BEFORE THE STATE BOARD OF EQUALIZATION

FOR THE STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF **CROOK COUNTY ASSESSOR** FROM A DECISION BY THE CROOK COUNTY BOARD OF EQUALIZATION (2016 Property Tax Assessment – Bell Property)	)	Docket No. 2016-45
IN THE MATTER OF THE APPEAL OF **DALE AND MARYLEE BELL** FROM A DECISION BY THE CROOK COUNTY BOARD OF EQUALIZATION (2016 Property Tax Assessment)	)	Docket No. 2016-50

DECISION AND ORDER

APPEARANCES

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

Marylee Bell appeared pro se on behalf of herself and Dale Bell (Taxpayers).

DIGEST

Last year, we affirmed the Crook County Board of Equalization's (County Board) decision remanding Assessor's 2015 assessment of the Bells' home. In 2016, the Bells again appealed Assessor's assessment to the County Board, the County Board again remanded that assessment, and Assessor again appealed that decision to the Wyoming State Board of Equalization (State Board). This appeal features the same issues, arguments, and evidence as did the 2015 case. Unsurprisingly, it also features the same outcome.

Marshall & Swift quality and condition ratings are among the factors that go into valuing residential property using the cost approach. The quality rating assigned by Assessor is at issue in this appeal. The six possible quality ratings are "Excellent," "Very Good," "Good," "Average," "Fair," and "Low." In 2016, Assessor rated the quality of the Bells' home as "Excellent." The Bells appealed to the County Board, contending that the quality rating should be "Good" or even "Average." The County Board determined that the

quality rating for the Bells' home should be "Good." Assessor appeals and asks the State Board to re-instate the "Excellent" rating, while the Bells cross-appeal and ask the Board to either affirm the "Good" rating or assign an "Average" rating.

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

ISSUES

A. Issues in Docket No. 2016-45

Assessor identified four issues in her appeal:

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

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

3. The County Board's decision valuing the Bells' home at $706,652 is arbitrary, capricious, or otherwise not in accordance with law.

4. The County Board of Equalization decision to amend their previously entered Order Denying in Part and Affirming in Part Appeal dated September 7, 2016 is arbitrary, capricious or otherwise not in accordance with law.

(Notice of Appeal, Docket No. 2016-45, 4-8). The Bells did not identify issues in their responsive brief, but disagreed with Assessor's contentions.

B. Issue in Docket No. 2016-50

The Bells present two seemingly incompatible requests in their cross-appeal: first they ask the State Board to uphold the County Board's decision assigning their home a Marshall & Swift quality rating of "Good," and then they ask the Board to assign their home a quality rating of "Average." (Notice of Cross-Appeal, Docket No. 2016-50, 1-2). We interpret the Bells' second request as a cross-appeal challenging the County Board's determination that their home is not of "Average" quality.

JURISDICTION

This Board is authorized to "hear appeals from county boards of equalization." Wyo. Stat. Ann. § 39-11-102.1(c) (2015). An aggrieved party may file an appeal with the State Board within 30 days of the County Board's final decision. Rules, Wyo. State Bd. of Equalization, ch. 3 § 2(a) (2006). The County Board issued its amended decision and order on October 5, 2016. Assessor filed her notice of appeal two days later, and the Bells filed their cross-appeal twelve days after Assessor's appeal. Thus, the appeal and cross-appeal were both timely. The State Board, therefore, has jurisdiction to consider the appeal and cross-appeal. Wyo. Stat. Ann. § 39-13-109(b)(i), (ii) (2015).

PROCEEDINGS BEFORE THE COUNTY BOARD

This is not our first foray into this matter. Assessor and the Bells litigated the 2015 assessment of the Bells' home. In the appeal from that case this Board relied on these "Facts Presented to the County Board":

> 1. Assessor took office as Crook County Assessor in 2015. She is permanently certified as a Wyoming Property Tax Appraiser through the Wyoming Department of Revenue. She is also a member of the International Association of Assessing Officers (IAAO) and the Wyoming Assessors' Association. Prior to 2015, Assessor worked for three and one-half years as Deputy Assessor in the Crook County Assessor's Office.
>
> 2. Taxpayers own residential property located in Crook County, Wyoming. Taxpayers built the residence in 2007 and began occupying it in 2008. Taxpayers' home is a one-story, 5,958 square foot residence with a 1,517 square foot attached garage.
>
> 3. For tax years 2009 through 2013, previous county assessors determined the fair market value of Taxpayers' residence by classifying its construction quality as "good" using the Marshall & Swift Residential Cost Handbook.
>
> 4. The Marshall & Swift quality classification refers to the construction, design, and workmanship of a residence using "quality" ratings identified as: low, fair, average, good, very good, and excellent. Similarly, when referring to the maintenance and upkeep of a residence, Marshall & Swift "condition" ratings are: poor, fair, average, good, very good, and excellent.

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

> Residences of Excellent Quality are usually individually designed and are characterized by the high quality of workmanship, finishes and appointments and the considerable attention to detail. Although residences at this quality level are inclusive of high-quality material and workmanship, and are somewhat unique in their design, these costs do not represent the highest cost in residential construction.
>
> Residences of Good Quality may be mass produced in above-average residential developments or built for an individual owner. Good-quality standard materials are used throughout. These houses generally exceed the minimum construction requirements of lending institutions, mortgage-insuring agencies and building codes. Some attention is given to architectural design in both refinements and detail. Interiors are well finished, usually having some good-quality wallpaper or wood paneling. Exteriors have good fenestration with ornamental materials or other refinements.

6. Assessor must annually determine the fair market value of residential real property within Crook County. There are three approaches to determine the fair market value of property, the income approach, the cost approach, and the sales comparison or market approach. Assessor used the cost approach to value Taxpayers' residence.

7. In 2014, a previous assessor, Lisa Fletcher, and Ms. Curren, then a staff member in the Crook County Assessor's Office, changed the Marshall & Swift quality classification of Taxpayers' residence from "good" to "excellent." This change increased the fair market value of the residence from $953,896 in 2013 to $1,119,425 in 2014.

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

9. Assessor Fletcher eventually agreed to settle the case by reducing the quality classification of the residence to "good," then further reduced it to "average" for the 2014 tax year, based on information Taxpayers submitted regarding the concrete efflorescence. These changes reduced the fair market value of the residence from $1,119,425 to $631,024.

10. In 2015, newly elected Assessor Curren again reclassified Taxpayers' residence as "excellent," and also changed its "Neighborhood" designation to one with masonry construction.[3]

11. These changes resulted in an increased appraised fair market value of $1,184,202, although only $1,098,306 is attributable to the residence. There is no evidence in the record indicating how much of the increase is attributed to the quality construction reclassification and how much, if any, is attributed to the "Neighborhood" change.

12. On April 27, 2015, Assessor sent Taxpayers a 2015 Assessment Schedule, and a separate letter providing notice and an explanation of the reason for the increased valuation. Taxpayers subsequently filed a Notice of Appeal with the Assessor claiming she overvalued their residence by classifying it as "excellent" instead of "good" or "average."

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

- wood rafters and sheathing with hips and valleys;
- taped and painted drywall on interior walls and ceilings;
- ample cabinetry with natural wood veneer finish in kitchen;
- hardwood baseboards and casings with mitered corners;
- walk-in closets;

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[3] Department Rules define "Neighborhood" as follows:

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

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

- ample linen and storage closets;
- good quality cedar shingles (although Taxpayers admitted they upgraded their cedar shingles for fire prevention purposes);
- built-in appliances and a fireplace (Taxpayers have three fireplaces);
- no vaulted or cathedral ceilings;
- medium quality floor coverings such as carpet, hardwood, sheet vinyl or vinyl tile floor cover (although 70-75% of their floors are polished concrete); and,
- no wood or steel floor joists or subfloors.

Taxpayers also argued they should receive a deduction for their concrete slab floor and steel box fireplaces.

14. Jerry Robinson, the contractor that built Taxpayers' home, testified on Taxpayers' behalf. Mr. Robinson has built custom homes "that are a million and up" since the 1980's. He testified Taxpayers' house lacks a custom interior and is of simple construction in comparison to a much larger home he had built in the area. However, he testified the replacement cost of Taxpayers' home would range from $225 to $300 a square foot. [4] Jerry Robinson admitted he was not familiar with "or aware of the official classifications under Marshall & Swift."

15. Jerry Robinson also admitted to constructing the residence without a vapor barrier under the concrete slab floor based on the incorrect advice of an engineer. He testified that, because there is no vapor barrier, water vapor passes through the capillaries in the concrete. Various minerals come through the concrete with the water vapor and deposit on the floor. Taxpayers use a high-speed burnishing machine every "couple of months" to remove the minerals and to polish the concrete to its former "sheen." Jim Robinson, another builder in the area, testified similarly.

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

[4] At these per square foot prices, according to Jerry Robinson, the house is worth between $1,340,550 and $1,787,400.

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

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

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

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

19. The County Board issued its decision on September 30, 2015, ordering Assessor to reduce the Marshall & Swift quality rating of the residence from "excellent" to "good," which the County Board found "takes into consideration the problem with the mineralization on the concrete floor." Assessor timely appealed the County Board's decision to the State Board.

In re Crook Cty. Assessor, 2017 WL 737753, Docket No. 2015-57, ¶¶ 1-18 (Wyo. State Bd. of Equalization, Feb. 15, 2017) (internal record citations omitted; footnotes in original).

20. In her appeal from the County Board's 2015 decision, Assessor contended that the County Board of Equalization's decision to change the quality rating from "Excellent" to "Good" was unsupported by substantial evidence and that the County Board's decision was arbitrary, capricious, or otherwise not in accordance with law. *Id.* at p. 1.

21. While awaiting our decision in the 2015 case, Assessor issued her 2016 valuation of the Bells' home and again rated the property as "Excellent" quality. (R. at 107). The Bells appealed to the County Board but were ambiguous about what they wanted. In their May 25, 2016 Statement of Appeal, they asked the County Board for "a return to the 2014 Assessor's settlement."[1] (R. at 3). But in a July 14, 2016 pre-hearing letter to the County Board, the Bells posed the same two incompatible requests they now ask of us: "1) reaffirm your 2015 decision to return this home to its historical classification of 'Good' and 2) consider our request to uphold the previous Assessor's reduction to 'Average' to acknowledge the significant reduction to fair market value of this major construction error." (R. at 27).

22. In litigating the 2016 assessment before the County Board, the parties stipulated that the evidence from their 2015 case would be incorporated and that "the CBOE shall take notice of the facts and evidence presented in that hearing." (R. at 99).

23. The County Board held a hearing in August 2016. It accepted two new exhibits from Assessor:

- Exhibit A is a 13-page document, produced by Assessor, entitled "How Property is Valued for Mass Appraisal for Tax Purposes." (R. at 13-25).
- Exhibit B is Assessor's curriculum vitae. (R. at 26).

The County Board accepted five new exhibits from the Bells:

- Exhibit 1 is two pages from the 2015 Marshall & Swift Residential Cost Handbook describing attributes of "Good" and "Very Good" quality residences. (R. at 39-40).
- Exhibit 5 is an affidavit from John Widdoss, a licensed appraiser. Mr. Widdoss opined that the efflorescence is essentially rotting the concrete floors and "posing a significant pending structural problem." (R. at 41). He also opined that the efflorescence could make the house unsellable and that the cost to remedy it "may exceed the value of the structure." *Id.*
- Exhibits 6 through 8 are lists of educational courses attended by Assessor and by former Assessors Ardith Griffis and Lisa Fletcher. (R. at 42-44).

24. The Bells did not put on any evidence that their home was of "Average" quality, nor did they argue for an "Average" rating at the hearing. Neither the 2015 record nor the 2016 record contain evidence about the attributes that warrant an "Average" quality rating.

[1] According to Paragraph 9 of our decision in Docket No. 2015-57, the 2014 settlement called for a "Good" quality rating, which Assessor later changed to "Average" after the Bells submitted information about the efflorescence in their concrete floors. (Supra, P. 6). Thus, the State Board interprets the Bells' request to "return to the 2014 Assessor's settlement" as a request to reinstate the "Good" quality rating.

25. The County Board met in September and voted to reverse Assessor's valuation and "reaffirm their decision from last year and to have the quality back to 'Good.' " (R. at 65). Later that day, the County Board issued its written Order Denying in Part and Affirming in Part Appeal. (R. at 66-78). The County Board found, as it had in 2015, that the Bells' home was of "Good" quality. (R. at 76). The County Board specifically found that the home was neither "Average" quality nor "Excellent" quality. *Id.*

26. The County Board met again in October and voted to amend pages 3 and 11 of its Order. (R. at 96). Over the County Attorney's objection, the County Board allowed Ms. Bell to present additional testimony. (Recording of October 5, 2016 County Board meeting).[2] Later that day, the County Board issued its Amended Order Denying in Part and Affirming in Part Appeal reflecting those amendments. (R. at 98-110). The original version of Paragraph 12(a) on page 3 reads:

> Appellant introduced Exhibits 1-4 that were pages out of the Marshall and Swift book that cost tables are incorporated into the CAMA System. Appellant went through various items in her home that she thought fit into the "Good" Quality rather than the "Excellent" Quality. Although the raised panel wood doors would be considered as Excellent.

(R. at 68).

27. The amended version reads:

> Appellant introduced Exhibits 1-4 that were pages out of the Marshall and Swift book that cost tables are incorporated into the CAMA System. Appellant went through various items in her home that she thought fit into the "Good" or "Very Good" Quality.

(R. at 100).

28. We find that the amended version is a more accurate description of the exhibits and testimony. (*See* R. at 39-40).

[2] The record includes an audio recording of the October 5 meeting, but much of that recording is of such poor quality that it is largely useless in deciding this case.

29. In the County Board's original decision, Subparagraph (b) of the Order read:

> The Bell home was classified in 2009, 2010 and 2011 as a "good *plus* quality" home. In 2012 and 2013, it was classified as a "*very* good quality" home. In 2014 it was classified as an "excellent quality" home. After the Bells spoke with the Assessor's office in 2014, the house was then classified as an "average quality" home. In 2015, the house was adjusted to an "excellent quality" home.

(R. at 76) (italics added).

30. The amended version of that subparagraph reads:

> The Bell home was classified in 2009, 2010 and 2011 as a "good quality" home. In 2012 and 2013, it was classified as a "good quality" home. In 2014 it was classified as an "excellent quality" home. After the Bell's spoke with the Assessor's office in 2014, the house was then classified as an "average quality" home. In 2015, the house was adjusted to an "excellent quality" home.

(R. at 108).

31. We find the only difference between the two is that the (italicized) words "plus" and "very" were removed. We further find that the amended version more accurately reflects the evidence.

32. The original version of the County Board's Order included a Subparagraph (d), which read:

> Based on the valuation of a "good quality" home per Marshall and Swift costs loaded into the CAMA system, the valuation of the Bell home should be $706,652.00.

(R. at 76).

33. The amended version of the Order did not include that subparagraph. (R. at 108).

34. After these cross-appeals were docketed and the parties submitted their briefs, we issued our decision in Docket No. 2015-57, resolving essentially the same dispute concerning the previous year's tax assessment of the Bells' property. We affirmed the County Board's decision, finding that it was not "contrary to the overwhelming weight of

the evidence," that substantial evidence supported it, and that the County Board had not acted arbitrarily or capriciously. *In re Crook Cty. Assessor*, ¶¶ 44-45.

35. In response to our decision in Docket No. 2015-57, Assessor urged us to "conclude that the Bells' home is Good Quality and Good Construction, until such time as the County Assessor can meet the burden of proof required by the SBOE" and further requested "that its appeal be granted and the County Board of Equalization's Order be remanded to County Assessor consistent with the SBOE conclusions in SBOE 2015-57." (Pet'r's Reply Br., Docket No. 2016-45, 2).

36. While we agree that our decision in Docket No. 2015-57 disposes of the contentions in these appeals as well, we nonetheless believe that the parties, and others situated similarly, will be better served if we issue a separate decision in these appeals.

CONCLUSIONS OF LAW

A. Standard of Review

37. When this Board hears an appeal 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.*

38. Our standard of review of a county board decision is nearly identical to the Wyoming Administrative Procedure Act standard (Wyo. Stat. Ann. § 16-3-114(c)(ii) (2015)) that a district court must apply in reviewing such decisions. Our 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).

39. Because our rules are patterned on the judicial review provisions of Wyoming Statutes section 16-3-114 (2015), judicial rulings interpreting that section offer guidance:

> When an appellant challenges an agency's findings of fact and both parties submitted evidence at the contested case hearing, we examine the entire record to determine if the agency's findings are supported by substantial evidence. If the agency's findings of fact are supported by substantial evidence, we will not substitute our judgment for that of the agency and will uphold the factual findings on appeal. "Substantial evidence is more than a scintilla of evidence; it is evidence that a reasonable mind might accept in support of the conclusions of the agency."

Chevron U.S.A., Inc. v. Dep't of Revenue, 2001 WY 79, ¶ 9, 158 P.3d 131, 134 (Wyo. 2001) (citations omitted).

40. We review 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)).

41. Likewise, we review a county board's ultimate findings of 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.

Mountain Vista Ret. Residence v. Fremont Cty. Assessor, 2015 WY 117, ¶ 4, 356 P.3d 269, 272 (Wyo. 2015) (citations omitted) (quoting *Britt v. Fremont Cty. Assessor*, 2006 WY 10, ¶4, 126 P.3d 117, 122-23 (Wyo. 2006)).

42. "The party challenging the sufficiency of the evidence has the burden of showing the lack of substantial evidence to support the agency's findings." *Faber v. Wyo. Dep't of Transp.*, 2009 WY 137, ¶ 5, 220 P.3d 236, 238 (Wyo. 2009).

B. Applicable Law

43. The Wyoming Constitution requires that all property be uniformly valued for taxation and that the Legislature prescribe regulations to secure a just valuation for the taxation of all property. Wyo. Const. art. 15, § 11.

44. 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) provides essential fairness. *Basin Elec. Power Coop., Inc. v Dep't of Revenue*, 970 P.2d 841, 852 (Wyo. 1998). 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.*

45. 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. § 39-11-102(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).

46. County assessors 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).

47. All taxable property must be valued annually at fair market value. Wyo. Stat. Ann. § 39-13-103(b)(vii) (2015). Fair market value is:

> [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).

48. There is a presumption in favor of an assessor's valuation.

> A strong presumption favors the Assessor's valuation. "In the absence of evidence to the contrary, we presume that the officials charged with establishing value exercised honest judgment in accordance with the applicable rules, regulations, and other directives that have passed public

scrutiny, either through legislative enactment or agency rule-making, or both."

Britt v. Fremont Cty. Assessor, 2006 WY 10, ¶ 23, 126 P.3d 117, 125 (Wyo. 2006) (quoting *Amoco Prod. Co. v. Dep't of Revenue*, 2004 WY 89, ¶ 7, 94 P.3d 430, 435 (Wyo. 2004)). A mere difference of opinion as to value is not sufficient to overcome the presumption. *J. Ray McDermott & Co. v. Hudson*, 370 P.2d 364, 370 (Wyo. 1962).

C. Application of the law to the facts in Docket No. 2016-45

49. This case requires us to review the County Board's decision to remand Assessor's valuation of the Bell property. Assessor's four issues are discussed separately below.

Does substantial evidence support the County Board's decision to change the quality rating from "Excellent" to "Good"?

50. Assessor posed this question in Docket No. 2015-57, and we affirmed the County Board's decision, finding that "there is substantial evidence supporting the County Board's decision to reject the evidence offered by Assessor," and that "the decision is in accord with the overwhelming weight of the evidence[.]" *In re Crook Cty. Assessor*, ¶ 41.

51. Assessor has not persuaded us that we decided this question wrongly in Docket No. 2015-57. While Assessor has the right to raise the question again here, we conclude, just as we did in Docket No. 2015-57, that substantial evidence supports the County Board's decision. Accordingly, we will not reverse the County Board on this issue.

Is the County Board's decision arbitrary, capricious, or otherwise not in accordance with law?

52. Assessor raised this issue in Docket No. 2015-57, and we affirmed the County Board's decision because "[t]he County Board simply reviewed the history of assessments for this property and, based on the evidence presented by the parties, determined Assessor did not sufficiently support her actions." *Id.* at ¶ 45.

53. Given that the issue, arguments, and evidence are identical, the outcome is identical. We will not reverse the County Board on this issue.

Is the County Board's decision valuing the Bells' home at $706,652 arbitrary, capricious, or otherwise not in accordance with law?

54. In its initial Order Denying in Part and Affirming in Part Appeal, the County Board ordered that "[b]ased on the valuation of a 'good quality' home per Marshall and Swift

costs loaded into the CAMA system, the valuation of the Bell home should be $706,652.00" (R. at 76). The County Board deleted that provision from its Amended Order Denying in Part and Affirming in Part Appeal. (R. at 108).

55. Assessor contends that the deleted provision was arbitrary, capricious, or otherwise not in accordance with law. (Notice of Appeal, Docket No. 2016-45, 7-8). This issue is moot because Assessor is complaining about an alleged error that the County Board has already remedied. This Board will not decide moot issues. *See, e.g. In re Jedediah Corp.*, 2015 WL 6121954, Docket No.s 2013-08, 2013-50, ¶ 57 (Wyo. State Bd. of Equalization, October 9, 2015) (citations omitted).

> *Is the County Board's decision to amend its initial order arbitrary, capricious, or otherwise not in accordance with law?*

56. Within this issue, Assessor first complains that the County Board violated statute and rules by amending its order after October 1.

57. Assessor cites Wyoming Statutes section 39-13-109(b)(i) and the Uniform County Board of Equalization Practice and Procedure Rules, ch. 7 § 21(b) for the proposition that a county board must issue its written decisions no later than the first of October. (Notice of Appeal, Docket No. 2016-45, 8). Neither the statute nor the rule prohibit the County Board from amending its timely decision or provide a sanction for doing so. We will not read into statutes or rules under the facts of this case a prohibition or a sanction not expressly stated therein. *Bi-Rite Package, Inc. v. Dist. Court of the Ninth Judicial Dist. of Fremont Cty.*, 735 P.2d 709, 717 (Wyo. 1987).

58. The entirety of Assessor's next contention is:

> In this case it was apparent at the hearing on October 5, 2016 that resulted in the Amended Order that the County Board of Equalization was reacting to written or oral objections received from the Taxpayer after the Taxpayer received the Order Denying in Part and Affirming in Part Appeal dates September 7, 2016. These written or oral objections were not sent to the County Assessor or County Attorney.

(Notice of Appeal, Docket No. 2016-45, 8).

59. Assuming that contention is entirely true, Assessor has not directed this Board to a statute, rule, or principle of law that the Bells or the County Board violated, nor has she explained how she was prejudiced or what she would have done differently if she had received advance notice of the Bells' objections. We decline to argue Assessor's case for her, and further decline to consider this contention that lacks cogent argument or citation

to relevant authority.[3] *In re Jan Charles Gray*, 2017 WL 5559382, Docket No. 2016-44, ¶ 33 (Wyo. State Bd. of Equalization, November 9, 2017) (citing *Fowles v. Fowles*, 2017 WY 112, ¶ 30, 402 P.3d 405, 413 (Wyo. 2017)).

60. Because all of Assessor's claims are either moot, unsupported by cogent argument and relevant authority, or have been previously decided on the same evidence, we decline Assessor's request to reverse the County Board and return the quality rating of the Bells' home to "Excellent."

D. Application of the law to the facts in Docket No. 2016-50

61. The Bells ask us to override the County Board's decision and declare that the Marshall & Swift quality rating for their home should be "Average." (Pet'r's Opening Br., Docket No. 2016-50, 1). As noted above, the record does not include any evidence about the attributes that warrant an "average" quality rating. (Supra ¶ 24). Because the Bells did not present evidence to support a finding that their home was of "Average" quality, we cannot say that the County Board's refusal to issue such a finding was arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law; in excess of statutory jurisdiction, authority or limitations or lacking statutory right; without observance of procedure required by law; or unsupported by substantial evidence.

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[3] It is disconcerting that the County Board allowed Ms. Bell to present additional evidence during the October meeting, several weeks after the evidentiary hearing ended, and over the County Attorney's objection. Our disconcertion, however, does not change our refusal to consider an issue lacking cogent authority or citation to relevant authority. We remind the County Board that once the evidence is closed at an evidentiary hearing, it may not receive additional testimony or other evidence and further, that it must ensure that all parties receive due process (reasonable notice and opportunity to be heard) in all proceedings.

ORDER

IT IS HEREBY ORDERED that the decision of the Crook County Board of Equalization is **affirmed** in all respects.

Pursuant to Wyoming Statutes section 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 after the date of this decision.

DATED this 16th day of February 2018.

STATE BOARD OF EQUALIZATION

Martin L. Hardsocg, Chairman

E. Jayne Mockler, Chairman

David L. Delicath, Board Member

ATTEST:

Nadia Broome, Executive Assistant

CERTIFICATE OF SERVICE

I certify that on the 16th day of February 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:

Dale and Marylee Bell
5602 N. 76th Place
Scottsdale, AZ 85250

Joseph M. Baron
Crook County & Prosecuting Attorney
Crook County Courthouse,
309 Cleveland Street
P.O. Box 397
Sundance, Wyoming 82729

Nadia Broome

Nadia Broome, Executive Assistant
State Board of Equalization
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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