

BEFORE THE STATE BOARD OF EQUALIZATION

FOR THE STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF)
GO BLUE, LLC FROM A DECISION) Docket No. **2017-67**
BY THE LINCOLN COUNTY BOARD)
OF EQUALIZATION)
(2017 Property Tax Assessment))

DECISION AND ORDER

APPEARANCES

Ryan Olsen appeared on behalf of Go Blue, LLC (Go Blue).

Spencer L. Allred, Lincoln County and Prosecuting Attorney, appeared on behalf of Lincoln County Assessor, Debbie Larsen (Assessor).

DIGEST

Go Blue, LLC appeals the decision of the Lincoln County Board of Equalization (County Board) upholding the Lincoln County Assessor’s 2017 assessment of Go Blue’s greenhouse. 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 the record. Because Go Blue has not presented cogent argument or cited relevant authority, the State Board affirms the County Board’s decision.

ISSUE

Go Blue filed a notice of appeal and a brief, but did not identify issues, cite authority, or present argument beyond disagreeing with Assessor’s assessment. (Notice of Appeal; Pet’r’s Br.). Assessor filed a brief but also did not identify issues, cite to the record, or cite authority. (Assessor’s Br.).

JURISDICTION

The State Board “shall hear appeals from county boards of equalization ... 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 of the County

Board's final decision. Rules, Wyo. State Bd. of Equalization, ch. 3 § 2(a) (2006). The County Board issued its final decision on September 22, 2017, but did not mail it to Go Blue until October 2, 2017. (Cty. Bd. Decision at 1). Go Blue filed its appeal 30 days later. (Notice of Appeal). Accordingly, the notice of appeal was timely and we have jurisdiction.

FACTS PRESENTED TO THE COUNTY BOARD

1. The facts are not disputed. Ryan and Lara Lee Olsen, incorporated as Go Blue, LLC, own a parcel of land in Lincoln County. (Ex. 1). Go Blue built a 1,800 square foot greenhouse on their land. (Hr'g Recording¹). The greenhouse is made of dry-stacked cinder blocks filled with concrete. *Id.* It leaks, has a gravel floor, and is mostly below-grade. *Id.* The assessment of the greenhouse is the only thing at issue in this appeal.

2. In 2017, Assessor assessed Go Blue's greenhouse at \$33,858. (Ex. 1). Go Blue appealed that assessment to the County Board. (Ex. 1). At the County Board hearing, Mr. Olsen testified that the materials for the greenhouse cost between \$12,000 and \$13,000, and argued that the greenhouse should be valued somewhere between those amounts. (Hr'g Recording).

3. Assessor valued Go Blue's greenhouse using the replacement cost new, less depreciation method. (Ex. 2). She testified (albeit, without being sworn) that it would cost between \$31,000 and \$35,000 to hire a contractor to build a similar greenhouse. (Hr'g Recording). She also testified that she assessed Go Blue's greenhouse in the same way she would assess any similar building. *Id.*

CONCLUSIONS OF LAW

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

4. This Board reviews county board decisions as an intermediate appellate body and treats the county board as the finder of fact. *Town of Thermopolis v. Deromedi*, 2002 WY 70, ¶ 11, 45 P.3d 1155, 1159 (Wyo. 2002).

5. Our standard of review of a county board decision is nearly identical to the Wyoming Administrative Procedure Act standard, found at Wyoming Statutes section 16-3-114(c)(ii) (2017), that a district court must apply in reviewing such decisions. Our review is limited to determining whether a county board's action is:

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

¹ The quality of the hearing recording is poor: much of it, including most of Assessor's testimony, is unintelligible.

- (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).

6. Because our rules are patterned on the judicial review provisions of Wyoming Statutes section 16-3-114 (2017), judicial rulings interpreting that section offer guidance:

When an appellant challenges an agency's findings of fact and both parties submitted evidence at the contested case hearing, we examine the entire record to determine if the agency's findings are supported by substantial evidence. If the agency's findings of fact are supported by substantial evidence, we will not substitute our judgment for that of the agency and will uphold the factual findings on appeal. "Substantial evidence is more than a scintilla of evidence; it is evidence that a reasonable mind might accept in support of the conclusions of the agency."

Chevron U.S.A., Inc. v. Dep't of Revenue, 2001 WY 79, ¶ 9, 158 P.3d 131, 134 (Wyo. 2001) (citations omitted). "The party challenging the sufficiency of the evidence has the burden of showing the lack of substantial evidence to support the agency's findings." *Faber v. Dep't of Transp.*, 2009 WY 137, ¶ 5, 220 P.3d 236, 238 (Wyo. 2009).

7. In conjunction with the substantial evidence standard, we apply the "arbitrary and capricious" standard:

Even if sufficient evidence is found to support the agency's decision under the substantial evidence test, this [Board] is also required to apply the arbitrary-and-capricious standard as a "safety net" to catch other agency action which might have violated the Wyoming Administrative Procedures Act. *Decker v. Wyoming Medical Comm'n*, 2005 WY 160, ¶ 24, 124 P.3d 686, 694 (Wyo. 2005). "Under the umbrella of arbitrary and capricious actions would fall potential mistakes such as inconsistent or incomplete findings of fact or any violation of due process." *Id.* (quoting *Padilla v. State ex rel. Wyoming Workers' Safety and Comp. Div.*, 2004 WY 10, ¶ 6, 84 P.3d 960, 962 (Wyo. 2004)).

State, ex rel., Wyo. Workers' Safety & Comp. Div. v. Madeley, 2006 WY 63, ¶ 8, 134 P.3d 281, 284 (Wyo. 2006).

8. 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).

9. We also review a county board’s ultimate findings of fact de novo:

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

Basin Elec. Power Coop., Inc. v. Dep’t of Revenue, State of Wyo., 970 P.2d 841, 850-51 (Wyo. 1998).

B. Applicable statutes and rules

10. 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.*, 970 P.2d at 852. 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.*

11. The Wyoming Department of Revenue (Department) is required to confer with, advise, and give necessary instructions and directions to the county assessors as to their duties, and to promulgate rules and regulations necessary for the enforcement of all tax measures. Wyo. Stat. Ann. § 39-11-102(c)(xvi), (xix) (2015). In particular, the Department “shall prescribe by rule and regulation the appraisal methods and systems for determining

fair market value using generally accepted appraisal standards[.]” Wyo. Stat. Ann. § 39-13-103(b)(ii) (2015).

12. 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).

13. All taxable property must be valued annually at fair market value. Wyo. Stat. Ann. § 39-13-103(b)(ii) (2015). Fair market value is defined as:

[T]he amount in cash, or terms reasonably equivalent to cash, a well informed buyer is justified in paying for a property and a well informed seller is justified in accepting, assuming neither party to the transaction is acting under undue compulsion, and assuming the property has been offered in the open market for a reasonable time[.]

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

14. “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, ¶ 23, 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)).

15. A mere difference of opinion will not overcome the presumption favoring an assessor’s valuation. *J. Ray McDermott & Co. v. Hudson*, 370 P.2d 364, 370 (Wyo. 1962).

C. Review of the County Board’s decision

16. Go Blue asks us to declare that the County Board erred when it affirmed Assessor’s 2017 assessment of Go Blue’s property.

17. In its written submissions to this Board, Go Blue did not present cogent argument, cite relevant authority, or identify any issues beyond simply disagreeing with the assessment.

18. The failure to present cogent argument or cite relevant authority warrants summary affirmance. *In re Jan Charles Gray*, 2017 WL 5559382 at *11, Docket No. 2016-44, ¶ 33

(Wyo. State Bd. of Equalization, Nov. 9, 2017) (*citing Fowles v. Fowles*, 2017 WY 112, ¶ 30, 402 P.3d 405, 413 (Wyo. 2017)).

19. We, therefore, summarily affirm the County Board's decision based on Go Blue's failure to present cogent argument or cite relevant authority.

20. We also affirm because Go Blue has not articulated a basis upon which the State Board might reverse.

CONCLUSION

21. We conclude the County Board correctly affirmed Assessor's 2017 valuation of Go Blue's greenhouse because Go Blue did not present evidence sufficient to overcome the presumption in favor of Assessor's valuation. Neither has Gold Blue cogently stated why the County Board's decision is incorrect.

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ORDER

IT IS HEREBY ORDERED the decision of the Lincoln County Board of Equalization is **affirmed**.

Pursuant to Wyoming Statutes section § 16-3-114 (2017) and Rule 12, Wyoming Rules of Appellate Procedure, any person aggrieved or adversely affected in fact by this decision may seek judicial review in the appropriate district court by filing a petition for review within 30 days after the date of this decision.

DATED this 10th day of August 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 certify that on the 10th day of August 2018, I served the foregoing DECISION AND ORDER by placing a true and correct copy thereof in the United States Mail, postage prepaid, and properly addressed to the following:

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cc: Dan Noble, Director, Department of Revenue
Brenda Arnold, Administrator, Property Tax Division, Department of Revenue
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ABA State and Local Tax Reporter
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File