

BEFORE THE STATE BOARD OF EQUALIZATION

FOR THE STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF )  
R. DUANE WALL FROM A DECISION )  
BY THE LARAMIE COUNTY ) Docket No. 2016-49  
BOARD OF EQUALIZATION )  
(2016 Property Tax Assessment) )

---

**DECISION AND ORDER**

---

**APPEARANCES**

Petitioner R. Duane Wall appeared *pro se*.

Bernard P. Haggerty, Deputy Laramie County Attorney, appeared on behalf of the Laramie County Assessor, Kenneth Guille.

**DIGEST**

R. Duane Wall appeals the Laramie County Board of Equalization's Order affirming Assessor's 2016 property tax assessment of his real property (Wall Property). The County Board held a contested case hearing on Mr. Wall's appeal on June 13, 2016. Mr. Wall testified and offered two exhibits in support of his position. Assessor also testified and offered two exhibits. The County Board affirmed Assessor's 2016 valuation in a written decision. Mr. Wall timely appealed to the State Board, contending that Assessor should have considered the impact of a poorly constructed valley pan, sidewalks, curbs, and gutters on the value of his property.

The Wyoming State Board of Equalization, Chairman Martin L. Hardsocg, Vice-Chairman David Delicath, and Board Member E. Jayne Mockler, reviewed the County Board record to determine whether the County Board's Findings of Fact, Conclusions of Law and Order was arbitrary, capricious, unsupported by substantial evidence, and/or contrary to law. Rules, Wyo. State Bd. of Equalization, ch. 3 § 9 (2006), *infra* ¶ 17. We affirm the County Board's decision.

**ISSUE**

Mr. Wall contends that Assessor over-valued the Wall Property because he "did not take into consideration the shoddy workmanship, eyesores, and future chance of getting

water in my basement when evaluating the value of my property.” (Pet’r’s Opening Br. at 3).

Assessor states the issue as:

The County Board found the Taxpayer failed to meet his burden of proof and affirmed the Assessor’s valuation of the Taxpayer’s property using the CAMA system. Was the County Board’s decision supported by substantial evidence, within its discretion, and in accordance with law?

(Assessor’s Br. at 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). Mr. Wall filed his appeal 17 days after the County Board issued its final decision. (DOR Ex. 500; R. at 91). Accordingly, the notice of appeal was timely and we have jurisdiction to decide this matter.

## **FINDINGS OF FACT**

1. Mr. Wall owns a home (the Wall Property) in Laramie County. (R. at 43).
2. Laramie County Assessor Kenneth Guille mailed Mr. Wall a 2016 property tax assessment valuing the Wall Property (land and improvements) at \$211,574. (R. at 43).
3. Assessor valued the Wall Property using the cost approach. (R. at 44).
4. Mr. Wall filed a timely notice of appeal with the County Board. (R. at 1).
5. The County Board held an evidentiary hearing at which Mr. Wall and Assessor both testified. (R. at 92-146).
6. The gravamen of Mr. Wall’s appeal was that Assessor should have reduced the assessed value of the Wall Property to account for conditions that—according to Mr. Wall—reduce the value of the property. (R. at 104-123). He specifically testified, “[t]he concrete sidewalk and driveway approaches or the sidewalk was not done according to these rules, which in itself devalues the property[.]” (R. at 109). He also testified that, “[the] valley pan has not worked correctly since that flood, which is detrimental to my lot and house. I mean, as it keeps building up, someday I’m going to get water in my basement.”

(R. at 115). On cross-examination, Mr. Wall stated: "I'm saying that my property was devalued because corners were cut." (R. at 124).

7. Mr. Wall testified that the allegedly defective valley pan, sidewalks, curbs, and gutters on or near his property will eventually cause flooding in his basement, which reduces the value of his home. (R. at 104-123).

8. In his notice of appeal, Mr. Wall suggested that "[t]he Fair Value for my lot and house should be lowered to \$175,000 as it would cost between 30 and 40 thousand dollars to make it the way it should have been done." (R. at 2). At the hearing, he admitted that he had no support for those figures. (R. at 125-26).

9. Mr. Wall did not argue that Assessor applied the cost approach improperly.

10. Assessor testified that he has been with the Assessor's office for 18 years and is a certified tax appraiser through the state of Wyoming. He estimated that he has attended more than 800 hours of education. (R. at 130).

11. Assessor testified that he used the Computer Assisted Mass Appraisal (CAMA) system to compute the assessed value of the Wall Property in accordance with law and the Department of Revenue's rules. (R. at 131-37).

12. Assessor testified that he did not consider the quality or condition of the valley pan when valuing the Wall Property. (R. at 139).

13. When asked why he did not consider those factors, Assessor replied:

In a mass appraisal setting, it's not an individual-by-individual home and property evaluation. It is mass appraisal. And we are here to tax - - or tax - - value all property within Laramie County, and we have to do that with statistical measures in ways that maybe a fee appraiser didn't have to do. That fee appraiser has the ability to have a subject property, cherry-pick three or four comparables and make adjustments to those comparables so it fits the subject property. In mass appraisal we just really don't have that ability to do so.

(R. at 140).

14. Mr. Wall did not contradict Assessor's testimony that he did not have the ability to adjust the appraisal to account for the defective valley pan, sidewalks, curbs, and gutters that allegedly devalue the Wall Property.

15. The County Board affirmed Assessor's valuation, finding that "the record is void of any credible evidence which supports Protestant's position that the property value should be anything other than that calculated by the Assessor." (R. at 155).

## CONCLUSIONS OF LAW

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

16. 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).

17. 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).

18. 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. Where both parties submit evidence at a contested case hearing, we apply the substantial evidence standard:

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).

19. 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).

20. 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).

21. Likewise, we review *de novo* a county board’s ultimate findings of fact:

When an agency’s determinations contain elements of law and fact, we do not treat them with the deference we reserve for findings of basic fact. When reviewing an “ultimate fact,” we separate the factual and legal aspects of the finding to determine whether the correct rule of law has been properly applied to the facts. We do not defer to the agency’s ultimate factual finding if there is an error in either stating or applying the law.

*Mountain Vista Ret. Residence v. Fremont Cty. Assessor*, 2015 WY 117, ¶ 4, 356 P.3d 269, 272 (Wyo. 2015) (quoting *Britt V. Fremont Cty. Assessor*, 2006 WY 10, ¶ 17, 126 P.3d 117, 122-23 (Wyo. 2006)).

22. “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

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

24. 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).

25. 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).

26. All taxable property must be valued annually at 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 the property has been offered in the open market for a reasonable time[.]

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

27. The Department has prescribed methods for valuing real property. The acceptable methods include a sales comparison approach, a cost approach, and an income or capitalized earning approach, in conjunction with the CAMA system. Rules, Wyo. Dep't of Revenue, ch. 9 §§ 5, 7 (2011).

28. The cost approach is a method of estimating value by summing the land value, where applicable, with the depreciated value of improvements. In the CAMA system, RCNLD [Replacement Cost New Less Depreciation] is calculated using Marshall and Swift cost tables. The cost approach is an accepted supplemental approach and could serve as the primary approach when sales data is unavailable or inadequate (such as special purpose properties). The cost approach relies on the principle of substitution in which an informed buyer will not pay more for a property than its comparable replacement.

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

29. The CAMA system is a computerized "system adopted and approved for valuation of taxable property assessed at the County level for property tax purposes" and must be used "for all real and personal property, except property for which narrative appraisals or other recognized supplemental appraisals are used as a substitute to the CAMA system." Rules, Wyo. Dep't of Revenue, ch. 9 § 7 (2011). CAMA effectively "automates the comparable sales and replacement cost methods" prescribed by rule. *Britt v. Fremont Cty. Assessor*, 2006 WY 10, ¶ 39, 126 P.3d 117, 128 (Wyo. 2006).

30. The Wyoming Supreme Court has recognized the validity of valuations derived from the CAMA system. *Gray v. Wyo. State Bd. of Equalization*, 896 P.2d 1347, 1351 (Wyo. 1995).

31. "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 Prod. Co. v. Dep't of Revenue*, 2004 WY 89, ¶ 7, 94 P.3d 430, 435 (Wyo. 2004)" *Britt*, ¶ 22, 126 P.3d at 125. A mere difference of opinion as to value is not sufficient to overcome the presumption. *Teton Valley Ranch v. State Bd. of Equalization*, 735 P.2d 107, 113 (Wyo. 1987).

### C. Review of the County Board's decision

32. In testimony before the County Board and argument to this Board, Mr. Wall assigns responsibility to county and municipal officials for the allegedly defective valley pan, sidewalks, curbs, and gutters. We conclude that such testimony and argument is not

relevant to the question of whether the County Board erred by affirming Assessor's assessment of the Wall Property. Even if the condition of the valley pan, sidewalks, curbs, and gutters were relevant to the assessment, responsibility for these defects would not be.

33. At bottom, Mr. Wall's complaint is not with anything Assessor did, but rather with what Assessor did not do. He contends that Assessor should have reduced the assessed value of his property to account for defects in public works projects on and near his property because they allegedly make it less valuable. *Supra* ¶¶ 6-7.

34. But, Mr. Wall offered no evidence, other than his own insistence that it was so, that the alleged defects reduced the value of his property.

35. Mr. Wall also did not present any evidence of what value Assessor should have assigned to the Wall Property—other than his own estimates, which were little more than random guesses. *Supra* ¶ 8.

36. The County Board concluded that “[t]he record is void of any credible evidence which supports Protestant's position that the property value should be anything other than that calculated by the Assessor. There was no evidence presented by Protestant demonstrating the Assessor had incorrectly utilized the CAMA system, a property appraisal method approved by the Department of Revenue.” (R. at 155). That conclusion is certainly true. Mr. Wall did not present any evidence showing that Assessor erred or that the valuation was incorrect.

37. In the end, the ultimate burden of persuasion remained with Mr. Wall, and he was required to demonstrate by a preponderance of evidence that Assessor's valuation was contrary to law. He did not satisfy that burden.

## CONCLUSION

38. Mr. Wall failed to demonstrate that Assessor's valuation was required to account for poorly designed and constructed valley pan, sidewalks, curbs, and gutters. Therefore he has not overcome the presumption that Assessor's valuation is correct. We find insufficient grounds to reverse the County Board's decision pursuant to the criteria set forth in Wyoming Statutes section 16-3-114(c)(ii) (2015) and the State Board's rules.

**THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.**

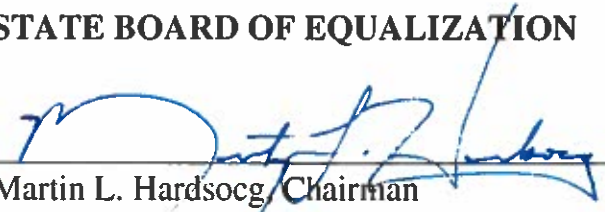


**ORDER**

**IT IS HEREBY ORDERED** that the Laramie County Board of Equalization's decision affirming Assessor's 2016 assessment of the Wall Property in Laramie County, Wyoming, is **affirmed**.

DATED this 18<sup>th</sup> day of April, 2018.

**STATE BOARD OF EQUALIZATION**

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

  
\_\_\_\_\_  
David Delicath, Vice-Chairman

  
\_\_\_\_\_  
E. Jayne Mockler, Board Member

ATTEST:

  
\_\_\_\_\_  
Nadia Broome, Executive Assistant

## CERTIFICATE OF SERVICE

I certify that on the 18<sup>th</sup> day April, 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:

R. Duane Wall  
1719 Gold Dust Road  
Cheyenne, WY 82007

Bernard P. Haggerty  
Deputy Laramie County Attorney  
310 West 19<sup>th</sup> Street, Suite 320  
Cheyenne, WY 82001



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

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