

**BEFORE THE STATE BOARD OF EQUALIZATION  
FOR THE STATE OF WYOMING**

IN THE MATTER OF THE APPEAL OF	)	
<b>ANITA RAYE KLEINER</b>	)	Docket No. <b>2021-97</b>
FROM A DECISION BY THE NATRONA	)	
COUNTY BOARD OF EQUALIZATION	)	
(2021 Property Valuation)	)	

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**DECISION AND ORDER**

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**APPEARANCES**

Non-attorney representative John Burd appeared on behalf of Taxpayer Anita Raye Kleiner.

Eric K. Nelson and Charmaine A. Reed, Natrona County Attorney’s Office, appeared on behalf of Natrona County Assessor Matt Keating.

**SUMMARY**

[¶ 1] Ms. Kleiner appeals from two Natrona County Board of Equalization orders dismissing her appeals of Assessor’s 2021 real property valuations. The County Board dismissed Ms. Kleiner’s appeals because she did not comply with a notice directing her to schedule hearings online. Ms. Kleiner contends that the notice violated our rules requiring the County Clerk to set hearings and then notify the parties. 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’ written submissions. We will remand for the County Board to rule on Ms. Kleiner’s contention that the schedule-your-own-hearing scheme violates this Board’s rules. Vice-Chairman Hardsocg concurs separately.

**ISSUES**

[¶ 2] Ms. Kleiner did not file an opening brief, opting instead to rely on her Notice of Appeal. That notice does not contain a statement of issues, but it includes these requests:

Petitioner requests that the Natrona County Board of Equalization's dismissal of BOE Docket # 2021-0589 and 2021-0591 be overturned and remanded back to the CBOE for hearing in accordance with applicable statutes and SBOE Rules.

Petitioner further requests that the SBOE find that Assessor's Attorney's Proposed "Findings of Fact and Order Dismissing Appeals" be determined as unlawful ex parte communications with the CBOE and hearing officer, and pursue all legal remedies.

Petitioner further requests that the SBOE consider relief for the other 185 unlawful dismissals.

(Notice of Appeal, 5).

[¶ 3] Assessor presented this statement of the issue:

Was the Natrona County Board of Equalization ("CBOE") action dismissing Taxpayer's appeals in excess of its statutory jurisdiction, authority or limitations or lacking statutory right or arbitrary, capricious, or otherwise not in accordance with law?

(Assessor's Br. 2).

## **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 October 26, 2021. (R. 97, 102). Ms. Kleiner filed her appeal on November 1, 2021. (Notice of Appeal). Accordingly, the appeal is timely and we have jurisdiction.

## **PROCEEDINGS AND EVIDENCE PRESENTED TO THE COUNTY BOARD**

[¶ 5] Ms. Kleiner, represented by Mr. Burd, appealed the 2021 valuations on two vacant lots she owns in Natrona County.<sup>1</sup> (R. 1). The County Board issued a Notice of Hearing

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<sup>1</sup> The County Board issued a separate decision for each property, but Ms. Kleiner filed a single notice of appeal, and we assigned a single State Board of Equalization Docket Number.

that applied to both appeals. (R. 2-3). A section of that Notice labeled HEARING SCHEDULING PROCEDURE stated:

Hearings must be scheduled by the petitioner. The process for scheduling a hearing is for the petitioner to access the county website at <https://ncboe.as.me/schedule> and selecting a time and date for the hearing. All hearings must be scheduled by October 15, 2021. Failure of petitioners to schedule a hearing by said date will result in dismissal.

(R. 3). Ms. Kleiner did not schedule a hearing despite at least two email reminders from the County Board. (R. 13, 47). On October 18, 2021, Mr. Burd sent the County Board an email stating:

The requirement to schedule a hearing by Oct. 15, 2021 or face dismissal is in violation of SBOE Rules CH 7 Section 7:

(a) The clerk shall set all timely filed appeals for hearing and provide written notice to the petitioner and assessor.

(b) The notice shall set forth the date, time, place, and nature of the hearing and shall advise the parties of the requirement to exchange information prior to the hearing.

I will be happy to work with you to set a time and date for the hearing, but the requirement to schedule or face dismissal is improper.

(R. 53). Assessor filed a response urging the County Board to dismiss Ms. Kleiner's appeal for failure to schedule a hearing. (R. 56-58). That response did not address Ms. Kleiner's contention that the schedule-your-own-hearing scheme violates this Board's rule. *Id.* Ms. Kleiner filed a reply setting forth her rules-based contention in greater detail. (R. 93-95).

[¶ 6] The County Board issued separate orders of dismissal that are identical except for the docket numbers and property descriptions. (R. 96-97, 101-02). The County Board found that Ms. Kleiner "failed to schedule an appeal hearing within the required time frame and had not contacted the CBOE with good cause to schedule an appeal hearing after the deadline." (R. 96, 101). The County Board did not rule on, or even acknowledge, Ms. Kleiner's contention that the schedule-your-own-hearing scheme violates this Board's rule. *Id.*

## CONCLUSIONS OF LAW

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

[¶ 7] 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)).

[¶ 8] 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)).

[¶ 9] 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.1998) (quoted in *Chevron U.S.A., Inc. v. Dep't of Revenue*, 2007 WY 79, ¶ 10, 158 P.3d 131, 134 (Wyo. 2007)).

B. The County Board failed to rule on Ms. Kleiner's contention that the county's scheduling system violates this Board's rules.

[¶ 10] Ms. Kleiner's argument centers on one of our rules:

(a) The clerk shall set all timely filed appeals for hearing and provide written notice to the petitioner and assessor.

(b) The notice shall set forth the date, time, place, and nature of the hearing and shall advise the parties of the requirement to exchange information prior to the hearing.

Rules, Wyo. State Bd. of Equalization, ch. 7, § 7 (2021). She contends that the Natrona County hearing scheduling scheme violates that rule because the clerk, instead of setting a hearing and notifying the parties, required Ms. Kleiner to take action to pick a date and time for her hearing.

[¶ 11] We're in familiar territory here. Last year, Ms. Kleiner appealed to us from a County Board decision that we described in this way:

[¶ 5] Ms. Kleiner owns real property in Natrona County. Assessor mailed Ms. Kleiner's 2019 assessment on April 26, 2019. Eighteen days later, Ms. Kleiner's representative, John Burd visited Assessor's office because he and Ms. Kleiner thought the assessment was incorrect. He spoke with Renee Berry, who told Mr. Burd that Assessor could review the assessment. Mr. Burd stated that Ms. Berry told him Ms. Klein would have 30 days to appeal after Assessor completed the review. Ms. Berry, however, stated that she told Mr. Burd that Ms. Klein would have a new 30 day appeal period only if Assessor changed the assessment. Assessor mailed Ms. Kleiner a letter on June 10, 2019, announcing that the review resulted in no change to the assessment.

[¶ 6] Ms. Kleiner filed her appeal on June 18. The County Board scheduled a hearing for November 13. At that hearing, Assessor's attorney conceded that Ms. Berry's statement could have led Ms. Kleiner to believe she had 30 days to appeal after completion of the review. Ms. Berry subsequently said that she didn't remember exactly what she told Ms. Kleiner.

[¶ 7] Assessor moved for dismissal on the grounds that the notice of appeal didn't meet the requirements set forth in our rules governing CBOE proceedings. The Hearing Officer granted the motion to dismiss on the grounds that the notice of appeal was untimely. The County Board chairman

signed an order dismissing Ms. Kleiner's appeal as untimely. The County Board did not address the question of estoppel in its decision and order.

*In re Kleiner*, 2020 WL 3041253, \* 1-2, Docket No. 2020-06, ¶¶ 5-7 (Wyo. State Bd. of Equalization, June 2, 2020) (internal citations omitted).

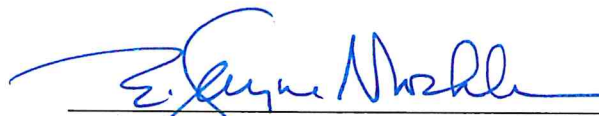
[¶ 12] We remanded for a decision on the estoppel question, explaining that “[b]ecause the County Board didn’t address equitable estoppel, there’s no equitable estoppel decision for this Board to review.” *Id.* at ¶ 12. In the case before us now, Ms. Kleiner again asserted a colorable claim before the County Board, but that Board, again, didn’t render a reviewable decision resolving that claim. With no decision to review, we see no choice but to remand this appeal to the County Board with instructions to consider, and render a decision on, Ms. Kleiner’s contention that the county’s system for scheduling hearings runs afoul of our rules. If the County Board determines that the claim lacks merit, it should dismiss Ms. Kleiner’s appeal for failure to schedule a hearing. If it determines that the schedule-your-own-hearing scheme violates our rule, it should hold an evidentiary hearing and then rule on the merits of Ms. Kleiner’s appeal.

### ORDER

[¶ 13] **IT IS, THEREFORE, ORDERED** that the decision of the Natrona County Board of Equalization is **REMANDED**.

DATED this 28 day of March 2022.

### STATE BOARD OF EQUALIZATION

  
\_\_\_\_\_  
E. Jayne Mockler, Chairman

  
\_\_\_\_\_  
David L. Delicath, Board Member

ATTEST:

  
\_\_\_\_\_  
Jennifer Fujinami, Executive Assistant



**DISSENTING IN PART, AND CONCURRING IN PART – Vice Chairman**

**Hardsocg:**

[¶ 14] To the extent the Majority holds that the County Board was required to specifically rule on Assessor's Motion to Dismiss and, more particularly, Ms. Kleiner's resistance to that motion arguing that the Clerk's process violated the State Board's rules, I disagree. Unquestionably, our review of the County Board's dismissal would benefit from the County Board's consideration of both the Assessor's motion and Ms. Kleiner's resistance. But, the County Board's dismissal implicitly rejected Ms. Kleiner's legal arguments (through her representative, Mr. Burd) challenging Assessor's requested dismissal, and implicitly agreed that Ms. Kleiner's failure to schedule a hearing was grounds for dismissal. The County Board's dismissal of the appeal, without separately identifying and resolving the merits of Ms. Kleiner's response, was not procedurally improper from a technical standpoint.

[¶ 15] I agree that this Board should reverse the County Board's decision, but would address the underlying decision as to whether the County Board procedurally violated this Board's rules, as Ms. Kleiner contends.



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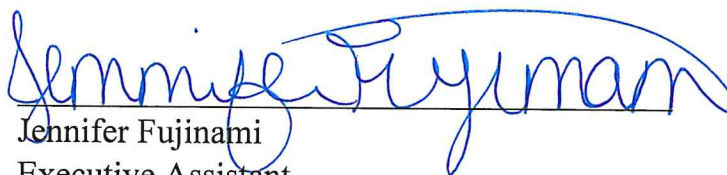
Martin L. Hardsocg, Vice Chairman

## CERTIFICATE OF SERVICE

I certify that on the 28 day of **March 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:

Anita Raye Kleiner  
John Burd  
4321 Bobcat  
Casper, WY 82604

Eric K. Nelson  
Charmaine A. Reed  
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cc: Brenda Henson, Director, Dep't of Revenue  
Brian Judkins, Property Tax Div., Dep't of Revenue  
Commissioners/Treasurer/Clerk/Assessor – Natrona County  
ABA State and Local Tax Reporter  
State Library