

BEFORE THE STATE BOARD OF EQUALIZATION
FOR THE STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF)	
RS APARTMENTS)	Docket No. 2021-94
FROM A DECISION BY THE SWEETWATER)	
COUNTY BOARD OF EQUALIZATION)	
(2021 Property Valuation))	

DECISION AND ORDER

APPEARANCES

Austin Glidewell and Christopher Glidewell, Pivotal Tax Solutions, appeared on behalf of Taxpayer RS Apartments.

John DeLeon, Sweetwater County Attorney, appeared on behalf of Assessor Dave Divis.

SUMMARY

[¶ 1] Taxpayer RS Apartments appeals from the Sweetwater County Board of Equalization's decision affirming Sweetwater County Assessor Dave Divis's valuation of multiple commercial properties owned by RS. On appeal, RS contends that the County Board erred by affirming valuations that Assessor calculated using the cost approach, instead of the income approach that RS would prefer. RS also argues that the County Board erred in concluding that RS didn't provide evidence sufficient to overcome the presumption favoring Assessor's valuation. The Wyoming State Board of Equalization, Chairman E. Jayne Mockler, Vice-Chairman Martin L. Hardsocg, and Board Member David L. Delicath, considered the parties' written submissions and oral arguments, along with the County Board record. Because RS's case amounts to nothing more than a difference of opinion and because RS didn't present evidence sufficient to overcome the presumption favoring Assessor's valuation, we affirm the County Board's decision.

ISSUES

[¶ 2] RS identified two issues:

The County Board failed to properly consider correct valuation methods as prescribed by the DOR.

...

The County Board claimed that Petitioner failed to provide “creditable” evidence, including expert testimony, to rebut the presumption that the assessor’s valuation methods were correct. The County board has erred in this claim because they have disregarded relevant information that was provided by Petitioner in accordance with the Department of Revenue.

(RS Br. 2-3).

[¶ 3] Assessor also articulated two issues:

1. Did the County Board of Equalization err in its ruling that “[t]he Assessor justified the use of a cost approach to valuing [Appellant’s] property over an income approach or sales comparison approach?
2. Did the County Board of Equalization err in its determination that Appellant failed to provide credible evidence, including expert opinion testimony?

(Assessor’s Br. 4).

JURISDICTION

[¶ 4] The State Board shall “hear appeals from county boards of equalization ... upon application of any interested person adversely affected[.]” Wyo. Stat. Ann. § 39-11-102.1(c) (2021). An aggrieved taxpayer or assessor may file an appeal with the State Board within 30 days after a county board’s final decision. Rules, Wyo. State Bd. of Equalization, ch. 2, § 5(e) (2021). The County Board issued its final decision on September 7, 2021. (R. 212). RS filed its appeal on October 6, 2021. (Notice of Appeal). Accordingly, the appeal is timely and we have jurisdiction.

PROCEEDINGS AND EVIDENCE PRESENTED TO THE COUNTY BOARD

[¶ 5] RS owns eleven commercial properties in Rock Springs: eight apartment buildings, two vacant lots, and a storage facility. (R. 192). In 2020, Assessor valued all of RS’s land at \$396,548, and improvements at \$5,976,000, for a combined total of \$6,372,548. (R. 26-67). In 2021, the land values remained the same, and the total value of the improvements increased to \$6,118,748, for a combined total of \$6,515,296. *Id.* RS appealed all eleven

valuations on the basis that “[c]urrent economic and market conditions support a lower valuation for the subject property.” (R. 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21).

[¶ 6] The County Board held a hearing on August 16, 2021. (R. 191). There is no transcript or audio recording of the hearing, but the parties have agreed that “the Findings of Fact in the County Board’s decision and the summary of testimony in the County Clerk’s minutes ... are completely accurate[.]” (RS Apartments’ Response to Notice of Deficient Record; Assessor’s Response to Notice of Deficient Record) (underline in original).

[¶ 7] Wayne Tannenbaum of Pivotal Tax Solutions was RS’s only witness. (R. 197). He didn’t testify about “current economic and market conditions,” as one might expect based on the Statement to Contest Property Tax Assessment forms. (*Supra*, ¶ 5). Rather, he opined that the total value of RS’s properties was \$4,423,778, which he calculated using the income approach¹. (R. 198). Mr. Tannenbaum further testified that RS provided its income data to Assessor after Assessor issued the 2021 valuations. *Id.*

[¶ 8] Assessor testified that he valued RS’s improvements using the cost approach. (R. 194). He didn’t use the sales comparison approach because there weren’t sufficient sales, and didn’t use the income approach because he didn’t have income data from RS. *Id.* RS submitted income data in its pre-hearing disclosures, but Assessor testified that the data didn’t make sense and wasn’t adequate to perform an income approach valuation. (*Id.* at 194, 197).

[¶ 9] The County Board unanimously affirmed Assessor’s valuation. (R. 211). It concluded that:

80. The Petitioner has failed to overcome the presumption that the Assessor’s property valuation is valid, accurate and correct.

81. The Petitioner failed to offer credible evidence, including expert opinion testimony, to rebut the presumption in favor of the valuation asserted by the Assessor.

82. The Petitioner has failed to show that it is more probable than not that the Assessor’s value is invalid, incorrect or inaccurate.

¹ The income approach is one of the three approved methods for valuing real property, along with the sales comparison approach and the cost approach. Rules, Wyo. Dep’t of Revenue, ch. 9, § 5 (2016). “The income approach to value is a method of estimating the present worth of the benefits to be derived from the property in the future. It is based upon the principle that the property is worth what it will earn, and proceeds on the premise that a buyer of income producing property is primarily interested in the income the property will generate. The theory of the income approach to value is that the greater the net income produced by an asset, the more a willing buyer will pay for the asset.” *In re Amoco Pipeline Co.*, 1988 WL 221001, *4 Docket Nos. A-86-29, A-86-30, A-86-31 (Wyo. State Bd. of Equalization, April 22, 1988).

Id.

CONCLUSIONS OF LAW

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

[¶ 10] This Board reviews county board decisions as an intermediate appellate body and treats the county board as the finder of fact. *Town of Thermopolis v. Deromedi*, 2002 WY 70, ¶ 11, 45 P.3d 1155, 1159 (Wyo. 2002). Our standard for reviewing a county board decision is nearly identical to the Wyoming Administrative Procedure Act standard, found at Wyoming Statutes section 16-3-114(c)(ii) (2021), that a district court must apply in reviewing such decisions. Our review is limited to determining whether a county board's action is:

- (a) Arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law;
- (b) In excess of statutory jurisdiction, authority or limitations or lacking statutory right;
- (c) Without observance of procedure required by law; or
- (d) Unsupported by substantial evidence.

Rules, Wyo. State Bd. of Equalization, ch. 3 § 9(a)-(d) (2021).

[¶ 11] “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)); see also, *Rules, Wyo. State Bd. of Equalization*, ch. 7, § 14(a) (2021) (“There is a presumption that the assessor’s property valuation is valid, accurate, and correct.”). “Petitioner may present any credible evidence to rebut the presumption in favor of the assessor’s valuation.” *Id.* at § 14(b). If a taxpayer presents credible evidence sufficient to rebut the presumption, the county board must then “equally weight 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 burden of going forward² would then shift to Assessor, but the

² The burden of going forward, also called the burden of production, is “[a] party’s duty to introduce enough evidence on an issue to have the issue decided by the fact-finder, rather than decided against the party in a

ultimate burden of persuasion would remain with the taxpayer to prove, by a preponderance of the evidence, that Assessor's valuation wasn't derived in compliance with constitutional or statutory requirements. *Id.* "A mere difference of opinion as to value" is not sufficient to overcome the presumption. *Britt*, at ¶ 34, 126 P.3d at 127.

[¶ 12] "[T]he burden of proof with respect to tax valuation is on the party asserting an improper valuation." *Williams Prod. RMT Co. v. State Dep't of Revenue*, 2005 WY 28, ¶ 7, 107 P.3d 179, 183 (Wyo. 2005). More specifically:

Except as specifically provided by law or in this section, the Petitioner shall have the burden of going forward and the ultimate burden of persuasion, which burden shall be met by a preponderance of the evidence. If Petitioner provides sufficient evidence to suggest the Department determination is incorrect, the burden shifts to the Department to defend its action.

Rules, Wyo. State Bd. of Equalization, ch. 2 § 20 (2021).

B. The County Board did not fail to properly consider correct valuation methods as prescribed by the DOR.

[¶ 13] In its first issue, RS challenges the County Board's conclusion that Assessor wasn't required to use the income approach because he didn't have income information in time to use it in his valuation. (RS Br. 2-3). This time-line may help:

March 31, 2021 - Assessor issues 2021 valuations;

April 29, 2021 - RS appeals the valuations to the County Board;

June 24, 2021 - RS provides income information to Assessor in its pre-hearing disclosures;

August 16, 2021 - County Board Hearing.

[¶ 14] RS seems to claim that once it provided income data to Assessor – three months after Assessor issued the valuations – Assessor should have re-valued the properties using the income approach. Admittedly, the income approach is the preferred choice when the assessor has sufficient data to apply it:

The income approach is the most appropriate method in valuing commercial and industrial property *if sufficient income data are available*. Direct sales comparison models can be equally effective in large jurisdictions with

peremptory ruling such as a summary judgment or a directed verdict." *Burden of Production*, *Black's Law Dictionary*, 236 (10th ed. 2014).

sufficient sales. When a sufficient supply of sales data and income data is not available, the cost approach should be applied.

Standard on Mass Appraisal of Real Prop., Int'l Ass'n of Assessing Officers, § 4.6.4 (2017) (emphasis added). However, Assessor testified that he didn't have "sufficient income data" before he issued RS's valuations, and further testified that the data RS supplied in June wasn't sufficient to value the properties using the income approach. (*Supra*, ¶ 8). Accordingly, we would not fault Assessor's choice of the cost approach, even if it were within our authority to do so.

[¶ 15] What's more, the County Board lacked (and this Board lacks) authority to order Assessor to use the income approach in place of the cost approach:

By ... ordering Assessor to value Taxpayer's property using the income approach, the County Board also usurped Assessor's ... statutory authority. Wyo. Stat. Ann. § 39-13-102(d) (2017) ("The county board of equalization has no power to and shall not set tax policy nor engage in any administrative duties concerning assessments which are delegated to the board, the department or the county assessor").

In re Teton Cty. Assessor, 2019 WL 2165527, * 5, Docket No. 2018-59, ¶ 15 (Wyo. State Bd. of Equalization, May 6, 2019). Given that holding, even the most complete, extensive, and timely income data possible couldn't get RS the relief it wants. We, therefore, find that the County Board did not err in declining to reverse Assessor's valuation based on his choice of the cost approach instead of the income approach.

C. Substantial evidence supports the County Board's determination.

[¶ 16] RS next claims that the County Board "disregarded relevant information that that [sic] was provided by Petitioner in accordance with the Department of Revenue." (RS Br. 3). The "relevant information" to which RS refers must be Mr. Tannenbaum's testimony and supporting exhibit, because that's the only evidence RS produced. RS offered one 20-page exhibit consisting of ten pages of photographs and maps, and ten pages of calculations supporting its preferred income approach valuation. (R. 226-45).

[¶ 17] RS cites Wyoming Statutes section 39-13-109 for the undeniable proposition that: "[t]he taxpayer may present any evidence that is relevant, material or not repetitious, including expert opinion testimony, to rebut the presumption in favor of a valuation asserted by the county assessor." (RS Br. 3). It then contends that the quoted language required the County Board to analyze "weather [sic] the Petitioner's evidence was relevant in deciding if the Petitioner's evidence was not creditable." *Id.*

[¶ 18] RS apparently contends that relevance, *vel non*, is a component that county boards must consider in deciding whether evidence is credible. RS doesn't cite any authority to support its contention, and our search hasn't turned up any either. Without attempting to present a treatise on the relationship (to the extent there is one) between relevance and credibility, we note that they are independent concepts. Relevance goes to the admissibility of evidence: credibility goes to the weight that the fact-finder gives to evidence. We simply find no support for the idea that the relevance of evidence has any influence on its credibility.

[¶ 19] RS's argument also fails because the County Board didn't find, conclude, or even imply that RS's evidence wasn't credible. Rather, it found that RS "did not provide evidence that the Assessor's value and process was not a rational method of valuation, was not equally or fairly applied nor that the methodology or value was contrary to law or rules." (R. 211). Because of that, the County Board concluded that "Petitioner has failed to overcome the presumption that the Assessor's property valuation is valid, accurate and correct." *Id.* We are convinced that evidence can be both relevant and credible, and also be insufficient to overcome the presumption favoring an assessor's valuation.

CONCLUSION

[¶ 20] Even if we accept that RS's preferred income approach valuation is: 1) based on adequate and accurate data; 2) correct; and 3) superior to Assessor's cost approach valuation, we're still left with a difference of opinion, which the County Board correctly found was not sufficient to overcome the presumption that Assessor's valuation is correct. RS didn't point out any deficiencies in Assessor's valuation, it just argued that Assessor used the wrong approach. Therefore, we will affirm.

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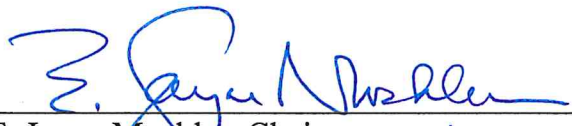
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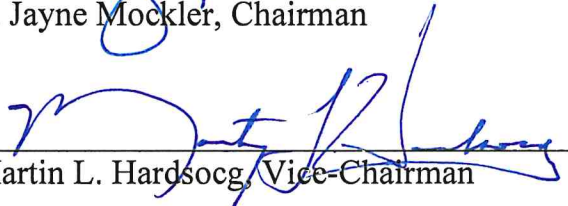
[¶ 21] IT IS, THEREFORE, ORDERED that the decision of the Sweetwater County Board of Equalization is **AFFIRMED**.

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

DATED this 7 day of July 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 7 day of **July 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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