

BEFORE THE STATE BOARD OF EQUALIZATION

FOR THE STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF)	
WALMART STORES EAST LP)	Docket No. 2020-42
FROM A DECISION BY THE LARAMIE)	
COUNTY BOARD OF EQUALIZATION)	

DECISION AND ORDER

APPEARANCES

D. Wiley Barker and Amanda M. Good, Crowley Fleck, PLLP, appeared on behalf of Walmart Stores East, LP (Walmart).

Mark T. Voss, Laramie County Attorney's Office, appeared on behalf of the Laramie County Assessor, Kenneth Guille (Assessor).

SUMMARY

[¶ 1] The Laramie County Board of Equalization (County Board) rejected Walmart's challenges to the 2020 property tax assessment of its distribution center located west of Cheyenne, Wyoming. Walmart asserted its distribution center, including the underlying lot, should be assessed at \$37 million rather than \$68 million. Walmart challenged the legality of Assessor's appraisal on several grounds, including that the real property assessment included significant personal property value. The State Board, Chairman E. Jayne Mockler, Vice-Chairman Martin L. Hardsocg, and Board Member David L. Delicath, having reviewed the record and parties' submitted briefs, **affirms** the County Board's Decision and Order.

JURISDICTION

[¶ 2] The State Board shall "hear appeals from county boards of equalization[.]" Wyo. Stat. Ann. § 39-11-102.1(c) (2019). An aggrieved taxpayer may file an appeal with the State Board within 30 days after the County Board's final decision. Rules, Wyo. State Bd. of Equalization, ch. 3 § 2(a) (2021). The County Board served its final decision on September 30, 2020. (R. at 586). Walmart mailed its appeal on October 30, 2020. (Notice of appeal). Accordingly, we have jurisdiction.

ISSUES

[¶ 3] Walmart did not identify issues in its brief. For the purposes of framing Walmart's appeal, we restate its arguments as issues:

- 1) Did the County Board err when it accepted Assessor's assessed value, notwithstanding Assessor's reliance on the services of a non-certified contract appraiser?
- 2) Did the County Board err when it affirmed Assessor's real property assessment, notwithstanding Assessor's alleged inclusion of personal property?
- 3) Did the County Board err when it accepted Assessor's assessment derived from a cost-based appraisal, which lacked sufficient supporting information to sustain?
- 4) Did the County Board err when it rejected Walmart's proffered appraisal?

(Walmart Br.). As a starting point for each, we necessarily resolve whether Walmart carried its initial evidentiary burden when challenging an assessment. *Infra* ¶¶ 33-35.

[¶ 4] Assessor responded with the following issue: "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's Br., 4).

PRESENTATION OF EVIDENCE BEFORE THE COUNTY BOARD

[¶ 5] Walmart built a distribution center adjacent to Interstate 80, west of Cheyenne, Wyoming, in 2006-2007. (R. at 277, 280-83, 310-12). The distribution center includes 147 acres of land, and improvements covering 920,000 square feet. Separate smaller rectangular buildings surround the main warehouse structure. (R. at 277, 280-83, 310-12). The facility accommodates primarily dry goods storage, but also significant refrigerated and frozen food storage. (R. at 281, 310-12). The facility includes extensive equipment, including conveyor systems, racking systems, lifts, freezers, refrigeration facilities, etc. (R. at 265-62, 319-20).

[¶ 6] Assessor appraised and assessed the distribution center improvements in 2020 at \$65,702,960, and the underlying lot at \$2,779,320, resulting in a total tax assessed value of \$68,482,220. (R. at 185, 232). Assessor relied heavily on the appraisal services of T.Y. Pickett, an appraisal firm specializing in the valuation of industrial and large commercial

properties. (R. at 114-19, 182-83). Assessor received an appraisal report, styled a “Recapitulation Report,” from T.Y. Pickett appraiser Robert Lehn. (R. at 233-49). Mr. Lehn applied the cost valuation method to value the property; he did not apply an income or sales comparison valuation methodology. (R. at 120-25).

[¶ 7] Walmart appealed the assessed valuation of its distribution center, asserting that the assessed value “is not representative of market value for this type of facility.” (R. at 1). Supporting its overvaluation claim, Walmart offered the appraisal of Allen & Associates Appraisal Group, Inc. (Allen & Associates), which appraised the distribution center at \$37 million. (R. at 274-381); *infra* ¶¶ 16-20. Allen & Associates, through appraiser Larry Allen, used the income and sales comparison valuation methods, opting to not employ a cost valuation method. *Id.*; (R. at 58-63).

[¶ 8] In argument and evidence presented to the County Board, Walmart challenged the valuation of its distribution center essentially on four grounds: 1) that Assessor relied upon an appraiser not certified as such by the Department of Revenue, rendering the assessed valuation illegal; 2) that the real property assessment impermissibly included personal property, such as equipment; 3) that the T.Y. Pickett Recapitulation Report, upon which Assessor relied, did not include sufficient information in support of the valuation rendered, and that it did not otherwise comply with appraisal standards; and, 4) that the Allen & Associates appraisal demonstrated the correct fair market value. (R. at 21-26, 479-503; Walmart’s Br.).

Evidence regarding the claim that Assessor relied on the work of a non-Wyoming
Department of Revenue certified appraiser

[¶ 9] Assessor conceded that Mr. Lehn, author of the T.Y. Pickett appraisal report, was not Wyoming Department of Revenue certified. (R. at 165). Assessor testified that the assessment was, nevertheless, valid and legal because he, himself, was a certified appraiser, reviewed the T.Y. Pickett Recapitulation Report, and effectively appraised the property. (R. at 152-54, 165-66).

Evidence that the real property assessment included personal property

[¶ 10] Walmart, through testimony of its Senior Property Tax Manager, Donna Sanders, claimed that the real property assessment of its distribution center included substantial personal property, resulting in a “double assessment” of Walmart’s property. (R. at 33-46, 50-55). Walmart did not appeal its personal property assessment. (R. at 45). Ms. Sanders was unable to identify the double assessed property or the extent to which the assessment overvalued the distribution center. (R. at 49-53). Ms. Sanders referenced \$12 million, but her testimony was unclear. *Id.*

[¶ 11] Ms. Sanders believed that someone with Walmart had notified the Assessor’s office

that personal property was misclassified as real property, but did not know for sure. (R. at 45-48). Assessor testified that no Walmart representative informed him that property was subject to double assessment and that, had Walmart expressed this concern, he would have reviewed the matter. (R. at 156).

[¶ 12] Larry Allen testified that he did not review Walmart's personal property return and was not a personal property appraiser. (R. at 86, 104, 250-71). He appraised the distribution center, applying the sales comparison and income valuation methods, without the equipment and personal property. He reasoned that a buyer would not want it and characterized this as obsolescence. He attributed approximately \$24 million to this obsolescence factor—the value of equipment not included in the facility's value. Walmart suggested before the County Board that the amount of overvaluation was possibly Mr. Allen's calculated obsolescence. (R. at 172-74); *infra* ¶ 61.

[¶ 13] Assessor did not dispute that personal property could have been included in the assessment of Walmart's distribution center, but disagreed that any such property was taxed twice. (R. at 153-54, 161-65). He responded that misclassification could result from a taxpayer's lumping of property together in tax returns, such as property reported as "fixtures and equipment." He explained that classification of property as real or personal depended upon how equipment was installed. Walmart's property, both real and personal, he explained, is assessed at the same rate, nine and one-half percent. (R. at 154-55). Mr. Lehn listed and individually depreciated all property, buildings and equipment, for valuation purposes. (R. at 155-56, *see also* R. at 142).

Evidence regarding Walmart's claim that the T.Y. Pickett appraisal did not
establish a valid valuation

[¶ 14] Evidence in support of Walmart's third claim consisted of Mr. Allen's critique of Mr. Lehn's "Recapitulation Report." He opined that the T.Y. Pickett Recapitulation Report did not satisfy Uniform Standards of Professional Appraisal Practice (USPAP) because it excluded information sufficient to explain the values. (R. at 81-84). Mr. Allen also questioned Mr. Lehn's failure to apply the income or sales comparison valuation methods. (R. at 77-78). He questioned Mr. Lehn's calculation of depreciation, objecting that Mr. Lehn "provides a value indication that it is higher—higher than market value." (R. at 78-79). He offered no authority or alternative cost method depreciation calculation. *Id.*

[¶ 15] Referring to his own appraisal, Mr. Allen stated that the Walmart distribution center was particularly large and accommodated very specific refrigeration and size needs. As such, he commented that comparable sales were difficult to find. He explained that his firm subscribed to several services from which it obtained market rental and sales data. (R. at 85-95). Mr. Allen had never performed a mass appraisal and was unfamiliar with the information disclosed in such. (R. at 96).

Evidence relating to Walmart's claim that the County Board erred when it did not accept Allen & Associates' appraised value of the distribution center

[¶ 16] Walmart emphasizes that its Wyoming-certified appraiser offered the County Board a comprehensive appraisal that satisfied USPAP guidelines. (Walmart Br., 15-23). Mr. Allen testified to his reliance on the income and sales comparison valuation methods, as well as his decision to forego a cost valuation. (R. at 58-74). He offered detail on how he applied each method. He discounted the cost valuation method because calculating depreciation and obsolescence would be difficult given that Walmart built the distribution center for its specific needs. He explained that calculating obsolescence would require rental income information and market sales information from like facilities. (R. at 60-61). He dismissed the cost method because it would generate a value similar to the income or sales comparison method. *Id.* He further noted that the cost valuation method was not used by market participants. (R. at 284).

[¶ 17] Applying the sales comparison method, Mr. Allen considered the sales of seven distribution warehouses located in San Antonio, Texas, Fort Worth, Texas, Clinton, Tennessee, Milton, West Virginia, Harrisburg, Pennsylvania, Oklahoma City, Oklahoma, and Elwood, Kansas. (R. at 63-70, 340-55). In order to arrive at a purchase value per square foot for comparison purposes, Mr. Allen adjusted each sale to account for building characteristics, condition, market location and conditions, and demographic attributes, among other factors. (R. at 356-61). Mr. Allen concluded that the Walmart distribution center supported a value of \$40 per square foot which, when applied to the facility's area of 920,283 square feet, established a value of \$36,800,000. (R. at 63-70, 363).

[¶ 18] Even though he performed an income valuation analysis, he cautioned that its utility is doubtful because neither Walmart, nor most businesses, would construct a distribution center to generate income (lease). (R. at 364). He generalized that rent paid for such facilities usually arises from a financing arrangement and would not therefore reflect a market transaction. *Id.* He stated that his income appraisal served as "a check on the sales comparison approach." *Id.*¹

[¶ 19] Mr. Allen summarized the income appraisal process:

But the basic process of the income approach involves a determining market rent for the property, a vacancy and credit loss, normal operating expenses, and a market derived capitalization rate. And then adjustments for stabilization costs in someone buying this facility is not buying a property that has tenants in place or is already leased, so a buyer would have to find a

¹ Mr. Allen attached an article entitled: "Appraisal Issues in the Valuation of Extremely Large Buildings," by Gary A. Battuello, MAI. The article confirmed Mr. Allen's view that an income method valuation would be of little use in appraising facilities such as the Walmart distribution center. (R. at 440).

tenant, negotiate a lease and put a tenant or multiple tenants in place.

(R. at 71). Mr. Allen essentially calculated a hypothetical net income and capitalized it to derive a market value. (R. at 65-75, 365-69). Through his income appraisal, Mr. Allen valued the distribution center at \$37.7 million. *Id.*

[¶ 20] Mr. Allen reconciled his sales comparison valuation and income valuation, concluding that the distribution center had a market value of \$37 million on January 1, 2020. (R. at 74-75, 376).

Assessor's evidence in response to Walmart's claims

[¶ 21] Mr. Lehn testified before the County Board that his work complied with USPAP, and all other applicable standards. He further assured that he had met or exceeded standards set under Wyoming law for determining market value. (R. at 116, 125, 143). He explained that appraisal report contents for mass-appraised property differ from what is typically included in other appraisals. (R. at 120).

[¶ 22] Mr. Lehn briefly summarized his cost valuation approach, insisting that he considered all three methods as required by law. (R. at 121-23). He stated that when he asked Walmart for income information, Walmart declined to provide the information and suggested it was irrelevant. (R. at 121-23, 144-46). As for application of the sales comparison method, Mr. Lehn opined that because the custom-built facility served a special purpose and was "state of the art," he didn't believe he would find sales of comparable facilities. *Id.* Mr. Lehn repeated that, because he gained access to the facility in 2006 when it was built, he could confidently track the purchase and installation costs back to original entries for the improvements and unique features. (R. at 123-24).

[¶ 23] Touching upon the personal property classification allegation, Mr. Lehn stated that much of Walmart's characterization of the equipment was incorrect, and that some of the personal property, termed "inventory," was built into the buildings as well. (R. at 125). He explained that correctly classifying property was necessary to ensure property was accurately depreciated; he individually addressed and depreciated each piece of property. (R. at 126). He testified that he reviewed property lists to ensure that items were taxed only once, commenting that the Assessor and he both rely upon Walmart to report and redress mistakes:

Yes. All their taxable – ... we only appraise it once. We don't keep things down twice. If that's pointed out to us in a coherent fashion – first of all, it would be a surprise because the information's coming from Walmart itself. Secondly, we ask – and we try to look through our files every year to make sure that does not happen. And I assure you the assessor's office has oversight on the TY Pickett reports and questions or asks us to explain things

when this sort of thing comes up.

(R. at 133-34).

[¶ 24] Responding to Walmart's complaint as to how he calculated obsolescence and depreciation (that his method was not discernible from his report), Mr. Lehn referred to T.Y. Pickett's "tables" and databases going back to 1926. (R. at 135-41, 149-50). He explained that T.Y. Pickett had, from the beginning of its existence, developed varying tables to calculate depreciation for complex or specialized industrial properties and that "they're the best available in the practice[.]" *Id.*

[¶ 25] Finally, describing the mass appraisal process, Assessor testified that his office did not subscribe to services selling property sales or lease information for commercial facilities. (R. at 157-59). Assessor explained that his office gathers statewide information from the Department of Revenue, educational institution databases, and local sources, such as taxpayers. *Id.* He stated:

We don't have the access. We don't purchase the access. I rely a lot on industry out there to tell us, you know, common things that are happening with certain types of properties. I will tell you every commercial appraisal that comes across my desk is in a file, and we keep those and refer back to them, because it helps us develop and really a benefit [sic] of the research of a fee appraiser. Again, we're mass appraisers. We're not appraising one piece of property at a time here. We are appraising 52,000 parcels and send out 52,000 notices on a yearly basis.

(R. at 158).

County Board Decision

[¶ 26] The County Board affirmed Assessor's valuation, rejecting each of Walmart's objections and claims. It rejected Walmart's "double assessment" claim because Walmart offered no evidence as to specific property assessed twice. (County Board Decision, R. at 533-35). The Board concluded that regardless of how the property was listed, the valuation outcome would not change because property removed from the real property assessment would necessarily be added to the personal property assessment. (County Board Decision, R. at 535-36). Classification of installed equipment as real or personal, the County Board observed, was often a judgment call influenced by Walmart's reporting of the property. (County Board Decision, R. at 536-38).

[¶ 27] The County Board resisted Walmart's proffered appraisal:

The Allen report, admitted as Exhibit 5, by Walmart, does not provide a

valuation of the equal and identifiable property which was evaluated by Assessor. It ignores significant amounts of property the Assessor considers as fixtures. Mr. Allen did not have access to, or evaluate any personal property, regardless of how Protestant wished to, or categorized, said property. The Allen report fails to value all “taxable property.” The Assessor is mandated to do so. Wyo. Stat. Ann. § 39-13-103.

(County Board Decision, R. at 541; *see also* R. at 542). The County Board was unpersuaded by Mr. Allen’s appraisal predicated on a distribution facility without equipment. (County Board Decision, R. at 543).

[¶ 28] By contrast, the Board was satisfied with Assessor’s/Lehn’s “consideration” of all three methods and application of just the cost method. (County Board Decision, R. at 538-39). The Board accepted Mr. Lehn’s explanation of his appraisal and was persuaded that he performed in accordance with USPAP and the Department’s rules. (County Board Decision, R. at 540-41).

CONCLUSIONS OF LAW

Standard of Review

[¶ 29] 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.*

[¶ 30] 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) (2019), 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
- (d) Unsupported by substantial evidence.

Rules, Wyo. State Bd. of Equalization, ch. 3 § 9(a)-(d) (2021).

[¶ 31] Because the State Board Rules are patterned on the judicial review provisions of Wyo. Stat. section § 16-3-114 (2019), 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).

[¶ 32] 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)).

[¶ 33] "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).

[¶ 34] "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.

[¶ 35] 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 (citing *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

[¶ 36] 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) (2019).

[¶ 37] All property must be valued annually at fair market value. Wyo. Stat. Ann. § 39-13-103(b)(ii) (2019). 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) (2019).

[¶ 38] The Department identifies three valuation methods available to assessors, all three of which are discussed 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) The Income or Capitalized Earnings Approach. 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).

(c) Review of the County Board's decision

[¶ 39] This is the classic “dueling appraisal” case, wherein a taxpayer challenges an assessment with its own appraisal, arguing that it better reflects fair market value. Unfortunately, and as the County Board noted, the appraisers applied different methodologies and did not confront each other on common ground—the same property. Assessor, as permitted by law, valued the distribution center through a cost method, while Walmart employed a fee appraisal centered on the sales comparison method, which it corroborated through an income method. *Supra* ¶¶ 14-20, 27, 38. We examine Walmart's appeal through its four distinct claims of error, and speak to each in turn. *See supra* ¶ 3.

I. Did the County Board err when it accepted Assessor's assessed value, notwithstanding Assessor's reliance on the services of a non-certified contract appraiser?

[¶ 40] As Walmart argues, the Department's rules provide that "No individual shall perform the duties or exercise the authority of a property tax appraiser unless certified by the Department." (Walmart Br., 8 citing Rules, Wyo. Dep't of Revenue, ch. 13 § 5(a) (2014)). The County Board blithely sidestepped this claim, finding that Walmart "raised no objection to . . . Mr. Lehn's qualifications, nor to their compliance with law in the conduct of their evaluation of the property." (County Board Decision, R. at 531). To the contrary, Walmart timely raised the issue and challenged Mr. Lehn's failure to certify with the Department of Revenue. (R. at 21). We must nevertheless disagree with Walmart as to its claim that Mr. Lehn's certification status rendered the assessment invalid.

[¶ 41] " '[T]he rules of statutory interpretation also apply to the interpretation of administrative rules and regulations.' " *Powder River Coal Co. v. Wyo. State Bd. of Equalization*, 2002 WY 5, ¶ 6, 38 P.3d 423, 426 (Wyo. 2002) (quoting *Wyo. Dep't of Revenue v. Buggy Bath Unlimited, Inc.*, 2001 WY 27, ¶ 6, 18 P.3d 1182, 1185 (Wyo. 2001)). If the language of a rule or statute is clear and unambiguous, we give effect to the plain language of the regulation. *State v. Bannon Energy Corp.*, 999 P.3d 1306, 1309 (Wyo. 2000). The Department promulgated its Chapter 13 rules to "establish, implement, and maintain a mandatory system of education and training for all county assessors and property tax appraisers, and to establish standards and criteria for certification as a property tax appraiser." Rules, Wyo. Dep't of Revenue, ch. 13 § 2 (2014).

[¶ 42] Even were we to find that Assessor violated Chapter 13 of the Department's rules, the regulatory language does not expressly punish violation of the rules, such as to render invalid an assessment as Walmart argues. (Walmart Reply Br., 7). Had the Department intended that outcome, it undoubtedly would have stated such, and we will not infer penalties through interpretation. See *Mountain Cement Co. v. South of Laramie Water & Sewer Dist.*, 2011 WY 81, ¶¶ 13, 40-41 (Wyo. 2011) (citations omitted).

[¶ 43] We agree with Assessor that the Department's Chapter 13 rules narrowly established prerequisites to exercise the authority of a county assessor or an employee in an assessor's office. In particular, the term "Property Tax Appraiser" within the rules refers to "all employees of the Department or any County Assessor's office, including county assessors who make valuation judgments used as a basis for property taxation." Rules, Wyo. Dep't of Revenue, ch. 13 § 3(g) (2014). Assessor testified that he reviewed Mr. Lehn's appraisal, that he was acquainted with Mr. Lehn's methods and appraisal resources, and that he independently exercised his appraisal authority when he relied on the Recapitulation Report. *Supra* ¶ 9. Walmart offered no evidence to the contrary, so we do not have before us an assessor who delegated his assessment authority to a noncertified contract appraiser. Inasmuch as the perilous practice of hiring noncertified appraisal

services may undercut an assessor's defense of an assessment in trial, neither the Department nor Wyoming law forbid the practice.²

[¶ 44] In sum, Walmart incorrectly interprets the Department's Chapter 13 rules as prohibiting the hiring of noncertified appraisal services. Even assuming a violation of the Department's Chapter 13 rules, the County Board was not required to strike the assessment as invalid under the law.

II. Did the County Board err when it affirmed Assessor's real property assessment, notwithstanding Assessor's alleged inclusion of personal property?

[¶ 45] Citing the Department's definitions of real and personal property, Walmart alleged that Assessor "double assessed" personal property and, more generally, overvalued its distribution center by including millions of dollars in personal property value. *Supra* ¶ 10.

[¶ 46] We begin with Walmart's burden of proof before the County Board. Walmart was first required to overcome the strong presumption that Assessor correctly applied Wyoming tax law and, only if it overcame that presumption was the County Board required to equally weigh the evidence to determine whether Walmart carried its ultimate burden of proof by a preponderance of evidence. *Supra* ¶ 35. We start here because Walmart argued before the County Board that it was "under no obligation to demonstrate the amount it has suffered as a result of the Assessor's errors once it demonstrates the assessment is invalid or unlawful." (Walmart's Reply Br., 10) (emphasis in original).

[¶ 47] Walmart is incorrect: an appealing taxpayer must offer evidence of an error's impact, in particular, the overvaluation. *See In re Appeal of R. Duane Wall*, 2018 WL 8062051, Doc. No. 2017-60, * 10, ¶¶ 43-47 (Wyo. Stat. Bd. of Equalization, Dec. 31, 2018) (Taxpayer proved assessor erred when he ignored distinctly negative property characteristic, but ultimately failed to carry burden when he offered no evidence of valuation impact); *In re Appeal of Robert W. Rebbe Jr.*, 2018 WL 3020300, Doc. No. 2016-42, * 14, ¶¶ 64-65 (Wyo. Stat. Bd. of Equalization, June 7, 2018) (Taxpayer demonstrated property lacked access, but failed to demonstrate that assessment overvalued property); *see also Weaver v. State Bd. of Equalization*, 511 P.2d 97, 98-99 (Wyo. 1973) (Although assessor admitted failure to value consistently, Court held that taxpayer still failed to prove lack of uniformity and need for equalization.); *Hillard v. Big Horn Coal Co.*, 549 P.2d 293, 294 (Wyo. 1976) ("The burden is on the taxpayer to establish any overvaluation.") (citing *Weaver*, 511 P.2d at 98).

² Taking Walmart's argument a step further, if it is correct, must every appraiser be certified to qualify as an acceptable witness before a county board of equalization?

[¶ 48] The County Board found insufficient evidence of error for several reasons, primarily Walmart's failure to specify the misclassified property or the corresponding degree of claimed valuation increase. *Supra* ¶ 26. We find that Walmart overcame the initial presumption of correctness: Ms. Sanders testified that the real property assessment included personal property; and, Assessor stated that the assessment's underlying Recapitulation Report possibly included some personal property. *Supra* ¶¶ 10, 13. Assessor and Mr. Lehn offered several sound explanations as to why the claimed misclassification of property did not result in an overvaluation, including their process of individually listing, depreciating and valuing each property. *Supra* ¶ 13. Walmart thereafter offered little evidence to solidify before the County Board an overvaluation arising from an alleged misclassification of personal property as real property, including whether Walmart was overtaxed, or how much excess tax burdened Walmart as a result.

[¶ 49] Walmart's evidence of "double assessment" or overvaluation of real property consisted of nonspecific testimony from its Property Tax Manager, Ms. Sanders, that much of the property on its personal property tax return was captured in Mr. Lehn's Recapitulation Report. *Supra* ¶ 10. Ms. Sanders, however, could not specify the misclassified property or identify the degree of overvaluation. *Id.* Conspicuously, Walmart's appraiser did not review Walmart's personal property tax return and expressly declined to opine as to how the Assessment incorrectly captured personal property.³ *Supra* ¶ 12.

[¶ 50] The County Board was then left to review numerous pages of Walmart's personal property tax return listing dozens of lines of generic property descriptions, such as "equipment," "fixtures," "racking," "warehouse conveyors," "machinery," "retail store F&F," "shelving," "storage," and the like. (R. at 251-64). Assessor and Mr. Lehn both pointed out that much of this property could be considered real property, depending upon how it was installed. Walmart in response offered no clarifying evidence detailing how any of the listed personal property was installed or if it was a fixture. *Supra* ¶¶ 13, 22-23. Walmart was content to broadly condemn Mr. Lehn's Recapitulation Report and did not respond to Assessor's compelling point that classifying property required a degree of *appraisal judgment*. Indeed, Walmart boldly asserts before this Board that classifying the property as real versus personal was a "purely legal" determination. (Walmart Reply Br., 8).

[¶ 51] We disagree. Classifying equipment as personal versus real property in commercial

³ Walmart curiously argues that it was undisputed that Walmart correctly listed its personal property on its personal property return and that the County Board should not include that aspect of its tax liability in this dispute. (Walmart Br., 14-15). This ignores an obvious implication of Walmart's theory of the case: if the Assessor improperly included personal property in its real property assessment, and if those items should be removed, then the personal property assessment may be incorrect as well. While Walmart did not appeal its personal property assessment, it cannot ignore the obvious implications of its challenge to the real property assessment.

applications requires detailed information and is often arguable. *See In re Appeal of Al Willis*, 2020 WL 2029787, Doc. No. 2019-33 (Wyo. St. Bd. of Equalization, April 16, 2020) (whether solar panels and shipping containers were properly classified as real property); *In re Appeal of Anchor Sign, Inc.*, 2017 WL 6276020, Doc. No. 2016-51 (Wyo. St. Bd. of Equalization, Nov. 28, 2017) (whether anchoring of signs to commercial buildings rendered signage real property); *In re Appeal of Hanover Compression LP*, 2007 WL 2462039, Doc. No. 2006-122 (Wyo. Bd. of Equalization, Aug. 24, 2006) (Classification of field compressors as real versus personal property disputed). Walmart did not bridge these considerable evidentiary gaps and, therefore, did not carry its ultimate burden of proving its claim that misclassified property constituted an overvaluation of its distribution center.

[¶ 52] Assessor also noted that Walmart could have informed Assessor of any misclassified property before the appeal, but did not do so. *Supra* ¶ 11. Assessor observed that Walmart’s “lumping” of property together makes it difficult to parse real versus personal property, another point to which Walmart did not directly respond. *Supra* ¶ 13. Wyoming’s tax system is a “self-reporting” system. *See* Wyo. Stat. Ann. § 39-13-107(a) (2019) (property tax reporting); *Airtouch Commc’ns, Inc. v. Dep’t of Revenue, State of Wyo.*, 2003 WY 114, ¶ 39, 76 P.3d 342, 357 (Wyo. 2003). Adjudicatory review does not favor taxpayers whose claims may arise in whole or in part from a failure to inform the taxing authority, or to clarify areas of concern, when the taxpayer is in the best position to do so. *See Wyo. Dep’t of Revenue v. Qwest Corp.*, 2011 WY 146, ¶¶ 25-30, 263 P.3d 622, 630-31 (Wyo. 2011) (taxpayers are obligated to timely provide necessary information to taxing authorities).

[¶ 53] Finally, Assessor compellingly explained that the valuation impact of possible property misclassifications was negligible because it listed, depreciated, and assessed all property only one time, as either real property or personal property. *Supra* ¶¶ 13, 23. All Walmart real and personal property, Assessor testified, was assessed at nine and one-half percent. *Id.* This too, the County Board reasoned, weighed against Walmart because it could show no particular valuation detriment in the absence of verified double assessments. *Supra* ¶ 28. In the end, Walmart did little to tie its proffered appraisal to evidence of property misclassification, merely suggesting that the difference in competing valuations was Assessor’s misclassification of personal property as real. *Supra* ¶ 12. We find the County Board did not err when it rejected Walmart’s claim that Assessor misclassified property.

III. Did the County Board err when it accepted Assessor's assessment derived from a cost-based appraisal, which lacked sufficient supporting information to sustain; and, correspondingly, did the County Board err when it rejected Walmart's proffered appraisal?

[¶ 54] Because Walmart's last two claims reflect opposing, but interrelated, challenges to the County Board's decision, we review them in tandem. As Walmart was first required to overcome the presumption that Assessor's reliance on Mr. Lehn's Recapitulation Report was correct, *supra* ¶ 35, failure to do so would render Mr. Allen's appraisal a nonfactor.

[¶ 55] Walmart first claims: "Pickett's methodology does not provide market value because it uses an inappropriate reproduction approach, without a corresponding income or sales approach[.]" (Walmart Br., 15). Walmart cites its appraiser's opinion that "'buyers and sellers, of this type of property, do not generally buy and sell based upon the cost approach to value.'" (Walmart Br., 16, citing R. at 339). Walmart cites no independent appraisal authority or Wyoming law for that proposition. The County Board heard Assessor's and Mr. Lehn's responsive description of Assessor's historic use of the cost method, along with Wyoming's computer assisted mass appraisal system (CAMA), broadly applied in the assessment of property in Wyoming. *Supra* ¶¶ 21-25. In addition, Mr. Lehn testified that he asked Walmart for income and sales information, which Walmart declined to provide. *Id.*

[¶ 56] Wyoming tax law requires that appraisers, if practicable, properly consider all three valuation methods, the cost, sales comparison, and income, and that they reconcile the results from each or explain why a method was not suitable. *Supra* ¶ 38; see *In re Appeal of Alpenhof Lodge Assoc.*, 2021 WL 1839755, Doc. No. 2020-40, ** 9-10 (Wyo. St. Bd. of Equalization, May 4, 2021); *In re Appeal of HollyFrontier Cheyenne Refining LLC*, 2019 WL 6464766, Doc. No. 2018-60, ** 13-19 (Wyo. St. Bd. of Equalization, Nov. 21, 2019). Mr. Lehn and Mr. Allen both explained why they chose the valuation methods utilized, reaching almost diametrically opposed conclusions. *Supra* ¶¶ 16, 21-22. Both satisfied the Department's rule requiring "consideration" of all three methods. *Supra* ¶ 38.

[¶ 57] Notwithstanding Mr. Allen's opinion that the cost method should not be used to value the distribution center, Wyoming law expressly permitted its application. *Supra* ¶ 38. "A taxpayer has no right to require the Assessor to determine value by a method the taxpayer prefers." *In re Appeal of Russell & Susan Magarity*, 2006 WL 370816, Doc. No. 2005-93, * 20 (Wyo. St. Bd. of Equalization, Feb. 14, 2006). Walmart offered insufficient evidence or appraisal authority that Mr. Lehn's reliance on the cost method, in and of itself, was contrary to law or appraisal practice.

[¶ 58] Walmart next offered evidence, again through its appraiser, that Mr. Lehn's Recapitulation Report did not satisfy USPAP guidelines. *Supra* ¶ 14. Walmart again

presented no dispositive evidence of a breach of appraisal standards, only Mr. Allen's opinion. *Id.* Mr. Lehn answered that he complied with USPAP and Wyoming law, commenting that mass appraisal differed from fee appraisal practice. *Supra* ¶¶ 21-22. Neither party cited USPAP or any other appraisal guidelines on this point of contention, so the evidence amounted to differing professional appraisal testimony as to the quality of Mr. Lehn's work and as to whether he complied with appraisal guidelines or Wyoming law. *See In re Appeal of the Teton Cty. Assessor*, 2019 WL 2165526, * 7 n. 12 (Wyo. St. Bd. of Equalization, May 6, 2019) (county boards of equalization should identify appraisal standards or legal principles to which evidence will apply). The County Board did not err when it accepted Assessor's and Mr. Lehn's professional opinions over Mr. Allen's. *See supra* ¶ 35 (A difference of opinion does not suffice to carry a protestant's burden of proof when challenging a tax assessment.).

[¶ 59] Walmart further assailed Mr. Lehn's appraisal because he relied upon vast information not physically included in the Recapitulation Report. *Supra* ¶ 14. Walmart argued that the County Board could not, as a consequence, accept Mr. Lehn's Recapitulation Report, i.e. that the report was not substantial evidence in support of the County Board's decision. (Walmart Br., 18-21).

[¶ 60] We again disagree. While Mr. Lehn's appraisal uncomfortably required generous faith in Mr. Lehn's and Assessor's assurances that calculations were derived from sound depreciation and obsolescence calculations (tables), Walmart offered no compelling affirmative evidence *that the Recapitulation Report was incorrect*. Walmart could have, through discovery, offered evidence that Mr. Lehn's appraisal was fatally incomplete or empirically incorrect. Walmart could have cited appraisal authority clearly challenging Mr. Lehn's appraisal work and his practice of withholding underlying appraisal data. It did not and instead argued that the County Board should have presumed incompetence because of the report's summary form and lack of attached underlying data. Walmart's accusations, without more, did not overcome the strong presumption that Assessor's appraisal was correct. *Supra* ¶¶ 33-35.

[¶ 61] Because Walmart did not initially offer sufficient evidence that the Assessment was incorrect, and the burden of proof on these points did not shift to Assessor, the County Board was free to reject Walmart's appraisal offered to challenge the assessment. *Supra* ¶¶ 34-35. Even so, the County Board justifiably struggled with Mr. Allen's disregard of the distribution center equipment as part of the distribution center's value. *Supra* ¶ 27. Walmart essentially discounted millions of dollars in value under the assumption that any buyer would not offer to buy only the building, and that the installed equipment would be a liability and source of obsolescence to be deducted. *Supra* 12. This may or may not be true, but we (and the County Board) have only Mr. Allen's opinion for guidance. Mr. Allen's appraisal judgment butted against Assessor's and Mr. Lehn's contrary views, leaving the County Board with no way to reconcile the two valuations. Walmart's indifference to the equipment component of the property was fatal to its case before the

County Board. The County Board's discomfort with Walmart's position on this point was understandable, and its rejection of Allen's appraisal, therefore, justified.

CONCLUSION

[¶ 62] The County Board did not err in affirming the assessment. Assessor's reliance on a non-certified appraiser did not require that the County Board declare the assessment invalid. Walmart offered insufficient evidence that the real property assessment included personal property and, therefore, failed to prove the property was overvalued. Walmart failed to prove that Mr. Lehn's appraisal, underlying the assessment, did not comply with Wyoming law. The County Board's affirmance of the assessment was supported by substantial evidence and was otherwise consistent with law.

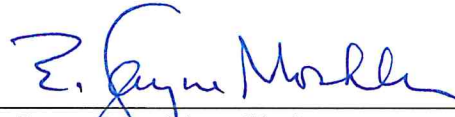
ORDER

[¶ 63] **IT IS HEREBY ORDERED** that the Laramie County Board of Equalization decision affirming the 2020 assessment of Walmart's distribution center is **affirmed**.


[¶ 64] **Pursuant to Wyoming Statutes section 16-3-114 (2019) 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 8 day of June 2021.

STATE BOARD OF EQUALIZATION



E. Jayne Mockler, Chairman



Martin L. Hardsocg, Vice-Chairman



David L. Delicath, Board Member

ATTEST:



Jennifer Fujinami, Executive Assistant

CERTIFICATE OF SERVICE

I hereby certify that on the 9 day of **June 2021**, 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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