

**BEFORE THE STATE BOARD OF EQUALIZATION
FOR THE STATE OF WYOMING**

IN THE MATTER OF THE APPEAL OF	)	
NATRONA COUNTY ASSESSOR	)	Docket No. 2021-59
FROM A DECISION BY THE NATRONA	)	
COUNTY BOARD OF EQUALIZATION	)	
(Murphy, 2020 Property Valuation)	)	

DECISION AND ORDER

APPEARANCES

Charmaine Reed, Natrona County Attorney's Office, appeared on behalf of Natrona County Assessor Matt Keating.

Cynthia Barlow, On Point Business Consulting, LLC, appeared on behalf of Taxpayers Angela and Brian Murphy (collectively Murphy).

SUMMARY

[¶ 1] Assessor appeals from the Natrona County Board of Equalization's decision remanding his 2020 assessment of residential real property owned by Murphy. We perceive the core of the County Board's decision to be that 1) Assessor did not use the most accurate model to value Murphy's property; 2) Assessor applied an arbitrary downward adjustment to Murphy's land value; 3) Assessor did not uniformly value Murphy's property and neighboring properties; and 4) Assessor should have put Murphy's property in a different Land Economic Area (LEA).

[¶ 2] 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, base this Decision and Order on the County Board record and the parties' briefs. Assessor's brief challenges three of the County Board's core conclusions, but does not dispute, or even mention, the finding that Assessor arbitrarily adjusted Murphy's land value. We deem that issue waived, and find error in the three core County Board conclusions that Assessor challenges. We affirm the County Board's decision in part and reverse it in part.

ISSUES

[¶ 3] Assessor articulates these issues:

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

(Assessor's Br. 1).

[¶ 4] Murphy's brief includes this statement of the issues:

- The assessor did not abide to W.S.-13-109(b)(i). The Assessor refused to allow the taxpayer the right to review the statements of consideration at any time to understand their assessment.
- The assessor did not allow at any time the right to the taxpayer to review ALL information used to determine the property values for this area as provided by statute W.S. -34-1-142 through 34-1-144.
- The Assessor revised the sales used from May to September from 25 sales to 16.
- The assessment is arbitrary and capricious.
- Lack of uniformity.
- Lack of transparency to the assessment.

(Murphy Br. 1) (Punctuation added).

JURISDICTION

[¶ 5] 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 appeal to 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 April 30, 2021. (R. at 91-94). Assessor filed his appeal on June 1, 2021. (Notice of Appeal). Accordingly, we have jurisdiction.

PROCEEDINGS AND EVIDENCE PRESENTED TO THE COUNTY BOARD

[¶ 6] Murphy owns residential real property in Land Economic Area (LEA) 0502RES02 in Natrona County. (R. at 69). In 2018, Assessor's predecessor valued that property at \$738,657. (*Id.* at 89). In 2019, that value dropped to \$558,792. *Id.* In 2020, Assessor valued

Murphy's land at \$496,545 and the improvements at \$416,230, for a total of \$912,775, which was \$353,983 more than its 2019 valuation. (*Id.* at 43). Murphy appealed to the County Board on May 5, 2020. (*Id.* at 1). On July 14, 2020, Assessor issued an Amended Notice of Assessment. (*Id.* at 50). That Amended Notice left the land value unchanged, but reduced the value of the improvements to \$386,276, making the total valuation \$882,821. *Id.* On September 16, 2020, Assessor issued a Second Amended Notice of Assessment reducing the land value to \$372,409 and the improvements to \$368,568, for a total of \$740,977. (*Id.* at 58).

[¶ 7] At the hearing, the County Board received Murphy's proffered exhibits A through I. (Hr'g Recording, Vol. I at 2:55). Those exhibits are:

- Ex. A1 2020 Notice of Assessment on Murphy's property;
- Ex. B1 Murphy's appeal form;
- Ex. C1-4 Copy of a form letter Murphy received from Assessor's office;
- Ex. C5 List of 25 properties in LEA 502RES02 that sold in 2019;
- Ex. C6 2020 Amended Notice of Assessment on Murphy's property;
- Ex. C7 List of 16 properties in LEA 0601RES01 that sold in 2019;
- Ex. C8 List of 16 properties in LEA 0502RES02 that sold in 2019;
- Ex. C9 Graph that Assessor's office created of properties in LEA 0502RES02 that sold in 2019;
- Ex. D1-4 Another copy of the form letter that Murphy received from Assessor;
- Ex. D5 Second 2020 Amended Notice of Assessment;
- Ex. E1 Market Analysis that Murphy commissioned from Jim Edgeworth;
- Ex. F1 Property Tax and Assessment Information sheet for 3701 Aspen Pl.;
- Ex. F2 Property Tax and Assessment Information sheet for 2140 Eddopf;
- Ex. F3 Property Tax and Assessment Information sheet for Murphy's property;
- Ex. F4 Aerial photograph purporting to show Murphy's property;
- Ex. G1 A list of 14 properties in LEA 0502RES02 that sold in 2019, and a graph, created by Ms. Barlow, purportedly representing those 14 properties. The list of properties is identical to Murphy's Ex. C8 except that two vacant residential properties have been removed;
- Ex. H1 Abstract sheet from our 2020 abstract meeting with Assessor; and

Ex. I1 Ms. Barlow's resume.

(R. at 43-67).

[¶ 8] The County Board also received Assessor's proffered exhibits A through I¹. (Hr'g Recording, Vol. I at 3:40; Vol. III at 55:30). Those are:

Ex. A First 2020 Amended Notice of Assessment for Murphy's property;

Ex. B 2020 Natrona County Assessor Property Profile for Murphy's property;

Ex. C 2020 Cost Breakdown Sheet for Murphy's property;

Ex. D/E1 Explanation of Eco Area 5;

Ex. D/E2 Map of LEA 0502RES02;

Ex. D/E 3 Map of NBHD 05BA;

Ex. D/E 4 List of 15 properties in LEA 0502RES02 that sold in 2019;

Ex. D/E 5-6 List of 72 properties that sold in 2019;

Ex. D/E 7-8 Another list of the same 72 properties that sold in 2019, but in a different order;

Ex. D/E 9 "Power Curve" graph representing 2019 sales in LEA 0502RES02;

Ex. D/E 10 List of 14 properties in LEA 0502RES02 that sold in 2019;

Ex. F Department of Revenue credentials for Assessor and two staff members;

Ex. G Department of Revenue credentials for Corrie Cabral;

Ex. H Murphy's appeal form; and

Ex. I Another copy of the first 2020 Amended Notice of Assessment, corrected by hand.

(R. at 68-88). More than half of the admitted exhibits were never mentioned again during the hearing or in the County Board's decision. We decline to guess at what they were meant to prove or how, if at all, they influenced the County Board's conclusions.

[¶ 9] Angela Murphy and Cynthia Barlow testified on behalf of Murphy. Ms. Murphy testified that she visited Assessor's office after receiving Murphy's Exhibit A1. Assessor gave her Murphy's Exhibits C5, C7, C8, and C9, but she still didn't understand why the property was valued as it was. (Hr'g Recording, Vol. II at 3:40; 6:08; 6:26). She visited

¹ Conventionally, one party will label its exhibits with letters, and the other will use numbers. Here, both parties used letters *and* numbers. We will refer to exhibits as "Murphy's Exhibit" or "Assessor's Exhibit."

Assessor again after receiving Murphy's Exhibit C6, but again left without understanding. (*Id.* at 8:00). After that visit, she received Murphy's Exhibit D5 from Assessor by mail. (*Id.* at 7:05). Ms. Murphy then obtained a market analysis (Murphy's Exhibit E1) from Jim Edgeworth.² (Hr'g Recording, Vol. II at 8:15).

[¶ 10] Ms. Barlow testified that she used Murphy's Exhibit C5 to create Murphy's Exhibit G1. (Hr'g Recording, Vol. II at 12:20). She noted that Murphy's Exhibit C8 listed 16 sales compared with the 14 sales listed on Murphy's Exhibit G1. (*Id.* at 14:10). She also noted that there are 26 sales listed in Murphy's Exhibit C5.³ (*Id.* at 19:45). There was conflicting testimony about how many sales Ms. Barlow used in her analysis versus how many sales Assessor's office used in its analysis. Ms. Barlow testified *that* the number of sales is important, but nobody explained *why* it's important.

[¶ 11] Assessor's Chief Analyst, Corrie Cabral, was Assessor's only witness. She testified that the September 16, 2020 reduction in Murphy's valuation resulted from a discretionary 25% downward adjustment that Assessor instructed her to apply to the land value because he thought it was too high. (Hr'g Recording, Vol. III at 9:00). No other properties received that adjustment. *Id.*

[¶ 12] A County Board member asked Ms. Cabral whether Ms. Barlow's analysis was more accurate than Assessor's. She said it was, but that both are valid and compliant with DOR rules. (Hr'g Recording, Vol. III at 30:00). A board member noted that two properties with lots about the same size as Murphy's had different land values. Ms. Cabral responded that those properties were not in the same LEA as Murphy's property. (*Id.* at 32:20-36:30).

[¶ 13] After closing arguments, one of the County Board members moved to reverse the assessment and remand for a new assessment without "discretionary adjustments." (Hr'g Recording, Vol. III at 1:02:00). The County Board voted unanimously to reverse and remand. (*Id.* at 1:08:00). The County Board later issued a written decision remanding the matter to Assessor "for further review," but omitted the instruction to do so without discretionary adjustments. (R. at 91-93). The crux of that written decision is:

5. Petitioner provided evidence that the subject property and the neighboring properties are not being uniformly valued.
6. Petitioner provided evidence that a linear cost per square foot model would provide a more accurate valuation.

² Nothing in the record tells us who Mr. Edgeworth is, what qualifies him to issue a market analysis, what information he used to generate that analysis, or why we should consider his opinion. Accordingly, we didn't consider his opinion, and mention it here only to explain why.

³ There are actually 25. (R. at 49).

7. The CBOE finds that the adjustments to the subject property made by the Assessor were not based on sales data but were made at the discretion of the Assessor and were arbitrarily determined.

8. The CBOE finds that the Petitioner has met her burden and has established that the valuation of her property was not fairly or uniformly derived.

9. The CBOE finds that the size of the subject property is an anomaly when considered with neighboring properties and should be placed in a different LEA.

(R. at 92-93).

CONCLUSIONS OF LAW

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

[¶ 14] 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, 246 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)).

[¶ 15] 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*

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)).

[¶ 16] 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. 1988) (quoted in *Chevron U.S.A., Inc. v. Dep't of Revenue*, 2007 WY 79, ¶ 10, 159 P.3d 131, 134 (Wyo. 2007)).

[¶ 17] "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, 1125 (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 ¶¶ 28, 34, 126 P.3d at 126-27.

B. Applicable law

[¶ 18] The Wyoming Department of Revenue is required to confer with, advise, instruct, and direct county assessors and to promulgate rules necessary for the enforcement of all tax measures. Wyo. Stat. Ann. § 39-13-103(c)(xvi), (xix) (2021). Specifically, the Department "shall prescribe by rule and regulation the appraisal methods and systems for determining fair market value using generally accepted appraisal standards[.]" Wyo. Stat. Ann. § 39-13-103(b)(ii) (2021). County assessors, in turn, 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).

C. Did the County Board err in reversing because Assessor did not use the most accurate valuation method?

[¶ 19] The County Board found that “Petitioner provided evidence that a linear cost per square foot model would provide a more accurate valuation.” (R. at 93). Ms. Cabral supported that conclusion when she testified that Ms. Barlow’s analysis was more accurate than Assessor’s. (Hr’g Recording, Vol. III at 30:00). She also testified, however, that both analyses were valid and compliant with DOR rules. *Id.* Assessor doesn’t have to apply the most accurate model; he has to apply a model that operates within the boundaries set by statutes, DOR rules, and applicable case law. Assessor’s method was adequate, even if Ms. Barlow’s was better. This issue presents a paradigmatic difference of opinion, which doesn’t rebut the presumption that Assessor’s valuation is correct. *Supra* ¶ 17. See also *In re Wagner*, 2020 WL 3631228, *2, Docket No. 2020-07, ¶ 10 (Wyo. State Bd. of Equalization, June 10, 2020). We find that the County Board erred in its resolution of this issue.

D. Did the County Board err in finding that Murphy’s property and neighboring parcels were not fairly or uniformly valued?

[¶ 20] The County Board found that “Petitioner provided evidence that the subject property and the neighboring properties are not being uniformly valued.” (R. at 92). That finding would be easier to evaluate if the County Board had identified the evidence, or the neighboring properties, that informed its finding. But it didn’t, and we can’t decide this issue without speculating on what evidence the County Board may have found persuasive. Rather than speculate, we will remand and instruct the County Board to issue a new decision enumerating the evidence on which it relies. We encourage all county boards to include enough information in their decisions to allow us to determine whether their conclusions are supported by substantial evidence.

E. Did the County Board err in ordering Assessor to place Murphy’s property in a different LEA?

[¶ 21] The County Board found that “the size of the subject property is an anomaly when considered with neighboring properties and should be placed in a different LEA.” (R. at 93). Although we’re not entirely certain, we think the County Board meant that the Murphy property, because of its size, should be in a different LEA. Assessor cites Wyoming Statutes section 39-13-102(d) (2021) for the proposition that a county board can affirm or reverse an assessor’s valuations, but can’t usurp an assessor’s authority to assign properties to LEA’s. (Assessor’s Br. 7). That subsection provides that “[t]he county board of

equalization has no power to and shall not set tax policy not engage in any administrative duties concerning assessments which are delegated to the board, the department or the county assessor.”

[¶ 22] A decade ago, this Board decided an appeal in which taxpayers contended that “the LEA the Assessor utilized was incorrect and should be changed to similar properties as theirs located only on tributaries or as a specific radius from their property.” *In re Fremont Cty. Assessor*, 2011 WL 7910749, *12, Docket No. 2010-126, ¶ 59 (Wyo. State Bd. of Equalization, Sept. 9, 2011). Based on Subsection 39-13-102(d), we held that “[i]nstructions to re-stratify the LEA, or use other comparable properties for sales comparison would be inappropriate.” *Id.* at *14, ¶ 72. Accordingly, we find that the County Board erred in its resolution of this issue.

F. Did the County Board correctly find that Assessor’s 25% downward adjustment to Murphy’s land value was arbitrary?

[¶ 23] The County Board found that “the adjustments to the subject property made by the Assessor were not based on sales data but were made at the discretion of the Assessor and were arbitrarily determined.” (R. at 93). The 25% downward adjustment to Murphy’s land value does, indeed, seem arbitrary because: 1) Ms. Cabral testified that she didn’t know how Assessor came up with it; and 2) no other properties received the same adjustment. It looks as though Assessor was just greasing the proverbial squeaky wheel.

[¶ 24] This Board finds itself in an unusual position. Having appealed the County Board’s decision, Assessor has the burden of persuading us that the County Board’s decision is erroneous. But Assessor’s brief mentions neither the downward adjustment to Murphy’s land value, nor the County Board’s determination regarding that adjustment. With no argument on the issue, we see no option but to deem it waived. *O’Donnel v. Blue Cross Blue Shield of Wyo.*, 2003 WY 112, ¶ 9 n. 1, 76 P.3d 308, 311 (Wyo. 2003) (citing *Doctors’ Co. v. Ins. Corp. of Am.*, 864 P.2d 1018, 1028 (Wyo. 1993)) (“Generally, an issue not raised or supported with cogent argument in the brief of appellant is considered waived.”). Accordingly, we will affirm the County Board’s resolution of this issue.

CONCLUSION

[¶ 25] The County Board erred in its resolution of two issues, and didn’t provide enough information for us to evaluate its resolution of a third issue. Assessor waived his appeal of the County Board’s determination that the 25% downward adjustment to Murphy’s property was arbitrary.

ORDER

[¶ 26] **IT IS, THEREFORE, ORDERED** that the Natrona County Board of Equalization's decision is **AFFIRMED IN PART, REVERSED IN PART**, and **REMANDED** for a new decision consistent with this Decision and Order.

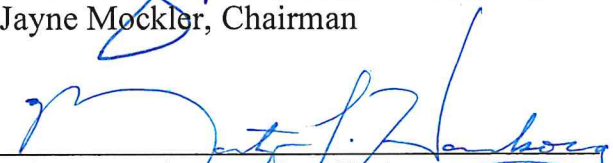
[¶ 27] Pursuant to Wyoming Statutes section 16-3-114 (2021) and Rule 12, Wyoming Rules of Appellate Procedure, a taxpayer aggrieved or adversely affected in fact by this decision may seek judicial review in the appropriate district court by filing a petition for review within 30 days after the date of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

DATED this 21st day of October 2021.

STATE BOARD OF EQUALIZATION



E. Jayne Mockler, Chairman

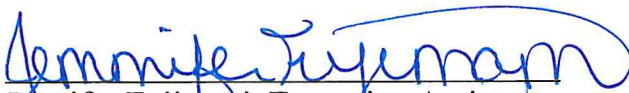


Martin L. Hardsocg, Vice Chairman



David L. Delicath, Board Member

ATTEST:



Jennifer Fujinami, Executive Assistant

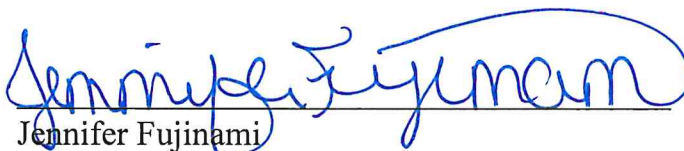
CERTIFICATE OF SERVICE

I certify that on the 27 day of **October 2021** I served the foregoing **DECISION AND ORDER** by placing a true copy thereof in the United States Mail, postage prepaid, addressed to:

Eric Nelson
Charmaine Reed
Natrona County Attorney
200 North Center St. Suite 300
Casper, WY 82601

Brian and Angela Murphy
3700 Aspen PL
Casper, WY 82604

Cynthia Barlow
10 Canal RD
Buffalo, WY 82834



Jennifer Fujinami
Executive Assistant
State Board of Equalization
P.O. Box 448
Cheyenne, WY 82003
Phone: (307) 777-6989
Fax: (307) 777-6363

cc: Brenda Henson, Director, Dep't of Revenue
Brian Judkins, Property Tax Div., Dep't of Revenue
Commissioners/Treasurer/Clerk/Assessor – Natrona County
CCH
ABA State and Local Tax Reporter
State Library