

**BEFORE THE STATE BOARD OF EQUALIZATION**

**FOR THE STATE OF WYOMING**

IN THE MATTER OF THE APPEAL OF	)	
<b>GREENBIRD &amp; ASSOCIATES, LLC</b>	)	<b>Docket No. 2021-102</b>
FROM A DECISION BY THE NATRONA	)	
COUNTY BOARD OF EQUALIZATION	)	

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**DECISION AND ORDER**

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**APPEARANCES**

Ken Carpenter, pro se, appeared on behalf of taxpayer Greenbird & Associates, LLC. (hereafter Taxpayer).

Eric K. Nelson, Natrona County Attorney, and Charmaine A. Reed, Deputy Natrona County Attorney, appeared on behalf of Assessor Matt Keating (hereafter Assessor).

**SUMMARY**

[¶ 1] Taxpayer appeals from the Natrona County Board of Equalization’s (County Board) decision affirming Assessor’s 2021 valuation of vacant residential property in Natrona County. Taxpayer raises a procedural claim that the County Board lacked the necessary equipment to proceed. As for the valuation, Taxpayer claims that Assessor incorrectly applied the “sales comparison” valuation method, relying on properties not sufficiently similar to its own. The County Board determined that Taxpayer offered insufficient evidence of appraisal error, and it affirmed the assessment.

[¶ 2] The Wyoming State Board of Equalization (State Board), Chairman E. Jayne Mockler, Vice-Chairman Martin L. Hardsocg, and Board Member David L. Delicath, reviewed the record and briefs of the parties. We shall affirm the County Board’s decision.

**ISSUES**

[¶ 3] Taxpayer presents the following issues:

1. Did the County Board of Equalization act without observance of procedure required by law when it allowed the hearing to go forward

knowing that they did not have the tools they needed and requested by the Taxpayer.

2. Did the County Board of Equalization act without observance of procedure required by law when they ruled without deliberation.
3. Did the County Board of Equalization act arbitrarily and capriciously or otherwise not in accordance with the law when it did not question the Assessor's use of invalid (not at arm's length) sales.
4. Did the County Board of Equalization act arbitrarily and capriciously or otherwise not in accordance with the law when it allowed the Assessor to use a sale from 2015 that had not been validated?
5. Did the County Board of Equalization act arbitrarily and capriciously or otherwise not in accordance with the law when it allowed the Assessor to use sales without adjusting for improvements, amenities or attributes?

(Taxpayer's Br., 1).

[¶ 4] Assessor identifies two issues: "1. Was the County Board of Equalization's affirmation of Assessor's assessments made with observance of procedure required by law? 2. Does substantial evidence<sup>1</sup> support Assessor's valuation of the subject property?" (Assessor's Br., 1).

## **JURISDICTION**

[¶ 5] As Taxpayer appealed to this Board from the County Board's decision within thirty days, as prescribed by the State Board's appellate rules, we have jurisdiction to hear Taxpayer's appeal. (County Board decision, dated Dec. 1, 2021, R. at 89-91; Notice of Appeal, dated Dec. 7, 2021); Rules, Wyo. Bd. of Equalization, Ch. 3 § 2 (2021).

## **EVIDENCE PRESENTED BEFORE COUNTY BOARD**

[¶ 6] Taxpayer owns approximately 40 acres of vacant "mountain" land in Natrona County, the legal description of which is SE NE 25-32-79. (R. 13; Hr'g Audio 01:07:00-01:09:00). Assessor appraised Taxpayer's 40 acre lot at \$45,515 in 2021, down from

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<sup>1</sup> Assessor's formulation of the issue misconstrues the evidentiary standard applied in administrative contested case hearings. When reviewing a decision maker's ruling, in this case the County Board's decision, we ascertain whether the County Board's decision is supported by "substantial evidence," which is variably defined as "relevant evidence which a reasonable mind might accept in support of the agency's conclusions." *Infra* ¶ 14. So, the question is not whether "substantial evidence" supports Assessor's valuation, but whether the County Board relied on substantial evidence to reach the decision it reached. It's a fine, but important, distinction.

\$234,000 in 2020. (R. at 39, 87).

[¶ 7] Taxpayer complained that Assessor's sales comparison valuation relied on property sales that were not sufficiently comparable, that Assessor had not verified terms of sales, and that Assessor had relied on non-arm's length sales. Taxpayer listed the Assessor's selected comparable sales on a color-coded spreadsheet and, for several sales, suggested reasons why Assessor should not have used them, or more generally raised questions about the sales. (R. at 86; Hr'g Audio 01:09:00-01:13:00). Taxpayer, through its representative, offered no conclusive evidence to establish the objectionable features of the comparable properties. Rather, the representative primarily asked questions about the properties or argued that certain conditions should disqualify the properties as comparable sales. *Id.*

[¶ 8] In support of the 2021 assessed value, Corrie Cabral, Chief Analyst for Assessor's Office, explained how Assessor appraised the land. (Hr'g Audio 01:13:00-01:18:50; R. at 11-21). Taxpayer's property fell within Land Economic Area (LEA) 1301Res03, which included only vacant residential lands outside of a municipality. *Id.* Relying upon property sales within the LEA (a grouping of like properties), she explained that the Assessor's Office started with 16 sales from 2015 to the present, but removed seven of the sales from the appraisal analysis because those seven properties lacked access. *Id.*

[¶ 9] Ms. Cabral reviewed her regression analysis of the nine sales, illustrated through a scatter chart plotting the nine sales on a grid. (Hr'g Audio 01:17:00-01:19:00; R. at 17, 20). The chart plotted the sales prices on the vertical y axis, and the property acreages on the horizontal x axis. *Id.* The chart included statistical measurements for the coefficient of dispersion, median, and price related differential, within the LEA. *Id.*; *see* Rules, Wyo. Dep't of Revenue, Ch. 9 § 6 (2016). The R-squared quotient, measuring how narrowly and consistently the property sales followed the trend line illustrating the price paid per acre, equaled 86%. *Id.* She explained that this meant that 86% of the data conformed to the measured valuation trend. *Id.* The scatter chart, Ms. Cabral opined, established the Assessor's compliance with mass appraisal guidelines. *Id.* Ms. Cabral last explained that Assessor applied a 62% reduction to the property's taxable value to account for the property's poor access, an attribute commonly applied to rural properties. *Id.*

[¶ 10] Taxpayer did not question the regression analysis, focusing instead on whether the Assessor's Office correctly accounted for the characteristics of the properties compared to its own. *Supra* ¶ 7; (Hr'g Audio 01:20:00-00:27:00). Taxpayer's agent testified that it was pleased that the property's value had decreased from the previous year's value, but disagreed that Assessor used proper comparable sales, or that Assessor properly excluded sales from the sales comparison analysis. Taxpayer did not further elaborate. *Id.*

[¶ 11] The County Board deliberated and unanimously voted to affirm the assessment. (Hr'g Audio 01:29:00-00:31:00). It issued an order consistent with that conclusion. (R. at 89-91).

## CONCLUSIONS OF LAW

### A. State Board's role and standard of review

[¶ 12] 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.*

[¶ 13] 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) (2021). 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) (2021).

[¶ 14] 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) (2021) 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 at 561.

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

[¶ 15] 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] at 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).

[¶ 16] 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)).

[¶ 17] 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

[¶ 18] The County Board having concluded that Taxpayer failed to submit sufficient evidence of mass appraisal error, we consider each of Taxpayer's challenges to the County Board's decision in turn.

i. **Did the County Board err when it "allowed the hearing to go forward knowing that they did not have the tools they needed and requested by the Taxpayer[?]"**

[¶ 19] Taxpayer's complaint, that the County Board lacked proper equipment, is a due process claim. Procedural due process is satisfied " 'if a person is afforded adequate notice and an opportunity to be heard at a meaningful time and in a meaningful manner.' " *Laughter v. Bd. of Cty. Com'rs for Sweetwater Cty.*, 2005 WY 54, ¶ 19, 110 P.3d 875, 882 (Wyo. 2005) (quoting *Amoco Prod. Co. v. Wyo. State Bd. of Equalization*, 882 P.2d 866, 872 (Wyo. 1994)). "A party claiming infringement [of due process rights] has the burden of demonstrating that infringement by first showing the existence of a protected property interest and then showing the interest has been affected in an impermissible way." *Pfeil v. Amax Coal West, Inc.*, 908 P.2d 956, 961 (Wyo. 1995) (citing *Meyer v. Norman*, 780 P.2d

283, 289 (Wyo. 1989)).

[¶ 20] Generally, an appellant on appeal must have clearly objected at the trial or hearing, to sufficiently preserve an issue for review on appeal. The Wyoming Supreme Court has stated: “[W]e will not consider claims raised for the first time on appeal.” *Crofts v. State Dep’t of Game and Fish*, 2016 WY 4, ¶ 19, 367 P.3d 619, 624 (Wyo. 2016) (quoting *Davis v. City of Cheyenne*, 2004 WY 43, ¶ 26, 88 P.3d 481, 490 (Wyo. 2004)). The Court has explained “ ‘it is unfair to reverse a ruling of a trial court for reasons that were not presented to it, whether it be legal theories or issues never formally raised in the pleadings nor argued to the trial court.’ ” *Id.*, citing *Basic Energy Servs., L.P. v. Petroleum Res. Mgmt. Corp.*, 2015 WY 22, ¶ 28, 343 P.3d 783, 791 (Wyo. 2015) (quoted source omitted).

[¶ 21] Taxpayer did not object that the hearing required certain equipment to proceed. Even if Taxpayer had raised the issue before the County Board, it would have also needed to identify the required technological standard (necessary equipment), and reasoning in support of its objection. Taxpayer did not clearly object or specify the equipment required to proceed. The County Board, accordingly, did not err when it proceeded with the hearing.

**ii. Did the County Board err when it “ruled without deliberation[?]”**

[¶ 22] Taxpayer cites Wyoming Statutes section 39-13-109(b)(i) (2021), which states in part that “[a]ll deliberations of the board shall be in public.” (Taxpayer’s Br., 5). Taxpayer does not explain why it believes the County Board acted contrary to this requirement, nor did it argue to the County Board that it failed to “deliberate.” Having merely quoted this statutory language in its brief to this Board, Taxpayer cites neither cogent authority nor evidence in support of its claim of error. Moreover, the County Board briefly deliberated and voted on the record immediately after close of the hearing’s evidentiary phase. *Supra* ¶ 11. We reject Taxpayer’s claim.

**iii. Did the County Board err when it “did not question the Assessor’s use of invalid (not at arm’s length) sales.”**

[¶ 23] Taxpayer offered varied reasons why several of the comparable sales should be considered non-arm’s length sales and, therefore, that Assessor should not have used them. Taxpayer argued that several sales of land adjacent to land the purchaser already owned should have been excluded as non-arm’s length. (Taxpayer’s Br., 2-5). Taxpayer argued that one of the properties sold was not on the market for a day, based on an internet property listing service. *Id.*

[¶ 24] We reject Taxpayer’s claim that Assessor improperly relied upon non-arm’s length sales. First, Taxpayer offers no authority for its suggestion that a sale of land, adjacent to

land the purchaser already owns (sharing a “common border”), is a non-arm’s length sale. The definition of arm’s length sale, applicable to an Assessor’s valuation analysis, is “[a] transaction between unrelated parties who are each acting in his or her own best interests.” Rules, Wyo. Dep’t of Revenue, Ch. 9 § 4(a)(vi) (2016). This term plays an important role in application of the “Sales Comparison” methodology assessors predominantly apply as part of the mass appraisal process. *See id.*, Ch. 9 § 5(b)(i) (defining the Sales Comparison Approach). We are unaware of authority designating sales of land, adjacent to the purchaser’s already-owned land, as necessarily non-arm’s length. And, Taxpayer offered no evidence that the sales were otherwise between related parties, or that the purchasers or sellers did not act in accordance with their own interests.

[¶ 25] Second, Taxpayer’s argument that one sale was on the market for less than a day, even if Taxpayer had proven this as fact, would not render the sale a non-arm’s length sale. Taxpayer argues that because a property was on the market for zero days, the purchaser and seller were likely related or had a disqualifying relationship. (Taxpayer’s Br., 4). We disagree. This particular property sale feature speaks to the transaction’s reliability as an indicator of fair market value, not whether it is an arm’s length transaction. *See* Wyo. Stat. Ann. § 39-11-101(a)(vi) (2021). In either event, Taxpayer’s focus on one sale with limited exposure to the open market did not carry Taxpayer’s initial burden of overcoming the presumption favoring Assessor’s valuation. *Supra* ¶ 17.

[¶ 26] Finally, Taxpayer’s challenge of Assessor’s comparable sales consisted largely of its agent’s meandering inquisition about the sales, interspersed with conclusory arguments that Assessor should not have used them. *Supra* ¶ 7. Taxpayer’s varied questions about the sales, without evidence demonstrating that they were poor comparables, did not constitute sufficient evidence to shift the burden of proof to Assessor. *Supra* ¶ 17.

**iv. Did the County Board err when it allowed the Assessor to “use a sale from 2015 that had not been validated?”**

[¶ 27] Although Taxpayer cites inapplicable authority for the proposition that Assessor failed to “validate” property sales used in his Sales Comparison valuation, we suspect Taxpayer meant to refer to Chapter 9 of the Department of Revenue’s rules. (Taxpayer’s Br., 5, citing Chapter 7 of the Department’s Rules, which applies to the Department’s valuation of property). Regardless, Taxpayer again argues that Assessor generally failed to validate a sale, without explaining and demonstrating Assessor’s particular omission or lapse in procedure. Appealing taxpayers must do more than latch on to technical terms and argue that an assessor probably failed to satisfy an inferred requirement, without offering compelling evidence. Taxpayer did not carry its initial burden of production on this claim before the County Board. *Supra* ¶ 17.



v. **Did the County Board err when it “allowed the Assessor to use sales without adjusting for improvements, amenities or attributes?”**

[¶ 28] Similar to its fourth claim, Taxpayer complains that Assessor did not “adjust” two of the property sales used in his sales comparison approach valuation. Taxpayer’s evidence that two of the property sales required an adjustment before they could be used in Assessor’s Sales Comparison valuation, was as follows:

	<u>Acct</u>	<u>SOC/Remarks<sup>2</sup></u>
...		
4	6513	Found/road to lot/structure?/
...		
13	6163	Found/MLS 0 days/BR/Buildings?/water/ARR on prop.

(Taxpayer’s Br., 5-6; R. at 86).

[¶ 29] The Department’s rules provide, in part:

For land valuation, the sales comparison is the preferred method of valuation .... Comparable sales shall be adjusted to reflect differences in time, location, size, physical attributes, financing terms or other differences which affect value. The use of this approach to value depends upon:

- (A) The availability of comparable sales data;
- (B) The verification of the sales data;
- (C) The degree of comparability or extent of adjustment necessary for time differences; and
- (D) The absence of non-typical conditions affecting the sales price.

Wyo. Dep’t of Revenue, Ch. 9 § 5(b)(i)(A)-(D) (2016).

[¶ 30] We reject Taxpayer’s objection. Taxpayer’s evidence of property sales requiring an adjustment under the Sales Comparison valuation method was not reliable. Taxpayer merely questioned whether two of the sold properties included features that rendered the properties non-comparable for valuation purposes. *Supra* ¶ 28. It offered no clear evidence of property characteristics, nor an explanation of how Assessor should have adjusted those

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<sup>2</sup> “SOC/Remarks” likely refers to Statements of Consideration, which a purchaser of property is required to complete and submit to the County Clerk, identifying the property and basic terms of the sale. *See* Wyo. Stat. Ann. § 34-1-142 (2021).

sales prices for valuation purposes. *Id.* Indeed, Taxpayer's Exhibit 16, a spreadsheet identifying the property sales used in Assessor's analysis, relied on *Taxpayer's argued property characteristics* rather than independent, objective property descriptions. (R. at 86).

[¶ 31] Neither did Taxpayer offer evidence of how inclusion of those tax sales skewed the mass appraisal valuation of his property under the Sales Comparison method. As with other claims, Taxpayer recited technical terms from rules applicable to the assessment process and suggested without evidence that Assessor violated those rules in some manner.

[¶ 32] We cannot conclude that the County Board's rejection of this claim lacked substantial evidence, "relevant evidence which a reasonable mind might accept in support of the agency's conclusions." *Supra* ¶ 17.

## CONCLUSION

[¶ 33] Taxpayer alleged that Assessor erroneously applied the sales comparison method when he valued Taxpayer's vacant land, but offered insufficient evidence to carry its initial burden of proof, failing to overcome the presumption that Assessor properly valued Taxpayer's property. The County Board's rejection of Taxpayer's claims is supported by substantial evidence.

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**ORDER**

[¶ 34] **IT IS, THEREFORE, ORDERED** that the decision of the Natrona County Board of Equalization is **AFFIRMED**.

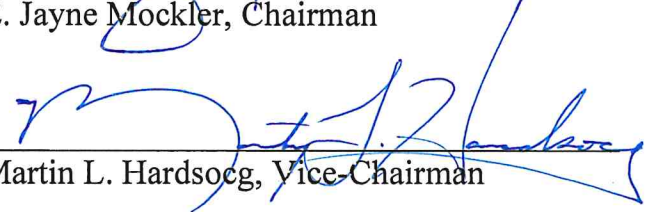
[¶ 35] Pursuant to Wyoming Statutes section 16-3-114 (2021) and Rule 12, Wyoming Rules of Appellate Procedure, any person aggrieved or adversely affected in fact by this decision may seek judicial review in the appropriate district court by filing a petition for review within 30 days after the date of this decision.

DATED this 1 day of June 2022.

**STATE BOARD OF EQUALIZATION**



E. Jayne Mockler, Chairman



Martin L. Hardsocg, Vice-Chairman



David L. Delicath, Board Member

ATTEST:



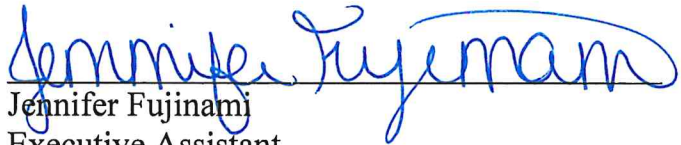
Jennifer Fujinami, Executive Assistant

**CERTIFICATE OF SERVICE**

I certify that on the 1 day of June 2022, 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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cc: Brenda Henson, Director, Dep't of Revenue  
Brian Judkins, Property Tax Div., Dep't of Revenue  
Commissioners/Treasurer/Clerk/Assessor – Natrona County  
ABA State and Local Tax Reporter  
State Library