

BEFORE THE STATE BOARD OF EQUALIZATION
FOR THE STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF)
JAN CHARLES GRAY)
FROM A DECISION BY THE CONVERSE)
COUNTY BOARD OF EQUALIZATION)
(2016 Property Tax Assessment))

Docket No. **2016-44**

DECISION AND ORDER

APPEARANCES

Jan Charles Gray (Petitioner) filed a brief pro se.

F. Scott Peasley, Attorney, filed a brief on behalf of the Converse County Assessor (Assessor).

DIGEST

Petitioner, Jan Charles Gray, protested the 2016 assessment of his properties in Glenrock: five commercial properties, 116 vacant residential lots in the Sunup Ridge subdivision, and three vacant residential lots in the Happy Hollow subdivision. The Converse County Board of Equalization (County Board) held a hearing on the appealed assessments.

At the hearing, Petitioner's attorney sought a continuance and requested Petitioner and a witness be allowed to testify by telephone. The County Board denied the motion for continuance and refused to allow the Petitioner to testify by telephone. It did allow Petitioner's witness to testify by telephone. (Hr'g Recording at 11:10, 13:30, 17:10). Petitioner introduced into evidence an affidavit he had executed the day before the hearing. (Hr'g Recording at 17:05; R., Pet'r's Ex. 1). In that affidavit Petitioner stated grounds for his protests: generally that the valuations had not been changed from 2015 despite declining economic conditions, the lots had not been valued individually, and three of the commercial properties were to be demolished and thus had no value. (R., Pet'r's Ex. 1).

In addition to introducing the affidavit, Petitioner's counsel called two witnesses: Jared Rude, a contractor who had bought and sold numerous properties in Natrona and Converse Counties, and the Converse County Assessor, Dixie Huxtable. The Assessor's testimony addressed generally the methods used to value the properties, the negligible changes from 2015 valuations, and the status of the commercial properties regarding potential demolition. Assessor also testified regarding her valuation approaches in relation to Department of Revenue rules, and as to individual attributes of the properties, including the demolition and lack of official condemnation actions as of the January 1, 2016 assessment date.

The County Board issued its Decision and Order on September 7, 2016, affirming Assessor's 2016 valuations of Petitioner's properties. (R., Cty. Bd. Decision & Order). Petitioner filed a timely notice of appeal from that decision with the State Board on October 6, 2016. Rules, Wyo. State Bd. of Equalization, ch. 3 § 2(a) (2006); Wyo. Stat. Ann. § 39-11-102.1(c) (2017). The State Board has jurisdiction to hear and determine all properly raised issues. 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.

ISSUES

In his Notice of Appeal, Petitioner alleges numerous errors and seeks an order from the State Board either remanding to the County Board or establishing Petitioner's values as the correct values for his property. He contends the County Board's decision was:

- 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;
- d. Unsupported by substantial evidence.

(Pet'r's Notice of Appeal, at 2).

As “examples” of the County Board’s errors, Petitioner alleges:

- Failure to grant a continuance or allow the Petitioner to testify by telephone at the hearing;
- A lack of cooperation by the County Assessor, County Attorney and County Commissioner with the Petitioner;
- Errors in the assessment by the County Assessor;
- Misstatement of testimony;
- Failure of the Assessor to individually review each of 117 vacant lots as required by statute;
- A lack of information regarding “comparables” used by the County Assessor to establish values;
- The County Assessor’s use of an insufficient number of “comparables” to establish value;
- The failure of the County Assessor to factor the decline in oil prices and the effect the decline had on the property values;
- The failure to reduce the valuation for a commercial property to Petitioner’s claimed value and the hearing officer disallowing testimony related to that property;
- The hearing officer’s failure to qualify the Petitioner’s witness as an expert;
- Failure to provide Petitioner with “back-up” documentation for “comparables”;
- The County Board’s refusal to allow an affidavit of the Petitioner into evidence and failure to consider testimony from the hearing on 2015 assessments of the same properties;
- The State Board’s failure to notify Petitioner by email of information relating to an appeal of 2015 assessments;
- A general lack of due process in the proceedings.

(Pet’r’s Notice of Appeal, at 2-5). Petitioner did not present argument on those claims in his Opening Brief, electing instead to rely on his Notice of Appeal.

He did, however, present three additional claims:

1. An assertion he was not allowed to present statements of persons not present at the hearing;

2. He is not able to present additional statements of valuation “at this time;”
3. The County Board did not take judicial notice of the current state of Wyoming’s economy since the price of oil has “dropped significantly.”

(Pet’r’s Opening Br. 1).

In response, the Assessor contends:

The evidence in this case shows the Assessor used the sales approach to determine the values, used Department of Revenue guidelines and the CAMA system to generate the numbers used to determine the values, and the documentation introduced and accepted in to evidence demonstrates the Assessor’s valuation were accurate and proper.

(Assessor’s Br. 2).

PROCEEDINGS BEFORE THE COUNTY BOARD

1. Assessor mailed notice of assessments of Petitioner’s properties on April 27, 2016. Petitioner protested the assessments and included with his statement the assessment notices with his asserted values written in pencil. Nearly all of the Petitioner’s values were approximately one-half the Assessor’s valuations. (R., Statement to Contest Property Tax Assessment & Attachments. (May 22, 2016)).
2. On June 14, 2016, Petitioner received a notice that the County Board would hold a hearing on his appeal on August 30, 2016. (R. Certified Mail Receipt; Hr’g Recording at 4:00). The notice stated that “Conference calls will not be allowed. All participants must appear in person.” (R., Notification of Bd. Hr’g (June 2, 2016)).
3. At the hearing, Petitioner’s counsel informed the County Board that Petitioner had retained him the afternoon before the hearing and requested a continuance of one week. As grounds for the continuance, the attorney asserted that Petitioner was in Denver, Colorado, on other business. Petitioner’s attorney also requested that Petitioner and a witness be permitted to testify by telephone. (Hr’g Recording at 6:26).
4. The County Board debated the requests, noting the date of mailing of the notice of the hearing and its receipt, its established policy of requiring attendance of persons appealing assessments, and that Petitioner was an attorney and had requested a continuance at a late date in a similar appeal filed the previous year. The County Board denied the

continuance request and the request to allow Petitioner to testify by telephone, and granted the request to allow Petitioner's witness to testify by telephone because he was also out of the county. (Hr'g Recording at 11:10, 13:30, 17:10).

5. The County Board admitted into evidence Petitioner's affidavit in which he asserted he had testified by telephone the previous year before the County Board in his assessment appeal hearing and thought the same would be available for the 2016 hearing. (Hr'g Recording at 17:05). He further asserted that he wanted to incorporate by reference the entire hearing from the previous year. (Hr'g Recording at 28:50). Petitioner offered the valuations he placed upon the properties listed in his protest statement and further asserted that the improvements on the three commercial properties were to be demolished and thus had no value. (R., Pet'r's Ex. 1).

6. Petitioner's first witness was Jared Rude, a contractor who testified that property values in the area had decreased about ten to fifteen percent from the previous year. (Hr'g Recording at 21:35). Rude opined that some of Petitioner's vacant lots were better building sites than others due to location and terrain. (Hr'g Recording at 38:40). Rude was familiar with Petitioner's properties but was neither licensed to appraise property nor was he a licensed real estate agent or broker. (Hr'g Recording. at 30:00).

7. Rude further testified concerning the status of Petitioner's commercial properties. Based upon conversations with the city code enforcement officer and an engineer, he believed one of the properties needed to be demolished. (Hr'g Recording at 25:45). He testified that the city code enforcement officer would not issue a permit for improvements due to the property's condition. (Hr'g Recording at 34:45). But at the same time, he testified that no one had prohibited him from making improvements to the property. (Hr'g Recording at 33:55).

8. Rude also testified that the existence of the improvement on this property was actually a negative value. (Hr'g Recording at 26:00, 36:55). At the same time, he was not aware of any official notice or order condemning the property, or of an engineering report suggesting demolition was necessary. (Hr'g Recording at 33:25). Rude testified that in May, 2015, he entered into a contract for deed to purchase one of Petitioner's properties (contained on five lots) for \$95,000. (Hr'g Recording at 24:55, 30:25, 31:10). Assessor had valued the same parcels at just under \$75,000 as of January 1, 2016. (R., Assessor's Ex. A; Hr'g Recording at 55:30). Rude did not know the 2016 assessed value of the property. (Hr'g Recording at 32:10).

9. By affidavit Petitioner sought to “incorporate” by reference his testimony, Rude’s testimony, and the entire hearing from the previous year’s hearing before the County Board. (Pet’r’s Ex. 1). Likewise, Rude’s testimony about the 2016 assessment was dependent upon the previous year’s valuation urged by the Petitioner because Rude did not know the 2016 assessed values of Petitioner’s properties and testified that property values in the area had generally decreased, rather than about specific values of any particular properties. (Hr’g Recording at 21:35). Without providing a copy of the transcript or recording, Petitioner’s counsel sought to introduce in evidence the previous year’s hearing. Assessor objected, noting there was no notice of intent to introduce the same, nor did Petitioner offer a transcript or recording of the hearing. The County Board denied Petitioner’s motion, noting that Petitioner had nearly two months following notice of the hearing to secure the evidence. (Hr’g Recording at 28:50).

10. The County Board summarized Assessor’s testimony as follows:

There was no change from 2015 to 2016 [in assessed valuation] on the residential lots. She [county assessor] uses the sales comparison approach on residential lots. She had 16 sales in the last three years. She looked at all lots for square footage and utilities. All lots are buildable; preferences are in the eye of the buyer. All 116 lots [are] in Sunup Ridge and four in Happy Hollow.

[S]he had received no notice either by Taxpayer or elsewhere that the [commercial] buildings might be demolished. Her assessment is as of January 1, 2016. They [commercial buildings] were not demolished nor did she have any knowledge of an order confirming condemnation.

[S]he stated and demonstrated through her exhibits that all assessments were conducted in accordance with DOR [Department of Revenue] guidelines and CAMA [Computer Assisted Mass Appraisal system] requirements.

(R., Cty. Bd. Decision & Order, at 3, ¶ 11).

11. The State Board adds to the County Board’s summary of Assessor’s testimony the following:

a. Assessor is certificated by the Wyoming Department of Revenue (Department) as a property tax appraiser, has eighteen years of experience as an assessor, and reviewed the vacant lots personally. (Hr'g Recording at 1:03:30).

b. If any formal condemnation notices or orders regarding Petitioner's commercial properties had been presented to her, Assessor would have considered them, but she did not know whether that would have reduced the valuations below the salvage values she had placed on the improvements through use of high depreciations. (Hr'g Recording at 50:00). Assessor explained the application of the replacement cost approach and adjustments for property condition and depreciation under the CAMA system for each of the commercial properties. (Hr'g Recording at 1:25:30 to 1:31:00).

c. Assessor used sixteen sales of comparable properties for the vacant land assessments. (Hr'g Recording at 45:30; 1:14:40). All sixteen were within the Land Economic Area (LEA) containing the Sunup Ridge properties. Six of those sales occurred in 2015. Rather than using only these six sales, Assessor used all sixteen, resulting in a lower average value per square foot (\$3.447 versus \$3.543). (R., Assessor Ex. D.; Hr'g Recording at 59:45).

d. In her review and assessment of the vacant lots in the LEA containing the Happy Hollow subdivision, Assessor had reduced some values based upon property characteristics. (Hr'g Recording at 1:41:10). Assessor testified that all lots within the LEA containing the Sunup Ridge subdivision were ready for development and could be built on. (Hr'g Recording at 47:00). She recalled that some properties were not as level as others. She also recalled large ravines on some of the lots but could not estimate the depth of any individual ravines and did not believe the individual characteristics of lots within the subdivision were significant enough to change their values. (Hr'g Recording at 47:40).

e. Assessor provided lists of comparable sales for the vacant lots, maps identifying those sales in relation to Petitioner's properties, and testified that the comparable sales of vacant lots did not contain characteristic differences from Petitioner's vacant lots. (R., Assessor Exs. D, E; Hr'g Recording at 1:01:20).

f. The State Board's standards provide that a county is in compliance with the fair market value standard required by the Wyoming Constitution, state statutes, and Board rules if its level of appraisal for residential vacant land is between .95 and 1.05 of the mean

for normal distribution and of the median for non-normal distribution. Rules, Wyo. State Bd. of Equalization, ch. 5 § 6(a)(i) (2006).

g. For the vacant lots at issue, using a comparative sales approach and a calculated square foot amount, Assessor set the values at .95 of the mean. (Hr'g Recording at 1:11:55).

REVIEW OF THE COUNTY BOARD DECISION

A. Standard of Review

12. 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.*

13. 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).

14. 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).

15. 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).

16. 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).

17. 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 Coop., Inc. v. Dep't of Revenue, State of Wyo.*, 970 P.2d 841, 850-51 (Wyo. 1998)).

B. Applicable Law

18. The Wyoming Constitution requires that all property "shall be uniformly valued at its full value as defined by the legislature." Wyo. Const. art. 15, § 11(a). It also provides that "[t]he Legislature shall prescribe such regulations as shall secure a just valuation of taxation of all property, real and personal." Wyo. Const. art. 15, § 11(d).

19. The determination of fair market value inevitably involves 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. 24, 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."

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

20. Broken into its component parts, the Wyoming Constitution requires that property valuation consists of: (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 one 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.

21. State statutes implement the constitutional requirement for full market value, requiring an annual assessment based on 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 property has been offered in the open market for a reasonable time.

Wyo. Stat. Ann. § 39-11-101(a)(vi) (2015).

22. The statutory valuation date is January 1 of each year; all taxable property must be valued and assessed for taxation in the name of the owner of the property on that date. Wyo. Stat. Ann. § 39-13-103(b)(i)(A) (2015). In annually valuing residential real property, a county assessor is required to “faithfully 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).

23. The 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).

24. 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).¹ The Department also 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 computer assisted mass appraisal (CAMA) system. Rules, Wyo. Dep’t of Revenue, ch. 9 §§ 5, 7 (2011). Those rules also specifically provide for the use of a CAMA system. Rules, Wyo. Dep’t of Revenue, ch. 9 § 6(a)-(d) (2011). A CAMA system “automates the comparable sales and replacement cost methods.” *Britt v. Fremont Cty. Assessor*, 2006 WY 10, ¶ 39, 126 P.3d 117, 128 (Wyo. 2006). The Wyoming Supreme Court has recognized the validity of valuations derived from a CAMA system. *Id.*

25. An assessor’s valuation is presumed valid, accurate, and correct. *Britt*, 2006 WY 10, ¶ 34, 126 P.3d at 127. That presumption survives until overturned by credible evidence. *Id.* That presumption is valid where the assessor valued the property according to the Department’s Rules and Regulations, which provide for the use of the CAMA system in the assessment of real property. Rules, Wyo. Dep’t of Revenue, ch. 9 § 7 (2011).

26. “The burden is on the Taxpayer to establish any overvaluation.” *Hillard v. Big Horn Coal Co.*, 549 P.2d 293, 294 (Wyo. 1976). A mere difference of opinion as to value is not sufficient to overcome the presumption in favor of an assessor’s valuation. *Britt*, 2006 WY 10, ¶ 34, 126 P.3d at 127.

27. The Wyoming Supreme Court aptly described the burden of proof for a taxpayer challenging a county assessor’s valuation as follows:

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

¹ IAAO refers to the International Association of Assessing Officers, and USPAP refers to the Uniform Standard of Professional Appraisal Practice and Advisory Opinions published by the Appraisal Standard Board. Rules, Wyo. Dep’t of Revenue, ch. 9 § 4(a)(xxii.), (xlili.) (2011).

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, 2006 WY 10, ¶ 23, 126 P.3d at 125.

C. Legal Analysis

28. Before addressing Petitioner’s contentions set out in his Notice of Appeal and Opening Brief, we first address Petitioner’s claims regarding his 2015 assessment. In doing so the State Board takes notice of its own files and concludes it lacks jurisdiction to address any claim based on the 2015 assessment. The County Board held a hearing on Petitioner’s 2015 assessment appeal, issuing a decision on September 2, 2015. This Board dismissed Petitioner’s subsequent appeal as untimely. *In re Gray*, Docket No. 2015-55 (Wyo. State Bd. of Equalization (Dec. 18, 2015)). Petitioner appealed the Board’s dismissal to district court, which subsequently dismissed the appeal because it was filed in the incorrect venue. *Gray v. Wyo. State Bd. of Equalization*, Civil Action No. 100640 (Dist. Ct., 6th Dist., Feb. 18, 2016). Petitioner cannot use his current 2016 appeal to reanimate his claims—dismissed many months ago as untimely—regarding the 2015 assessment.

29. We also address generically Petitioner’s failure to raise, at the hearing, specific objections to some of the alleged errors. Failure to do so means the right to challenge the alleged errors on appeal is waived. *Dale v. S & S Builders, LLC*, 2008 WY 84, ¶ 33, 188 P.3d 554, 562-63 (Wyo. 2008). We will, however, review the claimed errors to determine if the County Board or hearing officer actions were “arbitrary and capricious” or an abuse of discretion. *Gonzalez*, 2015 WY 134, ¶ 16, 357 P.3d at 1162.

i. **Refusal to grant continuance and allow telephonic testimony**

30. Petitioner first challenges the County Board’s refusal to grant a continuance and to allow him to testify telephonically. (Notice of Appeal, at 2). The Uniform County Board

of Equalization Practice and Procedure Rules provide: “Motions requesting continuances or extensions of time are not favored. Continuances or extensions of time may be granted sparingly upon a showing of good cause or when necessary to assure fairness or otherwise avoid manifest injustice. Cases will not be continued upon stipulation of the parties.” Rules, Wyo. State Bd. of Equalization, ch. 7 § 11(a) (2015). The granting of a continuance is a matter of judicial discretion. *Dunsmore v. Dunsmore*, 2007 WY 202, ¶ 24, 173 P.3d 389, 393 (Wyo. 2007). Petitioner, an attorney, knew of the hearing and of the County Board’s requirement that he appear in person, for two months. (R., Notification of Bd. Hr’g (June 2, 2017)). Notwithstanding that knowledge, he failed to retain counsel until the day before the hearing, offered no explanation for his absence other than a general, vague statement concerning the need to meet with the FCC on other business, and did not seek a continuance until after the hearing had begun. *Supra* ¶¶ 2-5. The State Board finds no abuse of discretion or misapplication of the rules.

31. The State Board finds no error in the County Board’s refusal to allow Petitioner to testify by telephone. The County Board notice of the hearing provided: “Conference calls will not be allowed. All participants must appear in person.” (R., Notification of Bd. Hr’g (June 2, 2017)). This is consistent with the provisions of Wyoming Statutes related to appearance at a county board hearing.

A county board of equalization may receive evidence relative to any assessment and **may require the person assessed** or his agent or attorney to **appear before it**, be examined and produce any documents relating to the assessment. The appeal may be dismissed if any person willfully neglects or refuses to attend a meeting of a county board of equalization and be examined or answer any material question upon the board's request.

Wyo. Stat. Ann. § 39-13-109(b)(i) (2015) (emphasis added). The Administrative Procedure Act provides: “Subject to these requirements and agency rule if the interests of the parties will not be prejudiced substantially testimony may be received in written form subject to the right of cross-examination as provided in subsection (c) of this section.” Wyo. Stat. Ann. § 16-3-108(a) (2015). Finally, the State Board uniform rules for appeals of property tax assessments to a county board allow for telephone or video proceedings at the discretion of the hearing officer or county board. Rules, Wyo. State Bd. of Equalization, ch. 7 § 14 (2015). Whether under rule or statute, there is no absolute right to provide testimony remotely; rather, the hearing officer or County Board has discretion to allow or deny a request to receive such testimony. The State Board has found no authority requiring the County Board to allow Petitioner to testify by telephone, and Petitioner has cited none.

Given nearly two months of notice that the County Board intended to enforce that preference, denial of the motion presented on the day of the hearing, with minimal attempt to establish cause, was not an abuse of the County Board's discretion.

ii. Lack of cooperation

32. Petitioner asserts a general lack of cooperation by Assessor, the County Attorney, and County Board. (Notice of Appeal, at 2). His complaints relating to the 2015 assessment will not be addressed further. *See supra* ¶ 29. His specific complaint relating to the 2016 assessment involves an asserted delay in receiving the County Board decision. Thus, Petitioner's complaint goes not to the County Board's decision, but to the County Board's method of disseminating that decision. While it is not at all clear that this is a legitimate basis for an appeal, the State Board will nonetheless address its merits. First, Petitioner's claim that his counsel "never received" the decision is rebutted by his counsel's letter which acknowledges receiving the September 7, 2016 Decision and Order on October 1, 2016. (Notice of Appeal, attachment 3). That letter also asserts Petitioner received the Decision and Order via certified mail in "late September," putting a "crunch" on Petitioner's ability to review and make a decision on appealing the same. *Id.* Assuming *arguendo* that the asserted delay in transmitting the decision is true, the State Board finds no harm caused by the delay: Petitioner filed a timely appeal. As to a time crunch created by the delay, the rules of the State Board provide thirty days for appealing a County Board of Equalization decision from the later of the entry of the decision or from the date of mailing of the decision. Rules, Wyo. State Bd. of Equalization, ch. 3 § 2(a) (2015). Thus, Petitioner had a full thirty days from the date the decision was mailed to file his notice of appeal.

iii. Errors by the Assessor

33. Petitioner contends that "[t]he errors in assessment made and admitted by the Assessor were extreme." (Notice of Appeal, at 3). He does not, however, develop that claim by identifying the alleged errors, explaining how or when Assessor allegedly admitted them, or citing any authority to support his contention. Because Petitioner has not supported this contention with cogent argument or citation to relevant authority, the State Board will not address it further.² *Fowles v. Fowles*, 2017 WY 112, ¶ 30, 402 P.3d 405,

² To be clear, Petitioner does not actually support *any* of his issues with cogent argument or citations to relevant authority, and thus the State Board could decline to address all of them.

413 (Wyo. 2017) (Court will not consider issues that the appellant has not supported by proper citation or cogent argument).

iv. Misstatement of the testimony by the County Board

34. Petitioner asserts that the County Board's order misstates the evidence and demonstrates bias. (Notice of Appeal, at 3). In support of his claim, Petitioner points to only one specific example: the County Board's alleged failure to recite "the Assessor's denial that the decline in the price of oil made no difference in the assessments." *Id.* Although it is far from certain, this may be a reference to Assessor's testimony that valuations are based on comparable sales and not on general economic conditions. (Hr'g Recording at 45:20). Even if the State Board were to conclude that such a failure established bias, which we do not, Petitioner's argument is based on a mischaracterization of Assessor's testimony. She testified that the economic conditions would be reflected in sales prices, not that economic conditions have no effect on values. Petitioner asserts a more general allegation that a comparison of the transcript with the "summaries" of testimony (by which we assume he means the County Board's Findings of Fact) shows bias. He provides no further examples and thus falls well short of proving impropriety. Our review of the hearing and the record shows that 1) the County Board was advised by a County Attorney, while a separate attorney represented the Assessor; 2) the County Board deliberated on Petitioner's requests for a continuance and for appearance by telephone (and allowed one of Petitioner's witnesses to appear by telephone); and 3) the County Board deliberated and ruled both for and against Petitioner on evidentiary issues and ultimately rendered a timely decision. Decision-makers in administrative proceedings are presumed to be honest and to act with integrity, a presumption that may be overcome with evidence. *Ririe v. Bd. of Trs. of Sch. Dist. No. One, Crook Cty., Wyo.*, 674 P.2d 214, 223 (Wyo. 1983) (citing *Withrow v. Larkin*, 421 U.S. 35, 47 (1975)). We are unable to discern from the record any bias or prejudice on the part of the county officials that could have denied Petitioner a fair hearing.

v. Assessor's failure to individually review 117 lots

35. Petitioner next contends that Assessor failed to comply with a statute requiring her to "individually value each of the 117 lots." (Notice of Appeal, at 3). Assessor testified that she reviewed the lots individually. (Hr'g Recording at 46:03). Petitioner seems to contend

However, we are able to discern at least some wisp of an argument in most of Petitioner's issues and will address them on their merits where possible.

that Rude’s testimony to the contrary requires us to discount Assessor’s testimony and reject the County Board’s conclusion crediting her testimony. That contention, however, ignores the applicable standard of review. *Supra* ¶ 13. Substantial evidence supports the County Board’s determination that Assessor reviewed all vacant lots for square footage and utilities and used the CAMA system and a comparable sales approach in accordance with rules of the Department, to value the Petitioner’s vacant lots. *Supra* ¶ 24. At most, Petitioner established that Rude would have adjusted valuations based on his view of “buildability.” Assessor, however, testified that all lots were buildable and ready for development, with the same characteristics as other lots in the same LEA and the comparable properties. (Hr’g Recording at 46:03; 47:00). For the Happy Hollow properties, the Assessor made characteristic adjustments based on the presence of a water course. (Hr’g Recording at 46:03). Petitioner relies on a difference of opinion, but has failed to establish a lack of substantial evidence supporting the County Board’s findings on this issue or arbitrary action or action not in accordance with law based upon a failure to individually assess each lot.

vi. Unavailability of Assessor’s comparable sales

36. Petitioner appears to assert that Assessor was unable or unwilling to provide information about how many of the lots used as comparable sales had a house built on them. (Notice of Appeal, at 3). He points to Rude’s testimony that “comparables where a house was built were subject to the artificial assignment of a land value by the builder or the developer” and concludes that, “it is not clear if the minimum comparables were really comparables.” *Id.* That contention both disregards the standard of review and fails to find support in the record. Assessor testified that the comparable sales were all of vacant land, and nothing in the record indicates otherwise. (Hearing Recording at 1:00:00). In addition, nothing in the record shows that Petitioner attempted to resolve this issue through the discovery process or that Assessor refused him access to any information.

vii. Insufficient number of comparable sales

37. Petitioner’s complaint regarding the number of comparison sales rests solely on his allegation that the number was inadequate given the number of vacant lots in the subdivision. (Notice of Appeal, at 3-4). He cites no authority to support that contention: no statute, no Department or Board rule, no IAAO standard nor any court ruling. The record discloses no testimony or documentation supporting the assertion. Petitioner also asserts that some of the comparable properties contained improvements, making the land values

arbitrary. The sales comparison approach is the preferred approach for vacant land when there are an “adequate number” of sales. Rules, Wyo. Dept. of Revenue (Property Tax Valuation Methodology and Assessment (County Assessments)), ch. 9, § 5(b)(i) (2011). The Department rules do not specify what the phrase “adequate number” means and do not set a minimum number of sales for application of the sales comparison approach. *Id.* Assessor testified that she could have used as few as five sales under Department rules. (Hr’g Recording at 1:46:15). The State Board finds, however, that no hard number is specified for this purpose.³ Assessor used sixteen sales spanning the prior three years, rather than just the six sales occurring in 2015. (Hr’g Recording at 45:30). That decision resulted in a lower assessed value for Petitioner’s properties than would have resulted from using just the six sales in 2015. (Hr’g Recording at 59:45). Petitioner has not demonstrated an error of law in Assessor’s use of a sales comparison method, or in reliance on the sixteen comparable sales in applying that method to assess the value of his vacant lots.

viii. Failure to factor the decline in oil prices

38. Petitioner asserts that the County Board erred by refusing to reduce assessments based on the decline in the price of oil and by refusing to judicially note the effect of lower oil prices. (Notice of Appeal, at 4). The County Board did not take judicial notice of oil prices—or anything else—for the simple reason that neither party asked it to do so. There being no evidence before the County Board quantifying the alleged effects of lower oil prices on real property values, the County Board did not err in not taking those alleged effects into account.

39. Petitioner likewise asks the State Board to take judicial notice of the crude oil price’s economic effect on employment and therefore the demand for the lots for housing.⁴ (Notice

³ Five sales within an LEA or other stratum is the minimum specified by Department rule for statistical analysis directed to review of residential valuations performed by assessors and the reliability of sales ratio study calculations performed by assessors for each LEA, neighborhood or other stratum in the county. Rules, Wyo. Dept. of Revenue (Property Tax Valuation Methodology and Assessment (County Assessments)), Chap. 9, § 6(a)(i) (2011). That minimum does not necessarily apply for purposes of establishing assessed values when using the sales comparison approach.

⁴ Under section 16-3-108 (2015) of the Wyoming Administrative Procedure Act:

(d) Notice may be taken of judicially cognizable facts. In addition notice may be taken of technical or scientific facts within the agency’s specialized knowledge or of information, data and material included within the agency’s files. The parties

of Appeal, at 4). The State Board is limited to the record before it. Rules, Wyo. State Bd. of Equalization, ch. 3 § 9 (2006). Because Petitioner did not present this claim to the County Board or seek to supplement the record in support of this contention, the State Board cannot address it. *In re Rasmussen*, 2003 WL 1901519, ¶ 31, Docket No. 2002-93 (Wyo. State Bd. of Equalization, March 11, 2003).

ix. The failure to reduce the valuation for a commercial property to Petitioner's claimed value and the hearing officer disallowing testimony related to that property

40. Petitioner claims that the County Board erred in not accepting his valuations in place of Assessor's. (Notice of Appeal, at 4). The totality of Petitioner's evidence supporting his valuations are the amounts written in by Petitioner on the various assessment notices, (R. Statement to Contest Property Tax Assessment (May 22, 2016)), his affidavit concluding that his values were correct, (R., Pet'r's Ex. 1) and Rude's testimony that the 2015 values he and Petitioner asserted were correct and should be reduced generally ten to fifteen percent. (Hr'g Recording at 21:35). Yet, Petitioner did not introduce those 2015 valuations into evidence and, thus, Rude's testimony established nothing in regard to values for the 2016 assessment. Petitioner's valuations were simply numbers inserted by Petitioner. No sales comparison basis, income approach, or cost approach supported any of Petitioner's values. The County Board would have committed an error of law and acted arbitrarily in accepting Petitioner's valuations which in sum amount to only an opinion. *Supra* ¶ 25.

shall be notified either before or during the hearing or after the hearing but before the agency decision of material facts noticed, and they shall be afforded an opportunity to contest the facts noticed.

An administrative agency may notice "judicially cognizable facts." Judicial notice of "adjudicative facts" is governed by Rule 201 of the Wyoming Rules of Evidence. Official notice of adjudicative facts requires parties to be informed and given an opportunity to respond. *Heiss v. City of Casper Planning and Zoning Commission*, 941 P.2d 27, 31 (Wyo. 1997). The State Board assumes Petitioner is relying on notice pursuant to the Court rules, as the County Board has no specialized knowledge of the effects of oil price declines on residential vacant lot prices.

x. The failure of the hearing officer to qualify the Petitioner’s witness as an expert

41. Petitioner next contends that the hearing officer erred by not designating Jared Rude as an expert witness. (Notice of Appeal, at 4). To the extent Petitioner’s claim is based upon the 2015 hearing, the State Board will not consider it. *Supra* ¶ 29. During the 2016 hearing, Petitioner’s counsel never proffered Rude as an expert. In other words, Petitioner faults the hearing officer for not *sua sponte* designating Rude as an expert witness. He has cited no authority requiring—or even allowing—a hearing officer to do so. Neither has he explained—or even alleged—any prejudice arising from the lack of an expert designation. Even if the hearing officer had denied a request to designate Rude as an expert, we would find error only if that denial constituted an abuse of discretion. *In re Guardianship of LNP*, 2013 WY 20, ¶ 17, 294 P.3d 904 (Wyo. 2013) (determination as to whether a witness qualifies as an expert is a matter of discretion, the exercise of which will not be disturbed absent an abuse of that discretion). Accordingly, the State Board finds no error here.

xi. Failure to provide Petitioner with “back-up” documentation for “comparables”

42. Petitioner asserts his request for “back-up” documentation for the comparable properties used by the Assessor was denied. (Notice of Appeal, at 5). A list of comparable properties Assessor used to value Petitioner’s residential properties was introduced at the hearing. (R., Assessor Ex. D). Nothing in the record supports Petitioner’s claim about requesting “back-up” documentation. Petitioner’s counsel made no such assertion at the hearing, even though he examined Assessor concerning use of the comparable properties. Petitioner was entitled to discovery and to review of statements of consideration of like properties under the applicable statutes and rules. Wyo. Stat. Ann. §§ 16-3-107(g) & 39-13-109(b)(i) (2015); Rules, Wyo. State Bd. of Equalization, ch. 7 § 9 (2015). No complaint based on a denial of discovery generally, or of this “back-up” documentation specifically, was presented at the hearing. Thus, Petitioner did not raise this claim to the County Board. The State Board is limited to the record before it. Rules, Wyo. State Bd. of Equalization, ch. 3 § 9. Because Petitioner did not present this claim to the County Board or seek to supplement the record in support of this contention, the State Board cannot address it. *In re Rasmussen*, 2003 WL 1901519, ¶ 31, Docket No. 2002-93 (Wyo. State. Bd. of Equalization, March 11, 2003).

xii. County Board's refusal to admit the Petitioner's affidavit and failure to consider testimony from the 2015 hearing

43. Petitioner contends that the County Board erred by not admitting his affidavit into evidence. (Notice of Appeal, at 5). That contention is based on a misconception: the County Board admitted the affidavit. (R., Pet'r's Ex. 1; Hr'g Recording at 17:05). The State Board sees no reason to address this claim further.

44. Petitioner claims that the County Board erred by not admitting the record from the 2015 hearing into evidence as requested in the affidavit. (Notice of Appeal, at 5). Evidentiary rulings in administrative proceedings "are within the sound discretion of the agency as the trier of fact; we will set aside an evidentiary determination only if the agency abused its discretion." *In re Greene*, 2009 WY 42, ¶ 9, 204 P.3d 285, 290 (Wyo. 2009) (citing *McIntosh v. State ex rel. Wyo. Med. Comm'n*, 2007 WY 108, ¶ 42, 162 P.3d 483, 494 (Wyo. 2007)). Under the facts set forth above, the State Board finds no abuse of discretion in the ruling. Further, the primary relevance of the 2015 hearing Petitioner appears to assert is a comparison of valuations between the 2015 and 2016 assessment years. The 2015 fair value assessments by the County Assessor appear on the 2016 assessments admitted into evidence. (R., Pet'r's Ex. 1; Assessor Exs. H-M). Petitioner's assertions of 2016 values were also contained within his Exhibit 1. Assessor freely acknowledged the lack of change in assessed values of the vacant lands from the 2015 assessments. (Hr'g Recording at 44:35).

xiii. The failure of the State Board to notify Petitioner by email of information relating to an appeal of 2015 assessments

45. Petitioner complains that he was not notified by email, his preferred method of notice given he is often not within the State. (Notice of Appeal, at 5). Due process requires "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Accelerated Receivables Solutions v. Huff*, 2015 WY 71, ¶ 35, 350 P.3d 731, 740 (Wyo. 2015) (quoting *Jones v. Flowers*, 547 U.S. 220, 223 (2006)). Petitioner received notice of the hearing and of the Decision and Order of the County Board by certified mail. (R., Certified Mail Receipt; Hr'g Recording at 4:00). That notice apprised Petitioner of the hearing and afforded him an opportunity to be heard. Petitioner has cited no authority, and the State Board knows of none, that requires the County Board to notify persons in their

preferred manner in order to comply with due process or Wyoming law. Any issues related to Petitioner's 2015 appeal were addressed therein. *See* ¶ 28 *supra*.

xiv. A general lack of due process in the proceedings

46. Petitioner's exposition and argument on this issue consists of a single sentence, "For the reasons set forth above there was a lack of 'due process' in the protest process, and the decision of Converse." (Notice of Appeal, at 5). Reasonable notice and the opportunity for a fair hearing are the touchstones of procedural due process. *Dubbelde v. State ex. rel. Dept. of Transp.*, 2014 WY 63, ¶ 22, 324 P.3d 820, 825 (Wyo. 2014). A party asserting a due process violation has the burden to demonstrate that a protected interest has been affected in an impermissible way. *Id.* In regard to hearings, "the strictures of due process require a fair hearing before a forum which is free from bias and prejudice." *State Transp. Comm'n of Wyo. v. Ford*, 844 P.2d 496, 498 (Wyo.1992). A party alleging a lack of a fair hearing must prove impropriety on the part of the hearing body. *Id.* Petitioner has not even attempted to satisfy those requirements.

xv. Petitioner was not allowed to present statements of persons not present at the hearing

47. The first additional claim in Petitioner's brief contends that he "was not allowed to present statements of people not present at the hearing." (Pet'r's Opening Br. at 1). To the extent this claim is based upon the 2015 hearing, the State Board will not consider it. *Supra*, ¶ 29. With regard to the 2016 hearing, Petitioner does not explain what statements were excluded, who said them, or how their exclusion affected the outcome of the hearing. In the 2016 hearing, Rude testified without objection or limitation concerning his conversations with the town's code enforcement person and an engineer. (Hr'g Recording at 25:45). Our careful review of the hearing shows the County Board did not reject any testimony about statements by persons not present at the hearing.

xvi. Petitioner is not able to present additional statements of valuation at the appellate stage

48. Rather than presenting an appellate issue, Petitioner in this contention merely restates a rule governing the State Board's consideration of appeals. (Pet'r's Opening Brief, at 1). Petitioner does not present any argument—cogent or otherwise—nor does he cite any authority. Accordingly, the State Board will not consider this "issue" further. *Fowles*, ¶ 30.

xvii. County Board’s failure to take judicial notice of the current state of Wyoming’s economy since the price of oil has “dropped significantly”

49. Finally, Petitioner reasserts that the County Board “did not take judicial notice of the current state of the Wyoming economy since the price of oil has dropped significantly, and the employment in the state has declined significantly.” (Pet’r’s Opening Br. at 1). This is essentially a restatement of issue viii above, and the State Board will not restate its disposition of that issue here. *Supra* ¶¶ 38-39.

CONCLUSION

50. Assessor used the Department's authorized methods to value Petitioner's properties. There is a presumption in favor of her valuation. The County Board correctly placed the burden of persuasion on Petitioner to show Assessor’s valuations were not derived in accordance with the required constitutional and statutory requirements. After a thorough review of the record, the State Board finds substantial evidence supporting the County Board decision. Each of Petitioner’s allegations of error beyond the valuations of his properties have been reviewed by the State Board, and the State Board finds no error of law nor action of the County Board which was arbitrary or capricious.

THE REMANIDER OF THIS PAGE LEFT BLANK INTENTIONALLY.


ORDER

IT IS HEREBY ORDERED that the decision of the Converse County Board of Equalization, affirming Assessor's 2016 determination of fair market value for Petitioner's properties in this matter, is **affirmed**.

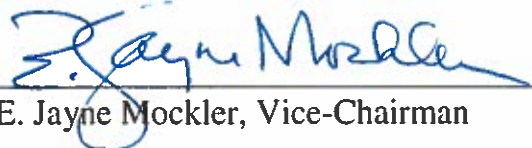
Pursuant to Wyo. Stat. Ann. § 16-3-114 and Rule 12, Wyoming Rules of Appellate Procedure, any person aggrieved or adversely affected in fact by this decision may seek judicial review in the appropriate district court by filing a petition for review within 30 days of the date of service of this decision.

DATED this 9th day of November, 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 9th day of November, 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:

Jan Charles Gray
218 N. Wolcott St.
Casper, WY 82601

Quentin Richardson
Converse County Attorney
107 N. 5th St., Suite 140
Douglas, WY 82633

Jan Charles Gray
PO Box 446
Custer, SD 57730

F. Scott Peasley
Attorney Converse County Assessor
119 S. Third
P.O. Box 703
Douglas, WY 82633

Jan Charles Gray
2793 Creston Drive
Los Angeles, CA 90068

and by emailing a copy of the Decision and Order to Jan Charles Gray at the following address: jcg43210@gmail.com.



Nadia Broome, Executive Assistant
State Board of Equalization
P.O. Box 448
Cheyenne, WY 82003
Phone: (307) 777-6989
Fax: (307) 777-6363

cc: State Board of Equalization
Dan Noble, Director, Dept. of Revenue
Brenda Arnold, Administrator, Property Tax Div., Dept. of Revenue
Commissioners/Treasurer/Clerk - Converse County
CCH
ABA State and Local Tax Reporter
State Library
File