

BEFORE THE STATE BOARD OF EQUALIZATION

FOR THE STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF)
NATRONA COUNTY ASSESSOR) **Docket No. 2021-81**
FROM A DECISION BY THE NATRONA)
COUNTY BOARD OF EQUALIZATION)
(Group 2))

IN THE MATTER OF THE APPEAL OF)
NATRONA COUNTY ASSESSOR) **Docket No. 2021-82**
FROM A DECISION BY THE NATRONA)
COUNTY BOARD OF EQUALIZATION)
(Group 2))

IN THE MATTER OF THE APPEAL OF)
NATRONA COUNTY ASSESSOR) **Docket No. 2021-83**
FROM A DECISION BY THE NATRONA)
COUNTY BOARD OF EQUALIZATION)
(Group 2))

IN THE MATTER OF THE APPEAL OF)
NATRONA COUNTY ASSESSOR) **Docket No. 2021-84**
FROM A DECISION BY THE NATRONA)
COUNTY BOARD OF EQUALIZATION)
(Group 2))

DECISION AND ORDER

APPEARANCES

Ken Carpenter, pro se, appeared on behalf of taxpayers Carpenter Co., LLC, Margaret Bobken, LLC, and Graham Brown Co. (hereafter Taxpayers).

Eric K. Nelson, Natrona County Attorney, and Charmaine A. Reed, Deputy Natrona County Attorney, appeared on behalf of Assessor Matt Keating (hereafter Assessor).

SUMMARY

[¶ 1] Taxpayers appealed four 2020 assessments of their residential improved properties in Natrona County, claiming Assessor overvalued the underlying land. The Natrona County Board of Equalization (County Board), following a contested case hearing, reversed and remanded the assessments for “reconsideration” because Assessor’s valuation analysis was non-uniform, because the Assessor’s analysis included individual property value-to-sales price ratios that appeared to violate Wyoming law, and because Taxpayer offered evidence demonstrating that the land valuation at \$10 per square foot was too high for the North Casper area. Assessor appealed the four decisions.

[¶ 2] The Wyoming State Board of Equalization, Chairman E. Jayne Mockler, Vice-Chairman Martin L. Hardsocg, and Board Member David L. Delicath, reviewed the record and briefs of the parties, including all pre-hearing materials. The State Board **affirms** the County Board’s reversal and remand, and directs that Assessor reassess the four properties for the reasons set forth herein.

ISSUES

[¶ 3] Assessor identified the issues as:

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 Briefs, 1).

[¶ 4] Taxpayer, in response, identifies the issues on appeal as:

1. Did the County Board of Equalization act arbitrarily and capriciously or otherwise not in accordance with the law when it did not consider the failure of the Assessor to fulfill his legal obligation to provide the Taxpayer copies of the Statements of Consideration (SOC) used to determine the values of the Taxpayer’s properties?
2. Did the County Board of Equalization act arbitrarily and capriciously or otherwise not in accordance with the law when it allowed the Assessor to introduce evidence of value, ie: his summaries, without him being able to provide the supporting Statements of Consideration?

3. Did the County Board of Equalization act arbitrarily and capriciously or otherwise not in accordance with the law when it failed to consider Chapter 7 Uniform County Board of Equalization Practice and Procedure Rules, Section 9(b) and WRCP Rule 37(b)(2)(A)(ii) Failure to Comply with a Court Order during their deliberations.
4. Did the Hearing Officer err in denying the Taxpayer's Motion in Limine?

(Taxpayers' Briefs, 2).

PROCEEDINGS BEFORE HEARING OFFICER AND COUNTY BOARD¹

[¶ 5] Taxpayers, among various other business property owners, through Ken Carpenter, appealed dozens of 2020 residential and residential vacant property tax assessments in Natrona County.² Mr. Carpenter enlisted former Johnson County Assessor, Cynthia Barlow, doing business as "OnPoint Business Consulting, LLC," to assist with presentation of Taxpayers' appeals to the County Board. (See 2021-81 R. at 128; 2021-82 R. at 143; 2021-83 R. at 61; 2021-84 R. at 17).

[¶ 6] Prior to each contested case hearing, Taxpayers, through Mr. Carpenter, labored to acquire valuation data from Assessor to better understand the taxable valuations assessed. Mr. Carpenter demanded Assessor turn over voluminous information, eventually seeking a subpoena duces tecum³, to compel the production of Assessor's valuation materials. We will not review these numerous information production demands in depth. Suffice to say, Taxpayers in these appeals aggressively demanded Assessor's relevant valuation information in accordance with Wyoming Statutes section 39-13-109(b) (2021), which requires that assessors share valuation information, upon request, no less than thirty days before a contested case hearing.

¹ Because the appeals were not joined before the County Board, each County Board docket has its own record. We shall identify each record with the assigned State Board docket number, such as 2021-81 R. at **).

² This and other property-owning entities, through Mr. Carpenter, appealed their assessments to the County Board. See *In re Appeal of Greenbird & Assoc., LLC*, Doc. Nos. 2021-62, 2021-63, 2021-64, 2021-65, 2021-66; *In re Appeal of Carpenter Co., LLC*, Doc. Nos. 2021-67, 2021-68, 2021-69, 2021-70; *In re Appeal of Paul Franklin, LLC*, Doc. Nos. 2021-71, 2021-72, 2021-73; *In re Appeal of Christensen Barnhart, LLC*, Doc. Nos. 2021-74, 2021-75; *In re Appeal of Margaret Bobken, LLC*, Doc. No. 2021-76. Assessor appealed four more County Board decisions adjudicating appeals brought through Mr. Carpenter. *In re Appeal of Natrona County Assessor*, Doc. Nos. 2021-81, 2021-82, 2021-83, 2021-84. Of all the appeals that Mr. Carpenter filed, the County Board held in favor of the Taxpayer in four of them—those appeals addressed in this decision. Assessor appealed from those four County Board decisions, which we have joined for the purposes of issuing a single decision.

³ A subpoena duces tecum is a written legal order, often issued to a party or third person in discovery prior to a trial or like proceeding, to compel the provision of documents or other materials.

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[¶ 7] Unsatisfied with Assessor’s response, Taxpayers filed a Motion in Limine seeking to prevent Assessor from admitting into evidence the evidentiary basis of his valuations. (See 2021-81 R. at 96-101; 2021-82 R. at 122-127; 2021-83 R. at 75-79; 2021-84 R. at 119-124). Taxpayers claimed that, because Assessor had not sufficiently complied with statutory information-sharing requirements or the County Board’s Order Compelling Discovery, the hearing officer should have denied admission of Assessor’s evidence of how he arrived at the assessed values. *Id.* Taxpayers argued that Assessor would then have been required to rely upon the previous year’s valuations. *Id.*

[¶ 8] Following a hearing on the Motion in Limine, the hearing officer denied the motion.⁴ She found that: 1) Taxpayers were not able to view the specific Statements of Consideration (SOC’s), because the three years of statements were made available in four boxes that were not organized by date or in any other manner; 2) Assessor provided taxpayers with spreadsheets containing valuation information in an electronic form; and 3) Assessor was unable to strictly comply with the statutory information disclosure requirement because the information was not organized, the Assessor was preparing for hundreds of appeals, and the COVID 19 pandemic limited his office’s ability to respond. (See 2021-81 R. at 146-148; 2021-82 R. at 170-172; 2021-83 R. at 114-116; 2021-84 R. at 167-169). The hearing officer concluded that Assessor had not intentionally violated the law, complying with its requirements “to the best of his ability under the circumstances.” *Id.* The hearing officer concluded that granting the motion would likely result in remand and initiation of the appeal process anew at great time and expense to the parties. *Id.*

[¶ 9] The County Board, through its hearing officer and with the parties’ input, grouped the appeals so that the County Board could hear the evidence addressing similarly situated or characterized properties of the taxpayers in successive hearings. The hearing officer designated the above-captioned appeals as “Group 2,” recorded on Hearing Audio Recording 3.⁵ The County Board dockets in Group 2, and the property at issue in each appeal, are as follows:

⁴ The record does not contain a transcript or audio recording of the pre-trial hearing on the Motion in Limine.

⁵ Unfortunately, the County Board did not formally join the appeals together for purposes of issuing its numerous decisions, and the parties thereafter rearranged and grouped the appeals by property owner for briefing purposes, rather than as the hearing officer grouped the appeals for hearing purposes. So, we have disentangled the appeals and joined docket numbers according to the hearing groupings established before the County Board. *See* Board Order Consolidating Appeals dated January 27, 2022. In so doing, we have joined the appeals heard in the same contested case hearings. This allowed us to streamline our decisions, citations to the audio record, and should assist appellate bodies if further review is sought. County Boards, as any trial court, have broad discretion to join, rearrange, and marshal proceedings to avoid confusion and ensure efficiency in the adjudicative process, as well as to aid reviewing courts.

State Board Docket	County Board Docket	Property	2019 valuation	2020 valuation
2021-81	2020-0581	Residential property at 1201 N. Melrose Street, Casper, Wyoming, with a single family residence, located within LEA 0302Res01, neighborhood 03AA.	Residential land: \$16,950 Improvements: \$49,265 Total: \$66,215	Residential land: \$50,000 Improvements: \$38,485 Total: \$88,485
2021-82	2020-0582	Residential property at 735 North Jefferson Street, Casper, Wyoming, with a single family residence, located within LEA 0302Res01, neighborhood 03AA.	Residential Land: \$25,425 Improvements: \$76,391 Total: \$101,816	Residential land: \$75,000 Improvements: \$59,616 Total: \$134,616
2021-83	2020-0586	Residential property at 818 North Kimball Street, Casper, Wyoming, with single family home, located within LEA 0302Res01, neighborhood 03AA..	Residential Land: \$16,950 Improvements: \$55,743 Total: \$72,693	Residential land: \$50,000 Improvements: \$43,676 Total: 93,676
2021-84	2020-0593	Residential property at 757 St. John Street, Wyoming, with a single family residence, located within LEA 0302Res01, neighborhood 03AA..	Residential Land: \$16,950 Improvements: \$37,105 Total: \$54,055	Residential land: \$50,000 Improvements: \$26,822 Total: \$76,822

(See 2021-81 R. at 208-209; 2021-82 R. at 234-235; 2021-83 R. at 178-179; 2021-84 R. at 232-233).

[¶ 10] The evidentiary presentations were rather disjointed and hindered by inaudible

discussions among unidentified persons in the hearing room. (Hr’g Audio 3, 00:01:00 – 00:04:00, 00:05:00 – 06:30:00). Ms. Barlow presented Taxpayer’s case through questioning of witnesses, and she herself offered testimony as a witness.

[¶ 11] The properties at issue are located in North Casper. (Hr’g Audio 3, 00:07:00 – 00:10:45). Assessor explained that the Group 2 properties are located in Land Economic Area (LEA) 0302Res01 and, if larger than .2 acres, received a 45% adjustment downward in value. This “size” attribute, he explained, tied to the value of other properties in the LEA. (Hr’g Audio 3, 00:10:30 – 00:13:45). Assessor deferred to his statistician to explain the 45% reduction in value. *Id.* Before applying the adjustment, Assessor valued the land at \$10 per square foot. (Hr’g Audio 3, 00:12:30 – 00:14:00).

[¶ 12] Ms. Barlow questioned Assessor’s process for receiving, verifying, and analyzing SOC’s, which contained the sales information of properties within the Land Economic Area. (Hr’g Audio 3, 00:13:45 – 00:16:00).

[¶ 13] Ms. Barlow questioned Assessor on how he applied the adjustment to other properties in the LEA, asking whether he could verify that his office actually applied the adjustment to other properties. (Hr’g Audio 3, 00:17:00 – 00:30:00). Ms. Barlow asked Assessor whether some of the properties were “out of compliance,” referring to the sales ratios of several individually valued properties: the appraised value relative to the sales price. (Hr’g Audio 3, 00:20:30 – 00:30:00). Assessor conceded that some of the valuations in the LEA may not have been properly adjusted, but clarified that the occasional unadjusted account would not have affected the valuation analysis applied to Taxpayers’ property values. (Hr’g Audio 3, 00:20:30 – 00:28:00, 00:32:00 – 00:33:30). This testimony included inaudible or garbled discussions, as well as apparent evidence not viewable in the record.⁶ *Id.* Ms. Barlow sought to establish that Assessor’s valuations throughout the LEA were non-uniform. (Hr’g Audio 3, 00:28:00 – 00:30:00).

[¶ 14] Corrie Cabral, the Assessor’s statistician, then testified for the Assessor’s Office before the Taxpayers rested their cases, an accommodation offered to help clarify the Assessor’s testimony. (Hr’g Audio 3, 00:43:00 – 00:45:00). She confirmed that any property within the LEA over .2 acres in size received a valuation adjustment deduction of

⁶ For example, Ms. Barlow asked Assessor to “pull accounts up” in real time to view underlying account information, but that information is not detailed in the record, as it was merely “showed on the screen” in the hearing room, or, maybe it wasn’t. We don’t know. Discussions concerning this “on screen” review ranged from audible to garbled. (Hr’g Audio 3, 00:20:00 – 00:30:00). Ms. Barlow, and County Board members, then asked Assessor if his office might “rerun” various calculations, followed by an extended period of silence or remote conferencing. The record does not include the results of those efforts. (Hr’g Audio 3, 00:35:00 – 00:41:00, 00:46:00 – 00:49:00; 00:57:00 – 01:03:30). Corrie Cabral then testified at Taxpayer’s request but, during her testimony, Assessor interjected and sought clarifications. These distractions occasionally devolved into conference discussions between unidentified persons and inaudible background mumblings. *Id.*

45% and that, if properties were not adjusted, that was an oversight. *Id.* She explained that the adjustment reflected her review of all sales and evidence that larger properties in the LEA were selling for less on a square foot basis. *Id.*

[¶ 15] County Board questions then took her testimony in an entirely new direction which would play a distinct role in the County Board’s decision, *supra* ¶ 22, as Board members struggled to understand that mass appraisal ratios could differ substantially from the overall neighborhood median ratio. The Board’s questions prompted her to explain: “We can’t, ... we’re not going to sales chase; we can’t go in and try to make our values match their sales price. We have to use the characteristics that we have, based on the information that we’re given, and then use the statistics for the whole neighborhood to come into compliance.” (Hr’g Audio 3, 00:54:00 – 00:55:00). She detailed why considering individual property sales ratios, prior to making neighborhood adjustments, was not a compelling indication of non-uniformity within the state’s mass appraisal valuation system. *Id.* The following exchange occurred:

Board Member Henry Question: If you talk about a fair and equitable tax, you’ve got the sales price, ... a lot of these, the new valuation is way under what they sold for It doesn’t stand to reason that it would be that much lower than the actual sales price. And I don’t know what happened between that column and the new total value, but I, I just can’t understand why that’s off.

Corrie Cabrall response: ... so if we look at Exhibit D 6/7 ... so that’s the neighborhood adjustment, and you can see our median is .99, so we didn’t add any sort of adjustment to bring it to compliance, but that’s kind of where the math comes in. It’s that we look at the overall median for the overall neighborhood, rather than—if we look at the individuals in order to review them, but at some point we have to send out values, and so we have what we have, and with our median being in compliance, there wasn’t the need to add an adjustment. ... Now you’re getting more into fee [appraisal], versus math—we look at the whole.

(Hr’g Audio 3, 00:51:00 – 00:53:15; 2021-81 R. at 206; 2021-82 R. at 232; 2021-83 R. at 176; 2021-84 R. at 230). Ms. Cabrall explained in some depth why individual property sales ratios in an overall analysis of the mass appraised property values within a given LEA might vary significantly from the appraised taxable value of that individual property.⁷ *Id.*

⁷ This case is noteworthy because the evidence delved deeper into mass appraisal analysis than most. For that reason, we highlight this discussion to assist this and other county boards of equalization.

[¶ 16] Ms. Cabral’s testimony ended with Ms. Barlow questioning her at length as to whether errors in performing the 45% adjustment to properties over .2 acres skewed the analysis, but her testimony offered no confirmation of that either way. (Hr’g Audio 3, 00:57:00 – 01:03:30).

[¶ 17] Ms. Barlow then argued and testified⁸ that North Casper properties should not be valued at \$10 per square foot, and she stated that her resources supported a value of \$5.50 per square foot. She referred to nonspecific, unidentified “realtor communications” that supported a per square foot value of \$5.50. She argued that Assessor’s reliance on the “abstraction” technique was problematic, but offered no explanation of why. She generalized that Assessor’s valuation process did not include review and updating of all accounts and properties. (Hr’g Audio 3, 01:03:30 – 01:10:00). Referring to her reanalysis of Assessor’s LEA valuation to argue that Assessor failed to comply with mass appraisal standards, Ms. Barlow graphed the LEA sales on a scatter chart. (2021-81 R. at 158; 2021-82 R. at 183; 2021-83 R. at 128; 2021-84 R. at 181). She noted that her calculated “R squared” figure of 0.2839 demonstrated that the valuations were not compliant or uniform. (Hr’g Audio 3, 01:07:00 – 01:09:00).

[¶ 18] Ms. Barlow alleged a number of failures in Assessor’s valuation approach. She stated that in addition to not correctly accounting for the status of improvements, re-stratification of properties in North Casper was needed. She disagreed that Assessor sufficiently understood his property improvement information and, consequently, should not have used the abstraction approach to appraise. She repeated that Assessor “backed into the values” through his adjustments, without explaining this concept. She argued that Assessor lacked the data to support a 45% deduction applied to just part of the LEA properties and that he should have applied the adjustment to the entire LEA, which would have resulted in values of about \$5.50 per square foot for all properties. She then reiterated that Assessor had not turned over sufficient information to understand the valuations in dispute. (Hr’g Audio 3, 01:03:30 – 01:15:45). “It’s my opinion that the entire LEA be reconsidered,” she concluded, citing various different valuation models that should have been used, as opposed to abstraction. *Id.*

[¶ 19] Assessor and his employees then testified to how they arrived at the values for the four properties in question. Rene Berry, the “Field Crew Supervisor” for the office, explained that the properties are located in LEA 0302Res01, submarket 3AA, which was depicted on a map in the record. (Hr’g Audio 3, 01:18:00 – 01:22:00; 2021-81 R. at 197-207; 2021-82 R. at 223-233; 2021-83 R. at 167-177; 2021-84 R. at 221-231). She testified that the Assessor’s Office used “abstraction” to value all of the properties, a process whereby the value of the improvements is first determined and removed from the overall

⁸ Ms. Barlow acted as both Taxpayer’s “agent” and witness, conducting witness examinations and intermittently testifying concerning Assessor’s compliance with mass appraisal standards.

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price paid for sold properties, leaving only the estimated land value, calculated on a value per square foot basis. *Id.* The Assessor’s Office may then apply a “neighborhood adjustment” to the reconstituted value of land and improvements, which reflects how market prices are trending. *Id.* She further testified that the value of improvements is subject to various quality and condition judgments. *Id.* She reviewed the improvement values for each of the four properties under appeal. *Id.*; *see supra* ¶ 9.

[¶ 20] The County Board questioned Ms. Berry, again struggling with evidence demonstrating a wide range of individual values relative to recent sales prices of those individual properties—commonly referred to as the “sales ratio.” (Hr’g Audio 3, 01:22:00 – 01:27:30). For example, a County Board member asked Ms. Berry about several individual property sales for which the sales price was \$144,000 versus an assigned value of \$106,560, and another sale at \$65,900, but with an assigned value of \$98,143. *Id.*; (2021-81 R. at 206; 2021-82 R. at 232; 2021-83 R. at 176; 2021-84 R. at 230). Ms. Berry answered that the County Assessor had adjusted values as required by a “Work Order” imposed by this Board. *Id.*; *infra* ¶ 40, n. 10. Speaking of the difference between sales prices and value, the County Board Member stated: “I can’t see where that’s fair and equitable.” (Hr’g Audio 3, 01:26:00 – 01:27:15).

[¶ 21] Reviewing the four properties under appeal, Ms. Berry confirmed that they did not receive a 45% adjustment because they were less than .2 acres in size:

The adjustment was applied during the appeal process for anything that was .2 acres or over. So, I believe that the Petitioner’s properties don’t fit that specification: we’ve got .11; we’ve got .17; we’ve got .11 and .11. So, we wouldn’t apply an adjustment based on the data set that we have, that we used last year’s assessment.

(Hr’g Audio 3, 01:27:00 – 01:28:45). She explained that the valuations were driven by the best information available under the circumstances, considering the difficulties of tracking down accurate information on the sales considered. (Hr’g Audio 3, 01:28:45 – 01:31:00).

[¶ 22] The County Board reversed the four valuations, in each decision finding in part, and concluding in part, that:

7. Petitioner’s agent presented testimony that the abstraction method used by the Assessor to value the Property was used and showed statistical compliance but cautioned that the Assessor must have confidence in the values of the improvements that were removed to determine the land value. Petitioner’s agent argued that the Assessor was effectively backing into the sales price for sales used in Assessor’s analysis.

8. Petitioner’s agent presented testimony that the data used and provided by the Assessor shows that there is a stratification issue with the grouping of properties for the subject LEA and that the LEA should be revalued.

9. Petitioner’s agent provided an analysis that shows the land value should be closer to five dollars per square foot instead of the ten dollar per square foot determined by the Assessor.

...

5. Petitioner provided evidence that the subject property and the neighboring properties are not being uniformly valued.

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

7. The CBOE finds that the Petitioner demonstrated several inconsistencies in the analysis completed by Assessor, including a number of ratios that did not appear to be in compliance with State requirements.

8. The CBOE finds that the North Casper area, where the subject property is located, is an economically depressed area and that the analysis and information provided by Petitioner does not support a value of ten dollars per square foot for the area.

[¶ 23] The County Board ordered that the appeals be “**REMANDED BACK TO THE ASSESSOR FOR FURTHER REVIEW.**” (See 2021-81 R. at 210-212; 2021-82 R. at 236-238; 2021-83 R. at 180-182; 2021-84 R. at 234-236).

CONCLUSIONS OF LAW

(a) Standard of Review

[¶ 24] 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.*

[¶ 25] 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).

[¶ 26] 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).

[¶ 27] 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)).

[¶ 28] “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.

[¶ 29] If Petitioner successfully overcame the presumption, the “county board was ‘required to equally weigh the evidence of all parties and measure it against the appropriate burden of proof.’ ” *Britt*, ¶ 23, 126 P.3d at 125 (citing *CIG v. Wyo. Dep’t of Revenue*, 2001 WY 34, ¶ 10, 20 P.3d 528, 531 (Wyo. 2001)). The Court explained the shifting of burdens upon overcoming the presumption: “The burden of going forward would then have shifted to the Assessor to defend her valuation,” but the ultimate burden of persuasion remained with the taxpayer to prove by a preponderance of evidence that the valuation was not derived in accordance with constitutional or statutory requirements. *Id.*

(b) Applicable Law

[¶ 30] 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) Review of the County Board Decisions

[¶ 31] Before resting its case, Taxpayers’ representative, Mr. Carpenter, asked a procedural question: “So, the discussion of law that we had in previous grouping, um, I’m hoping that that will follow in this grouping also, instead of having to go through it again. Is that acceptable?” The hearing officer responded, “Yes, yah, I mean ... these are, these are all, I mean, I know we are taking these by groups, but it’s basically the same hearing so, yes, absolutely.” Mr. Carpenter replied, “So, my, my part of group number one can follow us through all these groups.” A County Board Member then stated “So, this evidence is in, is in this one as well.” (Hr’g Audio 3, 01:17:15 – 01:18:00). So, Mr. Carpenter essentially asked that his earlier argument/testimony from the first hearing held, regarding Assessor’s alleged violation of statutory and regulatory information-sharing requirements from Group 1, be incorporated into all subsequent hearings.⁹

⁹ Mr. Carpenter filed fifteen 2021 appeals, variously grouped and heard in hearings. See *In re Appeal of In re Appeals of Natrona County Assessor*, Doc. Nos. 2021-81, 2021-82, 2021-83, and 2021-84
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[¶ 32] While Mr. Carpenter’s request was fair and a good idea in practice, neither he, the hearing officer, the County Board, the Assessor’s Office, or legal counsel proceeded on this basis or appropriately incorporated that material into subsequent records. The numerous appeals and hearings were not conducted as one continuous hearing. Rather, each audio session expressly identified one or more docket numbers and records that the hearing would adjudicate, and the County Board adjudicated each docket addressed in that hearing, and no others. Therefore, Mr. Carpenter needed to expressly seek to incorporate by reference evidence or materials from the first group of appeals into each subsequent appeal. Likewise, the hearing officer needed to assure that each audio record of each group of appeals incorporated by reference the desired materials from the previous Group 1 hearing. They did not, and so the audio records of each hearing do not incorporate Mr. Carpenter’s testimony and arguments from Group 1.

[¶ 33] To the extent Taxpayer(s) did not clearly incorporate hearing evidence or argument from the Group 1 hearing into a subsequent appeal, *the County Board was not responsible to consider the omitted evidence and argument*. In other words, this Board reviews the *County Board’s* adjudication of disputed facts and law, and we are limited to the evidence and record before the County Board and, particularly the evidence offered to prove or disprove facts, and application of law to those proven facts. The parties were strictly responsible for any failure to submit evidence and argument for the County Board’s consideration.

[¶ 34] In any event, *Taxpayers did not appeal the four Group 2 decisions*, so we would not consider Taxpayers’ subsumed claims that Assessor failed to disclose valuation information before the hearings anyway. Curiously, in their briefs to this Board, Taxpayers did not address the County Board’s decisions reversing Assessor’s valuation, and they disjointedly complain about the rulings as if they did not prevail before the County Board. (Taxpayers’ Br.). We therefore rely exclusively upon Taxpayers’ evidence and legal arguments submitted during the hearing to discern their positions in response to Assessor’s appeals.

[¶ 35] The County Board rejected the assessment as “not fairly or uniformly derived,” found that Assessor included “ratios that did not appear to be in compliance with State requirements,” and generally agreed with evidence countering Assessor’s valuation of North Casper land at ten dollars per square foot. *Supra* ¶ 22.

[¶ 36] To assist this and other county boards of equalization in the future, who are often

Greenbird & Assoc., LLC, Doc. Nos. 2021-62, 2021-63, 2021-64, 2021-65, 2021-66; *In re Appeal of Carpenter Co., LLC*, Doc. Nos. 2021-67, 2021-68, 2021-69, 2021-70; *In re Appeal of Paul Franklin, LLC*, Doc. Nos. 2021-71, 2021-72, 2021-73; *In re Appeal of Christensen Barnhart, LLC*, Doc. Nos. 2021-74, 2021-75; *In re Appeal of Margaret Bobken, LLC*, Doc. No. 2021-76.

In re Appeals of Natrona County Assessor, Doc. Nos. 2021-81, 2021-82, 2021-83, and 2021-84

new to property tax assessments appeals, or may lack clear guidance as to the standards applicable to adjudging an assessor's compliance with law, we note that "fairness" is a concept easily and casually offered, but of little use or import when interpreting a decision maker's ruling. The term is ambiguous, connoting subjective approval or disapproval, depending upon how it is placed. But, the term "fair" or "unfair" does not specify why a technical outcome is correct or incorrect. We admonish county boards of equalization to limit their decisions to what complies with Wyoming's statutes and regulations, as well as tenets of mass appraisal as adopted and applied through Wyoming's statutory and regulatory law. *See In re Appeal of Teton Cty Assessor*, 2019 WL 2165526, ¶¶ 34-35 n. 13, Docket No. 2018-52, * 7 (Wyo. State Bd. of Equalization, May 6, 2019) (County Board did not inquire about mass appraisal guidelines or rely on evidence presented, instead relying partially on information outside the record).

[¶ 37] Discarding the County Board's finding of unfairness, we are left with its conclusions that the assessments were not "uniformly derived," that the assessments included noncompliant ratios, and that Taxpayers demonstrated that land values of \$10 per square foot were too high. *Supra* ¶ 22. The County Board was clearly persuaded by Taxpayers' agent and witness, Ms. Barlow, who testified and opined that Assessor's valuation of each parcel of land at \$10 per square foot was excessive for "North Casper." She asserted that the land value should be approximately \$5.50 per square foot, like the properties within the LEA greater than .2 acres in size. *Supra* ¶¶ 13, 17-18.

[¶ 38] Upon questioning Assessor's valuation methodology and the manner in which his office arrived at market value for the LEA properties, four of which were the properties under appeal, Ms. Barlow elicited evidence that Assessor's valuation included a 45% negative adjustment to land parcels larger than .2 acres. *Supra* ¶¶ 11, 13-14, 16. For properties less than .2 acres in size, the land valuations received no downward adjustment. Recent sales within the LEA, Assessor explained, supported application of this negative adjustment only to larger properties. *Id.* Assessor admitted, however, that oversights may have occurred for those properties that were not adjusted downward as intended, and several such properties were potentially identified. *Id.* Taxpayers asserted that these errors may have skewed the overall valuation analysis applied to properties within the LEA, a possibility that Assessor alternately acknowledged and disputed. *Id.* While the County Board did not note these conceded "oversights" in its decisions, this appears to be the non-uniformity to which the County Board referred. *Supra* ¶ 22.

[¶ 39] We find that evidence of errors in how Assessor applied the 45% adjustment, and that it may have impacted all property valuations within the LEA, was sufficient to overcome the strong presumption that Assessor correctly appraised the four properties under appeal. The burden of proof then shifted to Assessor to establish that his Office correctly valued the four properties in question, and a preponderance of evidence standard thereafter applied. *Supra* ¶¶ 28-29.

[¶ 40] Taxpayers’ remaining challenges to Assessor’s valuation were nearly all nonspecific and premised on what Ms. Barlow, a former assessor herself, considered to be the best or preferred mass appraisal practice, versus Assessor’s method that she opined was lacking. For example, she disagreed that Assessor should have relied upon the “abstraction” appraisal technique, explaining that it only works if an appraiser is highly confident in all underlying data. Citing our Work Order issued to the Natrona County Assessor’s Office in 2019¹⁰, Ms. Barlow suggested that Assessor had not fully completed its work practice revisions and had not fully updated all account information, resulting in less accurate mass appraised valuations through the process of abstraction. *Supra* ¶¶ 17-18. This evidence did not amount to a preponderance of evidence that Assessor misapplied Wyoming’s mass appraisal valuation system. However, we are cognizant of Taxpayers’ lack of complete access to underlying valuation data and the potential prejudice Taxpayers experienced as a result. *Supra* ¶¶ 6-8.

[¶ 41] Further, at Ms. Barlow’s prompting, the County Board keyed on individual properties sold within the LEA, expressing discomfort with the ratios between the sales prices paid and the values assigned to those properties. *Supra* ¶¶ 15, 20. The County Board was bothered that Assessor valued some of the properties at far less than the sales price, and that he valued others at significantly higher values than the sales prices. *Id.* Assessor’s witnesses repeatedly responded that this was not unusual in mass appraisal and that the system valued like-situated properties within an LEA as a group through a statistical analysis. *Id.* Mass appraisal does not allow assessors to casually match a property’s taxable value with a property’s sales price, the Assessor’s Office explained, a forbidden practice referred to as “sales chasing.”¹¹ *Id.* Indeed, this Board monitors and analyzes county wide valuation performance by category to detect this specific unauthorized practice, as it lessens uniformity and may skew the measurement of “appraisal level.” *See* Standard on Ratio Studies, International Association of Assessing Officers, §§ 8.5 – 10 (April 2013).

[¶ 42] As such, no evidence supports the County Board’s finding that specific sales “ratios” were “out of compliance.” *Supra* ¶ 22. The County Board simply misunderstood the range at which sales ratios within an LEA may vary. The Assessor’s witnesses

¹⁰ We issued Order 2019-01 to the Natrona County Assessor’s Office in 2019, Assessor’s first year on the job, directing it to correct various areas of non-compliance with the Board’s county-wide mass appraisal standards. (2021-81 R. at 162-169; 2021-82 R. at 188-195; 2021-83 R. at 133-140; 2021-84 R. at 186-193)

¹¹ “Sales chasing” is “the practice of using the sale of a property to trigger reappraisal of the property at or near the selling price. If sales with such appraisal adjustments are used in a ratio study, the practice causes invalid uniformity results and invalid appraisal level results, unless similar unsold parcels are reappraised by a method that produces an appraisal level for unsold properties equal to the appraisal of sold properties.” Standard on Ratio Studies, International Association of Assessing Officers, p. 43 (April 2013). *See* iaao.org/media/standards/Standards_on_Ratio_Studies.pdf.

accurately refuted the County Board's suggestion that individual ratios necessarily demonstrated noncompliance. *Supra* ¶ 15. The individual ratios were not, by themselves, persuasive evidence of non-compliance with Wyoming law.

[¶ 43] However, Taxpayers did offer other compelling evidence that Assessor's valuations, based on recent sales throughout the LEA, fell short of mass appraisal guidelines. Ms. Barlow graphed the sales on a scatter graph using the limited information received, and revealed that the valuations, as a group, lacked the requisite consistency required in mass appraisal. Ms. Barlow compellingly testified that an R-squared factor of 0.2839 demonstrated the size of the properties within the LEA and their appraised value per acre were not sufficiently correlated for them to be uniformly appraised at fair market value. *Supra* ¶ 17. While Ms. Barlow's testimony regarding this facet of her analysis needed much more explanation, it was direct evidence that Assessor erred in how he valued the LEA properties in general, including the four properties under appeal. More telling, this analysis revealed a problem with Assessor's valuation of the LEA as a whole, rather than focusing on select individual property sale-to-value ratios, which by themselves are less revealing in a mass appraisal system.

[¶ 44] Assessor did not respond to Ms. Barlow's specific technical evidence that his valuation of the LEA was demonstrably deficient and, in the absence of such, failed to carry his burden of demonstrating by a preponderance of evidence that he valued the four properties in compliance with Wyoming law. "A preponderance of the evidence is 'proof which leads the trier of fact to find that the existence of the contested fact is more probable than its non-existence.'" *Trump v. State ex rel. Wyo. Workers' Safety and Comp. Div.*, 2013 WY 140, ¶ 21, 312 P.3d 802, 809 (Wyo. 2013) (quoting *Kenyon v. State ex rel. Wyo. Workers' Safety & Comp. Div.*, 2011 WY 14, 22, 247 P.3d 845, 851 (Wyo. 2011)). Rather than directly address Ms. Barlow's evidence, Assessor defaulted to an overview of how his office used abstraction to separate land values from the values of improvements. Ms. Barlow's graphic evidence of error went unchallenged, and in combination with her nonspecific allegations of poor appraisal practice, was a preponderance of evidence in opposition to the assessed values. At that point during the hearing, the County Board could reasonably disagree with the assessments and believe them to be noncompliant with Wyoming's mass appraisal system. Taxpayers had offered sufficient specific evidence, although poorly explained¹², of Assessor's failure to properly stratify the LEA and

¹² Ms. Barlow's explanation of the "R squared" calculation is so poorly explained that it is questionable whether this was sufficient evidence to carry Taxpayer's ultimate burden of proof. But, we defer to the County Board's final determination that Taxpayer offered sufficient evidence to demonstrate that the certain north Casper land valuations at \$10 per square foot were too high. *Supra* ¶ 22. We will not substitute our judgment for the County Board's in resolving factual disputes or as to the weight of evidence received, unless clearly at odds with the record. "[T]he deference that normally is accorded the findings of fact by a trial court is extended to the administrative agency, and we do not adjust the decision of the agency unless it is clearly contrary to the overwhelming weight of the evidence on record. This is so because, in such an instance, the administrative body is the trier of fact and has the duty to weigh the evidence and determine

uniformly tie values to sales throughout the LEA.

[¶ 45] However, this brings up a problem: the Taxpayers merely sought reconsideration of the valuations under a different valuation technique, such as allocation. *Supra* ¶ 18. Taxpayer did not precisely define what it wanted from the County Board. The County Board, for its part, did not specify the correction that Assessor was required to undertake, merely ordering that Assessor “FURTHER REVIEW” the assessments. *Supra* ¶¶ 22-23.

[¶ 46] While it is not this Board’s place to rewrite a County Board’s order when it fails to sufficiently explain how Assessor erred, we are reluctant to affirm the County Board’s Order as written. Such might result in Assessor restating his initial assessment without change, starting the appeal process anew with an updated, but identical or near identical assessment. Rather, we shall affirm the County Board’s Order reversing and remanding Assessor’s four assessments because Taxpayers have offered sufficient evidence that the square foot values at \$10 per square foot are incorrect. We remand the assessments to Assessor and direct him to reassess at a value consistent with the evidence presented.

CONCLUSION

[¶ 47] Taxpayer demonstrated by a preponderance of evidence that Assessor incorrectly valued the four properties at issue in these appeals. The County Board correctly reversed and remanded the four assessments to Assessor.

the credibility of witnesses.” *Dale v. S & S. Builders, LLC*, 2008 WY 84, ¶ 11, 188 P.3d 554, 558-59 (Wyo. 2008) (quoting *Newman v. State ex rel. Wyo. Workers’ Safety and Comp. Div.*, 2002 WY 91, ¶ 26, 49 P.3d 163, 173 (Wyo. 2002)).

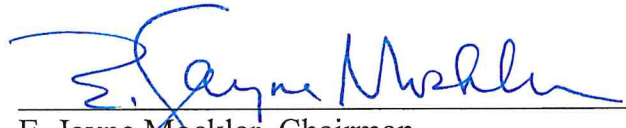
ORDER

[¶ 48] **IT IS HEREBY ORDERED** that the Natrona County Board of Equalization's Findings of Fact, Conclusions of Law, and Orders challenged in Docket No's. 2021-81, 2021-82, 2021-83, and 2021-84 are **affirmed**, and the assessments are **remanded** to the Natrona County Assessor for reassessment in accordance with this Decision and Order.

[¶ 49] 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 1 day of February 2022.

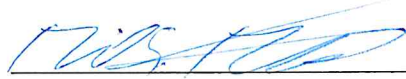
STATE BOARD OF EQUALIZATION



E. Jayne Mockler, Chairman

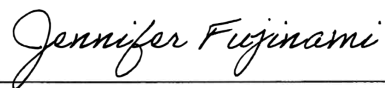


Martin L. Hardsocg, Vice-Chairman



David L. Delicath, Board Member

ATTEST:



Jennifer Fujinami, Executive Assistant

CERTIFICATE OF SERVICE

I hereby certify that on the 1 day of February 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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cc: Brenda Henson, Director, Dep't of Revenue
Brian Judkins, Property Tax Div., Dep't of Revenue
Commissioners/Treasurer/Clerk/Assessor – Natrona County
ABA State and Local Tax Reporter
State Library