BEFORE THE STATE BOARD OF EQUALIZATION

FOR THE STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF	)	
HOLLYFRONTIER CHEYENNE	)	Docket No. **2018-60**
REFINING LLC FROM A DECISION BY	)	
THE LARAMIE COUNTY BOARD OF	)	
EQUALIZATION	)	
(2018 Property Tax Assessment)	)	

DECISION AND ORDER

APPEARANCES

Walter F. Eggers, III, Holland & Hart LLP, appeared on behalf of Petitioner HollyFrontier Cheyenne Refining LLC (HollyFrontier).

Mark T. Voss, Laramie County Attorney, appeared on behalf of Laramie County Assessor Kenneth Guille (Assessor).

SUMMARY

[¶ 1] HollyFrontier appealed the 2018 tax assessment of its Cheyenne oil refinery to the Laramie County Board of Equalization (County Board), asserting that Assessor overvalued the facility's equipment. HollyFrontier claimed that because Assessor relied strictly on a cost valuation method, he did not adequately factor the refinery's business performance revealed through other valuation methods, such as the income method. HollyFrontier commissioned an independent appraisal, which asserted a value less than one-half of the Assessor's value. Assessor's and HollyFrontier's appraisal consultants presented their respective appraisals to the County Board in a contested case hearing. The County Board affirmed Assessor's valuation by a vote of four to one. HollyFrontier timely appealed to this Board.[1]

[¶ 2] HollyFrontier asserts that the County Board's affirmance of the Assessor's valuation is arbitrary, capricious, an abuse of discretion, not otherwise in accord with law, and unsupported by substantial evidence. (HollyFrontier Br. 14). The State Board,

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[1] Because HollyFrontier appealed from the County Board's decision within 30 days as required by rule, and otherwise complied with law in pursuing its appeal, this Board has jurisdiction. *See* Rules, Wyo. State Bd. of Equalization, Ch. 3 § 2(a) (2006); (County Board Decision, R. 1042-78; Notice of Appeal, R. at 1080-1139).

Chairman David L. Delicath, Vice-Chairman E. Jayne Mockler, and Board Member Martin L. Hardsocg, having considered the County Board's decision, the record of the proceedings, and the parties' submitted briefs and oral arguments, **reverses** and **remands** for a new valuation.

ISSUES

[¶ 3] HollyFrontier identifies the issues as:

> Did the County Board of Equalization err as a matter of fact and law when it affirmed the Assessor's assessments, which were based on a flawed and inadequate valuation? Specifically:
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> a. Did the assessments fail to recognize the conditions of the refinery and the overall refinery marketplace; and
>
> b. Were the assessments based on a misapplication of required valuation approaches?

(HollyFrontier Br. 4).

[¶ 4] Assessor's statement of the issue mirrors this Board's review criteria:

> Was the CBOE's Decision and Order, which affirmed the Assessor's valuation, in accordance with law, and not otherwise arbitrary, capricious, an abuse of discretion and, was it supported by substantial evidence in the record?

(Assessor Br. 5).

PROCEEDINGS AND EVIDENCE PRESENTED TO THE COUNTY BOARD

[¶ 5] Although this dispute concerns the taxable valuation of highly complex industrial equipment – an operating oil refinery – the appeal more narrowly concerns the parties' differing appraisal approaches to value the equipment. In sum, HollyFrontier objects that Assessor values the refinery equipment by perfunctorily adding the installed costs, trending the costs to calculate the equipment's cost as if new, and then depreciating the equipment to account for it's age and condition. Notwithstanding that the cost method is valid under Wyoming law and that Assessor is not strictly required to apply other methods in all cases, HollyFrontier asserts Assessor's valuation does not properly consider the facility's financial performance or the refining industry's competitive struggles. *Infra* ¶¶ 7, 10. Assessor counters that HollyFrontier's opposition and commissioned appraisal, offered to challenge the assessed value, is nothing more than a difference of valuation opinion and, as such, does not carry Assessor's burden of proof under Wyoming law. (Assessor's Br. 16, 26).

[¶ 6] HollyFrontier, a refining company, owns and operates a refinery in Cheyenne, Wyoming, where it refines about 50,000 barrels of crude oil per day. (Tr. 26). HollyFrontier does not produce the crude oil; rather it purchases crude oil from unrelated parties, refines the oil, and sells the refined products, including gasoline, diesel, and asphalt. (Tr. 24-25).

[¶ 7] Not content with recent tax valuations of its refinery, HollyFrontier hired consultant Deloitte Transactions & Business Analytics LLP (Deloitte) to appraise its refinery.[2] (Tr. 30-33). HollyFrontier believed that Assessor's 2018 valuation, as in the past, failed to consider critical aspects of the oil refining industry, as well as the refinery's historic and projected financial performances. (Tr. 33-35, 39-40, 60-62). HollyFrontier disagreed that Assessor could passively update previous cost-based appraisals, a practice it argued does not accurately reflect the refinery's fair market value under Wyoming law.[3] (HollyFrontier Br. 16-17, 20-21; HollyFrontier Reply Br. 5, 7).

[¶ 8] Moreover, HollyFrontier insists that Assessor's appraisal consultant, Mr. Robert Lehn of the appraisal consulting firm T.Y. Pickett, had access to HollyFrontier's financial information and was not limited to a cost-based appraisal. (Tr. 74; HollyFrontier Br. 23; HollyFrontier Reply Br. 9).[4]

[¶ 9] The parties arrived at vastly different fair market values. Applying the cost method of appraisal, Assessor valued the refinery equipment at $518,007,620, while HollyFrontier asserted a fair market value of $210,623,000.[5] (Ex. B, R. at 000220; Confid. Ex. T-9, R. at 000912-13, 000935); *infra* ¶¶ 29, 34. We review each appraisal in turn.

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[2] HollyFrontier does not contest Assessor's valuation of land underlying the refinery facilities. (Tr. 68-69, 226, 254).

[3] Through cross-examination, the Assessor's appraisal consultant described the Assessor's appraisal as a "spreadsheet that was built on the prior year's spreadsheet," … "layering on costs that are incurred on a year-to-year basis from the prior year." (Tr. 301-02).

[4] The County Board found that Assessor and his consultant, Mr. Lehn, lacked sufficient information to perform an income or sales comparison appraisal. *Infra* ¶ 40. This determination played prominently in the parties' case presentations before the Board, as well as the County Board's decision. *Infra* ¶¶ 12-13, 40, 63-66.

[5] The parties do not dispute the value of equipment used for pollution control or fire suppression, which is exempt from property taxation. The parties agree that whatever the result of this appeal, the taxable value will be reduced by the value of exempt property. (Tr. 69-73, 94-95, 254-55).

HollyFrontier's asserted fair market value of the refinery facility[6]

[¶ 10] Industrial Valuation Services, HollyFrontier's tax consultant, advised HollyFrontier that it should procure an independent appraisal to support its historic and present concern that Assessor's typical cost-driven valuation would not adequately account for the refinery's flagging financial performance.[7] (Tr. 57-59).

[¶ 11] HollyFrontier retained Deloitte in 2017 to appraise the refinery equipment. (Tr. 30, 32-33, 58-59, 66). Deloitte is an international firm offering an array of services, including valuation, audit, and tax consulting. (Tr. 98-99).

[¶ 12] Following Deloitte's completion of its appraisal in April 2018, HollyFrontier unsuccessfully sought to meet with Assessor and his consulting appraiser, Mr. Lehn.[8] HollyFrontier and Assessor, along with their hired consultants, eventually reviewed the Deloitte appraisal over the phone in May of 2018, and HollyFrontier provided additional supporting documentation. However, HollyFrontier received no indication Assessor agreed with the Deloitte appraisal. (Tr. 67-69, 95-96, 230, 243-44). Assessor testified that given the complexity of the appraisal information and considerable difference in valuations presented, he reached no agreement with HollyFrontier on the valuation. (Tr. 231).

[¶ 13] HollyFrontier representatives testified that they provided Mr. Lehn with refinery income information and that Assessor and Mr. Lehn had ample opportunity to request additional valuation information. (Tr. 67-69, 95-96, 230, 243-44). Assessor agreed that he had "adequate time to review the Deloitte report and to talk with HollyFrontier and its representatives prior to [the] hearing[.]" (Tr. 231-32). Mr. Lehn acknowledged access to the Deloitte appraisal but, for reasons he did not clearly explain, concluded he had insufficient time to analyze the Deloitte appraisal.[9] He broadly testified that he did not

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[6] We merely summarize the appraisal processes fully described in Deloitte's Appraisal Report which are rather complex and require a developed understanding of commercial/industrial property appraisal practice. As will become evident, only through a robust recitation of each expert's presentation to the County Board may one fairly understand our resolution of this appeal.

[7] HollyFrontier representatives testified that HollyFrontier had been losing money, a claim Assessor questioned. (Tr. 58, 62, 74-75; *see also* Confid. Tr. 275-77; Ex. B, R. at 000416). The record offers no clear answer. Mr. Tinnell, a Deloitte appraiser, offered the most comprehensive and balanced explanation:

> [T]here are some years historically where the refinery is losing money or had very small EBITDA [earnings before interest, taxes, depreciation, and amortization], 10, $20 million… Then other years where it might make a hundred million dollars of EBITDA. Depending on which year you took, you could get very different answers. So part of our job and part of the – one of the things we work very carefully in doing is understanding the business cycle, the expectations of that refinery over a period of time.

(Tr. 320-21).

[8] The parties generally agree that they intended to meet to review HollyFrontier's valuation concerns, but that it did not occur because of scheduling and other logistical factors. (Tr. 209, 229-30, 243, 266-67).

[9] Mr. Lehn alluded to some confusion during a conference call conducted to review the Deloitte appraisal, ultimately stating he lacked time to focus on the Deloitte materials. (Tr. 244-45, 266-67, 271, 303-04). He

receive sufficient information to perform income method or sales comparison method valuations. (Tr. 284-85, 294).

[¶ 14] Two Deloitte employees, Mr. Gregg Huber and Mr. Robert Tinnell, testified in support of the Deloitte appraisal. Both, as well as a third employee who did not testify, specialize in the valuation of refineries; the County Board recognized Mr. Huber as an expert in the valuation of refineries. (Tr. 98-103; Confid. Ex. T-9, R. at 000926-27). HollyFrontier did not move for Mr. Tinnell's designation as an expert.

[¶ 15] Deloitte began its appraisal by extensively reviewing the refinery and gathering specific information to determine the valuation methods that might be available, as well as how it might reconcile the results. (Tr. 104-07, 112-13). Deloitte, Mr. Huber testified, complies strictly with ASA (American Society of Appraisers) and USPAP (Uniform Standards and Principles of Appraisal Practice) guidelines, which govern the appraisal process and presentation of valuation results. *Id.*

[¶ 16] Deloitte applied all three prescribed valuation approaches: cost, income, and sales comparison. (Confid. Tr. 118; Confid. Ex. T-9, R. at 000894-913). HollyFrontier's case presentation to the County Board focused primarily on its disagreement with Assessor's historic adherence to the cost valuation method and, in particular, T.Y. Pickett's manner of applying the method. Mr. Huber identified several "key drivers" differentiating the Deloitte appraisal from the T.Y. Pickett cost valuation approach. He first cautioned that cost and value differ and that costs must be properly adjusted to account for depreciation and obsolescence, stating that: "how we arrive at replacement cost is more than engineering analysis." (Confid. Tr. 123-25). He suggested that Assessor related cost more directly to value without considering all factors that affect value. (Confid. Tr. 138-39). He added: "In the assessor's opinion, I think it's – there's more of a direct linkage between cost and value, and what appears to me it's cost, there's some physical depreciation, there's some obsolescence and then value. So what I see is that there was some steps that weren't quantified." (Confid. Tr. 138-39). He further stated, "[s]o in my opinion – so I think the fundamental tenet is that costs leads to value. Right? Cost results in value. It's all those steps in between that allow you to understand the difference between the two." (Confid. Tr. 138).

[¶ 17] Mr. Tinnell echoed Mr. Huber's opinion of the relationship between cost and value: "So my opinion of that is the analysis would be incomplete without considering that factor [income], because regardless of what the costs of creating that asset is, if there's not a market for it, somebody's not willing to pay that value, it doesn't represent fair market value and it would have to be adjusted." (Tr. 317).

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attributed this in part to his many other projects and workload: "I don't want to indicate that we were totally confused, but I do want to indicate we didn't have much time, in my opinion, to spend on this matter as far as looking at the Deloitte results." *Id.*

[¶ 18] Second, Mr. Huber pointed to the refinery's "unique" place in the market, because the refinery is relatively small. He explained that the HollyFrontier refinery was especially vulnerable to market factors and could not easily pass on expenses to customers. (Confid. Tr. 125-26).

[¶ 19] Third, Mr. Huber referenced the broader market, explaining that no new refineries have been built in decades, and those that remain are relatively large. Echoing his second point, Mr. Huber observed that the decreasing number of refineries indicates growing market challenges for refiners. (Confid. Tr. 127; Tr. 186-87). He also differentiated between the Cheyenne refinery and other companies holding refineries in conjunction with upstream and downstream oil and gas production components. (Confid. Tr. 141-43; Tr. 187-88).

[¶ 20] The Deloitte appraisal report consists of sixty-four pages and includes narrative sections describing application of all three valuation methodologies, followed by appendices containing financial information and the calculations performed. (Confid. Ex. T-9, R. at 000880-944). We agree the report adheres to USPAP and ASA guidelines as to format and the required qualifications and limitations. *Id.*; *supra* ¶ 15. Although complex, it conveys a fair understanding of how Deloitte performed the valuation.

[¶ 21] In its cost-based valuation, Deloitte did not use the refinery equipment's historical cost; rather, it consulted industry publications to identify the equipment's replacement costs new. (Confid. Tr. 129-31; Confid. Ex. T-9, R. at 000899-900). Deloitte calculated the properties' depreciation by determining effective age and "remaining economic life." Deloitte established a minimum remaining life for the equipment of seven percent. (Confid. Ex. T-9, R. at 000900-902); *see infra* ¶¶ 37, 71-73 (addressing Assessor's disagreement with Deloitte's depreciation methodology).

[¶ 22] Functional obsolescence, Deloitte determined, applied only to a small portion of the equipment and was limited to specified planned costs to maintain refinery operations over its remaining life for each asset. (Confid. Ex. T-9, R. at 000903). Deloitte applied this functional obsolescence to the equipment's depreciated replacement cost new. (Confid. Ex. T-9, R. at 000932-934). Prior to applying economic obsolescence, Deloitte calculated the equipment's "replacement cost new less depreciation" or RCNLD to be approximately $282 million. *Id.* This $282 million RCNLD is a critical juxtaposition to Assessor's cost valuation of $518 million and plays prominently in both the County Board's and our decision. *See supra* ¶ 9; *infra* ¶¶ 29-31, 34, 37, 39, 70-71.

[¶ 23] Deloitte's calculation of economic obsolescence within the cost method was a conspicuous point of contention with the Assessor, and a valuation feature the County Board ultimately rejected. (Confid. Tr. 160-65; Cty. Bd. Decision, R. at 0010172-74); *see infra* ¶¶ 40, 74-79. Mr. Huber acknowledged that there is "not a great tool within the cost approach to evaluate what the earnings of the business tell you." (Confid. Tr. 134). As described in its appraisal report narrative, Deloitte applied economic obsolescence in two separate ways: 1) by measuring the refinery's underutilization and comparing its productivity to other Rocky Mountain region refineries; and 2) by borrowing from its income method valuation. Deloitte estimated that the refinery's "projected earnings . . . [did] not indicate support for the investment in the Tangible Assets at their indicated [cost method based value] RCNLD," warranting an additional economic obsolescence adjustment. (Confid. Tr. 178-80; Confid. Ex. T-9, R. at 000899, 000903). Yet, critical in our review, Deloitte did not depict how these calculations equaled its eventual economic obsolescence deduction of 25.8%.[10] (Confid. Ex. T-9, R. at 000932). Rather, Deloitte summarily arrived at 25.8% by subtracting its final valuation result from its cost-based RCNLD of $282 million, which it stated as a fractional deduction. *Id.*

[¶ 24] Assessor, through his counsel, resisted the notion that Deloitte's income appraisal should simultaneously reduce its cost valuation through an obsolescence adjustment. (Confid. Tr. 160-65). The appraisal reconciliation process, Mr. Huber responded, permitted this. *Id.* This step in its cost valuation, Deloitte determined, reflected the relationship between the refinery's cost and the refinery's value—that the projected earnings do not justify investment in the assets at a cost-method RCNLD of $282 million. *See supra* ¶ 23.

[¶ 25] Mr. Huber next testified to application of the income method, stating "what we've done is really a discounted cash flow analysis." (Confid. Tr. 144). He explained, "because we felt that there were factors driven by the earnings potential of the facility, we determined that, you know, conducting and considering an income approach was important." *Id.* He continued, "[s]o you look at historical financial data, and you look at projected financial data, and you conduct an analysis to kind of walk to what is the present value of that – you know, that entity based on analysis of those cash flows."[11] *Id.*

[¶ 26] In contrasting the Deloitte valuation, which fully considered HollyFrontier's earnings and financial data, with Assessor's appraisal, which did not, Mr. Huber warned that a cost method valuation which does not consider income should note that fact:

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[10] We found this aspect of the valuation to be confusing, as the appended cost valuation analysis does not align with the narrative. Only through Mr. Huber's testimony could we infer that both economic obsolescence adjustments were subsumed within the 25.8% deduction, which is simply the difference between the RCNLD and Deloitte's final reconciled valuation. *Supra* ¶ 23; *see infra* ¶¶ 73-78.

[11] The hearing featured very general descriptions of the financial data and, other than the narrative and analyses contained in Deloitte's appraisal report, the County Board was left to its own devices as to interpretation. Some apparent inconsistences between the financial information in the Deloitte appraisal report and Assessor's exhibits exist. For example, HollyFrontier's earnings before interest, taxes, depreciation, and amortization (EBITDA) for years 2013 through 2016 does not match the numbers set forth in Assessor's Exhibit E, reportedly reflecting the same information. (Compare Confid. Ex. T-9, R. at 000937 with Ex. E, R. at 000530). The EBITDA plays a prominent role in the income valuation analysis.

So, basically, if you conduct an analysis and the cost approach and you don't consider the income approach, it's what's called an assumed earnings approach, and it effectively frequently states that we're valuing this property and we haven't looked at all at how profitable it is, and this is our answer. . . . And so it's well recognized in the appraisal community and the valuation space that any appraisal done without consideration of the income approach cannot result in a value conclusion. Because it's – it can, but you would have to caveat it distinctly by saying it's done on an assumed earnings approach.

(Confid. Tr. 146). He cautioned that assuming business earnings is "a big red flag" and constitutes a failure to consider all factors. *Id.*

[¶ 27] In its discounted cash flow analysis, Deloitte sought to isolate the anticipated "free cash flow" at its present value, considering historic expenses, revenues, and risks undertaken to achieve that cash flow. Through this involved analysis of past financials and anticipated cash flow, Deloitte calculated a value of $270 million. (Confid. Ex. T-9, R. at 000904-908, 000936-37).

[¶ 28] Mr. Huber testified that Deloitte's sales comparison method valuations corroborated the cost and income valuations. Acknowledging the scarcity of viable comparable sales, Deloitte applied the sales comparison method in two independent approaches: Deloitte appraisers looked at the stock sales of all similar refineries to calculate a value, and the appraisers separately reviewed sales transactions, adjusting for asset and market differences. In each instance, the Deloitte appraisers adjusted for the differences in the companies, developing a benchmark and "price points" for comparative purposes. (Confid. Tr. 147-48). (Confid. Tr. 147-50; Confid. Ex. T-9, R. at 000908-912, 000937-934).

[¶ 29] Mr. Huber reconciled Deloitte's two sales comparison valuations with its income method appraisal, weighting the income valuation of $270 million at 70% of the valuation, versus the two sales comparison valuations of $275 million and $260 million at 15% each. He explained: "because the data and information and analysis we were able to do for the discounted cash flow approach was as robust as it was, we weighted that more heavily." (Confid. Tr. 150). Deloitte calculated a "business enterprise value"[12] of $270 million. (Confid. Tr. 150-54; Confid. Ex. T-9, R. 000911). After several adjustments (subtracting materials, supplies and inventory), Deloitte ultimately valued the refinery equipment at $210,623,000. (Confid. Ex. T-9, R. at 000935-36).[13]

[12] The term "business enterprise value" or BEV, it was explained, refers to the overall value of a business, including all property rights, tangible and intangible, as well as liabilities. (Tr. 315-16, 324-25).

[13] The record at what should be bate-stamped page 000936 is not correctly numbered, but HollyFrontier originally stamped the page as HollyFrontier 0333. This page reflects the value adjustment of total assets at $290,880,000 million, down to a fair market value of $210,623,000.

[¶ 30] Comparing the income and market valuations to the cost-driven RCNLD of $282 million, Mr. Huber reiterated, *see supra* ¶¶ 16-17, 26, that cost valuations are usually higher than income and market valuations because they do not fully consider other important factors and, therefore, may not provide a complete picture of value. Describing the relationship between all three valuation methods, he opined that the reconciled value of $210.6 million through the market and income approaches reflected a typical relationship when contrasted to the cost method RCNLD of $282 million. *Id.* (Confid. Tr. 168-71; Confid. Ex. T-9, R. at 000932-934).

[¶ 31] Responding to questions about the considerable difference between Assessor's and Deloitte's valuations, Mr. Huber remarked: "500-plus million dollar number to me, from the cost approach, has the markings of what I've typically seen as a cost approach that hasn't considered all the relevant factors." (Confid. Tr. 178).

Assessor's appraised value of the refinery facility

[¶ 32] Assessor hired T.Y. Pickett, an appraisal consulting firm, to value the HollyFrontier refinery facilities, excluding the underlying land and associated office buildings. (Tr. 202-03, 207-08, 221, 236, 254). T.Y. Pickett values various complex industrial and commercial properties in Laramie County and has valued the HollyFrontier refinery for 26 years. *Id.* Assessor's appraisal was performed by Mr. Robert Lehn. *Id.*

[¶ 33] The hearing officer, without objection, designated Mr. Lehn an appraisal expert. (Tr. 235). Mr. Lehn initiated his appraisal, as usual, by touring the Cheyenne refinery in the fall of 2017 prior to the valuation date and met with HollyFrontier representatives, including employees of consultant IVS. (Tr. 237-40). As in the past, Mr. Lehn presented a "checklist" letter to HollyFrontier representatives in December requesting information, including financial information. (Tr. 240). Because T.Y. Pickett maintains original equipment cost information on HollyFrontier's facility, he began with original installed costs of equipment. *Id.*

[¶ 34] Mr. Lehn testified that he considered all three valuation methods, but applied only the cost valuation method. (Tr. 248, 284, 310-11). He did not describe his consideration of the three methods. He characterized his appraisal, Exhibit B, as a mass appraisal report, explaining: "It goes to the valuation of the appraisal using the best information available, considering all three approaches. We take no shortcut. And we did not simply add original installed cost[.]"[14] (Tr. 247). He appraised the total refinery equipment at $518 million, a large portion of which is exempt because it serves fire suppression and pollution control objectives. (Tr. 252-53).

[14] While Mr. Lehn described the appraisal as a mass appraisal, it was not performed through application of Wyoming's Computer Assisted Mass Appraisal (CAMA) system, and the valuation results were only input into the system for assessment purposes. (Tr. 228). Mr. Lehn valued the personal property and referred the valuation to Assessor. *Id.*

[¶ 35] The T.Y. Pickett appraisal report contains no narrative or explanatory sections. Mr. Lehn, identifying specific equipment to illustrate his appraisal process, testified about preparation of his appraisal report, which resembles a spread sheet. (Ex. B, R. at 000219-000500; Tr. 256-61, 286-93). On the left side of each page, each piece of equipment is listed in a column, and across the top are column headings indicating a characteristic or valuation adjustment. The column headings from left to right include a "trending" notation, the year equipment was installed, the "average physical life"[15] of the equipment in years, the RCN or "replacement cost new,"[16] an economic obsolescence deduction, a "service factor" deduction, and finally, the "Present Worth." *Id.* Included in the calculation described, but not separately set out, is the physical depreciation attributed to each item, which is limited to 30%.[17] (Ex. B, R. at 000219-000500; Tr. 258-59). Mr. Lehn testified that he applied a "not quite global" economic depreciation factor of 38.5%, but he did not explain the source of this deduction.[18] For some equipment listed, he applied other obsolescence factors or no economic obsolescence at all, explaining that such decisions were made after consulting the taxpayer. (Tr. 287-91). He added that he maintained notes with the reasons for these decisions, but did not include those with his appraisal report. (Tr. 291-93). Mr. Lehn was unsure of the source for the functional obsolescence deduction, identified in his report as a "service factor."[19] (Ex. B, R. at 000219-000500; Tr. 260, 292). The "present worth" on the far right side of each report page is the value each piece of equipment contributed to the refinery. (Ex. B, R. at 000219-000500; Tr. 260).

[¶ 36] Mr. Lehn described several unidentified adjustments to the valuation of equipment based on a host of factors, which he explained arose from feedback from taxpayer

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[15] The report references "Life." Mr. Lehn explained that this column contained the "average physical life" of the equipment." (Tr. 257).

[16] The "RCN" adjustment, Mr. Lehn testified, is the original cost trended to the present and accounts for inflation and "the cost doing business within that industry" as calculated by Marshall & Swift, an industry valuation resource. (Tr. 258).

[17] In each case, one reading the report must calculate the depreciation from the other numbers included. Mr. Lehn did not use the Department's advised depreciation schedule. Rather, he explained "we perform a calculation based on the single declining balance depreciation method and the service life assigned and the effective or chronological age of the item." (Tr. 286-87). He opted to use T.Y. Pickett's system which, he said, predates the Department's adopted depreciation schedule. *Id.*

[18] Mr. Lehn stated:

> You now multiply by .3850. And I believe, and I could stand corrected, but I'm pretty sure this dates back to the acquisition of – that there were reasons for acquisition costs to be considered. There were perhaps some reasons for Frontier to carry this as a certain type of asset. And I believe that's where that factor came in. Because you'll see it not quite as a global factor, but you'll see many times it's .3850.

(Tr. 259). This meant, he explained, that over 60% of the value was "removed for economic purposes." *Id.*

[19] Mr. Lehn, on cross-examination, testified that the source for this deduction was "[o]bservations and information shared between the taxpayer's representative and myself, plus the knowledge we have of the industry." (Tr. 292-93).

representatives. (Tr. 262-65). These he characterized as part of his functional obsolescence analysis. *Id.* In sum, the T.Y. Pickett appraisal report is not self-explanatory and requires considerable explanation and inference to understand.

[¶ 37] As to "key drivers" for the difference between his appraisal and that of Deloitte, Mr. Lehn noted that Deloitte equated the equipment's effective age with chronological age, and that such was possibly contrary to departmental rule. (Tr. 269); *supra* ¶ 21. He also disagreed that the income method should be used to alter the cost valuation method: "You don't take an income approach and say this is the right answer and force-feed a cost approach and declare that adjustment for economic obsolescence." (Tr. 270; *see also* Tr. 278-83, 304). He acknowledged however that, "[i]f you know the return on the assets that were expected, and you see clearly they're not reaching them, you could use aspects from the financials for the economic obsolescence calculation." (Tr. 271). Yet, he warned against overreliance on financial information and suggested mistakes in Deloitte's cash flow assumptions applied in its discounted cash flow analysis. (Tr. 271, 278-79). As a potential reason for the considerable difference in valuations, he suggested Deloitte's reliance on HollyFrontier's management for information in support of the assumptions applied. (Tr. 280-81).

[¶ 38] Mr. Lehn disagreed that the cost methodology, applied without consideration of financial information, was flawed. (Tr. 304-05).

County Board Decision

[¶ 39] Like us, the County Board struggled with the lack of any concise explanation as to why the dueling cost appraisals reached such wide-ranging results. A County Board member, during deliberations prior to voting on the appeal's resolution, reflected: "I think we've got two questions to answer here. Well, a lot of questions to answer here. But the two that I'm struggling with, cost approach to value and the difference in the assessor's cost approach to value versus the HollyFrontier's cost approach value difference – I don't have the numbers – 514 million versus 272 million."[20] (R. at 001028, 001036). The County Board also questioned whether Assessor (or his consultant) could have considered an income valuation approach. (Tr. 001029-30, 001036). After considering several alternative rulings, including returning the valuation to Assessor for a new valuation, the County Board affirmed Assessor's valuation by a vote of four-to-one. (Tr. 001037-38).

[¶ 40] The County Board's lynchpin finding was that Assessor lacked data with which to conduct an income or sales comparison appraisal. (Cty. Bd. Decision, R. at 001052, 001070). After thoroughly reviewing and summarizing evidence in support of, and countering, each valuation, the County Board concluded that Assessor complied with

[20] The respective cost-driven valuations, in round figures, are actually $518 million by T.Y. Pickett, versus $282 million (before deducting for economic obsolescence) by Deloitte. *Supra* ¶¶ 22, 34.

Wyoming law. (Cty. Bd. Decision, R. at 001046-70). Particularly, the County Board found:

> "The cost approach is an accepted approach and could serve as the primary approach when sales data is unavailable or inadequate. (Such as special purpose properties). Market adjusted RCNLD plus land value is an accepted method of the cost approach." Rules, Wyoming Department of Revenue, Chapter 9 § 5, (ii). The Laramie County Assessor and his retained appraiser, Mr. Lehn properly employed the cost approach as neither sales data nor income data was properly available to either party.

(Cty. Bd. Decision, R. at 001070). The County Board also determined that HollyFrontier offered no evidence demonstrating Assessor's noncompliance with Wyoming law or applicable methodologies. (Cty. Bd. Decision, R. at 001070-71). HollyFrontier's case presentation, the County Board decided, amounted to a difference of valuation opinion and, thus, HollyFrontier did not carry its evidentiary burdens of production and proof. (Cty. Bd. Decision, R. at 001072).[21]

CONCLUSIONS OF LAW

Standard of Review

[¶ 41] 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.*

[¶ 42] 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) (2017), the Wyoming Administrative Procedure Act standard that a district court must apply in reviewing agency 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;
>
> (b) In excess of statutory jurisdiction, authority or limitations or lacking statutory right;
>
> (c) Without observance of procedure required by law; or

[21] The County Board pinpointed numerous other perceived errors, irregularities, or problems in the Deloitte appraisal, several of which we identify and address in our analysis.

(d) Unsupported by substantial evidence.

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

[¶ 43] Because the State Board Rules are patterned on the judicial review provisions of Wyoming Statutes section 16-3-114 (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, 2007 WY 79, ¶ 9, 158 P.3d 131, 134 (Wyo. 2007) (citations omitted).

[¶ 44] 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.' " *Bowen v. State, Dep't of Transp.*, 2011 WY 1, ¶ 7, 245 P.3d 827, 829 (Wyo. 2011)).

Maverick Motorsports Grp., LLC v. Dep't of Revenue, 2011 WY 76, ¶ 12, 253 P.3d 125, 128 (Wyo. 2011).

[¶ 45] 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) (quoting *Basin Elec. Power Coop., Inc. v. Dep't of Revenue*, 970 P.2d 841, 850-51 (Wyo. 1998)).

[¶ 46] "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. Dep't of Transp.*, 2009 WY 137, ¶ 5, 220 P.3d 236, 238, (Wyo. 2009).

[¶ 47] "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. *Id.* at ¶¶ 28, 34, 126 P.3d at 126-27.

[¶ 48] If Petitioner 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.*

Applicable Law

[¶ 49] 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) (2017).

[¶ 50] All property must be valued annually at fair market value. Wyo. Stat. Ann. § 39-13-103(b)(ii) (2017). 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) (2017); *see also* Wyo. Dep't of Revenue, *Pers. Prop. Valuation Manual*, § 6.1 (2018) (same definition).

[¶ 51] The Department identifies three valuation methods available to assessors, all three of which are presented in this appeal:

> Section 5. Appraisal Methods.
>
> (a) 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.
>
> (b) General Appraisal Methods and Reconciliation
>
> (i) The Sales Comparison Approach. The comparable sales approach is an appropriate method of valuation when there are an adequate number of reliable arms-length sales and the properties subject to such sales are similar to the property being valued. For land valuation, the sales comparison is the preferred method of valuation. In the absence of adequate vacant land sales, other techniques may be used including allocation, abstraction, anticipated use, and capitalization of ground rents. In the mass appraisal of properties for property tax purposes it is acceptable to value the properties using generally accepted market modeling techniques. Comparable sales shall be adjusted to reflect differences in time, location, size, physical attributes, financing terms or other differences which affect value. The use of this approach depends upon:
>
> (A) The availability of comparable sales data;
>
> (B) The verification of the sales data;
>
> (C) The degree of comparability or extent of adjustment necessary for time differences; and
>
> (D) The absence of non-typical conditions affecting the sales price.
>
> (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 approach and could serve as the primary approach when sales data is unavailable or inadequate (such as special purpose properties). Market adjusted RCNLD plus land value is an accepted method of the cost approach. Sales prices shall be adjusted for time. Other factors influencing sale price should be considered. 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;

(I) Costs may be estimated on the basis of typical replacement or reproduction costs.

(II) 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.

(iii) <u>The Income or Capitalized Earnings Approach.</u> The income or capitalized earnings approach is a method of estimating the value of property by converting the anticipated benefits to be derived from the ownership of the property into a value estimate as is reflected or accomplished by yield capitalization methodology. These benefits can be reflected through the net operating income or cash flow of a company. The anticipated future income and/or reversions are discounted to a present worth. Direct capitalization may also be used to convert a single year's income expectancy into an indication of value. This conversion is accomplished by either dividing the income estimate by an appropriate income factor in accordance with generally accepted appraisal techniques. Both direct and yield capitalization methodologies are considered to be the income or capitalized earnings approach as discussed in this subsection[:]

(A) For the purposes of this subsection, cash flow is the difference between dollars paid and dollars received. Dollars received include all revenues generated from operating assets. Dollars paid include all current expenses and capital expenditures, or annual allowances therefore, required to develop and maintain the income stream. Cash flow must also take into account all legally enforceable restrictions on the property.

(B) Net operating income or cash flow is discounted to fair value using a capitalization rate developed by the methods described in Section 4(a)(vii).

(iv) Reconciliation. The appraiser shall weigh the relative significance, applicability and appropriateness of the indication of value derived from the approaches to value or methods outlined above, and will place the most weight and reliance on the value indicator which, in his professional judgment, best approximates the value of the subject property. The appraiser shall evaluate all alternative conclusions and reconcile the value indicators to arrive at a final estimate of value. For market value, the final estimate is that value which most nearly represents what the typical, informed, rational purchaser would pay for the subject property and a rational seller would accept if it were available for sale on the open market as of the date of the appraisal, given all the data utilized by the appraiser in their analysis.

Rules, Wyo. Dep't of Revenue, ch. 9 § 5(b)(i)-(iv) (2016); *see also* Wyo. Dep't of Revenue, *Wyo. Pers. Prop. Valuation Manual*, § 6.1-6.5 (2018) (guiding application of the income, sales comparison, and cost valuation methods for personal property, including oil and gas production and transportation equipment).

[¶ 52] The Department directs that when valuing special purpose personal property:

> (A) The cost, sales comparison, and income approaches should be considered as long as the market within the trade level is in equilibrium.
>
> (B) The valuation methodology selected shall reflect the trade level at which personal property is found, and consider factors influencing the value in use including utility, usefulness to the owner or the actual income produced.
>
> (C) References: Property appraisers may use any credible source to establish costs or sales or [sic] personal property, including, but not limited to "blue book on boats, airplanes, farm and construction equipment, Marshall and Swift Valuation Service and information developed by the Division.
>
> (I) The Division shall annually conduct a study of information on personal property, using such source material as may be available, including but not limited to trade journals and publication, auction information, sales from dealers and manufacturers, industry associations, as well as comment from interested parties.
>
> (II) The Division shall interpret the data collected in the study and make recommendation. The completed work product shall be published annually on the Department of Revenue website and be entitled the Wyoming Personal Property Valuation Manual.
>
> (III) The Wyoming Personal Property Valuation Manual shall also include updated cost trend factor tables, economic life tables, and depreciation tables. Said tables shall also be incorporated into the CAMA system.
>
> (D) Depreciation in the valuation of Personal Property
>
> (I) Depreciation shall be applied beginning at the first assessment date after the property is acquired.
>
> (II) Depreciation shall continue to be applied until the residual value is reached. The residual value shall be considered to be no less than twenty percent (20%) for all personal property, unless the property

> tax appraiser has collected sufficient market information to indicate a different residual value.
>
> (III) The Division shall provide tables of depreciation factors for use by property tax appraisers. Other rates of depreciation may be developed by the appraiser.

Rules, Wyo. Dep't of Revenue, ch. 9 § 5(c)(i) (2016).

Review of the County Board Decision

[¶ 53] HollyFrontier asserts that the County Board ruled arbitrarily and failed to rely on substantial evidence. *Supra* ¶¶ 2, 39-40. We begin with HollyFrontier's overarching argument.

> In the majority of Wyoming county property tax assessments, it is entirely appropriate for assessors to rely exclusively on the Cost Approach. However, in this case involving the valuation of complex refinery property, applications of the Cost Approach, as well as the Income and Sales Comparison Approaches, were ***required*** to reach the accurate fair market value of the Cheyenne Refinery property
>
> .

(HollyFrontier Br. 15) (emphasis added). We rephrase the argument as two questions: 1) Was Assessor's consulting appraiser, assuming he had access to the requisite information, ***required*** to apply more than just the cost valuation method under the circumstances? and, 2) If Assessor was required to apply more than a cost methodology, did he lack access to the necessary information?

I. The requirement that appraisers "consider" all three valuation methods, and whether Assessor satisfied that requirement under the presented facts.

[¶ 54] The Department directs that: "Appraisers must consider all three approaches to value and make an appropriate determination as to which approaches are most applicable, and be able to indicate why any approaches may not be appropriate or utilized for the valuation of a specific property." Wyo. Dep't of Revenue, *Wyo. Pers. Prop. Valuation Manual* § 6.1 (2018). The Department further directs that appraisers shall use the "appropriate method for the type of property being valued; that is, the property shall fit the assumptions inherent in the appraisal method[.]" *Supra* ¶ 51. The Department's rules, by contrast, use less mandatory language when describing an appraiser's method selection discretion, but direct that during the final "reconciliation" stage of the appraisal process, appraisers "shall weigh the relative significance, applicability and appropriateness of the indication of value derived from the approaches to value or methods outlined above[.]" *Supra* ¶ 51. Taken as a whole, the Department's rules and accompanying personal property valuation manual require that Assessors consider all three methods.

[¶ 55] Still, this regulatory language does not fully answer our questions because we do not know what it means to "consider" all three approaches to make an "appropriate" determination. *Supra* ¶ 51. Is it enough to momentarily think about all three methods, or does the word "consider" require more? Because the Department has relied upon and has generally adopted various appraisal industry standards in creating Wyoming's regulatory framework for the valuation of property, we examine the term "consider" as the Department/industry apply the word. "If a word in a statute has a usual meaning and a technical meaning, the technical meaning is preferred as stated in § 8-1-103 W.S. 1977, Cum. Supp. 1987[.]" *Amoco Prod. Co. v. State*, 751 P.2d 379, 382-83 (Wyo. 1988); *see* Wyo. Dep't of Revenue, *Wyo. Pers. Prop. Valuation Manual*, Forward at 5 (2018) ("The Property Tax Division developed the following information and procedures from various sources including ...Uniform Standards of Professional Practice, IAAO Standards and Appraisal Methodology, and additional outside sources.").

[¶ 56] From the following industry guidelines, we find that the Department's rule is a composite of the professional appraisal industry's guidance. For example, the International Association of Assessing Officers (IAAO) advises that:

> The cost, sales comparison, and income approaches should be considered in the appraisal of personal property.
>
> Consideration of the three approaches does not require the appraiser to use all three approaches, rather to evaluate their reliance in the valuation process. For example, [i]f demand exceeds supply or supply exceeds demand, one or more of the three approaches may produce distorted results[.] The degree of dependence on any one approach could also change with the availability of reliable data. The strengths and weaknesses of each developed approach to value are evaluated in the reconciliation phase of the appraisal.

Int'l Ass'n of Assessing Officers, Standard on Valuation of Pers. Prop., § 7.2 (Nov. 2018). The IAAO continues:

> As discussed in section 7.2, the cost, sales comparison, and income approaches should be considered in the appraisal of tangible personal property. However, certain types of personal property do not readily lend themselves to development of all three generally accepted approaches. If sufficient sales data are available to support use of the sales comparison approach, it should receive primary consideration. In many instances, however, sufficient sales data are not available, and in these instances, more reliance should be placed on the cost approach or the income approach. The assessor must always consider the quality and quantity of the available market data.

Id. at § 7.3.

[¶ 57] The American Society of Appraisers (ASA) directs that an "appraiser shall select and apply appropriate valuation approaches, methods and procedures" in accordance with the assigned valuation objective. ASA, Business Valuations Standards, BSV-I (IV) (2009); http://www.appraisers.org/docs/default-source/default-document-library/bv-standards.pdf ?sfvrsn=2. The ASA further advises:

> The selection of and reliance on appropriate methods and procedures depends on the judgment of the appraiser and not on any prescribed formula. One or more approaches may not be relevant to a particular situation, and more than one method under an approach may be relevant.
>
> The appraiser must use informed judgment when determining the relative weight to be accorded to indications of value reached on the basis of various methods, or whether an indication of value from a single method should be conclusive. The appraisers judgment may be presented either in general terms of mathematical weighting of the indicated values reflected in the conclusion. In any case, the appraiser should provide the rationale for the selection or weighting of the method or methods relied on in reaching the conclusion.

Id. at BVS-VI (III) (2009).

[¶ 58] The Uniform Standards of Professional Appraisal Practice (USPAP) establishes technical appraisal report guidelines. USPAP Standards Rule 7-1(a) (2018-19) states that appraisers must "be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal."[22] Rule 7-4 states, in part, and comments:

> In developing a personal property appraisal, an appraiser must collect, verify, and analyze all information necessary for credible assignment results.
>
> ....
>
> (f) When analyzing the assemblage of the various component parts of a property, an appraiser must analyze the effect on value, if any, of the assemblage. An appraiser must refrain from valuing the whole solely by adding together the individual values of the various component parts.

[22] USPAP defines "credible" as "worthy of belief," and its accompanying comment explains "Credible assignment results require support, by relevant evidence and logic, to the degree necessary for the intended use." Uniform Standards of Professional Appraisal Practice, Definitions (2018-19).

> <u>Comment</u>: Although the value of the whole may be equal to the sum of the separate parts, it also may be greater than or less than the sum of such parts. Therefore, the value of the whole must be tested by reference to appropriate data and supported by an appropriate analysis of such data.

USPAP Standards Rule 7-4(f) (2018-19); http://www.uspap.org/files/assets/basic-html/page-1.html#

[¶ 59] Finally, USPAP Standards, Rule 7-6 provides:

> In developing a personal property appraisal, an appraiser must:
>
> (a) reconcile the quality and quantity of data available and analyzed within the approach or approaches used; and
>
> (b) reconcile the applicability and relevance of the approach or approaches, methods and techniques used to arrive at the value conclusion(s).

USPAP Standards Rule 7-6 (2018-19): http://www.uspap.org/files/assets/basic-html/page-1.html#.

[¶ 60] While courts are generally deferential to an assessor's selected method, they agree that assessors shall initially consider all three methods based upon sufficient information. In *Jim Paws, Inc. v. Equalization Bd. of Garland Cty.*, 289 Ark. 113, 710 S.W.2d 197 (Ark. 1986), the Arkansas Supreme Court held that an assessor's sole reliance on the cost valuation method to appraise a hotel was contrary to law under the circumstances presented. The owner demonstrated through expert testimony that the income and market valuations, which relied in part on hotel occupancy rates, revenues, and sales, demonstrated a market value substantially less than assessor's valuation based on the cost method. *Id.* at 198-99. The Court, consequently, agreed that taxpayer had carried its burden in challenging the assessor's cost-based appraisal:

> We do find, however, that the appellant was able to show at trial that the estimates of its expert based on the income approach and the acquisition of the property adequately demonstrated that the appraisal did not reflect the true value of the property and that the county's assessment based on the "new cost" approach was excessive and clearly erroneous.

Id. at 200. The court more generally observed:

> We do not hold that the new cost approach to appraising property is a method that will always lead to an excessive appraisal. When income-producing property is assessed, however, and the new cost approach is exclusively used

> without any consideration of the cost of acquisition or of the value of the property in terms of the income that the property will generate for the owner, then the appraisal is not aimed at determining the property's true market value.

Id. at 200-01. *See also Bd. of Educ. of Ridgeland Sch. Dist. No. 122, Cook Cty. v. Prop. Tax Appeal Bd.*, 975 N.E.2d 263, 269 (Ill. App. Ct., 1st Dist. 2012) (citing *Cook Cty. Bd. of Review v. Property Tax Appeal Bd.*, 894 N.E.2d 400, 407-08 (Ill. App. Ct., 1st Dist. 2008)) (When information is available to apply all three valuation methods, each approach should be utilized); *Cook Cty. Bd. of Review,* 894 N.E.2d at 407-08 ("Professional appraisals generally employ more than one method to determine valuation; the use of more than one method in a single appraisal serves as a check on the value reached by the other method or methods."); *Fontana v. City of Grosse Pointe Woods*, 1993 WL 483898, Docket Nos. 123520, 123521, 123522, *8 (Mich. Tax Tribunal, Oct. 19, 1993) (Appraisers, if possible, are to apply all three methods because valuation results from each method provide a check on other valuation results; appraiser's failure to do so weighed against him).[23]

[¶ 61] Indeed, courts in several jurisdictions have determined that sole reliance on the cost method, when sufficient information exists to apply other methods, may be incorrect as a matter of law. In *Chrysler Corp. v. State Property Tax Appeal Bd.*, 387 N.E.2d 351, 356-57 (Ill. App. Ct., 2nd Dist. 1979), the court reversed the assessment of a car manufacturing facility because sufficient information existed to apply the comparable sales method, explaining:

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[23] Describing the strengths, weaknesses, and limitations of the cost valuation method, Am. Inst. of Real Estate Appraisers, *The Appraisal of Real Estate*, (12th ed. 2001), notes:

> The fundamental thesis of the cost approach is that the market value of new construction may be represented by the sum of the land value and the cost of the improvements, each at its highest and best use. The cost approach is commonly thought to set an upper limit of value. The sum of land value and building costs sets a maximum only within the cost approach because of the interaction of mathematical factors within the approach—i.e., the only other variable in the cost approach, besides land value and cost of construction, is depreciation, which has always been treated as a deduction from total cost. Market evidence may reveal a value that is higher than the value indicated by the cost approach, but the cost approach has no internal mechanism to deal with the addition.
>
> .....
>
> When improvements are considerably older or do not represent the highest and best use of the land as though vacant, physical deterioration, functional obsolescence, and external obsolescence of the structure are more difficult to estimate. Furthermore, relevant comparable data may be lacking or the data available may be too diverse to indicate an appropriate estimate of entrepreneurial profit (i.e., the profit actually earned from a completed project).

Id. at 355.

> When something like a bridge or railroad is involved, reproduction, minus depreciation minus obsolescence may be the only way to obtain a valuation for taxing purposes; it must be used despite its similarity to the prohibited value in use method. If, however, some other method, based on a more objective value to the prospective buyer or renter, is available, that more objective value must be given at least some weight in the valuation process.

Id.

[¶ 62] In still other jurisdictions, application of the cost approach is limited to specialized properties, and, again, only when information in support of a different method is not available. *See e.g. Allied Corp. v. Town of Camillus*, 604 N.E.2d 1348, 1351 (App. Ct. N.Y. 1992) ("But even when alternative theories must be used, the courts have been cautious about applying the reproduction cost less depreciation method because it is most likely to result in overvaluation, given its tendency to ascribe too little weight to such factors as rising construction costs and diminishing value by functional obsolescence."); *Gateway-Walden, LLC v. Pappas*, 127 N.E.3d 157, 171 (Ill. App. Ct., 1st Dist. 2018) ("when a property is of such unique nature that its market value literally cannot be quantified, an appraiser may resort to the reproduction cost method."). In *In re Belk-Broome Co.*, 119 N.C.App 470, 458 S.E.2d 921 (App. Ct. N.C. 1995), the court captured an often-stated concern about the cost method:

> It is generally accepted that the income approach is the most reliable method in reaching the market value of investment property. *Coastal Eagle Point Oil Co. v. West Deptford Township*, 13 N.J.Tax 242 (1993) (and authorities cited therein). *See also G.R.F. Inc. v. Bd. of Assessors of Cty. of Nassau*, 41 N.Y.2d 512, 393 N.Y.S.2d 965, 966, 362 N.E.2d 597, 598 (1977) (where the court recognized that the income approach "generally provides an acceptable and, in the absence of market data, a preferred method of valuing rental property"), and *Montgomery Ward & Co. v. County of Hennepin*, 482 N.W.2d 785 (Minn. 1992). The cost approach is better suited for valuing specialty property or newly developed property; when applied to other property, the cost approach receives more criticism than praise. For example, the cost approach's primary use is to establish a ceiling on valuation, rather than actual market value. It seems to be used more often when no other method will yield a realistic value. The modern appraisal practice is to use cost approach as a second approach "because cost may not effectively reflect market conditions." *[Coastal Eagle Point]Oil Co.*, 13 N.J. Tax 242, 288 (citations omitted).

Id. at 924. Although the court did not foreclose use of a combination of approaches, it determined that the income method should be given the greatest weight. *Id.*

[¶ 63] The rules and industry standard are clear: if sufficient information is available to apply a valuation method, an appraiser must apply the method, evaluate the results, and consider the outcome during the reconciliation stage of the appraisal. Although courts often defer to an appraiser's final valuation method selection, that deference assumes fair, informed consideration of all available methods.

[¶ 64] Mr. Lehn testified that he lacked sufficient information to conduct an income or sales comparison appraisal. *Supra* ¶ 13. The County Board agreed and affirmed Assessor's valuation based largely on this precipitating determination. *Supra* ¶ 40. The record as a whole, however, does not support Mr. Lehn's statement that he lacked sufficient information to perform an income or market valuation. Parts of his testimony, along with the testimony of other witnesses, do not support the County Board's finding. *Supra* ¶¶ 12-13.

[¶ 65] A preponderance of evidence indicates that Mr. Lehn had access to financial information and could have attempted an income valuation. HollyFrontier approached Assessor and Mr. Lehn early in the process to convince them that the facility's past and projected income did not align with historic cost valuations. *Supra* ¶ 12. Mr. Lehn testified that, upon reviewing the Deloitte appraisal in May of 2018, his confusion and busy schedule equated to a lack of information and inability to apply methods other than the cost method. *Supra* ¶ 13. Assessor, by contrast, testified that he had sufficient opportunity to review the Deloitte appraisal. *Supra* ¶ 13. HollyFrontier representatives and Deloitte, in addition to the appraisal submitted with appended financial data, offered access to financial information. *Supra* ¶¶ 8, 12-13. The record contains no evidence of HollyFrontier's refusal to provide its financial information. Indeed, HollyFrontier implored Assessor to examine its financial past and projected earnings. *Supra* ¶¶ 12-13. Other than Assessor's usual written request for information, the record contains no evidence of Mr. Lehn's efforts to inquire, gather, or fairly consider financial information, or to apply a method other than the cost appraisal method, consistent with his past practice. *Supra* ¶ 12-13, 33-34.[24]

[¶ 66] In sum, the County Board's determination that Mr. Lehn lacked sufficient information to perform an income appraisal, or to at least consider Deloitte's market appraisal, is not supported by substantial evidence. *Supra* ¶ 43. *Thunder Basin Coal Co.*

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[24] This Board is sensitive to any implication that taxpayers have withheld requested information from a taxing or tax auditing authority, and taxpayers are responsible for their failure to timely provide information as required by law. *See e.g. Wyo. Dep't of Revenue v. Qwest Corp.*, 2011 WY 146, ¶¶ 22-33, 263P.3d 622, 629-32 (Wyo. 2011) (Board of Equalization erred when it disregarded taxpayer's failure to provide requested information to Department of Audit); *RT Comm'ns, Inc. v. State Bd. of Equalization*, 11 P.3d 915, 927-28 (Wyo. 2000) (Department of Revenue correctly rejected taxpayer's economic obsolescence analysis, which lacked supporting information); *In re Range Tel. Coop., Inc.*, 2015 WL 5793069, Docket No. 2014-14 *6 (Wyo. St. Bd. of Equalization, Sept. 23, 2015) (Taxpayer did not withhold information; rather, the Department did not request information which it knew existed.). Taxing authorities, for their part, must diligently seek information necessary to perform taxing functions.

v. Campbell Cty., 2006 WY 44, ¶ 14, 132 P.3d 801, 807 (Wyo. 2006) ("The County Assessor's choice of appraisal methods is reviewed under the substantial evidence standard."). HollyFrontier demonstrated Assessor's failure to properly "consider" all three valuation methods under the circumstances presented here.

[¶ 67] Therefore, the County Board's ultimate conclusion and basis for affirming the assessment -- that the dispute amounts to a difference of valuation opinion -- is not sustainable. (Cty. Bd. Decision, R. at 001075). Such presumes that competing valuation opinions comply with departmental rules.

[¶ 68] In addition, HollyFrontier has offered sufficient valuation evidence to persuasively question whether a cost appraisal of the HollyFrontier facilities, by itself, is adequate and/or consistent with professional appraisal standards. Given Mr. Lehn's access to HollyFrontier's financial information and other materials, and his failure to fairly consider all available valuation methods, we shall reverse Assessor's valuation.

II. County Board's rejection of the HollyFrontier valuation.

[¶ 69] Having concluded that the County Board improperly affirmed the Assessor's valuation, we now determine whether the County Board's rejection of the Deloitte appraisal was consistent with law and supported by substantial evidence.

[¶ 70] An underlying frustration throughout the hearing was that neither party directly answered repeated inquiries as to why the respective cost valuations varied so significantly—by more than $200 million. *Supra* ¶ 39. One might expect that two professional cost appraisals of the HollyFrontier refinery equipment would generate a similar RCN and/or RCNLD. This was not the case, and a meaningful comparison of the two valuations is difficult because the appraisers grouped the equipment differently, or did not group the equipment at all. Further, Mr. Lehn included no RCNLD for the property in his report, so the County Board had to estimate individual deductions from the refinery equipment's replacement cost new. *Supra* ¶ 35. We share the County Board's frustration. *Id.*

[¶ 71] In any event, the poorly explained and seemingly illogical difference between the T.Y. Pickett cost appraisal and the Deloitte appraisal, along with other areas of concern, fueled the County Board's general disagreement with the Deloitte valuation. First, Deloitte's depreciation of the equipment may run afoul of the Department's rules. Deloitte imposed a "percent good" of less than 20% to much of the equipment notwithstanding its finding "that the Personal Property Assets have generally been well-maintained and are in good condition overall." (Confid. Ex. T-9, 000895-96, 000899-900, 000902, 000932-34); *supra* ¶¶ 21, 37. In order to properly do so, Deloitte was required to rely upon sufficient information to justify and support a residual value of less than 20% of the equipment's replacement cost new, or RCN. *Supra* ¶ 51; *see e.g., In re Merit Energy Co., LLC,* 2018

WL 8066052, Docket No. 2017-62 *11-15 (Wyo. St. Bd. of Equalization, Sept. 25, 2018) (finding that assessor properly considered owner's continuous maintenance of oil and gas field equipment in determining that equipment did not fully depreciate on straight line to a salvage value); *In re Mountain Cement Co.*, 2005 WL 1650797, Docket No. 2004-136, *9-10 (Wyo. St. Bd. of Equalization, July 12, 2005) (Assessor was required to justify deviation from Department's prescribed residual value minimum.). The Department generally cautions that operating oil and gas field equipment, because it must be maintained under various regulatory guidelines, will normally retain economic life and will not depreciate to a "poor" or "scrap" condition for valuation purposes.[25] Wyo. Dep't of Revenue, *Wyo. Pers. Prop. Valuation Manual*, app. A-2.2 (2018).

[¶ 72] In essence, Deloitte depreciated much of the equipment to a "percent good" value[26] less than the Department's standard residual value floor of 20%, which is akin to valuing the equipment as "scrap" or "salvage" value.[27] This over-depreciation resulted in an exceedingly low RCNLD and may help explain the considerable difference in cost valuations when compared to the T.Y. Pickett appraisal.[28] We further note that Deloitte, in determining the equipment's effective age, apparently did not consult the Department's rules or 2018 Personal Property Valuation Manual. (Confid. Ex. T-9, R. at 000900-901). Deloitte reports that it estimated the equipment's "economic life" based on discussions with management, Marshall & Swift guidelines, and guidelines of the American Society of Appraisers. *Id.*

[¶ 73] Similarly, the County Board noted that Deloitte equated the equipment's chronical age with effective age, which similarly may result in excessive depreciation for well-maintained property. Mr. Lehn explained that Deloitte's depreciation ignored HollyFrontier's continuous maintenance and refurbishing of equipment. (Cty. Bd. Decision, R. at 001056; Tr. 269); *see Merit Energy Co., supra.*

[¶ 74] Second, Deloitte's controversial calculation of economic obsolescence was the most prominent factor in the County Board's rejection of the HollyFrontier valuation.

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[25] The Department does not specifically address refinery equipment, but oil and gas field equipment shares many characteristics with refinery equipment to the extent each is designed to handle or process oil and gas production. Therefore, what applies to one, arguably offers a point of reference for the other.

[26] The Department defines "Residual Value" as "the fully-depreciated value of personal property that is still serviceable and in use, but has reached the end of its economic life." Wyo. Dep't of Revenue, *Wyo. Pers. Prop. Valuation Manual*, § 6.4 (2018).

[27] The Department defines equipment as being in a "poor" condition when it "[h]as a very high number of service hours. Requires rebuild, repair, or overhaul before it can be used. Not operational or functional." Wyo. Dep't of Revenue, *Wyo. Pers. Prop. Valuation Manual*, app. 1, § 1.2 (2018). Equipment, when classified as scrap or salvage, is such that the cost of repairs exceed the value or cost of replacing, and it has no useful life. *Id.*

[28] Mr. Lehn's depreciation also deviated from the Department's prescribed schedule but, as explained, his depreciation is not readily identified and must be estimated from other calculations. (Tr. 286-87); *supra* ¶ 35.

"Economic obsolescence" is the "impairment of desirability or useful life arising from factors external to the property, such as economic forces or environmental changes which affect supply-demand relationships in the market." Rules, Wyo. Dep't of Revenue, ch. 9 § 4(a)(xiii)(C) (2016).

[¶ 75] The County Board found that Deloitte improperly deducted economic obsolescence twice, once through the cost method and again when reconciling among the different valuation results. (Cty. Bd. Decision, R. at 001073). We also find Deloitte's calculation of economic obsolescence problematic, but for a different reason. Deloitte did not fairly apply and reconcile all three valuation methods: through reconciliation and calling it economic obsolescence, Deloitte discounted entirely Assessor's preferred method, the cost method, giving it no weight in the reconciliation step of its appraisal. *Supra* ¶¶ 29-30.

[¶ 76] We fully appreciate the critical significance of Deloitte's conclusion that given the facility's historic and projected revenue, the refinery's "projected earnings … [did] not indicate support for the investment in the Tangible Assets at their indicated [cost method based value] RCNLD[.]" *Supra* ¶ 23. But, we question whether this justified rendering the cost method functionally irrelevant in the valuation.[29]

[¶ 77] As we more closely examine Deloitte's economic obsolescence deduction, additional questions arise because that deduction, as described in its report narrative, does not correspond to the economic obsolescence adjustment set forth in supporting calculations. Deloitte described two independent economic obsolescence calculations or sources of obsolescence in its appraisal report, yet those calculations don't exist (or are not shown as stand-alone calculations) in the report's supporting materials. *Supra* ¶ 23. Instead, the appended calculation spreadsheet reveals that the economic obsolescence adjustment was simply the final valuation figure, $210,623,000, subtracted from the RCNLD of $281,574,000, a deduction of 25.8%. (Confid. Ex. T-9, R. at 000934).[30] Deloitte did not explain how its obsolescence deduction of 25.8% captured the two described economic obsolescence drivers and, consequently, the deduction appears arbitrary.

[¶ 78] The County Board issued the following conclusion of law:

> 23. The rules of the department do not permit an appraisal which dilutes or modifies the results of an authorized method for the determination of value. Deloitte's approach directly mixed earnings considerations and

[29] At the same time, Deloitte's RCNLD at $282 million, because it was so low, would not likely have changed the overall valuation had Deloitte weighted it equally with the other valuations. *Supra* ¶ 29.

[30] Mr. Lehn's economic obsolescence and other adjustments also raise questions. *See supra* ¶ 35. Mr. Lehn's decision to apply no economic obsolescence or functional obsolescence to a large portion of the equipment was not well explained, and may also account for the enormous difference between the rival cost valuations. *Supra* ¶¶ 35, 70-71.

> other factors appropriate to an income valuation into a "cost approach." Then, this valuation was "reconciled" with other valuations to arrive at their final conclusion. This improper adulteration of an acceptable method of valuation contaminates and invalidates the Deloitte outcome.

(Cty. Bd. Decision, R. at 001074).

[¶ 79] This may or may not be correct, as the Department's rules do not, and could not, fully line out each and every possible method of calculating an appraisal adjustment. By design, the Department's guidance generally incorporates industry standards and practices. *See supra* ¶¶ 51-52, 54-59. However, to carry its burden of proof, HollyFrontier had to demonstrate to the County Board's satisfaction that the cost method should legitimately play a negligible role in the overall valuation analysis, especially given the Assessor's historic reliance on that appraisal method. *Supra* ¶¶ 46-48. It did not do so. We thus find that the County Board's rejection of the Deloitte-appraised value was justified and supported by substantial evidence.

[¶ 80] We shall affirm the County Board's rejection of the Deloitte appraisal and remand this valuation to Assessor for a new valuation that considers all three valuation methodologies as required by the Department's rules.

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ORDER

[¶ 80] **IT IS HEREBY ORDERED** that the Laramie County Board of Equalization decision rejecting HollyFrontier's appraised value, submitted to challenge Assessor's valuation of the refinery facilities, is **affirmed.**

[¶ 81] **IT IS FURTHER ORDERED** that the Laramie County Board of Equalization decision affirming the assessment, to the extent HollyFrontier contested Assessor's failure to comply with the Department of Revenue's appraisal rules and guidelines, is **reversed**, and we **remand** the assessment to Assessor for a new valuation and assessment consistent with our decision herein.

DATED this 21 day of November 2019.

STATE BOARD OF EQUALIZATION

David L. Delicath, Chairman

E. Jayne Mockler, Vice-Chairman

Martin L. Hardsoeg, Board Member

ATTEST:

Jenny Fujinami, Executive Assistant

CERTIFICATE OF SERVICE

I certify that on the 21 day of November 2019, 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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