

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Property Tax

PORT OF UMATILLA and )  
HERMISTON FOODS, INC., )  
 )  
Plaintiffs, ) TC-MD 991438A (Control)  
 )  
v. )  
 )  
DEPARTMENT OF REVENUE, )  
STATE OF OREGON, )  
 )  
Defendant, )  
 )  
and )  
 )  
UMATILLA COUNTY ASSESSOR, )  
 )  
Intervenor-Defendant. )  
 )  

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NORPAC, INC. and HERMISTON FOODS, )  
INC., )  
 )  
Plaintiffs, ) TC-MD 010032A  
 )  
v. )  
 )  
UMATILLA COUNTY ASSESSOR and )  
DEPARTMENT OF REVENUE, )  
STATE OF OREGON, )  
 )  
Defendants. )  
 )  

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HERMISTON FOODS, INC., )  
 )  
Plaintiff, ) TC-MD 011214A  
 )  
v. )  
 )  
UMATILLA COUNTY ASSESSOR and )  
DEPARTMENT OF REVENUE, )  
STATE OF OREGON, )  
 )  
Defendants. ) **DECISION**

At issue is the assessment of Hermiston Foods, Inc. for the 1999-2000, 2000-2001, and 2001-02 tax years. The property is identified by Account 128251.

David L. Canary, Garvey, Schubert and Barer, argued the cause for Plaintiff. Joseph A. Laronge, Assistant Attorney General, and James C. Wallace, Assistant Attorney General, Department of Justice, Salem, argued the cause for Defendant. Trial was held February 18 through 28, 2003 in the courtroom of the Oregon Tax Court. The record closed July 17, 2003.

### **I. THE CASES PRESENTED**

The property subject to this appeal is an industrial facility located at 2250 Highway 395 South, between Hermiston and Stanfield, some six miles north of the Interstate 84 interchange. The facility is a plant for processing in bulk and individually quick-freezing vegetables such as peas, lima beans, carrots, asparagus, sugar snap peas, and red potatoes. It was built in 1990. (Ptf's Ex 1 at 39.) For the years at issue the facility had a 10,000 square foot receiving area; a concrete main building of 86,400 square feet supporting four freeze tunnels; a 22,292 square foot dry storage building; and a 14,800 square foot cold storage building. (Ptf's Ex 1 at 49.) There are also 4,386 square feet given over to office, lunchroom, and restrooms, as well as a maintenance shop, receiving bunker and receiving pit, waste bunker, and site improvements. (*Id.*)

The land and leased property are not at issue. Plaintiff has chosen to contest the real market value of the site improvements, buildings, and fixed machinery and equipment. Plaintiff's contention is that the real market value of those assets for the tax years in question was \$3,600,000; \$4,000,000; and \$3,500,000. (Ptf's Exs 1, 2, and 3 at Preface.) The respective real market value on the roll for the improvements was \$10,486,300; \$8,409,570; and \$8,383,240. (Ptf's Exs 1, 2, and 3 at 1.)

There were three components to Plaintiff's case. The first was a demonstration

that economic obsolescence was present in the production of frozen vegetables. The second was the presentation of whole plant sales. The third was the examination of buildings and structures, and of machinery and equipment, under the comparable sales and cost approaches. The income approach, due to Plaintiff's election under ORS 308.411, was not used. (Ptf's Ex 1 at 5 and 112; Ptf's Exs 2 and 3 at 4 and 113.) Plaintiff relied upon two appraisers to present its case, Larry J. Tapanen, ASA (Tapanen), and Don Gwyther, ASA (Gwyther).

The least controversial aspect of Plaintiff's case was its demonstration of the state of the industry for domestic producers of frozen vegetables. Defendant came to the same conclusion as Plaintiff as to the effect of increased foreign competition, consolidation of the grocery and food service industries, changing consumer demand, escalating operating costs, and static pricing, all on a mature industry with overcapacity in which individual producers operating with narrow margins compete in regard to commodity products. (Ptf's Exs 1, 2, and 3 at Addendum A, Producer Price Index; Def's Ex A, Tab 1 at 8.) Farmers in China, Mexico, and Chile are able to grow produce at less expense than farmers in the United States. The United States is losing export markets. Domestic consumption of frozen vegetables is declining. Production costs, particularly due to power, labor charges, and water management restrictions, are increasing, as are marketing expenses. As was testified to at trial, the resulting distress has lead to losses, closures, and bankruptcies among prominent vegetable producers, including Agripac, Tri-Valley Growers, Agrifrozen, and Chiquita. (See *also* Def's Ex A, Tab 2 at 38.)

Plaintiff's method under the cost approach looked to the original costs for the buildings and site improvements of \$3,828,147, which were brought forward to the assessment dates in question by means of the Marshall Valuation Service and

compared to that guide's estimate for a reproduction cost new. (Ptf's Ex 1 at 53; Ptf's Exs 2 and 3 at 52.) Depreciation, particularly the component for external obsolescence, was estimated by a reference to the sales and listings of food processing plants in eastern Washington.

Three sales, all of apple juice concentrating plants, occurred between January 1999 and May 2000 at prices from \$2 to \$20 million. (Ptf's Ex 1 at 56, 58-60; Ptf's Exs 2 and 3 at 54, 56-58.) Land to building ratios varied from 10 to 1 to 40 to 1; the ratio for the subject property is 13 to 1. (Ptf's Ex 1 at 56; Ptf's Exs 2 and 3 at 54.) The area of the buildings was from 38,360 to 182,000 square feet; the area of the subject property is 148,458 square feet. (*Id.*) The amount of the sales price allocated to the buildings by the parties was from \$600,000 to \$3,263,540. (*Id.*) The range of sales price per square foot for the buildings and site improvements was from \$14.25 to \$17.93. (*Id.*) Plaintiff went on to reference three listings as additional support. All the listings were from the Yakima Valley, an area 100 miles to the northwest of the subject property. (Ptf's Ex 1 at 55; Ptf's Exs 2 and 3 at 53.) Two of the properties were hop storage facilities; the third was a food processor. (*Id.*) Two of the properties were available for purchase at approximately \$16 per square foot; the third was priced at just over \$7 per square foot. (Ptf's Ex 1 at 55; Ptf's Exs 2 and 3 at 53-54.) From this information Plaintiff derived respective factors and values per square foot for the subject property's buildings and site improvements for the years at issue. Those are 42.92 percent and \$16; 45.65 percent and \$15.50<sup>1</sup>; and 46.33 percent and \$15.25. (Ptf's Ex 1 at 62; Ptf's Exs 2 and 3 at 60.)

Plaintiff's next step in its cost approach was to estimate the used market value

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<sup>1</sup> A minor inconsistency exists in Plaintiff's evidence. Although Plaintiff's Exhibit 2 is consistent in its use of a value of \$15.50 per square feet, the factor for economic obsolescence is reported as both 45.65 and 43.25 percent. (Compare Ptf's Ex 2 at 53, 60, and 62.)

or, in the alternative, use the depreciated cost new for the machinery and equipment. Those items and their support systems are of the sort used to receive, clean, inspect, sort, grade, process, freeze, and load vegetables. Installation costs were calculated and depreciated individually. The resulting contrast between reproduction cost new and real market value for all the machinery and equipment across each year at issue was \$13,427,078 and \$5,635,964; \$15,506,182 and \$6,560,321; and \$15,725,540 and \$6,306,644. (Ptf's Ex 1 at 64; Ptf's Exs 2 and 3 at 62.) As Gwyther testified, when the estimates for the real market value of the buildings and site improvements are added to the real market value of the machinery and equipment, the end result of Plaintiff's calculations under the cost approach is respective value of \$5,600,000; \$6,600,000; and \$6,300,000. (*Id.*)

Plaintiff's market approach estimated the property's value by relying on the sales of the Agripac facilities to Agrilink. (Ptf's Ex 1 at 91; Ptf's Exs 2 and 3 at 92.) A notable feature of those sales is they occurred in the context of Agripac's bankruptcy. Much of Plaintiff's testimony as to the bankruptcy came from Gwyther, whose knowledge was gained through appraisals of the Agripac plants for one of the secured creditors.

Regarding the bankruptcy, Gwyther testified that the plants were held out for sale through 1997 and 1998, while Agripac filed for Chapter 11 on January 4, 1999. Competing offers were made for the property. Plaintiff described the rationale behind the bankruptcy as being to protect the company and its lenders as they finalized plans to sell the company's assets to a buyer who would continue to operate the facilities and provide the cooperative members with the market for their products. (Ptf's Ex 1 at 92 and Addendum K; Ptf's Exs 2 and 3 at 93 and Addendum K.) Plaintiff described the grower contracts as important because Agripac was a grower cooperative. Another point emphasized by Plaintiff was that Agripac's financing was uninterrupted, and that a

major creditor in the bankruptcy filing provided financing to the purchaser. (Ptf's Ex 1 at 91; Ptf's Exs 2 and 3 at 92.) Defendant's commentary on the bankruptcy was that it was caused by management's loss of credibility, due to computer problems in reporting financial statements, at a point when the company was overextended during a difficult time for the industry.

Following the Agripac bankruptcy, Agrilink, a wholly owned subsidiary of Pro-Fac Cooperative, Inc., purchased Agripac's frozen foods division. (Ptf's Ex 1 at 93; Ptf's Exs 2 and 3 at 94.) Agrilink purchased the individually quick-frozen food processing plants in Woodburn (Processing Plant 3 and its adjacent repack facility, Plant 8), Salem (Processing Plant 2), and Walla Walla (Processing Plant 11). (*Id.*) At the same time, Chiquita Brands International, Inc. purchased Agripac's canned foods processing division, consisting of canning facilities located in West Salem (Plant 1) and Eugene (Plant 4), a labeling plant in Salem (Plant 7), and accounts used for storage and miscellany in West Salem. (*Id.*) An allocation of the sales price placed \$4,600,000 on the real estate, machinery and equipment, and personal property. (*Id.*)

The next step in Plaintiff's analysis was to determine the contributions each plant made to the allocated portion of the sales price. This was done by Gwyther on the basis of his appraisal of those assets. Gwyther's work produced the following results:

Agripac Plant 1 - Salem - Canning	\$ 2,576,000
Agripac Plant 2 - Salem - Freezing	\$ 2,000,000
Agripac Plant 3 - Woodburn - Freezing	\$ 11,500,000
Agripac Plant 4 - Eugene - Canning	\$ 1,610,000
Agripac Plant 7 - Salem - Labeling	\$ 414,000
Agripac Plant 8 - Woodburn - Freezing Repack	\$ 1,000,000
Agripac Plant 11 - Walla Walla - Freezing	\$ 5,500,000

In addition to those transactions, Plaintiff presented three other sales. The first

was the purchase, by Agripac from Stokely USA in 1996, of the Walla Walla plant for \$9,285,000. (Ptf's Ex 1 at 97 and 102; Ptf's Exs 2 and 3 at 97 and 103.) The second was another 1996 purchase, by Agripac from Stokely USA, of a processing plant in Grandview, Washington for \$6,215,000. (Ptf's Ex 1 at 97 and 103; Ptf's Exs 2 and 3 at 97 and 104.) Tapanen testified regarding a third – a vegetable processing plant built in 1996 for \$10,000,000, which sold in 1999 for less than \$3,000,000 with ownership changing from Northern Lights Cooperative to Lakeside Foods.

Those properties were presented by Plaintiff to support the conclusion that the Agripac sale was not an anomaly. Other transactions as to the Walla Walla property were described by Plaintiff as important proofs of that point. Gwyther testified that the facility, located at 1164 Dell Avenue in Walla Walla, sold in July of 1996 for a total transaction amount of \$9,285,000, of which \$2,285,000 was allocated to buildings and land. (See *also* Ptf's Ex 1 at 94.) It sold again in January of 1999 for \$5,500,000, with \$2,000,000 allocated to buildings and land. (*Id.*) It sold again in January 2002 for \$950,000. (*Id.*) In May 2002 it changed hands once more at \$1,625,000.<sup>2</sup> The latter transaction marked a change in use for the property, with the buyer and seller treating the machinery and equipment as having no value. (Ptf's Exs 1, 2, and 3 at 106.)

Although Plaintiff considered all of this evidence, it placed its greatest reliance, as Tapanen testified, upon the sales of the plants in Walla Walla and Woodburn. (Ptf's Ex 1 at 107; Ptf's Exs 2 and 3 at 108.) Both of those plants are larger than the subject property. (*Id.*) Plaintiff adjusted for that fact by determining the area of the subject property relative to the comparables and multiplying it by their selling prices. Tapanen explained that procedure as appropriate because all three plants produce the

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<sup>2</sup> Compare Plaintiff's Exhibit 1, pages 94 and 105, as to whether the total transaction price was \$1,625,000 or \$1,225,000, depending on the buyer's and seller's treatment of the machinery and equipment.

same products, with similar machinery densities and reproduction costs new per square foot of building area. (*Id.*) The fact that the Walla Walla and Woodburn plants have slightly higher proportions of equipment investment than the subject property was noted by Plaintiff as a point supporting its analysis. (*Id.*) After an additional adjustment in the amount of \$372,690 for the economic obsolescence due to excess operating costs caused by an insufficient amount of cold storage on the subject property, Plaintiff found that aspect of its appraisal to indicate a real market value of \$3,400,000 for the subject property for all years at issue. (Ptf's Ex 1 at 108; Ptf's Exs 2 and 3 at 109.)

Plaintiff went on to compare the subject property to the sales by an analysis that considered building size and machinery density and contrasted reproduction cost new with sales price. Dividing the allocated sales prices by the reproduction cost new, as determined by Gwyther, Plaintiff found the ratios of the most comparable properties to the subject (the Woodburn and Walla Walla facilities) to be 21 percent and 17 percent of their reproduction cost new. (Ptf's Ex 1 at 109, Addendums I and J; Ptf's Exs 2 and 3 at 110, Addendums I and J.) Concluding that the properties were similar in terms of the condition and age of their machinery and equipment, and that the subject property was superior as to its age and the condition of its buildings but inferior in its location and cold storage area, Plaintiff applied a ratio of 25 percent. Plaintiff applied that ratio to the reproduction cost new of the subject property, and again subtracted the \$372,690 to adjust for the subject property's lack of cold storage, concluding that its real market value was \$3,000,000; \$3,400,000; and \$3,300,000 for the respective tax years in dispute. (Ptf's Ex 1 at 109; Ptf's Exs 2 and 3 at 110.)

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The values found in Plaintiff's appraisal are set out in the table below.



TAX YEAR	COST ANALYSIS	DIRECT SALES COMPARISON/ REPRODUCTION COST NEW COMPARISON
1999-2000	\$5,600,000	\$3,400,000/\$3,000,000
2000-2001	\$6,600,000	\$3,400,000/\$3,400,000
2001-2002	\$6,600,000	\$3,400,000/\$3,300,000

Reasoning that the cost approach, through its summation of the values of the individual components, did not completely address all the subject property's obsolescence, Plaintiff reconciled the value indicated by the various approaches by concluding that the real market value for the subject property, exclusive of the land, was \$3,600,000 for the 1999-2000 tax year; \$4,000,000 for the 2000-2001 tax year; and \$3,500,000 for the 2001-02 tax year. (Ptf's Ex 1 at 113; Ptf's Exs 2 and 3 at 114.)

Defendant's approach to this case relied on three sets of appraisers. The first group, consisting of Mike Buchanan (Buchanan), Joe Corlett, MAI, SRA (Corlett), and Otto Cuyler, Jr. (Cuyler), of Cuyler Food Machinery and Appraisal, appraised portions of the property. The second set, Dean Schmidt (Schmidt), Craig Myers, and Zafer Abuelkhair, is made up of appraisers who testified as to their opinions of the conclusions of other appraisers. The result was that Defendant decided the subject property was worth approximately twice the value estimated by Plaintiff. (Def's Ex A, Tab 1 at 1 and 2.)

	1999-2000	2000-2001	2001-2002
Buildings, Structures, and Yard Improvements	\$3,788,000	\$3,663,000	\$3,588,000
Machinery and Equipment	<u>\$4,299,000</u>	<u>\$4,529,000</u>	<u>\$4,313,000</u>
Total	\$8,087,000	\$8,192,000	\$7,901,000

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Defendant's testimony as to the value of the machinery and equipment came  
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from the appraisals of Cuyler and Buchanan. Cuyler has a broad depth of experience in buying and selling used food machinery. Cuyler testified that a large part of the market for used machinery involves exports to Mexico, Argentina, Chile, the Pacific Rim, and the Dominican Republic.

Cuyler inspected the property and concluded that, while the equipment would sell well on the used equipment market, its best use was as an operating entity.

(Def's Ex A, Tab 2 at 9.) Cuyler went on to apply his expertise and decide that the fair market value of the machinery and equipment in place and in use for the years at issue was respectively \$4,755,664; \$4,529,203; and \$4,313,526. (*Id.*) That result was consistent with that found by Buchanan in his own investigation, which used similar methods. (Def's Ex A, Tab 6 at 1.)

Two particular clouds hang over Cuyler's testimony. The first is that his concept of "fair market value-in place/in use" uses an atypical definition of fair market value. (See Def's Ex A, Tab 2 at 9.) Cuyler at one point testified he did not know what fair market value was for purposes of appraising property according to Oregon law, and that fair market value was not a concept used by a dealer in used machinery. Also troubling was the fact that Cuyler's materials, specifically his website, suggest he has been a member of the American Society of Appraisers (Society) since 1987 when, in fact, and according to his testimony, his association with that body is limited to a candidacy that has not developed into membership. Cuyler also testified that he has been cautioned by the Society for overstating his association with that body.

Defendant's evidence as to the value of the balance of the subject property came from Corlett. While Corlett's specialty is the valuation of apartments, he does have experience valuing food processing plants. His opinion was that the value of the real estate for the years at issue was \$4,200,000; \$4,075,000; and \$4,000,000.

(Def's Ex A, Tab 3 at 2.) Corlett reached that conclusion on the basis of the cost and sales comparison approaches.

Corlett testified that the cost approach applied physical depreciation of 20 percent and an obsolescence factor of 10 percent to reproduction cost new for the buildings and site improvements of \$4,962,706 and \$595,000 respectively. (Def's Ex A, Tab 3 at 45.) When combined with a land value of \$412,000, Corlett arrived at a rounded value for the 1999-2000 tax year of \$4,250,000. (*Id.*)

Corlett's comparable sales approach used seven comparables, some of which it shares with Plaintiff's analysis. (Def's Ex A, Tab 3 at 47, 66, 67.) Most notably, two of Corlett's sales were the January 1999 transactions involving the Agripac facilities in Woodburn and Walla Walla. (*Id.* at 48 and 49.) Corlett used the same terms and allocations as Plaintiff. (*Id.*) Where Corlett's analysis departs from Plaintiff's is in the adjustment to the sales. Although Plaintiff adjusted those sales downward on the basis of equipment density, Corlett adjusted those sales upward to accommodate his opinion of the effective age of the properties and the greater area of the comparables. He found indicated values of \$15.45 and \$9.36 per square foot. (*Id.* at 47-49 and 66-67.)

The other sales used in Corlett's appraisal included the 1996 purchase of the vegetable processing plant in Grandview, Washington, also used by Plaintiff; the purchase of a potato processing plant in Jerome, Idaho with both Class S and C characteristics; the sale of a former butter plant in Hyrum, Utah; the sale of a warehouse distribution center in Puyallup, Washington; and a transaction involving a former cheese plant close to the Port of Tacoma and Sea-Tac Airport. (Def's Ex A, Tab 3 at 50 and 51.) The respective indicated value for the subject property from this analysis was \$12.11; \$19.74; \$32.17; \$56.52; and \$56.74 per square foot of gross

building area. (Def's Ex A, Tab 3 at 50-51 and 68-75.)

Concluding that the sale of the Hyrum, Utah food processing plant was most similar to the subject, Corlett concluded that \$30 per square foot of gross building area was the best choice for the indicated value of the subject for the 1999-2000 tax year, which resulted in a value of \$4,165,000. (*Id.* at 52 and 53.) Using a depreciation rate of 2 percent annually, value for the 2000-2001 and 2001-02 tax years was respectively placed at \$4,075,000 and \$4,000,000. (*Id.* at 53.) When Corlett contrasted those conclusions with his estimates under the cost approach, he found greater reliance in the sales comparisons and arrived at final conclusions of value of \$4,200,000; \$4,075,000; and \$4,000,000. (*Id.* at 54.)

The balance of Defendant's case consisted of a reply to Plaintiff's appraisals. Dr. Michael Hand (Hand), Professor of Applied Statistics and Information Systems at Willamette University's Atkinson Graduate School of Management, testified that Plaintiff's analysis of replacement cost new and sales price was an unreliable predictor of value.

Further testimony along these lines came from Schmidt, who observed that an analysis of sales price per reproduction cost new runs the risk of oversimplifying a complex matter, especially where the subject and the comparable sales differ as to depreciation or other characteristics. (Def's Ex MM at 1.) Schmidt also testified that Plaintiff was in error in its adjustment for the lack of cold storage in the subject property in that the total annual excess operating costs had not been reduced to reflect the effect of income taxes on the incremental income, which would reduce present value to \$223,614. (Def's Ex KK at 3; Def's Ex LL.) Schmidt also challenged Plaintiff's land and building analysis under the cost approach, asserting error in its reports regarding the apple juice plants. Defendant disagreed with Plaintiff as to the buyer and seller's

allocation of the sales price to the buildings in the Othello and Prosser transactions and presented a different building size for Wenatchee. (Def's Ex FF, GG, HH, and II.) In its review of the revised data Defendant found a range of indicated values of \$22.69 to \$40.45, an amount on the order of twice as great as that determined by Plaintiff. (Def's Ex II.)

Defendant also challenged Plaintiff's adjustment of the Woodburn and Walla Walla sales, asserting Plaintiff neither adequately accounted for the age and condition of the improvements, nor recognized the depreciation of the equipment.

## II. ANALYSIS

This is a complex case, in which three attorneys skillfully blended and contrasted the opinions of eight appraisers in a two week trial, followed by an additional five months of briefing. It is best resolved according to the following findings of fact and conclusions of law.

**The sale out of bankruptcy in which Agripac sold its frozen food division to Agrilink, resulting in the transfers of the Woodburn and Walla Walla facilities at allocated values, is a valid reflection of the market for frozen vegetable plants on the assessment dates in question.**

This court does not routinely use bankruptcy sales in its determinations of value. However, there is an exception to that general rule. The exception occurs when sales out of bankruptcy come to be a majority of the market. *Morrow Co. Grain Growers v. Dept. of Rev.*, 10 OTR 146, 148 (1985). There are good reasons for that choice. Although an isolated bankruptcy may reflect a failed business plan, a remarkable string of bankruptcies is more likely to be the result of an obsolescence that reaches all properties within an industry. Under those circumstances the choice of the court is not to dismiss the sales out of bankruptcy as reflecting atypical considerations, but to

instead examine the transactions to see if they are reliable indicators of market value.

With that perspective, the court is of the opinion that the Agripac bankruptcy sales are reliable. First, a majority of the sales presented to the court of plants producing individually quick-frozen vegetables are either out of bankruptcy, or involving parties who subsequently became bankrupt. Second, the volume of bankruptcies among commodity vegetable producers leads to the conclusion that the causes of the bankruptcies are not the idiosyncratic failures of business plans, but instead the result of national, and even global, changes in production, consumption, and marketing. Third, Defendant's own appraiser Corlett relied on the bankruptcy sales as an element of his analysis. While his treatment of the sales resulted in a conclusion of value disparate from Plaintiff's, Corlett used not only the sales, but also the parties' allocations, in his study of the value of the subject property. Fourth, the Agripac bankruptcy was not of the character that would particularly disrupt the aspects of the sale that make it a worthwhile indicator of value. The marketing period for the property was two years. Negotiations occurred during that period, with prospective buyers submitting competing offers. Lenders continued financing the bankrupt company, and even financed the subsequent purchase of the properties. The sales price was negotiated prior to bankruptcy, and the bankruptcy was used as a device to keep the plants operating and employees in place.

Defendant argued the timing between the purchase out of bankruptcy by Agrilink and Agrilink's own subsequent bankruptcy makes the sales of the comparable properties suspect. The substance of that argument either goes to show that Agrilink overpaid for the properties, or that the market's decline was so precipitous as to catch Agrilink unprepared. Either eventuality supports the reliability, for assessment purposes, of the sales. Defendant's last point raised against the bankruptcy sales was

that they showed a lower improvement residual per square foot than the other transactions. The court agrees with that result, but not with Defendant's conclusion. Time is an element that confounds Defendant's conclusions. The bulk of the bankruptcy sales occurred later in time than the other sales referenced by Defendant. Although Defendant presents the distress of the seller as the cause, another factor equally likely to explain the result is that the continued operation of the market over time caused the value of those properties to drop.

**When comparing the sales comparison approaches of Plaintiff and Defendant, Plaintiff's approach is the more reliable.**

Corlett performed his sales comparison approach valuing the subject property in a workmanlike manner. In the court's analysis, however, he had only two comparables that specifically demonstrated the value of the subject property: the Woodburn and Walla Walla vegetable processing plants. Differences in location, the type of construction, the market for the commodity produced, and the use of the subject property all preclude it from being usefully compared to a potato processing plant, a butter plant, a warehouse distribution center, or a cheese plant close to the Port of Tacoma and Sea-Tac Airport.

With the focus on the Woodburn and Walla Walla comparables, the difference between the appraisals of Plaintiffs and Defendant narrows dramatically. In the contrast between the competing values, the court is more persuaded by the analysis of Plaintiff than that of Defendant. Corlett did not analyze those sales by machine densities or replacement cost new, but confined his analysis to the real estate alone. His points regarding the comparables, that they were larger than the subject and in inferior condition, could be extremely important points that would tell against Plaintiff's method. The particular problem, though, is that they were insufficiently developed.

The comparable properties, and in particular the Woodburn plant, were larger than the subject. However, it is apparent from the testimony of both Plaintiff's and Defendant's witnesses that not all of the plant was of equal utility. Some of the plant, built in the first half of the 20th century, was of dubious utility. Without a greater demonstration of the specific character of each plant the court will not presume, especially as to the Woodburn property, that the buildings on the Woodburn and Walla Walla facilities made a greater contribution to value than the subject property.

Plaintiff's counter argument, that the smaller, newer improvements to the subject property were more or less equivalent to the larger but older improvements of the comparables, when analyzed in terms of machine density and replacement cost new, has merit. The court definitely agrees with Defendant in its observation that extracting ratios of reproduction cost new to sales price and using them to determine the value of comparable properties is not to be done lightly. However, the court disagrees with Defendant's contention that Plaintiff did its work in a cavalier manner. Plaintiff's witnesses were very familiar with the reproduction cost new of the subject property. They were also, by virtue of Gwyther's appraisal of the Woodburn and Walla Walla facilities, extremely knowledgeable about the reproduction costs of those facilities.

Defendant has argued to the contrary, presenting witnesses who described the Woodburn facility in particular as being burdened with obsolete equipment. The particular problem here is that Defendant's point that the comparable properties may have contained obsolete equipment does not show that Plaintiff's witnesses erred in their treatment of this obsolete equipment in their calculations. The court will not presume the existence of an error from the possibility that one might have occurred. On this state of the record, the finding of the court is that Plaintiff's machine density and



replacement cost new analysis was done with the sort of reliable information the method demands.

There remains the argument made by Defendant that the sample used by Plaintiff as the source of analysis looking to reproduction cost new relative to sales price was too small to be statistically valid. The court certainly accepts Hand's testimony at its face value. However, the court does not see that point as a limitation on its decision making. Hand's point was not that the result reached by Plaintiff was wrong. Instead, his conclusion was that he could not say with any confidence that Plaintiff's result was correct. The fact that a statistical analysis cannot guarantee Plaintiff's appraisal naturally makes the court cautious in reaching its conclusions. In this case the caution is overborne by the depth of Plaintiff's analysis.

**In the court's analysis, a discussion of the cost approach is unnecessary.**

The preceding discussion has explained that sales of properties comparable to the subject property exist, and that those sales can serve as reliable indicators of its value. Under those circumstances there is no reason to apply the cost approach as an indicator of value. The cost approach is inherently less reliable than comparable sales as an indicator of value. That is especially true in this case. Uncontradicted testimony demonstrated in this case that there is a great demand for used food processing machinery, of the sort at issue here, in the export market. The great danger of a cost approach is that looking to this market to determine the reproduction cost new of the subject property will overstate the value of machinery and equipment that is not in a warehouse, ready to be shipped, but instead is in an Oregon processing plant, subject to the economic forces that currently apply to northwest commodity producers.

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**Considerations of highest and best use do not require treating the liquidation values of machinery and equipment as a floor below which the real market value of an operating plant cannot fall.**

Defendant has argued, with great ingenuity, that highest and best use considerations require a contrasting of values for purposes of assessing a plant which, while operating, is in a situation where its machinery and equipment would produce greater values if sold on the secondary market as individual items than the assets have as assembled into an operating entity. Defendant reasons that, regardless of what the value of the assembled machinery and equipment might be, the collective value of the individual items upon liquidation serves as a floor below which their taxable value cannot fall.

The court will assume, for purposes of argument, that such a situation exists in this appeal. Although admitting that a foundation for such an argument exists in such statutes as ORS 308.205 (1999) and its accompanying administrative rule, the court does not agree that the assessed value of an operating plant may not fall below its liquidation value. Such a proposition is foreign to the essential nature of the concept of highest and best use. Although a property might have a whole series of alternative uses, in the end it has only one highest and best use. The highest and best use of the property is either as an operating entity, which, due to the nature of the business cycle, is in a period in which it is generating losses, or the highest and best use is to close the plant and liquidate. In this case every appraiser who appraised the property determined its highest and best use was to continue to operate. The court declines the invitation to assess the property as if that were not the case, or to construe *Dept. of Rev. v. Grant Western Lumber Co.*, 15 OTR 258, 263 (2000) to permit that to occur.

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These findings of fact and conclusions of law take care of the bulk of the arguments regarding this case. There remain some minor points. Defendant has argued that for the court to order a dramatic reduction in the value of the subject property does not make sense when the original investment in the plant is less than a decade old. The response of the court is that market forces are more of a determinant of contemporary values than of original investment and that, in the nine years since its inception, the market has worked to take value away from northwest frozen vegetable producers. Defendant noted Norpac might be planning to expand its frozen vegetable operations in Quincy and so might not have in its operations the degree of obsolescence present in other producers. As the Quincy proofs consist of a nonbinding letter of intent to acquire a plant and license to produce, the court will not infer such a conclusion from that evidence.

Plaintiff shall receive relief consistent with the conclusions of its appraisals, albeit with the modification proposed by Defendant to account for the effect of income taxes in the calculation of obsolescence due to the subject property's lack of cold storage. As Defendant's appraisal only provides that information for one of the three years at issue, the court will not perform the calculations. Instead, the court will look to the parties to supply that information before this matter is taken to judgment.

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### III. CONCLUSION

Now, therefore,

IT IS THE DECISION OF THIS COURT that the appeal is granted.

Dated this \_\_\_\_\_ day of February, 2004.

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SCOT A. SIDERAS  
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 SCOT A. SIDERAS ON FEBRUARY 24, 2004. THE COURT FILED THIS DOCUMENT ON FEBRUARY 24, 2004.**