

BEFORE THE STATE BOARD OF EQUALIZATION

FOR THE STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF )  
JAN CHARLES GRAY )  
FROM A DECISION BY THE CONVERSE ) Docket No. 2017-63  
COUNTY BOARD OF EQUALIZATION )  
(2017 Property Tax Assessment) )

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DECISION AND ORDER

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**APPEARANCES**

Petitioner Jan Charles Gray appeared on his own behalf.

Quentin Richardson, Converse County and Prosecuting Attorney, appeared on behalf of Dixie Huxtable, Converse County Assessor.

**DIGEST**

Jan Charles Gray appealed the Converse County Assessor's 2017 assessments of multiple real estate parcels that he owns. The Converse County Board of Equalization held a hearing on the appealed assessments. Mr. Gray represented himself at the hearing and testified on his own behalf. He also called a real estate professional as a witness, who testified that Wyoming real estate values have declined as a result of the reduction in oil prices. Assessor also testified. The County Board affirmed Assessor's assessments, and Mr. Gray has appealed to the Wyoming State Board of Equalization.

The State Board, Chairman Martin L. Hardsocg, Vice-Chairman David Delicath, and Board Member E. Jayne Mockler, reviewed the parties' briefs and the record to determine whether the County Board decision was arbitrary, capricious, an abuse of discretion, unsupported by substantial evidence, and/or contrary to law. Rules, Wyo. State Bd. of Equalization, ch. 3 § 9 (2006). Finding no errors, the State Board affirms the County Board decision.

**ISSUES**

Mr. Gray alleges numerous errors and asks us to remand the case to the County Board for another hearing. He contends the County Board's decision 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;
- d. Unsupported by substantial evidence.

(Notice of Appeal, 2). As “examples” of the County Board’s errors, Mr. Gray alleges:

- The County Board’s decision did not include critical testimony from Assessor;
- Assessor did not account for the reduction in real estate values caused by the drop in oil prices;
- Assessor did not satisfy the statutory requirement to individually review each of Mr. Gray’s 117 lots;
- The County Board’s decision did not reflect the testimony of Paul Richardson;
- A lack of information regarding “comparables” used by the County Assessor to establish values;
- The County Assessor’s use of an insufficient number of “comparables” to establish value;
- The County Board refused to grant a continuance or allow Mr. Gray to testify by telephone at the hearing;
- County Assessor and County Board did not cooperate with Mr. Gray;
- A pattern of “below standard Assessment policies;”
- The County Board’s decision misstates the testimony and is slanted in favor of Assessor;
- County Assessor failed to provide Petitioner with “back-up” documentation for “comparables”;

- The County Board refused to allow an affidavit of the Petitioner into evidence and failed to consider testimony from the hearings on previous assessments of the same properties;
- A general lack of due process in the proceedings.

(Notice of Appeal, 2-5).

Assessor contends: “The Assessor’s approach to value was fair and appropriate, and the Petitioner failed to meet his Burden of Proof to show Otherwise.” (Assessor’s Br., 4).

## **JURISDICTION**

The State Board shall “review final decisions of the department upon application of any interested person adversely affected.” Wyo. Stat. Ann. § 39-11-102.1(c) (2015). A taxpayer may file an appeal with the State Board within 30 days of the County Board’s final decision. Rules, Wyo. State Bd. of Equalization, ch. 3 § 2(a) (2006). The County Board issued its final decision on September 22, 2017. (Non-paginated record). Mr. Gray filed his appeal 25 days later. (Notice of Appeal). Accordingly, the notice of appeal was timely and we have jurisdiction to decide this matter.

## **STANDARD OF REVIEW**

1. The State Board reviews county board decisions as an intermediate appellate body, treating 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 that a district court must apply in reviewing such decisions. *See* Wyo. Stat. Ann. § 16-3-114(c)(ii) (2015). 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) (2006).

2. Because our rules are patterned on the judicial review provisions of Wyoming Statutes section 16-3-114 (2017), judicial rulings interpreting that section offer guidance. *Chevron U.S.A., Inc. v. Dep't of Revenue*, 2007 WY 79, ¶ 9, 158 P.3d 131, 134 (Wyo. 2007).

3. In conjunction with the substantial evidence standard, we apply the “arbitrary and capricious” standard:

Even if sufficient evidence is found to support the agency’s decision under the substantial evidence test, this [Board] is also required to apply the arbitrary-and-capricious standard as a “safety net” to catch other agency action which might have violated the Wyoming Administrative Procedures Act. *Decker v. Wyoming Medical Comm’n*, 2005 WY 160, ¶ 24, 124 P.3d 686, 694 (Wyo. 2005). “Under the umbrella of arbitrary and capricious actions would fall potential mistakes such as inconsistent or incomplete findings of fact or any violation of due process.” *Id.* (quoting *Padilla v. State ex rel. Wyoming Workers’ Safety and Comp. Div.*, 2004 WY 10, ¶ 6, 84 P.3d 960, 962 (Wyo. 2004)).

*State, ex rel., Wyo. Workers’ Safety & Comp. Div. v. Madeley*, 2006 WY 63, ¶ 8, 134 P.3d 281, 284 (Wyo. 2006).

4. We review conclusions of law *de novo*.

Questions of law are reviewed *de novo*, and “ ‘[c]onclusions of law made by an administrative agency are affirmed only if they are in accord with the law. We do not afford any deference to the agency’s determination, and we will correct any error made by the agency in either interpreting or applying 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)).

5. We also review a county board’s ultimate findings of fact *de novo*.

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) (citations omitted).

6. “The party challenging the sufficiency of the evidence has the burden of showing the lack of substantial evidence to support the agency’s findings.” *Faber v. Dep't of Transp.*, 2009 WY 137, ¶ 5, 220 P.3d 236, 238 (Wyo. 2009).

7. If a taxpayer presents sufficient evidence to overcome the presumption in favor of an assessor’s valuation, *see supra* ¶ 26, the burden of going forward shifts to the assessor. *Britt v. Fremont Cty. Assessor*, 2006 WY 10, ¶ 23, 126 P.3d 117, 125 (Wyo. 2006) (citing *CIG v. Wyo. Dep't of Revenue*, 2001 WY 34, ¶ 10, 20 P.3d 528, 531 (Wyo. 2001)).

### **FACTS PRESENTED TO THE COUNTY BOARD**

8. Jan Charles Gray protested the 2017 assessment of his five commercial properties, 109 vacant residential lots, and one vacant commercial lot, all in Converse County. (Hr’g Recording).

9. The Converse County Board of Equalization held a hearing on the appealed assessments. (Hr’g Recording).

10. Mr. Gray represented himself at the hearing and began by moving for a continuance, which motion the County Board denied. (Hr’g Recording).

11. He further moved that the County Board allow him to submit affidavits from additional witnesses after the hearing. The County Board took that motion under advisement and later denied it. (Hr’g Recording).

12. Mr. Gray testified that real estate prices in Wyoming are depressed because the state is experiencing an economic downturn due to the low price of oil. (Hr’g Recording).

13. Mr. Gray also called Paul Richardson to testify. Mr. Richardson has worked in the real estate business in Wyoming since 2010 and has run his own brokerage for about two years. He testified that Wyoming real estate prices have decreased, with the greatest decrease occurring in high-end residential properties. He testified that the price of vacant land has also decreased. (Hr’g Recording).

14. On cross-examination, Mr. Richardson testified that he is not a real estate appraiser. (Hr’g Recording).

15. Assessor testified that she is a certified property tax appraiser. She testified that three appraisal methods are allowed by Wyoming statutes: the sales comparison approach,

the cost approach, and the income or capitalized earning approach. She testified that the sales comparison approach is preferred and that she used it to appraise Mr. Gray's properties. (Hr'g Recording).

16. Assessor further testified that she discounted some of Mr. Gray's properties by 35% to account for topographical features that reduced their value. (Hr'g Recording).

17. Assessor explained that each property in Converse County is assigned to a Land Economic Area (LEA) based on the characteristics of the property. She explained, LEA-by-LEA, how she valued Mr. Gray's properties and explained her choices and the reasons for those choices. (Hr'g Recording).

18. Assessor also testified that after she issued the 2017 assessments for all of Mr. Gray's properties, he sold four of his commercial properties for a total of \$300,000. Assessor had valued those four properties at a total of \$274,178 in 2017. (Hr'g Recording).

## CONCLUSIONS OF LAW

### A. Legal principles

19. The Wyoming Constitution requires that all property be uniformly valued for taxation and that the Legislature prescribe regulations to secure a just valuation for taxation of all property. Wyo. Const. art. 15, § 11.

20. Broken into its component parts, the Wyoming Constitution requires: (1) a rational method of valuation; (2) that is equally applied to all property; and (3) provides essential fairness. *Basin Elec. Power Coop.*, 970 P.2d at 852. It is the burden of the party challenging an assessment to prove by a preponderance of the evidence that at least one of these elements has not been fulfilled. *Id.*

21. All property must be valued annually at fair market value. Wyo. Stat. Ann. § 39-13-103(b)(ii) (2015). Fair market value is defined as:

[T]he amount in cash, or terms reasonably equivalent to cash, a well informed buyer is justified in paying for a property and a well informed seller is justified in accepting, assuming neither party to the transaction is acting under undue compulsion, and assuming the property has been offered in the open market for a reasonable time[.]

Wyo. Stat. Ann. § 39-11-101(a)(vi) (2015).

22. In annually valuing residential real property, a county assessor is required to "[f]aithfully and diligently follow and apply the orders, procedures and formulae of the

department of revenue or orders of the state board of equalization for the appraisal and assessment of all taxable property.” Wyo. Stat. Ann. § 18-3-204(a)(ix) (2015).

23. The Wyoming Department of Revenue (Department) is required to confer with, advise, and give necessary instructions and directions to the county assessors as to their duties, and to promulgate rules and regulations necessary for the enforcement of all tax measures. Wyo. Stat. Ann. § 39-11-103(c)(xvi), (xix) (2015). In particular, the Department “shall prescribe by rule and regulation the appraisal methods and systems for determining fair market value using generally accepted appraisal standards[.]” Wyo. Stat. Ann. § 39-13-103(b)(ii) (2015).

24. The Department by rule directs that “[a]ll methods used by the Assessor shall be consistent with the applicable IAAO and USPAP standards[.]” Rules, Wyo. Dep’t of Revenue, ch. 9 § 5 (2011).<sup>1</sup> The Department also has prescribed methods for valuing property. The acceptable methods include a sales comparison approach, a cost approach, and an income or capitalized earning approach, in conjunction with the computer assisted mass appraisal (CAMA) system. Rules, Wyo. Dep’t of Revenue, ch. 9 §§ 5, 7 (2011). Those rules also specifically provide for the use of a CAMA system. Rules, Wyo. Dep’t of Revenue, ch. 9 § 6(a)-(d) (2011).

25. A CAMA system “automates the comparable sales and replacement cost methods.” *Britt*, ¶ 39, 126 P.3d at 128. The Wyoming Supreme Court has recognized the validity of valuations derived from a CAMA system. *Id.*

26. “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*, ¶ 22, 126 P.3d at 125 (quoting *Amoco Prod. Co. v. Dep’t of Revenue*, 2004 WY 89, ¶ 7, 94 P.3d 430, 435 (Wyo. 2004)). A mere difference of opinion as to value is not sufficient to overcome the presumption. *J. Ray McDermott & Co. v. Hudson*, 370 P.2d 364, 370 (Wyo. 1962).

#### B. Review of the County Board’s Decision

27. This case calls on us to determine the multiple questions Mr. Gray presents, mostly with little development or explanation. As we noted in Mr. Gray’s last appeal, we would be justified in summarily affirming the County Board’s decision without considering any of his issues because he has not supported his claims with cogent argument or citation to

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<sup>1</sup> IAAO refers to the International Association of Assessing Officers, and USPAP refers to the Uniform Standard of Professional Appraisal Practice and Advisory Opinions published by the Appraisal Standard Board. Rules, Wyo. Dep’t of Revenue, ch. 9 § 4(a)(xxii.), (xlili.) (2011).

relevant authority. *In re Gray*, 2017 WL 5559382, Docket No. 2016-44, ¶ 33 (Wyo. State Bd. of Equalization, November 9, 2017) (citing *Fowles v. Fowles*, 2017 WY 112, ¶ 30, 402 P.3d 405, 413 (Wyo. 2017)) (Court will not consider issues that the appellant has not supported by proper citation or cogent authority). But, for the benefit of Mr. Gray, Assessor, the County Board, and the general public, we will, nonetheless, address what we perceive to be Mr. Gray's arguments. We admonish Mr. Gray that in future appeals we will not consider unsupported arguments.

28. Mr. Gray's enumerated issues are:

***“Critical lack of testimony not set forth in Summary of Decision and the relevance of this testimony.”*** (Notice of Appeal, 2).

29. Mr. Gray seems to be complaining that the County Board did not consider Assessor's testimony setting forth the assessment per square foot figures for 2013 through 2017. Because only the 2017 assessment is at issue here, the figures for earlier years are not relevant. The 2017 figure was relevant, but not really important to the decision. There is no evidence (or even a contention, really) that Assessor did anything contrary to statute or rule. Accordingly, we find no error.

***“The Oil price decline that occurred significantly reduced the Value of these lots. The price of Oil being reduced significantly in 2014, 2015, 2016 and 2017 clearly reduced the value of these lots.”*** (Notice of Appeal, 2).

30. Mr. Gray contends that Assessor's "inability" to take into account the alleged drop in real estate prices caused by the drop in oil prices shows the error of Assessor's valuations. Essentially, Mr. Gray requests that, notwithstanding applicable statutes and rules, we find that Assessor erred when he did not accept Mr. Gray's theory of the case.

31. Mr. Gray fails to recognize that the comparable sales method administered through Wyoming's computer-assisted mass appraisal system (CAMA) automatically accounts for lower real estate prices. In this case, the system's reflection of value trends trails Mr. Gray's anticipated and requested value decreases. To successfully challenge Assessor's valuation, however, it was Mr. Gray's burden to demonstrate how Assessor should have adjusted value to accurately reflect fair market value. He failed to do so before the County Board.

32. Mr. Gray also "asks that judicial notice be taken of the affect [sic] on employment and therefore the demand for the lots for housing." (Notice of Appeal, 2). We do not take judicial notice of facts in appeals because our review is limited to the record developed before the County Board. Rules, Wyo. State Bd. of Equalization, ch. 3 § 9 (2006).



***“The Assessor did not follow the statute in individually reviewing each of the 117 lots.”*** (Notice of Appeal, 3).

33. Mr. Gray complains that Assessor did not value each of his lots individually, and spent only 30-45 minutes driving past them in 2016. Although he does not specifically say so, we perceive Mr. Gray to contend that Assessor violated the Department of Revenue’s rule requiring assessors to “physically inspect all real properties within their jurisdiction at least once every six years in order to assure the property characteristic data are correct.” Rules, Wyo. Dept. of Revenue, ch. 9, § 3(c) (2016)

34. Assuming Mr. Gray’s complaint is accurate, he has not explained how this omission resulted in an inaccurate assessment. For example, evidence of Assessor’s failure to account for property changes or property characteristic misclassifications, when combined with this proven allegation, might have carried Mr. Gray’s burden before the County Board.

***“Mr. Richardson’s testimony as to Value.”*** (Notice of Appeal, 3).

35. Mr. Gray states: “Mr. Richardson, a Realtor in Casper, who had reviewed the market with many realtors, testified that the real value of the lots on Sunup ridge was 50% lower than the assessments. This testimony was critical. Further, a realtor in Glenrock, also confirmed the 50% figure, but would not testify due to pending matters with the Assessor, and not willing to raise the Assessor’s ire.” (Notice of Appeal, 3).

36. Mr. Richardson, who is not an appraiser, testified as to his opinion that the assessments should be lower. He did not, however, take issue with how Assessor applied the relevant rules and statutes: he just has a different opinion. That is the paradigm example of a “difference of opinion” that is not sufficient to overcome the presumption that Assessor correctly valued a property. *J. Ray McDermott*, 370 P.2d at 370.

37. The hearing officer refused to admit Mr. Gray’s hearsay opinion from an unidentified source who was unwilling to testify. Admittedly, the prohibition against hearsay is not strictly applied in administrative hearings. *Gray v. State ex rel. Wyo. Workers’ Safety & Comp. Div.*, 2008 WY 115, ¶ 18, 193 P.3d 246, 252 (Wyo. 2008). Nonetheless, admissibility is not unlimited. Rather, admission or exclusion of evidence is left to the sound discretion of the administrative agency, and an agency’s evidentiary decisions will not be overturned absent an abuse of that discretion. *Sinclair Oil Corp. v. Wyo. Public Serv. Comm’n*, 2003 WY 22, ¶ 41, 63 P.3d 887, 901 (Wyo. 2003).

38. We will find an abuse of discretion only when the agency decision “shocks the conscience” and “appears to be so unfair and inequitable that a reasonable person could not abide it.” *Id.* Refusing to admit a cumulative, hearsay statement from an unidentified

declarant does not shock this Board's conscience, and we, accordingly, find no abuse of the County Board's discretion.

***“The Assessor's ‘comparable’ sales were not available in detail and subject to Paul Richardson testimony about artificial assignment of land value.”*** (Notice of Appeal, 3).

39. Mr. Gray states:

Again, in both 2015, 2016 and 2017, the Assessor presented several, according to the testimony 11 “comparables.” Mr. Rude, a builder in the Casper/Glenrock area testified in 2016 that comparables where a house was built were subject to the artificial assignment of a land value by the builder or the developer. The Assessor did not know or would not divulge how many of these comparable were subject to that infirmity. It is therefore not clear if the minimum comparables were really comparables.

*Id.*

40. That contention finds no support in the record because it relies on Mr. Rude's testimony which was not presented to the County Board in its hearing on this appeal. In addition, nothing in the record shows that Mr. Gray tried to resolve this issue through the discovery process or that Assessor refused him access to any information.

***“The number of Comparables was not enough to establish value and the current value is not appropriate.”*** (Notice of Appeal, 3).

41. Mr. Gray cites no authority for that contention: no statute, no Department or Board rule, no IAAO standard, no court ruling. The record discloses no testimony or documentation supporting the assertion.

42. The sales comparison approach, which Assessor used here, is the preferred approach to value vacant land when there are an “adequate number” of sales. Rules, Wyo. Dep't of Revenue, ch. 9, § 5(b)(i) (2016). The Department rules do not specify what the phrase “adequate number” means, and do not set a minimum number of sales for application of the sales comparison approach. In Mr. Gray's last appeal, we found that no hard number is specified for this purpose. *In re Gray*, 2017 WL 5559382, Docket No. 2016-44, ¶ 37 (Wyo. State Bd. of Equalization, August 13, 2017).

43. Mr. Gray has not presented evidence sufficient to shift his burden of proof to Assessor. *Supra*, ¶ 7. He has not demonstrated an error in Assessor's use of the sales comparison method, or in her reliance on the available comparable sales in applying that method to assess the value of his vacant lots.

***“Denial of a Continuance and an inability to appear by Phone.”*** (Notice of Appeal, 3).

44. Mr. Gray next challenges the County Board’s refusal to grant a continuance and to allow him to testify telephonically. (Notice of Appeal, 4). As with his other issues, Mr. Gray has not identified which part of our standard of review he believes is applicable. We read this issue as an appeal to the abuse of discretion standard.

45. Mr. Gray moved for a continuance after the hearing started, which the County Board denied. (H’rg Recording). He did not, at any point, move for leave to appear by telephone.

46. The granting of a continuance is a matter of judicial discretion. *Dunsmore v. Dunsmore*, 2007 WY 202, ¶ 24, 173 P.3d 389, 393-94 (Wyo. 2007). Petitioner—a licensed attorney—knew of the hearing in advance and did not seek a continuance until after the hearing had begun. The record contains no prior indication that Mr. Gray wanted to appear by telephone or moved for permission to do so. Nothing about the County Board’s denial shocks the conscience or is in any way remarkable, and we find no abuse of discretion.

***“Lack of Previous Cooperation.”*** (Notice of Appeal, 4).

47. Here, Mr. Gray complains about delays in receiving the County Board’s decisions in 2015 and 2016. The litigation regarding the 2015 and 2016 assessments is completed and has no bearing on the present appeal. We lack jurisdiction to address claims stemming from those assessments.

***“Errors of the Assessor show the pattern of below standard Assessment policies.”*** (Notice of Appeal, 4).

48. Mr. Gray elaborates: “The errors in assessment made and admitted by the Assessor were extreme. The properties assessed had been closed for many years. Clearly, no one had monitored the properties for many, many years, a violation of state law. These admitted errors were repeated in the assessment of the lots in question. This was true in 2015, 2016 and 2017.”

49. The primary flaw in this contention is that Assessor did not admit any errors, and Mr. Gray has not explained what errors he thinks she admitted. The contention he labels as “clear” is not clear at all, and what happened in 2015 and 2016 isn’t relevant to this appeal.

***“Misstatement of the testimony, slanted in favor of Converse.”*** (Notice of Appeal, 4).

50. Here, Mr. Gray complains about the County Board’s decisions in 2015, 2016, and 2017. Only the latter is properly before us now. He first contends that the County Board’s decision does not mention “the Assessor’s denial that the decline in the price of Oil made no difference in the assessments.” *Id.* Assessor admitted that the decline in oil prices made

no difference in her assessments. (H'rg Recording). Regardless, Mr. Gray still has not alleged that Assessor did anything contrary to law. Instead, he essentially contends that the law is wrong. If Mr. Gray is dissatisfied with state statutes, his remedy lies with the legislature, not with this Board.

51. Mr. Gray next contends that the County Board's decision misstates his testimony and that of Mr. Richardson. *Id.* That claim is impossible to analyze because he does not tell us what parts of the decision are misstatements or what the actual testimony was.

***“Gray was not provided the proper back-up documentation of the Comparables.”*** (Notice of Appeal, 5).

52. Mr. Gray contends that before the hearing, and again at the hearing, he requested “back-up documentation to the comparables,” *id.*, and was given none. A list of comparable properties Assessor used to value Mr. Gray's residential properties was introduced at the hearing. (Cty. Assessor Ex. D).

53. Nothing in the record supports Mr. Gray's claim about requesting “back-up” documentation. No such request appears in the record, and Mr. Gray made no such assertion at the hearing, even though he examined Assessor concerning use of the comparable properties.

54. Assessor and Mr. Gray were required to “disclose witnesses and exchange information, evidence and documents relevant to the appeal” no later than 30 days before the scheduled County Board hearing. Wyo. Stat. Ann. § 39-13-109(b)(i) (2015). If Mr. Gray believed that Assessor had relevant evidence she did not disclose, he should have demanded disclosure under that statute. Responsibility for Mr. Gray's failure to do so is Mr. Gray's alone.

55. Mr. Gray was entitled to discovery and to review of statements of consideration of like properties pursuant to the Uniform County Board of Equalization Practice and Procedure Rules. Rules, Wyo. State Bd. of Equalization, ch. 7 § 22 (2015). He did not complain about a denial of discovery generally, or of this “back-up” documentation specifically, at the hearing. Thus, Mr. Gray did not allege this claim to the County Board and, consequently, did not properly preserve the issue for appeal.

56. Our review is limited to the record before us. Rules, Wyo. State Bd. of Equalization, ch. 3 § 9 (2006). Because Mr. Gray did not present this claim to the County Board or seek to supplement the record in support of this contention, we cannot address it. *In re Rasmussen*, 2003 WL 1901519, Docket No. 2002-93, ¶ 31 (Wyo. State Bd. of Equalization, March 11, 2003).

***“The inability to include testimony from the previous year and Gray affidavit.”*** (Notice of Appeal, 5).

57. Mr. Gray contends that “[t]here was a denial of the request to include an affidavit from Gray, and to include testimony from the previous years. This critical evidence should have been considered.” *Id.*

58. The phrase “an affidavit from Gray” can be read to mean an affidavit signed by Mr. Gray or an affidavit signed by someone else, which Mr. Gray sought to provide to the County Board.

59. We believe that Mr. Gray intends the latter meaning. First, he testified at the hearing, so an affidavit from him would be superfluous: anything he wanted to say in an affidavit, he could have said in his testimony. Second, Mr. Gray did not request leave to submit his own affidavit, he requested leave to submit affidavits from other potential witnesses.

60. The affidavits Mr. Gray sought to introduce did not yet exist, so he essentially sought leave to listen to Assessor’s testimony and to reserve an opportunity to tailor affidavits to refute her testimony without allowing the Assessor an opportunity to cross-examine. (H’rg Recording).

61. More than a month before the hearing, the County Board notified Mr. Gray that he was required to disclose his exhibits before the hearing. Also, Wyoming Statutes section 39-13-109(b)(i) (2015) required Mr. Gray to disclose “evidence and documents relevant to the appeal” to Assessor at least 30 days before the hearing.

62. Pre-hearing disclosure of evidence precludes trial-by-ambush. We cannot find that the County Board erred by enforcing the unambiguous requirements of state statute and rules toward that laudable goal.

63. In addition, Mr. Gray has not explained what information his proposed affidavit(s) would have included or how that information would have affected the outcome of the hearing. Absent such explanation, we cannot independently evaluate whether the proposed affidavits would have been admissible.

64. The County Board did not have the previous years’ testimony made part of the 2017 record for the simple reason that neither party asked it to. We cannot therefore find an abuse of discretion.

***“Improper Value for Property in Converse County.”*** (Notice of Appeal, 5).

65. Mr. Gray contends that “[f]or the reasons set forth above there was an improper value placed on the lots and Commercial Property in Glenrock, Wyoming, Converse

County.” *Id.* Mr. Gray’s statement is not so much an issue as a summary: it does not merit a separate discussion.

**“Action of the State Board of Equalization in 2015.”** (Notice of Appeal, 5).

66. No actions by this Board in 2015—or at any other time—are relevant to the 2017 assessment of Mr. Gray’s property. We see no reason to address this issue further. (*Supra* ¶ 47).

**“Lack of ‘Due Process’ in the protest Process.”** (Notice of Appeal at 5).

67. Mr. Gray’s exposition and argument on this issue consists of a single sentence, “For the reasons set forth above there was a lack of ‘due process’ in the protest process, and the decision of Converse.” (Notice of Appeal, at 5).

68. Reasonable notice and the opportunity for a fair hearing are the touchstones of procedural due process. *Dubbelde v. State, ex. rel., Dep’t of Transp.*, 2014 WY 63, ¶ 22, 324 P.3d 820, 825 (Wyo. 2014).

69. A party asserting a due process violation has the burden to demonstrate that a protected interest has been affected in an impermissible way. *Id.* In regard to hearings, “the strictures of due process require a fair hearing before a forum which is free from bias and prejudice.” *State Transp. Comm’n of Wyo. v. Ford*, 844 P.2d 496, 498 (Wyo.1992). A party alleging a lack of a fair hearing must prove impropriety on the part of the hearing body. *Id.* Mr. Gray has not satisfied those requirements.

## **CONCLUSION**

70. Mr. Grey’s contentions lack merit and are not supported by the evidence presented at the hearing. To the contrary, the evidence supports the County Board’s decision to affirm Assessor’s valuations.

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**ORDER**

**IT IS HEREBY ORDERED** that the Converse County Board of Equalization's decision affirming Assessor's 2017 assessment of Mr. Gray's property in Converse County, Wyoming, is **affirmed**.

DATED this 27<sup>th</sup> day of June, 2018.

**STATE BOARD OF EQUALIZATION**

  
\_\_\_\_\_  
Martin L. Hardsocg, Chairman

  
\_\_\_\_\_  
David L. Delicath, Vice-Chairman

  
\_\_\_\_\_  
E. Jayne Mockler, Board Member

ATTEST:

  
\_\_\_\_\_  
Nadia Broome, Executive Assistant

## CERTIFICATE OF SERVICE

I certify that on the 27<sup>th</sup> day June, 2018 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:

Jan Charles Gray  
218 No. Wolcott St.  
Casper, WY 82601


Quentin Richardson  
Converse County Attorney  
107 N. 5<sup>th</sup> St., Suite 140  
Douglas, WY 82633

Jan Charles Gray  
PO Box 446  
Custer, SD 57730

Dixie Huxtable  
Converse County Assessor  
119 S. Third  
P.O. Box 703  
Douglas, WY 82633

Jan Charles Gray  
2793 Creston Drive  
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And to Jan Charles Gray by email to: [jcg43210@gmail.com](mailto:jcg43210@gmail.com).

  
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Commissioners/Treasurer/Clerk - Converse County  
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ABA State and Local Tax Reporter  
State Library  
File