

**BEFORE THE STATE BOARD OF EQUALIZATION
FOR THE STATE OF WYOMING**

IN THE MATTER OF THE APPEAL OF)
ROBERT W. REBBE JR. FROM A)
DECISION BY THE CROOK COUNTY) Docket No. **2016-42**
BOARD OF EQUALIZATION)
(2016 Property Tax Assessment))

DECISION AND ORDER

APPEARANCES

Robert W. Rebbe Jr, pro se, filed briefs on behalf of a family trust.¹

Joseph M. Baron, Crook County and Prosecuting Attorney, and Theresa Curren, Crook County Assessor, filed a brief on behalf of Assessor.

DIGEST

Petitioner appealed the Crook County Board of Equalization (County Board) Order Denying Appeal which affirmed Assessor’s valuation of real property owned by a family trust (the Rebbe property) for 2016. Petitioner faulted the valuation, specifically claiming Assessor did not consider the lack of access to the land when she valued the property. Petitioner also argued the Land Economic Area (LEA) in which the land was included was too broad, the sales used to value property were not comparable, and much of the Rebbe property was unusable or lacked access.

The Wyoming State Board of Equalization (State Board), Chairman Martin L. Hardsocg, Vice-Chairman David Delicath, and Board Member E. Jayne Mockler, reviewed the County Board record to determine whether the County Board’s Order Denying Appeal was arbitrary, capricious, unsupported by substantial evidence, and/or contrary to law. Rules, Wyo. State Bd. of Equalization, ch. 3 § 9 (2006), *infra* ¶ 16. The State Board affirms the County Board’s decision.

¹ Although this case is captioned as an appeal by Mr. Rebbe, it appears he is acting on behalf of a family trust. The State Board finds that distinction is immaterial to the determination of this appeal.

ISSUES

Petitioner raises the following objections to the County Board decision:

The County used an abuse of discretion, exceeded its authority, was outside the procedures by law, and made unsupported accusations on their behalf. The major areas are 1) selected sales, however disregarded parts of that sale, principally ignoring a non-typical condition, 2) stated false information on an Exhibit that was disallowed by the Hearing Officer, 3) fabricated a smoke screen regarding the appellant on his property, and 4) stating that access, or accessibility is not part of the sales price.

(Pet'r's Opening Br. 1).

Assessor argues that “[t]he County Assessor valued the property uniformly and fair with properties of similar characteristics located in Crook County and Rebbe has failed to provide evidence that the County Assessor did not.” (Assessor’s Resp. Br. 1).

Assessor also objects to the State Board’s consideration of this appeal “because Rebbe failed to send the Assessor a copy of its Notice of Appeal of the County Board of Equalization [decision] to the County Board and Assessor as required by Chapter 7 Uniform County Board of Equalization Practice and Procedure Rules Section 25 (d).” (Assessor’s Resp. Br. 1).

PROCEEDINGS BEFORE THE COUNTY BOARD

Assessor set the 2016 fair market value of Petitioner’s 57 acres of land located in the southeast corner of Crook County at \$177,723. (R. at 12). Petitioner timely appealed Assessor’s valuation of the Rebbe property to the County Board, asserting Assessor overvalued it.

The County Board held a contested case hearing on Petitioner’s appeal. Petitioner and his sister, Renee Rebbe O’Malley, testified on behalf of Petitioner. Petitioner offered 14 exhibits, 13 of which were admitted. Assessor also testified, offering six exhibits, five of which were admitted. Petitioner asserted Assessor overvalued the Rebbe property for tax purposes, arguing the property’s value should be set at \$89,000. The County Board affirmed Assessor’s 2016 valuation in a written decision. (R. at 177-82). Petitioner timely appealed to the State Board. (Notice of Appeal).

JURISDICTION

The State Board “shall hear appeals from county boards of equalization and review final decisions of the department upon application of any interested person adversely affected.” Wyo. Stat. Ann. § 39-11-102.1(c) (2015). A taxpayer may file an appeal with the State Board within 30 days from the County Board’s final decision. Rules, Wyo. State Bd. of Equalization, ch. 3 § 2(a) (2006). The County Board issued its decision on September 7, 2016; and Mr. Rebbe filed his appeal with the State Board on September 14, 2016. (R. at 96-110; Notice of Appeal). Accordingly, the notice of appeal was timely and we have jurisdiction to decide this matter.

EVIDENCE PRESENTED TO THE COUNTY BOARD

1. Assessor set the 2016 fair market value of Petitioner’s 57 acres of land located in the southeast corner of Crook County, Wyoming at \$177,723. (R. at 12).
2. A timely appeal of the assessment was filed by Petitioner with the Assessor. (R. at 1-12).
3. The County Board held a contested case hearing at which Mr. Rebbe provided a brief history of the Rebbe family’s ownership of the property, which dated back to the late 1800’s. He stated that in 2013 his sister, Ms. O’Maley, took over management of the property on behalf of their mother. It was then that they realized the assessed value and the taxes on the property had tripled between 2009 and 2013. Petitioner stated that in 2010 the property was valued at \$42,525, and by 2013 its value had increased to \$177,723. (R. at 10, 12; Hr’g Recording at 14:07).
4. Ms. O’Malley testified that she called the Assessor’s Office to learn the reasons for the valuation increase in 2013 and was told that land in the area had been sold to a resort, which increased its value. (Hr’g Recording at 53:55). Assessor testified she was unaware of such a sale and no such sales influenced her valuation of the Rebbe property. (Hr’g Recording at 1:33:00).
5. Mr. Rebbe described the Rebbe property, stating there have been no changes on the property between the 2009 assessment and the current assessment that could justify any increase in value. The property is unfenced, except for occasional border fencing erected by the Forest Service. While the property is not used for agricultural purposes, he noted that cows owned by other people go through the property. He did not believe it qualified as residential property and suggested it should be classified as rangeland. (Hr’g Recording at 8:52-58:12).

6. Mr. Rebbe engaged a local realtor to review the Rebbe property and together, using a GPS system, they went to the property. During that visit Mr. Rebbe took photos of the property to document the terrain and accessibility. (Exs. 8-14, R. at 76-82). The realtor provided a market value comparison estimating the property's sales value at \$89,667. (Pet'r's Ex. B, R. at 41-53).

7. Mr. Rebbe presented two maps to demonstrate a lack of road access to the Rebbe property. Exhibit 5 is a Black Hills National Forest Motor Vehicle Use Map which, he contended, indicated the property was less than ½ mile from Forest Service Road 801, near Tinton, South Dakota. (R. at 66). Exhibit 6 is a 2016 off road vehicle (ORV) map of the Black Hills National Forest that purportedly showed there were no ORV trails near the property. (R. at 67). Petitioner placed an "x" on each map to locate the Rebbe property. In each instance it was located within national forest lands and just across the state line from the ghost town of Tinton, South Dakota. (R. at 66-67; Hr'g Recording 00:41:00). He also relied on two computer map documents he apparently produced himself to show the location of the property relative to the nearest road, County Road 801, which came within one-quarter to one-half mile of the Rebbe property. (Exs. 3-4, R. at 64-65; Hr'g Recording at 8:52-58:12).

8. On June 28, 2016, Mr. Rebbe obtained a Title Commitment from First American Title of Sundance, Wyoming. (Ex. 7, R. at 68-75). The commitment indicated the conditions under which First American Title would issue a title insurance policy. In the policy's exceptions was the language: "Lack of a right of access to and from the land." (*Id.* at 73).

9. Petitioner hired an appraiser to prepare an appraisal of the Rebbe property, but the appraisal was not completed by the day of the hearing. Mr. Rebbe offered to provide the County Board the appraisal, upon its completion, to rebut the Assessor's valuation. (Hr'g Recording at 37:00). No appraisal is included in the County Board record.

10. Petitioner contended the lack of access to the property by road should preclude Assessor from using the comparable sales she used (Pet'r's Ex. B, R. at 21-36) to determine the property value.

11. Mr. Rebbe generally objected to the sales used by the Assessor in her comparison, arguing Assessor should have included the sales presented by the realtor, which included sales from outside the county and sales from 2016. (Hr'g Recording at 35:28).

12. Assessor testified that the Rebbe property best fit in LEA 1870 in Crook County. She stated that LEA 1870 is comprised of residential parcels throughout Crook County that

are 20 acres or larger, hilly, and densely treed. Assessor testified there is no other LEA within the county that the property would fit into and that she valued all property in the LEA the same way. (Hr'g Recording at 1:01). Assessor stated that she didn't look at specific attributes, such as access, when determining in which LEA to place a property. (Hr'g Recording at 1:13).

13. Assessor recounted the process she used to value property, including what attributes of the property she considered including: how the property fit within the construct of LEA 1870, what information was input into the Computer Assisted Mass Appraisal (CAMA) system, and how the land value was determined. She discussed how she considered various attributes, including accessibility to the land. She supplemented her testimony using maps created by various sources, including the county and forest service. She noted that for wooded properties without improvements, she frequently relies upon aerial maps to value the property. Using various maps and overlays, she determined that although the property had an easement for access, the closest road may not reach the property. (Exs. D, E; Hr'g Recording at 1:06-29).² With respect to the Rebbe property, Assessor also noted the land's location relative to Elk Area 1, a prime hunting area, but stated that she did not factor this into her valuation of the property. (Hr'g Recording at 1:13). She confirmed that she had been to the area in the past. (Hr'g Recording at 1:20).

14. Assessor used six valid 2015 sales in LEA 1870, which allowed her to determine the 2016 value of the Rebbe land using a sales comparison approach. (Assessor's Ex. B at 8-9; R. at 29-30).

15. Assessor used the valid sales and applied a multiple regression analysis to value the land in the LEA. The analysis resulted in a per acre value of \$3,117.95 which she applied to the 57 acre Rebbe property. This resulted in a market value of \$177,723. (Hr'g Recording at 1:06).

16. Assessor reviewed the comparables, *infra* ¶¶ 29, 38, identified by Petitioner's market comparison (Pet'r's Ex. B, R at 45-53, Ex. B), and explained why she did not or could not have used those sales as comparables in determining the value of the Rebbe property. Several of the sales were not valid sales (arm's length transactions allowing identification of price for defined property interests, and of similar property characteristics generally). She explained that she used only sales of similar properties in Crook County in 2015, but admitted that she would have to review the list in more detail to confirm whether

² Assessor also testified, without objection, that Exhibit F showed there were Forest Service roads to the Rebbe property. That exhibit, however, was not admitted. (Hr'g Recording at 1:06). Accordingly, we will not consider it.

she could have used any of the sales from the realtor's analysis. (Hr'g Recording at 1:11-29).

REVIEW OF COUNTY BOARD'S APPLICATION OF LAW

A. Standard of Review

17. 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.*

18. The State Board's standard of review of a county board decision is, by rule, nearly identical to Wyoming Statutes section 16-3-114(c)(ii), the Wyoming Administrative Procedure Act standard that a district court must apply in reviewing such decisions. The State Board's review is limited to determining 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).

19. 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. 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. Substantial evidence is relevant evidence which a reasonable mind might accept in support of the agency's conclusions. 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. 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.

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

20. 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. "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."

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

21. 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.' "

Maverick Motorsports Grp., LLC v. Dep't of Revenue, 2011 WY 76, ¶ 12, 253 P.3d 125, 128 (Wyo. 2011) (quoting *Bowen v. State, Dep't of Transp.*, 2011 WY 1, ¶ 7, 245 P.3d 827, 829 (Wyo. 2011)).

22. 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) (citations omitted), *quoted in Mountain Vista Ret. Residence v. Fremont Cty. Assessor*, 2015 WY 117, ¶ 10, 158 P.3d 131, 134 (Wyo. 2015).

B. Applicable Law

23. 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.

24. 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. *Basin Elec. Power Coop.*, 970 P.2d at 852. 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. *Id.*

25. 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).

26. 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).

27. 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).

28. 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).

29. 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).

30. The sales comparison approach states:

[T]he comparable sales approach is an appropriate method of valuation when there are an adequate number of reliable arms-length sales and the properties subject to such sales are similar to the property being valued. For land valuation, the sales comparison is the preferred method of valuation. In the absence of adequate vacant land sales, other techniques may be used including allocation, abstraction, anticipated use, and capitalization of ground rents. In the mass appraisal of properties for property tax purposes it is acceptable to value the properties using generally accepted market modeling techniques. Comparable sales shall be adjusted to reflect differences in time, location, size, physical attributes, financing terms or other differences which affect value. The use of this approach to value depends upon:

- (A) The availability of comparable sales data;
- (B) The verification of the sales data;
- (C) The degree of comparability or extent of adjustment necessary for time differences; and
- (D) The absence of non-typical conditions affecting sales price.

Rules, Wyo. Dep’t of Revenue, ch. 9 § 7 (2014).

31. 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).

32. 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 equality and uniformity in the assessment process. *Gray* at 1351.

33. “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.’ ” *Britt*, ¶ 22, 126 P.3d at 125 (quoting *Amoco Prod. Co. v. Dep’t of Revenue*, 2004 WY 89, ¶ 7, 94 P.3d 430, 435 (Wyo. 2004)). “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

34. Petitioner timely appealed from the County Board Decision. (Notice of Appeal). *See supra* Proceedings Before the County Board; Rules, Wyo. State Bd. of Equalization, ch. 3 § 2(a) (2006). In accordance with Wyoming Statutes section 39-13-109(b)(ii) (2015), the State Board has jurisdiction to hear and determine all properly raised issues.

35. Before addressing Petitioner’s primary challenge, lack of access and its impact on value, we briefly dispose of Petitioner’s objections that Assessor should have relied upon more than just the sales available within LEA 1870 and his complaint that Assessor incorrectly classified the property as vacant residential property. *Supra* ¶¶ 5, 11. We accept, as consistent with the required mass appraisal practice and law, Assessor’s explanation of how and why she included the Rebbe property within LEA 1870, based upon all property characteristics and her calculation of a per acre value. *Supra* ¶¶ 12-19, 30. Petitioner presented insufficient evidence to demonstrate Assessor’s overall selection or application of the valuation methodology was incorrect. *Supra* ¶ 11. Absent a well-

articulated challenge to the valuation method, the County Board appropriately presumed Assessor's valuation method selection and application to be correct.

36. Referring to Petitioner's written submissions, we group his intertwined objections to the County Board's decision into three basic claims: 1) Assessor's valuation ignored that the Rebbe property is not directly accessible by road, which he insisted was a "non-typical condition" under the Department's rules; 2) County Board incorrectly concluded Petitioner had not demonstrated the property's inaccessibility because he had not been on the property; and 3) County Board improperly rejected Petitioner's incomplete appraisal of the Rebbe property. (Pet'r's Opening Br. 1).

37. In her responsive brief, Assessor focuses on Petitioner's failure to establish how the absence of access diminished the Rebbe property's value. Referring to her own sales comparison valuation, she notes "[t]here was no evidence that these properties [which she used as comparable sales] either had or did not have access[.]" (Assessor's Resp. Br. 3). Yet, she admits " 'access' has not been factored into the sales prices" and that she did not do so "because evidence does not exist or had [not] been presented to her through actual sales of property showing that lack of access diminished the value of the property." (Assessor's Resp. Br. 4). Assessor ultimately contends Petitioner offered insufficient evidence to shift the burden of proof to Assessor and, therefore, the County Board's affirmance was appropriate. (Assessor's Resp. Br. 4-5).

38. Petitioner's burden of going forward and ultimate burden of proof was, consequently, twofold: 1) to establish that Assessor improperly ignored access as a property characteristic (a mixed question of fact and law); and 2) to demonstrate how Assessor's failure to consider lack of access impacted the Rebbe property's value (primarily a question of fact).

39. The starting point for our analysis must be the Department's rules, which define how the sales comparison approach is to apply:

The comparable sales approach is an appropriate method of valuation when there are an adequate number of reliable arms-length sales and the properties subject to such sales are similar to the property being valued. For land valuation, the sales comparison is the preferred method of valuation. In the absence of adequate vacant land sales, other techniques may be used including allocation, abstraction, anticipated use, capitalization of grant rents and land residual capitalization. ... Comparable sales shall be adjusted to reflect differences in time, location, size, physical attributes, financing terms

or other differences which affect value. The use of this approach to value depends upon:

- (A.) The availability of comparable sales data;
- (B.) The verification of the sales data;
- (C.) The degree of comparability or extent of adjustment necessary for time differences; and
- (D.) The absence of non-typical conditions affecting the sales price.

Rules, Wyo. Dep't of Revenue, ch. 9 § 5(i) (2011).³

40. Petitioner adamantly contends that lack of access to the Rebbe land was a “non-typical condition” that the Assessor was required to consider. (Pet’r’s Br. at 1). The Department rules do not specify all property attributes or detracting conditions warranting a value adjustment; rather its rule identifies broad categories typifying those conditions which require an adjustment: “time, location, size, physical attributes, financing terms or other differences which affect value.” *Supra* ¶ 38.

41. Applying the doctrine of *ejusdem generis*, general words, following an enumeration of words with specific meanings, are construed to apply to the same general kind or type as those specifically listed. *Shriners Hosps. for Children v. First N. Bank of Wyo.*, 2016 WY 51, ¶ 53, 373 P.3d 392, 409 (Wyo. 2016); *Powder River Coal Co. v. Wyo. State Bd. of Equalization*, 2002 WY 5, ¶ 19, 38 P.3d 423, 429-30 (Wyo. 2002). From the property conditions listed, it is logical to conclude that access, like location or other physical attributes, is so basic to a property’s use and enjoyment that it must be considered. And, assuming the effect is not otherwise captured through property sales used for comparison, the value should be adjusted.

42. The International Association of Assessing Officers (IAAO) instructs:

Other site characteristics often requiring adjustment include view, topography, traffic flow, limited access, ... Such adjustments however, are required only when some of the parcels in the neighborhood or stratum are affected. If none or all of the parcels are affected, no adjustments are required, because standard or common features are reflected in comparative unit and base lot values.

³ The Department revised Chapter 9 of its rules in 2016 after the valuation at issue was conducted. *See* Rules, Dep’t of Revenue, ch. 9 (July 25, 2016). Thus, the 2011 iteration of the Department’s Chapter 9 rules applied.

IAAO, *Property Appraisal and Assessment Administration* 195 (Joseph K. Eckert, ed., 1990).

43. Although the State Board has not fully dealt with this issue in a case before it, we have in passing noted that lack of access to property may affect value. *See In re Sollars, et al.*, 2007 WL 295559, *36, Docket Nos. 2006-89 through 96, ¶ 219, (Wyo. State Bd. of Equalization, Jan. 30, 2007) (“This lack of access [inability to obtain access easement] may well affect the value and even the marketability of Lots 5, 6, 7, and 8.”).

44. Courts and tax tribunals, consistent with the IAAO’s guidance, broadly recognize that diminished access or lack of access to property affects the property’s value. Indeed, in every instance of which the Board is aware, that lack of access should be considered is a foregone conclusion. For example, in *John Olson, Stevens County Assessor v. Robert and Norma Taylor*, Docket Nos. 83522, 8593, 87711, (Wash. Bd. Tax. App. Aug. 24, 2016) 2016 WL 6810384, it was not disputed that lack of access to the subject property was a factor warranting consideration to arrive at fair market value; the question litigated was whether the taxpayer had sufficiently demonstrated error in the assessor’s treatment of that condition. The Washington State Tax Board explained:

Regarding access to the subject, the Board encountered a similar situation in *Hershberger v. Brooks*, BTA Docket No. 40632, at 3 (1992). In that appeal, the Board found that the subject’s inaccessibility warranted a reduction in value by more than 50 percent. In *Baglio v. Elas*, BTA Docket No. 42076, at 3-4 (Final Decision, 1992), the Board stated that the “most reliable way of measuring the proper discount would be to estimate the cost of obtaining access.”

Id. at 5. *See also Weed v. Cty. of Fillmore*, 630 N.W.2d 419, 426 (Minn. 2001) (“We have recognized that the lack of access to a public road affects a property’s value.”); *In re Boos*, 382 S.E.2d 769, 771 (N.C. Ct. App. 1989) (Upheld tax commission ruling which found assessor’s valuation arbitrary in part for failure to consider diminished access to land); *Linda Noyes Qualified Personal Residence Tr. v. Twp. of Clark*, Docket No. 324628, 2011 WL 2673117 (Mich. Tax Trib. June 10, 2011) (Found property over-assessed because lack of accessibility not properly accounted for, but taxpayer failed to demonstrate to what extent); *Sargle v. Dep’t of Revenue of the State of Mont.*, Docket No. PT-1986-1760 and PT-1987-153R at 1, 1988 WL 152382 (Mont. Tax. App. Bd. Jan. 13, 1988) (Value of landlocked property was affected by lack of access and was, therefore, reduced to reflect the “possible prospective cost of access.”); *Chippewa Historical Tr. v. Twp. of Sugar Island*, Docket No. 269714 at 2, 2001 WL 1818080 (Mich. Tax Trib. Dec. 3, 2001) (“The subject property’s lack of an easement of access or frontage on a public right of way

reduces the marketability and value of the subject property and negatively affects the market value of the subject property.”).

45. Accordingly, the Department’s rule concerning “non-typical conditions affecting the sales price” of a property requires the assessor to consider and, if necessary, apply an adjustment to the property value to account for the absence of access. Rules, Wyo. Dep’t of Revenue, ch. 9 § 5(i)(D) (2011)

46. Assessor testified she did not consider whether the Rebbe property lacked access during the valuation process. *Supra* ¶ 12. In her brief, Assessor summarized her testimony as saying that “ ‘access’ has not been factored into the sales prices because evidence does not exist or had been presented to her through actual sales of property showing that the lack of access diminished the value of the property.” (Assessor Br. 4). While Assessor’s brief does not quite align with her testimony at hearing, we accept Assessor’s testimony that she did not consider lack of access when valuing the Rebbe property. *Id.* And, unfortunately, the record does not reveal whether Assessor’s six comparable sales were of properties for which there was comparably limited access.

47. The County Board concluded that Petitioner “did not provide sufficient evidence that the property lacked access legal or otherwise.” (Order Denying Appeal, ¶ 39, R. at 107). We must uphold the County Board’s determination if substantial evidence supports the County Board determination that Petitioner failed to establish a lack of access to the subject property. *Supra* ¶ 19.

48. The evidence concerning access to the Rebbe property came in several forms. First, Mr. Rebbe repeatedly insisted that no road or trail actually reached the property, the closest road approaching to within one-quarter to one-half mile to the east. He testified that the road was possibly the “Boundary Gulch Road,” also referred to as County Road 801. (Hr’g Recording at 00:48:00; Exs. 5, 6, D, E). He testified that he was familiar with the property and when asked if he had ever walked its perimeter, answered it was “nearly impossible to walk its perimeter.” (Hr’g Recording at 00:51:55).

49. Based on Petitioner’s response that it was nearly impossible to walk the entire perimeter of the Rebbe property, the County Board concluded that “Appellant testimony indicated that he had never been to the property before and had not been on the entire property to determine if other roads existed on or to the property. So he could not testify that the property lacked access.” (Order Denying Appeal, ¶ 33, R. at 106).

50. The County Board’s conclusion is not consistent with the testimony: Petitioner merely stated he had not walked the entire perimeter of his 57 acre lot because it was nearly

impossible to do. *Supra* ¶ 47. He repeatedly testified that he had investigated whether a road accessed his property. *Supra* ¶¶ 5-7, 48. The County Board's inference that Petitioner lacked knowledge of his property, and its conclusion that Petitioner could not verify a lack of access, are not supported by substantial evidence. Petitioner's repeated assurance that he was familiar with his property and had investigated access to his property, *id.*, outweighed the County Board's negative inference drawn from Petitioner's statement that he had not walked the property's perimeter.

51. Other evidence came in the form of various maps and photos offered by both Petitioner and the Assessor. Petitioner offered two computer generated photos overlain with sections to show the distinct shape of the Rebbe property, its relationship to surrounding properties, the shared Crook County/Wyoming/South Dakota borders, and other features. But those photos did not identify roads or trails. (Exs. 3-4, R. at 64-65).

52. Petitioner then referred the County Board to a Forest Service map depicting "off road vehicle" passages, and a U.S. Department of Transportation map depicting "off road vehicle" passages. (Exs. 5-6, R. at 66-67). While Petitioner asserted these maps supported his case, he did little more than mark the approximate location of the Rebbe property on the maps. Still, neither map indicates the presence of a highway, road, or trail of any type reaching the Rebbe property. (*Id.*). We do find, however, that County Road 801, which Petitioner discussed as coming within perhaps one-half mile of the property, appears to come within a quarter-mile to one-half mile of the purported location of the Rebbe property (as situated within the National Forest identified on the maps). (*Id.*; Hr'g Recording 00:48:00).

53. Referring to Petitioner's maps, (Exs. 5-6, R. at 66-67), as well as Assessor's GIS computer map of the area (Ex. D, R. at 83), the County Board concluded: "In addition to those roads shown [sic] those three Exhibits you can see other roads and trails *to the Appellant's property.*"⁴ (Order Denying Appeal, ¶ 35, R. at 106) (emphasis added). After careful review of these documents, the State Board disagrees and cannot locate any such trail or road consistent with the County Board's conclusion. The Forestry Department map, Department of Transportation map, and GIS map indicate no road reaching the Rebbe property.

54. Somewhat misleadingly, the GIS map legend indicates that roads are identified by red lines. (Ex. D, R. at 83). Yet, a cursory review of all evidence shows that the red lines

⁴ We presume the County Board's phrase "to the Appellant's property," means actually connecting to the property. If the County Board were agreeing with Petitioner that the closest access approaches to within approximately one-quarter to one-half mile from the Rebbe property, the County Board would not have concluded that Petitioner failed to carry his burden of proof with regard to access.

on the picture are property boundaries, not roads. (Compare Exs. 3 & 4, R. at 64-65, to Exs. D & E, R. at 83-85). For example, the road actually depicted on Exhibit D is white and is specifically identified as a “road,” rather than identified with a red line as the legend purports. In sum, these exhibits, while not conclusive, strongly support Petitioner’s position that no road or designated trail connects with the Rebbe property. The County Board’s conclusion, at paragraph 35 (R. at 106), with respect to these maps and photos, is contrary to the evidence.

55. Likewise, Assessor’s Exhibit E, an aerial photo of the area, shows a road east of the Rebbe property in South Dakota. This photo does not show the road reaching the actual property boundary. It does not support Assessor’s contention or the County Board conclusion that there is access to the Rebbe property. (Compare Ex. B, R. at 30, with Ex. D, R. at 83).

56. Exhibits D and E suffer the same defect: the legend erroneously states that roads are depicted with a red line. To the contrary, the red lines on the photos depict property boundaries, not roads. The one identifiable road on the photo (as well as the GIS computer diagram, Ex. D, R. at 83), lies to the east of the Rebbe property and is not revealed as a red line. No other roads coming as near to the Rebbe property are otherwise discernable from the photos. (Ex. E, R. at 84). Again, while inconclusive, these photos do not demonstrate in any way that the Rebbe property is accessible by road or trail.

57. Petitioner offered a Title Insurance Commitment which stated that the coverage excluded any understanding that the property had access. We agree with the County Board that this was not evidence supporting Petitioner’s contention that the property lacked access. The language appears to be pro forma verbiage, standard in title insurance policies, excepting from coverage any assurance of access to property. (Cty. Bd. Order Denying Appeal, ¶¶ 36-38, R. at 106-07).

58. After reviewing the aforementioned exhibits, the County Board concluded, “For all of these reasons the Appellant did not provide sufficient evidence that the property lacked access legal or otherwise.” (Cty. Bd. Order Denying Appeal, ¶ 39, R. at 107). The County Board’s determination is not supported by substantial evidence and reflects either its misunderstanding of the maps (misleading legends in Assessor’s Exhibits D and E), a misreading of the Forestry Service maps (Petitioner’s Exhibits 5 and 6), or disregard of photos that further supported Petitioner’s position that no roads or trails reach the Rebbe property. (Ex. E).

59. Petitioner carried its initial burden of going forward, by showing the Rebbe property lacked direct access, and overcame the presumption of correctness as to that aspect of the

valuation. Indeed, although the Assessor stated she had been to the area in the past, she testified that neither she nor her staff had physically visited the property for this review and she offered no evidence countering Petitioner's evidence of inaccessibility. (Hr'g Recording at 01:19:00).

60. Wyoming tax jurisprudence is clear and the presumption in favor of an assessor's valuation is worth repeating:

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. 2005).

Britt, ¶ 22, 126 P.3d at 125.

61. If the taxpayer is successful in overcoming the presumption, " 'the county board was 'required to equally weigh the evidence of all parties and measure it against the appropriate burden of proof.' " *Id. quoting CIG v. Wyo. Dep't of Revenue*, 2001 WY 34, ¶ 10, 20 P.3d 528, 531 (Wyo. 2001). The Court explained the shifting of burdens upon overcoming the presumption: "The burden of going forward would then have shifted to the Assessor to defend her valuation," but the ultimate burden of persuasion remained with the taxpayer to prove by a preponderance of evidence that the valuation was not derived in accordance with constitutional or statutory requirements. *Id.*

61. Accordingly, we next address the County Board's determination that Petitioner "did not provide any evidence that the properties [sic] perceived lack of access diminished the value of the property." (Cty. Bd. Order Denying Appeal at ¶ 40, R. at 107). The County Board reasonably concluded Petitioner's evidence in support of a lesser value was irrelevant or otherwise insufficient to demonstrate the claimed value of approximately \$89,000 should supplant Assessor's 2016 assessed value.

62. In particular, we agree with the County Board that Petitioner's "Comparable Market Analysis" contained invalid sales and did not constitute a complete appraisal. (Cty. Bd. Order Denying Appeal at ¶¶ 24-27, R. at 105). Petitioner offered no competent evidence to demonstrate that Assessor's comparable sales were improperly selected. Specifically, it did not provide information about whether or not the vacant forested parcels lacked reasonable access.

63. The County Board also correctly rejected Petitioner's unsupported argument that property values should not increase by more than 9.5% per year. (Cty. Bd. Order Denying Appeal at ¶ 28, R. at 105). The State Board is unaware of, and Petitioner did not cite the State Board to, any statutory, regulatory or other authority establishing a maximum annual rate of appreciation.

64. As an aside, while the County Board correctly concluded that Assessor's valuation was presumed to be valid, and that it was Petitioner's burden to provide evidence that lack of access diminished the value of the property, we question whether the presumption survives Assessor's failure to consider the fundamental property characteristic of access. Given that the Rebbe property lacked reasonable access and, without knowing whether the Assessor's comparable sales captured the effect of that condition, one could argue that the presumption should not extend to the valuation itself. The counterargument is that Assessor's failure to consciously account for lack of access does not mean she incorrectly determined the fair market value of the Rebbe property. Considering the record before the County Board, we simply cannot draw a conclusion because neither party adequately discussed the access component of Assessor's comparable sales.

65. In the end, the ultimate burden of persuasion remained with Petitioner, and he was required to demonstrate by a preponderance of evidence that Assessor's valuation was contrary to law. In light of the evidence presented, we conclude the presumption of correctness survived Assessor's failure to consider property access in this case. *See Britt, supra* ¶¶ 31, 33, 60, 61. The presumption of correctness as to the overall valuation, in the absence of evidence demonstrating how the value should have been adjusted, compels affirmation of the County Board's decision.

CONCLUSION

65. The Petitioner having failed to demonstrate the extent to which Assessor's valuation did not account for lack of access, the Assessor's valuation is presumed correct. We therefore find insufficient grounds to reverse the County Board's decision pursuant to the criteria set forth in Wyoming Statutes section 16-3-114(c)(ii) (2015).

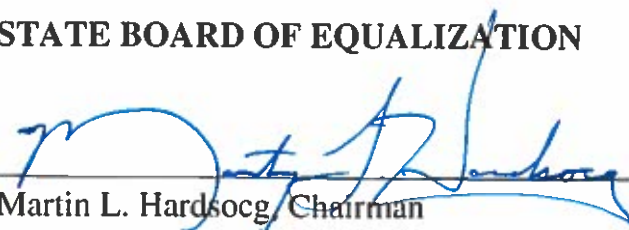
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ORDER

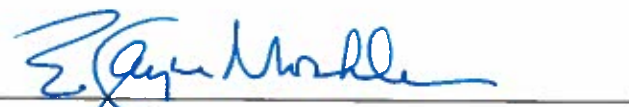
IT IS HEREBY ORDERED the decision of the Crook County Board of Equalization, affirming the 2016 determination of fair market value of \$177,723 for the Rebbe property located in Crook County, Wyoming, is **affirmed**.

DATED this 7th day of June, 2018.

STATE BOARD OF EQUALIZATION


Martin L. Hardsocg, Chairman


David L. Delicath, Vice-Chairman


E. Jayne Mockler, Board Member

ATTEST:


Nadia Broome, Executive Assistant

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day June, 2018, 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:

Robert W. Rebbe, Jr. 15908 Stare Street North Hills, CA 91343	Joseph M. Baron Crook County and Prosecuting Attorney Crook County Courthouse, 309 Cleveland Street P.O. Box 58 Sundance, Wyoming 82729
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Nadia Broome, Executive Assistant
State Board of Equalization
P.O. Box 448
Cheyenne, WY 82003
Phone: (307) 777-6989
Fax: (307) 777-6363

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