

BEFORE THE STATE BOARD OF EQUALIZATION
FOR THE STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF)	
ANN S. WATKINS and)	Docket No. 2021-96
FRANK B. WATKINS)	
FROM A DECISION BY THE FREMONT)	
COUNTY BOARD OF EQUALIZATION)	

AMENDED DECISION AND ORDER

APPEARANCES

Attorney Frank B. Watkins appeared on behalf of Watkins.

Jodi A. Darrough, Fremont County Attorney's Office, appeared on behalf of Assessor.

SUMMARY

[¶ 1] Taxpayers, Ann and Frank Watkins (collectively Watkins), appeal from the Fremont County Board of Equalization's decision affirming Fremont County Assessor Tara Berg's valuation of a building owned by Watkins. Watkins owns the building, but leases the land it sits on. Neither party requested oral argument, so the Wyoming State Board of Equalization, Chairman E. Jayne Mockler, Vice-Chairman Martin L. Hardsocg, and Board Member David L. Delicath, base this Decision and Order on the County Board record and the parties' briefs. Finding no reversible error, will affirm the County Board's decision.

ISSUES

[¶ 2] Watkins identified one issue:

Did the Fremont County Assessor err in the valuation of the office building owned by Watkins' at 2333 Rose Lane, Riverton, Wyoming[?]

(Watkins' Br. 4).

[¶ 3] Assessor also articulated a single issue:

Was the decision of the Fremont County Board of Equalization supported by substantial evidence or, in the alternative, arbitrary and capricious?

(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 28, 2021. (R. 107). Watkins appealed on October 27, 2021. (Notice of Appeal). Accordingly, the appeal is timely and we have jurisdiction.

PROCEEDINGS AND EVIDENCE PRESENTED TO THE COUNTY BOARD

[¶ 5] Watkins owns an office building in Fremont County that sits on land that Watkins leases from the Central Wyoming College Foundation. (R. 104). In 2021, Assessor valued Watkins' building at \$140,418. (R. 3). Watkins appealed and the County Board held a hearing on August 24, 2021. As evidence, Watkins offered a Comparative Market Analysis that suggested a list price of \$108,000 to 114,000 for Watkins' building, based on "analysis of the comparable properties." (R. 24). Skye Coleman-Weisz, the real estate broker who prepared the Comparative Market Analysis, testified that most of the comparable sales that Assessor used to value Watkins' building were not truly comparable. (Hr'g Rec. 20:50). He further testified that being on leased land makes Watkins' building less valuable because buyers want land and banks won't lend money to buy buildings without land. (*Id.* at 31:25).

[¶ 6] Mr. Watkins testified that 14 years remained on his 30-year lease of the real property. (Hr'g Rec. 35:30). He opined that Assessor should have to reduce his building's value because he cannot transfer it, on site, to a purchaser without the landowner's approval. (*Id.* at 37:00). He further opined that the building should be assessed and depreciated as personal property, not real property. *Id.*

[¶ 7] Assessor offered an "Assessor's Summary" that outlined her approach to valuing Watkins' building. (R. 62-67). In that summary, Assessor noted that she considered all three approved approaches to value (sales comparison, cost, and income) and "deemed the sales approach to be the most accurate method to value this property." (R. 62). She also

testified that no applicable statute or rule allowed her to value Watkins' building as personal property. (Hr'g Rec. 46:45). Assessor went on to testify that the neighborhood containing Watkins' building did not have the requisite number of sales to employ the sales comparison method, so she drew sales from other neighborhoods, as allowed by Department of Revenue rules. (*Id.* at 55:55). She then applied a market adjustment that reduced the value of Watkins' building by ten percent. (*Id.* at 1:05:20). Assessor testified that she had no data supporting a further adjustment for a building sitting on leased land. (*Id.* at 1:20:10).

[¶ 8] The County Board unanimously found that Watkins had not submitted credible evidence sufficient to shift the burden of persuasion from Watkins to Assessor. (Hr'g Rec. Vol. III 4:10-5:15). The County Board then unanimously affirmed Assessor's valuation. (*Id.* at 5:48-5:52).

CONCLUSIONS OF LAW

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

[¶ 9] 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). "Substantial evidence is relevant evidence which a reasonable mind might accept in support of the [County Board's] conclusions. It is more than a scintilla of evidence." *In re Lysne*, 2018 WY 107, ¶ 12, 426 P.3d 290, 294-95 (Wyo. 2018) (quoting *Walton v. State ex rel. Wyo. Workers' Safety & Comp. Div.*, 2007 WY 46, ¶ 9, 153 P.3d 932, 935 (Wyo. 2007)).

[¶ 10] We review questions of law de novo and will affirm a county board's conclusions of law "only if they are in accord with the law." *Maverick Motorsports Grp., LLC v. Dep't of Revenue*, 2011 WY 76, ¶ 12 253 P.3d 125, 128 (Wyo. 2011) (quoting *Bowen v. State Dep't of Transp.*, 2011 WY 1, ¶ 7, 245 P.3d 827, 829 (Wyo. 2011)).

[¶ 11] We also apply de novo review to a county board's ultimate findings of fact:

When an agency's determinations contain elements of law and fact, we do not treat them with the deference we reserve for findings of basic fact. When reviewing an "ultimate fact," we separate the factual and legal aspects of the finding to determine whether the correct rule of law has been properly applied to the facts. We do not defer to the agency's ultimate factual finding if there is an error in either stating or applying the law.

Basin Elec. Power Coop., Inc. v. Dep't of Revenue, State of Wyo., 970 P.2d 841, 850-51 (Wyo. 1988) (quoted in *Chevron U.S.A., Inc. v. Dep't of Revenue*, 2007 WY 79, ¶ 10, 158 P.3d 131, 134 (Wyo. 2007)).

[¶ 12] "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). "[A] mere difference of opinion as to value" is not sufficient to overcome the presumption. *Britt*, at ¶¶ 28, 34, 126 P.3d at 126-27.

[¶ 13] If a taxpayer presents credible evidence sufficient to rebut the presumption, the county board must then "equally weigh the evidence of all parties and measure it against the appropriate burden of proof." *Britt*, ¶ 23, 126 P.3d at 125 (citing *CIG v. Wyo. Dep't of Revenue*, 2001 WY 34, ¶ 10, 20 P.3d 528, 531 (Wyo. 2001)). The burden of going forward¹ would then shift to Assessor, but the 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.*

¹ 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 peremptory ruling such as a summary judgment or a directed verdict." Burden of Production, Black's Law Dictionary 236 (10th ed. 2014).

B. Applicable law

[¶ 14] The Wyoming Department of Revenue is required to confer with, advise, instruct, and direct county assessors and to promulgate rules necessary for the enforcement of all tax measures. Wyo. Stat. Ann. § 39-11-102(c)(xvi), (xix) (2021). Specifically, the Department “shall prescribe by rule and regulation the appraisal methods and systems for determining fair market value using generally accepted appraisal standards[.]” Wyo. Stat. Ann. § 39-13-103(b)(ii) (2021). County Assessors, in turn, are required to “[f]aithfully and diligently follow and apply the orders, procedures and formulae of the department of revenue or orders of the state board of equalization for the appraisal and assessment of all taxable property[.]” Wyo. Stat. Ann. § 18-3-204(a)(ix) (2021).

C. The County Board correctly determined that Watkins did not overcome the presumption favoring Assessor’s valuation.

[¶ 15] As the County Board recognized, Watkins did not produce evidence of reversible error. Watkins was tasked with rebutting the presumption that Assessor’s valuation was correct. *Supra.* ¶ 12. Watkins disagreed with some of Assessor’s choices, but didn’t present evidence that those choices, or the resulting valuation, were incorrect or contrary to law. Faced with a mere difference of opinion, the County Board correctly determined that Watkins had not satisfied the burden of proof.

CONCLUSION

[¶ 16] The County Board correctly determined that Watkins did not present credible evidence sufficient to overcome the presumption that Assessor’s valuation is correct. Accordingly, the burden of proof did not shift to Assessor to defend her valuation.

ORDER


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

[¶ 18] **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 4 day of March 2022.

STATE BOARD OF EQUALIZATION


E. Jayne Mockler, Chairman


Martin L. Hardsocg, Vice Chairman


David L. Delicath, Board Member

ATTEST:

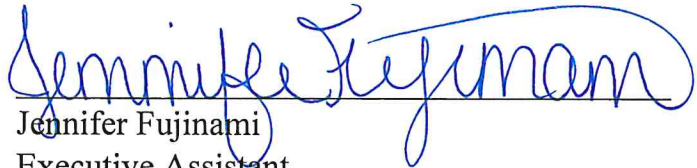

Jennifer Fujinami, Executive Assistant

CERTIFICATE OF SERVICE

I certify that on the 4 day of **March 2022** I served the foregoing **AMENDED DECISION AND ORDER** by placing a true and correct copy thereof in the United States Mail, postage prepaid, and properly addressed to the following:

Frank B. Watkins
Frank B. Watkins, P.C.
P.O. Box 1811
Riverton, WY 82501

Jodi A. Darrough
Fremont County Attorney's Office
450 N. 2nd Street, Room 170
Lander, WY 82520



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 – Fremont County
ABA State and Local Tax Reporter
State Library