STATE OF MICHIGAN
DEPARTMENT OF LICENSING & REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
MICHIGAN TAX TRIBUNAL

Yoplait USA – General Mills,
Petitioner,

v MTT Docket No. 455313

City of Reed City, Tribunal Judge Presiding
Respondent. David B. Marmon

FINAL OPINION AND JUDGMENT

Introduction

Petitioner, Yoplait USA – General Mills, ("Yoplait"), appeals ad valorem property tax assessments levied by Respondent, City of Reed City, against 12 parcels for the 2013 and 2014 tax years. Carl Rashid, Jr., Attorney, and Todd Barron represented Petitioner, and Roger and Cynthia Wotila, Attorneys, represented Respondent.

A hearing on this matter was held on August 25, 26 and 27, 2015. Petitioner's witnesses were Jim Dawson, Jeffrey Genzik, Chris Muntifering, Steven Marcusse, David Goesling and Kevin Kernan. Respondent's witnesses were Mark Pomykacz and Roy Kissinger.

Based on the evidence, testimony, and case file, the Tribunal finds that the true cash values ("TCV"), state equalized values ("SEV"), and taxable values ("TV") of the subject property for the 2013 and 2014 tax years are as follows:

Parcel ID	**TCV 2013**	**SEV 2013**	**TV 2013**
6752-009-001-00	$1,286,584	$643,292	$643,292
6752-009-044-55	$2,048	$1,024	$1,024
6752-101-007-00	$99,068	$49,534	$49,534
6752-102-001-00	$71,676	$35,838	$35,838
6752-108-001-01	$29,694	$14,847	$14,847
6752-108-017-00	$256	$128	$128
6752-108-020-00	$23,550	$11,775	$11,775
6752-109-001-00	$97,276	$48,638	$48,638
6752-109-001-01	$256	$128	$128
6752-999-922-00	$17,150	$8,575	$8,575
6752-999-929-00	$932,300	$466,150	$466,150
6752-999-930-00	$3,340,142	$1,670,071	$1,670,071
Total	$5,900,000	$2,950,000	$2,950,000

Parcel ID	TCV 2014	SEV 2014	TV 2014
6752-009-001-00	$1,497,308	$748,654	$653,584
6752-009-044-55	$1,590	$795	$795
6752-101-007-00	$95,728	$47,864	$47,864
6752-102-001-00	$72,194	$36,097	$36,097
6752-108-001-01	$30,212	$15,106	$15,084
6752-108-017-00	$318	$159	$130
6752-108-020-00	$27,670	$13,835	$11,963
6752-109-001-00	$133,256	$66,628	$49,416
6752-109-001-01	$636	$318	$130
6752-999-922-00	$24,808	$12,404	$8,712
6752-999-929-00	$1,296,626	$648,313	$473,608
6752-999-930-00	$2,719,654	$1,359,827	$1,359,827
Total	$5,900,000	$2,950,000	$2,657,210

SUMMARY OF PARTIES' CONTENTIONS

		Petitioner's			Respondent's		
Year	**Parcel ID**	**TCV**	**AV**	**TV**	**TCV**	**AV**	**TV**
2013	6752-009-001-00	$1,967,343	$983,672	$983,672	$5,899,674	$2,949,837	$2,949,837
2013	6752-009-044-55	$2,274	$1,137	$1,137	$9,723	$4,862	$3,410
2013	6752-101-007-00	$133,602	$66,801	$66,801	$454,073	$227,037	$200,320
2013	6752-102-001-00	$100,409	$50,205	$50,205	$328,395	$164,198	$150,522
2013	6752-108-001-01	$40,679	$20,340	$20,340	$135,924	$67,962	$60,993
2013	6752-108-017-00	$267	$134	$134	$700	$350	$350
2013	6752-108-020-00	$33,722	$16,861	$16,861	$108,200	$54,100	$50,562
2013	6752-109-001-00	$148,728	$74,364	$74,364	$446,000	$223,000	$223,000
2013	6752-109-001-01	$546	$273	$273	$1,800	$900	$819
2013	6752-999-922-00	$20,161	$10,081	$10,081	$78,402	$39,201	$30,229
2013	6752-999-929-00	$1,353,435	$676,718	$676,718	$4,275,499	$2,137,750	$2,029,317
2013	6752-999-930-00	$2,098,834	$1,049,417	$1,049,417	$6,353,000	$3,176,500	$3,146,956
2014	6752-009-001-00	$2,311,653	$1,155,827	$1,155,827	$7,146,353	$3,573,177	$3,573,200
2014	6752-009-044-55	$1,553	$777	$777	$4,861	$2,431	$2,400
2014	6752-101-007-00	$100,794	$50,397	$50,397	$311,638	$155,819	$155,800
2014	6752-102-001-00	$76,016	$38,008	$38,008	$234,953	$117,477	$117,477
2014	6752-108-001-01	$31,635	$15,818	$15,818	$97,819	$48,910	$48,900
2014	6752-108-017-00	$259	$130	$130	$800	$400	$400
2014	6752-108-020-00	$29,242	$14,621	$14,621	$90,441	$45,221	$45,200
2014	6752-109-001-00	$140,257	$70,129	$70,129	$433,600	$216,800	$216,800
2014	6752-109-001-01	$538	$269	$269	$1,800	$900	$832
2014	6752-999-922-00	$19,869	$9,935	$9,935	$81,000	$40,500	$30,712

2014	6752-999-929-00	$1,333,856	$666,928	$666,928	$4,218,000	$2,109,000	$2,061,786
2014	6752-999-930-00	$1,854,330	$927,165	$927,165	$5,732,512	$2,866,256	$2,866,300

PETITIONER’S CONTENTIONS

Petitioner contends that the subject was built in various sections and from acquisitions from 1920 to 2011, and should be valued as if vacant and available. Per its expert, the real property is worth $5.9 million. Petitioner also contends that silos and tanks added in 2012 are personal property, which were reported as such and are either now double-taxed, or wrongfully deprived of an exemption under PA Act 328 of 1998. Petitioner further contends that Respondent’s appraisal is deeply flawed, and has valued the subject as “value in use,” instead of “value in exchange.”

PETITIONER’S ADMITTED EXHIBITS

P-1 2013 and 2014 appraisals of subject by Genzink appraisal
P-1A Photograph of plant contained in appraisal
P-3 Photographs of plant over time
P-5 FM Global document of plant layout, and elevations
P-6 2013 and 2014 personal property statements
P-8 Review appraisal performed by Kevin Kernen
P-9 Review appraisal as to towers/silos performed by David Goesling
P-10 Review appraiser’s list of comparable sales in Michigan not considered by Respondent’s appraiser.
P-11 List of External Silo and Tank values, per STC
P-12 Letter dated February 18, 2008 to assessor with personal property returns

PETITIONER’S WITNESSES

Jim Dawson

Petitioner’s first witness was Jim Dawson, senior staff engineer at the subject property. Dawson testified as to information regarding the layout of the buildings, the construction of the buildings, the operations and history of the buildings. Regarding the building layout, Dawson explained how the subject came into being, with some of its problems. Dawson stated:

> It's a conglomeration of buildings, some of them dating back to -- one portion of the building was actually a hotel. Another portion I'm told, was a livery stable, I don't know how much of that remains. There's parts of an old boiler kind of in the middle of the building that I assume they just couldn't -- couldn't get it out of there, it was kind of trapped at that point.

> There are many elevations, you know, from filler room to filler room, you know, thirteen inches from the first three fillers to the next two fillers, thirteen inches again in increasing elevation.
>
> Then we go up 24 inches, then we drop down 30 inches between where we fill the cups and where we put the cups in cases. At one end its 42 inches difference, and the reason I mention that, is it makes getting around the plant very difficult. You -- you don't just go from point A to point B, you may have to go halfway around the plant to – to get to the other end of the line. [1]

According to Dawson, the plant contains 42 separate roofs,[2] and around 120 rooms as a result of piecemeal construction, Dawson stated that an open rectangular building, similar to other newer General Mills plants, is preferable as those allow for a better manufacturing process layout and are more easily expanded and added to.[3] Dawson's testimony included the fact that the facilities are utilized for production, and, the product then "goes to a distribution center down in Kalamazoo" since "Reed City is not considered to be a 'Hub.[4]'"

Aside from difficulties related to its location, Dawson also discussed issues related to wastewater disposal. The plant produces a large volume of waste water, but the City of Reed City's waste treatment plant cannot typically handle such amounts; thus, Yoplait is oftentimes forced to truck this waste water to Grand Rapids or to pig farmers throughout Michigan at high costs on a daily basis.[5] Additionally, because of the plant's layout and various elevations, Mr. Dawson testified that the work lines running through the plant do not simply run from one end of the building to another. Instead, these lines often require "fork trucks that serve the front of the line" to drive around a city block to get to the other end.[6]

The lay-out of the subject was contrasted with Petitioner's Murfreesboro Tennessee plant. Dawson stated:

> The plant is set up such that the inbound materials, the cups, the boxes, whatever, the raw material comes in on one end, as does the fruit and flavoring and they ship out the other end, and basically the line gets you from the one door to the other door.

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[1] T.1 p. 32-33
[2] T.1 p. 47
[3] T.1. p. 38
[4] T.1 p. 38-39
[5] T.1 p. 42-44
[6] T.1 p. 45-47

Q. And you don't have that luxury at this facility, do you?
A. No.[7]

Dawson also reviewed various aerial photographs of the plant and described the structural changes, additions and expansion of the plant over time.[8] After reviewing P-3, a photograph of the facilities as of 2007 and in particular the silos, Dawson testified that occasionally the silos had to be replaced with different sized silos for production purposes or once the existing silos could no longer be cleaned.[9] His testimony on direct examination regarding the silos is as follows:

> Q. So this is machinery and equipment that's all contained in the silos; is that correct?
> A. Like the agitator might be on the top or the side. The pumps aren't within it, the pumps are sitting next to it.
> Q. Next to it. The silo itself, is a -- could you describe what that is? It -- it's a can or –
> A. Yeah. The best way to think of what is part of the silo, I guess, is what comes on the truck.
> Q. Uh-huh.
> A. So when it comes on the truck, you know, there's a base that allows you to -- it's got enough structure that you can pick the thing up and you can ship it and so on. The agitator is in it, generally kind of braced so that over the road it doesn't break. The cleaning systems are all built into it, that's some internal piping that allows the cleaning fluids to circulate. The cold wall is certainly built into the tank wall.
> Q. And these tanks or silos, okay, they're interchangeable and replaceable?
> A. They're, like I said, specific to the process. So if we were to make Greek yogurt, I'd have to replace a number of silos to make Greek yogurt.
> Q. Okay.
> A. Or right now I'm looking at replacing four silos that were perfectly fine for making our custard product, but are not going to be fine for making a new product that we're coming out with. So –
> Q. Go ahead.
> A So anyway, I mean, the silo is specific to the task of what we're trying to do. And tastes change, you know, a few years ago nobody knew what Greek yogurt is. Now, if you want to compete you got to man up to make Greek yogurt.
> Q. And to do that, you have to bring in new silos; is that correct?
> A. Yep.

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[7] T.1 p. 47
[8] T.1 p. 54-63 See also Exhibits P-3, P-5.
[9] T.1 p. 60

Q. Okay. And do you -- do you buy silos to replace the ones that you have there?
A. Yes. In fact -- yeah, I mean you can buy – I bought a used one for one particular process. We brought -- when we closed our Addison, Texas plant we brought, I think, four silos from there up to here.
Q. And these silos are trucked up; is that correct?
A. Yep.
Q. Okay. And then they're lifted by a crane and put in place?
A. Yes.
Q. So when you put these silos in place, they're not intended to be there permanently; is that correct?
A. No. I mean, because, you know, they may have to come out for a different process the next year. And also the tanks are very fragile. I mean, a number of -- if -- if you just don't have the proper vent -- venting on a tank, if you pull the product out and the air can't get back in, the -- the tank will collapse.
Q. Okay.
A. We've had, you know, four or five tanks -- and when I say "Collapse" it may just get a wrinkle in it, but Quality will take a look at that and say "Can't be cleaned, replace it" or in some cases maybe you can fix it, but normally –
Q. And when they tell you to replace it, because it may have collapsed, a small part, you just pull out the can and put in a new can?
A. Right.
Q. And hook it up again to all of the machinery and equipment that goes with it?
A. Yep.
Q Do you consider these silos to be part of the machinery and equipment?
A. Yes.
Q. If you were to move this plant from Reed City to Kalamazoo or to Grand Rapids or any other location, would you take these tanks with you?
A. A good portion of them, yeah.
Q. And you would take them along with the assembly lines and everything else?
A. Yes.[10]

Jeffrey Genzink

Petitioner's next witness was its appraiser, Jeffrey Genzink. Mr. Genzink testified that the property is an owner-occupied "cold storage food processing facility," classified as industrial, consisting primarily of five buildings[11] and the property was constructed between 1920 and 2011. In regards to the property's highest and best use, Genzink responded: as vacant – future

[10] T.1 p. 68-71
[11] Mr. Genzink explained that the main building is a manufacturing facility containing 187,577 square feet of ground floor area and a cooler space of 35,453 square feet. He also described the two-story administration office containing 19,000 square feet and a tanker receiver building included within the manufacturing facility. The second-level space contained approximately 71,016 square feet. T.1 p. 120-121

industrial development, and as improved – continuation of the cold storage food processing facility.[12] Genzink also testified that nothing about the property or its operations lend it to any special use.[13] Thus, Genzink recognized that the property could be utilized for industrial processes or as a warehouse.

Genzink testified that he utilized both a sales comparison approach and an income approach valuation of the Property, based on sales of comparable buildings within Michigan, Wisconsin, Illinois, Indiana, and Ohio as well as sales of comparable vacant land "within the Lower Peninsula of Michigan as close as possible to Reed City that had industrial zoning." Genzink did not prepare a cost approach valuation because "it was not considered applicable to arrive at a credible result."[14] He went on to explain that because of its age and inability to arrive at a market-derived accrued depreciation for the Property, the cost approach valuation was inappropriate to the subject.[15]

After speaking to brokers and buyers and so as to remain consistent with the comparables Genzink determined that the 71,016 square foot of second level warehouse and manufacturing space should not be included within Yoplait's Valuation Report. Genzink explained:

> We did not include this area within our evaluation to bring it consistent with what we found with the comparable sales which do not have second level warehouse manufacturing space.
>
> Also, based on our interviews with the brokers and the buyers, we have recognized that the second floor space does not have the same function and utility as the ground floor space therefore it was not given any consideration.[16]

He also testified that current designs for an industrial building are not to have second level space, with the exception of office space.[17] Regarding the inclusion of second floor area in choosing his comparables, and calculating price per square foot, Genzink answered as follows:

> THE COURT: Were any of them [sales comparables] marketed as if they had a second floor? What I'm trying to get at, is the square foot total that you have on your comps, did any of those include second floor footage?

[12] T.1 p. 122
[13] T.1 p. 129-130
[14] T.1 p. 122-124
[15] T.1 p. 125
[16] T.1 p. 125-126
[17] T.1 p. 127

> THE WITNESS: Only -- so our subject property included second floor office area and we excluded the plant area. So all of our comparables did the same thing, if they included second floor office they were included. They did not include any second floor plant area so we were consistent with our application of using like building area of our subject to our comparables.[18]

Genzink noted the following challenges that could impact marketability: (i) the property's irregular shape which reduces the efficiency and usable space as compared to a rectangular-shaped building; (ii) the current design and layout for an industrial building is to have everything on the first floor; and (iii) the 123 demising walls within the property when buyers prefer an open configuration to facilitate free flow and process.[19] Genzink also noted that he excluded the personal property identified on page 15 of Yoplait's Valuation Report, which included the silos.

After identifying 30 comparables, Genzink then narrowed the field to 10 after excluding buildings that sold prior to 2009, buildings that were less than 50,000 square feet, buildings located within the City of Detroit, or sale-leaseback or lease transactions.[20] Genzink then testified in regards to each of the 10 comparables, noting various adjustments he made to account for differences in location, condition of the property, gross building area, building height, and whether the property was a current listing.[21] Before applying these adjustments, Genzink elected to use the building residual technique and extracted the implied value of the land for each comparable property in order to better reflect the land values in Reed City by adding a separate land value after making adjustments to the buildings. After making the appropriate adjustments, Genzink found the range of sales prices for the comparable buildings to be $14.81 per square foot to $34.80 per square foot with an average of $24.45 per square foot. Thus, Mr. Genzink concluded that for tax years 2013 and 2014, the value of the Property without land was $5,780,000 or $24.06 per square foot.[22] Next, Genzink performed a land valuation of the property and identified four comparable land sales. After making adjustments for market conditions, date of sale, location and shape, Genzink determined an appropriate valuation to be

[18] T.1 p. 191
[19] T.1 p. 127-128
[20] T.1 p. 130-131
[21] T.1 p. 131-146
[22] T.1 p. 143

$75,000.00, Mr. Genzink then added the land value to the building value that he determined to arrive at a true cash value of $5,855,000.[23]

In addition, Genzink prepared an income capitalization valuation of the Property in which he explained he "estimates a potential gross income of the property by gathering comparable market rates," and determines the market rent of the Property after subtracting vacancy, collection loss, and operating expenses to arrive at net income. Genzink determined the market rent to be $3.35 per square foot based upon five comparables. After making adjustments and determining a capitalization rate, Genzink calculated a value of $6,380,000 for the Property.[24]

In reconciling the final value estimate of the Property, Genzink explained that he "placed greater emphasis on the sales comparison approach" because the amount and quality of data was better in the sales comparison approach. Also, because the property is owner-occupied, Genzink found that the sales comparison approach presents a more accurate portrayal of the Property's value. Ultimately, Genzink found the fee simple estate to have a true cash value of $5,900,000 for the 2013 and 2014 tax years.[25]

On cross, Genzink conceded that he did not put any value on the second floor of the subject, even though it is in fact, occupied space.[26] He also conceded that one of his land comparables did not have water and sewer available.[27] He also admitted that nearly all of his comparables were to be used as warehouses rather than as food processing facilities. Interestingly, there were no questions regarding his income approach on cross. On redirect, Genzink testified as follows:

> So where I was going was, someone can design and occupy a building for a specific use, in this case, in my example it was Steelcase, and they have a furniture manufacturing component which has a variety of uses, powder coating, woodworking, dust collection systems, and these are very specific for their use. When they sold these buildings, they were sold for plastic injection molding, they were sold for food processing, and these buyers walked in and they saw the skeleton of the facility, they don't let what was in there obstruct them from doing what they want to do.

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[23] T.1 p. 143-146
[24] T.1 p. 147-158
[25] T.1 p. 158-159
[26] T.1 p. 172
[27] T.1 p. 178

So, it is so common, that whether it's an automotive manufacturing, furniture manufacturing or even on the flip side, if its food processing being sold for another use. These uses are all interchangeable. And it is -- is very common throughout the West Michigan marketplace that they don't focus on who was in there at the time of sale.

Q. Now, the subject property that we've been talking about, could that property be used for other purposes?
A. Sure.
Q. And I think Mr. Dawson confirmed that as well. Could the comps that you used be used for food processing?
A. Yes.
Q. And for other purposes as well?
A. Sure. We've seen it -- that's what my previous testimony was all about, was we have seen interchange or different uses for going into a building that were designed for one use, and another use steps in and has some modifications, but they use it for a different entire use.
Q. So, industrial and warehouse properties are somewhat interchangeable; is that correct?
A. Yes.
Q. Okay. The structures of those buildings can support both operations or either operation?
A. They can. I mean, the -- the caveat to that would be where the loading docks -- loading docks are, where the power source is, does it have open space or is the space have a lot of demising walls. I mean, that's -- that's one of the items we haven't even touched on, which is our subject property has several demising walls and that is an impairment, that is a detriment to our property.

So, for the subject property, they would have a tough time with attracting a lot of uses where the process takes place, due to all of the demising walls. As you travel east in the building where the cold storage and dry storage and pallet storage is, that's a lot more open and flexible for a variety of uses.

Q. And what about the different floor spacing?
A. That's a problem. Because of the way they transport goods, Hi-Los moving -- moving various products that's being made, as well as storing that product, so --
Q. And what about 54 different roofs up on top?
A. Well, 54 different roofs is the reflection of all the different additions, so the design is not unique, it's just how they have cobbled together over periods of time several additions which -- which creates a function utility problem for that westerly-end of the building.[28]

[28] T.1 p. 184-187

Chris Muntifering

Petitioner's third witness was Chris Muntifering, who was employed at General Mills for 14 years as senior manager of property and sales and use taxes.[29] During Muntifering's employment with General Mills, he testified that he included "a certain amount of silos/tanks" in the personal property statements in 2013 and 2014.[30] Muntifering also testified that, because of the Exemption which was granted in 2007, "all personal property acquired after that date would be exempt from taxation for a period of 12 years."[31]

Additionally, Muntifering noted that a listing of equipment and summary of building improvements were submitted with the filing of the application which listed the tanks as machinery and equipment.[32] Muntifering testified "I summarized the PA 328 assets, I put it on a State form, I submitted it to the assessor of Reed City and included a cover letter identifying that I have included a separate return for the PA 328 assets."[33] When presented at the hearing with a copy of the 2008 business personal property returns for the General Mills facility in Reed City, Michigan, Muntifering noted that the letter was sent to the assessor of Reed City and indicated that personal property statements for assets subject to Act 328, Certificate No. 127-2007 were included.[34] Moreover, Muntifering testified that each year since 2003, he filed the personal property returns and included the assessable tanks and silos as personal property. After submitting this self-created Act 328 personal property statement, Muntifering testified that he did not receive any subsequent Act 328 personal property statements from the Reed City assessor.[35]

Regarding his reasoning for treating the tanks as personal property, Muntifering had the following exchange on direct:

> Q. Okay. In your experience as a certified property tax professional, CMI, do you consider tanks as personal property/machinery and equipment?
> A. I do.
> Q. And what do you base that on?
> A. Commonly and universally accepted appraisal literature that it meets the three-prong test of annexation, adaptation and intention. So under annexation, if the equipment were to be removed and does not cause any damage to the

[29] T.2 p. 199-200
[30] T.2 p. 203-204
[31] T.2 p. 206
[32] T.2 p. 211-212. Interestingly, Muntifering also testified that Petitioner was assisted in getting its Act 198 Exemption certificate by David Porteous, who is a member of the law firm representing Respondent in this appeal.
[33] T.2 p. 218
[34] T.2 p. 232, 234
[35] T.2 p. 238-241

> equipment itself or the real estate, it would be considered personal property. Under adaptation, it's the -- whether it's designed to perform a processing function or it is a building function, for example, if it's an HVAC system it would be building, if it's processing that same type it would be considered personal property. And then finally the intention, the asset is intended to be a permanent part of the structure or ultimately will it be removed? In that case it would be tanks and it would be personal property.
> Q. And the tanks that you or that General Mills owns and is in Reed City at the plant fit every one of those descriptions or elements of personal property; is that correct?
> A. They do, they do.[36]

Steven Marcusse

Petitioner also called three rebuttal witnesses. The first rebuttal witness was Steven Marcusse, an industrial broker. Marcusse testified that if he were marketing the subject, he "would first frankly get three solid quotes for demolishing the western half of the facility. . . the parts that have all the segregations . . . and get down to about 112,000 feet. . . it would be very difficult to find somebody that would want to occupy that plant as it sits."[37] He also testified that there is no market for second story or mezzanine space in an industrial plant, stating "most of the time it's a detriment actually, it actually detracts from value.[38] On cross, he admitted to knowing nothing about the sale of 5 large businesses within 25 miles of the subject.

David Goesling

Petitioner's next rebuttal witness was David Goesling. During his 34 year career, Mr. Goesling appraised tanks, facilities with food processing type tanks, oil refinery and pipeline tanks.[39] Mr. Goesling was hired by Yoplait to perform an appraisal review of Pomykacz's valuation report as it relates to the silos.[40] To perform the review, Goesling "made a physical inspection of the tanks" and toured the facility to "see the character, condition, utility and nature of the tanks." Goesling also spoke with Yoplait personnel about the manner in which all 44 tanks were used, reviewed records, reviewed cost accounting data, performed an analysis of the cost to replace the tanks, performed market research on value of used tanks, and prepared the review report.[41]

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[36] T.2 p. 212-213
[37] T.2 p. 414-415
[38] T.2 p. 415
[39] T.3 p. 538
[40] T.3 p. 540-541
[41] T.3 p. 542

After performing the review report, Goesling testified as to the following: (i) the tanks are "very clearly part of the process" and while some are used to store Yoplait's products, it is "for short intervals but it is part of the production process;" (ii) without the tanks, the facility would not be able to operate or manufacture yogurt; and (iii) although the tanks were mounted in a variety of ways, they "could be removed with little to no damage to the real property" and often are unbolted and removed.[42] In fact, Goesling testified that, in his experience over the last 34 years, he could not "think of a single instance in which I would have considered tanks like this to be real property."[43]

Regarding the tanks in the plant, Goesling testified as follows:

> What I observed during the tours, that some of the tanks were bolted in place, some of the tanks were simply sitting on a concrete pad or a foundation, some of the tanks were sitting on structural steel supports, so there were different variety of ways that they were mounted. Based on what Mr. Pomykacz said yesterday would seem to imply that somebody would think that these should be real estate but in my opinion they are not.
> Q. There was some testimony that these tanks were embedded in concrete, did you find any tank embedded in concrete?
> A. No, none of the tanks are embedded in concrete.
> Q. In your estimation based on what you observed during your tour, are all of the tanks you reviewed removable without harming the real estate?
> A. I believe that all of the tanks could be removed with little to no damage to the real property.[44]

Goesling continued:

> Q. Okay. Does the fact that there's a foundation and the tanks are in some instances bolted to a foundation indicate that the tanks are real property?
> A. No, it does not. These tanks can be unbolted and removed and they often are.
> Q. Are there other instances where equipment is bolted to a foundation or the floor in a plant such as this type?
> A. Yes, at the Yoplait plant I believe somebody testified yesterday that there was a robot in the warehouse which was bolted to the floor but was considered personal property. Many of the assets at this plant are bolted to the floor, pumps are bolted to the floor, heat exchangers, chillers, lots of equipment is held stationary but that doesn't make it permanent.
> Q. And so would any of these assets be considered as real property in your opinion?
> A. In my opinion they are not real property.
> Q. And is there a three-prong test that you subscribe to in determining what's real versus personal?

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[42] T.3 p. 543-544, 547.
[43] T.3 p. 543
[44] T.3 p. 544-545

A. Yes, there is.[45]

Significantly, Goesling testified that similar tanks are sold on the open market. Some were sold in place, removed by the buyer and presumably used somewhere else.[46]

Kevin Kernen

Petitioner's final rebuttal witness was Kevin Kernen, who was accepted by the Tribunal as an expert in real estate appraisal. Kernen criticized Respondent's appraiser Mark Pomykacz's conclusion of highest and best use as too specific.[47] He criticized Pomykacz's selection of leased fee comparables, for not considering the property as vacant and available, and for failing to make any adjustment for the leases after using them. Further, he criticized Pomykacz for failing to use or consider the sale of 12 cold storage or food processing facilities involving 50,000+ square feet in central and northern Michigan.[48]

Kernen also critiqued Pomykacz's cost approach. He disagreed with Pomykacz's classification "good," for much of the plant without any discussion as to why these sections were above average. Kernan also testified that the depreciation numbers used by Pomykacz were mathematically incorrect and understated the depreciation. Specifically, Kernen stated:

> Q. Can you explain your review comments relative to the Federal Appraisal's calculation of depreciation also found on page nine of Petitioner's Exhibit 8?
> A. I can, yes, and this is one that I've struggled with or I did struggle with in doing the review and I've had a little bit more clarity over the last two days in hearing Mr. Pomykacz's testimony. There's a lot of discussion in the report or discussion in the report about the effective age of each component of the property, his projected economic life and the application of the age life method and estimating depreciation. When I did the math of doing an age life depreciation that number didn't match up with the depreciation that he applied, and there is a sentence in his report that I found that he used a curved, basically, approach to depreciation that's provided in the Marshall Valuation Service Manual. It's called the extended life theory is how MVS defines it is my understanding. The reason I say under my understanding, I've never seen this approach applied in 17 years in doing this, I've never seen anyone use that table for depreciation.
> Q. I see.
> A. It's under the premise -- the way it's explained is that a property would go through and needs to go through recurring revitalization in order to make this table applicable. There's no discussion in the report relative to this property going

[45] T.3 p. 547
[46] T.3 p. 549-550
[47] T.3 p. 584
[48] T.3 p. 585-594

> through that or projected costs that would be needed to shorten or reduce the depreciation that's present, so I just really struggle getting my arms around that that's the most reliable approach to estimating depreciation, physical depreciation for the property.
> Q. Would you have used a different depreciation?
> A. I would have definitely considered age life, I would also consider looking at a market drive depreciation when you look at sale comparables in the market and compute what their implied depreciation is placed on the sale prices, that's another way to support depreciation for a property.[49]

Kernen also criticized Pomykacz's failure to apply functional obsolescence to the entire property. He also took issue with Pomykacz's failure to apply any economic obsolescence, despite the fact that the location is very rural, with higher shipping costs, low population of employee base, and insufficient sewage treatment.[50] Kernen also took issue with Pomykacz's acceptance of the assessor's land value. Kernen stated:

> The Respondent's appraiser just made the statement that per the client's request he relied upon the assessor's land value and didn't give any indication that he did any research to verify if it was accurate. He felt that that was representative of true cash value. Was there site improvements included in that? I don't know. There's not a lot of description there, just basically says I relied on this number that was provided to me.
>
> One of the big issues I have with that is in his appraisal he's opining an overall value of the property, the land value is a piece of that so he essentially is opining that that land value is accurate but makes no mention of that. At a minimum he should have included an extraordinary assumption in the report that says I relied upon someone else's value of land and if it were to be different it could impact the value conclusion. You need to disclose if you're going to make an assumption like that that's out of the ordinary. [51]

Kernen also found fault with Pomykacz's use of a 15% entrepreneurial profit as part of the cost approach. He summed up his disagreements with Pomkacz's reliance upon the cost approach rather than the sales or income approaches as follows:

> Yes, I would definitely use a sales comparison approach. I would think I would use an income capitalization approach as well. There's just -- there's just a lot of issues on the cost approach side of things with the property of this age, built in so

[49] T.3 p. 596-598
[50] T.3 p. 598-600
[51] T. 3 p. 600-601

> many different stages and depreciation is very difficult to estimate, and that has a huge impact on the overall value and it's hard to really justify and give a good supporting number there.
> Q. Right.
> A. And so you can have wild fluctuations in your value by simply tweaking the depreciation estimate and that -- it leads to less reliable indication of value so I would rely on an income approach and a sales approach if I were to do this valuation.
> Q. What is your conclusion overall regarding the subject appraisal report?
> A. After doing my review and considering all of the comments that I've discussed, I just feel like wherever there was professional judgment that came into play so it wasn't a definitive item, it's just based on experience, all of the assumptions or conclusions were on the high side of value in terms of, you know, looking at entrepreneurial profit, 15 percent which is the top end of the normal range, and items like that, that I feel that providing a sales comparison approach that the appraiser had deemed potentially unreliable, incorrect methodology application of the sales comparison approach, not adjusting lease fee comparables, including lease fee comparables, all while making the statement in his appraisal that fee simple transactions sell at a lower number but I didn't use them because this is not in fact the plant. These all lead to that I feel this is a misleading report.[52]

RESPONDENT'S CONTENTIONS

Respondent contends that subject is worth $21,730,000 for 2013 and $21,520,000 for 2014. Respondent relied upon an appraisal performed by Mark Pomykacz, who relied exclusively upon the cost approach, and found the highest and best use of the subject to be its current use as a yogurt manufacturing and processing plant. Respondent concludes that the towers and silos installed on the IFT parcel are real property valued at $8,150,000 for 2013 and $7,670,000 for 2014 which it included in those totals.

RESPONDENT'S ADMITTED EXHIBITS

R-1 Valuation Disclosure by Federal Appraisal and Consulting dated February 28, 2015
R-2 Valuation Disclosure by Roy Kissinger
R-6 IFT Exemption documents 2007
R-7 IFT Exemption documents 2009
R-8 IFT Exemption documents 2011
R-10 Personal Property Statement 2013
R-11 Personal Property Statement 2014

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[52] T.3 p. 603-604

RESPONDENT'S WITNESSES

Mark Pomykacz

Respondent's first witness was Mark Pomykacz of Federal Appraisal. Pomykacz has the MAI designation from the Appraisal Institute. He is also licensed in 16 states, including Michigan. During *voir dire*, Pomykacz conceded he had been disciplined in Illinois, although that discipline is under appeal.[53]

Pomykacz claimed that he was valuing the subject "in exchange," rather than "in use," and explained why he used a very narrow highest and best use as a yogurt processing and production facility:

> Value in exchange is different from value in use in that value in exchange is what is typically expected to occur in a market, whereas value in use is what a particular user may have for a property. And that's important because any particular user may be atypical for market value or may not represent the highest and best use; however, some particular users do represent market value and represent the highest and best use or would use the property to its highest and best use. Those issues are quite important in this particular appraisal. This is an industrial property which is a large group of properties.
>
> There are a lot of types of industrial property, just like there are lots of residential properties and lots of apartments. There are lots of office buildings and different types of malls, there are perhaps five major categories of real estate and they are offices, residential, retail, industrial and perhaps hotels. We are in the large category of industrial property and you could break that down a lot of ways. You could look at loft buildings which are multi-story industrial buildings, you could look at warehouses, general purpose warehouses, you could look at factory buildings, and all of these have subcategories. It is important that we delineate precisely what our highest and best use is and what the -- not particularly Yoplait, but what a dairy processing facility is like. Yoplait has specific uses for this property. This property is not a general warehouse or general industrial. It is a food processing, more particularly a dairy processing facility and that's important to understanding where the value in exchange is going to come from and how -- the highest and best use comes from.[54]

Pomykacz went on to explain his use of the cost approach:

> The basic notion of a cost approach is that a property buyer or seller wouldn't buy or sell a property for any more or less than it would cost to build an alternative,

[53] T.2 p. 260-262
[54] T.2 p. 267-269

> with the same utility. All right, the principle of substitution, you wouldn't buy this one if you could build it for less elsewhere and you wouldn't sell this one if you know that they couldn't build it for less elsewhere, and so that's the notion of a cost approach is that value is related to cost.[55]

Pomykacz went on to testify that he primarily relied upon the cost approach because the other two approaches were unreliable for this particular property. He elaborated as follows:

> There's a general dictum in appraisals that the cost approach is particularly valuable for unique properties, special properties, rarer types that don't sell often and that don't rent often, and this property as a food processing facility, there is no market data for rental rates for dairy facilities, for example, and they sell -- they are very rare so then of course they sell rarely, and the issue of comparing those few sales to the subject make the cost approach a much more reliable and credible approach, both in theory as I'm talking about here but also in practice for this particular assignment.
> Q. All right. And going to that point, you've got a yogurt plant which you've designated as rather special in Reed City, Michigan, does the location make a great deal of difference?
> A. It makes some difference; however, the potential buyers and users for this facility are national concerns, perhaps even international. Yoplait being one of them, General Mills is a very large company, its competitors, Dannon, might come in here. There are probably only a few companies that would come in here and take this space. And they are all national players so the vacancy of industrial space in Osceola County is probably not that germane to the valuation of this issue.[56]

In using the cost approach, Pomykacz separately valued different parts of the plant, such as the stand alone office section, newer warehouses, and older buildings assembled into a major block. Pomykacz testified that the subject was special purpose property.[57] Because of the uniqueness of the property, adjustments are difficult, and the cost approach is more accurate.[58] In his sales approach however, he concluded that the subject was worth $35.00 per square foot, which he multiplied out to $19.72 million for 2013 and $19.32 million for 2014.[59]

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[55] T.2 p. 271
[56] T.2 p. 273-274
[57] T.2 p. 307
[58] T.2 p. 310-311.
[59] T.2 p. 311

Pomykacz testified that the criteria he used for determining whether the tanks and silos were real or personal was how they are affixed, what is the intention of the user, and can it be removed without damage to the tank or to the property. To this three prong test he added a fourth test, whether or not there is a market for the removed tank.[60]

On cross, Pomykacz testified that he gave some value to tanks that were not in working condition.[61] He admitted that he relied upon the assessor for his land values in the cost approach, and made no independent determination of the land value.[62] He admitted that all three of his comparables in his sales approach were leased fees. Further, he testified while adjustments are necessary for leased fees if the leases are not at market, he was unable to determine whether the leases were at market, and also, unable to make adjustments for whether or not the leases were at market. He justified the use of these comparables on the grounds that they were the best available, since other comparables did not have the same highest and best use.[63] Pomykacz had the following exchange with opposing counsel regarding value in use versus value in exchange:

> Q. So you were looking for primarily yogurt-producing facilities or dairy-producing facilities to use as comps; is that correct?
> A. Well, that would have been better than general food processing, yes.
> Q. Okay.
> A. But I wasn't able to find even just dairy processing at other facilities.
> Q. Now, doesn't that indicate a value in use theory?
> A. No, definitely not. It would be like having a resort hotel and saying, well, that's a resort hotel, that's a very specialized type of hotel, let's compare it to limited service hotels or motels. If you were to bring in motels as comparables you're looking at a different category of use. Here the category of use is industrial food processing, dairy processing. Changing it to another category doesn't make it a value in exchange.
> Q. Mr. Pomykacz, so you're looking at the use, that's what you just testified.
> A. No, I'm looking at the category of uses that represent the likely people who may exchange this property. We know that Yoplait enjoys this property and they're using this property a certain way.[64]

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[60] T.2 p. 300
[61] T.2 p. 343
[62] T.2 p. 345
[63] T.2 p. 352-354
[64] T.2 p. 354-355

When asked about his inclusion of a sales approach in his report, where all of the comparables were leased fees, and no adjustments were made even though adjustments were needed, Pomykacz answered "[i]n many other contexts . . . I would just say it is not applicable and leave it out." . . . "If I had not included this data, I would be faulted for – rightfully so – for perhaps not disclosing important information and allowing the adjudicator to make the decision . . . ."[65]

Also on cross, Pomykacz testified that the office building was valued at $209 per square foot. As he read into the record on cross, the average sales price per square foot in Michigan, per his own appraisal was $38.57 in 2013 and $42.26 in 2014.[66] He also admitted that he took the land value from the assessor at approximately $675,552 for 10.856 acres, (or $62,228 per acre). Pomykacz conceded that the Osceola County industrial land values, per Respondent's Exhibit 4 (not introduced) were valued at $2,700 per acre. Pomykacz had the following exchange with opposing counsel:

> Q. So land is not a major issue in your opinion?
> A. It wasn't my issue to deal with.
> Q. So it wasn't part of your assignment, is that what you said?
> A. Yes.
> Q. When you were retained did Ms. Wotila tell you not to bother looking at the land?
> A. In the beginning, no.
> Q. Did she later tell you to do that?
> A. Ultimately, I asked her how she wanted to deal with the land, I gave her pros and cons of having me do it or not doing it and we discussed it and in the end it was determined that I wouldn't do it.
> Q. Are you telling the Tax Tribunal that as an independent appraiser you're not supposed to make a determination of the land value in an appraisal report?
> A. No, my obligation is to clearly report what I did and didn't do, and if I didn't do it as long as I report I didn't do it that's my obligation.
> Q. Have you prepared other appraisal reports in which you have not done a study of the land value?
> A. Yes. Relatively frequently on complex properties.
> Q. Have you ever been reprimanded for that?
> A. That is one of the issues in Illinois.[67]

[65] T.2 p. 358
[66] T.2 p. 369
[67] T.2 p. 365-366

Regarding his valuation of the tanks, which he valued as real property, he apparently used the Marshall Valuation Service equipment table.[68] Finally, in response to the Tribunal's inquiry regarding the market for this plant, Pomykacz testified:

> THE COURT: Who would buy this plant?
> THE WITNESS: A small group of owner -- people who would intend to own it and occupy the property. They would be people who would do some kind of intense dairy processing.
> THE COURT: How often do sales like that occur?
> THE WITNESS: Extremely rare. From the data that we've been able to collect nationally it looks like over a period of a couple years there were only a couple sales that were truly dairy processing facilities.
> THE COURT: If General Mills decided to move to Indiana, what in your opinion would they do with this plant? Would they sell it?
> THE WITNESS: They would first try to sell it and the next buyer would be -- if they put no deed restrictions on it or anything like that, would be some other kind of intense dairy processing company.
> THE COURT: But there's only a handful, is your testimony, that would do that?
> THE WITNESS: Yes.
> THE COURT: That would be in that market?
> THE WITNESS: Yes.[69]

Roy Kissinger

Respondent's final witness was its assessor, Roy Kissinger. Kissinger testified that some activity at Yoplait drew his attention to the tanks:

> I observed with my camera like, holy smokes, look at these new structures going up, stainless steel or whatever they were, and then the question was brought up, why would them have to be personal? And that's when it -- things erupted and --
> Q. And the question came up, are these personal or real estate?
> A. That's right.[70]

Kissinger concluded that the tanks were real in 2013, "because anything attached to real estate is actually real, it is not personal." While testifying that he knew who poured the concrete for the towers, he testified, "I haven't actually walked through the silos to see how they were attached."[71]

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[68] T.2 p. 381
[69] T.2 p. 404-405
[70] T.3 p. 445
[71] T.3 p. 447

Regarding land values, Kissinger testified that they are assessed by linear front foot. He testified that there was a baseline value per front foot, which he adjusted up or down, and has not done a full calculation of front foot value for years.[72] He also testified that Yoplait purchased various properties over the past 20 years, tore them down, and incorporated them into the plant, paying in the $100,000 to $400,000 range, and each was below a quarter acre in size.[73] Later, Kissinger testified that he did not use the sales of land to Yoplait because “they were outliers, they were so far out of the spectrum, what things were worth it was ridiculous.”[74]

On cross, Kissinger testified that he does not make a recommendation regarding Industrial Facilities Tax applications, and is not even asked by the city council to attend a public hearing on the application.[75] Kissinger had the following exchange regarding the treatment of property under Act 328:

> Q. Now, you did not mention that there was a 328, an Act 328 application, are you familiar with that?
> A. I know there's a 328, yes.
> Q. And do you know what a 328 exemption is?
> A. No, I don't for sure. All I know is I report the values and the city treasurer determines the tax rate.
> Q. Okay. Now, a 328 exempts all new acquired personal property and there is no tax rate.
> A. I don't know why we're taxing it then.
> Q. Oh, you're taxing --
> A. Yes, we are. The city is taxing a 328.
> Q. There's a good one.
> A. It is.
> Q. All right. So you're not familiar with the process of a 328; is that right?
> A. No. The city treasurer does all the millage rates and I actually called to find out if it was exempt and it is not.
> Q. Okay.
> A. It's exempt from school operating and the state education tax.
> Q. All right. That's your understanding?
> A. That's what I was told by the city treasurer, yep.
> Q. Can I -- that's fine, all right. To the best of your knowledge the Act 328 is not exempt and that it's being taxed?
> A. Yes, it's being taxed.[76]

[72] T.3 p. 462-463
[73] T.3 p. 464-468
[74] T.3 p. 516
[75] T.3 p. 484-485
[76] T.3 p. 486-487

Kissinger also testified that he was unaware of recent legislation involving personal property tax reform.[77]

Regarding Petitioner's 2011 IFT application for the milk plant, Kissinger admitted that the entry for material storage equipment referred to is a silo. He admitted that he never taxed silos as real property in the past, but decided it was an "oversight" in 2013 not to tax silos as real property.[78] Kissinger had the following exchange with opposing counsel regarding the taxation of silos and tanks:

> Q. … Let's see [asset number] 11 -- 1199020?
> A. Yeah.
> Q. Okay. Through asset number 1213722, correct?
> A. Yep.
> Q. And those are listed as PA 328?
> A. Yep.
> Q. Schedule B machinery and equipment, right?
> A. Yes.
> Q. So when you receive this list and it identifies those tanks as being part of PA 328, did you include those tanks on the assessments?
> A. Yes.
> Q. And did your -- in addition to that, Yoplait U.S.A. claims that they reported the other tanks that are on that list in their personal property statement.
> A. I've heard that before, yes.
> Q. Did you take the other tanks on this list from the one we just recited up to the top and put that on the real property roll as well?
>
> * * *
>
> Q. And it's asset number 1173498?
> A. Yeah.
> Q. Through asset number 1173651; is that correct?
> A. Yeah.
> Q. So those four tanks/silos were put on parcel number 999929?
> A. Yeah.
> Q. Then the following list that have under return ORG and there's about 20-plus tanks; is that fair?
> A. They ain't all tanks.
> Q. They aren't?
> A. No.
> Q. What are they?
> A. It tells you what they are.
> Q. Okay. Go ahead.

[77] T.3 p. 491-492
[78] T.3 p. 498

A. I don't know what some of these things mean, this here is a 10,000-gallon --
Q. Tank?
A. -- TK vat-set.
Q. Tank?
A. And this is a cone 20-gallon -- or 20/20 M gallon -- 20 million maybe -- no, it ain't that, I don't know what 20 M means.
Q. You testified that these were all the tanks that when Mr. Wotila asked you, that you put on the tax rolls, right?
A. Yeah.
Q. And you still agree these are the tanks you put on the tax rolls?
A. Yes.
Q. All right. So we can read every one of these and they are either silos or tanks, whatever that means?
A. Yeah.
Q. All I'm asking you now so the Judge understands is that the first four you indicated were on tax ID number 999 --
A. Yes.
Q. --929, correct?
A. Yes.
Q. The next group that have ORG, this column ORG return?
A. Uh-huh.
Q. You put on tax ID number 009001?
A. That's true.
Q. That's true, okay. And then the last six tanks under PA 328 you assessed under tax ID number 999930?
A. Yes.
Q. And you did that in 2013?
A. Yes.
Q. Thank you. For parcel 929 which I believe -- what was the value that you placed on for those tanks, do you know?
A. I would have used acquisition cost.
Q. Uh-huh.
A. But I would not use the machinery -- schedule B machinery and equipment multiplier, because real is not the same depreciation. [79]

Kissinger also admitted that he never actually walked to the tanks and visually looked at them.[80]

As to how he arrived at his land value, Kissinger testified:

Q. So how did you -- so what is your value per front foot?
A. 320.
Q. How did you arrive at that?

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[79] T.3 p. 504-508
[80] T.3 p. 499

> A. It's through a process where we sit down in January, equalization and a guy from the State Tax Commission and he had a whole another district of land that's being sold or commercial/industrial that's being sold, we sit down and we say, okay, Petoskey, that there is a little different and he suggests and we all suggest, when it gets all done, what do you think? So we just pick a value and that's the end of it. And it's up to the taxpayer to say I dispute that and I'm going to prove you wrong.[81]

FINDINGS OF FACT

1. The subject is located at 128 E. Slosson Ave., in Osceola County.
2. Osceola County is predominantly rural, located in the middle portion of Michigan's lower peninsula, and as of 2010, Osceola County has a population of roughly 22,000-23,000.
3. The subject is on 10.856 acres, and consists of 5 areas, first floor office at 9,129 square feet, 2nd floor office at 8,109 square feet, cooler space at 35,453 square feet and warehouse/manufacturing at 187,577 square feet for a total of 240,268, plus second floor space of roughly 69,700 square feet.
4. The subject has 123 rooms and numerous demising walls.
5. The subject was acquired by and built by Petitioner over a period of years, beginning in the 1920's through 2011.
6. The subject is owner occupied.
7. Petitioner is in the business of producing yogurt on the subject property.
8. Under appeal are 12 parcels, three of which are Industrial Facilities Tax ("IFT") parcels.
9. The subject has numerous tanks and silos, which prior to 2013 were treated as personal property.
10. For tax year 2013, Respondent moved 34 tanks and silos from personal property onto the real property roll, including IFT parcels 999-929 and 999-930.
11. Petitioner's valuation expert Jeffrey Genzink valued the subject at $5,900,000 for tax years 2013 and 2014.
12. Genzink relied upon the sales and income approaches to value in determining true cash value.

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[81] T.3 p. 516-517

13. For his sales approach, Genzink chose 10 sales and listings, and separately valued the improvements from the land, and concluded to a value of $5,780,000 for 2013 and $5,730,000 for 2014 for the improvements only.
14. Petitioner added $75,000 for the land value to conclude to a value of $5,855,00 for 2013 and $5,805,000 for 2014 under the sales approach.
15. Genzink also used an income capitalization approach to value the subject.
16. Respondent's appraiser Mark Pomykacz relied upon the cost approach to determine a value of $21,730,000 for 2013 and $21,520,000 for 2014.
17. Pomykacz's conclusion as to highest and best use as a yogurt production facility resulted in only a handful of comparable sales in the United States, all of which were leased fee transactions.
18. Pomykacz testified that he did not know whether the leases were at market value, and therefore, made no adjustment.
19. Pomykacz testified that he did not rely upon his own sales approach, but put the data into his appraisal for the benefit of the trier of fact.
20. Pomykacz relied upon Respondent's assessor for the land value, which valued industrial land in Reed City at $62,228 per acre.
21. Per the cost approach, Pomykacz valued the storage tanks and silos at $8,150,000 for 2013 and $7,670,000 for 2014.
22. Osceola County Equalization valued industrial land at $2,700 per acre.
23. Pomykacz determined that the office section of the subject was worth $209 per square foot, while the average price for office sales in Michigan was per his own appraisal was $38.57 in 2013 and $42.26 in 2014.

CONCLUSIONS OF LAW

The assessment of real and personal property in Michigan is governed by the constitutional standard that such property shall not be assessed in excess of 50% of its true cash value.[82]

> The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law except for taxes levied for school operating purposes. The legislature shall provide for the determination of

[82] See MCL 211.27a.

> true cash value of such property; the proportion of true cash value at which such property shall be uniformly assessed, which shall not . . . exceed 50 percent. . . .[83]

The Michigan Legislature has defined "true cash value" to mean:

> The usual selling price at the place where the property to which the term is applied is at the time of assessment, being the price that could be obtained for the property at private sale, and not at auction sale except as otherwise provided in this section, or at forced sale.[84]

The Michigan Supreme Court has determined that "[t]he concepts of 'true cash value' and 'fair market value' . . . are synonymous."[85]

"By provisions of [MCL] 205.737(1) . . . , the Legislature requires the Tax Tribunal to make a finding of true cash value in arriving at its determination of a lawful property assessment."[86] The Tribunal is not bound to accept either of the parties' theories of valuation.[87] "It is the Tax Tribunal's duty to determine which approaches are useful in providing the most accurate valuation under the individual circumstances of each case."[88] In that regard, the Tribunal "may accept one theory and reject the other, it may reject both theories, or it may utilize a combination of both in arriving at its determination."[89]

A proceeding before the Tax Tribunal is original, independent, and de novo.[90] The Tribunal's factual findings must be supported "by competent, material, and substantial evidence."[91] "Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence."[92]

"The petitioner has the burden of proof in establishing the true cash value of the property."[93] "This burden encompasses two separate concepts: (1) the burden of persuasion, which does not shift during the course of the hearing, and (2) the burden of going forward with

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[83] Const 1963, art 9, sec 3.
[84] MCL 211.27(1).
[85] *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).
[86] *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981).
[87] *Teledyne Continental Motors v Muskegon Twp,* 145 Mich App 749, 754; 378 NW2d 590 (1985).
[88] *Meadowlanes Ltd Dividend Housing Ass'n v Holland,* 437 Mich 473, 485; 473 NW2d 636 (1991).
[89] *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 356; 483 NW2d 416 (1992).
[90] MCL 205.735a(2).
[91] *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990).
[92] *Jones & Laughlin Steel Corp, supra* at 352-353.
[93] MCL 205.737(3).

the evidence, which may shift to the opposing party."[94] However, "[t]he assessing agency has the burden of proof in establishing the ratio of the average level of assessments in relation to true cash values in the assessment district and the equalization factor that was uniformly applied in the assessment district for the year in question."[95]

The three most common approaches to valuation are the capitalization of income approach, the sales comparison, or market, approach, and the cost-less-depreciation approach.[96] "The market approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading."[97] The Tribunal is under a duty to apply its own expertise to the facts of the case to determine the appropriate method of arriving at the true cash value of the property, utilizing an approach that provides the most accurate valuation under the circumstances.[98] Regardless of the valuation approach employed, the final valuation determined must represent the usual price for which the subject would sell.[99]

The Tribunal is faced with the question as to how to find "the usual selling price" for industrial property in an out of the way place. Each party's expert concluded to a vastly different value.

<u>Highest and Best Use</u>

The first sub-issue is determining the property's highest and best use. Respondent's expert defined the highest and best use so narrowly, that valid sales comparables simply do not exist. Specifically, Pomykacz determined that the highest and best use is as a yogurt production plant, and treated the property as special purpose property, and thus concluded, "per general dictum in appraisals," that the cost approach was the appropriate method for determining value.

The *Appraisal of Real Estate* has the following to say about special purpose buildings:

> Although most buildings can be converted to other uses, the conversion of special- purpose buildings generally involves extra expense and design expertise. Such conversion may not be economically feasible or practical in many situations

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[94] *Jones & Laughlin Steel Corp, supra* at 354-355.
[95] MCL 205.737(3).
[96] *Meadowlanes, supra* at 484-485; *Pantlind Hotel Co v State Tax Comm*, 3 Mich App 170, 176; 141 NW2d 699 (1966), aff'd 380 Mich 390 (1968).
[97] *Jones & Laughlin Steel Corp, supra* at 353 (citing *Antisdale v City of Galesburg*, 420 Mich 265; 362 NW2d 632 (1984) at 276 n 1).
[98] *Antisdale, supra* at 277.
[99] See *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

> depending on a building's design and special construction features. Special purpose structures include:
>
> - Houses of worship
> - Theatres
> - Greenhouses
> - Schools
> - Rail and transportation facilities
> - Sports arenas
> - Other specially designed and constructed buildings[100]

The Tribunal concludes that the subject is not a special purpose building. Rather, it is a conglomeration of buildings over time that have been cobbled together to form a yogurt production facility. This building began in the 1920's, well before General Mills began producing yogurt. Per the testimony of Jim Dawson, it has expanded and been adapted to produce yogurt. However, the process and production is related to the equipment, rather than the building itself. Nothing about the building prevents a different user from installing different equipment, and using it to produce and store a different product. For that matter, as consumer tastes change, Petitioner could choose to convert the facility to produce a different type of yogurt, or a different product altogether. Prior to producing yogurt, General Mills used the facility to produce cheese.[101] It is now adding equipment to make Greek yogurt. Per Dawson, the building is not even ideal for producing yogurt. General Mills' other facility in Murfreesboro, Tennessee is one large single level open floor plant. Mr. Dawson testified that because of the different floor heights and "devising" walls, and second level, the work lines running through the plant do not simply run from one end of the building to another. Instead, these lines often require "fork trucks that serve the front of the line" to drive around a city block to get to the other end.[102]

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[100] Appraisal Institute, *The Appraisal of Real Estate* (Chicago: Appraisal Institute, 14th ed, 2013), p 269-270. 4th Ed.
[101] Per the assessor's implication, the subject used to be known as Reed City Milk and Cheese. T.3 p. 462
[102] T.1 p. 45-47

Dawson also testified that there was no special purpose to the building. He stated, "we take a warehouse we turn it into a filler room, but we do that by just getting rid of the nooks and crannies where – where dirt would collect and make it so its cleanable."[103]

Further, the Tribunal is not persuaded by Pomykacz's analogy to a luxury hotel, which is not comparable to a motel; similarly a yogurt factory is not comparable to a non-dairy food processing plant or warehouse. While room size, location and grade of materials and finishes help make a luxury hotel a luxury hotel, it is the equipment that makes the subject a yogurt plant.

Pomykacz's reliance upon process to determine highest and best use would result in many industrial facilities throughout the state to be considered special purpose, depending upon the number of producers in an industry. Under Pomykacz's reasoning, a factory set up to make fuel injectors could not be compared to a factory set up to make fuel pumps. This is contrary to the way users of industrial facilities purchase real estate. A manufacturer or warehouse looks at the space and the layout. Per testimony of Dawson and Genzink, there is nothing advantageous regarding the subject's layout, or its location.

While the subject, by virtue of its long history of expansion is unique in design and layout, its main feature is 35,453 square feet of cooler space and 187,577 square feet of warehouse/manufacturing with food-grade surfaces. These features are also in harmony with Genzink's highest and best use as a cold storage/food processing facility. Further, Respondent's argument that Genzink's comparables are unsuitable to make yogurt misses the mark of what is required under the definition of true cash value. Per MCL 211.27, the Tribunal must determine the usual selling price. In determining the usual selling price, the question is not whether a comparable can be set up to produce the same product as the subject; rather, the appropriate inquiry is to what the likely use would be of the subject if it were to be sold. *Huron Ridge LP v Ypsilanti Twp*.[104] Finally, as the Court of Appeals recently held in *Lowes Home Centers Inc v. Marquette Twp:*[105]

> Moreover, by taking the position that the HBU [Highest and Best Use] of the properties is use as a Lowe's and Home Depot store, respondents confuse the distinct concepts of fair market value (i.e., value-in-exchange) and value to the owner (i.e., value-in-use) by treating them as one in the same. Our Supreme Court

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[103] T.1 p. 71-72
[104] 275 Mich App 23, 33; 737 NW2d 187 (2007).
[105] unpublished per curiam opinion Court of Appeals docket nos. 314111, 314301 (April 22, 2014)

> has expressly stated that "the constitution and the General Property Tax Act require that property tax assessments be based on market value, not value to the owner...." *First Fed S & L Ass'n of Flint v. City of Flint,* 415 Mich. 702, 703; 329 NW2d 755 (1982). [Footnotes omitted].

While *Lowes* involved the valuation of big box stores rather than industrial property, the principle is the same. The Tribunal concludes that the highest and best use is as a food processing/cold storage facility.

<u>Silos</u>

A tangentially related issue to highest and best use is how to categorize the storage silos. Under Pomykacz' analysis, the silos are real property, and constitute, per Respondent's valuation, roughly 35% to 37% of the value of the real property. If that is so, then as a special feature of the realty, the special purpose based highest and best use determined by Pomykacz is somewhat more plausible. However, the Tribunal doubts that in the unlikely event a different yogurt producer purchased the subject, it would continue to use Petitioner's processes, recipes and equipment, including towers.[106] The issue also has independent financial consequences to the parties in that the 2013 re-categorization from personal to real of all of the subject's silos constitute an addition to an IFT parcel, as well as other parcels, as well as removing them from exempt property under section 328.

Respondents cite *Michigan National Bank v. City of Lansing*,[107] which sets forth the following tests:

> The test to be applied in order to ascertain whether or not an item is a fixture emphasizes three factors:
> (1) Annexation to the realty, either actual or constructive;
> (2) Adaptation or application to the use or purpose of that part of the realty to which it is connected or appropriated; and
> (3) Intention to make the article a permanent accession to the realty. [*citation omitted*]. The intention which controls is that manifested by the objective, visible facts. The permanence required is not equated with perpetuity. It is sufficient if the item is intended to remain where affixed until worn out, until the purpose to which the realty is devoted is accomplished or until the item is superseded by another item more suitable for the purpose.

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[106] This scenario could happen if General Mills spun off Yoplait. However, such a sale would undoubtedly include far more than the plant.

[107] 96 Mich App 551; 293 NW2d 626 (1980)

Michigan National involved drive through banking equipment, which was encased in cement, and in which canopies were built into place. The Court of Appeals found that this equipment was permanently affixed and thus fixtures, part of the real estate.

Petitioner cites *Tuinier v Bedford Twp*.,[108] which echoed the test put forward by the Court of Appeals in *Michigan National*:

> This appears to be a question of first impression in this state. Whether property qualifies as personal or real for purposes of taxation is determined by application of the following three tests: (1) whether the property was actually or constructively annexed to the real estate; (2) whether the property was adapted or applied to the use or purpose of that part of the realty to which the property in question is connected or appropriated; and (3) whether the property owner intended to make the property a permanent accession to the realty. [*citations omitted*].With respect to the intention of the property owner, [t]he intention which controls is that manifested by the objective, visible facts. The permanence required is not equated with perpetuity. It is sufficient if the item is intended to remain where affixed until worn out, until the purpose to which the realty is devoted is accomplished or until the item is superseded by another item more suitable for the purpose.

Tuinier involved polyethylene greenhouses, which were bolted into the ground, and connected up to gas and electric service.

In applying these tests Petitioner cites *Granger Land Dev v. Dep't of Treasury.*[109]*Granger* involved an exemption from Michigan's Use Tax[110] for personal property used or consumed during industrial processing. Nonetheless, the Court of Appeals applied the same three factors to determine whether cells installed into a landfill constituted real or personal property. The court of appeals stated:

> *Moreover, there is no evidence that Granger erects the cells in order to improve the land or make it more valuable in and of itself; rather, Granger erects the cells to facilitate the processing of waste material into gas that it can sell to third parties.* Given these unique facts, we conclude that Granger has neither actually nor constructively attached the landfill cells to its real property.

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[108] 235 Mich App 663 (1999)
[109] 286 Mich App 601; 780 NW2d 611 (2009).
[110] MCL 205.91 et seq. While *Granger* involved a non-property tax, it reviewed the same three factors to determine the issue of whether or not property was real or personal. The Tribunal does not believe that the Court of Appeals in a published case affecting common law, upon which both property taxes and use taxes are dependent, intended a different interpretation of the same tests for use tax than for property tax.

> For the same reasons, we conclude that the erection and maintenance of the cells does not amount to an adaptation of the land under the second test. Granger adapts the land to facilitate the erection of cells; it does not erect the cells to facilitate the use of the land.
>
> Finally, although there is evidence that the cells could remain in place indefinitely, it does not necessarily follow that Granger intended the erection of the cells to be an accession to the real estate. During their commercial lifespan, Granger intends the cells to generate gas and, for that reason, maintains the cells as separate processing units. Further, the fact that cells might conceivably remain in place indefinitely—even after the expiration of their commercial life—does not alter this conclusion. Rather, the abandonment of the cells on Granger's property at some future point in time would be akin to the onsite disposal of waste products by a traditional manufacturer.[111] [*Emphasis added*].

The analysis in *Granger* was recently scrutinized in *West Shore Service Inc. v Dep't of Treasury.*[112] In *West Shore*, a case involving whether or not civil defense sirens were real or personal property for use tax purposes, the Michigan Court of Appeals distinguished *Granger* as follows:

> The instant case is distinguishable from *Granger* and the facts of this case show that the poles were fixtures. Unlike in *Granger,* petitioner in the instant case took affirmative steps to attach the poles to the ground. Unlike the plaintiffs in *Granger,* petitioner did not simply pile garbage into layers in a particular area of land. Rather, petitioner dug holes into the ground, and, through the use of heavy equipment, set the poles in place and backfilled them to keep them there. This type of affirmative attachment was lacking in *Granger.* Additionally, where the plaintiffs in *Granger* took steps to prevent the cells from becoming integrated into the land, petitioner in this case directly integrated the poles into the land by digging holes and setting the poles into the aforementioned holes. Further, as noted above, the poles were adapted to and useful to the land. Finally, the intent in this case showed that the poles were to be part of the land, not maintained insulated from the land like the separate processing cells at issue in *Granger.*[FN1] In sum, we find that the poles and sirens at issue were fixtures. The MTT did not err in ordering that petitioner owed the use tax.
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> [FN1] We also note that this case does not involve the "noteworthy" consideration that influenced the panel's decision in *Granger,* i .e., avoiding "pyramiding" or multiple layers of taxation.

[111] Id., p. 612-613
[112] Unpublished per curiam opinion of the Court of Appeals Docket No. 321085 (July 21, 2015).

It is noted that *West Shore* is an unpublished decision, and per MCR 7.215(C) is not precedential. It is also noted that the Court of Appeals denied Treasury's request for publication.

In the instant case, there was mixed testimony regarding factor (1), whether the property was actually or constructively annexed to the real estate. Respondent's assessor Roy Kissinger admitted that he never inspected the tanks to see whether or how they were installed. However, Mark Pomykacz testified that he "made a special point" of looking at how the tanks were affixed, and determined that they were bolted into heavy foundations that were added. In some cases they had heavy steel scaffolding to support them.[113] Kissinger testified that the cement foundations were delivered by Elmer's Concrete.[114] Per Chris Muntifering, the tanks and silos can be removed without damaging the tank or the equipment, which he took to mean the tanks were not annexed. However, factor (1) under Michigan case law says "actually or constructively annexed." In *Tuinier*, it was apparent that the green houses could be removed without damage. However, while the Court of Appeals in *Grange*r cited the same three tests, its analysis adds a new wrinkle, holding that annexation must be to improve the property, rather than facilitate the processing. Despite the attempt to reconcile the two decisions by the Court of Appeals in *West Shore,* the Tribunal holds that the new requirement under *Grange*r is irreconcilable with the analysis set forth by the earlier decision in *Tuinier*. As *Granger* is the latest published decision from our appellate courts on the subject, the Tribunal is bound by its holding. If using heavy equipment to bury a cell within a land-fill is not at the very least constructively annexing the equipment to the property, then the mere bolting of tanks and silos, which can be unbolted are not annexed, and are therefore personal property under factor (1). It is undisputed that the tanks and silos were installed for the process of making yogurt, rather than for structural or aesthetical concerns for the building. There was also testimony that tanks can be, and in fact have been removed and resold.

Likewise, factor (2), whether the property was adapted or applied to the use or purpose of that part of the realty to which the property in question is connected or appropriated would appear to favor the tanks being classified as real under *Tuinier*, but not under *Granger*. Here, not only were cement foundations poured for at least some of these tanks; the tanks were specially

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[113] T.2 p. 280
[114] T.3 p. 446

plumbed and wired to be part of the building.[115] To paraphrase *Granger*, Petitioner adapts the land to facilitate the erection of silos; it does not erect the silos to facilitate the use of the land. Therefore, in accordance with *Granger*, the subject is personal property under the second factor.

The third factor, intention to make the article a permanent accession to the realty, would also have pointed to the silos being real under *Tuinier*, but are personal under *Granger*. Factor (3) quoted above, was explained under *Tuinier* as follows:

> With respect to the intention of the property owner, [t]he intention which controls is that manifested by the objective, visible facts. The permanence required is not equated with perpetuity. It is sufficient if the item is intended to remain where affixed until worn out, until the purpose to which the realty is devoted is accomplished or until the item is superseded by another item more suitable for the purpose.

Clearly, the silos would qualify as real property under this test, as the only hint that tanks have ever been removed was provided by Jim Dawson, who testified that tanks were replaced when they were damaged and could no longer be kept clean, or when a new product was to be made. However, *Granger* modified this test as well, indicating that a cell buried in a land fill permanently after its useful life was over, stating "the abandonment of the cells on Granger's property at some future point in time would be akin to the onsite disposal of waste products by a traditional manufacturer." In the instant case, it is likely that the tanks would be transferred, or salvaged and resold if economically feasible, should Petitioner wish to move its operations to another plant, or change its process to manufacture a different product. Accordingly, the Tribunal finds that the tanks and silos are personal property, rather than real property.

A factor not listed above, but which the Tribunal also finds to be significant is that should the subject be sold, it would likely not be sold with the tanks and silos. Jim Dawson's testimony quoted above makes this point.

<u>Valuation</u>

The Tribunal has two appraisals to help it determine true cash value. As the Tribunal finds that Pomykacz's appraisal has determined a highest and best use that is too narrow, and that the property is not special use property, the Tribunal must also find that

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[115] See Exhibit P-9, review appraisal of David Goesling, who noted the extra costs of wiring, plumbing and putting to connect the tanks to the process.

his conclusions of value are unreliable in this case. As noted above, Pomykacz relies almost exclusively on the cost approach. The cost approach works best for new improvements. Here, the Tribunal must value a building that has been built over a long period of time, with many inefficiencies that are hard to accurately account for with depreciation and obsolescence. Per Kernen's testimony, Pomykacz used a depreciation table that Kernen had never seen used in 17 years of appraisal practice, without explanation as to how or why it applied.

Even if one sets aside the fact that much of the plant is old, a conglomeration, and with an inefficient lay-out with 120 plus rooms, and different floor levels, Pomykacz's cost approach lacks market input. He attempts to determine the subject's "usual selling price" without a major market input, the value of the land as though vacant and available to be developed to its highest and best use. Estimating the land value is the very first step listed by Pomykacz under Cost Approach Procedure.[116] By failing to perform an analysis of land value, Pomykacz's reliance upon Marshall Swift fails to determine the value of the subject in Reed City, Michigan. Vacant land is very likely worth more in New York City, where Pomykacz testified he performs more of his work. The Tribunal holds that New York City, and Reed City have very little in common in terms of land values.

Pomykacz disclosed in his appraisal that he did not perform step 1 of the cost approach. Rather, he relied upon Reed City's assessor for that task. Mr. Kissinger's testimony, quoted above as to how he determined land value was less than confidence inspiring. He stated:

> It's through a process where we sit down in January, equalization and a guy from the State Tax Commission and he had a whole another district of land that's being sold or commercial/industrial that's being sold, we sit down and we say, okay, Petoskey, that there is a little different and he suggests and we all suggest, when it gets all done, what do you think? So we just pick a value and that's the end of it. And it's up to the taxpayer to say I dispute that and I'm going to prove you wrong.[117]

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[116] Exhibit R-1, p. 0055.
[117] T.3 p. 516-517

The end result of Kissinger's sit down with the STC and Equalization is a determination that the land in downtown Reed City is worth $62,228 per acre, when Osceola County Equalization determined that vacant industrial land sells for $2,700 per acre. Similarly, Pomykacz's cost approach came up with a value for the office portion of the facility at $209 per square foot, when his own appraisal indicated that office space in Michigan on average sells for $38.57 in 2013 and $42.26 in 2014. Again, Pomykacz's value for property in Reed City seems to be conflated with values in New York City.

Another reason the Tribunal finds Pomykacz's cost approach to be unreliable is its conclusion of value concerning the silos and tanks. His determination that the tanks and silos were worth well over a third of the value of the real estate is an example of the *tank* wagging the dog. It is hard to imagine that a buyer of this property would pay one third of its value for tanks and silos. Additionally, Pomykacz appeared to pad his costs by adding a 15% "entrepreneurial profit" to the replacement costs garnered from Marshall & Swift. As noted by Kevin Kernen, that profit appears to be excessive.

A more fundamental problem with Pomykacz's reliance upon the cost approach is found in his assertion that property such as the subject's must be valued as occupied.[118] As Pomykacz's own efforts at finding sales comparables underscores, industrial properties such as the subject rarely sell, and very rarely sell occupied. The only sales Pomykacz found involved leased fees, in which case the buyer is buying an income stream. This smacks of value in use, rather than value in exchange, prohibited under *Lowe's*, cited above. As with big box retailers, fully operational plants rarely sell. In the usual case, a new owner will adapt the plant to whatever industrial process it intends to use. To value the property as occupied is to value the income stream.

Pomykacz also justified his reliance upon the cost approach, as quoted above, "[t]he basic notion of a cost approach is that a property buyer or seller wouldn't buy or sell a property for any more or less than it would cost to build an alternative, with the same utility." The problem with this notion is that it values the subject in its current use *to its current owner*, rather than to a likely or prospective buyer. Again, the use of the cost approach in the present case appears to be "value in use" rather than value in exchange. Petitioner is in the food processing business,

[118] Exhibit R-1, p. 0048.

rather than the real estate business. While it has invested heavily in this plant, it is for the sole purpose of making money producing and selling yogurt. The price paid by Petitioner for these improvements only has to make sense in the context of the yogurt business; not in the real estate business. Because it is limited by its location within Reed City, Petitioner clearly paid a premium to expand its plant, when it purchased other adjoining properties. Respondent's assessor admitted as much, indicating that the values indicated by those sales prices were "outliers" and "ridiculous."[119]

Pomykacz did perform a sales comparison approach. However, he admitted that he did not rely upon it at all, and apparently put it in to give the Tribunal more data to consider. His approach consisted of three sales of leased property. He had no information concerning the leases, and could not opine whether or not the leases were at market, and whether the sales needed to be adjusted. In this instance the Tribunal agrees with Pomykacz and finds his sales comparison approach to be unreliable in determining true cash value.

Petitioner relies upon an appraisal prepared by Jeffrey Genzink , who found that the highest and best use is a cold storage/food processing facility. Genzink used two approaches; the sales comparison approach and the income capitalization approach. Unlike Pomykacz, Genzink found 30 sales in the state and region. He selected 10, and removed the land value from the sale, to equalize the location with the comparable improvements. Respondent has criticized Genzink for using vacant comparables. However, the subject being owner-occupied property, it is likely that it would also be vacant when it sold, as another purchaser would want to install its own processes into the building. As Genzink testified on redirect, "these buyers walked in and they saw the skeleton of the facility, they don't let what was in there obstruct them from doing what they want to do."[120] In other words, manufacturing and warehousing facilities are fairly interchangeable among themselves and each other. In its favor, the subject has cleanable surfaces for food production, and a large area for cold storage. On the other hand, its demised walls and different floor heights and second floor make it less appealing to other manufacturers who would likely prefer an open area on one level, where there are no obstructions for the

[119] T.3 p. 516
[120] T.1 p. 183

production line, or obstructions for Hi-Los and other mechanized systems to move materials around the facility.

The Tribunal finds that Genzink's appraisal is the best evidence presented of the subject's true cash value brought forth in this appeal. The Tribunal agrees that the sales approach followed by the income capitalization approach are the two best approaches for valuing this type of property in general, and the subject in particular. Respondent's issues concerning the use of the various comparables for both the subject, and the underlying land were adequately explained by Genzink on re-direct. While criticizing the applicability of the income approach, Respondent failed to raise any issues regarding Genzink's rental comparables, expenses, NOI, or cap rate, which were explained in his appraisal. The Tribunal agrees that the sales approach is more reliable for the subject because it would more likely sell as an owner-occupied facility.

Accordingly, the Tribunal accepts Genzink's conclusions regarding the subject's true cash value. The Tribunal also accepts Petitioner's allocation of the true cash value among the various parcels, including the original value for IFT parcel 930-00 prior to Respondent's addition to this parcel of several large storage tanks and silos.

The Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, the subject property's TCV, SEV, and TV for the tax year(s) at issue are as stated in the Introduction section above.

JUDGMENT

IT IS ORDERED that the property's state equalized and taxable values for the tax year(s) at issue are MODIFIED as set forth in the Introduction section of this Final Opinion and Judgment.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the property's true cash and taxable values as finally shown in this Final Opinion and Judgment within 20 days of the entry of the Final Opinion and Judgment, subject to the processes of equalization. See MCL 205.755. To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund within 28 days of entry of this Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment, and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 2009, at the rate of 1.23% for calendar year 2010; (ii) after December 31, 2010, at the rate of 1.12% for calendar year 2011; (iii) after December 31, 2011, and prior to July 1, 2012, at the rate of 1.09%; and (iv) after June 30, 2012, through December 31, 2015, at the rate of 4.25%.

This Final Opinion and Judgment resolves all pending claims in this matter and closes this case.

APPEAL RIGHTS

If you disagree with the Tribunal's final decision in this case, you may either file a motion for reconsideration with the Tribunal or a claim of appeal directly to the Michigan Court of Appeals ("MCOA").

A motion for reconsideration with the Tribunal must be filed, by mail or personal service, with the $50.00 filing fee, within 21 days from the date of entry of this final decision.[121] A copy of a party's motion for reconsideration must be sent by mail or electronic service, if agreed upon by the parties, to the opposing party and proof must be submitted to the Tribunal that the motion for reconsideration was served on the opposing party.[122] However, unless otherwise provided by the Tribunal, no response to the motion may be filed, and there is no oral argument.[123]

[121] See TTR 257 and TTR 217.
[122] See TTR 225.
[123] See TTR 257.

A claim of appeal to the MCOA must be filed, with the appropriate entry fee, unless waived, within 21 days from the date of entry of this final decision.[124] If a claim of appeal is filed with the MCOA, the party filing such claim must also file a copy of that claim, or application for leave to appeal, with the Tribunal, along with the $100.00 fee for the certification of the record on appeal.[125]

By: David B. Marmon

Entered: November 20, 2015

[124] See MCR 7.204.
[125] See TTR 213 and TTR 217.