BEFORE THE STATE BOARD OF EQUALIZATION

FOR THE STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF	)	
CROOK COUNTY ASSESSOR	)	**Docket No. 2023-46**
FROM A DECISION BY THE CROOK	)	
COUNTY BOARD OF EQUALIZATION	)	

AMENDED DECISION AND ORDER

APPEARANCES

Crook County Attorney Joseph M. Baron appeared on behalf of Crook County Assessor Daniel Thomas.

Taxpayers Bret Assmus and Melissa Assmus appeared pro se.

SUMMARY

[¶ 1] Assessor appeals from the Crook County Board of Equalization's decision reversing Assessor's 2023 assessment of residential real property belonging to Bret and Melissa Assmus (collectively Assmus). The County Board found that Assessor erred by including Assmus's property in "an overly-simplistic LEA [Land Economic Area[1]] definition" and by using inappropriate comparable sales in his analysis. The County Board also determined that Assmus presented evidence sufficient to show that Assessor violated "applicable statutes, rules, and regulations when valuing the Taxpayer's property for 2023." The County Board ordered Assessor to re-value Assmus's property in a different LEA and using different comparable sales. The Wyoming State Board of Equalization, Chairman Martin L. Hardsocg, Vice-Chairman David L. Delicath, and Board Member E. Jayne Mockler, have decided this appeal based on the County Board record, the parties' written submissions, and an oral argument held on April 5, 2024. Because the County Board exceeded its authority, we reverse its decision.

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[1] A Land Economic Area is "[a] geographic area that may encompass a group of neighborhoods, defined on the basis that the lands within its boundaries are more or less equally subject to a set of one or more economic forces that largely determine the value of the lands within this area." Rules, Wyo. Dep't of Revenue, ch. 9, § 4(xix) (2016).

ISSUES

[¶ 2] Assessor articulated two issues in his brief:

> A. Whether the County Board of Equalization action entering an Order to remand the matter to the Assessor to reevaluate and recalculate the Taxpayer's assessments by correcting the comparable sales and broadly defined LEA used in the formula was:
>
> (a) Arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law;
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> (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.
>
> B. Whether the County Board of Equalization action entering an Order finding the Taxpayer presented sufficient evidence overcoming the presumption that the Assessor complied with all applicable statutes, rules, and regulations when valuing the Taxpayer's property for 2023 was:
>
> (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.

(Assessor's Br. 2-3).

[¶ 3] Assmus identified these issues:

> A) If the CBOE is not allowed to provide input towards holding County officials honest in carrying out their jobs and assuring the citizens of the county are treated fairly, then who is? Is this not the very reason the CBOE was established?
>
> B) We encourage you to closely examine the evidence provided in this case and consider the processes and flexibilities provided in the assessment process. It was made VERY clear by substantial evidence in the case how several of the properties are remarkably dissimilar to the reference property;

supporting land valuations that FAR exceed the reference property resulting in excessive taxation for the reference property. A secondary impact of these higher priced properties being included in the same LEA, is that doing so suppresses the land valuations of those premium properties (is this fair and equitable?). It would seem buyers who would/could pay excessive prices in one section of the LEA as compare to the other sections are being rewarded; while buyers in the other sections of the LEA are being punished.

C) In the case presented to and decided by the CBOE the judgement was there were several properties not reasonably comparable to the referenced property. These properties were not in a comparable range of market value; and as such should be removed from the LEA and placed into a more comparable LEA. The appeal process is to give property owners a pathway for defending themselves against unjust county actions and the CBOE role is to not only ensure the counties rules are followed, but also assure the residents of the county are treated fairly and equitably. There was very clear evidence how the influence of incomparable properties resulted in inaccurate market valuation and unfair and inequitable taxation for the referenced property. Indeed, a core principle of the assessor's job is to insure not only that state approved laws and processes are followed, but also that following those processes and laws results in fair and equitable taxation of all properties in the county.

D) The County Assessor has flexibility completely within his authority and within the state approved rules and process to mitigate those differences. As documented in state law the job of the assessor is fair and equal valuation and taxation. Assessors have the flexibility to group like properties in a manner which results in fair and equitable valuations in a manner that approximates market values for all grouped properties. In fact, as stated in this case the County Assessor testified, he had the flexibility to assign the LEA for a property not only based on physical properties – like acreage with hills & trees – but also to consider other unique attributes in doing so – such as access to forest service land, a view of Devil's Tower, etc. it is precisely this action that is directed by the CBOE decision.

E) The County Assessor stated several times how taxes county wide had "increased double digits over the past 3 years"; however, 10% is vastly different from 86% - 99%. Therefore, "double digits" is simply an erroneous statement/illustration. Furthermore, "double digits" was obviously not an element used by the County Assessor to select "comparable properties;" as several listed were single digit acreage sizes versus the majority of the LEA

being larger in size. As you review the provided evidence, you will see how not only did the evidence and discussion indicate the premium and higher priced properties in the set of comparable properties used by the Assessor have an undue and unfair tax valuation calculation, BUT also provides clear evidence how the properties which are substantially smaller (<10 acres) also had an undue influence in the land valuation calculation for the reference property. It is common knowledge how the $/acre for a 5-acre parcel is not a reasonable factor in calculating $/acre for larger parcels – yet the land value calculations used by the County Assessor did just that. The discussions in the case covered this inequality as well though it was not explicitly referenced in the CBOE decision.

(Assmus Br. 1-3).

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 this 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 2, 2023. (R. 252). Assessor filed his appeal on November 1, 2023. (Notice of Appeal). Accordingly, the appeal is timely and we have jurisdiction.

PROCEEDINGS AND EVIDENCE PRESENTED TO THE COUNTY BOARD

[¶ 5] Assmus owns two vacant properties in Crook County. In 2023, Assessor valued Assmus's combined properties at $515,391. [R. 4, 11]. After a discussion with Assmus, Assessor reduced the value of one of the properties, which reduced the total valuation to $479,024. [R. 76]. Assmus timely appealed those valuations to the Crook County Board of Equalization. [R. 1-14].

[¶ 6] Both parties offered exhibits at the hearing, and they were all admitted. [R. 159]. Mr. Assmus was the only witness on behalf of Assmus, and Assessor's only witness was himself. Assessor testified that he assigned Assmus's property to LEA 1870 based on its topography and vegetation. [R.187-88, 193].

[¶ 7] Assmus contended that Assessor grouped Assmus's property into an LEA with properties that are physically different and more valuable. The County Board agreed with Assmus, finding:

> Three comparable sales located North of Hulett identified as parcel #R0014158, parcel #R0014118, and parcel #R0014120 should not have been used based on their distinguishing features making them higher valued properties. * * * The overly-broad and simplistic definition of "residential lots with hills and trees" used for LEA 1870 did not account for the complex features and characteristics that distinguished these comparable sales from the subject tract.

[R. 150]. The County Board also determined that Assmus "presented sufficient evidence overcoming the presumption that the Assessor complied with all applicable statutes, rules, and regulations[.]" *Id.* Based on those findings, the County Board ordered Assessor to "reevaluate and recalculate the assessment by correcting the comparable sales and broadly defined LEA used in the formula." *Id.*

[¶ 8] Assessor timely appealed to this Board. [Notice of Appeal].

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 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 (b) will be the dispositive provision in this appeal.

B. The County Board exceeded its authority in ordering Assessor to re-arrange LEA's.

[¶ 10] The County Board reasoned that:

> The Assessor used comparable sales that resulted in an incorrect valuation of the Assmus property. At a minimum, three of the comparable sales had features and characteristics that are not present on the Assmus property, and ultimately skewed the formula resulting in an excessive increase in the fair value of the property. These comparable sales varied significantly from the subject tract, and were included in an overly-simplistic LEA definition that did not consider property features like location, access, and surrounding amenities or property features among other value-adding characteristics.

[R. 150].

[¶ 11] Assessor contends, correctly, that we should reverse because the County Board exceeded its authority. He looks to one of our opinions for support:

> Wyoming Statutes section 39-13-102(d) (2021) provides that "the county board of equalization has no power to and shall not set tax policy nor engage in any administrative duties concerning assessments which are delegated to the board, the department or the county assessor." A decade ago, this Board decided an appeal in which taxpayers contended that "the LEA the Assessor utilized was incorrect and should be changed to similar properties as theirs located only on tributaries or as a specific radius from their property." *In re Fremont Cty. Assessor*, 2011 WL 7910749, *12, Docket No. 2010-126, ¶ 59 (Wyo. State Bd. of Equalization, Sept. 9, 2011). Based on Subsection 39-13-102(d), we held that "[i]nstructions to re-stratify the LEA, or use other comparable properties for sales comparison would be inappropriate." *Id.* at *14, ¶ 72. Accordingly, we find that the County Board lacked authority to re-arrange LEA's[.]

In re Kleiner, 2021 WL 5570259, *6, Docket Nos. 2021-77 & 2021-78, ¶ 24 (Wyo. State Bd. of Equalization, Nov. 22, 2021).

[¶ 12] The County Board exceeded its authority, and in doing so it ran afoul of at least two of this Board's prior opinions: *Fremont Cty. Assessor* and *Kleiner*.

C. We need not determine whether the County Board erred in concluding that Assmus presented sufficient evidence to overcome the presumption that Assessor complied with all applicable statutes, rules, and regulations.

[¶ 13] The County Board concluded that "The Assmus's [sic] presented sufficient evidence overcoming the presumption that the Assessor complied with all applicable statutes, rules, and regulations when valuing their property for 2023." [R. 150]. The County Board did not, however, explain which "statutes, rules, and regulations" Assessor failed to comply with, or what evidence demonstrated such noncompliance. Our resolution of the first issue makes it unnecessary for us to decide this one, but we take this opportunity to remind all county boards of equalization that their appellate decisions should include information and detail sufficient to allow us to understand and review their reasoning.

CONCLUSION

[¶ 14] The County Board's decision is in excess of its statutory jurisdiction, authority, or limitations, and thus runs afoul of our rules. [*supra*, ¶ 9].

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ORDER

[¶ 15] **IT IS, THEREFORE, ORDERED** that the decision of the Crook County Board of Equalization is **REVERSED AND REMANDED FOR A DECISION AFFIRMING ASSESSOR'S 2023 AMENDED VALUATION OF ASSMUS'S PROPERTY.**

[¶ 16] **Pursuant to Wyoming Statutes section 16-3-114 (2021) 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 11 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 11 day of **April 2024** 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:

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