

BEFORE THE STATE BOARD OF EQUALIZATION

FOR THE STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF)
LARAMIE COUNTY ASSESSOR FROM)
A DECISION OF THE LARAMIE COUNTY) Docket No. **2014-77**
BOARD OF EQUALIZATION - 2014)
PROPERTY VALUATION (Riedel Property))

DECISION AND ORDER

APPEARANCES

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

No brief was filed on behalf of the George F. Riedel Revocable Trust (Taxpayer).

DIGEST

The Assessor filed a Notice of Appeal of a Laramie County Board of Equalization (County Board) decision, which adjusted the 2014 valuation of the Riedel Trust Property to account for intermittent flooding of the property, to the Wyoming State Board of Equalization (State Board) on August 13, 2014. Mark T. Voss, Laramie County Attorney, filed a brief on behalf of Petitioner. Taxpayer did not file a response brief, as allowed by the State Board's Briefing Order issued on September 25, 2014.

The State Board,¹ 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 Petitioner's Opening Brief.

When reviewing a County Board's decision this Board applies our standard of review which is: whether the decision was arbitrary, capricious, unsupported by 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.

¹ Paul Thomas Glause and Steven D. Olmstead were members of the State Board when the appeal was filed. 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.

ISSUE

The Assessor identified one issue in his appeal:

The Laramie County Board of Equalization's decision in this matter is not in accordance with law, is arbitrary, capricious, and an abuse of discretion, and is unsupported by substantial evidence in the record.

(Assessor's Notice of Appeal, p. 1).

The Board restates the issue before it as follows:

Was the County Board decision adjusting the 2014 value of the Riedel Trust Property residential land arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law, in excess of statutory jurisdiction, authority or limitations or lacking statutory right, or unsupported by substantial evidence?

PROCEEDINGS BEFORE THE COUNTY BOARD

The County Board conducted a hearing on Taxpayer's protest on June 16, 2014. Taxpayer argued that intermittent flooding of his property lowered the value of the land. The Assessor disagreed and argued the land value was correctly determined using the standards outlined by the statute and the Department of Revenue (Department). The County Board issued Findings of Fact, Conclusions of Law and Order on August 4, 2014, affirming the Assessor's assessment of the Residential Improvements and reversing the assessment of the Residential Land. In its order the County Board reduced the land value by five percent, or \$2,096.70, resulting in a Residential Land assessment of \$39,846.30 for a total property valuation of \$143,882. (R. at 105).

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). The State Board's review is limited to determining whether the 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. § 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, [courts] will not treat them as findings of fact. [Courts] extend deference only to agency findings of “basic fact.” When reviewing a finding of “ultimate fact,” [courts] 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, [courts] 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. v. Wyo. State Bd. of Equalization, 802 P.2d 856, 860-61 (Wyo. 1990).

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) (citation omitted).

FACTS PRESENTED TO THE COUNTY BOARD

1. Mr. George Riedel represented Taxpayer, the George Riedel Revocable Trust, at the hearing before the County Board. (R. at 6, 8).
2. Taxpayer owns residential property located at 3806 Mynear Street, and legally described as: “Crestmore: South ½ of tract 5 less .08 A M/L to State Highway Commission,” in Laramie County, Wyoming. (R. at 52, 53, 55, 58).
3. The Assessor established the 2014 fair market value of Taxpayer’s property at \$158,174. The assessment valued the residential land at \$41,934 and the residential improvements at \$116,240. The Assessor mailed the 2014 Notice of Assessment to the Taxpayer on March 19, 2014. (R. at 52).
4. Mr. Riedel visited the Assessor’s office to review the assessment on April 11, 2014. Because Taxpayer raised several issues with the assessment, representatives from the Assessor’s office visited the property on April 14, 2014, which resulted in various adjustments to the assessment. (R. at 26).

5. As a result of various adjustments, the Assessor issued an Amended Notice of Assessment on April 15, 2014, assessing the Taxpayer's Residential Land at \$41,934 and the Residential Improvements at \$101,948, for a total valuation of \$143,882. (R. at 26, 53).
6. On April 17, 2014, Taxpayer filed an appeal of the County Assessor's revised 2014 valuation of the property. (R. at 1).
7. In the Notice of Appeal Taxpayer stated that the "property is flooded by County and City continually." (R. at 1).
8. Rather than suggest a remedy in support of his tax assessment appeal, Mr. Riedel suggested that a functional remedy to prevent future flooding of his property would be to "dig drainage ditch on west side of Ridge Rd. Market value should increase then." Mr. Riedel stated there is no flood insurance and that the property is not in a floodplain. He believed that the flooding was "manmade." (R. at 1, 19-24).
9. Mr. Riedel presented an overview of his property, which included photographs dated February 17, 2014, to suggest area flooding caused the structures and land to deteriorate and generally lowered the value of the property. The photographs reflected flooding in the general area, but did not allow the County Board to verify the extent of the flooding on the Riedel property. (R. at 16-24; Ex. 2a-2s at 93-99).
10. Taxpayer did not allege that the property had suffered damages in a specific amount. Rather, Mr. Riedel estimated that the land flooded three to four times a year, or about five percent (5%) of the year. (R. at 15, 21, 45).
11. Kenneth Guille, the Laramie County Assessor, testified in support of the property assessment and valuation. Mr. Guille has worked in the Laramie County Assessor's office for almost 16 years and is a Wyoming Department of Revenue (DOR) certified property tax appraiser. He is also a candidate for the AAS designation with the International Association of Assessing Officers (IAAO). (R. at 25).
12. Mr. Guille stated that he used the Wyoming Computer Assisted Mass Appraisal (CAMA) system to value the Riedel property. He noted that on April 14, 2014, his office re-evaluated the Riedel property, and he adjusted the initial assessment. The County Board received the adjusted appraisal report into evidence as part of Assessor's Exhibit A. (R. at 25-26; Ex. A at 51-70).
13. Mr. Guille reviewed neighborhood 801/802, which includes the Taxpayer's property. Neighborhood 801/802 is comprised of homes which were once mobile or manufactured, but are now permanently fixed to the property. Because of the nature of these homes they are assessed by type, and are not bound geographically. The

neighborhood is countywide. To determine value on the homes in this neighborhood, sales of these properties are also considered countywide. These sales indicated that the entire group needed an adjustment to reach market value. Mr. Guille applied a 6% market adjustment to all properties in the 801/802 neighborhood based on the RCLND (Replacement Cost New Less Depreciation) analysis. The adjustment was applied only to the improvements. (R. at 49-50).

14. Mr. Guille also reviewed the appraisal process for land in Laramie County. He noted that there is not just one land model used for neighborhood 801/802, as the properties are located throughout Laramie County. He discussed the process for developing a Land Economic Area (LEA). He noted that an LEA does not necessarily correspond to a neighborhood. He also stated that because there are few vacant land sales in the county, he relied in part on a countywide land study, which looked at land in and around Cheyenne, to help evaluate the relationship between the value of the underlying land to a property's overall sales price. From this data he was able to extrapolate land values for the entire county. He agreed that two different pieces of land of the same size can have different values, but suggested this should not be the case if the properties were right next to each other. (R. at 38-39, 49-50).

15. Mr. Guille made no adjustments to any land or structures in the Taxpayer's neighborhood as a consequence of the flooding. He stated that he is unable to quantify a discount value for land that floods. He added that state statutes and DOR rules do not allow a value adjustment based on periodic flooding. He stated the land is valued using a cost approach, which was adjusted for sales. (R. at 29-31, 35-37).

16. Mr. Guille stated that when valuing vacant land, he does not gather "attribute" information such as topography, whether the property is on a busy road, whether it is fenced, or whether it has infrastructure. (R. at 40).

17. The County Board issued its decision on August 4, 2014, affirming the fair market value for the Residential Improvements at \$101,948, but adjusted the fair market value of the Residential Land to \$39,846.30, a reduction of 5% or \$2,096.70 from the Assessor's Amended Notice of Assessment of the property. (R. at 53, 100-06).

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

APPLICABLE LAW

18. 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).

19. Broken into its component parts, the Wyoming Constitution requires that property valuation consists of: (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. v. Dep’t of Revenue*, 970 P.2d 841, 852 (Wyo. 1998).

20. 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).

21. 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.

22. 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).

23. 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).

24. 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).

25. 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.*

26. An assessor's valuation is presumed valid, accurate, and correct. This presumption survives until overturned by credible evidence. *Britt*, 2006 WY 10, ¶ 34, 126 P.3d at 127; *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." *Hillard v. Big Horn Coal Co.*, 549 P.2d 294, 294 (Wyo. 1976).

27. 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).

28. 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.

29. 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).

DISCUSSION AND ANALYSIS OF THE ISSUES

30. This appeal turns on whether the County Board’s decision was supported by substantial evidence and whether the County Board correctly applied the law. In determining whether there is substantial evidence in the record, the State Board will not substitute its judgment for findings reasonably supported by evidence in the County Board Record. *Laramie Cnty. Bd. of Equalization v. State Bd. of Equalization*, 915 P.2d 1184, 1188-1189 (Wyo. 1996); *Holly Sugar Corp. v. Wyo. State Bd. of Equalization*, 839 P.2d 959 (Wyo. 1992); *Sage Club, Inc. v. Employment Sec. Comm’n.*, 601 P.2d 1306, 1310 (Wyo. 1979). While substantial evidence may be less than the weight of the evidence, it cannot be clearly contrary to the overwhelming weight of the evidence. The Wyoming Supreme Court has stated “[s]ubstantial 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 Workers’ Comp. Div.*, 977 P.2d 60, 63 (Wyo. 1999).

31. The County Board record indicates the Assessor complied with the requirements of state law in determining the value for the Taxpayer’s property by using the sales comparison approach to value improvements and a cost approach to value vacant land as prescribed in Chapter 9 of the Rules promulgated by the Department. Rules, Wyoming Dep’t. of Revenue, ch. 9 §§ 5(i).(ii.) (2011). The uncontroverted testimony of the Assessor showed that the Assessor followed the Department’s Rules to determine the value of the Riedel Trust Property. *Supra* ¶¶ 12-16, 24-25.

32. The Assessor’s explanation of the process was clear and concise. He outlined for the County Board the process he used to determine the value of the Riedel land and improvements. He described the neighborhood in which the Riedel property was located and described the comparison properties used in the valuation of the Riedel property. He

adequately discussed the sales considered and the market adjustment made to the neighborhood. The Assessor also explained the process used to value the land, including a review of a countywide land study used to ensure uniformity throughout the county. *Supra* ¶¶ 12-16.

33. The Taxpayer did not demonstrate the Assessor's results were incorrect. Mr. Riedel offered his personal opinion that occasional flooding of the property diminished its value. However, he offered no authority for his position and could not reasonably quantify a decrease in value. Offering only Mr. Riedel's unsupported opinion to contest the Assessor's valuation, Taxpayer could not prevail. Taxpayer's unsupported opinion was insufficient to carry the burden of persuasion and did not overcome the legal presumption that the Assessor's valuation is correct. *Supra* ¶¶ 7-10, 26-28.

34. While the Assessor may have had some discretion to further evaluate Mr. Riedel's valuation claims and, if persuaded, could have adjusted the land value, he did not do so. In addition, the County Board could have sought additional information upon which it could base a decision to reduce the valuation. *Supra* ¶¶ 21, 23-25.

35. Instead, the County Board directed the Assessor to adjust the 2014 fair market value for the Residential Land portion of the Riedel Trust Property based on the Taxpayer's estimate of the devaluation caused by the periodic flooding. Neither the record, nor statutory, regulatory or appraisal authority support the County Board's ordered valuation change. *Supra* ¶¶ 7, 9-11, 23, 25, 29.

36. Further, the County Board cannot change the value of the Riedel Trust Property. The County Board lacks the authority to compromise valuations, or to order a valuation which does not take into account the requirements of the statutes and the Department's Rules. Wyo. Stat. Ann. § 39-13-102(d) (2013), *supra* ¶ 29.

37. Consequently, we conclude that the County Board's decision directing the Assessor to adjust the value of the Taxpayer's land by 5% was not supported by substantial evidence, was arbitrary, capricious, in excess of statutory jurisdiction, authority or limitations or lacking statutory right, and must therefore be reversed.

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ORDER

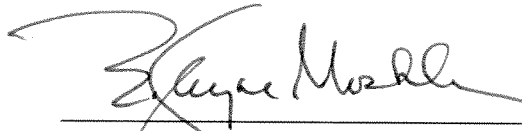
IT IS THEREFORE ORDERED the Laramie County Board of Equalization Order modifying the valuation of Taxpayer's property for 2012 is **reversed**; and

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

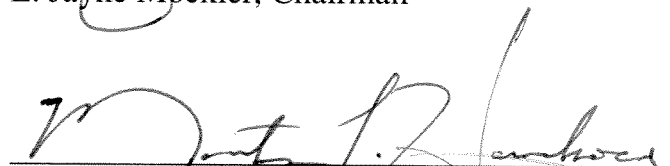
Pursuant to Wyo. Stat. Ann. §16-3-114 (2013) and Rule 12, Wyoming Rules of Appellate Procedure, any person aggrieved or adversely affected in fact by this decision may seek judicial review in the appropriate district court by filing a petition for review within 30 days of the date of this decision.

Dated this 13th day of May, 2015.

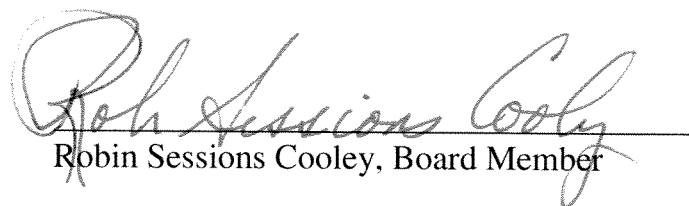
STATE BOARD OF EQUALIZATION



E. Jayne Mockler, Chairman

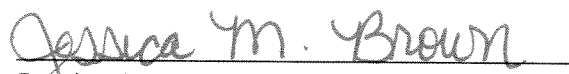


Martin L. Hardsocg, Vice-Chairman



Robin Sessions Cooley, Board Member

ATTEST:



Jessica M. Brown, Executive Assistant

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of 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:

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