

BEFORE THE STATE BOARD OF EQUALIZATION

FOR THE STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF)
TETON COUNTY ASSESSOR FROM A)
DECISION BY THE TETON COUNTY)
BOARD OF EQUALIZATION)
(2018 Property Tax Assessment, SSDA LLC)) Docket No. **2018-59**

DECISION AND ORDER

APPEARANCES

Keith Gingery, Deputy Teton County and Prosecuting Attorney, appeared on behalf of Melissa Shinkle, Teton County Assessor.

Taxpayer, SSDA, LLC was represented before the County Board by its owner, Scott Shepard. No one appeared or filed any documents on behalf of Taxpayer before the State Board.

SUMMARY

[¶1] Taxpayer appealed to the Teton County Board of Equalization from a property tax assessment issued by Assessor. The County Board reversed the assessment and Assessor appealed that decision to this Board. Taxpayer did not file a brief or otherwise appear.

[¶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 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 October 1, 2018. (R. at 0047). Assessor appealed 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 record and Assessor’s brief, reverses the County Board decision and remands the case for further proceedings consistent with this decision.

ISSUE

[¶4] Assessor articulates a single issue: “Whether the Teton County Assessor correctly classified this property as commercial?” (Assessor Br. 4). That issue statement misses the mark because we are not reviewing Assessor’s decision: we are reviewing the County Board’s decision. A more accurate statement of the issue is:

Wyoming Statutes section 18-3-204(a)(ix) (2017) 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[.]” The County Board ordered Assessor to disregard guidance from the Wyoming Department of Revenue in valuing real property. Was that order in excess of the County Board’s authority or otherwise not in accordance with law?

While this issue statement differs from the one Assessor provided, it is consistent with the argument in Assessor’s brief.

EVIDENCE PRESENTED TO THE COUNTY BOARD

[¶5] Taxpayer owns a mobile home park in Teton County. (R. at 008). When Assessor took office, some mobile home parks in Teton County (including Taxpayer’s) were classified as residential, and others as commercial. (*Id.*; Tr. 11, Aug. 16, 2018). After consulting the Department of Revenue and other assessors, Assessor classified all mobile home parks as commercial. (Tr. 13, Aug. 16, 2018). In 2018, Assessor valued Taxpayer’s property at \$3,708,139 (\$3,675,412 for the land and \$32,727 for the improvements). (R. at 0012). She valued the land using the Sales Comparison approach and the improvements using the Cost approach. (R. at 008, 0014-17).

[¶6] Taxpayer appealed the 2018 assessment to the County Board, challenging only the valuation of the land. (R. at 0025-29). The evidentiary hearing began on August 16, 2018. Assessor testified¹ that she had classified all mobile home parks as commercial “based on guidance from the state, [and] guidance from other county assessors across the state.” (Tr. 13, Aug. 16, 2018). She elaborated:

Although I have testified before that we liken them to a multiunit apartment complex where the tenants don’t own the unit and they are rented out by an

¹ The transcript does not reflect that Assessor or her chief deputy were under oath. We remind the County Board that it should require witnesses to take the standard oath, on the record, before allowing them to testify, or otherwise direct that any hearing officer administer oaths before proceeding with testimony. *See* Rules, Wyo. Bd. of Equalization, Ch. 7 § 16(d) (2015).

entity. That's what happens with mobile home land. It's a space that's rented to tenants.

So multiunits are class- -- anything more than three, so four or more units are classified as commercial. And so that's what leads me to the decision of moving mobile home parks into that classification.

(*Id.* at 14). Deputy Assessor Kristen Williamson testified that both the Department and this Board instructed the Teton County Assessor's Office to classify mobile home parks as commercial. (*Id.* at 15-16). Assessor also said, "So we have this valuation guide that's given to us by DOR every year. ... And under their definition in this book commercial land is any land that is not residential or industrial and generates revenue from capital gain or rental income, so[.]" (*Id.* at 23). This exchange soon followed:

MS. SHINKLE: I have multiple discussions with [Brenda Arnold]² at the Department of Revenue. And their instruction - - and again, I've poled [sic] and have e-mails from other assessors across the state that say that it's an income producing multiunit property and it's commercial.

COMM RHEA: So you feel the State has given you that guideline. So you're doing what you feel like the State has told you what to do?

MS. SHINKLE: Yes.

(*Id.* at 25).

[¶7] No one at the hearing could produce or cite any specific authority requiring assessors to classify mobile home parks as commercial, so the Deputy County Attorney asked for a continuance:

What we'll probably do is we just need to have a conversation with them; show us the citation; show us where this is in the books; where you get the number four from; why are mobile homes commercial? I'm going to write you a brief. I'm going to write it all out. I'm going to provide it to Mr. Shepard.

(*Id.* at 49-50). The Hearing Officer granted a continuance to September 13. (*Id.* at 53). When the hearing reconvened, the Deputy County Attorney did not provide a written brief. Instead, he offered this memorandum from Brenda Arnold, dated August 30, 2018, and addressed to all county assessors:

² The transcript reads "Brent Argol (phonetic)" but on the audio recording Assessor clearly says "Brenda Arnold." Ms. Arnold is the Administrator of the Property Tax Division of the Wyoming Department of Revenue. (Audio 31:42).

W.S. 39-11-102(c)(xvi) requires the Department of Revenue to “Confer with, advise and give necessary instructions and directions to county assessors as to their duties under the laws of the state.” As such, we have been asked to advise assessors regarding the classification of mobile home parks and multi-family properties.

There are some key differences associated with residential properties and commercial properties that must be taken into consideration when determining how to appraise mobile home parks and multi-family properties. The one similarity of these two types of properties are the fact that both provide a structure used for living purposes, however similarities cease to exist after this basic point. The many differences between residential real estate and commercial real estate will lead an appraiser to value the two types of properties using diverse methods and using different types of properties for sales comparison purposes.

Commercial real estate is any property used primarily for business purposes. If the real estate generates an income, is rented out, used for investment, or falls into a number of other categories other than being a private residence, it can be considered commercial real estate. Examples of commercial use are retail, office buildings, shopping centers, restaurants, recreational facilities, lodging, warehouses, manufacturing facilities, apartment complexes, mobile home/recreational vehicle parks and vacant land that has the potential for commercial development. In short, commercial real estate is a very broad category covering most any kind of real estate excluding single-family homes and single-family lots. Although, single family homes can be built or bought for the purpose of leasing and to generate an income, typically a home that is rented for a number of years may eventually be sold in the market as a single family residence. Commercial properties do not have the option of being sold as single family residential. The market for mobile home parks and apartment buildings will be investors looking to generate an income.

Pursuant to W.S. 39-11-102.1(c)(ii), the Wyoming State Board of Equalization is required to prescribe the form of the abstract of the assessment roll to be used by county assessors to report value. This report further illustrates the classification of residential versus commercial. The board requires separate abstract codes for commercial properties into specific sub-categories. Residential land is separate from commercial land, requiring the assessor to make a determination of which category each individual parcel should be in. Furthermore, the assessor is required to categorize the improvement/structures. In the case of Manufactured Housing/RV Parks (abstract code 21100) and Apartment Buildings (abstract code 21201), both sub-types are found under the commercial category. This requires the

assessor to classify these properties as commercial and thus solidifies the theory that structures and land of this type should be valued as commercial property.

(Ex. E, R. at 0038-39; see Tr. vol. II, 6-7, Sept. 13, 2018).

[¶8] Assessor did not submit any other exhibits supporting her contention that the Department required assessors to classify mobile home parks as commercial. No exhibits from Taxpayer were admitted.

[¶9] The County Board remanded the case to Assessor with instructions to re-assess the property using the “income approach method.” (R. at 0047). The County Board concluded:

In *Basin Elec. Power Co-op., Inc. v. Department of Revenue*, 970 P.2d 841, 852 (Wyo. 1998), the Wyoming Supreme Court summarized these constitutional requirement to mandate a “rational method” of appraisal, “equally applied to all property,” which results in “essential fairness,” (citations omitted). Thus, **regardless of Department of Revenue rules and customs**, the Wyoming Constitution requires that the Assessor’s methodology here be rational, equally applicable to all like property, and fundamentally fair.

(R. at 0043-44) (emphasis added). The County Board found that Taxpayer had presented credible evidence that Assessor’s assessment was not “valid, accurate, or correct,” but did not specify what that evidence was. (R. at 0046). The board further determined that although Assessor had complied with the Department’s guidance, that guidance “fails to take into account the unique economic and regulatory environment of Teton County and the Town of Jackson and the significant impact of that environment on the fair market value of properties operating in that environment.” *Id.*

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 a 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] 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’s decision is in excess of that Board’s authority.

[¶12] The Wyoming Department of Revenue 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) (2017). 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) (2017). 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) (2017).

[¶13] Assessor did not produce any tangible evidence of departmental guidance – predating the 2018 assessment of Taxpayer’s property – requiring her to classify that property as commercial. The only evidence of such guidance is the testimony of Assessor and her chief deputy. But, that testimony is uncontroverted and neither Taxpayer nor the County Board dispute the existence of such guidance; rather, the board determined that Assessor must disregard that guidance.

[¶14] “[I]t is beyond the County Board’s (and this Board’s) jurisdiction to declare void a rule of a state executive branch agency.” *In re Teton Cty. Assessor (Jackson Hole Hereford Ranch)*, 2017 WL 5128106, at *4, Docket No. 2016-41, ¶ 23 (Wyo. State Bd. of Equalization, Oct. 26, 2017). The County Board did not precisely declare the Department’s guidance to be void, but it ordered Assessor to disregard that guidance, which has a similar effect. Thus, the County Board’s order is in excess of the County Board’s authority, and subject to reversal under Rules, Wyo. State Bd. of Equalization, ch. 3 § 9(b) (2006).

[¶15] By ordering Assessor to disregard the Department’s guidance, and by ordering Assessor to value Taxpayer’s property using the income approach, the County Board also usurped Assessor’s and the Department’s statutory authority. Wyo. Stat. Ann. § 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

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

Dated this 16th day of May 2019.

STATE BOARD OF EQUALIZATION



David L. Delicath, Chairman



E. Jayne Mockler, Vice-Chairman



Martin L. Hardssoog, Board Member

ATTEST:




Nadia Broome, Executive Assistant

CERTIFICATE OF SERVICE

I certify that on the 10th day of May 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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