BEFORE THE STATE BOARD OF EQUALIZATION

FOR THE STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF	)	
UINTA COUNTY ASSESSOR	)	**Docket No. 2022-35**
FROM A DECISION BY THE UINTA	)	
COUNTY BOARD OF EQUALIZATION	)	

DECISION AND ORDER

APPEARANCES

Mark W. Harris, Harris Law Office, P.C., appeared on behalf of Lori Perkins, Uinta County Assessor.

Jared M. LeFevre and Lucas H. Forcella, Crowley Fleck PLLP and Timothy R. Beyer, Bryan Case Leighton Paisner LLP appeared on behalf of North Shore Energy, LLC.

SUMMARY

[¶ 1] Assessor appeals the Uinta County Board of Equalization's determination that Assessor erred when her designee, T.Y. Pickett, applied one set of formulae to two properties owned by North Shore, and Assessor applied a different set of formulae to every other property in the county. That difference resulted in the North Shore properties being appraised much higher than they would have been using the formulae applied to other properties. Assessor further argues that the County Board failed to hold North Shore to its burden of proof, and failed to make basic factual findings. In a final argument, Assessor contends that the County Board's decision isn't supported by substantial evidence.

[¶ 2] The Wyoming State Board of Equalization, Chairman Martin L. Hardsocg, Vice-Chairman David L. Delicath, and Board Member E. Jayne Mockler have considered the parties' briefs and oral arguments, along with the appellate record from the County Board. Finding no reversible error, the State Board affirms the County Board's decision

ISSUES

[¶ 3] Assessor articulates four issues:

I. Was the County Board's finding or conclusion that trend factors and residual value floors contained in the Wyoming Personal Property Valuation

Manual were formulae which the Petitioner was required to use and apply arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law?

II. Was the County Board's finding or conclusion that Petitioner did not uniformly assess Respondent's property arbitrary, capricious, as abuse of discretion or otherwise not in accordance with law?

III. Was the County Board's decision arbitrary, capricious and without observance of procedure required by law when the Board failed to assign to Respondent the burden of proof before the Board, did not make basic and essential factual findings and did not make Respondent meet its burden of proof and persuasion?

IV. Was the County Board's findings of fact supported by substantial evidence?

(Assessor's Opening Br. 2).

[¶ 4] North Shore responds with these four issues:

1. The County Board correctly found that the Assessor must apply certain formulae in this particular instance.

2. The County Board correctly found from the evidence presented that the Assessor treated the North Shore property unequally compared to other county property.

3. The County Board correctly assigned the burden of proof and made appropriate findings of fact.

4. The County Board's findings of fact were supported by substantial evidence in the record.

(North Shore Br. 12, 17, 21, 32).

JURISDICTION

[¶ 5] The State Board shall "hear appeals from county boards of equalization ... upon application of any interested person adversely affected[.]" Wyo. Stat. Ann. § 39-11-102.1(c) (2023). An aggrieved taxpayer or assessor may file an appeal with this Board within 30 days after the County Board's final decision. Rules, Wyo. State Bd. of Equalization, ch. 2, § 5(e) (2023). The County Board issued its final decision on October 19, 2022. (R. 293). Assessor filed her appeal on November 18, 2022, so the appeal is timely and we have jurisdiction.

PROCEEDINGS AND EVIDENCE PRESENTED TO THE COUNTY BOARD

[¶ 6] In 2018, North Shore bought several existing oil and gas wells, and above-ground facilities, including the Painter Reservoir gas plant (Painter) and the Whitney Canyon Gas Inlet Bypass facility (Whitney), both of which are in Uinta County, from Merit Energy for $49.5 million. (Ex. 6, pp. 1, 68-74). North Shore attributed 85% of the purchase price ($42,075,000) to the value of the oil and gas reserves, and 15% ($7,425,000) to the other facilities and equipment. (Hr'g Tr. 63-64). An attachment to the Purchase and Sale Agreement listed the agreed-upon prices for each individual well or facility. (Ex. 6, pp. 154-55). The prices listed for Painter and Whitney were $500,000 each, and included the facilities but not the land they were on. (*Id.*; Hr'g Tr. 59-62, 258). Before Merit could sell the assets to North Star, it was contractually required to offer to sell Whitney, at the agreed-upon price, to two other companies that held preferential rights. Neither company, each having a right of first refusal, accepted that offer. (Hr'g Tr. 56-58).

[¶ 7] Problems arose at Painter soon after the purchase, and the facility has been idle since. (Hr'g Tr. 31-34). It could not operate again without significant repairs. (*Id.* at 183). At the time of the 2022 appraisal, Whitney was operating at about 7% of its capacity. (*Id.* at 231-32).

[¶ 8] For several years, Assessor has contracted with T.Y. Pickett to appraise Painter and Whitney because those facilities are complex beyond her abilities. (Hr'g Tr. 258-59). Assessor and her staff do, however, appraise less complex oil and gas facilities, including some of the other facilities owned by North Shore. *Id.*

[¶ 9] In 2019, and again in 2020, Pickett appraised Painter at $56,887,040 and Whitney at $19,590,020. (R. 155-56, 161-62). North Shore appealed assessments derived from those appraisals. North Shore and Assessor eventually signed a settlement agreement agreeing to value all of North Shore's Uinta County properties at $60 million for 2019, $30 million for 2020, and $20 million for 2021. (*Id.* at 165-171). The agreement provides that the 2019 negotiated values were $36,600,000 for Painter and $9,720,000 for Whitney. (*Id.* at 169). The 2020 negotiated values were $18,300,000 for Painter and $4,860,000 for Whitney. (*Id.* at 170). And the 2021 negotiated values were $12,200,000 for Painter and $3,240,000 for Whitney. (*Id.* at 171). The settlement agreement provided that either party could seek to adjust the 2021 values by up to 25 percent of the negotiated value. *Id.* Assessor did not seek to do so. (Hr'g Tr. at 304-05).

[¶ 10] In 2022, Assessor again used T.Y. Pickett to appraise the personal property at Painter and Whitney. Pickett's Bryan Williams, in his first year of appraising the North Shore properties, valued them using the cost approach. (Hr'g Tr. 208, 217). That approach requires the appraiser to determine "replacement cost new," and then account for depreciation and obsolescence. Mr. Williams used trending information derived from Marshall & Swift publications. (*Id.* at 217, 234-35). He did not use trending factors from the Department of Revenue's Wyoming Personal Property Valuation Manual (the Manual). (*Id.* at 232).

[¶ 11] Mr. Williams did not consider the 2018 Purchase and Sale Agreement or the 2019 settlement agreement in performing his appraisal. (Hr'g Tr. 249). He applied depreciation rates derived in part from Marshall & Swift and in part from Pickett's internal practices. *Id.* He also applied a 30% depreciation floor, meaning that the property's value could not be depreciated below 30% of its replacement cost. *Id.* He testified that he knew of no authority supporting a 30% depreciation floor for personal property, but considered Painter and Whitney to be real property. (*Id.* at 236, 239-40). Mr. Williams also applied an obsolescence factor of 75%. (*Id.* at 225-27). Mr. Williams appraised Painter at $23,824,090 and Whitney at $6,653,220, roughly doubling the prior year's negotiated values. (R. 101, 117). Assessor adopted those numbers. (*Id.* at 125, 129). North Shore appealed the 2022 valuations to the County Board. (*Id.* at 3).

[¶ 12] Daniel Kistler testified for North Shore at the County Board hearing. (Hr'g Tr. 122-206). He's an appraiser accredited by the American Society of Appraisers and employed by property tax consulting firm KE Andrews (KEA). Mr. Kistler testified that he has been appraising, or overseeing KEA's appraisal of, Painter and Whitney since 2012. (*Id.* at 124, 130-31). KEA's 2022 appraisal of Painter and Whitney depreciated them by 80%, and applied a 95% obsolescence factor. (Ex. 1). Mr. Kistler testified that a maximum obsolescence factor of 95% is "industry standard for properties of this type." (Hr'g Tr. 155). KEA valued Painter at $2,496,156 and Whitney at $540,954. (R. at 18, 2). The total of those values is a little less than 10% of the TY Pickett appraisal, and a little less than 20% of the 2021 value agreed on in the 2019 settlement agreement.

[¶ 13] Mr. Kistler opined that Mr. Williams erred by applying a 30% depreciation floor, by deviating from the Manual's depreciation tables, by using a 75% obsolescence factor, and by not considering the 2018 Purchase and Sale Agreement in his appraisals of Painter and Whitney. (Hr'g Tr. 150-58).

[¶ 14] Assessor testified that she valued all other personal property in the county using the cost approach, but with trending information, depreciation rates, and a 20% depreciation floor, all prescribed by the Manual. (Hr'g Tr. 279, 284).

[¶ 15] The County Board understood North Shore to claim that "Assessor improperly applied the cost method, and did so in a way which creates 'unequal treatment' of the Property as compared to other property in Uinta County." (R. 291, ¶ 34). The County Board found this testimony from Mr. Williams on cross-examination significant:

> Q. And for depreciation you use 30 percent, don't you?
>
> A. Yes.
>
> Q. As the floor?
>
> A. As the floor, yes.

Q. Which means the most you're willing – under your tables or whatever you want to call them, the most you're willing to depreciate a piece of property is 70 percent.

A. Right.

Q. And this is an internal TY Pickett software thing?

A. No, that's because we consider it real property. Every gas plant that we evaluate all across the country is real property.

Q. Okay. All right. **So if this is personal property, not real property, then you use the wrong depreciation factor; right?**

A. **So it would be wrong since the day of inception.**

(Hr'g Tr. 235-36) (emphasis added). The notices of assessment for both properties, going back to 2017, describe the properties as "Industrial Personal Property," not real property. (R. 125, 129, 153-63).

[¶ 16] The County Board concluded:

> 35. The information contained in the Assessor's appraisals of property in Uinta County other than those appraised by Picket was calculated based on trending and depreciation information provided in the Manual. The information applied to the Property in Williams' Reports, however, was calculated based on trending and depreciation information provided by at least two different sources: Marshall & Swift Valuation Service, and Pickett's internal computations.
>
> 36. The trending applied to the Property was different from the trending applied by the Assessor to other property in Uinta County. Since Williams testified that the Manual "does not talk about replacement costs new," it is unclear from the record whether or not he even understood that the Manual provided trending information. Whether or not he did, however, the approach he applied on behalf of the Assessor did not "follow and apply the … formulae of the department of revenue."
>
> 37. The depreciation rates applied to the Property was different from the depreciation rates applied by the Assessor to other property in Uinta County. This approach did not "follow and apply the … formulae of the department of revenue."
>
> 38. The depreciation floor applied to the Property in Williams' Reports was different from the depreciation floor applied by the Assessor to other property in Uinta County. This approach did not follow and apply the … formulae of the department of revenue."

39. There was no rational reason why the Assessor treated the Property differently from other property in Uinta County. In fact, the Assessor testified that she only became aware on the day of the hearing in this matter that Pickett treated the property differently. Whether or not she was aware that she had done so, the Assessor did not apply a method equally to all property located in Uinta County. The Assessor's different and unequal treatment of the Property resulted in an assessment of tax which would be nearly twice as much as it would if the Property were assessed using the trending and depreciation information provided in the Manual – this does not constitute essential fairness.

40. The Taxpayer has demonstrated that the Assessor, through reliance upon the expert services of Pickett, has failed to trend and depreciate the Property equally as compared to other property in Uinta County in violation of the Wyoming Constitution, Article 15 § 11.

(R. 291-92). The County Board remanded the matter to Assessor for "re-valuation" of the property. *Id.*

CONCLUSIONS OF LAW

A. State Board's review function and burdens of proof

[¶ 17] This Board reviews county board decisions as an intermediate appellate body and treats the county board as the finder of fact. *Town of Thermopolis v. Deromedi*, 2002 WY 70, ¶ 11, 45 P.3d 1155, 1159 (Wyo. 2002). Our standard for reviewing a county board decision is nearly identical to the Wyoming Administrative Procedure Act standard, found at Wyoming Statutes section 16-3-114(c)(ii) (2023), that a district court must apply in reviewing such decisions. Our 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) (2023).

[¶ 18] Because our standard of review is patterned on the judicial review process of Wyo. Stat. section 16-3-114 (2023), judicial rulings interpreting that section offer important 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 those 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). "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).

[¶ 19] We review questions of law de novo and will affirm the County Board's conclusions of law "only if they are in accord with the law." *Maverick Motorsports Grp., LLC v. Dep't of Revenue*, 2011 WY 76, ¶ 12, 253 P.3d 125, 128 (Wyo. 2100) (quoting *Bowen v. State Dep't of Transportation*, 2011 WY 1, ¶ 7, 245 P.3d 827, 829 (Wyo. 2011)).

> We also apply de novo review to the County Board's findings of ultimate fact:
>
> 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.

Britt, *supra*, at ¶ 17, pp. 122-23 (citations omitted).

[¶ 20] "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)); see also *Rules, Wyo. State Bd. of Equalization*, ch. 7, § 14(a) (2021) ("There is a presumption that the assessor's property valuation is valid, accurate, and correct."). "Petitioner may present any credible evidence to rebut the presumption in favor of the assessor's valuation." *Id.* at § 14(b). If a taxpayer presents credible evidence sufficient to rebut the presumption, the county board must then "equally weight 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 burden of going forward would then shift to Assessor, but the ultimate burden of persuasion would remain with the taxpayer to prove, by a preponderance of the evidence, that Assessor's valuation wasn't derived in compliance with constitutional or statutory requirements. *Id.*

B. Did the County Board err in finding that Assessor must apply certain formulae from the Wyoming Personal Property Valuation Manual?

[¶ 21] Assessor summarizes her first issue in this way:

> The Manual contains guidelines for the Petitioner to refer to and utilize. The use of the Manual is not required by statute. No rule has been adopted requiring application of any factors or indexes in the Manual. The Manual is not a rule, nor is it a formulae that the Petitioner is required to follow in performing an assessment. The County Board's finding or conclusion that the Manual contained formulae which the Petitioner was required to follow and apply is arbitrary, capricious and not in accordance with law.

(Assessor's Opening Br. 13-14). Assessor says the County Board erred in concluding that she must apply formulae from the Manual in all cases. She contends that "the County Board would arbitrarily impose a requirement that an appraiser apply only the depreciation and trend factors printed in the Manual to every property." (Assessor's Opening Br. 19).

[¶ 22] It might be error for the County Board to say that Assessor has to use the Manual's depreciation and trend factors, to the exclusion of all others, in every instance: but that's not what the County Board said. Rather, it said that Assessor (and her designees) must apply the same formulae in every instance. That ruling was in response to Pickett using one set of formulae to value the North Shore properties, while Assessor used different formulae for all other personal property in the county. In other words, the County Board found that the valuations weren't uniform because Uinta County properties weren't all appraised using the same formulae.

[¶ 23] The Wyoming Constitution requires: 1) a rational method of valuation; 2) that is equally applied to all property; and 3) provides essential fairness. *In re Carbon Creek Energy, LLC and Powder River Midstream, LLC*, 2018 WL 3978750, *12, Docket No. 2017-50 (Wyo. State Bd. of Equalization, Aug. 8, 2018). "[C]onstitutional uniformity does not require the same result in every case; rather, it demands a uniform tax assessment process." *Id.* at *27. Here the Uinta County property appraised by TY Pickett was depreciated to a floor of 30%, with a maximum obsolescence factor of 75% applied thereafter. Property that Assessor appraised herself, by contrast, was depreciated to a floor

of 20% with a maximum obsolescence factor of 95% then applied. That simply isn't "a rational method of valuation that is equally applied to all property."

[¶ 24] In short, personal property in Uinta County was subject to different appraisal formulae, depending on whether Assessor appraised the property or hired TY Pickett to appraise it. And property appraised using Pickett's formulae was always going to be valued significantly higher than analogous property appraised using Assessor's formulae.

C. Was the County Board finding that Assessor didn't uniformly assess North Shore's properties arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law?

[¶ 25] Assessor provides this summary of the issue:

> The County Board erred in application of constitutional uniformity of assessment requirements to the facts of this case with the result that it required a method be applied that requires the same value outcome in every case, or that de facto requires the same values be assigned to different property.

(Assessor's Opening Br. 18). Assessor again misconstrues the County Board's decision. Nothing in that decision would require "the same value outcome in every case." Rather, it requires that similar properties be appraised using the same standards.

[¶ 26] Article 15, Section 11 of the Wyoming Constitution mandates that "all property ... shall be uniformly valued at its full value[.]" Both parties cite *Britt*, *supra*, for the proposition that art. 15, § 11 requires "only a rational method of appraisal, equally applied to all property, which results in essential fairness." (Assessor's Opening Br. 19; North Shore Br. 17). But Assessor apparently interprets the word "method" in that phrase to mean an assessor's choice between the sales comparison, cost, or income approaches to valuation, as provided in Chapter 9, Section 5 of the Department's rules. In other words, Assessor contends that once an assessor chooses one of the three approved methods, the constitution is satisfied so long as the assessor uses the same method on all personal property even if she uses varying practices or formulae within that method. North Shore takes a more expansive view of "method" to include depreciation rates, depreciation floor, and trending. Neither side cites authority for their position.

[¶ 27] The departmental rule in question doesn't assign the word "method" the same meaning that Assessor does. In fact, the rule uses the words "method," "technique," and "approach" interchangeably. We believe that, in the context of *Britt*, "method" means the entirety of an assessor's practices, not just her choice from the three "approaches" allowed by Chapter 9, Section 5. We further believe that the County Board reasonably determined that Assessor did not "equally apply" a "rational method of appraisal" to "all property" as *Britt* requires. We find no reversible error in this issue.

D. Did the County Board fail to make basic and essential findings of fact and improperly assign the burden of proof to North Shore?

[¶ 28] Assessor's summary of this argument reads:

> The County Board's findings of fact are inconsistent and/or incomplete and lack basic and/or essential findings of fact which this Board can follow to determine whether substantial evidence supports the County Board's decision. The findings of fact do not address the presumption of the validity of Petitioner's assessments, nor the specific facts relied upon to explain how Respondent overcame the presumption and shift the burden to Petitioner. Further, in reviewing the findings and conclusions as a whole, it is apparent that the County Board placed the burden of proof on the Petitioner and not the Respondent. The County Board applied findings of fact to the wrong rule of law or incorrectly applied its findings of fact to a correct rule of law.

(Assessor's Opening Br. 23-24).

[¶ 29] We read Assessor's argument on this issue to consist of three main points:

- The findings of fact do not address the presumption of validity of Assessor's assessments.
- The findings of fact do not address the specific facts relied upon to explain how North Shore overcame the presumption and shifted the burden to Assessor.
- In reviewing the findings and conclusions as a whole, it is apparent that the County Board placed the burden of proof on Assessor.

The findings of fact do not address the presumption of validity of Assessor's assessments

[¶ 30] Assessor skirts awfully close to the lack-of-cogent-argument rule here. She's long on generalizations about the law, and very short on application of the law to the facts of this case. Simply put, Assessor doesn't make her case. She doesn't cite (and we haven't found) any authority for the idea that the County Board was required to recite the presumption of correctness in its written decision. Assessor's counsel referenced the presumption twice in his opening statement, so we're confident the County Board was aware of it. (Hr'g Tr. pp. 16, 20). We're also consoled by a sentence in the County Board's decision that reads, "Assessor contends the assessments are presumed to be and are valid, accurate and correct." (R. 286).

[¶ 31] Assessor cites one of our decisions for the proposition that "arguments concerning allegations that assessors legally erred when they fail to consider certain evidence as part

of the valuation process could undermine the presumption regarding the correctness of assessments which would lead to lessening the burden of proof placed on aggrieved taxpayers." (Assessor Opening, Br. 25) (citing *In re Spire Storage West, LLC*, 2019 WL 3782592, * 21-22, Docket No. 2018-51, ¶¶ 21-22 (Wyo. State Bd. of Equalization Aug. 5, 2019)). Those paragraphs from *Spire Storage* stand for the proposition that a county board reviewing an assessor's valuation is limited to considering only the valuation and the information that was available to the assessor.

The findings of fact do not address the specific facts relied upon to explain how North Shore overcame the presumption and shifted the burden to Assessor.

[¶ 32] The County Board presented the important facts, and then applied those facts to the law, which is just what we want. Assessor also cites *Workers' Comp. Claim of Decker v. State ex rel. Wyo. Med. Com'n*, 2005 WY 160, 124 P.3d 686 (Wyo. 2005) for the proposition that "[a]ction taken by an agency can be determined to be facially insufficient if the findings or conclusions contain no indication that the agency considered and weighed all material evidence including an explanation of how it weighed conflicting expert opinions." (Assessor's Opening Br. 25). In *Decker*, WSC held that the Medical Commission's findings of fact didn't provide a rational basis for judicial review because it failed to weigh medical opinions material to the claim. *Id.* at ¶ 25. But here, there aren't any questions of fact at issue: it's all about interpretation of statutes and rules.

In reviewing the findings and conclusions as a whole, it is apparent that the County Board placed the burden of proof on Assessor.

[¶ 33] The County Board stated the issue before it in this way: "The issue to be determined is whether the *Taxpayer can prove by a preponderance of the evidence* that the assessments of its property are not valid, accurate and correct." (R. 286) (emphasis added). From that, it's clear that the County Board knew the burden of proof was on North Shore.

E. Were the County Board's findings of fact supported by substantial evidence?

[¶ 34] Assessor's summary of this argument reads:

> Petitioner and Respondent presented evidence to the County Board. The County Board, without finding that Respondent had met its burden of persuasion or proof, required the Petitioner to establish the validity and correctness of the market value determinations. In the course of its decision, the County Board rejected certain evidence submitted by the Petitioner. The reasons for rejecting the evidence are not supported by substantial evidence in the record and must be overturned.

(Assessor's Opening Br. 27). Assessor claims to be challenging the County Board's findings of fact, but she's actually contesting its conclusions of law. Therefore, the substantial evidence standard of review isn't applicable. Instead, we exercise de novo review. Regardless, the County Board's decision finds ample support in the evidence. For example, this exchange while Assessor was being cross-examined:

> Q. Okay. And so as a taxpayer, whether you get treated under the Manual or not under the Manual depends on whether you happen to do the appraisal whether Pickett does the appraisal; right?
>
> A. Yes.

(Hr'g Tr. p. 285). Or this exchange with Pickett's Bryan Williams after he testified that he had appraised the North Shore properties as real, rather than personal property:

> Q. Okay. All right. So if this is personal property, not real property, then you use the wrong depreciation factor; right?
>
> A. So it would be wrong since the day of inception.

(*Id.* at 236). We find no error in the County Board's decision.

CONCLUSION

[¶ 35] The County Board correctly determined that North Shore offered evidence of error, and Assessor was unable to explain how her deviation from the Department's guidance was appropriate.

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ORDER

[¶ 36] **IT IS, THEREFORE, ORDERED** that the decision of the Uinta County Board of Equalization is **AFFIRMED**.

[¶ 37] **Pursuant to Wyoming Statutes section 16-3-114 (2023) and Rule 12, Wyoming Rules of Appellate Procedure, any taxpayer 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 27 day of September 2023.

STATE BOARD OF EQUALIZATION

David L. Delicath, Vice-Chairman

E. Jayne Mockler, Board Member

ATTEST:

Jennifer Fujinami, Executive Assistant

CONCURRING – Chairman Hardsocg,

[¶ 38] I would affirm the County Board's decision, but for reasons different than Board Vice-Chair Delicath and Board Member Mockler opined.

[¶ 39] We must evaluate the County Board's ruling from its standpoint during the hearing, and with the evidence and arguments presented. *Supra* ¶ 18. Even if we might reach a different answer with respect to the factual portion or credibility of witnesses, we defer to the County Board's factual conclusions unless "clearly contrary to the overwhelming weight of the evidence." *In re Worker's Comp. Claim of Hamilton*, 2001 WY 20, ¶ 9, 18 P.3d 637, ¶ 9 (Wyo. 2001). "[T]he possibility of drawing two inconsistent conclusions from a body of evidence does not prevent a finding that the conclusion drawn by the

administrative agency was supported by substantial evidence." *Vandehei Developers v. Pub. Serv. Comm'n of Wyo.*, 790 P.2d 1282, 1287 (Wyo. 1990).

[¶ 40] Appraisers in several cases reviewed by this Board deviated from departmental guidance. We determined that the appraisers offered an informed basis for why they disregarded the Department's guidance in favor of their own trending and depreciation schedule. *In re Merit Energy Co, LLC*, 2018 WL 8062052, Doc. No. 2017-62, ** 11-13 (Wyo. St. Bd. of Equalization, Sept. 25, 2018), and more recently in *In re Contango Res., LLC*, 2023 WL 4295981, Doc. No. 2022-31, ** 17-18 (Wyo. St. Bd. of Equalization, June 20, 2023). We explained in each case that the Department's depreciation and residual value floor guidance is not, by its own terms, mandatory. *Id.* The Department's rules and personal property manual unambiguously permitted this deviation. Rules, Wyo. Dep't of Revenue, Ch. 9 § 5(c)(i)(D)(II) & (III) (2016) (appraisers may depreciate according to a different schedule than advised by the Department if supported by sufficient market information); *See* Ex. 14, p. 47 (Excerpt from Department's Personal Property Valuation Manual).

[¶ 41] The evidence surrounding T.Y. Pickett's valuation of Painter and Whitney, in particular, the contrast between Assessor's and T.Y. Pickett's depreciation schedules, were not well articulated. T.Y. Pickett appraiser, Williams, testified that this was his first year appraising the properties in question. (Tr. at 208). In describing the "trended cost," he stated that he applied a 30% depreciation floor, but failed to identify T.Y. Pickett's analysis and informational sources supporting his residual value. (Tr. at 219-20, 250-51); *see e.g. In re HollyFrontier Cheyenne Refining LLC*, 2019 WL 6464766, Doc. No. 2018-60, ** 7-8, 19-20 (Wyo. St. Bd. of Equalization, Nov. 21, 2019) (In its guidance, Department cautioned against over-depreciating oil and gas industry equipment which must, by law, be well maintained.); *In re Contango*, *supra* ** 8-9. 17-18 (describing T.Y. Pickett's internal review and sources for determining residual value of mining equipment). Mr. Williams merely generalized that the equipment was well maintained and, consequently, should not be depreciated more than 70%. (Tr. at 219-223, 232-35). Because Williams did not offer analysis or information explaining T.Y. Pickett's customized depreciation schedule and residual value floor of 30%, the County Board did not err when it ruled that T.Y. Pickett's appraisal was inconsistent with Wyoming law.

[¶ 42] Another point of contention, North Shore focused on T.Y. Pickett's classification of the Painter and Whitney facilities as real property, pointing out that Assessor and the Department classified oil and gas mining equipment as personal property. (Tr. at 228-30, 235-39). The County Board found this compelling. (County Board Order, pp. 6-7). I would not have. Nevertheless, North Shore predictably pressed this point to undermine the consultant appraiser's expertise and credibility.

[¶ 43] Mr. Williams' designation of the property as real property was a red herring of sorts because the equipment's designation as personal or real property would not necessarily alter value. Regardless of how appraisers classify processing facility equipment, a cost valuation of oil and gas equipment's is a function of the equipment's original or replacement cost new, remaining operational life, and condition, subject to adjustments for obsolescence. *See* Department's 2022 Personal Property Valuation Manual, North Shore Ex. 14, pp. 43-47 (specifying importance of equipment's age, condition, and maintenance when valuing, and cautioning that operating equipment, when it is worth repairing, should not be fully depreciated, referred to as "scrap"). The equipment's classification as real or personal property is not especially significant.

[¶ 44] Yet, Mr. Williams was unfamiliar with how Assessor or the Department classified oil and gas industry equipment, and was unaware of the Department's valuation guidance generally. The County Board was left with no explanation of why the properties' designation as real versus personal might make little or no difference from a cost-based valuation standpoint. Neither did Assessor clarify this point. (Tr. at 262-63, 280-81, 291-93).

[¶ 45] North Shore also pressed T.Y. Pickett's deviation from the Department's Personal Property Valuation Manual guidance, complaining that T.Y. Pickett's depreciation schedule resulted in a higher valuation than Assessor's valuation of other personal property in the county. (Tr. at 232-43, 253-54). North Shore claimed that this disparity resulted in non-uniform, unfair taxation. (North Shore Br., 12-19, 33-35). T.Y. Pickett's appraiser struggled to answer questions as to why heavy industrial equipment *installed within complex processing facilities*, Whitney or Painter, may be different than less substantial field production equipment (field compressors, well-heads, dehydrators, separators, storage tanks, etc.). (Tr. at 232-43, 253-54). Assessor testified that she essentially deferred to T.Y. Pickett's appraisal of the more complex oil and gas facilities. (Tr. at. 282-84). The County Board received little explanation of why different depreciation schedules might apply to different types of industry equipment, depending upon their installation, purpose, maintenance, and demand. Without a reasoned justification, it knew only that uniformity was lacking and the values were markedly different.

[¶ 46] The County Board concluded that although Assessor correctly treated Whitney Canyon and Painter as industrial personal property, "[T.Y. Pickett appraiser] Williams' testimony concerning his treatment of Painter and Whitney Canyon as real property [was] in contradiction to Wyoming Statutes and Rules of the Department of Revenue." (County Board Order, p. 7). Assessor's failure to squarely confront this alleged error and discrepancy undercut T.Y. Pickett's credibility before the County Board. From the County Board's perspective, Assessor and T.Y. Pickett were speaking different appraisal languages, and the assessment was fatally flawed.

[¶ 47] I would affirm the County Board's decision because Assessor, after the burden of production shifted to her, did not demonstrate that her valuation satisfied Wyoming law. North Shore offered a preponderance of unanswered evidence that Assessor erred.

DATED this 27 day of September 2023.

Martin L. Hardsocg, Chairman

ATTEST:

Jennifer Fujinami, Executive Assistant

CERTIFICATE OF SERVICE

I certify that on the 27 day of **September 2023** 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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