BEFORE THE STATE BOARD OF EQUALIZATION
FOR THE STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF **JOHN GORSKI** FROM A DECISION BY THE ALBANY COUNTY BOARD OF EQUALIZATION (2015 Property Tax Assessment)	)))))	**Docket No. 2015-52**

DECISION AND ORDER

APPEARANCES

John Gorski (Petitioner), *pro se*, did not file a brief but did present oral argument.

Peggy Trent, Albany County & Prosecuting Attorney, filed a brief and presented oral argument on behalf of the Albany County Assessor, Grant C. Showacre (Assessor).

DIGEST

Petitioner appealed the Albany County Board of Equalization's (County Board) Findings of Fact, Conclusions of Law and Order affirming Assessor's 2015 property tax assessment of Petitioner's mountain lot and improvements. Petitioner faulted the underlying valuation on several grounds, claiming his water well was contaminated and that a road and easement across his property made part of the lot unusable.

The Wyoming State Board of Equalization (State Board), Chairman E. Jayne Mockler, Vice Chairman Martin L. Hardsocg, and Board Member Robin Sessions Cooley, reviewed the County Board record to determine whether the Albany County Board of Equalization's Findings of Fact, Conclusions of Law and Order (County Board Decision) was arbitrary, capricious, supported by substantial evidence, and/or contrary to law. Rules, Wyo. State Bd. of Equalization, ch. 3 § 9 (2006), *infra* ¶ 23. The State Board partially affirms, partially reverses, and remands the County Board's Decision for action consistent with this Decision and Order.

ISSUES

Petitioner contends Assessor overvalued Petitioner's property because: 1) its source water well was contaminated; 2) a road and easement split the property, rendering a portion "unbuildable"; 3) overhead power lines crossed the property; and 4) other conditions detracted from the property's value. Pet'r's Notice of Appeal. Petitioner claims Assessor overvalued his property by $39,000, seeking a fair market value reduction from $200,534 to $161,534. *Id.*

Assessor states the issue differently:

> Whether the Albany County Board of Equalization's finding that the assessment as established by the Albany County Assessor for the 2015 value of the Gorski's [sic] property is a fair market value of $200,589[1] is supported by substantial evidence and is not arbitrary and capricious and in accordance with the law.

Assessor's Br. 13.

PROCEEDINGS BEFORE THE COUNTY BOARD

Petitioner timely appealed Assessor's 2015 property tax assessment to the County Board, asserting an overvaluation of his improved mountain property at 53 Upper Road, Laramie, Albany County, Wyoming. (R. at 1-2). The County Board held a contested case hearing on Petitioner's appeal on July 28, 2015. Petitioner asserted his property, valued for tax purposes at $200,534, was overvalued and should be reassessed at a value of $161,534. On September 15, 2015, the County Board issued its decision affirming Assessor's 2015 valuation. (R. at 177-82). Petitioner appealed to the State Board on October 15, 2015. Pet'r's Notice of Appeal.

[1] Assessor valued Petitioner's property for property tax purposes at $200,534. (Ex. 3, R. at 23). The County Board affirmed the assessed value of $200,534. (R. at 177-82). Assessor's reference to a fair market value of $200,859, at page 13 of his brief, appears to be a mistake and is inconsistent with other statements of the assessed valuation.

FACTS PRESENTED TO THE COUNTY BOARD

1. Petitioner received a property tax assessment for his mountain property (1 acre with 1½ story residence, plus shed) located at 53 Upper Road, Laramie, in Albany County, Wyoming, on approximately April 8, 2015. (R. at 106). Petitioner called the Assessor's Office to complain the value of his property was too high and, within several weeks, Assessor's staff inspected Petitioner's home. *Id.*

2. Following the site inspection, Assessor issued a 2015 amended assessment on May 6, 2015, increasing the assessed valuation to account for newly revealed improvements to the residence. The assessed value for the real property remained $38,301; for the improvements (a cabin and shed), the fair market value increased to $162,233, for a total assessment of $200,534. (Ex. 3, R. at 23; Ex. 8, R. at 40-47; R. at 106-08, 124, 128-31).

3. Petitioner informed Assessor his well water was contaminated with fecal coliform and of efforts to remedy the defect. (R. at 97, 106-09, 129-30, 137-39). Petitioner provided Assessor with a laboratory test of his well water, which confirmed contamination. (Ex. 6, R. at 30-33; R. at 108-10, 129-32).

4. Petitioner speculated that resolving septic system malfunctions and drilling a deeper well might cost as much as $40,000. (Ex. 5, R. at 27; R. at 98-99, 106-17). Petitioner offered no documentation in support of this cost to remediate. (R. at 107-14).

5. Petitioner insisted the water contamination rendered his property "not merchantable," arguing "[who] in their right mind would want to purchase this home for the valuation of the now adjusted price of $200,534." (Ex. 5, R. at 27; R. at 99, 121). Petitioner claimed the water well contamination reduced the value of his residence and shed $30,000, from $162,233 to $132,233. (R. at 100, 111, 116, 120).

6. Assessor agreed fecal coliform contaminated Petitioner's water supply, observing: "This is a common problem up in Wold [development tract]. I have seen it many times. I have also talked to Realtors. They say the solution is drilling a deeper well." (R. at 132, 143). In correspondence with Petitioner, Assessor agreed the water well defect should reduce the fair market value of Petitioner's property and asked Petitioner to provide information on the cost to repair. (Ex. 7, R. at 35-38; Ex. 18, R. at 13-14).

7. Receiving no drilling cost or similar information from Petitioner, Assessor contacted the well company performing the drilling and learned that drilling a new well and water testing would cost approximately $12,000. (R. at 134, 143-44). Assessor

testified that a "cost to cure" adjustment would be appropriate and that, before the hearing, he had offered Petitioner a one-time value deduction of $12,000.[2] (Ex. 18, R. at 13; R. at 108-13, 129-30, 153-56). Petitioner did not respond.

8. Insisting the cost to repair was yet unknown, Petitioner's claim for a $30,000 reduction in value reflected his best guess at the cost. (Ex. 7, R. at 35-38; Ex. 18, R. at 13-14). Petitioner maintained during the hearing that a $12,000 discount was insufficient because he could not know whether the new well would resolve the problem. Petitioner insisted the amount to cure could be "upwards of $30,000" and that the effort to remediate the problem was at that time incomplete. (R. at 112-16, 121-23, 157-59, 162).

9. Aside from the water contamination, Petitioner argued that several other property conditions supported his valuation challenge. He claimed a road and easement cutting across one-third of his property, along with overhead power lines, reduced the fair market value of his property. (R. at 99-100, 118, 121-23, 161-62). Petitioner estimated the road cutting through his property rendered 27% or "about a third of my one acre" lot unusable, for which he sought a $9,000 value discount. (R. at 99-100, 118, 123). Petitioner offered no explanation of how he arrived at $9,000. Petitioner sought a reduction in his land value from $38,301 to $29,301. *Id.*

10. Petitioner also complained his property value should reflect its status as a "secondary" home—a home used as a recreational or temporary residence. (R. at 103-05). Petitioner further argued extensive beetle-killed trees diminished the lot's value. *Id.* Petitioner tied no separate value reduction to these factors, implicitly including them within his claim for a $9,000 value reduction.

11. Petitioner generally objected to Assessor's application of the sales comparison method, arguing Assessor should have relied upon other valuation methods as well. (R. at 105, 141-48). Apart from argumentative questions, Petitioner offered no evidence demonstrating Assessor incorrectly selected or applied a valuation method. *Id.*

12. Defending his valuation process, Assessor cautioned he was required to adhere to "state guidelines by methods that are approved by the state and IAAO [International Association of Assessing Officers], to try and solve a value issue within the boundaries that the state allows[.]" (R. at 144).

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[2] Assessor's legal counsel, in closing argument, referred more generally to a cost-to-cure reduction sum of $12,000 to $14,000 based on correspondence between Assessor and Petitioner before the hearing. (R. at 163-64). References to the $14,000 figure, however, do not tie specifically to informed estimates of the cost-to-cure.

13. Although Assessor generally characterized his valuation as derived from a sales comparison valuation method (R. at 134), that explanation does not fully reflect how he valued Petitioner's property. Exhibit 8 includes a "property summary" indicating Assessor applied a cost-driven valuation method (replacement cost new less depreciation) to value Petitioner's cabin and out-shed. (Ex. 8, R. at 43-48).

14. Assessor prepared a "Reconciliation Statement" for Neighborhood 5322[3] stating: "Sales information is analyzed to develop neighborhood adjustments that must be applied to the replacement cost new less depreciation (RCNLD) value, to bring all properties within each neighborhood into market value." (Ex. 10, R. at 55-57). Referring to sales of comparable properties and the attributes of other properties within Neighborhood 5322, Assessor adjusted Petitioner's overall property value, along with all other Neighborhood 5322 values, by a factor of 1.6 to achieve a market valuation.[4] *Id.*

15. Thus, from the evidence presented, Assessor used Wyoming's Computer Assisted Mass Appraisal (CAMA) system, a cost-based method, in conjunction with the sales comparison method, to value and adjust for Petitioner's improvements.[5]

16. Assessor separately valued Petitioner's land using the sales comparison method. (R. at 128-30, 134-36). Assessor relied upon a group of similar sales from Land Economic Area (LEA) Neighborhood 5322, which includes Petitioner's property, to determine a fair market value of the land. (Ex. 9, R. at 50-53; R. at 134-36). After evaluating the sales from 2015 and prior years, Assessor did not change the value of Petitioner's land. *Id.*

17. Further explaining his sales comparison practice of valuing rural properties with cabins, Assessor places them into three classes for comparison purposes: 1) properties with residences that fully accommodate owners year-round; 2) properties with cabins, having fewer amenities, which are not normally year-round residences; and 3) cabins with no land (located on government property). (R. at. 142, 148-49).

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[3] Land Economic Area (LEA) Neighborhood 5322 consists of 343 properties located within a mountainous area west of Laramie, Wyoming. (Ex. 10, R. at 55-57).

[4] Because he was not pressed on the adjustment factor's origin or significance within the valuation, Assessor gave little explanation of how he arrived at an adjustment of 1.6, nor did he explain its purpose and effect as a component of mass appraisal. Neither Petitioner nor the County Board took issue with the adjustment during the hearing, and we note it here only to provide a comprehensive review of the evidence.

[5] While Petitioner offered little challenge to Assessor's valuation method selection, and offered no evidence Assessor incorrectly applied the method, a description of the basic valuation method helps assure a level of understanding and consistency when similar disputes arise before this Board.

18. Assessor referred to the sales of ten similar properties within LEA Neighborhood 5322 to support his valuation of Petitioner's property. (Ex. 10, R. at 55-57; R. at 134-36). Illustrating his application of the sales comparison valuation method, Assessor supplied details on the sale of three Wold tract lots, with similar residential improvements. (Exs. 11-13, R. at 59-73). Petitioner did not question the comparability of the specified property sales offered for comparison; his challenges, instead, focused on the contaminated water issue and the reduced usability of his property. *Id.*

19. Assessor separately valued the land at $38,301, unchanged from the previous year. Assessor increased the value of Petitioner's cabin to $162,233 to capture the value of improvements to the structure. (Ex. 3, R. at 23; R. at 134Ex. 8, R. 40-48; Ex. 9, R. at 50-53; Ex. 10, R. at 55; R. at 134); *supra* ¶¶ 2, 16.

20. As for the roads, easements, power lines, beetle killed trees, limited accessibility, and like conditions, Assessor disagreed with Petitioner that his property value should be reduced. (R. at 131, 145-49). Although Assessor agreed those characteristics might detract from a property's value, sales of similar properties already captured necessary adjustments to the value. "Whatever the person buys is a reflection of what they see it's worth, including those problems that you're saying. And so because all the mountains have the issue with the beetle kill, all the sales have taken that into consideration, and by the time we figure the value, that is considered through the sales." (R. at 145).

21. Assessor responded to several other objections, including: 1) failing to give Petitioner notice, or obtain consent, before inspecting the property; and 2) an allegation Assessor instructed Petitioner that his appeal depended upon allowing an inspection of the property. (R. at 100-01, 128-29, 137-39). Assessor clarified that when he cannot unilaterally access an owner's property, his office gives advance notice to property owners. He explained, however, that providing thousands of owners advance notice before inspections was not practicable. He clarified he had informed Petitioner that no adjustment to value would occur without an inspection or some additional information to support a valuation change. He denied advising Petitioner that inspection of the property was a precondition to filing an appeal. *Id.*

REVIEW OF COUNTY BOARD'S APPLICATION OF LAW

A. Standard of Review

22. When the State Board hears appeals from a county board, it sits as an intermediate level of appellate review. *Town of Thermopolis v. Deromedi*, 2002 WY 70, ¶ 11, 45 P.3d 1155, 1159 (Wyo. 2002); *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. *Town of Thermopolis*, ¶ 11, 45 P.3d at 1159.

23. The State Board's standard of review of a county board decision is, by rule, nearly identical to the Wyoming Administrative Procedure Act standard which a district court must apply in reviewing agency action, findings of fact, and conclusions of law. Wyo. Stat. Ann. § 16-3-114(c)(ii) (2015). 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(a)-(d) (2006).

24. Since the State Board Rules are patterned on the judicial review provisions of the Wyoming Administrative Procedure Act, judicial rulings interpreting Wyoming Statutes section 16-3-114(c) (2015) offer guidance. Where both parties submit evidence at a contested case hearing, we apply the substantial evidence standard:

> We review an administrative agency's findings of fact pursuant to the substantial evidence test. *Dale v. S & S Builders, LLC*, 2008 WY 84, ¶ 22, 188 P.3d 554, 561 (Wyo. 2008). Substantial evidence is relevant evidence which a reasonable mind might accept in support of the agency's conclusions. *Id.*, ¶ 11, 188 P.3d at 558. Findings of fact are supported by substantial evidence if, from the evidence in the record, this Court can discern a rational premise for the agency's findings. *Middlemass v. State ex rel. Wyo Workers' Safety & Comp. Div.*, 2011 WY 118, ¶ 11, 259 P.3d 1161, 1164 (Wyo. 2011). When the hearing examiner determines that the burdened party failed to meet his burden of proof, we will decide whether there is substantial evidence to support the agency's decision to reject the evidence offered by

> the burdened party by considering whether that conclusion was contrary to the overwhelming weight of the evidence in the record as a whole. *Dale*, ¶ 22, 188 P.3d at 561.

Jacobs v. State, ex rel., Wyo. Workers' Safety & Comp. Div., 2013 WY 62, ¶ 8, 301 P.3d 137, 141 (Wyo. 2013).

25. In conjunction with the substantial evidence standard, the State Board applies the "arbitrary and capricious" standard:

> The arbitrary and capricious standard of review is used as a "safety net" to catch agency action that prejudices a party's substantial rights or is contrary to the other review standards, but is not easily categorized to a particular standard. *Jacobs*, ¶ 9, 301 P.3d at 141. "The arbitrary and capricious standard applies if the agency failed to admit testimony or other evidence that was clearly admissible, or failed to provide appropriate findings of fact or conclusions of law." *Id.*

Gonzales v. Reiman Corp., 2015 WY 134, ¶ 16, 357 P.3d 1157, 1162 (Wyo. 2015).

26. The State Board reviews conclusions of law 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).

27. Likewise, we review de novo a county board's ultimate findings of fact:

> 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 has been properly applied to the facts. We do not defer to the agency's ultimate factual finding if there is an error in either stating or applying the law.

Basin Elec. Power Coop., Inc. v. Dep't of Revenue, State of Wyo., 970 P.2d 841, 850-51 (Wyo. 1998) (quoted in *Chevron U.S.A., Inc. v. Dep't of Revenue*, 2007 WY 79, ¶ 10, 158 P.3d 131, 134 (Wyo. 2007)).

B. Applicable Law

28. The Wyoming Constitution requires that all property be uniformly assessed for taxation, and that the Legislature prescribe regulations to secure a just valuation for the taxation of all property. Wyo. Const. art. 15, § 11.

29. 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 the party 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.*, 970 P.2d at 852.

30. The Wyoming Department of Revenue (Department) is required to confer with, advise, and give necessary instructions and directions to the county assessors as to their duties, and to promulgate rules and regulations necessary for the enforcement of all tax measures. Wyo. Stat. Ann. § 39-11-103(c)(xvi), (xix) (2015). In particular, the Department "shall 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) (2015).

31. County assessors, for their part, are 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) (2015).

32. All property must be valued annually at fair market value. Wyo. Stat. Ann. § 39-13-103(b)(vii). 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) (2015).

33. The Department by rule directs that "[a]ll methods used by the Assessor shall be consistent with the applicable IAAO and USPAP standards[.]" Rules, Wyo. Dep't of Revenue, ch. 9 § 5 (2011).[6]

34. The Department has prescribed methods for valuing property. The acceptable methods include a sales comparison approach, a cost approach, and an income or capitalized earning approach, in conjunction with the CAMA system. Rules, Wyo. Dep't of Revenue, ch. 9 §§ 5, 7 (2011).

35. The CAMA system is a computerized "system adopted and approved for valuation of taxable property assessed at the County level for property tax purposes" and must be used "for all real and personal property, except property for which narrative appraisals or other recognized supplemental appraisals are used as a substitute to the CAMA system." Rules, Wyo. Dep't of Revenue, ch. 9 § 7 (2011). CAMA effectively "automates the comparable sales and replacement cost methods" prescribed by rule. *Britt v. Fremont Cty. Assessor*, 2006 WY 10, ¶ 39, 126 P.3d 117, 128 (Wyo. 2006).

36. The Wyoming Supreme Court has recognized the validity of valuations derived from the CAMA system. *Id.*; *Gray v. Wyo. State Bd. of Equalization*, 896 P.2d 1347, 1351 (Wyo. 1995). In fact, the Wyoming Supreme Court has favored a CAMA-derived value over application of the sales price of a comparable property, concluding CAMA assured greater equality and uniformity in the assessment process. *Gray* at 1351.

37. An assessor's valuation is presumed valid, accurate, and correct until refuted by credible evidence. *Teton Valley Ranch v. State Bd. of Equalization*, 735 P.2d 107, 113 (Wyo. 1987). "In all cases, additions, deletions and changes in use will be recognized by appraisers and appropriate adjustments will be made to the valuation of the property." Rules, Wyo. Dep't of Revenue, ch. 9 § 10 (2011). A mere difference of opinion as to value is not sufficient to overcome the presumption. *J. Ray Mc Dermott & Co. v. Hudson*, 370 P.2d 364, 370 (Wyo. 1962). The presumption is especially valid where the Assessor valued the property according to the Department's rules providing for the use of the CAMA system in the assessment of real property. *Supra* ¶¶ 35-36; Rules, Wyo. Dep't of Revenue, ch 9 §§ 5, 7 (2011).

C. Legal Analysis

38. Petitioner timely appealed from the County Board Decision. *See supra* Proceedings Before the County Board; Rules, Wyo. State Bd. of Equalization, ch. 3 § 2(a) (2006). In

[6] IAAO refers to the International Association of Assessing Officers, and USPAP refers to the Uniform Standard of Professional Appraisal Practice and Advisory Opinions published by the Appraisal Standard Board. Rules, Wyo. Dep't of Revenue, ch. 9 § 4(a.)(xxii.), (xliii.) (2011).

accordance with Wyoming Statutes section 39-13-109(b)(ii) (2015), the State Board has jurisdiction to hear and determine all properly raised issues.

39. Challenging the County Board's decision, Petitioner complains Assessor erred in three basic ways: 1) he questions Assessor's valuation methodology selection; 2) he challenges Assessor's failure to account for contamination of the property's water well; and 3) he complains the valuation did not correctly account for other property detractors, like a road and overhead power lines which diminished the land's utility. *Supra* ¶¶ 2-9. We shall examine whether the County Board Decision was arbitrary, capricious, contrary to law, or amounted to an abuse of discretion; whether the County Board exceeded its statutory authority; whether the County Board failed to follow required legal procedures; and, ultimately, whether the County Board's decision was supported by substantial evidence. *Supra* ¶ 23.

40. We begin with Petitioner's very general objection that Assessor should have relied upon more than just the comparison sales valuation approach. *Supra* ¶ 11. Because the Assessor did not explain in any detail how he conducted the valuation, the record is somewhat sparse on this point. Upon careful examination of the exhibits and Assessor's testimony, the Assessor followed the sales comparison approach to value Petitioner's land and a combination of the cost approach and sales comparison approach to value the improvements. *Supra* ¶¶ 12-19. Consistent with mass appraisal practice, Assessor consulted sales and property characteristics within LEA and Neighborhood 5322 to derive an adjustment factor of 1.6, which he applied to all properties within the LEA and Neighborhood 5322. *Id.*

41. Petitioner presented no evidence to demonstrate Assessor's selection or application of valuation methodologies was improper. *Supra* ¶ 11. Without an articulated challenge to the valuation method, the County Board appropriately presumed Assessor's valuation method selection and application to be correct.[7] *Supra* ¶¶ 11-19, 27-29, 35; *see Britt*, ¶¶ 29-34, 126 P.3d at 126-27 (Although taxpayers offered alternative valuation methods to value their property, the evidence was insufficient to overcome the presumption in favor of assessor's valuation.).

[7] The State Board, assuming a sufficient record exists, will satisfy itself that an assessor has generally followed departmental guidelines. Overcoming the presumption will normally require taxpayers first comprehend Wyoming's mass appraisal valuation system (i.e. the difference between mass appraisal and a fee appraisal), and then specify how an assessor breached a particular standard within the mass appraisal framework. To overcome the presumption, a taxpayer must offer credible evidence of error. *Britt*, ¶ 23, 126 P.3d at 125; *supra* ¶ 29.

42. We next examine Petitioner's claim Assessor failed to account for the contamination of Petitioner's water well, for which Petitioner sought a $30,000 value reduction. *Supra* ¶¶ 3-8.

43. Petitioner initially argued his property's valuation should be zero or nominal, opining he could not sell his property with a tainted water source even if he so desired. *Supra* ¶ 3. To substantiate a zero or nominal value adjustment, Petitioner was required to demonstrate a zero fair market value through market specific evidence, or through evidence that the costs of remediation exceeded the fair market value of the property in an uncontaminated state. *See e.g. Monroe Cty. Bd. of Assessment Appeals v. Miller,* 570 A.3d 1386 (Pa. 1990) (Taxpayer offered expert testimony and evidence that contaminated properties could not be used and were not marketable, justifying a nominal taxable value.); *Girman v. Medina Cty. Bd. of Revision & Medina Cty. Auditor,* Doc. No. 2009-A-480, 2011 WL 5924476 *2 (Ohio Bd. Tax App. 2011) (Taxpayer must show actual effect of contamination on market value.); *see also* Bonnie H. Keen, *Tax Assessment of Contaminated Property: Tax Breaks for Polluters?* 19 B.C. Envtl. Aff. L. Rev. 885, 905-06 (1992) (While some taxpayers have argued for a zero or nominal value, a majority of tribunals have rejected such claims.); Norman J. Bruns, *Environmental Issues: How to Reduce Property Tax Assessments*, 3 J. Multistate Tax'n & Incentives 62 (1993) (discussing cases demonstrating evidence to sustain taxable valuation adjustments of contaminated properties). Although the County Board did not rule specifically on this claim, it implicitly rejected Petitioner's "zero value" argument when it held Petitioner failed to carry his initial burden of overcoming the presumption in favor of Assessor's valuation. (R. at 180).

44. With only Petitioner's suggestion the contaminated water well rendered his property valueless, the County Board correctly rejected Petitioner's unsupported claim.[8] *Supra* ¶¶ 3, 37.

45. In response to Petitioner's claim the water well contamination justified a $30,000 fair market value reduction, Assessor did not dispute contamination existed or that the contamination reduced the real property's value. He testified that such property conditions

[8] For a discussion of zero value arguments, *see* Gail L. Wurtzler, *Calculating Worth—Environmental Law: Even Contaminated Land Invariably Has Some Value*, The Daily Journal 1999 (reprinted with the permission of *The Colorado Journal*). www.dgslaw.com/images/materials/291570.pdf.; *Inmar Assoc., Inc. v. Borough of Carlstadt*, 549 A.2d 593 (N.J. 1988) (Improper to find property lacked value by subtracting cost of cleanup of industrial contamination, and parties below were required to determine "true value" through other appraisal factors.); *Lake Union Drycock Co. v. Ridder, King Cty Assessor*, Doc. No. 37655, 1990 WL 311592 (Wash. Bd. Tax. App. 1990) (rejecting zero valuation claim where property remained useful to the owner).

were typically addressed by subtracting the "cost to cure" from the untainted value.[9] *Supra* ¶¶ 4-5. With the parties agreeing that contamination existed, the dispute became one of how best to adjust the property's value to account for the contamination. Assessor, relying on information received from the company drilling a deeper well for Petitioner, formally offered to reduce Petitioner's property value by $12,000 prior to the hearing; Petitioner did not respond to the offer. *Supra* ¶¶ 3-8.

46. The County Board generally ignored Assessor's concession that a "cost-to-cure" adjustment should apply, concluding Petitioner failed to carry his burden of proof on all claims. (Cty. Bd. of Equalization's Findings of Fact, Conclusions of Law & Order, R. at 180).

47. Both case law and applicable appraisal standards support the unremarkable notion that contamination may reduce the fair market value of property. The IAAO's standards, which Assessor follows in performing his duties, *supra* ¶ 12, direct that "[m]ost property uses require availability of adequate water supplies. This is true for optimum use of residential property, where tests showing contamination may become locational factors and may influence value." Int'l Ass'n of Assessing Officers, *Standard on the Valuation of Property Affected by Environmental Contamination*, § 3.3.9 (2001 revision updated through June 2016). The IAAO standards advise that one valuing contaminated property should consider the property without any contamination, as well as the property's value in use. *Id.* at § 4.1.

48. The IAAO specifies three methods to value contaminated property: 1) sales comparison approach (applying similarly affected properties recently sold); 2) cost approach (with a cost-to-cure as functional or economic obsolescence adjustment); and 3) income approach (for income producing properties). Int'l Ass'n of Assessing Officers, *Standard on the Valuation of Property Affected by Environmental Contamination*, § 6 (2001 revision updated through June 2016); *compare supra* ¶ 34. While the IAAO warns a cost-to-cure adjustment may overstate or understate the fair market value of contaminated

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[9] The IAAO defines "cost to cure" as the:

> Cost or expense of cleaning up environmental contamination. Cleanup would result in levels of contamination that met standards of regulatory agencies. Complete cleanup may not be required, if contamination can be isolated. Costs include future monitoring and costs to reduce stigma (*see* **Stigma**). In many cases complete cure is impossible, and cost to cure is actually cost to control.

IAAO Standard on the Valuation of Properties Affected by Environmental Contamination, § 11 (2001 revision updated through June 2016); *see* www.iaao.org/Media/Exposure/Contamination_Exposure.pdf.

property, cost-to-cure includes "all costs necessitated by and associated with the cleanup."[10] *Id.* at § 4.2.

49. Often referring to IAAO standards, courts and administrative tax tribunals alike rely upon cost-to-cure when dealing with properties burdened with contamination or a contaminated water source. "It follows that when environmental contamination is shown to depress a property's value, the contamination must be considered in property tax assessment." *In re Commerce Holding Corp. v. Bd. of Assessors of the Town of Babylon*, 673 N.E.2d 127, 129 (N.Y. 1996); *see also Sweepster, Inc. v. Scio Township*, 571 N.W.2d 553 (Mich. 1997) (Fair market value for taxation must account for water contamination, but also for agreement to indemnify.).[11]

50. For example, the Washington State Board of Tax Appeals heard a property tax appeal similar to the present case in which the taxpayers claimed water contamination diminished the market value of their five acre parcel, improved with a log residence, barn, and small storage buildings. *Frater v. Britton, Spokane Cty. Assessor,* Doc. No. 34215, 1988 WL 242080 (Wash. Bd. Tax App. 1988). Valuing the land as unimproved, without contamination, the county assessor referred to the sale of five other similar unaffected lots. *Id.* at *2. The assessor presented evidence that digging the well deeper, at an estimated cost of $7,500, would resolve the problem. Taxpayers presented no evidence to counter Assessor's evidence, insisting instead that connecting their property to an exterior water source would be necessary. *Id.* at *1-2. The Assessor reduced the property's value, calculated without contamination, by the cost-to-cure of $7,500. *Id.* The Tax Board agreed with the County Assessor, explaining "[e]stablishing the market value of property, then applying a cost to cure the subject property in comparison to other properties is an accepted method to adjust the subject." *Id.* at *3. The Tax Board found "applying the Assessor's cost to cure to the value established by the market data is the best evidence of the market value for the subject property." *Id.*

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[10] The IAAO guidelines offer an extensive list of tangible (legal, monitoring, physical removal, etc.) and intangible (stigma) costs that may be included in the cost-to-cure analysis. *See* Int'l Ass'n of Assessing Officers, *Standard on the Valuation of Property Affected by Environmental Contamination*, § 4.2 (2001 revision updated through June 2016). Suffice it to say, a cost-to-cure will depend upon the facts and circumstances surrounding the contamination, an owner's ability to remediate, and the relationship between a contamination source and use of the property. *Id.*

[11] Some jurisdictions require by statute that fair market value of property for tax purposes account for any devaluation resulting from contamination. *See* Minn. Stat. § 273.11, subd. 17 (2014) (referring to "contamination value" of property); Wash. Rev. Code § 84.40.030(3)(a) (2014) (Appraised value must account for physical and environmental influences.).

51. Given Assessor's concession that Petitioner's residential property value should account for contamination of the property's domestic water well, *supra* ¶ 6, the question is whether the County Board received sufficient evidence of the cost-to-cure. The County Board Decision unfortunately does not include a specific discussion of the Assessor's concession on this point, nor did the County Board provide written conclusions concerning the Assessor's offer to reduce the property's value by $12,000. (County Board Decision, R. at 177-82; *supra* ¶¶ 3-7). The State Board is left only with the ultimate finding that Petitioner failed to carry his burden of overcoming the presumption favoring the Assessor's valuation. (County Board Decision, R. at 180).

52. The State Board reviews ultimate findings of fact and law de novo. *Supra* ¶ 27. We must decide whether substantial evidence supported the County Board's decision to disregard Assessor's concession that contamination negatively impacted the fair market value of Petitioner's property, as well as evidence of a $12,000 cost to drill and test a deeper well. *Dale v. S&S Builders, LLC*, 2008 WY 84 ¶ 22, 188 P.3d 554, 561 (Wyo. 2008); *supra* ¶ 24. We ultimately consider whether the County Board's conclusion was contrary to the overwhelming weight of the evidence in the record as a whole. *Id.* "Substantial evidence is relevant evidence which a reasonable mind might accept in support of the agency's conclusions." *Id.*, ¶ 11, 188 P.3d at 558.

53. We conclude the County Board's Decision, to the extent it denied Petitioner a valuation adjustment for the contaminated water well, was not supported by substantial evidence. Assessor did not dispute that the real property's value should account for Petitioner's contaminated water source. Assessor presented evidence that had Petitioner agreed with him on the adjustment amount, Assessor would have adjusted the real property value down by $12,000. Assessor consulted with the actual driller performing the well installation work to arrive at that estimate. Petitioner countered with no credible evidence in support of his $30,000 claim. *Supra* ¶¶ 4-5, 7-8. Assessor's willingness to accept the $12,000 estimate demonstrated a degree of trustworthiness and credibility that went unchallenged during the hearing. Yet, the County Board seemingly focused on the Petitioner's evidentiary case and the Assessor's overarching argument that the *Petitioner himself* offered insufficient evidence to overcome the presumption.

54. The ultimate question is not whether Petitioner offered evidence to overcome the presumption in Assessor's favor—the question is whether substantial evidence in the record supported the County Board's Decision, that is, "evidence which a reasonable mind might accept in support of the agency's conclusions." *S&S Builders*, ¶ 22, 188 P.3d at 561; *supra* ¶¶ 24, 52. As the county official responsible for establishing taxable value, and an expert in the application of valuation adjustments, Assessor's concession and offered

adjustment satisfied Petitioner's burden with respect to the contaminated well component of the appeal before the County Board.[12] *Supra* ¶ 5.

55. The County Board agreed with Assessor that, in failing to supply documentation of the cost-to-cure, Petitioner failed to overcome the presumption that Assessor's valuation was correct. (R. at 109-113, 132-134, 163-64; Assessor's Br. 10; Decision and Order, R. at 180). That presumption, however, did not survive Assessor's concession and intent to adjust the property's value down by $12,000. *Supra* ¶¶ 4-5. Without evidence contradicting Assessor's concession and intent to reduce the value by $12,000, the County Board's holding on this point was not "supported by relevant evidence which a reasonable mind might accept in support of the agency's conclusions," and further, was "contrary to the overwhelming weight of the evidence in the record as a whole" on this point. *S&S Builders*, ¶ 22, 188 P.3d at 561; *supra* ¶¶ 24, 52.

56. In support of remaining allegations Assessor failed to account for specific property characteristics, Petitioner offered only his personal views and assumption that his fair market value did not adequately reflect the negative influence of those characteristics. *Supra* ¶¶ 9-10, 20-21. These property features included a bisecting road, an easement, overhead power lines, beetle-killed trees, and the inaccessibility of his property during winter. *Id.* Other than his claim these characteristics reduced the property value by $9,000, Petitioner offered no evidence contradicting Assessor's reasonable responses in defense of the valuation. *Supra* ¶ 20.

57. While the State Board agrees these characteristics might impact a purchaser's offer to purchase, i.e. fair market value, Assessor adequately explained the factors were property characteristics common to other Wold tract properties and the sales of comparable properties already captured the effect of those property conditions. *Supra* ¶ 20. Petitioner offered insufficient evidence or authority to demonstrate that a further, separate adjustment was warranted. Because a mere difference of opinion as to value is not sufficient to overcome the presumption that an assessor's valuation is valid, accurate, and correct, *J. Ray McDermott & Co.*, 370 P.2d at 370, we reject Petitioner's remaining valuation claims.

58. Petitioner's miscellaneous procedural objections to the manner in which Assessor performed his valuation function, such as Assessor's failure to notify Petitioner prior to examining the property, *supra* ¶ 21, were insufficient to carry Petitioner's burden of proof

[12] Offers to settle are normally not admissible as evidence. Wyo. R. E. 408. In this instance, however, Assessor affirmatively defended his actions with evidence of his offer to resolve the water contamination issue and, in so doing, essentially carried Petitioner's burden of proof before the County Board concerning this narrow claim.

before the County Board. Petitioner neither demonstrated a direct tie between his objections and the valuation, nor offered evidence Assessor's practice violated substantive or procedural law.

CONCLUSION

59. The County Board erred in affirming Assessor's valuation to the extent it did not remand the matter to Assessor for a reduction of $12,000 in fair market value for the cost-to-cure the water well contamination. In all other respects, the County Board's affirmance of Assessor's 2015 valuation is confirmed; we find no grounds to reverse under the criteria set forth in Wyoming Statutes section 16-3-114(c)(ii) (2015). *Supra* ¶ 23.

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CERTIFICATE OF SERVICE

I hereby certify that on the 10th day March, 2017, 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:

Peggy Trent
Albany County Attorney
Albany County Courthouse
525 Grand Avenue, Suite 100
Laramie, Wyoming 82070

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Nadia Broome

Nadia Broome, Executive Assistant
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cc: Dan Noble, Director, Department of Revenue
Brenda Arnold, Administrator, Property Tax Division, Department of Revenue
Albany County Board of Equalization, Clerk
CCH
ABA State and Local Tax Reporter
Tax Analysts
State Library
File

ORDER

IT IS HEREBY ORDERED the decision of the Albany County Board of Equalization, affirming the 2015 determination of fair market value of $200,534 for Petitioner's property located at 53 Upper Road, Laramie, Albany County, Wyoming, is partially **reversed** and **remanded** with instructions to direct Assessor to reduce the fair market value by $12,000 for the 2015 tax year to reflect the cost-to-cure for remediation of the water well contamination; and

IT IS FURTHER ORDERED the decision of the Albany County Board of Equalization is, in all other respects, **affirmed.**

DATED this 10th day of March, 2017.

STATE BOARD OF EQUALIZATION

E. Jayne Mockler, Chairman

Martin L. Hardsocg, Vice-Chairman

Robin Sessions Cooley, Board Member

ATTEST:

Nadia Broome, Executive Assistant