

**BEFORE THE STATE BOARD OF EQUALIZATION
FOR THE STATE OF WYOMING**

IN THE MATTER OF THE APPEAL OF)
LARAMIE COUNTY ASSESSOR) Docket No. 2018-43
FROM A DECISION BY THE LARAMIE)
COUNTY BOARD OF EQUALIZATION)
(2018 Property Tax Assessment, Frelinger))

DECISION AND ORDER

APPEARANCES

Mark T. Voss, Laramie County Attorney’s Office, appeared on behalf of the Laramie County Assessor Kenneth Guille.

Rodman Frelinger, Taxpayer, appeared pro se.

SUMMARY

[¶1] Rodman Frelinger appealed the 2018 property tax assessment issued by Laramie County Assessor Kenneth Guille to the Laramie County Board of Equalization. The County Board reversed a portion of the assessment. Assessor appeals that decision to the State Board.

[¶2] 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) (2017). A taxpayer or assessor 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 24, 2018. (R. at 83-93). Assessor filed his appeal 10 days later. (Notice of Appeal). Accordingly, the notice of appeal was timely, and we have jurisdiction.

[¶3] The State Board, Chairman David L. Delicath, Vice-Chairman E. Jayne Mockler, and Board Member Martin L. Hardsocg, considered this appeal. Neither party requested

oral argument, so we will decide this appeal on the County Board record and the parties' briefs. We reverse the County Board decision and remand the case for further proceedings.

ISSUE

[¶4] Assessor and Frelinger both identify the sole issue as:

Was the CBOE's order, which required the Laramie County Assessor's determined value of the subject property of \$429,943.00 be reduced by 2,743.00 the value of the shed, in accordance with law, arbitrary, capricious, an abuse of discretion, or supported by substantial evidence in the record?

(Assessor Br. at 3; Frelinger Br. at 2).

FINDINGS AND CONCLUSIONS OF THE COUNTY BOARD

[¶5] Rodman Frelinger owns real property in Laramie County. In 2018, Assessor valued Mr. Frelinger's parcel (land and improvements) at \$429,843, including a shed valued at \$2,743. Mr. Frelinger appealed to the County Board, contending that his shed should not be included in the value of his real property because it is personal property, not a fixture appurtenant to the land. Mr. Frelinger explained that he was not questioning Assessor's computations. Rather, he challenged the Wyoming Department of Revenue's guidance requiring assessors to value sheds as real property. (Hr'g Tr. 5-7). Assessor testified that his office is "required to follow what the Department of Revenue and State Board of Equalization, their oversight, we are - - we do have to follow what they say." (Hr'g Tr. 11). He specifically testified that the Department issued a memorandum in 2001 requiring assessors to value sheds as real property. (Hr'g Tr. 11-12). Brenda Arnold, Administrator of the Department's Property Tax Division, testified that Assessor's understanding of the 2001 memorandum was correct. (Hr'g Tr. 13-14).

[¶6] The County Board noted that Assessor is required to comply with the Department's rules and guidance, including the 2001 memorandum, and determined that "[t]he fair market value determined by the County Assessor pursuant to the CAMA System is well within the statutory requirements for the subject property." (Cty. Bd. Decision, Findings of Fact, ¶ 7, R. at 90). The County Board nonetheless determined that "the shed value (\$2,743.00) should not be included in the assessment because it is not appurtenant to the land." (*Id.*) The County Board based that determination on Wyoming Statutes section 39-11-105(a)(xi) (2017) – which exempts "[p]ersonal property held for personal or family use"

from property taxation – and on Mr. Frelinger’s testimony that he intended to take the shed with him if he ever sold his property. (Cty. Bd. Decision, Conclusions of Law, ¶¶ 3, 5-6, R. at 91-92; Cty. Bd. Decision, R. at 85).

CONCLUSIONS OF LAW

A. State Board’s review functions and burdens of proof

[¶7] 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). 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;
- (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).

[¶8] This case involves only issues of law, which we review *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) (quoting *Bowen v. State, Dep’t of Transp.*, 2011 WY 1, ¶ 7, 245 P.3d 827, 829 (Wyo. 2011)).

B. The County Board decision is in excess of that Board's authority.

[¶9] The Department of Revenue is required to “[c]onfer 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) (2017). County assessors must “[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) (2017).

[¶10] Assessor contends that the County Board order is not in accordance with law because it orders Assessor to ignore a directive from the Department. (Assessor Br. at 13).

[¶11] The County Board ordered Assessor to disregard the Department's guidance and treat Mr. Frelinger's shed as personal, rather than real, property. By doing so, the County Board ordered Assessor to violate Wyoming Statutes section 18-3-204(a)(ix) (2017), which requires county assessors to “[f]aithfully and diligently follow and apply the orders, procedures and formulae of the department of revenue ... for the appraisal and assessment of all taxable property.”

[¶12] The County Board did not exactly declare the Department's guidance to be void, but it did order Assessor to disregard that guidance, which has a similar effect. As we have told another county board, “it is beyond the County Boards' (and this Board's) jurisdiction to declare void a rule of a state executive branch agency.” *In re Jackson Hole Hereford Ranch*, 2017 WL 512816, at *4, Docket No. 2016-41, ¶ 23 (Wyo. State Bd. of Equalization, Oct. 26, 2017). Thus, the County Board's order is in excess of the County Board's authority, and subject to reversal under chapter 3, section 9(b) of the Wyoming State Board of Equalization Rules. *Supra* ¶ 7.

[¶13] By ordering Assessor to disregard the Department's guidance, the County Board also usurped the Department's statutory authority to set tax policy, in violation of Wyoming Statutes section 39-13-102(d) (2017) (“The county board of equalization has no power to and shall not set tax policy nor engage in any administrative duties concerning assessments which are delegated to the board, the department or the county assessor”).

ORDER

[¶14] **IT IS, THEREFORE, ORDERED** that the Decision of the Laramie County Board of Equalization is **reversed**, and this matter is **remanded** to the County Board for further proceedings in accordance with this order.

Dated this 15th day of April 2019.

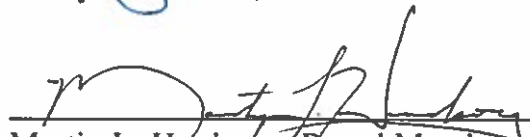
STATE BOARD OF EQUALIZATION



David L. Delicath, Chairman



E. Jayne Mockler, Vice-Chairman



Martin L. Hardsocg, Board Member

ATTEST:




Nadia Broome, Executive Assistant

CERTIFICATE OF SERVICE

I certify that on the 16th day of April 2019 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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