

BEFORE THE STATE BOARD OF EQUALIZATION

FOR THE STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF	)	
PAUL FRANKLIN, LLC, FROM A	)	Docket No. 2021-104
DECISION BY THE NATRONA COUNTY	)	
BOARD OF EQUALIZATION	)	

DECISION AND ORDER

APPEARANCES

Ken Carpenter, pro se, appeared on behalf of taxpayer Paul Franklin, LLC, (hereafter Petitioner).

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] The Natrona County Board of Equalization (County Board) remanded to Assessor for further review, Assessor's 2020 assessment of a residential improved property in Casper, Wyoming. After reviewing his assessment, Assessor notified the County Board that his assessment was correct and that he would not alter it. Petitioner appealed from Assessor's notification to the County Board. The County Board dismissed Petitioner's appeal, determining that it lacked jurisdiction, and it directed that Petitioner should appeal to the State Board from Assessor's decision.

[¶ 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 County Board record and received briefs from the parties. The State Board shall **reverse** the County Board's dismissal of Petitioner's appeal and order the County Board to hear Petitioner's appeal.

ISSUES

[¶ 3] Petitioner identified two issues:

Was the CBOE's Finding of Fact, Conclusion of Law and Order remanding

the original appeal back to the Assessor without observance of procedure required by law?

Did the CBOE error in deciding that it did not have jurisdiction, authority, or limitations or lacking statutory right to hear the Taxpayer's appeal of the Assessor's Notice After Remand?

(Pet'r's Br., 1).

[¶ 4] Assessor states the issue this way: "At the Natrona County Board of Equalization ("CBOE") hearing set November 16, 2021, did the CBOE have jurisdiction to do anything other than dismiss CBOE# 2020-0587?".

(Assessor's Br., 1).

PROCEEDINGS BEFORE COUNTY BOARD

[¶ 5] Following an appeal and contested case hearing, the County Board decided on June 22, 2021, that Assessor incorrectly valued Petitioner's residential improved property at 321 Dee Pl., Casper, Wyoming. The County Board found that Petitioner offered evidence that its property was not uniformly nor fairly valued. (R. at 139-41). The County Board remanded the assessment back to Assessor "FOR FURTHER REVIEW." *Id.*

[¶ 6] Approximately three months later, on September 24, 2021, Assessor, through his legal counsel, submitted to the County Board an "Assessor's Notice after Remand," indicating that Assessor further reviewed the assessment. (R. at 142). Assessor notified further that he used a prescribed valuation methodology, applied it correctly, and complied "with the statistical parameters mandated by the Department of Revenue[.]" *Id.* Assessor stated that he would not change his office's original 2020 valuation of Petitioner's property. *Id.*

[¶ 7] Petitioner timely filed an appeal from Assessor's Notice after Remand, and attached the Assessor's "Notice" as the appealed decision. (R. at 143-44).

[¶ 8] Petitioner, on November 2, 2021, emailed a member of the County Board, with a copy to Assessor's counsel, referring a question to the hearing officer about the procedure for his appeal:

Mr. Drell, I am unclear on what rules control the rehearing of my appeals Docket . . . 2020-587 As an example, there doesn't seem to be a 30 [day] window for exchange of evidence. Could you clarify that for me please. Also, could you let me know the status of the Motion for In Camera Review?

(R. at 148).

[¶ 9] Assessor responded to Petitioner's email by submitting what was, in effect, a motion to dismiss Petitioner's appeal. (R. at 159-60). The pleading, entitled "Assessor's Response to Petitioner's November 2, 2021 Email – County Board of Equalization Lacks Jurisdiction," argued that Petitioner's failure to appeal the County Board's June 22, 2021 decision deprived the County Board of jurisdiction.¹ *Id.*

[¶ 10] The County Board dismissed Petitioner's appeal on December 1, 2021, concluding that "[t]here is no provision in the Uniform County board of Equalization Practise [sic] and Procedure Rules for the CBOE to rehear such Second Appeal. Such Appeal should be made to the State Board of Equalization." (R. at 163-64). Thus, the County Board decided it lacked jurisdiction to proceed with Petitioner's appeal. *Id.*

CONCLUSION OF LAW

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

[¶ 11] 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 for reviewing a county board decision is nearly identical to the Wyoming Administrative Procedure Act standard, found at Wyoming Statutes section 16-3-114(c)(ii) (2021), 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) (2021).

B. Analysis

[¶ 12] In its dismissal the County Board reasoned: "There is no provision in the Uniform County Board of Equalization Practise [sic] and Procedure Rules for the CBOE to *rehear*

¹ Notably, Petitioner initially prevailed before the County Board. *Supra* ¶ 5. Thus, Assessor argued that Petitioner should have appealed from a decision in its favor.

such *Second Appeal*. Such Appeal should be made to the State Board of Equalization. Therefore the CBOE finds that it has no jurisdiction to hear such Second Appeal, and as such the matter must be dismissed.” *Supra* ¶ 10 (emphasis added). The County Board cited no authority in support of its conclusion.

[¶ 13] The precise question presented, therefore, is whether the County Board, after remanding an assessment back to Assessor for further review and correction, must entertain Petitioner’s subsequent appeal from Assessor’s decision after remand. Or, may the Petitioner appeal directly to the State Board? Does it matter that Assessor, after further reviewing his assessment as ordered, made no change? *Supra* ¶ 9.

[¶ 14] Various statutory provisions compel the same answer: within Wyoming’s local property tax dispute resolution system, taxpayers must in all cases first appeal property tax assessments to the appropriate county board of equalization. Correspondingly, the State Board lacks expressed authority to sit as the original appellate tribunal for local tax disputes. Wyo. Stat. Ann. §§ 39-11-102.1(c) (2021); 39-13-102(c)(iv)-(v) (2021); 39-13-109(b) (2021); *but see infra* ¶ 15 and fn. 3.

[¶ 15] A closer read of Wyoming’s relevant property tax statutes is helpful. The property tax code’s “administration” section provides that a county board of equalization shall “[h]ear and determine the complaint of any person relative to any property assessment or value as returned by the county assessor subject to W.S. 39-13-109(b)(i).” Wyo. Stat. Ann. § 39-13-102(b)(iv) (2021). That provision next states that county boards of equalization shall “[d]ecide all protests heard and provide the protestant with a written decision” *Id.* at (b)(v). This statute’s mention of the State Board focuses on “certification” of county board appeals to the State Board under limited circumstances. *Id.* at (b)(iv); *see infra* at fn. 3.

[¶ 16] Wyoming Statutes section 39-13-109(b)(i) (2021) sets forth the appellate process for tax appeals of locally-assessed² properties. The statute includes an extensive procedure and directs the State Board to promulgate procedural rules for such appeals, which this Board has done. *Id.*; *see* Rules, Wyo. State Bd. of Equalization, Ch. 7 (2021). Either the taxpayer or assessor may thereafter appeal from final county board of equalization decisions to the State Board. Wyo. Stat. Ann. §§ 39-13-109(b)(ii) (2021); 39-11-102.1(c) (2021); Rules, Wyo. State Bd. of Equalization, Ch. 3 § 2; Ch. 7 § 24 (2021).

[¶ 17] The legislature separately specifies the State Board’s authority to adjudicate property appeals from county boards of equalization: “The state board . . . shall hear appeals

² Distinct from locally-assessed property taxes, the Wyoming Department of Revenue assesses certain properties on a state-wide basis, and such are generally referred to as “state-assessed” properties. *See* Wyo. Stat. Ann. § 39-13-102(m) (2021) (providing that Department of Revenue shall assess mines and mining claims, pipeline companies, electric companies, railroads, telecommunication companies, utilities, and other like property). Taxpayers disputing these assessments appeal directly to the State Board.

from county boards of equalization and review final decisions of the department upon application of any interested person adversely affected, including boards of county commissioners for the purposes of this section” Wyo. Stat. Ann. § 39-11-102.1(c) (2021). This provision aligns with all other statutory references to local tax appeals, and no statute suggests that a taxpayer may forgo appealing to a county board of equalization and directly appeal to the State Board from a local property tax assessment.³

[¶ 18] The County Board struggled with the notion of a “Second Appeal,” *supra* ¶ 10, likely reasoning that again reviewing the very same assessment it earlier rejected and remanded for further consideration, would make no sense. Regardless, the legislature has not afforded local property taxpayers a direct appeal to the State Board, and we may not assume jurisdiction based merely on facts or circumstances; the State Board’s jurisdiction must clearly exist as a matter of statute. *Supra* ¶ 17; *see Best v. Best*, 2015 WY 133, ¶ 11, 357 P.3d 1149, 1152 (Wyo. 2015) (“Wyoming courts derive their jurisdiction from the Wyoming Constitution and from the Wyoming legislature.”); *Union Pac. Res. Co. v. State Bd. of Equalization for State of Wyo.*, 895 P.2d 464, 468-69 (Wyo. 1995) (without statutory authority, State Board lacked jurisdiction to issue declaratory relief); *Chevron U.S.A., Inc. v. Dep’t of Revenue*, 2007 WY 43, ¶ 27, 154 P.3d 331, 340 (Wyo. 2007) (State Board lacked jurisdiction to extend the statutory appeal deadline).

[¶ 19] Assessor confusingly argues that the County Board lacked jurisdiction to “reconsider a matter in which a final order has been previously issued.” (Assessor’s Br., 3).

[¶ 20] Semantics aside, Petitioner had a statutory appeal right from each of assessor’s final assessment decisions. While it was not good form for the County Board to merely “remand” the assessment back to Assessor without explicitly “reversing” the assessment in the first instance, the remand had the effect of reversing the assessment and was a final, appealable decision. The County Board must, therefore, again hear Petitioner’s timely appeal from Assessor’s decision to leave unchanged his original assessment, and rule as to its legality after receiving evidence from the parties.

³ That said, there is a “certification” option under certain circumstances. County boards of equalization, *after timely appeal* and at the parties’ request, may seek to certify a county board appeal to the State Board pursuant to the State Board’s procedural rules. Wyo. Stat. Ann. §§ 39-11-102.1(c) (2021), 39-13-102(c)(iv) (2021); *see* Rules, Wyo. State Bd. of Equalization, Ch. 2 § 35; *see e.g. In re Appeal of B&G Industries, LLC*, 2016 WL 4432578, Docket No. 2015-43 (July 21, 2016) (Tax dispute between assessor and lessees of Big Horn County property, wherein the county board of commissioners was conflicted as the lessor of the property in question, when acting as the county board of equalization). The State Board is not required to accept certification of such appeals, but may do so when the circumstances warrant, such as when conflicts of interest arise, or if a particularly complex dispute will likely be appealed to the State Board, and for other reasons promoting judicial economy.

CONCLUSION

[¶ 21] The County Board incorrectly concluded that it lacked jurisdiction to hear Petitioner's second appeal, and improperly dismissed.

ORDER

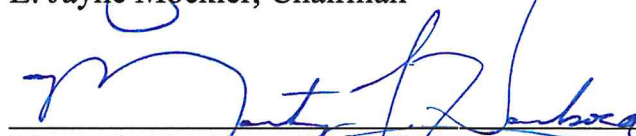
[¶ 22] **IT IS, THEREFORE, ORDERED** that the Natrona County Board of Equalization Order of Dismissal, dated December 1, 2021, is **reversed**, and the County Board has jurisdiction to adjudicate Petitioner's appeal of Assessor's Notice After Remand, a final appealable decision.

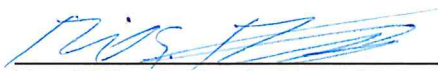
[¶ 23] Pursuant to Wyoming Statutes section 16-3-114 (2021) and Rule 12, Wyoming Rules of Appellate Procedure, any person aggrieved or adversely affected in fact by this decision may seek judicial review in the appropriate district court by filing a petition for review within 30 days after the date of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

DATED this 3 day of May 2022.

STATE BOARD OF EQUALIZATION


E. Jayne Mockler, Chairman


Martin L. Hardsocg, Vice-Chairman


David L. Delicath, Board Member

ATTEST:

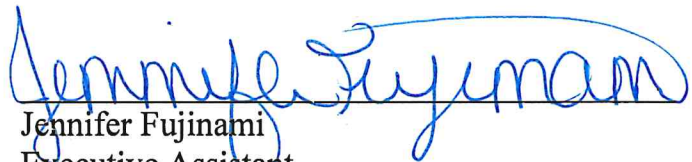

Jennifer Fujinami, Executive Assistant

CERTIFICATE OF SERVICE

I hereby certify that on the 3 day of May 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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Eric K. Nelson
Charmaine A. Reed
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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