

BEFORE THE STATE BOARD OF EQUALIZATION

FOR THE STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF )  
AL WILLIS ) Docket No. 2019-33  
FROM A DECISION BY THE LARAMIE )  
COUNTY BOARD OF EQUALIZATION )  
(2019 Property Tax Assessment) )

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**DECISION AND ORDER**

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**APPEARANCES**

Travis W. Koch, Overstreet, Homar & Kuker, appeared on behalf of Taxpayer, Al Willis.

Mark T. Voss, Laramie County Attorney, appeared on behalf of Laramie County Assessor Kenneth Guille.

**SUMMARY**

[¶ 1] Al Willis appealed Assessor's 2019 assessment of his real property to the Laramie County Board of Equalization, contesting Assessor's treatment of solar panels and shipping containers as real property. The County Board determined that Mr. Willis had not proven the assessment was in error. Mr. Willis appealed to the Wyoming State Board of Equalization.

[¶ 2] The Wyoming State Board of Equalization, Chairman David L. Delicath, Vice Chairman E. Jayne Mockler, and Board Member Martin L. Hardsocg, considered the record and the parties' briefs. Because neither the parties nor the County Board identified the correct statutory definition of "real property," it is no surprise that evidence, argument, and analysis addressing that definition are in short supply. Finding that the County Board's decision regarding the solar panels is unsupported by substantial evidence, and its decision regarding the shipping containers is unsupported by substantial evidence and not in accordance with law, we reverse.

**ISSUES**

[¶ 3] Mr. Willis raises two issues:

1. Whether the solar panels maintained by Petitioner fall within the definition of real property found in Wyo. Stat. Ann. § 39-15-101(a)(v).
2. Whether the shipping containers located at the subject property fall within the definition of real property found in Wyo. Stat. Ann. § 39-15-101(a)(v).

(Willis's Br. 2).

[¶ 4] Assessor articulates a single issue:

Was the CBOE's order, which [affirmed] "the Laramie County Assessor's determined value of the subject property of \$255,227.00["]", in accordance with law, arbitrary, capricious, an abuse of discretion, or supported by substantial evidence in the record?

(Assessor's Br. 3)

## **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 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 30, 2019. (R. 275). Mr. Willis filed his appeal 28 days later. (Notice of Appeal, 1). Accordingly, we have jurisdiction to decide this matter.

## **PROCEEDINGS AND EVIDENCE PRESENTED TO THE COUNTY BOARD**

[¶ 6] In 2019, Assessor treated several solar panels and two shipping containers on Mr. Willis's Laramie County property as taxable real property. (R. at 240-42). He valued all of the solar panels at \$36,700, and each of the shipping containers at \$631. (R. at 40). Mr. Willis appealed to the County Board. (R. at 1). He did not challenge the value Assessor attached to the panels and containers; rather, he challenged their classification as taxable real property. (R. at 24-25, 28).

[¶ 7] The County Board held an evidentiary hearing at which Mr. Willis testified that his solar generating system includes "panels, micro inverters, controllers, and notification services," all of which he contended are personal property. (R. at 23). He conceded that the supports embedded into the ground are real property, as are the buried electrical cables, the connection box, and the breaker box. (R. at 23-24; 225). He further testified that the "solar panels are attached to poles that are attached to land, but they're bolted to it." (R. at 35).

[¶ 8] Assessor testified that “when I look at Title 39, basically everything in the State of Wyoming is taxable, unless specifically exempted by law.” (R. at 43). Lacking any specific law or rule exempting solar panels, Assessor decided they were taxable real property. *Id.* Assessor also testified that “the wiring and piping” that Mr. Willis conceded were real property are “useless without the panels.” (R. at 44).

[¶ 9] Mr. Willis testified that his 40’ by 8’ shipping containers sit directly on the ground and are not attached to the land in any way. (R. at 21). He also testified that the containers are fitted with lifting points. *Id.* One of his exhibits is a photograph showing weight limits printed on one of the containers. (R. at 228). Another exhibit is a photograph of a large machine that Mr. Willis identified as “equipment to handle shipping containers.” (R. at 23, 232). He testified that the containers have not been moved since they arrived on his property, which was 2017 at the latest. (R. at 33). But in a pre-hearing submission, Mr. Willis stated that his shipping containers “are personal property designed to ship (my items) easily in and out of state to my other real property I have in Oklahoma, Arkansas, and/or Montana, as I have already shipped two containers out before.” (R. at 225).

[¶ 10] Assessor testified that a 2001 memo from Allen Black, of the Department’s Ad Valorem Division, required him to assess Mr. Willis’s shipping containers as real property.<sup>1</sup> (R. at 42). That memo, which was not an exhibit, reads:

We have received inquiries about the taxability of skid-mounted structures. The Division is of the opinion that skid mounted structures are in fact subject to Ad Valorem Taxation. The question seems to have arisen, in part, due to advertising by a manufacturer of skid mounted storage sheds. They are “suggesting” that their skid-mounted buildings are not taxable because they are not permanently attached to the ground. The Division does not share their opinion based on the concept that the structure becomes appurtenant to the land. The statutory definition of real property is clear that appurtenances are real property and therefore taxable. If you have skid-mounted structures in your county, they should be listed and valued for Ad Valorem Taxes.

Memorandum from Allen Black to All County Assessors (July 18, 2001). One of the County Board members asked Assessor, “what’s that memo say?” Assessor replied, “That

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<sup>1</sup> The 2001 memo was discussed in our decision in *In re Frelinger*, 2019 WL 1780381, Docket No. 2018-43 (Wyo. State Bd. of Equalization, April 15, 2019). In that case, Assessor valued a shed on Mr. Frelinger’s land as taxable real property. *Id.* at \*1. The 2001 memo was not an exhibit, but Assessor and the administrator of the Department’s Property Tax Division both testified that it required Assessor to assess Mr. Frelinger’s shed as real property. *Id.* The County Board acknowledged the memo, but nonetheless ordered Assessor to issue a new assessment that did not include the shed. *Id.* at 2. We reversed on appeal, holding that the Department’s guidance was binding on Assessor, and that the County Board lacked authority to order Assessor to disregard that guidance. *Id.* at 3. We didn’t order the County Board to reach a particular decision; we just said the County Board couldn’t order Assessor to ignore the Department’s instructions. *Id.*

-- it basically came down -- it's kind of confusing language, but that they are -- if they're there, they're basically taxable, whether they're on skids or whether they're attached to the ground." (R. 56).

[¶ 11] At the end of its subsequent deliberative session, the County Board voted 4-1 to affirm the assessment. (R. 257-62). With no legal analysis or reference to the statutory definition of "real property," the County Board concluded:

Protestant has the burden of proof to demonstrate the subject property was assessed incorrectly, erroneously, or in an otherwise unlawful matter, *Teton Valley Ranch v. State Board of Equalization*, 735 P.2d 107, 112 (Wyo. 1987) or that the decision is not supported by substantial evidence. *Butts v. Wyoming State Board of Architects*, 911 P.2d 1062, 1065 (Wyo. 1996). The burden was not met by Protestant.

(R. 274).

## CONCLUSIONS OF LAW

### A. State Board's review function and burdens of proof

[¶ 12] 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) (2019), 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). "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, 294-5 (Wyo. 2018) (quoting *Walton v. State ex rel. Wyo. Workers' Safety & Comp. Div.*, 2007 WY 46, ¶ 9, 153 P.3d 932, 935 (Wyo. 2007)). "The party challenging

the sufficiency of the evidence has the burden of showing the lack of substantial evidence to support the agency's findings." *Faber v. Dep't of Transp.*, 2009 WY 137, ¶ 5, 220 P.3d 236, 238 (Wyo. 2009).

[¶ 13] 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. Are the solar panels real property

[¶ 14] Mr. Willis contends that the County Board's decision regarding the solar panels was not in accordance with the definition of "real property" appearing at Wyoming Statutes section 39-15-101(a)(v) (2019). (Willis Br. 3-5). That definition, however, applies only to state sales tax. Wyo. Stat. Ann. § 39-15-101(a) (2019). There is no definition of "real property" in the ad valorem (property tax) statutes, but an earlier definition applies to all of Title 39, including the ad valorem tax statutes: " 'Real property' means land and appurtenances, including structures, affixed thereto, and any intangible characteristic which contributes to the fair market value thereof[.]" Wyo. Stat. Ann. § 39-11-101(a)(xv) (2019).

[¶ 15] The applicable definition required the County Board to determine whether Mr. Willis's solar panels are "appurtenances." To do that, the County Board should have asked: (1) whether they are connected or attached to the land; (2) whether the appropriation or adaptation of the panels is related to the use or purpose of that part of the land to which they are connected or attached; and (3) whether Mr. Willis objectively intended a permanent accession to the freehold with that intention being inferred from the nature of the object affixed, the purpose it serves on the land, and the party's relationship to the object and the land. *Amoco Prod. Co. v. Wyo. State Bd. of Equalization*, 2001 WY 1, ¶ 9, 15 P.3d 728, 733 (Wyo. 2001). On review, we must determine whether substantial evidence supports the County Board's implied finding that the panels are appurtenances.

Connection

[¶ 16] The only evidence about the solar panels' connection to the land was Mr. Willis's testimony that they are bolted to upright posts embedded in the ground. One of Mr. Willis's exhibits shows the underside of the panels mounted on the posts, and another shows the posts without the panels. (R. 233, 235). But, we don't know how much effort it takes to attach or remove the panels, and we don't know whether Mr. Willis keeps the panels in the same place all the time.

[¶ 17] In finding that irrigation pipe was not sufficiently connected to be an appurtenance, the Wyoming Supreme Court reasoned:

It is possible that the land could be irrigated without it, and the record is unclear whether other types of irrigation pipe, i.e., sprinkler pipe, could be attached to the rise pipes in the Rumery's field. The gated pipe is also readily marketable at a substantial value when separated from the land.

*Wyo. State Farm Loan Bd. v. Farm Credit Sys. Capital Corp.*, 759 P.2d 1230, 1235 (Wyo. 1988). Applying that reasoning to our case, Mr. Willis's land can be supplied with electricity without the solar panels, indeed, he has a gasoline-powered generator. (R. 24, 239). There was no evidence that the panels are, or are not, "readily marketable" if separated from the land. In short, there was almost no evidence addressing this element of the appurtenance test.

#### Adaptation and Intent

[¶ 18] The adaption and intent elements of the appurtenance test are closely related. *Wyo. State Farm Loan Bd.* at 1235. The panels came in individual boxes that seemingly anyone could buy, and there's no evidence that the panels were (or were not) adapted to the use or purpose of the land. (R. 238). For that matter, there is no evidence of what the use or purpose of the land is. The mere fact that the panels are useful does not support a finding that they were adapted. *Wyo. State Farm Loan Bd.* at 1235.

[¶ 19] There is no evidence that the panels are any more useful on Mr. Willis's land than they would be anywhere else, which doesn't support a finding that Mr. Willis intended a permanent accession to the land. *Id.* (Evidence that pipe is "portable and useful in any field with a suitable water hook-up" weighed against its being "adapted to use on the land.").

[¶ 20] We find that Mr. Willis has satisfied his burden of showing a lack of substantial evidence supporting the County Board's decision. Having considered the evidence – or, more accurately, the lack thereof – we hold that substantial evidence does not support the County Board's implied finding that the solar panels are appurtenances.

#### C. Are the shipping containers real property

[¶ 21] The Department is required to "[c]onfer with, advise, and give necessary instructions and directions to the county assessors as to their duties" and to promulgate rules and regulations necessary for the enforcement of all tax measures. Wyo. Stat. Ann. § 39-11-102(c)(xvi), (xix) (2019). County assessors must "[f]aithfully and diligently follow and apply the orders, procedures and formulae of the department of revenue or orders of the state board of equalization for the appraisal and assessment of all taxable property[.]" Wyo. Stat. Ann. § 18-3-204(a)(ix) (2019). A 2001 memorandum from the Department's Ad Valorem Division explained that skid-mounted structures should be considered real

property for property tax purposes.<sup>2</sup> The County Board based its decision on Assessor's explanation of that memorandum at the hearing.

[¶ 22] Mr. Willis testified that the shipping containers sit directly on the ground. (R. 21, 28). Assessor did not dispute that testimony. If the containers are on the ground, they're not on skids. And if they're not on skids, they're not skid-mounted. And if they're not skid-mounted, they're not skid-mounted structures and the Department's 2001 memorandum on skid-mounted structures doesn't apply to them. Therefore, substantial evidence does not support the County Board's implied finding that the containers are skid-mounted structures, and its conclusion that the containers are taxable real property is not in accordance with law.

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<sup>2</sup> Although that memorandum is not part of the record, it is available for our appellate consideration just as any rule or other guidance from the Department.

**ORDER**

[¶ 23] **IT IS, THEREFORE, ORDERED** the decision of the Laramie County Board of Equalization is reversed.

DATED this 16 day of April 2020.

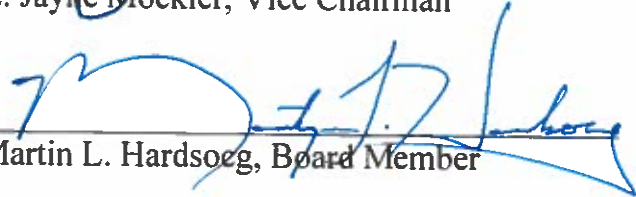
**STATE BOARD OF EQUALIZATION**



David L. Delicath, Chairman



E. Jayne Mockler, Vice Chairman



Martin L. Hardsoeg, Board Member

ATTEST:



Jennifer Fujinami, Executive Assistant



**CERTIFICATE OF SERVICE**

I certify that on the 16 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 the following:

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