BEFORE THE STATE BOARD OF EQUALIZATION

FOR THE STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF **HEIDI BELL** FROM A DECISION BY THE LINCOLN COUNTY BOARD OF EQUALIZATION (2019 Property Tax Assessment)	))))))	Docket No. **2019-31**

DECISION AND ORDER

APPEARANCES

Petitioner Heidi Bell represented herself.

Blaine E. Nelson, Deputy County Attorney for Lincoln County, appeared on behalf of Debbie Larson, Lincoln County Assessor.

DIGEST

[¶ 1] Petitioner Heidi Bell (Bell) appeals the Lincoln County Board of Equalization's (County Board) decision affirming the 2019 assessed valuation of Bell's cabin property. Bell asserts that her cabin has been uninhabitable since late 2013. She contends that her property's value should not have increased from the 2014 taxable valuation, which Assessor calculated after the cabin had sustained damage from a 2013 snow storm. In addition to alleging an overvaluation of her cabin, Bell claims that the County Board denied her a fair hearing.

[¶ 2] The Wyoming State Board of Equalization, Chairman David L. Delicath, Vice-Chariman E. Jayne Mockler, and Board Member Martin L. Hardsocg, determine that Ms. Bell submitted insufficient evidence to carry her burden of proof before the County Board. Nor has Bell demonstrated that the County Board denied Bell due process or a fair hearing. Accordingly, we **affirm** the County Board's decision.

ISSUES

[¶ 3] Bell submits five argumentative issues for our consideration, the substance of which we paraphrase for ease of understanding:

> 1. Did the County Board fail to conduct a fair, impartial hearing when it hired a former Lincoln County District Attorney to act as the hearing officer?
>
> 2. Did the hearing officer "display pervasive bias towards BELL when he fabricated evidence in favor of the Assessor in his decision entered as finding of fact no 10, to wit:"
>
> > "10. The assessor attempted to send petitioner at her last known address a review sheet in an effort to accurately assess the property. The review sheet was returned as undeliverable as addressed.
> > **(Noting that no such evidence was admitted to, attested to, or recognized as existing during any part of the County Board Hearing which Bell personally recorded!)"**
>
> 3. Did Assessor err or commit perjury when she did not consider the lack of water services to the cabin in performing her valuation of the property?
>
> 4. Did the County Board rely upon substantial evidence when it affirmed the Assessor's change of quality of construction from fair in 2014 to average in 2019?
>
> 5. "Was the County Board's decision arbitrary, capricious, or otherwise not in accordance with law[?]"

(Bell Br. 14).

[¶ 4] Assessor restates the issues as:

> Issue I. Whether the Lincoln County Board of Equalization's Findings of Fact and Conclusions of Law is supported by substantial evidence in the record?
>
> Issue II. Whether the Lincoln County Board of Equalization afforded the Appellant a fair hearing?

(Assessor Br. 7).

JURISDICTION

[¶ 5] The State Board shall "hear appeals from county boards of equalization[.]" Wyo. Stat. Ann. § 39-11-102.1(c) (2019). An aggrieved taxpayer 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 served its final decision on September 4, 2019. (R. at 39-44). Bell's appeal was postmarked September 30, 2019. (Notice of appeal). Accordingly, we have jurisdiction.

COUNTY BOARD PROCEEDINGS

Assessment, appeal, and hearing before the County Board

[¶ 6] Bell owns land and improvements consisting of "a frame kit cabin" in Star Valley Ranch, a Lincoln County, Wyoming community. (R. at 1). Bell acquired the land and improvements from a friend, Holli Telford, in 2016.[1] (R. at 1; Hr'g recording, Telford Testimony, 0:46:30 – 0:47:30).

[¶ 7] Because she was not receiving tax notices, Bell notified Assessor of her new mailing address in Rapid City, South Dakota, after which Assessor sent Bell her 2019 assessment information on April 19, 2019. (Hr'g recording, Larson Testimony, 1:50:30 – 1:52:50; R. at unnumbered); *see infra* ¶ 9. Assessor assessed the cabin's fair market value at $41,937 in 2018, and at $49,262 in 2019. (R. at unnumbered). Assessor applied an assessed value of $2,010 in 2014 and steadily increased the assessed value to $4,680 in 2019. (R. at 20).

[¶ 8] Bell submitted a formal protest notice claiming several valuation and procedural defects. (R. at 1). She objected to the increased valuations of her cabin structure, which had in 2013 sustained damages due to a snow storm. She argued that the heavy snow fall (which Bell generally refers to as the "Peril") caused the cabin to destabilize from its supporting "stilts," damaging the water service and septic systems. *Id.* She claimed the cabin became uninhabitable and had not been repaired as of 2018. Assessor, she insisted, should have assigned the same value as applied in 2014, which reflected the cabin's value after sustaining damages from the heavy 2013 snow fall. (R. at 1); *see infra* ¶ 11.

[¶ 9] Bell also complained of Assessor's failure to send notices of the tax valuation increases between 2016 and 2018, or notice of a tax sale of the property in 2017. (R. at 1; Hr'g recording, Larson testimony, 1:49:30 – 1:53:00). Bell sought a reduction of the cabin's value to the 2014 value, as well as a credit of all "overpaid" taxes in years prior to 2019. *Id.*; *infra* ¶¶ 11-14.

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[1] The record contains a quitclaim deed by which Ms. Telford deeded the property to Bell in January of 2017. (R. at 23).

[¶ 10] The County Board granted Bell's request to participate in the contested case hearing by phone. (R. at 17-19). The hearing frequently devolved into a chaotic[2] and combative harangue from Bell. The hearing officer patiently sought to guide Bell through the hearing process, including efforts to help her understand how to appropriately question witnesses. Bell was not receptive. Indeed, she interpreted the hearing officer's efforts as bias against her and preferred to argue with witnesses, or object to their answers as she questioned them.[3] She contemptuously rejected the hearing officer's guidance and accused him of partiality. *Supra* at n. 3; *infra* ¶ 38. Objections from Assessor's counsel incited similar responses. *Id.* Upon the hearing officer's warning that he might hold her in contempt, Bell persisted in her allegations of bias. *Id.* With this summary, we review the evidence presented.

[¶ 11] Referring to anticipated testimony from her witness and friend, Ms. Holli Telford, Bell began her testimony with a narrative tracking with her Notice of Protest. *Supra* ¶¶ 8-9. She explained that her property had experienced damage in 2013 and that, because the water line and septic system had not been repaired, the valuation should have remained at the 2014 assessed value. She insisted her property was uninhabitable and that before the water services and septic system could be addressed, the property's foundation would need to be repaired. (Hr'g recording, Bell testimony, 0:10:00 – 0:30:00; Telford testimony, 0:30:00 – 0:53:00; Larson testimony, 1:15:00 – 1:60:00). She referenced contractor bids to repair the foundation, but lacked direct, personal knowledge of those estimates. (Hr'g recording, Bell testimony, 0:19-50 – 0:30:00). Through this core testimony and her questions of witnesses, Bell frequently digressed and referred to tangential events and third-party involvements impacting the property's status.

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[2] The hearing suffered from persons frequently speaking at the same time. Bell continually interrupted the hearing officer as he tried to maintain order and explain hearing protocol. While we believe that the harshest sanctions for such behavior should be used as a last resort, especially when dealing with pro se litigants trying to learn as they go, Bell disregarded procedural decorum and civility with impunity. The hearing officer was fully justified to terminate the hearing or impose other sanctions. *See* Wyo. Stat. Ann. § 16-3-112(b)(v), (ix) (2019) (Hearing officers are authorized to regulate course of a hearing and to take any other actions authorized by agency rules); Wyo. Stat. Ann. § 16-3-107(k) (2019) ("So far as the orderly conduct of public business permits, any interested person may appear before any agency or its responsible officers or employees for the … determination of any issue, request or controversy in any proceeding … ."); *Bi-Rite Package, Inc. v. Dist. Ct. of Ninth Judicial Dist. of Fremont Cty.*, 735 P.2d 709, 712 (Wyo. 1987) (Courts have broad authority to "ensure civility, orderly procedure, [and] respect for the court[.]").

[3] While questioning Assessor, Bell emphatically objected to one of Assessor's answers on "foundation" grounds. She would not listen to the hearing officer's explanation that it was improper to object to testimony in response to her questions merely because she did not agree with the substance. (Hr'g recording, Larson testimony, 1:25:00 – 1:29:00). At one point she demanded that Assessor "restate" her testimony. (Hr'g recording, Larson testimony, 1:34:00 – 1:35:00). The hearing officer was consistently unable to maneuver his guidance through Bell's interruptions and accusations of bias. (Hr'g recording, Bell testimony, 0:18:00 – 0:19:00; 0:20:00 – 0:25:30; 1:05:00 – 1:05:50; Larson testimony, 1:05:00 – 1:06:00; 1:17:00 – 1:22:30; 1:24:00 – 1:29:00; 1:31:30 – 1:34:30; 1:35:00 – 1:42:00; 1:43:00 – 1:44:30; 1:55:00 – 2:01:00; 2:07:00 – 2:10:00).

[¶ 12] For example, she complained that either Lincoln County or the Town of Star Valley sought to impose an exorbitant fee to allow repair of the cabin's foundation. She stated that as a result, she (or Ms. Telford) initiated a RICO (racketeering influenced and corrupt organizations act)[4] action in Montana against Lincoln County or "the town," the specifics of which she could not provide. (Hr'g recording, Bell testimony, 0:15:00 – 0:17:20, 0:23:00 – 0:30:00; Telford testimony, 0:41:00 – 0:43:10). At another point, Bell suggested that Assessor favored the Town of Star Valley in Bell's past dealings, but again did not elaborate. (Hr'g recording, Bell testimony, 0:28:00 – 0:30:30). When Assessor's counsel sought clarification, Bell responded angrily and could not clarify, referring to "town notes" which were not in evidence.[5] (Hr'g recording, Bell testimony, 0:29:00 – 0:30:15). Bell and Ms. Telford referred to litigation with an unidentified insurance company that denied a claim for the cabin's damages but, again, offered no detail or documentation. (Hr'g recording, Bell testimony, 0:16:00 – 0:18:00; Telford testimony, 0:34:00 – 0:35:30).

[¶ 13] Ms. Holli Telford, the owner of the property in 2014 and a friend to Bell, testified more directly to the property's condition and agreed that the property was uninhabitable without water and septic services. (Hr'g recording, Telford testimony, 0:30:00 – 0:53:00). However, Ms. Telford admitted that she had not seen or been to the property since 2014. (Hr'g recording, Telford testimony, 0:47:00 – 0:49:15).

[¶ 14] Bell alleged through testimony, questioning, and objections, that Assessor's field personnel knew in 2014, and again in 2019, that the property was damaged and uninhabitable. (Hr'g recording, Bell testimony, 0:11:00 – 0:30:00; Larson testimony, 1:15:00 – 1:42:00). In response, Assessor summarized Wyoming's mass appraisal valuation system, the cost and sales valuation methodologies applied, and the possible range of property condition ratings in Wyoming's tax valuation system. (Hr'g recording, Larson testimony, 0:56:00 – 1:03:30). Assessor testified to her review of staff field reports, which did not support Bell's claims. Her staff's 2019 visit to the property revealed no impairment and, in fact, the cabin's improved condition warranted a revision of the condition rating from fair to average, which increased the valuation. She emphasized that she had not altered the cabin's quality of construction rating, contrary to Bell's allegation. (Hr'g recording, Larson testimony, 1:03:30 – 1:24:00; 1:45:00 – 1:50:00). The water had been turned off, Assessor testified, once at the owner's request and, later, because of a failure to pay water fees to Star Valley Ranch. (Hr'g recording, Larson testimony, 1:05:50 – 1:24:00; 1:30:00 – 1:36:00). In any event, she explained that market adjustments applied

[4] RICO laws are federal statutes enabling criminal prosecution or civil remedies for crimes that occur as part of an ongoing criminal organization, such as organized crime, and allows prosecution of an organization's leaders to the extent of their involvement. 18 U.S.C. §§ 1961-1968 (1970). The record left unclear how Bell's or Ms. Telford's dispute with the town or county could be pursued as a RICO action.

[5] Bell did attach to her brief a communication log of some sort, the origin of which is unclear, addressing the property in question. (Bell Br., attachment 2). Bell said that it was the town clerk's "notes"; Telford also referred to town "notes." (Hr'g recording, Bell testimony, 0:29:30 – 0:30:15; Telford testimony 0:44:00 – 0:46:00; Larson testimony, 1:16:45 – 1:19:45).

to whole neighborhoods, as well as "effective age" adjustments to the cabin, contributed to the cabin's valuation increase. (R. at 20-21; Hr'g recording, Larson testimony, 0:57:00 – 1:01:40).

[¶ 15] Assessor explained that if the property had suffered damages, she could have applied functional obsolescence as a form of depreciation and reduced the property's valuation for tax purposes. (Hr'g recording, Larson testimony, 1:05:00 – 1:15:00; 1:53:00 – 1:55:20). However, she received no request, no documentation of the cost to remedy defects, nor other information from Bell to support a functional obsolescence adjustment. *Id.* She noted that Bell refused to allow her staff to enter the cabin in 2019, which typically occurred when an appeal arose. *Id.* Bell responded angrily with accusations that Assessor should have informed her of these potential valuation adjustments in advance and that Assessor's omission was intentional. (Hr'g recording, Larson testimony, 1:15:00 – 1:32:00; *see also* Bell Br. 4, referring to Assessor's "retaliatory" tax assessment).

[¶ 16] The County Board affirmed Assessor's valuation; it cited Bell's failure to provide direct evidence or authority in support of her claim that the valuation was incorrect. (County Board Decision, R. at 41).

Appeal to the State Board

[¶ 17] Bell appealed to the State Board and, as the deadline for filing her brief approached, complained that the County Board had not provided her with the record. She sought to compel discovery from the County Board, as if it were a party. (Bell's Mot. for Extension of Time to File Br. and Mot. to Compel Disc.). Bell further indicated her intent to supply this Board with a written transcript of the hearing[6], which she submitted on January 27, 2020. (Bell Tr. of the Hearing). That transcript, however, includes no required attestations, such as the name of a qualified court reporter or a sworn attestation that the transcript is a true and accurate recitation of the hearing's contents (which, actually, makes sense because it isn't). When compared with the official audio recording of the hearing, Bell's transcript omits portions of the testimony and does not capture persons speaking at the same time.

[¶ 18] We granted Bell additional time to submit her brief. Bell cites to testimony from her self-made transcript rather than the audio recording prepared by the County Board. Bell also relies heavily on documents attached to her Brief, but which she did not submit as evidence at the hearing.

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[6] Bell states in her brief that she recorded the hearing herself. (Bell Br. 26). By rule, "all hearings shall be recorded electronically or by a court reporter or a qualified stenographer or transcriptionist." Rules, Wyo. St. Bd. of Equalization, Ch. 7 § 18(a) (2015). A party may have the County Board's audio recording transcribed, but must "make the necessary arrangements [with the County Board] and bear the cost thereof." *Id.* at § 18(b).

CONCLUSIONS OF LAW

A. State Board's role and standard of review

[¶ 19] When the State Board hears appeals from a county board, it sits as an intermediate level of appellate review. *Town of Thermopolis v. Deromedi*, 2002 WY 70, ¶ 11, 45 P.3d 1155, 1159 (Wyo. 2002). In its appellate capacity, the State Board treats a county board as the finder of fact. *Id.*

[¶ 20] The State Board's standard of review of a county board decision is, by rule, nearly identical to the Wyoming Administrative Procedure Act standard which a district court must apply in reviewing agency action, findings of fact, and conclusions of law. Wyo. Stat. Ann. § 16-3-114(c)(ii) (2015). The State Board's review is limited to a determination of 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).

[¶ 21] Since the State Board Rules are patterned on the judicial review provisions of the Wyoming Administrative Procedure Act, judicial rulings interpreting Wyoming Statutes section 16-3-114(c) (2019) offer guidance. For example, where both parties submit evidence at a contested case hearing, we apply the substantial evidence standard:

> We review an administrative agency's findings of fact pursuant to the substantial evidence test. *Dale v. S & S Builders, LLC*, 2008 WY 84, ¶ 22, 188 P.3d 554, 561 (Wyo. 2008). Substantial evidence is relevant evidence which a reasonable mind might accept in support of the agency's conclusions. *Id.*, ¶ 11, 188 P.3d at 558. Findings of fact are supported by substantial evidence if, from the evidence in the record, this Court can discern a rational premise for the agency's findings. *Middlemass v. State ex rel. Wyo Workers' Safety & Comp. Div.*, 2011 WY 118, ¶ 11, 259 P.3d 1161, 1164 (Wyo. 2011). When the hearing examiner determines that the burdened party failed to meet his burden of proof, we will decide whether there is substantial evidence to support the agency's decision to reject the evidence offered by the burdened party by considering whether that conclusion was contrary to the overwhelming weight of the evidence in the record as a whole. *Dale*, ¶ 22, 188 P.3d 554, 561.

Jacobs v. State, ex rel., Wyo. Workers' Safety & Comp. Div., 2013 WY 62, ¶ 8, 301 P.3d 137, 141 (Wyo. 2013).

[¶ 22] In conjunction with the substantial evidence standard, the State Board applies the "arbitrary and capricious" standard:

> The arbitrary and capricious standard of review is used as a "safety net" to catch agency action that prejudices a party's substantial rights or is contrary to the other review standards, but is not easily categorized to a particular standard. *Jacobs*, ¶ 9, 301 P.3d 137, 141. "The arbitrary and capricious standard applies if the agency failed to admit testimony or other evidence that was clearly admissible, or failed to provide appropriate findings of fact or conclusions of law." *Id.*

Gonzales v. Reiman Corp., 2015 WY 134, ¶ 16, 357 P.3d 1157, 1162 (Wyo. 2015).

[¶ 23] The State Board reviews 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.' " *Bowen v. State, Dep't of Transp.*, 2011 WY 1, ¶ 7, 245 P.3d 827, 829 (Wyo. 2011) (quoting *State ex rel. Workers' Safety & Comp. Div. v. Garl*, 2001 WY 59, ¶ 9, 26 P.3d 1029, 1032 (Wyo. 2001)).

Maverick Motorsports Grp., LLC v. Dep't of Revenue, 2011 WY 76, ¶ 12, 253 P.3d 125, 128 (Wyo. 2011). Likewise, we review the findings of ultimate fact of a county board 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, State of Wyo., 970 P.2d 841, 850-51 (Wyo. 1998) (internal citations omitted) (quoted in *Chevron U.S.A., Inc. v. Dep't of Revenue*, 2007 WY 79, ¶ 10, 158 P.3d 131, 134 (Wyo. 2007)).

[¶ 24] The Wyoming Supreme Court described the burden of proof one bears when challenging a county assessor's valuation:

> 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." *Amoco Production Co. v. Dept. of Revenue*, 2004 WY 89, ¶ 7, 94 P.3d 430, 435 (Wyo. 2004). The Britts [Taxpayers] had the initial burden of presenting evidence sufficient to overcome the presumption. *Id.*, ¶ 8. If the Britts successfully overcame the presumption, then the county board was "required to equally weigh the evidence of all parties and measure it against the appropriate burden of proof." *CIG v. Wyoming Dept. of Revenue*, 2001 WY 34, ¶ 10, 20 P.3d 528, 531 (Wyo. 2001). The burden of going forward would then have shifted to the Assessor to defend her valuation. *Id.* Above all, the Britts bore "the ultimate burden of persuasion to prove by a preponderance of the evidence that the valuation was not derived in accordance with the required constitutional and statutory requirements for valuing . . . property." *Id.*

Britt v. Fremont Cty. Assessor, 2006 WY 10, ¶ 23, 126 P.3d 117, 125 (Wyo. 2006).

B. Review of the County Board's decision

[¶ 25] Given how Bell pursued her appeal, including her repeated failure to serve filed documents on parties as required by our rules, her failure to cite the official record[7] from the County Board, her reliance on materials not presented at hearing, threats to sue members of the State Board, and her nearly exclusive focus on argued conclusions lacking any reasonable foundation or ability to verify from the evidence presented, we could summarily affirm the County Board's decision in favor of the Assessor.[8] *See In re Gray*, 2017 WL 5559382, Docket No. 2016-44, ¶ 33 (Wyo. State Bd. of Equalization, Nov. 9, 2017) (citing *Fowles v. Fowles*, 2017 WY 112, ¶ 30, 402 P.3d 405, 413 (Wyo. 2017) (Court will not consider issues that the appellant has not supported by proper citation or cogent authority); *Bender v. Uinta Cty. Assessor*, 14 P.3d 906, 911 (Wyo. 2000) (Pro se litigants

[7] Bell refers to, and quotes from, a "certified transcript" or "Hearing Transcript" throughout her brief. (Bell Br. 3, 7, 9, 11, 17, 20-21. She does not, however, cite to the certified record, including the hearing's audio transcript, which the County Board submitted to this Board as part of the record on appeal.

[8] To sanction for the violation of our rules, we may strike briefs or pleadings, draw an adverse inference, remove or limit the participation of disruptive persons, reschedule proceedings or continue deadlines, dismiss proceedings, assess costs, or impose other permitted legal sanctions. Rules, Wyo. St. Bd. of Equalization, Ch. 1 § 10 (2006).

are required to follow rules and are subject to sanction, including assessment of costs, for failure to follow rules). We opt, however, to address each of Bell's issues/claims for the benefit of future pro se litigants, county assessors, county boards of equalization, and the public.

Issue 1: Did the County Board fail to conduct a fair, impartial hearing when it hired a former Lincoln County District Attorney to act as the hearing officer?

[¶ 26] Bell alleges that she "Was Not Provided A Fair Tribunal by Unilateral Appointment of a Hearing Officer That Had Significant Ties With the County As A Past and Present Prosecutor And Who Fabricated Evidence In Favor Of the County Thereby Violating Appellant's Due Process and Equal Protection Rights To A Fair Assessment ... ." (Bell Br. 25). It was and is Bell's burden to establish that the hearing officer's participation was improper. *Bd. of Trust., Laramie Cty. School Dist. No. I v. Spiegel*, 549 P.2d 1161, 1166 (Wyo. 1976).

[¶ 27] Wyoming law establishes that a hearing officer in a contested case hearing shall conduct proceedings in an impartial manner and shall "withdraw if he deems himself disqualified provided there are other qualified presiding officers available to act." Wyo. Stat. Ann. § 16-3-112(a) (2019). Further:

> No officer, employee, contract consultant, federal employee or agent who has participated in the investigation, preparation, presentation or prosecution of a contested case shall be in that or a factually related case participate or advise in the decision, recommended decision or agency review of the decision, or be consulted in connection therewith except as witness or counsel in public proceedings. A staff member is not disqualified from participating or advising in the decision, recommended decision or agency review because he has participated in the presentation of the case in the event the staff member does not assert or have an adversary position.

Wyo. Stat. Ann. § 16-3-111 (2019). The Wyoming Supreme Court assures that "an unbiased tribunal is a constitutional necessity in a quasi-judicial hearing, and a denial of the same is a denial of due process." *Spiegel*, 549 P.2d at 1165 (quoting *Sorin v. Bd. of Educ.*, 315 N.E.2d 848, 851 (Ohio 1974)).

[¶ 28] Bell supported her allegation of bias with no evidence during the hearing; she merely insisted that the hearing officer could not act as such because he had previously worked as the county's district attorney and operated in league with the County or Assessor. *Id.* Bell attaches a one-page computer screen printout to her brief suggesting

that the hearing officer worked as a district attorney, but it lacks detail sufficient to identify the time frame or any other information in support of her objection. (Bell Br., Attach. 6).

[¶ 29] Bell might have more appropriately sought to voir dire the hearing officer prior to the presentation of evidence to discover any reason to disqualify. *See Spiegel*, 549 P.2d at 1164; *Ririe v. Bd. of Trust. Of Sch. Dist. One, Crook Cty., Wyo.*, 674 P.2d 214, 216-17 (Wyo. 1983) (party questioned school board members prior to the hearing to discern bias). This would have created a record of her objection for our review.

[¶ 30] Even assuming the hearing officer was once employed as a district attorney in Lincoln County, this would not disqualify him. Indeed, a decision-maker's previous knowledge and involvement with the subject matter of a dispute does not necessarily disqualify the decision-maker from future proceedings. *Ririe*, at 223 (citing *Withrow v. Larkin*, 421 U.S. 35, 47 (1975)). Nor does Bell offer authority for her argument that the hearing officer's past employment is, by itself, a basis to disqualify. We reject Bell's manner of protest as procedurally disruptive and her claim as substantively baseless.

Issue 2: Did the hearing officer "display pervasive bias towards BELL when he fabricated evidence in favor of the Assessor in his decision entered as finding of fact no 10, to wit:"

> "10. The assessor attempted to send petitioner at her last known address a review sheet in an effort to accurately assess the property. The review sheet was returned as undeliverable as addressed. **(Noting that no such evidence was admitted to, attested to, or recognized as existing during any part of the County Board Hearing which Bell personally recorded!)"**

[¶ 31] Bell's second issue and argument reveals her basic misunderstanding of the County Board's and hearing officer's respective roles in the adjudicative process. While the hearing officer may have had a hand in assisting with preparation of the County Board's decision (which is permissible and commonplace), the County Board alone was responsible for the decision's substance and adjudicated conclusion. *See* Wyo. Stat. Ann. § 16-3-112(b) (2019) (Among a hearing officer powers, he may recommend decisions when directed to do so); *In re Gorski*, 2018 WL 4205403, Docket No. 2016-52 * 2 (Wyo. St. Bd. of Equalization, Aug. 22, 2018) (A proposed decision signed by only a hearing officer, without the signature of a board member, is not a final, appealable decision.).

[¶ 32] Even so, Bell ignores the evidence and, without basis, accuses the hearing officer of fabricating evidence. (Bell Br. 26). Assessor testified regarding, and offered documentary evidence of, her efforts to send assessment information to the property's owner of record.

Supra ¶¶ 7, 9, 14. In a letter to Bell, Assessor summarized work on the account and her office's mailings that were returned as undeliverable. (R. at 20-21, 25-28). On cross-examination, Assessor described her inability to connect with Bell until 2018, at which point she requested that Bell complete a change of mailing address request. (Hr'g recording, Larson testimony, 1:50:00 – 1:53:00).

[¶ 33] Bell's testimony of events surrounding her notice claim, by comparison, is difficult to follow and she offered no documented evidence. She generally testified to phone conversations with Assessor and an email(s) in 2017 or 2018, but offered no verification of these. (Hr'g recording, Bell testimony, 0:28:45 – 0:30:00; Larson testimony, 1:26:00 – 1:29:45; 1:50:00 – 1:52:50; 1:57:00 – 2:09:00). Weighing Bell's unsubstantiated allegations against the Assessor's dispassionate review of events, substantial evidence supported the County Board's factual finding regarding the failure to give notice claim: "The assessor attempted to send petitioner at her last known address a review sheet in an effort to accurately assess the property. The review sheet was returned as underliverable." (R. at 40); *supra* ¶ 21. We find no "pervasive bias towards BELL," nor a fabrication of evidence in Assessor's favor.

Issue 3: Did Assessor err or commit perjury when she did not consider the lack of water services to the cabin in performing her valuation of the property?

[¶ 34] Bell argues that Assessor misstated the reason for the cabin's lack of water services prior to Bell's acquisition of the property and, in doing so, committed perjury. She states: "The Assessor out of nowhere testified during the hearing that TELFORD was delinquent on her water bill and that his was the reason that the water stayed off." (Bell Br. 27). From this premise, Bell concludes "[t]he moment this perjured testimony came out, the prosecutor tried to side step the perjury by absurdedly [sic] claiming lack of relevance to the 2019 tax assessment valuation, and the hearing officer immediately recessed the hearing so that the Assessor could be coached on how to due [sic] damage control on her perjured testimony." *Id.* Here, she accuses Assessor of lying under oath, and the hearing officer [and also Assessor's counsel] of aiding Assessor's perjury through improper interference with Bell's questioning. *See supra* ¶ 10, n. 3.

[¶ 35] Perjury occurs when a person "while under a lawfully administered oath or affirmation, he knowingly testifies falsely or makes a false affidavit, certificate, declaration, deposition or statement, in a judicial, legislative or administrative proceeding in which an oath or affirmation may be required by law, touching a matter material to a point in question." Wyo. Stat. Ann. § 9-5-301(a) (2019).

[¶ 36] Although not clear from Bell's arguments and testimony, this allegation underpins Bell's objection to Assessor's classification of the cabin's condition and quality as "average" in 2019. *Supra* ¶¶ 8, 11-15; (Bell Br. 8-13). Bell states: "the only matter subject

of this appeal is whether the Assessor wrongfully increased the quality and condition valuation of the building from the 2014 assessment when the Assessor had perfect knowledge that there was no water running to the building even after admitted repairs were made to the building." (Bell Br. 11).

[¶ 37] This is another example of Bell's belief that any testimony varying from her position reflected a lie under oath. Bell offered no proof that Assessor lied on the stand, and proving such would require more than her personal disagreement with Assessor's recall of the facts. Assessor summarized what her staff believed and had recorded during previous visits to the cabin. *Supra* ¶ 14. Notwithstanding that different reasons were given for a claimed lack of water services to the cabin at different times, the record contains no evidence of a knowing, intentional misrepresentation under oath.

[¶ 38] Bell accused (and continues to accuse) the hearing officer of ordering a brief recess to "coach" the Assessor during Bell's cross examination.[9] (Bell Br. 27; Hr'g recording, Larson testimony, 1:35:00 – 1:37:00); *Supra* ¶ 10. The hearing officer reasonably sought to allow Bell time to calm herself in the midst of her angry tirade in response to the Assessor's testimony. The hearing's audio recorder remained activated through the entire five minute recess. (Hr'g recording, Larson testimony, 1:36:00 – 1:42:00). The hearing officer did not "coach" Assessor. *Id.*

Issue 4: Did the County Board rely upon substantial evidence when it affirmed the Assessor's change of quality of construction from fair in 2014 to average in 2019?

[¶ 39] Bell's evidence challenging Assessor's rating of the cabin's condition as "average" centers upon the cabin's lack of water and septic services, and the unresolved damage to the foundation. *Supra* ¶¶ 8, 11, 13. Because Bell would not allow entry to the cabin in 2019, the record contains no evidence other than Bell's verbal assurance that the cabin remained uninhabitable. *Supra* ¶¶ 8, 11, 13, 15. The record contains a picture of the cabin, but it is a blur of white and black and offers no clear view whatsoever of the cabin. (R. at 2). Bell's witness, Ms. Holli Telford, testified to the cabin's 2014 defects, but admitted that she had not viewed or entered the cabin thereafter. *Supra* ¶ 13. Her testimony was anecdotal at best and could not be relied upon as evidence of the cabin's condition in 2019.

[9] A general misunderstanding of procedural formality and trial practice, i.e. how to pose and respond to objections, or deal with evidence, drove most of Bell's frustration and resulting anger. Her refusal to accept the Hearing Officer's assistance compounded this problem. While we appreciate that the expense of hiring an attorney is not justified in most property tax appeals, pro se litigants and attorneys alike should allow hearing officers to assist them when the occasion arises, and trust that the hearing officer merely seeks a fair, orderly process.

[¶ 40] Assessor testified to her staff's examination of the cabin's exterior in 2019 and their reports which noted an improvement to its condition and the completion of repairs.[10] *Supra* ¶ 14). Without pictures of the cabin or detailed information as to its condition, and weighing the credibility of the witnesses, substantial evidence supported the County Board's affirmation of the Assessor's condition rating change. Bell offered no objective evidence to counter Assessor's appraisal, and her resort to invective and accusations of conspiracy undoubtedly undermined the weight of her testimony. *Id.* In the absence of evidence to the contrary, the County Board correctly assumed the Assessor performed her duties as required by law and that her staff exercised sound judgment where it was required. *Supra* ¶ 24.

Issue 5: "Was the County Board's decision arbitrary, capricious, or otherwise not in accordance with law[?]"

[¶ 41] Bell, citing a Board decision addressing the revision of a property's condition rating, argues that because the condition of her cabin was considered "fair" in 2014, no deviation from this rating could occur in future years unless the Assessor proves a change is warranted. (Bell Br. 24, 28, citing *In re Crook Cty. Assessor*, Doc. Nos. 2016-45, 2016-50, 2018 WL 940162 (Wyo. St. Bd. of Equalization, Feb. 6, 2018)). Bell argues that the Assessor's revision was arbitrary and capricious without proof. *Id.* Bell misunderstands the holding in *Crook Cty.* and ignores Assessor's explanation as to why she revised the cabin's quality rating as average. *Supra* ¶ 14.

[¶ 42] Our decision in *Crook Cty.* was the third in a series of property tax decisions concerning that property's valuation. *See Crook Cty.* at * 2-8, ¶¶ 1-36. Those cases concerned a home's ***quality*** of construction and several revisions of that quality rating over a period years. *Id.* at * 2-8, ¶¶ 3-36. Not in dispute was the house's ***condition***, which assessors classify separately. *Id.* As one might imagine, a home's quality of construction is less likely to change from year to year, while its condition may change readily depending upon an owner's level of upkeep and maintenance

[¶ 43] Bell likely seizes upon a particular finding from our second decision in the *Crook Cty.* appeals concerning the Bell property.[11] There, we said the initial burden of going forward, which would normally lie with the appealing property owner, shifted in that case to the Assessor because she had revised the quality classification on the subject property

[10] Bell questioned Assessor's reliance on these reports and staff notes, which Assessor did not present as evidence in support of her testimony, and which Bell did not request prior to the hearing through discovery. (Hr'g recording, Larson testimony, 1:24:00 – 1:31:00; 1:41:00 – 1:44:00; 1:45:00 – 1:49:30). Unable to effectively question Assessor upon reports not submitted as evidence, Bell accused her of perjury and threated litigation. *Id.*

[11] By sheer coincidence, the property owners in the *Crook Cty.* appeals were named Bell, but as far as the Board is informed, there is no relationship between the Bell parties in that case and the present.

from good to excellent without apparent reason. *In re Crook Cty. Assessor*, 2017 WL 737753, Doc. No. 2015-57 * 9, ¶¶ 34-35 (Wyo. St. Bd. of Equalization, Feb. 15, 2017).

[¶ 44] In the present case, Assessor did not revise the **quality** rating; she revised the property's **condition** rating to "average." *Supra* ¶ 14; (R. at 20). We have not held that an assessor's condition rating should not change from year to year, nor is there authority for that proposition. In support of her decision to change the cabin's condition rating, Assessor explained that the condition had improved and repairs had occurred, at least from an outside vantage point. *Supra* ¶ 14. Here again, Bell responded with accusations, rather than meet the Assessor's evidence with objective, visual or technical evidence. Unsurprisingly, the County Board found Bell's emotional disputations, without corroborating evidence, unpersuasive.

[¶ 45] Moreover, Assessor testified that the cabin's valuation increased for a number of reasons, rather than just the condition rating change. *Supra* ¶ 14. Assessor then explained that she might have addressed a lack of water or septic system function through a functional obsolescence adjustment had she received information to support that form of depreciation. *Supra* ¶ 15. Bell viewed this explanation as a slight of hand:

> AFTER HOLLI's concluded testimony, the Assessor changed her whole defense to largely a defense of functional obsolescence, minimizing the sales/market approach she had intended to use by virtue of exhibits she presented to the Board in support of her case in chief.

(Bell Br. 6; Hr'g recording, Larson testimony, 1:30:00 – 1:35:00); *supra* ¶ 14.

[¶ 46] Bell attributed nearly every evidentiary disagreement or contentious exchange as reflecting malicious or dishonest intent. She offered no evidence justifying her allegations of dishonesty or conspiracy. She offered no objective evidence in support of her position that the cabin was overvalued. A preponderance of the evidence, and the law applied to that evidence, compelled the County Board's affirmation of Assessor's assessed value of the cabin.

CONCLUSION

[¶ 47] The County Board correctly concluded that Bell failed to carry her burden of proof, and its decision is supported by substantial evidence, is neither arbitrary nor capricious, and is consistent with law.

ORDER

[¶ 48] **IT IS HEREBY ORDERED** that the Lincoln County Board of Equalization's decision affirming Assessor's 2019 assessment of Ms. Bell's cabin property in Lincoln County, Wyoming, is **affirmed.**

[¶ 49] **Pursuant to Wyoming Statutes section 16-3-114 (2019) 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 21 day of April 2020.

STATE BOARD OF EQUALIZATION

David L. Delicath, Chairman

E. Jayne Mockler, Vice-Chairman

Martin L. Hardsocg, Board Member

ATTEST:

Jennifer Fujinami, Executive Assistant

CERTIFICATE OF SERVICE

I certify that on the 21 day of April 2020, 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:

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