

BEFORE THE STATE BOARD OF EQUALIZATION

FOR THE STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF)
CEDAR CANYONS, INC.) Docket No. 2018-48
a.k.a. OLD WEST CABINS)
FROM A DECISION BY THE TETON)
COUNTY BOARD OF EQUALIZATION)
(2018 Property Valuation))

DECISION AND ORDER

APPEARANCES

Nicole G. Kreiger, Hess D’Amours & Kreiger, LLC, appeared on behalf of Cedar Canyons, Inc.

Keith Gingery, Teton County Attorney’s Office, appeared on behalf of Teton County Assessor Melissa Shinkle.

SUMMARY

[¶1] Cedar Canyons, Inc. appealed a property tax assessment issued by Teton County Assessor Melissa Shinkle to the Teton County Board of Equalization. The County Board dismissed the appeal because no representative of Cedar Canyons appeared at the scheduled County Board hearing on that appeal. Cedar Canyons appeals that dismissal 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 4, 2018. (Notice of Appeal, Ex. A; R. at 00124-28). Cedar Canyons filed its appeal 30 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, having considered the County Board’s record and the parties’ briefs, reverses the County Board’s dismissal and remands the case for further proceedings.

ISSUE

[¶4] Cedar Canyons states the issue as: “Whether the County Board’s decision to dismiss the Taxpayer’s appeal for failure to appear, absent any evidence or finding that the Taxpayer’s actions constituted willful neglect or refusal to attend the appeal hearing, was supported by substantial evidence, in accordance with procedures required by law, and neither arbitrary, capricious, not inconsistent with law?” (Cedar Canyons Opening Br. 5).

[¶5] Assessor states the issue as: “Did the Teton County Board of Equalization properly dismiss the Petitioner’s appeal?” (Assessor Br. 4).

FINDINGS OF FACT

[¶6] Cedar Canyons owns real property in Teton County, which Assessor assessed at \$8,240,524 in 2018. (R. at 006). Cedar Canyons appealed that assessment to the County Board. The County Board set a hearing for August 13, 2018. (R. at 001). Cedar Canyons submitted exhibits in advance of the hearing, but no representative of Cedar Canyons was present when the hearing began. (R. at 0131; Cty. Bd. Decision 2, R. at 00125). The County Board dismissed the appeal under Wyoming Statutes section 39-13-109(b)(i) (2017), which permits dismissal when a party willfully neglects or refuses to attend a hearing. (Cty. Bd. Decision 2, R. at 00125). Despite dismissing the appeal, the County Board issued findings of fact, conclusions of law, and an order affirming the assessment. (Cty. Bd. Decision 2-5, R. at 00125-28). Those findings, conclusions, and order were unnecessary: once the County Board dismissed the appeal, there was no case to decide.

[¶7] The County Board did not find that Cedar Canyons, or its representative, willfully neglected or refused to attend the hearing. (*Id. passim*). The County Board’s decision does not mention any evidence or other information that would support such a finding, and no such evidence appears in the County Board’s record.

[¶8] Cedar Canyons appealed to us, and subsequently filed a motion asking us to order the County Board to re-open the hearing and take evidence from Cedar Canyons. (Mot. for

Supplementation of R.). Cedar Canyons supported that motion with an affidavit from its sole owner. (Aff. of Laurence J. Huhn). Mr. Huhn explained that he was prepared for the hearing, but got the dates mixed up. *Id.* Realizing his mistake, Mr. Huhn arrived for the hearing after the County Board had voted to dismiss the case, and the hearing examiner refused to reschedule the hearing. *Id.* We denied Cedar Canyons' motion because evidence about valuation does not support or refute the County Board's decision to dismiss. (Order Den. Mot. for Supplementation of R.).

[¶9] Neither party timely requested oral argument, so we will decide this appeal on the County Board's record and the parties' briefs.¹

CONCLUSIONS OF LAW

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

[¶10] 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).

[¶11] A party challenging the sufficiency of the evidence has the burden of demonstrating that the agency's findings are not supported by substantial evidence. *Faber v. Wyo. Dep't*

¹ Cedar Canyons submitted an untimely motion for oral argument which we denied.

of Transp., 2009 WY 137, ¶ 5, 220 P.3d 236, 238, (Wyo. 2009). 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 facts 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).

[¶12] 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) (quoting *Bowen v. State, Dep’t of Transp.*, 2011 WY 1, ¶ 7, 245 P.3d 827, 829 (Wyo. 2011)). 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.

Britt v. Fremont Cty. Assessor, 2006 WY 10, ¶ 17, 126 P.3d 117, 123 (Wyo. 2006) (citations omitted); *Mountain Vista Ret. Residence v. Fremont Cty. Assessor*, 2015 WY 117, ¶ 4, 356 P.3d 269, 272 (Wyo. 2015).

B. The County Board's decision is not supported by substantial evidence.

[¶13] An appeal to a county board “may be dismissed if any person willfully neglects or refuses to attend a meeting of a county board of equalization and be examined or answer any material question upon the board’s request.” Wyo. Stat. Ann. § 39-13-109(b)(i) (2017); *see also* Rules, Wyo. State Bd. of Equalization, ch. 7 § 20 (2015) (An appeal to a county board of equalization “may be dismissed by the county board if any person willfully neglects or refuses to attend a meeting of the county board and be examined or answer any material question upon the county board’s request”).

[¶14] No relevant statute or rule defines “willfull.” Its dictionary definition is:

Voluntary and intentional, but not necessarily malicious. A voluntary act becomes willful, in law, only when it involves conscious wrong or evil purpose on the part of the actor, or at least inexcusable carelessness, whether the act is right or wrong. The term *willful* is stronger than *voluntary* or *intentional*; it is traditionally the equivalent of *malicious*, *evil*, or *corrupt*.

Willful, *Black’s Law Dictionary*, 1834 (10th ed. 2014). In the context of a county board rule denying adjustments to the assessments of “any person who willfully neglects or refuses to attend a meeting of the board,” we accepted a definition of “willful neglect” as “[i]ntentional or reckless failure to carry out a legal duty.” *In re Cummins Rocky Mountain, LLC*, 2012 WL 1849824, at *8, Docket No. 2011-85, ¶ 24 (Wyo. State Bd. of Equalization, May 2, 2012) *citing Black’s Law Dictionary*, 1061 (8th ed. 2004).

[¶15] Similarly, albeit in the context of adoption, the Wyoming Supreme Court has defined “willfully” as “intentionally, knowingly, purposely, voluntarily, consciously, deliberately, and without justifiable excuse, as distinguished from carelessly, inadvertently, accidentally, negligently, heedlessly or thoughtlessly.” *In re Adoption of TLC*, 2002 WY 76, ¶ 28, 46 P.3d 863, 873 (Wyo. 2002) (quoting *In re Adoption of CCT*, 640 P.2d 73, 76 (Wyo. 1982)). And, in the context of a negligence action, the Court said that “[t]he aggravating factor which distinguishes willful misconduct from ordinary negligence is the actor’s state of mind. In order to prove that an actor has engaged in willful misconduct, one must demonstrate that he acted with a state of mind that approaches intent to do harm.” *Bryant v. Hornbuckle*, 728 P.2d 1132, 1136 (Wyo. 1986) (citation omitted).

[¶16] In its dismissal, the County Board cites only Cedar Canyons' failure to appear for the hearing. The County Board did not find or conclude that Cedar Canyons' failure to attend the hearing was willful, and the record includes no evidence that would lead to that conclusion. Thus the County Board's decision is not supported by substantial evidence.

[¶17] Assessor contends that Cedar Canyons had a responsibility to bring the County Board evidence that its failure to appear was not willful, after it voted to dismiss the appeal. (Assessor Br. 13). That argument essentially asks us to imply a rebuttable presumption that any failure to appear is willful, and assign the burden of proving otherwise to the party that failed to appear. No statute, rule, or decision allows such a presumption.

[¶18] We remand the case to the County Board with instructions to determine whether Cedar Canyons willfully neglected or refused to attend the August 13, 2018 hearing. And we remind the County Board that mere failure to appear is not conclusive evidence that Cedar Canyons willfully neglected or refused to attend the hearing. If the County Board determines that Cedar Canyons willfully neglected or refused to attend, it should issue a new order (supported by findings of fact and conclusions of law) dismissing the appeal without opining on the County Assessor's valuation. If the County Board determines that Cedar Canyons did not willfully neglect or refuse to attend, it should re-schedule an evidentiary hearing and decide the case on the merits.

The remainder of this page intentionally left blank.

ORDER

[[19] The County Board's dismissal of Cedar Canyons' appeal is **reversed** and this matter is **remanded** for further proceedings consistent with this decision.

DATED this 9th 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 9th 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:

Nicole G. Krieger
Hess D'Amours & Krieger, LLC
P.O. Box 449
Jackson, WY 83001

Keith M. Gingery
Deputy Teton County Attorney
P.O. Box 4068
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