MINNESOTA STATE LAW LIBRARY



**NO. A07-0394**

State of Minnesota

# In Supreme Court

Southern Minnesota Sugar Beet Coop,

*Relator,*

v.

County of Renville,

*Respondent.*

## RELATOR'S BRIEF

James H. Gilbert (#34708)
Steven R. Hedges (#43199)
Beverly J. Aho (#0386521)
JAMES H. GILBERT LAW GROUP, PLLC
12700 Anderson Lakes Parkway
Eden Prairie, Minnesota 55344
(952) 767-0167
and
Robert A. Hill (#217165)
Amy Darr Grady (#142074)
ROBERT HILL & ASSOCIATES, LTD.
12700 Anderson Lakes Parkway
Eden Prairie, Minnesota 55344
(952) 426-7373
and
Steven K. Champlin (#16044)
DORSEY & WHITNEY, LLP
50 South Sixth Street, Suite 1500
Minneapolis, Minnesota 55402-1498
(612) 340-2600

*Attorneys for Relator Southern Minnesota Beet Sugar Cooperative*

Marc J. Manderscheid (#15166X)
Andrew M. Carlson (#284828)
BRIGGS AND MORGAN, P.A.
2200 IDS Center
80 South Eighth Street
Minneapolis, Minnesota 55402-2157
(612) 977-8400

*Attorneys for Respondent Renville County*

John F. Beukema (#8023)
FAEGRE & BENSON LLP
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, Minnesota 55402-3901
(612) 766-7000

*Attorneys for Amicus Curiae Minnesota Chamber of Commerce*

2007 – BACHMAN LEGAL PRINTING – FAX (612) 337-8053 – PHONE (612) 339-9518 or 1-800-715-3582

## TABLE OF CONTENTS


Page

STATEMENT OF ISSUES ..... 1

STATEMENT OF THE CASE ..... 3

STATEMENT OF FACTS ..... 4

1. The Southern Minnesota Beet Sugar Cooperative ..... 4

2. The SMBSC Real Estate ..... 5

3. Market Sales of Beet Sugar Processing Plants ..... 7

4. The Renville County Assessments ..... 10

5. SMBSC's Experts' Opinion of Value ..... 11

6. Respondent's Opinion of Value ..... 12

   a. The Dennis Jabs Appraisal ..... 12

   b. County Assessor ..... 15

7. Tanks, Bins and Silos ..... 15

8. The Minnesota Tax Court Decision ..... 16

STANDARD OF REVIEW ..... 17

ARGUMENT ..... 18

I. AN AGRICULTURAL FOOD PROCESSING PLANT IS NOT A SPECIAL PURPOSE PROPERTY. ..... 18

II. THE TAX COURT ABUSED ITS DISCRETION IN FAILING TO CONSIDER THE COMPARABLE SALES APPROACH TO VALUATION BASED ON THE ABUNDANT MARKET DATA IN THE RECORD ..... 22

III. THE SUBJECT PROPERTY'S HIGHEST AND BEST USE IS AS AN AGRICULTURAL AND FOOD PROCESSING FACILITY AND NOT A BEET SUGAR PLANT. ..... 28

IV. THE TAX COURT ERRED IN ADOPTING THE VALUATION OF THE COUNTY ASSESSOR WHEN THERE IS NO EVIDENCE IN THE RECORD TO SUPPORT THE ASSESSOR'S VALUE CONCLUSIONS ..... 34

V. THE SUBJECT PROPERTY'S TANKS, SILOS AND BINS SHOULD NOT BE CLASSIFIED AS TAXABLE REAL ESTATE BECAUSE THEY ARE NON-TAXABLE PROCESS EQUIPMENT ..... 37

VI. THE TAX COURT ERRED IN FAILING TO GRANT SALES RATIO RELIEF ..... 46

CONCLUSION ..... 47

## TABLE OF AUTHORITIES

**Cases**

*American Express Financial Advisors v. County of Carver*, 573 N.W.2d 651 (Minn. 1998) ..... 1, 18, 24, 30, 33, 34

*Barton Enterprises, Inc. v County of Ramsey,* 390 N.W.2d 776 (Minn. 1986) ..... 2, 42, 43

*Busch v. Hennepin County*, 380 N.W. 2d 813 (Minn. 1986) ..... 43

*County of Scott v. Commissioner of Revenue and Valley Fair Family Amusement Park, Inc.*, WL 102973 Minn. Tax 1989 ..... 39

*Crown CoCo, Inc. v. Commissioner of Revenue*, 336 N.W.2d 272, 273-74 (Minn. 1983) ..... 17, 37, 38, 43

*Equitable Life Assur. Soc. of the U.S. v. County of Ramsey*, 530 N.W.2d 544 (Minn. 1995) ..... 1, 23

*Federal Reserve Bank of Minneapolis v. State of Minnesota*, 313 N.W.2d 619 (Minn. 1981) ..... 1, 18, 19, 22

*Financial Advisors v. County of Carver*, 573 N.W.2d 651 (Minn. 1998) ..... 18

*Harold Chevrolet, Inc. v. County of Hennepin*, 526 N.W.2d 54, 58 (Minn. 1995) ..... 17

*In re Objection to Real Property Taxes*, 353 N.W.2d 525 (Minn. 1984) ..... 2, 46

*Jensen-Re Partnership v. Superior Shores Lakehome Ass'n*, 681 N.W.2d 42, 44 (Minn. App. 2004), *rev. denied* (Minn. Sept. 21, 2004) (statute of limitations) ..... 17

*Kath v. Kath*, 238 Minn. 120, 124 55 N.W.2d 691, 693-94 (1953) ..... 35

*KDAL, INC. v. County of St. Louis,* 308 Minn. 101, 240 N.W.2d 560 (1976) ..... 2, 38

***Marquette Bank Nat. Ass'n v. County of Hennepin,*** 589 N.W.2d 301, 304 (Minn. 1999) ..... 17, 30, 31

*McCannel v. County of Hennepin*, 301 N.W.2d 910 (Minn. 1980) ..... 19, 22, 24

*McNeilus Truck & Manufacturing, Inc. v. County of Dodge*, 705 N.W.2d 410 (Minn. 2005) ..... 1, 17, 26, 30, 31, 32, 44

*Montgomery Ward & Co., Inc. v. County of Hennepin*, 450 N.W.2d 299, 303 (Minn. 1990) ..... 1, 23, 24

*Nagaraja v. Commissioner of Revenue*, 352 N.W.2d 373, 376 (Minn. 1984) ..... 17

*Northwestern Nat'l Life Ins. Co. v. County of Hennepin,* 572 N.W.2d 51, 52 (Minn. 1997) ..... 17

*Red Owl Stores, Inc. v. Comm. of Taxation,* 117 N.W.2d 401, 407 (1962) ..... 45

*Schleiff v. County of Freeborn,* 231 Minn. 389, 43 N.W.2d 265 (1950) ..... 2, 34

*Shell Oil Co. v. Kapler,* 235 Minn. 292, 300 50 N.W.2d 707, 713 (1952) ..... 35

*Space Center, Inc. v. County of Hennepin*, 302 N.W.2d 17, 21 (Minn. 1981)31, 32, 33, 34

*SPX Corp v County of Steele* File No. C1-00-350 et al. (Minn. Tax Ct. July 23, 2003) ..... 29

*State v. Russell-Miller Milling Co.*, 182 Minn. 543, 544 (Minn. 1931) ..... 32

*Suske v. Straka,* 229 Minn. 409, 413 39 N.W.2d 745, 749 (1949) ..... 35

*Weed v. County of Fillmore,* 630 N.W.2d 419, 426 (Minn. 2001) ..... 36

**Statutes**

Minnesota Statute Section 271.10 ..... 3

Minnesota Statute Section 272.01 ..... 38

Minnesota Statute Section 272.03, subd. 1 ..... 39, 44

Minnesota Statute Section 272.03, subd. 1(a) ..... 38

Minnesota Statute Section 272.03, subd. 1(c)(i) ..... 38

Minnesota Statute Section 272.03, subd. 1(c)(i) ..... 39

Minnesota Statute Section 272.03, subd. 1(c)(iii) ..... 38, 40, 41, 44, 47

Minnesota Statute Section 272.03, subd. 3 ..... 2

Minnesota Statute Section 272.03, subd. 8 ..... 32

Minnesota Statute Section 273.12 ..... 23

Minnesota Statutes Section 278.05, subd. 4 ..... 2, 46

Minnnesota Statute Section 273.11, subd. 1 ..... 1, 32, 44

**Other Authorities**

THE APPRAISAL INSTITUTE, APPRAISING INDUSTRIAL PROPERTIES 355 (2005) ..... 21

THE APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE 355 (12th ed. 2001) ..... 23, 31

## STATEMENT OF ISSUES

### I. IS AN AGRICULTURAL AND FOOD PROCESSING PLANT A SPECIAL PURPOSE PROPERTY?

The Tax Court held: In the affirmative

**Apposite Authority:**

*American Express Financial Advisors v. County of Carver*, 573 N.W.2d 651 (Minn. 1998)

*Federal Reserve Bank of Minneapolis v. State of Minnesota*, 313 N.W.2d 619 (Minn. 1981)

### II. DID THE TAX COURT ABUSE ITS DISCRETION IN FAILING TO CONSIDER THE COMPARABLE SALES APPROACH TO VALUATION BASED ON THE ABUNDANT MARKET DATA IN THE RECORD?

The Tax Court held (by implication): In the negative

**Apposite Authority:**

*Equitable Life Assur. Soc. of the U.S. v. County of Ramsey*, 530 N.W.2d 544 (Minn. 1995)

*Montgomery Ward & Co., Inc. v. County of Hennepin*, 450 N.W.2d 299, 303 (Minn. 1990)

*McNeilus Truck & Manufacturing, Inc. v. County of Dodge*, 705 N.W.2d 410 (Minn. 2005)

Minn. Stat. § 273.11, subd. 1 (2006)

### III. IS THE SUBJECT PROPERTY'S HIGHEST AND BEST USE AS A BEET SUGAR PROCESSING FACILITY AS OPPOSED TO AN AGRICULTURAL AND FOOD PROCESSING FACILITY?

The Tax Court held: In the affirmative

**Apposite Authority:**

*Ferche Acquisitions, Inc. v. County of Benton*, 550 N.W.2d 631 (Minn. 1996)

**IV. DID THE TAX COURT ERR IN ADOPTING THE VALUATION OF THE COUNTY ASSESSOR WHEN THERE IS NO EVIDENCE IN THE RECORD TO SUPPORT THE ASSESSOR'S VALUE CONCLUSIONS?**

The Tax Court held (by implication): In the negative

**Apposite Authority:**

*Schleiff v. County of Freeborn,* 231 Minn. 389, 43 N.W.2d 265 (1950)

**V. SHOULD THE SUBJECT PROPERTY'S TANKS, SILOS, BINS AND HOLDING PONDS BE CLASSIFIED AS TAXABLE REAL ESTATE AS OPPOSED TO NON-TAXABLE PROCESS EQUIPMENT?**

The Tax Court held: In the affirmative

**Apposite Authority:**

*Barton Enterprises, Inc. v County of Ramsey,* 390 N.W.2d 776 (Minn. 1986)

*KDAL, INC. v. County of St. Louis,* 308 Minn. 101, 240 N.W.2d 560 (1976)

Minn. Stat. § 272.03, subd. 3 (2006)

**VI. DID THE TAX COURT ERR IN FAILING TO GRANT SALES RATIO RELIEF?**

The Tax Court held (by implication): In the negative

**Apposite Authority:**

Minn. Stat. § 278.05, subd. 4 (2006)

*In re Objection to Real Property Taxes*, 353 N.W.2d 525 (Minn. 1984)

## STATEMENT OF THE CASE

The Relator, Southern Minnesota Beet Sugar Cooperative (SMBSC), filed a real estate tax protest challenging the assessment of its sugar beet processing plant located in Renville County, Minnesota, for the 2003 and 2004 tax years. The Renville County assessor had set the estimated market value of the subject property at $20,168,500 as of January 2, 2003 and $20,134,100 as of January 2, 2004.

An eight-day trial was held in May 2006 in the Tax Court before the Honorable George W. Perez, Chief Judge of the Minnesota Tax Court. At the trial, the County's appraiser and expert witness, Dennis Jabs, testified that he relied exclusively on the cost approach to value and concluded that the property had a taxable value of $55,000,000 for each of the years in question. In contrast, SMSBC's expert appraisers, relying on their analysis of the market for comparable facilities, testified that the property had a market value of $7,500,000.

The Tax Court decision was rendered on December 22, 2006, and stayed by the Tax Court for a period of 15 days. *Southern Minnesota Beet Sugar Coop v. County of Renville*[1] (hereinafter cited as A. 1-33). The Court "affirmed" the assessed values after rejecting both parties' experts. A Petition for Writ of Certiorari was filed on February 20, 2006, pursuant to Minn. Stat. § 271.10 and a Writ issued the same day.

---

[1] The decision was initially assigned a Westlaw citation (2006 WL 3803470), as is customary with Tax Court cases, but, without explanation the text of the decision is not available on Westlaw.

## STATEMENT OF FACTS

### 1. The Southern Minnesota Beet Sugar Cooperative

The Southern Minnesota Beet Sugar Cooperative (SMBSC) was formed in 1972 as a Minnesota Statutes Chapter 308A cooperative. SMBSC has approximately 585 members who are all sugar beet farmers with farms within a 17 county 50-mile radius of the SMBSC facility. (Tr. Vol. 1 at 77:14 to 78:8; 80:5-15.)[2] SMBSC employs approximately 270 full time and 450-500 seasonal workers. (Tr. Vol. 1 at 87:19-25.)

The SMBSC members have had good years and lean years. The range of risks for sugar beet growers extends from weather (both for growing and for subsequent storage of sugar beets awaiting processing) to plant diseases to market conditions to the reliability and functionality of processing methods and equipment. (Tr. Vol. 1 at 130:19 to 131:22.) The very existence of SMBSC has been in jeopardy on more than one occasion due to those various factors. (*See generally* Tr. Vol. 1 at 132-41; Vol. 2 at 146-47.)

For various reasons, including governmental regulation and the risks associated with changing political and economic climates, along with the other risks involved in growing and processing, 33 out of 58 sugar-processing operations (beet sugar and cane sugar) in the U.S. have closed down since 1996. (Tr. Vol. 2 at 162:11-25.) The trend has progressed to the point that there are currently no for-profit corporations that own beet sugar processing facilities in the United States. All 25 operating beet sugar processing

---

[2] The Tax Court trial extended over eight days. The transcripts have consecutive page numbering and are divided into eight volumes. Excerpts from the transcript are reproduced when referencing Appendix along with volumes and pages.

facilities are owned and operated by grower-owned cooperatives such as SMBSC. (Tr. Vol. 2 at 164:20 to 166:6.)

**2. The SMBSC Real Estate**

The subject property is located in Renville County on 621.76 acres. It consists of a main structure with several additional support buildings containing 230,488 square feet of ground floor space plus 179,512 square feet of mezzanine. Most of the buildings were built in 1974 and have a weighted average age of 21 years as of 2003. (Ramsland & Vigen, Inc. Appraisal, Exhibit 16 at 1, 9, and 13 [hereinafter "Battuello Appraisal, Ex. 16 at ____"]; Mr. Jabs, the opposing appraiser, concurred regarding the plant's average age; Tr. Vol. 6 at 974:16-25.)

Although the buildings on the subject property are large, they are old and inexpensively constructed. They are mainly metal-sided, "sandwich panel insulated steel" buildings with structural steel columns and beams. (Tr. Vol. 3 at 339:8-11; 341:18 to 342:7; Vol. 7 at 1086:7-8.) Jeffrey M. Counsell, a real estate broker specializing in representing sellers of large agricultural food processing facilities, testified that the building type involves "a metal shed over a process." (Tr. Vol. 3 at 469:11-25 and 490:6-11). This is vividly illustrated in the photographs reproduced in the Jabs Appraisal (Ex. 108 at 22-24; A. 41-43) taken during the "Vision 2002" project,[3] when the roofs and much of the exterior paneling were removed to permit the placement of the new

[3] "Vision 2002" was the name given to an extensive upgrade of the plant, primarily involving replacement of equipment located thereon, beginning in the late 1990's and completed in about 2002. Many of the witnesses and the documents in evidence refer to it.

equipment in the existing 20-plus year old structures. The photos depict the rusting structural steel columns and beams surrounding the new equipment and awaiting the replacement roof and siding.

Because of the very high humidity associated with beet processing and the production of sugar, along with the associated corrosive components in the atmosphere, the steel cladding on the structural frame of the buildings is constantly deteriorating and roofs generally rust out in three to five years. (Tr. Vol. 1 at 123:3-23; Vol. 4 at 582:11-15; Vol. 5 at 766:11-16.) As a consequence, the buildings where the processing takes place have numerous holes in the walls and roof areas from corrosion, hanging insulation, and widespread surface damage to exterior walls (at least at lower levels), caused by vehicles hitting the buildings during the persistent fog caused by the excessive humidity and steam generated by the production equipment in the winter. (*Id.* and Tr. Vol. 4 at 597:3 to 598:5; Battuello Appraisal, Ex. 16 at 13 and photos at a4; *see also* Ex. 26, photos 4, 5, 7, 8, and 9, [A. 36-40].) When the equipment was upgraded with Vision 2002, the same real estate footprint was used, roofs were removed to place new equipment in the shed type construction and new roofs were added after the new equipment was installed. (Tr. Vol. 1 at 100:1-3 and 127:8 to 128:17; Vol. 6 at 944:5-11.)

Sugar beets are root vegetables approximately 10 inches long and 8 inches in diameter. They are moved on a conveyor belt into the plant where they are washed and sliced. Thereafter, a process of diffusion and carbonation is performed yielding "thin juice." The thin juice is pumped through evaporators, resulting in "thick juice" which ultimately is refined into sugar in granular form. Some of the "thick juice" is diverted for

temporary storage in "thick juice tanks," for completion of processing later in the season. (*See generally* Tr. Vol. 1 at 94-96.) The granulated sugar requires additional conditioning to remove excess moisture, which is accomplished by using either special drying silos, the thick juice tanks or a piece of equipment called the Weibull bin. (Battuello Appraisal, Ex. 16 at f4-f5.) This additional conditioning is necessary so that the sugar is not subject to caking, which would render it unacceptable in the market. (Tr. Vol. 1 at 94-96, 98-99; Vol. 3 at 352:5 to 353:14.)

### 3. Market Sales of Beet Sugar Processing Plants

SMBSC's expert opinion of value was based in large part on the analysis of market comparable sales. SMBSC's extensive and unrebutted evidence demonstrated the existence of an active market for the sale of the subject property. Even Dennis Jabs, Respondent's expert appraiser, researched seven beet sugar facility sales, although he decided not to use them in his valuation analysis. (Ex. 108 at 63.)

John Richmond, the CEO and President of SMBSC, testified that there is an active market for such facilities. Mr. Richmond has over 30 years of experience in the industry and is a Director of the U.S. Sugar Beet Association. (Tr. Vol. 1 at 66:8-24; 71:2-5.) He testified that he knew of numerous sales in recent years and had personal involvement in several. (*See generally* Tr. Vol. 2 at 176-208, 222.) Four of these sales occurred in California, of which two were operating beet sugar processing plants when sold, namely Brawley and Mendota. (Tr. Vol. 2 at 176:20 to 178:17). The other two California facilities were closed beet sugar processing plants, one in Tracy (converted to a sugar

distribution center) and another in Hamilton City (rented out to a fertilizer distributor). (Tr. Vol. 2 at 178:18 to 179:21.)

Mr. Richmond also testified about a beet sugar facility in Hereford, Texas with a 10,000-ton slicing capacity that was closed and sold in 2003 and then resold to TNE Consolidators shortly thereafter. (Tr. Vol. 2 at 185:3 to 186:12; 207:16-23.) He also testified about a beet sugar processing factory in Moses Lake, Washington that was owned by Pacific Northwest Sugar Company and built by Holly Sugar. The factory was totally upgraded in 1998-99, but was closed in 2001 after three years of operation. (Tr. Vol. 2 at 187:11 to 189:22.)

Mr. Richmond also testified about four beet sugar-processing facilities sold in Michigan by Imperial Sugar, one facility in Torrington, Wyoming sold by Imperial Sugar to American Crystal Sugar, and another plant sold in Sydney, Montana. (Tr. Vol. 2 at 202:17-21; 208:5-10.) Imperial Sugar also sold three sets of facilities in the Rocky Mountain area and one in the Michigan area. (Tr. Vol. 2 at 222:7-20.) SMBSC's appraisers included three of these sales as comparables that were used in their analysis: Hereford, Texas; Moses Lake, Washington; and Hamilton, California. (Battuello Appraisal, Ex. 16 at 21-25.)

Jeffrey M. Counsell testified about the existence of an active market for facilities such as the subject property. He stated that he has had personal involvement in the sale of "upwards of 70" such facilities (Tr. Vol. 3 at 471:25.) He testified as an expert on the sale of large food processing plants – including agricultural facilities such as the SMBSC facility. (Tr. Vol. 3 at 472:22-25; *see also,* Ex. 21, CV of Mr. Counsell.)

Mr. Counsell testified that, because of the tremendous consolidation in retailing generally (the "Wal-Mart phenomenon"), there have been "enormous" numbers of plant closings, which has a significant impact on the overall supply of comparable real estate. (Tr. Vol. 3 at 497:5-25.) He concluded that, in the case of the SMBSC facility, if you took away the processing equipment, you would be left with the real estate, and "you'd have metal buildings, good clear heights, trench drains, reinforced concrete floors, some truck doors, all of which has a value, but it doesn't have much of a value." (Tr. Vol. 3 at 490:8-11.)

Mr. Counsell testified that there is a broader market for the sale of the subject property than just beet sugar processing. (Tr. Vol. 3 at 495:11-16; A. 93.):

> Q: Do you believe the Renville plant is a limited market property, sir?
>
> A: I mean, it depends on how one defines limited market. I mean, could it only sell to another beet processor, absolutely not. It could sell to dozens of different types of uses.

Mr. Counsell also testified that, in his brokerage business, he has successfully sold a number of plants similar to the Renville plant. (Tr. Vol. 3 at 484:11 to 485:5.) He emphasized that "It doesn't matter what the product is. It's the process, the infrastructure and the capacity that we're hired to understand, to package, and to market." (Tr. Vol. 3 at 484:24 to 485:2.) Mr. Counsell gave an example of the convertibility of facilities similar to the subject, including a Welch's juice processing plant that sold for $14/sq. ft. (Tr. Vol. 3 at 476:6-9; 478:1-7.) Also, Mr. Counsell concluded that the ConAgra plant in Fredericksburg, Iowa, one of the sale comparables used by SMBSC's expert appraiser (*see* Battuello Appraisal, Ex. 16 at 35) "absolutely" was a valid sales comparable to the

SMBSC property. (Tr. Vol. 3 at 486:1 to 488:11.) Mr. Counsell's testimony was unrebutted.

In addition, SMBSC presented testimony from Mark Suhr, an engineer whose company serves as a general contractor, building design consultant, and business consultant in the sugar processing industry. (Tr. Vol. 2 at 300:19-25.) Mr. Suhr testified regarding his experience in working both as a contractor and as a broker for removing and reselling manufacturing process equipment from closed beet sugar processing facilities to other sugar processing facilities in the U.S. and overseas. (*See generally* Tr. Vol. 3 at 391-401.) As Suhr pointed out, "removing and reselling" the process equipment enables the real estate to be sold for some purpose other than processing sugar beets.

Mr. Suhr also testified regarding his experience as an employee of Michigan Sugar in the early 1990s. That company shut down the beet sugar processing plant in Freemont, Ohio, after the beet farmers in that area switched production from sugar beets to other crops. This deprived the plant of sufficient beets to operate profitably, even though the plant was in excellent operating condition. (Tr. Vol. 2 at 311:24 to 313:22.)

**4. The Renville County Assessments**

The Renville County Assessor valued the SMBSC real estate at $20,168,500 for January 2, 2003 and $20,134,100 for January 2, 2004. (Ex. 1 and 2.) Those assessments did not include processing equipment, including the various tanks, bins, and silos, as real estate. (Tr. Vol. 2 at 254-57; Ex. 24.)

### 5. SMBSC's Experts' Opinion of Value

SMBSC's valuation experts were Gary A. Battuello, MAI, of Ramsland & Vigen, Inc. and Steven M. DeCaster, MAI, of the Nicollet Partners Appraisal Firm. Their joint opinion is based on an appraisal dated April 20, 2006 (referred to previously as "Battuello Appraisal"). SMBSC's appraisers used and relied upon the sales comparison approach with a final value conclusion of $7,500,000 (or $18.29 per square foot). (Battuello Appraisal, Ex. 16 at 20-51, 85.)

SMBSC's appraisal identified and examined fifteen comparable sales in its sales comparison approach to value. (*Id.* at 20-51; *see* Table 1 below.) Three of the comparable sales were beet sugar processing facilities and 12 were similar food processing or industrial light manufacturing facilities. (*See* Mr. Battuello's Sales Comparison. A. 120-121.) The three beet sugar processing facilities sold at prices between $9.59 and $24.93 per square foot, and the other light manufacturing and food-processing facilities sold for prices from $5.81 to $16.10 per square foot. Adjustments were made to reflect relevant differences. (Battuello Appraisal, Ex. 16 at 49-51, A. 122-124.)

SMBSC's appraisal also employed a cost approach, with an indicated value of $7,625,000. (*Id.,* Ex. 16 at 52-83.) This cost approach included land, buildings, yard improvements (including ponds), the "outer skin" of the Weibull bin, and one-half the cost of the four sugar silos and the beet pellet storage bins. (*Id.,* Ex. 16 at 54, 55; Tr. Vol. 4 at 556:12-23.) Although this cost approach was supportive of the sales comparison conclusions, Mr. Battuello and Mr. DeCaster did not rely upon the cost approach as a

value indicator for their final value conclusion. (Ex. 16 at 83, 85; Tr. Vol. 5 at 746:19 to 747:10.)

| Sale Date | Type of Facility | Location | Sale Price | Price/ft$^2$ | Ex. 16 pg. ref. |
|---|---|---|---|---|---|
| 8/2004 | Sugar Beet plant | Hereford, TX | $1,500,000 | $ 9.59 | 21-22 |
| 12/2005 | Sugar Beet plant | Moses Lake, WA | $1,825,000 | $24.93 | 23-24 |
| 4/2006 | Sugar Beet plant | Hamilton, CA | $1,500,000 | $19.46 | 25 |
| 5/2004 | Turkey processing plant | Marshall, MN | $ 750,000 | $ 5.81 | 26-27 |
| 3/1999 | Food processing plant | Green Bay, WI | $1,430,000 | $13.41 | 28 |
| 4/1995 | Vegetable processing | Ripon, WI | $2,400,000 | $11.61 | 29 |
| 12/1997 | Food processing plant | Bonduel, WI | $2,247,371 | $ 9.87 | 30 |
| 12/2000 | Food processing plant | New Hampton, IA | $3,000,000 | $ 8.94 | 31 |
| 7/2000 | Meat processing plant | Sherman, TX | $8,500,000 | $14.99 | 32 |
| 5/2000 | Meat processing plant | Goodletsville, TN | $4,200,000 | $11.57 | 33-34 |
| 5/2004 | Dairy processing plant | Fredricksburg, IA | $2,500,000 | $12.49 | 35 |
| 2/1999 | Meat processing plant | Orange City, IA | $2,182,000 | $16.10 | 36 |
| 1/2004 | Manufacturing plant | Cohasset, MN | $1,200,000 | $10.96 | 37-38 |
| 8/2005 | Manufacturing plant | Owatonna, MN | $1,900,000 | $ 8.14 | 39-40 |
| 7/2005 | Manufacturing/Distrib. | Glencoe, MN | $3,000,000 | $10.54 | 41-42 |

**Table 1. G. Battuello and S. DeCaster Sales Comparison Summary (from Ex. 16)**

**6. Respondent's Opinion of Value**

**a. The Dennis Jabs Appraisal**

Respondent called only two witnesses at trial, Dennis Jabs and Douglas J. Bruns, the Deputy County Assessor for Renville County. Mr. Jabs, who performed the appraisal for Respondent and testified as Respondent's expert witness, relied exclusively on the cost approach to value and concluded that the market value of the SMBSC property was

$55,000,000 for 2003 and 2004 (or $134.14 per square foot). After removing a crystallizer which was improperly added on the original equipment list at a value of $800,000, Mr. Jabs still came to the same value conclusion for the building "because I **rounded it to the nearest $5,000,000**." (Tr. Vol. 6 at 1025:11-25, emphasis added.) He did so by: (a) classifying the subject as a "special purpose property;" (b) including as real estate a substantial amount of production equipment; and (c) ignoring sales of comparable properties. (Jabs Appraisal, Ex. 108 at 71, 27.)

Mr. Jabs included various tanks, silos and bins as taxable real estate, even though the Renville County Assessor had excluded those items from the assessments. Since approximately 1979, the Renville County Assessor had assessed the real property based only on the land and buildings and did not include the thick juice tanks or other related process equipment, and the four holding ponds were assessed on the basis of $100 per acre. (Tr. Vol. 2 at 254-57; Vol. 4 at 562:2 to 563:8.) This all changed in 2006 – years after the 2003 and 2004 assessments -- when Mr. Jabs, who had never previously appraised a beet sugar processing plant (Tr. Vol. 7 at 1049:22-24; A. 111), included the cost of various categories of tanks, bins, silos, and ponds as real estate in his opinion of market value. (Jabs Appraisal, Ex. 108 at 16.) When asked why the assessor did not include tanks as real property during the prior 25 years, Mr. Jabs testified as follows: "He's confused, and he hasn't read – done the same analysis I did in researching the Minnesota statute and considering the case laws, case decisions that provide guidance on what is and what isn't." (Tr. Vol. 7 at 1188:1-10.)

In 2002, SMBSC replaced much of its old and outdated production equipment in its "Vision 2002" program. Mr. Jabs repeatedly mentioned the Vision 2002 renovation, which was designed to "increase efficiency and reduce production costs." (Jabs Appraisal, Ex. 108 at 41.) He repeatedly mentioned the $103 million cost associated with Vision 2002. (*Id.* at 20, 42, 53, 54, and 55.) However, 90% of the $103,000,000 investment was spent for the installation of new production equipment (which is undisputedly **not** classified as real estate and not subject to taxation), on improvements other than the subject property, and "less than 5 percent on buildings to surround [the equipment] with." (Tr. Vol. 1 at 128:3-6.) Mr. Jabs concluded that the large investment "related to non-taxable personal property solidifies the value of the taxable real property." (Jabs Appraisal, Ex. 108 at 53.) Although these new components Jabs added caused the assessed value to increase by almost $35,000,000, Mr. Jabs conceded that "the real estate was just slightly modified from what it originally was" (the actual building size and configurations did not change as part of Vision 2002). (Tr. Vol. 7 at 1061:23-24.)

Mr. Jabs did not rely on the sales comparison approach to value, despite testifying about seven sales of sugar beet plants from 1998 to 2002 (Tr. Vol. 6 at 1028-32; Jabs Appraisal, Ex. 108 at 62-69) and candidly acknowledged the existence of an active market for beet sugar facilities. (Tr. Vol. 7 at 1062:22-24; 1064:12-13 and 1065:15-16.) Mr. Jabs' full answer reads as follows (Tr. Vol. 7 at 1065:12-24; A. 113):

> There are other buyers. I believe there are buyers, and by virtue of the fact of the transactions that I've testified about earlier -- these plants are selling. There's a market out there for buying and selling. There's movement.

> It's not like, for example, when I think of a special purpose property limited market, I think of the classic museum. It's not like you have that few in the case of a museum -- who's going to buy a museum? There's more buyers in this case. I still believe this is a special purpose property. There are a few buyers. That's why it's a limited market property. But there are buyers.

**b. County Assessor**

Respondent offered no evidence regarding the assessor's method of valuation, no evidence of replacement cost, and no evidence of whether the County Assessor considered the market for the subject property or its highest and best use. Mr. Douglas J. Bruns, the Renville County Deputy Assessor, did not offer any testimony relating to assessed value or equipment. He testified only about the unequal assessment/sales ratio issues. (Tr. Vol. 5 at 890:18 to 900:5.)

On cross-examination, Mr. Bruns was asked why another similar industrial building (steel framed) within Renville County was valued at $17.65 per square foot when this plant was assessed at a much higher value. His response was simply, "I don't know." (Tr. Vol. 6 at 903:1-4; A. 114.) If the subject property had been assessed the same as its neighbor, its assessed value would have been $7,253,687. (Tr. Vol. 5 at 902:3-7; A. 114.)

**7. Tanks, Bins and Silos**

The remaining items on Exhibit 19 (*see* A. ___-___; Ex. 19 consists of pages 15-19 of the Jabs Appraisal, Ex. 108) that the Tax Court concluded were taxable, SMBSC's appraiser determined were process equipment. (A. 125-129; A. 9, 17.) They included the sugar storage bins (T1-4), fourteen Thick Juice Storage Tanks (T5-7, 17-27), the

Betaine Storage Tank (T-8), the Molasses Storage Tank (T-9-10), two fuel tanks (T-11 & 12), pellet storage tanks (T13-14) the Condenser Tank (T-15), the Fire Water Tank (T-16) the Weibull bin (T-28), the Water Clarifier (T-30) and the Ash Tank (T-31). The fuel tank and the water clarifier were non-functional and not even being used: (T-11 & T-30; Tr. Vol. 3 at 368:22-25, 374:2 to 375:19.) The exterior shell of the Weibull bin, the beet pellet bins and the four silos were included in SMSBC's cost appraisal. (Battuello Appraisal Ex. 16 at 52-54.) All of these tanks are made of carbon steel, are involved in processing sugar beets, and are removable. (*See* Suhr Testimony Tr. Vol. 3 at 350:4 to 381:20.) Mr. Suhr testified that: "it's a metal tank, just carbon steel tank that's welded together, and you can cut it back apart and ship it to another user and reweld it back together. So it's, there's no difficulty there. It's a pretty straight-forward process." (Tr. Vol. 3 at 358:10-15.) He further testified that there were other companies that would buy this used equipment. (Tr. Vol. 3 at 358:3-18 and 362:10-13.)

**8. The Minnesota Tax Court Decision**

The Tax Court found that the highest and best use of the property was confined to a beet sugar processing plant and concluded that the property is a special purpose property. The Tax Court indicated that: "both parties agree that the buildings, which consist of approximately 410,000 sq. ft., are taxable real property. They are listed below . . . ." (*See* Tax Court Reference to B-1 through B-31 buildings, A. 15-16.) Based primarily on its "special purpose" conclusion, the Tax Court concluded that it was appropriate to rely exclusively on the cost approach to value. However, the Court also concluded "that neither appraisal provided sufficient evidence to allow the Court to reach

a well supported and reasonable determination as to the market value of the Subject Property." Accordingly, the Tax Court "affirmed" the County Assessor's estimated market value for 2003 and 2004, even though no evidence exists in the record to support this value conclusion. (A. 32.) Respondent did not appeal the Tax court's rejection of its appraisal.

SMBSC, on the other hand, did appeal from the Tax Court's decision.

## STANDARD OF REVIEW

The determination of whether the Tax Court employed the proper approach to the valuation of real estate is a question of law which the Supreme Court reviews *de novo. Marquette Bank Nat. Ass'n v. County of Hennepin,* 589 N.W.2d 301, 304 (Minn. 1999), *citing Northwestern Nat'l Life Ins. Co. v. County of Hennepin,* 572 N.W.2d 51, 52 (Minn. 1997). As to questions of law, this Court always has plenary power, and no deference to the Tax Court's conclusion is required in such instances. *Nagaraja v. Commissioner of Revenue*, 352 N.W.2d 373, 376 (Minn. 1984). Construction of statutes is a question of law to be reviewed *de novo* by the reviewing court. *Jensen-Re Partnership v. Superior Shores Lakehome Ass'n*, 681 N.W.2d 42, 44 (Minn. App. 2004), *rev. denied* (Minn. Sept. 21, 2004) (statute of limitations); *Crown CoCo, Inc. v. Commissioner of Revenue*, 336 N.W.2d 272, 273-74 (Minn. 1983).

Perhaps most importantly, this Court will not defer to the Tax Court's decision when the court "*completely fail[s]* to explain its reasoning." *McNeilus Truck & Mfg., Inc. v. County of Dodge,* 705 N.W.2d 410, 414 (Minn. 2005); *Harold Chevrolet, Inc. v. County of Hennepin*, 526 N.W.2d 54, 58 (Minn. 1995) (emphasis added).

## ARGUMENT

### I. AN AGRICULTURAL FOOD PROCESSING PLANT IS NOT A SPECIAL PURPOSE PROPERTY.

As a threshold matter, the Tax Court ignored this Court's decision in *American Express Financial Advisors v. County of Carver*, 573 N.W.2d 651 (Minn. 1998) when it held here that an agricultural food processing plant is a special purpose property. Like the situation that confronted the *American Express* Court, the Tax Court simply labeled the subject property as a special purpose property in order to elevate the cost approach to the primary (in this case, sole) method for valuing the subject property and to avoid any discussion of similar beet sugar plants that have sold throughout the United States. Thus, the first issue before this Court is whether the Tax Court's finding that a food processing plant is a special purpose property was clearly erroneous. Under *American Express*, clearly it was erroneous for several reasons.

First, this Court has carefully defined the "special purpose property" classification:

> Special purpose property is property that is treated in the market as adapted to or designed and built for a special purpose. This definition combines both functional and structural aspects: a special purpose property becomes such either by its use for unique functions or by its distinctive, specially-designed structural details.

*Federal Reserve Bank of Minneapolis v. State of Minnesota*, 313 N.W.2d 619, 621-22 (Minn. 1981). A structure does not qualify as a special purpose property simply because it was built for a particular purpose. Rather, a special purpose property is one that, due to its unique function or design, is *not likely to be sold on the market* and cannot readily be

converted to other uses without a large capital investment or a substantial loss in the investment value of *the property's* special features. *Id.*

For example, this Court upheld the Tax Court's determination that the former Federal Reserve building was a special purpose property because 15% of the building's area was devoted to a bank vault which could never be converted to other uses and 60% of the building was "super constructed" with high-cost materials and features such as a firing range, heliport, and underground coin storage which would lose substantial investment value if converted to general office uses. (*Id.* 313 N.W.2d at 621-23.)

Similarly, in *McCannel v. County of Hennepin*, 301 N.W.2d 910 (Minn. 1980), this Court upheld the Tax Court's determination that Northwest's airport facility was a special purpose property because of the substantial loss in the investment value of unique airport facility features which would occur if the facility were used for any other purpose.

However, there is a critical distinction between unique design features of the real estate in *Federal Reserve* (vault, firing range, heliport, etc.) and *McCannel* (airport real estate) and the *equipment* functions in this case. As Mr. Counsell's testimony makes abundantly clear, SMBSC's **real estate** is not unique, as opposed to the specially designed equipment and machinery that can be removed and resold, as is commonly done in the industry.

Second, the Tax Court relied heavily on the fact that its "use . . . creates significant value," as does its capacity and the significant investment cost of its non-taxable equipment (other than tanks, bins and silos). (A. 26.) Unlike the situations in both *Federal Reserve* and *McCannel*, here, the Tax Court ignored unrebutted fact and expert

testimony of Messrs. Richmond, Counsell and Suhr (*see* discussion in Statement of Facts, Section 3 at pp. 7-10) demonstrating that the plant could be converted to numerous uses simply by removing the existing non-taxable equipment. The layout of the plant's buildings and yard does not inhibit use by other general agricultural food processing users. In fact, the plant's adaptability is evidenced by the numerous sales of beet sugar plants that have been successfully converted to other uses. (*See* discussion in Statement of Facts, Section 3, p. 8; *see also,* Battuello Appraisal, Ex. 16 at 48.)

Third, the market has not treated similar properties as only suitable to process sugar beets. Neither the structural nor the functional aspects of the subject property were adapted to only process sugar beets. Recognizing this essential fact, SMBSC's experts in the sale of such properties testified that the subject could be used to process bio-diesel, ethanol, and other agricultural and food products. (Tr. Vol. 3 at 495:13 to 496:10.) In light of these sales, SMBSC's appraisers concluded that the plant was a limited market property - not a special purpose property that would "not likely be sold on the market" or that couldn't be economically converted to an alternate use. (Battuello Appraisal, Ex. 16 at 18.)

The Tax Court made no findings on this issue, only a conclusion of law. The Tax Court made its decision after deciding that tanks, bins and silos should be classified as taxable real estate and that, *ipso facto*, the plant's production equipment "add[s] value to the Subject Property" because "there are a limited number of potential buyers that would use the subject property as a sugar beet facility." (A. 29-30.) In essence, the Tax Court used SMBSC's non-taxable machinery and equipment to prop up the subject property as

a special purpose property when in fact it is simply a run-of-the-mill food processing plant.

The Tax Court's analysis is fundamentally flawed as it assumes that, because it would be expensive to remove the existing production equipment if the farmers chose not to grow beets, the property would not be sold to a buyer interested in processing some other food product. Yet, as numerous witnesses testified, a potential buyer would simply remove the beet processing equipment and install other food processing equipment in its place, or, alternatively, use the buildings for storage. Whether the existing non-taxable processing equipment "adds value" to the SMBSC business is, therefore, irrelevant to what the subject property would sell for on the open market. As The Appraisal Institute points out in its authoritative text:

> Standard mortgage financing (of the real property only) assumes a piecemeal approach and does not include equipment or other assets as collateral. In these cases, a standard real estate appraisal assuming the market value of the real property is the appropriate approach to valuation. Sometimes, this will result in a value estimate that approaches liquidation value when compared to its value as a continuing use. The approaches to value used in estimating the market value as a going concern should not be relied on to estimate the market value of the real property alone.

THE APPRAISAL INSTITUTE, APPRAISING INDUSTRIAL PROPERTIES 355 (2005). (A. 130-132.)

Even Respondent's appraiser acknowledged that the recent expansion of the plant's production capacity was simply an "upgrade [of] outdated equipment" in the same old floor space on the same real estate. (Jabs Appraisal, Ex. 108 at 24, 41.) The old buildings remained the same except where new roofs were installed because the old roofs

were removed "to allow for the placement of new equipment in the existing plant." (*Id.*, Ex 108 at 42, 21.) Jabs admits that although "the investment in the nontaxable personal property is more directly related to production capacity" it is the "non-taxable personal property (that) solidifies the value of the taxable real property." (Jabs Appraisal, Ex. 108 at 53.) Mr. Jabs then admits that "the taxable real property is uniquely designed to serve a variety of production capabilities while the investment in the nontaxable personal property is more directly related to production capacity." (*Id.*) Mr. Jabs repeats this conclusion by reiterating: "the taxable real property is uniquely designed to serve a variety of production capacities." (*Id.* at 59.)

Accordingly, a sugar beet processing plant is inapposite to the facilities this Court deemed special purpose properties in *Federal Reserve* and *McCannel* because, in this case, there is no loss in investment value in either the buildings or yard improvements – rather, the only loss of investment would be in the sugar beet production equipment should the plant be converted to an alternate use. This Court has never used non-taxable production equipment to determine whether a building is a special purpose property. Since neither the design nor the current use of the sugar beet plant renders it incapable of being adapted to other uses, the Tax Court clearly erred in concluding that the facility was a special purpose property.

## II. THE TAX COURT ABUSED ITS DISCRETION IN FAILING TO CONSIDER THE COMPARABLE SALES APPROACH TO VALUATION BASED ON THE ABUNDANT MARKET DATA IN THE RECORD

The Tax Court's reliance on the cost approach as the sole method of valuing a beet sugar processing plant was an abuse of discretion. This Court recognizes the three

traditional approaches to determining the market value of real estate: 1) the market comparison, based on the prices paid for comparable properties in market transactions; 2) the cost approach, founded on the proposition that an informed buyer would pay no more for the property than the cost of building a new property with the same utility as the subject property; and 3) the income approach, predicated on the capitalization of the income the property is expected to generate. *Equitable Life Assur. Soc. of the U.S. v. County of Ramsey*, 530 N.W.2d 544, 552 (Minn. 1995).

This Court has repeatedly stressed that the Tax Court should apply at least two approaches to market value because the alternative value indications can serve as useful checks on each other. (*Id.* at 553.) Furthermore, because Minnesota law requires that every assessor "consider and give due weight to every element and factor affecting the market value" of real property for purposes of taxation, Minn. Stat. § 273.12 (2006), this Court has stated that circumstances will rarely warrant giving weight to only one approach to value. *Equitable Life*, *supra,* 530 N.W.2d at 554.

The cost approach is an imprecise measure which tends to inflate the value of a property because of the difficulty in making appropriate deductions for functional and economic obsolescence, especially for older buildings. *See Montgomery Ward & Co., Inc. v. County of Hennepin*, 450 N.W.2d 299, 303 (Minn. 1990); *see also,* THE APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE 355 (12th ed. 2001) ("The difficulty of estimating depreciation in older properties may diminish the reliability of the cost approach in that context."). (A. 133-134.) For this reason, this Court has stated that

at best, the cost approach is a useful method for putting a ceiling on the value of the property being appraised. *Montgomery Ward, supra,* 450 N.W.2d at 303.

In the narrow context of special purpose properties, this Court has generally permitted the use of a cost approach alone because the "very nature of special purpose property is such that market value cannot readily be determined by the existence of an actual market, and therefore other methods of valuation, such as reproduction cost, must be resorted to." *McCannel, supra,* 301 N.W.2d at 924. However, as this Court's decision in *American Express* makes clear, reliance upon the cost approach as the sole measure of value is justified **only** in the absence of valuable income and market comparison data. *American Express, supra,* 573 N.W.2d at 657-58.

In this case, there was substantial and unrebutted evidence in the record indicating that there was a market for the sale of the subject property. First, Respondent's expert Mr. Jabs repeatedly stated that "there's a market out there for this property." (Tr. Vol. 7 at 1062:22-24; 1064:12-13 and 1065:15-16.) Mr. Jabs also testified he was aware of at least seven sugar beet facility sales, although he decided not to use them in his appraisal, for reasons he did not explain. (Jabs Appraisal, Ex. 108 at 63.) In fact, Mr. Jabs rejected the Moses Lake sugar beet plant sale because he felt it "never really operated" and has been "non-functional." (Jabs Appraisal, Ex. 108 at 63, 65.) However, Mr. Richmond testified that in fact the Moses Lake facility had been operational for three years. (Tr. Vol. 2 at 187:11 to 189:22.) SMBSC's appraiser visited the Moses Lake facility to review it and found it to be a comparable sale. (Tr. Vol. 4 at 632-640; Battuello Appraisal, Ex. 16 at 23-24, 49-51.)

Moreover, Mr. Richmond, relying upon over 30 years of experience in the sugar processing industry, testified about 15 such sales in recent years, many of which he was personally involved with. Some of these sales were in California, Texas, Washington, Michigan, Montana and Wyoming. (*See* Statement of Facts, *supra,* Section 3 at 7-8.) Additionally, SMBSC's appraiser identified three sales comparables of sugar beet facilities in Texas, Washington and California and 12 similar light manufacturing or food processing facilities. (Battuello Appraisal, Ex. 16 at 21-42.)

Mr. Counsell, who has been involved in the sale of over 70 food-processing facilities, was also qualified as an expert to testify based on his real estate brokerage activities specializing in the needs of the global food industry. He testified that there was an active market for a facility such as the subject property. (*See generally,* Tr. Vol. 3 at 469-498.) Mr. Counsell testified that the subject property "could sell to dozens of different types of uses . . . biodiesel . . . ethanol." (Tr. Vol. 3 at 495:15-16 and 496:2-3.)

Mr. Counsell also testified that he successfully sold a number of plants similar to the subject property and emphasized that it "doesn't matter what the product is. It's the process, the infrastructure, and the capacity that we're hired to understand, to package, and to market." (Tr. Vol. 3 at 484:24 to 485:2.) He also testified about how similar properties have been converted for other food processing uses and gave an example of the Welch's juice processing facility that sold for $14.00 per square foot. (Tr. Vol. 3 at 476:6 to 478:7.) Mr. Counsell's testimony was unrebutted and Respondent made no effort to impeach him on cross-examination.

Mr. Mark Suhr, also an expert in the sugar beet processing industry, had substantial experience in dismantling sugar beet plant facilities when market conditions warrant. He testified that often, the real estate is sold separately from the processing equipment and that removing and installing processing equipment occurs regularly. (*See* Statement of Facts, *supra,* Section 3 at 10.) The Tax Court ignored the uncontested fact that this equipment is relatively easy to dismantle, remove and reassemble at another site – allowing the actual real estate to be sold to some other user. In fact, the Tax Court does not even mention the substantial and unrebutted testimony relating to comparable sales of sugar beet facilities. Instead, the Tax Court simply concluded the subject property was a special purpose property and that "when valuing a special purpose property, it is appropriate to rely solely on the cost approach to value." (A. 31.)

In *McNeilus Truck & Manufacturing, Inc. v. County of Dodge*, 705 N.W.2d 410, 413 (Minn. 2005), this Court found that "the appraiser must assess the actual market a hypothetical buyer of the subject property would look at, and consider comparable sales of properties in that market. The scope of the market depends on the kind of property being sold – two sales of land separated by great physical distance may nonetheless be comparable sales depending on the intended use of the property." The Tax Court did not provide any reasons whatsoever for rejecting Messrs. Battuello's and DeCaster's comparables, much less the unrebutted testimony offered by Mr. Richmond, Mr. Suhr and Mr. Counsell. Moreover, there is no indication in the record that the Tax Court even considered these comparable sales or the comprehensive unrebutted fact testimony despite the repeated admissions of Respondent's expert that in fact there is a market for

this type of property. In view of the authority cited above, it was error for the Tax Court to totally ignore numerous comparable market sales of beet sugar plants under the unarticulated supposition that somehow SMBSC's plant is different from every other processing plant throughout the country.

In contrast, SMBSC's appraiser did follow this Court's guidelines and applied two approaches to market value. Battuello and DeCaster relied on the comparable sales market approach, but also did a cost approach to serve as a "useful check" on the market value indicated by the sales comparison methodology. Under the sales comparison approach, Battuello and DeCaster arrived at a final value of $7,500,000, and checked it with the cost approach, which indicated a value of $7,625,000. (Battuello Appraisal, Ex. 16 at 85.) These are not the circumstances that would warrant giving weight to only the cost approach, because it is an imprecise measure and tends to inflate the value of the property. The shortcoming of using only the cost approach on the subject property is magnified because of the difficulty in making appropriate deductions and adjustments for functional and economic obsolescence, especially for older buildings such as these, most of which were built in 1974-75.

The only reason articulated by the Tax Court for rejecting SMBSC's appraisal is because SMBSC's cost approach was "missing . . . an analysis as to other taxable components, such as tanks, bins and silos and land improvements." (A. 31-32.) Battuello had no reason to include in his appraisal production equipment that is not taxable under Minnesota Statutes. What was really missing was *any* Tax Court analysis

as to the substantial unrebutted testimony of comparable sales and the actual market for these plants.

In fact, SMBSC's appraisers did take into account the major items that the Tax Court nonetheless held were missing. These included the exterior shell of the Weibull bin and four large sugar silos and the beet pellet bins. (Battuello Appraisal, Ex. 16 at 55, 68.) Also, SMBSC's cost approach included as part of the yard improvements the four wastewater treatment ponds as a "value component" at their original cost when constructed in 1975 (*i.e.*, $15,000,000), and as depreciated, (i.e., $1,875,000). (*Id.* Ex. 16 at 51, 55, 69.) The replacement cost new of the beet pellet silos, the outer skin on the Weibull bin and one-half of the sugar silos totaled $3,844,998. (*Id.* Ex. 16 at 55.)

These items were included in SMBSC's cost approach and all of the other similar equipment were either included in the sales comparables used (*i.e.*, Moses Lake, Washington, Hereford, Texas, and Hamilton City, California) or were adjusted out if not included in the comparable sale. (*See generally,* Tr. Vol. 4 at 709-712; Battuello Appraisal, Ex. 16 at 21-25, 50.) Accordingly, the Tax Court erred in concluding that these items were missing from SMBSC's experts "thorough analysis under the cost approach as to the building improvements." (A. 31.)

## III. THE SUBJECT PROPERTY'S HIGHEST AND BEST USE IS AS AN AGRICULTURAL AND FOOD PROCESSING FACILITY AND NOT A BEET SUGAR PLANT.

As in its erroneous decision ignoring the substantial market data in the record, the Tax Court similarly erred in finding that the subject property's highest and best use was

continued use as a sugar beet processing facility -- rather than as a food or agricultural processing facility.[4]

Battuello and DeCaster classified the highest and best use of the property "as an agricultural or food processing facility." (Battuello Appraisal Ex. 16 at 17.) SMBSC also presented unrebutted testimony and data on 15 comparable sales supporting this highest and best use classification, including the sales of sugar beet processing plants and the successful conversion of like facilities to other uses. (*Id.* Ex. 16 at 20-51.) John Richmond testified that there is an active market for this type of facility. (*See generally* Tr. Vol. 2 at 176-181.) Mr. Counsell added that this plant could be converted into other uses such as biodiesel and ethanol production. (Tr. Vol. 3 at 495:11 to 496:4.)

In contrast, the County only offered the unsubstantiated opinion of Mr. Jabs, who narrowly confined the highest and best use of the property to continued use as "a beet sugar processing plant," based upon his belief that it "is the most profitable use" and because it "would be difficult to convert the beet sugar processing plant to another use." (Jabs Appraisal, Ex. 108 at 26-27.) Jabs' failed to separate the current business operation from the real property value in determining highest and best use. He later admitted that "[a]ny losses due to underutilization [other than as a sugar beet processing plant] would first accrue to the nontaxable equipment component of the plant." (*Id.* Ex. 108 at 59.)

---

[4] As a threshold matter, the Tax Court impermissibly relied on its own precedent in coming to that conclusion, citing *The Pep Boys v County of Anoka*, for its analysis rather than this Court's precedent. (A. 25-26.) File Nos. C2-01-2780, C3-02-2877, C5-02-8549 (Minn. Tax Ct. Oct. 26, 2004); *see also SPX Corp v County of Steele* File No. C1-00-350 et al. (Minn. Tax Ct. July 23, 2003); A. 141-149.

The Tax Court acknowledged other possible options for the property including: "agri-business manufacturing, general industrial manufacturing, storage…or other uses." A. at 26.) However, the Tax Court determined the highest and best use of the property "is for continued use as a sugar beet processing facility" by applying its prior analysis in *The Pep Boys and SPX Corp.* (A. at 25-27.) In citing its own precedent, however, the Tax Court failed to apply Minnesota case law, contrary to the holding in *McNeilus Truck v. County of Dodge*, 705 N.W.2d 410, 411 (Minn. 2005) ("the tax court, citing its own precedent" was "clearly erroneous" and violated its "duty to assess property at market value"); *see also In Matter of Petitions of Space Center, Inc.*, 302 N.W.2d 17 (Minn. 1981); *Ferche Acquisitions*, 550 N.W.2d 631 (Minn. 1996); *American Exp. Financial Advisors, Inc. v. County of Carver*, 573 N.W.2d 651 (Minn. 1998); *Marquette Bank*, 589 N.W.2d 301 (Minn. 1999) (property's market value properly determined by sale value in marketplace to potential buyers and not its value-in-use to its current owner).

Classification of a property is crucial as vast differences between well-qualified expert appraisers "rests in large part on the difference in their assumptions as to best and highest use of the property." *Space Center* at 20. Specifically, this Court has held that there was clear error where the Tax Court classified a property's present use as its highest and best use for calculating market value, stating the property's "present configuration is an item of value to be weighed only to the extent it affects the selling price" (*Id.* at 22) and that appropriate weight "depends on there being buyers who would use the property in the same way. (*Id.* at 21.)

In other words, a highest and best use conclusion is based on a market that has a large enough pool of buyers associated with it to create a competitive market. Here, there may be too few buyers that would use the subject property strictly for processing sugar beets to encompass the market. But there are other uses. As The Appraisal Institute points out, "If the market demand for such buildings is low . . . the appraiser may also project a highest and best use as conversion to . . . some other appropriate or alternative use." THE APPRAISAL OF REAL ESTATE, 12th Ed., p. 326 (A. 134a). The broader highest and best use conclusion as a food or agricultural facility does not preclude the possibility of a sale as a sugar beet processing plant; it rather recognizes the actual and more competitive market scenario that exists for properties such as this.

By rejecting the market data offered by comparable sales and expert testimony, the Tax Court did not "assess the actual market a hypothetical buyer of the subject property would look at, and consider comparable sales of properties in that market" but rather only considered the value to its present owner. *McNeilus* at 413. (Supreme Court held that the Tax Court was clearly erroneous in rejecting out-of-state comparable sales data offered by taxpayer to determine market value). This leads to the type of overvaluation that this Court has specifically prohibited, because it emphasizes a property's intrinsic value to its present owner.[5] "Intrinsic value, also called value-in-use, is the value of property to its present user" and is comparable to replacement or construction cost. *Space Center* at 21. The Court has stated that the property's "sale value, not the actual value, is what must

[5] *Marquette Bank* 589 N.W.2d 301, 304; *see also Space Center,* 302 N.W.2d 17; *Ferche Acquisitions,* 550 N.W.2d 631; *American Exp*, 573 N.W.2d 651, 659.

control." *Id.* at 21, *citing State v. Russell-Miller Milling Co.*, 182 Minn. 543, 544 (Minn. 1931). Where there are no buyers who would use the property in the same way, the Court will not classify the property's present use as its 'highest and best' but will instead use a more general-purpose classification.[6]

Finally, the Tax Court's critically flawed analysis improperly looked at value-in-use rather than market value principles. Minnesota law requires that real property be assessed at its market value. Minn. Stat. § 273.11, subd. 1 (2006). Fair market value for property assessment purposes is the compensation which a willing purchaser not required to buy the property would pay to an owner willing but not required to sell it, taking into consideration the highest and best use of the property. *Ferche Acquisitions, Inc. v. County of Benton,* 550 N.W.2d 631, 634 (Minn. 1996); *see also* Minn. Stat. § 272.03, subd. 8 (2006). Value-in-use, in contrast, is the value of the property to the present owner and may be considered by the assessor only to the extent that such present use reflects the property's value to buyers in the marketplace. *Space Center, supra,* 302 N.W.2d at 17.

By refusing to look at SMBSC's market data and instead affirming the assessor's value – which admittedly was not based on any of the three approaches to market value – the Tax Court failed to determine "the actual market a hypothetical buyer of the subject property would look at, and consider comparable sales of properties in that market." *McNeilus* at 413. Rather, the Tax Court only considered the value to its present owner.

---

[6] *See Ferche, (*property's highest and best use determined to be general purpose industrial site); *see also Space Center, (*where present use was not highest and best use).

Under such circumstances, the Tax Court has routinely been reversed because it: (1) failed to separate the business operation from the property's taxable value, or (2) failed to analyze whether the configuration of the property added to or detracted from its value in the marketplace.[7]

Here, the Tax Court failed on both counts. First, rather than separate the business operation from the market value of the real estate, the Tax Court, instead, cited the current business operation, capacity, and efficiency together with its investment of $103 million in capital as a basis for its determination that the highest and best use is continued use a beet processing plant.

Second, the Tax Court then used the $103 million investment in "state-of-the-art production equipment' to summarily reject all other uses because they would "result in a waste of the massive amount of capital invested." (A. 27; *but see* Tr. Vol. 1 at 127-28, where Mr. Richmond, CEO, testified that 95% of $103 million investment was for equipment purchase, installation, and improvements on property other than the subject property.)

This Court has, in the past, rejected such circular reasoning by the Tax Court as clear error because it fails to analyze the data from the perspective of a typical purchaser,

---

[7] *See Space Center*, 302 N.W.2d 17, 21 (Minn. 1981); (where there was no evidence of a market for property to be used in precisely the same way, the value of the subject property was inappropriately inflated by the county assessor's reliance upon the property's value to the present owner); *see also, Ferche*, 550 N.W.2d 631, 632-4 (Minn. 1996); (where business operation of millwork was properly separated from property value appraisal and unusual design and construction characteristics of the property, which made it especially suitable for a business operation, was questioned whether it enhanced or diminished the property's value); *see also, American Express*, 573 N.W.2d 651, 659 (Minn. 1998.).

instead focusing only on the value of the property to its current owner. *See Space Center*, 302 N.W. 2d at 21; *see also American Express*, 573 N.W.2d at 659. Here too, the Court should reverse the Tax Court for precisely the same reason.

## IV. THE TAX COURT ERRED IN ADOPTING THE VALUATION OF THE COUNTY ASSESSOR WHEN THERE IS NO EVIDENCE IN THE RECORD TO SUPPORT THE ASSESSOR'S VALUE CONCLUSIONS

After rejecting both parties' appraisals, the Tax Court affirmed the county assessor's estimated market value of the property ($20,168,500 as of January 2, 2003 and $20,134,000 as of January 2, 2004). The county assessor's estimate of market value is *prima facie* valid, and the taxpayer carries the burden of proving that the value is excessive. *Schleiff v. County of Freeborn,* 43 N.W.2d 265, 269 (Minn. 1950). Here, affirming the county assessor's valuation was erroneous for two reasons. First, the Tax Court did not explain why SMBSC did not meet its burden of showing that the county assessor's value was excessive. Second, the assessor's value is suspect because there was no evidence in the record supporting the county assessor's estimate of market value.

SMBSC introduced substantial evidence showing that the county assessor's estimated value was excessive. In fact, the Tax Court commended SMBSC's evidence, stating "[Relator's] expert did a thorough analysis under the cost approach as to the building improvements." (A. 31.) In addition, Respondent was unable to effectively rebut SMBSC's evidence. For instance, when the assessor, Mr. Bruns, was asked why the subject property was taxed at a higher dollar amount than a similarly situated industrial building within the county, he candidly replied, "I don't know." (Tr. Vol. 5 at 901:1 to 903:4; A. 114.)

SMBSC also presented substantial testimony by experts who construct, install and dismantle sugar beet plant facilities that rebuts Respondent's new tact of including this equipment as taxable real estate. Mark Suhr, who has many years of experience in the maintenance and construction of sugar cane and beet manufacturing facilities, served as an independent contractor for SMBSC. He testified extensively about the difference between real estate and processing equipment. Mr. Suhr testified that he spends a large part of his time "removing and installing process equipment" and that he "dismantled a good share of the equipment at Moses Lake for an entity called Red Sugar that is located in St. Petersburg, Russia." (Tr. Vol. 2 at 303:17-19.) He further testified that it is quite simple to remove and haul away the tanks, this equipment was quite easy to dismantle, remove and reassemble at another site, and that this is common practice in the industry. (Tr. Vol. 3 at 358:2-15 and 362:10-13.)

In light of this unrebutted evidence, it was error for the Tax Court to rest on the presumption that the assessment is valid. Under Minnesota law, a presumption is merely a procedural device for controlling the burden of moving forward with evidence and has no function other than the limited one of dictating the decision in default cases or when there is an entire lack of competent evidence to the contrary. The moment substantial countervailing evidence appears, the presumption vanishes and the case should be decided as if it never existed. *Suske v. Straka,* 229 Minn. 409, 413 39 N.W.2d 745, 749 (1949); *Shell Oil Co. v. Kapler,* 235 Minn. 292, 300 50 N.W.2d 707, 713 (1952); *Kath v. Kath,* 238 Minn. 120, 124 55 N.W.2d 691, 693-94 (1953). Because SMBSC's evidence

removed the presumption of validity of the assessor's estimated value and was the only competent evidence of value, the Tax Court erred.

The Tax Court further erred by affirming the county assessor's estimate of value when there was no evidence in the record to support it. Respondent did not submit any evidence to support the county's estimated market value, instead attempting to prove an amount almost 2-1/2 times the assessment(s). This is contrary to *Weed v. County of Fillmore,* . where the Minnesota Supreme Court upheld the Tax Court's decision affirming the assessor's valuation of property, reasoning that the Tax Court's decision was reasonably supported by evidence such as the county's introduction of its formal appraisal report and testimony from two assessors. 630 N.W.2d 419, 426 (Minn. 2001). Ironically, if this Court were to determine that the tanks, bins, silos and ponds somehow are now going to be considered taxable real estate, the Tax Court's decision still must be reversed because there was no evidence presented at trial showing that the county assessor's estimated market value included these items as taxable real estate. In fact, the record shows the opposite, as is conclusively demonstrated by Respondent counsel's admission that the County did not know much about the assessment:

> "Your Honor, I'm not sure just what has been taxed in the County and what hasn't.
>
> That is an interesting question as to try to figure out what has and has not been taxed.
>
> This property has not been appraised for 30 years, and so the County has no appraisals as to what it has and has not taxed in the past."

(Tr. Vol. 1 at 30:24 to 31:5; A. 115.) Mr. Jabs himself testified that the county assessor was "confused" about "what is and what isn't taxable real estate." (*See* Tr. Vol. 7 at 1188:1-10.) These statements further undermine the validity of the assessed value and remove any presumption about it being *prima facie* valid. Here, the county chose *not* to submit evidence supporting the county assessor's valuation. Rather, it attempted to prove that this food processing plant should be assessed at a value per square foot greater than any commercial office building. Thus, because there was no independent support in the record of the county assessor's estimated market value, the Tax Court erred by affirming it.

## V. THE SUBJECT PROPERTY'S TANKS, SILOS AND BINS SHOULD NOT BE CLASSIFIED AS TAXABLE REAL ESTATE BECAUSE THEY ARE NON-TAXABLE PROCESS EQUIPMENT

As noted earlier, in order to establish the supposed "special purpose" character of the subject property, the Tax Court took the unprecedented step of including all sorts of production equipment as part of the taxable real estate. The Tax Court erred in concluding that the tanks, bins and silos were taxable as real estate. (A. 4-6.) The Court's findings of taxability encompassed more than the exterior shell of the items. The Tax Court ignored the uncontradicted facts of this case and "the functionality test" adopted by the Supreme Court in *Crown CoCo, Inc v. Commissioner of Revenue*, 336 N.W.2d 272 (Minn. 1983). The Tax Court performed a mechanical application of a portion of the *Crown CoCo* functionality test and summarily determined that the processing equipment items were taxable real estate because they "protect their contents from the elements." (A. 23.)

Minn. Stat. § 272.01 provides that all real estate and personal property in this state is taxable unless otherwise exempt. Minn. Stat. § 272.03, subd. 1(a) specifies that for the purposes of taxation, "real property" includes the land itself, rails, ties, and other track materials annexed to the land, and all buildings, structures, and improvements or other fixtures on it. However, Minn. Stat. § 272.03, subd. 1(c)(i), allows an exception to the rule and provides this exemption from taxation:

> Real property does not include tools, implements, machinery, and equipment attached to or installed in real property for use in the business or production activity conducted thereon, regardless of size, weight or method of attachment.

Thus, equipment used in a business or production activity is not taxable, even if it is large, heavy or attached to the real estate. The Legislature amended Minn. Stat. § 272.03, subd.1, by adding c(iii) in 1985. Minn. Stat. § 272.03, subd. 1(c)(iii) provides:

> The exclusion provided in clause (i) does not apply to the exterior shell of a structure which constitutes walls, ceilings, roofs, or floors if the shell of the structure has structural, insulation, or temperature control functions or provides protection from the elements. Such an exterior shell is included in the definition of real property even if it also has special functions distinct from that of a building.

This Court, in *Crown CoCo, Inc. v. Commissioner of Revenue*, 336 N.W.2d 272 , 274 (Minn. 1983) established a "functionality test" to help determine if equipment was exempt business or production equipment. In looking at whether the equipment is integral to the operation of the business, this Court held:

> To be exempt as equipment, an item must perform functions distinct and different from the functions ordinarily performed by buildings and other taxable structures. *See In Re KDAL, Inc. v. County of St. Louis*, 308 Minn. 101, 103-104, 240 N.W.2d 560,561 (1976).

Since 1989, when the Tax Court issued an opinion regarding rides at Valley Fair Amusement Park in Shakopee, the functionality test adopted by this Court has remained. (*See, County of Scott v. Commissioner of Revenue and Valley Fair Family Amusement Park, Inc.*, WL 102973 Minn. Tax 1989 (A. 150-156).) In Valley Fair, the concrete water trough for the river raft ride was nontaxable equipment, not taxable real estate.

Following the statutory directives, the Tax Court should properly determine whether the production equipment is integral to the operation of the business, whether it performs a processing function, not an ordinary building type function and then, whether the exterior shell is more like a building function, returning the shell to the taxable real estate category. Although Tax Court decisions are not precedent binding on this Court, tax practitioners, taxpayers and even the Renville County assessor have relied upon the principle that processing equipment is not taxable real estate since 1989.

It is clear that the tanks, bins and silos located on the subject property are not buildings as defined in Minn. Stat. § 272.03, subd. 1, and that this personal property is clearly used in the business conducted on the premises as being a part of a complex food processing facility. The method of attachment, size and weight of these items is irrelevant, as is the fact that the items are "attached to or installed in the real property for use in the business or production activity conducted thereon." Minn. Stat. § 272.03, subd. 1(c)(i).

Rather, the Tax Court summarily included entire pieces of process equipment integrated into SMBSC's food processing operation as taxable real property, "exclusive of equipment contained therein." It made no attempt to differentiate between the

statutory "exterior shell," and the balance of these items, except for equipment inside. The Tax Court rational would include such things as propane tanks in back yards of farms or factories, railcars, covered conveyor belts transferring product between buildings or the "Spam cooker" at the Hormel plant in Austin. In fact, every piece of manufacturing equipment or machinery located outdoors would now be considered taxable real estate under the Tax Court's decision. The Tax Court's sweeping definition extended far beyond the statutory exclusion from exemption contained in Minn. Stat. § 272.03, subd. 1(c)(iii). In the final analysis, whether taxable as real estate or not, none of these items contributes much, if any, value to the subject property because they only serve to provide value to the business – not the real estate that houses the business.

The various items of equipment the Tax Court claimed are "real estate" perform "functions distinct and different from the functions ordinarily performed by buildings and other taxable structures." *Crown.* at 274. Moreover, although the Tax Court concluded that the taxable portion of these items was "exclusive of equipment contained therein, it did not distinguish between the outer shell and the equipment inside. (A. 9.) SMBSC's appraisal accounted for the shell and the interior equipment. (Battuello Appraisal Ex. 16 at 11, 54.) The Tax Court determined that what constitutes equipment was a question of law and refused to allow rebuttal testimony of Daniel Boris, former Minneapolis Assessor to clarify how assessors handle taxation of production equipment. (*See* Tr. Vol. 8 at 1262:6-8.)

The plant is equipped with a large series of continuous, interconnected parts which process raw sugar beets into refined sugar. The cleaning, drying, slicing, cooling,

heating, purification, filtering, evaporating, dehumidifying, curing, and separating is one continuous process. The plant is laid out to take sugar beets through various stages under strict temperature and humidity controls. Even the thick juice tanks were described as merely a "kind of wide spot in the line" by the CEO of SMBSC. (Tr. Vol. 1 at 98:1-3.) The tanks, silos and bins are part and parcel of a single continuous work in progress, like a production line in a factory.

The Tax Court determined that "the two-layered shell, roof, floor and interior column of the Weibull bin are taxable real property" even though it found that there was a "two-layered shell of the Weibull bin (that) regulates the temperature and humidity of its contents." (A. 6, 9.) However, Mr. Richmond testified that the Weibull bin was "a tank within a tank" and that the "sugar falls down in that tank through a curtain of dehumidified air . . . so its dehumidified as it's going into that tank." (*See* Tr. Vol. 1 at 99:5-19.)

SMBSC's appraiser recognized that the outer layer exterior shell was providing a shelter function to the inner tank and allocated one-half the cost of the Weibull bin toward taxable real estate. (*See* Battuello Appraisal Ex. 16 at 11, 54.) In contrast, Mr. Jabs, without any itemization of cost or function, included the entire Weibull bin and its contents as one tank, despite this uncontradicted testimony about the inner tank's functionality that was distinct from ordinary buildings and separate and distinct from the outer shell. (*See* Tr. Vol. 1 at 99:5-7; *see also* Jabs Appraisal Ex. 108 at 32, 34, 40.) Under Minn. Stat. § 272.03, subd. (1)(c)(iii); it was error for the Tax Court to include both the "exterior shell" and the inner tank and its contents as taxable real estate.

Similarly, the Tax Court taxed the four concrete sugar storage bins or silos. These silos contain "conveying and conditioning equipment" that dries the sugar for seventy-two hours, removes the moisture and rotates the sugar to cure and keep it from clumping. The CEO of SMBSC testified that "the bins are not only storage but are also conditioning." (Tr. Vol. 1 at 98:23-25.) SMBSC's appraiser again recognized the exterior shell of these silos and included one-half of the cost as processing equipment. (*See* Battuello Appraisal Ex. 16 at 11, 54.) In contrast, Respondent included the entire cost of the silos cost in its valuation, without itemization of exterior shell cost or function. (*See* Jabs Appraisal Ex. 108 at 40.) Under the statute, the Tax Court should have only valued the exterior shell.

The function of the sugar beet tanks, bins and silos differ dramatically from the equipment analyzed in the cases relied upon by the Tax Court. *Barton Enterprises, Inc. v County of Ramsey,* 390 N.W.2d 776 (Minn. 1986), involved 11 oil tanks interconnected by a series of pipes used to contain oil. In *Barton,* there was no manufacturing process within the oil tank. The taxpayer in *Barton* testified that they "used the tanks for containing petroleum products that we sell." *Barton Enterprises, Inc. v. County of Ramsey,* 1986 WL 600 Minn. Tax. 1986 at 4. These products did not require any processing, just some mixing and storage. (*Id.*) The Tax Court found that "mixing" was "only incidental" and that "the tanks do protect the oils from various contaminants, from rain, snow and other forces of nature-*e.g.*, by insulating the heated asphalt cements from cold. (*Id.* at 4; 390 N.W.2d at 778; A. 157-160.) Accordingly, the Court held that the tanks were taxable real estate. Similarly the Court found that the "canopy installed over

gasoline pumps at a self service station" in *Crown CoCo, supra* and the greenhouse providing only a "controlled environment" in the *Busch v. Hennepin County*, 380 N.W. 2d 813 (Minn. 1986), were taxable structures. (*Id* at 15.)

Here, the Tax Court did not properly perform the *Crown CoCo* functionality text or limit taxability to the "exterior shell," but simply declared that these major items of process equipment were taxable real estate because they incidentally protect from the elements while principally performing processing function. All of the equipment is integrally and actively involved in the sugar beet refinement process. Their role in the sugar beet process is not incidental. The tanks, bins and silos perform sugar beet processing functions, distinct from the function of a simple building. The bulk of the cost of these items was for the process equipment rather than the large but older and inexpensive shed-type shelter of the exterior shell.

The sugar beet processing equipment is in stark contrast to the stationary, passive and inactive description of a greenhouse in *Busch* where plants grow in a "controlled environment"; a canopy in *Crown CoCo* installed over gasoline pumps to protect customers while they pumped gasoline and oil tanks in *Barton* designed to hold oil, a completed product. None of the items in *Crown, Busch* or *Barton* functioned as part of a manufacturing process. Here, the Tax Court included this equipment as taxable real estate, a major departure from this Court's precedent. The narrow statutory exception does not transform all process equipment into taxable real estate. Indeed, SMBSC is not aware of any other taxpayer (other than sugar beet processors) whose production equipment has been assessed as taxable real estate.

In addition to improperly including all the equipment rather than just the exterior shell as taxable real estate, the Tax Court made further errors under the statutes. The Court repeatedly relied on the height, diameter and found the tanks to be "large" in its determination. (A.4.) Minn. Stat. § 272.03, subd. 1, exempts machinery and equipment "regardless of size, weight or method of attachment."

What is even more troubling about the Tax Court decision was the advisory nature of its opinion in this significant and complex area. The Tax Court's decision to tax the tanks, silos and bins was not only error, but was not necessary or essential to determine the value of the property. In fact, the Tax Court's "holding" is directly to the contrary. It affirmed the assessor's original value but the Respondent never included tanks, bins and silos in the assessed value. The taxation of SMBSC's tanks, bins and silos should be limited to, at most, the exterior shells of those items. The Tax Court again appears to be writing to create a *de facto* Tax Court rule interpreting Statute 272.03, subd. 1(c)(3)(iii) beyond the definition of exterior shells of real property.

Even if the tanks, bins and silos are truly real estate, what is really missing from the Tax Court's analysis is any attempt to assess the tanks, bins and silos at market value as required by Minn. Stat. § 273.11, subd. 1 (2006). As the Court pointed out in *McNeilus*, "fair market value for property assessment purposes is the compensation of which a willing purchaser not required to buy the property would pay to an owner willing but not required to sell it, taking into consideration the highest and best use of the property." *See* 705 N.W.2d 410 at 414. Furthermore, the market value of the tanks, bins and silos was taken into account in SMBSC's sales comparison analysis using prices paid

for comparable properties in market transactions. The Tax Court abused its discretion in its out-of-hand rejection of this testimony and exhibits that were part of the record. *See, Red Owl Stores, Inc. v. Comm. of Taxation,* 117 N.W.2d 401, 407 (1962).

After Mr. Jabs' testified, SMBSC sought to introduce rebuttal testimony from Mr. Daniel Boris, a MAI appraiser and former Minneapolis City Assessor with over 30 years of assessment experience. Respondent objected to this testimony, arguing that it would be "redundant" and irrelevant. (Tr. Vol. 8 at 1255:3-13). The Tax Court sustained Respondent's objection, reasoning that the previous testimony of SMBSC's expert appraiser had "accomplished what I think you want to accomplish with respect to this witness in this rebuttal in this case." (Tr. Vol. 8 at 1273:8-10; A. 116-119.) The Tax Court further determined this evidence should be excluded because it "boil[ed] down to a legal issue as to what this county in this case is doing and whether or not it's correct or incorrect" and "then that's where the legal discussion comes in and the interpretation of the statute and the cases that we are going to be reviewing for this." (Tr. Vol. 8 at 1262:10-13, 23-25). In response, SMBSC made an offer of proof that it intended to have Mr. Boris testify that based on his experience as a former assessor, it was his opinion that the tanks, silos, bins and ponds were not taxable property. The Tax Court, however, excluded this key evidence. The Tax Court erred in its pronouncement of this "legal issue" and its "legal discussion" and should be reversed and vacated.

## VI. THE TAX COURT ERRED IN FAILING TO GRANT SALES RATIO RELIEF

At trial, SMBSC introduced into evidence the nine-month sales ratio study showing 12 sales and a 76.5% median sales ratio for assessment year 2004. (Ex. 20, Tr. Vol. 3 at 11-13.) Respondent did not submit any evidence rebutting the claim, other than some testimony related to similarity or dissimilarity of properties.

The 2004 nine-month study demonstrates that the SMBSC plant was not equally assessed in comparison to other commercial and industrial properties in Renville County. It is well established that "property taxpayers in Minnesota have a right to equal treatment in the apportionment of the tax burden." *In re Objection, supra* 353 N.W.2d at 529. In presenting claims related to unequal assessment, the Legislature has provided for the admissibility of sales ratio studies by the Department of Revenue pursuant to Minn. Stat. § 278.05, subd. 4 (2006). The burden of proof is on the petitioning taxpayer. *In re Objection, supra*, 353 N.W.2d at 530. However, once the sales tax ratios are admitted into evidence, the "burden of rebutting the validity of the studies is now on the taxing authority, which has the right to introduce evidence to rebut the taxpayer's claim." *Id.*, 353 N.W.2d at 532.

The Tax Court ignored the sales ratio and did not apply the value reduction warranted by the sales ratio of 76.5%. To support its decision, the Tax Court cited cases where no evidence was presented to the court about the market value of the property. For example, the Tax Court, in *Shenehon Property I vs. Hennepin*, File No. 5118 (Minn. Tax Ct. Order dated Dec. 29, 1986) held:

> When no credible proof of market value is offered, no finding on that fact is warranted. We have already held that petitioner failed in its overall burden of proof regarding the issue of market value. We therefore do not reach and are not making a finding regarding the issue of unequal assessment in this case.

Here, SMBSC offered a full appraisal and abundant proof of the plant's market value. The Tax Court's failure to reach a value conclusion, in the face of ample value evidence, should not prevent Realtor from receiving the sales ratio relief entitled to other taxpayers. The Tax Court erred when it deprived SMBSC of sales ratio relief.

## CONCLUSION

The Tax Court erred in its evaluation of the subject property as a special purpose property and using the original assessed values. The highest and best use of this property as agricultural and food processing is reflective of the market for such properties. The cost approach to older buildings such as this distorts the true market value and should not have been used by the Tax Court in rejecting SMBSC's appraiser's market value analysis. The Tax Court also included tanks, bins and silos as real property in the nature of an advisory opinion and not in accordance with Minn. Stat. § 272.03, subd. 1(c)(iii), or the facts and Minnesota law relating to process equipment. SBMSC respectfully requests that the Tax Court decision be reversed and remanded.

Respectfully submitted,

Date: March 22, 2007

James H. Gilbert (#34708)
Steven R. Hedges (#43199)
Beverly J. Aho (#0386521)
JAMES H. GILBERT LAW GROUP, P.L.L.C.,
12700 Anderson Lakes Parkway
Eden Prairie, Minnesota 55344
(952) 767-0176

Robert A. Hill (#217165)
Amy Darr Grady (#142074)
ROBERT HILL & ASSOCIATES, LTD.
12700 Anderson Lakes Parkway
Eden Prairie, Minnesota 55344
(952) 426-7373

Steven K. Champlin (#16044)
DORSEY & WHITNEY LLP
50 South Sixth Street, Suite 1500
Minneapolis, MN 55402-1498
(612) 340-2600

Attorneys for Relator

STATE OF MINNESOTA
SUPREME COURT
No. A07-0394

Southern Minnesota Beet Sugar Coop.,

Relator

v.

County of Renville,

Respondent.

# CERTIFICATION OF RELATOR'S BRIEF LENGTH

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subds. 1 and 3. It was prepared using the proportional font "Times New Roman" in 13-point type and Microsoft Word 2002 software. The length of this brief is 13,825 words.

Dated: March 22, 2007

James H. Gilbert (#34708)
Steven R. Hedges (#43199)
JAMES H. GILBERT LAW GROUP, P.L.L.C.,
12700 Anderson Lakes Parkway
Eden Prairie, Minnesota 55344
Telephone: (952) 767-0167

Robert A. Hill (#217165)
ROBERT HILL & ASSOCIATES, Ltd.
12700 Anderson Lakes Parkway
Eden Prairie, Minnesota 55344
Telephone: (952) 426-7373

Steven K. Champlin (#16044)
Dorsey & Whitney, LLP
50 South Sixth Street, Suite 1500
Minneapolis, MN 55402-1498
(612) 340-2600

Attorneys for Relator