

**BEFORE THE STATE BOARD OF EQUALIZATION**

**FOR THE STATE OF WYOMING**

IN THE MATTER OF THE APPEAL OF )  
TETON COUNTY ASSESSOR ) Docket No. 2016-41  
FROM A DECISION BY THE TETON )  
COUNTY BOARD OF EQUALIZATION )  
(2016 Property Tax Assessment-Jackson )  
Hole Hereford Ranch) )

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**DECISION AND ORDER**

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**APPEARANCES**

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

William P. Schwartz, Ranck, Schwartz & O'Halloran, LLC, filed a brief and argued on behalf of Jackson Hole Hereford Ranch, LLC (Respondent).

**DIGEST**

Petitioner, Jackson Hole Hereford Ranch, LLC, protested the Teton County Assessor's 2016 assessment of two parcels it owns in Teton County. The Teton County Board of Equalization held a hearing on the appealed assessment and concluded that "the Wyoming Department of Revenue rule regarding designation of non-agricultural land appeared to be in conflict with Wyoming Statute." (Cty. Bd. R. at 13, Cty Bd. Decision, at 3). The Order does not explain what that "conflict" was, 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 Equalization,<sup>1</sup> which remands to the County Board for entry of an order with findings of fact and conclusions of law.

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<sup>1</sup> 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 three 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?
3. Whether Wyoming Department of Revenue Chapter 10, Section 3(c) is in conflict with Wyoming Statute § 39-13-103(b)(x)(A)?

(Assessor Br. 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. The third issue poses a question that neither the County Board nor this Board have jurisdiction to answer.

Petitioner identified a single “Issue presented and standard of review”:

The County Board’s Order is entitled to a presumption of validity and correctness. See, e.g., *Union Pac. R.R. Co. v. Wyoming State Bd. Of Equalization*, 802 P.2d 856,859 (Wyo. 1990). The only question on appeal is whether the Assessor can overcome this presumption by showing that the Order is:

- A. Arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law; or
- B. In excess of statutory jurisdiction, authority, or limitations or lacking statutory right’ or
- C. Without observance of procedure required by law; or
- D. Unsupported by substantial evidence.

(Pet’r Br. 2). That is not really an issue statement at all; it is just the statutory standard of review.

## **PROCEEDINGS BEFORE THE COUNTY BOARD**

1. Hereford owns two 40 acre parcels of land in Teton County that are designated as Parcels # 01-002661 and 01-002699. (Cty. Bd. R. at 29, 43).
2. Parcels # 01-002661 and 01-002699 are located in Land Economic Area (LEA) 0137. (Cty. Bd. R. at 30, 44).
3. Since at least 2009, the Teton County Assessor has valued most of Parcels # 01-002661 and 01-002699 as irrigated crop land and a small portion of it as residential land. (Cty. Bd. R. at 89-90).
4. In 2009, the Assessor valued the residential land on Parcels # 01-002661 and 01-002699 at \$15,450 each. (Cty. Bd. R. at 89-90).
5. In 2011, 2012, 2013, 2014, and 2015, the Assessor valued the residential lands on Parcels # 01-002661 and 01-002699 at \$125,000 each. (Cty. Bd. R. at 91-101).
6. In 2016, the Assessor valued the residential land on Parcels # 01-002661 and 01-002699 at \$665,638 each. (Cty. Bd. R. at 29, 43).
7. The 2016 valuation of the residential land on Parcels # 01-002661 and 01-002699 increased because the Assessor changed from valuing the land in LEA 0137 using the site valuation method to valuing it using the abstraction method. (Cty. Bd. Hr'g Tr. *passim*).
8. Hereford timely appealed the 2016 assessment. (Cty. Bd. R. at 26).
9. The County Board held a hearing on Hereford's appeal on July 20, 2016. (Cty. Bd. R. at 11-14, Cty. Bd. Decision at 1).
10. Hereford challenged Assessor's valuation on two grounds: 1) the Assessor erred by changing from the site valuation method to the abstraction method; and 2) the Assessor erred by designating some of the land in Parcels # 01-002661 and 01-002699 as residential land. (Cty. Bd. Hr'g Tr. at 11-12).
11. The County Board issued its decision remanding the case to Assessor on August 2, 2016. (Cty. Bd. R. at 11, 14).
12. The County Board did not address whether the Assessor erred by changing from the site valuation method to the abstraction method.
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. 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, State Bd. of Equalization, ch. 2 § 36 (2006).

22. The County Board determined that Wyoming Department of Revenue Rule, Chapter 10, § 3(c)(iv) conflicts with Wyoming Statutes section 39-13-103(b)(x)(A). (Cty Bd. Decision at 3, Cty. Bd. R. at 14).

23. 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**

24. 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.

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

**ORDER**

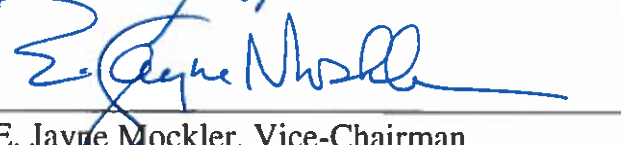
**IT IS HEREBY ORDERED** that the decision of the Teton County Board of Equalization, remanding Assessor's 2016 determination of fair market value for Petitioner's property in this matter, is **remanded to the County Board for further proceedings in accordance with this opinion.**

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 26<sup>th</sup> day of October 2017.

**STATE BOARD OF EQUALIZATION**

  
\_\_\_\_\_  
Martin L. Hardsocg, Chairman

  
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E. Jayne Mockler, Vice-Chairman

  
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David L. Delicath, Board Member

**ATTEST:**


  
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Nadia Broome, Executive Assistant

## CERTIFICATE OF SERVICE

I hereby certify that on the 26<sup>th</sup> 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:

William P. Schwartz  
Ranck, Schwartz & O'Halloran, LLC  
P.O. Box 3890  
Jackson, WY 83001

Keith Gingery  
Deputy Teton County Attorney  
P.O. Box 4068  
Jackson, WY 83001

  
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Nadia Broome, Executive Assistant  
State Board of Equalization  
P.O. Box 448  
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Phone: (307) 777-6989  
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cc: State Board of Equalization  
Dan Noble, Director, Dept. of Revenue  
Brenda Arnold, Administrator, Property Tax Div., Dept. of Revenue  
Commissioners/Treasurer/Clerk - Teton County  
CCH  
ABA State and Local Tax Reporter  
State Library  
File