

BEFORE THE STATE BOARD OF EQUALIZATION
FOR THE STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF)
ALBANY COUNTY ASSESSOR FROM A) Docket No. **2013-56**
DECISION OF THE ALBANY COUNTY)
BOARD OF EQUALIZATION – 2013)
PROPERTY VALUATION of UW-BISON)
RUN VILLAGE)

DECISION AND ORDER

APPEARANCES

Jennifer K. Stone, Deputy Albany County and Prosecuting Attorney, appeared on behalf of Mr. Grant Showacre, Albany County Assessor (Assessor).

Paula Ann Whaley, Associate General Counsel for the University of Wyoming, appeared on behalf of the University of Wyoming (University), which assumed responsibility for the appeal on behalf of CHF-Wyoming, LLC (CHF-Wyoming); the University and CHF-Wyoming are owners of property at issue in this appeal (Taxpayers).

DIGEST

Assessor filed a Notice of Appeal from an Albany County Board of Equalization (County Board) decision, reversing the Assessor’s denial of exempt status for property. The property consisted of land and improvements located within the University of Wyoming’s campus. The Wyoming State Board of Equalization (State Board), comprised of Chairman E. Jayne Mockler, Vice-Chairman Martin L. Hardsocg, and Member Robin Sessions Cooley, considered the matter.¹ The County Board’s Decision and Order is reversed, and the Albany County Assessor’s denial of tax-exempt status is reinstated.

¹ Paul Thomas Glause and Steven D. Olmstead were members of the Board at the time of the oral argument. Mr. Glause resigned from the Board, effective January 2, 2015. Mr. Olmstead’s term expired March 1, 2015. Governor Matthew Mead appointed Martin L. Hardsocg and Robin Sessions Cooley to the Board effective March 16, 2015. Mr. Hardsocg and Ms. Cooley reviewed the transcript, exhibits, record and briefing, and participated in the decision in this matter.

ISSUES

The Assessor framed the issues in his appeal as follows:

1. Whether the Decision of the Albany County Board of Equalization that the [Taxpayers'] property was being used primarily for a governmental purposes [sic] and therefore exempt from taxation is (a) arbitrary, capricious, and an abuse of discretion or otherwise not in accordance with the law; (b) in excess of the statutory jurisdiction or authority; (c) without observance of procedures [sic] required by law; or (d) unsupported by substantial evidence.
2. Whether the decision of the Albany County Board of Equalization that the [Taxpayers'] property was used by a secret, benevolent and charitable society or association to the extent it was not used for private profit nor primarily for commercial purposes, and therefore exempt from taxation is (a) arbitrary, capricious, and an abuse of discretion or otherwise not in accordance with the law; (b) in excess of the statutory jurisdiction or authority; (c) without observance of procedures [sic] required by law; or (d) unsupported by substantial evidence.

(Assessor's Br. 5).

Taxpayers similarly framed the issues as follows:

1. Was the decision of the Albany County Board of Equalization that Bison Run Village is exempt from taxation because it is state owned property being used for a governmental purpose supported by substantial evidence and not arbitrary or capricious in nature, an abuse of discretion, or not otherwise in accordance with the law?
2. Was the alternate finding of the Albany County Board of Equalization that Bison Run Village is exempt from taxation because it is owned by a charitable association and not used for private profit nor primarily for commercial purposes supported by substantial evidence and not arbitrary or capricious in nature, an abuse of discretion, or not otherwise in accordance with the law?

(Taxpayers' Br. 5).

From the State Board's perspective, the overarching question is whether Bison Run Village (Bison Run), consisting of a newly constructed apartment complex located on the University's campus, is tax-exempt pursuant to Wyoming Statutes section 39-11-105(a)(ii) (2013) or article 15, section 12 of the Wyoming Constitution?

If Bison Run is not tax-exempt pursuant to Wyoming Statutes section 39-11-105(a)(ii) (2013) or article 15, section 12 of the Wyoming Constitution as property "owned and used primarily for a governmental purpose," is the property tax-exempt under subsection (a)(xxvi) as property "used by a secret, benevolent and charitable society or association" in accordance with the statute and the Department of Revenue's interpretive rules?

We will examine Assessor's contentions within the framework of our standard of review, applying legal guidelines set forth in Wyoming Statutes section 39-11-105(a) (2013), article 15, section 12 of the Wyoming Constitution, the Department's Rules, and applicable case law.

PROCEEDINGS BEFORE THE COUNTY BOARD

The County Board heard Taxpayers' protest on August 27, 2013. It adopted as its own ruling Taxpayers' proposed Findings of Fact, Conclusions of Law and Order, and issued its decision on November 5, 2013. (R. at 1693-1707). The County Board ruled that Taxpayers' property was exempt from taxation under two alternative statutory sources, Wyoming Statutes sections 39-11-105(a)(ii) & (a)(xxvi) (2013). The County Board held that Bison Run Village is tax-exempt as state-owned property used primarily for governmental purposes or, alternatively, as property used by a secret, benevolent, and charitable society or association, not used for private profit nor primarily for commercial purposes by the entity or its lessee.

STANDARD OF REVIEW

When the State Board hears appeals from a county board, it acts as an intermediate level of appellate review. *Laramie Cty. Bd. of Equalization v. Wyo. State Bd. of Equalization*, 915 P.2d 1184, 1188 (Wyo. 1996); *Union Pac. R.R. Co. v. Wyo. State Bd. of Equalization*, 802 P.2d 856, 859 (Wyo. 1990). In its appellate capacity, the State Board treats a county board as the finder of fact. *Id.* In contrast, the State Board acts as the finder of fact when it hears contested cases on appeal from final decisions of the Department of Revenue (Department). Wyo. Stat. Ann. § 39-11-102.1(c) (2013). This sharp distinction in roles is reflected in the State Board Rules governing the two different types of proceedings. *Compare* Rules, Wyo. State Bd. of Equalization, ch. 2 (2006) *with* Rules, Wyo. State Bd. of Equalization, ch. 3 (2006).

The State Board standards for review of a county board decision are, by rule, nearly identical to the Wyoming Administrative Procedure Act standards which a district court must apply in reviewing an agency action, findings of fact, and conclusions of law. Wyo. Stat. Ann. § 16-3-114(c)(ii) (2013). The State Board's review is limited to a determination of whether a county board's action is:

- (a) Arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law;
- (b) In excess of statutory jurisdiction, authority or limitations or lacking statutory right;
- (c) Without observance of procedure required by law; or
- (d) Unsupported by substantial evidence.

Rules, Wyo. State Bd. of Equalization, ch. 3 § 9 (2006).

Since the State Board Rules are patterned on the judicial review provision of the Wyoming Administrative Procedure Act, we look to precedent interpreting Wyoming Statutes section 16-3-114(c) (2013) for guidance. For example, where both parties submit evidence at a contested case hearing, we apply the substantial evidence standard:

When an appellant challenges an agency's findings of fact and both parties submitted evidence at the contested case hearing, we examine the entire record to determine if the agency's findings are supported by substantial evidence. *Colorado Interstate Gas Co. v. Wyoming Department of Revenue*, 2001 WY 34, ¶ 8, 20 P.3d 528, 530 (Wyo. 2001); *RT Commc'ns, Inc. v. State Bd. of Equalization*, 11 P.3d 915, 920 (Wyo. 2000). If the agency's findings of fact are supported by substantial evidence, we will not substitute our judgment for that of the agency and will uphold the factual findings on appeal. "Substantial evidence is more than a scintilla of evidence; it is evidence that a reasonable mind might accept in support of the conclusions of the agency." *Id.*

Chevron U.S.A., Inc. v. Dep't of Revenue, 2007 WY 79, ¶ 9, 158 P.3d 131, 134 (Wyo. 2007). In conjunction with the substantial evidence standard, we apply the "arbitrary and capricious" standard:

Even if sufficient evidence is found to support the agency's decision under the substantial evidence test, this [Board] is also required to apply the

arbitrary-and-capricious standard as a “safety net” to catch other agency action which might have violated the Wyoming Administrative Procedures Act. *Decker v. Wyoming Medical Comm’n*, 2005 WY 160, ¶ 24, 124 P.3d 686, 694 (Wyo. 2005). “Under the umbrella of arbitrary and capricious actions would fall potential mistakes such as inconsistent or incomplete findings of fact or any violation of due process.” *Id.* (quoting *Padilla v. State ex rel. Wyoming Workers’ Safety and Comp. Div.*, 2004 WY 10, ¶ 6, 84 P.3d 960, 962 (Wyo. 2004)).

State ex rel. Wyo. Workers’ Safety & Comp. Div. v. Madeley, 2006 WY 63, ¶ 8, 134 P.3d 281, 284 (Wyo. 2006).

When reviewing conclusions of law, we review such conclusions *de novo*:

Questions of law are reviewed *de novo*, and “[c]onclusions of law made by an administrative agency are affirmed only if they are in accord with the law. We do not afford any deference to the agency's determination, and we will correct any error made by the agency in either interpreting or applying the law.” *Bowen v. State, Dep’t of Transp.*, 2011 WY 1, ¶ 7, 245 P.3d 827, 829 (Wyo. 2011) (quoting *State ex rel. Workers’ Safety & Comp. Div. v. Garl*, 2001 WY 59, ¶ 9, 26 P.3d 1029, 1032 (Wyo. 2001)).

Maverick Motorsports Grp., LLC v. Dep’t of Revenue, 2011 WY 76, ¶ 12, 253 P.3d 125, 128 (Wyo. 2011). Likewise, we review the findings of ultimate fact of a county board *de novo*:

When an agency’s determinations contain elements of law and fact, we do not treat them with the deference we reserve for findings of basic fact. When reviewing an “ultimate fact,” we separate the factual and legal aspects of the finding to determine whether the correct rule of law was properly applied to the facts. We do not defer to the agency’s ultimate factual finding if there was an error in either stating or applying the law.

RT Commc’ns v. State Bd. of Equalization, 11 P.3d 915, 920 (Wyo. 2000) (citations omitted); *quoted in Amoco Prod. Co. v. Wyo. State Bd. of Equalization*, 2001 WY 1, ¶ 5, 15 P.3d 728, 731 (Wyo. 2001); *Union Pac. R.R. Co. v. Wyo. State Bd. of Equalization*, 802 P.2d 856, 860-61 (Wyo. 1990).

FACTS PRESENTED TO THE COUNTY BOARD

The parties generally agreed to the underlying facts in this dispute. The parties, however, did not agree to the significance attributable to certain facts and how those facts and circumstances should be construed in light of statutory and regulatory guidelines, or applicable case law. The State Board is left to determine whether the County Board correctly evaluated the ultimate facts in light of the law. *See* Wyo. Stat. Ann. § 16-3-114(c)(ii) (2013); Rules, Wyo. State Bd. of Equalization, ch. 3 § 9 (2006).

The Assessed Property

1. Bison Run is an apartment complex project, including real property and newly constructed improvements, along with associated personal property required for operation of the facility, located at 2512 Willett Drive, Laramie, Albany County, Wyoming. This recently constructed apartment complex, containing 332 beds, is located on the University of Wyoming's campus. (R. at 361-73, 1562-63). Bison Run replaced the University's existing married housing complex, Summit View Apartments. (R. at 1510).
2. The University offers Bison Run apartments to sophomore through senior level students that satisfy certain eligibility criteria including, but not limited to, course load requirements. (R. at 367, 1562-64). However, unlike freshmen, who are required to reside in the University's on-campus dorms, sophomores, juniors and seniors are not required to rent Bison Run apartments. Bison Run tenants must also execute a 50-week lease rather than a semester lease. (R. at 1556-59, 1590-91).
3. The University began renting apartments to eligible University students in the fall of 2012, following completion of Bison Run's construction in August of that year. (R. at 1545-46). This tax dispute did not include the 2012 tax year because Taxpayers did not timely appeal the 2012 tax assessment. (R. at 1547-48).
4. The University's decision to pursue construction of new student apartments followed the recommendation in an internal University study that evaluated whether such housing was needed. (R. at 1520, 1529).

Construction financing through revenue bonds; Bison Run's ownership and operation

5. The University opted to use revenue bond financing² to fund construction of Bison Run. Revenue bonds were offered to the public in an "Official Statement" dated July 6, 2011. (R. at 777-951). The University sought to generate \$15.3 million for development, construction, and operation of Bison Run; the Bond issue was entitled: "Wyoming Community Development Authority Student Housing Revenue Bonds (CHF-Wyoming, L.L.C. – University of Wyoming Project) Series 2011." *Id.* The bond issuance will hereafter be referred to as the "Bond."

6. The facts and circumstances surrounding the University's decision to forgo direct funding of the Bison Run project, and its consequent use of bond financing, lie at the heart of this tax dispute. In particular, through various revenue Bond documents, including various lengthy financing agreements (Loan Agreement, Leasehold Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing, Ground Lease, Management Agreement, and Trust Indenture, among others), ownership of the apartments resided in a separate non-profit entity, CHF-Wyoming. (R. at 1601-1602). Assessor cites CHF-Wyoming's title ownership interest in Bison Run and certain aspects of control, among other related facts and circumstances within the financing structure, as critical considerations in his determination that Bison Run is not entitled to tax-exempt status under Wyoming statutory and constitutional law. (R. at 1601-05, 1610-13, 1625, 1627-32, 1639-42). Accordingly, a basic understanding of the Bond financing is necessary to fully evaluate the parties' respective positions in this dispute.

7. Ms. Megan Hanneman, the University's Manager of Financial Services, generally explained that the University determined that given its current bonding capacity, future bonding needs, and related factors, it could not directly incur debt to construct Bison Run. (R. at 1510-11, 1528). Instead, the University opted to use bond financing to fund construction and operation of Bison Run and, as such, the University itself would not be liable for repayment of any debt related to the project. Nevertheless, the University initially contributed \$3.2 million and paid legal and other fees of approximately \$38,000 to initiate the Bison Run Bond financing and project. (R. at 1520-1521, 1529, 1534-36, 1552).

² Revenue bonds are a security and, more specifically, a "type of bond issued by a state or local government repayable by the particular unit of government which issues it. Also, a bond issued for a specific public purpose such as the construction or maintenance of a bridge and repayable from income generated by such project." BLACK'S LAW DICTIONARY 1319 (6th ed. 1990). See also InvestingAnswers: "municipal bonds that are issued to fund specific projects that generate their own revenue." www.investinganswers.com/financial-dictionary/bonds/revenue-bond-4945 (last visited July 9, 2015).

8. During the hearing before the County Board, Taxpayers offered a flow chart depicting the bond financing arrangement. (R. at 460, 1512-19). While the State Board will parse the bond financing and underlying agreements in further detail, a general summary of the financing at this point is helpful. In the most simple terms, the Bond financing documents contractually authorized an entity separate from the University to lease campus lands, to borrow funds generated through publicly sold revenue bonds, to use those borrowed funds to construct and own an on-campus apartment complex, and to generally manage the apartments in order to collect rents and repay the construction debt over a 32-year term.

9. The Bond financing involved several other key entities. The Wyoming Community Development Authority (WCDA), acting as the “Issuer,” marketed and sold the bonds to the public. (R. at 521-641, 777-951). WCDA then lent proceeds from the sale of the Bonds to the University’s lessee, CHF-Wyoming, for the limited purpose of developing, constructing, and operating Bison Run. (R. at 643-717, Taxpayers’ Ex. 5, Loan Agreement between WCDA and CHF-Wyoming). The Bond financing requires that ownership of Bison Run belong exclusively with the University’s lessee, CHF-Wyoming, while the University retains ownership of the land for the 32-year term. (R. at 1129; R. at 1551-52, Taxpayers’ Ex. 13, Ground Lease, § 11(k), (m)).

10. To initiate the Bond financing, the University sought the services of a separate existing nonprofit entity, Collegiate Housing Foundation (CH Foundation). (R. at 1525-26, 1528-30). CH Foundation, a nonprofit entity that assists colleges with housing needs, created CHF-Wyoming as a separate, “single purpose” nonprofit entity to lease University lands upon which CHF-Wyoming would construct and operate Bison Run. (R. at 953-93, 1515-16). CH Foundation is the sole member of the limited liability company, CHF-Wyoming. (R. at 953).

11. As consideration for its assistance, the University agreed, *inter alia*, to pay CH Foundation an annual membership fee of 1.5% of Bison Run’s rental proceeds, amounting to approximately \$24,000 per year, over the 32-year term of the Ground Lease between the University and CHF-Wyoming. This fee, it was explained, would assist CH Foundation in carrying out its overall mission of assisting colleges with housing demands. (R. at 1525-26, 1533-34, 1536); see *infra* ¶ 100, fn. 7.

12. A separate banking institution acted as the Trustee for the Bond financing. The trustee in such transactions performs a wide range of responsibilities, including holding all funds and disbursing them in accordance with Bond agreements. (R. at 521-641).

13. CHF-Wyoming’s role and ownership rights to the Bison Run properties are primarily identified in the 32-year Ground Lease with the University. (R. at 1115-1202,

1517-18). Through the Ground Lease, the University empowered CHF-Wyoming to develop, construct and own the Bison Run apartment complex, but all significant decisions relating to Bison Run's design and construction required the University's written approval. (R. at 1115, 1126-31). Upon completion, CHF-Wyoming agreed to "operate, or cause to be operated, all such improvements as a student housing facility to serve Students and Eligible Residents." (R. at 1131, 1530).

14. CHF-Wyoming's obligation to pay rent to the University presumed a "Net Available Cash Flow" from operation of Bison Run. In other words, the University would receive rental payments only if Bison Run generated revenues in excess of debt service obligations and operating costs. (R. at 1123, 1537-38). Correspondingly, the Ground Lease empowered CHF-Wyoming to "in each Annual Period, charge or cause to be charged [from the student tenants] rent for the units comprising the Project sufficient to comply with all of the covenants and agreements of the Issuer and the Lessee contained in this Ground Lease and in the Bond Documents." (R. at 1123). The University retained a continuous option to purchase Bison Run for an amount equal to the outstanding bond debt and, at the end of the 32-year lease term, Bison Run property and improvements will belong to the University if all debts are paid. (R. at 1145, 1529-30, 1554-55).

15. CHF-Wyoming, however, subleases certain Bison Run facilities back to the University for \$53,000 per year. This subleased space includes a laundry room and maintenance shop used by the University to store its maintenance equipment and for maintenance staff. (R. at 1254-63, 1574-75).

16. Simultaneous with execution of the Ground Lease, CHF-Wyoming executed a "Management Agreement" with the University under which the University assumed nearly all Bison Run management responsibilities. (R. at 1163-81). Importantly, CHF-Wyoming retained certain authority and discretion to assure that the University's management would generate sufficient revenues to service the \$15.3 million Bond debt obligations. *Supra*, ¶ 14. For example, the University "acknowledges that Owner [CHF-Wyoming] is required to operate and manage the Project, . . . , in compliance with the Bond Documents[.]" and further "to use commercially reasonable efforts to manage the Project in accordance with the provisions of the Trust Indenture, the Loan Agreement, the Leasehold Mortgage," (R. at 1164).³ Consistent with the Bond documents, the University agreed to devise

³ CHF-Wyoming, for its part as borrower from the Bond issuer, agreed to a "Rate Covenant" requiring that it:

operate the Project as a revenue producing student housing facility . . . , to charge such fees and rates for its facilities and services and to exercise such skill and diligence as will provide Revenue Available for Fixed Charges, together with other

management policies and employ “commercially reasonable, good faith efforts” to collect revenues necessary to repay the Bond debt. (R. at 1164-65). The University agreed to market the Bison Run facilities, enforce resident contracts, carry out necessary capital improvements with notice to CHF-Wyoming, develop annual budgets, maintain records and report budgetary matters to CHF-Wyoming, and generally to undertake all actions required to ensure compliance with Bond documents. (R. at 1164-75). The University, as Bison Run’s contract manager, sets rental rates in accordance with the Bond documents, specifically the Loan Agreement between CHF-Wyoming and the WCDA. (R. at 1166).

17. Although the University assumed management of the Bison Run facilities, CHF-Wyoming, as leasehold owner, retained significant authority and could make certain demands concerning the University’s operation of the housing facilities. Under the Management Agreement, for example, the University’s authority to enter certain contracts is limited without first securing CHF-Wyoming’s written consent. The University must obtain CHF-Wyoming’s written consent to initiate most legal actions concerning Bison Run and cannot allow Bison Run to be further indebted or encumbered. (R. at 1173-74). Moreover, CHF-Wyoming retained limited authority to bring legal actions to enforce the Management Agreement against the University. (R. at 1177).

18. Consistent with the University’s determination that it would not or could not directly incur debt for Bison Run’s construction and operation, the bond documents uniformly specify that the University itself cannot be held liable for bond repayments or the costs to operate Bison Run. An example is found in the Management Agreement:

Manager [University] acknowledges that Owner [CHF-Wyoming] is required to operate and manage the Project, . . . ; provided, that, nothing herein or in the Bond Documents shall operate or be construed to make the Manager [University] liable or responsible for any aspect of the Project except as specifically set forth in this Agreement, and that nothing herein or in the Bond Documents shall obligate the Manager [University] to be liable for any portion of the principal of, interest on or redemption premium, if any, on the Bonds.

available funds, sufficient to pay promptly all expenses of operation, maintenance and repair of the Project, the annual membership fee payable to the Foundation . . . and to provide all payments required to be made by the Borrower under this Loan Agreement.

(R. at 694 (§ 8.06 of Loan Agreement)). The Loan Agreement requires that rental rates satisfy a threshold ratio of 1.2 times defined costs. *Id.*

(R. at 1164). The Ground Lease similarly directs that “in no event, shall the Lessor [University] be called upon to contribute thereto or do or pay for any work of any nature whatsoever on or relating to the Premises.” (R. at 1125). As such, repayment obligations under the Bond are secured by the newly constructed improvements, all related leasehold contract rights, and revenues generated through Bison Run’s operation; creditors have no direct recourse against the University. (R. at 658, 676, 808-09, 820, 823, 904, 1226-30).

19. Also relevant to the parties’ contentions in this dispute, the Bond documents uniformly define CHF-Wyoming as the “Borrower” of funds to develop, construct and operate Bison Run, and/or as “Owner” of the property. (R. at 534 (Trust Indenture); 648 (Loan Agreement), 808 (Official Statement); 1068 (Development Agreement); 1115, 1119 (Ground Lease); 1204 (Management Agreement)).

20. The State Board will discuss additional details concerning the Bond financing as necessary.

Assessor’s decision to assess property taxes on Bison Run in 2013
and the University’s contention that Bison Run is tax-exempt

21. The Assessor issued 2013 Notices of Assessment to the University and CHF-Wyoming for the surface property, improvements and personal property contained within the Bison Run development. (R. at 391-93; Assessor’s Ex. 15). The University timely appealed to the Albany County Board of Equalization, asserting the Bison Run property is exempt from property taxation pursuant to Wyoming Statutes section 39-11-105(a)(ii) and (xxvi) (2013) because Bison Run is “[u]sed as student housing for University of Wyoming students as part of the University’s educational services and mission.” (R. at 3). The University alternatively claimed that even if CHF-Wyoming is deemed Bison Run’s owner, it “is organized exclusively for charitable and educational purposes to structure financing for the project to assist the University of Wyoming to provide housing.” *Id.* See Wyo. Stat. Ann. § 39-11-105(a)(xxvi) (2013).

22. Consistent with its claim that Bison Run is tax-exempt, the University offered testimony, in conjunction with its legal arguments, that notwithstanding the Bond financing arrangement and CHF-Wyoming’s technical ownership of Bison Run facilities, the University owns the Bison Run properties for tax purposes. (R. at 1368-73, 1503-04; Taxpayers’ Br. 14-20). The University’s evidence consisted primarily of Bison Run’s inclusion within its campus system and educational mission. The University downplayed the Assessor’s view that Bison Run operates as a commercial venture that competes with private apartment businesses.

23. Megan Hanneman, the University's Manager of Financial Services, gave an overview of the Bond financing transaction and purpose of CHF-Wyoming, describing it as a single purpose entity created "to hold the property and do the developments for the Wyoming project." (R. at 1515). She testified that the University's decision to replace old student housing with the Bison Run development was based upon a study that demonstrated a demand and need for housing on campus. (R. at 1520).

24. Ms. Hanneman further testified that although the University may be entitled to rent under the Ground Lease, it had received no rent to date. (R. at 1519). The University performs all accounting functions, capitalizing the Bison Run improvements on its books. (R. at 1519-22). She testified concerning the University's management of Bison Run as an apartment complex, including setting rental rates. The University is required to generate revenue of at least 1.2 times the budgeted expenditures for any given year because CHF-Wyoming has to "cover the costs of the – of operating the project as outlined in the various agreements." (R. at 1523, 1531, 1541); *Supra* ¶ 16.

25. Although the University manages Bison Run, CHF-Wyoming makes debt payments, funds various operational accounts and routine maintenance, as well as funding a full time maintenance worker and an office position. (R. at 1526-27). The University, however, insures Bison Run and provides utility services. (R. at 1527, 1555).

26. In support of the University's argument that it, for all practical purposes, owns Bison Run, the University's Manager of Real Estate Operations, Mr. Joshua Decker, testified regarding the University's management of the facilities. Distinguishing Bison Run from other businesses that lease University property, he explained that the University does not contest taxation of other properties leased to for-profit concerns. (R. at 1544-55).

27. Mr. Decker testified regarding the University's extensive input in the design and construction of Bison Run, which all required the University's approval, and the University's employment of a "facilities planning project manager" who oversaw the project. (R. at 1545-46).

28. Mr. Decker discussed the Ground Lease, explaining that CHF-Wyoming acted as lessee for the narrow purpose of financing construction of Bison Run. (R. at 1551). He did not believe that CHF-Wyoming had any rights with respect to the underlying lands and that the University insisted upon retaining "fee simple marketable title to the land and also that the ground lease be unsubordinated to the lessee[.]" (R. at 1551-52). Discussing the Ground Lease, Mr. Decker testified that CH Foundation's role was to facilitate the financing of construction of student housing, consistent with the University's "educational mission." (R. at 1553-55).

29. The University's initial contribution of \$3.2 million, Mr. Decker asserted, reflected its commitment to the project, which would directly benefit the University. (R. at p. 1552). The University also funded initial legal fees and an "acquisition fee" totaling between \$32,000 and \$38,000. (R. at 1535-36).

30. The University's third witness, Mr. Patrick Call, Director of Residence Life Dining Services, characterized Bison Run as a component of the University's overall educational mission. (R. at 1560-61, 1576-77). He explained that the University leases by the bedroom to students at the sophomore or higher grade levels, and that resident-students must maintain at least six credit hours. The majority of units contain four bedroom-three bath units. (R. at 361-73, 1562-63). The University markets Bison Run across its campus with brochures and directly advertises to the parents of students. (R. at 1265-83, 1565-67).

31. Mr. Call discussed the University's direct management of Bison Run, stating that CHF-Wyoming has no day-to-day role in the operations. While CHF-Wyoming funds several positions, the University subsidizes operation through various administrative activities. (R. at 1568-69). The University's day-to-day management includes employment of a full-time property manager and a full-time assistant property manager to perform inspections, maintenance, and to respond to problems. (R. at 1569, 1571). The University staffs each of the four Bison Run buildings with a student "Apartment Life Assistant" (referred to as ALAs) to support the student residents; however, CHF-Wyoming funds the ALA costs. (R. at 1569-70). The ALAs are similar to "Resident Assistants" or "RAs" within the University's freshman dorms. (R. at 1570-71).

32. Mr. Call testified concerning Bison Run's inclusion within the University's campus security system: "The other way I think that the University covers the University Police Department, Bison Run Village like the rest of our apartments falls under their jurisdiction." (R. at 1572). Bison Run enjoys benefits from other University resources, including access to a community center with a computer lab, although the record is not clear regarding the location of the community center. (R. at 1573).

33. Mr. Call described the basis upon which student rental rates are determined, stating that they are not driven by market rates and depend entirely upon covering Bison Run's operational costs. (R. at 1575-76). He further opined that the University's intent was that Bison Run further its primary stated mission, which provides, in part: " 'In the exercise of our primary mission to promote learning, we seek to provide academic and co-curricular opportunities....' " (R. at 1332, 1576-78).

34. In differentiating Bison Run from other apartment housing businesses off campus, Mr. Call explained that because Bison Run was 100% student occupied, the University could better focus upon student needs. He mentioned the benefits of the campus shuttle

services, the Apartment Living Assistants, tutoring, counseling, mediation conflict, and other staffing resources that attend to student needs. (R. at 1578-83). Mr. Call described in some detail the standard lease agreement by which students rent rooms within Bison Run. He discussed imposition of various guidelines and conditions as part of the students' experience as Bison Run residents, including anti-harassment provisions, noise restrictions, and others. (R. at 1285-1304, 1322-30, 1584-87). He stated that in accordance with studies performed at the University and in other states, students who live on campus perform better academically and are more likely to complete school courses. (R. at 1587-88).

35. Residents at Bison Run must enter into a 50 week lease unlike students in campus dormitories, who enter into shorter academic year leases from August through May. (R. at 1590-95). Bison Run residents are responsible for paying rent under their leases even after the school year ends, after they graduate, or after they are no longer students. *Id.* All Bison Run apartments have a kitchen and residents are not required to use campus dining services. *Id.*

36. The Albany County Assessor, Mr. Grant Showacre, testified concerning his decision that Bison Run was not tax-exempt under Wyoming law. After reviewing several of the Bond financing documents, he concluded that Bison Run was taxable. (R. at 1601-02).

37. He determined that although CHF-Wyoming was created as a § 501(c)(3) nonprofit entity under the federal tax code, the exemption from federal taxation did not necessarily render it tax-exempt under Wyoming's property tax statutes. (R. at 1602-06). Moreover, Mr. Showacre concluded that a private entity's ownership of Bison Run, as opposed to ownership by the University, was critical in his evaluation, as were CHF-Wyoming's contractual management responsibilities. (R. at 1603, 1624, 1627-30).

38. First responding to Taxpayers' claim that CHF-Wyoming's property is tax-exempt as a non-profit secret, benevolent or charitable society, Mr. Showacre pointed out that pursuant to Chapter 14 of the Department of Revenue's Rules, a non-profit entity's ownership of housing may be tax-exempt under specified circumstances. Referring to section 14(b) of Chapter 14, he explained that CHF-Wyoming's ownership did not fall within the categories for which an exemption is recognized. (R. at 50, 1605-06). Then, citing section 12 of Chapter 14, Mr. Showacre concluded that CHF-Wyoming's ownership of Bison Run and role within the Bond financing did not justify designating it a "Secret," a "Charity," or a "Benevolent" association. He explained that providing housing to students, as were other local businesses, did not qualify as "Charity." (R. at 48, 1606-07). Finally, Mr. Showacre directed the County Board to section 12(d)(i) of Chapter 14 of the Department's Rules, which expressly directs that a nonprofit entity's operation of "housing" for a charge constitutes a "commercial purpose" that will render it ineligible for tax-exempt status. (R. at 49, 1608-09). He emphasized that even if the housing benefited

the public generally, it was not thereby “benefiting the public uniquely” and that other businesses offered similar services, all for a charge. (R. at 1637).

39. Additional considerations undermined the University’s claim for tax-exempt status, including that CHF-Wyoming and CH Foundation were compensated for their services. (R. at 1609-10). Mr. Showacre explained: “It’s not so much as making a profit as that it is the controlling factor of the property which is a commercial purpose[,] not so much profit.” (R. at 1627).

40. Mr. Showacre offered several counterpoints to Taxpayers’ assertion that Bison Run served a governmental purpose. He noted that offering housing to sophomore and upper level students did not appear to be a governmental purpose because those students were not required to live on campus. (R. at 1611). He noted that under the Ground Lease, CHF-Wyoming retained managerial authority and that the University’s ability to construct or market like or competing housing was limited. (R. at 1612-14). He explained that many of Bison Run’s amenities were comparable to those offered at competing housing businesses, including specifically “The Pointe,” “The Grove,” and “Campus Habitat”; Bison Run was, in his estimation, competing directly with those businesses. Referring to a table comparing all four apartment businesses, he observed that although they differed in some ways, rental rates fell within a comparable range and were driven by amenities offered at each. (R. at 361-72, 375 (Assessor’s Ex. 13), 377-90, 1613-18, 1648-50, 1652-53).

41. Notwithstanding the University’s heavy involvement in day-to-day Bison Run operations, Mr. Showacre disagreed that the University effectively owned Bison Run. (R. at 1629-30). Mr. Showacre countered that while the University assumes primary control over Bison Run’s operation, evidence of CHF-Wyoming’s authority and control was clearly set forth throughout the Bond documentation. (R. at 1639-41). Further, he observed that the University is required under the Bond documents (the Ground Lease in particular) to use commercially reasonable efforts in managing Bison Run and is accountable to CHF-Wyoming. (R. at 1650-52). The University’s contractual obligation to operate Bison Run as a commercial venture, as well as subordination of the University’s authority and interests to the commercial obligations underlying the Bond, were critical to the Assessor’s conclusion that Bison Run is taxable.

42. Applying Wyoming Statutes section 39-11-105(a)(ii)(A) (2013), Mr. Showacre rejected the Taxpayers’ claims and concluded that Bison Run’s apartments were “‘improvements placed on state lands by lessees for private or commercial use.’ ” (R. at 1618). Likewise, Mr. Showacre rejected the Taxpayers’ claim that Bison Run was exempt pursuant to Wyoming Statutes section 39-11-105(a)(xxvi) (2013). (R. at 1602-11, 1634-

40). Mr. Showacre issued separate 2013 tax assessments for the Bison Run apartment buildings, underlying property, and Bison Run personal property. (R. at 391-93).

APPLICABLE STATUTORY AND REGULATORY LAW

43. The State Board is required to “hear appeals from county boards of equalization.” Wyo. Stat. Ann. § 39-11-102.1(c) (2013). The Assessor timely appealed from the County Board’s November 5, 2013, decision on December 4, 2013. (R. at 1708-26). Consequently, the State Board has jurisdiction to consider this appeal. Rules, Wyo. State Bd. of Equalization, ch. 3 § 2 (2006).

44. The Wyoming Constitution exempts government property from taxation when used primarily for governmental purposes:

§ 12. Exemptions from taxation

The property of the United States, the state, counties, cities, towns, school districts and municipal corporations, **when used primarily for a governmental purpose**, and public libraries, lots with the buildings thereon used exclusively for religious worship, church parsonages, church schools and public cemeteries, shall be exempt from taxation, and such other property as the legislature may by general law provide.

Wyo. Const. art. 15, § 12 (emphasis added). The highlighted language, “when used primarily for a governmental purpose,” was added in 1956. *Town of Pine Bluffs v. State Bd. of Equalization*, 333 P.2d 700, 703-04 (Wyo. 1958).

45. The Wyoming Legislature further identified thirty-eight categories of exempt property. Taxpayers claim three of these categories could apply:

(a) The following property is exempt from property taxation:

* * *

(ii) Property of the state of Wyoming owned and used primarily for a governmental purpose. The following property is not owned and used primarily for a governmental purpose:

(A) Improvements placed on state lands by lessees for private or commercial use;

* * *

(xxvi) Property used by a secret, benevolent and charitable society or association, including any fraternal organization officially recognized by the University of Wyoming or any community college, and senior citizens centers to the extent it is not used for private profit nor primarily for commercial purposes by the society, association or center, or lessee thereof;

(xxvii) Property owned by a nonprofit society, foundation or association and used primarily as a community area center in which presentations in music, the arts and related fields are made in order to foster public interest and education therein, to the extent and in the proportion that receipts and revenues attributable to the above specified presentations bear to total receipts and revenues from the use and operation of the center including rentals and revenues received for the commercial use of the center not attributable to the above specified presentations[.]

Wyo. Stat. Ann. § 39-11-105(a)(ii), (xxvi) & (xxvii) (2013).

46. In support of their claim that Bison Run property is exempt, Taxpayers cite the exemption for property “owned by a nonprofit society, foundation or association and used primarily as a community area center in which presentations in music, the arts and related fields are made in order to foster public interest and education therein[.]” Wyo. Stat. Ann. § 39-11-105(a)(xxvii) (2013). However, they did not substantively address this provision in their briefing or through their evidentiary presentation. (*See* R. at 1373-75, 1704). It appears that in several instances, Taxpayers mistakenly identified subsection (a)(xxvii) in place of subsection (a)(xxvi). Because Taxpayers have not substantively addressed subsection (a)(xxvii), neither will the Board. *See Feltner v. Casey Family Program*, 902 P.2d 206, 210 (Wyo. 1995) (“Our rule is that we refuse to consider positions unsupported by cogent argument or pertinent authority.”).

47. The Department of Revenue is required to confer with, advise, and give necessary instructions and directions to county assessors as to their duties, and to promulgate rules and regulations necessary for the enforcement of all tax measures. Wyo. Stat. Ann. § 39-11-102(c)(xvi), (xix) (2013). County assessors, for their part, must “[f]aithfully and diligently follow and apply the orders, procedures and formulae of the department of revenue . . . for the appraisal and assessment of all taxable property[.]” Wyo. Stat. Ann. § 18-3-204(a)(ix) (2013). The Department has enacted a chapter of rules entitled, “Ad Valorem Tax Exemption Standards.” Rules, Wyo. Dep’t of Revenue, ch. 14 (2008). These administrative rules have the force and effect of law. *Wyo. Dep’t of Revenue v. Union Pac. R.R. Co.*, 2003 WY 54, ¶ 18, 67 P.3d 1176, 1184 (Wyo. 2003).

48. The Department's Chapter 14 Rules "provide a reference to accepted definitions, procedures and criteria for the exemption from assessment and taxation of real and personal property[.]" and serve "as a ready reference to commonly encountered problems." Rules, Wyo. Dep't of Revenue, ch. 14 § 1 (a), (b) (R. at 39-52; Assessor's Ex. 5).

49. Depending upon the ownership of property, the Department's Rules establish the following presumptions regarding exemptions:

(i) For publicly owned property the assessor begins with the legal presumption the property is exempt.

(ii) For all other property, both real and personal, the exemption process begins with the legal presumption the property is assessable utilizing the established principle that taxation is the rule, and exemptions are not presumed. Specific exemptions are provided by statute and constitution. In applying specific exemptions, the statutes and constitution shall be strictly construed. This does not mean, however, any possible doubt must be resolved to approve the exemption. Only if the doubt is well founded should the exemption be denied.

Rules, Wyo. Dep't of Revenue, ch. 14 § 2(a.) (2008); *see Lance Oil & Gas Co. v. Wyo. Dep't of Revenue*, 2004 WY 156, ¶ 29, 101 P.3d 899, 907 (Wyo. 2004) (If legislative intent is still in doubt concerning an exemption after application of all rules of interpretation, the rule of strict construction may resolve that ambiguity.). A presumption imposes upon the party against whom it is directed the burden of proving that the nonexistence of the presumed fact is more probable than its existence. Wyo. R. Evid. 303(a).

50. The Department's rules more specifically define the burdens of proof for securing or refuting a tax exemption for publicly-owned property, providing that "[e]xcept for publicly-owned property, the burden is on the owner to prove the property meets exemption requirements[.]" while "[f]or publicly owned property, the burden is on the taxing authority to establish taxability." Rules, Wyo. Dep't of Revenue, ch. 14 § 3 (2008).

51. The Department's Rules also identify typical considerations used to determine whether property is exempt:

(c.) Three considerations are typically involved in determining whether a property should be exempt:

(i) Ownership of the property;

(ii) Use of the property; and/or

(iii) Type of property.

Rules, Wyo. Dep't of Revenue, ch. 14 § 2 (c.) (2008). "We take this to be a summary of the character of the many exemptions, rather than a directive to an assessor. Exemption[s] are typically framed in terms of ownership, e.g., Wyo. Stat. Ann. § 39-11-105(a)(xviii), (xxi), (xxii), (xxxvi), (xxxvii); use of property, e.g., Wyo. Stat. Ann. § 39-11-105(a)(vii), (xx); type of property, e.g., Wyo. Stat. Ann. § 39-11-105(a)(x), (xii), (xv); or some combination of ownership, use, and type, e.g., Wyo. Stat. Ann. § 39-11-105(a)(iii), (iv), (v), (xiv), (xxvii), (xxxv)." *Cheyenne LEADS, Inc.*, Docket No. 2007-52, 2008 WL 755826, ¶ 74 (Wyo. State Bd. of Equalization, March 14, 2008).

52. The Department has cross-referenced its Rules governing specific exemptions with its statutory counterpart. The Department's Rules, more specifically applicable to the statutory exemptions at issue in this appeal, are as follows:

Section 4. Publicly owned property - W.S. 39-11-105(a)(i)-(vi).

(a.) Publicly owned property is not, per se, exempt from taxation. The property is exempt only "when used primarily for a governmental purpose."

(b.) The phrase "governmental purpose" cannot be precisely defined. The following considerations should be evaluated:

(i) If a service or function is obligatory (one the governmental entity must perform as a legal duty imposed by statute), the function is governmental and the associated property is exempt.

(ii) If a service is rendered gratuitously, supported by taxes, and for the public welfare or enjoyment generally, the property associated with providing such service is exempt.

(iii) W.S. 39-11-105(a)(v) specifically identifies certain municipal property which is exempt (used primarily for a governmental purpose).

(iv) W.S. 39-11-105(a)(i)(A)-(E) and (ii)(A)-(D) identify specific uses of federal and state property which are not exempt (not used for governmental purposes).

(v) Property owned by a governmental entity acting in its proprietary capacity is not exempt, (e.g. where a city enters the field of private

competitive business for profit or into activities which may be and frequently are carried on through private enterprises).

* * *

Section 12. Secret, benevolent and charitable societies and associations - W.S. 39-11-105(a)(xxvi).

(a.) The following definitions apply:

(i.) "Secret" means fraternal or lodge-type societies or associations which are not necessarily secret or ritualistic.

(ii.) "Charity" is a gift for the benefit of an indefinite number of persons in Wyoming, by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves in life, or by erecting or maintaining public buildings or works. The fundamental basis for this exemption is the benefit conferred upon the public, and the consequent relief, to some extent, of the burden upon the state to care and advance the interests of its citizens.

(iii.) "Benevolent" includes purposes which may be deemed charitable, as well as acts dictated by kindness, good will, or a disposition to do good, the objects of which have no relation to the promotion of education, learning, or religion, the relief of the needy, the sick, or the afflicted, the support of public works, or the relief of public burdens. The term has wider significance than "charitable" as a legal tenet but shall be limited to purposes or activities of sufficient public importance and wide-spread social value.

(iv.) The word "and" in the phrase "secret, benevolent and charitable society or association" shall be understood in the disjunctive, not conjunctive.

(b.) To be exempt under this section, the institution shall fulfill the above definitions, and operate primarily for non-commercial purposes without any element of private profit.

(c.) In making a determination of use for private profit, one distinctive feature is whether the entity has capital stock and a provision for dividends or profits, or whether it derives funds mainly from public and private charity, holding them in trust to be expended only for charitable and benevolent purposes.

- (i.) An institution may charge fees or engage in business, but no gain or value may be distributed to members or stockholders. The officers and members may have no pecuniary interest in the property from which they gain. Payments made to officers, employees, contractors and suppliers shall be reasonable and not an indirect means of conferring gain or profit to private persons.
 - (ii.) Revenue from fees paid by recipients of the charity or services shall be devoted only to the maintenance of the institution or its purposes.
 - (iii.) A grant of sales/use tax exempt status by the State as a qualified charitable organization, or the grant of income tax exempt status by the Internal Revenue Service as a "501(c)(3)" or similar organization, is not binding in making the determination of whether the property of the entity is exempt from ad valorem taxation. Assessors may consider compliance with and operation under the tax exempt provisions of the Internal Revenue Service Code or an exemption from sale and use tax as a rebuttable presumption the institution's operations are reasonable and not for profit.
 - (iv.) The matter of private profit concerns the way property is used, not solely the ownership thereof. The entire use of the property by all concerned shall be considered.
- (d.) The property at issue shall not be used primarily for a "commercial purpose", that is use of property or any portion thereof to provide services, merchandise, area or activities for a charge, which are generally obtainable from any commercial enterprise and are collateral to the purpose of the secret, benevolent and charitable society or association.
- (i.) Commercial purpose includes, without limitation, the operation for charge of bars, restaurants, dancing areas, merchandise shops, housing, theaters and bowling alleys.
 - (ii.) The use of property for commercial purpose is controlling, not whether or not a profit is actually made nor how the revenue is ultimately used. If an activity is considered "commercial", it does not become "non-commercial" merely because the revenue derived from the commercial use is devoted to charitable or authorized purposes.
- (e.) If a secret, benevolent and charitable society or association confers a benefit only upon the citizens of another state, its property is not exempt.

Rules, Wyo. Dep't of Revenue, ch. 14 §§ 4, 12 (2008).

CONCLUSIONS OF LAW – APPLICATION OF PRINCIPLES OF LAW

53. The County Board adopted Taxpayers’ proposed findings of fact, conclusions of law, and order and held that in accordance with Wyoming Statutes section 39-11-105(a)(ii) (2013), the University owns Bison Run and uses it primarily for a governmental purpose. The County Board alternatively held that to the extent CHF-Wyoming owns Bison Run, the property is nonetheless tax-exempt pursuant to Wyoming Statutes section 39-11-105(a)(xxvi) (2013) because CHF-Wyoming is a secret, benevolent, and charitable entity, and the property is not used for commercial purposes. (R. at 1693-1707). The State Board concludes that the County Board’s ruling was incorrect on both claims.

54. This tax dispute presents an issue of first impression. Neither the State Board nor Wyoming Supreme Court have applied article 15, section 12 of the Wyoming Constitution, or Wyoming Statutes section 39-11-105(a) (2013), to a tax exemption dispute concerning “state” property. Past cases have concerned local government properties. Further, the State Board deems it necessary to isolate and address several significant sub-issues not discussed by the parties. Given the decision’s length and complexity, we preview our conclusions:

A. The State Board holds that the County Board incorrectly placed the burden of proof upon the Assessor, *infra* ¶¶ 55-58;

B. Although the parties did not address whether the University’s property is “state” property under the Wyoming Constitution or applicable statutes, the State Board confirms that University property is “state” property under article 15, section 12 of the Wyoming Constitution and Wyoming Statutes section 39-11-105(a) (2013), *infra* ¶ 60-61;

C. Applying rules of statutory construction, the State Board reconciles different statutory and constitutional applications of the phrase “used primarily for a governmental purpose” in Wyoming Statutes section 39-11-105(a)(ii)(A) (2013) and article 15, section 12 of the Wyoming Constitution, and finds that these provisions require a determination of “primary” use, *infra* ¶¶ 62-72;

D. The State Board confirms that property use, ownership, and type, rather than title ownership alone, determine whether tax-exempt status applies, *infra* ¶ 73;

E. Although not dispositive, application of the Department’s rules favor the Assessor’s position that Bison Run is not entitled to tax-exempt status because it operates in a commercial and proprietary manner, *infra* ¶¶ 74-77;

F. Although not precisely on point, Wyoming’s case law supports Assessor’s position that per the Wyoming Constitution and applicable statutes, Bison Run is not “used primarily for a governmental purpose,” rather it operates as a commercial and/or private business and is, therefore, taxable, *infra* ¶¶ 78-106;

G. Finally, the County Board incorrectly held that, in the alternative, Bison Run is tax-exempt pursuant to Wyoming Statutes section 39-11-105(a)(xxvi) (2013) as property used by a secret, benevolent, and charitable association for other than a commercial or for-profit purpose, *infra* ¶¶ 107-117.

The State Board will reverse the County Board’s decision and order.

Burden of Proof

55. The County Board determined that the Assessor had the burden of proving that land underlying Bison Run was taxable. (R. at 1719, Cty. Bd. Decision, ¶ 46). The County Board made no specific determination as to the burden of proving the taxability of the Bison Run improvements or personal property, but implicitly adopted Taxpayers’ position that the University owned Bison Run facilities for tax purposes. (R. at 1721-24, Cty. Bd. Decision, ¶¶ 58-70;).

56. While property ownership is not itself determinative of whether property is tax-exempt (See *infra* ¶ 72), the Department, by rule, has assigned the burden of establishing or disestablishing tax-exempt status based upon property ownership. See *supra* ¶ 51. The present case, however, does not lend itself to easy assignment of burdens because Bison Run is subject to a split ownership of sorts—the University owns the land underlying the apartment buildings, while CHF-Wyoming owns the improvements and personal property. See *supra* ¶ 9. Muddying the waters further, the University argues that because it exercises day-to-day managerial responsibilities and treats Bison Run as any other part of its campus, it effectively owns the entire property. (Taxpayers’ Br. 14-28). The University’s ownership claim, however, does not reconcile with the Bond financing documents it executed. *Supra* ¶¶ 9, 19.

57. Because the surface estate and Bison Run improvements are inextricably bound together for tax exemption purposes, we view the land and improvements uniformly as property owned by CHF-Wyoming, a non-governmental entity. While the University retained title ownership of the land underlying the Bison Run buildings, those interests are necessarily subsumed within leasehold rights conveyed to CHF-Wyoming, allowing CHF-Wyoming to construct and operate Bison Run. (See *supra* ¶¶ 10-19; R. at 1551-52). Indeed, the Ground Lease merely subordinates lessee CHF-Wyoming’s ownership in the land to the University’s ownership interest; CHF-Wyoming nonetheless has property rights

in the land upon which Bison Run was constructed. (R. at 1129). Any suggestion to the contrary must give way to the Taxpayers' predominate contractual intent to establish CHF-Wyoming's rights and authority to complete the apartment development and, at the same time, to insulate the University from any basis of liability or financial responsibility. *Supra* ¶¶ 7, 18.

58. In applying the Department's rules identifying the burdens of proof, it would be illogical to consider the properties separately, as such would ignore the parties' formal agreement that CHF-Wyoming construct, own, and operate an apartment business, obligations that necessarily encompass certain rights to the lands beneath. As when interpreting and applying statutes, the Board's interpretation and application of rules should not render an absurd result. *See Rodriguez v. Casey*, 2002 WY 111, ¶ 10, 50 P.3d 323, 326 (Wyo. 2002). Rather, applying the same interpretive concepts as are applied to statutes, rules should be given a reasonable, practical construction. *State Bd. of Equalization v. Cheyenne Newspapers, Inc.*, 611 P.2d 805, 809 (Wyo. 1980). Accordingly, because the University and CHF-Wyoming unambiguously agreed that CHF-Wyoming would receive all property rights necessary to fully own and operate Bison Run as a private entity, including property rights in the surface estate, Taxpayers had the burden of proving that Bison Run is tax-exempt. Rules, Wyo. Dep't of Revenue, ch. 14 § 3 (2008); *supra* ¶ 50.

The County Board's ruling that Bison Run is tax-exempt as a government-owned entity, used for governmental purposes pursuant to Wyoming Statutes section 39-11-105(a)(ii) (2013).

59. The County Board agreed with Taxpayers that, notwithstanding CHF-Wyoming's ownership of the Bison Run facilities and personal property pursuant to the Bond financing employed to fund construction and operation, the lease relationship with CHF-Wyoming was not typical and the University "is the true owner of the Bison Run property for tax purposes." (R. at 1723, Cty. Bd. Decision, ¶¶ 66-67). The County Board accepted the University's argument that because it manages Bison Run day-to-day, and because Bison Run's resident students enjoy many campus-related benefits, the property should be treated like other parts of the campus. The County Board embraced the University's suggestion that its "equity" interest in Bison Run—its vested long-term interest—should dictate ownership. (R. at 1722-24). The County Board consequently agreed with Taxpayers that Bison Run serves a governmental purpose and is tax-exempt pursuant to Wyoming Statutes section 39-11-105(a)(ii) (2013).

Is University property “state” property?

60. The Assessor did not contest whether the University’s campus property falls within the overall scope of the exemption: “Property of the State of Wyoming owned and used primarily for a governmental purpose[.]” Wyo. Stat. Ann. § 39-11-105(a)(ii) (2013); *see also* Wyo. Const. art. 15, § 12 (“The property of the United States, the state, counties, cities, towns, school districts and municipal corporations, when used primarily for a governmental purpose[.]”). Nevertheless, we are mindful that “a statutory grant of exemption from taxation is never presumed, must be clearly conferred in plain terms and should be strictly construed.” *Comm’rs of Cambria Park v. Bd. of Comm’rs of Weston Cty.*, 174 P.2d 402, 405 (Wyo. 1946) (quoting *State ex rel. Goshen Irrigation Dist. v. Hunt*, 57 P.2d 793, 799 (Wyo. 1936)).

61. The State Board concludes that the constitutional and statutory language referring to “state” property implicitly includes the University’s property for tax exemption purposes. Wyo. Stat. Ann. § 39-11-105(a)(ii) (2013); Wyo. Const. art. 15, § 12. The University arose simultaneously with the State’s formation and is constitutionally recognized. Wyo. Const., art. 7, § 15; *see also* Wyo. Act of Admission, § 8 (26 Stat. 223 (1890))(Lands granted to states for support of universities, and universities shall be under exclusive control of states); 1890 Wyo. Sess. Laws ch. 75. Further, the Wyoming Supreme Court has determined that even though the University operates as a separate institution, it “is not separate from or independent of the state; but it is so much a dependent part of the state that, even upon a vesting of title through such a provision as that before us referring to public lands of the state, the lands would still remain the lands of the state.” *Ross v. Trs. of Univ. of Wyo.*, 228 P. 642, 651 (Wyo. 1924); *see also Hjorth Royalty Co. v. Trs. of Univ. of Wyo.*, 222 P. 9, 9-10 (Wyo. 1924) (Suit against University is a suit against the State and requires State’s consent.).

*Constitutional and statutory language rendering state property tax-exempt
when used primarily for a governmental purpose*

62. The exemption of state property from taxation, when used primarily for a governmental purpose, arises from both Wyoming constitutional and statutory law. *Supra* ¶¶ 44-45. However, the statutory and constitutional provisions applicable to the “state” property in this matter substantively differ, and the differences merit careful consideration to ensure proper application of the law. *Compare* Wyo. Const. art. 15, § 12 *with* Wyo. Stat. Ann. § 39-11-105(a)(ii)(A) (2013); *see also Uhls v. State ex rel. City of Cheyenne*, 429 P.2d 74, 87-88 (Wyo. 1967) (Explaining that municipalities have both proprietary and governmental powers and that article 15, section 12 of the Wyoming Constitution permits taxation of municipal property when used for proprietary purposes).

63. Beginning with the Wyoming Constitution, article 15, section 12, provides:

The property of the United States, the state, counties, cities, towns, school districts and municipal corporations, **when used primarily for a governmental purpose**, and public libraries, lots with the buildings thereon used exclusively for religious worship, church parsonages, church schools and public cemeteries, shall be exempt from taxation, and such other property as the legislature may by general law provide.

Wyo. Const. art. 15, § 12 (emphasis added); *supra* ¶ 44. The highlighted constitutional language unambiguously directs that state property, “when used primarily for a governmental purpose,” is tax-exempt. *Id.* The Constitution allows additional property exemptions through legislative enactment. *Id.*

64. In contrast, statutory language at issue in this dispute does not merely recite the constitutional language granting tax-exempt status to state property “used primarily for a governmental purpose”—it carves out exceptions to the exemption by declaring that under certain circumstances, properties “are not owned and used primarily for a governmental purpose”:

(a) The following property is exempt from property taxation:

* * *

(ii) Property of the state of Wyoming owned and used primarily for a governmental purpose. **The following property is not owned and used primarily for a governmental purpose:**

(A) **Improvements placed on state lands by lessees for private or commercial use;**

(B) Improvements furnished by the state to employees as a place of residence;

(C) Improvements and equipment rented, leased, loaned or furnished by the state to employees or groups of employees for the purpose of operating enterprises for which there is a service or admission charge;

(D) The equity or interest of the purchaser, his heirs, executors or assigns, in any land being purchased from the state of Wyoming under a contract of sale, the value thereof to be determined by taking the market value of the lands and deducting the amount of principal and

accrued interest owing to the state of Wyoming on January 1 of the year for which the property is assessed.

Wyo. Stat. Ann. § 39-11-105(a)(ii)(A-D) (2013) (emphasis added); *supra* ¶ 45.

65. As will be explained, when viewed in light of the entire statute, this difference is significant. Notably, these exceptions are applicable **only to state property**; the language identifying tax-exempt properties held by counties, cities, towns, school districts, and certain special districts, generally track with the constitutional language in article 15, section 12, followed by an open-ended list of property uses and activities that are tax-exempt. *See* Wyo. Stat. Ann. § 39-11-105(a)(iii)-(xxiii) (2013). For example, subsection (a)(v) exempts: “Property of Wyoming cities and towns owned and used primarily for a governmental purpose including: (A) Streets and alleys and property used for construction, reconstruction . . .” followed by a broad list of other exempt property uses. Wyo. Stat. Ann. § 39-11-105(a)(v) (2013).

66. When reconciling the differences among the aforementioned constitutional and enumerated statutory exemptions, several interpretative approaches are possible. With respect to the exemption language at issue in this case, subsection (a)(ii)(A) may mean that improvements placed on state lands by lessees for private or commercial use are, **by definition**, not used primarily for a governmental purpose. Given that interpretation, the legislature has effectively created an “either-or status” for these state-leased lands, even if such property arguably serves both governmental and commercial/private purposes. In other words, where there are overlapping governmental and commercial purposes, the statute may require that state property be classified as taxable because there is a commercial or private use.

67. Several rules of statutory interpretation favor this interpretive approach. “ ‘[W]hen the legislature use[s] certain language in one part of the statute and different language in another, the court assumes different meanings were intended.’ ” *In re Kite Ranch, LLC*, 2010 WY 83, ¶ 20, 234 P.3d 352, 359 (Wyo. 2010) (quoting 2A Norman J. Singer & J.D. Shambie Singer, *Statutes and Statutory Construction* § 46:6 (7th ed. 2007)). Further, courts may not reorder statutory language under the guise of interpretation. *Matter of Voss’ Adoption*, 550 P.2d 481, 485 (Wyo. 1976) (citations omitted); *Dep’t of Revenue & Taxation v. Irvine*, 589 P.2d 1295, 1298 (Wyo. 1979). The State Board may, consistent with these guidelines, simply ascertain whether Bison Run serves a commercial or private purpose and, if so, find that the property is not tax-exempt regardless of any related governmental purpose.

68. Alternatively, the State Board may interpret subsection (a)(ii)(A) to require a determination of the “primary” purpose—whether the improvements placed on state lands

serve “primarily” a governmental purpose, versus a commercial/private purpose. Following this interpretive approach, the statute and constitution implicitly allow for property uses that serve overlapping governmental and commercial purposes, and whether the property is exempt depends not narrowly on whether state property is used for commercial or private purposes, but on the property’s “primary” purpose. *See* case analysis, *infra* ¶¶ 78-86. Indeed, Wyoming case law interpreting statutory tax exemptions applicable to property owned by towns, cities and counties has generally followed this analytical approach. *See infra* ¶¶ 78-86. The State Board, under this approach, would evaluate Bison Run’s “primary” purpose.

69. Our analytical approach must in any event reconcile with article 15, section 12 of the Wyoming Constitution. Referring back to article 15, section 12, we note that the language broadly exempts state property used primarily for a governmental purpose. Wyo. Const. art. 15, § 12; *supra* ¶¶ 44, 62. The constitutional provision neither requires nor invites legislative action to define “governmental purpose.” *Id.* With this overview of Wyoming’s constitutional and statutory tax-exemption provisions, we turn to well-established rules of interpretation.

70. “In construing our constitution, we follow essentially the same rules as those governing the construction of a statute. The fundamental purpose of those rules of construction is to ascertain the intent of the framers.” *Dir. of the Off. of State Lands & Invs., Inc. v. Merbanco*, 2003 WY 73, ¶ 33, 70 P.3d 241, 252 (Wyo. 2003) (citing *Geringer v. Bebout* 10 P.3d 514, 521 (Wyo. 2000)). “ ‘We are charged with discerning the intent of the Constitutional Convention, and we look first to the plain and unambiguous language to discern that intent.’ ” *Id.* (quoting *Mgmt. Council of Wyo. Leg. v. Geringer*, 953 P.2d 839, 843 (Wyo. 1998)). “If the language is sufficiently clear, we do not resort to rules of construction.” *Merbanco*, ¶ 35, 70 P.3d at 253. The court first considers the ordinary and obvious meaning of a statute when the language is unambiguous but, when unclear, looks to the “mischief the statute was intended to cure, the historical setting surrounding its enactment, the public policy of the state, . . . and other prior and contemporaneous facts and circumstances[.]” *Id.*

71. “Our rules of statutory interpretation require that we, in seeking legislative intent, must find a consistent and realistic intendment which includes the presumed desire of the legislature to recognize its legislative duty to act constitutionally.” *Appleby v. State ex rel. Wyo. Workers’ Safety & Comp. Div.*, 2002 WY 84, ¶ 28, 47 P.3d 613, 622 (Wyo. 2002) (citing *Parker Land and Cattle Co. v. Wyo. Game & Fish Comm’n*, 845 P.2d 1040, 1081 (Wyo. 1993)). Further,

[a]ll statutes are presumed to be enacted by the legislature with full knowledge of the existing state of law with reference thereto and statutes are

therefore to be construed in harmony with the existing law, and as a part of an overall and uniform system of jurisprudence, and their meaning and effect is to be determined in connection, not only with the common law and the constitution, but also with reference to the decisions of the courts.

Matter of Voss' Adoption, 550 P.2d 481, 486 (Wyo. 1976).

72. The parties offered no argument concerning interpretive differences between subsection (a)(ii)(A) and article 15, section 12 of the Wyoming Constitution. Moreover, the cases cited do not address the specific statutory provision at issue. *See* Wyo. Stat. Ann. § 39-11-105(a)(ii)(A) (2013); *see infra* ¶¶ 78-86. It could be argued that the statute in question and Wyoming Constitution clash where commercial/private improvements on state land also serve primarily a governmental purpose. While the statute, strictly interpreted, may dictate that such property is not tax-exempt, article 15, section 12 of the Wyoming Constitution may be understood to direct otherwise, or, at least, require a different analytical approach. Without further legislative guidance, the State Board opts to follow the Wyoming's Supreme Court's historic analytical framework, applied to other (albeit different) exemption provisions, to resolve any inconsistency. In those cases, the Court has typically weighed and evaluated governmental purposes, along with commercial/private interests, to discern which are "primary." *See infra* ¶¶ 78-86. We shall do likewise.

Property ownership vs. property use as a consideration

73. Turning now to application of the statutory tax exemption language at issue, Wyoming Statutes section 39-11-105(a)(ii)(A) (2013) references the general factual circumstance presented in this appeal—the University's lease of campus property to a private business, CHF-Wyoming. *Supra* ¶¶ 6, 13-19. While very broadly written, the tax exemption language is clear and unambiguous as to whether title ownership is a dispositive factor in the analysis. The answer is "no." Accordingly, CHF-Wyoming's title ownership is not dispositive and, as we shall discuss, is a consideration secondary to others. Indeed, the statutory language specifies that the *use of property* dictates whether leased property is deemed "owned and used primarily for a governmental purpose." Wyo. Stat. Ann. § 39-11-105(a)(ii) (2013). The Wyoming Supreme Court has observed that this statutory language aligns with article 15, section 12 of the Wyoming Constitution, which directs that a property's "use," rather than title ownership, shall be the critical factor in determining the property's tax-exempt status. *City of Cheyenne v. Bd. of Cty. Comm'rs of Laramie Cty.*, 484 P.2d 706, 707 (Wyo. 1971) (discussing revision of Article 15, § 12 of the Wyoming Constitution following *Pine Bluffs v. State Bd. of Equalization*, 333 P.2d 700 (Wyo. 1958)); *City of Cheyenne v. Sims*, 521 P.2d 1347, 1348-49 (Wyo. 1974) (Exemption of city property is solely dependent upon its use, and such questions present a question of fact.);

see also Rules, Dep't of Revenue, ch. 14 § 2 (2008) (Assessors shall consider property title, use and type, rather than property title alone, in determining whether property is exempt from taxation.).

Application of the Department's rules

74. The Department's Rules offer several helpful guidelines to resolve whether Bison Run serves a "governmental purpose." Rules, Wyo. Dep't of Revenue, ch. 14 § 4(b) (2008); *supra* ¶¶ 47-52. The first consideration is whether the service or function is obligatory—one that the University is legally bound to perform. Rules, Dep't of Revenue, ch. 14 § 4(b)(i) (2008); *supra* ¶ 51. The evidence does not reflect that the University's provision of housing for sophomores and higher level students was obligatory. Rather, the University's decision to offer on-campus housing under the circumstances is characterized as a discretionary, operational decision.⁴ The second consideration, whether the property sustains a tax-supported service rendered gratuitously and for the public welfare or enjoyment, is not applicable under the facts presented. Rules, Wyo. Dep't of Revenue, ch. 4 § 4(b)(ii) (2008); *supra* ¶ 51. The University's construction of new on-campus student housing, although possibly funded through some tax revenues,⁵ is not a gratuitous service to the public or University's student body. Indeed, the University selected revenue bond financing to avoid directly incurring any obligation for the cost of building or operating Bison Run. *See supra* ¶¶ 5-19.

75. The remaining departmental consideration requires the Board to evaluate whether the University (and CHF-Wyoming) acted in a "proprietary capacity." Rules, Wyo. Dep't of Revenue, ch. 4 § 4(b)(v) (2008); *supra*, ¶ 51. In its rules, the Department illustrates the "proprietary capacity" consideration with an example: "where a city enters the field of private competitive business for profit or into activities which may be and frequently are carried on through private enterprises." *Id.* "In the absence of a statutory definition, [the Court] infers that the legislature intended no special meaning for the word but, instead, intended that it be given its ordinary meaning—its common dictionary meaning." *Craft v. State*, 2012 WY 166, ¶ 14, 291 P.3d 306, 310 (Wyo. 2012) (citation omitted). While the Department does not define "proprietary," an entity acts in a "proprietary capacity" "when it engages in a business-like venture rather than a governmental function." Black's Law

⁴ While no witness was asked this specific question, none of the three witnesses who testified on behalf of the Taxpayers described the Bison Run project as a required development; rather, Ms. Hanneman explained that the University simply determined it should replace existing on-campus housing that needed to be replaced. (R. at 1510).

⁵ The University's contribution to development and construction of Bison Run consisted of an initial payment of \$3.2 million and funds for initial legal expenses. *Supra* ¶ 7. The record does not reveal the source of those funds.

Dictionary, p. 249 (10th ed. 2014). In a governmental context, the term “proprietary function” is generally viewed as “conduct that is performed for the profit or benefit of the [government], rather than for the benefit of the general public.” *Black’s Law Dictionary* 1414 (10th ed. 2014).

76. Applying these concepts, the University arguably sought development of Bison Run in its “proprietary capacity.” The evidence before the County Board indicated no legal obligation to provide housing services to sophomores, juniors or seniors, nor are the University’s target tenants required to stay on-campus, unlike freshmen. *Supra* ¶¶ 2, 4, 30, 35, 40. Further, the evidence demonstrates that the University’s operation of Bison Run constitutes a service commonly offered by private industry (housing) and, in-fact, is offered in a similar manner by three competing private apartment businesses. *Supra* ¶ 40. While the University disagreed it competed directly with off-campus apartment businesses, the parties did not really dispute that Bison Run and the private entities competed for tenants. Finally, the University’s offering of student housing may admittedly generate a profit, and, in terms of the financing arrangement selected, Bison Run’s operation must generate a revenue stream sufficient to pay construction and operational costs, among other associated bond obligations. *Supra* ¶¶ 8, 14, 16-17, 24.

77. On the other hand, the University’s management of Bison Run and provision of on-campus housing is not easily classified as “proprietary” because, as the University repeatedly asserted and supported through evidence, student housing plays an integral role in the University’s overall educational objective--providing an effective institution of higher learning. *Supra* ¶¶ 16-17, 22-34. Again, the question is whether Bison Run is “used primarily for a governmental purpose,” or whether, under the circumstances, it falls within the category of a “private or commercial use”? Wyo. Stat. Ann. § 39-11-105(a)(ii)(A) (2013). Applying and weighing only the Department’s guiding considerations, Bison Run does not appear to primarily serve a governmental purpose.

*Wyoming case law interpreting “governmental purpose” for
property tax purposes*

78. While the facts of this case present a dispute unlike other tax exemption denial disputes in Wyoming, the Wyoming Supreme Court has identified a host of guiding considerations when evaluating whether a property’s use is for a “governmental purpose.” The Wyoming Supreme Court’s decision in *Town of Pine Bluffs v. State Board of Equalization*, 333 P.2d 700 (Wyo. 1958) is helpful and offers insight regarding the taxability of government property used both for governmental purposes and in a proprietary capacity. The Court adopted the view that while a municipality’s use of government property, in that case an electrical utility, to provide electricity for the public was a governmental function, operation of that utility in a private capacity or in competition with

private entities justified classification of the property as other taxable property. *Id.* at 700-11. The Court held, “We, accordingly, think that insofar as the appellants herein furnish electricity for the purpose of lighting streets and directing traffic that is a governmental function and should be exempt from taxation.” *Id.* at 711. Thus, the Court distinguished between a governmental entity’s activities in direct service to the public (the provision of electricity for the public’s benefit), as opposed to steps taken beyond those necessary to serve the public (the sale of electricity to rate payers), especially activities in direct competition with the private sector or that would generate a profit.

79. Almost twenty years later, the Wyoming Supreme Court resolved a tax exemption dispute in *City of Cheyenne v. Board of County Commissioners of Laramie County*, 484 P.2d 706 (Wyo. 1971), a ruling that the Court has since repeatedly cited as persuasive in resolving the question of what constitutes a “governmental purpose” for tax exemption purposes within article 15, section 12 of the Wyoming Constitution. Identifying the legal issue, the Court observed, “[t]he problem then gets down to a determination of just what is meant by use of the word ‘primarily’ and what is meant by the term ‘governmental purpose’ in the first clause of the constitution.” *Id.* at 708 (referring to art. 15, § 12, Wyo. Const.). The Court concluded that in the absence of a legislative definition of “governmental purpose,” courts have relied upon several criteria to resolve whether property serves a governmental purpose. These include: 1) whether an activity is governmental or proprietary in nature; and 2) whether given properties were an “essential or necessary adjunct” to an identified governmental purpose. *Id.* at 709. Importantly, the Court stressed that neither a governmental entity’s generation of rent, nor profit for a private entity, were in and of themselves dispositive of the question; rather, all circumstances are to be considered. *Id.*

80. The Court in *City of Cheyenne* reviewed the use of buildings as they related to operation of a municipal airport in Laramie County and, depending upon each building’s specific function and role in the airport’s basic operation, found that some buildings served a governmental purpose, while others did not. With each building, the Court reviewed whether it was “reasonably necessary or essential” to “the efficient operation and maintenance of the airport.” *Id.* at 709. With respect to a building that duplicated services otherwise offered and that were not imperative to the airport’s basic function, the Court rejected the City’s exemption claim. *Id.* at 709-10. Conversely, for facilities that served a fundamental repair function for airplanes, the Court characterized those as a “necessary adjunct to the operation of an airport,” and they were thus exempt. *Id.* at 709.

81. The Assessor in his appeal before the County Board, and now before the State Board, relies heavily upon *Oakley v. Fremont County Community College District*, 2010 WY 106, 236 P.3d 1004 (Wyo. 2010). In that case, the Wyoming Supreme Court held that a community college district’s lease of district properties to private entities for use as a

business park did not support the district's claim that the property was exempt. *Id.* The Court rejected the district's argument that the leased properties in question served a governmental purpose because lease revenues funded community college scholarships and educational programs. Applying the *City of Cheyenne* analysis, *supra* ¶¶ 79, 80, the Court noted that the leases for a business park were not "necessary or essential to the operation of CWC." *Id.*, ¶ 16, 236 P.3d at 1008. In further support of its conclusion, the Court noted the community college district's lack of direct involvement with the leased property. *Id.*

82. However, the *Oakley* decision is of limited assistance given the facts in the present case because the community college's connection with the business park in *Oakley* was tenuous at best, while in the present dispute, the University remained directly involved with operation of the leased property day-to-day. *Supra* ¶¶ 16-17, 24-34. In *Oakley*, the business park's claimed "governmental purpose" was as a source of income to the community college district and served no other significant purpose. *Id.* The leases in the present tax dispute, in contrast, are admittedly a component part of a larger bond finance transaction, entirely distinguishable from the leases at issue in *Oakley*.

83. Finally, the Wyoming Supreme Court has in several cases addressed the term "primarily" within the phrase "used primarily for a governmental purpose." The Court in *In re Deromedi*, 2002 WY 69, 45 P.3d 1150 (Wyo. 2002), and its companion case, *In Re Town of Thermopolis*, 2002 WY 70, 45 P.3d 1155 (Wyo. 2002), evaluated the role primacy plays in determining "governmental purpose." In *Deromedi*, the Court determined that the city of Thermopolis' ownership of property used primarily as a museum and for other purposes, which was operated by a for-profit entity and for which an admission was charged, was tax-exempt. The Court explained in *Deromedi* that operation of a museum under those particular circumstances constituted a governmental purpose, in part because public museums are recognized as serving a governmental purpose in other statutes. *Deromedi*, ¶ 13, 45 P.3d at 1154-55. The Court further cited the role museums serve in communities, providing scientific, educational and cultural activities that improve the quality of life of a community's citizenry. *Id.* Citing *City of Cheyenne*, the Court disagreed that the generation of revenues destroyed the exemption, and further disagreed that the museum was proprietary merely because it enhanced economic growth or could be deemed to compete against private forms of entertainment. *Deromedi*, ¶¶ 14, 15, 45 P.3d at 1155. The companion case, *In re Town of Thermopolis*, addressed the same issues and one additional issue, but for a different tax year.

84. Likewise, in *State Board of Equalization v. City of Lander*, 882 P.2d 844 (Wyo. 1994), the City of Lander used a building as a city hall, but also leased approximately half of the property to the Wyoming Department of Environmental Quality. Although the leased property was unnecessary for the city's operation of government under *City of Cheyenne*, *supra*, the Court considered the meaning of the word "primarily," which means

“of first importance,” and held that leasing a portion of the property for a non-governmental purpose did not negate the property’s primary use as a city hall. *Id.* at 849-51. Thus, a governmental property that serves both governmental and nongovernmental functions will retain tax-exempt status if used “primarily” for a governmental purpose.

85. The properties in the *Deromedi*, *Town of Thermopolis* and *City of Lander* cases were municipal properties, and the statutory language defining the exemption began: “Property of Wyoming cities and towns owned and used primarily for a governmental purpose including:[.]” *Deromedi*, ¶ 7, 45 P.3d at 1152, fn. 2 (citing Wyo. Stat. Ann. § 39-11-105(a)(v) (LexisNexis 2001)); *Town of Thermopolis*, ¶ 7, 45 P.3d at 1158, fn. 1 (citing Wyo. Stat. Ann. § 39-11-105(a)(v) (LexisNexis 2001)), *City of Lander*, 882 P.2d at 847 (citing Wyo. Stat. Ann. § 39-1-201(a)(v)(C) (1994)). The exemption’s scope in each case was then broadly defined through a list of general activities and purposes that would qualify the subject property for tax-exempt status. *Id.*; see also discussion regarding statutory and constitutional exemption language differences, *supra* ¶¶ 62-72.

86. By contrast, the exemption language applicable to property of the state of Wyoming in the present case is not affirmatively defined with a list of activities or uses that qualify as tax-exempt. Rather, the language instructs that no exemption shall apply for “[i]mprovements placed on state lands by lessees for private or commercial use[.]” Wyo. Stat. Ann. § 39-11-105(a)(ii)(A) (2013). Reconciling that statute with article 15, section 12 of the Wyoming Constitution, and as discussed in *City of Cheyenne*, *Deromedi* and *City of Lander*, the State Board will consider whether the property’s “primary” purpose is a governmental purpose, or, whether Bison Run instead serves a commercial or private purpose. *Supra* ¶¶ 62-72.

Application of rules and Wyoming case law to evidence

87. Within the analytical framework offered through the Department’s Rules and the Wyoming Supreme Court’s decisions, we examine the parties’ respective positions. To varying degrees, the Taxpayers and Assessor center their arguments on Bison Run’s ownership. But, as explained, the State Board is less concerned with whether the University holds title ownership to Bison Run and instead must focus more particularly on whether Bison Run is operated primarily for a governmental purpose, as opposed to a commercial enterprise or for private use. See Wyo. Stat. Ann. § 39-11-105(a)(ii) (2013); Rules, Wyo. Dep’t of Revenue, ch. 14 §§ 3, 4 (2008); *supra* ¶¶ 62-73.

88. Applying the guiding principles set forth in *City of Cheyenne*, *supra*, whether Bison Run serves primarily a governmental purpose is arguable. The Court in that case identified two criteria: 1) whether an activity is governmental or proprietary in nature (similar to the Department’s Rules); or 2) whether a property’s use is an “essential or necessary adjunct”

to an identified governmental purpose (in that case operation of an airport). 484 P.2d at 709; *supra* ¶¶ 79-80.

89. As explained, the University’s construction of Bison Run arguably serves a proprietary objective—the product of a discretionary, business purpose. *Supra* ¶¶ 74-77. On that point, however, the evidence is equivocal at best. On one hand, Bison Run is a student housing development for students at the sophomore or higher levels, and those students are not required to live on campus. *Supra* ¶¶ 2, 4, 30, 35, 40. The State Board agrees that Bison Run operates similarly to private, off-campus housing businesses, competes with those housing businesses for student tenants, and requires that student residents who choose to reside at Bison Run enter the equivalent of a one year lease (50 weeks). *Supra* ¶¶ 35, 40-41, 74-77. Further, because the University used bond financing, Bison Run operates through a separate proprietary entity, CHF-Wyoming, and must effectively operate at a profit to cover its operational costs and to service the underlying construction and operational debt. *Supra* ¶¶ 8-19, 24, 33, 41. Indeed, the University concedes that Bison Run must generate 1.2 times budgeted expenditures to service financed debt incurred to develop, construct, and operate the business. *Supra* ¶¶ 24, 33. Careful examination of the Bond finance contracts reveals that while the University retains broad day-to-day operational authority, it must ultimately operate Bison Run within certain commercial parameters, independent of educational objectives. CHF-Wyoming has authority to enforce those commercial parameters. *Supra* ¶¶ 13-19, 41.

90. On the other hand, the University offered evidence that Bison Run serves an educational objective and is an integral part of the University’s “co-curricular” system. *Supra* ¶¶ 26-34. The University pointed out several aspects of Bison Run that clearly distinguished it from its competitors.⁶ *Supra* ¶ 34. The University argues that the Bond financing was merely a funding vehicle and does not dilute Bison Run’s overall function as an important on-campus housing resource within the University’s governmental program. *Supra* ¶¶ 22-28. Applying the first *City of Cheyenne* factor, inasmuch as Bison Run appears proprietary in nature, we have no clear answer. *See e.g., Town of Pine Bluffs, supra* ¶ 78 (Town’s sale of electricity to rate payers was proprietary use of property and, thus, nongovernmental).

⁶ The testimony distinguishing Bison Run from other off-campus apartment developments was equivocal. While the University’s witnesses discussed various benefits of living in Bison Run, it was unclear whether many of those benefits were exclusive to students living in Bison Run, or whether any University students might enjoy those. These included tutoring, campus shuttle services, mentoring and counseling, computer lab and entertainment resources, among others. *Supra* ¶ 34.

91. The second *City of Cheyenne* analytical factor, whether or not Bison Run is a “necessary or essential adjunct” to the University’s operation, is less problematic. The Court in *City of Cheyenne* held that one of the leased buildings, leased to a third-party to operate an ambulance service, was not exempt, in part because the ambulance service was not at that time necessary to the operation of an airport. The Court explained that “[w]hile it is true that the public no doubt did receive a benefit by the respective governments making such a service possible, a matter worthy of consideration, the fact remains that the service did not meet the test we have prescribed to bring it within the ‘airport’ exemption and, of course, the service was not gratuitous.” *City of Cheyenne*, 484 P.2d at 710. So, it is not enough that a particular activity benefit the public, the activity must be functionally necessary to operation of the governmental service.

92. The University did not present evidence that Bison Run was a necessary or essential adjunct to the University’s educational function. While the University persuasively pointed to the conveniences of on-campus housing for upperclassmen within Bison Run and elsewhere, it did not establish that Bison Run is essential or necessary to the University’s basic operation. The Assessor correctly counters that while housing services among all competing providers differ in some respects, Bison Run is one of four similar apartment services. *Supra* ¶ 40. Coupled with Bison Run’s commercial operational structure, at least while CHF-Wyoming owns it through the 32-year Ground Lease, Bison Run does not appear to be an “essential or necessary adjunct” to an identified governmental purpose. 484 P.2d at 709; *supra* ¶¶ 79-80.

93. Of course, the devil is in the details, and the University’s decision to use complex revenue bond financing lies at the heart of this tax dispute. Through that Bond financing, the University agreed that a separate private party, CHF-Wyoming, would lease campus lands for the purpose of developing, constructing, owning, and operating an apartment complex for University students for up to thirty-two years. The University chose this option to avoid incurring debt or liability for the costs of Bison Run’s construction and operation. *Supra* ¶¶ 6-19. The University argues that because CHF-Wyoming’s role and corresponding responsibilities/authorities arose as part of a specialized financing arrangement, the County Board properly discounted those contractual agreements, or, in any event, properly did not view CHF-Wyoming’s ownership of Bison Run and role as its operator as determinative. (Taxpayers’ Br. 14-28).

94. The State Board disagrees. Regardless of how the University, CHF-Wyoming, or any other party chooses to characterize their contractually interconnected rights and responsibilities for tax purposes, those documents legally define both the ownership and permitted use of Bison Run over the thirty-two year lease term. Indeed, the University tacitly acknowledges such and proffers only that the Board should, *in effect*, disregard the

Bond financing's contractual formalities in favor of a recognition that, in practice, the University owns and operates Bison Run.

95. Nevertheless, applying the plain meaning of the statutory exemption language in Wyoming Statutes section 39-11-105(a)(ii)(A) (2013), specifically the phrase "private or commercial use," the Assessor necessarily evaluated the University's and CHF-Wyoming's mutual legal interests and obligations concerning Bison Run. *See Preferred Energy Properties v. Wyo. State Bd. of Equalization*, 890 P.2d 1110, 1113 (Wyo. 1995) (The State Board properly examined and interpreted the parties' contracts to determine whether or not they supported the parties' claims with respect to application of tax laws.); *EOG Res. v. Dep't of Revenue*, 2004 WY 35, ¶¶ 13-21, 86 P.3d 1280, 1284-85 (Wyo. 2004) (Board correctly considered all aspects of complex contractual dealings in adjudicating tax liability dispute.). Only through the Assessor's careful examination of these documents could he resolve whether Bison Run was used primarily for a governmental purpose, or in a "private or commercial" capacity, per article 15, section 12 of the Wyoming Constitution and Wyoming Statutes section 39-11-105(a)(ii)(A) (2013). He correctly concluded that a private lessee's ownership and operation of Bison Run, given the University's consideration paid for that service and other remuneration received through the Bond repayment, constituted a private, commercial use.

96. Reviewing the contracts entered between the University, CHF-Wyoming, and other parties, we apply the Wyoming Supreme Court's often-cited rules of contract interpretation:

Our primary focus in contract interpretation is the parties' intent. *Carlson v. Flocchini Invs.*, 2005 WY 19, ¶ 15, 106 P.3d 847, 854 (Wyo. 2005). The "language of the parties expressed in their contract must be given effect in accordance with the meaning which that language would convey to reasonable persons at the time and place of its use." *Moncrief v. Louisiana Land Exploration Co.*, 861 P.2d 516, 524 (Wyo. 1993). We employ common sense in interpreting contracts and ascribe the words with a rational and reasonable intent. *Comet*, [2008 WY 69] ¶ 6, 185 P.3d at 1261; *Caballo Coal Co. v. Fidelity Expl. & Prod. Co.*, 2004 WY 6, ¶ 11, 84 P.3d 311, 314 (Wyo. 2004); *Wadi Petroleum, Inc. v. Ultra Resources, Inc.*, 2003 WY 41, ¶¶ 10-11, 65 P.3d 703, 708 (Wyo. 2003). Courts should consider the circumstances surrounding execution of the agreement to determine the parties' intention, even in reviewing unambiguous contracts. *Mullinnix LLC v. HKB Royalty Trust*, 2006 WY 14, ¶ 6, 126 P.3d 909, 915 (Wyo. 2006); *Caballo*, ¶ 11, 84 P.3d at 314-15.

Ultra Res., Inc. v. Hartman, 2010 WY 36, ¶ 22, 226 P.3d 889, 905 (Wyo. 2010). Appellate review of a tribunal's conclusions of law with respect to a contract, such as whether it is ambiguous, determining the parties' intent, etc., are questions of law and are reviewed de novo. *Fox v. Wheeler Elec., Inc.*, 2007 WY 171, ¶ 10, 169 P.3d 875, 878 (Wyo. 2007).

97. While the University offers evidence that Bison Run serves a governmental purpose to the extent on-campus housing furthers educational objectives, it fails to recognize that through the Bond financing, the University unambiguously agreed that a separate entity would develop, construct, and operate Bison Run primarily as a commercial business. *Supra* ¶¶ 5-19. Illustrating this point, as painstakingly described in the Bond documents, CHF-Wyoming is contractually obligated to operate Bison Run in a manner ensuring that Bond debts will be paid in full, and CHF-Wyoming has ultimate authority to enforce that outcome. *Supra* ¶¶ 13-19. Consequently, CHF-Wyoming's authority in most instances allows it to act in response to, and to prevent if necessary, any interference with this paramount debt-service obligation, including limiting aspects of the University's discretion and authority where Bison Run is concerned. If Bison Run were truly operated primarily for a governmental purpose, debt repayment would not trump others interests.

98. The Board also disagrees that the University may unambiguously consent to another entity's ownership and operation of Bison Run as a private, commercial enterprise for financing purposes and, at the same time, disclaim that the business is a commercial enterprise for tax purposes. To illustrate that point, enforcement of the Bond documents permits the Trustee, creditors and/or bond investors to judicially enforce leasehold rights-remedies and property interests that the University may not so casually discount. (R. at 598-602, 701-02, 1235-40). Courts typically disfavor attempts to assume inconsistent positions from the intent set forth in an unambiguous contract. *See Butler Nat. Corp. v. Gerald T. Kelly & Co.*, 43 P.3d 824, 827 (Kan.App. 2002) (denying party's attempt to misinterpret clear language in contract); *A.G. Edwards & Sons, Inc. v. Smith*, 736 F.Supp. 1030, 1036 (D.Ariz. 1989) ("It would be disingenuous to allow plaintiff to disregard its own choice of law provision whenever plaintiff believes it would be advantageous to do so."); *Schwartz v. Pillsbury Inc.*, 969 F.2d 840, 847 (9th Cir. 1992) ("It is disingenuous for it now to argue that a provision it inserted into the agreement deeming the contract to have been made in New York does not mean what it plainly says.").

99. Wyoming cases applying the "primarily used for a governmental purpose" concept align with this conclusion. In *Town of Pine Bluffs*, the town's operation of a utility was taxable to the extent that property served to achieve a commercial gain and did not directly serve the public. *Supra* ¶ 78. The Court held that when commercial or private objectives supersede governmental purposes, i.e. serving the public good, the property becomes taxable. *Town of Pine Bluffs*, 333 P.2d at 711-12. Likewise, in *City of Cheyenne*, municipal property used for commercial/private activities, unnecessary to the actual operation of an

airport, were not “primarily used for a governmental purpose” and were therefore taxable. *Supra* ¶¶ 79-80. In *Oakley*, the Court held that a college district’s lease of lands for a business park did not primarily serve the district’s governmental function, stating: “Even if there is some tangential use of the property by CWC faculty, staff, or students of which we are unaware, it has not been demonstrated that such use is primarily governmental.” *Oakley*, ¶ 16, 236 P.3d at 1008; *Supra* ¶¶ 81-82. In *Deromedi*, a for-profit entity’s operation of a museum on municipal property served a statutorily recognized governmental purpose and one that unquestionably served the public welfare. *Supra* ¶ 83. Finally, in *City of Lander*, the Court concluded that a municipal building’s primary function was that of a town hall, and the competing use as leased office space in no way diminished or subordinated that primary governmental purpose. *Supra* ¶ 84.

100. The University’s payment of a “membership fee,” 1.5% of Bison Run’s gross revenue (approximately \$24,000 per year) to CH Foundation over a thirty-two year term, strengthens the Assessor’s argument that Bison Run’s operation is a commercial operation rather than one serving primarily a governmental purpose. *Supra* ¶¶ 11, 28. While the record offers little detail as to CH Foundation’s use of these payments (and neither CH Foundation nor CHF-Wyoming offered testimony), CHF-Wyoming and/or CH Foundation receive compensation for their roles as facilitator, owner, and operator of Bison Run, another indication that Bison Run operates as a commercial enterprise.⁷ Further, the State Board agrees with Assessor that their non-profit status under the Internal Revenue Code does not necessarily speak to whether they engage in a commercial enterprise. *Supra* ¶¶ 37-38.

101. Nor does the University effectively counter the Assessor’s point that the Ground Lease provides that the operation of Bison Run, to the extent it produces revenues in excess of operating costs, will generate rental income to the University. *Supra* ¶¶ 14, 24. It matters not that as of the date of the hearing before the County Board, the University had received no rent. The parties to the Bond transaction intended that the University could receive rental income from Bison Run’s operation. *Supra* ¶ 14. While the State Board agrees that the University’s and CHF-Wyoming’s paramount objective was to operate Bison Run in a manner ensuring payment of underlying Bond debt obligations, rather than

⁷ Although not fleshed out by testimony, payment of CHF-Wyoming’s costs and compensation also appears to flow from the rental rate calculation mandated in the Loan Agreement between CHF-Wyoming and the WCDA. (R. at 694). The Loan Agreement requires that rental rates at Bison Run produce a revenue stream of no less than 1.2 times the calculated fixed and other costs, including payment of the 1.5% membership imposed under the Lease Agreement. (R. at 694). The record contains no detail concerning the rental rate calculations. It should also be noted that although CHF-Wyoming is a separate business entity from CH Foundation, CHF-Wyoming’s sole member is its creator, CH Foundation. *Supra* ¶ 10.

to generate a profit, the parties' predominate intent was and is to operate Bison Run as a commercially profitable enterprise for the benefit of private investors and the University alike. Although the University contributed financially, the student residents themselves are primarily responsible for funding Bison Run's development, construction, and operation. *Supra* ¶¶ 14, 16, 24, 33, 35.

102. The University cites several non-Wyoming cases in support of its position that Bison Run is University-owned and serves a governmental purpose. (Taxpayers' Br. 14-16). The University cites *Christian Action Ministry v. Department of Local Government Affairs*, 383 N.E.2d 958 (Ill. 1978) for the proposition that the University's method of finance should not weigh against it in resolving this taxation dispute. (Taxpayer's Br. 1404-08). The University argues,

Here, UW leased its land to CHF-Wyoming in order to finance construction of the buildings and CHF-Wyoming subsequently delegated responsibility of Bison Run to UW through an exclusive, detailed Management Agreement. (*Management Agreement*, University Exhibit 14; RT 17, 19-22). This arrangement did not destroy the governmental purpose of providing living, learning communities for UW that promotes education of its students.

(Taxpayers' Br. 21).

103. The court in *Christian Action Ministry*, however, focused primarily upon the role of title ownership as a requirement under the Illinois tax statute. In that case, the Illinois Department of Revenue asserted that a non-profit, charitable entity's financing of property through a contract-for-deed justified denial of tax-exempt status because the charitable entity would not immediately receive title ownership. *Id.* 963. The court disagreed and held that under the Illinois statute in question, the ownership requirement allowed for different financing arrangements. *Id.* at 964.

104. While the Board agrees financing decisions may not be dispositive, this case is clearly distinguishable from *Christian Action Ministry* because that dispute concerned only whether the claimant had "equitable title" for purposes of ownership under the Illinois statute. *Id.* at 964. Further, that dispute concerned property used for charitable purposes, and the financing had nothing whatsoever to do with whether the property would be used for those tax-exempt purposes, an important consideration in the court's decision. *Id.* In the present dispute, however, even without the financing component, the University's rental of non-mandatory housing for upperclassmen may be viewed as a discretionary decision to compete with the private student apartment housing market. Accordingly, operation of Bison Run may constitute a proprietary and commercial activity notwithstanding the financing used. Second, in the present dispute, the University did not

directly borrow funds or finance construction of Bison Run; rather, the University agreed to transfer property rights to a separate, private entity, CHF-Wyoming, so that it could finance Bison Run's construction through revenue bond financing. Unlike *Christian Action Ministry* in which there was no connection between the financing and the activity which gave rise to the tax exemption, the University specifically agreed that a private entity would operate Bison Run as a commercial concern until construction and operational debts are paid. This election appropriately triggered the Assessor's review and ultimate conclusion that Bison Run was "placed on state lands by lessees for private or commercial use." Wyo. Stat. Ann. § 39-11-105(a)(ii)(A) (2013); *supra* ¶ 45.

105. Similarly, Taxpayers' reliance upon *Board of Education of Glen Ellyn Community Consolidated School District No. 89 v. Department of Revenue*, 825 N.E.2d 746 (Ill. App. 2005), is unpersuasive. (Taxpayers' Br. 15). That case largely echoes the analysis in *Christian Action Ministry* and stands for the unremarkable principle of tax law that property ownership, for ad valorem tax purposes, may include considerations beyond possession of title. *Id.* at 754.

106. In sum, applying the Department's prescribed evaluative considerations and the Wyoming Supreme Court's analytical framework adopted in *City of Cheyenne* and other cases cited herein, the State Board concludes that the County Board incorrectly applied the law and construed contractual obligations when it determined that the University owns and operates Bison Run primarily for a governmental purpose. The Assessor correctly concluded that Bison Run operates not primarily for a governmental purpose, but for a private and/or commercial purpose, and is not entitled to tax-exempt status. Accordingly, the County Board's decision granting Bison Run exempt status pursuant to Wyoming Statutes section 39-11-105(a)(ii) (2013) must be reversed, and the Assessor's original valuation and assessment reinstated.

The County Board's alternative ruling that Bison Run buildings and personal property are exempt from taxation pursuant to Wyoming Statutes section 39-11-105(a)(xxvi) (2013).⁸

107. The County Board agreed with Taxpayers that assuming CHF-Wyoming, a non-profit charitable association, owns the Bison Run developments and personal property, that the property is exempt from property taxation pursuant to Wyoming Statutes section 39-11-105(a)(xxvi) (2013), which provides:

Property used by a secret, benevolent and charitable society or association, including any fraternal organization officially recognized by the University of Wyoming or any community college, and senior citizens centers to the extent it is not used for private profit nor primarily for commercial purposes by the society, association or center, or lessee thereof[.]

108. Assessor challenges the County Board's determination on two grounds: 1) that CHF-Wyoming does not qualify as a secret, benevolent and/or charitable society or association under the Department's Rules, which defines the terms "Secret," "Charity," and "Benevolent"; and 2) that a secret, benevolent or charitable association's operation of a housing service for a charge constitutes a commercial purpose under the Department's Rules and is, therefore, ineligible for a tax exemption. (Assessor's Br. 22-24).

109. The County Board adopted the Taxpayers' argument that even though the Department's Rules define paid housing as a commercial enterprise, ineligible for a property tax exemption, Bison Run nevertheless qualified. (R. at 1704-06; Cty. Bd. Decision, ¶¶ 71-79). The County Board essentially accepted the Taxpayers' argument that because Bison Run was distinguishable from other competing apartment businesses and existed on campus as part of the University's co-curricular program, it was not "housing" under the Department's Rules. *Id.*

110. The State Board disagrees. As with the application of statutes, we apply agency rules as written and do not apply rules of construction unless the rules are ambiguous. *Bailey v. State ex rel. Wyo. Workers' Safety & Comp. Div.*, 2010 WY 152, ¶ 10, 243 P.3d 953, 956 (Wyo. 2010). "We endeavor to ascertain the underlying intent of the rule or

⁸ The County Board adopted the Taxpayers' Proposed Findings of Fact, Conclusions of Law and Order, which references Wyoming Statutes section 39-11-105(a)(xxvii) (2013). (R. at 1704). The Order's textual analysis, however, refers to Wyoming Statutes section 39-11-105(a)(xxvi) (2013) and corresponding Department Rule, Chapter 14, § 12 (2008). As such, the County Board's reference to Wyoming Statutes section 39-11-105(a)(xxvii) (2013) appears to be a typographical error.

regulation.” *Glover v. State*, 860 P.2d 1169, 1173 (Wyo. 1993). The Department’s Rules, in pertinent part, provide:

(d.) The property at issue shall not be used primarily for a "commercial purpose", that is use of property or any portion thereof to provide services, merchandise, area or activities for a charge, which are generally obtainable from any commercial enterprise and are collateral to the purpose of the secret, benevolent and charitable society or association.

(i.) Commercial purpose includes, without limitation, the operation for charge of bars, restaurants, dancing areas, merchandise shops, **housing**, theaters and bowling alleys.

(ii.) The use of property for commercial purpose is controlling, not whether or not a profit is actually made nor how the revenue is ultimately used. If an activity is considered "commercial", it does not become "non-commercial" merely because the revenue derived from the commercial use is devoted to charitable or authorized purposes.

Rules, Wyo. Dep’t of Revenue, ch. 14 § 12(d) (2008) (emphasis added).

111. The County Board found that, “[a]lthough housing is an excluded use for a property to qualify under the charitable association exemption, the University provided ample evidence at trial that distinguishes these on-campus student living, learning communities from for-profit and typical housing apartment complexes.” (R. at 1705, Cty. Bd. Decision, ¶ 78). While the State Board agrees that Bison Run residents enjoy certain benefits because they are University students, and other advantages because they are Bison Run residents, Bison Run nonetheless constitutes housing offered for a charge.

112. The Department’s Rule is unambiguous and includes the term “housing” as one of several generic commercial services to describe and represent a larger class of commercial activities that are to be considered “commercial” when offered for a charge. Rules, Wyo. Dep’t of Revenue, ch. 14, § 12(d) (2008); *supra* ¶¶ 52, 110. Because the Department refers to “housing” in its most generic and ordinary context, we infer that the Department’s classification is broadly inclusive and to be applied to all housing for which a charge is made. Moreover, where the Department has carved out a circumstance whereby housing services are tax-exempt, it has specified such. *See* Rules, Wyo. Dep’t of Revenue, ch. 14, § 13(c)(ii) (2008) (Exception for housing offered by senior citizen centers).

113. The County Board incorrectly implied an exception to the Rule for Bison Run, in effect concluding that Bison Run is not merely “housing,” but an enhanced, specialized service entitled to tax-exempt status. The Board finds nothing in the Department’s Rules,

or in the evidence, to support such an application. First, section 12(d)(i) of Chapter 14 of the Department's Rules plainly directs that housing, like other activities that are generally offered to the public in the private sector, is a commercial activity if a charge is imposed for the service. Bison Run is not a free housing service to University students or the public in general. *Supra* ¶¶ 8, 16, 35. The Department's intent must be given the force and effect of law as written. "When rules are adopted pursuant to statutory authority and are properly promulgated, they have the force and effect of law." *Fullmer v. Wyo. Emp't Sec. Comm'n*, 858 P.2d 1122, 1123-24 (Wyo. 1993); see *Drake v. State ex rel. Dep't of Revenue & Taxation*, 751 P.2d 1319, 1322 (Wyo. 1988). Second, if the term "housing" applies differently depending upon the types of amenities and ancillary services offered, then housing's designation as a commercial service might soon become the exception rather than the rule. For example, housing coupled with ancillary services or benefits, such as medical assistance services, security, entertainment options, etc., may become exempt by implication.

114. Neither the County Board nor this Board are at liberty to redefine the term "housing" within the Department's Rules. We conclude that CHF-Wyoming's Bison Run improvements are not properly exempt pursuant to Wyoming Statutes section 39-11-105(a)(xxvi) (2013) or the Department's Rules interpreting that statute. Because the County Board's alternative ruling regarding Bison Run is contrary to law, we reverse and again direct that the Assessor's original valuation and assessment be reinstated.

115. Given this Board's holding that the County Board incorrectly interpreted and applied the Department's Rules with respect to whether Bison Run constitutes "housing," we need not address the Assessor's second basis for challenging the County Board's ruling, that CHF-Wyoming is not a "secret, benevolent and charitable society or association" under the Department's Rules and Wyoming Statutes section 39-11-105(a)(xxvi) (2013).

CONCLUSION

116. The County Board's determination that the Assessor incorrectly rejected Taxpayers' claim for tax-exempt status was not supported by substantial evidence and is contrary to law for the reasons set forth herein. Bison Run, as currently owned and operated, is not tax-exempt under Wyoming Statutes section 39-11-105(a)(ii) (2013) because it constitutes "[i]mprovements placed on state lands by lessees for private or commercial use," and Bison Run's primary purpose is commercial in nature. Wyo. Stat. Ann. § 39-11-105(a)(ii)(A) (2013).

117. The County Board's alternative holding that, to the extent CHF-Wyoming owns Bison Run, it is tax-exempt pursuant to Wyoming Statutes section 39-11-105(a)(xxvi) (2013), is not supported by substantial evidence and is contrary to law for the reasons set

forth herein. Bison Run is a housing service pursuant to the Department's Rules and, accordingly, is a commercial use of property, ineligible for tax-exempt status. *Supra* ¶¶ 95-103.

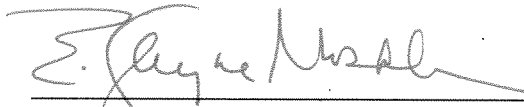
ORDER

IT IS THEREFORE HEREBY ORDERED the Albany County Board of Equalization Order that "real property, buildings and personal property for the property commonly known as Bison Run Village is tax exempt[,] is **reversed and the Albany County Assessor's property tax assessments at issue in this matter are reinstated.**

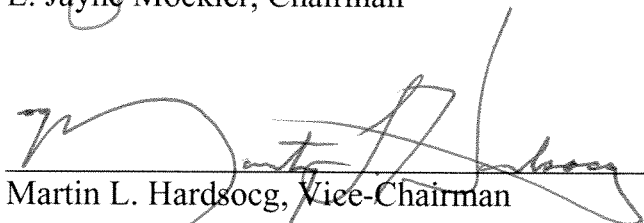
Pursuant to Wyo. Stat. Ann. § 16-3-114 and Rule 12, Wyoming Rules of Appellate Procedure, any person aggrieved or adversely affected in fact by this decision may seek judicial review in the appropriate district court by filing a petition for review within 30 days of the date of this decision.

Dated this 13th day of July, 2015.

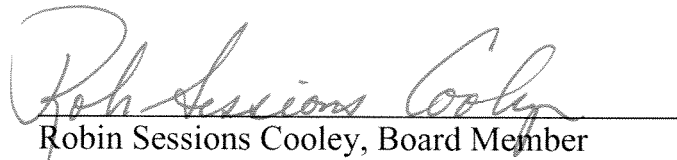
STATE BOARD OF EQUALIZATION



E. Jayne Mockler, Chairman

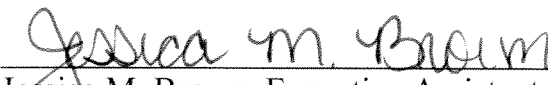


Martin L. Hardsocg, Vice-Chairman



Robin Sessions Cooley, Board Member

ATTEST:



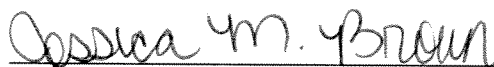
Jessica M. Brown, Executive Assistant

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of July, 2015, I served the foregoing **DECISION AND ORDER** by placing a true and correct copy thereof in the United States Mail, postage prepaid, and properly addressed to the following:

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File