

BEFORE THE STATE BOARD OF EQUALIZATION

FOR THE STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF)
CROOK COUNTY ASSESSOR) Docket No. 2015-57
(BELL PROPERTY) FROM A DECISION)
BY THE CROOK COUNTY BOARD OF)
EQUALIZATION)
(2015 Property Tax Assessment))

DECISION AND ORDER

APPEARANCES

Joseph M. Baron, Crook County and Prosecuting Attorney, appeared on behalf of Petitioner, Theresa Curren, Crook County Assessor (Assessor).

Marylee and Dale Bell (Taxpayers), appeared pro se.

DIGEST

Assessor appeals an Order from the Crook County Board of Equalization (County Board), to change the Marshall & Swift construction quality classification of Taxpayers' property from "excellent" to "good," which presumably reduced the fair market value of the property. (R. at 369-80).¹

The Wyoming State Board of Equalization (State Board), Chairman E. Jayne Mockler, Vice Chairman Martin L. Hardsocg, and Board Member Robin Sessions Cooley, heard oral arguments from the parties in support of their briefs on May 20, 2016, and reviewed the County Board record to determine whether the County Board's decision was arbitrary, capricious, unsupported by substantial evidence, and/or contrary to law. Rules, Wyo. State Bd. of Equalization, ch. 3 § 9 (2006). The State Board finds the County Board decision was supported by substantial evidence, was not contrary to law, nor was it arbitrary or capricious. We, therefore, affirm the decision.

¹ The record does not reflect how much this change will reduce the value of the property. See ¶ 7, *infra*.

ISSUES

In her opening brief, Assessor outlined the issues as follows:

A. The County Board of Equalization[']s action of changing the quality of construction from Excellent to Good is unsupported by substantial evidence.

B. The County Board's decision is arbitrary, capricious, or otherwise not in accordance with law.

Assessor's Br. 3, 5.

Taxpayers generally agreed with the County Board that the Marshall & Swift "good" construction quality rating for their property was appropriate.² Taxpayers' Reply Br. 1.

SUMMARY OF PROCEEDINGS

From 2009 through 2013, Crook County classified and assessed Taxpayers' residence as "good" quality construction based on the Marshall & Swift cost system. In 2014, the assessor's office changed this classification to "excellent" and the tax assessment increased accordingly. Taxpayers appealed the 2014 assessment to the County Board. Prior to hearing, Taxpayers and a previous county assessor agreed to reclassify the construction quality as "average" to account for, among other things, efflorescence of the residence's concrete floors, which reduced the assessed value of Taxpayers' residence. In 2015, newly-elected Assessor Curren reclassified the construction quality of Taxpayers' residence to "excellent," increasing the assessed value of the residence accordingly. Taxpayers appealed to the County Board.

The County Board conducted a contested case hearing on August 13, 2015. (R. at 399-650). Taxpayers presented numerous witnesses including Marylee Bell, Jerry Robinson, James Dennis Robinson, and Larry Christofferson. Taxpayers also called Assessor to testify, and she testified in her case-in-chief, as well. The County Board issued its Order on Appeal on September 30, 2015, directing Assessor to "reassess the Bells'

² Before the County Board, Taxpayers sought a further reduction of the quality classification to "average" to account for the contractor's failure to install a vapor barrier under the concrete floor resulting in efflorescence on the concrete. (Taxpayers' Reply Br. 1); *infra* ¶¶ 8-9, 14-16. The County Board did not agree with Taxpayers, but because Taxpayers did not file a timely cross-appeal of the decision (*In re Bell*, Wyo. State Bd. of Equalization, Docket No. 2015-61, Order of Dismissal with Prejudice (Feb. 22, 2016)), that issue is not before the State Board in this appeal. The County Board did, however, address and account for the efflorescence in its Order on Appeal. (R. at 34-35).

house for the 2015 tax year using the cost approach, changing the Marshall & Swift quality rating of the Bell's house from 'excellent' to 'good', and leaving the Marshall & Swift condition rating of the Bell's house as 'good.'" (R. at 378). The County Board accounted for the concrete efflorescence when it reduced the quality classification of the residence from "excellent" to "good." (R. at 377-78).

FACTS PRESENTED TO THE COUNTY BOARD

1. Assessor took office as Crook County Assessor in 2015. She is permanently certified as a Wyoming Property Tax Appraiser through the Wyoming Department of Revenue. She is also a member of the International Association of Assessing Officers (IAAO) and the Wyoming Assessors' Association. (R. at 539; Assessor Exs. K, L). Prior to 2015, Assessor worked for three and one-half years as Deputy Assessor in the Crook County Assessor's Office. *Id.*

2. Taxpayers own residential property located in Crook County, Wyoming. (R. at 47-61). Taxpayers built the residence in 2007 and began occupying it in 2008. (R. at 27, 407). Taxpayers' home is a one-story, 5,958 square foot residence with a 1,517 square foot attached garage. (Assessor Ex. B at 48).

3. For tax years 2009 through 2013, previous county assessors determined the fair market value of Taxpayers' residence by classifying its construction quality as "good" using the Marshall & Swift Residential Cost Handbook. (R. at 383, 407-409).

4. The Marshall & Swift quality classification refers to the construction, design, and workmanship of a residence using "quality" ratings identified as: low, fair, average, good, very good, and excellent. (R. at 549). Similarly, when referring to the maintenance and upkeep of a residence, Marshall & Swift "condition" ratings are: poor, fair, average, good, very good, and excellent. (R. at 549-50).

5. Marshall & Swift describes the construction qualifications relevant to this case, "excellent" and "good," as follows:

Residences of Excellent Quality are usually individually designed and are characterized by the high quality of workmanship, finishes and appointments and the considerable attention to detail. Although residences at this quality level are inclusive of high-quality material and workmanship, and are somewhat unique in their design, these costs do not represent the highest cost in residential construction.

(Assessor Ex. G, R. at 72).

Residences of Good Quality may be mass produced in above-average residential developments or built for an individual owner. Good-quality standard materials are used throughout. These houses generally exceed the minimum construction requirements of lending institutions, mortgage-insuring agencies and building codes. Some attention is given to architectural design in both refinements and detail. Interiors are well finished, usually having some good-quality wallpaper or wood paneling. Exteriors have good fenestration with ornamental materials or other refinements.

(Taxpayers Ex. 52, R. at 260).

6. Assessor must annually determine the fair market value of residential real property within Crook County. There are three approaches to determine the fair market value of property, the income approach, the cost approach, and the sales comparison or market approach. Assessor used the cost approach to value Taxpayers' residence. (Assessor Exs. B, R. at 48; J, R. at 99-100); *see also infra* ¶¶ 26-29, 32.

7. In 2014, a previous assessor, Lisa Fletcher, and Ms. Curren, then a staff member in the Crook County Assessor's Office, changed the Marshall & Swift quality classification of Taxpayers' residence from "good" to "excellent." This change increased the fair market value of the residence from \$953,896 in 2013 to \$1,119,425 in 2014. (Taxpayers Exs. 1, R. at 152-53, 159; 7, R. at 152; 8, R. at 153).

8. Taxpayers appealed the 2014 assessment, claiming the construction quality of their house was "good" as opposed to "excellent," and requested an additional reduction in the quality classification to "average" because the concrete floors experience efflorescent deposits. Taxpayers explained that because their residence is built on a concrete slab foundation without a vapor barrier, minerals from the ground water seep through the floor causing a powder to collect and, in some places, to etch the polished concrete. (R. at 4-15; 143-44; Taxpayers Exs. 1-27, R. at 146-275).

9. Assessor Fletcher eventually agreed to settle the case by reducing the quality classification of the residence to "good," then further reduced it to "average" for the 2014 tax year, based on information Taxpayers submitted regarding the concrete efflorescence. These changes reduced the fair market value of the residence from \$1,119,425 to \$631,024. (R. at 407-10; Assessor Ex. C, R. at 52; Taxpayers Ex. 14, R. at 159).

10. In 2015, newly elected Assessor Curren again reclassified Taxpayers' residence as "excellent," and also changed its "Neighborhood" designation to one with masonry

construction.³ These changes resulted in an increased appraised fair market value of \$1,184,202, although only \$1,098,306 is attributable to the residence. There is no evidence in the record indicating how much of the increase is attributed to the quality construction reclassification and how much, if any, is attributed to the “Neighborhood” change. (R. at 407; Assessor Exs. B, R. at 47-50; C, R. at 51-53).

11. On April 27, 2015, Assessor sent Taxpayers a 2015 Assessment Schedule, and a separate letter providing notice and an explanation of the reason for the increased valuation. (Assessor Exs. C, R. at 51-53; E, R. at 62). Taxpayers subsequently filed a Notice of Appeal with the Assessor claiming she overvalued their residence by classifying it as “excellent” instead of “good” or “average.” (R. at 1-15).

12. At the hearing before the County Board, Taxpayers relied on the basic framework provided by the Marshall & Swift cost system, noting several features of their residence that fell within the “good” construction classification. Taxpayers referred to the:

- wood rafters and sheathing with hips and valleys;
- taped and painted drywall on interior walls and ceilings;
- ample cabinetry with natural wood veneer finish in kitchen;
- hardwood baseboards and casings with mitered corners;
- walk-in closets;
- ample linen and storage closets;
- good quality cedar shingles (although Taxpayers admitted they upgraded their cedar shingles for fire prevention purposes);
- built-in appliances and a fireplace (Taxpayers have three fireplaces);
- no vaulted or cathedral ceilings;
- medium quality floor coverings such as carpet, hardwood, sheet vinyl or vinyl tile floor cover (although 70-75% of their floors are polished concrete); and,
- no wood or steel floor joists or subfloors.

Taxpayers also argued they should receive a deduction for their concrete slab floor and steel box fireplaces. (R. at 5-6, 438-39).

³ Department Rules define “Neighborhood” as follows:

“Neighborhood (NBHD)”: 1) The environment of a subject property that has a direct and immediate effect on value. 2) A geographic area (in which there are typically fewer than several thousand properties) defined for some useful purpose, such as to ensure for later multiple regression that the properties are homogenous and share important locational characteristics.

Rules, Wyo. Dep’t of Revenue, ch. 9, § 4(xxxi.) (2011).

13. Jerry Robinson, the contractor that built Taxpayers' home, testified on Taxpayers' behalf. Mr. Robinson has built custom homes "that are a million and up" since the 1980's. (R. at 417-18). He testified Taxpayers' house lacks a custom interior and is of simple construction in comparison to a much larger home he had built in the area. (R. at 418-24). However, he testified the replacement cost of Taxpayers' home would range from \$225 to \$300 a square foot.⁴ (R. at 425-26, 463). Jerry Robinson admitted he was not familiar with "or aware of the official classifications under Marshall & Swift." (R. at 431-32).

14. Jerry Robinson also admitted to constructing the residence without a vapor barrier under the concrete slab floor based on the incorrect advice of an engineer. He testified that, because there is no vapor barrier, water vapor passes through the capillaries in the concrete. Various minerals come through the concrete with the water vapor and deposit on the floor. (R. at 442-45, 449-56; Taxpayers Exs. 24, R. at 169; 25, R. at 170; 26, R. at 171). Taxpayers use a high-speed burnishing machine every "couple of months" to remove the minerals and to polish the concrete to its former "sheen." (R. at 446-47, 452-60). Jim Robinson, another builder in the area, testified similarly. (R. at 470-80).

15. Larry Christofferson, another area builder, also testified on behalf of Taxpayers. He agreed with Jerry Robinson the home was of excellent quality, although he was not familiar with the Marshall & Swift classification factors. Mr. Christofferson essentially repeated Jerry Robinson's testimony about the efflorescence, but was clear it did not create a health concern nor did it affect the structural integrity of the residence. (R. at 481-96; Taxpayers Ex. 23, R. at 168).

16. Ms. Bell testified they tried numerous "fixes" to stop the efflorescence, but none worked. She does not believe it can be fixed. The record, however, contains documents submitted by Taxpayers discussing other possible "fixes" with a 60-70% chance of success in stopping the efflorescence, although these alternatives may leave the floor with a different look, or may require a floor covering. (R. at 526-28; Taxpayers Ex. 53, R. at 271-72). Taxpayers presented no evidence regarding the cost of these alternatives.

17. To defend her valuation, Assessor testified she considered:

- the design of the house which included arched windows and doorframes with good-quality hardware;
- the workmanship of the residence, including the various finishes and appointments, which were of high quality and showed considerable attention to detail, including custom ornamentation and trim, and select cut stone;
- built-in shelving;
- spacious walk-in closets and pantry;

⁴ At these per square foot prices, according to Jerry Robinson, the house is worth between \$1,340,550 and \$1,787,400. (R. at 425-26, 463); *supra* ¶ 2.

- ample cabinets;
- granite countertops; and,
- marble tile in the master bath.

(R. at 555-78). Assessor also considered the 26-plus plumbing fixtures throughout the home, and the diamond-polished and colored concrete floor. (R. at 595-96). Assessor indicated she would need to make further adjustments based on Ms. Bell’s testimony, possibly increasing the value for ceiling height and decreasing it for the steel box fireplaces. (R. at 555-79).

18. The County Board issued its decision on September 30, 2015, ordering Assessor to reduce the Marshall & Swift quality rating of the residence from “excellent” to “good,” which the County Board found “takes into consideration the problem with the mineralization on the concrete floor.” (R. at 378). Assessor timely appealed the County Board’s decision to the State Board.

REVIEW OF COUNTY BOARD’S APPLICATION OF LAW

A. Standard of review

19. 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). In its appellate capacity, the State Board treats a county board as the finder of fact. *Id.*

20. 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).

21. 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. For example, 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).

22. 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 [137] 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).

23. 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). Likewise, we review the findings of ultimate fact of a county board de novo:

When an agency's determinations contain elements of law and fact, we do not treat them with the deference we reserve for findings of basic fact. When reviewing an "ultimate fact," we separate the factual and legal aspects of the finding to determine whether the correct rule of law 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) (internal citations omitted) (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

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

25. Broken into its component parts, the Wyoming Constitution requires that property be valued for tax purposes using (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.

26. The Legislature requires that all property in Wyoming be valued annually at fair market value. Wyo. Stat. Ann. § 39-13-103(b)(ii) (2015). 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).

27. 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) (2015); *see also* Rules, Wyo. Dep’t of Revenue, ch. 9 (2011).

28. Assessor used the cost approach to value Taxpayers’ property, which is described as follows:

(ii.) The Cost Approach. The cost approach is a method of estimating value by summing the land value, where applicable, with the depreciated value of improvements. In the [Computer Assisted Mass Appraisal] CAMA system, [Replacement Cost New Less Depreciation] RCNLD is calculated using Marshall and Swift cost tables. The cost approach is an accepted supplemental approach and could serve as the primary approach when sales data is unavailable or inadequate (such as special purpose properties).

Rules, Wyo. Dep’t of Revenue, ch. 9 § 5(ii.) (2011).

29. The Wyoming Department of Revenue (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) (2015); *see also* Rules, Wyo. Dep’t of Revenue, ch. 9 (2011). 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) (2015); *see also* Rules, Wyo. Dep’t of Revenue, ch. 9 (2011).

30. The rules promulgated by the Department specifically provide for the use of a Computer-Assisted Mass Appraisal (CAMA) system. Rules, Wyo. Dep’t of Revenue, ch. 9 § 7 (2011). CAMA “automates the comparable sales and replacement cost methods.” *Britt*, ¶ 39, 126 P.3d at 128. 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 rejected the use of actual sales price for properties in favor of the value established by the CAMA system because of the equality and uniformity which result from its use. *Id.*

31. However, property valuations inevitably involve 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.” *Teton* [*Valley Ranch v. State Bd. of Equalization*], 735 P.2d [107] at 115.

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

32. The Wyoming Supreme Court described the burden of proof one bears when challenging a county assessor’s valuation:

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 [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 v. Fremont Cty. Assessor, 2006 WY 10, ¶ 23, 126 P.3d 117, 125 (Wyo. 2006).

C. Legal Analysis

33. The County Board found:

Having reviewed the criteria (guidelines) under the Marshall and Swift Residential Cost Handbook, and having considered the testimony and evidence presented, the Board concludes based upon the preponderance of the evidence that the current Assessor was incorrect in rating the quality of the Bell’s house as “excellent”, and the appropriate quality rating for the Bell’s house should be “good”, and the appropriate condition rating should be “good”. **The evidence and testimony presented by Marylee Bell and Jerry Robinson as regards to [sic] the “quality” of the Bell’s house in view of the Marshall and Swift quality guidelines is credible and**

persuasive to the Board that the Marshall and Swift quality rating for the Bell's house should be "good". **The current Assessor did not provide sufficient evidence to support her Marshall and Swift rating of the Bell's house as "excellent" quality, and hence was unable to support her valuation of the Bell's house.** No evidence was presented by the current Assessor showing any improvements or changes affecting the quality of the Bell's house since 2008 when the quality was rated as "good" by the former Assessor. Further, although no evidence was presented showing that the concrete floor mineralization problem poses a health risk or affects the structural integrity of the Bell's house at this time, clearly the failure to install a vapor barrier under the concrete floor and the resulting problem is not consistent with excellent quality construction.

(R. at 390-91) (emphasis added).

34. Assessor claims the County Board improperly shifted the burden of proof from Taxpayers to Assessor. (Assessor's Opening Arg.). While it is true a strong presumption favors the Assessor's valuation, if a taxpayer presents sufficient evidence to overcome the presumption, the burden of going forward shifts to the Assessor. *Britt*, ¶ 23, 126 P.3d at 125; *supra* ¶ 32. The State Board finds the burden of going forward shifted to Assessor because Taxpayers presented sufficient evidence to overcome the presumption.

35. Taxpayers successfully questioned the presumption that followed Assessor's valuation by pointing out the residence was identified as "good" quality construction from 2009 through 2013. Nor did Assessor point to evidence of "improvements or changes affecting the quality of the Bell's house since 2008 when the quality was rated as "good" by the former Assessor."⁵ (R. at 390); *supra* ¶ 33. The State Board finds the County Board did not improperly shift the burden of proof. Instead, it properly recognized that given the earlier "good" quality classification from tax years 2009 through 2013, the burden of going forward shifted to Assessor to defend her valuation. *Britt*, ¶ 23, 126 P.3d at 125; *supra* ¶ 32. At that point, the County Board was required to "equally weigh the evidence of all parties and measure it against the appropriate burden of proof." *Id.* Ultimately, Taxpayers continued to bear the "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.*

36. When questioned about the classification change, Assessor initially agreed that once a Marshall & Swift quality rating is established, it should not vary during the life of a house. The condition rating for the house may change, but the quality rating should not. Assessor later clarified that a residence's quality can change as a result of the requirement to reassess properties every six (6) years to ensure the construction quality classification is correct.

⁵ Taxpayers first occupied the house in 2008, but the first tax year was 2009. *Supra* ¶ 2-3.

(R. at 548-49, 573-77; Assessor's Opening Arg.). In her testimony, Assessor Curren stated: "It just depends on who the reviewer is, if they're certified or not. Since we have to review every house every six years, if a reviewer comes along and comes up with evidence. . . [that] shows that this house is not an average quality but may be a fair quality or a good quality, yes, they can change that." (R. at 548-49, 573).

37. In support of her change in the construction quality classification, Assessor stated her immediate predecessor was not qualified to properly assess Taxpayers' residence. She implied an assessor before that was also not qualified, but provided no testimony or other evidence of such. (R. at 540, 558, 574-77, 580, 583-84, 597-99, 609-10, 619, 622); *supra* ¶ 36. However, if that was the case, and because Taxpayers made no modifications to the house, it was incumbent on Assessor to fully challenge the qualifications of previous assessors and to set forth with specificity the basis of the new classification.

38. The County Board accordingly found: "Once a Marshall and Swift quality rating is established for a house, that rating should not vary for the life of the house. However, the Marshall and Swift condition rating for the house may vary." (R. at 377). Based on Assessor's testimony, the State Board agrees it is unlikely a quality classification will change absent some type of change to the property, or because previous assessors were not qualified or failed to consider certain characteristics. That said, if such a change is made to the quality classification, the assessor must adequately justify and explain the change. The State Board agrees with the County Board that Assessor did not fully support and adequately explain why the house was mistakenly classified from 2009 through 2013, and again in 2014 when the previous assessor entered into a settlement to change the rating to "average," nor did she adequately support the basis for her decision to change the classification from "average" in 2014 to "excellent" in 2015. (R. at 390-91); *supra* ¶ 33.

39. Assessor did testify that when she considers the quality construction classification for a property, she must consider the classification that most accurately reflects a majority of the residence's characteristics. (R. at 520-21, 620-21). Consequently, it was critical that Assessor fully explain as much to the County Board given this highly specialized and experience-driven field of mass appraisal. The State Board agrees with the County Board that Assessor did not adequately support her findings by comparing the "good" quality characteristics of the home, as pointed out by Taxpayers, with the "excellent" qualities of the residence, to illustrate why her opinion should prevail. (R. at 555-79, 595-96); *supra* ¶ 17.

40. In fact, the evidence on this point was inconclusive. The residence has the basic characteristics of a "good" quality residence, like stock cabinets, average quality carpet, and medium quality kitchen appliances. (R. at 5-6, 437-41); *supra* ¶ 12. But, the residence also has a number of the characteristics found in an "excellent" quality residence, such as turrets, rock siding, outside fireplace and stove, several 14' ceilings, and numerous fixtures. (R. at 423-25, 545, 576-79); *supra* ¶ 17. The County Board could not be expected to make

the necessary comparisons to determine where the home best fit; rather the Assessor, as the certified expert in this area, should have done so.⁶ Instead, because Assessor failed to adequately explain and support her findings, the County Board was left to speculate on Assessor's rationale in comparing the "good" versus the "excellent" quality construction classifications.

41. On appeal, the State Board must consider whether "there is substantial evidence to support the [County Board's] decision to reject the evidence offered by the [Assessor] by considering whether that conclusion was contrary to the overwhelming weight of the evidence in the record as a whole." *Jacobs*, ¶ 8, 301 P.3d at 141; *supra* ¶ 21. The State Board finds there is substantial evidence supporting the County Board's decision to reject the evidence offered by Assessor, and further finds the decision is in accord with the overwhelming weight of the evidence in the record as a whole. (R. at 390).

42. Finally, the County Board considered and accounted for the concrete efflorescence in the quality classification of the residence, stating "clearly the failure to install a vapor barrier under the concrete floor and the resulting problem is not consistent with excellent quality construction." (R. at 378). It further held: "The Board's conclusion that the Marshall and Swift quality and condition rating for the Bell's house should be "good" takes into consideration the problem with the mineralization on the concrete floor." *Id.*; *supra* ¶¶ 18, 33. Because the State Board affirms the County Board's finding that Assessor failed to fully support her assessment, the State Board makes no finding with regard to the efflorescence issue as Taxpayers did not file a timely cross-appeal. *Supra* p. 2 n.2.

43. Taxpayers also alleged in their initial response to the Assessor's Notice of Appeal, dated November 27, 2015, that a dissenting County Board member was biased due to a personal relationship with the Assessor and that the County Attorney representing Assessor was biased due to different political affiliations.⁷ (R. at 665). The State Board finds absolutely no evidence in the record to support these claims. This matter involved a difficult and complex valuation dispute, for which the applicable Marshall & Swift guidelines lacked clear direction. The State Board finds that the Parties, the County

⁶ The County and State Boards are also left to speculate on the importance of the Assessor's change of Neighborhood type. Assessor changed the Neighborhood to a masonry Neighborhood because the outside walls are poured concrete, with a layer of styrofoam with rock masonry on top. (R. at 542). Although mentioned, neither Party offered evidence that demonstrated the appropriateness of this change nor did they address the effect it had on the assessed value of the residence. Taxpayers did not challenge the modification other than to ask that the Neighborhood classification be changed back to its earlier identification. The State Board will do as the County Board and disregard this evidence as irrelevant to the fair market value of this residence in this particular tax year.

⁷ Taxpayers sent another response on November 30, 2015, to include additional information for the State Board's consideration. (R. at 651-63).

Attorney, and the County Board spent considerable time and effort on this matter to resolve it fairly and impartially, and the claims of bias are unfounded.

CONCLUSION

44. In sum, the State Board will not substitute its judgment for those findings reasonably supported by evidence in the County Board record. *Laramie Cty. Bd. of Equalization v. Wyo. State Bd. of Equalization*, 915 P.2d 1184, 1188-89 (Wyo. 1996). The County Board's decision was not "contrary to the overwhelming weight of the evidence." *Jacobs*, ¶ 8, 301 P.3d at 141; *supra* ¶ 21. Assessor challenged the previous assessor's change to an "average" classification indicating she was not properly certified to make that change. *Supra* ¶ 37. But Assessor did nothing to challenge the assessment valuation that classified the residence as "good" quality construction from 2009 through 2013. *Supra* ¶¶ 37-38. There is substantial evidence in the record "that a reasonable mind might accept" to support the County Board's decision to return the construction quality classification to the same level it was from tax years 2009 through 2013.

45. To the extent Assessor contends the County Board acted arbitrarily and capriciously when it "order[ed] a valuation which does not take into account the requirements of the Wyoming Department of Revenue's rules" (Assessor's Notice of Appeal at 6), the State Board disagrees. Assessor points to no departmental requirement the County Board failed to consider in its decision, and the State Board, itself, finds none. Moreover, to the extent Assessor complains that the County Board "set tax policy or engage[d] in [] administrative duties concerning assessments which are delegated to the state board, the department or the county assessor," in violation of Wyoming Statutes section 39-13-102(d) (Assessor's Notice of Appeal at 6), the State Board also disagrees. The County Board simply reviewed the history of assessments for this property and, based on the evidence presented by the parties, determined Assessor did not sufficiently support her actions. *Supra* ¶ 33. Nothing in this record suggests the County Board considered inadmissible evidence or failed to make appropriate findings of fact and conclusions of law. *Supra* ¶ 22. For that reason, the State Board affirms the County Board's decision to order Assessor to amend the quality construction classification of Taxpayers' residence to "good" for the 2015 tax year.

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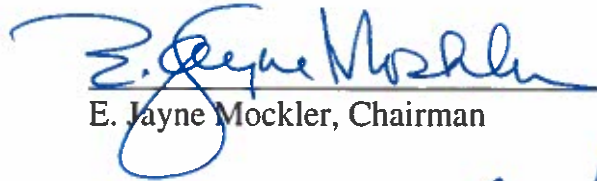
ORDER

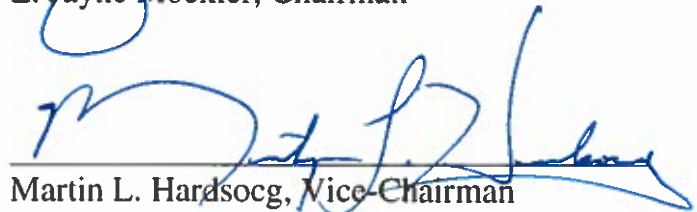
IT IS THEREFORE ORDERED the decision of the Crook County Board of Equalization is **affirmed**.

Pursuant to Wyo. Stat. Ann. § 16-3-114 (2015) 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 15 day of February, 2017.

STATE BOARD OF EQUALIZATION


E. Jayne Mockler, Chairman


Martin L. Hardsocg, Vice-Chairman


Robin Sessions Cooley, Board Member

ATTEST:


Gayle R. Stewart, Executive Secretary-Attorney

CERTIFICATE OF SERVICE

I hereby certify that on the 15 day of February, 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:

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ABA State and Local Tax Reporter
State Library
File