

BEFORE THE STATE BOARD OF EQUALIZATION

FOR THE STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF)
MARYLEE BELL FROM A DECISION) Docket No. 2017-69
BY THE CROOK COUNTY BOARD OF)
EQUALIZATION (2017 Property Tax)
Assessment))

DECISION AND ORDER

APPEARANCES

Petitioner Marylee Bell appeared on her own behalf.

Joseph M. Baron, Crook County and Prosecuting Attorney, appeared on behalf of Theresa Curren, Crook County Assessor.

DIGEST

Marylee Bell appeals the Crook County Board of Equalization's decision affirming the 2017 assessment of her home. This is our third decision involving Ms. Bell's home. Briefly, this Board affirmed the County Board's decisions remanding Assessor's 2015 and 2016 assessments of Ms. Bell's home.

Marshall & Swift quality and condition ratings are among the factors that go into valuing residential property using the cost approach. The six possible quality ratings are "Excellent," "Very Good," "Good," "Average," "Fair," and "Low." The "Good" quality rating that Assessor assigned to Ms. Bell's home in 2017 is at issue in this appeal. Ms. Bell appealed that rating to the County Board, contending the quality rating should be "Average." The County Board affirmed, and Ms. Bell appeals, asking us to assign an "Average" rating.

The Wyoming State Board of Equalization, Chairman Martin L. Hardsocg, Vice-Chairman David L. Delicath, and Board Member E. Jayne Mockler, reviewed the County Board 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 the County Board's decision.

ISSUES

Ms. Bell articulates two issues:

The first issue before the State Board is whether or not the newly-elected Assessor provided sufficient evidence to support her overturning the previous assessor's valuation.

The second issue before the State Board is a review of the Crook County Board of Equalization's decision in CBOE 2017-24, in which it upheld the current assessor's continued action to disregard the previous assessor's adjusted valuation.

(Bell Br. 2, 3).

Assessor identifies a single issue:

Did the County Board of Equalization make a decision that was unsupported by substantial evidence when it decided that the Petitioner's 2008 Ranch Style House of 5980 square foot home with a 1517 square foot garage should be assessed as good quality and good condition?

(Assessor's Br. 1).

JURISDICTION

A taxpayer may file an appeal with the State Board within 30 days of a county board's final decision. Rules, Wyo. State Bd. of Equalization, ch. 3 § 2(a) (2006). The County Board issued its final decision on October 4, 2017, and mailed the decision to the Petitioner on October 6, 2017. (R., vol. I, at 102-15). Ms. Bell filed her appeal with the State Board on November 2, 2017. (Notice of Appeal). Thus, the notice of appeal was timely and we have jurisdiction to decide this matter.

PROCEEDINGS BEFORE THE COUNTY BOARD

1. Ms. Bell and her husband own a home in Crook County. (R., vol. I, at 3).
2. Assessor uses the cost approach to value the Bell Residence. (R., vol. I, at 15).
3. One of the factors that goes into the cost approach to valuing residential property is a Marshall & Swift quality rating. The six possible quality ratings are "excellent," "very good," "good," "average," "fair," and "low." (R., vol. I, at 25-34).

4. For tax years 2009 through 2013, previous county assessors assigned the Bell Residence a quality rating of “Good.” *In re Crook Cty. Assessor (Bell I)*, 2017 WL 737753, Docket No. 2015-57, ¶ 3 (Wyo. State Bd. of Equalization, Feb. 15, 2017).

5. In 2014, a previous assessor, Lisa Fletcher, changed the Marshall & Swift quality classification of the Bell Residence from “Good” to “Excellent,” which increased the assessed value of the home. *Bell I*, ¶ 7. Ms. Bell appealed the 2014 assessment, claiming the construction quality of the Bell Residence was “Good” as opposed to “Excellent,” and requested an additional reduction in the quality classification to “average.” *Id.* at ¶ 8. She requested that additional reduction because the contractor failed to install a vapor barrier under the house, which led to efflorescent deposits on the concrete floors. *Id.*

6. Assessor Fletcher and the Bells signed a settlement agreement reducing the 2014 assessed value of the Bell Residence to \$51,939. (R., vol. I, at 63). The settlement agreement did not mention the property’s quality rating, and, by its specific terms, applied only to the 2014 assessment. (*Id.*). After signing the settlement agreement, Assessor Fletcher changed the Bell Residence’s quality rating to “Average.” *Bell I*, ¶ 9.

7. In 2015, newly elected Assessor Curren reclassified the Bell Residence as “Excellent,” which caused its assessed value to increase. *Bell I*, ¶ 10. Ms. Bell appealed the 2015 assessment to the County Board, claiming the construction quality of the house was “Good” or even “Average,” as opposed to “Excellent.” *Id.* at ¶ 11. The County Board held a hearing and issued a decision ordering Assessor to reduce the Marshall & Swift quality rating of the Bell Residence from “Excellent” to “Good,” which the County Board found “takes into consideration the problem with the mineralization on the concrete floor.” *Id.* at ¶ 18. Assessor timely appealed the County Board’s decision to us, and we affirmed. *Id.* at ¶ 45.

8. In 2016, while awaiting our decision on the 2015 assessment, Assessor again rated the quality of the Bell Residence as “Excellent.” *In re Crook Cty. Assessor (Bell II)*, 2018 WL 940162, Docket Nos. 2016-45 & 2016-50, (Wyo. State Bd. of Equalization, Feb. 6, 2018). Ms. Bell appealed to the County Board, which remanded with instructions to assign a “Good” quality rating. *Id.* Assessor appealed to us, and Ms. Bell cross-appealed, asking us to assign an “Average” quality rating. *Id.* We affirmed the County Board’s decision. *Id.*

9. In 2017, guided by our decision on the 2015 assessment, Assessor assigned the Bell Residence a “Good” quality rating. (R., vol. I, at 13). Ms. Bell appealed, seeking an “Average” rating. (*Id.* at 1-4). The County Board took judicial notice of the evidence presented in the 2015 hearing. (*Id.* at 110). The County Board affirmed the Assessor’s valuation, and Ms. Bell timely appealed to us. (Notice of Appeal).

CONCLUSIONS OF LAW

A. Standard of Review

10. 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).

11. 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) (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).

12. 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, 2007 WY 79, ¶ 9, 158 P.3d 131, 134 (Wyo. 2007).

13. 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).

14. "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).

15. We review conclusions of law *de novo*, and affirm them "only if they are in accord with the law. We do not afford any deference to the agency's determination, and we will correct any error made by the agency in either interpreting or applying the law." *State ex rel. Wyo. Workers' Safety & Comp. Div. v. Garl*, 2001 WY 59, ¶ 9, 26 P.3d 1029, 1032 (Wyo. 2001) (citation omitted).

16. 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, 970 P.2d 841, 850-51 (Wyo. 1998) (citations omitted).

B. Applicable Law

17. The Wyoming Constitution requires that all property be uniformly valued for taxation and that the Legislature prescribe regulations to secure a just valuation for the taxation of all property. Wyo. Const. art. 15, § 11.

18. 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.*

19. All 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).

20. “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)). A mere difference of opinion as to value is not sufficient to overcome the presumption. *Id.* at ¶ 34, 126 P.3d at 127; *J. Ray McDermott & Co. v. Hudson*, 370 P.2d 364, 370 (Wyo. 1962).

C. Application of the law to the facts

21. Ms. Bell identifies her first issue as whether Assessor provided sufficient evidence to support overturning the previous assessor’s 2014 valuation. (Bell Br. 2). She explains that “[s]ince Petitioner presented sufficient evidence to the previous Crook County Assessor Fletcher to adjust the proposed 2014 valuation, the burden now shifts to the newly-elected Assessor Curren to defend her 2015 actions to overturn Assessor Fletcher’s previously established 2014 property valuation.” *Id.*

22. Ms. Bell misapprehends our rules of review. When Assessor Curren issued the 2017 assessment, *that* assessment was presumed valid, regardless of whether it differed from the 2014 settlement agreement. That is because properties are valued and assessed annually at fair market value, and each assessment year stands on its own. *See* Wyo. Stat. Ann. § 39-13-103(b)(i), (ii) (2015). Accordingly, Assessor was not required to present evidence justifying a departure from the 2014 settlement agreement. Rather, Ms. Bell had the burden

of showing that Assessor's 2017 assessment was incorrect. The County Board found that she failed to satisfy that burden. We agree.

23. The 2014 settlement agreement had no effect beyond the 2014 assessment. The time to litigate the 2015 assessment was in 2015. The parties did so, and the County Board determined that the quality rating of the Bell Residence should be "Good": not "Excellent," "Very Good," or "Average." We affirmed that determination, neither party appealed to the district court, and our decision became final. We decline to address this issue because the 2015 assessment is not properly before us and never can be again.

24. In her second issue, Ms. Bell claims to challenge the County Board's 2017 decision, but again seeks to assign Assessor the burden of justifying her decision to depart from the 2014 settlement agreement. Ms. Bell contends that at the 2017 County Board hearing, Assessor had the burden of presenting evidence to support her 2017 assessment. She further contends that we must reverse the 2017 assessment because it is supported only by a "mere difference of opinion" between Assessor and her predecessor. (Bell Br. 3). But, Ms. Bell had the burden of showing that Assessor erred. The County Board found that she failed in her burden, and we affirm that decision.

CONCLUSION

25. The County Board correctly determined that Ms. Bell did not present sufficient evidence that Assessor's 2017 assessment was arbitrary, capricious, unsupported by substantial evidence, contrary to law, or in any other way erroneous.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.

ORDER

IT IS HEREBY ORDERED that the decision of the Crook County Board of Equalization is **affirmed** in all respects.

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

DATED this 22nd day of May 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 22nd day of May 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:

Dale and Marylee Bell
5602 N. 76th Place
Scottsdale, AZ 85250

Joseph M. Baron
Crook County & Prosecuting Attorney
Crook County Courthouse,
309 Cleveland Street
P.O. Box 397
Sundance, Wyoming 82729



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

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