

BEFORE THE STATE BOARD OF EQUALIZATION

FOR THE STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF)
ALEXANDRE AND SYBILLA) Docket No. 2017-61
BALKANSKI FROM A DECISION)
BY THE TETON COUNTY BOARD OF)
EQUALIZATION)
(2017 Property Tax Assessment))

DECISION AND ORDER

APPEARANCES

Keith Gingery, Deputy County Attorney, filed a brief and argued on behalf of the Teton County Assessor (Assessor).

Erika M. Nash and Aaron J. Lyttle, of Long Reimer Winegar Beppler LLP, filed a brief and argued on behalf of Alexandre and Sybilla Balkanski (Petitioners).

DIGEST

Petitioners protested the Teton County Assessor's 2017 assessment of improvements (consisting of two residences and a barn) on their land located in Teton County. The Teton County Board of Equalization (County Board), following a contested case hearing, concluded that Appellant failed to rebut the presumption in favor of the County Assessor's valuation, that Assessor complied with all Department rules, and that Assessor presented sufficient evidence to sustain his valuation. (Cty. Bd. Decision 2-3, ¶¶ 3-6; R. at 0078-79). The Decision does not, however, identify any specific evidence in support of its determination or otherwise explain the basis for the ruling. The Wyoming State Board of Equalization (State Board), Chairman Martin L. Hardsocg, Vice Chairman David L. Delicath, and Board Member E. Jayne Mockler, 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 reverses and remands for entry of an order sufficiently stating the evidentiary basis for the County Board's decision.

ISSUES

Petitioners identified one issue: “Was the County Board’s decision reviewing the Teton County Assessor’s 2017 assessment of the Balkanskis’ property supported by substantial evidence, in accordance with procedures required by law, and neither arbitrary, capricious, nor inconsistent with law?” (Pet’rs’ Br. 5).

Assessor states the issue as “Whether the Teton County Assessor correctly determined the residential improvement valuation for the subject property?” (Assessor’s Br. 4).

PROCEEDINGS BEFORE THE COUNTY BOARD¹

1. Petitioners act as trustees of the Balkanski Family Trust-2002, which owns land (47 acres) and improvements located at 555 S. Ely Springs Road in Teton County, Wyoming. The property consists of two single family residential properties and a two-story barn. (Ex. B, R. at 006). The primary residence, at 9,348 square feet, is a two story, five bedroom house of excellent quality and very good condition. The smaller residence is also a two-story structure, consisting of 1,123 square feet. (Ex. B, R. at 007-0010).

2. Petitioners challenge Assessor’s valuation of the improvements only, not the land (R. at 0091), on several grounds.

a. Petitioners object to Assessor’s valuation of the improvements at \$7,137,845 (\$621/sq. foot) which increased substantially from the improvements’ 2015 (assessed in 2016) taxable value, \$5,676,178 (\$441/sq. foot). (R. at 0091-92; Ex. 5, R. at 0059, 0061).

b. Petitioners challenge Assessor’s inclusion of Petitioners’ property in HVH III², reflecting Assessor’s grouping of similar properties for mass appraisal purposes. (R. at 0093-95; Ex. K, R. at 0026-29; Ex. 2, R. at 0038-43). Petitioners argue for the

¹ The contested case proceedings before the County Board were somewhat expedited, and the County Board relied heavily on a “Hearing Summary” encapsulating the contestant’s and Assessor’s respective positions. (Oral Arg.; *See* Ex. A, R. at 002-4). The hearing officer, in this instance a County Board member, after receiving a summary of the facts noticed in the appeal, instructed Petitioners they had ten minutes to present their evidence. (R. at 0087). The presiding County Board member then instructed:

The assessor may solely rely upon his narrative and exhibits filed, or she may also make an argument. Then I shall close the evidentiary hearing. The Teton County Board of Equalization will then either take the case under advisement and issue a decision at later date or they will make a decision now and state the findings of facts and conclusions of law.

(R. at 0087-88).

² According to Assessor’s counsel, and the Deputy Assessor, who testified, HVH III is a characteristic classification attributed to certain “high value homes” in Teton County. (Ex. A; R. at 0089, 00102-108).

application of sales of different properties as comparable sales, which they assert are more similar or comparable to their property than those Assessor selected. (Ex. 2, R. at 38-43). However, Petitioners' selected properties are not included in Assessor's HVH III classification, the neighborhood (grouping of properties) selected by Assessor as a basis for comparison. (Assessor's counsel's remarks, R. at 102).

c. Petitioners offered the testimony of Real Estate Broker Ted Dawson, who testified that, based on his 18 years as a broker, the market for high end properties (properties selling for more than \$5 million), was in decline. That market's decline, Mr. Dawson explained, was reflected in the number of high end properties that remained on the market for more than a year. (R. at 0096-97; Ex. 2, R. at 0038). Mr. Dawson offered alternative comparable sales. (Ex. 1, R. at 0037; Ex. 2, R. at 0043). Mr. Dawson opined, consequently, that Assessor's valuation increase between 2015 and 2017 was unwarranted. (R. at 0096-98; Ex. 2, R. at 0038). He opined that Petitioners' property, based on age and other characteristics, should be valued at between \$450 and \$500 per square foot. (R. at 0098). He did not specifically testify regarding the group of suggested comparable sales.

d. Petitioners' explanation of how they calculated their requested valuation of the improvements is found in their Notice of Appeal to the County Board. (Ex. D, R. at 0013-16). The calculation appears to be an extrapolation from their valuation of \$441 to \$500 per square foot. *Id.* No witness specifically addressed this point in testimony.

e. Petitioners asserted the value of the improvements should be reduced by \$2,075,606—that the improvements should be valued at \$5,062,239. (Ex. A, R. at 001-5; Ex. 1, R. at 0033-36).

3. Assessor's counsel, without cross examining Petitioners' witness, summarized Assessor's position and commented on Petitioners' evidence. (R. at 0099-103). He described the Assessor's decision to include Petitioners' property in "H3" (otherwise referred to as "HVH III"), and the valuation adjustment applied to reflect the sales ratio analysis for properties sold in that class of properties. *Id.* Generally noting the difference between mass appraisal and fee appraisals, Assessor's counsel suggested that Mr. Dawson's opinions as to the valuation at issue were likely irrelevant. *Id.*

4. Chief Deputy Assessor, Kristin Williamson, adopted the views of Assessor's counsel regarding the Assessor's position. She then answered County Board questions regarding the valuation dispute:

a. Ms. Williamson explained the difficulty of valuing high-value homes and their strategy of distinguishing between "High Value Level 3" and "High Value Level 2" properties. She explained that through CAMA, there is little discretion because the system establishes values based on the type of materials used and condition of the property. (R. at 00105-06).

b. She explained that because there were at least five sales within HVH III during the previous year, no “time trending” (use of past year’s sales to trend values) occurred. (R. at 00106-07).

c. She explained that the HVH III (aka H3) properties were located throughout the county. (R. at 00107). She added that there were six tiers of high-end residences, and that Petitioners’ property was “right in the middle.” (R. at 00108).

d. Ms. Williamson testified that she would not use comparable sales from other classes unless she had adequate information about the comparables and lacked sufficient sales from within the class of property in which the property was included. She added that she does not do so with higher end properties because the range of value is so great.³ (R. at 00112-13).

5. The presiding County Board member closed the hearing, and the County Board voted unanimously to affirm the Assessor’s decision, subject to a later confirmation of the vote. (R. at 00115). Assessor’s counsel stated he would submit findings of fact and conclusions of law, subject to exception, which he would submit for the County Board’s action. (R. at 00116).

6. Petitioners timely appealed the County Board’s September 19, 2017 Decision on October 17, 2017. (Pet’rs’ Notice of Appeal).

REVIEW OF COUNTY BOARD’S DECISION

A. Standard of Review

7. When the State Board hears appeals 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.*

8. The State Board’s standard of review of a county board decision is, by rule, nearly identical to the Wyoming Administrative Procedure Act standard which a district court must apply in reviewing agency action, findings of fact, and conclusions of law. Wyo. Stat. Ann. § 16-3-114(c)(ii) (2017). The State Board’s review is limited to a determination of whether a county board’s action is:

a. Arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law;

³ The County Board did not offer Petitioners’ counsel an opportunity to cross-examine Ms. Williamson, but he was permitted rebuttal comments. (R. at 00108-09).

- 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).

9. Because the State Board Rules are patterned on the judicial review provisions of the Wyoming Administrative Procedure Act, judicial rulings interpreting Wyoming Statutes section 16-3-114(c) (2015) offer guidance. For example, where both parties submit evidence at a contested case hearing, we apply the substantial evidence standard:

We review an administrative agency's findings of fact pursuant to the substantial evidence test. *Dale v. S & S Builders, LLC*, 2008 WY 84, ¶ 22, 188 P.3d 554, 561 (Wyo. 2008). Substantial evidence is relevant evidence which a reasonable mind might accept in support of the agency's conclusions. *Id.*, ¶ 11, 188 P.3d at 558. Findings of fact are supported by substantial evidence if, from the evidence in the record, this Court can discern a rational premise for the agency's findings. *Middlemass v. State ex rel. Wyo. Workers' Safety & Comp. Div.*, 2011 WY 118, ¶ 11, 259 P.3d 1161, 1164 (Wyo. 2011). When the hearing examiner determines that the burdened party failed to meet his burden of proof, we will decide whether there is substantial evidence to support the agency's decision to reject the evidence offered by the burdened party by considering whether that conclusion was contrary to the overwhelming weight of the evidence in the record as a whole. *Dale*, ¶ 22, 188 P.3d at 561.

Jacobs v. State, ex rel., Wyo. Workers' Safety & Comp. Div., 2013 WY 62, ¶ 8, 301 P.3d 137, 141 (Wyo. 2013).

10. In conjunction with the substantial evidence standard, the State Board applies the "arbitrary and capricious" standard:

The arbitrary and capricious standard of review is used as a "safety net" to catch agency action that prejudices a party's substantial rights or is contrary to the other review standards, but is not easily categorized to a particular standard. *Jacobs*, ¶ 9, 301 P.3d at 141. "The arbitrary and capricious standard applies if the agency failed to admit testimony or other evidence that was clearly admissible, or failed to provide appropriate findings of fact or conclusions of law." *Id.*

Gonzales v. Reiman Corp., 2015 WY 134, ¶ 16, 357 P.3d 1157, 1162 (Wyo. 2015).

11. The State Board reviews 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.’ ” *Bowen v. State, Dep’t of Transp.*, 2011 WY 1, ¶ 7, 245 P.3d 827, 829 (Wyo. 2011) (quoting *State ex rel. Workers’ Safety & Comp. Div. v. Garl*, 2001 WY 59, ¶ 9, 26 P.3d 1029, 1032 (Wyo. 2001)).

Maverick Motorsports Grp., LLC v. Dep’t of Revenue, 2011 WY 76, ¶ 12, 253 P.3d 125, 128 (Wyo. 2011).

12. The State Board reviews findings of ultimate 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.

Chevron U.S.A., Inc. v. Dep’t of Revenue, 2007 WY 79, ¶ 10, 158 P.3d 131, 134 (Wyo. 2007) quoting *Basin Elec. Power Coop., Inc. v. Dep’t of Revenue, State of Wyo.*, 970 P.2d 841, 850-51 (Wyo. 1998).

13. The Wyoming Supreme Court has explained: “An agency must make findings of basic fact on all material issues before it and upon which ultimate findings of fact or conclusion are based in order to enable the reviewing court to determine whether evidence was considered on a reasonable and proper basis.” *Rodgers v. State, ex rel., Wyo. Workers’ Safety & Comp. Div.*, 2006 WY 65, ¶ 36, 135 P.3d 568, 580-81 (Wyo. 2006) (citing *Pan Am. Petroleum Corp. v. Wyo. Oil & Gas Conservation Comm’n*, 446 P.2d 550, 555 (Wyo. 1968)). An agency’s failure to do so renders the decision arbitrary and capricious. *Id.* The Court explained, “[i]t is insufficient for an administrative agency to state only an ultimate fact or conclusion, but each ultimate fact or conclusion must be thoroughly explained in order for a court to determine upon what basis each ultimate fact or conclusion was reached. The Court must know the why.” *Geraud v. Schrader*, 531 P.2d 872, 879 (Wyo. 1975), (quoted in *Rodgers*, 2006 WY 65, ¶ 32, 135 P.3d at 579; *Himes v. Petro Engineering & Const.*, 2003 WY 5, ¶ 19, 61 P.3d 393,399 (Wyo. 2003)).

B. Legal Analysis

14. In one of the three arguments supporting its appeal, Petitioners contend the County Board's decision is arbitrary and capricious because "its terse three-page decision demonstrates a failure to conduct a full review of the evidence and to make required findings of fact and conclusions of law." (Pet'rs' Br. 10). Petitioners complain the County Board did not "consider the evidence" and neglected "to provide reasoned findings of fact and conclusions of law based on the evidence presented." (Pet'rs' Br. 11). Petitioners finally assert "[t]he Board's decision contains little more than conclusory statements that Appellant failed to rebut the presumption in favor the [sic] Assessor's valuation and that the Assessor presented credible evidence (R. at 0078), with no findings of fact or explanation of how the testimonial and documentary evidence supported those conclusions." *Id.*

15. We agree with Petitioners' argument that the County Board failed to issue required findings of fact and conclusions of law, and that the decision contains little more than conclusory statements. For that reason, we cannot know whether the County Board considered the evidence, and, to the extent it did, which evidence compelled the County Board's ultimate ruling that Petitioners failed to carry their burden of overcoming the presumption in favor of Assessor's valuation.

16. Our cursory summary of the evidence is far more detailed than the County Board's recitation in its Decision. Indeed, from the County Board's statement of the facts and evidence, we know that all exhibits were accepted into evidence and that Mr. Dawson testified, but know nothing of the substance. (Cty. Bd. Decision, ¶ 1, R. at 0077). We know who owns the property, where it is located, and the present disputed valuation numbers (not the reasons they are disputed). (Cty. Bd. Decision., ¶ 2, R. at 0078). Finally, we are aware of Petitioners' valuation claim in total—the total value Petitioners asked the County Board to accept. (Cty. Bd. Decision, ¶ 4, R. at 0078). Following that statement of the evidence alone, the County Board concluded that Petitioners failed to carry their burden of going forward and their ultimate burden of proof, and that Assessor presented sufficient evidence to sustain his valuation. (Cty. Bd. Decision, ¶¶ 5-6. R. at 0078-79).

17. The County Board identifies no specific fact, exhibit, excerpt of testimony, unanswered questions, omitted evidence, or evidentiary development that compelled its ultimate finding in favor of the Assessor, or against Petitioners. While we might agree with Assessor's counsel that Mr. Dawson's testimony was irrelevant (counsel offered no objection, only observations in rebuttal, *supra* ¶ 3), as an appellate tribunal we are constrained to determine whether the *County Board* relied on substantial evidence—"relevant evidence which a reasonable mind might accept in support of the agency's conclusions." *Supra* ¶ 9.

18. The decision, for example, omits any mention of the alleged key valuation defect, that Assessor substantially increased the property's value between 2015 and 2017. *Supra* ¶ 2a. Notwithstanding that the Assessor's case addresses this point of contention, we cannot know whether the County Board considered this fact and, if so, why it found either party's explanation persuasive.

19. We reiterate the Wyoming Supreme Court's admonition that in the absence of a reasonable explanation in support of the County Board's decision, including sufficient detail allowing us to know "the why," we must find the County Board's Decision arbitrary and capricious, and then must remand for the County Board's further explanation. *Supra* ¶ 15. Because we normally do not sit as the trial court in appeals from county boards (unless the appeal is certified), our jurisdiction allows us only to determine whether the County Board's decision was supported by substantial evidence, or whether it was arbitrary, capricious, constituted an abuse of discretion, among other review criteria. *Supra* ¶ 8.

20. Because the County Board's decision does not offer a basis for any of its ultimate findings of fact or conclusions of law, we do not resolve or otherwise address this appeal on its merits. We shall do so upon reissuance of the County Board's decision if either party appeals that decision.

CONCLUSION

21. The County Board's Decision omits evidentiary findings and legal analysis necessary to adjudicate Petitioners' appeal. The County Board's Decision is, therefore, arbitrary and capricious, so we must reverse and remand for a decision setting forth the factual and legal basis of the County Board's determination.

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ORDER

IT IS HEREBY ORDERED that the decision of the Teton County Board of Equalization, remanding Assessor's 2017 determination of fair market value for Petitioners' property in this matter, is **reversed and remanded to the County Board for further proceedings in accordance with this opinion.**

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 of the date of this decision.

DATED this 22nd day of March 2018.

STATE BOARD OF EQUALIZATION


Martin L. Hardsocg, Chairman


David L. Delicath, Vice-Chairman


E. Jayne Mockler, Board Member

ATTEST:


Nadia Broome, Executive Assistant

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd 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:

Erika M. Nash
Aaron J. Lyttle
Long Reimer Winegar Beppler LLP
P.O. Box 3070
270 West Pearl Street, Suite 103
Jackson, WY 83001

Keith Gingery
Deputy Teton County Attorney
P.O. Box 4068
180 South King Street
Jackson, WY 83001



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

cc: State Board of Equalization
Dan Noble, Director, Dept. of Revenue
Brenda Arnold, Administrator, Property Tax Div., Dept. of Revenue
Commissioners/Treasurer/Clerk - Teton County
CCH
ABA State and Local Tax Reporter
State Library
File