

**BEFORE THE COURT OF TAX APPEALS
STATE OF KANSAS**

IN THE MATTER OF THE
EQUALIZATION APPEALS OF
EXXONMOBIL OIL CORPORATION
FOR THE YEAR 2012 IN GRANT,
HASKELL, KEARNY, MORTON, AND
STEVENS COUNTIES, KANSAS

Docket Nos. 2012-6593-EQ thru
2012-6711-EQ
2012-6540-EQ thru 2012-6592-EQ
2012-6712-EQ thru 2012-6800-EQ
2012-6801-EQ thru 2012-6849-EQ
2012-6887-EQ thru 2012-7698-EQ

IN THE MATTER OF THE
EQUALIZATION APPEALS OF XTO
ENERGY, INC. FOR THE YEAR 2012
IN GRANT, HASKELL, KEARNY,
AND STEVENS COUNTIES, KANSAS

Docket Nos. 2012-6200-EQ thru
2012-6203-EQ
2012-6204-EQ thru 2012-6215-EQ
2012-6216-EQ thru 2012-6471-EQ
2012-6527-EQ thru 2012-6539-EQ

IN THE MATTER OF THE
EQUALIZATION APPEALS OF
EXXONMOBIL OIL CORPORATION
FOR THE YEAR 2012 FROM
SEWARD COUNTY, KANSAS

Docket Nos. 2012-6850-EQ thru
2012-6886-EQ

IN THE MATTER OF THE
EQUALIZATION APPEALS OF XTO
ENERGY, INC. FOR THE YEAR 2012
FROM SEWARD COUNTY, KANSAS

Dockets Nos. 2012-6472-EQ thru
2012-6526-EQ

**ORDER ON CROSS MOTIONS
FOR SUMMARY JUDGMENT**

Now the above-captioned matters come on for consideration and decision by the Court of Tax Appeals of the State of Kansas. These are equalization appeals relating to the valuation of a multitude of gas wells located in Grant, Haskell, Kearny, Morton, Stevens, and Seward Counties.

The Court conducted oral arguments on August 1, 2013, regarding cross motions for summary judgment. Taxpayers appeared by their attorney of record Jarrod C. Kieffer of the firm Stinson Morrison Hecker LLP. The Counties of Grant, Haskell, Kearny, Morton, and Stevens (the “Five Counties”) appeared by their attorney of record Eric I. Unrein of the firm Frieden, Unrein & Forbes, LLP. Seward County (“Seward County”) appeared by its attorney of record Daniel H. Diepenbrock. The Five Counties and Seward County are sometimes collectively referred to as the “Counties.”

In an Order issued May 22, 2013, the Court requested that the parties file cross motions for summary judgment addressing the following issues:

ISSUE 1: Is the IPV [in-place value of reserves] methodology a deviation from the [Division of Property Valuation’s 2012 Year Oil & Gas] Guide?

ISSUE 2: If the IPV methodology is a deviation from the Guide, was the Counties’ deviation from the Guide proper under Kansas law?

Issue 2 has three sub-issues:

1. *Must the deviation be specific to individual pieces of property?*
2. *Did the Counties have “just cause” for deviation?* This issue has two subparts:
 - i. What are the legal standards for “just cause”?
 - ii. When determining whether the Counties had just cause for deviation, what point in time should be examined? That is, should the analysis focus on the information and evidence that is currently available, or should the analysis focus on the information and evidence that was in the Counties’ possession when they deviated from the Guide?
3. *Did the Counties have “proper documentation,” as that phrase is used on page 39 of the Guide?* This issue has two subparts:

- i. What is “proper documentation,” as that term is used on page 39 of the Guide?
- ii. When determining whether the Counties had “proper documentation,” what point in time should be examined? That is, should the analysis focus on the documentation that is currently available, or should the analysis focus on the documentation that was in the Counties’ possession when the Counties deviated from the Guide?

On June 3, 2013, Taxpayers filed their *Motion for Summary Judgment* and their *Memorandum in Support of Motion for Summary Judgment*. On July 1, 2013, the Five Counties filed their *Memorandum in Opposition to Taxpayers’ Motion for Summary Judgment*, and Seward County filed its *Response to Taxpayers’ Motion for Summary Judgment*. Thereafter, on July 22, 2013, Taxpayers filed their *Reply in Support of Motion for Summary Judgment Against Seward County*.

Similar filings also occurred from reverse perspectives. On June 3, 2013, the Five Counties filed their *Motion for Summary Judgment* and their *Memorandum in Support of Motion for Summary Judgment*. On July 1, 2013, Taxpayers filed their *Response in Opposition to the Five Counties’ Motion for Summary Judgment*. Thereafter, on July 22, 2013, the Five Counties filed their *Reply to Taxpayers’ Response in Opposition to Summary Judgment*.

The Court now proceeds to consideration of the cross motions for summary judgment. After considering the arguments presented, and being fully advised of the premises, the Court finds and concludes as follows:

I.
Jurisdiction

This Court has jurisdiction of the subject matter and the parties, as appeals have been properly and timely filed pursuant to K.S.A. 79-1448 and K.S.A. 79-1609.

II.
Summary Judgment Standards

Motions for summary judgment are governed by K.S.A. 60-256 and Kansas Supreme Court Rule 141. See K.A.R. 94-5-15(d). Summary judgment is appropriate

when the pleadings, the discovery and disclosure materials on file, and any affidavits or declarations show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. K.S.A. 60-256. The purpose of summary judgment is to eliminate delay in legal disposition when there is no real issue of material fact. *Timi v. Prescott State Bank*, 220 Kan. 377, 386, 553 P.2d 315 (1976).

Summary judgment is a drastic procedural remedy. The movant has the strict burden of demonstrating that there are no factual questions and that judgment as a matter of law is appropriate. See *Saliba v. Union Pac. R.R. Co.*, 264 Kan. 128, 131, 955 P.2d 1189 (1998). “The trial court is required to resolve all facts and inferences which may reasonably be drawn from the evidence in favor of the party against whom the ruling is sought. (Citations omitted.)” *State ex rel. Stovall v. Reliance Ins. Co.*, 278 Kan. 777, 788, 107 P.3d 1219 (2005).

III.

Uncontroverted Facts

Upon review of the parties’ respective statements of uncontroverted facts, and the parties’ respective replies thereto, the Court finds that the following are uncontroverted facts herein for purposes of the respective motions for summary judgment:

1. Taxpayers own certain gas wells in Grant, Haskell, Kearny, Morton, Stevens, and Seward Counties that are the subject of these tax appeals (the “Subject Wells”). [**Taxpayers’ Memorandum in Support of Motion for Summary Judgment, Uncontroverted Fact (“TPUF”) #1**]
2. Except for indicating an incorrect assessment rate of 25% (rather than the correct rate of 30%) in some instances, Taxpayers accurately completed and timely submitted the oil and gas renditions required under K.S.A. 79-301 *et seq.* for the Subject Wells using the discounted cash flow methodology prescribed by the Division of Property Valuation’s 2012 Year Oil & Gas Guide (the “Guide”). [**TPUF #2**] [**Five Counties’ Memorandum in Opposition to Taxpayers’ Motion for Summary Judgment, Additional Material Fact (“CAMF”) ##70 & 73**]
3. Thomas Fuhrmann (“Fuhrmann”) is an owner of Landmark Appraisal, Inc. (“Landmark”), and is the County Appraiser for the Counties of Grant, Haskell, Morton, and Stevens. Another employee of Landmark – Thomas O. Scott – is the County Appraiser for Kearny County. For these five counties (the “Five Counties”), Fuhrmann is the person charged with valuing oil and gas wells. [**TPUF #3**] [**Five**]

**Counties' Memorandum in Support of Motion for Summary,
Uncontroverted Fact ("COUF") #22]**

4. Kerrie Huskey ("Huskey") is the Deputy Appraiser for Seward County and its oil and gas appraiser. [Seward County's *Response to Taxpayer's Motion for Summary Judgment* ("Seward's Response") regarding TPUF #3] [Seward's Response, Additional Material Fact ("SAMF") #23]

5. Neither Fuhrmann nor Huskey is aware of any renditions that were filled out by Taxpayers incorrectly (except for indicating an incorrect assessment rate in some instances) according to the Guide. [TPUF #4] [CAMF ##70 & 71]

6. Fuhrmann used an in-place value of reserves ("IPV") methodology for valuing gas wells in major fields for the 2012 tax year. Fuhrmann does not use an IPV methodology for all other Kansas gas fields ("AOK") gas wells. Nor has he attempted to develop an IPV methodology for valuing AOK gas wells.¹ [TPUF #5]

7. Major field gas wells are identified in the Guide in Table A at p.40. Pursuant to the Guide, at p.41, AOK gas fields are all gas fields in Kansas other than those listed in Table A (Major Proven Gas Fields and Areas) and those included in Table C (Coalbed Methane Gas Fields). [TPUF #6]

8. The IPV method is a sales comparison approach to valuing gas wells. [TPUF #7] [COUF #2]

9. The IPV methodology developed by Fuhrmann is applied² as follows to value gas wells in major fields: [TPUF #8]

- a. Fuhrmann reviews sales of natural gas wells as reported in commercial publications, including the publication IHS Drilling Wire. For tax year 2012, Fuhrmann analyzed information only from IHS Drilling Wire. Fuhrmann attempts to exclude sales that do not have a majority of their wells in the mid-continent region (which includes Kansas) and sales that are mostly oil wells. He reviews and analyzes the published information for pertinent sales for the three years prior to the tax year at issue, and creates files in which he records the information. The

¹ The Five Counties point out that the Guide recognizes the IPV method is an appropriate alternate valuation method only for natural gas properties in "major proven gas areas and fields." See Division of Property Valuation's 2012 Year Oil & Gas, pp.37-44.

² Huskey implemented this approach for Seward County by using Fuhrmann's table.

published information typically describes only the price at which the reserves changed hands, the size of the reserves in-place, and the location of the reserves. By dividing the price paid by the size of the reserves purchased, an IPV value for each reported transaction is calculated in terms of dollars per Mcf. [TPUF #8(a)] [CAMF ##62 & 63] [COUF ##7, 9, 10, 28, 29, & 38] [Five Counties' *Reply to Taxpayers' Response in Opposition to Summary Judgment* ("Counties' Reply") regarding COUF ##7 & 28]

- b. From these sales, Fuhrmann excludes "outliers," those sales that he determines are on the high-end or low-end that influence the mean, then uses his judgment to select a midpoint value for each Mcf that he incorporates into IPV tables he develops for application by the counties with gas wells in major fields (the "Fuhrmann IPV Tables"). [TPUF #8(b)] [COUF #10 & 29]
- c. Fuhrmann inserts the selected midpoint value into the 200,000 to 400,000 Mcf strata of gas reserves of the valuation table he develops for Grant, Haskell, Kearny, and Stevens Counties. [TPUF #8(c)] [COUF #29]
- d. Thereafter Fuhrmann calculates the remaining categories for the IPV tables for Grant, Haskell, Kearny, and Stevens Counties as follows: The rate (or price) for the first bracketed range (0 to 100,000 Mcf range) is calculated as .6250 of the midpoint range (200,000 to 400,000 Mcf range). The second bracketed range (100,001 to 200,000 Mcf range) is calculated at .8125. The fourth bracketed range (400,001 to 700,000 Mcf range) is calculated at 1.1875, and the fifth bracketed range (700,001 and up) is calculated at 1.3750. [TPUF #8(d)] [COUF ##23, 24, 25, & 29]
- e. Fuhrmann then calculates the IPV table for Hamilton, Stanton, and Morton Counties by multiplying the bracketed ranges he developed for the Grant, Haskell, Kearny, and Stevens Counties table by .8333. [TPUF #8(e)] [COUF ##23, 26, & 30]
- f. In or about 2010, Fuhrmann began to apply the IPV table on a progressive or graduated basis, meaning that the first 100,000 Mcf of gas reserves were valued at the value for that range, the second 100,000 Mcf of gas reserves were valued at the

corresponding value for that range, and so on. [TPUF #8(f)]
[COUF #27]

- g. Fuhrmann developed separate valuation tables for BP American Production Co., a subsidiary of BP plc (“BP”) wells, under which BP’s gas wells are given a value that is 25% lower than the values set by the IPV tables referenced in Findings of Fact 8(c) through 8(e). [TPUF #8(g)]

10. As described in Uncontroverted Fact Number 9 above, and before the Five Counties and Seward County (the “Counties”) began to receive natural gas renditions for the 2012 tax year, Fuhrmann completed his market analysis and developed the IPV tables the Counties would use for tax year 2012. [CAMF #62]

11. For tax year 2012, Fuhrmann determined on a general basis (rather than a well-by-well basis) that the discounted cash flow (“DCF”) methodology would not achieve fair market value.³ This determination was made before the Counties evaluated the renditions for the year. Fuhrmann therefore instructed the Counties’ appraising personnel to use his IPV methodology unless they found individual circumstances that justified the use of the DCF methodology. In particular, Fuhrmann instructed the appraisers to value each gas well by looking at the basic two numbers of DCF value and IPV value and, *if* the appraisers found information in the individual renditions (which used the DCF valuation method) indicating the IPV method did *not* better reflect market value, then they had the authority and responsibility not to use the IPV value. [TPUF #10] [COUF #34]

12. After reviewing early natural gas rendition filings, Fuhrmann determined which methodology – DCF or IPV – was a better indicator of market value⁴ and explained to the other appraisers working on the oil and gas renditions in the Counties what he thought was “going on between the schedule [DCF] and the IPV value.” Fuhrmann believed that one reason for the differences between the DCF value and the IPV value is that the DCF methodology is highly dependent on the preceding year’s annual average gas price, and gas prices had dropped in the preceding year. Fuhrmann also believed, based on his experience, that the market value of a particular property is not so heavily dependent on the preceding year’s average gas price, especially in the Counties’ “major proven gas areas and fields,” and this belief informed his initial judgment that the DCF value would not

³ Huskey drew the same conclusion on behalf of Seward County. [SAMF #28]

⁴ Huskey made the same comparison and drew the conclusion on behalf of Seward County that the IPV methodology better represented market value. [SAMF #33]

represent market value in 2012. [TPUF #9] [CAMF #64] [COUF ##22, 31, 32, & 34]

13. Fuhrmann's practice of valuing wells – implemented by the Counties for tax year 2012 in these cases – used the IPV methodology unless a peculiarity with the well justified use of the DCF methodology. Because only the valuation numbers generated by the two (DCF and IPV) methodologies were typically available to look at on an individual well basis, peculiarities were not indicated and the IPV value was used rather than the DCF value, regardless of whether the IPV value was higher or lower than the DCF value.⁵ [TPUF ##11 & 12] [COUF #58]

14. Fuhrmann's practice of valuing wells – implemented by the Counties for tax year 2012 in these cases – assumes that, if the taxpayer does not complete the "owner" column (Column B) of the rendition, then the value shown by Column A of the rendition (which uses the DCF methodology) provides the lowest possible value for the particular well, and thus the most favorable valuation from the taxpayer's perspective.⁶ Accordingly, if the taxpayer does not complete Column B, typically the IPV value will be applied to that well. [TPUF ##12 & 13]

15. Fuhrmann views IPV value of a particular well as its market value based on his market analysis. [TPUF #14]

16. Fuhrmann believes that the statutory factors listed in K.S.A. 79-331 are relevant to the valuation of oil and gas wells and must be taken into account regardless of which methodology is used to value oil and gas well property. [TPUF #15]

17. Fuhrmann believes that K.S.A. 79-1456 requires county appraisers to follow the Division of Property Valuation's 2012 Year Oil & Gas Guide (the "Guide") unless a statutory exception is met. [TPUF #17]

18. Fuhrmann believes that the base or default method of valuing gas well property under the Guide is the DCF methodology, but also that the IPV methodology is authorized under the Guide in certain circumstances. [TPUF #18]

⁵ Huskey also used the IPV value regardless of whether it was higher or lower than the DCF value. [SAMF #59] [Taxpayers' Reply to Seward County's Response to Taxpayers' Motion for Summary Judgment ("Taxpayers' Reply") regarding TPUF #15]

⁶ The same is also true for Huskey's determinations on behalf of Seward County. [SAMF ##31 & 34]

19. Fuhrmann determined the final value for all the subject wells in these tax appeal cases using the IPV methodology rather than the DCF methodology.⁷ [TPUF #19]

20. Based on his experience and analysis, Fuhrmann determined that the DCF methodology was “way too volatile to have any bearing on market value,” (b) that as a general matter, for tax year 2012, DCF values did not appropriately reflect market value,⁸ and (c) that use of IPV values was justified to achieve the statutory mandate for fair market value.⁹ [Five Counties’ Memorandum in Opposition to Taxpayers’ Motion for Summary Judgment (“Counties’ Response”) regarding TPUF #17] [COUF #34]

21. Each individual property herein was analyzed separately by the Counties’ appraiser staff person assigned to work that property’s rendition. [Counties’ Response regarding TPUF #19] [CAMF #66, 67, 68, 69, 70, & 100] [SAMF ##24, 26, 27, 30, 32, 40, 51, 53, & 56 (first two sentences)] [COUF ##34, 40, 41, 42, 43, 44, 45 (the first sentence), 46 (the first sentence), 47]

22. For each individual property herein, the Counties’ appraiser personnel specifically made calculations and comparisons required for IPV valuation as well as verifying the DCF valuation on Column A; they documented these calculations and comparisons, and recorded the percentage differences between the two methodologies, in the operator files prepared for each individual property; and then the Counties’ appraisal personnel determined that these calculations corroborated and substantiated both (a) Fuhrmann’s (and Huskey’s) initial judgment that DCF valuation did not represent market value in 2012 and (b) the appraisers’ judgment to the same effect. The Counties thus determined, based solely on a comparison to the IPV value, that the DCF value did not accurately reflect market value. [Counties’ Response to TPUF #17] [CAMF #66, 67, 68, 69, 99, & 100] [SAMF ##24, 26, 27, 30, 32, 34, 36, 40, 41, 44, 46, 49, 51, 53, & 56 (first two sentences)] [COUF ##3, 4, 17 (except for the first sentence), 20, 33, 34, 36, 39 (except for

⁷ The same is also true for Huskey’s determination on behalf of Seward County. [SAMF #28] [Taxpayer’s Reply regarding TPUF #22]

⁸ Huskey also believed, based on her experience, that the DCF value likely did not represent market value. [Seward’s Response regarding TPUF #15] [SAMF ##28, 46, 53, & 59]

⁹ Huskey followed the same view for Seward County. [SAMF ##34, 46, & 59] [Taxpayers’ Reply regarding SAMF #34]

the first sentence), 40, 41, 42, 43, 44, 45 (the first sentence), 46 (the first sentence), 47, 48, 60 (the first clause)]

23. When Counties calculated the IPV value for an individual property, they determined the rate – using a dollar amount per Mcf – that was appropriate for that particular property based on the IPV tables created through Fuhrmann’s market analysis (see Uncontroverted Fact 9 above). This rate was then used in the fourth step of IPV valuation as those steps are outlined in the Guide. **[SAMF ##27, 36, 37, 38, & 48 (first sentence)] [COUF #16, 20, 21, 39, 41, 42, & 44]**

24. The Counties’ appraiser personnel created document files for each individual property in which were included the operator’s initial rendition; the division order; the County’s worksheets for calculating the IPV valuation, calculating or verifying the DCF valuation, calculating any other valuation method used, and comparing the results under each valuation method; any materials generated or submitted at the informal hearings; and the final computer rendition, which reflects the County’s final certified valuations. **[CAMF #66, 67, 68, 69, 70, & 73] [SAMF #51] [COUF #17 (except for the first sentence), 19, 20, 34, 40, 41, 42, 44, 45 (the first sentence), & 46 (the first sentence)]**

25. For each and every individual property in these tax appeal cases (well in excess of 1,000 properties), a separate decision was made by the county appraiser offices to follow Fuhrmann’s recommendation and use the IPV value rather than the DCF value. **[Counties’ Response to TPUF #19] [SAMF #48 (first sentence), 49, 53, 56 (first two sentences), & 61 (second sentence)] [COUF ##34 & 42]**

26. Regarding the properties that are located in the Five Counties and the subject of these tax appeals, the average DCF value in each county was lower than that of the average IPV value, with the following differences for each of the Five Counties: Grant – 31.24% lower; Haskell – 35.93%; Kearny – 43.73%; Morton – 43.97%; and Stevens – 40.05%. **[COUF #49]**

27. The IPV methodology was developed over a number of years with input from operators and other members of the natural gas industry. The Counties have, from time to time prior to tax year 2012, applied this methodology to value natural gas properties in “major proven gas areas and fields.” Taxpayers and other operators have, from time to time prior to tax year 2012, adopted or accepted the use of IPV methodology for valuing natural gas properties. Taxpayers have not adopted, accepted, or endorsed use of the IPV methodology for tax year 2012 for the properties that are the subject of these tax appeals. **[SAMF ##29, 37, 38, 44, 45, 47, 54, 55, 57, 58, & 60] [COUF ##5, 11, 12, 37, 54, 55, 56, 57, 58, & 59] [Taxpayers’ Response in Opposition to the Five Counties’ Motion for Summary Judgment (“Taxpayers’ Response”) regarding COUF #37]**

IV.
*Controverted and Immaterial Facts
and Statements of Fact Tantamount to Conclusions of Law*

Upon review of the parties' respective statements of uncontroverted facts, and the parties' respective responses and replies thereto, the Court finds herein that the following are controverted facts or immaterial facts or tantamount to conclusions of law:¹⁰

The following numbered statements of facts contained in Taxpayers' *Memorandum in Support of Motion for Summary Judgment* are properly controverted by the Counties: 16.¹¹

The following numbered statements of additional material facts contained in the Seward County's *Response to Taxpayers' Motion for Summary Judgment* are properly controverted by Taxpayers: 48 (the second sentence).

Grant, Haskell, Kearny, Morton, and Stevens Counties (the "Five Counties") have filed a *Memorandum in Support of Motion for Summary Judgment*, and the following numbered statements of facts contained therein are properly controverted by Taxpayers: 6, 8, 16, 17 (the first sentence), 18, 35, 46 (except for the first sentence), 50, 51, 52, and 53.

The following numbered statements of additional material facts contained in the Five Counties' *Memorandum in Opposition to Taxpayers' Motion for Summary Judgment* are immaterial: 65, 72, 74, 75, 76, 77, 80, 81, 82, 83, 84, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 97, and 98.

The following numbered statements of additional material facts contained in the Seward County's *Response to Taxpayers' Motion for Summary Judgment* are immaterial: 25, 35, 42, 43, 52, and 62.

¹⁰ Controverted statements of fact are not identified in this Part IV as immaterial facts even though they may be both controverted *and* immaterial. Nor are controverted statements of fact identified in this Part IV as tantamount to conclusions of law even though they may be the latter. In other words, a controverted fact may also be immaterial or tantamount to a conclusion of law even though it is not identified as such in this Part IV.

¹¹ Seward County did not fully controvert Taxpayers' statement of fact number 16. **[Seward's Response regarding TPUF #16]**

The following numbered statements of additional material facts contained in the Five Counties' *Memorandum in Opposition to Taxpayers' Motion for Summary Judgment* are not actually statements of fact, but are statements of applicable law and regulations and thus tantamount to conclusions of law: 78, 79, 80, 85, 86, 87, 95, 96, 97, and 98.

The following numbered statements of additional material facts contained in the Seward County's *Response to Taxpayers' Motion for Summary Judgment* are not actually statements of fact, but are statements of applicable law and regulations and thus tantamount to conclusions of law: 39, 50, 56 (last two sentences), and 61 (first sentence).

The following numbered statements of facts contained in the Five Counties' *Memorandum in Support of Motion for Summary Judgment* are not actually statements of fact, but are statements of applicable law and regulations and thus tantamount to conclusions of law: 13, 14, 15, 39 (the first sentence), 45 (except for the first sentence), 60 (the second clause), and 61.

V.

*Legal Framework: The 2012 Oil and Gas
Appraisal Guide, and Deviation Therefrom*

Oil and gas wells are considered personal property in Kansas for purposes of valuation, assessment, and taxation. K.S.A. 79-329. In valuing personal property, the county appraiser's fundamental statutory obligation is to ascertain "fair market value." See, e.g., K.S.A. 79-501, 79-503a, 79-1439(a), and 79-1455. In determining the value of oil and gas properties, county appraisers are required to take into consideration the following items or factors:

- (1) the age of the well;
- (2) the quality of oil or gas being produced therefrom;
- (3) the nearness of the well to market;
- (4) the cost of operation;
- (5) the character, extent, and permanency of the market;
- (6) the probable life of the well;
- (7) the quantity of oil or gas produced from the property;
- (8) the number of wells being operated; and
- (9) such other facts as may be known by the appraiser to affect the value of the property.

K.S.A. 79-331(a); *see also Cimarex Energy Co. v. Seward County Bd. of County Comm'rs*, 38 Kan. App. 2d 298, 305, 164 P. 3d 833, 838 (2007). Subsection (d) of K.S.A. 79-331 establishes that the primary and predominant consideration in determining fair market value of oil and gas properties is the “actual value of oil and gas production severed from the earth.”

To assist county appraisers in valuing personal property, including oil and gas wells, the state director of property valuation has the responsibility to devise and prescribe guides for such valuation. K.S.A. 75-5105a(b). *See also* K.S.A. 79-1412a(b). As a general rule under K.S.A. 79-1456, county appraisers are required to follow the guide established by the director of property valuation for valuing oil and gas wells. *See also Cimarex*, 38 Kan. App. 2d at 299-300, 164 P. 3d at 835-36. K.S.A. 79-1456 provides in full as follows:

The county appraiser *shall follow* the policies, procedures and guidelines of the director of property valuation in the performance of the duties of the office of county appraiser.

The county appraiser in establishing values for various types of personal property, *shall conform* to the values for such property as shown in the personal property appraisal guides prescribed or furnished by the director of property valuation. *The county appraiser may deviate from the values shown in such guides on an individual piece of property for just cause shown and in a manner consistent with achieving fair market value.*

(emphasis added). Thus the statutory standard permitting deviation from the applicable guide requires a property-specific showing of just cause for such deviation. In addition, the valuation resulting from such deviation must also be shown to be consistent with achieving fair market value.

Pursuant to K.S.A. 75-5105a(b), the Director of Property Valuation – Division of Property Valuation, Kansas Department of Revenue – issued in January 2012 the 2012 Year Oil and Gas Appraisal Guide (the “Guide”). Guide, p.i, ¶2. This is the controlling guide in all the present tax appeal cases. The Guide reiterates the statutory requirement that the county appraiser must follow the Guide’s policies, procedures, and guidelines. *Id.* at p.i, ¶3. The director has created and adopted an assessment rendition form (the “Rendition Form”) implemented by the Guide. *Id.* at p.ii, ¶6. The value calculated in Column A of the Rendition Form – sometimes referred to as the “Schedule Value” or the “Guide Value” – is to be completed by using the Guide’s instructions without departure, adjustment, or change. *Id.* Column A uses a modified discount cash flow (“DCF”) methodology to arrive at a valuation for oil and gas properties. *Board of Ness County Comm'rs v. Bankoff Oil*

Co., 265 Kan. 525, 529, 960 P.2d 1279, 1283 (1998); *Cimarex*, 38 Kan. App. 2d at 306, 164 P.3d at 838-39; *In re Equalization Appeals of EOG Resources, Inc.*, 46 Kan. App. 2d 821, 826, 265 P.3d 1207, 1212 (2011). Column B of the Rendition Form, entitled “Owner,” is used by taxpayers to make requested adjustments to the value derived in Column A. Guide, p.ii, ¶¶6 & 8. Column C of the Rendition Form, entitled “Appraiser,” is used by county appraisers to make adjustments to the value derived in Column A or to finalize the value of the property, or both. *Id.* at p.ii, ¶¶6 & 7.

The in-place valuation of reserves (“IPV”) methodology is accepted in the oil and gas industry for valuation purposes, and – for major proven gas areas and fields – is also “an acceptable, alternative valuation tool” for use by county appraisers under certain circumstances. *Id.* at p.39. The IPV methodology is a sales comparison approach to valuing gas wells. *Id.* The Guide expressly notes as follows:

[T]he [IPV] value, a measure of market value, should be determined using *the same appraisal standards* as any other type of property being valued by the market [sales comparison] approach. Comparable sales data is essential to this process, and as with any type property, more than one sale should be analyzed to more accurately determine value. *Comparable properties with limited adjustments* from similar producing areas should be used when utilizing this [IPV] approach. If using this method as a “check” to the guide [DCF value], and then possibly as a final determination of value, the appraiser must be certain to *consider all aspects of the subject property, as well as, the comparables used.*

Id. (emphasis added). The Guide then outlines a series of steps to calculate the IPV value, and concludes as follows:

The resulting [IPV] value *should then be analyzed using the comparable sales information gathered to determine the market value of the lease.* The appraiser must use the KS Dept of Revenue’s Oil and Gas Guide’s Schedule, Column A to first determine [DCF] value, which may be compared to the [IPV] established market value. If the appraiser determines the guide value to be representative of market value, it should be used. If the appraiser determines the guide [Column A – DCF] value does not accurately reflect market value, he/she has the authority and responsibility to deviate from the guide [DCF] valuation on individual properties with just cause and proper documentation.

Id. (emphasis added).

As previously noted, the IPV methodology is acknowledged by the Guide as “an acceptable, alternative valuation tool” for use by county appraisers. *Id.* The first legal question facing this Court in these tax appeal cases is whether the IPV methodology constitutes a “deviation” from the Guide. Although in some of their summary judgment documents the Counties appear to concede the IPV methodology is a deviation,¹² they asserted at oral argument that it is *not* a deviation. In any event, we hold that IPV methodology is a deviation from the Guide. We base this conclusion on the clear language of the Guide itself. The entire sentence acknowledging the acceptability of IPV values states as follows: “The [IPV] methodology is an acceptable, alternate valuation tool for the [county] appraiser to ascertain market value if he/she *chooses to deviate from the guide [Column A - DCF] value on individual properties.*” *Id.* Thus the Guide itself expressly identifies the IPV methodology as a “deviation.” Use of the IPV methodology is conditional under the Guide – it can be implemented only if the appraiser determines to “deviate,” a term also used in K.S.A. 79-1456 which triggers the statutory requirements of “just cause shown” for an “individual piece of property.” The Guide reiterates these statutory requirements for a deviation. See, e.g., Guide, p.i, ¶3.

The conclusion that IPV methodology constitutes a deviation is reinforced by other language in the Guide implicitly noting that the IPV methodology requires just cause on a property-specific basis. Immediately after discussing the IPV methodology and the calculation steps, the Guide directs the county appraiser to use the DCF (Column A) value. Only if the county appraiser determines that the DCF (Column A) value does not accurately reflect market value does the appraiser have “the authority and responsibility *to deviate from the guide [DCF – Column A] valuation on individual properties with just cause. . . .*” Guide, p.39. Thus any valuation method other than the DCF method is a deviation and requires just cause on a property-specific basis. Based on page 39 of the Guide, it is reasonable to interpret other “Guide value” references to similar effect. At page i, ¶3, the Guide reads as follows: “If the lease valuation estimated by use of the oil and gas guide [Column A – DCF value] does not reflect market value, . . . the [county] appraiser has the authority to review and adjust the valuation to market value *for just cause.*”

¹² *Five Counties’ Memorandum in Opposition to Taxpayers’ Motion for Summary Judgment*, p.28 (“IPV is a Preferred Deviation” and these appeals “involve an appraiser’s deviation from the Guide’s schedule method in favor of [the IPV] method. . . .”). Seward County has adopted all the arguments, authorities, reasons, and rationales set forth in the *Five Counties’ Memorandum in Opposition to Taxpayers’ Motion for Summary Judgment*. See *Seward County’s Response to Taxpayer’s Motion for Summary Judgment*, pp.14-15.

(emphasis added). Use of the IPV methodology would be such an adjustment requiring just cause.

As a deviation from the Guide, use of the IPV methodology is only permitted upon a proper showing by the county appraiser that just cause for such deviation exists determined on a property-specific basis. *See Cimarex*, 38 Kan. App. 2d at 300, 164 P.3d at 835 (“Because the County in this case never showed ‘just cause’ to deviate from the valuation method prescribed by the Guide, Cimarex’s confidential in-house reserves information was not relevant to a valuation of the property.”), 38 Kan. App. 2d at 309, 164 P.3d at 840 (“Any deviation from the Guide on an individual piece of property requires the County to show ‘just cause.’”). In addition to showing just cause on a property-specific basis, the county appraiser must also develop proper documentation to substantiate such just cause. Guide, p.i, ¶3, & p.39.¹³ Although the “proper documentation” requirement appears only in the Guide and not in K.S.A. 79-1456, it is a reasonable requirement given the necessity of just cause, and the context of the valuation and appeals process, and it is within the director of property valuation’s statutory authority and responsibility to go beyond the bare language of valuation statutes and establish detailed guidelines. *See* K.S.A. 75-5105a(b); *see also* K.S.A. 79-1412a(b). Administrative rules and regulations are presumed to be valid. *In re Appeal of the City of Wichita*, 277 Kan. 487, 495, 86 P.3d 513, 519 (2004). The one who challenges them has the burden of showing their invalidity. *Id.* Here, the Counties have not briefed or otherwise presented any argument that the Guide’s requirement for proper documentation somehow exceeds the director’s authority. Moreover, the “proper documentation” requirement of the Guide would appear to meet the validity standard that administrative rules and regulations “must be within the statutory authority conferred upon the agency and must be appropriate, reasonable, and not inconsistent with the law.” *Id.*

The Counties valued all the gas wells in these tax appeal cases using the IPV methodology and thus “deviated” from the Guide by not using the DCF values for the subject wells. We will next consider whether those deviations properly complied with the statutory and Guide requirements.

VI.

The Propriety of Deviation in the Present Cases

We have concluded – in Part V above – that the in-place valuation of reserves (“IPV”) methodology is a deviation from the 2012 Year Oil and Gas Appraisal Guide

¹³ The proper documentation must also be furnished to the taxpayer in a timely fashion. Guide, p.i, ¶3, & p.ii, ¶7.

(the "Guide"). Such deviation is proper only on (i) individual properties, (ii) for just cause, and (iii) with proper documentation substantiating just cause. K.S.A. 79-1456; Guide, p.i, ¶3, & p.39. We proceed now to consider each required element in the context of the uncontroverted facts presented in these tax appeal cases.

A. Property-Specific Analysis. The first requirement for using the IPV methodology is that such deviation must be determined "on an individual piece of property." K.S.A. 79-1456; Guide, p.i, ¶3, & p.39. In other words, the analysis must evaluate the propriety of deviation on a property-specific basis, not as a matter of collective or mass analysis. Based on the uncontroverted facts, the Counties engaged, to some extent, in a property-specific analysis for each of the subject wells. Each individual property herein was analyzed separately by the Counties' appraiser staff person assigned to work that property's rendition. For each individual property, the Counties' appraiser personnel specifically made calculations and comparisons required for IPV valuation, as well as verifying the Guide value (the value in Column A derived using a discounted cash flow ("DCF") methodology). They next computed the percentage differences between the two methodologies, concluded that the IPV value reflected the fair market value of the property better than the DCF value, and certified the IPV value. Thus, for each and every individual property in these tax appeal cases, a separate decision was made by the county appraiser to use the IPV value rather than the DCF value.

On the other hand, the uncontroverted facts also give rise to a strong perception that collective or mass appraisal analysis occurred here. Before the Counties began to receive natural gas renditions for the 2012 tax year, Fuhrmann completed a market analysis of sales of gas wells reported in the IHS Drilling Wire, and developed IPV tables for the Counties based thereon, which tables were used by the Counties for tax year 2012. Based on Fuhrmann's analysis, Fuhrmann and Huskey determined as a preliminary and general matter that the Guide value – based on a discounted cash flow ("DCF") methodology – would not achieve fair market value for gas wells in major fields for tax year 2012, and that IPV value of a particular well reflected its market value. This determination was made before the Counties evaluated the renditions for the year. No subsequent facts, information, or circumstances disabused either Fuhrmann or Huskey in holding to this determination. Fuhrmann instructed the Counties' appraising personnel to use IPV methodology for valuation unless they found individual circumstances that justified the use of the DCF methodology. Indeed, Fuhrmann believed that what caused the disconnect between DCF values and fair market values was the *general or overall* drop in the natural gas price during the year prior to 2012. DCF valuation is highly dependent on the preceding year's average gas price. Fuhrmann believed the DCF methodology was "way too volatile to have any bearing on market value" and that a gas well's actual fair market value was not, as a general rule, heavily dependent on the preceding year's average gas price. These beliefs were essentially a

comprehensive rejection of the Guide's favored method for valuing gas wells. These beliefs were not derived from analysis of the discrete characteristics of individual gas wells. See K.S.A. 79-331(a).

In due course, all the subject gas wells in these tax appeal cases were valued using the IPV methodology rather than the DCF methodology. In the case of each well, the Counties determined, based solely on a comparison to the IPV value, that the DCF value did not accurately reflect market value. On balance, based on all the uncontroverted facts, we conclude that mass or collective analysis predominated in the Counties' valuations of the Taxpayers' wells herein. Nothing in the controverted or immaterial facts¹⁴ – if viewed in the light most favorable to the Counties – would alter this conclusion. No property-specific analysis occurred to justify use of the IPV methodology. The Counties' approach herein does not satisfy the requirement for determining just cause *on individual properties*.

B. Just Cause. The second requirement for using the IPV methodology is that such deviation must be based on “just cause.” K.S.A. 79-1456; Guide, p. i, ¶3, & p.39. Even if we had concluded the Counties engaged in property-specific analysis,¹⁵ their deviation would still fail to meet the requirement for just cause in these tax appeal cases.

1. The Time Period for Measuring Just Cause. Just cause is to be measured at the time a county decides to deviate from the Guide. The fundamental rule of statutory construction is that legislative intent and purpose govern. *In re Tax Appeal of Collingwood Grain, Inc.*, 257 Kan. 237, 246, 891 P.2d 422, 429 (1995); *In re Appeal of Cessna Employees Credit Union*, 47 Kan. App. 2d 275, 280, 277 P.3d 1157, 1160-61 (2012). When courts examine a statute and find that its language is plain and unambiguous, they must give such language full effect as an expression of the legislature's intent. *State v. Valladerez*, 288 Kan. 671, 675-76, 206 P.3d 879, 883 (2009). Ordinary words are generally to be given their ordinary or plain meaning. *State v. Gracey*, 288 Kan. 252, 257, 200 P.3d 1275, 1280 (2009); *Director of Property Valuation*, 284 Kan. at 602, 161 P.3d at 762 (2007). Only if statutory language is ambiguous (that is, not plain), do courts properly resort to other principles of statutory construction or consult legislative history. *In re Tax Exemption Application of Mental Health Ass'n of the Heartland*, 289 Kan. 1209, 1211, 221 P.3d 580, 583 (2009); *Valladerez*, 288 Kan. at 675-76, 206 P.3d at 883-84. And finally, judicial interpretation of a statute must be reasonable and sensible. *Double M. Constr., Inc. v. State Corp. Comm'n*, 288 Kan. 268, 272, 202 P.3d 7, 11 (2009).

¹⁴ See Part IV above.

¹⁵ See Part VI.A. above.

In this instance, the statute expressly states that deviation from the Guide requires “good cause *shown*.” K.S.A. 79-1456. The statute uses past tense rather than future tense. The plain and ordinary meaning of the word “shown” indicates that just cause must be established and demonstrated by the time of the deviation. Accordingly, just cause herein is to be measured at the time the Counties decided to deviate from the Guide. This interpretation is buttressed by a recent decision from the Kansas Court of Appeals.

In *Cimarex Energy Co. v. Seward County Bd. of County Comm’rs*, 38 Kan. App. 2d 298, 164 P. 3d 833 (2007), the Kansas Court of Appeals prohibited a county’s discovery of taxpayer’s confidential in-house information about its remaining recoverable oil and gas reserves without a prior showing of just cause to deviate from the guide. The case arose as a tax appeal dispute over the fair market value of a well in which the county had used the guide valuation method. The requested confidential information was not necessary under the guide to calculate value. Accordingly, the court prohibited the discovery because “the County in this case never showed ‘just cause’ to deviate” from the guide. *Id.* at 300, 164 P.3d at 835. The tax litigation was in its early stages, the discovery phase, when an interlocutory appeal brought it to the appellate court. Thus the information necessary to show just cause had not been, and could not be, developed by the time of the initial tax litigation. The Kansas Court of Appeals held as follows:

The County cannot circumvent the “just cause” rule under K.S.A. 79-1456 by obtaining information that is not called for under the Guide through a discovery order and using this information to establish the value of Cimarex’s properties [through a valuation method that deviates from the Guide].

Id. at 310, 164 P.3d at 841.

The clear implication of the *Cimarex* case, as applied here, is that the examination of just cause must be measured based on the information available to the county when it decides to deviate from the Guide, and deviation at the litigation stage is too late. Thus information obtained through discovery (even if allowed) or otherwise developed since filing a tax appeal in this Court can not be used to show, after the fact, just cause to deviate. This supports our conclusion that just cause is to be measured based on the information used by a county when it decides to deviate from the Guide. Subsequent information obtained or developed after the fact would not be appropriate to consider in evaluating whether just cause existed.¹⁶

¹⁶ The Counties have not, as a basis for just cause, proffered any information developed or obtained after their decision to deviate. We recognize, however, that significant discovery in these tax appeal cases has not begun.

Finally, measuring just cause at the time of deviation is also reinforced by the Guide's language that deviation must be made "*with* just cause and proper documentation." Guide, p.39 (emphasis added). This language, especially the word "with," presupposes the existence of just cause before the county appraiser decides to deviate. It also presupposes the existence of proper documentation at the time of deviation.¹⁷ Satisfying the "proper documentation" requirement before deviation inherently entails basing that decision on the information available (and properly documented) at the time of the decision.

2. The Standards for Measuring Just Cause. The term "just cause" is not defined in either K.S.A. 79-1456 or the Guide. Black's Law Dictionary, however, defines "just cause" to mean "a cause . . . based on reasonable grounds, . . . a fair and honest cause or reason, regulated by good faith . . . legal or lawful ground for action. . . ." Black's Law Dictionary (6th ed. 1990), p.863. In interpreting the phrase "without just cause" in the context of attorneys fees, the Kansas Supreme Court has equated "just cause" with "a bona fide and reasonable factual ground" and as being "not arbitrary, capricious, or in bad faith." *Clark Equipment Co. v. Hartford Accident and Indemnity Co.*, 227 Kan. 489, 494, 608 P.2d 903, 907 (1980). Therefore, as suggested by the Counties, the concept of "just cause" incorporates both an objective element of reasonableness as well as a subjective element of honesty or good faith. If either element is missing, then just cause does not exist.

For our conclusion that just cause is lacking in these tax appeal cases, we focus on the objective aspect of reasonableness. Did the Counties have a reasonable basis to deviate from the Guide when they determined to use IPV methodology to value the subject gas wells? It is uncontroverted that the Counties determined the Guide or DCF value for each well did not accurately reflect market value, and that this determination was based solely on a comparison to the IPV value. Given that, the Counties' actions were unreasonable for two reasons as discussed in Parts VI.B.3 and VI.B.4 below.

3. The Illogic of the Counties' Asserted Basis for Just Cause. "Logic" is the science that deals with the principles and criteria of validity of inference and demonstration.¹⁸ Logical arguments are typically constructed as deductive

¹⁷ See Part VI.C. below.

¹⁸ <http://www.merriam-webster.com/dictionary/logic>;
<http://dictionary.reference.com/browse/logic>; "Logic, Formal," Encyclopedia Britannica Macropedia, Volume 11, p.38 (15th ed. 1974).

syllogisms, with a major and minor premise that lead to a deduction or conclusion.¹⁹ An argument is considered “valid” or “logical” if the conclusion must necessarily follow from the premises: in other words, if the premises are true, then the conclusion must necessarily be true.²⁰ In contrast, an argument is considered “invalid” or “illogical” if the conclusion does *not* necessarily follow from the premises.²¹ In other words, an argument is invalid or illogical if it involves erroneous reasoning that renders the argument logically unsound.²² An invalid argument is also called a “fallacy.”²³ “Circular reasoning” or a “circular argument” is one common example of an invalid argument or fallacious reasoning.²⁴ The formal name for circular reasoning is *petitio principii*, which is Latin for “assuming the initial point.”²⁵ It is a fallacy that argues the conclusion as a premise.²⁶ It is also sometimes referred to as “begging the question.”²⁷

¹⁹ <http://www.merriam-webster.com/dictionary/syllogism>;
<http://dictionary.reference.com/browse/syllogism>; “Syllogism” and “Syllogism, Categorical,”
Encyclopedia Britannica Micropedia, Volume VI, p.729 (15th ed. 1974); “*Logic, Formal,*”
Encyclopedia Britannica Macropedia, Volume 11, p.50 (15th ed. 1974).

²⁰ <http://www.merriam-webster.com/dictionary/valid>;
<http://dictionary.reference.com/browse/valid>; “*Logic, Formal,*” Encyclopedia Britannica
Micropedia, Volume VI, p.300 (15th ed. 1974); “*Syllogistic,*” Encyclopedia Britannica
Macropedia, Volume 17, p.891 (15th ed. 1974); “*Logic, Applied,*” Encyclopedia Britannica
Macropedia, Volume 11, p.28 (15th ed. 1974); “*Logic, Formal,*” Encyclopedia Britannica
Macropedia, Volume 11, p.39 (15th ed. 1974).

²¹ <http://www.merriam-webster.com/dictionary/invalid>;
<http://dictionary.reference.com/browse/invalid>.

²² <http://www.merriam-webster.com/dictionary/fallacy>;
<http://dictionary.reference.com/browse/fallacy>.

²³ <http://www.merriam-webster.com/dictionary/fallacy>;
<http://dictionary.reference.com/browse/fallacy>.

²⁴ <http://www.merriam-webster.com/dictionary/circular>;
<http://dictionary.reference.com/browse/circular+reasoning>; “*Circular Argument,*”
Encyclopedia Britannica Micropedia, Volume II, p.944 (15th ed. 1974).

²⁵ <http://encyclopedia.thefreedictionary.com/circular+argument>; “*Circular Argument,*”
Encyclopedia Britannica Micropedia, Volume II, p.944 (15th ed. 1974).

²⁶ <http://www.merriam-webster.com/dictionary/circular>;
<http://dictionary.reference.com/browse/circular+argument>;
<http://dictionary.reference.com/browse/circular+reasoning>;

In these tax appeal cases, it is uncontroverted that the Counties determined the Guide or DCF value for each well did not accurately reflect market value, and that this determination was based solely on a comparison to the IPV value. This was and is the Counties' asserted justification for deviating from the Guide and using the IPV values, rather than the DCF values, for each of the subject gas wells. This is circular reasoning. We can construct the Counties' argument in syllogistic form as follows:

Major Premise:	Under the Guide, just cause is required to use IPV value as the proper valuation method.
Minor Premise:	IPV value establishes just cause.
Conclusion:	Therefore, IPV value is a proper valuation method under the Guide.

The circularity is obvious. The Counties have proffered no other basis for deviating from the Guide and using IPV methodology than IPV valuations (as compared to DCF valuations).

As we have outlined above, an argument based on circular reasoning is invalid, illogical, and fallacious. We therefore hold that using circular reasoning as the basis for a decision to deviate from the Guide is objectively unsound and does not meet the standard of reasonableness. "[A] circular argument violates the criterion of acceptability."²⁸ Because just cause requires a reasonable decision, a decision based on circular reasoning cannot qualify as "just cause."

4. The Counties' Failure to Implement the Requirements of K.S.A. 79-331 or to Satisfy Applicable Appraisal Standards. Even if we had concluded the Counties engaged in property-specific analysis,²⁹ and even if we ignored the circularity of their reasoning for deviation from the Guide,³⁰ the Counties would still

<http://encyclopedia.thefreedictionary.com/circular+argument>; "Circular Argument," Encyclopedia Britannica Micropedia, Volume II, p.944 (15th ed. 1974).

²⁷ <http://encyclopedia.thefreedictionary.com/circular+argument>.

²⁸ <http://grammar.about.com/od/c/g/circargterm.html> (quoting Damer, *Attacking Faulty Reasoning*, Wadsworth (2001)).

²⁹ See Part VI.A. above.

³⁰ See Part VI.B.3 above.

fail to meet the requirement for just cause in these tax appeal cases. K.S.A. 79-1456 states that “[t]he county appraiser may deviate from the values shown in [the Guide] on an individual piece of property for just cause shown *and in a manner consistent with achieving fair market value.*” (emphasis added). The Guide similarly states as follows:

The county appraiser may . . . deviate from [the valuation] guidelines on individual properties for just cause *and in a manner consistent with achieving fair market value in accordance with the state statutes.*

. . . If the lease valuation estimated by use of [the Guide] *does not reflect market value*, in the judgment of the appraiser . . . , the appraiser has the authority to review and adjust the valuation to market value for just cause and proper documentation.

Guide, p.i, ¶3 (emphasis added); *see also id.* at p.39. Finally, the Guide states this: “The county appraiser may adjust the valuation in Column A [the DCF value] of the oil and gas rendition if an adjustment is necessary for the appraiser *to comply with . . . the statutory requirement of market value.*” *Id.* at p.ii, ¶7 (emphasis added). Taxpayers assert that this statutory and Guide language about “achieving fair market value” creates a fourth requirement for deviation from the Guide.³¹ The Counties counter that “achieving fair market value” is the sole measure of whether just cause exists. Regardless of which view is adopted, the Counties fail to show that their IPV methodology, as applied to the subject gas wells, is consistent with achieving fair market value, and thus they fail to show they have met the requirement or requirements for deviation from the Guide.

The Guide itself identifies statutory measures (“in accordance with the state statutes”) for determining whether a “fair market value” analysis justifies deviation. In addition, an appropriate standard of “reasonableness” (which is an element of measuring just cause³²) demands full compliance with applicable statutes directing how fair market value is to be determined.³³ Conversely, failure to comply with applicable valuation statutes would render the resulting value an unreasonable basis for just cause and thus in turn fail as grounds for deviation. *See* Guide, p.39. It is uncontroverted that the Counties determined the Guide or DCF

³¹ In addition to the requirements for (i) property-specific analysis, (ii) just cause for deviation, and (iii) proper documentation substantiating just cause.

³² *See* Part VI.B.2 above.

³³ *See also* Black’s Law Dictionary (6th ed. 1990), p.863 (including “legal or lawful ground for action” as part of the definition of “just cause”).

value for each well did not accurately reflect market value, and that this determination was based solely on a comparison to the IPV value. It is also uncontroverted that the Counties believed and assert that the IPV value which they calculated for each particular well is its fair market value.

The Guide expressly addresses the proper standards for calculating IPV value:

[The IPV] value, a measure of market value, should be determined *using the same appraisal standards* as any other type of property being valued by the market [sales comparison³⁴] approach. *Comparable sales data is essential* to this process, and as with any type property, more than one sale should be analyzed to more accurately determine value. *Comparable properties with limited adjustments* from similar producing areas should be used when utilizing this [IPV] approach. If using this [IPV] method as a “check” to the guide, and then possibly as a final determination of value, the appraiser *must be certain to consider all aspects of the subject property, as well as, the comparables used.*

Guide, p.39 (emphasis added). The statute providing specific guidance on valuing oil and gas wells is K.S.A. 79-331. It identifies, as previously noted,³⁵ nine items or factors specific to the property being valued that must be taken into account. These items or factors are (i) the age of the well, (ii) the quality of oil or gas being produced therefrom, (iii) the nearness of the well to market, (iv) the cost of operation, (v) the character, extent, and permanency of the market, (vi) the probable life of the well, (vii) the quantity of oil or gas produced from the property, (viii) the number of wells being operated, and (ix) any other relevant facts. Consideration of all these factors listed in K.S.A. 79-331 “is mandatory [and] failure to take into consideration any of these statutory factors will invalidate the [valuation].” *Helmerich & Payne, Inc. v. Bd. of Seward County Comm’rs*, 34 Kan. App. 2d 53, 56, 115 P.3d 149, 152 (2005); *see also Garvey Grain, Inc. v. MacDonald*, 203 Kan. 1, 14-15, 453 P.2d 59, 68-69 (1969). The Guide’s assessment rendition form “was created to value the property according to this statute [K.S.A. 79-331].” Guide, p.2, ¶6. This effectively deems the Column A (DCF) value to be in statutory compliance because the Guide instructs that Column A “is to be completed by using the oil and gas guide without departure, adjustment, or change.” *Id.*

³⁴ It is uncontroverted that the IPV method is a sales comparison approach to valuing gas wells.

³⁵ See Part V above.

The question here is whether, for the subject wells, the IPV calculations made by the Counties were in compliance with applicable law and the Guide. While the Counties generally followed the four-step process outlined on page 39 of the Guide for calculating the IPV value of each subject well, their approach was nonetheless flawed. The flaw occurred in the fourth step. This fourth step effectively incorporates the sales comparison approach for valuation as referenced by the Guide. It is uncontroverted that, when the Counties implemented the fourth step, they derived their market rates from the IPV tables created through Fuhrmann's market analysis. In other words, the existing sales used for comparison were those sales analyzed by Fuhrmann to generate the IPV tables.

The Guide directs that the IPV methodology "should be determined using the *same appraisal standards* as any other type of property using the market [sales comparison] approach." *Id.* at p.39. The sales comparison approach estimates value by comparing similar properties that have recently sold with the subject property and making adjustments to the sale prices based upon relevant, market-derived elements of comparison. *The Appraisal of Real Estate*, Appraisal Institute (14th ed. 2013), p.377. The market value is to be derived through comparable sales data *with adjustments*, and the appraiser "must be *certain* to consider all aspects of the subject property" and of the comparables used. Guide, p.39 (emphasis added). This is consistent with general appraisal standards as set forth in USPAP Standards 1 and 2,³⁶ which require evaluation of the characteristics of the comparable properties and the property to be appraised, and the use of appropriate adjustments to account

³⁶ 1992 USPAP Standards 1 and 2 (as well as Standards 7 and 8) are standards for developing and reporting single-property appraisals, and thus are the appropriate standards in these tax appeal cases given that K.S.A. 79-1456 and the Guide both permit the IPV methodology only on an individual piece of property. *See also* K.S.A. 79-505(a)(1) ("The director of property valuation shall adopt rules and regulations or appraiser directives prescribing appropriate standards for the performance of appraisals in connection with ad valorem taxation in this state [and] such rules and regulations or appraiser directives shall require, at a minimum: (1) That all appraisals be performed in accordance with generally accepted appraisal standards as evidenced by the appraisal standards promulgated by the appraisal standards board of the appraisal foundation which are in effect on March 1, 1992."); PVD Directive 92-006. USPAP Standard 7 is directed to the same substantive aspects as Standard 1, but addresses personal property. Standard 8 applies to personal property appraisal and is identical in scope and purpose to the appraisal reporting requirements in Standard 2. A written or oral report must clearly and accurately set forth the appraisal so it will not be misleading and will set forth information considered, the appraisal procedures followed and the reasoning that supports the analyses, opinions, and conclusions. Standard 8-1 and 8-2. "When analysis of comparable sales is one of the methods used in the appraisal of personal property for sale purposes, carefully document the sales and analysis." 1992 Standard 8-2(g).

for the differences between them. 1992 USPAP Standard 2-2(f); Standard 8-2(f) and (g). These characteristics, at a minimum, should include the items or factors identified in K.S.A. 79-331(a).

The Counties' approach in using Fuhrmann's IPV rate tables does not comport with accepted sales comparison appraisal methods. It is uncontroverted that the only information which Fuhrmann gleaned from the existing sales (as reported in IHS Drilling Wire) was threefold: (i) the price at which each property sold, (ii) the size of the reserves in place for the property, and (iii) the location of the property. Fuhrmann therefore did not undertake to identify any other characteristics for the properties sold. This ignored the Guide, appraisal standards, and many of the factors identified in K.S.A. 79-331(a). Neither Fuhrmann nor other appraisal staff of the Counties engaged in a process to evaluate the characteristics of a particular subject well being appraised or to select a narrow set of the most similar existing sales for comparison. See Guide, p.39 (the appraiser is to use "comparable properties with limited adjustments"). Moreover, neither Fuhrmann nor other appraisal staff of the Counties made any adjustments in comparing existing sales to a particular subject well. In actuality, Fuhrmann's market analysis was a mass appraisal with no adjustments made for the specific characteristics of each subject well (except for the size of the gas reserve), and, as delineated above, mass appraisal is not an approach permitted by the Guide or applicable law for use with the IPV methodology. See K.S.A. 79-331(a); Guide, p.39. Although percentages of the midpoint values were applied to prices to account for the size of the gas reserves, no analysis or support for the determination of such percentages was provided. The information presented fails to provide an adequate foundation for the methodology and value conclusions. Specifically, there is no market evidence (sales evidence) presented. Although Fuhrmann kept records of his market analysis and general descriptions thereof, neither the market analysis nor sales comparison approach itself was presented. Accordingly, the Counties' approach for calculating the IPV values in these tax appeal cases violates the Guide, appraisal standards, and applicable law, and is thereby unreasonable and thus cannot constitute "just cause" for deviation. Indeed, for the reasons stated above, the Counties' approach fails to rise to the level of a supportable sales comparison approach or an appropriate calculation of IPV value under the Guide.³⁷

The Counties refer us to a 2007 decision by the Board of Tax Appeals ("BOTA") – this Court's predecessor – in which BOTA accepted therein an IPV

³⁷ Based on this, a case cited and asserted by the Counties – *In re Appeal of Director of Property Valuation*, 14 Kan. App. 2d 348, 791 P.2d 1338 (1989) – is not implicated by these tax appeal cases. See also *Cimarex Energy Co. v. Seward County Bd. of County Comm'rs*, 38 Kan. App. 2d 298, 164 P. 3d 833 (2007).

valuation approach that is, according to the Counties, similar to what the Counties used in these tax appeal cases. That 2007 decision is *In re Protest of Betty McNeill & Louise Hopkins –Tr for Taxes Paid for 2005 and 2006 in Morton County, Kansas*, Docket Nos. 2006-7170-PR & 2007-526-PR. The Counties quote language from the Order issued December 20, 2007, as follows:

The Board recognizes that the sample of comparison sales selected by the county is widely varying in location, reserve size and per-unit value. The Board nonetheless is satisfied that the county's method of arraying the properties according to reserve size narrows the sample and provides a reasonable basis for a per-unit valuation of the subject lease.

Id. at p.4. This language does seem to support the Counties' position. If this were the only germane language from the *McNeill/Hopkins* case, however, we would be forced to reject it.

In our view, the county's method as described in the *McNeill/Hopkins* Order (of December 20, 2007) was flawed for all the reasons we have set out above. This Court is only bound, through the doctrine of stare decisis, to follow published opinions of the Kansas Court of Appeals or the Kansas Supreme Court. K.S.A. 74-2433(a). *See also In re K-Mart Corp.*, 238 Kan. 393, 396, 710 P.2d 1304 (1985) (“[T]he doctrine of stare decisis is inapplicable to decisions of administrative tribunals. There is no rule in Kansas that an administrative agency must explain its actions in refusing to follow a ruling of a predecessor board in a different case. . . .”). We note that the taxpayers in *McNeill/Hopkins* were not the leaseholder but the owners of the royalty interest, and such owners proceeded pro se in that case. In addition, two important distinctions between that case and the present tax appeals are (i) *McNeill/Hopkins* involved a property-specific deviation on only one property and (ii) BOTA found just cause for deviation based on facts other than the IPV valuation of the property.³⁸ Moreover, the pro se taxpayers did not argue or offer any alternative method for valuing the property. *McNeill/Hopkins*, Order issued December 20, 2007, p.4. Finally, and this is critical, BOTA provided factual clarification in its Order Denying Reconsideration issued January 25, 2008. BOTA stated the following regarding the county's methodology:

³⁸ This eliminated any hint of circular reasoning therein. BOTA found just cause for deviation because production from the property spiked significantly after the operator installed an electric rod pump and then continued to produce at increased levels thereafter, and for this reason BOTA also concluded that the guide's (DCF) method could not provide a sound basis for determining the lease's decline curve and remaining recoverable resources. *McNeill/Hopkins*, Order issued December 20, 2007, p.3.

Thus the only genuine point of contention is whether the county used appropriate unit prices in applying the [IPV] appraisal method to the subject well. The taxpayer argues that the unit prices used by the county in both tax years were unsound because they were derived from sales of properties that were not comparable. *Upon review of the entire record*, the Board notes that although the county did use a large sampling of sales to arrive at its unit prices, *the county also relied heavily on sales of Anadarko-operated properties [Anadarko was taxpayers' leaseholder] in Morton County*. The county testified that these Morton County sales set a baseline for its unit-price comparison and that *adjustments* were made to account for risk and other factors.

Order Denying Reconsideration at p.2 (emphasis added). These facts significantly distinguish *McNeill/Hopkins* from the present tax appeal cases, and fully justify our disregarding *McNeill/Hopkins* as providing any helpful guidance for us here.

C. Proper Substantiating Documentation. The third requirement for using the IPV methodology is that the county appraiser must develop proper documentation to substantiate just cause to deviate from the Guide's DCF methodology. In Part VI.B.1 above, we concluded that just cause is to be measured at the time a county decides to deviate from the Guide. For the reasons stated therein and for consistency in evaluating both requirements, we also conclude that the documentation to be examined (to determine whether it is "proper" or not) must be that which was in the county appraiser's possession when the decision to deviate was made. This conclusion is buttressed by the Guide's language that deviation must be made "*with . . . proper documentation.*" Guide, p.39 (emphasis added). This language, especially the word "with," presupposes the existence of the proper documentation when the county appraiser decides to deviate.

While it is conceivable that just cause could be demonstrated while proper documentation substantiating it is lacking, the reverse would be impossible. Failure to satisfy the "just cause" requirement would necessarily doom as well the concomitant documentation as insufficient to meet the "proper documentation" requirement. Because we have concluded what the Counties actually did here fails to qualify as just cause, any documentation verifying what the Counties did would also necessarily fail the requirement for proper documentation. In other words, documentation comparing DCF values to IPV values, evincing a circular argument for deviation, is deficient documentation.³⁹ Documentation of Fuhrmann's market analysis and of the Counties' detailed IPV calculations is similarly deficient because

³⁹ See Part VI.B.3 above.

all it shows is that the Counties' approach violated the Guide, appraisal standards, and applicable law, and thus failed to demonstrate just cause.⁴⁰

We also note in passing that, in what documentation the Counties created, they never provided a narrative to set forth and explain their determination of just cause to deviate from the Guide. They only provided their value calculations.

VII.
*Waiver, Equitable Estoppel,
and Quasi-Estoppel*

The Counties argue that Taxpayers have lost their right to challenge use of the IPV methodology based on the legal theories of waiver, equitable estoppel, and quasi-estoppel. The asserted facts underlying each theory is that Taxpayers – for several years prior to tax year 2012 – presented, and successfully persuaded the Counties to use, the IPV methodology as the approach to value Taxpayers' subject wells. According to the Counties, Taxpayers helped develop IPV methodology, encouraged its inclusion in the Guide, and used IPV valuations in prior tax years "in precisely the manner that [they now claim] to have been unlawful in 2012."⁴¹ Even with these facts, however, the theories of waiver, equitable estoppel, and quasi-estoppel do not help the Counties in these tax appeal cases.

A. Waiver. Waiver is the voluntary and intentional relinquishment of a known right and the expression of an intention not to insist upon what the law affords. *Chelf v. State*, 46 Kan. App. 2d 522, 533-34, 263 P.3d 852, 860 (2011) (citing *Prather v. Colorado Oil & Gas Corp.*, 218 Kan. 111, 117, 542 P.2d 297 (1975)); *Jones v. Jones*, 215 Kan. 102, 116, 523 P.2d 743, 754, cert. denied 419 U.S. 1032, 95 S.Ct. 515, 42 L.Ed.2d 307 (1974)). It "is a voluntary act." *Jones*, 215 Kan. at 116, 523 P.2d at 754. Waiver must be manifested "in some unequivocal manner by some distinct act or by inaction inconsistent with an intention to claim . . . a right." *Chelf*, 46 Kan. App. 2d at 533-34, 263 P.3d at 860 (citing *Patrons Mut. Ins. Ass'n v. Union Gas System, Inc.*, 250 Kan. 722, 725-26, 830 P.2d 35 (1992)) (emphasis added).

The Counties argue that Taxpayers have waived their right to challenge use of the IPV methodology. This argument is based on the asserted facts that Taxpayers helped develop IPV methodology and encouraged its inclusion in the Guide, and – for several tax years prior to 2012 – presented, and successfully persuaded the Counties to use, the IPV methodology as the approach for valuing Taxpayers' subject wells. These asserted facts, however, do not support a theory of

⁴⁰ See Part VI.B.4 above.

⁴¹ *Five Counties' Memorandum in Support of Their Motion for Summary Judgment*, p.48.

waiver herein. First, what rights are at issue when a taxpayer advocates for, and succeeds in persuading a county appraiser to use, the IPV methodology in a given tax year? As we have established already, IPV valuation is a deviation from the Guide and thus is legally proper only in certain circumstances. If a taxpayer voluntarily pursues an IPV valuation for a given tax year, the only right being relinquished is the right to challenge that valuation as a deviation *for that tax year*. No other right, and particularly not the right to challenge deviation in future tax years, is at issue in the prior year. Therefore, any waiver of the prior year's right cannot properly constitute a waiver of the current year's right.

This conclusion makes even more sense when considered in light of the general Kansas tax law system. Each tax year stands alone. *See In re Fleet*, 293 Kan. 768, 780-81, 272 P.3d 583, 590-91 (2012). For a particular piece of property, each tax year requires a discrete determination of value. The county appraiser must appraise each piece of personal property each year as of January 1 at its fair market value. K.S.A. 79-501, 79-503a, and 79-1439. Every year the county appraiser's determination of valuation must comply with Kansas law and is subject to review for such compliance. *See* K.S.A. 79-1448 and 79-2005. A county appraiser who performs a non-compliant property valuation in one tax year without complaint or appeal is not justified in continuing to use that non-compliant method in a future year. Nor is a taxpayer precluded from appealing a non-compliant valuation method one year simply because the taxpayer had, in previous tax years, pursued and successfully obtained application of that same method.

Waiver can be based on affirmative acts or inaction inconsistent with an intention to claim a right. As Taxpayers point out, if the Counties' theory of waiver were permitted, a county appraiser could apply a fatally flawed valuation method (such as picking one residence's value in the county and applying that exact value without any changes to all other residences in the county) and if taxpayers, knowing what the county has done, choose not to appeal their valuations, the flawed method would become the law of that county for valuing residences -- displacing a detailed and carefully-developed property tax system in Kansas consisting of statutes, guides, case law, rules, and procedures. This makes no sense. County appraisers cannot ignore Kansas property tax law. Yet this is what the Counties' argument entails -- that the Counties can use an improper valuation method for a particular taxpayer's property without the possibility of challenge if the taxpayer failed to appeal the same valuation method in the past. No one would seriously argue, for example, that a county's use of a cost approach in valuing a commercial building in one tax year would then preclude it from using an income approach or a sales comparison approach in a subsequent tax year. Similarly, here, a taxpayer's selection of and advocacy for the IPV approach in one tax year cannot preclude its advocacy for application of the DCF approach in a subsequent year.

A final reason for holding that waiver cannot occur in these circumstances focuses on the intentionality required for waiver. The act or inaction necessary for waiver must be inconsistent with an intention to claim a right. Therefore, to consciously relinquish a known right, or not to insist on enforcing that right, the right itself must be material or have some intrinsic value. Here, the right “not asserted” was the Taxpayers’ right to challenge in prior tax years the Counties’ deviation from the Guide so that the IPV methodology could be used. Did this right to challenge deviation have any value to the Taxpayers in the prior tax years? No. It is a reasonable inference that Taxpayers pursued the IPV values in prior tax years because the DCF values were higher than the IPV values.⁴² With DCF values being higher than IPV values, Taxpayers had no financial reason in prior tax years to stay with DCF values and thus had no material reason to challenge deviation from the Guide, which would permit county appraisers to use IPV values. This fact, in and of itself, prevents the intentionality necessary for waiver. Without any positive value attached to a right (here – the right to challenge deviation in prior tax years), there can be no intentional relinquishment of it.

B. Equitable Estoppel. The Counties also assert the doctrine of equitable estoppel by acquiescence and, as legal support, quote language from *Schiffelbein v. Sisters of Charity of Leavenworth*, 190 Kan. 278, 374 P.2d 42 (1962):

The rule is well recognized that where a party with full knowledge, or with sufficient notice or means of knowledge, of his rights and of all the material facts remains inactive for a considerable amount of time or abstains from impeaching a contract or transaction, or freely does what amounts to a recognition thereof as existing, or acts in a manner inconsistent with its repudiation and so as to affect or interfere with the relation and situation of the parties, *so that the other party is induced to suppose that it is recognized*, this amounts to acquiescence and the transaction, although originally impeachable, becomes unimpeachable.

Id. at 282, 374 P.2d at 46 (emphasis added).

⁴² Cf. *Kuxhausen v. Tillman Partners, L.P.*, 291 Kan. 314, 320, 241 P.3d 75, 80-81 (2010); *In re Appeal of ANR Pipeline Co.*, 276 Kan. 702 Syl. ¶ 5, 79 P.3d 751, 753 (2003); *Friends of Bethany Place, Inc. v. City of Topeka*, 43 Kan. App. 2d 182, 202, 222 P.3d 535, 549 (2010). This reasonable inference is consistent with Fuhrmann’s uncontroverted reverse assumption – implemented by the Counties for tax year 2012 in these cases – that, if Taxpayers did not complete the “owner” column (Column B) of the rendition, then the value shown by Column A of the rendition (which uses the DCF methodology) provides the lowest possible value for the particular well, and thus the most favorable valuation from the taxpayer’s perspective.

As its name evinces, equitable estoppel is an equitable doctrine. This Court does not have, however, the power to hear equitable claims or apply equitable doctrines such as equitable estoppel. *Sage v. Williams*, 23 Kan. App. 2d 624, 628, 933 P.2d 775, 779 (1997). We have only those powers expressly or impliedly granted to us by the legislature. *Pork Motel, Corp. v. Kansas Dept. of Health & Environment*, 234 Kan. 374, 378, 673 P.2d 1126, 1132 (1983); *Vaughn v. Martell*, 226 Kan. 658, 660-61, 603 P.2d 191, 194 (1979); *Sage*, 23 Kan. App. 2d at 627, 933 P.2d at 779. This Court is an independent agency and administrative law court within the executive branch of state government. K.S.A. 74-2433a. It thus is not a judicial branch court that exercises broad judicial power under Article III of the Kansas Constitution. *Pork Motel*, 234 Kan. at 378, 673 P.2d at 1132; *Sage*, 23 Kan. App. 2d at 627, 933 P.2d at 779. Administrative agencies, like this Court, are creatures of statute and their power depends upon authorizing statutes, and therefore any exercise of authority claimed by this Court must come from within its statutes. *Pork Motel, Corp.*, 234 Kan. at 378, 673 P.2d at 1132; *In re Appeal of Trickett*, 27 Kan. App. 2d 651, 655, 8 P.3d 18, 23 (2000). Equitable powers are not within the statutory authority of this Court.

Even if we possessed equitable powers, it is highly doubtful that estoppel by acquiescence should be applied to the situation here. For tax years prior to 2012, when Taxpayers successfully persuaded the Counties to go with IPV valuations, the “recognition” of IPV methodology by Taxpayers (or their failure to “impeach” it) addressed only those prior tax years. Taxpayers’ conduct thus amounted to nothing more than recognition, in those prior tax years, that IPV was a valuation method that they could propose and pursue. Their conduct does not show acquiescence for IPV methodology as the *only* acceptable valuation method for oil and gas wells for all situations and for all time. Indeed, Taxpayers were required under the Guide to make calculations for the DCF method on the renditions even for those prior tax years. Given what the Guide requires and says about DCF methodology, it is nonsensical to assert that, in prior tax years, Taxpayers thought IPV was the only permitted or appropriate method, let alone that taxpayers somehow acquiesced in that belief. Taxpayers asserted the IPV methodology in prior tax years when DCF was also an acceptable method under the Guide. They have done nothing in prior tax years to “recognize” IPV methodology as the *only* acceptable valuation method in every tax year whether past, present, or future. This conclusion is reinforced by the concept – discussed more fully in Part VII.A. above – that each tax year stands alone; for a particular piece of property, each tax year requires a discrete determination of value.

Moreover, the general elements of equitable estoppel have not been met. In 2011, the Kansas Court of Appeals held that, for equitable estoppel to apply, a party must show the following: “(1) the party was induced to believe certain facts as a

result of another person's acts, representations, or admissions . . . ; (2) the party relied and acted upon those facts; and (3) the party would be prejudiced if the other person were allowed to deny the existence of those facts." *Chelf v. State*, 46 Kan. App. 2d 522, 535, 263 P.3d 852, 861 (2011). All forms of equitable estoppel – except for quasi-estoppel⁴³ – require these elements. *Id.* at 536, 263 P.3d at 861. Any reliance must be reasonable. *Cf. Berryman v. Kmoch*, 221 Kan. 304, 307, 559 P.2d 790, 793-94 (1977) (promissory estoppel requires reasonable reliance). The Counties' theory of equitable estoppel fails to satisfy the first two elements outlined in *Chelf*. Looking at the first element, what the Counties assert as representations or acquiescence relates not to "facts" but to the "law" – that is, whether IPV methodology is the only appropriate method for valuing gas wells in Kansas. Clearly, the current law says that it is not.⁴⁴ The first element thus is not met because the relevant activity, information, or acquiescence does not involve "facts."

Regarding the second element, the Counties could not reasonably rely or be induced to believe that IPV was the only acceptable method for valuing gas wells. As discussed throughout this opinion, and particularly in Part V above, the statutory law and the Guide clearly establish otherwise. The Counties' "equitable estoppel" theory essentially suggests that the Taxpayers by their actions somehow induced the Counties to believe that the law had changed. This is unreasonable. Thus the second element also is lacking.

Finally, even if the Counties could satisfy all the elements of equitable estoppel, it still might not be appropriate, under equitable principles, to apply it against taxpayers in tax cases. Mutuality of remedy is an equitable doctrine which states that an equitable remedy should be available to both parties in order for either to employ it. *See* Black's Law Dictionary (6th ed. 1990), p.1021 ("Mutuality of remedy" means "one party . . . may not have equitable relief if he is not bound . . . to the same extent as the other party, or if his remedy is not co-extensive."); *see also Burr v. Greenland*, 356 S.W. 2d 370, 375 (Tax. Civ. App. 1962) ("[M]utuality of remedy . . . means that the right to performance must be mutual [and that] equity will not compel one party to specifically perform where it cannot compel performance by the other."). Mutuality of remedy is thus based on the broad equitable concept that one party should not obtain from equity that which the other party could not obtain. We know that equitable claims and doctrines cannot be applied against taxing authorities in tax matters. *Sage*, 23 Kan. App. 2d at 628, 933 P.2d at 779. In other words, a taxing authority's conduct in one tax year cannot be used to prevent different conduct by that taxing authority in another year.

⁴³ See Part VII.C. below.

⁴⁴ See Part V above.

Therefore, if the equitable concept of mutuality were applied here, it would prevent the Counties' use of equitable doctrines like estoppel against taxpayers.

C. Quasi-Estoppel. As a third and final theory, the Counties assert quasi-estoppel. This concept "involves an assertion of rights inconsistent with past conduct, silence by those who ought to speak, or situations where it would be unconscionable to permit a person to maintain a position inconsistent with one in which [the person] has acquiesced." *Harrin v. Brown Realty Co.*, 226 Kan. 453, 458-59, 602 P.2d 79, 84 (1979); *Chelf v. State*, 46 Kan. App. 2d 522, 536, 263 P.3d 852, 862 (2011). Unlike other forms of equitable estoppel, quasi-estoppel does not require a misrepresentation or detrimental reliance. *Chelf v. State*, 46 Kan. App. 2d 522, 535, 263 P.3d 852, 861-62 (2011). It applies when "a party has previously taken a position which is so inconsistent with the position now taken as to render the present claim unconscionable." *Wichita Federal Savings & Loan Ass'n v. Black*, 245 Kan. 523, 536, 781 P.2d 707, 716 (1989). The doctrine may be invoked when "the conscience of the court is repelled by the assertion of rights inconsistent with a litigant's past conduct." *Bowen v. Lewis*, 198 Kan. 706, 712, 426 P.2d 244, 250 (1967).

There are multiple problems with the Counties' assertion of quasi-estoppel in the present tax appeal cases. First, quasi-estoppel (like equitable estoppel by acquiescence) is an equitable doctrine. *Chelf*, 46 Kan. App. 2d at 533, 536, 263 P.3d at 860, 861-62. As such, its application requires application of equitable powers. As discussed in Part VII.B. above, however, this Court does not have the power to hear equitable claims or apply equitable doctrines.

Second, as discussed in Part VII.A. above, Kansas law is clear that each tax year stands alone. For a particular piece of property, each tax year requires a discrete determination of value.

Third, it does not shock this Court's conscience, or otherwise appear unconscionable, for a taxpayer – or a county for that matter – to take one valuation position in one tax year and then take a different valuation position in a subsequent tax year. As mentioned previously, no one would seriously argue that a county's or a taxpayer's use of a cost approach in valuing a commercial building in one tax year would then preclude it from using an income approach or a sales comparison approach in a subsequent tax year. In both situations, the applicable tax law controls the valuation. Assuming no changes in the law from year to year, all the same statutes, guides, case law, rules, and procedures would still apply and require compliance therewith.

Fourth and finally, as discussed in Part VII.B. above, the equitable concept of mutuality would likely prevent the Counties' use of equitable doctrines like quasi-estoppel against taxpayers.

VIII. *Conclusion*

We have concluded herein, based on applicable law and the uncontroverted facts, that IPV methodology constitutes a deviation from the Guide; that, for appropriate deviation to use the IPV methodology, the Counties must show (i) just cause (ii) on an individual property (iii) with proper documentation; that the Counties have failed all three of these requirements on each subject gas well; and that waiver, equitable estoppel, and quasi-estoppel do not apply herein to help the Counties. Therefore, this Court must grant Taxpayers' motion for summary judgment and deny the Counties' motion for summary judgment. Use of the IPV methodology in all these tax appeal cases was an improper deviation from the Guide and its requirements. Because of the result we reach herein, it is not necessary for this Court to address Taxpayers' theory that the Counties have violated the "uniform and equal" clause of the Kansas Constitution. See Kansas Const., Art. 11, § 1.

Based on the uncontroverted fact that Taxpayers accurately completed the oil and gas renditions regarding the valuation of the subject gas wells using the DCF methodology (Column A of the Rendition Form), the proper valuation for each property herein is the valuation submitted by Taxpayers in Column A for each respective property (with the correct assessment rate to be applied).

In closing, we note the obvious that it is not our role to adopt the IPV methodology as a matter of general and unqualified principle, or otherwise to ignore the clear standards established by statute and the Guide. The Counties, through Fuhrmann, expressed their belief that the DCF methodology is "way too volatile to have any bearing on market value" and that, for 2012, the DCF methodology was not appropriately reflecting fair market value.⁴⁵ To the extent the Counties disagree with the Guide's policies and approaches for valuing gas wells, including its treatment of IPV methodology as a deviation therefrom, they have two options for the adoption of their viewpoint. *In re Equalization Appeal of Wedge Log-Tech, L.L.C.*, 48 Kan. App. 2d 804, 816-17, 300 P.3d 1105, 1113 (2011). The first is to approach the legislature and seek statutory changes fully implementing IPV

⁴⁵ See also *Five Counties Memorandum in Support of Their Motion for Summary Judgment*, p.24 fn.3 ("[T]he schedule [DCF methodology] is based upon a series of unrealistic averages and a questionable 13% discount rate.").

methodology. *Id.* The second option is to engage the Director of Property Valuation and seek to have their views and approach presented with the goal of fully incorporating them into the Guide without qualification or prerequisites. *Id.*; *see also* K.S.A. 75-5105a(b) (“In the preparation of the guides, the director of property valuation shall confer with representatives of the county appraisers and district appraisers, and shall seek counsel from official representatives of organized groups interested in and familiar with the value of classes of property with which they are concerned.”).

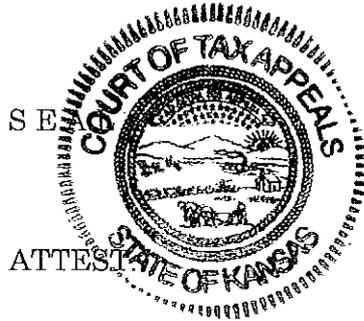
IT IS THEREFORE ORDERED, for the reasons stated above, that Taxpayers’ motion for summary judgment is granted (and the Counties’ motion for summary judgment is denied).

IT IS FURTHER ORDERED that the fair market value for each property herein for tax year 2012 is that value contained in Column A of the renditions originally filed by Taxpayers in these matters for tax year 2012.

IT IS FURTHER ORDERED that the appropriate officials shall correct the counties’ records to comply with this order and provide a refund to the taxpayers, if applicable.

Any party to this action who is aggrieved by this decision may file a written petition for reconsideration with this Court as provided in K.S.A. 77-529. The written petition for reconsideration shall set forth specifically and in adequate detail the particular and specific respects in which it is alleged that the Court's order is unlawful, unreasonable, capricious, improper or unfair. Any petition for reconsideration shall be mailed to: Secretary of the Court, Kansas Court of Tax Appeals, Eisenhower State Office Building, Suite 1022, 700 SW Harrison St., Topeka, KS 66603. *A copy of the petition, together with any accompanying documents, shall be mailed to all parties at the same time the petition is mailed to the Court. Failure to notify the opposing party shall render any subsequent order voidable.* The written petition must be received by the Court within fifteen (15) days of the certification date of this order (allowing an additional three days for mailing pursuant to statute). If at 5:00 pm on the last day of the specified period the Court has not received a written petition for reconsideration of this order, no further appeal will be available.

IT IS SO ORDERED



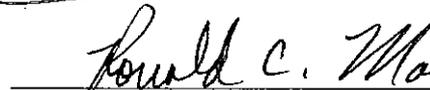
THE KANSAS COURT OF TAX APPEALS



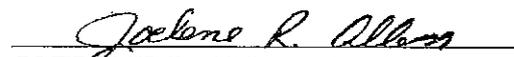
SAM H. SHELDON, CHIEF JUDGE



JAMES D. COOPER, JUDGE



RONALD C. MASON, JUDGE



JOELENE R. ALLEN, SECRETARY

CERTIFICATE OF SERVICE

I, Joelene R. Allen, Secretary of the Court of Tax Appeals of the State of Kansas, do hereby certify that a true and correct copy of this order in Docket Nos. 2012-6200-EQ *et al.*, and any attachments thereto, was placed in the United States Mail, on this 10th day of January, 2014, addressed to:

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IN TESTIMONY WHEREOF, I have hereunto subscribed my name at Topeka,
Kansas.



Joeline R. Allen, Secretary