

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. 2017-60
BOARD OF EQUALIZATION)
(2017 Property Tax Assessment))

DECISION AND ORDER

APPEARANCES

R. Duane Wall (Mr. Wall or Petitioner) appeared *pro se*.

Gladys Ayokosok, Deputy Laramie County Attorney, appeared on behalf of the Laramie County Assessor, Kenneth Guille (Assessor).

DIGEST

Petitioner appeals the Laramie County Board of Equalization's Order affirming Assessor's 2017 property tax assessment of his real property (Wall Property). Similar to his tax appeal for the previous year, Mr. Wall complained that a poorly constructed, defective concrete "valley pan,"¹ located inside and along a border of his property, and other defects devalued his lot. Mr. Wall argued the valley pan was so defective that his lot's value might be zero, leaving only the value of his home for property tax purposes. Mr. Wall challenges the County Board's decision affirming Assessor's valuation, which he claims did not sufficiently account for the defective valley pan.

The Wyoming State Board of Equalization, Chairman Martin L. Hardsocg, Vice-Chairman David L. Delicath, and Board Member E. Jayne Mockler, reviewed the parties' briefs and County Board record to determine whether the County Board's Findings of Fact, Conclusions of Law and Appearances was arbitrary, capricious, unsupported by substantial evidence, and/or contrary to law. Rules, Wyo. State Bd. of Equalization, ch. 3 § 9 (2006), *see infra* ¶ 40. We affirm the County Board's decision.

¹ The "valley pan" is a shallow concrete channel, approximately 3.5 feet in width and extends along the interior border of Petitioner's property. Water from a gutter in front of his home is diverted and passes through the valley pan during heavy rains.

ISSUE

Mr. Wall does not identify an issue per se. Rather, he offers several legal justifications for reversal, including reference to several Wyoming constitutional provisions. (Pet'r's Br. 13-14). Mr. Wall generally claims the city of Cheyenne's Building Department, the City Engineer, and a construction contractor, among others, installed a defective sidewalk, curb, gutter along the front of his property, and an adjoining defective valley pan along his property's east border, the operation of which negatively impacts his property. (Pet'r's Br. 1-13, 16; R. at 159). He argues: "The violations [of the project's specifications] I have pointed out that makes [sic] my property less valuable should be part of the equation and should be subtracted from the total value." (Notice of Appeal at 2).

From Mr. Wall's briefing, argument, and evidence, we infer his issue on appeal to be whether the County Board of Equalization correctly affirmed Assessor's valuation, which did not account for the effects of the defective sidewalk, curb, gutter or "valley pan." *See also infra* ¶ 33.

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. 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 on October 17, 2017, within 30 days of the County Board's September 25, 2017 decision. (R. at 202-17; Pet'r's Notice of Appeal). We have jurisdiction to decide this matter.

PROCEEDINGS BEFORE THE COUNTY BOARD

Evidence before the County Board indicated the following:

1. Mr. Wall owns a home (the Wall Property) in Laramie County at 1719 Gold Dust Road, Cheyenne, Wyoming. (R. at 169).

2. Laramie County Assessor Kenneth Guille mailed Mr. Wall a 2017 property tax assessment valuing the Wall Property (land and improvements) at \$218,160. (R. at 33-34, 175).

3. Assessor valued the Wall Property using the Cost Approach to value the improvements (home) at \$177,221, and used the Sales Comparison Approach to value Petitioner's lot at \$40,939. (R. at 151-65, 168-200).

4. The County Board held an evidentiary hearing during which Mr. Wall and Assessor both testified. (R. at 134-66).

5. The State Board had not yet ruled on Mr. Wall's 2016 property tax appeal at the time of his 2017 County Board hearing. *See In re Wall*, 2018 WL 2014342, Docket No. 2016-49 (Wyo. State Bd. of Equalization, April 18, 2018). Mr. Wall's case presentation was similar to his 2016 tax appeal before the County Board. The Hearing Officer allowed Mr. Wall to submit his evidentiary materials from the previous hearing. (R. at 124-26; Ex. 1).

6. Underlying both tax appeals, Mr. Wall ultimately sought resolution of a larger dispute with Cheyenne city officials dating back to before 2006. Those officials, Mr. Wall asserted (and asserts before this Board), oversaw construction of a defective valley pan within an easement along the east border of Mr. Wall's residential lot.² Mr. Wall alleged a conspiracy and cover-up among not just city officials and the contractor that installed the street, sidewalk, curb, gutter and valley pan, he also complained that state regulatory bodies³, to the extent they failed to reprimand licensed professionals, were complicit in damaging his property. (Pet'r's Br. 14-16).

7. To demonstrate the valley pan's defective construction and poor performance, Mr. Wall directed the County Board to municipal construction guidelines, project specifications, including performance standards and slope requirements, and pictorial and video evidence of the valley pan's failure to perform. (R. at 6-87, 106-17; Ex 116a (video narrative of valley pan performance)).

8. Damage to Mr. Wall's land, presented through a video review of his land and narrative description of the sidewalk, curb, gutter and valley pan's operation, includes uneven surface grading which left Mr. Wall's property lower than his neighbor's lot. (Ex. 116a, Video 1). Mr. Wall explained that the valley pan collects water from neighboring properties, along with mud and sediment, which run through the valley pan and off of Mr. Wall's property. Mr. Wall complains that because the concrete has depressions and does

² Mr. Wall alleges defective construction of the adjoining sidewalk and gutter as well, but the valley pan is the primary source of his claims on appeal.

³ Mr. Wall sought assistance from the Wyoming Board of Engineers and Professional Land Surveyors, as well as its legal counsel with the Attorney General's Office, hoping they would sanction city officials who failed in their professional capacities. (Pet'r's Br. 14-15; R. at 126-27).

not slope as required, mud, dirt and sediment accumulate and remain within the channel's "low spots" or overflow onto Mr. Wall's yard. Mr. Wall noted crumbling or defective portions of the sidewalk and gutter, as well as the gutter's failure to collect water from the street. (Ex. 116a, Videos 1, 4 & 5; Pet'r's Br. 1). Mr. Wall demonstrated the valley pan's operation by running water from his garden hose down the gutter and valley pan. (Ex. 116a, Video 2). The video and pictures generally confirmed Mr. Wall's characterization of the valley pan's operation.

9. Not corroborated, however, was Mr. Wall's speculation that the valley pan's substandard performance might lead to flooding of his basement. (Ex. 116; R. at 7-8, 60-61, 148).

10. Without specifying how much his lot value should be reduced, Mr. Wall argued the construction defects negatively influenced his lot's value when compared to surrounding lots. (R. at 143-44). He stated that Assessor's application of Wyoming's mass appraisal valuation system, CAMA, did not rely upon comparable properties subject to a similar "negative influence." (Tr. at 146).

11. In his previous appeal "Mr. Wall did not argue that Assessor applied the cost approach improperly." *Wall*, 2018 WL 2014342, *2, ¶ 8. In the present appeal, however, Mr. Wall faulted Assessor for not classifying the defectively constructed curb, gutter, and valley pan as a form of depreciation to be subtracted from the value of his lot. (R. at 138-42, 157-59, 162-66). Mr. Wall concluded "I do believe that the negative influence should be taken away from that RCN⁴, less depreciation, because all depreciation should be added together and then taken from that \$40,939." (R. at 166).

12. Assessor testified 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 700 hours of appraisal training and education. (R. at 149-50).

13. 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 149-63). Assessor explained that a value per lot is calculated for all properties within a given "land economic area" or LEA based on a linear analysis of sales within the LEA. He then added a per square foot adjustment to arrive at a total land valuation, in Mr. Wall's case, \$1.50 per square foot. (R. at 154-55, 170-200).

14. In response to Mr. Wall's insistence that the valley pan's negative influence on the value of his property be taken "off the top" as a form of depreciation, Assessor explained that "it did come off" in the sense that he did not appraise it as part of the Wall property's value. (R. at 156, 158-60). Assessor added that although the valley pan would likely be

⁴ RCN refers to replacement cost new.

subject to depreciation due to its condition, he did not calculate depreciation because the valley pan was not taxed. (R. at 163).

15. When asked whether he considered characteristics, such as the valley pan, Assessor explained:

We do not at this point in time. We are collecting the data for landscaping. But at this point in time, we don't have enough data or enough sales to support that. And, really, that's where I have to look. I have to look to the sales of property to make any adjustments. I just don't go out and make an adjustment just to make one.

(R. at 161). The Assessor further explained that "in [a] mass appraisal setting, we're not that focused in on that subject property. In mass appraisal, we're making uniform adjustments to an entire strata of property at one time." (R. at 164).

16. The County Board reviewed Assessor's mass-appraised valuation of Mr. Wall's property, examined Mr. Wall's objections to the valuation, and concluded that "Protestant presented no evidence that the property was assessed contrary to State Board regulations or in a non-uniform manner." (R. at 212-13; *see also* R. at 214). The County Board further observed that Assessor was not responsible for oversight or remediation of faulty construction of the valley pan. (R. at 214). The County Board affirmed Assessor's valuation. (R. at 214).

CONCLUSIONS OF LAW

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

17. 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).

18. 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).

19. Because our rules are patterned on the judicial review provisions of Wyoming Administrative Procedure Act, 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) (citations omitted), *quoted in In re Pine Bluffs*, Docket No. 2016-46, ¶ 3, 2017 WL 4466803, at *3, (Wyo. State Bd. of Equalization, August 13, 2017).

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) (citations omitted), *quoted in In re Pine Bluffs*, ¶ 5, 2017 WL 4466803, at *3, ¶ 5.

21. "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) (citations omitted).

22. "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, ¶ 22, 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).

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. 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. § 39-11-103(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).

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)(vii) (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 (2016). As applied to Assessor's valuation of Mr. Wall's lot, the Sales Comparison Approach provides:

The comparable sales approach is an appropriate method of valuation when there are an adequate number of reliable arms-length sales and the properties subject to such sales are similar to the property being valued. For land valuation, the sales comparison is the preferred method of valuation. In the absence of adequate vacant land sales, other techniques may be used including allocation, abstraction, anticipated use, and capitalization of ground rents. In the mass appraisal of properties for property tax purposes it is acceptable to value the properties using generally accepted market modeling techniques. Comparable sales shall be adjusted to reflect differences in time, location, size, physical attributes, financing terms or other differences which affect value. The use of this approach to value depends upon:

- (A) The availability of comparable sales data;
- (B) The verification of the sales data;
- (C) The degree of comparability or extent of adjustment necessary for time differences; and
- (D) The absence of non-typical conditions affecting the sales price.

Rules, Wyo. Dep't of Revenue, ch. 9, § 5(b)(i) (2016).

28. 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 (2016). CAMA effectively “automates the comparable sales and replacement cost methods” prescribed by rule. *Britt*, 2006 WY 10, ¶ 39, 126 P.3d 117, 128.

29. 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).

C. Review of the County Board's decision

30. Mr. Wall's primary disagreement lies with the City of Cheyenne, in particular, public officials he faults for defective installation of the curb, gutter, and sidewalk in front of his house, as well as the adjoining valley pan constructed inside the eastern border of his property. *See supra* ¶¶ 6-8. Mr. Wall offered into evidence construction project specifications, city construction guidelines, and evidence of how those structures failed to

perform as required. *See supra* ¶ 7. Mr. Wall also provided evidence of his continued inability to obtain relief from city officials. (R. at 55-57, 64, 72, 86-87). Mr. Wall offered testimonial, pictorial, and video evidence of the valley pan's defective operation, including that water, mud, and sediment are left within the valley pan following rain flows and that water over-flows into his yard depositing silt and other materials. *See supra* ¶ 7.

31. Irrelevant for our purposes, however, are Mr. Wall's demands that the city and individual officials be held accountable, or that the city should reinstall the curb, gutter, and valley pan correctly. (Notice of Appeal; R. at 126-29). Mr. Wall's complaints that the city deprived him of due process, property rights without just compensation, or that public officials violated their oaths of office, are not germane to whether Mr. Wall carried his burden of proof before the County Board. *See supra* ¶¶ 21, 23; (Pet'r's Br. 13-14).

32. Still, for the purposes of this appeal, the County Board had before it uncontroverted evidence that the curb and gutter were defective. Mr. Wall argued that the valley pan's defective operation negatively affected the lot's value. *See supra* ¶¶ 6-11. In response, Assessor explained why he did not consider these structures in his valuation. *See supra* ¶¶ 13-15. Assessor testified that in the absence of comparable sales, mass appraisal and CAMA did not accommodate an adjustment for such defects. *Id.*

33. The lone issue, therefore, is whether the County Board correctly affirmed Assessor's valuation of Mr. Wall's property in light the valley pan's "negative influence." In other words, given Mr. Wall's proof that the City installed a defective concrete valley pan which allows water, mud, and silt to either remain within the structure, or deposit onto Mr. Wall's property, did state statutes or departmental rules allow Assessor to consider and adjust the lot's taxable value? Additionally, assuming Assessor could adjust for the valley pan's defective operation, did Mr. Wall carry his burden of demonstrating the proper valuation? *See supra*, Issue, at p. 2; *see In re Rebbe.*, Docket No. 2016-42, ¶¶ 64-65, 2018 WL 3020300, at *14 (Wyo. St. Bd. Equalization, June 7, 2018) (Taxpayer was required to demonstrate the value reduction resulting from lack of access to his property.).

34. Mr. Wall seizes upon the terms "economic obsolescence" and "depreciation" within the Department of Revenue's rules to argue that the "negative influence" from the defective curb, gutter, and valley pan should be considered a form of depreciation or economic obsolescence deducted from the value of his lot. (R. at 139-42, 157-60). Mr. Wall then argues that Assessor should have otherwise accounted for the "negative influence" of the valley pan because comparable properties utilized in the CAMA system were not similarly affected. (R. at 142-44).

35. The Department defines "Depreciation" as "[a] loss of utility and hence value from any cause. Depreciation may take the form of physical depreciation, functional obsolescence, or economic obsolescence." Rules, Wyo. Dep't of Revenue, ch. 9, § 4(a)(xiii) (2016). Physical depreciation is "[t]he physical deterioration as evidenced by wear and tear, decay or depletion of the property." *Id.* Applied to the present case, while

physical depreciation might have applied to the gutter, curb, or valley pan if they were valued and taxed, we agree with Assessor's explanation as to why physical depreciation does not describe the relationship between the poorly constructed valley pan and the value of Mr. Wall's lot. Assessor aptly explained that because he did not appraise or tax the poorly functioning valley pan, its value effectively came "off the top" of Mr. Wall's property value. Assessor agreed that physical depreciation would have applied to the valley pan itself, if it was appraised, but physical depreciation to the valley pan did not reduce the value of Mr. Wall's lot. (R. at 157-63).

36. Mr. Wall also questioned Assessor as to why obsolescence, another form of depreciation, should not be applied to reflect the valley pan's "negative influence" on Mr. Wall's land value. (R. at 139-44, 161-65). "Functional Obsolescence" is "[t]he impairment of functional capacity or efficiency, which reflects a loss in value brought about by such factors as defects, deficiencies, or super adequacies, which affect the property item itself or its relation with other items comprising a larger property." Rules, Wyo. Dep't of Revenue, ch. 9, § 4(a)(xiii)(B) (2016).

37. Assessor offered little explanation as to why functional obsolescence would not apply, responding that "[i]n mass appraisal, we're making uniform adjustments to an entire strata of property at one time." (R. at 163-64); *see supra* ¶ 15. He added, "in a mass appraisal setting, we really can't just focus in on that one property because the house down the street on your same road may not have the washboard roads because he goes out and grades it himself." (R. at 164).

38. We are not convinced. Assessor's explanation makes complete sense when examining land characteristics which are common to most properties within an LEA or neighborhood, such as washboard roads, overhead lines, poorly constructed streets, rocky terrain, beetle-killed trees in a rural setting, lack of public access among numerous properties, exposure to a public nuisance (sources of offending noise, odor, light, etc.), and the like. In those instances, sales of comparable properties within a neighborhood will more uniformly reflect the effect of those conditions on value. *See e.g. In re Gorski*, Docket No. 2015-52, ¶¶ 56-57, 2017 WL 1041926, at *11 (Wyo. St. Bd. of Equalization, Mar. 10, 2017) (taxpayer not entitled to valuation adjustment for overhead power lines, beetle-killed trees or lack of winter access because any devaluation was captured through comparison to other properties similarly situated); *In re Magarity*, Docket No. 2005-93, ¶¶ 66-86, 2006 WL 370816, at 15-19 (Wyo. St. Bd. of Equalization, Feb. 14, 2006) (describing assessor's application of the sales comparison approach and identification of common characteristics in comparable lots).

39. But, for properties subject to a distinct, isolated, and unusual condition, especially one which no like properties exhibit, the answer is less clear. The Sales Comparison Approach to valuation, applied to Mr. Wall's property, provides in part:

The comparable sales approach is an appropriate method of valuation when there are an adequate number of reliable arms-length sales and the properties subject to such sales are similar to the property being valued. For land valuation, the sales comparison is the preferred method of valuation. . . . Comparable sales shall be adjusted to reflect differences in time, location, size, physical attributes, financing terms or other differences which affect value. The use of this approach to value depends upon:

- (A) The availability of comparable sales data;
- (B) The verification of the sales data;
- (C) The degree of comparability or extent of adjustment necessary for time differences; and
- (D) The absence of non-typical conditions affecting the sales price.

Rules, Wyo. Dep't of Revenue, ch. 9, § 5(b)(i) (2016). The language does not state or imply that assessors are strictly limited to adjustments derived from comparable sales, or that they lack discretion to examine the effect of atypical land conditions.

40. In reviewing our cases concerning application of the Sales Comparison Method, we find that Assessors, without a comparable sale, have adjusted for uncommon land characteristics, defects, or circumstances. In *Gorski*, the assessor conceded that the land in question, because it lacked a clean water source, was devalued; we held that the record included sufficient evidence of the “cost to cure” the contaminated water source and established the amount of devaluation. *In re Gorski*, ¶¶ 51-55, 2017 WL 1041926, at *10-11. Similarly, this Board reviewed a county appeal wherein the assessor, without the benefit of a comparable sale, reduced the valuation of land by the cost to build a bridge necessary to make the land accessible. *In re McGlothlin*, Docket No. 2008-93, ¶¶ 23-27, 2009 WL 361190, at *6-7 (Wyo. St. Bd. of Equalization, Feb. 6, 2009). We affirmed assessor’s adjustment of value based on that cost. *Id.*

41. Tax tribunals in other jurisdictions have examined and upheld similar valuation adjustments in the absence of comparable sales. In *Hayman v. Noble, King Cty. Assessor*, Docket No. 56791, 2002 WL 726473 (Wash. B.T.A., Mar. 13, 2002), the Board examined a lot’s value in light of a landslide on adjacent property four years earlier and the possibility of a recurrence affecting the lot in question. The Board decided that a 30 percent adjustment to the land’s value was justified in light of the stigma from the unresolved danger of a landslide, but noted that such stigma would dissipate over time in the absence of a recurrence. *Id.* at *3. In *Olson v. Noble, King Cty. Assessor*, Docket No. 55011, 2000 WL 1681560 (Wash. B.T.A., Sept. 21, 2000), the Board adjusted the taxable value of several lots by 25 percent to account for the stigma of a chronically defective public sewage

system in the area. The Board explained that while it based that adjustment on no comparable sale, it estimated the negative impact to the properties would be greater than the impact of other stigma-producing conditions. *Id.* at *3.

42. We therefore disagree with Assessor that Wyoming’s mass appraisal system limited his ability to adjust the value of Mr. Wall’s lot to account for the unsightly and defective valley pan. Assessor offered no persuasive evidence or authority in support of that position, merely his view that he could not adjust Mr. Wall’s value without the aid of comparable sales. *See supra* ¶ 15. Assessor explained that few residential lots contain a valley pan. (R. at 156).

43. Assessors possess authority and discretion to account for the effect of isolated or atypical land conditions when the impact of those peculiar conditions on value is not captured through the sale of like properties. *See supra* ¶¶ 38-41; *see also* Rules, Wyo. Dep’t of Revenue, ch. 9, § 5(b)(iv) (2016) (“Reconciliation” requires consideration of different valuation methodologies and value indicators to arrive at final estimate of value best representing price an informed, rational purchaser would pay for property, as well as price an informed, rational seller would accept for property.).

44. Mr. Wall offered sufficient evidence to establish that, to the extent the city built a continuously defective valley pan through his property, his property was different from all surrounding properties. Mr. Wall compellingly argued that prospective buyers would not likely compare his lot favorably to otherwise similar properties.

45. Thus, the County Board erred when it concluded “Protestant did not submit any evidence that the Assessor incorrectly utilized the CAMA system.” (Cty. Bd. Decision, Conclusions of Law, ¶ 10; R. at 214). While Assessor generally utilized CAMA as required, he failed to consider the distinct “negative effect” of a land characteristic which his selected comparable sales could not reflect. Assessor incorrectly presumed that CAMA required that he value Mr. Wall’s land without regard to the defective valley pan.

46. While Mr. Wall carried his burden of demonstrating at least a potential valuation reduction, he offered no evidence of the resulting value reduction. In the absence of comparable sales indicating the price a similarly burdened property would bring in an arm’s length transaction, the cost of remediating, often referred to as the “cost to cure,” would reflect the value reduction. *See e.g. In re Gorski*, ¶¶ 45-50, 2017 WL 1041926, at *9-10; *Olson v. McLaughlin, Cowlitz Cty. Assessor*, Docket Nos. 03-081, 03-082, 2005 WL 936514, * 5-6 (Wash. B.T.A., Feb. 4, 2005) (A-typical condition caused flooding to land, the valuation effect of which was not reflected by the comparable sales, so owner’s cost to cure the flooding was a proper adjustment.); *Froling v. City of Bloomfield Hills*, Docket No. 443766, 2015 WL 4544410, * 23-27 (Mich. Tax Trib., May 27, 2005) (Evidence supported a reduction to value for external obsolescence based on the cost to remediate flooding caused by a defective storm sewer on adjacent properties).

47. In the absence of such evidence, Mr. Wall did not carry his burden before the County Board. See *supra* ¶¶ 21-22; See *In re Rebbe*, ¶¶ 64-65, 2018 WL 3020300, at *14.

CONCLUSION


48. Mr. Wall carried his burden of demonstrating that a defective valley pan on his lot likely reduced the lot's value. Assessor incorrectly determined that he lacked authority to evaluate the valley pan's effect on the lot's value. See *supra* ¶ 42. The County Board accordingly erred when it found no evidence that "Assessor incorrectly utilized the CAMA system." (R. at 214). However, Mr. Wall offered no evidence of the value reduction and, therefore, we must affirm the County Board's decision affirming the assessment.

ORDER

IT IS HEREBY ORDERED the decision of the Laramie County Board of Equalization, affirming the Assessor's 2017 determination of fair market value for Petitioner's property located at 1719 Gold Dust Road, Cheyenne, Wyoming, is **affirmed**.

DATED this 31st day of December 2018.

STATE BOARD OF EQUALIZATION



Martin L. Hardsock, Chairman



David L. Delicath, Vice-Chairman



E. Jayne Mockler, Board Member

ATTEST:



Nadia Broome, Executive Assistant

CERTIFICATE OF SERVICE

I certify that on the 31st day of December 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

Gladys Ayokosok,
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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