

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

IN THE MATTER OF THE APPEAL OF )  
**S & B IRREVOCABLE TRUST** ) **Docket No. 2023-41**  
FROM A DECISION BY THE TETON )  
COUNTY BOARD OF EQUALIZATION )

---

**DECISION AND ORDER**

---

**APPEARANCES**

Susan Frankewich, pro se, on behalf of S & B Irrevocable Trust. (Hereafter Trust).

Keith M. Gingery, Deputy Teton County Attorney, on behalf of Teton County Assessor Melissa Shinkle. (Hereafter Assessor).

**SUMMARY**

[¶ 1] Trust appealed Assessor’s 2023 assessed value of its Teton County residential property. The County Clerk sent notice by certified mail, return receipt requested, that the Teton County Board of Equalization (County Board) would conduct a contested case hearing on September 13, 2023. Trust did not appear before the County Board on the day of the hearing. The County Board dismissed Trust’s appeal. Trust appealed the dismissal to the State Board of Equalization, Chairman Martin L. Hardsocg, Vice-Chairman David L. Delicath, and Board Member E. Jayne Mockler. The State Board considered the record and the parties’ submitted briefs. Because the County Board dismissed without determining whether Trust’s non-appearance was negligent or intentional, we **remand** for a determination of these requisite findings.

**JURISDICTION**

[¶ 2] 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) (2023). An aggrieved taxpayer or assessor may file an appeal with this Board within 30 days of the County Board’s final decision. Rules, Wyo. State Bd. of Equalization, Ch. 3 § 2(a) (2021). The County Board issued its final decision on October 3, 2023. (R. at 0341-43). Trust filed its appeal on September 26, 2023, after the County Board’s vote to dismiss was taken, and then again on October 10, in response to a State Board request that

Trust clarify its intent to appeal. The appeal is timely, and we have jurisdiction.

## **ISSUES**

[¶ 3] Trust did not identify questions to be resolved. Rather, it stated in its appeal notice that it received no notice of the hearing, and that there was a “substantive failure of statistical evidence to support the valuation[.]” (Not. of Appeal, 1-2).

[¶ 4] Assessor, in response, asks this Board to consider whether “the Teton County Board of Equalization properly dismiss[ed] the Petitioners’ [sic] appeal.” (Assessor’s Br., 4).

## **PROCEEDINGS BEFORE COUNTY BOARD**

[¶ 5] Trust appealed Assessor’s 2023 valuation of its residential property at 6275 N. Aspen Drive in Jackson, Wyoming. Assessor received the appeal notice on April 27, 2023. (R. at 0328-34). In a hand-written notice, Trust’s representative alluded to “30%” as the measure of valuation error, attributing such to a number of factors and property conditions, which are not particularly relevant to this appeal. *Id.* Trust’s Notice of Appeal included an extensive list of informational items sought from Assessor as to how she mass-appraised the property.

[¶ 6] Assessor amended the assessment, lowering the total valuation from \$2,344,005 to \$1,978,504 on May 16, 2023, after which, Trust submitted an Amended Notice of Appeal on May 20, 2023. (R. at 014, 0335-38). Trust repeated its request for information, but added numerous additional questions.<sup>1</sup> *Id.*

[¶ 7] The Teton County Clerk, through certified mail, return receipt requested, sent notice of a contested case hearing to be held September 13, 2023, with a postmark of July 27, 2023. The mailing issued from a Salt Lake City, Utah post office. (R. 001-004). The Certified Mail card indicates that it was returned to the sender, Assessor’s Office, on the day of the hearing, and that Trust did not pick up the materials sent. (R. 005). The notice included procedural information and statutory guidelines to be followed in preparation for the hearing. *Id.*

[¶ 8] The County Board, because Trust did not appear as directed on September 13th, dismissed Trust’s appeal upon Assessor’s verbal reference to the procedural rule that allowed dismissal. (Hr’g Audio) (citing Rules, Wyo. State Bd. of Equalization, Ch. 7 § 19 (2021)). Other than noting Trust’s failure to appear, the County Board made no inquiry or

---

<sup>1</sup> Trust’s Notices of Appeal revealed a level of frustration and disagreement beyond the scope of the assessment at issue, also not relevant to the ultimate question we must resolve.

factual finding with respect to Trust’s non-appearance, or the notice sent from the County Clerk’s Office. *Id.*

[¶ 9] The county Board issued a Decision dismissing Trust’s appeal, stating only that: “The Appellants did not appear at the hearing. The Board voted unanimously to dismiss the appeal and affirm the Assessor’s valuation.” (R. at 341-42).

## **PROCEEDINGS BEFORE THE COUNTY BOARD AND CONCLUSIONS OF LAW**

### State Board’s review function, presumptions, and burdens of proof before the County Board

[¶ 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) (2023), 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) (2023).

[¶ 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 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 forward<sup>2</sup> 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.* "A mere difference of opinion as to value" is not sufficient to overcome the presumption. *Britt*, at ¶ 34, 126 P.3d at 127.

[¶ 12] At issue in this appeal is the Board's Chapter Seven Rules, which govern contested case proceedings before county boards of equalization. In particular, the Teton County Clerk was required to "provide written notice [of the hearing time place, and nature] to the petitioner and assessor." Rules, Wyo. St. Bd. of Equalization, Ch. 7 § 7 (2021).

[¶ 13] Pursuant to Section 19 of those rules, a county board of equalization "may dismiss an appeal if the petitioner willfully neglects or refuses to attend a hearing and be examined or answer any material question upon the county board's request." *Id.* § 19; Wyo. Stat. Ann. § 39-13-(b)(i) (2023).

#### Review of the County Board's Decision dismissing appeal

[¶ 14] Trust complains in its brief that it did not receive notice of the hearing's date and time, notwithstanding that Trust representative Ms. Frankewich repeatedly contacted Assessor to obtain information used to value the Trust's property. (Trust Reply Br., 2). The record, however, contains no evidence that Trust pressed Assessor to learn more about the disputed valuation, other than the notices of appeal, which included questions directed to Assessor. Trust's arguments, set forth in its brief on appeal, are not evidence and carry no evidentiary weight because the County Board did not have an opportunity to consider them.

[¶ 15] The County Clerk sent notice of the hearing date, with instructions, to the Trust by certified mail, return receipt requested, on July 27, 2023. Evidence of the mailed notice consisted of a green certified mail postal receipt card commonly used to document and track such postage. (R. 1-5). The postal system, however, returned the green card to Assessor on September 18, 2023, after the date of the hearing. *Id.* It indicated that the Trust did not retrieve the notice from the post office as directed. *Id.* In any event, the County Board did not consider how notice was given to the Trust, whether or not Trust actually received notice of the hearing, nor other aspects surrounding Trust's failure to appear. *Supra* ¶ 8.

[¶ 16] Although Trust complains that the County Clerk should not have used certified mail, and it alleges Assessor's trickery in failing to ensure Trust received notice, we do not know

---

<sup>2</sup> 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 (10<sup>th</sup> ed. 2014).

why Trust did not retrieve the certified mail. (Trust Reply Br., 4-9). We don't know whether Trust's representatives ignored the certified mail card. *Supra* ¶ 15. The record answers none of these questions. We know only that notice was sent by certified mail, but Trust did not retrieve the notice from the post-office.

[¶ 17] With few facts and little evidence in the record illuminating the notice sent to, or received by, Trust, our review begins with the County Board's consideration of the Trust's non-appearance and consequent dismissal. The County Board acted upon Assessor's counsel's reference to the State Board's rules indicating that dismissal might be appropriate, but without attending to the prerequisites for such dismissal. *Supra* ¶¶ 12-17. The County Board immediately concluded that dismissal should follow because Trust did not attend its hearing, as if the non-appearance, without more, were a sufficient basis to dismiss. *Id.*

[¶ 18] While failure to appear might justify dismissal in most cases, county boards of equalization must, at a minimum, ascertain that notice was given and that a petitioner's non-appearance arose from willful inattention or refusal to attend. *Supra* ¶¶ 8, 12-13. As both parties note, this Board's decision in *In re Cedar Canyons, Inc., A.K.A. Old West Cabins*, 2019 WL 1780382, Doc. No. 2018-48 (Wyo. St. Bd. of Equalization, April. 9, 2019) also addressed the Teton County Board of Equalization's dismissal of an appeal after the taxpayer failed to attend its contested case hearing. Upon appeal to the State Board, we reversed and remanded that appeal to the county board for additional findings, in particular, a determination of whether the taxpayer's failure to appear was willful neglect or a refusal to attend. *Id.* at ¶¶ 13-18, \*\* 3-4.

[¶ 19] In the case before us now, the County Board apparently did not have before it evidence of how the written hearing notice was issued to the Trust, the fact that the certified mailing went unclaimed, nor any other details surrounding notice to the Trust. Assessor did not admit into evidence the notice and written indications of how that notice was mailed to the Trust. The record does not reveal whether those materials were otherwise available for the County Board to consider. We therefore are unable to review whether dismissal was appropriate and must remand this matter to the County Board for a determination of whether substantial evidence supported the County Board's dismissal. *See Teton Cty. Assessor v. Aspen S, LLC, et al.*, 2024 WL 1207712, 24 WY 30, ¶ 13, \_\_\_ P.3d \_\_\_, \* 3 (Wyo. 2024) (county boards of equalization must issue sufficient factual findings.).

**ORDER**

[¶ 20] **IT IS THEREFORE, ORDERED** that the decision dismissing Trust's appeal is **REMANDED TO THE TETON COUNTY BOARD** for a determination of whether Trust failed to appear because it willfully neglected, or refused, to appear;

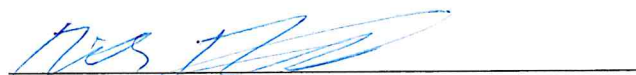
[¶ 21] **IT IS FURTHERMORE ORDERED** that if the County Board is unable to find that its dismissal was properly issued, it shall conduct a new hearing after notice to the parties is given.

[¶ 22] Pursuant to Wyoming Statutes section 16-3-114 (2023) 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 16 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 16 day of **April 2024**, I served the foregoing **DECISION and ORDER** by placing a true copy thereof in the United States Mail, postage prepaid, addressed to:

Susan Frankewich, Trustee  
S & B Irrevocable Trust  
6275 Aspen Drive  
Jackson, WY 83001

Melissa Shinkle  
Teton County Assessor  
P.O. Box 583  
Teton, WY 83001

Keith Gingery  
Teton County Attorney  
PO Box 4068  
Teton, WY 83001



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  
Kenneth Guille, Property Tax Div., Dep't of Revenue  
Commissioners/Treasurer/Clerk/Assessor – Teton County