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Attorneys for Respondent

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Legal Services Office
Montana Dept Of Revenue

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

The Department of Revenue Of the State of Montana, Appellant,	)	CAUSE NO.: PT-2010-27, PT-2011-11
v.	)	**Respondent's Memorandum in Response to Motion To Compel**
CONOCOPHILLIPS COMPANY, Respondent.	)	

Respondent ("Phillips 66")[1] respectfully submits this memorandum in response to Appellant's motion to compel responses to first discovery requests.

FACTUAL BACKGROUND

A. YCTAB Market Valuation

The Department issued a 2010 assessment of the Billings Refinery dated October 8, 2010, and a revised assessment dated November 22, 2010, assessing the property at a total market value of $505,567,663. Exhibit A hereto.

1 ConocoPhillips split into two separate, independent companies on May 1, 2012. The newly created downstream company, Phillips 66, was assigned the assets and liabilities of the Billings Refinery that are at issue in this proceeding.

ConocoPhillips ("COP") appealed the revised 2010 assessment to the Yellowstone County Tax Appeals Board ("YCTAB"). In a decision dated April 21, 2011, YCTAB found a total market value of $379,718,534.00. Exh. B.

The Department issued a 2011 Assessment Notice, dated June 13, 2011, with a total market value of $549,092,344. Exh. C. COP appealed and, in proceedings before YCTAB, the Parties stipulated that the April 2011 YCTAB decision governed. Accordingly, the YCTAB by order dated November 2011 adopted a market value of $379,718,534 for 2011. Exh. D.

The Department subsequently appealed YCTAB's 2010 and 2011 decisions.

B. Positions of the Parties Before YCTAB

In its 2010-2011 assessments of the Billings Refinery, the Department relied on the "cost" methodology. Exhs. A, C. As explained by the Department's representative in the YCTAB hearing:

> Each year the Taxpayer sent a reporting form for their machinery and equipment that is based upon they present us with their additions and deletions of property. ... With regards to the cost approach again, we considered and do consider all three forms of depreciation. For the machinery and equipment, the physical deterioration is handled primarily through the trended historical costs less depreciations. ...

See Exh. E, Transcript p. 104-105.

Based on hundreds of pages of cost data requested by the Department and provided by COP, the Department determined the property had a market value of $505 million for 2010, and $549 million for 2011, broken down as follows:

	2010	2011
Machinery & Equipment	$451,163,571	$494,069,426
Industrial Land	$9,391,200	$9,391,200
Heavy vehicles	$1,293,815	$1,053,029
Buildings	$43,719,077	$39,578,689
Total	$505,567,663	$549,092,344

The Department did not utilize either a "sales" or "market" approach to valuation. Exhs.

A, C. As noted by YCTAB:

> Board Member: I'm going to stop this for a minute because you people are engaged in an argument here over the sales approach or the lack of an income approach.... They (the Department) did not use the comparable sales approach. They used cost approach. So I really think you should focus your summary and questions on the question about the cost approach. The Board is obligated to assume that the Department has done a good job. You can challenge, I think you would be wise to challenge their cost approach, which is the only thing they've given us to evaluate ....

See Exh. E, Transcript at pp. 160-161.

Nothing in the Department's annual reporting requirements for property of this type require that the taxpayer provide data pertinent to either a sales or market methodology. See Exh. E, Transcript at p. 146 (Department witness acknowledged the taxpayer is not obligated to provide income data), The Department routinely values property like the Billings Refinery based on cost data with no consideration of sales or market approaches, methodologies that are used by the Department for centrally assessed property. At the YCTAB hearing Department representatives explained:

> "[T]he majority of the plant is new or relatively new, so this would make the cost approach an appropriate approach based upon the appraisal tests." See Exh. E, Transcript at p. 99.
>
> "The cost approach is particularly important when a lack of market activity limits the usefulness of the sales comparison approach and when the property to be appraised is not amenable to valuation by the income capitalization approach." See Exh. E, Transcript at p. 95.
>
> "The cost approach is a relevant approach when valuating new assets and considering all forms of depreciation. We feel we've done that...." See Exh. E, Transcript at p. 174.

In proceedings before YCTAB, COP advocated a $245 million market valuation, based on Appraisal Analysis prepared by then-COP and current Phillips 66 employee, Robert Adair.

In its decision, the YCTAB rejected the $245 million market valuation suggested by COP under the 2010 Appraisal Analysis. The YCTA also rejected the $505 million market valuation of the Department. Instead, the YCTAB adopted a market valuation of $379 million, based on "cost" methodology. Specifically, the YCTAB held:

- Land: Rejecting contentions of both the Department ($80,000 per acre) and Phillips 66 ($22,000 per acre), the YCTAB determined a market value of $43,560 per acre.

- Buildings and Improvements: YCTAB reasoned that buildings greater than 60 years old have no market value, and adjusted the Department's valuation accordingly.

- Personal Property: Both parties agreed on 16-year depreciation life. YCTAB excluded equipment more than 16 years old. YCTAB then determined the original cost of equipment acquired during the 16-year period 1995-2010 was $595,719,026. Applying a 16-year depreciation schedule, the YCTAB determined the equipment had a market value of $345,070,535. The YCTAB adopted a further adjustment for functional obsolescence, in a 3.5% amount, yielding a total market value of $332,993,066.

Exh. B.

For 2011, the Parties stipulated that the 2010 YCTAB decision controlled and, therefore, YCTAB issued a decision essentially adopted the same rationale for 2011. Exh. D.

C. Department Appeal

The Department has appealed YCTAB's 2010 and 2011 assessment decisions. This Board has issued a scheduling order which obligates the Department to produce expert analysis by a date certain (August 1, 2012), with Phillips 66 then to later submit its response expert analysis (October 1, 2012). The deadline for Phillips 66's expert disclosure is more than two months hence. Phillips 66 has not concluded its expert analysis, and will not be in position to do so until it has reviewed the Department's disclosures, as contemplated by this Board's scheduling order.

Phillips will not produce the 2010 Appraisal Analysis as an expert report in this proceeding. YCTAB rejected the $245 million valuation suggested by the 2010 Appraisal

Analysis. Phillips 66 has not appealed that decision, and does not advocate a $245 million market valuation in this appeal.

The sole matter at issue is ***YCTAB's*** determination of market value in the amount of $379 million. The Department bears the burden of overturning YCTAB's decision. Phillips 66 has no obligation to produce appraisal or other expert analysis, except as it may elect in response to the Department's timely disclosures.

DISCUSSION

A. Adair Appraisal Analysis

Much of the Department's moving brief is devoted the $245 million appraisal introduced by COP in proceedings before YCTAB, and the Department's contention it requires materials pertinent to that $245 million appraisal in order to prosecute its claim in this case. See, e.g., Department Brief at p. 3 ("The Department directed its discovery efforts at understanding ... the Appraisal Analysis.")

This matter easily is resolved. The $245 million appraisal is moot. YCTAB rejected the $245 assessment. Phillips 66 has not appealed that decision. Phillips 66 does not advocate a $245 million market value on this appeal. Phillips 66 maintains that YCTAB's market valuation of $379 million should be upheld. Plainly put, the 2010 Appraisal Analysis is of no pertinence to any issues on this appeal.

For this reason, the Department's extensive discussion of the $245 million appraisal is simply irrelevant. Because the appraisal is no longer at issue, the Department has no need for materials supporting the appraisal, or materials contradicting the appraisal, or materials it might need to rebut the appraisal.

Appeal from decisions of county tax appeal boards lies to this Board. Mont. Code Ann. §

15-2-301(1). The STAB "may affirm, reverse, or modify any decision." § 15-2-301(4). The "decision" under review is that of YCTAB, in the amount of $379 million. Discovery relating to an appraisal of $245 million, one not adopted by YCTAB, and one not urged by any party in this appeal, plainly is unnecessary.

The point is underscored by the Department's extensive discussion of "obsolescence", and the discovery it claims is necessary in order to address obsolescence. See Department Brief at pp. 6-9. While COP suggested functional obsolescence of 17.3%, and external obsolescence of 32.5% in proceedings before YCTAB -- figures to which the Department makes repeated reference in its moving brief --- the YCTAB did ***not*** adopt either approach. Rejecting both Phillip's rates and the Department's proposed 15% obsolescence rate, see Exh. E Transcript at p. 99[2], the YCTAB adopted a 3.5% adjustment for obsolescence.

> YTAB disagrees with the 17.3% External Obsolescence factor used by Conoco but agrees there is External Obsolescence and deducts 3.5% from the depreciated value of personal property for a total personal property value of $332,993,066.

Exh. B.

The issue is whether YCTAB's decisions should be upheld. Extensive discovery directed to obsolescence analysis the YCTAB did not accept is plainly unnecessary, onerous and irrelevant.

For all of the foregoing reasons, the Department's motion to compel should be denied.

B. Sales / Income Indicators

The Department now seeks "scorched earth" discovery it claims is necessary in order to utilize the comparable sales and income methodologies for market value. See Department Brief

[2] The Department's witness testified that "by using this methodology we're conceding that there is obsolescence … functional obsolescence present, at these facilities…. [W]e are conceding to the extent of fifteen percent functional obsolescence." Transcript at p. 116.

at pp. 9-13. But the discovery the Department now wants is in stark contrast to the Department's own 2010 and 2011 assessments, and to the YCTAB decisions under review.

As noted above, the Department did ***not*** incorporate either a sales comparable or income approach to valuation in either its 2010 or 2011 assessments. Exhs. A, C. In periods pre-dating 2010, the Department never used these methodologies in its assessments of the Billings Refinery. Instead, the Department's assessments – including 2010 and 2011 – have been based on cost data.

In proceedings before YCTAB, the Department did not introduce either a market comparables or income approach to valuation of the Billings Refinery. As Department representatives testified before YCTAB:

> "With regards to the market data approach, again, we considered it, but refineries are not like houses where there is a readily available market. And because of this, finding sales which are arms length and willing buyer willing seller is extremely difficult." See Exh. E, Transcript at p. 137.
>
> "The DOR considered market sales and dismissed them as not representative of arms length transactions lack of true compatibility with the subject refinery." See Exh. E, Transcript at p. 174.

Instead, the Department contended the market value should be determined using cost data and a 16-year depreciable life:

> And again, it's, in the cost approach in the big picture we're taking accepted appraisal thought here and we're taking their historical costs to current costs and then depreciating it based on that life and coming up with a value, with that market value that in our opinion is relative to its value to the owner. And again, it is based on a sixteen year life for the machinery and equipment and of course a forty year life for buildings ....

See Exh. E, Transcript p. 119.

The YCTAB did not adopt, utilize, or endorse either market or income methodologies in its decision. Instead, consistent with longstanding treatment of this locally assessed property, the YCTAB relied on a straightforward "cost" methodology. Exhs. B, D. COP *did* address market and income methodologies in the 2010 Appraisal Analysis; however, as noted above, that appraisal was not adopted, and is not advocated on this appeal.

Against this backdrop, the Department's sweeping requests for mountains of material pertaining to market and income methodologies can only be interpreted as harassment. Having eschewed these methodologies in its assessments, and in its assessments of other properties of this type, the Department should not be allowed to reverse field and manufacture an entirely new approach to assessment. The issue is the YCTAB's $379 million valuation, and the Department's $505 million and $549 million assessments. Having assessed the properties at those amounts, using a cost approach, the burden is on the Department to support its 2010 and 2011 assessments. Nothing in the statutory scheme contemplates that the Department can use ***its*** appeal of a County Board decision as an excuse to conjure up entirely new valuations.

The Department suggests Phillips 66 advocates market and income approaches to assessment in this appeal, citing Phillips 66's response to pre-hearing questionnaire. The response to questionnaire is not a formal pleading, and is not and was not intended as an articulation of Phillips 66's final position before this Board. Phillips 66 believes the YCTAB decision should be affirmed. It is that YCTAB decision which is at issue. Market and income methodologies have no part to play. ***If*** the Department is allowed, over Phillips 66's objections, to now come up with brand new methodologies in support of its assessments, then of course Phillips 66 must be allowed opportunity to respond. However, that will only be because the Department has been allowed to radically alter its assessment methodology some years after the assessments were issued. Phillips' response is not due until October 1, 2012. Consistent with this Board's scheduling Order, Phillips will produce expert analysis and appraisals and supporting materials at that time.

For all of the foregoing reasons, the Department's motion to compel materials for the Department's use in now creating novel approaches to assessment should be denied.

C. Confidentiality / Protective Order

To the extent Phillips 66 has withheld materials pending issuance of a protective order to ensure confidentiality of the materials, Phillips 66 stands prepared to work with the Department to craft an appropriate form of order for this Board's review. Absent agreement of the Parties, Phillips 66 will file an appropriate motion for issuance of protective order.

D. The Department's Statutory Obligations

In the final analysis, the Department's motion to compel, and its oppressive discovery practice in this case, run afoul of the long-established statutory system of property taxation in Montana. By statute, the Department has an obligation to complete its assessments in a timely fashion. The owner of locally assessed property may seek review by the County Board, and from the County Board decision appeal lies to this Board. Nothing contemplates that the Department may use one methodology for the initial assessments, then abandon its assessments and seek to come up with entirely different appraisals based on entirely different methodologies during the appeal process. Finally, if the Department over Phillips' objections comes up with new assessments based on new methodologies, then Phillips is entitled to respond, and will respond, in accordance with the scheduling order. Phillips cannot now produce any such materials, for the simple reason the disclosures are not due until October 1, 2012 and do not presently exist.

E. Specific Discovery Requests

In summary of the foregoing, and in specific response to the requests enumerated in the Department's motion, Phillips 66 states its position as follows.

(1) Requests for Production Nos. 38, 39, 40 (Department Brief pp. 6-8). The requests pertain to "obsolescence" analysis in the 2010 Appraisal Analysis. Because the $245 million appraisal was not adopted by YCTAB and is not advocated by Phillips 66 on this appeal, the materials are not subject to discovery. Phillips 66 will produce expert analysis on October 1, 2012, and will at that time produce all supporting materials used in the analysis.

(2) Requests for Production Nos. 28, 30, 34 (Department Brief pp. 8-11). The requests pertain to the Department's purported need to respond to the income methodology in the 2010 Appraisal Analysis, which now is moot. To the extent the Department seeks income data in order to craft an entirely new methodology for the first time on this appeal, the motion to compel should be denied.

(3) Request for Production No. 48, 50 (Department Brief pp. 12-13): The requests pertain to market methodology of the mooted 2010 Appraisal Analysis. Because the Department did not use a market approach in either the 2010-2011 assessments, and the YCTAB did not use market methodology in the decision under review, the materials are irrelevant and not subject to discovery.

CONCLUSION

For all of the foregoing reasons the Department's motion to compel should be denied.

Dated this 18th day of July, 2012.

Robert L. Sterup
Holland & Hart LLP
401 North 31st Street Suite 1500
Billings, MT 59103-0639
Attorneys for Respondent

CERTIFICATE OF SERVICE

This is to certify that the foregoing was mailed to the following persons by United States mail, postage prepaid, and via e-mail, on the date herein.

Brendan Beatty
Derek Bell
Montana Department of Revenue
125 North Roberts Street
P.O. Box 7701
Helena, MT 59604-7701

Dated this 18th day of July, 2012.

5683904_1

Legal Owner(s):
CONOCOPHILLIPS COMPANY

2010 Revised Assessment Notice
Property Subject to Taxation

Yellowstone County
Dept of Revenue Office
175 N 27th ST Ste 1400
Billings, MT 59101-2089

Date: 11/22/2010
Assessment Code: 000D012050
School District: 1965
2009 Mill Levy: 494.510

THIS IS NOT A TAX BILL. For details about your property taxation values, please visit your local Department of Revenue Office or call (406) 896-4000.

Legal Description Geocode	Property Classification	Current Year Taxable Percent	Quantity	Value Before Reappraisal	Market/ Productivity Value As of 1/1/2002	Market/ Productivity Value As of 7/1/2008	Taxable Value Previous Year	Taxable Value Current Year
03-000D012050-001	6300 - Intangible Software					100,306		
	6311 - Furniture and Fixtures of Commercial Properties	3.000%				347,276	10,647	10,418
	6403 - 3rd Yr New & Expanding Industry - Machinery & Equip.						1,941,458	
	6404 - 4th Yr New & Expanding Industry - Machinery & Equip.	1.500%				124,719,435		1,870,792
	6511 - Heavy Equipment & SM Equipment						4,363	
	6514 - Manufacturing Machinery and Manufacturing Tools	3.000%	31.00			289,139,044	5,893,123	8,674,171
	6519 - Supplies & Materials	3.000%				9,226,597	11,819	276,798
	6811 - Air and Water Pollution Control Machinery & Equipment	3.000%	2.00			27,436,652	869,163	823,100
	6834 - Citizen Band Radios and Mobile Phones	3.000%	1.00			194,261	1,207	5,828
03-000D012050-002	6511 - Heavy Equipment & SM Equipment	3.000%				1,293,815		38,814
S02, T01 S, R26 E, LT 3 FRAC LTS 1 & 2 & S2NW W OF YEGEN 03-0927-02-2-01-10-0000	2611 - Industrial Land	2.820%	111.80	4,041,659	1,118,000	9,391,200	62,756	138,126
	3809 - 3rd Year New Industry Improvements (50%) 15-24-1401						41,809	
	3810 - 4th Year New Industry Improvements (50%) 15-24-1401	1.410%		7,773,500		3,300,811		39,141
	3817 - 10th Year New Industry Imps and All Industrial Imps	2.820%		28,542,900	26,722,190	39,804,359	711,234	765,920
	3855 - Air and Water Pollution Control Improvements	3.000%		613,907	644,977	613,907	18,417	18,417
			Totals	40,971,966	28,485,167	505,567,663	9,565,996	12,661,525

NOTE: The total values in the shaded columns provide the best value change comparisons and reflect the legislature's reappraisal mitigation strategy. Livestock shown on this notice are exempt from property tax but are subject to a per capita fee that is billed in November.

If you have questions or concerns, please contact your local Department of Revenue office. We welcome hearing from you.

EXHIBIT

tabbies

A

Exhibit B2

Docket A-17-10, 000D012050, April 20, 2011

The Yellowstone County Tax Appeals Board (YCTAB) met April 20, 2011 and heard an appeal brought by The ConocoPhillips Company (Conoco) of the Montana Department of Revenue (DOR) assessment of the ConocoPhillips refinery property in Yellowstone County, Montana (YC). The DOR was represented by Conrad Peterson and Seth Carlson. Conoco was represented by Bob Adair, Kevin Sandstead, and Kurt Austin.

DOR assessed the property as follows: **Land**, 111.8 acres, $9,391,200, **Heavy vehicles**, $1,293,815, **Buildings**, $43,719,077, and **Refinery Equipment**, $451,163,571, **Total**, $505,567,663.

Conoco requested the property be assessed as follows: **Land**, 111.8 acres, $2,515,500, **All Other Infrastructure and Equipment**, $242,484,500, Total, $245,000,000.

With the exception of the current oil crude capacity of 58000 barrels/day and the Nelson Complexity factor of 15.2, Conoco provided no information specific to the YC refinery. Conoco provided no income data specific to this refinery. Consequently, DOR was limited to employing a cost approach to determine the DOR assessment. The YCTAB, concluded that DOR was limited to the cost approach to value by Conoco's decision to not provide income data and was under no obligation to attempt other methods for which adequate specific information was unavailable.

Conoco presented a professional, informative, and well organized briefing that covered refinery-operations, economics, and industry. Conoco determined values for the YC refinery by the cost, income and comparable sales methods. These evaluations supported Conoco's requested assessment.

The DOR responded that it is the appellant's responsibility to challenge the DOR position which must be assumed to be correct. DOR contended that Conoco had failed to meet this responsibility. The DOR then made an abbreviated, incomplete, and unconvincing presentation of its assessment. An examination of DOR exhibits (A-M) shows no connection between facts (personal property reported by Conoco) and the final assessment value. The DOR challenged some of the sales used by Conoco in its evaluation as not arms-length. However, the YCTAB determined that Conoco did effectively challenge the DOR assessment, that the DOR should have presented and defended its position more vigorously, and that the YCTAB was consequently obligated to reduce the appraised values.

The YCTAB concluded that while the Conoco presentation clearly undermined the DOR assessed value, its lack of specific data for the YC refinery precluded the YCTAB assessing the refinery at $245,000,000 as requested by Conoco.

The Property Tax Appeals Form submitted by Conoco to the Yellowstone County Clerk and Recorder includes in the Reason for Appeals section the statement that Conoco is only appealing the excess valuation over $370,300,000. Conoco testified that while they believe the fair value of the refinery is $245,000,000 they were appealing the appraised value over $370,300,000 which means to the CTAB that they are prepared to accept a revised appraised value of $370,300,000. DOR testified that it had no knowledge of this offer. The YCTAB allowed a one and one-half hour break in the hopes that the parties

EXHIBIT
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B

would accept a compromise based on this value. DOR did not respond. This offer had been on the table since December 10, 2010.

Therefore, based on the testimony and its knowledge of local values and conditions the YCTAB finds as follows:

Land. Neither party submitted evidence to their land valuations. DOR verbally stated that its value came from a CALP model; DOR showed neither CALP models nor comparable sales of Heavy Industrial Land. DOR did not present a neighborhood map nor the sales used to determine neighborhood parameters. Conoco submitted several land sales; however, only one was industrial and was not classified as heavy industrial. YCTAB knows that Conoco's land is isolated and that expansion is difficult and costly. Land that has been used for a refinery for 70 years will not have a highest and best use other than as a refinery. The land has little or no market value to anyone except another refinery. YCTAB has knowledge of heavy industrial property that has not sold and has been listed for over four years and available for $60,000 per acre. Offers of $40,000 per acre have been offered and not accepted. This land is adjacent to a refinery. YCTAB disagrees with Conoco and DOR and establishes the land value at $43,560 per acre or $4,870,008.

Heavy Equipment (geocode 03-000D012050-002). There were no specific challenges to this assessment; therefore YCTAB makes no change. The assessment shall be $1,293,815.

Buildings and Improvements (geocode 03-0927-02-2-01-10-000 except land). This value of $43,719,077 was not challenged; except that it is included in DOR's total refinery value which YCTAB believes Conoco showed to be excessive. A review of the Summary of Appraisal Data for Structures, Improvements, and Land, DOR Exhibit B, indicates that DOR has appraised many old buildings at their replacement value minus less than 50% deduction for age and functionality. For a 62 year old office building to be appraised at 66% of the price to rebuild new, stretches DOR's credibility. Buildings that are single purpose only structures have a lower value then a multiuse structure. Exhibit B was entered into evidence without explanation pursuant to DORs approach to this hearing. DOR testified that the YC Conoco refinery is a relatively new refinery because it has been rebuilt and modernized. This testimony is not supported by Exhibit B. Because there was no explanatory testimony, the YCTAB is forced to use its own judgment of local values and conditions. YCTAB judged buildings older than 60 years to have no remaining market value. The assessed value shall be $40,561,645

Personal Property (geocode 03-000D012050-001). Conoco has invested $595,719,206 into personal property in the YC refinery from 1995 through 2010 per DOR Exhibit G. Refineries have a depreciation life of 16 years per testimony by both DOR and Conoco. If Conoco's investments are depreciated at this rate, the value of the investments is $345,070,535. Equipment purchased as long ago as the 1930's is still in use per DOR exhibit G. Therefore, the YCTAB concludes that despite Conoco's pessimistic report on refinery values, the value of the refinery personal property should be the depreciated invested value over the last sixteen years and assesses the personal property at $345,070,535. YTAB also agrees with

Conoco on the External Obsolescence argument. YTAB disagrees with the 17.3% External Obsolescence factor used by Conoco but agrees there is External Obsolescence and deducts 3.5 % from the depreciated value of personal property for a total personal property value of $332,993,066.

The YCTAB assesses the ConocoPhillips refinery in Yellowstone County, Montana at $379,718,534.

Yellowstone County Tax Appeal Board

Edward R. Cross, Chairman

AGENT'S APPROVAL

Initials: Date

RECEIVED

JUN 09 2011

Owner(s):
CONOCOPHILLIPS COMPANY

2011 Assessment Notice
Property Subject to Taxation

Yellowstone County
Dept of Revenue Office
175 N 27th ST Ste 1400
Billings, MT 59101-2089

Date: 6/13/2011
Assessment Code:
000D012050
School District: 1965
2010 Mill Levy: 511.370

THIS IS NOT A TAX BILL. For details about your property taxation values, please visit your local Department of Revenue office or call (406) 896-4000.

Legal Description / Geocode	Property Classification	Current Year Taxable Percent	Quantity	Value Before Reappraisal	Market /Productivity Value As of 1/1/2002	Market /Productivity Value As of 7/1/2008	Taxable Value Previous Year	Taxable Value Current Year
03-000D012050-001	6300 - Intangible Software					258,282		
	6311 - Furniture and Fixtures of Commercial Properties	3.000%				304,692	10,418	9,141
	6404 - 4th Yr New & Expanding Industry - Machinery & Equip.						1,870,792	
	6405 - 5th Yr New & Expanding Industry - Machinery & Equip.	1.500%				110,600,628		1,659,009
	6514 - Manufacturing Machinery and Manufacturing Tools	3.000%				339,161,987	8,674,171	10,174,860
	6519 - Supplies & Materials	3.000%				24,929,986	276,798	747,900
	6811 - Air and Water Pollution Control Machinery & Equipment	3.000%				19,373,851	823,100	581,216
	6834 - Citizen Band Radios and Mobile Phones	3.000%				525,282	5,828	15,758
03-000D012050-002	6511 - Heavy Equipment & SM Equipment	3.000%				1,053,029	38,814	31,591
S02, T01 S, R26 E, LT 3 FRAC LTS 1 & 2 & S2NW W OF YEGEN	2611 - Industrial Land	2.720%	111.80	4,041,659	1,118,000	9,391,200	138,126	150,693
03-0927-02-2-01-10-0000	3810 - 4th Year New Industry Improvements (50%) 15-24-1401						39,141	
	3811 - 5th Year New Industry Improvements (50%) 15-24-1401	1.360%		7,773,500		3,300,811		37,035
	3817 - 10th Year New Industry Imps and All Industrial Imps	2.720%		28,318,800	26,722,190	39,578,689	765,920	761,759
	3855 - Air and Water Pollution Control Improvements	3.000%		613,907	644,977	613,907	18,417	18,417
			Totals	40,747,866	28,485,167	549,092,344	12,661,525	14,187,379

NOTE: The total values in the shaded columns provide the best value change comparisons and reflect the Montana Legislature's reappraisal mitigation strategy. Livestock reflected on this notice are exempt from property tax but are subject to a per capita fee that is billed in November separately from any property tax.

If you have questions or concerns, please contact your local Department of Revenue office. We welcome hearing from you.

6-10-11
scanned + sent to Brenda + Larry

EXHIBIT

C

Yellowstone County Tax Appeals Board Decision ConocoPhillips Co. vs. Department of Revenue

Tax Year 2011, Docket A-51-11, November 15, 2011

In the appeal of The ConocoPhillips Company (Conoco) vs. Department of Revenue (DOR) regarding the Conoco refinery and property tax appraisal for 2011, YCTAB Docket A-51-11, scheduled for YCTAB hearing on November 30, 2011, the YCTAB finds as follows:

1. The Yellowstone County Tax Appeals Board accepts and enters onto the record a Joint Stipulation to Waive Hearing and Have Decision received by the YCTAB on November 15, 2011, and submitted by the DOR and Conoco. A copy of the Joint Stipulation is attached hereto and labeled as exhibit A1.

2. The Yellowstone County Tax Appeals Board enters onto the record its decision of the appeal brought by Conoco vs. DOR, YCTAB Docket A-17-10, 000D012050, and dated April 20, 2011. A copy of the YCTAB decision is attached and labeled as exhibit B2.

3. In Exhibit A1, Conoco and DOR stipulate to this Board in writing that they do not wish to attend, testify, submit exhibits, or be heard by the Yellowstone County Tax Appeals Board at its hearing scheduled on November 30, 2011 hearing regarding our Docket A-51-11, provided that the YCTAB decide Docket A-51-11, in a manner similar to its decision of Docket A-17-10, 000D012050, April 20, 2011 (Exhibit B2) which results in an appraised value for 2011 of $379,718,534.

5. The Yellowstone County Tax Appeals Board therefore vacates the hearing scheduled for November 30, 2011 and finds as follows:

DOR assessed the property as follows: **Land**, 111.8 acres, $9,391,200, **Heavy vehicles**, $1,293,815, **Buildings**, $43,719,077, and **Refinery Equipment**, $451,163,571, **Total**, $505,567,663.

Conoco requested the property be assessed as follows: **Land**, 111.8 acres, $2,515,500, **All Other Infrastructure and Equipment**, $242,484,500, Total, $245,000,000.

The YCTAB concluded that while in YCTAB Docket A-17-10, 000D012050, April 20, 2011 Conoco clearly undermined the DOR assessed value, its lack of specific data for the YC refinery precluded the YCTAB assessing the refinery at $245,000,000 as requested by Conoco.

In YCTAB Docket A-17-10, 000D012050, April 20, 2011, the Property Tax Appeals Form submitted by Conoco to the Yellowstone County Clerk and Recorder includes in the Reason for Appeals section the statement that Conoco is only appealing the excess valuation over $370,300,000. Conoco testified that while they believe the fair value of the refinery is $245,000,000 they were appealing the appraised value over $370,300,000 which means to the CTAB that they are prepared to accept a revised appraised value of $370,300,000. DOR testified that it had no knowledge of this offer. The YCTAB allowed a one and one-half hour break in the hopes that the parties would accept a compromise based on this value. DOR did not respond. This offer had been on the table since December 10, 2010.

Therefore, based on the testimony and its knowledge of local values and conditions the YCTAB finds as follows:

EXHIBIT

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Land. Neither party submitted evidence to their land valuations. DOR verbally stated that its value came from a CALP model; DOR showed neither CALP models nor comparable sales of Heavy Industrial Land. DOR did not present a neighborhood map nor the sales used to determine neighborhood parameters. Conoco submitted several land sales; however, only one was industrial and was not classified as heavy industrial. YCTAB knows that Conoco's land is isolated and that expansion is difficult and costly. Land that has been used for a refinery for 70 years will not have a highest and best use other than as a refinery. The land has little or no market value to anyone except another refinery. YCTAB has knowledge of heavy industrial property that has not sold and has been listed for over four years and available for $60,000 per acre. Offers of $40,000 per acre have been offered and not accepted. This land is adjacent to a refinery. YCTAB disagrees with Conoco and DOR and establishes the land value at $43,560 per acre or $4,870,008.

Heavy Equipment (geocode 03-000D012050-002). There were no specific challenges to this assessment; therefore YCTAB makes no change. The assessment shall be $1,293,815.

Buildings and Improvements (geocode 03-0927-02-2-01-10-000 except land). This value of $43,719,077 was not challenged; except that it is included in DOR's total refinery value which YCTAB believes Conoco showed to be excessive. A review of the Summary of Appraisal Data for Structures, Improvements, and Land, DOR Exhibit B, indicates that DOR has appraised many old buildings at their replacement value minus less than 50% deduction for age and functionality. For a 62 year old office building to be appraised at 66% of the price to rebuild new, stretches DOR's credibility. Buildings that are single purpose only structures have a lower value then a multiuse structure. Exhibit B was entered into evidence without explanation pursuant to DORs approach to this hearing. DOR testified that the YC Conoco refinery is a relatively new refinery because it has been rebuilt and modernized. This testimony is not supported by Exhibit B. Because there was no explanatory testimony, the YCTAB is forced to use its own judgment of local values and conditions. YCTAB judged buildings older than 60 years to have no remaining market value. The assessed value shall be $40,561,645

Personal Property (geocode 03-000D012050-001). Conoco has invested $595,719,206 into personal property in the YC refinery from 1995 through 2010 per DOR Exhibit G. Refineries have a depreciation life of 16 years per testimony by both DOR and Conoco. If Conoco's investments are depreciated at this rate, the value of the investments is $345,070,535. Equipment purchased as long ago as the 1930's is still in use per DOR exhibit G. Therefore, the YCTAB concludes that despite Conoco's pessimistic report on refinery values, the value of the refinery personal property should be the depreciated invested value over the last sixteen years and assesses the personal property at $345,070,535. YTAB also agrees with Conoco on the External Obsolescence argument. YTAB disagrees with the 17.3% External Obsolescence factor used by Conoco but agrees there is External Obsolescence and deducts 3.5 % from the depreciated value of personal property for a total personal property value of $332,993,066.

For 2011, the YCTAB assesses the ConocoPhillips refinery in Yellowstone County, Montana at $379,718,534.

1. Board member Richard Beitel recuses himself because he was not on the panel that heard the 2010 appeal of Conoco vs. DOR (YCTAB Docket A-17-10, 000D012050, April 20, 2011). This appeal was decided by Edward Cross, Randy Reger, and Jeff Weldon.

Yellowstone County Tax Appeal Board

Edward R. Cross

Edward R. Cross, Chairman

IN THE MATTER OF:

CONOCOPHILLIPS COMPANY
ATTN: PTRRC, 4001 PENBROOK ST.
ODESSA, TX 797625917

PT-2010-27

APPLICATION FOR REVALUATION
OF PROPERTY FOR 2010

TRANSCRIPT OF HEARING

April 20, 2011
Yellowstone County Courthouse
Billings, Montana

BEFORE: YELLOWSTONE COUNTY TAX APPEAL BOARD

EDWARD CROSS, CHAIRMAN
RANDY REGER, MEMBER
JEFF WELDON, MEMBER
PHYLLIS BRADY, SECRETARY

EXHIBIT

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appraisal institute. So it is nothing that, nothing new I guess is what I'm trying to say. So applicability and limitations of the cost approach. The cost approach is particularly important when a lack of market activity limits the usefulness of the sales comparison approach and when the property to be appraised is not amenable to valuation by the income capitalization approach. And I can't stress enough that the Department is certainly open to the use of the other two approaches, whether it be the income approach or the market sales approach. To a certain extent we're only as good as the information that we have available to us to form an appraisal. We did on quite a few occasions request the income and expense information regarding specific to the Billings refinery. For confidentiality, proprietary reasons that we were told that would not be provided. One of the best ways to support your value is to have a number of ways of looking at it, at the property. And again, when we don't have that opportunity to look at, to either do a direct cap of the income or a yield cap, just kind of cash flow analysis, when our hands are tied there, you know you have no choice but to rely on the other approaches for the basis of your value. I just wanted to make that point apparent. Because the cost and market value are usually more closely related when properties are new, the cost approach is important in estimating the market value of new, relatively new construction and a little

DOR: And it is a little confusing but it is a very important point because certainly you have assets that are older than sixteen years old at the facility. However, and I think Seth's got a document that will show this as well, is the important point on this is that by not trending to it's true reproduction cost the Department, our own methodologies are allowing for what we would call technological obsolescence or I think Bob Adair talked about it in his presentation regarding functional obsolescence. And coincidentally or not, our amount of functional obsolescence represented in the manner in which we trend and depreciate these assets was around 15 percent I think, Seth. I think Bob Adair in his report their amount of functional obsolescence that he allowed for was 17 percent, so on that basis it is a very comparable estimate of functional obsolescence allowed by both the Department and ConocoPhillips. We'll go over that a little bit more later.

DOR: At this point the key items as far as this spreadsheet that we wanted to point out is again, the majority of the plant is new or relatively new, so this would make the cost approach an appropriate approach based upon the appraisal tests. Okay. The next thing that I'd like to go into is explaining how I valued this plant. And that is for the land used comparable sales within the area of the refinery that were sold in the previous cycle. This would be it to the refinery itself, would have also shot the value of the land on the refinery way up. That's why we made sure we looked at greater than twenty acres because that is what, those are going to be included in the refinery as a plant. So we then took the value we determined for property greater than twenty acres and applied it to those smaller parcels around the refinery that are essentially part of the refinery now.

BOARD MEMBER: So $1.1 million to $9.3 million in that period of time from July or January 1st, 2008 to July 1st, 2011, 2002 to 2008. And do you have any data showing how you arrived at that other than explaining that you looked at the comparable sales that you guys put together because the model didn't have enough?

DOR: Again, we'll get that to the Board for their review.

BOARD MEMBER: Why isn't that here today?

DOR: We have so much to go through that we felt that the bulk of the value is in the, in with the other assets. And we apologize. That won't happen again.

DOR: The valuation for the machinery and equipment and for the buildings and improvements are in large part based upon what the Taxpayer has presented to us. Each year the Taxpayer sent a reporting form for their machinery and equipment and that is based upon they present us with their additions and deletions of property. And we account for those additions and deletions for each piece of machinery and equipment. They are then, all of the equipment at the refinery is then trended to current dollars and depreciated on the sixteen-year life. Again, we limit the trending to the sixteen years. For the buildings and improvements the valuation is based upon information provided by the Taxpayer and what we observe in site visits. Our measurements and the observed condition of the buildings so that we can look and have, has a new roof been put on, have things occurred to each of the buildings that would extend the life or has a building, is it not as useful put in for an original purpose and that purpose has changed, things like that. Has it had extraordinary wear and tear on it because the process wears out the building faster? And we go through and look at each building and value each building based upon that. With regards to the cost approach again, we considered and do consider all three forms of depreciation. For the machinery and equipment, the physical deterioration is handled primarily through the trended historical costs less depreciation. We trend what they installed it for and then depreciate it from that value. For the buildings and improvements we utilize the Replacement Costs New Less Observed Depreciation, the RCNLD, that the cost approach in residential and commercial facilities that you would have seen in those cases. And again, we look at extraordinary

DOR: To a certain extent we're conceding without actually measuring asset by asset, allowing for functional obsolescence asset by asset, by using this methodology we're conceding that there is obsolescence or obsolescence present, functional obsolescence present, at these facilities. If you are going to ask us to point out specifically what assets are we talking about, whether it be, I think Bob and his colleagues talked to some of the older equipment and necessary to be replaced to bring it to current technology, that's what we're conceding there without getting into the individual assets by asset. It is something that, another way to look at it is if we were to trend that original cost to it's true reproduction cost, it would be $139 million higher. It's another way to look at it. We're not getting to the true reproduction cost, therefore we are conceding to the extent of fifteen percent functional obsolescence. And again, it ties in pretty close to what Bob had in his report.

BOARD MEMBER: I guess this is a simplistic question. However, if the Taxpayer bought a personal computer twenty years ago it probably would have cost him about $2400. It would now be sitting in some back room or someplace and it is more than sixteen years old. And you still are maintaining when you have all of this old stuff, you've got more than $130 million worth of it that is more than sixteen years old that that's what you valued it at, a hundred and, a hundred

DOR: Well and again, the twenty percent is not, that would be for your process machinery and equipment. The computer equipment is on at five...

BOARD MEMBER: I realize that you don't like the example.

DOR: Right, right. And again, it's, in the cost approach in the big picture we're taking accepted appraisal thought here and we're taking their historical costs. We are taking it from historical costs to current costs and then depreciating it based on that life and coming up with a value, with that market value that in our opinion is relative to its value to the owner. And again, it is based on a sixteen year life for the machinery and equipment and of course a forty year life for buildings and...

BOARD MEMBER: Okay. Let me try to give you my, don't argue with me about what the product is here. I won't give you a product. I want this to be a product that would be totally appropriate to talk about, alright? So whatever that is, you can put in the appropriate things for that. But if twenty years ago they paid $100,000 for it, now you're going to trend, you're going to come up with some, you've got some trend calculation you're going to make to say that is worth something today.

DOR: Say $150,000 rather than $100,000. It's worth $150,000 in current dollars, if you were to buy it today.

BOARD MEMBER: In current dollars.

on the cost approach and more reliance on other approaches. And with our hands tied, it's difficult to do.

DOR: In our observations we observed that the, we did not see a likelihood of the external obsolescence. Had we done so we would have, like I said, put less reliance on the cost approach and more reliance upon an income approach because all forms of depreciation are included in that income approach where measuring the economic is very difficult to do specific for the cost approach. We asked, again, for the income data and did not receive it. With regards to the market data approach, again, we considered it, but refineries are not like houses where there is a readily available market. And because of this, finding sales which are arms length and willing buyer willing seller is extremely difficult. What we have included here are, is an examination of the sales that ConocoPhillips used in their report and how we feel about, or I guess our opinion of the validity of those sales.

BOARD MEMBER: Seth, so is that all you have to say about the external obsolescence argument is you didn't see any indication of it?

DOR: Based on the lack of red flags, in other words, the market to book ratio and the lack of an incurement indication from the Taxpayer. And we'll go further into this when we

MR. AUSTIN: Pardon me. Let me finish. And a group of financial investors, savvy financial investors, for the Saint Paul Park Refinery, opened bidding processes on the Bakersfield. And I realize you said that was in a bankruptcy proceeding or (inaudible), but open bidders bidding for that refinery realizing they had to outbid other participants in that bidding process. None of those are comparable.

DOR: No. And it's not just my opinion. This is Stancil and Company's. Their methodology mirrored ours. It's a third, independent party, they track refinery sales, they specifically told us in response that their list will include operating refineries, it will exclude idle facilities and bankruptcies.

MR. AUSTIN: I understand when you said they were...

BOARD MEMBER: I'm going to stop this for a minute because you people are engaged in an argument here over the sales approach or the lack of an income approach. The Department had no way of doing an income approach because ConocoPhillips chose to not provide the information. They did not use the comparable sales approach. They used cost approach. So I really think you should focus your summary and questions on the question about the cost approach. The Board is obligated to assume that the Department has done a good job. You can challenge, I think you would be wise to challenge their cost approach, which is the only thing they've given us to evaluate, and not challenge their lack of effort and methodology to do something else that they didn't do. I hope I didn't say that too harshly to anybody, but I think we're wasting time.

MR. AUSTIN: No, I understand. Thank you very much.

MR. ADAIR: Okay. I'll be glad, I think it might help if I comment on some areas and we will comment about the sales and income approach although they didn't do it, they are an indication of external obsolescence that we contend is very obvious in a cost approach. And I'll mention the stock and book value comparisons that they've done. I will say that it may be an okay method for regulated rate-based utilities. That is a very different animal than the refining business. Internet searches, and (inaudible), and that's, those are companies that derive their income from tariffs, from electric utilities, those type of companies. Internet searches can, I mean I get a lot of my information from searching the internet. They could have searched the internet to find ample evidence of external obsolescence for age in the refining business. Regarding the sales, and now this again relates to the external obsolescence. Conrad mentioned when we're not making money that's when they sell it. That's a pretty good indication that there is external obsolescence out there. That they are, it's not a good time for refining and by the way, the reason it's not selling for high prices

DOR: I know at different times I raised my voice a little. I hope none of you think I was trying to be argumentative or anything that way. I just got going and...

DOR: The cost approach, in summary, the Department of Revenue feels our value is accurate and appropriate with the information that was provided. The cost approach is a relevant approach when valuing new assets and considering all forms of depreciation. We feel we've done that. ConocoPhillips is a sophisticated global oil giant. They have invested $386 million in this plant over the last four, five years. Their value that they want us to consider doesn't reflect those capital investments over the last five years. The market sales data for refineries should be treated with care and it is inappropriate to consider sales over a small portion of the refinery business cycle such as the bottom or trough of that cycle. The DOR considered market sales and dismissed them as not representative of arms length transactions and lack of true comparability with the subject refinery. Information necessary to complete an income approach estimate was not made available to the DOR. You haven't heard that one yet. Using comparable properties for your income and expense information as performed by Mr. Adair is not accepted methodology and not found in accepted appraisal textbooks. That's it.