

BEFORE THE STATE BOARD OF EQUALIZATION

FOR THE STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF)
STEVEN A. AND PATRICIA L. ESPONDA)
FROM A DECISION BY THE JOHNSON) Docket No. 2016-48
COUNTY BOARD OF EQUALIZATION)
(2016 Property Tax Assessment))

DECISION AND ORDER

APPEARANCES

Steven A. Esponda appeared on behalf of himself and Patricia L. Esponda.

Tucker J. Ruby, Johnson County and Prosecution Attorney, and Barry V. Crago, Civil Deputy, Johnson County and Prosecuting Attorney's Office, appeared on behalf of Cynthia L. Barlow, the Johnson County Assessor.

DIGEST

Steven and Patricia Esponda appeal the decision of the Johnson County Board of Equalization (County Board) upholding the Johnson County Assessor's 2016 assessment of the Espondas' real property (the Esponda Parcel). The Espondas contend that sufficient evidence did not support Assessor's refusal to assess the Esponda Parcel as agricultural land, Assessor's assignment of the Esponda Parcel to a particular Land Economic Area (LEA), or Assessor's refusal to designate as "waste land," portions of the Esponda Parcel that are unbuildable due to a road, a swamp, and a septic leach field. The Espondas also contend that procedural irregularities rendered the County Board's decision illegal. Neither party requested oral argument, so this case is ripe for a decision on the record and the briefs.

The Wyoming State Board of Equalization (State Board), Chairman Martin L. Hardsocg, Vice Chairman E. Jayne Mockler, and Board Member David L. Delicath, reviewed the parties' briefs and the record to determine whether the County Board's decision 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 because the evidence supports it and because one of the Espondas' claims is moot.

ISSUES

We discern four issues in the Espondas' Notice of Appeal:

1. Was the County Board's decision illegal because there was not a quorum of board members at the evidentiary hearing?
2. Did the evidence support the County Board's decision affirming Assessor's refusal to assess the Esponda Parcel as agricultural land?
3. Did the County Board err by affirming Assessor's assignment of the Esponda Parcel to LEA 1699?
4. Did the County Board err by affirming Assessor's refusal to designate, as waste land, portions of the Esponda Parcel that are unbuildable due to a road, a swamp, and a septic leach field?

(Notice of Appeal at 1-2).

Assessor, states the issues as:

- A. Whether the Johnson County Board of Equalization's decision was arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law.
- B. Whether the Johnson County Board of Equalization's decision was in excess of statutory jurisdiction, authority or limitation or lacking statutory right.
- C. Whether the Johnson County Board of Equalization failed to observe procedure required by law.
- D. Whether the Johnson County Board of Equalization's decision was supported by substantial evidence.

(Assessor's Resp. Br. 2).

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 Espondas filed their appeal 28 days after the County Board issued its final decision. (R. at 82-88; Notice of Appeal). Accordingly, the Espondas’ notice of appeal was timely and we have jurisdiction to decide this matter.

FINDINGS OF FACT

1. Mr. Esponda, his siblings, and their mother are all joint owners of Esponda Works LLC (Esponda Works), which owns a 1,275 acre ranch (the Esponda Ranch) in Johnson County. (R. at 12-23, 69).
2. Mr. and Mrs. Esponda own the Esponda Parcel, a separate 8.47 acre parcel that is contiguous to the Esponda Ranch. (R. at 43; Hr’g Recording). Two of Mr. Esponda’s siblings each also own similar parcels contiguous to the Esponda Ranch. (Hr’g Recording).
3. Esponda Works leases the Esponda Ranch to Yeager Cattle Company (Yeager) for grazing. (R. at 64-70). The parcels that Mr. Esponda and his siblings own are not included in the property leased to Yeager. (R. at 69). Yeager’s lease payments go to Esponda Works, not to Mr. Esponda or any of the other Esponda Works owners individually. (R. at 64).
4. No fences separate the Esponda Parcel from the Esponda Ranch. Yeager’s cattle graze on both. (Hr’g Recording).
5. Mr. Esponda used to be a deputy county assessor in Johnson County. (Hr’g Recording). In 2012, he convinced Assessor to re-assign multiple parcels, including the Esponda Parcel, from LEA 1699 to LEA 1680. (*Id.*) The assessed value per acre in LEA 1680 was lower and resulted in the assessed value of the Esponda Parcel (land only) decreasing from \$61,585 in 2011 to \$11,066 in 2012. (R. at 46-47). The parcels owned by Mr. Esponda’s siblings remained in LEA 1699. (Hr’g Recording).
6. In November 2015, Mr. Esponda—who was no longer a deputy county assessor—asked Assessor to assess the Esponda Parcel as agricultural land. (R. at 5). Assessor denied that request. (*Id.*).
7. After Mr. Esponda was no longer her deputy, Assessor determined that re-assigning parcels from LEA 1699 to LEA 1680 had been a mistake. (Hr’g Recording). She moved several parcels, including the Esponda Parcel, back to LEA 1699. (Hr’g Recording). That change resulted in the assessed value of the Esponda Parcel (land only) increasing from

\$29,509 in 2015 to \$151,977 in 2016. (R. at 43). At least three nearby parcels of similar size are also assigned to LEA 1699. (R. at 49, 51, 53).

8. The Espondas appealed the 2016 assessment of the Esponda Parcel. (R. at 1-10). After an evidentiary hearing, the County Board affirmed Assessor's valuation. (R. at 82-87).

CONCLUSIONS OF LAW

A. State Board's review function and burdens of proof

9. This Board reviews county board decisions as an intermediate appellate body, treating the county board as the finder of fact. *Town of Thermopolis v. Deromedi*, 2002 WY 70, ¶ 11, 45 P.3d 1155, 1159 (Wyo. 2002).

10. Our standards for review of a county board decision are, by rule, nearly identical to the Wyoming Administrative Procedure Act (WAPA) standard (codified at Wyoming Statutes section 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).

11. Because our rules are patterned on the judicial review provisions of WAPA, judicial rulings interpreting Wyoming Statutes section 16-3-114(c) (2015), 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, 2007 WY 79, ¶ 9, 158 P.3d 131, 134 (Wyo. 2007).

12. In conjunction with the substantial evidence standard, we apply the “arbitrary and capricious” standard:

Even if sufficient evidence is found to support the agency’s decision under the substantial evidence test, this [Board] is also required to apply the arbitrary-and-capricious standard as a “safety net” to catch other agency action which might have violated the Wyoming Administrative Procedures Act. *Decker v. Wyoming Medical Comm’n*, 2005 WY 160, ¶ 24, 124 P.3d 686, 694 (Wyo. 2005). “Under the umbrella of arbitrary and capricious actions would fall potential mistakes such as inconsistent or incomplete findings of fact or any violation of due process.” *Id.* (quoting *Padilla v. State ex rel. Wyoming Workers’ Safety and Comp. Div.*, 2004 WY 10, ¶ 6, 84 P.3d 960, 962 (Wyo. 2004)).

State, ex rel., Wyo. Workers’ Safety & Comp. Div. v. Madeley, 2006 WY 63, ¶ 8, 134 P.3d 281, 284 (Wyo. 2006) (citations omitted).

13. 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) (citations omitted).

14. 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.

Basin Elec. Power Coop., Inc. v. Dep’t of Revenue, 970 P.2d, 841, 850-51 (Wyo. 1998) (citations omitted).

15. “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 statutes and rules

16. 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. 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.*, 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.*

17. The Wyoming Department of Revenue 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).

18. 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).

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

[T]he amount in cash, or terms reasonable 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).

20. “A strong presumption favors the county 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 Prod. Co. v. Dep’t of Revenue*, 2004 WY 89, ¶ 7, 94 P.3d 430, 435 (Wyo. 2004)) (citations omitted).

C. Review of the County Board's decision

21. This case requires us to decide whether the County Board erred when it affirmed Assessor's valuation of the Esponda Parcel. We read the Espondas' Notice of Appeal to include the four italicized issues addressed separately below.

"I believe that the decision by the CBOE was illegal due to the fact that there was never a full quorum of commissioners present at either the original hearing or the second hearing where they came to the decision. Johnson County has 3 commissioners, and Linda Greenough was absent at the initial hearing. At that time, the hearing officer, Chris Wages, said since Linda was absent, that he would be a part of the decision. When the second hearing was held, Linda was present, but did not offer one word, and Mr. Wages was absent, and another hearing officer was there. He did not have any input at all. One commissioner said he ruled in favor of the Assessor, and the other commissioner clearly did not like the decision, but in the end, he said there was not enough evidence to rule against the Assessor." (Notice of Appeal).

22. The Espondas did not raise this issue before the County Board, so we could refuse to consider it on that basis. *In re Mastio Family 2004 Trust*, 2017 WL 2854728, Docket No. 2015-51, ¶¶ 42-43 (Wyo. Bd. of Equalization, May 1, 2017) (citing *Dale v. S & S Builders, LLC*, 2008 WY 84, ¶ 33, 188 P.3d 554, 562-63 (Wyo. 2008)). But, we believe we can better serve the parties and the public by deciding this issue on the merits.

23. We read this issue as an appeal to our rule allowing reversal when a County Board acts "without observance of procedure required by law." *Supra* ¶ 10.

24. While County Board Members Novotny and Hicks were present for the evidentiary hearing, Board Member Greenough was absent. (R. at 75). But, two members of the three-member board constitute a quorum. Wyo. Stat. Ann. § 18-3-501(a) (2015). Therefore, there was a quorum even without Board Member Greenough.

25. The Espondas mischaracterize the statements of Hearing Officer Wages. He noted that he would assist the County Board in its deliberations, but said nothing to suggest that he would have a voice in the decision, and indeed he had none. (Hr'g Recording).

26. The record confirms that Board Member Greenough was largely silent during the July meeting. (Recording, Cty. Bd. Meeting, 7/18/16). Her silence, however, is inconsequential because no statute or rule requires a board member to speak at a hearing or meeting.

27. The Espondas' contend that one County Board member voted to affirm Assessor's valuation even though he did not like that outcome. The member allegedly did so only because there was insufficient evidence to reverse the Assessor's valuation. The evidence does not support the Espondas' assertion.

28. Even if that assertion were proven, it would not demonstrate error. Rather, it would show that the board member understood and applied the correct standard of review. Rules, Wyo. State Bd. of Equalization, ch. 7 § 15 (2015). As such, we conclude that the County Board's decision resulted from proper observance of procedure required by law.

The County Board's decision affirming Assessor's denial of Agricultural classification is not supported by the evidence.

29. Here, the Espondas contend that Assessor erred by declining to assess the Esponda Parcel as agricultural land.

30. Land can be assessed as agricultural only if:

(I) The land is presently being used and employed for an agricultural purpose;

(II) The land is not part of a platted subdivision, except for a parcel of thirty-five (35) acres or more which otherwise qualifies as agricultural land;

(III) If the land is not leased land, the owner of the land has derived annual gross revenues of not less than five hundred dollars (\$500.00) from the marketing of agricultural products, or if the land is leased land the lessee has derived annual gross revenues of not less than one thousand dollars (\$1,000.00) from the marketing of agricultural products; and

(IV) The land has been used or employed, consistent with the land's size, location and capability to produce as defined by department rules and the mapping and agricultural manual published by the department, primarily in an agricultural operation, or the land does not meet this requirement and the requirement of subdivision (III) of this subparagraph because the producer:

(1) Experiences an intervening cause of production failure beyond its control;

(2) Causes a marketing delay for economic advantage;

(3) Participates in a bona fide conservation program, in which case proof by an affidavit showing qualification in a previous year shall suffice; or

(4) Has planted a crop that will not yield an income in the tax year.

Wyo. Stat. Ann. § 39-13-103(b)(x)(B) (2015). The conjunction “and” at the end of subdivision (B)(III) means that all four subdivisions of subparagraph (B) must be satisfied for land to be classified as agricultural. *See, e.g. Merrill v. Jansma*, 2004 WY 26, ¶ 38, 86 P.3d 270, 287 (Wyo. 2004); *In re Sollars, et al.*, 2007 WL 295559, Docket No. 2006-89 (Wyo. State Bd. of Equalization, 1/30/2017).

31. An assessor may require a landowner seeking an agricultural classification to provide an affidavit and supporting documentation. Wyo. Stat. Ann. § 39-13-103(b)(x)(C) (2015). We have interpreted that provision to mean that “[t]he taxpayer requesting agricultural classification for property has the burden of proving compliance with the statutory requirements for that classification.” *In re Crook County Assessor*, 2002 WL 233552, Docket No. 2001-143, ¶ 20 (Wyo. State Bd. of Equalization, Feb. 15, 2002).

32. The County Board found that “there was no evidence that the [Esponda Parcel] meets the four statutory requirements set forth in Wyoming Statute § 39-13-103(b)(x).” (CBOE Order at 5). We will consider the four divisions of Subparagraph (B) individually.

33. *Subdivision (B)(I)*—The Espondas, while not specifically acknowledging the requirements of Division (I), contended that Yeager cattle grazing on the Esponda Parcel demonstrated that the Esponda Parcel was used for an agricultural purpose. They may have been right. Grazing is an agricultural purpose. Wyo. Stat. Ann. § 39-13-101(a)(viii)(C) (2015). The statute does not require that the landowner profit from or participate in the agricultural purpose, it just requires that the property be used for an agricultural purpose. We conclude that the Espondas presented sufficient evidence to satisfy their burden of proof as to Division (I).

34. *Subdivision (B)(II)*—Neither party offered evidence that the Esponda Parcel is, or is not, part of a platted subdivision. Accordingly, the County Board correctly determined that the Espondas failed to satisfy their burden of proof as to Subdivision (B)(II).

35. *Subdivision (B)(III)*—Neither party offered evidence about revenue from the marketing of agricultural products. Accordingly, the County Board correctly determined that the Espondas failed to satisfy their burden of proof as to Subdivision (B)(III).

36. *Subdivision (B)(IV)*—“Agricultural operation” means “a business in the primary pursuit of activities that attempt to produce agricultural products by the application of management, capital and labor consistent with accepted agricultural practices.” Rules, Wyo. Dep’t of Revenue, ch. 10 § 3(y) (2014). Neither party offered evidence that the primary use of the Esponda Parcel is, or is not, to produce agricultural products. Accordingly, the County Board correctly determined that the Espondas failed to satisfy their burden of proof as to Subdivision (B)(IV).

37. Because the Espondas presented no evidence regarding three of the four required divisions of Wyoming Statutes section 39-13-103(b)(x)(B) (2015), the County Board correctly determined that the Espondas did not carry their burden of proving that the Esponda Parcel is agricultural land.

“She [Assessor] changed the LEA (Land Economic Area) of my property into an LEA that is \$17,000 per acre. For the past 3 years, the LEA my property was in, was \$4000 per acre.” (Notice of Appeal).

38. Assessor testified that the Esponda Parcel was in LEA 1699 until she re-assigned it to LEA 1680 at Mr. Esponda’s urging. (Hr’g Recording). That change reduced the assessment of the Esponda Parcel (land only) from \$61,585 in 2011 to \$11,066 in 2012. (R. at 46-47). She changed multiple parcels in the area at that time, but others remained in LEA 1699. (Hr’g Recording). For example, the parcels owned by Mr. Esponda’s brother and sister, also contiguous to the Esponda Ranch, remained in LEA 1699. *Id.*

39. In 2016, Assessor recognized her error and returned multiple parcels, including the Esponda Parcel, to LEA 1699. (Hr’g Recording). Assessor testified that she should not have moved those parcels to LEA 1680 in the first place. *Id.*

40. Other than his opinion that the Esponda Parcel should be in LEA 1680, Mr. Esponda offered no evidence that Assessor’s inclusion of the Esponda Parcel in LEA 1699 was incorrect. A mere difference of opinion as to value is not sufficient to overcome the presumption that Assessor’s valuation is correct. *Britt v. Fremont Cty. Assessor*, 2006 WY 10 ¶ 28, 126 P.3d 117, 126 (Wyo. 2006).

41. Along with her testimony, Assessor presented evidence that at least three similar size parcels in the same area are also assigned to LEA 1699. (R. at 49, 51, 53).

42. The evidence, therefore, supports the County Board’s decision to affirm Assessor’s re-assignment of the Esponda Parcel to LEA 1699.

“I argued, that the property containing the road, is obviously not buildable, and should not be valued at prime residential value. Under DOR rules for agriculture, roads are considered waste land for agriculture.” (Notice of Appeal).

43. “Waste land” is land that “has minimum economic value owing to inaccessibility, boggy conditions, sparseness of forage growth, or ditches, roads, and submerged lands, which contribute, to poor grazing conditions for livestock. It is less productive than Rangeland Class R-5.” Rules, Wyo. Dep’t of Revenue, ch. 10 § 3(u) (2014).

44. A designation as “waste land” is relevant only to the valuation of range land, which is one of the three types of agricultural land. *See* Rules, Wyo. Dep’t of Revenue, ch. 10 §§ 3(m) & 5(b)(ii)(C)(II) (2014). Because Assessor rightfully declined to classify the Esponda Parcel as agricultural, the question of whether any portion of that parcel should be considered waste land is moot. Accordingly, the County Board did not err by refusing to reverse on this issue.

CONCLUSION

45. Because the Espondas offered insufficient evidence to demonstrate Assessor’s 2016 valuation was performed contrary to law, the County Board correctly affirmed Assessor’s valuation.

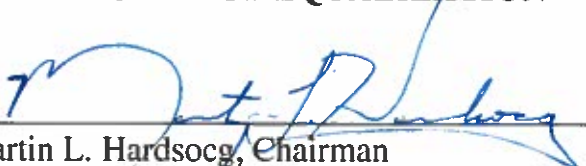
ORDER

IT IS HEREBY ORDERED the County Board’s decision is **affirmed**.

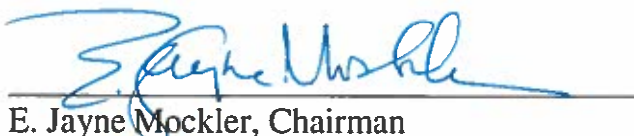
Pursuant to Wyo. Stat. Ann. § 16-3-114 and Rule 12, Wyoming Rules of Appellate Procedure, any person aggrieved or adversely affected in fact by this decision may seek judicial review in the appropriate district court by filing a petition for review within 30 days after the date of this decision.

DATED this 16th day of March 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 March 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:

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cc: Dan Noble, Director, Department of Revenue
Brenda Arnold, Administrator, Property Tax Division, Department of Revenue
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CCH
ABA State and Local Tax Reporter
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File