

BEFORE THE STATE BOARD OF EQUALIZATION
FOR THE STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF)	
H. KENNETH JOHNSTON II)	Docket No. 2024-14
FROM A DECISION BY THE LARAMIE)	
COUNTY BOARD OF EQUALIZATION)	

DECISION AND ORDER

APPEARANCES

Taxpayer H. Kenneth Johnston II appeared pro se.

Laramie County Attorney Mark Voss and Deputy County Attorney Monique Meese appeared on behalf of Laramie County Assessor Todd Ernst.

DIGEST

[¶ 1] Taxpayer H. Kenneth Johnston II appeals from the Laramie County Board of Equalization's decision affirming Laramie County Assessor Todd Ernst's 2023 assessment of Mr. Johnston's residential property. The County Board found that Johnston didn't meet his burden of showing reversible error in Assessor's valuation. The County Board also found that Assessor's exhibits were admissible even though Mr. Johnston received them 27 days before the hearing, rather than the 30 days Mr. Johnston believes were required.

[¶ 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. We will affirm the County Board's decision because Mr. Johnston did not demonstrate reversible error; because the Assessor timely provided his exhibits to Mr. Johnston; and because Mr. Johnston wasn't prejudiced by the admission of the exhibits since he didn't have a case with or without them.

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).

JURISDICTION

[¶ 5] 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 June 18, 2024. (Decision attached to Notice of Appeal). Mr. Johnston appealed that decision six days later. (Notice of Appeal). Therefore, the appeal is timely and this Board has jurisdiction.

PROCEEDINGS AND EVIDENCE BEFORE THE COUNTY BOARD

[¶ 6] 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. 29). Assessor then issued an Amended Notice of Appraisal on May 9, 2023. (R. 122). Two weeks later, Assessor realized that he had been mistaken about the type of siding on Mr. Johnston's house. (R. 30-31). 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.

[¶ 7] The Laramie County Board of Equalization set a hearing for June 26, 2023. (R. 2). On May 26, 2023, 31 days before the hearing, Assessor sent his exhibits to Mr. Johnston by certified mail. (R. 22). Mr. Johnston received those exhibits on May 30. *Id.* 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. 21). The Hearing Officer nonetheless admitted Assessor's exhibits, finding that the exhibits had been provided on the day they were mailed. (R. 22).

[¶ 8] 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). 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 subsequently amended that valuation twice. (R. 24-45).

[¶ 9] 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 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. 198). Mr. Johnston appealed that decision to this Board. (R. 219-20). Instead of issuing a decision on the merits of the appeal, we remanded and ordered the County Board to determine whether Mr. Johnston’s failure to appeal from the second amended assessment was excused. *In re Johnston*, 2024 WL 1843212, *4, Docket No. 2023-40, ¶ 15, (Wyo. State Bd. of Equalization, April 23, 2024).

[¶ 10] The County Board determined that Mr. Johnston’s failure to appeal from the second amended assessment was excused, and further determined that its original decision upholding the second amended assessment was still correct. (R. 254-56). Mr. Johnston appealed that decision to us. We notified the parties that we would base our decision on their briefs and arguments in the original proceeding unless a party indicated intent to submit new briefing. (July 16, 2024 Procedural Order). Neither party so indicated, so we will rely on the briefs and oral argument from Docket No. 2023-40.

CONCLUSIONS OF LAW

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

[¶ 11] 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) (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) (2021).

[¶ 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 Cnty. 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 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.* “A mere difference of opinion as to value” is not sufficient to overcome the presumption. *Britt*, at ¶ 34, 126 P.3d at 127.

B. The County Board did not commit reversible error in admitting Assessor’s exhibits.

[¶ 13] Wyoming Statutes section 39-13-109(b)(i) (2023) provides in relevant part that, “[t]he county assessor ... shall disclose witnesses and exchange information, evidence and

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).

documents relevant to the appeal ... no later than thirty (30) days prior to the scheduled county board of equalization hearing.” The statute does not spell out any consequences for nondisclosure or untimely disclosure.

[¶ 14] Subsection (b)(i) also provides that county board hearings will be conducted in accordance with this Board’s rules. Our rules governing County Board proceedings require that:

(a) At least 30 days before the scheduled hearing, the petitioner and assessor, or their respective attorney or agent, shall disclose witnesses and exchange information, evidence, and documents relevant to the appeal[.]

(b) Failure to disclose witnesses or to exchange information, evidence or documents may result in exclusion of the undisclosed testimony, evidence or documents at the hearing at the discretion of the county board or hearing officer.

Rules, Wyo. State Bd. of Equalization, ch. 7, § 8 (2021). Thus, Assessor should have provided his exhibits to Mr. Johnston by May 27, 2023 (30 days before the June 26, 2023 hearing). Assessor mailed those exhibits to Mr. Johnston, by certified mail, on May 26, 2023, and Mr. Johnston received them on May 30. (R. 22).

[¶ 15] At the County Board hearing, Mr. Johnston objected to admission of Assessor’s exhibits on the basis that Assessor had not timely provided those exhibits to him. (R. 22). Assessor contended that the exhibits were timely provided under the mailbox rule. (R. 21). Mr. Johnston countered (without authority) that the mailbox rule doesn’t apply to certified mail. *Id.* The Hearing Officer overruled that objection, stating that, “[p]lacing in the mail is provision of the information[.]” (R. 22). On appeal, Mr. Johnston contends that the mailbox rule applies to “normal First Class Mail,” but not to certified mail. (Johnston Br. 1). He has not supported that contention with any authority, nor have we found any on our own.

[¶ 16] We will uphold the Hearing Officer’s admission of Assessor’s exhibits. Our rule provides that failure to exchange documents “*may result* in exclusion of the undisclosed ... documents at the hearing at the discretion of the ... hearing officer.” (Supra, ¶) (emphasis added). Use of the word “may” means that exclusion is permissive, not mandatory. *See Saunders v. Saunders*, 2019 WY 82, ¶ 16, 445 P.3d 991, 997 (Wyo. 2019) (“[T]he term ‘may’ is generally permissive.”). Thus, even if the Hearing Officer had found that Assessor violated our rule, that violation would not have *required* him to exclude those documents.

[¶ 17] We believe the Hearing Officer’s decision to admit Assessor’s exhibits was reasonable, in part because Mr. Johnston has not demonstrated, or even contended, that he was prejudiced by the allegedly untimely provision of those exhibits. First, Mr. Johnston received the documents well in advance of the hearing and thus had ample time to consider them and prepare to respond to them. More importantly, as the County Board found:

The Protestant 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 Protestant's receipt of the Assessor's evidentiary material irrelevant and inconsequential because, even without the Assessor's evidentiary documentation, the Protestant did not meet his burden of proof.

(R. 216). In other words, Mr. Johnston's case wasn't sufficient to overcome the mandatory presumption of correctness, even if Assessor had presented no evidence. Thus, the County Board's receipt of Assessor's evidence didn't influence the outcome. Accordingly, Mr. Johnston has not shown reversible error in the admission of Assessor's exhibits.

C. The County Board did not err in determining that Mr. Johnston failed to prove that Assessor's valuation was arbitrary, capricious, or an abuse of discretion.

[¶ 18] Mr. Johnston testified that, in his opinion, his property was valued higher than comparable properties in the same area. He didn't prove, or even suggest, that Assessor violated any statute, violated any rule, or performed any calculation incorrectly. Mr. Johnston couldn't prevail before the County Board without showing that Assessor erred, and a Market Evaluation Report disagreeing with Assessor's valuation is not sufficient. See e.g. *In re Fremont Cnty. Assessor*, 2004 WL 225016, *6, Docket No. 2003-110 (Wyo. State Bd. of Equalization, Jan. 23, 2004). This is a paradigmatic difference of opinion that doesn't overcome the presumption favoring Assessor's valuation. (*Supra*, ¶ 12).

CONCLUSION

[¶ 19] The County Board did not err either in admitting Assessor's exhibits or in finding that Mr. Johnston did not carry his burden of proof. Accordingly, we will affirm the County Board's decision.

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ORDER


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

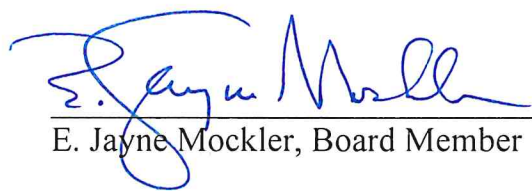
[¶ 21] Pursuant to Wyoming Statutes section 16-3-114 (2023) and Rule 12, Wyoming Rules of Appellate Procedure, any taxpayer aggrieved or adversely affected in fact by this decision may seek judicial review in the appropriate district court by filing a petition for review within 30 days after the date of this decision.

DATED this 23 day of August 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 August 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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