BEFORE THE STATE BOARD OF EQUALIZATION

FOR THE STATE OF WYOMING

IN THE MATTER OF THE APPEALS OF	)	
TETON COUNTY ASSESSOR	)	**Docket No. 2021-92**
FROM DECISIONS BY THE TETON	)	Stirn Trusts
COUNTY BOARD OF EQUALIZATION	)	**Docket No. 2021-93**
(Stirn, Kelvin H & Nancy J Trustees;	)	Aspen S LLC
Aspen S LLC)	)	

DECISION AND ORDER

APPEARANCES

Keith Gingery, Deputy Teton County Attorney, representing Teton County Assessor, Melissa Shinkle, (hereafter Assessor).

Clay D. Geittmann, of Geittmann Larson Swift, LLP, representing Kelvin H Stirn Living Trust, Nancy J. Stirn Living Trust, and Aspen LLC, (hereafter Taxpayers).

SUMMARY

[¶ 1] Assessor denied Taxpayers' applications for continued classification of their rural Teton County pasture lands as agricultural[1], significantly increasing their 2021 taxable valuations. Assessor determined that the lands did not qualify as "agricultural" land because Taxpayers did not generate revenue from the marketing of agricultural products, nor did Taxpayers use the lands consistent with their capability to produce. Following a contested case hearing, the Teton County Board of Equalization (County Board)

[1] For properties designated as "agricultural land," assessors must calculate taxes based on the "capability of the land to produce agricultural products," rather than the property's fair market value. *See* Wyo. Const., art. 15, § 11(b) ("All taxable property shall be valued at its full value … except agricultural and grazing lands which shall be valued according to the capability of the land to produce agricultural products under normal conditions."); Wyo. Stat. Ann. § 39-13-103(b)(x)(B)(2021), *supra* ¶ 26. The Wyoming Department of Revenue publishes an annual Agricultural Land Valuation Study with updated market prices of products, which are plugged into valuation formulae to calculate agricultural land values each year based on production capabilities. Rules, Wyo. Dep't of Revenue, Ch. 10 § 5(a) (2017); 2021 Wyoming Agricultural Land Valuation Study. Owners of agricultural property, when compared to owners of properties taxed based on their market values, pay significantly less property tax.

determined that statutory and regulatory terms were unclear and reversed Assessor's classification of the land, remanding the assessments to Assessor for further review. Assessor appealed to this Board.

[¶ 2] The Wyoming State Board of Equalization, Chairman E. Jayne Mockler, Vice-Chairman Martin L. Hardsocg, and Board Member David L. Delicath, reviewed the evidentiary records, received briefing, and heard oral arguments from the parties. The Board finds that Taxpayers did not carry their burdens of proving that Assessor erred when she reclassified the lands as non-agricultural in 2021. We shall **reverse** the County Board's decisions and affirm Assessor's classifications of the lands as non-agricultural.

ISSUES

[¶ 3] Assessor identifies one issue, "[w]hether the Teton County Assessor's removal of agricultural classification of the non-residential portions of these parcels was correct?"(Assessor's Br., 5).

[¶ 4] Taxpayers similarly frame the issue presented: "whether the Teton County Board of Equalization properly determined that the Aspen Parcel and the non-residential portion of the Stirn Trust Parcel should be classified as agricultural lands in accordance with Wyo. Stat. § 39-13-103(b)(x)(B)." (Taxpayers' Br., 3).

JURISDICTION

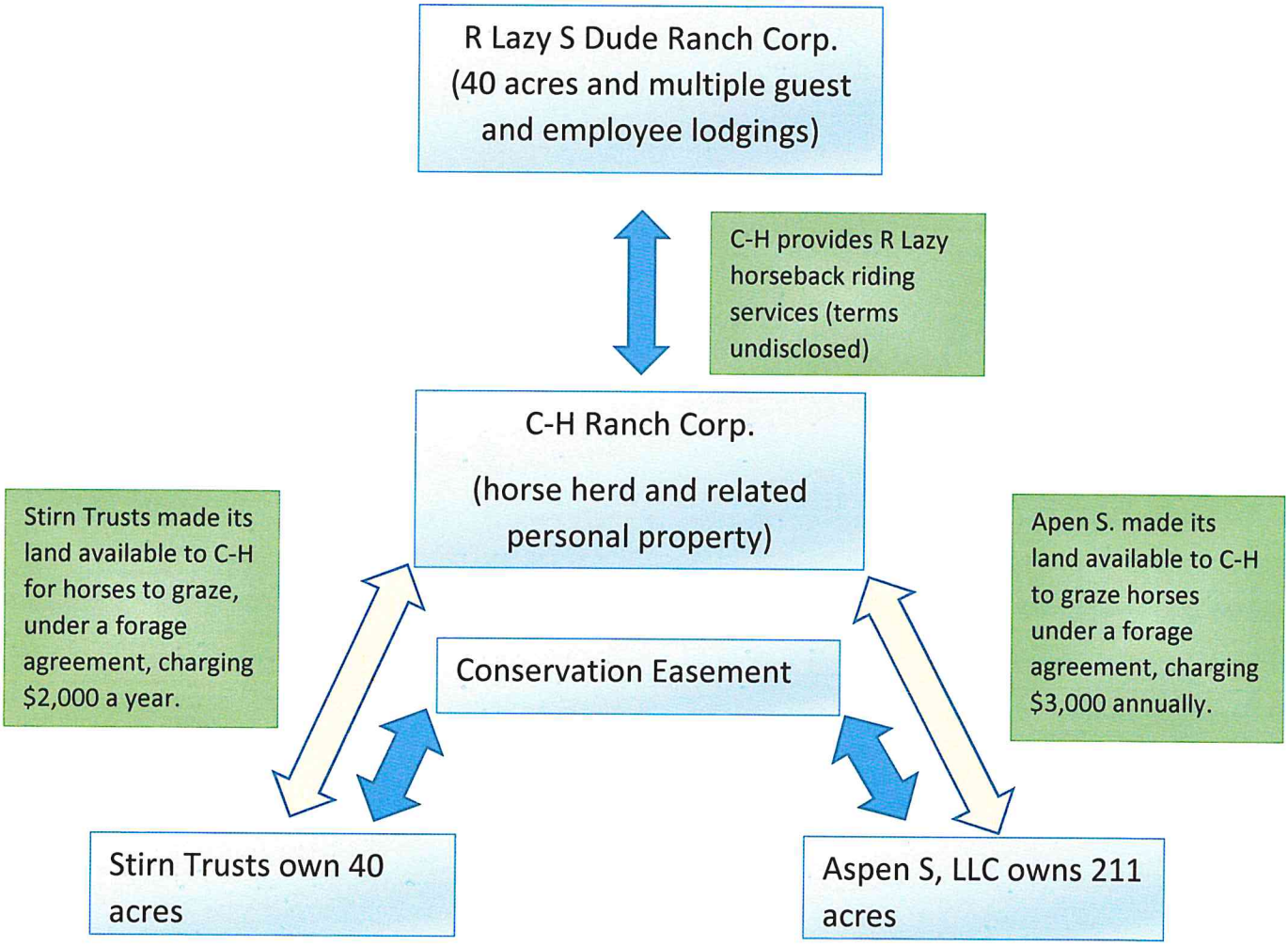
[¶ 5] Assessor appealed to this Board from the County Board's decisions[2] within thirty days of issuance, the prescribed deadline by which to appeal from a local county board of equalization decision. (County Board decision, dated August 30, 2021, Aspen R. at 0354-58; County Board Decision, dated August 30, 2021, Stirn Trusts R. at 0348-52; Notices of Appeal, dated Sept. 28, 2021); Rules, Wyo. Bd. of Equalization, Ch. 3 § 2 (2021)). We have jurisdiction to hear Assessor's appeals.

[2] Appellee Taxpayers, business entities or trusts held by members of the same family, presented their appeals to the County Board in the same contested case hearing. They joined and submitted a single brief to this Board in defense of the County Board's decisions reversing Assessor's classification of their properties. However, Taxpayers are separate entities, and the County Board generated a separate evidentiary record for each appeal, which we shall hereafter distinguish and cite as "Stirn Trust R., ***" or "Aspen R., ***").

PROCEEDINGS AND EVIDENCE BEFORE THE COUNTY BOARD

[¶ 6] Assessor reviewed Teton County properties historically classified as agricultural. Assessor notified Taxpayers that she would not classify their pasture lands as agricultural property in 2021. (Stirn Trusts R. at 011-12; Aspen R. at 011-12; Tr. at 56-57, 60). She assessed specified portions of the properties as residential vacant land in 2021, substantially increasing their taxable values from 2020. (Stirn Trusts R., 011-12; Aspen R., 011-12). Assessor notified Taxpayers of the intended valuation change, allowing them time to support their agricultural land claims. (Stirn Trusts R., 019-78, 0141-62, 0287-314; Aspen R., 024-85, 0148-69, 0293-0320; Tr. at 89-91).

[¶ 7] Taxpayers are the Stirn Trusts (as co-owners of 40 acres), and Aspen S, LLC (holding 211 acres). Their lands are comprised mostly of undeveloped pasture. Taxpayers work with several family-owned entities in support of a dude ranch operation, the relationships between which are depicted below. *Infra* ¶¶ 8-12; (Tr. at 30).



[¶ 8] The R Lazy S Dude Ranch Corp. owns approximately 40 acres, guest and employee lodging structures, corrals, barns, and other facilities related to the operation of its dude ranch business. (Tr. at 27-29). This business did not challenge the taxable classification of its lands, but its function as a dude ranch played an integral role in the dispute between Taxpayers and Assessor. *Id.* R Lazy S Dude Ranch conducted horseback riding on all lands described herein, as well as in Grand Teton National Park. *Id.*; (Tr. at 36). It purchased horseback riding services from C-H Ranch Corp. (C-H Ranch), a separate family-owned business. (Tr. at 30-31).

[¶ 9] Neither did C-H Ranch dispute the classification of its property. Owning no real property, C-H Ranch raises and trains horses, provides horseback riding services to its sister company, R Lazy S Dude Ranch Corp., and occasionally sells horses. (Tr. at 29-31, 43-47). C-H Ranch maintains a heard of approximately 60 horses; it sold one horse in 2020 for $450, and four the year before for over $2,000. *Id.*; (Tr. at 45-48).

[¶ 10] The Stirn Trusts (Stirn Trusts) held approximately 40 acres in close proximity to the R Lazy S Dude Ranch Corp. property, five acres of which were residential. The undeveloped portion of this land had been designated "agricultural" until 2021. (Tr. at 23-25). The Stirn Trusts agreed in a Forage Agreement that C-H Ranch could graze and feed its horses on the unimproved pasture land, a portion of which is irrigated, for $2,000 per year. *Id.*; (Stirn Trusts R., 0155; Tr. at 31-35, 45). For their part, the Stirn Trusts agreed to cultivate "native grasses, … which can then be used for the rearing, feeding, grazing or management of Livestock, consistent with the land's capability to produce the same." (Stirn Trusts R., 0155-56). Both parties agreed that they would rotate horse grazing to preserve ground cover and to protect the soil. *Id.*

[¶ 11] Aspen S, LLC, (Aspen) owns 211 acres, some of which is irrigated. (Tr. at 20-23). Aspen likewise grows grass for forage on its acreage, and it entered a nearly identical Forage Agreement with C-H Ranch, allowing it to graze its horses. *Id.*; (Compare Stirn Trusts R., 0147-53 with 0154-60; Compare Aspen R., 0154-60 with 0161-67; Tr. at 31-35). C-H Ranch annually pays $3,000 to Aspen for grazing and forage. (Tr. at 33, 45; Stirn Trusts R., 0148; Aspen R., 0155). Taxpayers did not cut, bale, or otherwise harvest forage or other cultivated materials; rather, C-H Ranch's horses received the forage by grazing. (Tr. at 44-45).

[¶ 12] The Stirn Trusts and Aspen lands were also subject to a conservation easement which required Taxpayers to maintain the historical use of the property for agricultural and ranching purposes. The easement permitted Stirn Trusts and Aspen to use the land for agricultural purposes, including as pasture and for grazing purposes, along with recreational dude ranch activities. (Tr. at 24-26; Stirn Trusts R., 0148, 0155; Aspen R., 0155, 0162). Noted in the Forage Agreements, the easement required that users of the

lands preserve ground cover, protect the soil, and not pollute surface or subsurface waters. (Aspen R., 0154; Stirn Trusts R., 0154).

[¶ 13] Assessor applied Wyoming Statutes section 39-13-103(b)(x)(B) (2021), *infra* ¶ 26, Department of Revenue rules, and case law, determining that the Stirn Trusts and Aspen pasture lands did not qualify as agricultural land. *Infra* ¶¶ 25-32; (Tr. at 53-71, 77). Assessor and Taxpayers exchanged correspondence and information prior to the contested case hearing to understand all aspects of their dispute. *Supra* ¶ 6. Assessor ultimately denied agricultural status for three reasons. First, the sale of forage to C-H Ranch under the facts did not qualify as the marketing of an agricultural product because C-H Ranch grazed its horses on the lands primarily in support of a dude ranch's operation, rather than for the sale of crops or livestock. (Tr. at 57-71; Stirn Trusts R., 08-09; Aspen R., 08-09). In effect, Taxpayers could not demonstrate to Assessor a marketing or sale of sufficient agricultural products as defined in Wyoming property tax law.

[¶ 14] Second, the forage agreement payments by C-H Ranch, Assessor explained, did not count toward satisfying the threshold revenue requirement of $1,000 for leased agricultural lands, *infra* ¶¶ 26-32. *Id.*; (Tr. at 69-72, 85-91, 102-25, 130-33). Only C-H Ranch's sale of one horse for $450, Assessor asserted, counted toward satisfying the threshold statutory revenue in 2020. *Id.*; *supra* ¶ 9.

[¶ 15] Third, Assessor determined that Taxpayers did not generate sufficient agricultural revenues, consistent with the lands' capabilities, as Wyoming Statutes section 39-13-103(b)(x)(B)(IV) (2021) required. An employee of the Assessor's Office, relying upon Department of Revenue agricultural land study guidelines, determined that Taxpayers' lands, given their size and attributes, would have generated revenues totaling over $8,000 in 2020 (A minimum of $1,196 for the Stirn Trusts acreage, and $7,579 for the Aspen acreage). (Stirn Trusts R., 08, 079; Aspen R., 08, 086; Tr. at 99-104). The employee explained in some detail the Office's process for calculating the production revenue expected from properties in Teton County. *Id.* Buttressing her decision to deny Taxpayers the "agricultural land" classification, Assessor cited and discussed several State Board of Equalization decisions, copies of which she offered into evidence. (Stirn Trusts R., 0163-278; Aspen R., 0170-285; Tr. at 60-67, 112-12, 119-25).

[¶ 16] Assessor rejected Taxpayers' arguments offered as mitigating factors. Taxpayers asserted that the COVID 19 pandemic's impact upon business, and the conservation easement-imposed limitations on use of the lands, justified relaxing the statutory and regulatory standards. (Tr. at 22-26, 29-32, 37-38, 47-48, 80-88; Stirn Trusts R., 0297; Aspen R., 0303).

[¶ 17] Taxpayers also alleged that Assessor's change of classification set her apart from how other assessors in the state classified similar properties. (Tr. at 40-41, 91-94). The evidence, however, included only anecdotal and inferential evidence of how other assessors were possibly treating like scenarios.

[¶ 18] The County Board expressed confusion with how Assessor applied several statutory terms and generally disagreed with her analysis and change in classification of Taxpayers' lands. In virtually identical decisions, the County Board stated, and held, in part:

> 8. The Board finds that the Appellant did overcome the presumption that the County Assessor's valuation was valid, accurate and correct and the Appellant did provide credible evidence to overturn the valuation.
>
> 9. The Board finds that the County Assessor's removal of the agricultural classification of the non-residential portion of the subject property is incorrect.
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> 10. The Board desires that the County Assessor provide clarification regarding:
>
> a. The distinction between leases of agricultural lands and the marketing of agricultural products upon agricultural lands, as set forth in Wyoming Statute § 39-13-103(b)(x)(B)(III);
>
> b. The determination by the County Assessor of agricultural lands's (sic) "production capabilities", as set forth in Wyoming Statute § 39-13-103(b)(x)(B)(IV), in light of the exceptions contained at Wyoming Statute §§ 39-13-103(b)(x)(B)(IV)(1) and (3);
>
> c. An interpretation of Department of Revenue Rules, Chapter 10, Section 3.d.d., and in particular the definition of the word "sales" included in the first sentence thereof; and
>
> d. Clarification of the County Assessor's approach to various corporate entities performing separate and distinct ownership or operation functions with respect to the agricultural properties and appurtenant properties.
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> . . .
>
> THE TETON COUNTY BOARD OF EQUALIZATION HEREBY ORDERS AS FOLLOWS:

1. The case is remanded back to the Teton County Assessor for further review. The Teton County Assessor shall issue a new Notice of Assessment in a timely manner. The Appellants shall have 30 days from the date of the issuance of the new Notice of Assessment to file an appeal, if they so choose.

(Stirn Trusts R., 0350-52; Aspen R., 0356-58; Tr. at 102-53).

CONCLUSIONS OF LAW

(a) Standard of Review

[¶ 19] 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.*

[¶ 20] 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).

[¶ 21] 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).

[¶ 22] 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)).

[¶ 23] "A strong presumption favors the Assessor's valuation. 'In the absence of evidence to the contrary, we presume that the officials charged with establishing value exercised honest judgment in accordance with the applicable rules, regulations, and other directives that have passed public scrutiny, either through legislative enactment or agency rule-making, or both.' " *Britt v. Fremont Cty. Assessor*, 2006 WY 10, ¶ 23, 126 P.3d 117, 125 (Wyo. 2006) (quoting *Amoco Prod. Co. v. Dep't of Revenue,* 2004 WY 89, ¶ 7, 94 P.3d 430, 435 (Wyo. 2004)). "[A] mere difference of opinion as to value" is not sufficient to overcome the presumption. *Id.* at ¶¶ 28, 34, 126 P.3d at 126-27.

(b) Applicable Law

[¶ 24] County assessors are required to "[f]aithfully and diligently follow and apply the orders, procedures and formulae of the department of revenue or orders of the state board of equalization for the appraisal and assessment of all taxable property[.]" Wyo. Stat. Ann. § 18-3-204(a)(ix) (2021).

[¶ 25] By Department of Revenue rule, "Agricultural" "means the primary use of the land is to produce crops, harvest timber or graze livestock for commercial purposes consistent with the land's capability to produce including land used for a farmstead structure that supports the land's capability to produce." Rules, Wyo. Dep't of Revenue, Ch. 10 § 3(a) (2017).

[¶ 26] By statute, taxpayers must qualify land as "agricultural" by demonstrating the following criteria are met:

> (x) The following shall apply to agricultural land:

...

(B) Contiguous or noncontiguous parcels of land under one (1) operation owned or leased shall qualify for classification as agricultural land if the land meets each of the following qualifications:

(I) The land is presently being used and employed for an agricultural purpose;

(II) The land is not part of a platted subdivision, except for a parcel of thirty-five (35) acres or more which otherwise qualifies as agricultural land;

(III) If the land is not leased land, the owner of the land has derived annual gross revenues of not less than five hundred dollars ($500.00) from the marketing of agricultural products, or if the land is leased land the lessee has derived annual gross revenues of not less than one thousand dollars ($1,000.00) from the marketing of agricultural products; and

(IV) The land has been used or employed, consistent with the land's size, location and capability to produce as defined by department rules and the mapping and agricultural manual published by the department, primarily in an agricultural operation, or the land does not meet this requirement and the requirement of subdivision (III) of this subparagraph because the producer:

(1) Experiences an intervening cause of production failure beyond its control;

(2) Causes a marketing delay for economic advantage;

(3) Participates in a bona fide conservation program, in which case proof by an affidavit showing qualification in a previous year shall suffice; or

(4) Has planted a crop that will not yield an income in the tax year.

(C) If needed, the county assessor may require the producer to provide a sworn affidavit affirming that the land meets the requirements of this paragraph. When deemed necessary, the county assessor may further require supporting documentation.

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

[¶ 27] An "agricultural purpose" within the meaning of Wyoming Statutes section 39-13-103(b)(x) (2021), means uses of land:

[c]onducted consistent with the land's capability to produce or when supporting the land's capability to produce [and consisting of the]:

(A) Cultivation of the soil for production of crops; or
(B) Production of timber products or grasses for forage; or
(C) Rearing, feeding, grazing or management of livestock; or
(D) Land used for a farmstead structure.

Wyo. Stat. Ann. § 39-13-101(a)(viii) (2021); *see also* Rules, Wyo. Dep't of Revenue, Ch. 10 § 3(a) (2017) (defining "Agricultural" as when "the primary use of the land is to produce crops, harvest timber or graze livestock for commercial purposes consistent with the land's capability to produce … ."). "Primary," as used in the statutes and rules, means "chiefly or the first importance." *Id.*, at Ch. 10 § 3(d).

[¶ 28] The Department of Revenue has issued a handful of additional rules to aid in applying the statutes defining agricultural lands. The Department directs that certain lands are, when used in a particular manner, per se not agricultural. These excluded uses include "[c]ommercial land used for commercial feed lots, dude ranch facilities, and other commercial or income purposes[.]" Rules, Wyo. Dep't of Revenue, Ch. 10 § 3(c)(iii) (2017).

[¶ 29] The Department defines "Agricultural operation" as a "business in the primary pursuit of activities that attempt to produce agricultural products by the application of management, capital and labor consistent with accepted agricultural practices." *Id.* at Ch. 10 § 3(y).

[¶ 30] The Department defines "Agricultural products" to include the "grazing of livestock, growing of crops or forage under cultivated conditions, or the management and harvest of timber products, for commercial purposes." *Id.* at Ch. 10 § 3(z).

[¶ 31] "Intervening cause of production failure" is "any cause outside of the control of the producer that prevents or significantly impacts the growing of crops, timber products or the grazing of livestock." *Id.,* Ch. 10 § 3(aa).

[¶ 32] The Department directs that "Income derived from the marketing of agricultural products" means the "sales of livestock or crops." *Id.*, Ch. 10 § 3(dd). The rule adds that "[i]ncome from an agricultural lease by itself will not qualify land as agricultural unless the land is used by the lessee and he can provide proof of annual gross revenues of not less than one thousand dollars ($1,000) from the marketing of agricultural products." *Id.*

(c) Review of the County Board's Decision

[¶ 33] To qualify as "agricultural land," Taxpayers must not only use their lands for an "agricultural purpose" as defined in law, *supra* ¶ 25, but must produce from the land at a level commensurate with the land's productive capability. *Supra* ¶ 26. The legislature has imposed four requirements to achieve the "agricultural land" classification, the fourth of which echoes language from Wyoming's Constitution:

> The legislature shall prescribe the percentage of value which shall be assessed within each designated class. All taxable property shall be valued at its full value as defined by the legislature **except agricultural and grazing lands which shall be valued according to the capability of the land to produce agricultural products under normal conditions . . . .**

Art. 15, § 11, Wyo. Const. (emphasis added); *compare* with Wyo. Stat. Ann. § 39-13-103(b)(x)(B)(I-IV) (2021), *supra* ¶ 26. The Department of Revenue has issued rules further defining how those requirements are interpreted and administered. *Supra* ¶¶ 25, 27-32. We address each statutory qualification, and the evidence or arguments offered, in turn. Taxpayers were required to prove that they satisfied all four statutory criteria, or that an exception justified less than strict application of the third and fourth criteria. *Supra* ¶ 26.

1. The first statutory requirement that: "[t]he land is presently being used and employed for an agricultural purpose"

[¶ 34] Assessor concluded that Taxpayers *did not* use the land for an "agricultural purpose" because "pasture leasing does not qualify for agricultural classification." (Assessor's Br., 32). Taxpayers confusingly assert that Assessor did not contest whether Taxpayers satisfied this first qualification. (Taxpayers' Br., 17).

[¶ 35] The "agricultural purpose" qualification is not as simple as it appears, and it requires an interpretation of other provisions. The legislature defines "agricultural purpose" as a use:

> conducted consistent with the land's capability to produce or when supporting the land's capability to produce [and it includes]:
>
> (A) Cultivation of the soil for production of crops; or
> (B) Production of timber products or grasses for forage; or
> (C) Rearing, feeding, grazing or management of livestock; or
> (D) Land used for a farmstead structure.

Wyo. Stat. Ann. § 39-13-101(a)(viii) (2021), *supra* ¶ 27. This definition unfortunately generates a circular analysis because, not only must a certain type of activity occur on the land, but that activity must also occur at a level "consistent with the land's capability to produce[.]" *Id.* That is, the definition of "agricultural purpose" includes a component separately imposed as the stand-alone fourth criteria for "agricultural land." So, we won't finally know whether land is put to an "agricultural purpose" until we fully evaluate the fourth criteria and conclude whether the land was used at a level of production falling within the range calculated for this land. *See infra* ¶¶ 48-56.

[¶ 36] In any event, Taxpayers' activities on the lands qualified as an "agricultural purpose" insofar as the activities alone were considered. Taxpayers cultivated grasses for forage, and thereafter agreed to allow C-H Ranch to graze its horses on that forage. *Supra* ¶¶ 9-11. Producing forage and grazing livestock are listed "agricultural purpose" activities. *Supra* ¶¶ 27, 35. The parties do not disagree on this narrow point.

2. The second statutory requirement that "[t]he land is not part of a platted subdivision, except for a parcel of thirty-five (35) acres or more which otherwise qualifies as agricultural land"

[¶ 37] The parties agree that the lands satisfy this qualifying condition and did not otherwise contest this requirement.

3. The third statutory requirement that, "[i]f the land is not leased land, the owner of the land has derived annual gross revenues of not less than five hundred dollars ($500.00) from the marketing of agricultural products, or if the land is leased land the lessee has derived annual gross revenues of not less than one thousand dollars ($1,000.00) from the marketing of agricultural products"

[¶ 38] Citing this third statutory prerequisite, Assessor denied agricultural status to the lands in question. She asserted that Taxpayers could not demonstrate that their lessee, CH Ranch, derived gross revenues of at least $1,000 from the marketing of agricultural products. *Supra* ¶¶ 13-15. Although C-H Ranch paid Taxpayers a total of $5,000 for grazing rights under the Forage Agreements, Assessor explained that these payments did not count toward the threshold revenue requirement pursuant to Chapter 10, section 3(dd) of the Department's rules. *Id.*; *supra* ¶ 32. Section 3(dd) provides that if lands in question

are leased, the lessee, not lessor, must demonstrate gross revenues of at least $1,000 from the marketing of agricultural products; the lease payment does not itself meet that threshold sum. *Supra* ¶ 14. Assessor determined that lessee C-H Ranch generated only $450 during 2020 from the sale of an "agricultural product," the sale of one horse that grazed on Taxpayers' pasture lands. *Id.* Consequently, she denied Taxpayers' claims that their lands were agricultural for tax purposes. *Id.*

[¶ 39] Taxpayers roundly characterize the Forage Agreements as a sale of agricultural products, rather than as leases of their lands for grazing. (Taxpayers' Br., 18-21). They argue that C-H Ranch purchased forage from Taxpayers for $5,000, which constituted gross revenue to Taxpayers from the marketing of forage removed from the lands by grazing horses. *Id.* Uncomfortable with Assessor's application of the rule, the County Board agreed and summarily concluded that Assessor erred. *Supra* ¶ 18.

[¶ 40] A previously constituted State Board addressed a similar dispute in *In re Appeal of the Fremont County Assessor*, 2010 WL 1931238, Docket No. 2009-111 (Wyo. State Bd. of Equalization, May 11, 2010). In that case, the property owners claimed that they sold forage to an owner of horses, and that the forage was delivered to the owner, an outfitter, when the horses grazed on the owners' lands. *Id.* at ¶¶ 5-10, * 4. This Board disagreed, stating:

> it is apparent from the evidence presented by Taxpayers at the County Board hearing Mr. Allen considered his use of Taxpayers' property in 2008 as a "pasture lease." … A conclusion Taxpayers[] leased the property at issue to Mr. Allen in 2008 appears to be a more reasonable conclusion, based on the evidence presented at the County Board hearing, than a sale of "grass forage" harvested by grazing horses. Such an assertion, while an intriguing argument, seems designed to avoid the requirement a person requesting agricultural classification for property based on the land being leased must provide evidence the lessee had the requisite amount, $1000, of gross revenues from the marketing of agricultural products.

Id. at ¶ 45, * 11.

[¶ 41] Similarly, the question in the present case is whether Assessor correctly viewed the Forage Agreements to be leases, or should have viewed them as something else, as Taxpayers contend. Our focus in contract interpretation is to determine the parties' intent. *Carlson v. Fiocchini Inv.,* 2005 WY 19, ¶ 15, 106 P.3d 847, 854 (Wyo. 2005). The "language of the parties expressed in their contract must be given effect in accordance with the meaning which that language would convey to reasonable persons at the time and place of its use." *Moncrief v. Louisiana Land Exploration Co.,* 861 P.2d 516, 524 (Wyo. 1993).

[¶ 42] Speaking generally, the Wyoming Supreme Court has stated that a " 'lease' is '[a]ny agreement which gives rise to the relationship of landlord and tenant.' " *Holding v. Luckinbill,* 2022 WY 10, ¶ 26, 503 P.3d 12, 20 (Wyo. 2022) (quoting *Belle Fourche Pipeline Co. v. State*, 766 P.2d 537, 543 (Wyo. 1988)). The Court continued:

> The very nature of a lease encompasses a recognition by the lessee that he does not have an ownership interest in the property. The necessary elements of the relationship of landlord and tenant have been said to be: "[p]ermission or consent on the part of the landlord, subordination of the landlord's title and rights on the part of the tenant, a reversion in the landlord, an estate in the tenant, and the transfer of possession and control of the premises to the tenant under a contract either expressed or implied between the parties."

Id.

[¶ 43] The clear and unambiguous language of the Forage Agreements conveyed to C-H Ranch not only access to cultivated forage on Taxpayers' land, but the right to enter the land with its horses so that they could graze and consume the forage. *Supra* ¶¶ 9-11. The agreements further made C-H Ranch responsible for controlling the grazing of its horses through fencing to avoid damage to the lands. *Id.* Taxpayers' inclusion of "*Forage Sale*" provisions in the agreements, rather than use the terms "lease" or "rent," did not change the fundamental operation of the agreement. *Id.* The Forage Agreements were grazing leases, creating a landlord-tenant relationship between Taxpayers (as landlords) and C-H Ranch (as lessee). Assessor correctly viewed them as such.[3] Taxpayers offered no evidence to indicate otherwise, and their suggestion that the Forage Agreements were something other than grazing eases is unconvincing.

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[3] Taxpayers distractingly distort the issue, arguing that Assessor penalized them because the same family members owned the various businesses and contracted with each other as officials representing each entity. (Taxpayers' Br., 18-19, 27-29). While this factor was mentioned and addressed head-on during the hearing, it is irrelevant to the question of whether the Forage Agreements were grazing leases for the purposes of Wyoming Statutes section 39-13-103(x)(b)(III) (2021). Nor did the Stirn (or other) families' common ownership of all entities play a pivotal role in Assessor's decision, as she did not "disregard" the Taxpayers' business entities. *Supra* ¶ 16; (*See* Tr. at 69-70, 85-88, wherein Assessor explains that the ownership interests in the various entities did not drive her ultimate decision). Indeed, the record of evidence and legal briefing includes only brief mention of the family-owned status of the businesses. Assessor did not seek to "pierce the veil" of the businesses: i.e. did not argue that the business entities were a fiction for tax purposes. *Id.* Taxpayers' focus on this issue is a red herring, irrelevant to whether Taxpayers carried their burdens of proof before the County Board.

[¶ 44] Assessor properly applied the Department's definition of the phrase "Income derived from the marketing of agricultural products," which requires that when a lease of agricultural lands is concerned, an assessor must determine the land's output *from the lessee's use of the land*, not the lessor's. *See supra* ¶¶ 32, 38. This requirement assures that assessors will consider a land's actual use through sale of agricultural products on the open market, rather than stop their inquiry at the leasehold rent received by the landowner, which may have little relationship to how land is used. The intent is that assessors verify precisely whether users of "agricultural land" truly operate the land as an "agricultural operation" as defined in the Department of Revenue's rules. *See supra* ¶¶ 28-30.

[¶ 45] Yet, the County Board struggled with the difference between Taxpayers' Forage Agreements, i.e. payments totaling $5,000 for the rights to graze horses on the lands, as opposed to C-H Ranch's consequent marketing of agricultural products. *Supra* ¶ 18. Members of the County Board generally disagreed that C-H Ranch's leasing of horses for horseback riding services to a dude ranch could not be considered the selling of an "agricultural product." (Tr. at 114-33). Resisting Assessor's efforts to inform the County Board of case decisions on the point, one member suggested: "but because C-H is its own entity that cultivates an agricultural product, I think that that's – it doesn't matter after that as long as they're showing some sort of revenue that comes in that supports that they are – that they're a legit agricultural entity." (Tr. at 121).

[¶ 46] The County Board's rejection of the Assessor's decision appears more a disagreement with the Department's rule, as the County Board demanded Assessor "clarify" why the leasing of agricultural lands could not also be the marketing of agricultural products. *Id.* The County Board simply preferred that the "agricultural land" designation accommodate a more inclusive range of commercial activities than the Department of Revenue defined by regulation. While we understand the County Board's difficulty, the rule had the force and effect of law; the County Board was not free to disregard it, or to interpret it contrary to its stated intent. *State ex rel. Wyo. Dep't of Revenue v. Union Pac. R. Co.*, 2003 WY 54, ¶ 18, 2003 WY 54, 1184 (Wyo. 2003) (citation omitted).

[¶ 47] Assessor offered unrefuted evidence that the total agricultural production from C-H Ranch's horses grazing on the lands was $450 in 2020, far less than the required $1,000. *Supra* ¶¶ 9, 13-15. Taxpayers countered that 2020 was an anomalous year due to the COVID 19 pandemic, but several factors undercut that argument. First, C-H Ranch's primary role was not to sell horses, but to maintain a herd of horses for trail riding services supplied to R Lazy S Dude Ranch. Those services and the income from such, as we shall explain, would not qualify as an agricultural use of the land or a marketing of agricultural products. *Infra* ¶¶ 52-53. Second, Taxpayers argue that C-H Ranch might have sold more

of its horses and that it was not "able to maintain its historic gross revenues from its normal uses of its retained stock." (Taxpayers' Br., 20). Taxpayers offered insufficient evidence supporting that explanation. Other than its sale of horses, Taxpayers offered the County Board no other qualifying activity or revenue on behalf of C-H Ranch.

4. The fourth statutory requirement that "[t]he land has been used or employed, consistent with the land's size, location and capability to produce as defined by department rules and the mapping and agricultural manual published by the department, primarily in an agricultural operation ... ."

[¶ 48] Assessor correctly opined that the fourth requirement exists to ensure that land is truly used in an agricultural operation. (Tr. at 59-60). The Assessor's Office calculated that at the low end of the lands' collective productive capability, they would have generated revenues of over $8,000 in 2020. *Supra* ¶ 15. Assessor's Office applied Department of Revenue agricultural study data[4] for the area to arrive at that estimate. *Id.* Assessor testified that Taxpayers' lands have not annually generated revenues approaching that revenue and, for that reason as well, disagreed that 2020 could be considered an anomalous production year. (Stirn Trusts R., 0346; Aspen R., 0352; Tr. at 57-58). And, as with the third requirement, Assessor again did not find that the $5,000 paid to Taxpayers under the Forage Agreements was to be considered. *Supra* ¶¶ 13-15, 38-44; (Tr. at 60-65).

[¶ 49] Taxpayers did not challenge Assessor's calculation of their lands' productive capability. They instead responded that intervening circumstances and events interfered with their ability to generate revenues. (Taxpayers' Br., 24-25). We shall, therefore, focus on Taxpayers' arguments that they were entitled to relief from the fourth statutory requirement.

[¶ 50] Taxpayers first complain that Assessor never informed them of the revenue levels they needed to achieve to maintain the agricultural status of their lands under Wyoming's property tax laws. (Taxpayers' Br., 24-25). Assessors are not required by law to notify agricultural property owners of the revenues they must generate to maintain the agricultural classification of their lands. Wyoming assessors act as appraisers of property, responsible only to uniformly administer Wyoming's mass appraisal valuation system. They are not

[4] The Department of Revenue compiles and publishes an annual study of local agricultural production capabilities, which county assessors use to calculate agricultural production values. The Department of Revenue considers soil qualities, weather patterns, and other factors. Assessor offered into evidence the 2021 Agricultural Land Manual and other data used to calculate the productive capability of the lands. (Stirn Trusts R., 079-0140; Aspen R., 086-0147).

required to, nor should they, prefer or advocate for one valuation outcome over another. *See also In re Appeal of Tory & Meredith Taylor*, 2008 WL 755827, Docket No. 2007-70, ¶ 66, * 13 (Wyo. State Bd. of Equalization, March 12, 2008) ("Taxpayers' awareness has nothing to do with enforcement of the law… ." Further, Taxpayers submitted affidavits claiming that their property qualified as agricultural.).

[¶ 51] Second, Taxpayers asserted that an intervening cause, the COVID 19 pandemic, was a reason for their failure to satisfy the fourth requirement. *Supra* ¶ 16. That statutory provision provides that agricultural land need not satisfy statutory criteria three and four if "the producer: (1) Experiences an intervening cause of production failure beyond its control[.]" Wyo. Stat. Ann. § 39-13-103(b)(x)(B)(IV)(1) (2021), *supra* ¶ 26. Taxpayers contend that the R Lazy S Ranch did not operate in 2020, and that C-H Ranch was unable to sell as many horses "or otherwise generate revenues from its stock in 2020 due to a pandemic beyond its control[.]" (Taxpayers' Br., 24-25).

[¶ 52] The evidence does not support Taxpayers' position that the fourth requirement is inapplicable due to intervening events, as they have not explained how the pandemic impacted their ability to market and sell *agricultural products*. *See supra* ¶ 32. For example, Taxpayers have not explained how the R Lazy S Ranch's business slowdown prevented the marketing and sale of agricultural products generated from Taxpayers' lands. From evidence in the record, the R Lazy S Ranch's connection to Taxpayers' land in 2020 would have been trail riding services with horses that C-H Ranch supplied to R Lazy S Ranch's customers and staff. *Supra* ¶¶ 8-11. The record does not specify how much C-H Ranch charged for those services in other years. Even so, supplying horses for dude ranch patrons would not qualify as the sale of agricultural products—the marketing and sale of crops or livestock pursuant to the Department of Revenue's rules. *Supra* ¶ 32; *see Taylor*, ¶¶ 55-59, ** 11-12 (Use of land to support a dude ranch or professional outfitting business is not income "derived from the sale of agricultural products").

[¶ 53] And, as we have discussed in the previous section addressing the third criteria for an "agricultural land" designation, it is unclear how the pandemic prevented C-H Ranch from selling horses, or that C-H Ranch's typical horse sales would satisfy the minimum revenues the lands should annually generate to qualify as "agricultural." *Supra* ¶ 48.

[¶ 54] Taxpayers next contend that the conservation easement burdening their lands should excuse them from satisfying the fourth requirement. (Taxpayers' Br., 25-27); *supra* ¶ 26. They argue, "[w]hile it is hypothetically possible that the agricultural production could be increased on portions of both of these parcels subject to these appeals, the reality is that the means to enhancing the agricultural production could very well violate the conservation easements." (Taxpayers' Br., 25-26).

[¶ 55] The conservation easement's limiting influence was argumentative and unsupported by direct evidence. Indeed, the easement did not prevent Taxpayers' intended use of the lands for agricultural purposes. The easement expressly reserved and allowed agricultural activities on the lands in question, merely directing that taxpayers would not operate the land in a manner that would damage the cover or soil, or would pollute water. *Supra* ¶ 12. The record contains no evidence of activities or the intensity of production that would necessarily violate the easement. Assessor astutely commented during her testimony that, "I, unfortunately, don't know what the land trust considers overuse or how to measure that." (Tr. at 82). Suggesting the easement prevented compliance with the fourth statutory requirement, without more, did not sustain Taxpayers' burden of proof.

[¶ 56] Yet, Assessor rejected Taxpayers' reliance on the conservation easement for a different reason: it did not qualify as the type of easement that might excuse compliance with the fourth statutory criteria. (Assessor's Br., 31-32). On this point, we find insufficient evidence and authority either way. The County Board did not rule on whether the easement relieved Taxpayers of their burden of satisfying the third or fourth criteria, and it seemingly ignored this aspect of Taxpayers' case altogether. *Supra* ¶ 18. To the extent the County Board may have relied upon this component of Taxpayers' challenge, the County Board lacked substantial evidence to reach such a conclusion. *Supra* ¶ 21.

[¶ 57] We find that Taxpayers offered insufficient evidence that mitigating circumstances rendered inapplicable the fourth statutory criteria for designation of their lands as "agricultural." Assessor correctly found that Taxpayers did not use their lands to their productive capability.

5. Was Assessor's decision classifying Taxpayers' lands as non-agricultural unlawful because she treated the lands differently than like properties are treated in other counties?

[¶ 58] Taxpayers complain that Assessor stands apart from other county assessors in how dude ranches are valued, thus violating Article 15, section 11(d) of Wyoming's Constitution. (Taxpayers' Br., 31-32). The reasons for rejecting this argument are many, and we need not identify them all here. Suffice to say, Taxpayers' uniformity argument presumes that Assessor's interpretation of the statutes and rules was incorrect, which they did not demonstrate before the County Board, as was their burden.

[¶ 59] Second, as we have repeatedly noted, "constitutional uniformity does not require the same result in every case; rather, it demands a uniform tax assessment process." *In re Appeal of Alpenhof Lodge Associates*, 2021 WL 1839755, Doc. No. 2020-40, ¶ 53, * 14 (Wyo. St. Bd. of Equalization, May 4, 2021) (citing *In re Appeal of Carbon Creek Energy,*

LLC, and Powder River Midstream, LLC, 2018 WL 3978750, Doc. No. 2017-50, ** 26-27 (Wyo. St. Bd. of Equalization, Aug. 8, 2018)). A claimant must show a "systematic, arbitrary, or intentional undervaluation of some property, as compared to the valuation of other property in the same class[.]" *Id.* (citing *Weaver v. St. Bd. of Equalization*, 511 P.2d 97, 98 (Wyo. 1973)). Taxpayers did not prove a violation of Wyoming's uniformity requirements.

CONCLUSION

[¶ 60] The County Board, without sufficient explanation, rejected Assessor's determination that Taxpayers did not satisfy three statutory criteria to classify their lands as agricultural. Taxpayers did not offer sufficient evidence that their lands satisfied the first, third, or fourth criteria set forth in Wyoming Statutes section 39-13-103(b)(x)(B)(I-IV) (2021), or that the exceptions to those criteria applied. Taxpayers would have satisfied the first criteria, as we explained, *supra* ¶¶ 34-36, but for their failure to satisfy the fourth, which is incorporated into the first requirement that property be used for an agricultural purpose. Taxpayers' failure to satisfy any of the four requirements is dispositive and, so, we must reverse the County Board's decision.

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ORDER

[¶ 61] **IT IS HEREBY ORDERED** that the Teton County Board of Equalization's Decisions in Docket Nos. 2021-92 and 2021-93 are **reversed**, and that Assessor's classifications and assessments of the lands in each docket as nonagricultural in 2021, are **affirmed**.

[¶ 62] **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 9th day of August, 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 certify that on the 9th day of **August 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:

Clay D. Geittmann
Geittmann Larson Swift LLP
155 East Pearl Street
P.O. Box 1226
Jackson, WY 83001

Keith Gingery
Teton County Deputy County Attorney
P.O. Box 4068
Jackson, WY 83001

Jennifer Fujinami

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 – Teton County
ABA State and Local Tax Reporter
State Library