

BEFORE THE STATE BOARD OF EQUALIZATION
FOR THE STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF)	
NATRONA COUNTY ASSESSOR)	Docket No. 2021-115
FROM A DECISION BY THE NATRONA)	
COUNTY BOARD OF EQUALIZATION)	
(2021 Property Valuation))	

DECISION AND ORDER

APPEARANCES

Eric K. Nelson and Charmaine A. Reed, Natrona County Attorney's Office, appeared on behalf of Natrona County Assessor Matt Keating.

Keith Olson appeared on behalf of Taxpayer Kevin R. Forgey.

SUMMARY

[¶ 1] Assessor appeals from the Natrona County Board of Equalization's decision remanding his 2021 valuation of Mr. Forgey's improved real property. The County Board determined that Mr. Forgey "presented sufficient evidence to overcome the presumption of validity of the Assessor's evaluation [sic] and showed by a preponderance of the evidence that the Assessor's [valuation] was incorrect." Assessor contends on appeal that the County Board erred. Neither party requested oral argument, so the Wyoming State Board of Equalization, Chairman E. Jayne Mockler, Vice-Chairman Martin L. Hardsocg, and Board Member David L. Delicath, will decide the appeal based on the parties' submissions and the County Board record. Because substantial evidence does not support the County Board's decision, we will remand.

ISSUES

[¶ 2] Assessor initially presented this statement of the issues:

1. Is there substantial evidence to support Assessor's valuation?¹
2. Did Taxpayer overcome the strong presumption that Assessor correctly applied Wyoming tax law?

(Assessor's Br. 1). In a supplement to his opening brief, Assessor raised two new issues:

1. Was the Natrona County Board of Equalization's remand of this matter, CBOE # 2021-0520, arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law?
2. Was the hearing before the Natrona County Board of Equalization held without observance of procedure required by law?

(Suppl. to Natrona Cty Assessor's Opening Br. 1).

[¶ 3] Mr. Forgey filed a brief but did not articulate issues for review.

JURISDICTION

[¶ 4] The State Board shall "hear appeals from county boards of equalization ... upon application of any interested person adversely affected." Wyo. Stat. Ann. § 39-11-102.1(c) (2021). An aggrieved taxpayer or assessor may file an appeal with the State Board within 30 days after a county board's final decision. Rules, Wyo. State Bd. of Equalization, ch. 2, § 5(e) (2021). The County Board issued its final decision on December 1, 2021. (R. 90). Assessor filed his appeal on December 30, 2021. (Notice of Appeal). Accordingly, the appeal is timely and we have jurisdiction.

PROCEEDINGS AND EVIDENCE PRESENTED TO THE COUNTY BOARD

[¶ 5] Mr. Forgey owns an improved residential property in Natrona County. (R. 64). In April 2021, Assessor valued Mr. Forgey's land at \$16,305 and his newly constructed improvements at \$885,572, for a total of \$901,877. (R. 58). Mr. Forgey timely appealed that valuation to the County Board. (R. 60). In July 2021, Assessor issued an amended valuation of \$16,305 for land and \$772,936 for improvements, for a total of \$789,241. (R. 57). That assessed value reflected a 1.96 neighborhood adjustment². (R. 65).

¹ Assessor asks the wrong question here. The County Board was responsible for determining whether substantial evidence supported Assessor's decision. The State Board's job is to determine whether substantial evidence supports the County Board's decision.

² A "neighborhood adjustment" is a multiplier that is applied to the replacement-cost-new-less-depreciation (RCNLD) of improvements, but is not applied to the value of land. A 1.96 neighborhood adjustment means the RCNLD of each property in the neighborhood is multiplied by 1.96.

[¶ 6] Keith Olson represented Mr. Forgey at the County Board hearing. Mr. Forgey's only exhibit at the hearing was a 45-page fee appraisal dated March 28, 2020, valuing his property at \$417,000. (R. 9-53). Mr. Olson testified for Mr. Forgey and began by challenging the 1.96 neighborhood adjustment that Assessor applied to Mr. Forgey's property. (Hr'g Rec. 2:15). He contended that Mr. Forgey's property was not truly comparable to the other homes that Assessor included in the same neighborhood. He opined that the property was a statistical outlier that should be removed from the LEA, but cited no legal authority to support that opinion. (*Id.* at 28:40).

[¶ 7] Assessor began his presentation by moving for a continuance because Assessor's counsel had failed to provide Mr. Forgey's fee appraisal to Renee Berry (Assessor's Chief Deputy) before the hearing, and because the sketch in the fee appraisal didn't match the sketch in Assessor's records. (Hr'g Rec. 7:38). Counsel explained that Ms. Berry needed the continuance so she could compare the fee appraisal with Assessor's records. *Id.* Before the hearing officer ruled on Assessor's motion, one of the County Board members announced, "I would vote against this because it's a certified appraisal and it's \$300,000 off." (Hr'g Rec. 9:27). Mr. Forgey objected to the motion on the basis that he wasn't challenging Assessor's basic valuation; he was challenging the neighborhood adjustment, which has nothing to do with either sketch of the house. (*Id.* at 11:38). The hearing officer denied Assessor's motion for a continuance. (*Id.* at 12:38).

[¶ 8] Ms. Berry testified on behalf of Assessor. (Hr'g Rec. 12:55-19:15). She explained mass appraisal and how properties in the LEA are valued, and also explained how the neighborhood adjustment was calculated. (*Id.* at 13:20-17:44). She testified that Assessor's data were in compliance with the Department's standards. (*Id.* at 15:40). After Ms. Berry testified, one of the County Board members asked Assessor's counsel a question that, intentionally or not, recognized that Assessor had acted within the statutes and rules:

It's not fair, but the process is, so what ... if we remanded it back and the State's already said, "we agree that it -- that there's an issue here but the taxpayer has no recourse *because you clearly followed the process.*" I'm -- I'm at a loss the State's already approved something so they know there's an issue with. We can't remand it back *because the process is right.* I guess some direction from -- what would the State say -- if we sent something down? Would they say, "you followed the process" then?

(Hr'g Rec. 25:10-26:42) (emphasis added).

[¶ 9] A County Board member moved "to send this one back to the Assessor in hopes that he'll send it to the State because I want the Board of Equalization to hear this recording." (*Id.* at 31:55). After another County Board member seconded the motion, one

of the County Board members said, “I will be abstaining³ because I am part of that 1.96 [neighborhood adjustment].” (*Id.* at 36:20). Assessor’s counsel pointed out that, “if someone has a conflict and is abstaining, that means they abstain from everything, not just the vote.” (*Id.* at 36:32). The board member then decided that he wouldn’t “abstain” after all. (*Id.* at 36:44). Without allowing the parties to present closing arguments, the County Board voted unanimously to remand. (*Id.* at 37:05). One of the County Board members then opined that Assessor hadn’t done anything wrong, and another voiced agreement. (*Id.* at 37:44).

CONCLUSIONS OF LAW

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

[¶ 10] 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). “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, 294-95 (Wyo. 2018) (quoting *Walton v. State ex rel. Wyo. Workers’ Safety & Comp. Div.*, 2007 WY 46, ¶ 9, 153 P.3d 932, 935 (Wyo. 2007)).

[¶ 11] We review questions of law de novo and will affirm a county board’s conclusions of law “only if they are in accord with the law.” *Maverick Motorsports Grp., LLC v. Dep’t*

³ We believe the County Board member meant that he would recuse himself, as allowed by Chapter 7, Section 23 of our rules.

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)).

[¶ 12] We also apply de novo review to a county board's ultimate findings of fact:

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) (quoted in *Chevron U.S.A., Inc. v. Dep't of Revenue*, 2007 WY 79, ¶ 10, 158 P.3d 131, 134 (Wyo. 2007)).

[¶ 13] "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.' " *Britt v. Fremont Cty. Assessor*, 2006 WY 10, ¶ 23, 126 P.3d 117, 125 (Wyo. 2006) (quoting *Amoco Prod. Co. v. Dep't of Revenue*, 2004 WY 89, ¶ 7, 94 P.3d 430, 435 (Wyo. 2004)); see also, *Rules, Wyo. State Bd. of Equalization*, ch. 7, § 14(a) (2021) ("There is a presumption that the assessor's property valuation is valid, accurate, and correct."). "Petitioner may present any credible evidence to rebut the presumption in favor of the assessor's valuation." *Id.* at § 14(b). "A mere difference of opinion as to value" is not sufficient to overcome the presumption. *Britt*, at ¶ 34, 126 P.3d at 127.

B. Substantial evidence does not support the County Board's decision.

[¶ 14] The County Board found that Mr. Forgey, "presented sufficient evidence to overcome the presumption of validity of the Assessor's evaluation [sic] and showed by a preponderance of the evidence that the Assessor's [valuation] was correct." (R. 90). The County Board did not, however, enumerate the evidence that it found to be sufficient.

[¶ 15] At least one County Board member placed great weight on Mr. Forgey's "certified appraisal," using that phrase no less than six times and declaring that he would vote to remand the case because of it. (Hr'g Rec. 9:27, 9:54, 32:27, 32:35, 34:28, 35:22; *supra*, ¶ 7). A private appraisal, regardless of whether it's titled "fee appraisal," "market analysis," or even "certified appraisal," can't overcome the presumption favoring Assessor's valuation. *In re Walker*, 2022 WL 1078147, * 3, Docket No. 2021-111, ¶ 12 (Wyo. State Bd. of Equalization, April 5, 2022). As we have repeatedly said:

Property owners challenging local county tax assessments often wrongly assume their traditional “fee” appraisal materials, publicly listed prices for neighboring properties, or like market price indicators, will carry the day before the County Board. Because fee appraisals and other like materials do not speak directly to whether a mass appraised valuation is correct, these approaches are rarely successful.

Id. citing *In re Franklin, LLC*, 2022 WL 362993, *7, Docket No. 2021-73, ¶ 27 (Wyo. State Bd. of Equalization, Feb. 1, 2022).

[¶ 16] Other than the fee appraisal, the only evidence Mr. Forgey presented was Mr. Olson’s testimony. That testimony is subject to a discount because Mr. Olsen admitted that he is not a “scholar in this.” (Hr’g Rec. 7:24). Even without that discount, Mr. Olsen’s testimony is no more than a difference of opinion, which cannot overcome the presumption favoring Assessor’s valuation.

CONCLUSION

[¶ 17] Nothing in Mr. Olsen’s testimony could reasonably be construed to overcome the mandatory presumption that Assessor got it right. The County Board members’ comments to the effect that Assessor had “followed the process” and hadn’t done anything wrong support that conclusion. (*Supra*, ¶¶ 8-9). Simply put, the County Board didn’t remand the valuation because Assessor failed to follow the applicable rules and statutes. Rather the County Board remanded because Assessor did everything by the book, and arrived at a valuation that the County Board sees as unfair. We will reverse and remand.

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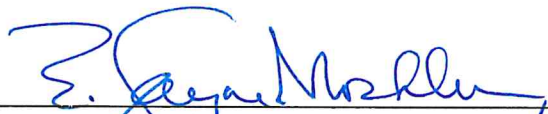
ORDER

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

[¶ 19] Pursuant to Wyoming Statutes section 16-3-114 (2021) and Rule 12, Wyoming Rules of Appellate Procedure, any taxpayer 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 10 day of June 2022.

STATE BOARD OF EQUALIZATION



E. Jayne Mockler, Chairman



Martin L. Hardsocg, Vice-Chairman



David L. Delicath, Board Member

ATTEST:



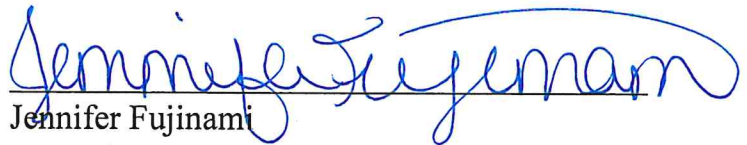
Jennifer Fujinami, Executive Assistant

CERTIFICATE OF SERVICE

I certify that on the 10 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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