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No. 1017944
Court of Appeals No. 83065-1-I

THE SUPREME COURT
OF THE STATE OF WASHINGTON

PETROGAS PACIFIC LLC and PETROGAS WEST LLC,

Appellants/Petitioners,

v.

REBECCA XCZAR, Whatcom County Assessor,

Respondent.

ANSWER TO PETITION FOR REVIEW

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A. IDENTITY OF RESPONDENT

Respondent, Whatcom County Assessor Rebecca Xczar, by Brandon Waldron, Deputy Prosecuting Attorney for Whatcom County, seeks the relief designated in Part B.

B. DECISION AND RELIEF REQUESTED

Respondent asks this Court to deny Petitioner Petrogas' Petition for Review of the Court of Appeals decision affirming the decision of the Board of Tax Appeals. A copy of the Court of Appeals opinion is attached herein as Respondent's Appendix A.

C. ISSUE PRESENTED FOR REVIEW

Whether the Court of Appeals decision below is in conflict with Supreme Court precedent thus warranting review under RAP 13.4(b)(1), and whether the petition involves an issue of substantial public interest thus warranting review under RAP 13.4(b)(4).

D. FACTS

The subject properties are a liquified petroleum gas (“LPG”) terminal for the processing and storage of LPG, and a wharf which allows Petrogas to export LPG to Asia. *Petrogas Pacific LLC v. Xczar*, 520 P.3d 1077, 1079 (2022). At the time of the assessments at issue in this case, the subject properties constituted the only LPG exporting facility on the west coast of North America. CP 4251. Petrogas is also the lessee in an aquatic lands lease with the State of Washington which covers the aquatic tidelands upon which the wharf is built. *Petrogas Pacific LLC*, 520 P.3d at 1079. The lease permitted Petrogas to land up to 26 large ocean-going ships at the wharf in 2017, and 48 ships annually thereafter. CP 2544.

In 2014, Petrogas purchased the terminal for \$242 million. *Id.* at 1079. In 2016, it purchased the wharf for \$122 million. *Id.* Petrogas and its appraiser claim that the total purchase price of \$364 million was not accurate of true market value, but rather was a reflection of the “extraordinary

commercial leverage” that it was subject to throughout the bidding process. *Id.* at 1084-85; CP 1329. Notwithstanding this extraordinary leverage, Petrogas’ general counsel testified that such a sale was “typical.” *Id.*

Upon being notified of the sale, the Whatcom County Assessor began a review of the subject properties. *Id.* at 1080. He reviewed publicly available information concerning the LPG industry. *Id.* For his 2016 valuation, the Assessor started with the combined purchase price of \$364 million, and then made deductions for inventory, intangible personal property, and other tax-exempt values to arrive at values of \$182,725,099 for the wharf and \$90,108,394 for the terminal. *Id.*

In 2017, the Assessor requested an advisory appraisal from the Department of Revenue. *Id.* The Department of Revenue’s appraisal used all three approaches to value the subject properties and it contained more detailed assets listing and income information than was previously available to the Assessor. CP 1850. The Assessor found some of the

Department's methods to be lacking, and hired a contract appraiser to assist in developing an income approach the value. CP 1862. Armed with this information, the Assessor valued the terminal at \$190,710,788 for 2017 and \$194,606,203 for 2018. *Petrogas Pacific LLC*, 520 P.3d at 1080. He valued the wharf at \$182,725,099 for 2016, \$98,244,952 for 2017 and \$100,251,680 for 2018. *Id.* Petrogas appealed all five valuations to the Board of Tax Appeals (the "Board").

The Board heard testimony from several witnesses, including the Assessor and Petrogas' hired appraiser, Kevin Reilly. *Id.* In discussing his appraisal methodology, Reilly indicated he only developed a cost approach to value. *Id.* at 1080. According to Reilly the income approach was not feasible due to limited information. *Id.* He also testified he did not conduct a sales approach because he did not believe the purchase price was reflective of the true market value of the subject properties. *Id.* at 1084-85. Though Reilly was aware of the sales of the subject properties, he did not consider them in

his valuation and thus violated State law. *Id.* at 1085. Reilly's cost approach led to valuations of the terminal of \$157 million for both 2017 and 2018, and of the wharf of \$15 million, \$16 million and \$17 million for 2016, 2017 and 2018, respectively.

At the conclusion of the hearing, the Board issued its decision. It sustained the Assessor's valuations in large part, only reducing the 2016 valuation of the wharf to \$98 million. Petrogas sought judicial review of the Board's decision, and the Whatcom County Superior Court certified the case for direct review to the Court of Appeals.

In its decision, the Court of Appeals addressed three issues: The Board's consideration of the intangible characteristics or attributes of real property, the Board's consideration of the aquatics lands lease, and the Board's rejection of Petrogas' appraisal. *Id.* at 1082, 1083, 1084. The court concluded that the Board was required to consider, and appropriately did consider the intangible characteristics of the subject property. *Id.* at 1083. The court also held that the

Board appropriately considered the aquatic lands lease as an intangible characteristic of property that affects the highest and best use of the subject properties. *Id.* at 1084. Finally, the court determined that the Board's rejection of Reilly's appraisal was supported by substantial evidence that Reilly failed to consider the intangible characteristics of the subject properties and their sales. *Id.* at 1085.

E. ARGUMENT IN OPPOSITION TO DISCRETIONARY REVIEW

Petrogas' Petition for Review fails to offer adequate grounds and supporting argument to justify discretionary review under RAP 13.4(b). Under RAP 13.4(b), this Court will grant review only:

- (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
- (2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or
- (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or

(4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

Petrogas asserts two bases for acceptance of review: 1) that the Court of Appeals decision affirmed the Board of Tax Appeals is in conflict with several Supreme Court decisions, and the petition involves an issue of substantial public interest that should be decided by the Supreme Court. As discussed further below, the Court of Appeals decision is not in conflict with prior Supreme Court decisions. The unique nature of the subject properties also demonstrates there are no issues of substantial public interest which would justify this Court accepting review.

1. The Court of Appeals' decision regarding the appraisal methods is consistent with this Court's precedent and State statutory authority.

RCW 84.40.030 lays out the approaches to value to be used in the assessment of real property for ad valorem taxation. The approaches to be used are the sales, cost, and income

approach. RCW 84.40.030(3). The first statutory mandate is that the true and fair value of real property *must* be based upon any sales of the subject property within the prior five years. RCW 84.40.030(3)(a). An appraiser may also consider the cost or income approach. RCW 84.40.030(b). When the subject property is a complex one or there is no record of a sale of the subject property, the cost and income approaches must be the dominant factors in valuation. *Id.* Petrogas asks this Court to vitiate the mandate in RCW 84.40.030(3)(a) and would have assessors turn a blind eye to sales of the subject properties. As the Court of Appeals correctly noted, the sales approach can be the most reliable method of valuation. *Petrogas Pacific LLC v. Xczar*, 520 P.3d at 1084, *citing Sahalee Country Club, Inc. v. Bd. of Tax Appeals*, 108 Wn.2d 26, 33, 735 P.2d 1320 (1987). Further, no particular appraisal method is mandatory. *See Folsom v. City of Spokane*, 111 Wn.2d 256, 266 n.1, 759 P.2d 1196 (1988), *citing Pier 67, Inc. v. King County*, 78 Wn.2d 48, 269 P.2d 902 (1970).

Petrogas asserts that the only reason the Board rejected Kevin Reilly's appraisal was because it valued only tangible property. Petrogas Pet. for Review, 21. That is not the case. As the Court of Appeals recognized, the Board concluded that Reilly erred by not failing to appropriately consider the sales of the subject properties or the intangible characteristics of the property that contributed to its overall value. *Petrogas Pacific LLC*, 520 P.3d at 1085. The Court further stated that as the sales of the subject properties were within five years of the valuation, the sales were required to be considered. *Id.*

Petrogas claims that the Court of Appeals decision upholding the Board's rejection of Reilly's appraisal conflicts with six prior decisions of this Court concerning the appropriate valuations methods to be applied in this case.¹

¹ *Weyerhaeuser Co. v. Easter*, 126 Wn.2d 370, 894 P.2d 1290 (1995); *Folsom v. City of Spokane*, 111 Wn.2d 256, 759 P.2d 1196 (1988) [*Folsom II*]; *Sahalee County Club, Inc. v. Bd. of Tax Appeals*, 108 Wn.2d 26, 735 P.2d 1320 (1987); *Folsom v. City of Spokane*, 106 Wn.2d 760, 725 P.2d 987 (1986) [*Folsom*

However, those cases are inapposite. Petrogas omits the most important point that distinguishes those cases from the present one: there was no data concerning sales of the subject properties in those cases. *Folsom I* and *Folsom II* involved a commercial property that had been owned for at least sixteen years prior to the contested assessment. 106 Wn.2d 760, 761, In *Weyerhaeuser Co.* the property owner built the subject paper mill in 1957. 126 Wn.2d 370, 373. Thus, there was no data concerning a sale of that property within five years prior to the contested valuation. In *Sahalee Country Club, Inc.*, the assessor did utilize a sales approach. 108 Wn.2d 34-35. However, this approach was based upon bare land sales in the area and sales of golf courses throughout the western United States. *Id.* Presumably the assessor was relegated to this approach because there was no sales data for the subject

Id.; *Boise Cascade Corp. v. Pierce County*, 84 Wn.2d 667, 529 P.2d 9 (1974); *Ozette Ry. Co. v. Grays Harbor County*, 16 Wn.2d 459, 133 P.2d 983 (1943).

property. In *Boise Cascade Corp.*, this Court addressed the assessor's failure to consider the subject property's functional obsolescence in his cost approach. 84 Wn.2d 667, 672.

Neither party conducted a sales approach and there was no discussion in the Court's decision regarding sales of the subject properties. Finally, in *Ozette Ry. Co.*, this Court recognized that there were no sales of logging railroads from which to develop a sales approach. 16 Wn.2d 459, 470-71. In speaking specifically to the appraisal methodologies, the Court stated, "Appellants concede that in the absence of proof of 'actual value and actual sales,' proof of cost less depreciation is admissible to throw light on the question of value." *Id.* at 471.

Read in tandem, these cases cannot be interpreted to endorse a "cost approach only" mandate as Petrogas suggests. Rather, they stand for a common-sense pillar of real property appraisal: that a determination of value should be based upon those methods for which there is accurate and reliable data. *See Sahalee*, 108 Wn.2d 26, 33-34 (discussing the

reconciliation process). As discussed further below, the subject properties benefit from a number of intangible characteristics and attributes. The Board found that Reilly failed to consider those characteristics as is required by statute. *Petrogas Pacific LLC*, 520 P.3d at 1085. The Court of Appeals properly upheld the Board's conclusions as to that issue. *Id.* Petrogas has failed to identify any decision on this point in conflict with the decision below.

2. The Court of Appeals' decision does not conflict with any Supreme Court case interpreting the exemption of intangible personal property.

Throughout the entirety of this litigation, Petrogas has mischaracterized or misunderstood a distinction central to the issues in this case: the difference between tax exempt intangible personal property and the intangible characteristics or attributes of real property that must be considered in its valuation. *Petrogas Pacific LLC*, 520 P.3d at 1082-83; RCW

84.36.070; WAC 458-50-160. Unfortunately, Petrogas repeats this error in its petition for review.

It is true that intangible personal property is exempt from ad valorem taxation. RCW 84.36.070(1), (2). However, there are certain intangible characteristics or attributes of real property that affect the value of real property and must be considered in determining the value of real property. RCW 84.36.070(3); WAC 458-50-160(4). These intangible characteristics or attributes include things like location, scarcity, utility as an integrated unit, and proximity to markets. WAC 458-50-160(4)(a), (c). The Court of Appeals found that the Board did not err in finding that the subject properties benefitted from some of these intangible characteristics or attributes. *Petrogas Pacific LLC*, 520 P.3d at 1083. The court made specific reference to the Board's findings concerning the subject properties' location and proximity to Asian markets, the uniqueness and scarcity as the only LPG exporting facility on the west coast of North America, and the operation of the

subject properties as an integrated unit. *Id.* The Board and the Assessor were required to consider these characteristics, and in doing so, complied with the unambiguous language of RCW 84.36.070 and WAC 458-50-160. *Id.*

Petrogas has failed to identify any Supreme Court decisions involving these principles that is at odds with the Court of Appeals decision below. In support of its position, Petrogas cites two Supreme court decisions: *State ex rel. Wolfe v. Parmenter*, 50 Wash 164, 96 P. 104 (1908), and *State ex rel. Atwood v. Wooster*, 163 Wash. 659, 2 P. 653 (1931). In *Parmenter* the only issue before the Court was the constitutionality of a statute that defined taxable personal property and exempted other items. *Parmenter*, 50 Wash. 164, 172. Specifically, the exempt items were mortgages, notes, accounts, moneys, certificates of deposit, tax certificates, judgments, and government bonds. *Id.* The Court ultimately found the statute constitutional. *Id.* at 178-79. More importantly, that decision did not address the definition or

exemption of intangible personal property, as that exemption would not be enacted by the legislature for another twenty-three years. Rather, the Court decided, as a matter of constitutional law, that the legislature was free to classify the above items as exempt. *Id.*

In *Wooster*, the Court was again faced with the Legislature's classification of certain intangible personal property as tax exempt given the 1930 amendments to Article 7, section 1 of the State Constitution. 163 Wash. 659, 661-62. The Court held that, pursuant to amended Article 7, section 1, the Legislature had the authority to classify certain property as tax exempt and that such classification was "a matter between the legislature and those to whom it is responsible." *Id.* at 664. The Court did not parse the language of RCW 84.36.070 to determine which items of intangible property are exempt and what other aspects of property are taxable.

The decision below analyzed the distinction in RCW 84.36.070 between tax exempt intangible personal property and

the intangible characteristics or attributes of real property that contribute to its value. *Petrogas Pacific LLC*, 520 P.3d at 1082-83. The Court of Appeals properly applied the canons of statutory interpretation, found that RCW 84.36.070 was unambiguous, and held the Board's findings and conclusions were consistent with the plain meaning of that statute. *Id.* Petrogas has failed to identify any Supreme Court precedent which is in conflict with the decision below.

3. The Court of Appeals appropriately affirmed the Board's finding that Petrogas' aquatic lands lease contributed to the value of the property.

Petrogas argued that this conflicts with *Japan Line, Ltd. v. McCaffree*, 88 Wn.2d 93, 558 P.2d 211 (1977), stating that the *Japan Line* court concluded that the leasehold excise tax was intended to replace the ad valorem tax on leasehold interests in public lands. That statement is a mischaracterization of the court's decision. The Court was not, as Petrogas suggests, addressing the ability of the

Legislature to double tax an item of personal property.

Instead, the Court was deciding two constitutional issues:

whether the retroactive application of the leasehold tax

violated due process, and whether the concurrent

cancellation of the ad valorem tax and enactment of the

leasehold tax was an unconstitutional gift of public funds.

Id at 96, 98. While the Court did, in passing, make the

statement cited by Petrogas, it was only to support the

Court's holding that the legislative action was

constitutional. *Id.* at 98-99.

Contrary to Petrogas' position, the Court of

Appeals decision does not result in their interests being

"double taxed." The Court of Appeals noted the tax exemption

for leasehold interests in public land under RCW 84.36.451.

Petrogas Pacific LLC, 520 P.3d at 1083. However, the court

also recognized the statutory requirement that assessors must

consider "licenses, permits, and franchises granted by a

government agency that affect the use of the property." RCW

84.36070(4); *Petrogas Pacific, LLC*, 520 P.3d at 1083. The Assessor did not attribute any dollar value directly to the lease. *Id.* at 1083. Rather, the Assessor recognized that the aquatic lands lease affects the highest and best use of the real property. *Id.* at 1084. Without the ability to have 48 ships cross the State-owned tidelands annually, the subject properties would not be able to achieve their highest and best use as an LPG export facility.

4. The unique nature of the subject properties indicates that there are no issues of great public interest at stake.

The issues of ad valorem taxation are public in nature. However, the outcome of this case will have little to no impact on other property tax assessments in the future because the property in question is an extremely unique LPG storage facility, connected to a deep-water port, with access to the Pacific Ocean, and with licenses from the State to dock a large number of ocean-going supertankers. Petitioners themselves

are forced to accept the uniqueness of this property. *Petrogas* Petition for Review, 11. Due to the unique nature of this property, the issues presented here are unlikely to reoccur in the future.

Equally, guidance to the future assessment of ad valorem taxation is not needed because it is unlikely that another assessor will encounter a property with these unique characteristics. Even if that were to occur, future guidance is not warranted because any future public official will be properly instructed by the Court of Appeals decision in this case. In the future, it would be correct to consider any existing uniqueness, scarcity, and access to market; and to further consider licenses, franchises, and permits issued by the government that impact the use of property. *Petrogas Pacific LLC*, 520 P.3d at 1083.

Therefore, there is not an issue of substantial public importance that requires review to prevent sweeping implications.

F. CONCLUSION

Petrogas has failed to identify grounds sufficient for discretionary review in this matter. Petrogas has failed to identify any Supreme Court decision that is in conflict with the Court of Appeals' decision below. Petrogas has also failed to demonstrate that the petition contains an issue of substantial public interest that should be addressed by this Court. The Whatcom County Assessor respectfully requests this Court to deny the petition for review.

This document contains 3,059 words, excluding parts of the document exempted from the word count by RAP 18.17(b).

DATED this 21st day of March, 2023

Respectfully submitted,



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APPENDIX A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

PETROGAS PACIFIC LLC AND
PETROGAS WEST LLC,

Appellants,

v.

REBECCA XCZAR, WHATCOM
COUNTY ASSESSOR,

Respondent.

No. 83065-1-I

DIVISION ONE

PUBLISHED OPINION

MANN, J. — This appeal arises from the property tax valuation of a terminal and wharf owned by Petrogas Pacific LLC and Petrogas West LLC (Petrogas). Petrogas appeals the final decision of the Board of Tax Appeals (Board). Petrogas argues that the Board erred (1) by considering intangible characteristics of the subject properties, (2) by considering an aquatic lands lease in the property tax value, and (3) by rejecting Petrogas’s appraisal. We affirm.

FACTS

A. Purchase and Valuation

Petrogas owns and operates a liquified petroleum gas (LPG) terminal and wharf near Ferndale, Washington. In May 2014, Petrogas acquired the terminal from Chevron

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for \$242,000,000. In September 2016, Petrogas acquired the wharf from Intalco Aluminum for \$122,000,000.

The terminal provides storage and distribution of liquefied propane and butane to domestic and international markets. The terminal can export and import up to 30,000 barrels a day, has rail, truck, and pipeline capacity, and is connected to two local refineries. The wharf serves the LPG operation of the terminal and the aluminum smelting operation of Intalco. The wharf is built on aquatic lands within the Strait of Georgia and subject to an aquatic lands lease with the State of Washington. The aquatic lands lease allows 48 ships to dock at the pier per year, regardless of product. Ships unload alumina ore to supply the Intalco aluminum smelting plant and load LPG product from the terminal to ship overseas.

The purchases of the terminal and wharf were somewhat complicated by the arrangements currently in place and a third party right of first refusal. Because purchase of the terminal connected significantly with Petrogas's other assets and connections, Petrogas was motivated to bid very aggressively on the property. Yet Petrogas's counsel testified that the transaction was "typical of such a sale." In addition, during the 2016 purchase of the wharf, Petrogas agreed to an overpayment because the wharf was critical to the integrity of the terminal and Petrogas's export program as a whole.

After purchasing the terminal, Petrogas's independent auditors, Pricewaterhouse Coopers (PwC) conducted an appraisal and allocation. PwC's appraisal was conducted under U.S. general approved accounting practices (U.S. GAAP). Based on appraisals, PwC allocated \$11,895,000 to land, \$157,752,327 to the real property improvements

(Terminals/Tanks), and \$2,772,500 to tangible personal property. PwC allocated the remaining amount of the price to intangible value.

After purchasing the wharf, Petrogas engaged an appraisal firm to assess the wharf's condition, which estimated repair costs of around \$11 million, and obtained an appraisal concluding the fair market value of the wharf in its condition at the time of sale was \$10,205,058. Petrogas allocated \$10,205,058 to the wharf improvements, other smaller amounts to tangible personal property at the wharf, \$100,000,000 to intangible goodwill, and \$11,699,896 to the aquatic lands lease. Petrogas reported this allocation on the real estate excise tax affidavit. PwC reviewed and agreed to the allocation for the purposes of financial accounting under U.S. GAAP.

Once the Whatcom County Assessor¹ (Assessor) received notice of the terminal sale, it believed the property had been undervalued and began a review. During this review, the Assessor reviewed publicly available information on the industry to understand the "fundamentally dynamic changes that had been occurring" in the business. The Assessor found that demand from the Asian market had been increasing, while on the supply side, new reserves were being discovered. It also found that the highest and best use of the wharf was changing from its initial purpose to support Intalco's aluminum smelter to increasingly larger shipments of LPG.

For its 2016 valuation of the wharf, the Assessor relied on the sales information for the combined terminal and wharf for \$364,000,000. After deductions for inventory,

¹ Rebecca Xczar is now the Whatcom County Assessor, but for the relevant valuation years, Keith Willnauer was the assessor.

intangible value, and others values, the Assessor valued the wharf at \$182,725,099, and the terminal at \$90,108,394.

In 2017, the Assessor requested an Advisory Appraisal from the Department of Revenue (DOR). DOR used all three valuation approaches—cost, income, and sales—to form a final opinion of market value. While the Assessor criticized aspects of the DOR appraisal, it used some of their documentation and methodology to conduct both a cost approach and an income approach to value Petrogas's property for 2017 and 2018. As a result, the Assessor valued the terminal at \$190,710,788 for 2017 and \$194,606,203 for 2018. The Assessor valued the wharf at \$182,725,099 for 2016, \$98,244,952 for 2017, and \$100,251,680 for 2018.

Petrogas sought review of all five valuations before the Board.

B. Proceedings before the Board

The Board conducted a formal hearing over six days, hearing from seven witnesses. The Board admitted multiple exhibits from each party, including an appraisal report commissioned by Petrogas, a review of the appraisal submitted by the Assessor, and rebuttal reports.

Petrogas's appraisal report was conducted by Kevin Reilly, ASA, of evcValuation LLC. At the time of the report, there were only 10 LPG export facilities in North America, with several more planned or under construction. Petrogas's LPG terminal and wharf were the only operating LPG storage and export facility on the West Coast.

When Reilly considered all three of the traditional approaches to valuation, Reilly found the sales comparison approach and income approach not applicable to the valuation of the terminal and wharf. Reilly did not develop the sales comparison

approach because Petrogas's purchase was the only known sale of an operating LPG terminal on the West Coast and "there are typically many details of [these] transactions that are not able to be discerned." In deciding not to develop an income approach to value, Reilly cited several challenges such as: limited historical financials, a limited number of comparable terminals to establish a regional market, related parties leading to unrecognized revenues and operating expenses, limited information to develop market-based throughput rates for the West Coast, and the overall highly proprietary nature of LPG terminal history.

Thus, Reilly only developed and applied the cost approach. Under the cost approach, Reilly concluded that both the 2018 and 2017 market values for the terminal were \$157,000,000. Reilly also concluded the market values for the wharf were \$17,000,000 for 2018, \$16,000,000 for 2017, and \$15,000,000 for 2016. The appraisal also concluded that "the highest and best use of the LPG Terminal and Wharf are their current uses as LPG export facilities."

The Assessor's review appraisal was conducted by Brent Eyre, ASA. Eyre's report criticized the Reilly appraisal in three main areas. First, Eyre argued that in analyzing the highest and best use for the properties, Reilly's cost approach, a summation of the value of the tangible real property as individual and independent assets, would not achieve the highest and best use as an integrated assets function. In contrast, under a unit appraisal, an integrated group of operating assets is valued as "one thing without reference to the independent value of the component parts."

Second, Eyre argued that Reilly should have included the value of the aquatic lands lease in assessing the overall value of the terminal and wharf. Third, Eyre

criticized Reilly’s failure to consider and analyze the sale of the subject properties. This would have shown that considerable taxable value was missing from the cost approach and led Reilly to use a unitary valuation method. Eyre concluded, “these errors have led to an improper valuation of the subject property.” The Board found Eyre credible.

The Board issued its final decision on June 29, 2021. While the Board found Reilly credible, it also found that Reilly “did not consider intangible characteristics including proximity to Asian markets, scarcity of LPG facilities on the West Coast, the aquatic lands lease, and the number of ships that can land at the wharf annually.” The Board concluded that the Reilly appraisal erred by considering only the cost approach and not appropriately considering the subject sales nor any income approach valuation. And the Board concluded that Petrogas’s contended values excluded attributes of the properties that were properly taxable. The Board concluded that the DOR and Assessor properly used unitary valuation methods and the Assessor’s valuations were properly performed.

As a result, the Board upheld the Assessor’s valuation of the terminal for 2017 and 2018. The Board also upheld the Assessor’s valuation of the wharf for 2017 and 2018. The Board, however, adjusted the 2016 valuation of the wharf from \$182,725,099 to \$98,000,000. The assessed values, Petrogas’s response, and the Board’s decision are as follows:

Assessment Year	Assessed Value	Petrogas’s Appraisal	Board’s Decision
Wharf			
2016	\$182,725,099	\$15,000,000	\$98,000,000
2017	\$98,244,952	\$16,000,000	\$98,244,952
2018	\$100,251,680	\$17,000,000	\$100,251,680

Terminal			
2017	\$190,710,788	\$157,000,000	\$190,710,788
2018	\$194,606,203	\$157,000,000	\$194,606,203

Petrogas petitioned for review of the agency decision. Whatcom County Superior Court certified the case for direct review under RCW 34.05.518.

ANALYSIS

We review decisions by the Board of Tax Appeals under the Administrative Procedure Act (APA), ch. 34.05 RCW. Judicial review is limited to the agency record. RCW 34.05.558; see also Puget Soundkeeper All. v. Dep't of Ecology, 191 Wn.2d 631, 637, 424 P.3d 1173 (2018). Under the APA, we may grant relief from an agency's order based on one of nine reasons listed in RCW 34.05.570(3), including that the order is (1) based on an erroneous interpretation or application of the law, (2) not supported by substantial evidence, or (3) arbitrary or capricious. RCW 34.05.570(3)(d), (e), (i).

We review questions of law, statutory construction, and an agency's application of the law de novo. Puget Soundkeeper, 191 Wn.2d at 637. We review an agency's factual findings for substantial evidence, "asking whether the record contains evidence sufficient to convince a rational, fair-minded person that the finding is true." Pac. Coast Shredding, L.L.C. v. Port of Vancouver, USA, 14 Wn. App. 2d 484, 501, 471 P.3d 934 (2020). We defer to the agency's broad discretion in weighing the evidence. Whidbey Envtl. Action Network v. Growth Mgmt. Hr'gs Bd., 14 Wn. App. 2d 514, 526, 471 P.3d 90 (2020). An agency's unchallenged findings of fact are verities on appeal. Darkenwald v. Emp't Sec. Dep't, 183 Wn.2d 237, 244, 350 P.3d 647 (2015).

A. Consideration of Intangible Characteristics

Petrogas argues that the Board erred by including intangible personal property in the taxable value of the property. We disagree.

Statutory interpretation is a question of law reviewed de novo. Dep't of Ecology v. Campbell & Gwinn, L.L.C., 146 Wn.2d 1, 9, 43 P.2d 4 (2002). The ultimate goal of interpretation is to determine and carry out the intent of the legislature. Campbell & Gwinn, 146 Wn.2d at 9. If possible, courts “must give effect to [the] plain meaning [of a statute] as an expression of legislative intent.” Campbell & Gwinn, 146 Wn.2d at 9. Courts derive plain meaning from the context of the entire act as well as any “related statutes which disclose legislative intent about the provision in question.” Campbell & Gwinn, 146 Wn.2d at 11. If a statute is unambiguous, courts need not consider outside sources. State v. Delgado, 148 Wn.2d 723, 717, 63 P.3d 792 (2003).

A statute is ambiguous when, after examination, “it is subject to more than one reasonable interpretation.” City of Seattle v. Winebrenner, 167 Wn.2d 451, 456, 219 P.3d 686 (2009). Once a statute is subject to more than one reasonable interpretation, courts “may resort to statutory construction, legislative history, and relevant case law for assistance in discerning legislative intent.” Christensen v. Ellsworth, 162 Wn.2d 365, 373, 173 P.2d 228 (2007).

All property must be valued at 100 percent of its true and fair value. RCW 84.40.030(1). True and fair value means market value and is the amount of money a buyer would pay a seller, taking into consideration all uses to which the property is adapted. WAC 458-07-030(1).

While intangible personal property is exempt from ad valorem taxation, RCW 84.36.070 distinguishes between intangible personal property and the characteristics or attributes of property. Specifically, “intangible personal property does not include zoning, location, view, geographic features, easements, covenants, proximity to raw materials, condition of surrounding property, proximity to markets, the availability of a skilled workforce, and other characteristics or attributes of property.” RCW 84.36.070(3) (emphasis added).

RCW 84.36.070 provides in full:

(1) Intangible personal property is exempt from ad valorem taxation.

(2) “Intangible personal property” means:

(a) All moneys and credits including mortgages, notes, accounts, certificates of deposit, tax certificates, judgments, state, county and municipal bonds and warrants and bonds and warrants of other taxing districts, bonds of the United States and of foreign countries or political subdivisions thereof and the bonds, stocks, or shares of private corporations;

(b) Private nongovernmental personal service contracts, private nongovernmental athletic or sports franchises, or private nongovernmental athletic or sports agreements provided that the contracts, franchises, or agreements do not pertain to the use or possession of tangible personal or real property or to any interest in tangible personal or real property; and

(c) Other intangible personal property such as trademarks, trade names, brand names, patents, copyrights, trade secrets, franchise agreements, licenses, permits, core deposits of financial institutions, noncompete agreements, customer lists, patient lists, favorable contracts, favorable financing agreements, reputation, exceptional management, prestige, good name, or integrity of a business.

(3) “Intangible personal property” does not include zoning, location, view, geographic features, easements, covenants, proximity to raw materials, condition of surrounding property, proximity to markets, the availability of a skilled workforce, and other characteristics or attributes of property.

(4) This section does not preclude the use of, or permit a departure from, generally accepted appraisal practices and the appropriate application thereof in the valuation of real and tangible personal property, including the appropriate consideration of licenses, permits, and

franchises granted by a government agency that affect the use of the property.

DOR's regulations also explain the difference between exempt intangible property and other intangibles. WAC 458-50-160(4) explains:

Nonproperty intangible characteristics or attributes are elements or components of value associated with a real or tangible asset. These characteristics or attributes are "intangible" but they are not "property" and therefore are not tax exempt intangible personal property. They are contingent and dependent upon other property and cannot be owned, used, transferred, or held separately from other property. To the extent that these characteristics, attributes, or other factors contribute to, or affect the value of property, they must be appropriately considered when determining taxable value. They include the following types:

- (a) Zoning, location, view, geographic features, easements, covenants, proximity to raw materials, condition of surrounding property, proximity to markets, or the availability of a skilled work force;
- (b) Grants of licenses, permits, and franchises by a government agency that affect the use of the property being valued; and
- (c) Other characteristics of property, such as scarcity, uniqueness, adaptability, or utility as an integrated unit.

The Board's findings and conclusions fall within the plain meaning of RCW 84.36.070(3) and WAC 458-50-160(4). First, the Board heard testimony of the increasing demand for LPG in Asian markets and the properties' proximity to these markets. Second, witnesses for both parties recognized the uniqueness and scarcity of Petrogas's properties, being the only LPG export facility on the West Coast. Finally, the Assessor provided testimony that the terminal and wharf benefit from their utility as an integrated unit. While Petrogas's appraiser denied that the properties benefit from operation as an integrated unit, Reilly conceded that without the terminal the wharf would have no ability to ship LPG via ocean-going vessels.

Because the plain language of RCW 84.36.070(3) permits consideration of characteristics or attributes of property such as scarcity, uniqueness, and value as an integrated unit, the Board did not err.

B. Aquatic Lands Lease

Petrogas argues that as a leasehold interest in public land, the aquatic lands lease is exempt from taxation. Under RCW 84.36.451(1)(a) and (c), any leasehold interest to occupy or use property owned by the State of Washington is exempt from taxation. The Assessor concedes that by statute, leasehold interests in government-owned property are exempt from ad valorem property taxation. But the Board did not include the leasehold interest as taxable value. Instead, the Board concluded that it was error for Petrogas's appraisal to not include the aquatic lands lease as a characteristic or attribute of intangible property in its valuation. RCW 84.36.070(1).

Under RCW 84.36.070(4), the exemption of intangible personal property does not preclude the use of "generally accepted appraisal practices and the appropriate application thereof in the valuation of real and tangible personal property, including the appropriate consideration of licenses, permits, and franchises granted by a government agency that affect the use of the property." In addition, under WAC 458-50-160(4), when determining taxable value, characteristics, attributes, or other factors that contribute to, or affect the value of property must be appropriately considered. These factors include "[g]rants of licenses, permits, and franchises by a government agency that affect the use of the property being valued." WAC 458-50-160(4)(b).

The Assessor testified before the Board that he did not attribute any value directly to the aquatic lease in his assessment. Instead, he considered "the contributory

value associated with the highest and best use of the property that is valuing the property in recognition of the presence of that lease.” Petrogas’s appraisal considered the aquatic lands lease to be an intangible asset and assigned no taxable value. Reilly explained, “in arriving at my value conclusion under the cost approach, we did not appraise intangible values or value in my overall conclusions.”

The plain language of RCW 84.36.070(4) and WAC 458-50-160(4) support consideration of the aquatic lands lease because it affects the highest and best use of the properties. In this case, the aquatic lands lease is intertwined with a real asset because it pertains directly to the use of the wharf. In addition, use of the wharf contributes directly to the business of the terminal. The terminal uses the wharf to ship LPG across the Pacific Ocean. The lease allows Petrogas to dock 48 ships at the pier per year. The value of the wharf would be diminished without this permitted use.

Because the aquatic lands lease could be considered in determining the highest and best use of the property, the Board did not err.

C. Market Value Approach

Petrogas argues that the Board erred by rejecting its appraisal and concluding that the cost approach to valuation should not be a dominant factor. The Assessor argues that Petrogas’s appraisal was rejected by the Board because it ignored the sales of the subject properties and excluded intangible attributes that should be considered in valuation. We agree with the Assessor.

In determining market value, there are three general approaches. Washington Beef, Inc. v. County of Yakima, 143 Wn. App. 165, 165, 177 P.3d 162 (2008). In general, appraisers use one or a combination of the approaches to arrive at fair market

value. Washington Beef, 143 Wn. App. at 165-66; WAC 458-070-030(2). First, under the income approach, value is approximately equal to the present value of the future benefits of property ownership. Sahalee Country Club, Inc. v. Bd. of Tax Appeals, 108 Wn.2d 26, 33, 735 P.2d 1320 (1987). Second, the cost approach estimates what it would cost a typically informed purchaser to produce a replica of the property in its present condition. Sahalee, 108 Wn.2d at 33. Third, under the sales approach, an appraiser compares the sale prices of similar properties. Sahalee, 108 Wn.2d at 33. When the supporting data is adequate, the sales approach is the most reliable method of valuation. Sahalee, 108 Wn.2d at 33.

Because the sales approach is the most reliable method, RCW 84.40.030(3)(a) requires an assessor to base valuation on any sales of the property being appraised or similar property sold within the past five years. (Emphasis added). Similarly, WAC 458-07-030(2)(a) provides that sales of the property being appraised that occurred within five years of the assessment are valid indicators of true and fair value. The assessor should be afforded considerable discretion in determining property value for tax purposes. Folsom v. Spokane County, 106 Wn.2d 760, 769, 725 P.2d 987 (1986).

Petrogas relies on RCW 84.40.030(3)(b) for the proposition that in assessing property of a complex nature, the dominant factors in valuation should be “cost, cost less depreciation, reconstruction cost less depreciation, or capitalization of income that would be derived from prudent use of the property.” Petrogas also cites several cases that recognize the validity of the cost approach. Both parties agree that the property is of a complex nature. But they disagree that the cost approach was the only appropriate

method of valuation. Thus, the issue is whether the Board's decision to reject Petrogas's appraisal was supported by substantial evidence. RCW 34.05.570(3)(e).

Petrogas's appraisal by Reilly only used the cost approach. Reilly concluded that the income approach was not a meaningful indicator of value because there were limited historical financials, a limited number of comparable terminals to establish a regional market, related parties leading to unrecognized revenues and operating expenses, limited information to develop market-based throughput rates for the West Coast, and the overall highly proprietary nature of LPG terminal history. Reilly did not use the sales comparison approach because he only found two comparable sales that failed to disclose the purchase consideration. While Reilly did not consider the sales of the terminal and wharf to Petrogas in his valuation because he did not believe the sales represented market value, per RCW 84.40.030(a), because the sales were within five years, they should have been considered.

In contrast, the Assessor, and DOR, used all three valuation methods to determine the market value of the terminal and wharf. The Assessor also relied on the sales of the terminal and wharf in his valuations.

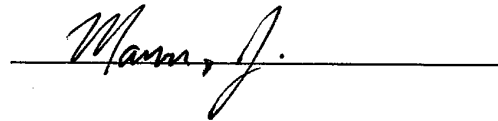
The Board also heard testimony from Eyre and reviewed his report. Eyre criticized the Reilly appraisal for failing to appraise the properties as a going concern using the unit valuation concept, ignoring the sales of the subject properties, and failing to include all taxable property.

Contrary to Petrogas's argument, the Board did not require all three approaches to valuation in this case. Instead, the Board considered relevant facts and expert opinions on true market value. It made factual determinations with the proper standards

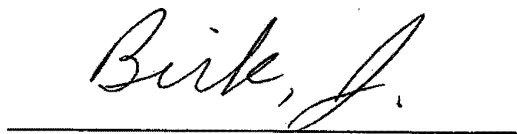
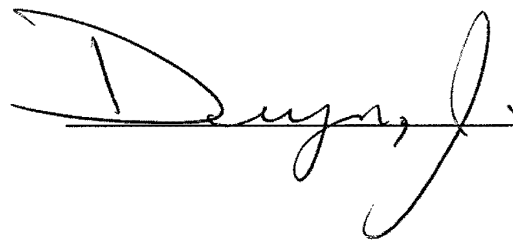
in mind, specifically finding that Reilly's appraisal failed to "consider intangible characteristics including proximity to Asian markets, scarcity of LPG facilities on the West Coast, the aquatic lands lease, and the number of ships that can land at the wharf annually." As a result, the Board concluded that Reilly's appraisal erred because it did not appropriately consider the subject sales.

Because the Board "showed a good understanding of the accounting and economic principles in play here," we find that the findings of fact are supported by evidence and support the conclusions of law. Washington Beef, 143 Wn. App. at 170.

Affirmed.

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WE CONCUR:

A handwritten signature in cursive script, appearing to read "Birk, J.", is written above a horizontal line.A handwritten signature in cursive script, appearing to read "Dwyer, J.", is written above a horizontal line.

WHATCOM COUNTY PROSECUTOR'S OFFICE APPELLATE DIVISION

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