Board of County Commissioners - Staff Report

Meeting Date: August 7, 2018 **Presenter:** Sherry Daigle

Submitting Dept: County Clerk **Subject**: JH Hereford Ranch Tax Appeal

Statement / Purpose:

Approval of Amended Order in Jackson Hole Hereford Ranch. 2016 Tax Appeal.

Background / Description (Pros & Cons):

The County Board of Equalization originally ruled in favor of the Landowner, Jackson Hole Hereford Ranch and against the Teton County Assessor. The Teton County Assessor appealed to the State Board of Equalization. The State Board of Equalization remanded the original 2016 county order back to the Teton County Board of Equalization on October 26, 2017. The County Board of Equalization met on January 8, 2018 and made additional findings to support their earlier decision and remanded the matter back to the Teton County Assessor. The Teton County Assessor then appealed again to the State Board of Equalization. The State Board of Equalization remanded again and sent the Amended Decision of the Teton County Board of Equalization back to the County Board of Equalization on March 22, 2018. The County Board of Equalization then met and discussed further changes to the order on the 2nd remand. The County Board of Equalization requested that the prevailing side, JH Hereford Ranch through their attorney William P. Schwartz, write a proposed order. Mr. Schwartz has drafted a proposed order which is attached hereto as the proposed order for the 2nd remand.

Attachments:

Proposed Second Amended Decision of Teton County Board of Equalization.

Suggested Motion:

I move to approve the second amended order as presented in the case of in Docket 2018-03, the appeal of Jackson Hole Hereford Ranch, LLC from a decision of the Teton County Assessor 2016 property valuation.

BEFORE THE COUNTY BOARD OF EQUALIZATION

FOR THE COUNTY OF TETON

STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF	)	
JACKSON HOLE HEREFORD RANCH LLC	)	
FROM A DECISION OF THE	)	Docket No. 2016-41
TETON COUNTY ASSESSOR	)	
2016 PROPERTY VALUATION	)	

AMENDED DECISION OF THE TETON COUNTY BOARD OF EQUALIZATION

THIS MATTER comes before the Teton County Board of Equalization (the "Board") on remand from the State Board of Equalization. In response to the State Board of Equalization's request for more detailed findings and conclusions, the Board now makes the following revised Findings of Fact and Conclusions of Law in support of its decision to remand this matter to the Teton County Assessor.

FINDINGS OF FACT

1. The parcels in question consist of two separate forty-acre tracts of land. From the 1930's these tracts, along with approximately 1,000 acres of other contiguous and non-contiguous parcels, have been continuously used for agricultural purposes, specifically a cow/calf and supporting hay operation known as the Jackson Hole Hereford Ranch ("JHHR"). (Transcript at pp. 14-15).

2. JHHR is adjacent to the Town of Jackson and is surrounded by residential real estate development. (See Map attached to JHHR Exhibit 15.)

3. The parcels in question are located roughly in the center of the ranch and encompass an area generally known as the "ranch headquarters." Consistent with a typical headquarters for a cow/calf and haying operation, the parcels (hereinafter, the "ranch headquarters" or "ranch headquarters parcels") contain various structures, specifically: two barns, a calving shed, a Quonset hut, storage buildings and three residential structures. (Transcript at p. 16). The structures at the ranch headquarters, including the residential structures maintained to house ranch employees, exist solely to support the ranching operation, although it should be noted that, at the present time, one of the residential structures (a 2,300 square foot du-plex) on one of the parcels has been temporally rented to teachers to help address the housing crisis in Teton County. (Transcript at pp.16-18). This particular du-plex was moved to JHHR in 1999 for the specific purpose of housing ranch employees and has historically been used for that purpose. (Id. at p. 47-48).

4. Over the last several years, the Assessor has taken inconsistent positions regarding his assessment of the parcels constituting the ranch headquarters. In 2009, the assessed combined value assigned by the Assessor to each of the two forty-acre parcels in question was $39,086, with $15,450 of that value being ascribed by the Assessor to "Residential Land" and $23,636 to "Agricultural Irrigated Crop Land". (JHHR Exhibits 1 & 2). In 2011, the Assessor ascribed a value of $413,697 to one of the parcels (Tract 18), and $235,823 to the other (Tract 19). As in 2009, those assessments included separate values for "Residential Land" and "AG Irrigated Crop Land," but the 2011 assessments also included a new category for "Residential Improvements." (JHHR Exhibits 3 & 4). In 2015, the assessed value of the ranch headquarters parcels had grown to $549,368 (Tract 18), and $248,778 (Tract 19), respectively, with the bulk of the value being assigned to the "Residential Land" and "Residential Improvements" categories.

5. In 2016, the Assessor took a new approach to valuing the ranch headquarters parcels. First, the Assessor determined that approximately 2-acres of each of the parcels in question contained structures and were therefore not "agricultural" in use. (Transcript at p. 69). Having ascribed a "non-agricultural" use to these newly defined 2-acre sub-parcels or pockets, the Assessor next determined that they should be valued as "marketable residential" real estate. From there, the Assessor looked to adjacent residential subdivisions to arrive at a per-acre value of residential properties in the area and applied those residential values to the "non-agricultural" 2-acre sub-parcels in the ranch headquarters parcels. Given the skyrocketing cost of housing in Teton County, the Assessor's new methodology resulted in dramatically larger assessments for the ranch headquarters parcels in 2016:

Tract 18: **$887,191** (compared to $549,368 for 2015)

Tract 19: **$797,815** (compared to $248,778 for 2015)

Not surprisingly, the bulk of the increases were assigned to the "Residential Land" category. (JHHR Exhibits 12 & 13).

6. In response to the 2016 assessment, JHHR provided the Assessor with the Affidavits prescribed by Wyoming Statutes and certified under oath that the ranch headquarters parcels qualified as agricultural lands because they were being used: (i) to produce grass for grazing, (ii) for grazing of livestock, (iii) were not part of a platted subdivision, (iv) produced gross revenues of not less than $500 from the marketing of agricultural products, and (v) have been used consistent with their size, location and capability to produce primarily as an agricultural operation. None of the factual assertions contained in the Affidavits have been contested or refuted by the Assessor. (Transcript at p. 19).

7. The forty-acre parcels in question are zoned by Teton County as rural land. The Assessor acknowledges that any attempt by JHHR to market or sell a two-acre sub-parcel of its rurally-zoned land would violate the Teton County Land Development Regulations and Wyoming's subdivision statutes. (*See* Transcript at pp. 20-21; 27).

8. To determine the market value of the hypothetical 2-acre "residential parcels" assumed by the Assessor, he changed the method of valuation from the "Site Valuation Method" used in prior years to the "Multiple Regression Analysis based on Abstraction Method". (Transcript at pp. 31; 61-67). Under questioning, the Assessor admitted that the "Abstraction Method" he chose to value the hypothetical 2-acre residential sub-parcels in question was <u>not</u> uniformly applied throughout Teton County to similar ranch lands, where he continued to use the "Site Methodology." (*Id*. at pp. 66-67).

9. The Assessor's change of valuation approach resulted in a dramatic increase in value for the parcels in question. The Assessor's new valuation methodology creates hypothetical two-acre "non-agricultural" pockets of land within agricultural lands as if they are marketable residential properties like those in adjacent subdivisions. (Id. at pp. 69-71; 73-76; 95-96).

10. This Board voted to remand the case to the Assessor to consider other options for assessing the value of the ranch headquarters parcels. (Id. at pp. 92-93; 97).

11. Rather than pursuing a different methodology or approach, the Assessor simply filed his Notice of Appeal to the State Board of Equalization. Subsequently, the State Board of Equalization remanded this matter (on two separate occasions) because of the insufficiency of this Board's Findings of Fact and Conclusions of Law. Meanwhile, the Assessor has made no effort to

reevaluate the assessment of the parcels in question. All of this has resulted in considerable additional effort and expense to JHHR, which this Board has concluded was overtaxed by the Assessor.

CONCLUSIONS OF LAW

A. Article 15, Section 11 of the Wyoming Constitution provides, among other things, that:

(i) all property must be "uniformly valued;"

(ii) all taxation shall be "equal and uniform within each class of property;"

(iii) all property shall be valued at its "full" value, "except for agricultural and grazing lands" which "shall be valued according to the capability of the land to produce agricultural products under normal conditions;"

(iv) the legislature "shall not create new classes or subclasses or authorize any property to be assessed at a rate other than the rates set for authorized classes;"

(v) the legislature shall prescribe regulations as shall secure a "just" valuation for taxation of all property.

B. In *Basin Elec. Power Co-op., Inc. v. Department of Revenue*, 970 P. 2d 841, 852 (Wyo. 1998), the Wyoming Supreme Court stated that "in at least eleven decisions" the Court has consistently interpreted the above constitutional requirement to mandate a "rational method" of appraisal, "equally applied to all property," which results in "essential fairness." (citations omitted). Thus, regardless of Department of Revenue rules and customs, the Wyoming Constitution requires that the Assessor's methodology here be rational, equally applicable to all agricultural property, and fundamentally fair.

C. Moreover, the Assessor's work must comply with the requirements of Wyoming Statute. Wyoming Statute Section 39-13-103(b)(x) sets forth the parameters for the assessment of agricultural land. It states, among other things, that "contiguous or non-contiguous parcels of land under one (1) operation…**shall** qualify for classification as agricultural land" if "the land" meets

four qualifications:

(i) "The land" is presently being used and employed for agricultural purposes;

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

(iii) The owner of "the land" has derived annual gross revenue of not less than $500 from the marketing of agricultural products; and

(iv) "The land" has been used "consistent with its 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."

(Emphasis supplied).

D. The foregoing statue authorizes assessors to require a sworn affidavit from any land owner claiming agricultural status on a parcel of land. As noted above, JHHR supplied the Assessor with a sworn Affidavit attesting to each of the required statutory facts with regard to the two forty-acre parcels of land at issue here. The Assessor did not contest those Affidavits, nor did he present contrary facts at the hearing. The two parcels in question indisputably qualify as agricultural land under Wyoming Statute Section 39-13-103(b)(x).

E. The Assessor attempts to circumvent Wyoming Statute Section 39-13-103(b)(x) by relying upon certain rules and regulations of the Wyoming Department of Revenue (hereinafter, the "Department"). The Assessor specifically points to Chapter 10, Section 3 of the Department's Rules, which purports to give County Assessors the ability to classify "non-agricultural lands" within "agricultural lands." According to the Rule, an assessor may classify a portion of agricultural land as "non-agricultural" if it is "occupied by buildings which constitute the home site including one or more acres of land used in direct connection with the homesite," or "where topsoil is removed or topography is disturbed to the extent that the property cannot be used to raise crops, timber or to graze livestock." *Department of Revenue Rules*, Chapter 10, Section 3(c)(ii) & (iv).

F. Absent some enabling authority, the Department, as an administrative agency, lacks the power to create new tax categories, such as "non-agricultural land within agricultural land." The Wyoming Supreme Court has observed that administrative agencies "have no inherent or common law powers," but rather, "only the power and authority granted by the constitution and statutes," and "[s]uch statutes must be strictly construed" so that "any reasonable doubt of existence of any power must be resolved against the exercise thereof." *US West Communications, Inc. v. Wyoming Public Service Commission*, 907 P. 2d 343, 346 (Wyo. 1995) (quoting *Montana Dakota Util. Co. v. Pub. Serv. Comm'n*, 847 P. 2d 978, 983 (Wyo. 1993)) (other citations omitted). We are aware of no basis in the Wyoming Constitution or Wyoming Statute for the Department to authorize assessors to classify sub-pockets of "non-agricultural land" within a larger parcel that is indisputably agricultural in use.

G. Further, "[a]n agency is wholly without power to modify, dilute or change in any way the statutory provisions from which it derives its authority." *Wyodak v. Dept. of Revenue*, 60 P. 3d 129, 141 (Wyo. 2002) (quoting *Platte Development Co. v. State, Environmental Quality Council*, 966 P. 2d 972, 975 (Wyo. 1998)) (other citations omitted). In other words, "[a] doubtful [administrative] power does not exist." *Id*. Therefore, any rules promulgated by the Department in excess of its constitutional or statutory authority are invalid. *Wyoming Dep. of Rev. v. Buggy Bath*, 18 P. 3d, 1182, 1186 (Wyo. 2001) (administrative rules in excess of statutory authority are null and void).

H. Chapter 10, Section 3 of the Department's Rules unlawfully purports to give county assessors the authority to override the requirements of Wyoming Statute Section 39-13-103(b)(x) by creating a separate sub-class of property within agricultural lands. To suggest, as the Assessor does, that the existence of "disturbed topsoil" or a "ranch house" should subject sub-portions of

agricultural land to vastly different tax treatment is not supported by even the most liberal reading of the above statute. Plainly, the Department's approach is an impermissible "modification of" or "dilution" of the statutory definition of agricultural land. The Assessor therefore cannot rely on Chapter 10, Section 3 of the Department's Rules as a basis for an appraisal that otherwise deviates from Wyoming law.

I. The Assessor also cites the Department's *Agricultural Appraisal Manual* as authority to value sub-parcels of land within an agricultural parcel as marketable residential real estate. This too is misplaced. Like Chapter 10, Section 3 of the Department's Rules, the *Agricultural Appraisal Manual* purports to create a new tax class, or sub-class of property—agricultural property with certain structures or disturbed topsoil—and then endorses the valuation of this new sub-class as if it were marketable residential real estate. The Wyoming Constitution cannot be read to support this approach. As noted above, under Wyoming's Constitution, taxation must be "equal and uniform within each class of property;" the legislature "shall not create new classes or subclasses or authorize any property to be assessed at a rate other than the rates set for authorized classes;" and agricultural property "shall be valued according to the capability of the land to produce agricultural products under normal conditions."

J. JHHR submitted unrefuted evidence that the ranch headquarter parcels have been continuously used as part of an agricultural operation since the 1930's and that the structures located around the ranch headquarters are an integral part of those operations. There is no evidence to support a valuation of any portion of the parcels in question as marketable residential real estate. To the contrary, the two-acre "non-agricultural" lots hypothesized by the Assessor do not exist in fact and, under Teton County's zoning regulations, could not exist in law. The attempt to value two-acre sub-parcels of the agricultural parcels as marketable residential real estate is thus based

upon a fiction and is without valid support. The Assessor's approach, which he admits has not been uniformly applied throughout Teton County to other agricultural properties, cannot be harmonized with the requirements of Wyoming's Constitution that property taxation must be based on a "rational method" of appraisal "equally applied to all property" resulting in "essential fairness." See *Basin Elec. Power Co-op., Inc. v. Department of Revenue*, 970 P.2d 841, 852 (Wyo. 1998).

WHEREFORE, THE BOARD HEREBY ORDERS AS FOLLOWS:

A. This matter is remanded back to the Teton County Assessor to assess the land in question as agricultural land or to otherwise assess the land in a manner that is based on a "rational method" of appraisal "equally applied to all property" resulting in "essential fairness."

TETON COUNTY BOARD OF EQUALIZATION

Dated this _____ day of _____, 2018.

By: _____
Mark Newcomb, Chairman

Attest:

_____
Sherry L. Daigle, Teton County Clerk

CERTIFICATE OF SERVICE

I hereby certify that on the ____ day of _____, 2018, I served the foregoing AMENDED DECISION AND ORDER by forwarding a true and correct copy thereof via email and in the United States Mail, postage prepaid, and properly addressed to the following:

Jackson Hole Hereford Ranch
William P. Schwartz
P.O. Box 3890
Jackson, WY 83001
bschwartz@rsowy.com

Keith Gingery
Deputy Teton County Attorney
P.O. Box 4068
Jackson, WY 83001
keith@tetoncountyattorney.com