

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

KRC ROLLS and VOITH PAPER SERVICE,)	
)	
Plaintiffs,)	TC-MD 070169D
)	
v.)	
)	
LANE COUNTY ASSESSOR)	
and DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendants.)	DECISION

Plaintiffs appeal the real market value of their property identified as Account 1411907 for tax year 2006-07. A trial was held in the Oregon Tax Courtroom, Salem, Oregon, on December 3, 4, and 5, 2007, and continued on April 21, 22, and 23, 2008. Christopher K. Robinson, Attorney, appeared on behalf of Plaintiffs. Charles P. Thompson (Thompson), MAI; Richard Locke (Locke), KRC Rolls' Regional Division Manager; Genoveva "Veva" Zuercher (Zuercher), KRC Rolls' Controller; Scott Engmann (Engmann), Corporate Tax Director, Voith AG; and Paul McCarten (McCarten), PhD, Vice President Technical Applications, Voith Paper Rolls N.A., testified on behalf of Plaintiffs. Douglas Adair, Senior Assistant Attorney General, appeared on behalf of Defendant Department of Revenue (Defendant). Guillermo "Bill" Rodriguez (Rodriguez), Defendant's Industrial Appraiser, and Daniel J. Cenatempo (Cenatempo), AVA, CFFA and MBA, testified on behalf of Defendant.

The parties stipulated to the following real market values for tax year 2006-07:

Land: \$868,680; and

Machinery and Equipment: \$5,971,300.

The only issue before the court was the real market value of the buildings and site improvements.

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Plaintiffs' Exhibits 1, 3, 4, 5, 6, 7, 8 (pages 1 through 50), 9, 14, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 37 were offered and received without objection. Plaintiffs' Exhibits 15 and 36 were offered and received with noted comment from Defendant Oregon Department of Revenue (Defendant). Defendant's Exhibits A, C, D, E, F (page 6A substituted for page 6 and pages 10 through 18 are subject to the court's protective order filed April 14, 2008, G (pages 5 and 7 are subject to the court's protective order), H, I, and J were offered and received without objection.

I. STATEMENT OF FACTS

Plaintiffs, who are owned by Voith AG headquartered in Germany, are in the paper roll business, providing "Mechanical Roll Repairs, Replacement Rolls, Roll Covers and Coatings for the paper industry" and offering "field service, cylinder grinding and coating." (Def's Ex A at 95.)

Plaintiffs appeal the real market value of improvements. The improvements, identified as the subject property, are two buildings, a main building and cover building, and site improvements such as paved parking and landscaping, which are located in Springfield, Oregon on 5.945 acres. (Ptf's Ex 1 at 14.) The subject property is zoned Heavy Industrial (HI). (*Id.* at 15.)

A. *Improvements*

The main building, which was built in 1986-87 and expanded in 1993, is approximately 34,302 square feet.¹ (*Id.* at 17.) In 1999, Plaintiffs acquired that building, which was referenced by the parties as the "original building," in a multi-asset acquisition, allocating approximately \$5.7 million to the original building and cover building. (Def's Ex A at 194.) The main building

¹ Defendant's exhibits give varying sizes for the original building as follows: 34,012 square feet (Def's Ex A at 275); 33,602 square feet (Def's Ex A at 63); and 35,326 square feet (Def's Ex A at 173).

houses both administrative offices and a production area. In the production area, features of note include one bridge crane system, four cranes (two 7-ton cranes and two 20-ton cranes), heavy concrete slab foundation (4 inches and 8 inches), metal siding over heavy steel framing and 24 foot wall height. (Ptf's Ex 1 at 17-18; Def's Ex A at 63.) Activities such as "disassemble, test, regrind and repair" are performed on "cover rolls for the paper manufacturing industry, primarily paper-making machine rolls used in the manufacturing of tissue and news paper."

(Def's Ex A at 3.)

The cover building which was built in 1998 is approximately 48,640² square feet with 30 foot eave height. (*Id.*; Ptf's Ex 1 at 18.) Locke testified that the two story building which was added "at a time when business was good," was "conceptually" designed by him. He described the cover building as a "green field operation." In the first floor production area, features of note include a bridge crane system, two 80-ton cranes, heavy reinforced concrete slab foundation (8 inches), heavy steel frame (24 inch I-beams on 25 foot centers), three pits (balancer, grinder and autoclave), and blast room. (Locke's test; Def's Ex A at 63.) Activities in the cover building include application of "a rubber or polyurethane cover to the paper-making machine rolls." (Def's Ex A at 3.) A training and conference room is located on the second floor. Plaintiffs state that the original cost was approximately \$3 million. (Def's Ex A at 206.)

B. *Plaintiffs' Appraisal*

Thompson, an appraiser in the Eugene area since 1965 with the certified appraiser license number of "7," determined that the real market value of the two buildings and site improvements for tax year 2006-07 was \$3,600,000. (Ptf's Ex 1 at 2.) Thompson concluded that the highest and best use of the subject property is its "continued use as an industrial facility," stating that its

² Defendant states that the cover building is 48,840 square feet. (Def's Ex A at 9.)

current use is the “most profitable” and “financially feasible.” During cross examination, Thompson concluded that, even though the subject property has “special features,” such as a heavy concrete foundation, average eave heights of 24 feet and 30 feet and “pits,” it is not a “special purpose property” because the “buildings are adaptable to other uses” once the pits are filled in.³ He testified that Plaintiffs built the subject property “without regard to the market” and the “special features would not bring much if anything in the market.” Plaintiffs offered a report dated August 12, 1996, which was prepared by Defendant’s industrial appraisers, stating that “[t]he building and structures on the subject property are constructed with minimal special purpose features. Consequently, the building and structures can readily be appraised as a general use facility.” (Ptf’s Ex 8 at 7.) Plaintiffs offered that there have been no structural changes to the original building since the 1996 appraisal. Rodriguez testified that there was an “error” in that appraisal because the owner used all the features which were part of the “integrated use of the facility.” He went on to say that the special features should have been appraised and not been labeled “super adequacies” nor should they have been subtracted from the real market value.

Thompson supported his valuation with reference to the sale of the Voith “Portland facility” which took months to sell because, according to the broker, it was “priced too high” and had no “leases.” The parties stipulated that the three buildings (75,259 total square feet), which were listed for \$4.9 million sold on May 24, 2005, for \$3.4 million. As an alternative, Buildings 1 and 2 were offered for lease at 35 cents (warehouse) to 65 cents (office), triple net. (Ptf’s Ex 42 at 3.) Thompson testified that, according to the broker, the sale was “arm’s length.” He testified that, according to the real estate broker and current occupant, the Portland facility

³ Plaintiffs referenced Defendant’s appraiser’s report (Ptf’s Ex 8 at 19), which stated that “[t]he production facility could be used by two tenants with differing needs without some modification.” Defendant’s counsel suggested that the word “without” was a typographical error and the correct word was “with.” Defendant’s appraisers who issued that report did not testify.

“was in good to average condition at the time of purchase” and the “special features” such as cranes are currently in use. Thompson testified that the current occupant, Halton Tractor, “uses the entire site (12 acres)” and constructed “two metal clad” buildings, painted the buildings and did other minor improvements including “building out unfinished space.” Rodriguez testified that he recently toured the same Portland complex (three buildings) and spoke with Halton’s facility manager, who told him that at the time of purchase the property was in “disrepair” and Halton spent “\$2.5 million to \$3.0 million to bring buildings into current condition.” Rodriguez testified that Halton “filled in the pits with sand, gravel and then concrete” and, because Halton is not “using the [buildings] for the purpose they were built,” there are “super adequacies” present. Rodriguez computed a range of “\$65 to \$72 for the 70,000 square feet” found in the three buildings based on sale price and deferred maintenance costs. He concluded that Building 1 (which is “being used as a shop” with 24 foot eave height and a small crane) and Building 2 (“substantial portion is office with some storage”) are not comparable to the subject property. Rodriguez stated that Building #3 is “potentially comparable” to the subject property’s “original building” because it had a 60 foot bay and overhead cranes. He testified that currently Building 3 is being used as a warehouse to store parts.

Thompson explained that he considered three valuation approaches: “cost, direct sale, and income.” After describing the cost approach, Thompson testified that he eliminated the cost approach for the subject property because it was “problematic” to “estimate accrued depreciation,” including economic and functional obsolescence, if any. On redirect, Thompson stated that the cost approach must consider the “three forms of depreciation: physical, functional and economic.” He testified that plant capacity is “an element of obsolescence” and “must be included in the cost approach or it would be misleading.” Thompson further testified that utilization less than capacity is “indicative of economic obsolescence.”

Moving next to the income approach, Thompson reviewed ten sales from which he computed a capitalization rate of 8.5 percent. (Ptf's' Ex 1 at 30-31.) Thompson applied the capitalization rate to a net operating income (NOI) that he computed. (*Id.* at 32.) The NOI was computed using an average lease price per square foot of 43 cents based on four triple net lease agreements for industrial properties in the Eugene/Springfield area. NOI was reduced by a 5 percent vacancy and credit loss and 7 percent for expenses. (*Id.* at 30.) Thompson determined an estimated “[v]alue of Building and Improvements” of \$3,630,000. (*Id.* at 32.)

In response to Defendant’s questions, Thompson testified that the income approach is based on the principle of anticipation, *i.e.*, “benefits that come to owner from the building being rented or leased.” He stated that the cost of the special purpose features is “recouped from a profitable business.” In response to questions about the comparable lease properties, Thompson testified that each of the lease properties has an eave height of approximately 20 foot to 24 foot, overhead cranes are not present in some of the leased properties, and the finished area in one of the leased properties is 27 percent, which is substantially more than the subject property with its 8.3 percent finished area. In direct testimony, Rodriguez challenged Thompson’s choice of properties, noting concerns of comparability based on zoning, size, height, construction, and absence of cranes.

Thompson described the four sales and one listing he used for the “direct sales or market approach.” (*Id.* at 33.) To each of the unadjusted sale prices, he computed an estimated land value which he subtracted from the sales price. (*Id.*) Thompson testified that all the sales are slightly inferior to the subject property. Sale 1, “a concrete tilt-up building with 19% finished area,” was “constructed in 1980/1990.” (*Id.* at 34.) In his opinion, a “concrete tilt-up structure” is “better quality” and steel framing is “superior” because it is stronger, especially if “overhead cranes” are “installed.” Thompson stated that Sale 3, a recent sale occurring in similar market

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conditions as January 1, 2006, was approximately 67,000 square feet and built in 1979/80. (*Id.*) Sale 4 was a metal structure “similar to the subject with regard to construction, age, and percent of finished area” but “not as elaborate” as the subject property. (*Id.*) The listing, which is described as Sale 5, remains unsold. Thompson determined that the real market value of the subject property was \$3,567,000. (*Id.*)

During cross examination, Thompson stated that the “direct sales or comparable sales approach” is based on the principle of substitution; the market is based on finding a “substitute property with the same utility as the property that was sold.” For each of the comparable sales, Thompson testified that he viewed, but did not inspect, each property, and verified each sale. None of the comparable properties had “super adequacies” and none was “overbuilt for the market.” When questioned for more details about the sales, Thompson testified that Sale 1 was zoned “I-2” and he was not sure if Plaintiffs could conduct their business in an area zoned I-2. He explained that Sale 2 was formerly used to manufacture and test lightweight boats. Thompson concluded that the sale was “arm’s length” when the purchase option was exercised by the tenant in February 2007. According to Thompson, none of the buildings in Sales 1, 2, or 3 had overhead cranes. He testified that Sale 4 was a group of three buildings adjacent to the subject with a vacant lot. The eave height in the three buildings varied from 18 feet to 24 feet. Thompson testified that Sale 5 is an “older building, built in 1980, with 20 foot ceiling height and plywood frame with metal sliding.” Its current use is “heavy industrial.”

On redirect, Thompson testified that he spoke with Clayton Walker (Walker), a “well-known industrial broker in Eugene,” about the subject property. Walker stated that he “had a client interested in leasing the subject property.” Thompson testified about his recent conversation with Walker who “reconfirmed” that the subject property is not a “special purpose” property and could “easily be converted” for other industrial use. Thompson concluded that it would be difficult

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to get more than 40 cents per square foot. He testified that two 80-ton cranes are “heavier than typical, but they are not unusual.” Rodriguez testified that he reviewed a number of commercial properties listed by Walker. (Def’s Ex A at 311, 312.) He concluded that many of the properties could be used for industrial warehousing but they were not “comparable to [the subject property owned by] Voith.”

Thompson testified that his determination of real market value is based on an arm’s length transaction between a willing buyer and willing seller. He stated that real market value is not “value in use for Voith.” Thompson concluded that “if the market will not pay for the special features,” then “the lease and sale comparables” he selected “are more comparable to the subject property because no value can be charged for the special features.”

C. *Operations*

Locke testified that he had been in the “paper business” for over 30 years. He referenced the closure of many paper mills from 1989 to 2003, located in Camas, Washington; Port Alice, British Columbia; Maine; and North Bend and Junction City, Oregon, and other places. (Ptf’s Exs 14, 15, 16, 17, 18, 19, and 20.) The impact of those closures on the Springfield facility, according to Locke, is a reduction in business because “there are less paper machines in the industry.”

At the Springfield facility, Locke described the two main functions as “service and repair, and roll covers,” including rubber, polyurethane and composite. A simplified description of the steps of the roll cover process is: remove; blast; extrude; autoclave; trim. He testified that Plaintiffs handle warranty work (12 or 24 months) for “those things manufactured in Springfield;” “service contracts are not sold.” He testified that, in 1999, Voith AG acquired the subject property. At that time, the combined gross revenue of the Portland and Springfield facilities was \$26 million. Locke testified that, since 1999, the Portland facility closed, taking with it the ceramic

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cover product line which moved to Wisconsin, resulting in the discontinuation of cylinder service. He stated that direct labor hours for the two facilities in 1999 was 120,000 hours and as of 2006 for the subject property it was 55,000 to 65,000 hours. Locke testified that the plant is capable of 100,000 hours with no additional capital expenditures and some additional labor.

Locke testified that the Portland facility closed on October 15, 2004. He described the Portland facility as follows: The Portland facility measured approximately 90,000 square feet in three separate buildings. Buildings were tilt-up concrete construction with 90-ton capacity (there were three 30-ton overhead cranes). McCarten testified that when Portland was closed, its service business was primarily mechanical, including rebuilding and replacing work on rolls with “minor roll covering.” Locke testified that the assets were sold for “\$150,000” and the property was sold in May, 2005 for “\$3.4 million.” Locke testified that “to sell the facility,” the “six pits were filled” at a cost of \$50,000.

In describing the operating conditions, Locke testified that, prior to and including the assessment date of January 1, 2006, pricing pressures have resulted in “discounting” of list prices. He concluded that the “discounting” is driven by an “over-capacity of service providers who are trying to stay in business.” Locke stated that “the customers are viewing” its services as a “commodity” which could lead to “a race to the bottom.” Zuercher testified that “discounting still continues” and all quotes are reviewed to gain a better understanding of what it takes to price the service to “get the business.” The “only growth industry,” according to Locke, is “tissue.” He stated that Plaintiffs’ main competitors for mechanical and paper rolls are Stowe Woodward and Metso. Locke testified that Metso, which operates in a smaller, older facility than Plaintiffs’, has a contract with Inland Container “for all services; however, it is in breach of its contract” because it cannot handle the largest rolls which are shipped to KRC Rolls for service. He stated that, recently, Metso replaced four of its six repair facilities managers.

Locke stated that net operating losses for the Springfield operations “have increased” and that, as of the assessment date, asset utilization was “40 - 50 percent of capacity.”⁴ McCarten referenced Plaintiffs’ Exhibit 21 which stated that production hours have been flat from 2002 through 2005 and Plaintiffs’ Exhibit 23 at 14 which discussed claims and plant utilization. (McCarten Test at 11.) During cross examination, Locke testified that, during fiscal years 2004 and 2005, the facility experienced quality control issues, requiring some rolls to be redone three times; the issue has been “solved.” Locke testified that over a period of years Voith AG has consolidated “eight plants into three plants,” but Voith AG has no plans to close the Springfield facility. He described the location of the Springfield facility as “at the southern end of the paper mecca.” Locke testified that the facility was “sized correctly” until recovery occurs.

D. *Financial Overview*

Zuercher is KRC Rolls’ current controller and has worked for KRC Rolls for over 14 years. She testified that one of her responsibilities is to submit the annual industrial property tax return to the Oregon Department of Revenue. Zuercher testified that Defendant’s 2004 and 2005 Value Transmittal Sheet Real Property included a footnote stating that “[o]ne or more of the Buildings and Structures assets on this account are classified as General Use.” (Ptfs’ Exs 4 and 5.) She noted that the above footnote did not appear on the 2006 Value Transmittal Sheet Real Property. (Ptfs’ Ex 6.)

Zuercher reviewed Plaintiffs’ financial statements for fiscal years ending September 30, 2003, 2004, 2005, and 2006 with the court and Defendant. (Ptfs’ Ex 7.) She testified that in fiscal year ended 2003, Plaintiffs’ operating income was \$85,149. (*Id.*) For each of the next three years,

⁴ The issue of utilization (billable project hours worked versus actual direct hours worked) was discussed again during cross examination of Zuercher. It was concluded that there is no document that shows 100 percent utilization of plant capacity and it was suggested that maximum utility might be 40 percent.

operating income was a loss. (*Id.*) Zuercher explained that the Portland facility closure and reduction in direct labor hours contributed to the losses. She stated that the accrued severance and rent expenses related to the Portland facility closure appeared “below the operating results line.” In addition, she testified that product claims resulting in “rework” contributed to the substantial increase in the expense line item labeled actual risk cost. (*Id.*)

Locke testified that the paper rolls division headquarters are located in Wilson, North Carolina. Personnel located at the headquarters handle marketing and large corporate accounts. Locke testified that “corporate overhead” for those and other services, such as income tax return preparation, is allocated to KRC Rolls. Zuercher testified that KRC Rolls pays Voith AG a license fee of 1.1 percent of sales and, beginning in 2006, KRC Rolls pays a fee for research and development. She explained that Voith AG requires a “daily cash sweep” of all of its owned companies. Zuercher testified that the cost allocation of corporate services is a “benefit” because the “economies of scale” dictate a sharing of costs, such as research and development, corporate tax preparation, human resources, and marketing. She stated that each year the corporate financial statements are audited by Ernst and Young, Certified Public Accountants, who have concluded that the allocated costs are “reasonable and customary costs.”

E. *Defendant’s Appraisal*

Rodriguez, who has 19 years of experience as an industrial and utility appraiser for Defendant, determined the real market value of the subject property as of the assessment date was \$7,096,100. (Def’s Ex A at 38 (corrected).) He described the subject property while referencing the property description portion of his appraisal report. (Def’s Ex A at 44-46, 48, 52, and 54.) Rodriguez testified that the sale of the subject property to Voith AG in 1999 “supports” a value greater than his determination. (Def’s Ex A at 34.)

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After inspecting the subject property for five days in the summer of 2006, Rodriguez concluded that the subject property was an “especial use property” because it was “specifically designed and equipped for the current user and operation.” (Def’s Ex A at 5, citing “valuation standards set forth in ORS 308.205 and OAR 150-308.205-(A)(3)”.) He testified that the subject property was “designed for a specific function with no concern for marketability.” Rodriguez compared the subject property to the property in a prior tax court case, *STC Submarine, Inc. v. Dept. of Rev.*, 13 OTR 14 (1994), *aff’d* 320 Or 589, 890 P2d 1370 (1995). He testified that the “*STC* property” was similar to the subject property because both properties were “specialized structures” with similar “special features” which were built with “no consideration of marketability,” and their “highest and best use” was their current use. Both properties, in his opinion, did not have “super adequacies” which he defined as “features above and beyond what the market could support” because each property “was in use” and met the “owner’s needs.” Rodriguez listed the special features of the cover building: flammable liquids storage room; mill room; sandblasting room; balance pit; grinder pit; autoclave pit; retaining wall to keep rolls from “flying off” during rotation; concrete foundation, and column width. Plaintiffs countered that those features represent slightly more than three percent of the total available square footage.

In discussing the highest and best use of the subject property, Rodriguez testified that the current use is both “legally and physically possible.” (Def’s Ex A at 14, 15.) He stated that the current use is “financially feasible” because “demand for the product exists” and it is “maximally productive” because “all of the specialty improvements and machinery” are in use.

(*Id.* at 16 and citing OAR 150.308.270(D)(2).) On cross examination, Plaintiffs questioned how Rodriguez could determine that the subject property was “financially feasible” when it did not “generate positive return.” Rodriguez responded that “the income does not tell the whole story” because of the cost allocations. Even though notes of one of his team members stated that

“production employees” in the machine shop have “decreased,” Rodriguez testified that his review of “other information” did not show a “significant” change in the number of employees. (Def’s Ex A at 255.)

Rodriguez concluded that the subject property “does not warrant an adjustment for external obsolescence.” (*Id.* at 5.) He explained that the “synergies of KRC Rolls with their German parent, Voith AG, influence the viability of the subject property.” In his opinion, the utilization of the subject property is “the same or increasing” and there was no “value impairment demonstrated to the German parent company, Voith AG.” (*Id.*) Rodriguez concluded that all the special features of the subject property are in use, and the consolidation of the Portland facility with the Springfield facility resulted in a “benefit to the remaining company.” On cross examination, Rodriguez testified that, to him, the subject property is a “cost center, not a profit center.” Engmann disputed Rodriguez’s statement that Plaintiffs are a “cost center.” He testified that KRC Rolls is a “profit center,” because it is a “legal entity,” “separate reporting unit,” and all transactions between Plaintiffs and the other Voith AG owned companies are “arms length.”

Rodriguez testified that Plaintiffs elected “under ORS 308.411 to have the property valued using the income approach to value.” (*Id.* At 5-6.) He stated that the “income approach was determined to be an unreliable indicator of value for the industrial improvements.” (*Id.* at 6.) Rodriguez’s conclusion was based on access to only three years of financial information, leaving him with questions about income and expense items, including which items “are not solely attributed to the subject plant,” and the “value of the Voith name recognition” to the subject property. (*Id.*)

Moving next to the cost approach, Rodriguez testified that the “cost approach is based on the principle of substitution, which states that no property will command a greater price than a comparable substitute currently available in the marketplace.” (Def’s Ex A at 19.) He stated that

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the cost approach requires an “estimation of a replacement or reproduction cost new less allowances for” all types of depreciation. (*Id.*) Rodriguez explained in detail how he computed the replacement cost for the buildings and structures “using Marshal-Swift’s (M-S) computerized Commercial Cost Estimator.” (Def’s Ex A at 26, 172-178, 180-185, 240, and 250-51.) He testified that he computed a price per square foot of \$72.81 for the original building and \$99.64 for the cover shop building. (Def’s Ex A at 174, 180.) Rodriguez testified that there was “no measurable amount of functional obsolescence.” (Def’s Ex A at 27.) In his appraisal report, Rodriguez wrote that “External Obsolescence for especial use property means external negative influence on value of the subject to the owner. The owner here is Voith AG, the German parent company.” (Def’s Ex A at 27.) Rodriguez testified that he “researched through the internet” Plaintiffs’ competitors and concluded that the subject property has not “suffered any external obsolescence.” (Def’s Ex A at 27-32.) He commented that “Voith reacted” to the downturn in the paper industry, specifically the “closure of 10 percent of the paper machines, by closing three of its owned facilities.” Rodriguez testified that Voith is “at the forefront of new research and development.” In sum, Rodriguez testified that the “cost approach is the most appropriate” valuation method.

When considering the comparable sale approach, Rodriguez visited and inspected two properties located in Oregon (Portland and Tualatin), and two located in Washington (Vancouver and Lakewood). (Def’s Ex A at 35-37.) He briefly described each property, explaining that, in his opinion, none of the properties is “suitable for Voith activities.” Rodriguez stated in his appraisal report that “[d]ue to the fact that no reliable comparable sales were found, the sales comparison approach was not considered to be reliable.” (Def’s Ex A at 35.) In his testimony, Rodriguez reviewed each of the comparable properties selected by Thompson, noting the lack of comparability (size, age, quality, height, multi-tenant) of each to the subject property. Rodriguez

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was asked about the Pierce Pacific building, which one of the Defendant's appraisers in training referenced as "comparable." (Def's Ex A at 302, 303.) Rodriguez testified that the Pierce Pacific building is "not like the cover building," but is more similar to Thompson's comparables which are not special purpose facilities that could be used for Plaintiffs' "operation."

F. *Economic Obsolescence*

Cenatempo, who has over 17 years of valuation and financial analysis experience including extensive pulp, paper, forest products, and packaging experience, testified that "it was reasonable for the DOR to not make an adjustment to their appraisal for economic obsolescence." (Def's Ex F at 1.) To support his statement, Cenatempo presented a brief overview of the "state of the pulp and paper industry" from 1999 to 2006. He concluded that between 1999 and 2006 "North American pulp & paper reduced capacity in order to balance supply and demand," and "[t]here were more Western paper machines per roll service facility in 2006 than 1999* * *." (*Id.* at 2, 3.) Cenatempo testified that the closure of North America pulp and paper machines "increased the value of the remaining machines." (*Id.* at 4.) (emphasis in original). As a result of those closures, he testified that "[r]oll service facilities [20 percent of West Coast facilities] were also closed to increase the remaining facilities' values." (*Id.* at 5.) Cenatempo testified that the closing of "least competitive machines" which handle smaller, lighter weight rolls had less impact on the subject property which has a "competitive advantage" for rolls "20 tons (40,000 lbs.) and higher." (*Id.* at 8.) He testified the mill closures had a "short term impact on the paper industry, and he predicted that "paper demand was expected to grow as of the valuation date" which would support "future roll service sales." (*Id.* at 9.) Cenatempo concluded that Voith's closure of the Portland facility was done to "bring Voith back in line" with the market and to "retain value in the remaining facilities." On cross examination, Cenatempo was asked about two of the studies he co-authored. (Ptf's Exs 17, 18.) Plaintiffs concluded that those studies supported a conclusion that

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the pulp and paper industry in North America has been a poor competitor. In response, Cenatempo testified that Plaintiffs overlooked some of the positive parts of the report. (*See* Ptf's Ex 17 at 4, 11, 15-16.) He did state that overall the pulp and paper industry is a "mature industry" and has given "little return to shareholders" even though it has generated sufficient cash to pay its debt. (Ptf's Ex 31 at 13, 15.)

Looking at KRC Rolls' financial statements, Cenatempo compared net cash flow as reported to an adjusted net cash flow. (Def's Ex F at 11.) The adjustments made by Cenatempo relate to intercompany charges and allocations, and non-recurring rework costs and the Portland facility closure. (*Id.* at 10.) Cenatempo testified that "value follows cash flow." On cross examination, Cenatempo testified that there is "no economic rational basis for allocations that shift income" and "quality problems" are not a result of external economic conditions.

Cenatempo reviewed production data and concluded that the subject property's "production hours have increased 32% since 1999" and "(+20% since 2001.)" (*Id.* at 13.) He concluded that "[d]ollars per production hour are down far less (-5%) than production hours have increased (+20%) since 2001" which he concluded results in an increase in revenue for the subject property. (*Id.* at 14.) Cenatempo testified that "production hours" show a "positive trend," providing "no basis to conclude that there is economic obsolescence." In addition, Cenatempo testified that each of the following financial ratios, direct contribution margins, gross margins, and gross profits, "do not indicate economic obsolescence." (*Id.* at 15, 16, 17.) He concludes that the subject property "has Special Value to Voith" because it "helps Voith maintain customer relationships to sell equipment and other services." (*Id.* at 18, 19.)

McCarten, who has over 22 years of industry experience, offered a different perspective of the state of the paper roll cover business. He recited the closure of five Voith plants and the closure of plants by Voith's competitors, Metso and Stowe Woodward, beginning in the late
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1990s. Both McCarten and Cenatempo testified that Consolidated Paper paid a premium for a roll cover facility in 2000 and sold assets in 2007 for more than the original amount allocated to those assets. However, McCarten stated that Consolidated Paper wrote down the value of the assets in 2003 and, even though it retained a portion of the business (Coreno Coreboard), it did not make a profit on the sale. Using data from sales of paper facilities, Cenatempo concluded that “Suppliers and Likely Buyers” would pay between 1.4 and 1.5 times sales for the aggregated assets of a paper rolls service facility. (*See* Def’s Ex G at 3.) Using that method, Cenatempo computed a value for Plaintiffs’ assets, subtracted cash, inventory, accounts receivable, prepaid expenses, and other assets, and concluded that Defendant’s real market value of the building and structures gave “support” that there is no “economic obsolescence.” (Def’s Ex G at 4.) On cross examination, he testified that the “computed amount reflects business value” which “includes some intangible value,” such as “customer relations, goodwill, and trademarks.” Cenatempo testified that “supply and demand,” specifically, paper machines and production, are “in balance,” because industry closures “take out capacity” to keep “supply and demand in balance.” Plaintiffs questioned whether “shutdown costs” are a form of obsolescence; Cenatempo responded stating that “for those that were closed yes, but not those still open.” McCarten challenged the type of paper facilities used to develop the 1.4 to 1.5 ratio; he stated that at least one company, New Page, sold a mill and he was unfamiliar “with the business of some of the companies.” McCarten concluded that “you can’t compare different businesses.”

McCarten testified that the technology improvements currently allow “covers” to “run 50 percent longer” and demand “only a slight price premium,” resulting in “a 30 percent shrinkage in the service market.” He concluded that in the “western region of the United States” where Plaintiffs are located, the market was “20 percent smaller in 2006 than it was in 1999 when paper production peaked.” McCarten read an internal communication announcing the Portland

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shutdown which stated that “overcapacity * * * dictates taking these measures.” (Ptf’s Ex 21 at 115.) In contrast, Cenatempo concluded that “since 2002 and 2003 prices have gone up” and one of Plaintiff’s competitors, Metso, had a “record year in 2006/2007 in their paper supplier segment.”

Cenatempo, McCarten, and Rodriguez discussed or referenced Xerium Technologies Inc.’s (Xerium) Form 10-K filed March 2, 2006, for the period ended December 31, 2005.

(Ptf’s Ex 37.) In the Form 10-K, Xerium listed “Risks Relating to our Business and the Industry,” describing “restructuring measures in response to changing market conditions” through

December 31, 2005, “fluctuations in currency exchange rates,” and the impact of “a sustained downturn in the paper industry” if such a situation developed. (*Id.* at 15.) Cenatempo testified that Xerium made “forward looking statements” to “alert reader of potential risks that could happen to the company” and, in these reports, companies “do not list positive things that could happen.” Cenatempo read Xerium’s statement that it “expanded” its roll covering business “in response to demand from paper producers that we perform work on the internal mechanisms of a roll while we refurbish or replace a roll cover.” (*Id.* at 31.) Xerium’s cost reduction and restructuring costs in addition to cost of product sold were briefly discussed. (*Id.* at 33, 35, 37.)

Cenatempo commented that restructuring is an “analysis of how to maximize performance.”

McCarten testified that “consolidations are a rational response by paper companies to an unhealthy industry.”

II. ANALYSIS

Plaintiffs use the subject property to recover and service paper machine rolls and components. Plaintiffs appeal the real market value of its buildings and on-site improvements for

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the 2006-07 tax year.⁵ The subject property consists of two buildings: the original building was built in 1986-1987 and expanded and remodeled in 1993; and the cover building was built in 1998, and designed specifically for Plaintiffs' use for their rubber and polyurethane covering operation.

Plaintiffs allege that the real market value of the subject property on the assessment date was \$3,600,000. (Pfts' Ex 1 at 2.). Defendant alleges that the real market value was \$7,096,100. (Def's Ex A at 38 corrected.) The difference in real market value between the parties does not stem from their differing opinions about the highest and best use of the subject property. Both parties agree that the highest and best use of the subject property is its "continued use as an industrial facility," for "roll servicing." (Pfts' Ex 1 at 25 and Def's Ex A at 16.)

A. *Subject Property: Special Purpose Use*

The parties' difference in value reflects their conclusion that the subject property is or is not a special purpose property. Plaintiffs conclude that the subject property is an industrial facility, "not special purpose in design and would appeal to a wide market of industrial users." (Pfts' Ex 1 at 28.) In contrast, Defendant concludes that the subject property is an "especial property," as defined in Oregon Administrative Rule (OAR) 150-308.205-(A)(3) as follows:

"Especial property is property specifically designed, equipped and used for a specific operation or use which is beneficial to only one particular user. This may occur because the especial property is part of a larger total operation or because of the specific nature of the operation or use, but in either case, the improvement's usefulness is designed without concern for marketability * * *."

(Def's Ex A at 14.)

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⁵ The parties stipulated to the following real market values for tax year 2006-07:

Land:	\$868,680
Machinery and Equipment:	\$5,971,300.

The court agrees with both parties. The original building is not a special purpose property and the cover building is an especial property. The two buildings are not part of one integrated operation; each facility is designed and equipped to handle different types of operations.

The cover building was designed by Plaintiffs' regional general manager (Locke) specifically for Plaintiffs' use for its rubber and polyurethane covering operation. The building measuring close to 50,000 square feet was laid out to maximize efficiency and avoid floor congestion. The facility was constructed to allow unobstructed vertical clearance and reinforced to bear equipment weight necessary to manage heavy, long stainless steel rolls that weigh tons. Pits varying in lengths up to 65 feet to house specialized equipment were constructed and then protective exterior and overhead rails installed to safely contain the vibrating rolls. The cover building was constructed to design specifications without regard or consideration of future marketability. Even though it could be converted to another use, the market for the facility's special construction features is limited and conversion costs could reduce or dampen demand. A facility like the cover building with custom features that specifically exist for the facility's operations is a special use property.

In contrast, the original building is approximately 28,000 square feet with an exterior office and seven covered work and storage bays. The building was first constructed in 1986 and expanded in 1993. The service and repair equipment requires no special housing (specifically, pits with customized exterior protective structures). There are no special work areas, *e.g.*, sand blasting or mill rooms, like those found in the cover building. The original building with its limited amount of special features could accommodate various types of users.

Defendant characterized the crane system as one of the defining features of especial property. In the subject property, the overhead crane system and the attached cranes are designed to lift varying weights of paper rolls. Crane systems alone do not define an especial property. In
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the cover building, where the cranes are used in a manufacturing process in combination with other specialized equipment and specially designed work areas, including pits and rooms, the crane system is one more special feature in a special purpose use facility. In the original building, the crane system is like any other tool used in the repair and servicing of the paper rolls and, absent other special features, the crane system by itself does not create an especial property.

Defendant emphasized other features, such as the approximate 30 foot eave height, beam spacing, and reinforced concrete in the floor. Each of those features is commonly found in buildings which can be used for a variety of uses. For example, beam spacing can create an open or clear span which permits easy movement of material and equipment. Reinforced concrete measuring from five to eight inches in thickness is suited for both industrial equipment or warehouse loads. Like the crane systems, those features alone do not define a property as especial. As previously stated, structural features are combined with other specialized equipment and specially designed work areas to create an especial property.

B. *Valuation*

ORS 308.411(1)⁶ requires that an industrial plant be valued at its “real market value” using one of the three methods of appraisal: market data (comparable sales method); cost approach (reproduction or replacement cost of the plant); or income approach (capitalization of income) “or by two or more approaches.” ORS 308.411(13) provides that “[t]he department may adopt any rules necessary to carry out the purposes of this section.” With respect to especial property, the department’s rule states that “[r]eal market value must be determined by estimating just compensation for loss to the owner of the unit of property through either the cost or income approaches, whichever is applicable, or a combination of both.” OAR 150-308.205A-(3).

⁶ All references to Oregon Revised Statutes (ORS) and Oregon Administrative Rules (OAR) are to 2005.

1. *Original Building*

Looking first to the original building, Plaintiffs used both the income and comparable sales approach. For the income approach, Plaintiffs' appraiser, Thompson, estimated real market value using the direct capitalization method. He selected four leased production facilities with finished floor space ranging in size from 5,187 to 103,500 square feet. (Ptf's Ex 1 at 28.) Defendant provided pictures and detailed descriptions of the facilities selected by Thompson. (Def's Ex D at 7-10.) With lease dates of 2004, 2005, and 2007, Thompson determined the subject property's market rent of 43 cents per square foot per month, triple net. The 43 cents per square foot per month, triple net, compares favorably to the lease rates (35 cents (non-office) and 65 cents (office)) listed in 2005 for Voith AG's Portland facility. Thompson concluded that the "4,650 square foot attached covered storage area [would] command market rent of approximately \$0.15 per square foot per month," but he provided no data to support his conclusion. (Ptf's Ex 1 at 29.)

Thompson developed a capitalization rate based on 10 sales of property located in the Eugene area, ranging in size from 7,000 to 114,195 square feet and having sale dates from May 2004 to May 2006. (Ptf's Ex 1 at 31.) In determining an overall capitalization rate of 8.5 percent, Thompson wrote that he considered "location, age, quality, and type of improvements" of the 10 properties. (*Id.*) No detail to support his conclusion was provided to the court in Thompson's report or testimony.

Thompson's income approach is similar to Defendant's 1996 income approach. (Ptf's Ex 8 at 25.) Defendant relied on six comparable facilities ranging in size from 15,000 to 56,450 square feet to compute a "blended rent" rate of \$0.30 per square foot per month, triple net. (*Id.*) Defendant did not use a lower monthly rate for the storage area. (*Id.* at 30.) Defendant computed expenses at six percent. Because there were "virtually no sales of large industrial or warehouse buildings of age 5 or less," Defendant's appraiser used "the cap rate data from national investor
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surveys” to set a capitalization rate of 9.75 percent. (*Id.* at 25.) Defendant determined a real market value for the original building of \$1,059,000, or approximately \$30 per square foot of floor area. (*Id.* at 28.)

Thompson concluded that “[t]he Income Approach to Value is generally considered to be the most reliable in the appraisal of income producing properties.” (Ptf’s Ex 1 at 34.) Using the income approach, Thompson determined a real market value of \$3,630,000 for both the original building and the cover building or approximately \$41 per square foot. (*Id.*) To reach that real market value, the stipulated real market value of the land (\$905,612) was subtracted from the total value computed for both buildings.

Thompson next determined the real market value of the subject property using the comparable sales approach. (Ptf’s Ex 1 at 33.) He selected four sales in the Eugene/Springfield area that sold in February 2005, June 2006, February 2007, and September 2007. (*Id.*) The age of buildings varied and many were remodeled or expanded over the years. (*Id.*) Thompson included one property listed in January 2006, which was similar in size to the subject property (the two buildings) but was built in 1980. (*Id.*) A listing or offering price for a property may or may not be a valid indicator of real market value because the ultimate sale price could be higher or lower depending on unknown factors. For that reason, the court finds the listing of limited use in determining value.

Thompson reduced the unadjusted sale and listing prices for estimated land values. The prices per square foot including site improvements ranged from \$34.29 to \$43.13. (*Id.*) Defendant provided pictures and detailed descriptions of the facilities selected by Thompson. (Def’s Ex D at 2-6.) Rodriguez concluded that two of the sales were zoned light industrial, construction of all of the buildings was inadequate to bear the weight of the special purpose equipment, and only one of the buildings had a crane system. (*Id.*) Based on the information

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provided by the parties, the court concludes that none of the buildings was totally suitable for Plaintiffs' use. Sales of buildings that are too small to accommodate Plaintiffs' current operations are not true comparables. Thompson concluded after "taking into consideration major differences and the factor of time, the value of the subject property, including site improvements is reasonably concluded to be \$43.00 per square foot," or approximately \$3,567,000 for both buildings. (Ptf's Ex 1 at 34.) He concluded that because the "value indicated by the Market Approach [varied] only slightly from that indicated by the Income Approach," the market approach was "additional support" for his conclusion that the fair market of the original building and cover building including on-site improvements was \$3,600,000 or approximately \$41 per square foot. (*Id.* at 35.) Plaintiffs suggest that Voith AG's sale of its Portland facility in May 2005 is a comparable property. The Portland facility consisted of three separate buildings:

- Building 1: 30,061 square feet with an additional 1,400 square feet of office space
- Building 2: 14,630 square feet with an additional 5,820 square feet of office space
- Building 3: 30,568 square feet with an additional 1,710 square feet of office space

(Ptf's Ex 42 at 2.) The facility was located on 12.165 acres of which 10.92 acres was described as usable. (*Id.* at 3.) In contrast, the Springfield facility is located on approximately six acres. The land value for the Portland facility was not disclosed. The Portland facility was offered at \$4,900,000 and sold for \$3,500,000. It is comparable in size to the Springfield facility and similarly constructed of concrete. It is unclear whether pits were present in all the buildings or only Building 3. According to Locke, those pits were filled in at a cost of \$50,000 to Voith AG. Locke testified that there were three 30-ton overhead cranes which the current owner is not using. The condition of the facility at time of sale is disputed; Plaintiffs' representative testified that it was in average to good condition and Defendant's representative testified that the new owner spent \$2.5 million to \$3 million on deferred maintenance. Because the condition of the property at the time of sale is disputed, the comparability of the Portland facility to the subject property cannot be

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stated with certainty. Further, without knowing the land value, the real market value of the Portland facility is not a reliable benchmark for the real market value of the Springfield building.

Defendant used only the cost approach to value the property because it concluded that the subject property was especial property. Defendant considered the income approach but concluded that Plaintiffs was a “cost center” and the lack of comparable properties eliminated the direct capitalization method. (Def’s Ex A at 17, 18.) Rodriguez wrote that “[a]ll buildings and structures costs were developed using Marshal-Swift’s (M-S) computerized Commercial Cost Estimator.” (Def’s Ex A at 26.) He classified the buildings as Industrial Heavy Manufacturing in average condition. (*Id.*) Rodriguez used a physical and functional depreciation rate of 25 percent, which equates to an 80 year life for the portion of the building built in 1986 and 52 years for the portion of the building built in 1993. (*Id.* at 174.) Even though Rodriguez computed separate costs for the heating and cooling units and sprinklers, he used the same life for those short-lived physical components as the long-lived structural components of the building, *e.g.*, foundation and framing. (*Id.*) Evidence to support the computed remaining lives was not presented. There were no “special features” added to the computed cost of the original building. (*Id.*) Rodriguez determined a real market value replacement cost of \$2,080,440 exclusive of site improvements of \$149,213, or approximately \$61 per square foot.⁷ (*Id.*)

In sum, the appraisers’ reports determined a range of values from \$41 to \$61 per square foot for the original building. Each appraiser used slightly different total square footage for the building: Thompson used 34,302 square feet and Rodriguez used 34,012 square feet. Plaintiffs have “the burden to show that its approach to valuation best reflects the property’s ‘real market value.’ ” ORS 305.427; *STC Submarine, Inc. v. Dept. of Rev. (STC)*, 320 Or 589, 597, 890 P2d

⁷ According to Rodriguez’s appraisal report, the building including mezzanine area measured 34,012 square feet. (Def’s Ex A at 174.)

1370 (1995). Plaintiffs met their burden. Defendant's value determination is based on the original building being an especial property. The court concludes it is not an especial property. Even though each appraiser's methods raise unanswered questions, Thompson's income approach is most applicable to the valuation of an income producing property like the original building which is not an especial property. Based on the evidence presented, the court concludes that the real market value of the original building as of the assessment date was \$1,400,000 including site improvements.

2. *Cover Building*

The real market value of an especial property like the cover building "is the amount of money that would justly compensate the owner for loss of the property." ORS 308.205(2)(c). The real market value must be determined "by estimating just compensation for loss to the owner of the unit of property through either the cost or income approaches, whichever is applicable, or a combination of both." OAR 150-308.205(A)(3). When determining the value of the cover building, the court cannot consider Plaintiffs' comparable sales approach because the cover building is an especial property. Plaintiffs' income approach which was previously discussed determined \$41 per square foot for the building. This square footage amount results in a value (\$1,994,240⁸) which is less than the original cost (\$3,106,389) of the cover building. (Def's Ex A at 206.)

Rodriguez concluded that he lacked complete information to value the cover building using the income approach. Using the cost approach, Rodriguez computed a value of \$4,866,474 for the cover building including special features. (Def's Ex A at 180.) Special features, identified by Defendant as loading well, blast room, balancer foundation, and extruder foundation and rail bed,

⁸ According to Thompson's appraisal report, the buildings measured 48,640 square feet. (Ptf's Ex 1 at 18.)

were valued at \$588,352. (*Id.*) Using Defendant's estimate of 48,840 square feet for the cover building, the price per square foot is \$99.64. A 10.4 percent depreciation rate for "physical and functional" was applied to the "basic structure cost" and no depreciation was computed for the special features. (*Id.*) A 10.4 percent depreciation rate equates to approximately a 77 year life. Even though Rodriguez computed separate costs for the heating and cooling units and sprinklers, he used the same life for those short-lived physical components as the long-lived structural components of the building, *e.g.*, foundation and framing. (*Id.*) Evidence to support the computed remaining lives was not presented.

The court must reconcile Plaintiffs' income approach and Defendant's cost approach. Plaintiffs' income approach is based on sales and an estimated rental income stream from properties deemed by Plaintiffs to be comparable to the subject property. Because the cover building is an especial property and not a general purpose building as Plaintiffs conclude, there is a lack of comparable properties which significantly clouds the reliability of Plaintiffs' determination. Defendant's computed reproduction new cost was reduced by depreciation. Marshal-Swift depreciation data is accumulated for general purpose properties, not special purpose facilities. Defendant overstated the expected life of some physical components of the cover building and failed to explain why it did not depreciate all of the assets.

As of the date of assessment, market demand for Plaintiffs' roll cover products and services existed which supported Plaintiffs' continued highest and best use of the subject property. "A specialized building with an ongoing use, which is the highest and best use, should be valued at that use." *BPOE v. Dept. of Rev.*, 6 OTR 488, 492 (1976); *see also STC 320 Or* at 594 (holding that "market demand" as of the assessment date "continued to exist for taxpayer's products and services" which "supports the department's conclusion that taxpayer's existing use of its building and structures was their 'highest and best use.' ") Because Plaintiffs did not value the cover

building at its highest and best use as a special purpose building, the court must disregard its determination. The court accepts Defendant's cost approach but concludes that its determination of value is overstated. After careful review of the evidence, the court concludes that the real market value of the cover building as of the assessment date was \$4,500,000.

C. *External Obsolescence*

Plaintiffs argue that Defendant's determination of value using the cost approach⁹ is overstated because it fails to consider the effect of the economic obsolescence present in the paper and pulp industry. This court previously defined economic obsolescence as "[l]ike some spirit whose presence may be discerned but whose intangible nature defies measurement." *Truitt Brothers, Inc. v. Dept. of Rev. (Truitt)*, 10 OTR at 118. The court stated that economic obsolescence "confuses and chills the marketplace." *Id.*

The court was provided with numerous multi-page articles and reports describing the state of the North American pulp and paper industry. (*e.g.*, Ptf's Exs 14-20, 25, 26, 31-36.) Those articles and reports spanned numerous years. From an investor's perspective, the overall financial performance of the industry was pitiful, especially between 2001 and 2003. Numerous mills were closed and paper machines were taken out of the service throughout the United States and Canada. In Plaintiffs' service territory, the west coast of North America, including Canada, many paper machines disappeared in 2001. In the year (2005) prior to the assessment date, Longview Fibre closed one packaging machine.

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⁹ "One concern with utilization of or primary reliance on the cost approach is that it alone cannot measure economic obsolescence." *Truitt Brothers, Inc. v. Dept. of Rev.*, 10 OTR 111, 119 (1985), *aff'd* 302 Or 603, 732 P2d 497 (1987).

Cenatempo concluded that “[p]aper machines were closed to restore the supply and demand balance and to increase the value of the remaining lines. * * * As a result, there were more Western paper machines per roll service facility in 2006 than 1999.” (Def’s Ex F at 2.) Plaintiffs offered no evidence to the contrary. In 2006, Plaintiffs had few competitors and declared that, because the subject property is equipped to service both its own manufactured and third party’s paper rolls in excess of 20 tons, it has a competitive advantage. Even though Plaintiffs’ employees described a competitive market which requires discounting to secure work, Plaintiffs’ net income after adjustment for its multiple rework of one roll was positive at fiscal year end 2005.

Based on the testimony and evidence, as of the assessment date, the pulp and paper industry was in a stabilizing period after numerous consolidations and closures, which occurred primarily in Plaintiffs’ territory in 2001. Plaintiffs’ west coast location and its competitive advantage in large rolls weighing more than 20 tons suggest that economic obsolescence, if any, is less than that present in the entire industry. Plaintiffs’ employees testified that there is no intent to close the Springfield facility. Plaintiffs presented no evidence that the special features of the cover building would not be “equally valuable to any other” rubber and polyurethane covering operation which the parties agree is the highest and best use of that building. *STC*, 320 Or at 596.

To prove that economic obsolescence exists, Plaintiffs suggest that the court adopt the *Truitt* approach. In *Truitt*, the court concluded that even though the sale of a comparable property could not “be relied upon alone,” it [the sale price] could be “compared to the value indicated by the reproduction cost new” as “persuasive evidence of economic obsolescence.” *Truitt*, 10 OTR at 120. Plaintiffs allege that the \$3.5 million sale in May 2005 of the Voith AG paper rolls repair property located in Portland is an indicator of the subject property’s market value and the difference between the Portland property’s sale price and Defendant’s reproduction costs for the subject property is “persuasive evidence of economic obsolescence.” *Id.* The court finds that,

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based on the evidence, the computed difference could be economic obsolescence, but there are significant unknowns. First, the sale price of the Portland facility was for both land and building, and Defendant's reproduction cost new is the building cost, exclusive of land. Second, there is a dispute as to the condition of the Portland facility at date of sale and the substantial costs incurred for deferred maintenance. The total dollar amount of those items in relation to the sales price could be large enough to negate comparability between the Portland facility and the subject property. Third, Plaintiffs failed to prove that the Portland facility was comparable in design and features to the cover building. The lack of evidence prevents the court from adopting the *Truitt* approach.

Even if the court concludes that economic obsolescence is present, Plaintiffs failed to offer evidence providing guidance as to how to determine the correct amount of economic obsolescence to deduct from the computed reproduction cost new. It is generally recognized that capacity and utilization of a facility can be used to determine obsolescence. Unfortunately, in this case, the court was presented with conflicting testimony and a failure to identify capacity and utilization for each building. Most of Plaintiffs' witnesses' testimony focused on justification for economic obsolescence but did not provide the court with a method other than the *Truitt* approach to compute economic obsolescence.

III. CONCLUSION

After a careful review of the voluminous evidence and lengthy testimony, the court determines that the real market value for tax year 2006-07 of the subject property was:

Original building and on-site improvements: \$1,400,000; and cover building: \$4,600,000.

The court lacks sufficient information to compute economic obsolescence, if any. Now, therefore,

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IT IS THE DECISION OF THIS COURT that the total real market value of the subject property (buildings and on-site improvements) identified as Account 1411907 for tax year 2006-07 was \$6,000,000; and

IT IS FURTHER DECIDED that the parties stipulated to the following real market values for tax year 2006-07: Land: \$868,680; and Machinery and Equipment: \$5,971,300.

Dated this _____ day of July 2008.

JILL A. TANNER
PRESIDING MAGISTRATE

If you want to appeal this Decision, file a Complaint in the Regular Division of the Oregon Tax Court, by mailing to: 1163 State Street, Salem, OR 97301-2563; or by hand delivery to: Fourth Floor, 1241 State Street, Salem, OR.

Your Complaint must be submitted within 60 days after the date of the Decision or this Decision becomes final and cannot be changed.

This document was signed by Magistrate Jill A. Tanner on July 31, 2008. The Court filed and entered this document on July 31, 2008.