

BEFORE THE STATE BOARD OF EQUALIZATION
FOR THE STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF)	
NATRONA COUNTY ASSESSOR)	Docket No. 2021-60
FROM A DECISION BY THE NATRONA)	
COUNTY BOARD OF EQUALIZATION)	
(Wegner, 2020 Property Valuation))	

DECISION AND ORDER

APPEARANCES

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

Taxpayer, Nicholas Wegner, appeared pro se.

SUMMARY

[¶ 1] Natrona County Assessor Matt Keating appeals from the Natrona County Board of Equalization's decision remanding his 2020 assessment of real property owned by Nicholas Wegner. Assessor contends that the County Board erred by: 1) basing its decision on "evidence" that was not introduced at the hearing; and 2) reversing Assessor's valuation despite not finding that Assessor had run afoul of any statute, rule, or other requirement. 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. We will reverse the County Board's decision.

ISSUES

[¶ 2] 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).

[¶ 3] Mr. Wegner's brief does not include an issues statement, cogent argument, or citation to relevant authority.¹ We understand him to urge affirmance of the County Board's decision.

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 May 5, 2021. (Ex. 500). Assessor filed his appeal on June 4, 2021. (Notice of Appeal). Accordingly, the appeal was timely and we have jurisdiction.

PROCEEDINGS AND EVIDENCE PRESENTED TO THE COUNTY BOARD

[¶ 5] Mr. Wegner owns land and a modular house in Natrona County. In 2018, Assessor's predecessor valued that property at \$581,493. (R. at 68). The 2019 valuation was \$375,019. *Id.* And in 2020, Assessor valued it at \$405,998. (R. at 44). Mr. Wegner appealed that 2020 valuation to the County Board. (R. at 15-16). The 2020 valuation was based, in part, on Assessor's belief that Mr. Wegner's house included a finished basement. After the appeal was docketed, Assessor learned that the basement wasn't finished, and issued a new assessment of \$344,803. (Hr.g R. at 10:00; R. at 67).

[¶ 6] At the hearing, the County Board admitted all of Mr. Wegner's proffered exhibits. (Hr'g R. at 4:01). Those exhibits include his county appeal form; his three-page statement explaining why the assessment is wrong; a 24-page fee appraisal, dated July 17, 2019, setting a value of \$247,000; notices of assessment from 2020, 2015, and 2011; Mr. Wegner's written statement of "total major home costs"; the receipt from buying his modular home from a dealer; and a receipt from the county for fees related to placing the modular home on his land. (R. at 15-49). Mr. Wegner testified for about four minutes, including questions from the County Board. (Hr'g R. at 4:20 – 8:19). He testified consistent with his exhibits, but didn't add anything new.

¹ Although the State Board has accepted Mr. Wegner's brief and scoured it for anything that might help us to decide this appeal, we could have chosen to disregard it because it lacks cogent argument or citation to relevant authority. *Rodriguez v. State*, 2019 WY 25, ¶ 47, 435 P.3d 399, 413 (Wyo. 2019).

[¶ 7] The County Board also admitted all of Assessor's proffered exhibits. (Hr'g R. at 3:40). Those include a four-page property profile; the 2020 "cost breakdown sheet" for Mr. Wegner's property; an explanation (including maps and lists of properties sold) of the Land Economic Area (LEA) that includes Mr. Wegner's property; appraiser certifications for Assessor and members of his staff; another copy of Mr. Wegner's appeal form; Mr. Wegner's building permit; and a 2020 "Taxroll Correction" decreasing the property's value from \$405,998 to \$344,803, issued after Assessor learned that Mr. Wegner's basement was unfinished. (R. at 50-67).

[¶ 8] Deputy Assessor Renee Berry testified that the improvements to Mr. Wegner's land were valued as required by Department of Revenue rules. (Hr'g R. at 15:20). She further testified that there were fewer than five sales in the LEA, so she grouped it with the "most similar" LEA because that's what the Department's rules require when an LEA has fewer than five sales. (Hr'g R. at 22:15 – 24:00; 35:15).

[¶ 9] After questioning Ms. Berry about how the neighborhood adjustment and depreciation amount were determined, the County Board members began "testifying" and asking each other questions about the LEA's included in Ms. Berry's analysis. (Hr'g R. at 38:10 – 40:00). They articulated facts that neither party had introduced as evidence, and opined that some of the properties in the LEA were commercial instead of residential. *Id.* Ms. Berry explained that the apparent discrepancy was probably just an error in printing the map, and that there were no commercial properties included in the LEA. (*Id.* at 39:10).

[¶ 10] After closing arguments, one of the County Board members moved to reverse the assessment, and the Board deliberated. They seemed to understand that Assessor had abided by the statutes and rules, but they just didn't like the outcome. (*See e.g.* Hr'g R. at 59:15 – 59:37). Their deliberations included statements such as, "I can't see where the Assessor's Office has done anything incorrectly, necessarily, but the comparables have me bewildered." (*Id.* at 1:00:03 – 1:00:23). And, "[w]e do have to have some justifications to remand. I would say that ... while this is within the County Assessor's statutorial [sic] authority to, uh, group properties how he feels like grouping ... it does need to be looked at by the state, how those properties are being put together." (*Id.* at 1:01:44 – 1:02:35). And "[t]he rules that are out there ... and I'm not saying that the Assessor is not following the them, I'm just saying that I think in this particular case the rule has to be addressed" (*Id.* at 1:04:45 – 1:04:56).

[¶ 11] The County Board voted unanimously to reverse and remand "for further review." (R. at 71). Its subsequent written decision does not mention the non-admitted "evidence" upon which the County Board relied. (R. at 70-72). It also omits the County Board members' belief that Assessor had not done anything untoward, but that the applicable rules needed "to be addressed." *Id.*

CONCLUSIONS OF LAW

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

[¶ 12] 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)).

[¶ 13] 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)).

[¶ 14] 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)).

[¶ 15] “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

[¶ 16] 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. The County Board erred by basing its decision on “evidence” that was not admitted at the hearing.

[¶ 17] The County Board members based their decision, at least in part, on their personal knowledge that was not admitted as evidence. (*Supra*, ¶ 9). In doing so, they erred by departing from the evidence in the record. See, *In re Teton Cty. Assessor (Gabelli & Devivo)*, 2019 WL 2165526, * 7, Docket No. 2018-52, ¶ 35 (Wyo. State Bd. of Equalization, May 6, 2019) (“Reliance upon supposed facts or knowledge of events/matters not presented as evidence, nor otherwise identified in the record, may deprive parties of their right to confront witnesses. * * * Such also prevents this Board from reviewing all material relied upon at the county board of equalization level.”).

D. The County Board exceeded its authority by reversing the assessment despite not finding that Assessor had acted contrary to any applicable statute or rule.

[¶ 18] The County Board did not reverse Assessor's valuation because he had violated any Department of Revenue rules, but because it found fault with the rules themselves. (Supra, ¶ 10). The County Board may have expected Assessor to issue a new valuation that disregarded the Department's rules. That expectation would run afoul of Wyoming Statutes section 18-3-204(a)(ix) (2021), which requires county assessors 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[.]"

[¶ 19] Alternatively, the County Board may have expected that Assessor would appeal to this Board, and that we would invalidate the Department's rules. However, neither this Board nor the County Board have authority to declare void or invalid a rule of a state executive branch agency. *In re Teton Cty. Assessor (Jackson Hole Hereford Ranch)*, 2017 WL 5128106, * 4, Docket No. 2016-41, ¶ 23 (Wyo. State Bd. of Equalization, Oct. 26, 2017).

CONCLUSION

[¶ 20] The County Board erred by relying on evidence that was not properly admitted at the hearing, and by reversing Assessor's valuation despite recognizing that he had not run afoul of any statute, Department of Revenue rule, or other authority.

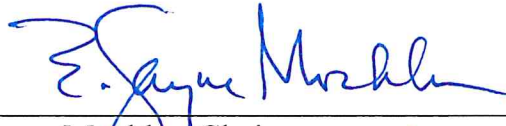
ORDER

[¶ 21] **IT IS, THEREFORE, ORDERED** that the decision of the Natrona County Board of Equalization is **REVERSED** and **REMANDED** to the County Board with instructions to issue a new decision based on the evidence introduced by the parties at the hearing. The County Board is further instructed to limit itself to determining whether Assessor's valuation is incorrect or unlawful, rather than addressing whether the statutes or Department of Revenue rules are adequate.

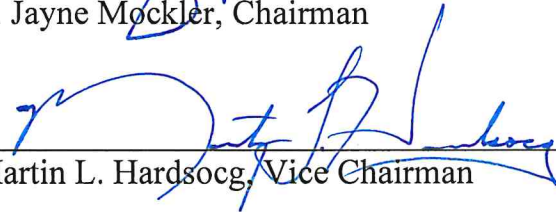
[¶ 22] **Pursuant to Wyoming Statutes section 16-3-114 (2021) and Rule 12, Wyoming Rules of Appellate Procedure, any person aggrieved or adversely affected in fact by this decision may seek judicial review in the appropriate district court by filing a petition for review within 30 days after the date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

DATED this 13 day of September 2021.

STATE BOARD OF EQUALIZATION



E. Jayne Mockler, Chairman



Martin L. Hardsocg, Vice Chairman



David L. Delicath, Board Member

ATTEST:



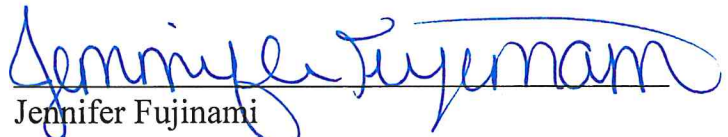
Jennifer Fujinami, Executive Assistant

CERTIFICATE OF SERVICE

I certify that on the 13 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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cc: Brenda Henson, Director, Dep't of Revenue
Brian Judkins, Property Tax Div., Dep't of Revenue
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ABA State and Local Tax Reporter
State Library