

RULES OF PRACTICE AND PROCEDURES
BEFORE THE LINCOLN COUNTY BOARD OF EQUALIZATION
INVOLVING TAXATION MATTERS

Section I. Authority.

These Rules of Practice and Procedure are promulgated by authority of the Wyoming Administrative Procedures Act, W.S. 16-3-101-115 (WAPA) and W.S. 39-13-102.

Section II. Purpose of Rules.

These rules are intended to provide a uniform and understandable process for appeals from administrative decisions of the Lincoln County Assessor (hereinafter "The Assessor") to the Lincoln County Board of Equalization Board (hereinafter "The Board") and to provide for the fair and just disposition of such appeals.

Section III. Application of Rules.

These rules apply to all appeals brought before the Board concerning those matters administered by the Assessor under Title 39 of the Wyoming Statutes, Taxation and Revenue. Specifically, these rules shall apply to appeals authorized in W.S. 39-13-109 and brought before the Board from any assessment of the Assessor.

Section IV. Construction.

These rules are to be liberally construed to assure the unbiased, fair, expeditious and impartial conduct of proceedings. *Ririe v. Board of Trustees*, 674 P.2d 214 (Wyo. 1983); *ANR Production Co. v. Wyoming Oil & Gas*, 800 P.2d 492 (Wyo. 1990).

Section V. General Course of Contested Case Procedures.

Unless otherwise provided by law, the course of proceedings is governed by the contested case provisions of the Wyoming Administrative Procedure Act, these rules, and, to the extent their application is not inconsistent with application to an administrative contested case proceeding, the Wyoming Rules of Civil Procedure. *White v. Board of Trustees of Western Wyoming Community College District*, 648 P.2d 528 (Wyo. 1982).

Section VI. Definitions.

For the purpose of appeals brought before the Board under these rules, the following definitions apply:

- A. "Appeal" - a proceeding before the Board in which the legal rights, duties, or privileges of a party are to be determined by the Board after an opportunity for hearing. An appeal is a contested case as that term is defined in W.S. 13-3-101(b)(ii).

- B. "Appellant" - any person contesting the assessment of his/her property by seeking relief before the Board.
- C. "Board" - the County Board of Equalization as set forth in W.S. 39-13-102.
- D. "Clerk" - the County Clerk who will be the Secretary to the Board and will attend all hearings.
- E. "Parties" - the Assessor and the Appellant seeking relief before the Board.
- F. "Person" - means an individual, partnership, corporation, company or any type of association, and any agent or officer of any partnership, corporation, company or other type of association.
- G. "Hearing Examiner" - the Presiding Officer in a contested case as set forth in W.S. 13-3-112.

Section VII. Meeting of the Board and Designation of Presiding Officer.

The Board will meet no earlier than the fourth Tuesday in April to consider current year assessments. W.S. 39-13-102(c). The Board shall designate a presiding officer (Hearing Examiner) who shall be a licensed attorney on contract with the Lincoln County Board of Commissioners who is knowledgeable of and qualified in the particular area of taxation. The functions of the presiding officer shall be conducted in an impartial manner. Presiding officers shall have the full authority provided by W.S. 16-3-112(b).

Section VIII. Commencement of Appeals.

Any person wishing to contest an assessment of his/her property shall file a statement with the Assessor no later than thirty (30) days after the date or postmark of the assessment schedule. Said statement may be filed by ordinary mail, hand delivery, or electronic means. Any statement filed by electronic means must be followed by a signed or otherwise duly executed original, or copy of any electronic transmission other than facsimile transmission, mailed within 24 hours of the electronic transmission. The statement shall include:

- A. The name, mailing address, and phone number of the Appellant;
- B. A concise statement of facts, issues and objection which the Appellant considers relevant to the assessment of the property;
- C. A concise statement as to the relief desired, including any request for hearing;
- D. A reference to the statutes, rules, or orders that may apply, if known; and
- E. A copy of the assessment schedule.

ANY STATEMENT NOT TIMELY FILED, OR NOT COMPLETED IN ACCORDANCE WITH THESE RULES MAY BE DISMISSED. Upon request, the Assessor's office will provide to the Appellant a form Statement to Contest Property Tax Assessment that conforms to these rules.

Section IX. Notice of Hearing.

The Clerk shall by notice set a time and place for hearing the case. The notice shall set forth the date, time, place and nature of the hearing. The Notice of Hearing shall be sent to the Appellant via registered mail, return receipt requested. (?)

Section X. Production of Documents and Discovery.

- A. Production of Documents: The Assessor and the Appellant, or his agent, shall disclose witnesses and exchange information, evidence, and documents relevant to the appeal, including sales information from relevant statements of consideration. if requested, no later than fifteen (15) days prior to the scheduled hearing. The Assessor shall specifically identify the sales information used to determine market value of the property under appeal. Failure to file evidence or documents will result in exclusion of said evidence or documents from consideration.
- B. Discovery: Unless otherwise prohibited by law or limited by these Rules or Board Order, the taking of discovery shall be available to the parties in accordance with the provisions of W.S. 16-3-107.

Section XI. Ex Parte Discussions.

Except to the extent authorized by law, the Board, staff members of the Board, and any presiding officer designated by the Board are prohibited from engaging in *ex parte* discussions with any individual or party on any material fact at issue after commencement of a case until its final disposition. If *ex parte* communication is unavoidable, the official involved shall:

- A. Immediately draft a written document or summary setting forth the contents and circumstances of the communication;
- B. Mail the document to all parties to the proceeding and all other officials involved in the decisional process; and
- C. Indicate that the matter covered in the communication will be considered at the next scheduled hearing relating to the case, or as otherwise scheduled with notice to all parties.

Section XII. Motions.

- A. An application for a Board Order shall be by motion, which unless made during the conduct of a hearing, shall be in writing and shall state with particularity the grounds and the relief or order sought. Written motions shall advise the parties that should they wish to contest the motion, they must file a written response, serving copies on the Board and all parties within fifteen (15) days of service of the motion. The response shall set forth the party's objection to the motion. No motions shall be filed within twenty (20) days of a hearing.

- B. Absent a request for hearing by moving party or any party affected by the motion, the Board may, in its discretion, determine the motion without a hearing. A motion not determined within ninety (90) days after filing shall be deemed denied. The Board may, upon reasonable notice to all parties, hear orally or otherwise, any motion filed in connection with hearings under these rules.

Section XIII. Continuances and Extensions of Time.

- A. Generally, motions requesting continuances or extensions of time are disfavored, yet they may be granted sparingly and only upon a showing of good cause or when necessary to assure fairness and otherwise avoid manifest injustice.
- B. Unless time does not permit, motions for continuance of any unscheduled hearing shall be in writing, shall state the reasons therefore and shall be filed and served to all parties.
- C. Motions for an extension of time for the doing of any act prescribed or allowed by these rules or by Order of the Board, shall be filed and served on all parties prior to the expiration of the applicable time period.

Section XIV. Subpoenas.

- A. Subpoenas for appearance and to produce books, papers, documents, or exhibits will be issued by the Board, upon written motion of any party, or on the Board's own motion, pursuant to W.S. 16-3-107(c).
- B. Subpoenas may be enforced pursuant to W.S. 16-3-107(c).

Section XV. Hearing and Representation.

- A. The Appellant may represent himself/herself at the hearing, he/she may be represented by a person designated by the Appellant, or he/she may be represented by an attorney who is duly authorized to practice law in the State of Wyoming or is associated at the hearing with one or more attorneys authorized to practice law in Wyoming. NO ADJUSTMENT IN AN ASSESSMENT SHALL BE GRANTED TO OR ON BEHALF OF ANY PERSON WHO WILLFULLY NEGLECTS OR REFUSES TO ATTEND A MEETING OF THE COUNTY BOARD OF EQUALIZATION AND BE EXAMINED OR ANSWER ANY MATERIAL QUESTION UPON THE BOARD'S REQUEST.
- B. The Assessor may represent himself/herself, or be represented by any of his/her employees or the Lincoln County Attorney, a designee of the Lincoln County Attorney or a Deputy Lincoln County Attorney.
- C. If and when either the Assessor, appellant or the Board discloses statements of consideration with respect to the value of the assessment of Appellant's property, the hearing shall be declared closed. In case of such disclosure, only the Appellant or his agent and Appellant's legal counsel, the Assessor and/or deputies, the Assessor's designee and the Assessor's legal counsel, the

members of the Board or County Commissioners, the Hearing Officer, Board counsel, the County Clerk and/or deputies and the court reporter may remain for that portion of the hearing. THE HEARING OFFICER SHALL REGULATE THE COURSE OF CONDUCT OF THE HEARING TO ENSURE THAT THE PARTIES SHALL ONLY DISCLOSE STATEMENTS OF CONSIDERATION, AND EXAMINE WITNESS RELATIVE TO THOSE STATEMENTS, DURING THE TIME THE HEARING IS DECLARED CLOSED.

- D. The Presiding Officer shall have full authority to limit time for the conduct of the hearing.

Section XVI. Burden of Going Forward: Burden of Persuasion.

Except as specifically provided by law or in this Section, the Appellant shall have the burden of going forward and the ultimate burden of persuasion, which burden should be met by a preponderance of reliable and probative evidence. The presumption is that the Assessor's valuations of property are valid, accurate, and correct. The Appellant has the initial burden to present sufficient credible evidence to overcome the presumption, and mere difference of opinion as to value is not sufficient. If the Appellant provides credible evidence that the Assessor's determination is incorrect or unlawful, the burden shifts to the Assessor to defend his/her valuation. *Teton Valley Ranch v. State Bd. Of Equalization*, 735 P.2d 107, 113 (Wyo. 1987), *Colorado Interstate Gas Co. v. Wyoming Dept. of Revenue*, 20 P.3d 528, 531 (Wyo. 2001).

Section XVII. Order of Procedure at Hearing.

As nearly as possible, hearings shall be conducted in accordance with the following order of procedure:

- A. The Hearing Officer, who shall conduct the hearing, shall announce that the hearing is convened and shall indicate the appeal to be heard. The Hearing Officer will then read the appeal into the record and shall note for the record all appearances of record.
- B. The Hearing Officer shall then take up any motions or preliminary matters to be heard.
- C. Opening statements will be heard at the discretion of the Board.
- D. The Appellant, or his/her designated agent, or his/her attorney then presents his/her evidence, after which the Assessor or his/her representative shall present evidence. Evidence may be presented through witnesses, oral statements, and/or documentary evidence. Each party shall have the opportunity to cross-examine witnesses in any matter relevant to the issues even though the matter was not covered in direct examination. Any objection to testimony or evidentiary offers should be directed to the Hearing Officer and the basis of the objection stated. The Hearing Officer shall rule on all such objections. The members of the Board and Hearing Officer may ask

questions of any party or any witness for the purpose of clarifying their understanding of the case.

- E. Closing Statements may be made at the conclusion of the presentation of the evidence by both parties. These statements may include summaries of the evidence and legal arguments.
- F. After all proceedings have been concluded, the Board shall dismiss and excuse all witnesses and declare the hearing closed. The Board shall take the appeal under advisement and shall advise the parties. The decision of the Board shall be announced within due and proper time following consideration of all matters presented at the hearing.

Section XVIII. Rules of Evidence.

All evidence which is not irrelevant, immaterial or unduly repetitious shall be admitted at the hearing. The Board will give effect to the rules of privilege recognized by law. W.S. 16-3-108 generally sets forth the rules of evidence which will be followed by the Board.

Section XIX. Record of Proceedings.

Minutes of the meeting shall be taken and filed with the Clerk to the Board. Minutes shall include all pleadings, notices, motions, rulings, documentary evidence, oral statements, proposed findings, objections thereto, ruling on said objections, and the final order. A copy of such minutes will be furnished to any party upon written request to the Board and the payment of a reasonable fee. If one or more parties desire the hearing transcribed by a certified court reporter, they must make the necessary arrangements and bear the cost thereof.

Section XX. Inspection of File.

Each party, or his representative, shall be permitted to inspect and copy, at his/her own expense at the offices of the Board, all documents on file in the Appeal, that are permitted by law to be copies.

Section XXI. Decision of Board.

The Board shall, following the full and complete hearing, make and enter a written decision containing Findings of Fact and Conclusions of Law. Such decisions will be recorded into the minutes and filed with the Clerk of the Board. Upon filing, the Clerk will send a copy to the Appellant by registered mail, return receipt requested.

Section XXII. Appeal to the State Board of Equalization.

Any party aggrieved or adversely affected by a final decision of the Board in an Appeal is entitled to appeal to the State Board of Equalization pursuant to W. S. 39-11-102.1. Appeal shall be made to the State Board of Equalization, Herschler Building, Room 1720, First Floor – West, Cheyenne, WY 82002; P.O. Box 448, Cheyenne, WY 82003. Such Notice of Appeal shall set forth the decision appealed from, shall state, in

ordinary and concise language, the facts upon which the appeal is based and shall state the relief desired. The Notice of Appeal must also contain the Appellant's address. The Notice of Appeal must be filed with the State Board within thirty (30) days of the date of the final administrative decision from which the appeal is taken.

Section XXIII. Severability.

If any portion of these Rules is found to be invalid or unenforceable, the remainder shall be in effect.

Section XXIV. Statements of Consideration Confidential.

ANY PERSON OR AGENT WHO CONTESTS HIS PROPERTY TAX ASSESSMENT OR VALUATION IN A TIMELY MANNER AS PROVIDED BY LAW AND THESE RULES IS ENTITLED TO REVIEW STATEMENTS OF CONSIDERATION AND ALL OTHER INFORMATION USED BY THE COUNTY ASSESSOR IN DETERMINING THE VALUE OF THE PROPERTY AT ISSUE.

THE STATEMENT OF CONSIDERATION IS NOT A PUBLIC RECORD AND SHALL BE HELD CONFIDENTIAL BY THE COUNTY CLERK, COUNTY ASSESSOR, STATE BOARD OF EQUALIZATION, THE DEPARTMENT OF REVENUE AND WHEN DISCLOSED UNDER SUBSECTION (9) OF W.S. 34-1-142, ANY PERSON WISHING TO REVIEW OR CONTEST HIS PROPERTY TAX ASSESSMENT OR VALUATION, AND THE COUNTY BOARD OF EQUALIZATION.

STATEMENTS OF CONSIDERATION SHALL NOT BE SUBJECT TO DISCOVERY IN ANY OTHER COUNTY OR STATE PROCEEDING.

IT IS A MISDEMEANOR FOR A PERSON TO WILLFULLY FALSIFY OR PUBLICLY DISCLOSE, EXCEPT AS AUTHORIZED BY THE LAW AND THESE RULES, ANY INFORMATION ON THE STATEMENT OF CONSIDERATION REQUIRED BY W.S. 34-1-142 AND 34-1-143. UPON CONVICTION, THE OFFENDER IS SUBJECT TO A FINE OF NOT MORE THAN SEVEN HUNDRED FIFTY DOLLARS (\$750.00), IMPRISONMENT OF NOT MORE THAN SIX (6) MONTHS, OR BOTH.

ADOPTED this ____ day of _____, 2009.

BOARD OF COMMISSIONERS OF
LINCOLN COUNTY, WYOMING;

Jerry Harmon, Chairman

ATTEST:

Jeanne Wagner,
Lincoln County Clerk