

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

IN THE MATTER OF THE APPEAL OF            )  
**H and A, LLC** FROM                                )  
A DECISION OF THE CROOK COUNTY        )     Docket No. **2006-106**  
BOARD OF EQUALIZATION - 2006        )  
PROPERTY VALUATION                        )

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**DECISION AND ORDER**

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**APPEARANCES**

Francis E. Stevens and Paul S. Phillips of Stevens, Edwards, Hallock & Carpenter, P.C., for H and A, L.L.C., a South Dakota limited liability company (H and A or Taxpayer).

Joseph M. Baron, Crook County and Prosecuting Attorney, for the Crook County Assessor (Assessor).

**DIGEST**

H and A appealed the Crook County Board of Equalization (County Board) decision affirming the Assessor's classification of two of Taxpayer's parcels of land as non-agricultural. The State Board of Equalization (State Board), comprised of Alan B. Minier, Chairman, Thomas R. Satterfield, Vice-Chairman, and Thomas D. Roberts, Board Member, considered the County Board hearing record, the County Board decision, and the parties' briefs. The State Board heard oral argument on January 16, 2007.

We evaluate Taxpayer's claims against our standard of review, which is whether the ruling of the County Board was arbitrary, capricious, unsupported by substantial evidence, and/or contrary to law. *Rules, Wyoming State Board of Equalization, Chapter 3, § 9.*

**PROCEEDINGS BEFORE THE COUNTY BOARD**

The County Board conducted a hearing on July 19, 2006, and subsequently entered an Order Denying Protest and Petition for the Classification of Land as Agricultural on September 5, 2006. The Order affirmed the Assessor's denial of agricultural classification for two parcels of Taxpayer's land.

## **JURISDICTION**

The State Board is required to "hear appeals from county boards of equalization." *Wyo. Stat. Ann. § 39-11-102.1(c)*. The Taxpayer filed a timely appeal of the County Board decision with the State Board. *Rules, Wyoming State Board of Equalization, Chapter 3, § 2*. The State Board has jurisdiction to decide this matter.

## **STANDARD OF REVIEW**

When the State Board hears appeals from a County Board, the State Board acts as an intermediate level of appellate review. *Laramie County Board of Equalization v. Wyoming State Board of Equalization*, 915 P.2d 1184, 1188 (Wyo. 1996); *Union Pacific Railroad*

*Company v. Wyoming State Board of Equalization*, 802 P.2d 856, 859 (Wyo. 1990). In its appellate capacity, the State Board treats the County Board as the finder of fact. *Id.* In contrast, the State Board acts as the finder of fact when it hears contested cases on appeal from final decisions of the Wyoming Department of Revenue (Department). *Wyo. Stat. Ann.*

*§ 39-11-102.1(c)*. This sharp distinction in roles is reflected in the State Board Rules governing the two different types of proceedings. *Compare Rules, Wyoming State Board of Equalization, Chapter 2 and Rules, Wyoming State Board of Equalization, Chapter 3*. Statutory language first adopted in 1995, when the State Board and the Department were reorganized into separate entities, does not express the distinction between the State Board's appellate and de novo capacities with the same clarity as our long-standing Rules. *1995 Wyo. Sess. Laws, Chapter 209, § 1; § 39-1-304(a), (currently Wyo. Stat. Ann. § 39-11-102.1(c))*.

By Rule, the State Board's standards for review of a County Board's decision are nearly identical to the Wyoming Administrative Procedure Act standards which a district court must apply to hold unlawful and set aside agency action, findings of fact, and conclusions of law. *Wyo. Stat. Ann. § 16-3-114(c)(ii)*. However, unlike a district court, the State Board will not rule on claims that a County Board has acted "[c]ontrary to constitutional right, power, privilege or immunity." *Wyo. Stat. Ann. § 16-3-114(c)(ii)(B)*. The State Board's review is limited to a determination of whether the County Board 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, Wyoming State Board of Equalization, Chapter 3, § 9.*

Since the State Board Rules are patterned on the judicial review provision of the Wyoming Administrative Procedure Act, we look to precedent under Wyo. Stat. Ann. § 16-3-114(c) for guidance. For example, we must apply this substantial evidence standard:

Our task is to examine the entire record to determine if substantial evidence exists to support the [County Board's] findings. We will not substitute our judgment for that of the [County Board] if [its] decision is supported by substantial evidence. Substantial evidence is relevant evidence which a reasonable mind might accept in support of the agency's conclusions.

*Romero v. Davy McKee Corp.*, 854 P.2d 59, 61 (Wyo. 1993).

We review the findings of ultimate fact of a county board of equalization 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 Co-op., Inc. v. Dep't of Revenue, State of Wyo.*, 970 P.2d 841, 850-51 (Wyo. 1998)(citations omitted).

*Britt v. Fremont County Assessor*, 2006 WY 10, ¶ 17, 126 P.3d 117, 123 (Wyo. 2006).

We must also apply this “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. Wyoming Workers’ Safety and Comp. Div. v. Madeley*, 2006 WY 63, ¶ 8, 134 P.3d 281, 284 (Wyo. 2006)

## **ISSUES**

Under the State Board’s standards of review, the Taxpayer must establish the County Board decision was unsupported by substantial evidence and/or the County Board’s decision affirming the Assessor’s decision to classify Taxpayer’s two properties as non-agricultural for 2006 tax purposes was arbitrary, capricious, or contrary to law. The Taxpayer identified the following issues for review:

- I. The . . . County Board . . . decision is arbitrary, capricious, an abuse of discretion and otherwise not in accordance with law.
  - A.The [County] Board . . . decision is based in substantial part on evidence and testimony gathered long after the date of assessment.
  - B.The [County] Board . . . decision is based in substantial part on evidence which was admitted over the Taxpayer’s objection as otherwise irrelevant.
  
- II. The . . . County Board . . . decision is in excess of statutory authority.
  - A.The [Department’s] Rules impermissibly conflict with Wyoming Statutes.
  - B.In such a circumstance, the Statutes control.
  
- III. The [County] Board . . . decision is not supported by substantial evidence in the record.
  - A.There is insufficient evidence in the record to support the [County] Board’s Conclusion that the land is in the midst of an “active transition” as contemplated by the [Department’s] Rules.
  - B.The [County] Board’s conclusion that the [Taxpayer] . . . did not demonstrate that the lessee derived annual gross

revenues of not less than one thousand dollars is unsupported by substantial evidence in the record.

C. The Board's contention that the [Taxpayer] . . . did not overcome the "presumption of correctness" accorded the Assessor is unsupported by substantial evidence in the record.

[*Opening Brief of Appellant*, pp. 4, 12, 14, 16, 17, 22].

We will examine Taxpayer's contentions within the framework of our standard of review and Wyo. Stat. Ann. § 39-13-103(b)(x) which sets out the requirements for agricultural classification.

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

1. H and A purchased 4,097.63 acres of land and buildings located in Crook County, Wyoming, from Broadaxe Cattle L.C. on March 29, 2005. [County Board Record, Exhibit 6, p. 203; Exhibit 7, pp. 204-205; Exhibit 8, pp. 206-208].
2. Hugh Estes was the managing partner of H and A, a South Dakota limited liability company. [County Board Record, Transcript p. 16].
3. Taxpayer filed an Affidavit for Agricultural Classification for Assessment Year 2005 with the Assessor on March 29, 2005. The affidavit stated Taxpayer's land was presently being used for the agricultural purpose of rearing, feeding, grazing or management of livestock. The land was not part of a platted subdivision and was not leased at the time the affidavit was submitted to the Assessor. The affidavit indicated 200 AUM's would be raised on the land. The number of acres requested for agricultural classification was not completed on the affidavit. [County Board Record, Exhibit 9, pp. 209-210; Transcript, pp. 37-38].
4. Taxpayer's real property was previously owned and operated by Broadax Cattle, L.C., and was classified as agricultural as of January 1, 2005, by the Assessor. [County Board Record, Exhibit 7, p. 53; Transcript, p. 64].
5. On September 7, 2005, Mr. Estes signed a Declaration of Covenants, Conditions and Restrictions on behalf of H and A. The document identified Taxpayer's parcels as the Sundance Canyon Ranch. The Covenants for the Sundance Canyon Ranch were filed with the Crook County Clerk on November 3, 2005. [County Board Record, Exhibit 10, pp. 211-220]. The Covenants were amended on November 9, 2005. The amendment was filed with the Crook County Clerk on November 10, 2005. [County Board Record, Exhibit 11, pp. 221-230; Transcript, p. 71].

6. The Covenants were adopted “in order to provide a general plan for the improvement and development of the Land.” [County Board Record, Exhibit 10, Article II, p. 212; Exhibit 11, Article II, p. 222]. The Covenants provided that “[e]ach tract shall be constructed upon, improved, used and occupied only for private residential purposes.” [County Board Record, Exhibit 10, Article IV, p. 212; Exhibit 11, Article IV, p. 222]. The Covenants also contemplated the creation of a service and improvement district. “All maintenance and repairs to the roadway easements located within the Sundance Canyon Ranch shall be the responsibility of the Tract Owners and paid by each Tract Owner as assessed by the Sundance Canyon Ranch Service and Improvement District.” [County Board Record, Exhibit 10 Article III, p. 212; Exhibit 11, Article III, p. 222].

7. Some time in 2005, H and A hired Arleth & Associates, land surveyors, from Deadwood, South Dakota, to survey and map the Sundance Canyon Ranch Tracts - Phase I with 66 foot access and utility easements. The Map of the Survey of Sundance Canyon Ranch access and utility easements was recorded by the Crook County Clerk on November 4, 2005. [County Board Record, Exhibit 12, pp. 231-233; Transcript, pp. 37, 75].

8. On November 9, 2005, Taxpayer sold 43.41 acres of the Sundance Canyon Ranch to William R. Buhler and Teri J. Buhler. The survey map for the Buhler property ties directly to the Map of Survey of the Sundance Canyon Ranch road and utility easements in the County Board Record. [County Board Record, Exhibit 12, pp. 231-233; Exhibit 13, pp. 234-236; Transcript, p. 76].

9. Taxpayer did not own cattle when the ranch was purchased on March 29, 2005, but Mr. Estes stated he planned to lease the land. The previous landowner told him 200 AUM’s was the capacity of the ranch. [County Board Record, Transcript, pp. 37-38].

10. In 2005, Mr. Estes had a verbal agreement with Monte Snook (Lessee) of Belle Fourche, South Dakota, to allow Mr. Snook to run 160 pairs of livestock on approximately 4,200 acres of Taxpayer’s land. The agreed upon monthly grazing fee for the cattle was \$10 per head in the winter and \$26 per cow/calf unit the rest of the time. [County Board Record, Transcript, pp. 23-24, 41, 52]. Taxpayer told the County Board it received \$26,988 for grazing and \$6,720 from haying in 2005. [County Board Record, Transcript, pp. 24-26]. The evidence presented to support this testimony, however, is not consistent with the testimony and does not lend itself to a calculation of the actual monthly use of the land by the Lessee during 2005. [County Board Record, Exhibit A, p. 367].

11. According to Mr. Estes, the verbal lease also included agreements concerning haying and hunting on Taxpayer’s property. The haying operation was to be hired out on a 50/50 split between the Lessee and the Taxpayer with the Lessee buying the Taxpayer’s share of the hay. [County Board Record, Exhibit A, p. 367; Transcript, pp. 50-51]. The hunting agreement called for Lessee to pay Taxpayer \$1,000 for each deer killed. In

2005, Lessee paid Taxpayer \$8,000 for hunting on the property. Since only seven deer were harvested, Taxpayer subtracted \$1,000 from amount due for the lease of Taxpayer's land. [County Board Record, Exhibit A, p. 367; Transcript, p. 44].

12. Mr. Snook did not have a long term lease for the property, only a verbal lease. However, Mr. Estes told him "you can keep running cattle here as long as I own the land." [County Board Record, Transcript, p. 53].

13. Susan Redding was the Crook County Assessor for over thirteen years, including 2006. She also was a tax appraiser certified by the Department. [County Board Record, Exhibit 1, p. 188; Exhibit 2, p. 189; Transcript, p. 59].

14. On May 16, 2006, the Assessor mailed the 2006 Assessment Schedules to all Crook County property owners, including H and A. Taxpayer received three separate schedules. The appeal of Schedule 2 was withdrawn by Taxpayer at the County Board hearing. Schedules 1 and 3 were appealed to the County Board. The following chart lists the three schedules, the prior market value, the current market value, the prior year's tax and an estimate of the current year's tax:

	Property Number	Description	Prior Market Value	Current Market Value	Prior Year's Tax	Current Year's Tax Est.
1.	4964-11-4-00-007	Vacant Land 2,876.59 Ac.	\$213,812	\$5,177,862	\$1,229	\$29,760
2.	4963-18-4-01-001	Res. Land, Res. & Bld. 5.68 Ac.	\$252,558	\$252,558	\$1,452	\$1,452
3.	4963-07-3-00-005	Vacant Land Res. & Bld. 1,215.36 Ac.	\$205,200	\$2,262,824	\$1,179	\$13,006

[County Board Record, Exhibit 2, pp. 190-191; Exhibit 3, pp. 192-193; Exhibit 4, pp. 194- 195; Transcript, p. 60].

15. Taxpayer had its attorney file a Statement of Protest to the Crook County Board of Equalization on May 15, 2006. The Statement requested the properties be assessed as agricultural. [County Board Record, Exhibit 5, pp. 196-202; Transcript, p. 61].

16. On March 29, 2005, the Assessor received an Affidavit for Agricultural Land Classification for Assessment year 2005 from the Taxpayer. The Assessor made a note on

the top of the application to classify the property as agricultural for 2006 based on the application and her conversation with the Mr. Estes on March 29, 2005. At that time, Mr. Estes indicated to the Assessor he wanted to set up his son in a ranching operation. [County Board Record, Exhibit 9, pp. 209-210; Transcript, p. 65].

17. The Assessor subsequently changed the classification of Taxpayer's land from agricultural to vacant land on February 21, 2006. [County Board Record, Transcript, p. 65]. An Affidavit for Agricultural Land Classification for Assessment Year 2006 was not filed. [County Board Record, Transcript, p. 66]. The Assessor explained residential and vacant land are assessed on market value and agricultural land is assessed based on the capability of the land to produce agricultural products. [County Board Record, Transcript, p. 69].

18. The Assessor looked at the status of what was going on in Crook County during the previous year for particular pieces of property, using information filed with the County Clerk's Office to make her determination on the classification of lands. [County Board Record, Transcript, p. 70].

19. The Assessor made her decision not to classify Taxpayer's land as agricultural after reviewing the Covenants, Conditions and Restrictions for the Sundance Canyon Ranch. The Assessor relied in part on Article III of the covenants which state: "Each tract shall be constructed upon, improved, used and occupied only for private residential purposes." The Assessor believed this provision indicated the property was not agricultural. [County Board Record, Exhibit 11, p. 222; Transcript, p. 71].

20. The Assessor pointed out that Section V of the Taxpayer's Covenants provided for an architectural committee and required building plans to be approval by a board of directors. The Covenant's requirements were consistent with the classification and definition of non-agricultural land found in Chapter 10, § 3(c)(iii) of the Department's Rules. [County Board Record, Exhibit 11, p. 223; Transcript, p. 72].

21. The Assessor found the Covenants for the Sundance Canyon Ranch were more restrictive than those of other improvement areas such as Vista West and the towns of Sundance, Hulett, Moorcroft and Pine Haven. [County Board Record, Transcript, p. 75].

22. The Assessor noted Taxpayer filed an access and utility easements map for the Sundance Canyon Ranch Tracts with the County Clerk on November 4, 2005, just prior to selling Tract 43 to William and Terri Buhler on November 9, 2005. [County Board Record, Exhibits 12, 13, 14; Transcript pp. 75-76].

23. The Assessor produced Exhibits 17 through 29, warranty deeds and mortgage release documents for several tracts within the Sundance Canyon Ranch which were sold to different individuals. While these sales occurred after January 1, 2006, and were

admitted over the objection of the Taxpayer, the Assessor relied on them in making her determination that Taxpayer's the land was being split up for sale and development. The transactions indicated to the Assessor the land was in active transition from agricultural use to residential use. [County Board Record, Exhibits 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, pp. 245-298; Transcript, pp. 79-80].

24. The Assessor referred to Exhibit 44, a map prepared by her office, showing Sundance Canyon Ranch tracts sold, including the parcel sold to the Buhlers in November, 2005. [County Board Record, Exhibit 44; Transcript, p. 85].

#### SUNDANCE CANYON RANCH

Exhibit Number	Tract Number	Buyer	Date of Sale
13	43	William & Terri Buhler	11/09/05
17	59	Derek & April Silbaugh	3/04/06
18 & 23	57	John D. & Judy A. McCormick	3/16/06
19	58	John D. & Judy A. McCormick Edward H. & Kimberly A. Peterson	3/16/06
24	56	John A. & Jeanne Ann Scott	3/28/06
26	66	Sharon Seneczko	3/28/06
29	73	Daniel & Kristine Dobbs	4/08/06

All Sundance Canyon Ranch sales occurred before April 8, 2006, a month before assessment schedules were sent to all Crook County Taxpayers on May 16, 2005. [County Board Record, Exhibit 13, pp. 233-236; Exhibit 17, pp. 245-249; Exhibit 18, pp. 250-254; Exhibit 19, pp. 255-259; Exhibit 23, pp. 269-275; Exhibit 24, pp. 276-280; Exhibit 26, pp. 284-288; Exhibit 29, pp. 295-298].

25. The Assessor produced a printout of the website of United Country Real Estate showing key features of the Sundance Canyon Ranch and the advantages of the Sundance and Black Hills area. The website printout also showed a starting price of \$2,500 per acre for tracts in Sundance Canyon Ranch. [County Board Record, Exhibit 45, pp. 317-318; Transcript, p. 86].

26. The Assessor also produced a colored brochure she received in March or April of 2006. The brochure shows a wealth of outdoor activities for the Sundance Canyon Ranch

including a map illustrating a potential 95 tracts of land for sale. [County Board Record, Exhibit 46, pp. 319-324; Transcript, pp. 34, 87].

27. The Assessor made her determination the land was not agricultural based on the lands being in active transition. One of the factors for her decision was the improvement district process. It served as supporting evidence that Taxpayers's land was in active transition from agricultural use to developmental use. The Taxpayer indicated he started the process of forming the Improvement and Service District to maintain the roads in the Sundance Canyon Ranch on the advice of his attorney. [County Board Record, Transcript, pp. 20, 35, 100].

28. We find the County Board's findings of fact to be consistent with the testimony and evidence presented at the County Board hearing and supported by substantial evidence in the County Board Record.

### **DISCUSSION OF ISSUES AND APPLICABLE LAW**

29. The Wyoming Constitution, article 15, § 11(b) provides in pertinent part: “[a]ll taxable property shall be valued at its full value as defined by the legislature except agricultural and grazing lands which shall be valued according to the capability of the land to produce agricultural products under normal conditions.”

30. The classification of land as agricultural requires fulfilment of four statutory requirements:

(x)The following shall apply to agricultural land:

(A) The department shall determine the taxable value of agricultural land and prescribe the form of the sworn statement to be used by the property owner to declare that the property meets the requirements of subparagraph (B) of this paragraph. In determining the taxable value for assessment purposes under this paragraph, the value of agricultural land shall be based on the current use of the land, and the capability of the land to produce agricultural products, including grazing and forage, based on average yields of lands of the same classification under normal conditions;

(B) Contiguous or noncontiguous parcels of land under one (1) operation owned or leased shall qualify for classification as agricultural land if the land meets **each** of the following qualifications:

(I) The land is presently being used and employed for an agricultural purpose;

(II) The land is not part of a platted subdivision;

(III) If the land is not leased land, the owner of the land has derived annual gross revenues of not less than five hundred dollars (\$500.00) from

the marketing of agricultural products, or **if the land is leased land the lessee has derived annual gross revenues of not less than one thousand dollars (\$1,000.00) from the marketing of agricultural products; and**

(IV) The land has been used or employed, consistent with the land's size, location and capability to produce as defined by department rules and the mapping and agricultural manual published by the department, **primarily in an agricultural operation**, or the land does not meet this requirement and the requirement of subdivision (III) of this subparagraph because the producer:

- (1) Experiences an intervening cause of production failure beyond its control;
- (2) Causes a marketing delay for economic advantage;
- (3) Participates in a bona fide conservation program, in which case proof by an affidavit showing qualification in a previous year shall suffice; or
- (4) Has planted a crop that will not yield an income in the tax year.

(C) If needed, the county assessor may require the producer to provide a sworn affidavit affirming that the land meets the requirements of this paragraph. When deemed necessary, the county assessor may further require supporting documentation.

*Wyo. Stat. Ann. § 39-13-103(b)(x)* (emphasis added).

31. The 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. § 39-11-102(c)(xvi) and (xix)*. In particular, except as provided by law for specific property, 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)*.

32. A county assessor has a corresponding duty to annually value property within the assessor’s county, and in doing so 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)*.

33. The Department Rules contain a definition of “agricultural land.”

(a) "Agricultural land" means contiguous or noncontiguous parcels of land presently being used and employed for the **primary purpose of providing gross revenue from agricultural or horticultural use** or any combination

thereof unless part of a platted subdivision. Agricultural land shall generally include land that is actively farmed, ranched or is used to raise timber for timber products to obtain a fair rate of return.

*Rules, Wyoming Department of Revenue, Chapter 10, § 3(a)* (emphasis added).

34. The Department Rules also contain a definition of “non-agricultural lands:”

(c) "Non-agricultural lands" shall include but not be limited to lands as described in the State of Wyoming market valuation of Residential, Commercial and Industrial Lands as published by the Department of Revenue, Ad Valorem Tax Division:

(i) Lands classified within neighborhood boundaries as residential, commercial, industrial or rural, whether vacant or improved;

(ii) **Lands in active transition from agricultural use to residential, commercial or industrial use, which includes creation or **division of a tract, parcel or other unit of land for the purpose of sale or development**** for such use.

(iii) Residential subdivision lands developed with either predetermined floor plans and elevations or custom buildings;

(iv) Farmsteads with lands occupied by buildings which constitute the homesite including one or more acres of land used in direct connection with the homesite;

\* \* \*

(x) Parcels of land forty (40) acres or less unless the landowner provides proof that such land should otherwise be classified as agricultural land.

(xi) Land zoned for purposes, which exclude agricultural uses.

*Rules, Wyoming Department of Revenue, Chapter 10, § 3(c)* (emphasis added).

35. The Department’s Rules define “primarily” as “chiefly or the first importance.” *Rules, Wyoming Department of Revenue, Chapter 10 § 3(d)*.

36. Administrative rules have the force and effect of law. *Wyo. Dep’t of Revenue v. Union Pacific Railroad Co.*, 2003 WY 54, ¶ 18, 67 P.3d 1176, 1184 (Wyo. 2003); *Painter v. Abels*, 998 P.2d 931, 939 (Wyo. 2000).

37. With regard to appeals of property tax matters, the Wyoming Supreme Court has stated:

The Department’s valuations for state-assessed property are presumed valid, accurate, and correct. This presumption can only be overcome by credible evidence to the contrary. In the

absence of evidence to the contrary, we presume that the officials charged with establishing value exercised honest judgement 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.

The petitioner has the initial burden to present sufficient credible evidence to overcome the presumption, and a mere difference of opinion as to value is not sufficient. If the petitioner successfully overcomes the presumption, then the Board is required to equally weigh the evidence of all parties and measure it against the appropriate burden of proof. Once the presumption is successfully overcome, the burden of going forward shifts to the DOR to defend its valuation. The petitioner, however, by challenging the valuation, bears the ultimate burden of persuasion to prove by a preponderance of the evidence that the valuation was not derived in accordance with the required constitutional and statutory requirements for valuing state-assessed property....

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*Colorado Interstate Gas Company v. Wyoming Department of Revenue*, 2001 WY 34, ¶¶ 9-11, 20 P.3d 528, ¶¶ 9-11 (Wyo. 2001) (citations omitted).

*Airtouch Communications, Inc. v. Dep't of Revenue*, 2003 WY 114, ¶ 12, 76 P.3d 342, 348 (Wyo. 2003).

*Thunder Basin Coal Co. v. Campbell County, Wyoming Assessor*, 2006 WY 44, ¶ 13, 132 P.3d 801, 806 (Wyo. 2006). This presumption applies equally to an assessor's valuation of locally assessed property. *Id.* at 806 n.1.

38. “The burden of proof is upon the party asserting an improper valuation.” *Amoco Prod. Co. v. Wyo. State Bd. of Equalization*, 899 P.2d 855, 858 (Wyo. 1995); *Teton Valley Ranch v. State Bd. of Equalization*, 735 P.2d 107, 113 (Wyo. 1987).

#### **A. Present Use for Agricultural Purpose**

39. The first statutory requirement to qualify for agricultural valuation is the present use and employment of the land for an agricultural purpose. *Wyo. Stat. Ann.* § 39-13-103(b)(x)(B)(I). “Agricultural purpose” is defined by statute:

"Agricultural purpose," as used in W.S. 39-13-103(b)(x), means the following land uses when conducted consistent with the land's capability to produce:

- (A) Cultivation of the soil for production of crops; or
- (B) Production of timber products or grasses for forage; or
- (C) Rearing, feeding, grazing or management of livestock.

*Wyo. Stat. Ann. § 39-13-101(a)(viii).*

40. The Taxpayer leases its land to Mr. Snook who grazes cattle and does some haying on a 50/50 basis with the Lessee purchasing Taxpayer's share of the hay. *Supra* ¶¶ 10, 11.

41. Cattle grazing and hay production are agricultural purposes as defined by Wyo. Stat. Ann. § 39-13-101(a)(viii) and meet the first requirement of Wyo. Stat. Ann. § 39-13-103(b)(x)(B)(I). *Supra* ¶ 30; [See County Board Record, *Order Denying Protest*, Conclusions of Law ¶ 12, p. 449].

## **B. Not Part of Platted Subdivision**

42. The second statutory requirement for agricultural classification is that the land "is not part of a platted subdivision." *Wyo. Stat. Ann. § 39-13-103(b)(x)(B)(II)*. The Department's Rules define "platted subdivision" as follows:

[“]Platted Subdivision” means for the purpose of Chapter 13 of Title 39, the creation of a lot, parcel, or other unit of land; or division of a lot, parcel, or other unit of land into one or more parts **that has received approval** from the governing body in whose jurisdiction the property resides at the time of creation and is recorded in the records of the county clerk.

*Rules, Wyoming Department of Revenue, Chapter 10, § 3(b)* (emphasis added).

43. The County Board concluded the Taxpayer's property was not part of a platted subdivision because the Taxpayer had divided its land into lots larger than 35 acres thus avoiding the statutory requirement for approval. *See Wyo. Stat. Ann. § 18-5-303(b)*; [County Board Record, *Order Denying Protest*, Conclusions of Law ¶ 13, p. 450]. While the evidence was equivocal as to whether Taxpayer divided its lands into lots prior to or at the time of each lot sale, the Taxpayer established that it met the requirement of Wyo. Stat. Ann. § 39-13-103(b)(x)(B)(II). *Supra* ¶ 30.

## **C. Minimum Annual Gross Revenues**

44. The third requirement to qualify for agricultural classification is that the owner establish the statutory minimum gross revenues were derived from agricultural use of the

property. Where the Taxpayer does not lease the land, the Taxpayer must derive annual gross revenues of not less than five hundred dollars. Where a landowner leases the land, the lessee must derive annual gross revenues of not less than one thousand dollars. *Wyo. Stat. Ann. § 39-13-103(b)(x)(B)(III)*; *supra* ¶ 30.

45. There is no dispute the Taxpayer derived revenue from the lease of its land. *Supra* ¶¶ 10, 11. This lease revenue, however, does not meet the \$500 statutory requirement. The statute clearly contemplates revenue required by *Wyo. Stat. Ann. § 39-13-103(b)(x)(B)(III)* attributed to the Taxpayer be derived from the property's agricultural use, not its lease.

46. In considering this statutory requirement, the County Board concluded the Taxpayer did "not provide proof of annual gross revenues of not less than five hundred dollars (\$500.00) from the marketing of agricultural products, for 2006." [County Board Record, *Order Denying Protest*, ¶ 18, p. 451]. From our review of the record we agree that no evidence was presented showing the gross revenue derived by the Taxpayer from the marketing of agricultural products.

47. To qualify for agricultural classification for leased land, the landowner is required to establish that the lessee derived annual gross revenue of not less than one thousand dollars (\$1,000) from the marketing of agricultural products. *Wyo. Stat. Ann. § 39-13-103(b)(x)(B)(III)*; *Rules, Wyoming Department of Revenue, Chapter 10 § 3(a)(ii)*. The issue is, therefore, what the Lessee earned from the marketing of agricultural products, not what the Lessee paid the Taxpayer for the use of the land.

48. The County Board acknowledged the Lessee produced copies of five checks written to H and A, L.L.C. totaling \$37,108, but concluded the payments were expenses of the Lessee related to the lease and not evidence that Lessee derived not less than \$1,000 from the marketing of agricultural products. [County Board Record, *Order Denying Protest*, Conclusions of Law ¶ 22, p. 454]. Taxpayer contends the County Board erred when it failed to infer from the Lessee's payments to the Taxpayer, and specifically the payment for the Taxpayer's one-half of the hay, that the Lessee derived at least the statutory minimum gross revenue from agricultural use. [*Opening Brief of Appellant*, p. 22].

49. While the evidence presented by the Taxpayer may have established a value for a portion of the hay produced, it does not necessarily follow that the Lessee sold any hay. In the absence of evidence of the sale by the Lessee of agricultural products produced on Taxpayer's land, the County Board's conclusion that Taxpayer failed to meet its burden of persuasion on this requirement is supported by the record and not in error.

**D. Use Consistent With Size, Location and Capability to Produce Primarily in an Agricultural Operation**

50. The Wyoming Constitution grants favorable treatment to agricultural and grazing lands by providing that they “. . . shall be valued according to the capability of the land to produce agricultural products under normal conditions” and requires the legislature to “. . . prescribe such regulations as shall secure a just valuation for taxation of all property, real and personal.” *Wyo. Const. art 15 § 11(b) & (d)*. In fulfilling that obligation, the legislature has provided that land qualifies for agricultural classification if it meets a fourth and related statutory test of being “used or employed, **consistent** with the land's size, location and capability to produce as defined by department rules and the mapping and agricultural manual published by the department, **primarily** in an agricultural operation . . .” *Wyo. Stat. Ann. § 39-13-103(b)(x)(B)(IV)* (emphasis added).

51. The pertinent definition of “consistent” is “in agreement or harmony; in accord; compatible.” *Webster’s New World College Dictionary*, 4th Edition (2002), p. 311. The fourth statutory test for agricultural classification requires use of the land in an actual agricultural operation, measured generally by the same constitutional standard providing favorable property tax treatment – the land's capability to produce.

52. The Department’s Rules define “primarily” as “chiefly or the first importance.” *Rules, Wyoming Department of Revenue, Chapter 10 § 3(d)*. This definition is consistent with the general definition of “primarily” which is “mainly; principally.” *Webster's New World College Dictionary*, 4th Edition (2002), p. 1140.

53. The Taxpayer has lodged a general objection to Chapter 10, § 3(c) of Department’s Rules defining non-agricultural lands. *Supra* ¶ 34. Taxpayer argues the rule improperly adds to or supplements the requirements for agricultural land classification found in *Wyo. Stat. Ann. § 39-13-103(b)(x)(B)*. [*Opening Brief of Appellant*, pp. 14-17].

54. Wyoming Statute Annotated §§ 39-11-102(b) and 39-13-103(b)(x) provide express authority for the Department to adopt rules related to the qualification of lands for agricultural classification and its valuation. *See Matter of Bessemer Mountain*, 856 P.2d 450, 453-454 (Wyo. 1993).

55. The State Board finds the rules adopted by the Department to be a valid exercise of the clear statutory rule making authority granted to the Department. The intent of the legislature was to deny agricultural classification to lands principally employed in other uses, such as residential or being held for future residential development, yet generating enough agricultural revenue to meet the minimum gross revenue standards of *Wyo. Stat. Ann. § 39-13-103(b)(x)(B)(III)*. The rules adopted by the Department reflect this intent.

56. The State Board has reviewed the statutes and Department’s Rules and conclude the rules and statutes compliment each other rather than conflict with each other. Administrative rules and regulations have the force and effect of the law and an

administrative agency must follow its own rules and regulations or face reversal of its action. *Painter v. Abels*, 998 P.2d 931, 938 (Wyo. 2000). The Assessor must adhere to these rules. *Wyo. Stat. Ann. § 18-3-204(a)(ix)*, *supra* ¶ 32.

57. At the County Board hearing the Assessor took the position that Taxpayer's land was "in transition" and therefore did not qualify for agricultural classification. *Supra* ¶ 27. The State Board has previously been reluctant to deny agricultural classification based on an assessor's general assertion that the lands in question are in transition. *E.g.*, *Matter of Arnola M. Davis*, Docket No. 2003-96, February 11, 2004, 2004 WL 364070 (Wyo. St. Bd. Eq.).

58. In this case, however, the County Board made numerous findings that the Taxpayer was not using its land primarily in an agricultural operation as required by Wyo. Stat. Ann. § 39-13-103(b)(x)(B)(IV). [County Board Record, *Order Denying Protest*, pp. 451-454]. The County Board, in its capacity as the finder of fact, summarized its finding that the Taxpayer was not using its lands primarily in an agricultural operation based on the following factors:

The provisions of the covenants.

Testimony from the general manager that the land is for sale.

The listing of 95 tracts of the land with a real estate agent priced as \$2,500 per acre.

The sale of a single lot in 2005 providing a return on investment greater than the return on investment from the agricultural operations.

The proposed creation of a service and improvement district.

The evidence of active changes in use of the land including the change of name, the adoption of covenants restricting use for "private residential purposes" and inconsistent with agricultural use; the planning for roads, the listing of tracts for sale for residential purposes. [See County Board Record, *Order Denying Protest*, Findings of Fact, ¶¶ 11-17].

[County Board Record, *Order Denying Protest*, pp. 451-454].

59. Taxpayer nonetheless contends it was only contemplating a non-agricultural use on January 1, 2006. [*Opening Brief of Appellant*, pp. 17-21]. The County Board found to the contrary based on the forgoing facts. [County Board Record, *Order Denying Protest*, ¶¶ 21, 22, p. 454]. The County Board's findings are supported by the record, and

constitute substantial evidence from which the County Board could properly conclude that Taxpayer's land was not being used primarily in an agricultural operation.

#### **E. Miscellaneous Issues**

60. In its brief, the Taxpayer renewed an objection made at the County Board hearing concerning the admission of evidence and exhibits obtained by the Assessor after the January 1, 2006, assessment date. [*Opening Brief of Appellant*, pp. 4-13]. The pertinent statute provides:

(B)All taxable property shall be annually listed, valued and assessed for taxation in the county in which located and in the name of the owner of the property on January 1;

*Wyo. Stat. Ann. § 39-13-103(b)(i)(B)*. This is the date for determination of property ownership and location for tax purposes. It does not preclude an assessor from adjusting the value of property.

61. An assessor is specifically charged with the responsibility of gathering information necessary to complete the assessment process **commencing** on January 1. *Wyo. Stat. Ann. § 39-13-103(b)(v)*. The statute allows the Assessor to make adjustments in the property value until the fourth Monday in April or as soon after as is practicable before the mailing of the assessment schedule to each taxpayer. *Wyo. Stat. Ann. § 39-13-103(b)(vii)*. In this case the Assessor changed the classification of the property before the assessment schedule was mailed to the Taxpayer on May 16, 2005.

62. While we agree with the Taxpayer's general proposition that contemplation of a change in use unaccompanied by action will not support a change in classification of land, we do not find that to be the case here. There is ample evidence in the record of active steps taken by the Taxpayer which support the County Board's conclusion that the Taxpayer was not using its land primarily in an agricultural operation as required by *Wyo. Stat. Ann. § 39-13-103(b)(x)(B)(IV)*.

63. When the Taxpayer claims its primary land use is in an agricultural operation on the assessment date, evidence of the use of the land by the Taxpayer after the assessment date is relevant to the County Board's effort to evaluate the credibility of the Taxpayer's position regarding its intention prior to the assessment date of January 1, 2006. In this case, there was substantial evidence from which the County Board could conclude, as it did, that the Taxpayer's claim regarding its primary land use in 2005 was not credible.

64. We commend the County Board on the completeness of its findings of fact and conclusions of law. They were more than adequate to permit review of the merits of the County Board's determination. The State Board finds and concludes the County Board

decision was supported by substantial evidence, was not arbitrary or capricious, and was not otherwise contrary to law.

**ORDER**

**IT IS THEREFORE HEREBY ORDERED** the decision of Crook County Board of Equalization affirming the Crook County Assessor's determination that Taxpayer's land should not be classified as agricultural is **affirmed**.

**Pursuant to Wyo. Stat. Ann. § 16-3-114 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 of the date of this decision.**

Dated this \_\_\_\_\_ day of April, 2007.

**STATE BOARD OF EQUALIZATION**

\_\_\_\_\_  
Alan B. Minier, Chairman

\_\_\_\_\_  
Thomas R. Satterfield, Vice Chairman

\_\_\_\_\_  
Thomas D. Roberts, Board Member

**ATTEST:**

\_\_\_\_\_  
Wendy J. Soto, Executive Secretary