BEFORE THE STATE BOARD OF EQUALIZATION

FOR THE STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF	)	
CROOK COUNTY ASSESSOR	)	Docket No. **2018-50**
FROM A DECISION BY THE CROOK	)	
COUNTY BOARD OF EQUALIZATION	)	
(Bell-2018 Property Tax Assessment)	)	

DECISION AND ORDER

APPEARANCES

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

Marylee Bell appeared pro se on behalf of herself and Dale Bell, Taxpayers.

SUMMARY

[¶1] Taxpayers Marylee Bell and Dale Bell appealed the 2018 assessment of their Crook County residential property to the Crook County Board of Equalization. After a hearing, the County Board ordered Assessor to reduce her assessment of Bells' property by 20 percent. Assessor appeals that decision to the State Board of Equalization.[1]

[¶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 after 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 2, 2018, and Assessor

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[1] This is our fourth appeal concerning the Bell Property and featuring Bells as either petitioners or respondents. *In re Bell* (*Bell III*), 2018 WL 2473290, Docket No. 2017-69, (Wyo. State Bd. of Equalization, May 22, 2018); *In re Crook Cty. Assessor* (*Bell II*), 2018 WL 940162, Docket No. 2016-45 & 2016-50, (Wyo. State Bd. of Equalization, Feb. 6, 2018); *In re Crook Cty. Assessor* (*Bell I*), 2017 WL 737753, Docket No. 2015-57, (Wyo. State Bd. of Equalization, Feb. 15, 2017). The County Board incorporated the records of all three earlier appeals at the 2018 County Board hearing. (2018 R. 440). Those records are thus available to us in deciding this case. We will cite the records of the four appeals as "2018 R." "2017 R." "2016 R." and "2015 R."

appealed 16 days later. (Notice of Appeal). Accordingly, the 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, reverses the County Board decision and remands the case for further proceedings.

ISSUES

[¶4] Assessor identifies two issues:

> a. This appeal by the Assessor of the County Board of Equalization[']s Order is whether there was sufficient evidence produced by the Bells for the County Board of Equalization to lower the valuation of the Bells' house by 20%.
>
> b. This appeal by the Assessor is whether the County Board of Equalization acted arbitrarily, capriciously, and abused its discretion or otherwise acted not in accordance with law when they entered an Order to lower the valuation of the Bells' house by 20%.

(Assessor Br. 2).

[¶5] Bells did not articulate an issue.

PROCEEDINGS BEFORE THE COUNTY BOARD AND THIS BOARD

[¶6] Bells own a home in Crook County. (2017 R., vol. I at 3). Assessor and her predecessor, Lisa Fletcher, have both used the cost approach to value Bells' home. (2017 R. vol. I, at 15). One of the factors that goes into the cost approach is a Marshall & Swift quality rating. (2017 R., vol I at 25-34). The six possible quality ratings are "Excellent," "Very Good," "Good," "Average," "Fair," and "Low." *Id.* In 2014, Assessor Fletcher changed the Marshall & Swift quality rating of Bells' home from "Good" to "Excellent," which increased the assessed value of the property. *Bell I*, ¶ 5. Bells appealed that assessment, claiming the quality of the house was "Good," not "Excellent," and requested an additional reduction in the quality rating to "Average" because a construction error results in persistent efflorescent[2] deposits on the home's polished concrete floors. *Id.*

[¶7] While Bells' 2014 appeal was pending before the County Board, Assessor Fletcher and Bells settled their litigation with an agreement to reduce the value of the property to

[2] "Effloresce" means, "to change to a powder from loss of water or crystallization," or "to form or become covered with a powdery crust." Merriam-Webster's Collegiate Dictionary, 397 (11th ed. 2003).

$631,024. (2015 R. at 52). Assessor Fletcher achieved that reduction by changing the quality rating of the house to "Average." (2018 R. at 058). The settlement, by its specific terms, applied only to the 2014 assessment. (2015 R. at 52).

[¶8] In 2015, newly elected Assessor Curren reclassified Bells' Property as "Excellent," which increased its assessed value to $1,184,202. (2015 R. at 51). Bells appealed the 2015 assessment to the County Board, claiming the construction quality of their house was "Average," as opposed to "Excellent." (2015 R. at 2).

[¶9] The County Board issued a decision ordering Assessor to reduce the quality rating of the house from "Excellent" to "Good," which the County Board found "takes into consideration the problem with the mineralization[3] on the concrete floor." 2015 R. at 378. That change reduced the 2015 assessed value of the Bell Property to $869,982. (2016 R. at 5). Assessor timely appealed the County Board's decision to us, and we affirmed. *Bell III*, ¶ 7. Although the question was not before us, we noted that "[t]he County Board did ... address and account for the efflorescence in its Order on Appeal." *Bell I*, *1, n. 2.

[¶10] In 2016, Assessor again rated the quality of the Bell Property as "Excellent" and valued it at $1,280,197. (2018 R. at 190-91). Bells appealed to the County Board, which remanded with instructions to assign a "Good" quality rating. (2016 R. at 66-78). That change reduced the assessed value of the Bell Property to $833,556. (2017 R. at 3). Assessor appealed to us, and Bells cross-appealed, asking us to assign an "Average" quality rating. (2106 R. at 111-64). We affirmed the County Board's decision in all respects. *Bell III*, ¶ 8.

[¶11] In 2017, Assessor assigned the Bell Property a "Good" quality rating and valued it at $845,463. (2017 R.at 13-14). Bells appealed, seeking an "Average" rating. (2017 R. at 2). The County Board affirmed the Assessor's value, and Bells timely appealed to us. (2017 R. at 119-20). We affirmed. *Bell III*, ¶ 25.

[¶12] In 2018, Assessor again assigned the Bell Property a "Good" quality rating and valued it at $841,681. (2018 R. at 020-21). Bells appealed, asking for either a return to the "Average" quality rating or "a financial equivalent to accommodate both existing and potential damages due to the major construction error at the time of construction." (2018 R. at 002).

[¶13] Assessor moved for dismissal of Bells' 2018 appeal on the basis of issue preclusion. (2018 R. at 176-78). The County Board, with advice from the hearing officer, denied that motion. (2018 R. at 374-75). During the hearing, the County Board took judicial notice of all the evidence admitted in Bells' 2015, 2016, and 2017 hearings. After the hearing, the County Board issued an Order Affirming Appeal, in which it agreed with Assessor's

[3] The County Board has used "mineralization" and "efflorescence" interchangeably.

"Good" quality rating, but ordered her to reduce the assessment by 20 percent to account for the construction error. (2018 R. at 273, 283).

CONCLUSIONS OF LAW

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

[¶14] 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;
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> (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). "Substantial evidence is relevant evidence which a reasonable mind might accept in support of the [County Board's] conclusions. It is more than a scintilla of evidence." *In re Lysne*, 2018 WY 107, ¶ 12, 426 P.3d 290, 294-95 (Wyo. 2018) (quoting *Walton v. State ex rel. Wyo. Workers' Safety & Comp. Div.*, 2007 Wyo. 46, ¶ 9, 153 P.3d 932, 935 (Wyo. 2007)).

[¶15] We review questions of law de novo and will affirm the County Board's conclusions of law "only if they are in accord with 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. Denial of Assessor's motion for dismissal

[¶16] Assessor contends that the County Board's denial of her motion to dismiss was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. (Assessor Br. 13). She relies on the related concepts of "law of the case" and issue preclusion. We will address those two concepts separately.

[¶17] The "law of the case" doctrine exists to "avoid repetitious litigation and to promote consistent decision making." *Triton Coal Co. v. Husman, Inc.*, 846 P.2d 664, 667 (Wyo. 1993). It provides that "a court's decision on an issue of law made at one stage of a case becomes a binding precedent to be followed in successive stages of the same litigation." *Id.* citing 1B James W. Moore, Jo Desha Lucas & Thomas S. Currier, *Moore's Federal Practice* ¶ 0.404[1] (2d ed. 1983). Law of the case does not apply in sequential property tax appeals because "each challenge by a taxpayer to the new year's valuation constitutes a new case, it is not just a continuation of the prior year's contest, nor a 'successive stage of the same litigation.' " *In re Deromedi*, 2001 WL 770802, at *2, Docket No. 2000-145, (Wyo. State Bd. of Equalization, May 15, 2001).

[¶18] Even if law of the case were available in property tax appeals, it would not apply here because Assessor did not raise it before the County Board. Neither her written motion to dismiss, nor her argument before the County Board, includes any mention of the law of the case doctrine. (2018 R. 176-78, 353-61). We will not fault the County Board for not applying a legal theory that neither party raised.

[¶19] Issue preclusion, also known as collateral estoppel, bars "re-litigation of issues actually and necessarily decided previously in an action between the same parties" if: (1) the issue decided in the prior adjudication was identical to the issue presented in the present action; (2) the prior adjudication resulted in a judgment on the merits; (3) the party against whom collateral estoppel is asserted was a party or in privity with a party to the prior adjudication; and (4) the party against whom collateral estoppel is asserted had a full and fair opportunity to litigate the issue in the prior proceeding. *In re Bender*, 2000 WL 290313, at *11, ¶ 72, Docket No. 99-128 (Wyo. State Bd. of Equalization, Mar. 13, 2000). *See also In re Reynolds*, 2012 WL 8302072, at *19, Docket No. 2011-91, (Wyo. State Bd. of Equalization, Dec. 5, 2012). Collateral estoppel, unlike law of the case, is applicable at the county board level. *Bender*, at *12, ¶ 73.

[¶20] The facts of this case might well have supported a claim of collateral estoppel, but Assessor's motion included almost nothing in the way of authority or argument. (2018 R. 176-78). Assessor's argument in favor of her motion at the hearing was similarly bereft. (*Id.* 355-61). We cannot fault the County Board for being unpersuaded by a mere wisp of an argument, even if a more robust presentation of the claim might have carried the day. Accordingly, we will not reverse the County Board's denial of Assessor's motion to dismiss.

C. The County Board's decision exceeds its authority

[¶21] "Counties have only those powers granted expressly by statute or necessarily implied in order to execute express powers." *Pedro/Aspen, Ltd. v. Bd. of Cty. Comm'rs for Natrona Cty.*, 2004 WY 84, ¶ 25, 94 P.3d 412, 419 (Wyo. 2004) (citing *Schoeller v. Bd. of Cty. Comm'rs of the Cty. of Park*, 568 P.2d 869, [876] (Wyo. 1977)). In deciding property tax appeals, county boards of equalization have the expressly granted statutory power to either "affirm the assessor's valuation or find in favor of the taxpayer and remand the case back to the assessor." Wyo. Stat. Ann. § 39-13-109(b)(i) (2017). County boards do not have authority to set property values. *In re Carbon Creek Energy, LLC*, 2018 WL 3978750, Docket No. 2017-50, *28, ¶ 108 (Wyo. State Bd. of Equalization, Aug. 8, 2018).

[¶22] The County Board went beyond simply affirming or reversing Assessor's decision when it ordered Assessor to reduce her valuation by 20 percent. That order dictated a specific value as surely as if the County Board had prescribed a specific dollar amount. By doing so, the County Board exceeded its authority. *Id.* (County Board's order purporting to set taxable values exceeded Board's authority "because it had no authority to establish value, only to adjudicate whether Assessor's valuation was correct and to remand consistent with the adjudicated outcome.").

[¶23] By ordering Assessor to assign a particular value to Bells' property, the County Board also crossed a statutory boundary declaring that county boards "shall not … engage in any administrative duties concerning assessments which are delegated to … the county assessor." Wyo. Stat. Ann. § 39-13-102(d) (2017). Because the County Board exceeded its authority, we will remand.

D. On remand, the County Board must base its decision on properly admitted evidence

[¶24] If the County Board's decision on remand is appealed to us, that appeal will likely require us to determine whether substantial evidence supports the decision. Because we will base such a determination only on the evidence that was admitted at the hearings, we encourage the County Board to do the same. As Assessor correctly contends, many of the 2018 exhibits, including some on which the County Board seemed to base its opinion, were never admitted as evidence. (Assessor Br. 2). Similar problems are apparent in the 2015, 2016, and 2017 records as well. In the following paragraphs, we will enumerate the evidence that was – and was not – properly admitted in the four County Board hearings.

[¶25] The County Board's 2015 Case Management Order required the parties to submit their exhibits before the hearing, but did not require them to submit written objections to exhibits before the hearing. (2015 R. at 16). Bells submitted 50 exhibits. (2015 R. at 146-

256). During the hearing, Assessor's attorney stated that Assessor did not object to any of those exhibits. (2015 R. at 412-13). Although both parties frequently discussed and used Bells' exhibits during the hearing, only Exhibits 35-50 were offered and admitted on the record. (2015 R. at 416). Assessor submitted 14 exhibits before the trial. (2015 R. at 46). Assessor moved for admission of nine of them during the hearing; Bells did not object and the exhibits were admitted. (2015 R. at. 538-39). The hearing officer should have admitted (but did not) all of the exhibits from both parties under Chapter, 7, Section 16(b) of our rules. "The hearing officer ... shall mark and admit all evidence, *unless there is an objection* to the admission of any evidence." We deem all of Bells' and Assessor's 2015 exhibits admitted under Section 16(b) because there were no objections. *See* Rules, Wyo. State Bd. of Equalization, ch. 7 § 16(b) (2015).

[¶26] In 2016, the County Board again issued a Case Management Order requiring the parties to submit their exhibits before the hearing. (2016 R. at 7-8). Assessor submitted two exhibits before the hearing. (2016 R. at 13-26). Bells did not submit any exhibits ahead of the hearing. (2016 R. at 27). At the hearing, Bells nonetheless offered multiple exhibits. (2016 R. at 38). The hearing officer admitted Bells' Exhibits 1 and 5-8. (*Id.*; 2016 Recording at 26:20, 36:45, 51:35, 56:45). We find that Assessor's two exhibits, and Bells' Exhibits 1 and 5-8 – but no others – were properly admitted.

[¶27] The County Board's 2017 Case Management Order again required the parties to submit their exhibits ahead of the hearing. (2017 R. at 5-6). Unlike prior orders, the County Board's 2017 order specified that "[a]ll exhibits submitted by either party are admitted to evidence before the Board" absent a written objection ahead of the hearing. *Id.* That provision is consistent (or at least not in conflict) with our rule directing hearing officers to "mark and admit all evidence, unless there is an objection to the admission of any evidence," and to rule on objections. Rules, Wyo. State Bd. of Equalization, ch. 7 § 16(b) & (d) (2015). Bells submitted 15 exhibits, and Assessor filed written objections to 13 of them. (2017 R. at 42-46, 49-59, 63). Bells did not offer any of their exhibits during the hearing; Assessor did not request a ruling on her objections; and the hearing officer did not ask for argument on Assessor's objections, rule on the objections, or admit any of those exhibits on the record.

[¶28] Because the County Board's 2017 Case Management Order provided that exhibits "are admitted" absent a timely objection, Bells' two exhibits to which Assessor did not object are deemed admitted. But what about the other 13? What happens when a pro se party fails to offer the exhibits it presented pre-hearing or seek a ruling on their admissibility, the hearing officer fails in his duty to rule on objections to those exhibits, the county board fails to enforce its order requiring the hearing officer to rule on objections, and the objecting party does not request rulings on its objections?

[¶29] Bells urge us to deem their exhibits admitted because the hearing officer did not rule them inadmissible. (Bell Br. 1). That solution would essentially make Assessor responsible

for the nonfeasance of every other participant in the hearing. Chapter 7, Section 16(d) of our rules, and the County Board's order, obliged the hearing officer to rule on Assessor's objections, but he failed in that duty. The County Board had ordered the hearing officer to rule on objections, but failed to enforce that order. Bells had an interest in having their exhibits admitted, but failed to offer them at the hearing or ask the hearing officer to rule on their admissibility. By contrast, Assessor did everything that the law, our rules, the County Board's orders, and the discharge of her official duties required of her. We believe it asks too much to expect Assessor to act against the interests of her office to cure the opposing party's tactical omissions and the tribunal's administrative errors. Therefore, Bells' 2017 Exhibits 13 and 15, to which Assessor did not object, "are admitted." The rest of Bells' 2017 exhibits were not admitted.

[¶30] In 2018, the County Board again issued a Case Management Order setting deadlines for submitting exhibits and objecting to exhibits. (2018 R. at 005). The Order again provided that:

> All Exhibits submitted by either party **are automatically stipulated to and admitted** to evidence before the Board unless they are objected to in writing by the opposing party. The written objection shall state the basis of the objection to admissibility. Written objections **shall be heard** at the contested case hearing.

(*Id.*, emphases added). Bells submitted 34 exhibits, and Assessor objected to 29 of them. (2018 R. at 040-60, 115-71, 174-75). Bells objected to six of the ten exhibits Assessor submitted. (2018 R. at 013-39, 063-112, 172-73, 186-229). At the hearing, Assessor offered nine of her submitted exhibits as evidence and the hearing officer admitted all nine over Bells' objections. (2018 R. at 360-61, 437-38, 444-47, 450-51). Bells, however, did not offer any of their exhibits into evidence at the hearing, and neither Assessor nor Bells asked for rulings on Assessor's objections to those exhibits. The hearing officer did not ask for argument on Assessor's objections, rule on any of those objections, or admit any of Bells' exhibits on the record. For the reasons explained above, we determine that Bells' 2018 exhibits (except Exhibits 1-4 and 30, to which Assessor did not object) were not admitted or available for the County Board to consider in deciding the case.

CONCLUSION

[¶31] We will remand the case to the County Board for a new decision that is within the County Board's authority and based on admitted evidence. The County Board may, but is not required to, conduct a new hearing at which the hearing officer may rule on Assessor's objections to Bells' 2018 exhibits. If the County Board does not hold a new hearing, it must limit itself to evidence that was admitted in the prior hearings or that we have deemed admitted in this decision.

ORDER

[¶32] **IT IS, THEREFORE, ORDERED** that the Order Affirming Appeal of the Crook 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 11th day of July 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 11th day of July 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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