

BEFORE THE STATE BOARD OF EQUALIZATION
FOR THE STATE OF WYOMING

IN THE MATTER OF THE APPEAL BY)
THE LARAMIE COUNTY ASSESSOR)
FROM THE DECISION OF THE LARAMIE) Docket No. **2014-76**
COUNTY BOARD OF EQUALIZATION)
2014 PROPERTY VALUATION)
(Kostelac Property))

DECISION AND ORDER

APPEARANCES

Mark T. Voss, Laramie County Attorney, filed a brief on behalf of Kenneth Guille, Laramie County Assessor (Assessor or Petitioner).

Richard and Jeni Kostelac (Taxpayers) did not file a responsive brief in this appeal.

DIGEST

Assessor appeals a decision of the Laramie County Board of Equalization (County Board), ordering him to reduce the value of Taxpayers' property by the value of the deck. More specifically, the County Board ordered Assessor to adjust the valuation by removing from the assessment the value of Taxpayers' deck based on Taxpayers' loss of the use and enjoyment of the deck as a result of the noise generated from a neighbor's wind turbine. Assessor's Notice of Appeal was filed with the State Board of Equalization (State Board) on August 13, 2014. Mark T. Voss, Laramie County Attorney, filed an opening brief on behalf of Assessor on November 26, 2014. Taxpayers did not file a responsive brief nor did either party request oral argument before the State Board.

The State Board,¹ comprised of Chairman E. Jayne Mockler, Vice Chairman Martin L. Hardsocg, and Board Member Robin Sessions Cooley, considered the County Board record, Assessor's Notice of Appeal and Assessor's Opening Brief.

The State Board evaluates Assessor's claims by applying the following standard of review: whether the decision of the County Board was arbitrary, capricious, unsupported by

¹ Paul Thomas Glause and Steven D. Olmstead were members of the State Board when the Assessor filed the appeal. Mr. Glause resigned from the Board, effective January 2, 2015. Mr. Olmstead's term on the State Board expired on March 1, 2015. Robin Sessions Cooley and Martin L. Hardsocg were appointed to the Board effective March 16, 2015.

substantial evidence, and/or contrary to law. Rules, Wyo. State Bd. of Equalization, ch. 3 § 9 (2006). Based on that review, the decision of the Laramie County Board of Equalization is reversed as contrary to law and unsupported by substantial evidence.

ISSUE

In his opening brief, Assessor outlined the issue as follows:

Was the CBOE's order, which required "the Laramie County Assessors determined value of the subject property of \$332,760.00 be reduced by the value of the deck", in accordance with law, arbitrary, capricious, an abuse of discretion, or supported by substantial evidence in the record?

(Br. of Pet'r 3).

More specifically, Assessor focuses his arguments before the State Board on whether the County Board Order is in accordance with the law and whether Taxpayers presented sufficient credible evidence to overcome the presumption of validity that attaches to Assessor's assessment. (Br. of Pet'r 13-22).

PROCEEDINGS BEFORE THE COUNTY BOARD

The County Board conducted a hearing on Taxpayers' appeal on June 6, 2014. (R. at 19-59). On August 4, 2014, the County Board issued its Findings of Fact, Conclusions of Law and Order, directing Assessor to reduce the value of Taxpayers' property by the value of the deck, based on Taxpayers' loss of the use and enjoyment of their deck. (R. at 107-14).

JURISDICTION

The State Board is required to "hear appeals from county boards of equalization." Wyo. Stat. Ann. § 39-11-102.1(c) (2013). Assessor filed a timely appeal from the County Board decision, Rules, Wyo. State Bd. of Equalization, ch. 3, § 2 (2006), and the State Board has jurisdiction to consider the appeal. Wyo. Stat. Ann. § 39-13-109(b)(ii) (2013).

STANDARD OF REVIEW

When the State Board hears appeals from a county board, it acts as an intermediate level of appellate review. *Laramie Cnty. 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 the County Board as the finder of fact. *Id.* By contrast, the State Board acts as the finder of fact when it hears contested cases on appeal from final decisions of the Wyoming 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's Rules providing the standards to review a county board's decision are nearly identical to the Wyoming Administrative Procedure Act standards that a district court must apply to hold unlawful and set aside agency action, findings of fact, and conclusions of law. Wyo. Stat. Ann. § 16-3-114(c)(ii) (2013). However, unlike a district court, the State Board will not rule on claims that a county board acted "[c]ontrary to constitutional right, power, privilege or immunity." Wyo. Stat. Ann. § 16-1-114(c)(ii)(B) (2013). The State Board's review is limited to determining whether a county board 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, the State Board looks to precedent under Wyo. Stat. Ann. section 16-3-114(c) (2013) for guidance. Accordingly, it must apply the substantial evidence standard, as follows:

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).

When reviewing conclusions of law, the Board applies the following standard of review:

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).

The Board reviews a county board’s findings of “ultimate facts” as follows:

When an agency's determinations contain elements of law and fact, we will not treat them as findings of fact. We extend deference only to agency findings of “basic fact.” When reviewing a finding of “ultimate fact,” we divide the factual and legal aspects of the finding to determine whether the correct rule of law has been properly applied to the facts. If the correct rule of law has not been properly applied, we do not defer to the agency's finding but correct the agency's error in either stating or applying the law.

Union Pac. R.R. Co., 802 P.2d at 860-61.

Finally, “[t]he arbitrary and capricious standard remains a 'safety net' to catch agency action which prejudices a party's substantial rights or which may be contrary to the other W.A.P.A. review standards yet is not easily categorized or fit to any one particular standard.” *Dale v. S&S Builders, LLC*, 2008 WY 84, ¶ 23, 188 P.3d 554, 561 (Wyo. 2008).

FACTS PRESENTED TO THE COUNTY BOARD

1. Richard and Jeni Kostelac (Taxpayers) own residential property located at 7309 Van Buren Avenue, in the Blue Ridge Subdivision of Laramie County, Wyoming. (R. at 56-59). Taxpayers purchased the property in December 1999 and have made substantial improvements since that time. (R. at 27).

2. Kenneth Guille is the Laramie County Assessor (Assessor). Assessor is certified as a property tax appraiser by the Department and has served in the Laramie County Assessor’s Office for over 16 years. (R. at 19).

3. On March 19, 2014, Assessor sent Taxpayers a 2014 Notice of Assessment identifying the total market value of their property as \$332,760. (R. at 56).

4. Taxpayers filed a timely Official Appeal of Assessment on April 10, 2014, stating that:

In 2010 a Skystream 3.7 wind turbine was installed at 7213 Van Buren Ave. 100 yards from our rear deck. It produces noise levels making our deck unusable. Attached is report from Quest and an updated report will be available for the June 16-20th appeal.

(R. at 1).

5. In the Official Appeal of Assessment, Taxpayers requested “as much as [a] 40% reduction” in the assessed value of their property. (*Id.*).

6. At the hearing held June 16, 2014, the County Board heard first from Taxpayer, Richard Kostelac, on behalf of himself and his wife. He explained that in February of 2010, a neighbor installed a wind turbine on a hill overlooking Taxpayers’ property, and Mr. Kostelac submitted a DVD containing video and audio of the wind turbine in relation to his deck and the sound associated with the wind turbine. (R. at 27; Ex. 2 – DVD, Private Wind Turbine Sound Sample Test).

7. Mr. Kostelac also submitted a report from a company he hired to measure the ambient noise levels on his property. The report provided noise level measurements using a sound meter recording on two separate dates. (R. at 6-15).

8. Mr. Kostelac testified he and his wife can only use the deck on nice evenings; otherwise, if the wind is blowing and the wind turbine is running, “[i]t is so noisy on that deck that it’s not enjoyable being out there.” (R. at 29).

9. Mr. Kostelac testified that he asked the neighbor to try to control the noise level, but the neighbor refused. Taxpayers did file a nuisance lawsuit against the neighbor that was pending on the date of the County Board hearing. (R. at 29, 32-34).

10. Mr. Kostelac agreed that the assessment performed by Assessor is correct and provides a correct value of the property. Taxpayers seek a reduction in the assessed value due to the wind turbine erected by his neighbor that interferes with the use and enjoyment of their deck. (R. at 31, 39, 42).

11. Assessor testified after Mr. Kostelac. He testified that the appraisal report provides the information that is entered into the Computer Assisted Mass Appraisal (CAMA)

system. (R. at 38). However, he testified he could not quantify an amount for the loss of value to this property as a result of activities on an adjacent property, and that when using the CAMA system he could not take into consideration this type of a nuisance issue. (R. at 40). Assessor testified he could not value the nuisance amount to appropriately or accurately address a claim that the property's value is diminished. He also testified that under both the regulatory statutes and rules applicable to assessments, he did not know of a legal way to discount the overall value by a specific dollar amount. (R. at 41).

12. After Assessor testified that he knew of no way to affix a dollar amount to this type of claim, Mr. Kostelac asked the County Board if it would be possible to simply decrease the assessed value by the value of the deck. Mr. Kostelac indicated the deck is worth "3,000, 4,000, I don't know what they are, (sic) and simply say, okay, I've lost the enjoyment of that. We don't use it anymore." (R. at 42). The Cost Detail of Building listed a value of \$6,178 for the wood deck. (R. at 64).

13. Assessor testified to the "cost to cure" method of valuation. Assessor explained that using the current system of assessment he could, for instance, take into account the cost to remove a shed when the property is worth more without the shed; in other words, he could account for the cost to cure the problem. Assessor testified that this type of valuation would not "cure the defect" in this situation. (R. at 42-44, 46-47).

14. Assessor testified that he could delete the deck from the computer valuation, but he observed "as the Assessor, my duty is to identify, locate and value all taxable property. Of course, this deck is taxable. Whether there is a wind turbine at the neighboring property or not, it is still a taxable item or not. Could it be taken off the CAMA system? Of course, but then I am removing a taxable item due to a nuisance that's a taxable item." (R. at 47).

15. The County Board issued its decision on August 4, 2014, finding that Taxpayers had sustained their burden of proving that "because of a wind turbine installed by the neighbors next door, they have experienced a loss of use of their deck because of the noise level and the increased decibel level which is sometimes above 80 decibels." (R. at 112). The County Board ordered "that the Laramie County Assessor's determined value of the subject property of \$332,760.00, be reduced by the value of the deck." (R. at 113).

16. The State Board incorporates certain additional references to the record in the following discussion.

APPLICABLE LAW

17. The Wyoming Constitution, article 15, section 11(a), requires that all property "shall be uniformly valued at its full value as defined by the legislature. The legislature shall prescribe such regulations as shall secure a just valuation of taxation of all property, real and personal." Wyo. Const. art. 15, § 11(d).

18. Broken into its component parts, the Wyoming Constitution requires: (1) a rational method of valuation; (2) that is equally applied to all property; and (3) which provides essential fairness. It is the burden of one challenging an assessment to prove by a preponderance of the evidence that at least one of these elements has not been fulfilled. *Basin Elec. Power Coop., Inc. v. Dep't of Revenue*, 970 P.2d 841, 852 (Wyo. 1998).

19. The Legislature has required that all property in Wyoming be valued annually at fair market value. Wyo. Stat. Ann. § 39-13-103(b)(ii) (2013). Fair market value is defined as:

[T]he amount in cash, or terms reasonably equivalent to cash, a well-informed buyer is justified in paying for a property and a well-informed seller is justified in accepting, assuming neither party to the transaction is acting under undue compulsion, and assuming the property has been offered in the open market for a reasonable time.

Wyo. Stat. Ann. § 39-11-101(a)(vi) (2013).

20. The determination of fair market value inevitably involves a degree of discretion:

Early on, Justice Blume recognized a truth inherent in the area of property valuation: “there is no such thing as absolute value. A stone cannot be other than a stone, but one man may give a different valuation to a piece of land than another.” *Bunten v. Rock Springs Grazing Ass'n*, 29 Wyo. 461, 475, 215 P. 244, 248 (1923). Accordingly, this court has consistently interpreted Wyo. Const. art. 15, § 11 to require “only a rational method [of appraisal], equally applied to all property which results in essential fairness.”

Holly Sugar Corp. v. State Bd. of Equalization, 839 P.2d 959, 964 (Wyo. 1992), quoted in *Basin Elec. Power Coop.*, 970 P.2d at 857.

21. The statutory valuation date is January 1 of each year; all taxable property must be valued and assessed for taxation in the name of the owner of the property on that date. Wyo. Stat. Ann. § 39-13-103(b)(i)(A) (2013).

22. The county assessor must annually determine the fair market value of residential real property within the assessor's county. In doing so, the assessor is required to “[f]aithfully and diligently follow and apply the orders, procedures and formulae of the department of revenue or orders of the state board of equalization for the appraisal and assessment of all taxable property.” Wyo. Stat. Ann. § 18-3-204(a)(ix) (2013).

23. The Department is required by law to confer with, advise and give necessary instructions and directions to the county assessors regarding 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). In particular, the Department must “prescribe by rule and regulation the appraisal methods and systems for determining fair market value using generally accepted appraisal standards.” Wyo. Stat. Ann. § 39-13-103(b)(ii) (2013).

24. The Department has promulgated rules to provide appraisal methodologies for county assessors. Rules, Wyo. Dep’t of Revenue, ch. 9 § 5 (2011). Those rules specifically provide for the use of a computer assisted mass appraisal (CAMA) system. Rules, Wyo. Dep’t of Revenue, ch. 9 § 6(a)-(d) (2011). CAMA “automates the comparable sales and replacement cost methods.” *Britt v. Fremont Cnty. Assessor*, 2006 WY 10, ¶ 39, 126 P.3d 117, 128 (Wyo. 2006). The Wyoming Supreme Court has recognized the validity of valuations derived from a CAMA system. *Id.*

25. An assessor’s valuation is presumed valid, accurate, and correct. This presumption survives until overturned by credible evidence. *Teton Valley Ranch v. State Bd. of Equalization*, 735 P.2d 107, 113 (Wyo. 1987). This presumption is valid where the assessor valued the property according to the Department’s Rules and Regulations which provide for the use of the CAMA system in the assessment of real property. Rules, Wyo. Dep’t of Revenue, ch. 9 § 7 (2011). “The burden is on the Taxpayer to establish any overvaluation.” *Britt*, 2006 WY 10, ¶ 34. 126 P.3d at 127; *Hillard v. Big Horn Coal Co.*, 549 P.2d 294, 294 (Wyo. 1976).

26. A mere difference of opinion as to value is not sufficient to overcome the presumption in favor of an assessor’s valuation. *Britt*, 2006 WY 10, ¶ 34. 126 P.3d at 127; *J. Ray McDermott & Co. v Hudson*, 370 P.2d 364, 370 (Wyo. 1962).

27. The Wyoming Supreme Court aptly described the burden of proof for a taxpayer challenging a county assessor’s valuation as follows:

A strong presumption favors the Assessor’s valuation. “In the absence of evidence to the contrary, we presume that the officials charged with establishing value exercised honest judgment in accordance with the applicable rules, regulations, and other directives that have passed public scrutiny, either through legislative enactment or agency rule-making, or both.” *Amoco Production Co. v. Dept. of Revenue*, 2004 WY 89, ¶ 7, 94 P.3d 430, 435 (Wyo. 2004). The Britts [protesting taxpayers] had the initial burden of presenting evidence sufficient to overcome the presumption. *Id.*, ¶ 8. If the Britts successfully overcame the presumption, then the county board was “required to equally weigh the evidence of all parties and measure it against the appropriate burden of proof.” *CIG v. Wyoming Dept. of Revenue*, 2001 WY 34, ¶ 10, 20 P.3d 528, 531 (Wyo. 2001). The burden of going forward would then have shifted to the Assessor to defend her valuation. *Id.* Above all, the Britts bore “the ultimate burden of persuasion

to prove by a preponderance of the evidence that the valuation was not derived in accordance with the required constitutional and statutory requirements for valuing . . . property.” *Id.*

Britt, 2006 WY 10, ¶ 23, 126 P.3d at 125.

DISCUSSION AND ANALYSIS OF THE ISSUES

The following analysis is presented in the same order as the issues were presented in Assessor’s brief.

Whether the County Board’s decision is in compliance with the law.

28. Taxpayers did not argue that Assessor’s valuation was contrary to the law for valuing property; in fact, Taxpayers conceded that the valuation was appropriate and in accordance with constitutional and statutory requirements for valuing property. *Supra* ¶ 10.

29. In support of their claim to the loss of use and enjoyment of their property, Taxpayers submitted a March 30, 2012, article about property value losses near wind turbines, a measurement of the noise decibels near their deck on two separate occasions, a DVD, and Mr. Kostelac’s testimony about how the noise from the wind turbine impacts the ability to use and enjoy their deck. (R. at 2-55; Ex. 2); *see supra* ¶¶ 6-9. Of note, the noise decibels report indicated that on the dates the noise decibels were tested, they did not exceed the Cheyenne Noise Ordinance level of 80 dBA. (R. at 9).

30. In their Official Appeal of Assessment, Taxpayers requested “as much as 40% reduction” in the estimated market value of their property. *Supra* ¶ 5. At hearing, Taxpayers did not present any evidence relating to values other than Taxpayers’ estimate of the cost of the deck to support a specific monetary reduction in their property value. Nor did Taxpayers account in that valuation for those periods of time that they were able to use the deck, although Taxpayers recognized that they can, on occasion, still use it. *Supra* ¶ 8.

31. Assessor testified he used the CAMA system to determine an assessed value for the Taxpayers’ property. (R. at 38). He further testified that although he could physically remove the deck from the CAMA system, the deck was still a taxable item and that he did not believe he could legally remove that item from his assessment. *Supra* ¶ 14. Nor would removing the deck from the computer system “cure” the problem. Assessor testified that he is able to assess certain “cost to cure” situations, such as assessing a cost if a shed were located on a property and the property would be worth more if the shed were torn down. *Supra* ¶ 13. Assessor testified this would not be an appropriate method to take the wind turbine into account because doing so does not “cure” the issue on the Taxpayers’ property,

nor can it effectively “cure” or remove the alleged source of the problem from the neighboring property. *Supra* ¶ 14.

32. In response to questions from County Board Member Ash, Assessor testified his office does not take similar neighborhood issues into account in other areas around Cheyenne. For instance, the Assessor’s Office does not consider the activities from Frontier Refinery affecting a nearby neighborhood, nor does it take into account the noise from Big Country Speedway, or the possible issues from Duke Energy’s wind farm in its property assessments. (R. at 50-51).

33. Nevertheless, the County Board found that Assessor could reduce the assessed value by the lost value of the deck, concluding it “acceptable under the DOR regulations in the State of Wyoming to cure the problem by reducing the assessed value by the value of the deck because [Taxpayers] have lost its use pursuant to the installation of a wind turbine on the neighbor’s property.” (R. at 111).

34. The County Board did not recognize that although Assessor testified he could delete the deck from the valuation, he testified that doing so would be illegal based on his understanding of Department rules, as the deck remained a taxable item. *Supra* ¶ 14.

35. Although the use and enjoyment of Taxpayers’ deck may be impacted by neighboring activities, Assessor cannot legally take that into account in valuing property because the deck is a taxable item that remains a part of the property. There is no Department-approved method to value the loss of use and enjoyment of the deck, or even to attempt to include in that analysis the proportionate time that Taxpayers’ are able to use and enjoy the deck. Doing so improperly opens up valuations to any number of subjective adjustments for “barking dogs, loud parties and the myriad annoyances of suburban or ex-urban existence, to act as inputs in the valuation of real property and its fixtures.” (Br. of Pet’r 23).

36. An assessor is required to annually value property within the assessor’s county for tax purposes at its fair market value. The Board reiterates that in doing so, an assessor is required to “[f]aithfully and diligently follow and apply the orders, procedures and formulae of the Department of Revenue or orders of the State Board of Equalization for the appraisal and assessment of all taxable property.” Wyo. Stat. Ann. § 18-3-204(a)(ix), *supra* ¶ 22. Assessor followed the orders, procedures and formulae of the Department of Revenue in conducting the appraisal and assessment of Taxpayers’ property, and did so of “all taxable property” including Taxpayers’ deck. To do otherwise would violate the Assessor’s duties and responsibilities under Department rules. *Supra* ¶¶ 21-23.

37. “The burden is on the Taxpayer to establish any overvaluation.” *Hillard*, 549 P.2d at 294, *supra* ¶ 25. Although Taxpayers testified they could not use their deck at times, and they provided a report showing there was some level of increased noise from the wind

turbine, Taxpayers provided no objective evidence to support a lawfully recognized monetary reduction in the valuation and assessment of their property.

38. Accordingly, Taxpayers failed to overcome the presumption of validity, accuracy and correctness of Assessor's valuation and assessment. *See Teton Valley Ranch v. State Bd. of Equalization*, 735 P.2d 107, 113 (Wyo. 1987). Taxpayers further failed in their burden of establishing that the Assessor overvalued their property. *Hillard*, 549 P.2d at 294; *supra* ¶ 25.

39. The County Board erred in its determination that it was "acceptable under the DOR regulations in the State of Wyoming to cure the problem by reducing the assessed value by the value of the deck" (R. at 111).

40. The County Board "has no power to and shall not set tax policy nor engage in any administrative duties concerning assessments which are delegated to the board, the department or the county assessor." Wyo. Stat. Ann. § 39-13-102(d) (2013).

41. The County Board lacked authority to direct the Assessor to delete a taxable item from the valuation of Taxpayers' property in violation of the Department Rules. For this reason, the County Board's Order was contrary to law and must be reversed.

Whether the County Board's decision is supported by sufficient evidence.

42. Taxpayers presented an article about property value losses near wind turbines, a report on the noise decibels measured near the deck on two separate occasions, a DVD and testimony of how the wind turbine's operation impacted their ability to use and enjoy the deck. (R. at 1-55; Ex. 2 - DVD). *Supra* ¶¶ 6-10. Taxpayers initially requested "as much as 40% reduction" in the estimated market value of their property, *supra* ¶ 5, but at the hearing asked instead for a reduction in value equal to the cost of building the deck, estimating that the deck cost \$3,000 to \$4,000. *Supra* ¶ 12. Taxpayers did not account for those periods of time that they were able to use the deck, although Taxpayers recognized that they can, on occasion, still use it. *Supra* ¶ 8.

43. The County Board found that "[Taxpayers] did demonstrate a loss of use of their deck because of the wind turbine installed by his neighbor next door. The noise of the wind turbine creating a decibel level beyond 80 decibels at times, has created a loss of use of [Taxpayers'] deck. The record is clear that [Taxpayers] ha[ve] experienced a loss of use of the deck because of the wind turbine installed next door by [their] neighbor." (R. at 112).

44. In determining whether there is substantial evidence in the record, the State Board will not substitute its judgment for those findings reasonably supported by evidence in the County Board Record. *Laramie Cnty. Bd. of Equalization v. State Bd. of Equalization*, 915

P.2d at 1188-89, *supra* p. 3. “Substantial evidence is a term of art best described as relevant evidence that a reasonable mind can accept as adequate support for an agency’s conclusion.” *Sidwell v. State ex rel. Wyo. Worker’s Comp. Div.*, 977 P.2d 60, 63 (Wyo. 1999).

45. The County Board’s finding that the “decibel level [was above] 80 decibels at times” is not supported by substantial evidence in the County Board Record. Taxpayers’ evidentiary submission of a report of noise decibels around the deck area demonstrated that the noise from the wind turbine measured from 49.7 to 74.6 dBA on one occasion in the “area of concern” and from 51.1 to 63.3 dBA on another occasion in the “area of concern.” The report is clear that the decibels do not reach 80 decibels, noting that the noise levels “did not exceed the Cheyenne Noise Ordinance of 80 dBA.” *Supra* ¶ 7.

46. The County Board’s finding that the value of the property should be reduced by the value of the deck is not supported by substantial evidence in the County Board Record. Although Taxpayers likely have some loss of the use and enjoyment of their deck due to the wind turbine on the neighboring property, they only presented anecdotal evidence based on nothing more than speculation and conjecture. Taxpayers initially requested their land valuation be reduced by 40%, but did not support that with any credible evidence at the hearing. Instead, Taxpayers’ requested a reduction in the value of the property by the value of the deck which Taxpayer estimated to be around \$3,000 to \$4,000. (R. at 1, 42). Without offering some legal basis upon which to justify such a valuation discount, this evidence was insufficient to carry Taxpayers’ burden.

47. No evidence was presented to support either the percentage reduction initially requested or the amount requested for the value of the deck. Nor did Taxpayers or the County Board quantify or in any way account for those periods of time Taxpayers could use the deck. In its Order, the County Board simply ordered Assessor to effectively value the home as though no deck existed.

48. There is no support in the record for the County Board’s conclusion that Taxpayers lost the complete and total use and enjoyment of their deck. Nor is there any support in the record for the County Board’s order to delete the deck from the value of the house.

49. The State Board accordingly concludes there was not substantial evidence in the record to support the decision of the County Board.

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK.

ORDER

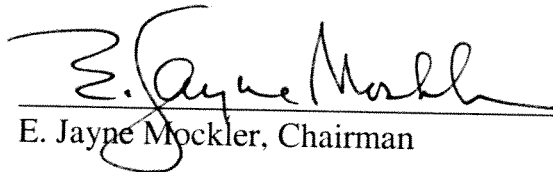
IT IS THEREFORE ORDERED that the Laramie County Board of Equalization's Order directing Assessor to reduce the value of the subject property by the value of the deck, is reversed as it is not in compliance with the law, nor is it supported by substantial evidence; and

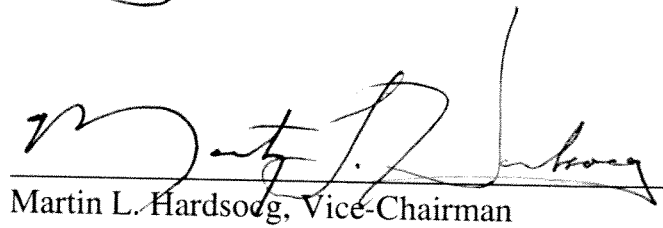
IT IS FURTHER ORDERED that Assessor's valuation and assessment is hereby affirmed without modification.

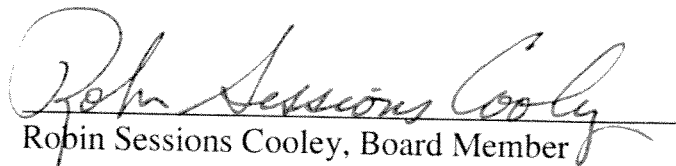
Pursuant to Wyo. Stat. Ann. § 16-3-114 and Rule 12, Wyoming Rules of Appellate Procedure, any person aggrieved or adversely affected in fact by this decision may seek judicial review in the appropriate district court by filing a petition for review within 30 days of the date of this decision.

DATED this 1st day of May, 2015.

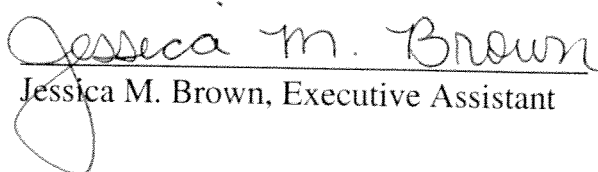
STATE BOARD OF EQUALIZATION


E. Jayne Mockler, Chairman


Martin L. Hardssoog, Vice-Chairman


Robin Sessions Cooley, Board Member

ATTEST:


Jessica M. Brown, Executive Assistant

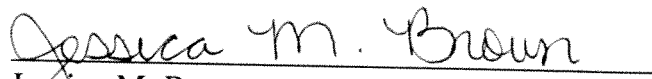
CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of May, 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:

Richard and Jeni Kostelac
7309 Van Buren Ave.
Cheyenne, WY 82009

Mark T. Voss
Laramie County Attorney
310 West 19th Street, Ste. 320
Cheyenne, WY 82001

Kenneth Guille
Laramie County Assessor
P.O. Box 307
Cheyenne, WY 82003



Jessica M. Brown
Executive Assistant
State Board of Equalization
P.O. Box 448
Cheyenne, WY 82003
Phone: (307) 777-6986
Fax: (307) 777-6363

cc: SBOE
Dan Noble, Director, Department of Revenue
Brenda Arnold, Property Tax Division, Department of Revenue
Commission/Treasurer - Laramie County
CCH
ABA State and Local Tax Reporter
Tax Analysts
Lexis-Nexis
State Library
File