

BEFORE THE STATE BOARD OF EQUALIZATION
FOR THE STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF)	
RICK AND MONICA SOLLARS FROM)	
A VALUATION DECISION OF THE)	Docket No. 2006-81
FREMONT COUNTY ASSESSOR)	
2005 PROPERTY VALUATION)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION AND ORDER

APPEARANCES

Rick and Monica Sollars (Petitioners or Taxpayers), appearing pro se.

James Whiting, Deputy Fremont County and Prosecuting Attorney, on behalf of Eileen Oakley, Fremont County Assessor (Respondent or Assessor).

STATEMENT OF THE CASE

This matter originally came before the State Board of Equalization (State Board) as an appeal by the Fremont County Assessor from a decision of the Fremont County Board of Equalization (County Board). The Assessor appealed the County Board decision directing her to re-assess the Taxpayers' property using an agricultural classification. The State Board, comprised of Alan B. Minier, Chairman, Thomas R. Satterfield, Vice-Chairman, and Thomas D. Roberts, Board Member, considered the hearing record and decision of the County Board. Neither party requested oral argument. The State Board entered a Decisions and Order dated July 13, 2006, remanding the Assessor's appeal to the County Board for further proceedings. *Fremont County Assessor*, Docket No. 2005-88 July 13, 2006, ___ WL ____ (Wyo. St. Bd. Eq.). In response, on August 24, 2006, the County Board requested, pursuant to Rules, Wyoming State Board of Equalization, Chapter 2, §36, that the original appeal by Taxpayers of the Assessor's denial of their request for agricultural status be certified to the State Board for its consideration as the finder of fact rather than as an intermediate level of appellate review. *Wyo. Stat. Ann.* §

39-11-102.1(c). Compare Rules, Wyoming State Board of Equalization, Chapter 2 and Rules, Wyoming State Board of Equalization, Chapter 3. 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). The State Board granted certification by order dated August 24, 2006. The appeal of the Taxpayers from the Assessor's agricultural status denial is thus before this Board the same as an initial appeal pursuant to Rules, Wyoming State Board of Equalization, Chapter 2.

The State Board has reviewed and carefully considered all the evidence presented at the County Board hearing, including a tape recording of the testimony. There was no issue of credibility of the witnesses with respect to the matters which dispose of this case, thus a repeat of their testimony to this Board is not necessary. We have also been provided, in the context of the Assessor's original appeal to this Board, sufficient briefing on the relevant issues, thus the receipt of further briefing is not required.

JURISDICTION

Within 30 days after the date or postmark date of an assessment schedule, whichever is later, objections to local assessments must be filed with the county assessor indicating why the assessment is incorrect. *Wyo. Stat. Ann. §39-13-109(b)(i)*. The Taxpayers' assessment schedule was dated April 25, 2005. The Assessor's denial of agricultural status was dated May 7, 2005. Taxpayers' protest was filed with the County Assessor on May 23, 2005. The Taxpayers' appeal is timely.

CONTENTIONS AND ISSUES

Taxpayers assert the County Assessor improperly denied agricultural valuation in 2005 for 19.7 acres of their property. We affirm the Assessor's denial of agricultural status.

FINDINGS OF FACT

1. Rick and Monica Sollars own and reside on 19.7 acres of land located at 2195 North 2nd Street in Fremont County, Wyoming. The land was previously known as Lot 2 of the O'Brien Subdivision in Fremont County, Wyoming. [Board Record, Exhibit 4, p. 14].
2. Eileen Oakley is the Fremont County Assessor. [Hearing Tape].

3. The Assessor, on April 25, 2005, sent the Taxpayers an Assessment Schedule listing the total market value of their property as \$400,200 for 2005. Of this total, \$136,200 was for the Taxpayers' land which is the value at issue in this proceeding. [Board Record, Exhibit 3, p. 14].

4. Rick and Monica Sollars applied for agricultural classification for their property on May 5, 2005. [Board Record, Exhibit 5, pp. 16-17].

5. On May 18, 2005, the Assessor denied their application for agricultural classification, stating the information furnished did not meet the definition for agricultural land as set forth in the Wyoming statutes and rules. The Assessor listed the following reasons for the denial:

Property has characteristics of a subdivision or is in transition for further development.

Primary purpose or use of the land is other than producing a marketable agricultural product, *i.e.* home site, cabin site, or dude ranch facilities.

Activities on the land, which appear agricultural in nature, do not by themselves qualify the land for agricultural assessment.

[Board Record, Exhibit 7, p. 19].

6. The denial letter also requested the Taxpayers submit any additional information which might affect the classification to the Assessor's office. The Taxpayers were advised that if they disagreed with the Assessor's decision they could file a protest with the County Board within 30 days of the assessment notice. [Board Record, Exhibit 7, p. 19].

7. Rick and Monica Sollars filed a Statement To Contest 2005 Property Tax Assessment on May 23, 2005. [Board Record, pp. 105-106].

8. Mr. Sollars stated he was seeking an agricultural classification for their property pursuant to Wyo. Stat. Ann. § 39-13-103. He asserted their land was being used for agricultural purposes in 2005, and like most ranches in the area, the property had a shop and a home. They raised feeder livestock for their own consumption and put up hay which they sold. [Board Record, Hearing Tape].

9. Mr. Sollars testified the land was not part of a platted subdivision, pointing out the vacation of the O'Brien Subdivision was approved by the county commissioners the

previous year. He stated the county planning rules and regulations allow for a vacation of subdivisions. [Board Record, Hearing Tape].

10. Mr. Sollars argued Wyo. Stat. Ann. § 18-5-301 gave the control and regulation of subdivision of land in unincorporated areas to the county commissioners. He contended that under this authority the county commissioners reviewed the petition for vacation and did vacate the O'Brien Subdivision. [Board Record, Exhibit 1, p. 12].

11. The Taxpayers furnished a copy of their Federal Income Tax Form 1040 Schedule F, Profit or Loss From Farming, showing a gross income of approximately \$2,830 for Tax Year 2004. From one cutting the area produced three tons of hay per acre. They fertilized the land and installed irrigation pipe for efficient water use. Mr. Sollars expressed his opinion that the land had been employed consistent with the land size, location and capability to produce. All of the properties in the area were generally smaller parcels. Mr. Sollars ventured a guess that most of the other parcels produced approximately the same amount as his land, but he did not have any information to show what the other parcels produced. [Board Record, Hearing Tape; Exhibit 6, p. 18].

12. Mr. Sollars took issue with Chapter 10 of the Department Rules. It was his opinion the rules were in conflict with the statutes in that there are no subjective standards as to whether or not the land has characteristics of a subdivision. He argued the rules can not exceed, nullify or change what the legislature passed as law. In his opinion, the legislature said the land was not part of a platted subdivision. It is either platted or it is not. He argued the statute does not address whether or not the land does or does not have characteristics of a subdivision. [Board Record, Hearing Tape].

13. The Taxpayers also took issue with the Assessor's statement that the primary purpose of their land was other than agricultural because of the restrictive covenants. Other than the homestead portion, the Taxpayers either lease the land for grazing or raise hay. [Board Record, Hearing Tape].

14. Mr. Sollars stated their property could not be subdivided further for two reasons. First, the current restrictive covenants precluded any subdivision of the land unless all of the other owners of the former O'Brien Subdivision lots consent. [Board Record, Hearing Tape; Exhibit 10, pp. 22-30]. Second, any additional subdivision of land would have to come before the county commissioners to have a plat approved. [Board Record, Hearing Tape].

15. Mr. Sollars testified there was a Home Owners Association. He stated the only function of the association was to hold title to the dirt road that serves the tracts in the area. The road was deeded to the Home Owners Association, which was left intact when

the subdivision was vacated. Each tract has an easement on the road. [Board Record, Hearing Tape]. No deed for the road was included in the evidence submitted.

16. The Taxpayers complained that other small acre parcels in the area were given agricultural status. Mr. Sollars stated that when the owners of the O'Brien Subdivision came before the county commissioners to vacate the subdivision they candidly stated the reason for vacation was to be classified as agricultural. The owners felt they were being discriminated against tax wise because they were in a platted subdivision, yet the Bird and Spriggs properties near the subdivision were smaller than any of the lots in the O'Brien Subdivision and were classified as agricultural. [Board Record, Hearing Tape; Exhibits 11, 12, pp. 30-31].

17. In closing, the Taxpayers argued the statute was mandatory: if they met the statutory requirements they qualified for agricultural status; there was no leeway. Their position was they met all the requirements of Wyo. Stat. Ann. § 39-13-103 to qualify for agricultural classification. [Board Record, Hearing Tape; Exhibit 8, p. 20].

18. Eileen Oakley testified she was the Fremont County Assessor and was certified as a property tax appraiser by the Department of Revenue (Department). [Board Record, Hearing Tape].

19. The Assessor presented a complete description of the Taxpayers' property. The market value of the property was not disputed, only its agricultural classification. [Board Record, Exhibit R, p. 100].

20. The Assessor testified that to qualify for agricultural assessment a property must meet the conditions of the statutes and rules which govern agricultural classification. The statutes outline those conditions, and Chapter 10 of the Department's Rules further define the conditions. [Board Record, Exhibit I, pp. 57-60].

21. The Assessor asserted that to meet agricultural classification there were four qualifications, all of which must be met. The initial qualification was that the land be used to produce forage. There were, however, other qualifiers. The Assessor must consider that certain activities which appear to be agricultural in nature do not, by themselves, qualify land for the agricultural classification. The Assessor must consider all requirements, not just the appearance of the land. [Board Record, Hearing Tape].

22. The Assessor must consider whether or not the land is part of a platted subdivision. The Assessor conceded the county commissioners had vacated the O'Brien Subdivision but believed the vacation contravened the intent of the statutes on subdivisions. [Board Record, Hearing Tape].

23. The Assessor testified the land under appeal had been divided into parcels for sale and development. [Board Record, Exhibit K, p. 62]. She stated the owners of the parcels waited until the subdivision was fully developed to begin the process of vacation. The only reason for the vacation was to qualify for agricultural classification to lower their taxes. [Board Record, Hearing Tape].

24. The third qualification for agricultural land status was whether the owner of the land derived annual gross revenue of not less than \$500. The Taxpayers' IRS form 1040 Profit of Loss From Farming showed a gross income of \$2,830. [Board Record, Exhibit 6, p. 18]. Of this amount, \$2,480 was from the sale of agricultural products, and \$350 was from custom hire machine work. *Id.*

25. The fourth qualification for agricultural status was quoted by the Assessor from the statute. "The land has been used or employed, consistent with the land's size, location and capability to produce as defined by the department rules and the mapping and agricultural manual published by the department, primarily in the agricultural operation..." where primarily means chiefly or of the first importance. The Assessor pointed out the Taxpayers' own restrictive covenants established that the land was residential with animals and agricultural use being limited. Therefore, the Assessor concluded the land's primary use was residential. The parcel had significant residential improvements as described in the CAMA printouts. [Board Record, Exhibit B, p. 33].

26. The Assessor testified she applied the Department's Rules equally and uniformly. Regardless of the fact that people feel they have used property as best they can and produced as much as they can, the land must meet the standards of a true agricultural operation to assess everyone equally. [Board Record, Hearing Tape].

27. The Assessor prepared a quantitative analysis to determine whether the Taxpayers had used their land consistent with the land's capability to produce. [Board Record, Exhibit R, pp. 102-103]. She first subtracted two acres from the Taxpayers' total acreage of 19.7 acres, in order to account for a residential farmstead as required by the Department's Rules. *Rules, Wyoming Department of Revenue, Chapter 10, § 3(c)(iv)*. [Board Record, pp. 100, 103]. She then determined a productive capacity for the remaining 17.7 acres using elements of the methods prescribed by the Department for valuation of all agricultural lands. [Board Record, Exhibit R, p. 102].

28. The Assessor used the Lander Area Soil Survey to determine the land soil type of the Taxpayers' property. [Board Record, Exhibit R, p. 102; Exhibit J, p. 62]. She overlaid ownership information on the soil survey map to do so. [Board Record, Exhibit R, p. 102; Exhibit J, p. 62; Exhibit K, p. 63].

29. The Assessor determined the productive value of the Taxpayers' soil type using the 2005 Ag Land Valuation Study authorized by the Department. [Board Record, Exhibit M, p. 64-79]. The Assessor determined: (1) the pertinent Land Resource Area, and (2) the productive class of the land. [Board Record, Exhibit R, p. 102; Exhibit M]. These numbers were translated into a standard productive range for irrigated crop land, expressed in tons of hay per acre. [Board Record, Exhibit R, p. 102; Exhibit M, p. 71]. The resulting range of production for the Taxpayers' property was from three to four tons per acre. [Board Record, Exhibit R, p. 102; Exhibit M, p. 71]. Using the chart identified by the Assessor, those values appear for Land Resource Area 4-5, Class III. [Board Record, Exhibit M, p. 71]

30. The Assessor next multiplied the Taxpayers' total acreage (exclusive of farmstead), or 17.7 acres, times the low end of expected production per acre of three tons per acre, to reach an expected total production of 53.1 tons. [Board Record, Exhibit R, p. 102]. She then multiplied this expected total tonnage by a low revenue estimate of \$70 per ton of hay, and rounded down to reach an expected total of \$3,500 revenue for the Taxpayers' property. [Board Record, Exhibit R, p. 102].

31. Finally, the Assessor compared this expected revenue, prepared using low-end estimates at each step, with the Taxpayers' actual revenue of \$2,480. *Supra*, ¶¶ 11, 24. In the Assessor's judgment, the Taxpayers' failure to achieve the low-end revenue estimate demonstrated that the Taxpayers were not using their land consistent with its capability to produce. [Board Record, Exhibit R, pp. 102-103].

32. The Assessor testified a portion of the Taxpayers' production may have been used to feed horses. Such use would not qualify as agricultural under the Department's Rules. Chapter 10, Section 3(ii)(B)(II), of those Rules states "grazing on land by any animal kept as a hobby will not be considered agricultural...." If part of the production was for hobby animals, the land's marketable production would be less than its capability to produce, and the land would not qualify for agricultural classification. [Board Record, Exhibit I, p. 58].

33. The Assessor reviewed the records of other small acreage parcels between 5 and 20 acres. The Assessor testified only five small acreage parcels had an agricultural value. There are 247 other small acreage parcels valued as residential. The Assessor further advised that her office is receiving more and more applications for agricultural use. Agricultural status is considered at the time of application. Her office has consistently and uniformly valued these small parcels as residential. [Board Record, Hearing Tape; Exhibits N, O, pp. 80-88].

34. In conclusion, the Assessor asserted that while the Taxpayers' parcel had activities which appear to be agricultural, such activities did not fulfill all of the requirements for

agricultural classification. While the land was agricultural prior to being subdivided, the parcels were subsequently sold and used primarily as residential. The Taxpayers' parcel was correctly valued as residential land. [Board Record, Hearing Tape; Exhibit R, p. 104].

CONCLUSIONS OF LAW: PRINCIPLES OF LAW

35. The Board is required to “[d]ecide all questions that may arise with reference to the construction of any statute affecting the assessment, levy and collection of taxes, in accordance with the rules, regulations, orders and instructions prescribed by the department.” *Wyo. Stat. Ann. § 39-11-102.1(c)(iv)*.

36. The Board's Rules provide:

[T]he Petitioner shall have the burden of going forward and the ultimate burden of persuasion, which burden shall be met by a preponderance of the evidence....

Rules, Wyoming State Board of Equalization, Chapter 2 § 20.

37. The Board, in interpreting a statute, follows the same guidelines as a court:

We read the text of the statute and pay attention to its internal structure and the functional relationship between the parts and the whole. We make the determination as to meaning, that is, whether the statute's meaning is subject to varying interpretations. If we determine that the meaning is not subject to varying interpretations, that may end the exercise, although we may resort to extrinsic aids to interpretation, such as legislative history if available and rules of construction, to confirm the determination. On the other hand, if we determine the meaning is subject to varying interpretations, we must resort to available extrinsic aids.

General Chemical v. Unemployment Ins. Comm'n, 902 P.2d 716, 718 (Wyo. 1995).

‘Determining the lawmakers’ intent is our primary focus when we interpret statutes. Initially, we make an inquiry respecting the ordinary and obvious meaning of the words employed according to their arrangement and connection. We construe together all parts of the statute *in pari materia*, giving effect to each word, clause, and sentence so that no part will be inoperative or superfluous. We will not construe statutes in a manner which

renders any portion meaningless or produces absurd results.’ *In re WJH*, 2001 WY 54, ¶ 7, 24 P.3d 1147, ¶ 7 (Wyo. 2001).

TPJ v. State, 2003 WY 49, ¶ 11, 66 P.3d 710, 713 (Wyo. 2003).

38. The Board considers the omission of certain words intentional on the part of the Legislature, and we may not add omitted words. “[O]mission of words from a statute is considered to be an intentional act by the legislature, and this court will not read words into a statute when the legislature has chosen not to include them.” *BP America Production Co. v. Department of Revenue*, 2005 WY 60 ¶ 22, 112 P.3d 596, 607 (Wyo. 2005), quoting *Merrill v. Jansma*, 2004 WY 26, ¶ 29, 86 P.3d 270, 285 (Wyo. 2004). See also *Parker v. Artery*, 889 P.2d 520 (Wyo. 1995); *Fullmer v. Wyoming Employment Security Comm’n.*, 858 P.2d 1122 (Wyo. 1993). The language which appears in one section of a statute but not another, will not be read into the section where it is absent. *Matter of Adoption of Voss*, 550 P.2d 481 (Wyo. 1976).

39. It is an elementary rule of statutory interpretation that all portions of an act must be read *in pari materia*, and every word, clause and sentence of it must be considered so that no part will be inoperative or superfluous. Also applicable is the oft-repeated rule it must be presumed the Legislature did not intend futile things. *Hamlin v. Transcon Lines*, 701 P.2d 1139, 1142 (Wyo. 1985).

40. The issue raised by the Taxpayers concerns the Assessor’s denial of agricultural classification for their land.

41. 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.”

42. 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).

43. 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)*.

44. 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)*.

45. The Department's 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).

46. The Department's 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).

47. 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).

48. 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....

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.

CONCLUSIONS OF LAW - APPLICATION OF PRINCIPLES OF LAW

49. We initially note that the Taxpayers have ignored the provision of the Department's Rules placing an additional burden on the landowners who seek agricultural classification for a parcel of forty acres or less. Those landowners must provide proof that a parcel of that size should be classified agricultural. *Rules, Wyoming Department of Revenue, Chapter 10, § 3(c)(x)*. *Supra*, ¶ 46. This burden applies whether or not the landowner chooses to appeal an assessor's determination of agricultural classification.

A. Present Use for Agricultural Purpose

50. 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).

51. In this case, the Taxpayers presented testimony that they raised feeder cattle for their own consumption and put up hay for sale. While the rearing of livestock is an agricultural purpose, doing so for personal consumption may affect a determination that the land is being used consistent with its capability to produce. The Taxpayers' \$350 in gross revenue associated with custom machine work does not qualify as an agricultural purpose. [Board Record, Exhibit P, p. 92]. The production of hay for sale is an agricultural purpose and meets the requirement of *Wyo. Stat. Ann. § 39-13-103(b)(x)(B)(I)*.

B. Not Part of Platted Subdivision

52. 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” [sic] 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). We note that neither of the parties addressed this Department Rule.

53. The exhibits and testimony of record, and the parties’ respective briefs, do not adequately address the interpretation and application of Wyo. Stat. Ann. § 39-13-103(b)(x)(B)(II) nor the Department Rule. This lack of discussion and analysis however, based on our conclusions with regard to the other requirements for agricultural classification, does not prevent a final decision in this matter. *Infra ¶¶ 55-60.*

C. Minimum Annual Gross Revenues

54. The third requirement to qualify for agricultural valuation is that the owner establish the statutory minimum gross revenues were derived from agricultural use of the property. *Wyo. Stat. Ann. § 39-13-103(b)(x)(B)(III).* The evidence related to this requirement consisted of Taxpayers’ Federal Income Tax Form 1040 Schedule F, Profit or Loss From Farming, showing a gross income from the sale of agricultural products of approximately \$2,480 for Tax Year 2004. The amount shown on their Federal Income Tax form exceeded the minimum income requirements set by the legislature for agricultural valuation, and could thus be accepted as meeting the minimum gross revenues requirement set by the legislature for agricultural valuation.

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

55. 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.” *Wyo. Const. art. 15 § 11(b).* The statutory definition of agricultural purpose echoes this language, limiting those purposes to being “consistent with the land’s capability to produce.” *Wyo. Stat. Ann § 39-13-101 (a)(viii).* Land can only qualify 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).* The qualifying phrase, “consistent with the land’s capability to produce,” appears repeatedly in the Department’s

Rules. *E.g., Rules, Wyoming Department of Revenue, Chapter 10, §§ 3(a)(i), 3(a)(ii), 3(a)(ii)(B), 3(a)(ii)(B)(II), 3(a)(ii)(B)(III), 3(a)(ii)(B)(IV).*

56. The pertinent definition of “consistent” is “in agreement or harmony; in accord; compatible.” *Webster’s New World College Dictionary*, 4th Edition (2001), 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. The State Board concludes 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).

57. The statute expressly addresses the problem that “normal conditions” may not prevail in any given assessment year. Unusual conditions may interfere with a taxpayer’s ability to use the land consistent with its capability to produce. An agricultural producer may accordingly be excused from compliance with the fourth requirement for agricultural classification, and the minimum gross revenue requirement of Wyo. Stat. Ann. § 39-13-103(b)(x)(B)(III), if it:

- (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 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.

Wyo. Stat. Ann. § 39-13-103(b)(x)(B)(IV); see Rules, Wyoming Department of Revenue, Chapter 10, § 3(a)(ii)(A). The Taxpayers in this case offered no evidence to support any such excuse from compliance with Wyo. Stat. Ann. § 39-13-103(b)(x)(B)(IV).

58. The Assessor prepared a calculation to quantify her view that the Taxpayers did not meet this requirement. She first excluded two acres from the Taxpayers’ parcel to account for their residence, as required by the Department’s Rules and consistent with her practice for other agricultural land in Fremont County. *Rules, Wyoming Department of Revenue, Chapter 10, § 3(c)(iv).* She then calculated a minimum production value for the remaining acres, which she rounded down to \$3,500. *Supra*, ¶¶ 29, 30. This calculation is consistent with statutory requirements of the Department’s mapping and agricultural manual, which we have described in detail in other cases arising from Fremont County. *E.g., Fremont County Assessor (Dechert Property)*, Docket No. 2004-125, February 4, 2005, 2005 WL 301141 (Wyo. St. Bd. Eq.). Finally, she compared this minimum value against the income actually reported by the Taxpayers, or \$2,480. Based on this

comparison, she concluded the Taxpayers had not employed their land consistent with its capability to produce. *Supra*, ¶ 31.

59. The Assessor's calculation may not be the only approach to determining whether the use of a particular property is consistent with its capability to produce, but her approach has obvious virtues. It relies on measurable criteria. The criteria tie to the Assessor's uniformly enforced policy concerning the size of the residential portion of agricultural lands in her county. The criteria also tie to the same measures of productivity that the Department uses to determine taxable value. They also tie to revenues that a taxpayer can readily document. These objectively verifiable measures should enable a county assessor and a taxpayer to readily reach a common understanding about whether the taxpayer's lands qualify for agricultural classification.

60. The Taxpayers did not address the Assessor's undisputed and objective measurement to the degree which the Taxpayers actually used their land for agricultural purposes.

61. The Taxpayers, in summary, have not fulfilled their burden of proof or ultimate burden of persuasion that the property in question qualifies for agricultural status.

ORDER

IT IS THEREFORE HEREBY ORDERED the decision of the Fremont County Assessor denying the Taxpayers' request for agricultural classification of 17.7 acres 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 30th day of August, 2006.

STATE BOARD OF EQUALIZATION

Alan B. Minier, Chairman

Thomas R. Satterfield, Vice-Chairman

Thomas D. Roberts, Board Member

ATTEST:

Wendy J. Soto, Executive Secretary