BEFORE THE STATE BOARD OF EQUALIZATION

FOR THE STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF	)	
CARBON CREEK ENERGY, LLC, AND	)	
POWDER RIVER MIDSTREAM, LLC,	)	Docket No. **2017-50**
FROM A DECISION BY THE JOHNSON	)	
COUNTY BOARD OF EQUALIZATION	)	
(2016 Property Tax Assessment)	)	

DECISION AND ORDER

APPEARANCES

Walter F. Eggers, III, Holland & Hart, LLP, appeared on behalf of Carbon Creek Energy, LLC, and Powder River Midstream, LLC (Collectively Petitioners, or individually Carbon Creek and Powder River).

Barry V. Crago, Deputy Johnson County and Prosecuting Attorney, appeared on behalf of the Johnson County Assessor, Cynthia Barlow (Assessor).

DIGEST

The question presented is whether an assessor must use a recent arm's length, open market sale of personal property to value that property for tax purposes. Petitioners contend that in accordance with *Thunder Basin Coal Co. v. Campbell Cty.*, 2006 WY 44, 132 P.3d 801 (Wyo. 2006) and the Department of Revenue's regulatory guidance, the Johnson County Assessor was required to use Petitioners' 2015 asset purchase transactions as a "starting point" in applying cost method valuations of the acquired equipment. Assessor, however, declined. Following a contested case hearing, the Johnson County Board of Equalization (County Board) affirmed Assessor's refusal, accepting her valuations based on the original equipment acquisition costs, trended and depreciated to the assessment date, January 1, 2016.

The Wyoming State Board of Equalization, Chairman Martin L. Hardsocg, Vice-Chairman David Delicath, and Board Member E. Jayne Mockler, reviewed the County Board record to determine whether the County Board's Findings of Fact, Conclusions of Law and Order (County Board Order) was arbitrary, capricious, supported by substantial evidence, and/or contrary to law. Rules, Wyo. State Bd. of Equalization, ch. 3 § 9 (2006).

We find Petitioners carried their burden of overcoming the presumption in favor of Assessor's valuation as to the sale of the gathering system property, but not with respect to the sale of the wellhead production equipment. The State Board, therefore, partially affirms, partially reverses, and remands this matter to the County Board for correction of its Order, and ultimately for remand to Assessor for action consistent with this Decision and Order.

ISSUES

Petitioners identify three issues in their appeal:

a. The Johnson County Board of Equalization (County Board) affirmed the decision of the Johnson County Assessor (Assessor) to disregard recent transactions when the Assessor valued the Petitioners' property. **Was the County Board's Order contrary to Wyoming property tax law, as described by the Wyoming Supreme Court?**

b. The Assessor made no adjustments to the valuation of Petitioners' property based on the current market for oil and gas equipment. When the County Board affirmed the Assessor's decision, it failed to apply the Wyoming Department of Revenue's guidance on this issue and it made a determination that was inconsistent with the Campbell County Board of Equalization on the same issue and facts. **Did the decision conflict with Wyoming law and create unequal treatment between counties?**

c. The Assessor testified at the hearing that the assessments contain errors. Instead of reversing and remanding the assessments for correction, the County Board affirmed the assessments and imposed new values. **Did the County Board's order violate the statute governing property tax appeals where the County Board, Assessor, and Petitioners all recognized the assessments were incorrect?**

(Pet'rs' Opening Br. 5) (emphasis in original).

Assessor restates the issues as:

A. Whether the Johnson County Board of Equalization's decision was arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law.

B. Whether the Johnson County Board of Equalization's decision was in excess of statutory jurisdiction, authority or limitation or lacking statutory right.

C. Whether the Johnson County Board of Equalization failed to observe procedure required by law.

D. Whether the Johnson County Board of Equalization's decision was supported by substantial evidence.

(Assessor's Resp. Br. 5).

For ease of understanding, we further distill the issues:

1) Assuming the evidence demonstrated that Petitioners bought the personal property in transactions that qualified as reflecting "fair market value," as that term is statutorily defined, was Assessor legally required to use the purchase prices, to the extent possible, to value the equipment?

2) Did Assessor have discretion to reject the purchase transactions because Petitioners provided incomplete information about them, because Petitioners relied on an allocation method with which Assessor disagreed, or for other reasons?

3) Did Petitioners carry their burdens of overcoming the strong presumption favoring Assessor's valuations and, if so, did Assessor sufficiently sustain her shifted burden of demonstrating that she complied with Wyoming law in performing the valuations?

4) Was the Johnson County Board of Equalization, under constitutional uniformity principles, required to adhere to the Campbell County Board of Equalization's adjudication of Petitioners' like valuation claims for similar personal property located in Campbell County, purchased in the same transaction?

5) Did the County Board violate Wyoming Statutes section 39-13-109(b)(i) (2015) when, rather than remand the proceedings to Assessor to correct the assessments as proposed, it directly ordered that the valuations were as Assessor contended?

JURISDICTION

The State Board is authorized to "hear appeals from county boards of equalization[.]" Wyo. Stat. Ann. § 39-11-102.1(c) (2017). The County Board issued Findings of Fact, Conclusions of Law, and Order on May 17, 2017. (R. at 162-82).

Petitioners appealed on June 12, 2017. (R. at 183-86). As Petitioners timely appealed from a final action of the County Board, the State Board has jurisdiction to hear this appeal. Rules, Wyo. State Bd. of Equalization, ch. 3 § 2 (2006); Wyo. Stat. Ann. § 39-11-102.1(c) (2017).

FACTS PRESENTED TO THE COUNTY BOARD

The crux of this appeal is Petitioners' claim that Assessor was bound to use the purchase prices of Petitioners' 2015 property acquisitions to value the property acquired. The parties, accordingly, focused on Petitioners' 2015 asset purchase transactions and Assessor's reasons for not relying upon those transactions.

A. Overview of the taxpayers and property: Petitioners' acquisition of CBM production and gathering assets in the Powder River Basin[1]

1. Carbon Creek and Powder River were formed in 2015 for the narrow purpose of acquiring coal bed methane (CBM) reserves, along with the facilities and equipment required to produce, gather, and transport the CBM from leases within the Powder River Basin, primarily in Johnson and Campbell Counties. Carbon Creek acquired all CBM reserves and production facilities, i.e. wellhead and necessary wellsite equipment, at issue in this appeal. An affiliate, Powder River, acquired all gathering system facilities, i.e. compressors, dehydrators, pipelines, at issue in this appeal. (R. at 26-28, 51-52, 61-64, 118-19; Jt. Stip., R. at 55-56).

2. The former owners of the CBM production assets in question, Anadarko Onshore LLC (Anadarko) and WPX Energy Rocky Mountain, LLC (WPX), held nearly equal ownership of the CBM reserves and the production facilities. WGR Asset Holding Company LLC (WGR) owned and operated the gathering system facilities. (Tr. 70-73).

3. Petitioner Carbon Creek entered separate purchase and sale agreements with WPX and Anadarko on July 28, 2015; Petitioner Powder River entered a purchase and sale agreement with WGR for purchase of the gathering system facilities and associated gathering service rights on the same day.[2] (Confidential Tr. 81-89, 137-38; Tr. 184-86; Confidential Exs. T1 – T8). Each contract included confidential attachments identifying

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[1] Because Assessor generally conceded the 2015 purchase transactions could establish a fair market value as defined by statute and departmental rule, we shall not restate in detail evidence of how those transactions were negotiated and other circumstances offered in support of Petitioners' argument that the transactions qualified. (Tr. 345-48, 369-73, 375). We shall note, when pertinent, that Assessor did not contest whether the transactions qualified as fair market value transactions.

[2] Moriah Powder River, LLC (Moriah) actually negotiated and purchased the assets on behalf of Petitioners, eventually transferring all CBM interests and associated production and gathering equipment to Petitioners. (Tr. 62, 73-74, 117-19, 178). For ease of understanding, however, we shall refer to Petitioners as the entities that acquired the property.

assets or price allocations for assets conveyed in the sales. *Id.* The purchase amounts were and are confidential, yet the parties agreed, as does the State Board, that disclosure of the exact purchase amounts[3] was unnecessary for a clear understanding and resolution of the dispute.

4. Due to third-party confidentiality demands, Petitioners offered the purchase and sale agreements to Assessor and the County Board as confidential exhibits, excerpts of which were redacted and several appendices to which were omitted. (Confidential Tr. 84-86 134-37, 148-49, 155-56; Tr. 119, 179-80; Confidential Exs. T1-T8). Neither did Petitioners provide Assessor closing or settlement statements summing completion of the transactions between Petitioners and the sellers. (Confidential Tr. 137, 148-49, 168-69).

5. Carbon Creek Chief Executive Officer, Alan Brown, who negotiated the purchase transactions, repeatedly testified that the omitted contract materials and redacted contract provisions did not speak to the contract price or value of the equipment. (Confidential Tr. 86, 134; Tr. 148, 179-80). Mr. Brown also testified that the unexecuted transaction documents submitted as exhibits were exact copies of the executed versions. (Tr. 179).

6. Upon closing of the purchase and sale transactions, Carbon Creek owned and operated approximately 3,500-3,600 CBM wells in Johnson County and controlled approximately 80-85% of the CBM produced from the Powder River Basin. (Tr. 34, 44; Exs. T11-T12).

B. Petitioners' equipment costs and claimed equipment values

7. Petitioners argued to Assessor and the County Board that their purchase prices for the equipment should set the properties' taxable value, or at least establish a "starting point" in determining fair market value of the equipment for tax purposes. Yet, Carbon Creek's purchase contracts with WPX and Anadarko did not identify prices paid for the equipment itself. Rather, Carbon Creek valued the reserves in the ground; in that calculation, Carbon Creek considered all costs, including equipment costs and the cost to extract the gas. (Tr. 99-100, 109-10, 120-23, 180-81; Confidential Tr. 160-62). Carbon Creek's Chief Executive Officer, Alan Brown, explained:

> We did a reserve valuation that takes into the account the equipment value kind of as a byproduct of that, but we – ours is based on that reserve analysis and then an allocation to a value based on what's there at that well, what's capable of producing and what we believe the ultimate value was, tying that back to the actual purchase price.

[3] The purchase transactions would close months later, and the eventual purchase payments were netted to reconcile offsetting credits due Petitioners, revenues received by sellers and buyers, and expenditures incurred from January through September of 2015. (Confidential Tr. 93-95, 149-50, 169-71).

(Tr. 99-100). So, Carbon Creek did not separately appraise or price the production equipment in determining a price it would pay sellers WPX and Anadarko—it employed engineering software to value the CBM reserves, the equipment costs of which were an intrinsic part of that calculation. (Tr. 99-100, 120-23; Confidential Tr. 160-62, 165). Carbon Creek, however, attributed a zero cost to the equipment for federal tax purposes. (Tr. 195-96).[4]

8. In contrast, Powder River assigned specific prices to the gathering system equipment during its negotiation and acquisition of the gathering system and service rights. (Tr. 110, 193-95). Mr. Brown testified to another company official's experience with compressors and that official's on-site inspection and evaluation of all gathering system compressors and like equipment. The official based his recommended prices on the equipment's utility and operating condition. Powder River assigned those prices to the gathering system equipment for financing and insurance purposes, as well as to inform the negotiation process. (Tr. 100-103, 110, 181, 194-95, 301-02; Confidential Tr. 154-55).

9. To evaluate their property tax liabilities, Petitioners hired Merit Advisors (Merit), which had previously worked with predecessor WPX on tax matters. (Tr. 108-09). While Powder River asserts that the value of the gathering equipment for tax purposes should track with the costs it assigned during the purchase negotiation and acquisition from WGR, Carbon Creek could refer Assessor to no such costs for its purchase of the production facilities. *See supra* ¶¶ 7-8. Carbon Creek's solution was to devise an allocation method to impute a price to all production equipment. (Tr. 98-100, 196-99). Petitioners' witness, Merit consultant Kelly Stewart, described how she, in consultation with firm colleagues, developed an allocation method.[5] (Tr. 196-223, 288-90; Ex. T-10).

10. Merit's allocation method to isolate a price paid for the production equipment drew intense scrutiny before the County Board. Ms. Stewart testified that she consulted a Marshall & Swift[6] depreciation table, in part because the Wyoming Department of Revenue

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[4] Petitioner Carbon Creek discussed its decision to book and report a zero cost/value for the acquired equipment for federal tax purposes, but did not further explain the significance of this action, other than to assert that it could have claimed a zero value pursuant to the cost valuation method for property tax purposes. Carbon Creek, in challenging the taxable valuations of its production equipment, asserted that the more reasonable approach was to allocate a cost, notwithstanding that it booked zero cost, and recognize that the equipment still had value for property tax purposes. (Tr. 208-13, 258-59; Confidential Tr. 286-87). Because the record offers no understanding of Petitioners' "booking" of a "zero" cost or value, beyond Petitioners' very limited explanation, our consideration is limited accordingly.

[5] The County Board's hearing officer did not designate Ms. Stewart an expert, explaining: "[T]he board certainly can consider her qualifications and experience. I won't make any evidentiary ruling that she is, in fact, an expert witness for this particular case. I don't see that called for in the BOE rules, but I don't – also don't hear from Mr. Crago he's going to argue that she can't render opinions on behalf of the taxpayer." (Tr. 191).

[6] Marshall & Swift is a recognized and often consulted appraisal resource which the Department of Revenue generally cites as authority. *See Infra* ¶ 45; (Tr. 292-93). The record, however, contains no copy

cites Marshall & Swift as authoritative guidance for assessors. (Tr. 199-201, 211-13, 289-93). Relying on Marshall & Swift's reported salvage value depreciation percentage for oil/gas refinery facilities, Carbon Creek determined the production equipment should be valued at a salvage rate of seven percent, applied against the gross contract purchase prices Carbon Creek paid for the CBM well production equipment. Ms. Stewart testified that applying the salvage rate of seven percent was preferable to the option of using a zero cost, which Carbon Creek booked for federal tax purposes. *Supra* ¶ 7. In sum, Carbon Creek asserted the value of its production equipment should be tied to an allocation of seven percent of the total contract purchase amounts paid to WPX and Anadarko.[7] *Id.*

11. To value the gathering system equipment, Powder River reported its self-assigned prices for compressors, dehydrators and other equipment, established during the purchase negotiation with WGR. (Tr. 100-03, 193, 243, 265-66, 269; Confidential Ex. T-8). Ms. Stewart did not consult other valuation guides to report a value of the Powder River equipment (compressors, dehydrators, etc.). (Tr. 268).

12. The parties and County Board focused on Carbon Creek's selection of a seven percent "salvage" rate. Ms. Stewart justified application of a seven percent salvage rate to all production equipment, regardless of the equipment's condition:

> So in terms of this – of the oil and gas equipment, the gas equipment that we're talking about today, the end of its useful life or its intended use is going to be at the end of the life of the well. So we're not – we're not talking salvage value and went and chose in Marshall & Swift a salvage value table to attest to the condition of the equipment. That it's not good equipment, it's not average equipment, it's salvage or scrap. That's not what we're attesting to by using a salvage value percentage for Marshall & Swift.
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> The salvage value is recognizing the value of the asset at the end of its useful life. The other important piece of information with oil and gas equipment, at the end of a well's life, that piece of equipment may still be able to be used. It has a depreciated value, but the costs of removing that equipment or the costs of plugging that well exceed, typically, the depreciated value.
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> So in most cases, at the end of a well's life, the value of that equipment is actually less – it's actually less than salvage. But typically in the property

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of the Marshall & Swift publication referenced in this case. Evidence indicating Ms. Stewart's application of the Marshall & Swift resource was purely testimonial: "It's – I believe from memory it's Section 96. The furniture and equipment depreciation page and salvage values listed at the bottom of it, yes." (Tr. 244).

[7] Ms. Stewart also accounted for the split ownership between Anadarko and WPX, which shared ownership of the wells. Likewise, Ms. Stewart determined 69% of the equipment was in Johnson County and 31% of the equipment was in Campbell County. (Tr. 199-215, 225, 239, 244, 249-50, 288-94, 307-08).

> tax world, for oil and gas equipment, we – it is commonly agreed to a salvage value instead of taking it down at zero or less than zero.

(Tr. 200-01). Ms. Stewart added that because coal bed methane production differs from conventional production, much of the equipment is essentially valueless or of diminished value once a well has produced all of the available gas. She opined the equipment is generally not worth the cost of moving it to a different location. (Tr. 172-75).

13. On cross-examination, Ms. Stewart admitted she had never performed such an allocation, but her colleagues had. (Tr. 306-07). Ms. Stewart knew of no written publication or authoritative source supporting her method of establishing the value of personal property. (Tr. 247-48).

14. Ms. Stewart admitted that she was not involved in the negotiations nor was she aware of other consideration or contractual components that might have been part of the transactions (which the parties termed "intangibles"). (Tr. 241-42, 260, 308-10). She was not privy to the purchase contracts in an un-redacted form. (Tr. 240-41). Ms. Stewart acknowledged she had relied strictly on the contract amounts, which the Petitioners referred to her, to prepare the allocations. Ms. Stewart knew nothing about, nor did she consider, the equipment's condition at any point.[8] (Tr. 240-41, 278-79, 281, 309-10; Confidential Tr. 285-86; Confidential Ex. T-8).

15. Carbon Creek Chief Executive Officer Alan Brown testified that the extreme downturn in the 2014 oil and gas market played a significant role in Petitioners' negotiation and agreement to purchase the assets for the prices paid. (Tr. 64-69; Ex. T-9). Petitioners further argued that Assessor disregarded departmental guidance that the value of oil and gas facilities had decreased 30-35% due to the oil and gas market downturn. *Infra* ¶ 49.

16. Petitioners, through Ms. Stewart, submitted numerous "renditions," *infra* ¶¶ 19-21, and a voluminous spreadsheet to Assessor's office. Those documents reported Petitioners' expected property values on a property-by-property basis. (Tr. 218-21; Ex. T-10). The spreadsheet identified numerous properties that Assessor had misclassified as owned by other entities. (Tr. 254-56; Ex. T-10). Petitioners reported values substantially lower than the preceding owners had reported. (Tr. 264-66); *infra* ¶ 21.

17. Petitioners ultimately asserted that Assessor could not rightly value their property far in excess of their cost to acquire the property. Rather, they contended, the fair market

[8] For example, Ms. Stewart was unfamiliar with ownership of the pipelines. (Tr. 267-68, 302-03). Nor did Ms. Stewart consider the useful life of the equipment (Tr. 246) or that some equipment, such as compressors, had been overhauled. (Tr. 278-80).

value should reflect the actual cost to purchase the assets, as allocated in their open market, arm's length transactions. (Confidential Tr. 162-64; Tr. 181-84, 225-28, 231).

C. Assessor's rejection of the purchase transactions in valuing Petitioners' personal property

18. Assessor typically applies the cost method to value personal property. (Tr. 318). The parties agreed that the cost method should be applied to value the wellhead production equipment and gathering system equipment. (Tr. 360-61).

19. Assessor explained that the valuation process begins with a taxpayer-submitted "rendition," a valuation form identifying the property of record and cost information. (Tr. 319, 349, 351-52). Taxpayers return renditions to the Assessor's Office, informing of changes to the property and providing other requested information, which the Assessor's Office then enters into its computer system. *Id.*; *see also* Wyo. Stat. Ann. § 39-13-103(b)(v) (2015) (establishing process for property owners' submission of renditions to assessors).

20. Because she did not fully understand how Petitioners arrived at their requested values for the acquired equipment, Assessor valued Petitioners' equipment using previously reported historical values trended and depreciated to the present day. (Tr. 324, 376-77, 391). Assessor contacted Petitioners' tax consultant, Kelly Stewart, to better understand how Petitioners arrived at their claimed valuations. (Tr. 321-23, 35, 374-78). Assessor received the redacted 2015 acquisition contracts and supporting documentation after sending out notices of valuation and receiving Petitioners' appeals. (Tr. 323-25, 352, 377-78; Confidential Exs. T1-T8).

21. With the renditions and supporting documentation, Assessor identified numerous misclassified properties and other account errors. (Tr. 322, 327-30, 336-38). Based on her corrections and adjustments, including changing the condition of equipment from good to average, Assessor revised the production equipment's value. *Id.*; (Jt. Stip., R. at 55-56). Assessor did not, however, formally reassess the corrected values, determining she would deal with the corrected values on appeal: "By the time we're so deep into the protest, it's better to have it come out at this level and go from there."[9] (Tr. 328-331). Assessor tracked Petitioners' personal properties in 107 accounts, a summary of which she entered into evidence. (Ex. 1-107). The parties stipulated, for identification purposes only, to Petitioners' claimed values, Assessor's original values, and Assessor's revised values:

[9] Evidence in the record supports, and we therefore conclude, that Assessor decided against immediate reassessment late in the appeal to avoid additional administrative proceedings that would unreasonably delay resolution of the dispute before both the County Board, the State Board, and Wyoming's courts. Petitioners did not object, stipulating to Assessor's corrected, but not formally assessed, revaluations. (Jt. Stip., R. at 55-56). Assessor's procedural decision is relevant to our resolution of Petitioners' challenge to the wording of the County Board's Order. *See infra* ¶¶ 106-109.

- Carbon Creek asserted the production equipment value was $4.419 million;
- Powder River claimed the gathering system equipment value was $50.443 million;
- Assessor assessed the production equipment at $136.484 million, which she revised to $158,261,574;
- Assessor assessed the gathering system equipment at $344.418 million, revising the value down to $284,710,984.

(Jt. Stip., R. at 55-56; *see also* R. at 359-60).

22. Members of Assessor's staff visited each compressor site and performed a sampling (examining less than the total number of sites to test information and valuation criteria accuracy) of the thousands of well sites during the valuation process. (Tr. 385-86).

23. Several factors prompted Assessor's disregard of the 2015 acquisition transactions when she performed her valuations. Assessor testified, and it was not disputed, that Petitioners offered unsigned acquisition documents. (Confidential Tr. 148-49, 155-56, 326-27; Confidential Exs. T1-T-8); *supra* ¶¶ 4-5. Petitioners did not provide closing or settlement statements for the property acquisitions. *Id.* Petitioners provided confidential transaction documents that omitted attachments or that contained redacted excerpts. *Id.* Explaining her decision to rely on original cost data and historical trending and depreciation, Assessor stated:

> I believe that in the redacted sections of the contractual agreements there are elements that pertain to either value or liability. And in that, I can't come to that end line of what that market value is without full disclosure. When I'm looking at a home, I have an SOC. And in that statement of consideration, there's financing agreements, there's personal property consideration, there's other things that might be a part of the sale that I would call and verify. In this I had nothing to call and verify on.

(Tr. 327). Assessor continued:

> I do not believe that the full value disclosure has been made as to the agreements that were pertained within the redacted sessions (sic) that allows me to make that solid judgment to appraisal … I believe that the purchase prices disclosed in those contracts do not give me enough information.

(Tr. 373-74).

24. Assessor expanded on her decision, addressing Petitioners' failure to provide a complete picture of the 2015 transactions:

I don't discredit the contracts. I look at the contracts and say with what has been disclosed, there's not enough information pertaining to the other values sitting there to help us make the decision. When I look at a home – and let's say a home sells, and it sells for – it's a brand-new home, and it has the market value of $250,000 home and it sells for $50,000. The first thing I do is call and check to see why did that change? Was it an open market sale? In this case we had verified, yes, it's an open market sale. There's not a dispute to that.

Other extenuating circumstances that I looked at to say – when I see Ms. Stewart's reporting and how it was reported, the inconsistencies of the actual value to the acquired value from Carbon Creek to PRB (sic), in one it was approached with depreciation that actually – like on the Carbon Creek side, I (sic) dropped it less than the 7 percent – actually, less than the 3 percent because she got that acquired year depreciation with already a decreased value, which brought it to more like a little over 2 percent.

And then when you look at the PRB (sic) reporting and how that played out, it caused me to question it. So I recognize that I needed to talk more with Ms. Stewart and made that attempt. We talked about the approach to value and how Campbell County was even doing that and how – as we had talked about before, with mitigation [sic],[10] which we had all agreed to, which we never had that chance in Johnson County. That was only provided to Campbell. So some of those questions might have been answered provided we had mitigation to be able to come back and really have those discussions, and it wasn't provided.

As we sit now, when we look at the purchase prices that I had to consider in these contracts, I do not believe that I have all the information to be able to say that market value can be derived by just using the purchase price that was provided in these contracts.

(Tr. 375-76).

25. Addressing her rejection of Petitioner Powder River's equipment purchased from WGR (for which there were specific prices as part of the contract), Assessor stated, "[u]sing our personal property handbook as well as contracting vendors in our area, you know, looking at prices to be able to come up with that would be a market value to the compression, I found their value was low and I didn't find that I had sufficient information to be able to reduce it to that level." (Tr. 392). She continued:

[10] Assessor later clarified that she actually meant "mediation." (Tr. 383).

> Because somebody receives or gets – makes a negotiation for a purchase price to be X, doesn't mean that's the value or that's the value. You know, it could be greater or less than. In this case, I felt like I didn't have enough information, and the best information available was that that has been reported historically, taking into consideration all costs, all costs to the site, other equipment that was there at the site. We're not just talking compressors. We're talking complete locations. So I think there was a lot of information and more discussion perhaps that needed to take place to maybe come to those – to that level of understanding that didn't occur.

(Tr. 393).

26. Nor did Assessor agree with Petitioners' reporting method. (Tr. 380). Although the record is vague on why or how Ms. Stewart's "back-trending" method would negatively impact the 2016 valuation, Assessor did not agree that it was an accepted method.[11] (Tr. 323-24, 355-59, 375-76, 386-88); *infra* ¶ 97.

27. Defending her discretion to reject transaction prices in the valuation process, Assessor stressed that the 2016 Department Personal Property Valuation Manual encourages questioning of a taxpayer's accounting documents and data, quoting several excerpts from the Manual:

> "During the valuation process for personal property, a vast majority of data collected is self-reported from individual taxpayers, during this process and through data analysis and interpretation an appraiser must be careful to distinguish between price and value, which can be vastly different as reported by the taxpayer."
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> . . .
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> "The appraiser[-]assessors often rely on the cost approach and the reporting of cost information by the taxpayer as a primary method of business equipment valuation. This approach further relies on a presumption that the taxpayers' accounting records are fully forthcoming and the accounting methods conform to Generally Accepted Accounting Principles. This approach relies on an often false presumption that these generally accepted accounting principles used for income tax and financing reporting are reliable in the application of corresponding appraisal principles."
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> . . .

[11] Through questioning, Assessor challenged Ms. Stewart's prospective method of depreciating from Petitioners' values going forward, a discussion which at times confused the valuation issues for the present tax dispute. (Tr. 323-24, 355-59); *infra* ¶¶ 97.

> "Therefore, the review of accounting records, the questioning of reporting data and periodic auditing is a necessary part of an accurate, acceptable and uniform assessment utilizing the cost approach."

(Tr. 381-83) (quoting Dep't Personal Property Valuation Manual 2016, §§ 4.3, 5.4, 30-31, 36, Ex. 109 at 30-31, 36).

28. Assessor agreed, however, that pursuant to the cost method, and in accordance with departmental guidance, sales of used property establish "data points" to find a trend for the property's value. (Tr. 362-63; Ex. 109, p. 44). She acknowledged the Department of Revenue's Valuation Manual guidance that the "2015 market for oil and gas production and exploration materials, machinery and equipment is experiencing a period of severely declining demand due to external market factors." (Tr. 365-66; Ex. 109, p. 48). She further acknowledged the Department's advisory that the oil and gas market downturn had resulted in a 30-35% decrease in equipment values relative to 2014. *Id.*

29. Assessor opted to rely on the properties' original purchase costs, trended and depreciated to the present, as opposed to relying upon Petitioners' intervening 2015 purchase transactions. In so doing, she believed she valued Petitioners' property in accordance with Wyoming law. (Tr. 324, 343, 376-77, 391).

D. County Board's affirmation of Assessor's corrected valuations and prospective assessment

30. The County Board agreed that Assessor valued Petitioners' property in accordance with statutory law and departmental guidelines, and, that "[t]here was no evidence to indicate that the Assessor did not perform the duties imposed by law or that such property was assessed in a manner inconsistent or contrary to State Board directives or in a non-uniform manner." (Cty. Bd. Order, ¶ 32, R. at 172).

31. The County Board rejected Petitioners' "starting point" argument on three grounds. First, the County Board agreed that Assessor could not be required to rely on transactions lacking information necessary to fully understand the transactions. (Cty. Bd. Order, ¶ 34, R. at 172-73). Second, the County Board agreed that Petitioners' valuation method, in particular Ms. Stewart's allocation approach applied to Carbon Creek's acquired properties, was unsound or unexplained. (Cty. Bd. Order, ¶¶ 36-38, R. at 174). Third, and possibly most significant, the County Board rejected Petitioners' argument, premised on *Thunder Basin Coal Co. v. Campbell Cty.*, 2006 WY 44, 132 P.3d 801 (Wyo. 2006), that Assessor was **required** to rely on the 2015 transactions as the starting point to value the equipment at issue. Rather, it agreed with Assessor that *Gray v. Wyo. State Bd. of Equalization*, 896 P.2d 1347 (Wyo. 1995) authorized Assessor's disregard of the 2015 transactions. (Cty. Bd. Order, ¶¶ 42-46, R. at 176-79).

32. The County Board ruled that Petitioners failed to overcome the presumption in favor of Assessor's valuation. In its order, the County Board purported to set the values. (Cty. Bd. Order, R. at 180).

CONCLUSIONS OF LAW

A. Standard of Review

33. When the State Board hears appeals from a county board, it sits as an intermediate level of appellate review. *Town of Thermopolis v. Deromedi*, 2002 WY 70, ¶ 11, 45 P.3d 1155, 1159 (Wyo. 2002). In its appellate capacity, the State Board treats a county board as the finder of fact. *Id.*

34. The State Board's standard of review of a county board decision is, by rule, nearly identical to Wyoming Statutes section 16-3-114(c)(ii) (2015), the Wyoming Administrative Procedure Act standard that a district court must apply in reviewing such decisions. The State Board's review is limited to determining whether a county board's action is:

> (a) Arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law;
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> (b) In excess of statutory jurisdiction, authority or limitations or lacking statutory right;
>
> (c) Without observance of procedure required by law; or
>
> (d) Unsupported by substantial evidence.

Rules, Wyo. State Bd. of Equalization, ch. 3 § 9(a)-(d) (2006).

35. Because the State Board Rules are patterned on the judicial review provisions of Wyoming Statutes section 16-3-114(c)(ii) (2017), judicial rulings interpreting that section offer guidance:

> When an appellant challenges an agency's findings of fact and both parties submitted evidence at the contested case hearing, we examine the entire record to determine if the agency's findings are supported by substantial evidence. If the agency's findings of fact are supported by substantial evidence, we will not substitute our judgment for that of the agency and will uphold the factual findings on appeal. "Substantial evidence

> is more than a scintilla of evidence; it is evidence that a reasonable mind might accept in support of the conclusions of the agency."

Chevron U.S.A., Inc. v. Dep't of Revenue, 2001 WY 79, ¶ 9, 158 P.3d 131, 134 (Wyo. 2001) (citations omitted).

36. The State Board reviews conclusions of law de novo:

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

Maverick Motorsports Grp., LLC v. Dep't of Revenue, 2011 WY 76, ¶ 12, 253 P.3d 125, 128 (Wyo. 2011) (quoting *Bowen v. State, Dep't of Transp.*, 2011 WY 1, ¶ 7, 245 P.3d 827, 829 (Wyo. 2011)).

37. Likewise, the State Board reviews a county board's ultimate findings of fact *de novo*:

> When an agency's determinations contain elements of law and fact, we do not treat them with the deference we reserve for findings of basic fact. When reviewing an "ultimate fact," we separate the factual and legal aspects of the finding to determine whether the correct rule of law has been properly applied to the facts. We do not defer to the agency's ultimate factual finding if there is an error in either stating or applying the law.

Mtn. Vista Ret. Residence v. Fremont Cty. Assessor, 2015 WY 117, ¶ 4, 356 P.3d 269, 272 (Wyo. 2015) (citations omitted).

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

39. "A strong presumption favors the Assessor's valuation. 'In the absence of evidence to the contrary, we presume that the officials charged with establishing value exercised honest judgment in accordance with the applicable rules, regulations, and other directives that have passed public scrutiny, either through legislative enactment or agency rule-making, or both.' " *Britt v. Fremont Cty. Assessor*, 2006 WY 10, ¶ 23, 126 P.3d 117, 125 (Wyo. 2006) (quoting *Amoco Prod. Co. v. Dep't of Revenue*, 2004 WY 89, ¶ 7, 94 P.3d 430, 435 (Wyo. 2004)). A mere difference of opinion as to value is not sufficient to

overcome the presumption. *J. Ray McDermott & Co. v. Hudson*, 370 P.2d 364, 370 (Wyo. 1962).

40. If Petitioners successfully overcame the presumption, the "county board was 'required to equally weigh the evidence of all parties and measure it against the appropriate burden of proof.' " *Britt*, ¶ 23, 126 P.3d at 125 (quoting *CIG v. Wyo. Dep't of Revenue*, 2001 WY 34, ¶ 10, 20 P.3d 528, 531 (Wyo. 2001)). The Court explained the shifting of burdens upon overcoming the presumption: "The burden of going forward would then have shifted to the Assessor to defend her valuation[,]" but the ultimate burden of persuasion remained with the taxpayer "to prove by a preponderance of evidence that the valuation was not derived in accordance with constitutional or statutory requirements[.]" *Id.*

B. Applicable Law

41. The Wyoming Constitution requires that all property be uniformly valued at full value for taxation, and that the Legislature prescribe regulations to secure a just valuation for the taxation of all property. Wyo. Const. art. 15, § 11(a), (d).

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

43. County assessors are required to "[f]aithfully and diligently follow and apply the orders, procedures and formulae of the department of revenue or orders of the state board of equalization for the appraisal and assessment of all taxable property[.]" Wyo. Stat. Ann. § 18-3-204(a)(ix) (2015).

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

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

Wyo. Stat. Ann. § 39-11-101(a)(vi) (2015); *See also* Rules, Wyo. Dep't of Revenue, ch. 9 § 4(xxi) (2011); Dep't Personal Property Manual 2016 § 6.1, 39, Ex. 109 at 39.

45. One of the acceptable methods of valuation is the cost approach. Rules, Wyo. Dep't of Revenue, ch. 9 § 5(ii.) (2011). The Department's rules provide:

> **Section 5. Appraisal Methods.**
>
> The appraisal techniques which may be used by the County Assessor include the approaches described in this section. Each approach used shall be an appropriate method for the type of property being valued; that is, the property shall fit the assumptions inherent in the appraisal method in order to calculate or estimate the fair market value of the property. Each approach used shall also consider the nature of the property and the regulatory and economic environment within which the property operates. All methods used by the Assessor shall be consistent with the applicable IAAO and USPAP standards including, but not limited to, the following (except where standards conflict with Wyoming Statute or Rule): IAAO Standard on Mass Appraisal (2008), IAAO Standard on Automated Valuation Models (AVMs) (2003), IAAO Standard on Ratio Studies (part A) (2010), Uniform Standards of Professional Appraisal Practice (USPAP) Standard 6 (2010-2011), IAAO Standard on Property Tax Policy (2010) and IAAO Standard on Valuation of Personal Property.
>
> . . .
>
> (ii.) The Cost Approach. The cost approach is a method of estimating value by summing the land value, where applicable, with the depreciated value of improvements. In the CAMA system, RCNLD is calculated using Marshall and Swift cost tables. The cost approach is an accepted supplemental approach and could serve as the primary approach when sales data is unavailable or inadequate (such as special purpose properties). The cost approach relies on the principle of substitution in which an informed buyer will not pay more for a property than its comparable replacement. The approach requires:
>
> (A.) Accurate, current land values in the case of real property;
>
> (B.) Accurate, pertinent physical data regarding the property to which cost data may be applied;
>
> (C.) Current cost data which considers appreciation in the case of real and personal property;
>
> (1.) Costs may be estimated on the basis of typical replacement or reproduction costs.

(2.) Typical replacement or reproduction costs may be estimated by the quantity survey method, the unit-in-place method, the comparative unit method, or the trended original cost method.

Rules, Wyo. Dep't of Revenue, ch. 9 § 5(ii) (2011).

46. Under the Department's rules, an assessor has discretion and shall rely most heavily "on the value indicator which, in his professional judgment, best approximates the value of the subject property," and shall also "evaluate all alternative conclusions and correlate the value indicators to arrive at a final estimate of fair market value." Rules, Wyo. Dep't of Revenue, ch. 9 § 9 (2011).

47. "The fair market value of all taxable property shall be determined by applying the methods of valuation outlined above. In all cases, additions, deletions and changes in use will be recognized by appraisers and appropriate adjustments will be made to the valuation of the property." Rules, Wyo. Dep't of Revenue, ch. 9 § 10(a.) (2011).

48. The Department directs that personal property valuations "shall account for factors influencing the value in place including utility, usefulness to the owner or the actual income produced." Rules, Wyo. Dep't of Revenue, ch. 9 § 13(b.) (2011). The Department promulgates depreciation guidelines and tables and directs that the value of personal property shall not be depreciated below 20% unless the appraiser "has collected sufficient market information to indicate a different residual value." *Id.* at § 13(d.)(iv.).

49. The Department's 2016 Personal Property Valuation Manual describes two variations of a cost approach to value. With respect to the Trended Cost Approach, the Department advises:

> **Trended Cost Approach (C)** -- This variation begins with the reported cost of a specific piece of equipment provided by the taxpayer on the annual rendition forms submitted to the assessor's office. This cost is then trended from the date of purchase (acquisition date), or in some instances the date of refurbish or rebuilding of an original piece of equipment, to current day dollars in order to derive an estimate of replacement cost new (RCN).
>
> Once the reported costs have been trended, and an estimate of (RCN) is derived, an estimate of the total loss in value is made, which is the result of all forms of depreciation (physical, functional, and economic) on the subject property. The resulting value is determined to be the subject property's market value.

> Care should be taken by the taxpayer and the appraiser to ensure an appropriate cost is trended based on the circumstances of ownership for the property.
>
> If property is purchased new, and is used under normal conditions by a single owner, then the original date of purchase, along with the total original cost, represents the data points by which trending should occur.
>
> Alternatively, if a used piece of property was acquired at some point after its original date of manufacturing; then the date of acquisition, along with the total acquisition cost, represents the data points by which trending should occur.
>
> Additionally, if a piece of equipment is purchased new and used under normal conditions by a single owner, and is refurbished or rebuilt as that equipment reaches the end of its original useful life (changing the effective age of the property). The year of rebuild, along with the cost to refurbish the property should be reported, and would represent the data points by which trending should occur.

Dep't Personal Property Valuation Manual 2016 § 6.4, 43-44 (Tr. 361-64; Ex. 109 at 43-44). The Department further advises:

> The 2015 market for oil and gas production and exploration materials, machinery, and equipment is experiencing a period of severely declining demand due to external market factors.
>
> In 2015, new drilling and production of oil and gas has dramatically declined in many areas of the United States. Demand for additional equipment has been decreasing as a result of fluctuating oil and gas prices and the absence of sources for financing. Oilfield machinery and equipment has experienced decreasing price trend which has resulted in an overall decrease of approximately 30% to 35% in equipment values, as compared to 2014.

Dep't Personal Property Valuation Manual 2016, Append. 1, § A-1.0, 48. (Ex. 109 at 48).

C. Review of County Board's decision

50. With competing factual and legal considerations, we first resolve whether Assessor was required to use the 2015 purchase transactions as a basis for her valuations. The County Board held that Assessor was not so required, rejecting Petitioners' reliance on *Thunder*

Basin. The County Board accepted Assessor's counter argument that in accordance with *Gray*, an assessor is not required to use the sale of a property to value that property. *Supra* ¶ 31; *infra* ¶ 55-58.

51. Second, we will determine whether substantial evidence supported the County Board's decision that Assessor justifiably rejected each transaction because she lacked sufficient information to properly evaluate each transaction. *Infra* ¶¶ 68-99. Third, we examine Petitioners' uniformity concerns and argument that another county board of equalization's decision must or should have guided the County Board's decision, or should influence our examination on appeal. *Infra* ¶¶ 100-105. Fourth, we resolve whether the County Board's affirmation of Assessor's corrected, but unassessed, valuation was procedurally contrary to law. *Infra* ¶¶ 106-109.

i. *Thunder Basin, Gray,* and Assessor's valuation discretion pursuant to the Department's rules

52. In *Thunder Basin,* the Campbell County Assessor valued mine assets in 2001 using the taxpayer's 1998 acquisition of those assets. The taxpayer objected that its purchase price did not reflect the property's fair market value because federal tax considerations drove the purchase price. *Thunder Basin,* ¶¶ 17, 25, 132 P.3d at 807, 809. Taxpayer further complained that assessor's reliance on the 1998 purchase would "reset" the used property's economic life, treating the property as new notwithstanding years of depreciation. *Id.*, ¶ 21, 132 P.3d at 808. Assessor responded that the recent purchase of the used facilities was the "best evidence" of "fair market value" as the term was defined, reasoning that purchaser implicitly accounted for depreciation when agreeing to a purchase price. *Id.*

53. After summarizing the Department's cost method guidelines, the Court observed "[n]othing in the statutes, regulations or guidelines prohibits the use of the acquisition cost of used personal property as the starting place for the cost method of appraisal and, in fact, **the guidelines seem to direct it**." *Id.* (emphasis added). The Court stated:

> After a thorough review, we conclude the record supported the County Board's conclusion. Thunder Basin provided no citation to any guideline, rule or statute requiring the use of the original acquisition date and price when applying the cost method of appraisal. In fact, both the guidelines and the rules **suggest, directly and indirectly**, the actual acquisition price and date are **a proper starting point** for applying the cost method to used property.

Id., ¶ 24, 132 P.3d at 809 (*citing Jim Paws Inc. v. Equalization Bd. of Garland Cty., Ark.*, 710 S.W.2d 197 (Ark. 1986)) (emphasis added). The Court added, "[t]he County Board's decision was well justified and we cannot conclude it acted in an arbitrary or capricious manner in concluding Thunder Basin failed to carry its burden." *Id.*, ¶ 26, 132 P.3d at 810.

54. The question in the present case is whether *Thunder Basin* **required** Assessor to rely on the 2015 transactions as the "starting point" in her valuation process. *Thunder Basin* does not conclusively answer that question. The Court merely suggested that assessor may have been required to use the transaction price, observing the Department rules "suggest, directly and indirectly" that an actual transaction price is "a proper starting point." *Id.*, ¶ 24, 132 P.3d at 809. The Court concluded only that the reviewing tribunal, the county board of equalization, did not rule arbitrarily or capriciously when it found the taxpayer failed to carry its burden. *Thunder Basin,* ¶ 26, 132 P.3d at 810. We are unwilling to extend *Thunder Basin* beyond its stated analysis and holding. Moreover, inferring a hard-and-fast rule from *Thunder Basin* risks collateral damage to well-established regulatory directives, specifically, that assessors possess ample discretion to evaluate and discard transactions if warranted.

55. From Assessor's standpoint, the Wyoming Supreme Court in *Gray* "makes clear, *Thunder Basin* does not, and cannot, stand for the proposition that a county assessor must utilize a purchase price provided by property owners as the beginning point in her assessment procedure." (Assessor's Br. 19, *citing Gray,* 896 P.3d at 1351). Assessor offers that Court's holding as conclusive:

> We hold the Assessor appropriately applied the CAMA in arriving at assessed valuations in this case and was not bound to utilize the purchase price of the property in lieu of the appraisal method. The legislature and the State Board have diligently sought to establish equal and uniform methods for taxation of property in accordance with the constitution. **It would be a travesty to arbitrarily disregard that system in favor of the utilization of a purchase price which would lead to wide disparity in the context of uniformity and equality.**

(Assessor's Br. 19, quoting *Gray,* 896 P.3d at 1354 (emphasis in original)).

56. Assessor's reliance on *Gray* is unavailing given the facts and circumstances of that dispute and the Court's reasons for rejecting taxpayer's claim. The Taxpayer in *Gray* purchased various real properties in Converse County through private and public sales. Challenging assessor's 1991 mass-appraised valuation calculated through the State's CAMA (Computer Assisted Mass Appraisal) system, taxpayer argued that in accordance with the statutory definition of fair market value at Wyoming Statutes section 39-1-101(a)(vi) (1990), "the best and exclusive evidence of fair market value is the actual transaction price." *Gray,* 896 P.2d at 1351. *See* Wyo. Stat. Ann. § 39-11-101(A)(vi) (2015).

57. The Wyoming Supreme Court disagreed for several reasons. First, the Court distinguished taxpayer's cited cases because they arose from states with constitutions imposing different tax valuation criteria than Wyoming's Constitution imposes. *Id.*, 896 P.2d at 1351-52. Second, several of the purchases were tax sales and did not satisfy the

statutorily defined "fair market value" criteria, including that the transactions be "open market" transactions. *Id.*, 896 P.2d at 1352-53. The Court rejected taxpayer's suggestion that the Court establish, through a court ruling, new tax valuation criteria. *Id.* The Court ultimately rejected taxpayer's overly broad claim that actual sales prices necessarily trump CAMA valuations, which offer a uniform mass-appraised value of improved residential properties.

58. It is telling that the *Thunder Basin* court, some eleven years after *Gray*, did not distinguish or even discuss *Gray* when it held that the assessor properly used the actual sales price of the mine assets. The differences between *Gray* and the present dispute are equally striking.[12] The taxpayer in *Gray* challenged application of Wyoming's CAMA system to real properties, commercial and residential, while the present dispute involves specialized personal property—mining equipment. *See supra* ¶¶ 20-22, 29 (Assessor valued using original purchase cost, trended and depreciated to present). Contrary to the County Board's conclusion that "[t]he Supreme Court, in *Gray v. Wyoming State Board of Equalization,* specifically addressed this issue and found that assessors are not required to utilize a purchase price to establish market value[,]" the Court has not so held in a case similar to the present case. *See* Cty. Bd. Order, ¶ 42, R. at 176-77. The County Board's conclusive reliance on *Gray* was misplaced, and that ruling is not dispositive.

59. Neither the Department's rules nor its 2016 Personal Property Valuation Manual (Manual) definitively answer the question. *Supra* ¶¶ 45-49. The Department's rules defining the cost method refer to various guidelines or considerations, but do not state that a recent purchase of property necessarily establishes value. *Id.* More helpful is the Manual (Ex. 109), which advises concerning valuation methods, scenarios, or property types. Referring to the "Trended Cost Approach," the Manual directs that "if a used piece of property was acquired at some point after its original date of manufacturing; then the date of acquisition, along with the total acquisition costs, represents the data points by which trending should occur." (Ex. 109 at 44; Tr. 361-64); *supra* ¶ 49. This guidance arguably supports Petitioners' position that when applying the trended cost approach (as occurred in this case), Assessor must consider a recent purchase of equipment, absent a compelling reason for disregarding the purchase.

60. A survey of cases from other jurisdictions reveals differing views on the relative evidentiary weight given a recent open market, arm's length sale of property, but supports the conclusion that such a transaction is at least relevant evidence of value and should be considered. *See* Kristine Cordier Karnezis, Annotation, *Sale price of real property as evidence in determining value for tax assessment purposes*, 88 A.L.R.3d 1126 (1979 &

[12] Additional details concerning Gray's purchased properties are available in the State Board's decision issued upon review of the Converse County Board of Equalization's ruling in the underlying dispute. *In the Matter of the Appeal of Jan Charles Gray*, 1993 WL 220382, Doc. No. 91-156 (Wyo. State Bd. of Equalization, June 16, 1993). The properties included various commercial properties and residential improved lots, including a hotel. *Id.*

Supp. 2018). To some degree, nearly every court predicates its analysis on the universal appraisal goal of estimating what a willing buyer would pay, and a willing seller would accept, for property in an open market-driven, arm's length transaction, when neither buyer nor seller are under compulsion to buy or sell. Although this annotation deals primarily with real property assessment disputes, the proposition itself is not specific to real property and the discussion is therefore helpful.

61. In a fair number of jurisdictions, a recent sale of property under open market conditions is strong or conclusive evidence of value. In *Foreman & Clark of Iowa, Inc. v. Bd. of Review of City of Cedar Rapids*, 286 N.W.2d 169, 173 (Ia. 1979), the Iowa Supreme Court held that taxpayers met their burden of showing assessor's excessive valuation of a commercial property, stating, "[t]he evidence of the contract sale price and the adjustments considered to avoid distortion of market value was probative as bearing on the market value and ultimately the actual value of the property." A New York court embraced the general rule that " 'the purchase price set in the course of an arm's length transaction of recent vintage, if not explained away as abnormal in any fashion, is evidence of the 'highest rank' to determine the true value of the property at that time.' " *W.T. Grant Co. v. Scrogi*, 420 N.E.2d 953, 959-60 (N.Y. 1981) (quoting *Plaza Hotel Assoc. v. Wellington Ass'n,* 333 N.E.2d 346, 349 (N.Y. 1975)). The court found the recent sale of commercial property in question was the best evidence of the value. *Id.*

62. Similarly, Vermont's Supreme Court reasoned "[w]hen, however, fair market value can be established by the operation of bona fide sale transactions themselves, a market value is perforce established for appraisal purposes." *Royal Parke Corp. v. Town of Essex*, 488 A.2d 766, 768 (Vt. 1985). The Wisconsin Supreme Court similarly recognized that "[a] recent arm's-length sale of the subject property, or sales of reasonably comparable land, represent the best information with which to determine fair market value. Given evidence of such sales, it is error for an assessor to look to other information to value the property." *Waste Mgmt. of Wis., Inc. v. Kenosha Cty. Bd. of Review*, 516 N.W.2d 695, 702 (Wis. 1994).

63. The Court in *Shiloh Auto. Inc. v. Levin*, 881 N.E.2d 227, 232 (Ohio 2008) recited the rule that "[t]he best evidence of true value of tangible personal property is an arm's-length transaction," but rejected the recent sale at issue because it did not satisfy the required criteria. *See also Rich's Dep't Stores, Inc. v. Levin*, 925 N.E.2d 951, 956 (Ohio 2010) (*quoting Shiloh Auto*); *Spector Terminals, Inc. v. Bd. of Educ. of Nordonia Hills Sch. Dist.*, 461 N.E.2d 16, 18 (Ohio Ct. App. 1983) (Referring to a real property sale, Court stated rule that " 'The best method of determining value, when such information is available, is an actual sale of such property between one who is willing to sell but not compelled to do so and one who is willing to buy but not compelled to do so.' ").

64. Other courts view recent sales of property as merely one consideration among others in establishing value. These courts tend to focus more on an absence of evidence, or quality

of evidence, when determining whether a taxpayer has overcome the presumption favoring an assessor's valuation. In *Biltmore Hotel Partners v. Maricopa Cty.*, 866 P.2d 149 (Ariz. Tax Ct. 1993), the court found that evidence of the property's recent sale was flawed and did not overcome the presumption of correctness favoring assessor's valuation. Thus, the recent sale was not entitled to greater weight than other valuation evidence. The Arkansas Supreme Court similarly found that a sale of property, while important, did not conclusively establish market value. *Tuthill v. Ark. Cty. Equalization Bd.*, 797 S.W.2d 439, 441 (Ark. 1990). The court reasoned that reliance on the transaction should not be automatic because it might constitute an unusual bargain or reflect an aberration in the market. *Id.* Here again, the court focused on whether the taxpayer sustained his burden of overcoming the presumption favoring the assessor. *Id.* at 441-42.

65. In *Hains v. Holley,* 234 So.2d 152, 153 (Fla. Dist. Ct. App. 1970), the court concluded that because the governing statute offered multiple guideposts to determine value, a recent sale of the property was not "the sole criterion in determining a just valuation." Another court observed that "[w]hile the sale price ought not to be conclusive, it may reasonably be relied upon by the factfinder as one of the most important elements to be considered, since it is the sale value[.]" *In re Objections & Defenses to Real Prop. Taxes for 1970 Assessment*, 235 N.W.2d 390, 393 (Minn. 1975). The Nebraska Supreme Court, in a dispute over the taxable value of hog confinement facilities, held that although an actual sale of the facilities did not conclusively establish value, it should have received strong consideration, and further held that evidence of the sale demonstrated an overvaluation of the facilities. *Dowd v. Bd. of Equalization of Boone Cty.*, 482 N.W.2d 583, 589 (Ne. 1992).

66. Other considerations may impact the analysis. Assessors may consider the manner in which a property is offered for sale or acquired, *see Gray,* 896 P.2d at 1352, the duration of a property's market exposure, the property's uniqueness or purpose, mixed property types sold for a total price, and whether a sale occurs during extreme economic downturns or market upturns, among other considerations. Karnezis, *supra,* §§ 6-12.

67. Reconciling these court rulings with the Department's rules and Personal Property Valuation Manual 2016 (Ex. 109), in particular the Department's trended cost guidance, *supra* ¶ 49, and considering that most courts have found a recent sale of the property is relevant evidence, and often strong ("best evidence") or conclusive evidence, of that property's value, Assessor was required to consider Petitioners' purchases of the oil and gas equipment to the extent she could. Assessor, in accordance with the Department's rules and 2016 Personal Property Valuation Manual, nevertheless retained ample discretion to carefully examine, question and, if justified, reject the 2015 transactions.[13] We next address

[13] The Department's 2016 Personal Property Valuation Manual gives assessors using the cost method broad discretion to question and interpret transactional data: "review of accounting records, the questioning of reported data, and periodic auditing is a necessary part of an accurate, acceptable, and uniform assessment utilizing the cost approach." (Ex. 109, 30-31; Tr. 381-83); *supra* ¶ 27.

whether Assessor's reasons for rejecting the 2015 sales were justified and whether substantial evidence supported the County Board's agreement with those reasons.

ii. Assessor's valuation of Petitioner Carbon Creek Energy, LLC's acquired wellhead equipment

68. Petitioner Carbon Creek challenged Assessor's application of the cost method, in particular her refusal to use Carbon Creek's purchase of equipment in her valuation of the equipment. Carbon Creek further complained, *inter alia,* that Assessor's valuation did not fully recognize the effect of the 2014-15 severe oil and gas market downturn, nor did she follow the Department's guidance concerning the effect of that market spiral. Pet'rs' Br. 37-38.

69. The County Board affirmed[14] on three grounds. First, the County Board agreed that Petitioners' failure to provide complete documentation of the Carbon Creek purchase transaction justified rejection, stating "[a]s noted by the Wyoming Supreme Court, 'the taxpayer bears the burden of providing accurate information to the assessor for preparation of a valuation of its properties.' " (Cty. Bd. Order, ¶ 34, R. at 172-73 (*citing Thunder Basin*, ¶ 25, 132 P.3d at 809)). Second, the County Board agreed that Petitioner's allocation method was contrary to accepted appraisal practice, among other defects. (Cty. Bd. Order, ¶¶ 35-41, R. at 173-76). Third, relying on *Gray,* the County Board concluded Assessor was not required to use the 2015 Carbon Creek purchase transaction. (Cty. Bd. Order, ¶ 42, R. at 176-77). The County Board concluded that Carbon Creek did not, therefore, overcome the presumption that Assessor's valuation was correct. (Cty. Bd. Order, ¶ 48, R. at 179-80).

70. Having noted the County Board's overreliance on *Gray*, *supra* ¶¶ 56-58, we next resolve whether substantial evidence supported the County Board's ruling and consider whether the County Board's Decision and Order was otherwise consistent with law.

a. Assessor's rejection of Carbon Creek purchase transactions because documentation was incomplete

71. Assessor rejected the 2015 Carbon Creek transaction in part because Petitioners failed to supply complete versions of the contracts. Assessor explained she could not fully examine, consider, or verify the contract terms and pricing. *Supra* ¶¶ 23-27. Carbon Creek admittedly offered redacted and incomplete confidential purchase contracts into evidence. *Supra* ¶¶ 4-5. Mr. Brown reassured Assessor and the County Board that the redacted

[14] Although the County Board did not affirm Assessor's assessed values, it agreed with Assessor's corrected values and adopted them as the appropriate values. (Cty. Bd. Order, 19, R. at 180). We address Petitioners' objection to the form of the County Board's order in a separate section. *See infra* ¶¶ 106-109.

contract excerpts and omitted contract attachments did not speak to the gross contract prices paid to Anadarko and WPX. *Id.*

72. The County Board agreed that Assessor reasonably rejected the contract prices because she could not fully review or verify how the equipment costs were derived, a significant fact given the cost method of valuation required Assessor to understand how Petitioners' arrived at their claimed equipment cost. *Supra* ¶¶ 45-49.

73. From a purely legal standpoint, it was incumbent upon Petitioners to supply complete and responsive information to Assessor in support of their claimed valuations. *See Thunder Basin*, ¶ 25, 132 P.3d at 809 ("As we have repeatedly stated in the past, the taxpayer bears the burden of providing accurate information to the assessor for preparation of a valuation of its properties."); *Wyo. Dep't of Revenue v. Guthrie*, 2005 WY 79, ¶¶ 17-36, 115 P.3d 1086, 1093-98 (Wyo. 2005) (In Wyoming's self-reporting tax system, taxpayer was required to supply underlying data in support of reported deductions during audit, even if only available through third-parties.); *See also In re Carol-Holly Oil Co.*, 1991 WL 101789, Docket No. A-90-149, ¶ 7, (Wyo. State Bd. of Equalization April 30, 1991) (County Board did not err in refusing to rely on taxpayer's incomplete sale information).

74. We also agree that Petitioners had procedural means to supply all necessary confidential information to Assessor and the County Board, while maintaining the confidentiality of sensitive information.[15] (Assessor's Resp. Br. 24, fn 6). In any event, Petitioners offer no authority for the proposition that an assessor must, to his or her official detriment, accommodate contractual confidentiality constraints under facts similar to those presented here.

75. Because Carbon Creek used a seven percent allocation to identify equipment costs, and because the allocation applied to the contract sums Carbon Creek paid to Anadarko and WPX, Assessor reasonably sought to verify all aspects of the purchase contracts. *Supra* ¶¶ 9-10, 12-14. Further, because the Carbon Creek purchase contracts encompassed expressed and implied considerations and obligations, *supra* ¶¶ 14, 23-27, some of which were redacted, omitted from the contract forms, or were not explained, Assessor's and the County Board's skepticism and reluctance were not only reasonable, but justified. Even if we disagreed with the County Board's conclusion on this point, we could not substitute our judgment for the County Board's as long as reasonable minds might agree. *Sinclair Oil Corp. v. Wyo. Pub. Serv. Comm'n*, 2003 WY 22, ¶ 8, 63 P.3d 887, 893 (Wyo. 2003).

[15] Petitioners moved the County Board to protect the confidentiality of identified documents on August 16, 2016. (Petitioners' Mot. to Protect Confidentiality of Certain Exhibits & to Conduct Portions of the Hearings in Confidential/Executive Session, R. at 22-24).

76. To illustrate the point further, Assessor questioned whether the Carbon Creek purchase contract prices reflected all consideration paid. (Cty. Bd. Order, ¶¶ 21-22; R. at 168-69; Confidential Tr. 129-34, 137, 145-49, 241-43); *Supra* ¶¶ 23-27. Other forms of consideration (sometimes referred to as "intangibles"), included various contract rights and obligations received or incurred through the acquisition, including the obligation to plug abandoned wells. Those "intangibles" were mentioned—but neither fully identified nor understood—at the hearing. *Supra* ¶ 14. Ms. Stewart, who prepared and applied the allocation to impute a price to the equipment, admitted she did not know whether Carbon Creek's contractual purchase prices captured all consideration paid to purchase the wellhead assets, nor did she question whether additional consideration was given. *Supra* ¶ 14. Without knowing whether the price paid was the entire consideration conveyed, neither Assessor nor the County Board could truly know whether the allocation worked as intended.

77. Petitioners suggest Assessor's refusal to use the incomplete contracts "was simply an effort to avoid applying the contract prices as the starting point and to avoid valuation that the Assessor felt was 'substantially less' than values reported in prior years." (Pet'rs' Opening Br. 29). "In the absence of evidence to the contrary, we presume that the officials charged with establishing value exercised honest judgment in accordance with the applicable rules, regulations, and other directives[.]" *Britt*, ¶ 22, 126 P.3d at 125; *supra* ¶ 39. We find no evidence that Assessor shunned her responsibilities or sought to discard pertinent valuation data. In fact the record indicates that Assessor worked with Ms. Stewart to understand the contracts and improve the accuracy of her valuation process. *Supra* ¶¶ 19-21.

78. We thus conclude substantial evidence supported the County Board's determination that Assessor lacked sufficient documentation and information to properly review, understand, and verify the Carbon Creek contract acquisition prices, upon which Petitioner's complex allocation was premised. (Cty. Bd. Order, ¶¶ 33-34, R. at 172-73). Petitioners asked Assessor and the County Board to accept too much on faith, in particular, Mr. Brown's broad assurance that the excluded contract language and materials were unnecessary to fully consider the contract price. *Supra* ¶¶ 4-5.

79. Moreover, Petitioners' suggestion that Assessor and the County Board should pursue anything less than a comprehensive review of the contracts, ran counter to the Department's admonition that assessors diligently question and verify information when performing valuations. *Supra* ¶¶ 27, 67.

b. Assessor's rejection of allocation method to derive cost of production equipment

80. We do not agree with all of the County Board's reasons for rejecting Petitioner's seven percent allocation ratio. Yet, evidence of the allocation's origin and application left many questions unanswered about its efficacy. Consequently, the County Board reasonably found that Petitioners, who relied on the allocation, failed to carry their burden in challenging the Assessor's valuation of the oil and gas equipment.

81. Carbon Creek offered no established appraisal authority supporting, or procedural protocol for applying, the seven percent allocation applied to value Carbon Creek's personal property. Ms. Stewart testified she had never used the approach before, but had consulted with unidentified members of her firm who had. *Supra* ¶¶ 13-14. The County Board was justifiably troubled by Petitioner's failure to offer some indicia that the allocation was a recognized method, or a method appropriate under the circumstances. (Cty. Bd. Order ¶¶ 35-36, R. at 173-74). The County Board found it significant that Ms. Stewart attempted no independent verification of her valuation results or allocation selection: "She did not compare her results to prevailing market prices or the prices set forth in the Wyoming *Personal Property Manual*." (Cty. Bd. Order, ¶ 38, R. at 174). The County Board understandably deferred to Assessor, who indicated no familiarity with the method. (Tr. 375-76, 380, 386).

82. More particularly, the County Board found Ms. Stewart's reliance on a Marshall & Swift salvage value table to create a seven percent allocation ratio problematic. *Supra* ¶¶ 9-12. Ms. Stewart testified she could find no industry allocation guideline applicable to the gas wells in question, so she selected a Marshall & Swift publication because the Department of Revenue generally cited Marshall & Swift as a valuation resource. She used a salvage value table applicable to oil and gas refining facilities. *Id.* Assessor struggled to accept the allocated value premised on a seven percent salvage rate because much of the equipment was in good working order. But Ms. Stewart, who was entirely unfamiliar with the equipment, applied the rate to all equipment regardless of circumstances or operating condition. *Id.*; *supra* ¶¶ 23-25.

83. On the other hand, Ms. Stewart and Mr. Brown persuasively explained why a salvage or scrap rate might apply to good operating equipment under the circumstances. *Supra* ¶ 12. Nevertheless, Ms. Stewart's unfamiliarity with the equipment, including basic operational characteristics and records, undermined the credibility of her allocation process. *Supra* ¶¶ 13-14.

84. On other points of contention concerning the allocation's effect, confusion reigned and questions went unanswered. Assessor argued that the allocation, as applied, actually generated a ratio of less than seven percent. (Tr. 375-76). The County Board consequently observed:

> In addition, the chosen and advocated percentage of allocation was not actually used by Ms. Stewart. Instead, due to some additional calculation which this Board fails to understand, the actual allocation of value was much less than seven percent (7%). It was actually much closer to five percent (5%). *See supra* ¶ 17; *see also Tr.* at 25:9-18. It is also worth noting that the final allocation percentage amount bears no relationship to the allocations made within the contracts by Moriah, Anadarko, and WPX. *Tr.* at 263:13-25, 264:1-6. Consequently, the Board is unsure how the purported purchase price was actually allocated to each individual piece of Carbon Creek personal property located within Johnson County.

(Cty. Bd. Order, ¶ 37, R. at 174). The evidence on this point was inconclusive, but again illustrated Petitioners' failure to adequately explain the allocation's effect.

85. Much like the County Board and Assessor, the State Board struggles to understand how any **depreciation rate** would apply as an allocation percentage to derive the cost of equipment sold as part of a larger acquisition. It seems like an apples to oranges relationship. The record contains no explanation of how a depreciation rate can double as the fraction applied in such an allocation or, really, how such allocations are generally constructed in the first place. Petitioners proceeded as though their allocation approach was legitimate without offering supporting authority, industry reference, or any objective verification of the results, i.e. "foundation" from an evidentiary standpoint.

86. Similarly, neither Assessor nor the County Board were comfortable with Ms. Stewart's "back-trending" approach used to calculate depreciation. Yet, the back-trending discussion was relevant only to future years, a fact the County Board likely misunderstood.[16] (Cty. Bd. Order, ¶ 40, R. at 175-76; Tr. 298-301, 355-59); *supra* ¶ 26.

87. The County Board likely misinterpreted the Department's guidance that property should not be depreciated to less than 20% of the original acquisition costs. (Cty. Bd. Order, ¶ 38, R. at 174). The County Board misunderstood this to mean that a property's value could not, in any case, be less than 20%, a provision seemingly violated. On this point, however, the record is clear and Carbon Creek offered sufficient evidence to distinguish the depreciation guideline from other valuation factors. (Tr. 294-96). Nevertheless, understanding this distinction required that the County Board comprehend the conceptual difference between depreciation as an adjustment to value over time, versus Petitioners' use of a depreciation table as a surrogate indicator to allocate equipment price. *Id.* We understand how the County Board's confusion persisted because Petitioners blended the

[16] Assessor agreed that the back-trending and depreciation component was an issue for years after 2016: "Q[uestion]: Hypothetically, if they were to agree with us, the question of depreciation and trending, that would really come into play in 2017 for the 2017 tax year; is that correct? A[nswer]. Correct. Because you've purchased it in '15." (Tr. 357-58).

concepts when allocating a seven percent depreciation rate, without adequately supporting its approach as an industry-accepted practice. *Supra* ¶¶ 10-12, 84-85.

88. As a whole, we agree Carbon Creek did not present sufficient evidence to establish error or that Assessor's valuation was illegal. Petitioner's reliance on *Thunder Basin*, although legally compelling, incorrectly presumed under the facts of this case that Assessor **could use** the transactions as a "starting point" as easily as did the assessor in *Thunder Basin*.[17] To the contrary, the transactional price in *Thunder Basin* did not present the same challenges or difficulties as the transactions in the present case: the assessor in *Thunder Basin* was able to fully consider that transaction, and, no post hoc allocation was necessary to initially identify prices paid for the equipment. We find Carbon Creek failed to carry its burden of overcoming the strong presumption that Assessor valued Carbon Creek assets in accordance with Wyoming law. Substantial evidence, in particular Petitioner's failure to supply complete transactional information to Assessor, along with remaining questions about the allocation, supported the County Board's ruling as to the Carbon Creek property.

89. Neither is Petitioner Carbon Creek's assertion that Assessor necessarily erred by not fully accounting for the economic downturn, or by valuing the property at more than the total purchase price, sufficient to carry its burden. The record lacks sufficient evidence of how the economic downturn impacted Assessor's valuation. Nor does the record indicate how the Department's advisory, concerning the oil and gas market's downturn, impacted Assessor's valuation of the equipment. Assessor acknowledged the oil and gas market downturn and Department of Revenue's advisory, but was not asked how these factors influenced her valuation. *See supra* ¶ 28. The record is incomplete on these counts, revealing no clear departure from Wyoming statute or regulation. In the absence of evidence specifying Assessor's improper consideration of these factors, we must presume she exercised sound discretion and followed all required guidelines. *Supra* ¶ 39.

iii. Assessor's valuation of Petitioner Powder River Midstream, LLC's acquisition of gathering system equipment

90. The County Board affirmed Assessor's valuation of the Powder River gathering system assets, finding Powder River failed to carry its burden to overcome the presumption

[17] Petitioners alternatively argue that even if their allocation method was questionable, "that disagreement did not authorize the Assessor to disregard the contracts. The Taxpayer has a duty to report the value of its property in a logical and justifiable manner, but the Assessor equally has a duty to reach fair market value of property using current transactions as the 'starting point" for valuation.' " (Pet'rs' Opening Br. 35-36, citing *Thunder Basin*, ¶ 24, 132 P.3d at 809). The State Board disagrees. Assessors are not obligated to accept questionable valuation transactions in the hopes that taxpayers may further illuminate unexplained processes or resolve an assessor's concerns. Nor must assessors undertake future negotiations to work out transactional defects, such as a contested allocation method applied to discern the purchase price of equipment. The Board has located no general authority for these propositions; indeed, the opposite is true and courts universally hold taxpayers responsible for demonstrating the applicability and relevance of their transactions within a given assessment process and timeframe. *See supra* ¶ 73.

that Assessor's valuation is correct. However, Assessor could object to fewer aspects of the Powder River transaction as a market value transaction because its purchase of field gathering system equipment from WGR included actual prices assigned to the equipment as part of the purchase negotiation. *Supra* ¶¶ 8, 11. In other words, Powder River did not rely on a questionable post-sale allocation to impute an equipment cost from the overall contract price. Assessor conceded from the beginning that the Powder River purchase transaction was, in general terms, an eligible fair market value transaction. *Supra* p. 4, n. 1; *supra* ¶ 44.

91. Still, the County Board determined Powder River failed to carry its burden because Ms. Stewart did not "actually value the Powder River personal property." (Cty. Bd. Order, ¶ 39, R. at 174-75). The County Board took issue with the buyer's and seller's price netting process, through which they reconciled costs and revenues between the contract's execution and closing, without explaining why. *Id.*

92. We have held that *Thunder Basin* required that, unless the transactions could not be used for a specific reason, the equipment purchase prices were at least a factor to be considered in the valuation process. *Supra* ¶¶ 52-55, 67. Correspondingly, the 2016 Personal Property Valuation Manual directed Assessor to consider and use the Powder River purchase to the extent possible as a data point in applying the cost valuation method. *Supra* ¶¶ 49, 59, 67. We find Powder River carried its burden and overcame the presumption in favor of Assessor's valuation. Powder River offered prices it recently paid for the gathering system equipment in an admittedly arm's length, open market sale—prices Assessor disregarded in her valuation. The burden thereafter shifted to Assessor to explain how her valuation complied with Wyoming law. *Supra* ¶¶ 39-40.

93. Assessor's justification for declining to use the Powder River purchase prices lacked specificity, and she did not directly challenge the designated equipment prices. Assessor explained her reason for rejecting the Powder River purchase agreement:

> Using our personal property handbook as well as contacting vendors in our area, you know, looking at prices to be able to come up with what would be a market value to the compression, I found their value was low and I didn't find that I had sufficient information to be able to reduce it to that level.

(Tr. 391-92); *see supra* ¶¶ 23-27. Yet, Assessor did not explain how insufficient information undermined her reliance on the specific prices for equipment. So, while Assessor explained her rejection of the allocation used to value the Carbon Creek assets, Assessor's complaint that she lacked sufficient information to understand the Powder River contract was not supported by evidence. We therefore agree with Petitioners that redacted portions of the Powder River acquisition contracts did not justify Assessor's broad disregard of the Powder River transaction.

94. Because Assessor rejected the contract prices paid for the gathering system equipment without sufficient explanation, she did not explain whether she could have used the purchase prices "as a data point" in her trended valuation of the equipment, as the Department directs. (Tr. 361-64); *supra* ¶¶ 49, 59, 67).

95. The County Board's conclusions of law with respect to the Powder River gathering system equipment either do not align with evidence in the record and/or rely on faulty legal analyses. The County Board faults Ms. Stewart, who reported Powder River's claimed equipment prices, for using the actual prices paid for the equipment as identified in Powder River's contract with WGR. (Cty. Bd. Order ¶ 39, R. at 174-75). The County Board observed "this process is unsound from the beginning as the evidence does not support the contention that these values were actually allocated by the parties." *Id.* The evidence, however, indicated that Powder River (Moriah Group) attributed prices/values to the compressors and other equipment during negotiations with WGR. WGR agreed to sell the gathering system equipment and attendant contract rights, accepting Powder River's offer. *Supra* ¶¶ 8, 11. We fail to understand how reporting of the actual prices assigned to the equipment in the arm's length, open market purchase transaction was an "unsound" application of the cost valuation method.

96. The County Board also misunderstood the evidence concerning Powder River's "netting" of a price paid to WGR for the gathering system equipment:

> Mr. Brown testified that the personal property acquired by PRM was allocated pursuant to *Confidential Exhibit* T-8, which totals around $65 million. *Id.* at 150:10-15. He also testified that all that was purchased in the WGR exchange was personal property and no reserves. *Id.* at 149:17-25, 150:1-5. However, the gross contract price was actually $80 million, not $65 million. *Id.* at 93:7. Sixty five million dollars ($65,000,000) was the net contract price at closing after adjustments were made for profits between the date of execution and the date of closing. *Id.* at 94:15-25, 95:1-17. Thus, at a minimum, the personal property should have been valued at the gross contract value of $80 million. However, this was not done by Carbon Creek.

(Cty. Bd. Order ¶ 39, R. at 174-75). Details about the Powder River contract totals and the netting of a final price actually paid WGR had no direct bearing on the valuation of the gathering system equipment because the equipment was individually valued/priced. *Supra* ¶¶ 8, 11. We note that the County Board inadvertently referred to Carbon Creek (above) when it likely meant Powder River, the purchaser of the gathering system equipment.

97. The County Board disagreed with Ms. Stewart's "back trending" approach to calculate equipment depreciation. (Cty. Bd. Order ¶ 40, R. at 175-76). But, as explained above, the County Board mistakenly assumed Ms. Stewart's "back-trending" testimony

was relevant to the present dispute. It was not and only served to confuse the issues. *Supra* ¶ 86 n.16.

98. The County Board identified some gathering equipment valuations that suggested Powder River arbitrarily discounted the properties' value contrary to industry practice or regardless of condition. (Cty. Bd. Order ¶ 41, R. at 176). On this point alone, we agree that evidence may support Assessor's claim that Powder River undervalued equipment in its submitted renditions.

99. In sum, we conclude the County Board's holding with respect to Powder River's property was neither supported by substantial evidence, nor consistent with Wyoming law. Upon careful consideration of the record, Assessor failed to carry her burden of establishing that she valued the Powder River property in accordance with Wyoming law, in particular the Department's directive that the sale of used property be included in the cost trending analysis. *Supra* ¶¶ 49, 59, 67. She must either accept Powder River's proposed valuation of the property or revalue that property using the contract prices as data points within her cost trending analysis. She may, however, reject prices paid for equipment in performing her revaluation, *i.e. supra* ¶ 98, but must specify why said price(s) should not be included in her cost trending analysis.

iv. Do uniform/equal taxation concerns compel this Board to consider the Campbell County Board of Equalization's adjudication of Petitioners' similar appeals?

100. Petitioners argue for reversal to ensure uniformity with the Campbell County Board of Equalization's decision in *In re Powder River Midstream, LLC, and Carbon Creek Energy, LLC*, Cty. Docket Nos. 2016-04, 2016-05 (Campbell Cty. Bd. of Equalization, May 10, 2017). (Pet'rs' Opening Br. 37-38). The Campbell County Board of Equalization, without fully accepting either Petitioners' valuation claims or assessor's valuations in that case, ruled differently than the County Board in the present case. *In re Clements, Campbell Cty. Assessor*, Wyo. State Bd. of Equalization, Docket No. 2017-49 (Appeal filed June 8, 2017). The Campbell County Assessor appealed.

101. Petitioners' argument lacks merit for several reasons. First and most obvious, even assuming Petitioners presented similar or identical claims in Campbell County, the evidence, legal issues and Campbell County Board's ruling may reveal different issues. Indeed, as explained herein, the ultimate questions in the case at bar are mixed questions of fact and law, and whether either county board decision is consistent with law will depend upon a review of the record and law in that case and, ultimately, whether substantial evidence supported the decision. *Supra* ¶¶ 33-40. Further, Petitioners presume the Campbell County Board of Equalization ruling to be correct, a question the State Board must take up in that case alone.

102. Second, constitutional uniformity does not require the same result in every case; rather, it demands a uniform tax assessment process.[18] "The Constitutional command is that the Legislature shall provide for a uniform and equal rate of assessment and taxation. . . . This is fundamental, and cannot be evaded by any shift or device whatever." *Rocky Mtn. Oil & Gas Assoc. v. State Bd. of Equalization, Dep't of Revenue & Taxation*, 749 P.2d 221, 235-36 (Wyo. 1987). In that case, the Court rejected the State Board's imposition of different tax rates, which it found constituted an illegal "de facto classification" for specific entities. *Id.*

103. The Wyoming Supreme Court in *Appeal of Monolith Portland Midwest Co., Inc.*, 574 P.2d 757 (Wyo. 1978) addressed the valuation of limestone, shale and other minerals used to manufacture cement. The Department argued it was required to include the same transportation costs applied to other producers to ensure valuation uniformity. The Court disagreed stating that the Wyoming Constitution's mandates of uniform assessment (Article 15, Section 11) and equal and uniform taxation (Article 1, Section 28) "do not require, however, that all minerals of like kind be assigned the same value." *Id.* at 761. The Court explained that "[u]niformity of assessment requires only that the method of appraisal be consistently applied. Hillard v. Big Horn Coal Company, supra [549 P.2d 293 (Wyo. 1976)]. It is an intrinsic fact in mineral valuation that differences in values result from the application of an appraisal method." *Id.*

104. Finally, uniform taxation violations arise from "systematic, arbitrary, or intentional undervaluation of some property, as compared to the valuation of other property in the same class[.]" *Weaver v. State Bd. of Equalization*, 511 P.2d 97, 98 (Wyo. 1973). In *Weaver,* notwithstanding admitted tax disparities, the Court held taxpayers did not prove non-uniformity. *Id.* at 98-99.

105. For the foregoing reasons, the Campbell County Board of equalization's decision in an appeal similar to the present appeal is irrelevant, and neither appeal necessarily speaks to the other.

v. Petitioners' objection to the County Board's Decision and Order on grounds it incorrectly "attempted to impose its own corrected values"[19]

106. Disagreeing with the underlying Order's phrasing, Petitioners argue the County Board exceeded its authority pursuant to Wyoming Statutes section 39-13-109(b)(i) (2015). (Pet'rs' Br. 38-41; Reply Br. 15-18). That section, which sets forth in some detail Wyoming's property tax appeal process before county boards of equalization, provides:

[18] Petitioners' witness, Ms. Kelly Stewart, made this very point: "Fair and equal treatment of property or of taxpayer should not look to the value. It looks to the process." (Tr. 257).
[19] Pet'rs' Br. 38.

(b) Appeals. The following shall apply:

(i) Any person wishing to contest an assessment of his property shall file not later than thirty (30) days after the date of the assessment schedule properly sent pursuant to W.S. 39-13-103(b)(vii), a statement with the county assessor specifying the reasons why the assessment is incorrect. The county assessor shall provide a copy to the county clerk as clerk of the county board of equalization. The county assessor and the person contesting the assessment, 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 thirty (30) days prior to the scheduled county board of equalization hearing. The assessor shall specifically identify the sales information used to determine market value of the property under appeal. A county board of equalization may receive evidence relative to any assessment and may require the person assessed or his agent or attorney to appear before it, be examined and produce any documents relating to the assessment. The appeal may be dismissed if any person willfully neglects or refuses to attend a meeting of a county board of equalization and be examined or answer any material question upon the board's request. The state board of equalization shall adopt rules to be followed by any county board of equalization when conducting appeals under this subsection. All hearings shall be conducted in accordance with the rules adopted by the state board of equalization. Each hearing shall be recorded electronically or by a court reporter or a qualified stenographer or transcriptionist. The taxpayer may present any evidence that is relevant, material or not repetitious, including expert opinion testimony, to rebut the presumption in favor of a valuation asserted by the county assessor. The county attorney or his designee may represent the county board or the assessor, but not both. The assessor may be represented by an attorney and the board may hire a hearing officer. All deliberations of the board shall be in public. **The county board of equalization may affirm the assessor's valuation or find in favor of the taxpayer and remand the case back to the assessor.** The board shall make specific written findings and conclusions as to the evidence presented not later than October 1 of each year[.]

Wyo. Stat. Ann. § 39-13-109(b)(i) (2015) (emphasis added).

107. Petitioners argue the County Board's Order violates the bolded language above because, rather than remand the assessments to Assessor for reassessment of the corrected values, which the County Board effectively affirmed, the County Board ordered that "the current market value of the subject property of Carbon Creek Energy, LLC **is the sum of $158,261,575.00**[,]" and "the current market value of the subject property of Powder River Midstream, LLC **is the sum of $284,710,984.00**." (Cty. Bd. Order, 19, R. at 180; Pet'rs'

Opening Br. 38-40; Pet'rs' Reply Br. 15-18) (emphasis added).[20] Because Assessor herself has not reassessed the corrected values, which are the subject of these appeals, Petitioners claim on appeal that the assessments at issue "are not final assessments." (Pet'rs' Opening Br. 40).

108. "As an arm of the state, the county has only those powers expressly granted by the constitution or statutory law or reasonably implied from powers granted." *Dunnegan v. Laramie Cty. Comm'rs*, 852 P.2d 1138, 1142 (Wyo. 1993). We agree the County Board's Order technically ran afoul of the statutory directive, but only to the extent the Order purported to set taxable values. This, the County Board could not do because it had no authority to establish value, only to adjudicate whether Assessor's valuation was correct and to remand consistent with the adjudicated outcome. Wyo. Stat. Ann. § 39-13-109(b)(i) (2015). The County Board could, in support of its adjudication, partially affirm, partially reverse, or take other action as necessary to resolve an appeal without assuming Assessor's valuation function.

109. While the County Board improperly assumed Assessor's role when it purported to set the values as identified by Assessor, the error was not fatal and is easily rectified through this Board's remand with instructions to further remand the matter to Assessor with a properly worded order. The form of Order, in other words, does not prevent us from rending a final decision on all issues, nor does it hinder the parties' ability to protect their interests on appeal.

CONCLUSION

110. The County Board's Decision that Petitioner Carbon Creek failed to overcome the presumption favoring Assessor's valuation of Carbon Creek's acquired property (wellhead and other gas production equipment) is upheld. Assessor duly exercised her discretion to question and, ultimately, to reject the 2015 purchase transactions for the reasons set forth herein.

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[20] Somewhat confusingly, Petitioners offered a different position in their closing argument before the County Board, and in their Proposed Findings of Fact, Conclusions of Law, and Order. (R. at 103; Tr. 413-14). Petitioners seemingly took the position **after the hearing** that the County Board could not in any event affirm Assessor's corrected valuations because the original assessments admittedly contained errors. (Pet'rs' Proposed Findings, Conclusions of Law and Order, R. at 103). The troubling implication of that argument—the County Board would have been required to reverse and remand to Assessor for reassessment based on the corrected values. Such an argument would run counter to Petitioners' repeated acknowledgment, acquiescence, and acceptance of the form of Assessor's case presentation. Rather than retract her mistaken valuations and assessments late in the appeal, Assessor chose to issue corrected valuations during the appeal and explained that she would address their propriety through the appeal before the County Board. *Supra* ¶¶ 20-21. Petitioners did not object to Assessor's procedural approach and repeatedly argued that the only issue was whether Assessor was required under law to rely upon the 2015 purchase transactions in her valuations. (*See* e.g. Jt. Stip., R. at 56; Tr. 9-10; Pet'rs' Prehearing Br., R. at 44).

111. We reverse the County Board's Decision that Petitioner Powder River failed to overcome the presumption favoring Assessor's valuation of Powder River's acquired property (gathering system equipment). Petitioner Powder River offered authority and sufficient evidence to overcome Assessor's valuation, and, at a minimum, Assessor must consider Powder River's equipment prices and apply them as data points to the extent possible under the cost valuation method. Assessor, if she is unable to use the price of said equipment in her application of the trended cost method, must provide a reason in support of her determination.

112. The County Board's Decision, in particular the language of the Order, violates Wyoming Statutes section 39-13-109(b)(i) (2015) to the extent the County Board purports to establish value, a function beyond the County Board's authority.

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ORDER

IT IS HEREBY ORDERED the decision of the Johnson County Board of Equalization is **affirmed** to the extent it, in effect, approved Assessor's valuation of property acquired by Carbon Creek Energy, LLC, the 2016 value of which was adjudicated before the Johnson County Board of Equalization in Docket No. 2016-007;

IT IS FURTHER ORDERED the decision of the Johnson County Board of Equalization, is **reversed** to the extent it, in effect, approved Assessor's valuation of property acquired by Powder River Midstream, LLC, the 2016 value of which was adjudicated before the Johnson County Board of Equalization in Docket No. 2016-010, and is **remanded** to the County Board and Assessor for action consistent with this Decision and Order; and

IT IS FURTHER ORDERED the decision of the Johnson County Board of Equalization, is **reversed** and **remanded** to the County Board for revision of the Order language, and the County Board shall reissue the Order so that it merely affirms the corrected valuations, rather than purport to set the valuations, and that the Order shall expressly remand the matter to the County Assessor for reassessment, in accordance with Wyoming Statutes section 39-13-109(b)(i)(2015).

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 after the date of this decision.

DATED this 8th day of August, 2018.

STATE BOARD OF EQUALIZATION

Martin L. Hardsocg, Chairman

David L. Delicath, Vice-Chairman

E. Jayne Mockler, Board Member

ATTEST:

Nadia Broome, Executive Assistant

CERTIFICATE OF SERVICE

I certify that on the 8th day of August, 2018, I served the foregoing DECISION AND ORDER by placing a true and correct copy thereof in the United States Mail, postage prepaid, and properly addressed to the following:

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