

**BEFORE THE STATE BOARD OF EQUALIZATION**

**FOR THE STATE OF WYOMING**

IN THE MATTER OF THE APPEAL OF )  
WEST PLAINS, LLC ) Docket No. **2017-57**  
FROM A DECISION BY THE GOSHEN )  
COUNTY BOARD OF EQUALIZATION )  
(2017 Property Tax Assessment) )

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**DECISION AND ORDER**

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**APPEARANCES**

Charles J. Oeler, Bettencourt Tax Advisors, LLC, appeared on behalf of West Plains, LLC (West Plains).

Debra A. Surratt, Goshen County Assessor (Assessor), did not file a brief or otherwise appear.

**DIGEST**

West Plains, LLC appeals the Goshen County Board of Equalization's decision upholding the County Assessor's 2017 assessment of West Plains' property. Because West Plains has not presented cogent argument and citations to relevant authority, or even articulated a justiciable issue, this Board will summarily affirm the County Board's decision.

**ISSUE**

Neither party identified issues or presented argument.

**JURISDICTION**

A taxpayer 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 final decision on August 1, 2017. (Cty. Bd. Decision at 1). West Plains filed its appeal 29 days later. (Notice of Appeal). Accordingly, the notice of appeal was timely and we have jurisdiction.

## **PROCEEDINGS BEFORE THE COUNTY BOARD**

1. The property in question consists of land, improvements, and industrial personal property. (R. at 4-5). The previous owner, Wyoming Ethanol, LLC, used the property to produce ethanol. (Hr'g Recording).
2. In 2014, Assessor classified the property as Industrial and assessed it at \$7,702,703. (R. at 135-36).
3. The assessment increased to \$7,875,703 in 2015, but dropped to \$3,874,803 in 2016. (R. at 131-34). West Plains bought the property for \$2,000,000 in 2016. (R. at 11).
4. In 2017, Assessor re-classified the property as Commercial because it was no longer used to produce anything. (Hr'g Recording). Her assessment that year was \$3,814,093. (R. at 4-5).
5. West Plains appealed Assessor's 2017 assessment to the County Board, contending that the \$2,000,000 purchase price reflected the property's true value. (R. at 27).
6. The County Board held a hearing at which Assessor testified that she calculated the 2017 assessment using the cost approach and the Computer Assisted Mass Appraisal (CAMA) system. (Hr'g Recording). She also testified that the sales comparison approach would not have been appropriate given the lack of sales of comparable properties. *Id.*
7. Assessor further testified that the \$2,000,000 purchase price did not reflect fair market value for three reasons. The sale to West Plains was not an arms-length transaction, the property was not offered on the open market, and Wyoming Ethanol was acting under undue compulsion. *Id.*
8. The County Board affirmed Assessor's assessment.

## **REVIEW OF COUNTY BOARD'S DECISION**

### **A. Standard of Review**

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) (quoting *Laramie Cty. Bd. of Equalization v. Wyo. State Bd. of Equalization*, 915 P.2d 1184, 1188 (Wyo. 1996)).
10. Our standard of review of a county board decision is nearly identical to the Wyoming Administrative Procedure Act standard, Wyoming Statutes section 16-3-

114(c)(ii) (2017), 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 Wyo. Stat. section 16-3-114 (2017), 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*, 2007 WY 79, ¶ 9, 158 P.3d 131, 134 (Wyo. 2007) (citations omitted).

12. "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. Dep't of Transp.*, 2009 WY 137, ¶ 5, 220 P.3d 236, 238, (Wyo. 2009) (citing *Bradshaw v. Wyo. Dep't of Transp.*, 2006 WY 70, ¶¶ 24, 135 P.3d 612, 619 (Wyo. 2006)).

13. We review conclusions of law de novo and affirm them "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." *State ex rel. Workers' Safety & Comp. Div. v. Garl*, 2001 WY 59, ¶ 9, 26 P.3d 1029, 1032 (Wyo. 2001) (citations omitted).

14. We also 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, State of Wyo.*, 970 P.2d 841, 850-51 (Wyo. 1998) (citations omitted).

#### B. Legal Analysis

15. West Plains asks us to declare that the County Board erred when it affirmed Assessor's 2017 assessment of West Plains' property.

16. West Plains did not identify any issues in its Notice of Appeal, and then elected to rest on that notice instead of filing a brief. Thus, West Plains has not articulated an issue, presented cogent argument, or cited relevant authority.

17. The failure to present cogent argument or cite relevant authority warrants summary affirmance. *In re Jan Charles Gray*, 2017 WL 5559382 at \*11, Docket No. 2016-44, ¶ 33 (Wyo. State Bd. of Equalization, Nov. 9, 2017) (citing *Fowles v. Fowles*, 2017 WY 112, ¶ 30, 402 P.3d 405, 413 (Wyo. 2017)).

18. We, therefore, summarily affirm the County Board's decision based on West Plains' failure to present cogent argument or cite relevant authority.

19. In the alternative, we could also affirm because West Plains' dearth of argument falls short of satisfying the standard of review articulated above. *See supra* ¶ 10.

#### CONCLUSION

20. West Plains has not identified issues on appeal, presented cogent argument, or cited relevant authority. The County Board's decision is, therefore, summarily affirmed.

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**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 7<sup>th</sup> day of August, 2018.

**STATE BOARD OF EQUALIZATION**

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

  
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David L. Delicath, Vice-Chairman

  
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E. Jayne Mockler, Board Member

ATTEST:


  
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Nadia Broome, Executive Assistant

## CERTIFICATE OF SERVICE

I certify that on the 7<sup>th</sup> day of August, 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:

Charles J. Oeler, CMI, ASA, MBA  
Bettencourt Tax Advisors  
West Plains LLC  
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Houston, TX 77024

Herbert K. Doby  
Goshen County Attorney's Office  
P.O. Box 130  
Torrington, WY 82240

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

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