

BEFORE THE STATE BOARD OF EQUALIZATION
FOR THE STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF)
TETON COUNTY ASSESSOR) Docket No. **2016-40**
FROM A DECISION BY THE TETON)
COUNTY BOARD OF EQUALIZATION)
(2016 Property Tax Assessment-Lockhart))

DECISION AND ORDER

APPEARANCES

Keith Gingery, Deputy Teton County and Prosecuting Attorney, filed a brief and argued on behalf of the Teton County Assessor (Assessor).

Kelly Lockhart, Managing Member, filed a brief and argued on behalf of the Lockhart Cattle Co., LLC (Respondent or Lockhart).

DIGEST

Petitioner, Lockhart Cattle Co., LLC, protested the Teton County Assessor’s 2016 assessment of its 39.1 acre parcel in Teton County. The Teton County Board of Equalization (County Board) held a hearing on the appeal, concluded that “there were discrepancies in how the County Assessor had determined the non-agricultural lands” on Lockhart’s property, and remanded the case to the Assessor for a new assessment. (Cty. Bd. R. at 13, Cty. Bd. Decision, at 3). Although not reflected in the Order, that conclusion stems from the County Board’s determination—stated more clearly in the County Board’s order remanding the companion case, *In re Jackson Hole Hereford Ranch*, State Bd. Docket No. 2016-41—that Wyoming Department of Revenue Rule, Chapter 10, section 3(c)(iv) is contrary to Wyoming Statutes section 39-13-103(b)(x)(A). The Order does not explain what those “discrepancies” were, what the Assessor should have done differently, or what she is to do differently now. The County Board’s Order also does not include any significant findings of fact or conclusions of law. Assessor appealed to the Wyoming State Board of Equalization¹ (State Board), which remands to the County Board for entry of an order with findings of fact and conclusions of law.

¹ At the time of the hearing, the State Board was comprised of Chairman E. Jayne Mockler, Vice-Chairman Martin L. Hardsocg, and Board Member Robin Sessions Cooley. Ms. Cooley was succeeded by Board Member David Gruver, who has since resigned and been succeeded by Board Member David L. Delicath. Mr. Delicath reviewed the record, including the transcript of proceedings, and participated in this decision.

ISSUES

Assessor identified two issues:

1. Whether the County Assessor properly applied the methodology of abstraction in assessing the parcel owned by the Landowner?
2. Whether the County Assessor properly applied Wyoming Department of Revenue Rule Chapter 10, Section 3(c) in regards to designation of non-agricultural lands?

(Assessor Br., at 4). The first of those issues is not properly before this Board because the County Board did not rule on it. The second issue identifies a justiciable controversy, but misstates the question we are authorized to answer. The *County Board* was charged with determining whether the Assessor erred; the *State Board* is charged with determining whether the County Board erred.

Lockhart identified the issues as:

1. Whether the State Board of Equalization has a rational basis for review and therefore can grant the relief sought by the Appellant?
2. Whether the County Board of Equalization's determination that there were discrepancies in how the County Assessor classified the "non-agricultural" lands on the Subject Property was supported by substantial evidence and/or was arbitrary, capricious, or otherwise not in accordance with law?
3. Whether the County Board of Equalization's determination that the Assessor's valuation was not done in accordance with law and resulted in an unfair assessment was supported by substantial evidence and/or was arbitrary capricious, or otherwise not in accordance with law?

(Resp't Br. at 1-2).

PROCEEDINGS BEFORE THE COUNTY BOARD

1. Lockhart owns a 39.1 acre parcel of land in Teton County, Wyoming that is designated as Parcel # 01-007815. (Cty. Bd. R. at 33).
2. Parcel # 01-007815 is located in Land Economic Area (LEA) 0137. (Cty. Bd. R. at 43).

3. Since at least 2012, the Teton County Assessor has valued most of Parcel # 01-007815 as irrigated crop land and a small portion of it as residential land. (Cty. Bd. R. at 40).

4. In 2012, 2013, 2014, and 2015, the Assessor valued the residential land on Parcel # 01-007815 at \$125,000. (Cty. Bd. R. at 34, 40-42).

5. In 2016, the Assessor valued the residential land on Parcel # 01-007815 at \$750,123. (Cty. Bd. R. at 33).

6. The 2016 valuation of the residential land on Parcel # 10-007815 increased because the Assessor changed from valuing the land using the site valuation method to valuing it using the abstraction method. (Cty. Bd. Hr'g Tr. *passim*).

7. The Assessor changed from the site valuation method to the abstraction method for LEA 0137 on advice from the Wyoming Department of Revenue. (Cty. Bd. Hr'g Tr. at 62-63).

8. Lockhart timely appealed the 2016 assessment. (Cty. Bd. R. at 27).

9. In his appeal, Lockhart identified two reasons why the assessment was incorrect:

a. "Residential land should be agricultural land as it is used for the feeding, grazing, or management of livestock"; and

b. "It is also not consistent of other properties in Teton County."

(Cty. Bd. R. at 27).

10. In a written document submitted as an exhibit at the hearing, Lockhart identified three reasons why the assessment was wrong:

I. All of the parcel should be classified as agricultural land because all of it is used for agricultural production;

II. The "residential land" cannot legally be sold separately from the rest of the parcel; and

III. The methodology used on the parcel was not the same one used on other agricultural parcels in Teton County.

(Ex. 1.1, Cty. Bd. R. at 90).

11. The County Board held a hearing on Lockhart's appeal on July 20, 2016. (Cty. Bd. R. at 11; Cty. Bd. Decision at 1).
12. The County Board issued its decision remanding the case to Assessor on August 2, 2016. (Cty. Bd. R. at 11, 15; Cty. Bd. Decision at 1, 5).
13. Assessor timely appealed the County Board's decision.

REVIEW OF COUNTY BOARD'S DECISION

A. Standard of Review

14. 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.*, ¶ 11, at 1159.

15. 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) (2017). 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).

16. Because 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).

17. 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.*

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

18. 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).

19. The State Board reviews findings of ultimate fact *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.

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

20. The State Board may remand a case in which the county board issued a decision so deficient that we cannot review it in a meaningful way. *In re Fremont County Assessor*, 2006 WL 3327959, Docket No. 2005-84 (Wyo. State Bd. of Equalization, July 13, 2006), ¶ 54.

B. Legal Analysis

21. In its first issue, Lockhart contends that because the County Board failed to "make specific findings of basic facts upon all material issues in the proceeding and upon which its ultimate findings of fact or conclusions are based, there is no rational or meaningful basis for review" by this Board. (Appellee's Brief, at 9). Accordingly, Lockhart urges us to remand the case to the County Board with instructions to issue "specific findings of fact and conclusions of law." *Id.* Lockhart contends, correctly, that a resolution of this issue in its favor will make consideration of its second and third issues unnecessary. *Id.*

22. The County Board did not identify any factual or legal disputes, or provide findings or conclusions that resolve any such disputes. The County Board did not explain what the Assessor did wrong or explain what the Assessor is to do differently on remand. In short, the decision is so deficient that we cannot review it in any meaningful way. Were we to proceed on the merits, the State Board would effectively proceed as if the case were certified, a request the County Board has not issued. *See* Rules, Wyo. State Bd. of Equalization, ch. 2 § 36 (2006).

23. Considering this case along with *Jackson Hole Hereford Ranch*, Docket No. 2016-41, we see that the basis for the County Board's decision was its determination that Wyoming Department of Revenue Rule, Chapter 10, § 3(c)(iv) is contrary to Wyoming Statutes section 39-13-103(b)(x)(A).

24. That determination is problematic because it is beyond the County Board's (and this Board's) jurisdiction to declare void a rule of a state executive branch agency.

CONCLUSION

25. Because the County Board's decision is so deficient that we cannot review it in any meaningful way, this Board will remand the case to the County Board with instructions to issue a new decision that: 1) accurately identifies the factual and legal disputes presented; 2) includes findings of fact and conclusions of law that resolve those disputes; and 3) either affirms the County Assessor's Notice of Assessment or identifies errors and informs of steps required to correct those errors.

26. The County Board may hold an additional hearing if it determines that would be useful.

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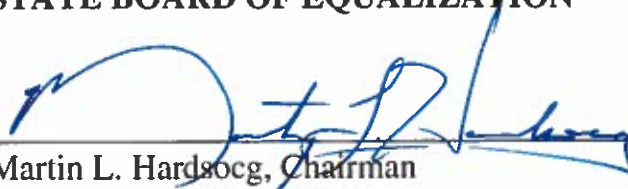
ORDER

IT IS HEREBY ORDERED that the decision of the Teton County Board of Equalization, remanding Assessor's 2016 determination of fair market value for Petitioner's property in this matter, is **remanded to the County Board for further proceedings in accordance with this opinion.**

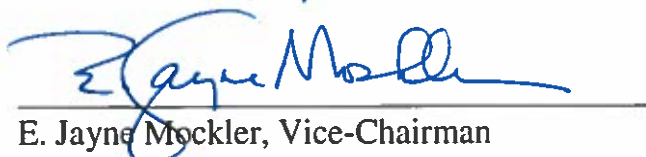
Pursuant to Wyo. Stat. Ann. §16-3-114 and Rule 12, Wyoming Rules of Appellate Procedure, any person aggrieved or adversely affected in fact by this decision may seek judicial review in the appropriate district court by filing a petition for review within 30 days of the date of this decision.

DATED this 26th day of October 2017.

STATE BOARD OF EQUALIZATION



Martin L. Hardsocg, Chairman



E. Jayne Mockler, Vice-Chairman



David L. Delicath, Board Member

ATTEST:



Nadia Broome, Executive Assistant

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of October 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:

Lockhart Cattle Co., LLC
Kelly Lockhart, Manager
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State Library
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