

**BEFORE THE STATE BOARD OF EQUALIZATION**

**FOR THE STATE OF WYOMING**

IN THE MATTER OF THE APPEAL OF	)	
NATRONA COUNTY ASSESSOR	)	<b>Docket No. 2021-54</b>
FROM A DECISION BY THE NATRONA	)	
COUNTY BOARD OF EQUALIZATION	)	

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**DECISION AND ORDER**

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**APPEARANCES**

Charmaine A. Reed, Natrona County Deputy Attorney, appeared on behalf of Natrona County Assessor Matt Keating. (Hereafter Assessor).

Taxpayer Buchholz Land & Cattle LLC, through its representative, Marcie Buchholz, appeared pro se. (Hereafter Buchholz).

**SUMMARY**

[¶ 1] Assessor denied Buchholz’s request that its land be designated “agricultural” for property taxation purposes in 2020.<sup>1</sup> Following a contested case hearing, the Natrona County Board of Equalization (County Board) reversed Assessor’s assessment of the land as residential vacant land, finding that the land was agricultural because Buchholz intended to use the land for agricultural purposes. The Wyoming State Board of Equalization, Chairman E. Jayne Mockler, Vice-Chairman Martin L. Hardsocg, and Board Member David L. Delicath, reviewed the County Board record, received briefing, and heard oral argument from the parties. The State Board **reverses** the County Board’s Findings of Fact, Conclusions of Law, and Order. Assessor correctly determined that Buchholz’s property did not qualify as agricultural land in 2020.

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<sup>1</sup> For properties designated as “agricultural land,” Assessors must calculate taxes based on the “capability of the land to produce agricultural products,” rather than the property’s fair market value. *See* Wyo. Const., art. 15, § 11(b) (“All taxable property shall be valued at its full value ... except agricultural and grazing lands which shall be valued according to the capability of the land to produce agricultural products under normal conditions.”); Wyo. Stat. Ann. § 39-13-103(b)(x) (2021). The Wyoming Department of Revenue publishes an annual Agricultural Land Valuation Study with updated market prices of products to be plugged into valuation formulae for agricultural land. Rules, Wyo. Dep’t of Revenue, Ch. 10 § 5(a) (2017); 2021 Wyoming Agricultural Land Valuation Study. Comparatively speaking, property owners pay far less property tax for agricultural land than non-agricultural land.

## **JURISDICTION**

[¶ 2] The State Board shall “hear appeals from county boards of equalization[.]” Wyo. Stat. Ann. § 39-11-102.1(c) (2021). A county assessor 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) (2021). On April 23, 2021, Assessor appealed from the County Board’s March 26, 2021 decision, which reversed his assessment of the Buchholz property. (Notice of Appeal). Assessor, having timely appealed, we have jurisdiction.

## **ISSUES**

[¶ 3] Assessor asks whether “the property owned by Respondents, Chris and Marcie Buchholz, and described in the *2020 Notice of Assessment* (R. at 36), should be classified as agricultural land for the 2020 property tax assessment.” (Assessor’s Br. 1) (emphasis in original).

[¶ 4] Buchholz identified no issue.

## **EVIDENCE PRESENTED BEFORE NATRONA COUNTY BOARD OF EQUALIZATION**

[¶ 5] In 2019, Buchholz purchased 355 acres in Natrona County, including 48.7 acres of irrigated land. (Hr’g recording, 00:12:30-12:55; R. at 17).

[¶ 6] In December of 2019, Assessor’s Office sent Buchholz a standard form “Affidavit for Agricultural Classification,” requesting that Buchholz indicate and demonstrate whether its newly acquired property qualified as “agricultural” for 2020 tax purposes. (R. at 22-23; Hr’g Recording, 00:13:00-00:14:00). Marcie Buchholz partially completed the Affidavit and returned it to the Assessor’s Office, representing that Buchholz used the property for “rearing, feeding, or management of livestock.” *Id.* Buchholz further indicated that it did not lease the land and had “derived annual gross revenues of not less than five hundred (\$500) from the marketing of agricultural products from the subject land.” *Id.*

[¶ 7] Marcie Buchholz did not answer the affidavit question of whether Buchholz used the land “consistent with the land’s size, location and capability to produce as an agricultural operation.” *Id.*; *see infra* ¶ 24. Neither did Buchholz represent that any intervening event prevented the land from satisfying the agricultural property requirements, or that Buchholz caused a “marketing delay for economic advantage.” *Id.*; *see infra* ¶ 22.

[¶ 8] Assessor assessed the property as vacant residential property, after which Buchholz appealed to the Natrona County Board of Equalization. In its appeal petition, Buchholz stated that “Assessor has this land described as ‘vacant land.’ – it has been used for agriculture since 1938, only difference is the ownership has changed.” (R. at 1). Buchholz stated that it intended to use the Natrona County land as agricultural property in conjunction with its agricultural land owned in Carbon County. Buchholz also questioned why it needed to demonstrate a sale of products. (R. at 2). Buchholz did not protest the valuation method or application, disputing only the property’s classification as non-agricultural. *Id.*

[¶ 9] During the ensuing contested case hearing before the County Board, Marcie Buchholz submitted a written narrative response in advance of her testimony. (R. at 17). In her narrative, she summarized her communications with Assessor, stating that the family’s operation was just beginning and that it would not generate income “for some time.” *Id.* She referred to a map of the property, purchases of animals, various business bills paid, and pictures of animals acquired. (R. at 18-32).

[¶ 10] Reading from her narrative summary and testifying consistent therewith, Ms. Buchholz stated that the property had always been used for agricultural purposes. (Hr’g Recording, 00:12:00-13:40). She testified to the property’s agricultural use, including part of the property’s inclusion in an irrigation district. *Id.* She stated that Buchholz would not produce or sell anything that year because it was a “start-up” operation. (Hr’g Recording, 00:13:50-16:00).

[¶ 11] Diane Glazier, employed by the Assessor’s Office, testified that Assessor had not received evidence of income from the land and, therefore, classified it as non-agricultural land under Wyoming law. (Hr’g Recording, 00:20:00-21:00). She referred to several letters sent to Buchholz indicating that the land would not be classified as agricultural land unless Buchholz demonstrated income of at least \$500 in agricultural products from the land. (Hr’g Recording, 00:21:00-24:00). Ms. Glazier recounted her past inquiries as to whether Buchholz would sell cattle in the future, to which Ms. Buchholz answered “no.” (00:47:00-49:40).

[¶ 12] During questioning of Ms. Glazier, members of the County Board suggested explanations as to why the property could qualify as agricultural, seizing upon language in the Affidavit submitted by Buchholz. County Board members suggested that Buchholz’s lack of revenue from agricultural activities would not disqualify the land under the provision, “marketing delay for economic advantage.” (Hr’g Recording, 00:29:00-36:45); *see infra* ¶ 22. Notwithstanding Ms. Glazier’s repeated testimony that that provision and exception to the agricultural property requirements did not apply based on answers she received from Ms. Buchholz, County Board members suggested that misunderstandings between Ms. Glazier and Ms. Buchholz had likely occurred. *Id.* Ms. Buchholz did not

testify that the business' lack of revenue was intentional or by design and repeated that her family's business produced nothing it could have sold. *Id.*

[¶ 13] Assessor Matt Keating testified to the requirements for classifying property as agricultural property, explaining that his office repeatedly tried to learn whether the Buchholz property qualified as agricultural under the statute. He concluded that Buchholz had not satisfied the statutory requirements. (Hr'g Recording, 00:48:00-50:00).

[¶ 14] The County Board decided that the Buchholz property was agricultural property, concluding "there was likely miscommunication between Ms. Buchholz and the staff of the Assessors (sic) office about Petitioners (sic) future plans for their livestock." (R. at 50). The County Board concluded that "Petitioners provided evidence that they intend to operate a business and they are raising cattle with the intent to sell for income when the cattle are large enough to sell." *Id.*

[¶ 15] Assessor appealed to this Board. (Notice of Appeal).

## **CONCLUSIONS OF LAW**

### **(a) Standard of Review**

[¶ 16] 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.*

[¶ 17] The State Board's standard of review of a county board decision is, by rule, nearly identical to Wyoming Statutes section 16-3-114(c)(ii) (2021), the Wyoming Administrative Procedure Act standard that a district court must apply in reviewing agency decisions. The State Board's 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).

[¶ 18] Because the State Board rules are patterned on the judicial review provisions of Wyo. Stat. section § 16-3-114 (2021), judicial rulings interpreting that section offer guidance:

When an appellant challenges an agency's findings of fact and both parties submitted evidence at the contested case hearing, we examine the entire record to determine if the agency's findings are supported by substantial evidence. If the agency's findings of fact are supported by substantial evidence, we will not substitute our judgment for that of the agency and will uphold the factual findings on appeal. "Substantial evidence is more than a scintilla of evidence; it is evidence that a reasonable mind might accept in support of the conclusions of the agency."

*Chevron U.S.A., Inc. v. Dep't of Revenue*, 2001 WY 79, ¶ 9, 158 P.3d 131, 134 (Wyo. 2001) (citations omitted).

[¶ 19] 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." "

*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)).

[¶ 20] "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)). "[A] mere difference of opinion as to value" is not sufficient to overcome the presumption. *Id.* at ¶¶ 28, 34, 126 P.3d at 126-27.

(b) Applicable Law

[¶ 21] County assessors are required to "[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) (2021).

[¶ 22] By statute, taxpayers must qualify land as "agricultural":

- (x) The following shall apply to agricultural land:
- (A) The department shall determine the taxable value of agricultural land and prescribe the form of the sworn statement to be used by the property owner to declare that the property meets the requirements of subparagraph (B) of this paragraph. In determining the taxable value for assessment purposes under this paragraph, the value of agricultural land shall be based on the current use of the land, and the capability of the land to produce agricultural products, including grazing and forage, based on average yields of lands of the same classification under normal conditions;
  - (B) Contiguous or noncontiguous parcels of land under one (1) operation owned or leased shall qualify for classification as agricultural land if the land meets each of the following qualifications:
    - (I) The land is presently being used and employed for an agricultural purpose;
    - (II) The land is not part of a platted subdivision, except for a parcel of thirty-five (35) acres or more which otherwise qualifies as agricultural land;
    - (III) If the land is not leased land, the owner of the land has derived annual gross revenues of not less than five hundred dollars (\$500.00) from the marketing of agricultural products, or if the land is leased land the lessee has derived annual gross revenues of not less than one thousand dollars (\$1,000.00) from the marketing of agricultural products; and
    - (IV) The land has been used or employed, consistent with the land's size, location and capability to produce as defined by department rules and the mapping and agricultural manual published by the department, primarily in an agricultural operation, or the land does not meet this requirement and the requirement of subdivision (III) of this subparagraph because the producer:
      - (1) Experiences an intervening cause of production failure beyond its control;
      - (2) Causes a marketing delay for economic advantage;
      - (3) Participates in a bona fide conservation program, in which case proof by an affidavit showing qualification in a previous year shall suffice; or
      - (4) Has planted a crop that will not yield an income in the tax year.
  - (C) If needed, the county assessor may require the producer to provide a sworn affidavit affirming that the land meets the requirements of this paragraph. When deemed necessary, the county assessor may further require supporting documentation.



Wyo. Stat. Ann. § 39-13-103(b)(x)(2021); *See also* Wyo. Stat. Ann. § 39-13-101(a)(iii) (2021) (defining “Agricultural land” through reference to Wyo. Stat. Ann. § 39-13-103(b)(x) (2021)).

(c) Review of the County Board’s Decision

[¶ 23] Applying Wyoming Statutes section 39-13-103(b)(x) (2021), our voluminous case jurisprudence establishes a rather straight forward four-part analysis for resolving disputes over an assessor’s denial of “agricultural land” status. *See e.g. In re Appeal of Teton Cty. Assessor*, 2019 WL 1780378, Doc. No. 2018-29 (Wyo. State Bd. of Equalization, March 29, 2019); *In re Appeal of Steven A. and Patricia L. Esponda*, 2018 WL 1313236, Doc. No. 2016-48 (Wyo. State Bd. of Equalization, March 6, 2018); *In re Appeal of Washakie Cty. Assessor*, 2015 WL 3939513, Doc. No. 2014-74 (Wyo. State Bd. of Equalization, June 19, 2015), *aff’d*, *Helmut J. Mueller Ltd. P’Ship v. Treanor*, 2018 WY 131, 430 P.3d 733 (Wyo. 2018) (affirming assessor’s denial of agricultural status after taxpayer failed to submit evidence that statutory criteria was met).

[¶ 24] Under the facts set forth, Assessor had to verify<sup>2</sup> that use of the land in 2019 satisfied four conditions:

- 1) That the land was used and employed for an agricultural purpose;
- 2) That the land was not part of a platted subdivision;
- 3) That Buchholz generated not less than \$500 in gross revenue from the marketing of agricultural products; and
- 4) That the land had been used or employed consistent with the land’s size, location and capability to produce as defined by the Department’s rules and mapping.

Wyo. Stat. Ann. § 39-13-1-3(b)(x) (2021), *supra* ¶ 22. Buchholz could obtain relief from the third and fourth requirements by demonstrating that it experienced “intervening causes of production failure,” or that it “caused marketing delay for economic advantage.” *Id.*

[¶ 25] Assessor did not deny agricultural status to the Buchholz property for failure to satisfy the first two conditions, nor did the County Board address those provisions during the hearing. In any event, there is evidence in the record that Buchholz used its newly acquired land for an agricultural purpose. *Supra* ¶¶ 8-10; *see* Wyo. Stat. Ann. § 39-13-

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<sup>2</sup> By rule: “Any producer wishing to receive agricultural classification of his/her land shall provide the prescribed sworn affidavit, as well as supporting documentation, to the County Assessor.” Rules, Wyo. Dep’t of Revenue, Ch. 10 § 6 (Wyo. 2017) (prescribing affidavit form to be used). Buchholz, following Assessor’s request, partially completed and submitted an affidavit. *Supra* ¶¶ 6-7.

101(a)(viii) (2021). There is no indication in the record that the land was part of a platted subdivision. We presume that the first two conditions were satisfied.

[¶ 26] As for the third condition, that the land generated at least \$500 gross revenue from the marketing of agricultural products, the evidence established that the land did not in 2019, for the purposes of the 2020 tax assessment. *Supra* ¶¶ 8-13. In particular, Ms. Buchholz testified that her family business did not sell either crops or livestock, and could not because there were none to sell. *Id.* An employee of the Assessor’s Office, Ms. Glazier, testified that Ms. Buchholz offered similar explanations. *Id.* Indeed, Ms. Buchholz, in her appeal petition, questioned why it was even necessary that Buchholz demonstrate sales revenues. *Supra* ¶ 8.

[¶ 27] The County Board, upon receiving this evidence, however, disagreed with the Assessor’s denial based on other language in the statute—that Buchholz “caus[ed] a marketing delay for economic advantage.” *Supra* ¶¶ 12, 22. The County Board, on its own accord, suggested that this statutory language relieved Buchholz from the requirement that it show \$500 from the sale of agricultural products. *Supra* ¶ 12. It then cited that provision as the basis for its reversal of the assessment, discounting the evidence to the contrary. *Supra* ¶ 14; (R. at 50).

[¶ 28] We disagree. First, the County Board did not rely upon the evidence presented. *Supra* ¶¶ 12, 14. Board members resisted Ms. Buchholz’s testimony, as well as testimony from an employee of the Assessor’s Office, at times arguing to Assessor that Buchholz did not need to demonstrate \$500 in gross revenue because it was a start-up operation. *Supra Id.*

[¶ 29] As we have observed in past rulings, county boards of equalization should take care to consider only the evidence duly presented at trial. *See e.g. In re Appeal of the Teton County Assessor*, 2019 WL 2165526, Doc. No. 2018-52, \*7, ¶¶ 34-35 (Wyo. St. Bd. of Equalization, May 6, 2019) (County Boards must rely upon property admitted evidence and should refrain from considering evidence not available to the parties). The County Board stepped out of its role as adjudicator when individual members effectively testified in support of Buchholz’s appeal.

[¶ 30] Second, the County Board incorrectly interpreted the statutory phrase “causes a marketing delay for economic advantage.” *Supra* ¶ 22. The County Board concluded that, “Petitioners provided evidence that *they intend to operate a business and they are raising cattle with the intent to sell for income when the cattle are large enough to sell.*” (R. at 50) (emphasis added). The County Board essentially read that statutory provision as creating a broad exception for new agricultural operations that intend to grow, harvest, and sell agricultural products sometime in the future. Had the legislature intended a “new operation” exception to the revenue requirement, it would have codified such. We are guided by the Wyoming Supreme Court’s admonition that “exceptions not made by the



legislature in a statute cannot be read into it.” *Hede v. Gilstrap*, 2005 WY 24, ¶ 6, 107 P.3d 158, 163 (Wyo. 2005) (citation omitted) (quoting *In re Estate of Seader*, 2003 WY 119, ¶ 23, 76 P.3d 1236, 1244 (Wyo. 2003)).

[¶ 31] The plain and ordinary meaning of the statutory phrase is clear enough. “We begin by construing the statutory language according to the ordinary and obvious meaning of the words at issue according to their arrangement and connection.” *Amoco Prod. Co. v. Dep’t of Revenue, St. of Wyo.*, 2004 WY 89, ¶ 34, 94 P.3d 430, 444 (Wyo. 2004) (citing *Lodberg v. State*, 2004 WY 48, ¶ 5, 88 P.3d 1045, 1048 (Wyo. 2004)). The language anticipates that a producer of agricultural products may “cause” a “marketing delay.” The word “cause” within the context of that provision implies a taxpayer’s knowing course of action to “delay” marketing to enjoy a deferred economic outcome. *Supra* ¶ 22. Further, the phrase presumes that the producer could sell agricultural products if desirable, but opts to not do so. See *In re Appeal of Rick and Monica Solars*, 2007 WY 295559, Doc. Nos. 2006-89 through 2006-96, \* 28 (Wyo. St. Bd. of Equalization, Jan. 30, 2007) (language refers to intentional delay of available livestock for “marketing purposes.”).

[¶ 32] The evidence did not show that Buchholz chose to delay marketing efforts. The evidence established only that Buchholz purchased land from which it intended to produce crops and/or livestock. *Supra* ¶¶ 5-10. Ms. Buchholz repeatedly testified that it had not yet done so. *Id.* As such, the County Board’s application of the statutory exception to the revenue requirement was inconsistent with the statute’s intended purpose.

[¶ 33] Finally, the County Board did not address in any form the fourth statutory condition required for land to be classified as agricultural. *Supra* ¶ 22. In its submitted affidavit, Buchholz did not attest that it used the land consistent with its “size, location and capability to produce as defined by department rules and the mapping and agricultural manual published by the department, primarily in an agricultural operation[.]” *Supra* ¶ 22. Although Assessor did not cite this as a reason for his denial, Buchholz was required to attest that it satisfied this criteria. Buchholz’s omission prevented Buchholz from carrying its initial and ultimate burdens of proof before the County Board. For this reason as well, the County Board’s reversal was contrary to statute and not supported by substantial evidence.

## CONCLUSION

[¶ 34] The County Board disregarded evidence of how Buchholz used its property, substituting its own explanation for why the property should be classified as agricultural property. The County Board also misinterpreted the statutory exception to the requirement that agricultural property generate at least \$500 in revenue from the sale of agricultural products. The County Board’s decision is neither supported by substantial evidence, nor consistent with Wyoming Statutes section 39-13-103(b)(x) (2021). We shall reverse.

## ORDER

[¶ 35] **IT IS HEREBY ORDERED** that the Natrona County Board of Equalization's Findings of Fact, Conclusions of Law, and Order in this matter is **reversed**, and Assessor's assessment of the Buchholz property as residential vacant land is **affirmed**.

[¶ 36] 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 14 day of September 2021.

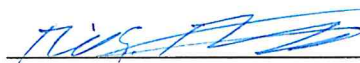
### STATE BOARD OF EQUALIZATION



E. Jayne Mockler, Chairman



Martin L. Hardsocg, Vice-Chairman



David L. Delicath, Board Member

ATTEST:



Jennifer Fujinami, Executive Assistant

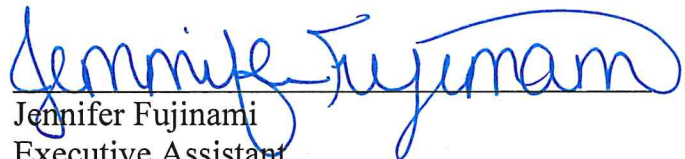
## CERTIFICATE OF SERVICE

I hereby certify that on the 14 day of September 2021, 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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