

BEFORE THE STATE BOARD OF EQUALIZATION

FOR THE STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF)	
TETON COUNTY ASSESSOR)	Docket No. 2021-95
FROM A DECISION BY THE TETON)	
COUNTY BOARD OF EQUALIZATION)	

DECISION AND ORDER

APPEARANCES

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

Edward Bushnell, Mulligan Law Office, P.C., representing Spotted Horse Ranch, LLC, (hereafter Owner).

SUMMARY

[¶ 1] Owner operated a dude ranch on its land in Teton County, Wyoming, which included pastureland and land for growing crops, as well as land supporting numerous business improvements. Assessor determined in 2021 that Owner's land was not "primarily" used for agricultural purposes, even though Owner grew crops and fed its horses on the land. Owner objected, arguing that Assessor should have classified most of the land as agricultural, as assessors had in the past. Following a contested case hearing, the Teton County Board of Equalization agreed with Owner, unanimously reversed Assessor's classification of the land, and remanded the assessment to Assessor for further review. Assessor appealed to the State Board of Equalization.

[¶ 2] The Wyoming State Board of Equalization (Board or State Board), Chairman E. Jayne Mockler, Vice-Chairman Martin L. Hardsocg, and Board Member David L. Delicath, reviewed the evidentiary record, received briefing, and heard oral arguments from the parties. The Board finds that Owner did not carry its burden of proving that Assessor erred when she reclassified the land as non-agricultural in 2021 (referring back to 2020). We also find that the County Board misconstrued Wyoming property tax law.

We shall **reverse** the County Board’s decision and affirm Assessor’s 2021 classification of the land as non-agricultural.

ISSUES

[¶ 3] Assessor presents one issue for review: “Whether the Teton County Assessor’s removal of agricultural classification for this parcel was correct?” (Assessor’s Br., 4).

[¶ 4] Owner similarly frames the question presented: “Did the Teton County Assessor erroneously remove the agricultural exemption¹ from the entirety of the Spotted Horse Dude Ranch’s parcel of land?” (Owner’s Br., 4).

[¶ 5] We rephrase the issue as two questions: Whether a dude ranch owner/operator’s land is “agricultural” if it primarily supports a dude ranch operation, but also generates the sale of sufficient agricultural products? An ancillary question is: whether Assessor erred when she refused to classify part of the land as “agricultural,” and the balance as residential or commercial, under the facts presented?

JURISDICTION

[¶ 6] Assessor appealed to this Board from the County Board’s decision within thirty days of issuance, the prescribed deadline by which to appeal from a local county board of equalization decision. (County Board decision, dated Sept. 27, 2021, R. at 0285-91; Notice of Appeal, dated Oct. 18, 2021; Rules, Wyo. Bd. of Equalization, Ch. 3 § 2 (2021)). We have jurisdiction to hear Assessor’s timely appeal. Wyo. Stat. Ann. § 39-11-102.1(c) (2021).

PROCEEDINGS AND EVIDENCE BEFORE THE COUNTY BOARD

[¶ 7] Between every May and October 15th, Owner operates a dude ranch on approximately 43 acres in Teton County at the base of the Teton Mountains. (Tr. at 84). According to Owner, 30 structures, including Owner’s home residence, dude ranch employee living accommodations, a lodge, guest cabins, a restaurant, corrals, barn, campfire site, and other facilities, occupy approximately five and one-half acres of its land. (Tr. at 86-92); *but see infra* ¶ 13. The remaining land is pasture, range, or crop land, on which Owner grows hay and natural grasses. *Id.* After shutting down its dude ranch

¹ Owner incorrectly refers to the classification of its land as giving rise to an “agricultural exemption.” Land classified as “agricultural” is not exempt from property taxes, nor is an exemption in any way implicated; rather, classification of land as “agricultural” subjects the property to a different valuation methodology. *See infra* at fn. 3.

business each year in mid-October, Owner stocks remote hunting camps through the end of October. (Tr. at 74, 84).

[¶ 8] Because she determined that dude ranches and similar commercial properties in Teton County were incorrectly valued as agricultural property for property tax purposes, Assessor removed the property's "agricultural" designation in 2021.² (R. at 05-060; Tr. at 14-17, 26). The Department of Revenue's (Department) Chapter Ten rules, Assessor explained, required that she discontinue classifying feed lots and dude ranches as "agricultural." (Tr. at 14-20, 22-23, 32); *see also In re Appeal of Tory & Meredith Taylor*, 2008 WL 755827, Doc. No. 2007-70, ¶¶ 52-60, ** 11-12 (Wyo. St. Bd. of Equalization, March 12, 2008) (noting that commercial operations such as dude ranches were, by Department rule, not agricultural); *see also In re Appeals of Teton Cty Assessor*, Docket Nos. 2021-92, 2021-93, ¶¶ 58-59 (Wyo. State Bd. of Equalization, Aug. 9, 2022) (Appeals concerning Teton County dude ranch 2021 tax appeals).

[¶ 9] Assessor acknowledged that removing the land's agricultural classification would dramatically increase its taxable value³, so she sought the non-agricultural valuation option that would least increase the land's valuation. After considering several valuation approaches, she settled on a "site" valuation approach, valuing all Teton County ranch land parcels, over 35 acres, at \$5,208,000. (Tr. at 14-19, 28-30, 67-68; R. at 05, 062). Assessor's Office relied upon eight ranch sales between 2014 and 2020 to develop that site valuation assessment. *Id.* She determined that this "site" valuation approach, because it avoided an even higher valuation, was the "most fair." *Id.*

[¶ 10] To achieve the lowest possible valuation, Assessor valued the entire land parcel as residential, but acknowledged that she should have valued the lands supporting dude ranch building structures as commercial. (Tr. at 26-30, 35-36, 45-46, 55-56; *see also* Tr. at 104). She suggested that challenging her questionable classification of the land as residential, rather than commercial, might result in reversal and remand, increasing the valuation even more. *Id.*

² Assessor sent specified property owners holding "agricultural" classifications, including dude ranches, a letter on December 16, 2020, informing them that their "agricultural" classifications were likely incorrect and that she would not continue that designation in 2021. (R. at 094-95; Tr. at 19, 36-39).

³ 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), *infra* ¶ 24. The Department 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.

[¶ 11] Referring specifically to Wyoming’s property tax statutes and the Department’s rules, Assessor determined that owner did not primarily use its land for “agricultural” purposes. She concluded that Owner primarily operated a dude ranch, a use expressly inconsistent with the “agricultural” land designation. (Tr. at 30-32, 61-62, 112).

[¶ 12] Owner primarily challenged Assessor’s decision to depart from its historic “split” or “hybrid” valuation approach. (Tr. at 96-97, 126-27; Owner’s Br., 11-14). Owner complained that Assessor should have continued the previous approach of dividing Owner’s land for valuation purposes: treating range and crop lands as agricultural, and treating land underlying improvements separately as residential or commercial. *Id.*

[¶ 13] Assessor responded that if she followed Owner’s preferred “hybrid” approach, she would have sectioned off 14.5⁴ acres as commercial because those acres either supported commercial structures or could not be used to produce agricultural products. (Tr. at 43-46, 62-67, 109). The overall valuation, she explained, would be even higher than her “site” valuation, given the higher number of acres and particularly high commercial land valuations in Teton County. *Id.*

[¶ 14] The County Board’s members, Owner’s counsel, and Assessor engaged in a free flowing dialogue of how different valuation options would play out.⁵ (Tr. at 43-52, 67, 86-87, 93-120). Reviewing her efforts to settle the valuation dispute with Owner, Assessor described several “hybrid” valuation variations, wherein she would pair commercial or residential portions of the land with separate agricultural portions. She concluded that each option would generate a value similar or higher than the site valuation approach she selected. *Id.* Assessor maintained throughout her testimony that she thoroughly considered all options, selecting the valuation most beneficial to Owner. *Id.*

[¶ 15] Owner presented its case last, explaining that it maintains a herd of about 70 horses for its dude ranch staff to ride, for customer horseback riding, and for hunting activities. Owner kept no other livestock. It offered evidence of \$1,245 in 2020 horse sales. (Tr. at 56-58, 73-76, 78, 87-89, 91-92; R. at 082-084). Owner grazed its horses on its land and

⁴ Assessor explained that previous assessments identified approximately six acres of residential land within the 43 acre parcel, which was incorrect. She testified that land underlying occupied structures and land on which nothing can be grown amounted to 14.5 acres, referring to an overhead picture of the parcel. (Tr. at 63-67, 112-13; R. at 060).

⁵ The hearing proceeded unlike typical contested case hearings, which normally proceed much as a civil trial. Contested case tax hearings usually begin with the taxpayer’s case presentation, followed by the assessor’s case presentation, with each opposing party given a chance to cross examine the other’s witnesses one time after each testifies. In the present hearing, Assessor presented her valuation first, and the County Board and Owner’s counsel interjected throughout with their concerns in response. County Board members argued and questioned Assessor’s analysis, offering their considerations and policy concerns apart from the evidence. Owner’s witness testified last, but Assessor and her counsel continued to answer questions throughout the hearing and, even during closing arguments, as the County Board worked to find an alternative valuation.

other lands that Owner leased from others, as well as Forest Service land, and it grew approximately 20 tons of hay in 2020. It can produce as much as 35-45 tons of hay in good years. (Tr. at 74-76, 87-88, 91-92). Owner feeds its hay to its horses, but packs 400 bales of produced hay to its hunting camps. *Id.* Owner can sell its hay for \$210 to \$300 per ton, and it seeks to sell enough to maintain its agricultural status. *Id.*; (Tr. at 84-86). Still, Owner purchases hay when necessary. (Tr. at 92) Owner sells two to three horses a year, depending upon their suitability for dude ranch horseback riding. (Tr. at 74-76, 87-88, 91-93).

[¶ 16] Deliberating, the County Board sought lower valuation options. It also expressed concerns that dude ranches in other counties were treated differently than Teton County dude ranches. (Tr. at 106-30). The motion/question prompting the County Board's eventual ruling went as follows:

Madam hearing Officer, so in my mind, there is a little bit of a smell test here. And I think that the Assessor has brought forward a lot of evidence indicating that she has followed the law.

I think there is possibly a preponderance of evidence or is that maybe she did it incorrectly. And I think, again, she's worked very hard and is under a lot of various, you know, pressures to do this correctly.

But what I would say from my smell test is that the property clearly sustains a dude ranch. But it also sustains some amount of agriculture. And the question to some exist is, you know, whether it's one dollar worth of agriculture or whether it's \$100,000 worth of agriculture, does that matter?

...

But I would move to remand the appraisal – I would move to remand the appraised valuation of the Spotted Horse Ranch, LLC, based on a [sic] assessment excluding any use of the property for ag when indeed some has been used for agriculture.

(Tr. at 127-28). The County Board unanimously voted to remand the assessment to Assessor, concluding that "property should have been valued as split parcel with portions of the property assessed as agricultural." (R. at 0290). The County Board offered no specific factual findings in support of that conclusion. (R. at 0285-90). The County Board ordered that Assessor further review the assessment and "issue a new Notice of Assessment in a timely manner." *Id.*

CONCLUSIONS OF LAW

(a) Standard of Review

[¶ 17] 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.*

[¶ 18] 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).

[¶ 19] 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).

[¶ 20] 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)).

[¶ 21] “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

[¶ 22] 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).

[¶ 23] By Department 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).

[¶ 24] 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)).

[¶ 25] 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).

[¶ 26] The Department 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*, 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).

[¶ 27] 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).

[¶ 28] 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).

[¶ 29] 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 County Board decision reversing Assessor’s assessment

[¶ 30] Disputes challenging an assessor’s classification of lands as non-agricultural nearly always concern application of Wyoming Statutes section 39-13-103(b)(x)(B)(I-IV) (2021). *Supra* ¶ 24; *see e.g. In re Appeal of Washakie Cty Assessor*, 2015 WL 3939513, Doc. No. 2014-74 (Wyo. St. Bd. of Equalization, June 19, 2015), *aff’d Helmut J. Mueller L. Ltd. P’Ship.*, 2018 WY 131, 430 P.3d 733 (Wyo. 2018) (applying statutory criteria required for classification of “agricultural” land). However, Assessor did not withhold the “agricultural” classification as a result of Owner’s failure to satisfy the four statutory requirements *per se*. (Assessor’s Reply Br., 2). Rather, Assessor states in her Reply Brief that “Spotted Horse Ranch does not qualify for agricultural classification because the primary use of the property is a Dude Ranch.” *Id.* We, therefore, focus on the Wyoming Department’s regulations which disqualify land used for certain types of commercial activities.

[¶ 31] Assessor espouses an all-or-nothing approach to the “agricultural” classification analysis, arguing that if land is “primarily” used to operate a dude ranch, this commercial activity renders the owner’s *integrated lands* (raw terrain, crop lands, and lands underlying improvements) non-agricultural under the Department’s rules. *See* Rules, Wyo. Dep’t of Revenue, Ch. 10 § 3(c)(iii) (2017). This is true, Assessor argues, even though Owner used

much of the land to grow hay or allow its horses to graze: “A dude ranch must be looked at as a whole, rather than numerous different valuations and different classifications that just happen to exist coincidentally on the same parcel as a dude ranch.” (Assessor’s Reply Br., 4).

[¶ 32] Owner counters that Assessor’s previous “hybrid” approach was appropriate and that Assessor erred when she discontinued her division of its land based on types of use, specifically residential versus agricultural. It asserts that only dude ranch “facilities” or improvements are disqualified from the “agricultural” classification by the Department’s rules. (Owner’s Br., 11-14); *see infra* ¶¶ 12-13. In other words, Assessor should separately classify “agricultural” land used to grow crops or to graze horses, even if that land’s overall function supported operation of a dude ranch business, i.e. raising and feeding horses used for horseback riding, hosting and entertaining dude ranch patrons, outfitting hunting trips, camping excursions, etc. (Owner’s Br., 11-14).

[¶ 33] We must reconcile several statutory and regulatory provisions to resolve whether Assessor correctly classified Owner’s property. We first examine Assessor’s focus on a land’s “primary” use (as well as the adverb “primarily”), a key concept threading together several regulations addressing the difference between agricultural and non-agricultural lands. The Department defines “Primary” as “chiefly or the first importance.” *Supra* ¶ 25.

[¶ 34] We begin with the defined term “agricultural.” *Supra* ¶¶ 23, 25. When found in the statutes or regulations, “Agricultural” land requires that “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” Rules, Wyo. Dep’t of Revenue, Ch. 10 § 3(a) (2017) (emphasis added), *supra* ¶ 23.

[¶ 35] The fourth statutory agricultural property requirement also includes the word “primary.” Wyo. Stat. Ann. § 39-13-103(b)(x)(B)(iv) (2017), *supra* ¶ 24. That is, owners must use land consistent with its productive capability “**primarily** in an agricultural operation.” *Id.* (emphasis added). The term “Agricultural operation” refers to 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), *supra* ¶ 27. (emphasis added). So, the production of “agricultural products” through “accepted agricultural practices” must be the land operator’s chief objective.

[¶ 36] Because agricultural production may occur for numerous practical purposes or business ends, ranging from feeding an owner’s family to selling the products on the open market as a business, we must also know the meaning of “commercial purposes” as used in the statutes. *See* Rules, Wyo. Dep’t of Revenue, Ch. 10 § 3(a), (z) (2017), *supra* ¶¶ 23, 28. In that vein, the Department directs that “ ‘[i]ncome derived from the marketing of agricultural products’ means sales of livestock or crops.” *Id.* at Ch. 10 § 3(dd), *supra* ¶

29.⁶ Connecting the provisions, the owner of “agricultural” land must use the land primarily to produce agricultural products, specifically crops or livestock, for sale.

[¶ 37] The Department’s classification of non-agricultural uses of land, as well as business activities that do not qualify, is illustrative and offers further interpretive guidance to the meaning of “commercial purposes”:

(c) “Non-agricultural lands” shall include lands whose **primary** purpose consists of uses other than those defined as agricultural in Title 39 and these rules. Appraisal of such lands shall be conducted in accordance with Department of Revenue Chapter 9 rules:

(i) Lands in active transition from agricultural use to residential, commercial or industrial use, which includes creation or division of a tract, parcel or other unit of land for the purpose of sale or development for such use;

(ii) Home site with lands occupied by structures which are built for or used for human habitation or attached to said structures. The home site shall consist of one acre per habitable structure unless verifiable information is provided by the Assessor or land owner to justify the site being listed as more one acre of land used in direct connection with the home site;

(A) In addition to land occupied by structures, typical amenities to a home site include, but are not limited to, the area for well and septic, landscaped area, driveway, patios, decks, gazebos and other land that is not used to support the agricultural purpose stated in W.S. 39-13-101(a)(viii)(A) through (C).

⁶ Evolution of the Department’s Chapter 10 rules reveals a continuing effort to revise and more clearly articulate the type of production activities and business objectives that qualified land as “agricultural.” Between 2003 and 2011, the Department categorized “certain activities which *appear* to be agricultural in nature [but] do not by themselves qualify land for agricultural assessment,” because they would not “raise the expectation of monetary incentive consistent with the capability of the land to produce” Rules, Wyo. Dep’t of Revenue, Ch. 10 § 3(a)(ii)(B) (2003 thru 2011) (emphasis added). Those rules also defined activities that, per se, rendered land non-agricultural, including dude ranch facilities, resorts, or recreational lands. *Id.* at § 3(c). The Department’s next set of Chapter 10 rules likewise distinguished between lands that “appear” agricultural, requiring that assessors look for additional evidence of agricultural production apart from the apparent agricultural activities. Rules, Wyo. Dep’t of Revenue, Ch. 10 § 3(a)(ii)(B) (2011 thru 2014). This later iteration of the Chapter 10 rules again specified that dude ranch facilities, among other commercial uses, would not under any circumstances qualify the land as agricultural. *Id.* at § 3(c). The present Chapter 10 rules do not identify those uses that “appear” to be agricultural, but are not. Rather, the present rules rely more heavily on word definitions and more directly refer to the sale of livestock or crops, to clarify the meaning of “commercial purposes.” *See supra* at ¶¶ 23, 25-29.

(iii) **Commercial land used for commercial feed lots, dude ranch facilities, and other commercial income purposes;**

(iv) Land where topsoil is removed or topography is disturbed to the extent that the property cannot be used to raise crops, timber or to graze livestock unless land is used for a farmstead structure as defined by W.S. 39-13-101(a)(x)(A) through (D);

(v) Resort or recreational lands, summer homes or mountain cabins;

(vi) Activities on land which occur after the crop is harvested or animal has been raised do not qualify land for agricultural assessment. A storage activity by a non-producer does not qualify property for agricultural assessment. Processing activities, whether or not by a producer, such as pasteurizing and bottling milk, cheese making, honey candy manufacturing or slaughtering, dressing and packing meat do not qualify for agricultural assessment;

...

(viii) Land grazed by any animal kept as a hobby;

(ix) Land used to harvest firewood, shrubs or seeds that grow wild on the land;

(x) Land used for the activity of hunting or harvesting game animals or birds.

Rules, Wyo. Dep't of Revenue, Ch. 10 § 3(c) (2017) (emphasis added).

[¶ 38] Reconciling the above-mentioned definitions with these specified non-agricultural uses of land, we agree with Assessor that lands are “agricultural” when the overarching purpose of the land is to produce crops or livestock for commercial purposes—specifically, the sale of that production. Conversely, when the sale of crops or livestock is secondary to other overlapping business objectives, the lands do not qualify as agricultural.⁷ This

⁷ Several scenarios have arisen wherein agricultural production occurs on lands intended for other uses, or in conjunction with non-agricultural business activities. In *In re Appeal of Tony and Cindy Spriggs*, 2006 WL 3327969, Doc. No. 2006-83, ¶¶ 56-57, * 11 (Wyo. St. Bd. of Equalization, Aug. 31, 2006), this Board concluded that “the intent of the legislature was to deny agricultural classification to lands principally employed in other uses, such as residential use or land held for future residential development, yet generating enough agricultural revenue to meet the minimum gross revenue standards of Wyo. Stat. Ann. § 39-13-103(b)(x)(B)(III).” In *In re Appeal of Ralph B., Amanda R. and Charlotte Alley*, 2006 WL

may also be true when landowners nominally sell crops or livestock, not because their business activities require it, or flourish because of it, but more particularly *to qualify land as agricultural to secure the beneficial tax treatment.*⁸

[¶ 39] The Department illustrated this distinction through an enumeration of business ventures and activities that, per se, do not qualify. The list of non-agricultural businesses and land uses often involves livestock or crops on some level, but do not “primarily” concern the production of crops or livestock for sale as contemplated by the definitions of “agriculture” or “agricultural operation.” *See supra* ¶¶ 23, 27.

[¶ 40] Dude ranches are a prime example, as this Board explained in *In re Appeal of Tory & Meredith Taylor*, 2008 WL 755827, Doc. No. 2007-70, ¶¶ 52-60, ** 11-12 (Wyo. St. Bd. of Equalization, March 12, 2008). In *Taylor*, owners claimed their 44 acres were “agricultural,” arguing that their sale of hay, natural forage, and honey justified the designation. *Id.* at ¶¶ 4-20, ** 3-5. A large part of their income arose from a grazing lease for horses used in a hunter outfitting business. *Id.* This Board agreed with Assessor that the property did not, for that reason, qualify as agricultural property. This Board cited dude ranches as analogous to hunter outfitting:

53. While a commercial operation may use the **same types of resources as an agricultural operation**, there is a discernable difference. Income from commercial operations is not derived from the sale of agricultural products produced on agricultural land.

54. Taxpayers complain the Assessor incorrectly characterized their operations as a dude ranch. [Taxpayer’s Brief, p. 2]. We view the Assessor’s comments as drawing attention to the **distinction between agricultural and non-agricultural use.**

3761809, Doc. No. 2006-86 (Dec. 13, 2006), owners of land transitioning from a platted subdivision to non-platted residential land, claimed their land was agricultural. This Board found that the owners had not carried their burdens of proof, even though the land produced some agricultural products. *Id.* at ¶¶ 87-92, **19-20. In *In re Appeal of Fremont Cty Assessor*, 2006 WL 3327957, Doc. No. 2005-82 (Wyo. St. Bd. of Equalization, July 13, 2009), State Board was skeptical that production of forage for owners’ own privately used horses, on primarily residential land that restricted agricultural uses, could satisfy statutory requirements for an “agricultural” property designation. *Id.* at ¶¶ 45-46, 69-70, ** 10, 17.

⁸ Assessor mentioned a “smell test,” her euphemism for the inquiry of whether land was agricultural given an owner’s foremost business activities that were not inherently focused on the sale of crops or livestock. (Tr. at 42, 116). She commented that, “...the smell test, I understand that we want to protect our ranches, but is it fair to give a dude ranch the same classification as somebody who is in Alta growing hay for a living, or selling cows for a living? I mean, I don’t know - -.” (Tr. at 116). This Board has similarly inquired in cases as to whether an owner’s use of property is “truly agricultural.” *See e.g. In re Appeal of Teton Cty Assessor*, at ¶ 44, * 10; *In re Appeal of Lane R. and Dianna K. Ross*, 2001 WL 314339, Doc. No. 2000-157; 158, ¶ 14, * 5 (Wyo. St. Bd. of Equalization, March 14, 2001).

55. The use of real property as a “dude ranch” in the Department’s Rules provides a clear example of this distinction. *Rules, Wyoming Department of Revenue, Chapter 10 § 3(c)(vi), supra* ¶ 42. The use of land, livestock, forage, feed and other resources in a dude ranch operation **resembles an agricultural operation**. It is, however, significantly different in one respect. The income from the dude ranch is derived from the services provided to those who visit the ranch, not the sale of agricultural products made available to the visitors to enjoy as part of their ranch experience. The same is true for the operations of an outfitter.

...

59. Taxpayers’ admission that they use their land **to support their outfitting business** is substantial evidence of the Taxpayers’ non-agricultural use of their land and supports the County Board Decision.

Id. at ¶¶ 53-59, 11-12 (emphasis added).

[¶ 41] Still, Owner correctly notes that it is “dude ranch facilities” that are expressly non-agricultural, and it reasons that Assessor should not have reclassified acres used to grow hay or to feed horses. *Supra* ¶ 12. While land underlying dude ranch facilities is, by definition, not an agricultural use of that land, the balance of the owner’s land still must primarily function as “agricultural land” or as an “agricultural operation,” the chief purpose of which is to produce crops or livestock for sale. In *Taylor*, the owners used their land to support an outfitting business, not to sell livestock or crops as required by Department rule. Thus, the land that fed horses used to provide guiding services was not primarily used “to produce crops, harvest timber or graze livestock for commercial purposes consistent with the land’s capability to produce” *Supra* ¶ 40.⁹ Owner incorrectly interprets the statute and rules as requiring a division of lands for classification purposes, regardless of the land’s predominant use.

[¶ 42] Except for disagreement concerning the area of Owner’s land serving residential purposes, *Supra* ¶¶ 7, 13, the parties generally agreed upon the facts. In 2020, Owner grew crops and natural forage for horses used for its dude ranch and hunting guide operations. Owner sometimes sells horses it does not need, or hay it does not feed to its horses. *Supra*

⁹ Whether a dude ranch could operate in conjunction with “agricultural operation” would depend on the facts. An assessor would necessarily discern whether the land primarily functioned as an agricultural operation in accordance with the Department’s rules, and whether that function predominated over any other business activities, such as a dude ranch or outfitting operation. In that event, an assessor might justifiably classify portions of land as agricultural, and only that portion of land supporting dude ranch functions as commercial in accordance with the Department’s rules. *Supra* ¶ 37.

¶ 15. Owner's horses also grazed on federal properties or on offsite-leased lands. *Id.* Owner used its horses for staff and dude ranch patrons to ride, as well as for hunting excursions. *Id.*

[¶ 43] A preponderance of evidence supported Assessor's conclusion that Owner primarily used its land for purposes other than the production of crops or livestock, and for commercial purposes that were not primarily the sale of crops or livestock. *Supra* ¶ 15. She therefore correctly concluded that none of Owner's land was "agricultural" as Wyoming's tax statutes and the Department's rules prescribed. Even its 2020 horse sales revenue would not be derived entirely from Owner's land, as Owner frequently grazed its horses on lands it did not own, but leased from others. *Supra* ¶ 15; *see Washakie Cty Assessor*, ¶¶ 49-52, * 14 (Property owners did not identify how cattle were grazed among various properties and so, there was no evidence of how properties were used consistent with their productive capability, the fourth statutory requirement to demonstrate that property is "agricultural.")).

[¶ 44] Because Assessor does not challenge the County Board's decision with respect to her favorable classification of Owner's land as residential, rather than the correct commercial classification, we will not speak to that decision. Moreover, doing so would risk classifying one property differently than like properties, which we understand Assessor also classified and valued through the "site" approach. *Supra* ¶ 9.

[¶ 45] Owner's objection that the "assessment violates the Wyoming Constitution in that is [sic] does not ensure uniformity with similar facilities across the State of Wyoming," lacks merit for several reasons. (Owner's Br., 15). From an evidentiary standpoint, the record refers to several other dude ranches in other Wyoming counties, but offers no clear indication of how assessors in those counties valued those properties. The parties referred to screenshots with information not entered into evidence, and speculated about other county assessments. (Tr. at 69-72). Assessor cautioned the County Board that she could not know or opine on how other assessors appraised dude ranches. (Tr. at 107-08, 116-17). Neither are we able to glean evidence of a constitutional violation with the record before us.

[¶ 46] As we recently noted, violations of Wyoming's constitutional uniformity mandate require considerable quantities of evidence covering very specific areas of intentional systemic error, none of which this trial touched upon. *See In re Appeals of Teton Cty Assessor*, Docket Nos. 2021-92, 2021-93, ¶¶ 58-59 (Wyo. State Bd. of Equalization, Aug. 9, 2022) (Identifying basic constitutional uniformity standard). The burden of demonstrating a violation of constitutional uniformity implicating local assessments across multiple counties would require proportionately more evidence, equal to the number of counties involved.

[¶ 47] Owner's case before the County Board, and its presentation to this Board, relied heavily upon local land-use preferences, angst about anticipated land ownership trends, and tax policy considerations. The County Board found these compelling. *Supra* ¶ 14, (Tr. at 48-55). We don't. The County Board's decision is neither consistent with Wyoming law, nor supported by substantial evidence that Owner used its land primarily for an agricultural purpose as defined by the Department's rules.

CONCLUSION

[¶ 48] The County Board incorrectly concluded that Assessor erred. Assessor correctly examined the purpose of Owner's limited agricultural production, which Owner produced largely to support its dude ranch and outfitting business activities. Accordingly, Assessor correctly concluded that the land was not agricultural land pursuant to Wyoming Statutes section 39-13-103(b)(x)(B) (2021) and the Department's rules.

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ORDER

[¶ 49] **IT IS HEREBY ORDERED** that the Teton County Board of Equalization's Decision is **reversed** and, that Assessor's classification and assessment of the land is **affirmed**.

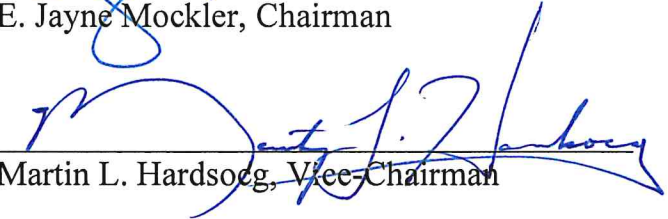
[¶ 50] Pursuant to Wyoming Statutes section 16-3-114 (2021) and Rule 12, Wyoming Rules of Appellate Procedure, any person aggrieved or adversely affected in fact by this decision may seek judicial review in the appropriate district court by filing a petition for review within 30 days after the date of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

DATED this 1 day of September 2022.

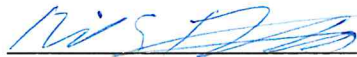
STATE BOARD OF EQUALIZATION



E. Jayne Mockler, Chairman



Martin L. Hardsocg, Vice-Chairman



David L. Delicath, Board Member

ATTEST:



Jennifer Fujinami, Executive Assistant

CERTIFICATE OF SERVICE

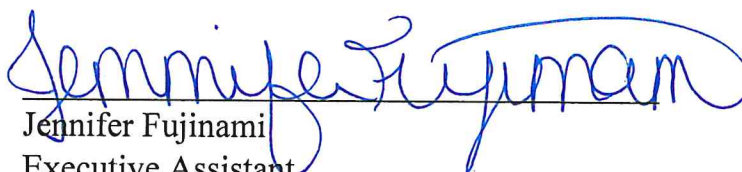
I certify that on the 1 day of **September 2022** I served the foregoing **DECISION AND ORDER** by placing a true and correct copy thereof in the United States Mail, postage prepaid, and properly addressed to the following:

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