

BEFORE THE STATE BOARD OF EQUALIZATION
FOR THE STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF)
EDWARD AND CAROLYN MOSHER) Docket No. **2017-65**
FROM A DECISION BY THE CROOK)
COUNTY BOARD OF EQUALIZATION)
(2017 Property Tax Assessment))

DECISION AND ORDER

APPEARANCES

Edward Mosher filed a brief and argued on behalf of Edward and Carolyn Mosher (Petitioners).

Joseph M. Baron, Crook County & Prosecuting Attorney, filed a brief and argued on behalf of the Crook County Assessor, Theresa Curren (Assessor).

DIGEST

Petitioners challenged various aspects of the Crook County Assessor's 2017 assessment of their home, primarily the manner by which Assessor measured the residence's square footage. Petitioners also disagree that their home is a one and one-half story home, insisting their home should be valued as a single level ranch style home with a finished attic. The County Board of Equalization (County Board) affirmed Assessor's valuation, concluding Petitioners offered insufficient evidence of nonconformance with Wyoming property tax valuation guidelines. 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 affirms.

ISSUES

Petitioners press primarily three issues.¹ They contend Assessor, in applying the cost valuation method, was required to rely on the finished interior square footage of their home rather than the home's exterior dimensions. In this assertion, they rely heavily on guidance from Marshall & Swift, an appraisal industry reference applied within Wyoming's computer assisted mass appraisal (CAMA) system. Second, Petitioners disagree that their home is a one and one-half story structure with a finished partial second floor. They argue their home should be valued as a single floor residence with a finished attic. Finally, Petitioners assert Assessor erred when she valued their home as a structure of completed additions, as opposed to an uninterrupted construction occurring over a seven year period. (Notice of Appeal 2, 6-7; Pet'rs' Opening Br. 14, 17; Pet'rs' Reply Br. 1-5, 11).

Assessor more generically identifies the issues along the State Board's statutory review function: whether the County Board acted arbitrarily or capriciously, whether it abused its discretion or failed to act in accordance with law, and whether substantial evidence supports its decision. (Assessor's Br. 2); *see infra* ¶ 18.

EVIDENCE PRESENTED TO THE COUNTY BOARD

1. Mr. Edward Mosher presented Petitioners' case before the County Board. Mr. Mosher extensively questioned technical aspects of the CAMA valuation process, and his testimony frequently blended Petitioners' allegations with technical argument, along with his recall of past dealings with Assessor's Office. Notwithstanding voluminous evidence concerning the house's construction and Petitioners' past interactions and settlements² with Assessor, the County Board focused on the CAMA valuation process and the parties' interpretation of technical guidelines. (R. at 303-04). We summarize only that admitted evidence and, for a better understanding of the proceedings, non-admitted evidence, pertinent to Petitioner's three claimed errors on appeal.

¹ Although Petitioners seek resolution of three core issues in their appeal, Petitioners' digressive presentations before the County Board and the State Board revealed many objections and argued appraisal defects. (*See* Ex. Mosher # 8, R. at 166-72; Hr'g Recordings 1-3).

² In response to numerous broad objections from Assessor's counsel before and during the hearing, Mr. Mosher withdrew many exhibits, and the hearing officer denied admittance of many others. (R. at 149-50, 235-36; Hr'g Recording 2, 00:47:00-2:18:00). Petitioners do not cogently challenge the hearing officer's disallowance of exhibits or rulings on the many objections, and because the Hearing Officer offered a reasonable explanation for not admitting exhibits, we do not further consider those rulings. We conclude that the Hearing Officer's rulings on exhibits were neither arbitrary nor capricious, and his conduct of the hearing over many hours afforded Petitioners' reasonable opportunity to pursue their tax disputes with the Assessor. *See infra* ¶ 20.

2. Petitioners labored to construct their home in Crook County between 2006 and 2012. (Hr’g Recording 1, 17:00). They first framed their home and completed the attached garage at one end, thereafter gradually completing the exterior and interior of the framed structure over a seven year period.

3. Assessor did not dispute that Petitioners constructed the first floor of their home as one continuous process, rather than as separately commenced and completed additions. (Exs. 1-7, R at 158-65; Exs. 12-14, R. at 218-28; Hr’g Recording 3).

4. Petitioners’ home consists of a garage, guest room, living/dining room/kitchen/foyer, den, master bedroom, attic/second floor bedroom, and detached garage. (R. at 109-10, 173, 223, 232). These are arranged in a curved, linear design. *Id.*

5. Petitioners asked Assessor to classify their home as a single level home with a finished attic and balcony. (Hr’g Recordings 1-3; Statement of Appeal, R. at 4). Mr. Mosher explained that in 2013, Petitioners improved the attic, which at first was merely a “crawl space,” into something habitable. The second floor, accessible by stairs, was improved by Petitioners raising the walls from four feet in height to eight feet and by converting a second level closet into a bathroom. They also added large windows to the attic, which is built atop the center of the house, but its perimeter is smaller than that of the first floor below. Petitioners painted the walls and added carpet and limited electrical service, but did not improve the second level with heating or air conditioning. (Hr’g Recording 1, 00:1900 – 00:22:00; Hr’g Recording 2, 00:16:00; R. at 19, 100, 102, 143-44, 158-65, 223). Petitioners upgraded the second floor and added amenities to accommodate a relative’s occupancy, after which they have used the finished upper floor as storage. *Id.*

6. Petitioners demonstrated that the attic’s walls were eight feet in height, rather than the Assessor’s estimated nine feet. Assessor agreed to alter her valuation and assessment accordingly. (Hr’g Recording 3).

7. In support of their focal claim that CAMA’s cost-based value of the home must be derived from a precise square footage measurement of the “finished” interior, Petitioners relied extensively on Marshall & Swift guidelines and Mr. Mosher’s credentials as a certified Marshall & Swift user. Mr. Mosher repeatedly emphasized that the Marshall & Swift program itself, and therefore Wyoming law as well, demanded strict compliance with Marshall & Swift guidelines. Mr. Mosher also referred to the Marshall & Swift “RCH,” or Residential Cost Handbook, and other Marshall & Swift materials³, to support and illustrate his point that interior measurements, rather than home exterior measurements, must be used in an appraisal. This material included Mr. Mosher’s Curriculum Vitae (Ex. 11, R. at 196-216), Marshall & Swift License Agreement (R. at 7-8), “Square Foot Method” instructional

³ Most of the Marshall & Swift materials were not admitted as evidence, but were nonetheless included in the record as a published resource. *Supra* ¶ 1, n. 2; (R. at 7-8, 20-49, 59-60, 72, 74-79).

materials and an Appraisal Form (R. at 27-32, 74-80), the “SwiftEstimator Residential Estimator Worksheet” (R. at 36-43), Department of Revenue directives that Marshall & Swift cost data must be used without alteration (R. at 44-49), and numerous annotated sketches, diagrams and the parties’ dimension measurements, some of which were not admitted.

8. On the question of how the house was to be measured, each party focused on a key Marshall & Swift definitional term, “total finished floor area,” the distinction between that term and the related concept of the “finished” living area, and Marshall & Swift’s direction that: “The gross square foot area will always be based on outside dimensions and include the thickness of the exterior wall. Unless otherwise specified, the square footage will be the total finished floor area.” (R. at 27; Hr’g Recordings 1-3). Assessor argued that this definitional language supported her position that exterior measurements were appropriate, while Petitioners countered that this was merely a definition and not a mandate to rely on exterior measurements. *Id.*

9. In contrast to Petitioners’ heavy reliance on Marshall & Swift, Assessor offered a general narrative of her valuation process (Ex. A, R. at 130), discussed application of the cost valuation method applied through Wyoming’s CAMA system, and explained how she arrived at a Replacement Cost New valuation for Petitioners’ home. (Hr’g Recording 3; R. at 129-48). She explained that much of the valuation occurs automatically after entry of the residence’s characteristics, including property condition. *Id.* Assessor had visited Petitioners’ property and measured the home’s exterior four separate times; she loaded the measurements into the CAMA system. (Hr’g Recording 3, 2:20; Ex. A, R. at 142).

10. In response to Petitioners’ claim that relying on interior finished floor measurements was mandatory, Assessor answered that in accordance with Marshall & Swift’s initial definitional statement that “gross foot area will always be used on outside dimensions and include the thickness of the exterior wall[,]” exterior measurements were appropriate. *Supra* ¶ 8; (Hr’g Recording 3). Thus, Assessor inferred that this definitional language doubled as a requirement that exterior measurements be used. Assessor further testified that the CAMA system generally required use of exterior measurements, but directed the County Board to no independent evidence or reference addressing this requirement. Her CAMA training, she recalled, instructed that valuations should rely on exterior measurements of residential properties. (Hr’g Recording 3, 00:07:50).

11. Assessor testified that she spoke with other assessors who relied on exterior property dimensions in performing their valuations, but she did not specify which assessors or the time and place of such conversations. (Hr’g Audio 3, 00:07:50). Assessor speculated that many property owners would not permit her staff appraisers to take interior measurements. She surmised that relying on interior measurements for some properties, but not others, would result in non-uniform valuations. *Id.* Paradoxically, Assessor testified that she takes interior measurements when requested or if there is an appeal, but did not explain (nor was

she asked) how such measurements were applied (in light of her earlier testimony that use of interior measurements would create non-uniformity). (Hr’g Recording 3, 00:08:30, 01:27:00). She had not measured the interior dimensions of Petitioners’ home after its completion, but was not asked why she had not done so. (Hr’g Recording 1, 00:40:00; Hr’g Recording 3, 00:06:00).

12. We find that Petitioners are correct as to their interpretation of Marshall & Swift’s direction: Marshall & Swift advises reliance on interior finished measurements rather than gross exterior measurements. (R. at 27-32, 60, 72, 76-79; Hr’g Recordings 1-2). As we explain below, *infra* ¶¶ 26-34, that finding does not end the inquiry.

13. Denying Petitioners’ claim that the second floor of the home was merely a finished attic, Assessor testified the attic was considered a second level because it was “livable.” (Hr’g Recording 3, 00:12:50, 01:02:00; Ex. A, R. at 132). She explained the technical process of inputting the square footage into RealWare (the computer program applying CAMA) and that the system automatically calculates the value. *Id.* She further explained that the CAMA system dictates that homes be classified as one and one-half stories when the area of the second level is 40%-60% of the area of the first level. *Id.*; *but see infra* ¶ 38.

14. Other than disagreeing with Assessor that the upstairs floor was “livable,” and stressing that they currently use the second level for storage, Petitioners offered no evidence demonstrating Assessor’s classification of the attic as a finished second floor improvement, *within the CAMA system*, was incorrect. *Supra* ¶¶ 5-6. In their briefing, however, Petitioners question Assessor’s application of the 40%-60% criteria as qualifying their home as a one and one-half story home. They note that even accepting Assessor’s square footage measurements, the attic’s measured square footage does not equal 40% or more of the total square footage of the first level. *Supra* ¶ 13. Pet’rs’ Reply Br. 27.

15. As to the third issue—how to characterize the house construction’s progress, Assessor offered no evidence contradicting Petitioners’ well-documented, factual explanation of the construction’s timing, progress, and completion. She did, however, explain how the CAMA system accounts for the valuation of improvements before they are completed. She testified that assessment of homes begins upon completion of 50%; for outbuildings, assessment begins when the structure becomes “enclosed.” She referred the County Board to backup appraisal documents denoting an improvement’s percent of completion. (Hr’g Recording 3, 00:23:00; Ex. A, R. at 131-38).

16. Other than Assessor’s specific concessions as to the timing of construction progress, Petitioners offered no evidence demonstrating that Assessor misapplied CAMA or its associated features, relative to construction timing.⁴

⁴ Mr. Mosher argued that if successful in obtaining revaluation of the home in accordance with his explanation of the construction’s beginning, middle, and end, the valuation would benefit him. However,

REVIEW OF COUNTY BOARD DECISION

A. Standard of Review

17. 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.*

18. 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;
- 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 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

altering the depreciation schedule was not his intent; he merely sought an accurate characterization of his property. (Hr'g Audio 2, 00:29:00-00:35:00).

(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).

20. 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).

21. 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).

22. 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)).

23. “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. Legal Analysis

24. The County Board rejected Petitioners’ three particularized claims. It held that Marshall & Swift’s references to “gross square footage,” which refers to the outside dimensions of a property, govern. The County Board held that gross square footage measurements ensured that all properties were uniformly treated. (Cty. Bd. Decision, R. at 303). Second, without much explanation, the County Board affirmed Assessor’s classification of Petitioners’ property as a one and one-half story home because her determination complied with Marshall & Swift. *Id.* Third, the County Board found no credible evidence that changing the terminology of the home’s construction progress over seven years (i.e. referring to “additions” rather than “modules”) or otherwise classifying the construction, would affect the valuation.⁵ *Id.* We shall address each ruling in turn.

i. Measurement of exterior or interior of Petitioners’ home

25. Answering Petitioners’ first and most impassioned claim, the County Board stated: “The answer to that question is quite simple. Use the gross square footage. Marshall and Swift states that it will always be used.” (Cty. Bd. Decision, R. at 303). Assessor’s reliance on exterior measurements was consistent with Wyoming law, *but not for the reason the County Board cited.* Indeed, the County Board incorrectly interpreted the Marshall & Swift’s guidance and reference to “gross square footage” as the answer to Petitioners’ question, which it was not. To the contrary, Petitioners correctly argued that Marshall & Swift advises that interior measurements, not exterior measurements, should be used.

⁵ The record includes various references and discussions relating to other narrow issues, some seemingly raised for the first time during the hearing. The Assessor assented to the requested resolution of several of those miscellaneous questions, but not all. Because Petitioners have not fully addressed those claims in this appeal, we do not address them either.

26. But contrary to Petitioners' arguments⁶ and the County Board's determination, the Marshall & Swift guidance on "gross square footage" and related "square foot method" is not determinative within Wyoming's CAMA system and, therefore, did not bind Assessor. The County Board incorrectly attributed predominant authoritative weight to Marshall & Swift which it did not merit.

27. To answer the question presented—whether Assessor was required to measure the interior of Petitioners' home—we first examine basic statutory and regulatory guidance to county assessors. Wyoming statutes provide that "all taxable property shall be annually listed, valued and assessed for taxation in the county in which located and in the name of the owner of the property on January 1[.]" Wyo. Stat. Ann. § 39-14-103(b)(i)(A) (2015). Property is annually valued at its fair market value, the appraisal methods to estimate which are prescribed by rule and regulation. Wyo. Stat. Ann. § 39-13-103(b)(ii) (2015). 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).

28. In accordance with its obligations to prescribe a system of establishing the fair market value of all property, and to ensure the uniform valuation of properties, the Department adopted CAMA, a computer-assisted mass appraisal system. Wyo. Stat. Ann. § 39-11-102(c)(xv) (2017); Rules, Wyo. Dep't of Revenue, ch. 9 § 7 (2016). CAMA effectively "automates the comparable sales and replacement cost methods" prescribed by rule. *Britt*, ¶ 39, 126 P.3d at 128. The Wyoming Supreme Court has recognized the validity of valuations derived from the CAMA system. *Id.*; *Gray v. Wyo. State Bd. of Equalization*, 896 P.2d 1347, 1351 (Wyo. 1995).

29. The Department's rules governing county property tax valuations do not directly speak to the question of how assessors are to take measurements when valuing residential properties, but they do cite guiding appraisal industry references. For example, the "Cost Approach," which requires assessors to determine a property's replacement cost new, less depreciation, "is calculated using Marshall and Swift cost tables." Rules, Wyo. Dep't of

⁶ Petitioners' written submissions demonstrate time and time again their misapprehension that Marshall & Swift's appraisal guidelines not only applied, but that Assessor lacked any discretion to deviate from that specific appraisal guidance. They argued and proposed, for example, a conclusion of law to the County Board that: "Use of the Marshall-Swift Cost Approach as defined and precisely specified within their mandated Residential Cost Handbook is the singularly appropriate Method to calculate RCNLD." (Pet'rs' Proposed Order on Appeal, R. at 271). Among similar statements throughout the hearing in testimony, argument, and briefing, Mr. Mosher argued in his testimony that "The aggregate square footage of the structures are the basis for all calculations and are required in the fashion stipulated in the Residence Cost Handbook. We are all legally required to follow this; this is our standard, passed down from the state." (Hr'g Recording 2, 00:40:00). Although Assessor argued in briefing that Marshall & Swift did not comprehensively govern the assessors' valuation practices, she nonetheless offered an interpretation of the Marshall & Swift guidance as if it governed. (Assessor's Br. 2-3).

Revenue, ch. 9 § 5(b)(ii) (2016). The Department further instructs appraisers to use the “Marshall and Swift Valuation Service” to establish costs of personal property when applying the cost method. *Id.* at § 5(c)(i)(C). The Department does not, however, assign Marshall & Swift a role beyond that of property cost surveyor/resource, i.e. the Department updates its CAMA system with Marshall & Swift property replacement cost tables. (*See R.* at 47-48, memorandum from Department to Assessor explaining that Marshall & Swift cost tables are used to update the CAMA system annually).

30. As for the appraisal standards which arguably speak to the question presented, the Department has adopted standards set by the International Association of Assessing Officers (IAAO). Department certification as a property tax appraiser may be obtained through successful completion of IAAO appraisal coursework, and “[t]he IAAO Standards of Professional Practice & Ethics Update Course is required to be taken once every four (4) years.” Rules, Wyo. Dep’t of Revenue, ch. 13 § 5(g) (2014). Conversely, certification as an appraiser does not require mastery of the Marshall & Swift program.⁷ The Department specifies that unless in conflict with its rules, IAAO statistical analysis and standards “shall prevail.”⁸ Rules, Wyo. Dep’t of Revenue, ch. 9 § 6(a) (2016). We therefore examine IAAO guidelines to better understand a mass appraisal official’s discretion as to the methods for measuring properties.

31. IAAO issued two nearly identical publications addressing the mass appraisal of real property. IAAO Standard on Mass Appraisal of Real Property (2013); IAAO Standard on Mass Appraisal of Real Property (2017). When “Collecting and Maintaining Property

⁷ Examination of the Marshall & Swift RCH reveals it to be a comprehensive residential appraisal resource, offering several levels of appraisal scrutiny and precision. However, it is not necessarily geared toward mass appraisal. *See* Marshall & Swift, Residential Cost Handbook, pp. 1-3 (2016). As such, the Handbook’s guidance clearly presumes access to information which may not be readily available in all types of appraisal or under all circumstances.

⁸ It is worth noting that the Department’s previous chapter nine rules more explicitly directed that “[a]ll methods used by the Assessor shall be consistent with the applicable IAAO and USPAP standards including, but not limited to, the following (except where standards conflict with Wyoming Statute or Rule): IAAO Standard on Mass Appraisal (2008), IAAO Standard on Automated Valuation Models (AVMs) (2003), IAAO Standard on Ratio Studies (part A) (2010), Uniform Standards of Professional Appraisal Practice (USPA Standard 6 (2010-2011)[.]” Rules, Wyo. Dep’t of Revenue, ch. 9 § 5 (2011); *See e.g. In re John Gorski*, 2017 WL 1041926, Doc. No. 2015-52, ¶¶ 33-35, 47-49 (Wyo. St. Bd. of Equalization, Mar. 10, 2017) (referring to IAAO guidance regarding cost-to-cure as an appropriate adjustment in valuation process); *But see In re Wirth Revocable Trust*, 2009 WL 797879 Doc. No. 2008-95, ¶¶ 52-54 (Wyo. St. Bd. of Equalization, Mar. 18, 2009) (IAAO standards not binding on Wyoming assessors). Prior to the Department’s formal adoption of IAAO and USPAP as authoritative guidance, the State Board held that these resources were merely factors to consider along with others. *In re D Bar D Ranch, LLC*, 2006 WL 3327975, Doc. No. 2005-113, ¶¶ 102-05 (Wyo. St. Bd. of Equalization, July 20, 2006). While we struggle to understand why the Department omitted this helpful language from its present chapter nine rules and offered little substitute guidance on standards to be followed, the present rules at least implicitly adopt IAAO’s guidance as the resource for appraisal practice and standards, and we find no competing authoritative resource to answer questions such as the one presented.

Data,” the IAAO recommends that “[d]epending on the data required, an interior inspection *might* be necessary. At a minimum, a comprehensive exterior inspection should be conducted.” IAAO Standard on Mass Appraisal of Real Property, § 3.3.2.1 (2013). The IAAO recommends achieving the following level of accuracy when measuring area:

Continuous or area measurement data, such as living area and exterior wall height, should be accurate within 1 foot (rounded to the nearest foot) of the true dimensions or within 5 percent of the area. (One foot equates to approximately 30 centimeters in the metric system.) If areas, dimensions, or volumes must be estimated, the property record should note the instances in which quantities are estimated.

Id. at § 3.3.2.4.

32. To maintain accurate property characteristic data, the IAAO recommends that, among other processes, “reinspections should include partial remeasurement of the two most complex sides of improvements and a walk around the improvement to identify additions and deletions.” IAAO Standard on Mass Appraisal of Real Property (2013) § 3.3.4.

33. As one might expect of an appraisal system intended to efficiently value possibly tens of thousands of properties each year, and requiring physical inspection of all properties no less than once every six years, the IAAO recommends “[t]he data collection format should promote consistency among data collectors, be clear and easy to use, and be adaptable to virtually all types of construction.” IAAO Standard on Mass Appraisal of Real Property (2013) § 3.3.2.2.

34. Thus, neither the Department’s rules nor IAAO guidance materials require or advise that assessors must take interior measurements of a residence. Rather than mandate an impractical or unrealistic appraisal standard⁹, the IAAO recommends processes that should be workable under nearly all circumstances: “Mass appraisal is the process of valuing a group of properties as of a given date and using common data, standardized methods, and statistical testing.” *Id.* at § 2.

35. In any event, Petitioners offered insufficient evidence or authority to demonstrate that Assessor’s method of measuring Petitioners’ house conflicted with Wyoming law. Wyoming law does not require assessors to measure the interior or finished square footage of residences; while the County Board incorrectly relied upon, and misinterpreted, Marshall & Swift’s guidance, it correctly found no evidence that Assessor’s method of

⁹ Assessor testified to the impracticability of requiring interior measurements, explaining that her staff would not be able to gain entry into every property to obtain interior measurements. She stated that she measured the interior of properties upon request or if an appeal arose. *Supra* ¶¶ 9-11. She was not questioned on why she had not measured the interior of Petitioners’ home after its completion. *Id.*

measuring violated applicable appraisal guidelines.¹⁰ (R. at 304). In the absence of compelling evidence demonstrating faulty measurement of the Petitioners' home's exterior, we presume Assessor measured the home correctly, as described in evidence and reflected in Assessor's assessment, and affirm the County Board's decision on the grounds stated herein. *Supra* ¶ 23.

ii. Classification of home as a one and one-half story residence

36. We also affirm the County Board's decision that Assessor correctly classified Petitioners' property as a one and one-half story structure. Although Petitioners offered compelling evidence to support a different, preferred classification for their attic, they failed to demonstrate how Assessor's classification was improper *under CAMA system guidelines*, which was their burden to carry. *Supra* ¶ 23.

37. More specifically, Petitioners conceded that they converted the attic for a relative's indefinite occupancy, equipping the attic with a bathroom, windows, electricity, and other amenities, but not heat or air conditioning. *Supra* ¶ 5. Mr. Mosher testified that he "deactivated" some of those amenities upon the relative's departure, and that the attic currently served as nothing more than storage. *Id.* But, the evidence does not show that Mr. Mosher rendered the attic unlivable. *Id.*

38. Further, Petitioners did not sufficiently refute Assessor's explanation that CAMA classifies homes to be one and one-half stories if the second story is "livable" and it covers at least 40% to 60% of the main level area underlying the second floor. *Supra* ¶ 13-14. Petitioners correctly take issue with how Assessor determined that the second level satisfied the 40%-60% standard, objecting that the square footage of the attic did not equal at least 40% of the first level square footage. *Supra* ¶ 14. While Petitioners correctly object that the attic's square footage, when compared to the first level square footage, does not exceed 40%, that guidance is not a hard-and-fast standard for a home to qualify as a one

¹⁰ Review of decisions from other state tax tribunals does not support Petitioners' position that interior measurements must be used. *In re Hall*, Appeal No. 90-A-5593, 1991 WL 524127 at 2 (Idaho Bd. Tax App. Apr. 14, 1991) ("For residential ad valorem purposes, exterior measurements are used."); *Gratis Roze and Joanna Roze v. Scott Noble, King Cty. Assessor*, Docket No. 64929, 2007 WL 2301696 at 7, 9 (Wash. Bd. Tax. App., May 9, 2007) ("All measurements were taken from the exterior of the home, which is standard practice throughout the Department of Assessments of King County. Interior measurements are not used to calculate living area because interior access is not always possible."); *Theodore A. Miller & Nancy D. Miller v. Town of Gorham*, Docket No. 23610-07PT, 2010 WL 2891223 at 3 (N.H. Bd. Tax Land App., May 13, 2010) (In mass appraisal, it is common to rely on external measurements, and these will be used unless proof that they are incorrect); and *Lawrence & Judith Deutsch v. Michael Brooks, Acting Assessor, St. Louis Cty., Mo.*, Appeal No. 09-10107, 2011 WL 794413, *8 (Mo. State. Tax. Comm'n, Mar. 2, 2011) ("The use of exterior measurements, as opposed totaling the individual square footages of the component living areas, to arrive at the gross living area is the appropriate method for appraisal practice in appeals before the Commission.").

and one-half story residence. Assessor's mention of the "40% to 60%" reference, found in the Marshall & Swift RCH, is merely a suggested guideline:

One-and-one-half-story residences have two levels of living area. Characterized by a steep roof slope and dormers, the area of the upper level, whether finished or unfinished, is usually 40% to 60% of the lower level. For one-and-one-half-story residences with a finished upper level, enter the respective cost table at the total floor area of both levels. For one-and-one-half-story residences with an unfinished upper level, enter the applicable cost table at the first floor area only.

Marshall & Swift, Residential Cost Handbook, 4 (2016) (emphasis added). Conversely, that the second level be "livable" is required under Marshall & Swift. *Id.* Petitioners did not demonstrate that their second floor was unlivable. *Id.*

39. While the County Board's legal conclusion on this claim is somewhat difficult to understand (R. at 303), we agree that Petitioners offered insufficient evidence to demonstrate that Assessor's classification was contrary to appraisal guidelines. We, like the County Board, must consequently presume that Assessor correctly classified and valued the second floor of Petitioners' home and the home itself as a one and one-half story improvement. *Supra* ¶ 23. Substantial evidence supported the County Board's resolution of this issue. *Supra* ¶ 19.

iii. Single continuous construction vs. construction with additions

40. Petitioners' third claim we find difficult to discern. Petitioners, in their Reply Brief, ask that we order Assessor "to record the Mosher residence shall be recognized and described as a single structure, commenced in 2007 and continuously constructed until completion on Dec. 31, 2012. There shall be no reference to 'additions', 'modules' or years beyond 2007." (Pet'rs' Reply Br. 4).

41. The question asked before the County Board was whether Assessor's characterizations of the home's construction as uninterrupted and continuous, would impact the valuation of Petitioners' property. We find that Petitioners offered sufficient evidence in support of their claim as to the starting point and completion of their home, but failed to articulate precisely how Assessor mis-valued the property in light of their successful demonstration of the construction's beginning, middle, and end.

42. Assessor, for her part, testified to the CAMA system's application to property before construction is complete. *Supra* ¶ 15. Petitioners did not offer sufficient evidence of how Assessor's characterization of the construction should change the value, apart from how depreciation should apply.

43. Like Petitioners' presentation of other claims, Mr. Mosher's articulation of this claim suffered from innumerable digressions, asides, and redirection to other aspects of the appeal. One such distraction was Petitioners' disagreement with Assessor's terminology applied to portions or stages of the construction, i.e. whether properly termed a "module," "addition," or other term. Yet, Petitioners themselves used the offensive term "module" during the hearing, and in written communications, to describe phases of the construction. Unable to glean the legal or appraisal significance of which term should or must apply, we conclude that Petitioners did not demonstrate Assessor's terminology to be incorrect as a matter of law or to otherwise be in violation of required appraisal practice, at trial.

CONCLUSION

44. The County Board correctly concluded that Petitioners failed to carry their burden of proving Assessor's valuation conflicted with Wyoming property tax statutes or the Department of Revenue's applicable rules. Specifically, Assessor's reliance on exterior home measurements fell within her discretion. The evidence did not demonstrate that Assessor's classification of Petitioners' house as one and one-half stories was incorrect as a matter of law. Finally, although Petitioners offered sufficient evidence of how construction of their home commenced and ended, they offered insufficient evidence that Assessor misvalued the home in light of those facts, except for the various miscellaneous issues which the parties mutually agreed to resolve.

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ORDER

IT IS HEREBY ORDERED the decision of the Crook County Board of Equalization, affirming the 2017 valuation of the Mosher property located in Crook County, Wyoming, except for those narrow issues which the parties agreed to resolve on the record and which are enumerated in paragraph 11 of the County Board decision, is **affirmed**.

DATED this 9th day of August, 2018.

STATE BOARD OF EQUALIZATION



Martin L. Hardsogg, 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 9th day 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:

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File