

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

IN THE MATTER OF THE APPEAL OF)
ANITA RAYE KLEINER) Docket No. **2021-77**
FROM A DECISION BY THE NATRONA)
COUNTY BOARD OF EQUALIZATION)
(2020 Property Valuation))

IN THE MATTER OF THE APPEAL OF)
ANITA RAYE KLEINER) Docket No. **2021-78**
FROM A DECISION BY THE NATRONA)
COUNTY BOARD OF EQUALIZATION)
(2020 Property Valuation))

DECISION AND ORDER

APPEARANCES

Non-attorney representative John Burd appeared on behalf of Taxpayer Anita Raye Kleiner.

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

SUMMARY

[¶ 1] Taxpayer Anita Raye Kleiner appeals from two Natrona County Board of Equalization decisions affirming Natrona County Assessor Matt Keating's 2020 valuations of real property owned by Ms. Kleiner. The County Board determined that Ms. Kleiner failed to prove that Assessor valued the properties in violation of applicable statutes or rules. Because neither party requested oral argument, 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. Finding no reversible error, we will affirm the County Board's decision.

ISSUES

[¶ 2] Ms. Kleiner did not file an opening brief, opting instead to rely on her Notice of Appeal. That notice did not contain a statement of issues, but it includes contentions that we re-phrase as:

1. In 2019, Assessor arbitrarily and capriciously removed a downward adjustment to land value without a physical inspection within the last six years in violation of Department of Revenue rules.
2. In 2020, Assessor re-assigned the properties into a Land Economic Area with much more valuable properties in violation of Department of Revenue rules.
3. Assessor cherry picked seven properties to use in his multiple regression analysis, although many more were available. A prudent Assessor would have used as many properties as needed to provide an accurate analysis.
4. Assessor ignored Ms. Kleiner's May 24, 2020 request for documentation under Wyoming Statutes section 34-1-124(g).

(Notice of Appeal, 1-2). Ms. Kleiner attached other documents to her Notice of Appeal, but because our review is limited to the record transmitted by the County Clerk, we did not examine or consider those documents.

[¶ 3] Assessor presented this statement of the issues:

1. Did Taxpayer 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] Ms. Kleiner articulated these issues in her reply brief:

1. Did the taxpayer overcome the strong presumption that the Assessor correctly applied Wyoming tax law?
2. Is there substantial evidence to support the taxpayer assertions?

(Kleiner's Reply Br. 1).

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 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 decisions on June 3, 2021. (2021-77 R. 89; 2021-78 R. 93). Ms. Kleiner filed her appeal on June 30, 2021. (Notice of Appeal). Accordingly, the appeal is timely and we have jurisdiction.

PROCEEDINGS AND EVIDENCE PRESENTED TO THE COUNTY BOARD

[¶ 6] Ms. Kleiner owns two vacant lots in LEA 0901RES01 in Natrona County. (2021-77 R. 88). Her Parcel ID numbers are 33790640100900 (Parcel # 900) and 33790640101000 (Parcel # 1000). (2021-77 R. 87; 2021-78 R. 91).

[¶ 7] Our Docket No. 2021-77 involves Parcel # 900. In 2018, Assessor’s predecessor valued Parcel # 900 at \$10,170. (2021-77 R. 38). That value reflected a 25% downward adjustment in the land value that the previous Assessor had attributed to “topography.” *Id.* In 2019, Assessor removed the adjustment and valued the parcel at \$31,616. (*Id.* at 37, 86). In 2020, Assessor decreased that valuation to \$28,839. (*Id.* at 87).

[¶ 8] Our Docket No. 2021-78 involves Parcel # 1000. In 2018, Assessor’s predecessor valued Parcel # 1000 at \$10,170. (2021-78 R. 90). The record does not tell us whether that valuation included a downward adjustment. In 2019, Assessor valued the parcel at \$32,426. (2021-78 R. 91). The County Board reversed and remanded that valuation, and Assessor’s appeal of that decision is pending before us in our Docket No. 2021-79. Assessor’s 2020 valuation of Parcel # 1000 decreased to \$31,238. *Id.*

[¶ 9] Ms. Kleiner appealed both 2020 valuations, and the County Board held a single evidentiary hearing on both of them. Before hearing testimony, the Hearing Officer admitted these exhibits offered by Ms. Kleiner:

- 1 2020 Property Profile for Parcel # 900;
- 2 2020 Property Profile for Parcel # 1000;
- A1 2019 Property Profile for Parcel # 900;
- A2 2018 Property Profile for Parcel # 900;
- B1 Map of LEA 1001RES01;
- C 2020 Appeal form for Parcel # 1000;

- D 2020 Appeal form for Parcel # 900;
- E1 List of seven properties in LEA’s 0901RES01 and 1001RES01 that sold in 2019;
- E2 List of the same seven properties, in a different order, with a graph;
- F1 Page from an unidentified document prepared by DOR;
- F2 Abstract sheet from the State Board’s 2020 abstract meeting with Assessor;
- G Four-page list of attributes applied to an unidentified area at an unidentified time;
- H MLS data sheets for four Natrona County properties that sold in 2018 and 2020;
- J Nineteen Statements of Consideration for Natrona County properties sold in 2016-2019;
- BB1 Enlarged map.¹

(Hr’g Rec. at 1:35, 3:00; 2021-77 R. 35-77).

[¶ 10] Assessor offered these exhibits, which were all admitted without objection:

- B² 2020 Property Profile for Parcel # 900;
- D/E1 Description of Economic Area 9;
- D/E2 Map of LEA 0901RES01;
- D/E3 List of seven properties in LEA’s 0901RES01 and 1001RES01 that sold in 2019;
- D/E4 List of the same seven properties, in a different order, with a graph;
- F Department of Revenue credentials for Assessor, Renee Barry, and Ken Burrell;
- G Department of Revenue credentials for Corrie Cabral;

¹ This exhibit was admitted without objection during the hearing. (Hr’g Rec. at 3:00). For reasons unknown to us, the exhibit left the hearing with Ms. Kleiner and wasn’t, therefore, included in the appellate record that the County Clerk sent to this Board. The Clerk sent copies of the Certificate of Record to both parties, but that Certificate didn’t list exhibits individually, so Assessor and his counsel might not have known that the exhibit wasn’t in the record. Ms. Kleiner certainly did: the original exhibit was in her possession. We learned of the omission when Ms. Kleiner filed her notice in lieu of an opening brief and attached a purported copy of the exhibit. We will not consider the exhibit because: 1) the item we received is described by Ms. Kleiner as a “copy,” not the actual exhibit admitted at the hearing; and 2) we can’t be sure it’s a true, unaltered duplicate of the original exhibit. We note that Ms. Kleiner, the Hearing Examiner, or the County Clerk (and possibly others) could have prevented this problem, but didn’t.

² 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 “Kleiner’s Exhibit” or “Assessor’s Exhibit.”

H 2020 Appeal form for Parcel # 900.

(Hr'g Rec. at 1:20; 2021-78 R. 82-89).

[¶ 11] Ms. Kleiner's representative, John Burd, called three witnesses: Ms. Kleiner; Cynthia Barlow, of On Point Business Consulting, LLC; and Assessor. Ms. Kleiner testified that her land is in an economically depressed area featuring dirt roads with pot holes. (Hr'g Rec. at 5:30). Ms. Barlow testified that Assessor's predecessor used a market analysis in 2018 and also applied a 25% downward adjustment to Ms. Kleiner's land values. (*Id.* at 10:10). In 2019, Assessor used linear regression analysis but eliminated the adjustment. (*Id.* at 9:25). In 2020, Assessor used multiple regression analysis with no adjustment. (*Id.* at 7:30). Ms. Barlow opined that Assessor erred by combining sales in Ms. Kleiner's LEA with sales in the more affluent LEA 1001RES01 to reach the five sales required by the Department's rules³. (*Id.* at 11:55). She thought that Assessor should have instead used historical sales and time-trended them to get the five sales. (*Id.* at 15:00). Ms. Barlow further opined that Assessor should have applied a downward adjustment to Ms. Kleiner's LEA. *Id.*

[¶ 12] Assessor testified that he removed the downward adjustment in 2019, pursuant to Department of Revenue guidance, because there was no documentation to support it. (Hr'g Rec. at 27:20). Assessor further testified that he and his staff have received the required Department of Revenue training and credentials, and that he grouped sales from Ms. Kleiner's LEA with sales from LEA 1001RES01 to get the requisite number of sales. (*Id.* at 33:40).

[¶ 13] Assessor's only witness was Renee Berry, his Field Crew Supervisor. (Hr'g Rec. at 39:00-48:25). She testified about the boundaries and characteristics of LEA 0901RES01 as presented in Assessor's Exhibits D/E 1 and 2. (*Id.* at 40:10). She also testified that

³ That rule provides:

(a) These standards apply to residential valuations performed by the Assessor with department approved software, and are directed primarily at the reliability of sales ratio study calculations performed by the Assessor for each LEA, Neighborhood or other stratum in the county. IAAO standards apply except where there is a conflict with these rules, in which case these rules shall prevail.

(i) Sales Sample Sizes for Ratio Studies. A ratio study is valid to the extent that the sample of sold properties is sufficiently representative of the population being appraised. The minimum sample size shall be 5 for any LEA, neighborhood or other stratum. If five sales are unavailable the following methods should be used to increase sample size. * * *

(A) Restratification. If levels of appraisal are similar or properties are homogenous, broader strata containing larger samples can be created by combining existing strata or by stratifying on a different basis.

Rules, Wyo. Dept. of Revenue, ch. 9 § 6(a)(i)(A) (2016).

Assessor's Exhibits D/E 3 and 4 include a list of the sales used in the multiple regression analysis for LEA's 0901RES01 and 1001RES01. (*Id.* at 41:15). That list includes properties from both LEA's because there weren't enough 2019 sales in LEA0901RES01 to satisfy the five-sale requirement. (*Id.* at 41:40). Ms. Berry further testified that the Median, Co-efficient of Dispersion, and Price Related Differential used to validate both LEA's were all within the ranges prescribed by the Department. (*Id.* at 42:15).

[¶ 14] The County Board issued separate decisions that are identical except for the docket numbers and dollar amounts. (2021-77 R. 88-90; 2021-78 R. 92-94). The County Board found that Ms. Kleiner "has not met her burden and has not established that the valuation of the property was not fairly or uniformly derived." *Id.* It further found that "Assessor used all available information to value the Property and that the Petitioner has not demonstrated that the Assessor used an unlawful methodology or misapplied the methodology used in valuing the Property." *Id.*

CONCLUSIONS OF LAW

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

[¶ 15] This Board's standard for reviewing county board decisions 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)). 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).

[¶ 16] 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)).

[¶ 17] 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)).

[¶ 18] “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

[¶ 19] 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 rejecting Ms. Kleiner’s claim that Assessor acted arbitrarily and capriciously in 2019 when he removed a downward adjustment to Ms. Kleiner’s land values without a physical inspection within the last six years?

[¶ 20] Ms. Kleiner’s entire statement and discussion of this issue appears in these two sentences in her Notice of Appeal:

In 2018 the property in question (Midwest Heights Edition Lots 1 & 2 BLK 5 had an adjustment based on the last physical inspection. In 2019 that adjustment was arbitrarily and capriciously removed without a physical inspection within the last 6 years in violation of WY Dept of Revenue Regulations Chapter 9 Sec 3(c).

(Notice of Appeal, 1). Ms. Kleiner challenges Assessor’s decision, in 2019, to remove a downward adjustment from her land values. Assessor’s 2019 decision to remove the adjustment was appealable in 2019, and we lack jurisdiction to consider it as part of Ms. Kleiner’s appeal of her 2020 assessment. *See, In re Gray*, 2017 WL 5559382, *9, Docket No. 2016-44, ¶ 28 (Wyo. State Bd. of Equalization, Nov. 9, 2017).

[¶ 21] Even if we had jurisdiction to consider it, this issue would be unavailing for Ms. Kleiner. Assessor testified that he removed the adjustment, with guidance from the Department of Revenue, because there was no documentation supporting the purported reason for the adjustment. (Hr’g Rec. at 27:20). That uncontroverted testimony shows that Assessor’s decision was neither arbitrary nor capricious.

[¶ 22] Ms. Kleiner also reads too much into the requirement to physically inspect every six years:

County Assessors shall physically inspect all real properties within their jurisdiction at least once every six years *in order to assure the property characteristic data are correct*. The Department may, if necessary, require a yearly plan from the assessor to assure compliance. Exempt properties shall be reviewed as deemed necessary by the assessor to assure the basis for the exemption remains valid and applicable.

Rules, Wyo. Dept. of Revenue, Ch. 9, § 3(c) (emphasis added). The plain language of that rule does not require an assessor to wait until after the sexennial physical inspection to add or remove an adjustment. Further, Ms. Kleiner mischaracterizes the evidence when she

contends there has been no physical inspection of her property within the last six years. (Notice of Appeal, 1). In response to a question from Mr. Burd, Assessor testified that his office did not inspect Ms. Kleiner's property before removing the downward adjustment. (Hr'g Rec. at 26:00). Assessor did not testify about whether there had been an inspection within the last six years because Mr. Burd didn't ask him about that.

D. Did the County Board err in rejecting Ms. Kleiner's claim that Assessor violated Department of Revenue rules in 2020 when he re-assigned Ms. Kleiner's properties into a Land Economic Area with much more valuable properties?

[¶ 23] Assessor re-assigned Ms. Kleiner's properties to the newly created LEA 0901RES01 in 2020. (Hr'g Rec. at 32:70). That LEA consists of all Natrona County properties outside of incorporated municipalities. (2021-77 R. 79-80). Ms. Kleiner contends that her properties should be in a different LEA: one without high-value properties. (Notice of Appeal, 1).

[¶ 24] Wyoming Statutes section 39-13-102(d) (2021) 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." 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 lacked authority to re-arrange LEA's, and did not err in declining to do so.

E. Did Assessor err by "cherry-picking" seven properties to use in his multiple regression analysis, although many more were available?

[¶ 25] Ms. Kleiner presented this issue in her Notice of Appeal in this way:

The Assessor used a Multiple Regression to value the properties contained in LEA 0901res01[.] The assessor cherry picked 7 properties to use in the regression although many more were available. A prudent Assessor would have used as many properties as needed to provide an accurate analysis. Of the 7 properties used, 6 were located in the affluent south Casper location and the last was located in the affluent Vista West area. None were within

several miles of the poor Midwest Heights Addition, which is not located in any incorporated town or city. All properties used in the analysis were flat in nature and these properties are located on extremely sloping terrain.

(Notice of Appeal, 2).

[¶ 26] Ms. Kleiner doesn't tell us what she means by the phrase "cherry-picking," nor does she describe Assessor's conduct that she believes amounts to cherry-picking. We accept that she used the phrase to mean, "to select the best or most desirable." *Cherry-pick*, *Merriam-Webster's Collegiate Dictionary*, 212 (11th edition 2014). In other words, we understand Ms. Kleiner to allege that Assessor chose to include in his analysis only those property sales that would yield the result he desired.

[¶ 27] Ms. Kleiner states: "[Ms. Barlow] also pointed out that all of the properties the assessor used in his analysis were from the more affluent LEA 1001 Res 01, and no properties were used from LEA 901 Res 01 and the error that resulted." She cites the Hearing Recording at 12:16-19:09 as authority. That portion of the recording begins with Ms. Barlow discussing the soon-to-be-missing Kleiner's Exhibit BB1 and apparently pointing out some of the properties used in Assessor's multiple regression analysis. We cannot see what Ms. Barlow was referring to, because the exhibit isn't part of the record available to us. *Supra*, ¶ 9 n1. Ms. Barlow did not, however, discuss cherry-picking properties.

[¶ 28] The record simply does not support Ms. Kleiner's contention that Assessor "cherry-picked" sales from more affluent areas. Accordingly, we find no reversible error related to this issue.

F. Did the County Board err in rejecting Ms. Kleiner's claim that Assessor violated Wyoming Statutes section 34-1-124(g) by ignoring Ms. Kleiner's May 24, 2020 request for documentation?

[¶ 29] Ms. Kleiner initially presented this issue in this way: "On May 24, 2020 a request was made to the Natrona County Assessor for documentation per WS 34-1-124(g), this request was ignored." (Notice of Appeal, 2). She did not provide any additional information or argument, and did not expand on that statement in her Reply Brief.

[¶ 30] Ms. Kleiner's presentation of this issue demonstrates two common, fundamental misunderstandings about how the State Board functions, and we will take this opportunity to correct them. First, this Board reviews decisions of county boards; we don't decide issues that weren't presented to the county board. The County Board did not decide this issue because Ms. Kleiner never asked it to. We will not address this issue because there is no County Board decision for us to review.

[¶ 31] Second, we know only what is in the record. In her Notice of Appeal, Ms. Kleiner contends that “[o]n May 24, 2020 a request was made to the Natrona County Assessor for documentation per WS 34-1-124(g), this request was ignored.” (Notice of Appeal, 2). The letter referenced is not in the record, nor is there anything else in the record that supports Ms. Kleiner’s claim. Simply put, we don’t know anything about the facts behind this issue, and Ms. Kleiner hasn’t given us anything to work with. Lacking both a reviewable decision and meaningful information, we decline to address this issue further.

CONCLUSION

[¶ 32] The County Board correctly determined that Ms. Kleiner did not present evidence sufficient to overcome the presumption favoring Assessor’s valuation.

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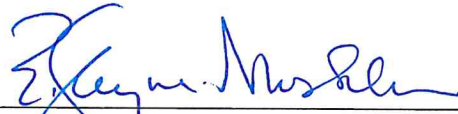
ORDER

[¶ 33] **IT IS, THEREFORE, ORDERED** that the decisions of the Natrona County Board of Equalization are **AFFIRMED**.

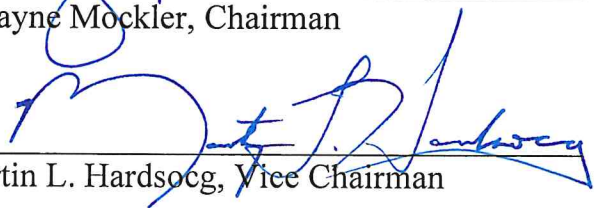
[¶ 34] **Pursuant to Wyoming Statutes section 16-3-114 (2021) and Rule 12, Wyoming Rules of Appellate Procedure, any person aggrieved or adversely affected in fact by this decision may seek judicial review in the appropriate district court by filing a petition for review within 30 days after the date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

DATED this 22 day of November 2021.

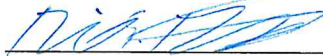
STATE BOARD OF EQUALIZATION



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 22 day of **November 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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