

BEFORE THE STATE BOARD OF EQUALIZATION

FOR THE STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF)
H. KENNETH JOHNSTON II) **Docket No. 2023-40**
FROM A DECISION BY THE LARAMIE)
COUNTY BOARD OF EQUALIZATION)

DECISION AND ORDER

APPEARANCES

H. Kenneth Johnston II appeared pro se.

Laramie County Attorney Mark Voss appeared on behalf of Laramie County Assessor Todd Ernst.

DIGEST

[¶ 1] Taxpayer H. Kenneth Johnston II appealed Assessor’s 2023 assessment of Mr. Johnston’s residential property. Mr. Johnston timely appealed to the County Board, but Assessor later issued an amended assessment and a second amended assessment, neither of which Mr. Johnston appealed. The Laramie County Board of Equalization held a contested case hearing, but Mr. Johnston’s failure to appeal the first or second NOA was not raised or discussed at that hearing. The County Board upheld the second amended assessment.

[¶ 2] The State Board, Chairman Martin L. Hardsocg, Vice-Chairman David L. Delicath, and Board Member E. Jayne Mockler, considered the County Board record, the parties’ briefs, and oral argument. Finding that the County Board lacked subject matter jurisdiction because Mr. Johnston did not appeal the amended assessments, we **reverse** and **remand** the appeal to the County Board for a determination of whether good cause excused Mr. Johnston’s failure to appeal, consistent with the State Board’s procedural rules.

ISSUES

[¶ 3] Mr. Johnston did not provide a statement of issues, but we understand him to have raised two:

1. Did the County Board err in admitting exhibits that Assessor did not timely provide to Mr. Johnston?
2. Did the County Board err in determining that Mr. Johnston failed to prove that Assessor's valuation was arbitrary, capricious, or an abuse of discretion?

[¶ 4] Assessor identified one issue:

Was the County Board's decision supported by law, within its statutory authority, in compliance with procedures required by law and supported by substantial evidence?

(Assessor Br. 2).

EVIDENCE PRESENTED BEFORE COUNTY BOARD

[¶ 5] Mr. Johnston owns an improved residential parcel in Laramie County. (R. 121). In 2023, Assessor initially valued Mr. Johnston's property at \$732,661. *Id.* Mr. Johnston appealed that valuation on April 21, 2023. (R. 1). The next month, Assessor changed the quality rating of the property from "good plus" to "good," which reduced the value to \$671,465. (R. 34). Assessor then issued an Amended Notice of Appraisal on May 9, 2023. (R. 122). Two weeks later, Assessor later realized that he had been mistaken about the type of siding on Mr. Johnston's house. (R. 34-35). Accordingly, he issued a second Amended Notice of Appraisal increasing the value to \$674,249. (R. 123). Mr. Johnston did not appeal either of the amended appraisals.

[¶ 6] The Laramie County Board of Equalization set a hearing for June 26, 2023. (R. 1). On May 26, 2023, 31 days before the hearing, Assessor sent his exhibits to Mr. Johnston by certified mail. (R. 120). Mr. Johnston received those exhibits on May 30. (R. 11). At the hearing, Mr. Johnston objected to admission of the exhibits, contending that Assessor had not timely provided them, as required by statute and rule. (R. 11, 26-27). The Hearing Officer nonetheless admitted Assessor's exhibits, finding that the exhibits had been provided on the day they were mailed. (R. 27).

[¶ 7] Mr. Johnston offered one four-page exhibit consisting of, "the Sales Data for [Mr. Johnston's] neighborhood which was part of the Assessor's Confidential Exhibit B," and a

Market Evaluation Report prepared by a Cheyenne realtor. (R. 171-74, 187). The Hearing Officer admitted that exhibit without objection. (R. 19). Mr. Johnston's testimony was brief, but it contained multiple contentions: 1) other homes in his neighborhood that sold for more are valued lower; 2) Assessor has some facts wrong about Mr. Johnston's property; 3) properties with larger lots are valued lower; and 4) the realtor's market analysis of Mr. Johnston's property came in lower than Assessor's valuation. (R. 12-23). Assessor testified about how he valued Mr. Johnston's property and then amended that valuation twice.

[¶ 8] The County Board stated that Mr. Johnston's appeal was timely, but did not address whether he was required to file separate appeals of the Amended Assessments. (R. 186). The County Board unanimously affirmed Assessor's second amended valuation, finding that Mr. Johnston:

did not present evidence sufficient to show that the Assessor's valuation was incorrect, erroneous, or otherwise done in an unlawful manner, which further made any argument about the timing of [Mr. Johnston's] receipt of the Assessor's evidentiary material irrelevant and inconsequential because, even without the Assessor's evidentiary documentation, [Mr. Johnston] did not meet his burden of proof.

(R. 181-84, 195-96). Mr. Johnston appealed that decision to this Board. (R. 219-20).

CONCLUSIONS OF LAW

[¶ 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 of review of 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). Subsection (a) will be the dispositive provision in this appeal.

[¶ 10] This Board questions the County Board’s subject matter jurisdiction – its “power to hear and determine the matter in controversy between the parties.” *Brush v. Davis*, 2013 WY 161, ¶ 8, 315 P.3d 648, 651 (Wyo. 2013) (quoting *McGuire v. McGuire*, 608 P.2d 1278, 1290 (Wyo. 1980)). Because a court’s subject matter jurisdiction must exist before the court may proceed, it may be raised as an issue any time by any party, or by the court on its own motion. *Id.*

[¶ 11] A property owner’s timely appeal gives rise to a county board’s subject matter jurisdiction:

(b) Appeals. The following shall apply:

(i) **Any person wishing to contest an assessment of his property shall file not later than thirty (30) days after the date of the assessment schedule properly sent pursuant to W.S. 39-13-103(b)(vii), a statement with the county assessor specifying the reasons why the assessment is incorrect. For purposes of this paragraph, if a statement of reasons is mailed or sent by electronic transmission by the person assessed, it shall be deemed timely filed if it is postmarked or transmitted not later than thirty (3) days after the mailing or the electronic transmission of the notification of the assessment schedule.** The county assessor shall provide a copy to the county clerk as clerk of the county board of equalization. The county assessor and the person contesting the assessment, or his agent, shall disclose witnesses and exchange information, evidence and documents relevant to the appeal, including sales information from relevant statements of consideration if requested, no later than thirty (30) days prior to the scheduled county board of equalization hearing. The assessor shall specifically identify the sales information used to determine market value of the property under appeal. A county board of equalization may receive evidence relative to any assessment and may require the person assessed or his agent or attorney to appear before it, be examined and produce any documents relating to the assessment. The appeal may be dismissed if any person willfully neglects or refuses to attend a meeting of a county board of equalization and be examined or answer any material question upon the board’s request. The state board of equalization shall adopt rules to be followed by any county board of equalization when conducting appeals under this subsection. All hearings shall be conducted in accordance with the rules adopted by the state board of equalization. Each hearing shall be recorded electronically or by a court reporter or a qualified stenographer or transcriptionist. The 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. The county attorney or his designee may represent the county board or the assessor, but not both. The assessor may be represented by an attorney and the board may hire a hearing officer. All deliberations of the board shall be in public. The county board of equalization may affirm the assessor's valuation or find in favor of the taxpayer and remand the case back to the assessor. The board shall make specific written findings and conclusions as to the evidence presented not later than October 1 of each year;

Wyo. Stat. Ann. § 39-13-109(b)(i) (2023) (emphasis added). A County Board must dismiss an untimely appeal, “unless it determines that good cause exists to toll or extend the filing deadline.” Rules, Wyo. State Bd. of Equalization, Ch. 7 § 6(b), (d) (2021).

[¶ 12] Although the County Board identified all three assessments in its decision, it did not consider whether Mr. Johnston was required to separately appeal from the amended assessment(s). (R. at 38). Rather, the County Board incorrectly concluded that Mr. Johnston's appeal was timely, likely assuming that Mr. Johnston's initial appeal sufficed, allowing him to challenge valuation changes contained in subsequent assessment decisions. *Id.*

[¶ 13] The second amended assessment did not revise the previous assessments. Rather, it supplanted them and was a separate, appealable decision. Upon issuing the second amended assessment, nothing of the initial assessment or the first amended assessment remained, and Mr. Johnston's challenge of the initial assessment became moot.

[¶ 14] Because neither the parties nor County Board raised the question of whether Mr. Johnston filed a timely appeal, they also didn't address the question of whether good cause existed for his omission. *See supra* ¶ 8. The County Board was – and still is – obliged to resolve that question. If the County Board finds that good cause did not excuse Mr. Johnston's failure to appeal, then it must dismiss his appeal for lack of subject matter jurisdiction, and may take no further action. If, however, the County Board finds that Mr. Johnston's failure to appeal was excused, and the appeal deadline was tolled, it must state the basis of those findings and proceed with an appeal Mr. Johnston has yet to pursue. Mr. Johnston would be permitted to appeal within a time the County Board would set, and his appeal would again be adjudicated. *See In re Appeal of Lawrence R. Greene*, 2023 WL 6211498, *4, Docket No. 2023-07, ¶ 19 (Wyo. St. Bd. of Equalization, Sept. 13, 2023) (State Board remanded for County Board to determine whether taxpayer's failure to appeal amended assessment was excused for good cause)

CONCLUSION

[¶ 15] The County Board incorrectly deemed Mr. Johnston's appeal timely filed. The County Board must assure it had jurisdiction to hear the appeal. On remand, the County Board must determine whether Mr. Johnston's failure to appeal from the second amended assessment was excused and, if so, explain such, and allow Mr. Johnston additional time to file a timely appeal from the second amended assessment.¹ If the failure to appeal is not excused, the County Board must dismiss Mr. Johnston's appeal for lack of subject matter jurisdiction.

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¹ The County Board, if it determines good cause excused Mr. Johnston's failure to appeal, may incorporate the evidence submitted in the contested case since it pertained to the second amended assessment. It may, but is not required to, conduct an additional evidentiary hearing to resolve whether good cause existed.

ORDER

[¶ 16] **IT IS, THEREFORE, ORDERED** that the decision of the Laramie County Board of Equalization is **REVERSED and REMANDED** for a determination of whether the County Board had subject matter jurisdiction to adjudicate Mr. Johnston's appeal.

[¶ 17] Pursuant to Wyoming Statutes section 16-3-114 (2023) 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 23 day of April 2024.

STATE BOARD OF EQUALIZATION



Martin L. Hardsocg, Chairman



David L. Delicath, Vice-Chairman



E. Jayne Mockler, Board Member

ATTEST:



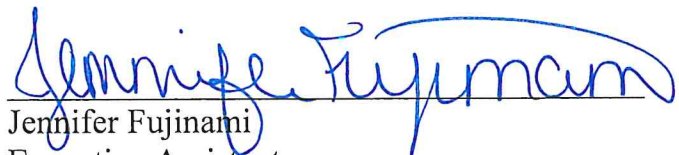
Jennifer Fujinami, Executive Assistant

CERTIFICATE OF SERVICE

I certify that on the 23 day of April 2024, 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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cc: Brenda Henson, Director, Dep't of Revenue
Kenneth Guille, Property Tax Div., Dep't of Revenue
Commissioners/Treasurer/Clerk/Assessor – Laramie County
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State Library