

A07-394

**STATE OF MINNESOTA  
IN SUPREME COURT**

Southern Minnesota Beet Sugar Coop.,

*Relator,*

vs.

County of Renville,

*Respondent.*

**BRIEF OF RESPONDENT COUNTY OF RENVILLE**

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## TABLE OF CONTENTS

	<b>Page</b>
TABLE OF AUTHORITIES.....	i
STATEMENT OF THE CASE .....	1
STATEMENT OF THE FACTS.....	3
A.    The Real Property Includes Land, Buildings, Bins, Tanks, and Silos, and Land Improvements.....	3
B.    The Testimony at Trial.....	5
C.    The Tax Court’s Order .....	10
ARGUMENT .....	12
I.    SCOPE AND STANDARD OF REVIEW .....	12
A.    The Scope of SMBSC’s Appeal Is Limited Because SMBSC Did Not Bring a Motion for Amended Findings, Conclusions of Law, or New Trial .....	12
B.    The Supreme Court Defers to the Tax Court’s Factual Findings .....	12
II.   THE TAX COURT CORRECTLY IDENTIFIED THE TAXABLE REAL PROPERTY .....	14
A.    Structures Such as the Bins, Tanks, and Silos Have Been Taxable Real Property Under Minnesota Law For More Than 20 Years.....	14
B.    Minnesota Stat. § 272.03 Provides the Statutory Test For Identifying SMBSC’s Taxable Real Property .....	19
C. <i>Busch</i> and <i>Barton</i> Illustrate the Application of Section 272.03 and Have Been Applied in Subsequent Cases .....	21
D.    The Tax Court’s Order Applies The Correct Analysis .....	24
E.    The Tax Court Correctly Held That The Bins, Tanks, and Silos are Taxable Real Property.....	25
1.    The Thick Juice Storage Tanks are Taxable Real Property.....	25
2.    The Sugar Storage Silos and Weibull Bin Are Taxable Real Property.....	28
3.    The Other Steel Tanks and Bins are Taxable Real Property .....	30
F.    The Analyses Proposed by SMBSC and the Chamber Are Inconsistent, Incorrect, and Intellectually Disingenuous .....	31

**TABLE OF CONTENTS**

(continued)

	<b>Page</b>
III. THE TAX COURT CORRECTLY FOUND AS A FACT THAT THE HIGHEST AND BEST USE OF THE PROPERTY IS CONTINUED USE AS A SUGARBEET PROCESSING PLANT .....	35
IV. THE TAX COURT CORRECTLY CONCLUDED THAT THE PROPERTY IS A SPECIAL PURPOSE PROPERTY .....	38
A. The Tax Court Found as Facts That the Property Has All of the Attributes of a Special Purpose Property .....	38
B. The Tax Court’s Special Purpose Property Determination Is Consistent With All Relevant Caselaw .....	40
V. THE TAX COURT’S VALUE CONCLUSION IS NOT CLEARLY ERRONEOUS .....	44
A. The Tax Court Properly Rejected SMBSC’s (Non)Comparable Sales .....	44
B. It is Appropriate to Rely on the Cost Approach When Valuing a Special Purpose Property .....	46
C. No Per Se Rule Was Established .....	47
D. The Tax Court’s Decisions to Affirm the Assessed Value and Deny Sales Ratio Relief Were Not Clearly Erroneous .....	48
CONCLUSION .....	50

## TABLE OF AUTHORITIES

### CASES

	<u>Page(s)</u>
<i>200 Levee Drive Ass'n v. County of Scott</i> , 532 N.W.2d 574 (Minn. 1995).....	13
<i>Abex Corp. v. Comm'r of Taxation</i> , 207 N.W.2d 37 (1973).....	14-15, 22
<i>Am. Crystal Sugar Corp. v. Traill County Bd. of Comm'rs</i> , 714 N.W.2d 851 (N.D. 2006) .....	27, 31
<i>Am. Express Fin. Advisors, Inc. v. County of Carver</i> , 573 N.W.2d 651 (Minn. 1998) .....	10-11, 38, 40-41, 46-47
<i>Anacker v. County of Cottonwood</i> , 302 N.W.2d 342 (Minn. 1981) .....	49
<i>Barton Enters., Inc. v. County of Ramsey</i> , 390 N.W.2d 776 (Minn. 1986) .....	8, 10-11, 18, 21-27, 31-33, 35
<i>Busch v. County of Hennepin</i> , 380 N.W.2d 813 (Minn. 1986) .....	10-11, 13, 17-18, 20-26, 31-33, 35
<i>Carson Pirie Scott &amp; Co. v. County of Hennepin</i> , 576 N.W.2d 445 (Minn. 1998) .....	12
<i>Crown CoCo, Inc. v. Comm'r of Revenue</i> , 336 N.W.2d 272 (Minn. 1983).....	16, 18, 31-32
<i>Equitable Life Assurance Soc'y v. County of Ramsey</i> , 530 N.W.2d 544 (Minn. 1995). .....	47
<i>Evans v. County of Hennepin</i> , 548 N.W.2d 277 (Minn. 1996).....	44
<i>Fed. Reserve Bank of Minneapolis v. State</i> , 313 N.W.2d 619 (Minn. 1981)...	38, 41-43, 47
<i>Ferche Acquisitions, Inc. v. County of Benton</i> , 550 N.W.2d 631 (Minn. 1996).....	35-36
<i>Handle With Care, Inc. v. Dept. of Human Servs.</i> , 406 N.W.2d 518 (Minn. 1987) .....	34
<i>Hansen v. County of Hennepin</i> , 527 N.W.2d 89 (Minn. 1995) .....	13, 44

<i>ILHC of Eagan, LLC v. County of Dakota</i> , 693 N.W.2d 412 (Minn. 2005).....	13, 33-34
<i>In re McCannel</i> , 301 N.W.2d 910 (Minn. 1980) .....	38, 42, 47
<i>KDAL, Inc. v. County of St. Louis</i> , 240 N.W.2d 560 (Minn. 1976) .....	15-16
<i>Ladish Malting Co. v. Stutsman County</i> , 416 N.W.2d 31 (N.D. 1987) .....	27
<i>Lewis and Harris v. County of Hennepin</i> , 516 N.W.2d 177 (Minn. 1994) 23, 25, 35, 44-45	
<i>Manthey v. Comm’r of Revenue</i> , 468 N.W.2d 548 (Minn. 1991) .....	12-13
<i>McNeilus Truck &amp; Mfg., Inc. v. County of Dodge</i> , 705 N.W.2d 410 (Minn. 2005) .....	48
<i>Sauter v. Wasemiller</i> , 389 N.W.2d 200 (Minn. 1986) .....	12
<i>Schleiff v. County of Freeborn</i> , 43 N.W.2d 265 (Minn. 1950) .....	49
<i>Space Center, Inc. v. County of Hennepin</i> , 302 N.W.2d 17 (Minn. 1981) .....	42
<i>Westling v. County of Mille Lacs</i> , 512 N.W.2d 863 (Minn. 1994) .....	37
<i>Weed v. County of Fillmore</i> , 630 N.W.2d 419 (Minn. 2001) .....	49

### UNPUBLISHED CASES

<i>American Crystal Sugar Co. v. County of Polk</i> , Nos. C1-05-574, C3-05- 575, CX-06-373, C4-06-367, 2007 WL 987084 (Minn. Tax Ct. Mar. 30, 2007).....	23, 27-31, 34-35
<i>Barton Enters. v. County of Ramsey</i> , No. TA-550, 1986 WL 600 (Minn. Tax Ct. Jan. 16, 1986).....	21, 35
<i>Busch v. County of Hennepin</i> , No. TC-3482, 1985 WL 3182 (Minn. Tax Ct. Mar. 18, 1985).....	17
<i>Cont’l Grain Co. v. County of Goodhue</i> , No. C0-93-568, 1994 WL 660286 (Minn. Tax Ct. Nov. 15, 1994).....	41
<i>County of Scott v. Comm’r of Revenue</i> , No. 5000, 1989 WL 102973 (Minn. Tax Ct. Aug. 2, 1989).....	23

<i>Crown CoCo, Inc. v. Comm’r of Revenue</i> , No. 3500, 1982 WL 1494 (Minn. Tax Ct. July 2, 1982).....	15
<i>Farmers Union Grain Terminal Ass’n v. County of Winona</i> , Nos. 34885, 35970, 1983 WL 1103 (Minn. Tax Ct. Dec. 15, 1983).....	16-18, 21-22, 32-33
<i>Lewis and Harris v. County of Hennepin</i> , No. TC-11441, 1993 WL 117570 (Minn. Tax Ct. Apr. 15, 1993).....	22-23, 29-30
<i>Pillsbury Co. v. Comm’r of Revenue</i> , Nos. 13209, 13285, 1980 WL 1191 (Minn. Tax Ct. Jan. 17, 1980).....	35
<i>Pep Boys v. County of Anoka</i> , Nos. C2-01-2780, C3-02-2877, C5-02-8549, 2004 WL 2436350 (Minn. Tax Ct. Oct. 26, 2004).....	36
<i>Rahr Malting Co. v. County of Scott</i> , Nos. 99-03807, 00-01171, 2000 WL 967457 (Minn. Tax Ct. July 15, 2000).....	41
<i>SPX Corp. v. County of Steele</i> , No. C1-00-350, 2003 WL 21729580 (Minn. Tax Ct. July 23, 2003).....	35-36

**STATUTES**

Minn. Stat. § 271.08.....	2
Minn. Stat. § 271.10.....	12, 13
Minn. Stat. § 272.01.....	19
Minn. Stat. § 272.02.....	20
Minn. Stat. § 272.03.....	<i>passim.</i>
Minn. Stat. § 272.06.....	48
Minn. Stat. § 645.16.....	33

## STATEMENT OF THE CASE

This case concerns the taxation of an enormous sugarbeet processing facility near Renville, Minnesota, which is owned and operated by Relator Southern Minnesota Beet Sugar Coop. (“SMBSC”). The facility covers more than 620 acres, with over 400,000 square feet of building area, 30 major bins, tanks, and silos, and over 110 acres of settling and wastewater treatment ponds. SMBSC’s facility is the newest, largest, and most efficient sugarbeet processing facility in the United States.

On May 17, 2006, the parties and Chief Judge Perez of the Minnesota Tax Court toured SMBSC’s facility. Beginning on May 18, 2006, Chief Judge Perez presided over an eight-day trial concerning the taxable value of the facility. Renville County had set the estimated market value (“EMV”) of the facility at \$20,168,500 as of January 2, 2003 and \$20,134,100 as of January 2, 2004, the years at issue in these cases. At trial, SMBSC argued that the fair market value of the facility was \$7.5 million; Renville County argued that the fair market value of the facility was \$55 million.

On December 22, 2006, Chief Judge Perez issued his Findings of Fact, Conclusions of Law, and Order for Judgment (“Order”).<sup>1</sup> (A.1-33.) He first concluded that the buildings, bins, tanks, and silos (exclusive of equipment therein), and the land improvements, including manmade ponds and beet piling strips, were taxable real

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<sup>1</sup> Specific findings of fact or conclusions of law from the Order will be cited as “FOF \_\_\_” or “COL\_\_\_.” SMBSC’s brief will be cited as “SMBSC Brief at \_\_\_.” The brief of Amicus Curiae Minnesota Chamber of Commerce (the “Chamber”) will be cited as “Chamber Brief at \_\_\_.” Respondent’s Supplemental Record and Addendum will be cited as “RSRA \_\_\_.”

property pursuant to Minn. Stat. § 272.03, subd. 1 and caselaw. He next found as a fact that the highest and best use of the real property was for continued use as a sugarbeet processing facility. He then concluded that, under existing caselaw, the facility was a special purpose property. It was therefore appropriate to consider the cost approach to valuation. Chief Judge Perez found, however, that neither party's appraisal provided sufficient evidence to allow him to reach a well supported and reasonable determination of value. He thus affirmed the assessor's EMV. He denied any relief for unequal assessment.

SMBSC did not move for amended findings or for a new trial within the 15-day time period prescribed by Minn. Stat. § 271.08, subd. 1. Renville County did not appeal the Tax Court's Order.

The Order contains detailed and amply supported factual findings to which this Court should defer. Its legal analysis is sound and complete. The determination that neither party's appraisal provided a sufficient basis to reach a valuation was within the Tax Court's discretion. Chief Judge Perez's Order should be affirmed.

## STATEMENT OF THE FACTS

### A. The Real Property Includes Land, Buildings, Bins, Tanks, and Silos, and Land Improvements

Petitioner SMBSC's sugarbeet processing facility near Renville, Minnesota (the "Property") covers 621.76 acres. (FOF 2.) The parties stipulated to a market value of the land, exclusive of all improvements, of \$2 million. (Ex. 108 at 30.) Approximately 30 buildings, 30 major outdoor bins, tanks, and silos, and many large land improvements are located at the facility. (Order at 16-18; *see* RSRA 1-8 (photographs of the Property).)

The buildings on the Property have a gross building area of approximately 410,000 square feet. (FOF 8.) The main process buildings are constructed with a heavy structural steel frame and have insulated steel walls, insulated metal roofs, concrete floors, and extensive mezzanines. (Ex. 16 at 9.) The heavy framing is visible in photographs from SMBSC's 2002 Annual Report (A. 41-42), which show bright red new roof beams installed at the facility in 2002. (Tr. 943:3-944:11.)

The oldest parts of the Property were constructed in 1973-74, and the plant began operating in 1975.<sup>2</sup> (FOF 17.) In 1990, additional buildings were built and equipment was installed when a molasses refinery was added. (*Id.*) SMBSC spent approximately \$103 million in improvements to the Property and its equipment from 1998 to 2002 in a capital improvement program referred to as "Vision 2002," including over \$14.5 million invested in buildings, and tanks, bins, and silos in 2000-2002. (FOF 18, Ex. 103 at 1-2.)

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<sup>2</sup> The construction of many of the buildings, tanks, and silos is depicted and described in newspaper articles and photographs from 1973 and 1974, RSRA 9-13.

Because the “beet end” of the facility can process beets into thick juice (a purified solution containing concentrated sugar extracted from beets) faster than the “sugar end” can process thick juice into sugar, it is necessary to use storage tanks to store thick juice until it can be processed. (FOF 11.) Thick juice is sometimes stored in the tanks for periods in excess of one year. (Tr. 451:13-15.)

There are six very large thick juice storage tanks (150 feet in diameter, 40 feet tall, with a capacity of 5,189,000 gallons each) and eight large thick juice storage tanks (100 feet in diameter, 40 feet tall, with a capacity of 2,350,000 gallons each) at the Property.<sup>3</sup> (FOF 10; Order at 17.) The thick juice storage tanks were built on site by welding curved steel panels into place and attaching them to a concrete foundation; the roofs were also constructed of welded steel panels. (FOF 11; Tr. 354:23-355:24.) The other large outdoor tanks and bins at the facility – the beet pellet storage bins, molasses storage tanks, fuel tanks, condenser tank, betaine storage tank, water tank, water clarifier, and ash tank – are generally similar in construction (all consist of a steel shell, were built on site, and most are on a concrete foundation), size (all over 100,000 gallons in capacity) and other attributes to the thick juice storage tanks. (FOF 10, 12.)

There are four concrete sugar storage silos and a “Weibull bin” on the Property.<sup>4</sup>

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<sup>3</sup> The fourteen thick juice storage tanks are shown on either side of the main plant buildings in an aerial photo, RSRA 2, and three of the very large thick juice storage tanks dominate the foreground in RSRA 7.

<sup>4</sup> The Weibull bin is the cylindrical structure in the center of a photograph, RSRA 8. The concrete sugar storage silos are the tall cylindrical structures in the center of RSRA 4; details of their construction are shown in RSRA 9-13.

(FOF 9, 13, 14.) The concrete sugar storage silos are each 125 feet tall and 50 feet in diameter, with a capacity of 1,844,777 gallons. (FOF 9.) Each sugar storage silo consists of a thick concrete shell with some equipment (such as a screw conveyor) contained therein. (Tr. 351:1-352:18.) The Weibull bin is a massive structure (approximately 96 feet tall and 116 feet in diameter, with a capacity of over 7,600,000 gallons) constructed of a two-layered insulated steel shell with a central support column containing a passenger elevator. (FOF 9, 14.) The two-part shell of the Weibull bin allows the temperature and humidity of its contents to be regulated (except that circulated air, instead of insulation, is used to do so). (Order at 23.) The Weibull bin contains a scroll, used to level and remove the sugar, and other equipment. (Tr. 577:23-24, 1204:2-5.)

The Property has hundreds of acres of land improvements, including four major manmade ponds used to store water from sugarbeet processing. (FOF 19; the ponds are visible in RSRA 1, 6.) Each of these ponds has a capacity of approximately 60 million gallons, and the ponds cumulatively cover approximately 110 acres. (*Id.*) The Property also includes other substantial land improvements, including extensive railroad track, rail switches, paved and gravel drives and parking areas, fencing, dikes and landscaping, and nine “beet piling strips.” (*Id.*) Beet piling strips, which are used to store beets in large piles between harvest and processing, are asphalt strips surrounded by acres of compacted clay soil which directs run-off to a holding pond. (*Id.*)

#### **B. The Testimony at Trial**

The first witness was SMBSC’s President and Chief Executive Officer, John Richmond. He testified in detail concerning SMBSC’s business operations and also

described the circumstances of three sales transactions involving former sugarbeet processing plants – the plants in Hamilton City, California, Hereford, Texas, and Moses Lake, Washington – that SMBSC’s appraiser had used as “comparable” sales. (Tr. 202-214.)

Neil Rudeen (former Chairman of SMBSC’s Board) and Jeff Plathe (SMBSC’s Vice President of Administration and Chief Financial Officer) testified next. Mr. Plathe testified that the cost for each of the three very large thick juice tanks that SMBSC built during Vision 2002 was “roughly a million dollars a tank.” (Tr. 274:24.) He testified that from 1993 through 2002, SMBSC spent more than \$15 million to build new buildings. (Tr. 280:5-15.) He testified that as of the valuation dates, both SMBSC’s financial records and insurance policies show the replacement value for SMBSC’s buildings alone as approximately \$50 million and for SMBSC’s tanks, bins, and silos at over \$26 million. (Exs. 104, 105; Tr. 283:14-284:22, 287:9-288:21.)

SMBSC’s sugarbeet industry consultant, Mark Suhr, described how the main processing building at the plant has unusually heavy structural steel, to support the equipment, as well as reinforced floors. (Tr. 340:4-341:4.) Mr. Suhr described the construction of the thick juice storage tanks, and how the other tanks are substantially similar to them. (Tr. 354:22-357:1, 360:12-373:22.) He testified that the thick juice storage tanks and the Weibull bin have walls, roofs, and floors, and provide a temperature control function, protection from the elements, and a structural function. (Tr. 448:5-450:22.) He identified the sugar storage silos as “concrete wall structures” (*i.e.*, not equipment), which have walls, ceilings or roofs, and a floor, and provide a temperature control function, protection from the elements, and/or a structural function. (Tr. 350:17;

444:10-448:4.)

SMBSC next presented the testimony of Jeffrey Counsell, a Chicago real estate broker.<sup>5</sup> He described the Property as “a custom-made suit that’s designed for the sugar beet co-op to do exactly what they do in terms of the size, the configuration, the tankage, the rail, the throughput of the plant.” (Tr. 479:4-7.)

SMBSC’s last witness was its appraiser, Gary Battuello, MAI. He concluded that the facility’s highest and best use was for “agricultural or food processing purposes” and that continued use as a sugarbeet factory was not a highest and best use option he could consider. (Ex. 16 at 17.) Mr. Battuello used a sales comparison approach to value the Property, and identified fifteen allegedly comparable sales. Three were defunct former sugarbeet processing plants located outside the Upper Midwest and sold for other uses; nine were agri-processing facilities, one located in Minnesota and the remainder in other states; and three were non-agricultural manufacturing plants in rural Minnesota. (*Id.* at 21-42.) He identified five additional going-concern transactions involving sugarbeet plants, but concluded they “cannot be used to provide a reliable finite indication of fee simple real estate value.” (*Id.* at 43-48.)

Mr. Battuello also conducted a cost approach analysis. He found that the replacement cost new (“RCN”) of the buildings and structures at the Property was \$32

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<sup>5</sup> In 10 instances throughout its Brief, (SMBSC Brief at 7, 10, 19, 24, 25, 26 (twice), 28, 29, and 35), SMBSC uses the term “unrebutted” to describe the testimony of Mr. Counsell and its other witnesses. This use of the term “unrebutted” is wrong: Renville County rebutted SMBSC’s evidence by cross-examination of SMBSC’s witnesses, the direct testimony of Renville County’s witnesses, and the introduction of other evidence.

million. (*Id.* at 55.) He included part of the Weibull bin, one-half of the sugar storage silos, and the entirety of the beet pellet bins in this figure, but he did not assign value to any of the other bins and tanks. (*Id.* at 54-55.) In addition, he opined to an aggregate RCN of \$15 million for the land improvements. (*Id.* at 55.) He depreciated all of these values, including the real estate improvements constructed between 1993 and 2002, by 87.5%. (*Id.* at 83.) He did not rely on this cost approach analysis. (*Id.* at 85.)

Mr. Battuello testified that the Property is a “limited-market property. It has some special purpose features to it....” (Tr. 543:10-12.) He testified that a grain elevator is a “great example” of what would be a special design (*i.e.*, special purpose) property. (Tr. 796:12-17.)

Renville County’s first witness was Deputy Renville County Assessor Douglas Bruns. He testified only as to the details of the sales from which the Minnesota Department of Revenue’s 2004 commercial/industrial sales ratio study for Renville County had been derived. (Tr. 890:18-900:5.)

Renville County’s chief witness was its expert appraiser, Dennis Jabs, MAI. Mr. Jabs explained how the identification of taxable real property is governed by Minn. Stat. § 272.03, subd. 1 and *Barton Enters., Inc. v. County of Ramsey*, 390 N.W.2d 776 (Minn. 1986). (Ex. 108 at 3-4.) He listed and described each of the structures that he valued as part of the taxable real property. (*Id.* at 15-18). He concluded that the Property’s highest and best use is for continued use as a sugarbeet processing plant, because conversion to another use would not be financially feasible or maximally productive. (*Id.* at 27.)

Mr. Jabs used Marshall Valuation Service to estimate the replacement cost of each building, bin, tank, or silo, and land improvement, and when possible, confirmed these estimated costs by comparing them to actual cost figures for specific building projects in Vision 2002 and to SMBSC's financial records. (*Id.* at 32-34.) He concluded to an RCN for the Property's real estate components (buildings, bins, tanks, and silos, and land improvements) of almost \$84 million. (*Id.* at 34.) He deducted 37% for physical depreciation, and determined that since the Property was the newest, largest, and most efficient sugarbeet processing plant in the country, no functional or economic obsolescence was present. (*Id.* at 36-61.) He described in detail seven going-concern transactions involving sales of sugarbeet processing operations, but concluded that none of those business sale transactions provided a reliable indication of the fee simple market value for the real estate alone, and thus the comparable sales approach was not useful in this instance.<sup>6</sup> (*Id.* at 62-70; RSRA 14.) Mr. Jabs concluded that the Property's fair market value for each of the valuation dates was \$55 million. (Ex. 108 at 71-73.)

Mr. Jabs had prior experience appraising special purpose properties, including the Rahr malting plant in Shakopee, Minnesota, breweries, and grain elevators. (Tr. 919:1-13.) He was aware that the tanks found to be taxable real estate in *Barton* were all 100,000 gallons or larger, so in his appraisal, he only included tanks of 100,000 gallons

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<sup>6</sup> The seven going-concern sugarbeet plant transactions that Mr. Jabs considered and rejected included all five of the going-concern transactions that Mr. Battuello had also rejected. Thus, despite the arguments of SMBSC and the Chamber, both appraisers agreed that it was not appropriate to use the sales of ongoing sugarbeet processing businesses as comparable sales to determine the fair market value of the Property for property tax purposes.

or larger as real estate. (Tr. 1174:16-1175:7.) He excluded interior or ancillary equipment such as vents, heat exchangers, pipes, or pumps from his valuation of the Weibull bin, the thick juice storage tanks, and the other tanks. (Tr. 1205:2-25, 1216:4-19.) He explained that although the Property (like any other property) could theoretically be converted to a variety of other uses, such conversion, in this instance, would not be the highest and best use.<sup>7</sup> (Tr. 1059:24-1060:25.)

### C. The Tax Court's Order

The Tax Court began its valuation analysis by determining which assets at the Property were taxable real property. It made findings of fact about the characteristics of the buildings, bins, tanks, and silos, and land improvements. (FOF 8-19). It applied Minn. Stat. § 272.03, *Barton*, and *Busch v. County of Hennepin*, 380 N.W.2d 813 (Minn. 1986) to the facts it had found, concluding that all the buildings, the 30 large bins, tanks, and silos, (exclusive of equipment contained therein), and all the land improvements were taxable real property as a matter of law. (COL 1-3, Order at 18-25.)

The Tax Court next found as a fact that the highest and best use of the Property was continued use as a sugarbeet processing facility, rather than simply as an agricultural or food processing plant. (FOF 21, Order at 25-27.)

The Tax Court determined that SMBSC's facility was a "special purpose property" as defined in *Am. Express Fin. Advisors, Inc. v. County of Carver*, 573 N.W.2d

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<sup>7</sup> Mr. Jabs described how Mr. Battuello's comparable sales were not actually comparable to the Property because they did not have tanks, ponds, and other improvements similar to those at the Property. (Tr. 1056:14-1057:7.)

651 (Minn. 1998). (COL 4, Order at 27-31.) It distinguished the Property from the conference center that was held in *Am. Express* not to be a special purpose property. (Order at 29-30.) The Tax Court further found that conversion of the Property to any other use, although possible, would require a large capital investment and would result in a massive loss in the value of the Property's special features. (Order at 30-31.)

With these issues decided, the Tax Court reviewed the caselaw on valuation, accurately stating that when valuing a special purpose property, it is appropriate to rely on the cost approach. (Order at 31.) Because it had found that the facility's highest and best use was as a sugarbeet processing plant, and that it was a special purpose property, the Tax Court determined that a complete cost approach analysis was necessary. (*Id.*) The Tax Court determined that Mr. Battuello's appraisal did not provide "sufficient evidence to allow the Court to reach a well supported and reasonable determination as to the market value of the Subject Property," implicitly concluding that Mr. Battuello's comparable sales were not actually comparable and explicitly stating that his cost approach was incomplete because it was missing an analysis of the value of the tanks, bins, silos, and land improvements. (*Id.*) The Tax Court also could not gather enough detail from Mr. Jabs' analysis to reach a determination as to the market value of the Subject Property. (Order at 32.) The Tax Court accordingly affirmed the assessor's EMV. (COL 5, Order at 32.)

The Tax Court denied SMBSC's unequal assessment claim. (COL 6, Order at 32-33.)

## ARGUMENT

### **I. SCOPE AND STANDARD OF REVIEW**

#### **A. The Scope of SMBSC's Appeal Is Limited Because SMBSC Did Not Bring a Motion for Amended Findings, Conclusions of Law, or New Trial**

The Supreme Court reviews a Tax Court decision “on the ground that the Tax Court was without jurisdiction, that the order of the Tax Court was not justified by the evidence or was not in conformity with law, or that the Tax Court committed any other error of law.” Minn. Stat. § 271.10, subd. 1 (2006). Because SMBSC did not bring a motion for amended findings or a new trial, the “only question preserved for appellate review is whether the evidence sustains the findings of fact and conclusions of law.” *Carson Pirie Scott & Co. v. County of Hennepin*, 576 N.W.2d 445, 446-47 (Minn. 1998). Procedural and evidentiary rulings made at trial are not subject to this Court’s review. *Sauter v. Wasemiller*, 389 N.W.2d 200, 201-02 (Minn. 1986). Accordingly, this Court should not consider SMBSC’s complaints about the exclusion of Mr. Boris’ testimony.<sup>8</sup> (SMBSC Brief at 45.)

#### **B. The Supreme Court Defers to the Tax Court’s Factual Findings**

“As in any civil action, [the Supreme Court] does not substitute its judgment for that of the tax court on questions of fact, leaving the factual findings undisturbed where the evidence, as a whole, supports the decision.” *Manthey v. Comm’r of Revenue*, 468

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<sup>8</sup> SMBSC’s recognition of the non-appealability of evidentiary rulings is presumably why the exclusion of Mr. Boris’ testimony was identified in SMBSC’s Statement of the Case as a discrete issue on appeal, but is not a discrete issue in SMBSC’s Brief.

N.W.2d 548, 550 (Minn. 1991), *citing Busch*. “The trial court’s findings of fact in a property valuation for tax purposes will be sustained on review unless they are clearly erroneous.” *200 Levee Drive Ass’n v. County of Scott*, 532 N.W.2d 574, 576 (Minn. 1995). The Tax Court’s decision is clearly erroneous only when the reviewing court has a “definite and firm conviction that a mistake has been committed.” *Hansen v. County of Hennepin*, 527 N.W.2d 89, 93 (Minn. 1995), *reh’g denied* (Mar. 1, 1995) (citation omitted).

The Supreme Court’s review of questions of law is plenary, so the Tax Court’s legal determinations are reviewed de novo. Minn. Stat. § 271.10, subd. 1 (2006); *ILHC of Eagan, LLC v. County of Dakota*, 693 N.W.2d 412, 419 (Minn. 2005).

## II. THE TAX COURT CORRECTLY IDENTIFIED THE TAXABLE REAL PROPERTY

There is only one logical order in which the issues presented in this appeal should be analyzed: the first step is to identify the taxable real property. Until the taxable real property is identified, it is not possible to conclude to a highest and best use, make a special purpose property determination, or consider which of the three approaches to valuation is appropriate. The Tax Court correctly began its analysis by distinguishing between the taxable real property and nontaxable personal property, stating “this determination will define the Subject Property for valuation purposes.” (Order at 15.) Minn. Stat. § 272.03 and well-settled caselaw compelled the Tax Court to conclude that the large bins, tanks, and silos at the Property are taxable real property.

### A. Structures Such as the Bins, Tanks, and Silos Have Been Taxable Real Property Under Minnesota Law For More Than 20 Years

The first modern case distinguishing between real property and personal property for the purposes of tax assessment was *Abex Corp. v. Comm’r of Taxation*, 207 N.W.2d 37 (1973). Abex owned a foundry with large items of machinery and furnaces. *Id.* at 40. Abex disputed the inclusion of the machinery and furnaces in its tax assessment. Emphasizing the machinery’s “ponderousness,” this Court found that the machinery was necessary to the continuing operation of the foundry, was installed in the building for its remaining useful life, and was not intended to be moved somewhere else. *Id.* at 44-45. The Court concluded that the machinery constituted “fixtures” and should be included as part of the real estate for property tax purposes. *Id.*

In response to *Abex*, the 1973 Minnesota Legislature adopted an exception to the definition of real property, providing that “real property shall 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...” 1973 Minn. Laws 1687 (c. 650, art. 24, § 2), now codified as Minn. Stat. § 272.03, subd. 1(c)(i).

In *KDAL, Inc. v. County of St. Louis*, 240 N.W.2d 560, 561 (Minn. 1976), the Court found that Minn. Stat. § 272.03, subd. 1(c) was “enacted to change the law following our decision in *Abex*...”<sup>9</sup> The structure at issue in *KDAL* was an 800-foot-tall television antenna tower. *Id.* at 560-61. Because the tower’s sole function was to hold the antenna aloft, the tower was found to be equipment within the scope of subd. 1(c)(i) and thus non-taxable. *Id.* at 561-62.

A few years later, in *Crown CoCo, Inc. v. Comm’r of Revenue*, No. 3500, 1982 WL 1494 (Minn. Tax Ct. July 2, 1982),<sup>10</sup> the Tax Court had to decide whether a canopy over the pumps at a gas station was real property. The Tax Court considered subd. 1(c)(i), and in reliance on *KDAL*, determined that the canopy performed functions different from those of a building and thus should be considered equipment, not taxable real property. *Id.* at \*2. This Court reversed the Tax Court, holding that because the

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<sup>9</sup> At the time of adoption, and as of the 1976 *KDAL* decision, this provision was numbered subd. 1(c), not subd. 1(c)(i).

<sup>10</sup> Copies of this and other unpublished cases referred to herein are included in Respondent’s Supplemental Record and Addendum, unless previously reproduced in other appellate pleadings.

canopy sheltered the pumps and patrons of the station from the elements (similar to the shelter function provided by buildings and other taxable structures) the canopy was not equipment under subd. 1(c)(i), but was taxable real property. *Crown CoCo, Inc. v. Comm'r of Revenue*, 336 N.W.2d 272, 274 (Minn. 1983).

Shortly thereafter, the Tax Court had to determine the taxability of structures with some attributes of buildings, but that also performed a business function. In *Farmers Union Grain Terminal Ass'n v. County of Winona*, Nos. 34885, 35970, 1983 WL 1103 (Minn. Tax Ct. Dec. 15, 1983), the Petitioner operated a malting plant with multi-story malthouses and other building-like structures that had been specially designed for the process of germinating and kilning malt, but that also had walls that sheltered their contents from the elements. Uncertain about the meaning of the holdings of *KDAL* and *Crown CoCo*, the Tax Court queried: for an item to be excluded from taxable real property, must the item exclusively perform functions distinct from those of a building, or is it instead sufficient that only the primary function of the item be distinct from the functions of a building? *Id.* at \*13-14.

The *Farmers Union* Tax Court created the “primary function” test, examining each structure to determine the extent to which the structure’s “primary function” was distinct from the functions ordinarily performed by buildings. *Id.* at \*14-16. The Tax Court found, for example, that 30% of a specific malthouse was not used for transforming barley into malt, but the primary function of the remaining 70% of the malthouse was to transform barley into malt; thus the Tax Court held that 30% of the malthouse was

taxable real property, but the remaining 70% was not. *Id.* at \*15. *Farmers Union* was not appealed.

Fifteen months later, in *Busch v. County of Hennepin*, No. TC-3482, 1985 WL 3182 (Minn. Tax Ct. Mar. 18, 1985), the Tax Court reconsidered the “primary function” test created in *Farmers Union*. Busch argued that his greenhouses were not taxable because they were “machinery” or “equipment” used in his flower business and thus fell within subd. 1(c)(i). *Id.* at \*2. The Tax Court disagreed, holding that the greenhouses provided the same shelter function performed by buildings and thus were taxable real property. *Id.* at \*3. The Tax Court was careful to distinguish the taxable greenhouse structures from items of machinery and equipment inside them, which were not taxable real property. *Id.*

Busch appealed, providing this Court an opportunity to answer the question that had puzzled the Tax Court in *Farmers Union*. In *Busch*, this Court began by identifying the facts and the parties’ arguments:

[Busch] considers each greenhouse structure as an exterior shell of a piece of horticultural equipment called an “environmental growing chamber.” Busch contends the sheltering function of a greenhouse is incidental to its main purpose: creation of an optimum environment for the production of plants. Hennepin County, on the other hand, contends that each greenhouse structure has all the attributes of a building – roof, walls, framing, and a base; and that each performs the traditional function of a building, to-wit: sheltering what is inside from the forces of nature.

380 N.W.2d at 814.

Rejecting Busch’s arguments, this Court held that personal and real property should be distinguished by applying the “shelter” test, stating “the shelter function need

not be the sole nor the primary purpose of the structure.” *Id.* at 816. *Busch* clarified the application of the “functionality” test from *Crown CoCo* and specifically rejected the “primary function” test created by the Tax Court in *Farmers Union*. *Id.* After *Busch*, the law was settled: a structure that provides shelter is taxable real property, even if it also performs special business-related functions distinct from those of a building.

*Busch* was promptly reaffirmed in *Barton* (decided six months after *Busch*). *Barton* operated a business selling asphalt and oils for use in road construction and other commercial uses. 390 N.W.2d at 777. The asphalt and oils were stored in large outdoor tanks, ranging from 100,000 gallons to four million gallons in capacity. *Id.* The tanks were interconnected by pipes, and pumps were used to transfer the oils from receiving to loading stations, to blend the oils to the desired grades, and to maintain the specified grade of the asphalts, which changed character frequently because they were held at 300° F. *Id.*

Relying on Section 272.03, subd. 1(c)(i), *Barton* argued that the tanks were not taxable real property but were equipment used in its business. *Id.* The Court explained how *Busch* had clarified the *Crown CoCo* “functionality” test, and held that notwithstanding their use in *Barton*’s business, the tanks were taxable real property because they provided shelter to their contents and protected their contents from contaminants and from the elements. *Id.* at 777-78. Thus, since 1986, it has been clear that large outdoor storage tanks are taxable real property, even if the tanks are used in a business and the tanks’ contents are mixed or heated therein.

**B. Minnesota Stat. § 272.03 Provides the Statutory Test For Identifying SMBSC's Taxable Real Property**

All real and personal property in Minnesota is taxable, except as is by law exempted from taxation. Minnesota Stat. § 272.01, subd. 1 (2002). Minnesota Stat. § 272.03 ("Section 272.03") provides the statutory framework for distinguishing between taxable real property and nontaxable personal property. It begins:

(a) 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, bridges of bridge companies, and all rights and privileges belonging or appertaining to the land, and all mines, iron ore and taconite minerals not otherwise exempt, quarries, fossils, and trees on or under it.

Minn. Stat. § 272.03, subd. 1(a) (2002). This provision is the starting point for identifying taxable real property: it provides that all buildings, structures, land, land improvements, and rail and track materials are taxable real property.

Section 272.03 continues:

(b) A building or structure shall include the building or structure itself, together with all improvements or fixtures annexed to the building or structure, which are integrated with and of permanent benefit to the building or structure, regardless of the present use of the building, and which cannot be removed without substantial damage to itself or to the building or structure.

Minn. Stat. § 272.03, subd. 1(b) (2002). This provision broadens the definition of real property in subdivision 1(a) by providing expansive definitions of "building" and "structure."

Subdivision 1(c) of Section 272.03 creates an exception to subd. 1(a)'s definition

of “real property.”<sup>11</sup> Subd. 1(c)(i) provides:

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, and mine shafts, tunnels, and other underground openings used to extract ores and minerals....

Minn. Stat. § 272.03, subd. 1(c)(i) (2002). This exception applies only to “tools, implements, machinery, and equipment,” so if an item is neither a tool, an implement, machinery, nor equipment, subd. 1(c) does not exclude it from taxation.

There are two exceptions to the exception set forth in subd. 1(c)(i). The first, subd. 1(c)(ii), provides that:

The exclusion provided in clause (i) shall not apply to machinery and equipment includable as real estate by paragraphs (a) and (b) even though such machinery and equipment is used in the business or production activity conducted on the real property if and to the extent such business or production activity consists of furnishing services or products to other buildings or structures which are subject to taxation under this chapter.

Minn. Stat. § 272.03, subd. 1(c)(ii) (2002). This exception negates subd. 1(c)(i) as to certain machinery and equipment that furnishes services to other buildings or structures.

Subdivision 1(c)(iii) provides the second exception to subd. 1(c)(i)’s exception:

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.

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<sup>11</sup> Minn. Stat. § 272.02, subd. 9, which defines exempt property, provides that “all personal property and the property described in section 272.03, subdivision 1, paragraphs (c) and (d), shall be exempt.” Exemption provisions are to be strictly construed. *Busch*, 380 N.W.2d at 816.

Minn. Stat. § 272.03, subd. 1(c)(iii) (2002). This exception negates subd. 1(c)(i) as to the exterior shell of a structure, defining the exterior shell as real property even if the shell “also has special functions distinct from that of a building.”

For purposes of this case, these provisions can be condensed into a few principles that summarize Section 272.03:

- Land, buildings, structures, rail, and land improvements are taxable real property, and improvements and fixtures annexed to buildings and structures are taxable real property.
- Tools, implements, machinery, and equipment used in the production or business activity are not real property, except:
- The exterior shell of a structure that would otherwise be excepted as equipment is taxable if it constitutes walls, ceilings, roofs, or floors and has structural, insulation, or temperature control functions, even if the shell has other functions distinct from those of a building.

**C. *Busch and Barton Illustrate the Application of Section 272.03 and Have Been Applied in Subsequent Cases***

The Legislature adopted subd. 1(c)(iii) in 1985, while *Busch* and *Barton* were pending, but after the tax years at issue in those cases. 1985, 1st Sp. Sess., Minn. Laws 2384 (c. 14, art. 3, § 4). This Court noted that the adoption of subd. 1(c)(iii) “mooted” the issue presented in *Busch* for taxes levied in 1985 and later. *Busch*, 380 N.W.2d at 815, n.3. The *Barton* Tax Court likewise noted that subd. 1(c)(iii) reversed the taxability determinations made in *Farmers Union. Barton Enters. v. County of Ramsey*, No. TA-550, 1986 WL 600 at \*4 (Minn. Tax Ct. Jan. 16, 1986), *aff’d*, 390 N.W.2d 776 (Minn. 1986). Thus, it was recognized in both *Busch* and *Barton* that application of subd. 1(c)(iii) would have resulted in the same outcome as was reached in the Court’s

decisions: Busch's greenhouses and Barton's tanks were taxable real property, and the "primary function" test created by the Tax Court in *Farmers Union* was not good law.

*Busch* and *Barton* are entirely consistent with Section 272.03, subd. 1(c)(iii), and they illustrate how Section 272.03 is to be applied. In each case, the Court began by noting that all buildings, structures, land, and land improvements are taxable real property pursuant to Section 272.03, subd. 1(a). 380 N.W.2d at 814-15; 390 N.W.2d at 777. In each, the Court then noted that under subd. 1(c)(i), tools, machinery, equipment, and implements are excepted from taxable real estate. 380 N.W.2d at 815; 390 N.W.2d at 777. When the taxpayer argued that the structures at issue were equipment under subd. 1(c)(i), the Court tested the argument by applying the shelter test first set forth in *Busch* and now codified in subd. 1(c)(iii). 380 N.W.2d at 816; 390 N.W.2d at 777-78. *Busch* and *Barton* have remained the leading cases defining taxable real property for over twenty years.<sup>12</sup> In contrast to its response to *Abex*, the Legislature has left Section 272.03 unchanged for over twenty years.

*Busch*, *Barton*, and subd. 1(c)(iii) have been applied in subsequent cases. In *Lewis and Harris v. County of Hennepin*, No. TC-11441, 1993 WL 117570 (Minn. Tax Ct. Apr. 15, 1993), the Tax Court relied on *Busch* and *Barton*, and rejected the taxpayer's subd. 1(c)(i) argument that recording studios were non-taxable equipment because they were used for the production of music:

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<sup>12</sup> See 45 Dunnell Minn. Digest, *Taxation*, § 4.11 (4<sup>th</sup> ed. 1999) (summarizing Minnesota law concerning the distinction between taxable real property and nontaxable personal property and repeatedly citing *Busch* and *Barton*).

We believe that the shelter function of real property extends to internal divisions....We find it absurd to believe that the functions ordinarily performed by buildings include only those which protect against the elements. We believe internal building functions have not been addressed in prior cases because the structures reviewed in those cases were simple structures (canopy over gas pumps, oil tanks, green houses) containing no walls, rooms, windows, or doors. We therefore affirm our decision that the studios perform functions ordinarily performed by buildings.

*Id.* at \*3, *aff'd* 516 N.W.2d 177 (Minn. 1994). This Court affirmed the Tax Court's *Lewis and Harris* decision, approving of the Tax Court's application of *Busch* and *Barton*: "[r]ejecting the partnership's contention that the recording studios are equipment, not real estate, Judge Doar found that the studios are integrated with and permanently affixed to the building and are, therefore, part of the real estate." *Id.* at 180.<sup>13</sup>

*Busch*, *Barton*, and the statutory analysis of Section 272.03 set forth above were again applied together less than one month ago, when Judge Sanberg of the Tax Court held that Weibull bins, sugar storage silos, thick juice tanks, and other structures at sugarbeet processing plants in Crookston and East Grand Forks, Minnesota, were taxable real property. *American Crystal Sugar Co. v. County of Polk*, Nos. C1-05-574, C3-05-575, CX-06-373, C4-06-367, 2007 WL 987084 (Minn. Tax Ct. Mar. 30, 2007), *pet. for rev. filed* Apr. 6, 2007 ("*Polk County*"). As SMBSC does here, American Crystal had argued that these structures were equipment, not real property. Relying on *Busch*, *Barton*, and subd. 1(c)(iii), Judge Sanberg rejected this contention. *Polk County* at \*4-6.

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<sup>13</sup> See also *County of Scott v. Comm'r of Revenue*, No. 5000, 1989 WL 102973 (Minn. Tax Ct. Aug. 2, 1989), where the Tax Court reviewed *Busch* and *Barton* as it analyzed whether a trough and reservoir used as an amusement park ride were taxable real property.

**D. The Tax Court's Order Applies The Correct Analysis**

The Tax Court in this case began its analysis by citing Section 272.03, subd. 1(a): “an analysis of whether or not a structure is taxable real property begins with the principle that land, railroad track, and track materials, buildings, structures and land improvements are all taxable real property.” (Order at 18 (emphasis added).) It then noted that subd. 1(c)(i) provides an exception to the general presumption that all property is taxable, and that such an exception provision is to be strictly construed. (Order at 18-20.) The Tax Court explained that the exception in subd. 1(c)(i) is qualified by subd. 1(c)(iii). (Order at 19.) It analyzed *Busch* and *Barton*, explaining how their holdings, reached independently of subd. 1(c)(iii), are consistent with and inform the interpretation of subd. 1(c)(iii). (Order at 19-21.)

The Tax Court held that the thick juice storage tanks were taxable real property because they met the criteria of subd. 1(c)(iii). (Order at 21-22.) Next, it applied subd. 1(c)(iii) to the concrete sugar storage silos and to the Weibull bin, holding that because these structures similarly met the criteria of subd. 1(c)(iii), they were also taxable real property, notwithstanding their sugar conditioning function. (Order at 22-23.) The Tax Court then applied subd. 1(c)(iii) to the other steel tanks and bins; like the thick juice storage tanks, they were taxable real property pursuant to subd. 1(c)(iii). (Order at 24.) The Tax Court carefully noted that while the thick juice storage tanks, sugar storage bins and silos, and other tanks and bins were all taxable real property, the taxable components of these structures did not include equipment contained within them, such as vents, heat exchangers, heating coils, pipes, or pumps. (*Id.*) Finally, it found that the manmade

ponds and other land improvements were taxable real property because land improvements are taxable pursuant to subd. 1(a). (Order at 24-25.) The Tax Court's analysis is well organized, thorough, and correctly applies Section 272.03, *Busch*, and *Barton*.

E. **The Tax Court Correctly Held That The Bins, Tanks, and Silos are Taxable Real Property**

1. **The Thick Juice Storage Tanks are Taxable Real Property**

As explained above, the identification of taxable real property begins with Section 272.03, subd. 1(a), which provides that all buildings, structures, and improvements on land are taxable real property. Minn. Stat. § 272.03, subd. 1(a) (2002). The thick juice storage tanks are “structures.” (Tr. 1185:2-11.) Accordingly, the analysis for the thick juice storage tanks starts with the initial determination that they are within the definition of taxable real property. This determination includes the thick juice storage tanks' foundations and floors as well as their exterior steel shells – all are part of the “structure.”

SMBSC asserts that the thick juice storage tanks should be excluded from the definition of taxable real property pursuant to Section 272.03, subd. 1(c)(i) as “equipment” used in processing. (SMBSC Brief at 15, 39-41.) Chief Judge Perez found as a fact, however, that the thick juice storage tanks were used primarily for storage:

The beet end of the plant can process beets into thick juice faster than the sugar end can process thick juice into granulated sugar. It is necessary to use the thick juice storage tanks to store thick juice until it can be processed into sugar.

(FOF 11; *see also* Ex. 102 (SMBSC used the term “thick juice storage” to describe the thick juice storage tanks, indicating that outside of litigation, SMBSC sees their purpose

as storage, not processing).<sup>14</sup>

Assuming arguendo that the thick juice storage tanks fall within the ambit of subd. 1(c)(i), they are nevertheless taxable real property because they precisely fit the criteria specified in subd. 1(c)(iii). The Tax Court made specific factual findings, based on testimony from SMBSC's expert witness, that the thick juice storage tanks have walls, a roof or ceiling, and floors. (FOF 11.) It likewise found that that the steel shells of the thick juice storage tanks provide a structural function and that these tanks protect their contents, the thick juice, from the elements. (*Id.*) The Tax Court's factual findings match up precisely with the elements of subd. 1(c)(iii). Accordingly, even if the thick juice storage tanks have some special functions distinct from those of a building, their exterior shells are taxable real property. Minn. Stat. § 272.03, subd. 1(c)(iii) (2002).

This conclusion is directly supported by *Barton*. Physically, the thick juice storage tanks at the Property are very similar in construction, capacity, dimensions, and use to the tanks in *Barton*. The tanks in *Barton* allowed their contents to be heated, blended, and maintained, just as thick juice can apparently be heated or maintained in the thick juice storage tanks. *Barton*, 390 N.W.2d at 777. Just as the tanks in *Barton* were held to be taxable real property (even though the taxpayer contended that they were

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<sup>14</sup> Since SMBSC's thick juice storage tanks are used primarily for storage, it is difficult to consider them as "equipment" that is non-taxable under subd. 1(c)(i). By that logic, other storage structures such as a garage, a hangar, a grain elevator, or a warehouse would not be subject to property taxation. As in *Busch*, a taxpayer may not escape property taxation by merely characterizing a structure as "equipment." 380 N.W.2d at 814 (taxpayer contended that greenhouses were horticultural equipment called an "environmental growing chamber," but the Court found that they were instead structures and taxable real estate).

equipment), SMBSC's thick juice storage tanks are also taxable real property.

SMBSC's argument that the *Barton* tanks were real property because they were used only for mixing and storage, not processing, is unavailing. (SMBSC Brief at 42.) SMBSC overlooks the facts as found by Chief Judge Perez: SMBSC's thick juice storage tanks were used primarily for storage, and it is "questionable" whether any processing took place in the thick juice storage tanks at all, considering that "it is thick juice that enters the tanks and thick juice that leaves the tanks." (Order at 21-22.)

The Tax Court's conclusion is consistent with two other recent cases involving large steel tanks at sugarbeet processing plants. Judge Sanberg found that thick juice storage tanks were taxable real property. *Polk County* at \*6. The North Dakota Supreme Court, in *Am. Crystal Sugar Corp. v. Traill County Bd. of Comm'rs*, 714 N.W.2d 851, 863 (N.D. 2006) ("*Traill County*"), found that the "physical structures" of large steel molasses tanks were subject to real property taxation under North Dakota law.<sup>15</sup> In that case, the County had included equipment inside the tanks in its assessment, so the North Dakota Court remanded for further proceedings. *Id.* at 864. In contrast, Chief Judge Perez correctly excluded equipment inside the thick juice storage tanks, such as pipes, pumps, or heating coils, from his determination of taxable real property. (COL 1, Order at 24.) The Tax Court's conclusion that the thick juice storage tanks are taxable real

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<sup>15</sup> A copy of *Traill County* is provided at RSRA 24-35. North Dakota follows a more narrow test for distinguishing between taxable real property and nontaxable personal property than does Minnesota; if an item is taxable real property in North Dakota, it is almost certain to be taxable real property under Minnesota law. *Id.*, 714 N.W.2d at 860 (describing test under *Ladish Malting Co. v. Stutsman County*, 416 N.W.2d 31 (N.D. 1987)).

property must be affirmed.

2. The Sugar Storage Silos and Weibull Bin Are Taxable Real Property

Like the thick juice storage tanks, the concrete sugar storage silos and the Weibull bin are undoubtedly “structures,” and so they fit within the definition of taxable real property pursuant to subd. 1(a). (Tr. p. 577:18 (Mr. Battuello refers to the Weibull bin as a “structure”).) This determination extends to the walls, foundations, and other structural elements of the sugar storage silos and Weibull bin (such as the central support column and passenger elevator inside the Weibull bin). (FOF 14.)

SMBSC asserts that the silos and Weibull bin are part of the sugar production process because “conditioning” of the sugar takes place therein.<sup>16</sup> (SMBSC Brief at 7, 39-42.) However, the evidence at trial suggested that the function of these structures is to provide storage at least as much as it is to provide conditioning. (Tr. 98:4-99:19, 381:15-19; Ex. 102 (describing silos as “sugar storage silos”).) Accordingly, the Tax Court found as a fact that the sugar storage silos and Weibull bin provide both storage and conditioning. (FOF 13, 14.)

To the extent that subd. 1(c)(i) even applies to the Weibull bin and sugar storage silos, subd. 1(c)(iii) clearly applies to make their exterior shells taxable real property. The Tax Court specifically found that the silos and Weibull bin both have walls, a roof or

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<sup>16</sup> With regard to the concrete sugar silos, SMBSC’s argument is directly contrary to its Interrogatory Answers. (Ex. 106 at 7 (“Generally, Petitioner regards its buildings and concrete silos as part of its real property”).) American Crystal recently conceded that concrete sugar storage silos at its Crookston plant are not exempt from real property taxation under Section 272.03 because they perform no special function; they merely store sugar and contain no process-related tools or equipment. *Polk County* at \*3, n. 23.

ceiling, and a floor. (FOF 13, 14.) It found that the concrete silos' exterior shell performs a structural function and a temperature control function, and that it protects their contents, granulated sugar, from the elements. (FOF 13.) It likewise found that the Weibull bin's shell regulates the temperature and humidity of its contents, protects its contents from the elements, and that its shell and column perform a structural function. (FOF 14.) The facts found by the Tax Court directly correspond to the elements of subd. 1(c)(iii). Accordingly, no matter that the Weibull bin and sugar storage silos may also perform a conditioning function, their exterior shells are taxable real property. Minn. Stat. § 272.03, subd. 1(c)(iii) (2002).

SMBSC argues that the Tax Court erred in not excluding the inside surface of the Weibull bin's shell from the taxable real estate. (SMBSC Brief at 41.) The Tax Court found as a fact, however, that what SMBSC refers to as the "inner wall" and "outer wall" constitute a unitary two-layered shell within which air is circulated to insulate the sugar. (Order at 23.) An argument similar to SMBSC's was rejected in *Polk County*, where Judge Sanberg found five Weibull bins to be taxable real property:

Contrary to Petitioner's argument, the inner walls [of the Weibull bins] are not pieces of equipment, tools or implements: they are improvements. The inner walls are attached to and a portion of the shell (like the interior walls of a house) that are used to circulate air, insulate, and regulate the temperature and humidity of the sugar contained in the Weibull Bins....

*Polk County*, 2007 WL 987084, at \*5 (footnote omitted);<sup>17</sup> see also *Lewis & Harris*, 1993

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<sup>17</sup> Like Chief Judge Perez, Judge Sanberg has toured sugarbeet processing plants and stood in a Weibull bin. Her understanding of the Weibull bin's construction and operation should be accorded significant deference.

WL 117570, at \*3, *aff'd* 516 N.W.2d 177.

The North Dakota Supreme Court also held that a Weibull bin (exclusive of equipment contained therein) was taxable real property. *Trails County*, 714 N.W.2d at 861-62. In this case, the Tax Court correctly identified the taxable real property components of the Weibull bin and sugar storage silos, and its determinations of taxability should be affirmed.

### 3. The Other Steel Tanks and Bins are Taxable Real Property

The Tax Court found that the remaining eleven large steel tanks and bins at the Property are similar to the thick juice storage tanks in their basic construction, size, and characteristics. (FOF 10, 12, Order at 24.) These tanks consist of two molasses storage tanks, two fuel tanks, two pellet storage tanks, a betaine storage tank, a condenser tank, a water tank, a water clarifier, and an ash tank. (FOF 10, Order at 24.) They all have steel shells, and most are mounted on a concrete foundation. (FOF 12, Order at 24.)

Just as the thick juice storage tanks are “structures” pursuant to Section 272.03, subd. 1(a), the remaining eleven tanks and bins are also structures under subd. 1(a), and thus are presumed taxable. Just as with the thick juice storage tanks, the Tax Court specifically found that these other tanks and bins all have floors, walls, and roofs or ceilings. (FOF 12.) The tanks and bins fall directly within subd. 1(c)(iii) and accordingly are taxable real property.

The Tax Court’s identification of the structural components of these remaining tanks as taxable real property is mandated by existing precedent. The smallest tanks identified as real property in *Barton* were 100,000 gallons in capacity; only those exterior

tanks that were 100,000 gallons in capacity or larger were found to be taxable real property in the Order. In *Polk County*, American Crystal conceded that molasses tanks, pellet bins, and a raffinate tank were not exempt because they performed only storage functions. *Polk County*, 2007 WL 987084, at \*3. Molasses tanks at American Crystal's *Traill County* facilities are taxable real property under North Dakota law. *Traill County*, 714 N.W.2d at 863. Chief Judge Perez's holding that the eleven remaining steel storage tanks are taxable real property must be affirmed.

F. **The Analyses Proposed by SMBSC and the Chamber Are Inconsistent, Incorrect, and Intellectually Disingenuous**

SMBSC's approach to distinguishing real property from personal property is a jumble.<sup>18</sup> SMBSC mentions subd. 1(c)(iii) in passing, but does not apply it to the structures at issue here, and does not explain the relationship between it, *Crown CoCo*, *Busch*, and *Barton*. (SMBSC Brief at 38.) Instead of applying Section 272.03, SMBSC argues that to distinguish between real property and personal property, the Court should follow the *Crown CoCo* "functionality" test:

Here, the Tax Court did not properly perform the *Crown CoCo* functionality text [sic] 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 [a] processing function.

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<sup>18</sup> At trial, SMBSC sometimes argued that the manmade ponds are not taxable real property. (Tr. 46:14-17, 388:18-25.) However, on appeal SMBSC provides no argument concerning the ponds, merely mentioning that its appraiser included them in his cost approach. (SMBSC Brief at 28.) Renville County assumes, therefore, that SMBSC is not challenging the Tax Court's conclusion that the manmade ponds are taxable land improvements.

(SMBSC Brief at 43 (emphasis added).)<sup>19</sup> The above passage reveals that what SMBSC is really asking is for the Court to make new law by resurrecting the discredited “primary function” test from *Farmers Union*, ignoring subd. 1(c)(iii), and reversing both *Busch* and *Barton*. To do as SMBSC suggests would undo twenty years of settled law defining taxable real property and is likely to lead to substantial litigation, at great cost to taxing authorities and property owners.<sup>20</sup>

SMBSC’s appraiser actually used the “primary function” approach in his appraisal: he considered only 50% of the concrete sugar storage silos and only the outer layer of the Weibull bin’s shell to be taxable real property, on the theory that the remainder of these structures were “process related.” (Ex. 16 at 11, 54.) There is no meaningful difference between his analysis and the rejected “primary function” test the Tax Court applied in *Farmers Union*. Given Mr. Battuello’s misunderstanding of Minnesota law, the Tax Court had little choice but to completely reject his appraisal.

The Chamber takes a different approach than SMBSC, explicitly arguing that *Busch* and *Barton* are no longer good law because they were “superseded” by the

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<sup>19</sup> SMBSC’s description of the Tax Court’s holding is quite inaccurate: nowhere in the Order is it stated that the bins, tanks, and silos “incidentally” protect their contents from the elements while “principally” performing a processing function. To the contrary, the Tax Court made factual findings that the thick juice storage tanks were used for storage (FOF 11), and that the Weibull bin and sugar storage silos are used both for storage and conditioning (FOF 13, 14).

<sup>20</sup> If concrete sugar silos, which are essentially the same structures as grain elevators, are held not to be taxable real property, outstate Minnesota’s tax base would be likely to shrink dramatically.

adoption of subd. 1(c)(iii). (Chamber Brief at 15-17.) The Court must spurn the Chamber's disingenuous argument.

The Chamber begins by correctly noting that *Busch*, *Barton*, and subd. 1(c)(iii) all reject the "primary function" test from *Farmers Union*. (Chamber Brief at 16.) The Chamber then states "[t]o the extent that the reasoning enunciated in [*Busch* and *Barton*] overlaps or conflicts with clause (c)(iii), the cases are superseded by the statute." (*Id.*) Yet, the Chamber never identifies any conflict between subd. 1(c)(iii), on the one hand, and *Busch* and *Barton*, on the other. Nor does the Chamber explain how the Section 272.03 analysis that was applied in *Busch* and *Barton* has been superseded. The Court should not be taken in by the Chamber's sophistry. The analysis set forth in *Busch* and *Barton* remains good law, providing a practical application of facts to law when determining whether structures at industrial facilities are taxable as real property.

The Chamber then boldly goes where no one has gone before, arguing that subd. 1(c)(iii) is ambiguous and recommending that the Court ascertain the Legislature's intent by considering statements from the Shakopee City Administrator, a lobbyist, and an unidentified male voice. (Chamber Brief at 17-21.) First, this raises an entirely new issue: the assertion that subd. 1(c)(iii) is ambiguous was not made below,<sup>21</sup> and the Tax Court did not consider it ambiguous. *See* Minn. Stat. § 645.16 (the Court may look to outside sources to ascertain the meaning of a statute only when it is not explicit); *ILHC*,

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<sup>21</sup> *See* SMBSC's Pre-Trial Memorandum (A.164) and Post-Trial Memorandum (A. 179-184) (ignoring subd. 1(c)(iii) and not suggesting that any part of Section 272.03 is ambiguous).

693 N.W.2d at 419 (“When a statute’s meaning is plain from its language as applied to the facts of the particular case, a judicial construction is not necessary.”) Second, this Court has advised that “statements [of legislators] made in committee discussion or in floor debate are to be treated with caution,” and may be akin to “looking over a crowd and picking out your friends.” *Handle With Care, Inc. v. Dept. of Human Servs.*, 406 N.W.2d 518, 522, n.8 (Minn. 1987). The statements by non-legislators relied upon by the Chamber should be given even less credit.<sup>22</sup>

Although their arguments are mostly inconsistent with each other, SMBSC and the Chamber both resort to a parade of alleged horrors, arguing that the Tax Court’s analysis in this case will somehow change Minnesota law and subject all manner of currently non-taxable items to taxation. (SMBSC Brief at 40, Chamber Brief at 23-24.) To the contrary, affirmance of Chief Judge Perez’s Order will maintain the status quo. The hypothetical situations SMBSC and the Chamber raise are not presented by the facts in this case. For example, the Chamber’s alarm that “process-related piping” could be a taxable structure (Chamber Brief at 24) is wildly inaccurate, given that the Tax Court found piping to be equipment and not taxable. (COL 9, Order at 24.)

The Tax Court’s holdings on the facts in this case extend no further than to confirm that two categories of structures are and, for more than twenty years, have been

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<sup>22</sup> The affidavit of Richard L. Cox which contains the legislative history relied upon by the Chamber (Chamber Addendum at 1-23) is not in the evidentiary record in this case. In *Polk County*, Judge Sanberg gave no credence to the same legislative history argument when it was made by American Crystal, which submitted a virtually identical affidavit.

taxable real property: 1) storage tanks and bins that are built on site, located outdoors, and larger than 100,000 gallons in capacity, consistent with *Barton*; and 2) concrete sugar storage silos and the Weibull bin, which are functionally very similar to grain elevators (which have long been taxable real property in Minnesota). *See, e.g., Pillsbury Co. v. Comm’r of Revenue*, Nos. 13209, 13285, 1980 WL 1191 (Minn. Tax Ct. Jan. 17, 1980) (determining market value of a grain elevator); *Barton*, 1986 WL 600 at \*4 (“The tanks here are very similar to grain elevators”).

The Court should recognize that SMBSC’s and the Chamber’s analyses are irreconcilable with the plain language of subd. 1(c)(iii) and with the straightforward and well-established analyses set forth in *Busch*, *Barton*, *Lewis & Harris*, and most recently, *Polk County*.

**III. THE TAX COURT CORRECTLY FOUND AS A FACT THAT THE HIGHEST AND BEST USE OF THE PROPERTY IS CONTINUED USE AS A SUGARBEET PROCESSING PLANT**

“All market valuation looks first at the highest and best use of the subject property to determine its market value.” *Ferche Acquisitions, Inc. v. County of Benton*, 550 N.W.2d 631, 634 (Minn. 1996). To determine highest and best use,

The appraiser...determines whether the greatest net return on the property would come from its existing use, or from similar, compatible uses (i.e. any industrial business), or whether it would be best to sell it vacant on the open market.

*Id.* Highest and best use is “the reasonabl[y] probable and legal use of vacant land or an improved property that is physically possible, legally permissible, appropriately supported, financially feasible, and that results in the highest value.” *SPX Corp. v.*

*County of Steele*, No. C1-00-350, 2003 WL 21729580 (Minn. Tax Ct. July 23, 2003) (A.141), quoting Appraisal Institute, *The Appraisal of Real Estate* 305 (12th ed. 2001) (“*Appraisal of Real Estate*”). The highest and best use of a property as improved is the use that should be made of an improved property in light of the existing improvements. *Pep Boys v. County of Anoka*, Nos. C2-01-2780, C3-02-2877, C5-02-8549, 2004 WL 2436350 (Minn. Tax Ct. Oct. 26, 2004) (A.135), citing *Appraisal of Real Estate* at 315.

The Tax Court properly analyzed each of the four highest and best use factors with regard to the Property. (Order at 26.) The first two are not disputed – it is physically possible and legally permissible to use SMBSC’s facility as a sugarbeet processing plant.

The Tax Court next considered whether use of the facility as a sugarbeet processing plant was financially feasible. It found that such use was financially feasible because it created significant value as of the assessment years at issue. (*Id.*) As proof, it cited SMBSC’s \$103 million Vision 2002 investment in the Property’s equipment and real property. (*Id.*) No rational person would invest \$103 million in a facility if the use of the real estate was not financially feasible.

Finally, the Tax Court considered the wide range of possible uses for the Property that had been testified to at trial, to determine which use would be maximally productive, *i.e.*, would bring the “greatest net return on the property.” *Ferche*, 550 N.W.2d at 634. Possible options identified by the parties included continued use as a sugarbeet processing plant, agri-business manufacturing, general industrial manufacturing, storage, concrete crushing, or other uses. (Tr. 985:9-987:1 (continued use as a sugarbeet

processing plant), 480:5-11, 494:16-21 (Mr. Counsell's testimony as to a variety of other potential uses).)

The Tax Court concluded that conversion to uses other than the current use would result in a waste of the massive amount of capital invested in the Property, and would not take advantage of all of the Property's real property improvements, including the buildings, tanks, bins, silos, and ponds. (Order at 26-27; *see also* Ex. 108 at 27; Tr. 985:21-25.) The Tax Court concluded that the maximally productive use of the Property as improved was continued use as a sugarbeet processing facility. (Order at 27.)

The Tax Court's factual finding that the Property's highest and best use is its current use is consistent with a wide range of authority. The highest and best use standard set forth in *Ferche*, for example, contemplates that a property's highest and best use may "come from its existing use." *Id.* at 634; *see also Westling v. County of Mille Lacs*, 512 N.W.2d 863, 867 n.1 (Minn. 1994) (concurrence of Keith, J.) (taxpayer was using property for its highest and best use, so the Tax Court's valuation should reflect that use). The leading appraisal treatise states that the "highest and best use of a property as improved may be continuation of the existing use," and "the highest and best use of a special-purpose property as improved is probably the continuation of its current use if that use remains viable." *Appraisal of Real Estate* at 315, 326. Continued use of the Property for sugarbeet processing is certainly "viable." Thus, after properly considering all of the applicable highest and best use factors, the Tax Court made a specific factual finding, to which this Court should defer, that the highest and best use of the Property as improved is continued use as a sugarbeet processing facility. (FOF 21.)

#### IV. THE TAX COURT CORRECTLY CONCLUDED THAT THE PROPERTY IS A SPECIAL PURPOSE PROPERTY

The most recent major case on special purpose properties is *Am. Express*, which sets forth the following test:

[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 substantial loss in the investment value of the property's special features.

573 N.W.2d at 656; *see also Fed. Reserve Bank of Minneapolis v. State*, 313 N.W.2d 619, 621-22 (Minn. 1981); *In re McCannel*, 301 N.W.2d 910, 923-24 (Minn. 1980).

Typical examples of special purpose properties include houses of worship, theaters, sports arenas, clubhouses, museums, hospitals, and breweries. *Appraisal of Real Estate* at 262; *Fed. Reserve*, 313 N.W.2d at 621, n.2. The Tax Court properly applied the caselaw regarding special purpose properties and concluded as a matter of law that SMBSC's facility is a special purpose property. (COL 4, FOF 15, Order at 27-31.) The Tax Court's special purpose conclusion is important because it underlies the Tax Court's analysis, and ultimate rejection, of the parties' appraisals.

##### A. The Tax Court Found as Facts That the Property Has All of the Attributes of a Special Purpose Property

The Tax Court made detailed factual findings concerning the many unique aspects of the Property. It noted that the Property has many buildings designed specifically for sugarbeet processing, including the main processing building, the Putsch Press building (which has no doors), and the beet washhouse. (Order at 28.) It observed that the Property's buildings have unusual attributes, such as their height, their heavily reinforced

structural steel framing, and their reinforced concrete and steel floors and mezzanines with numerous openings. (*Id.* at 29.) The Tax Court considered the unusual and massive land improvements necessary for sugarbeet processing, including the ponds and beet piling strips. (*Id.*) The Court also noted the length of railroad track and the specialized building for bulk loading sugar into railcars. (*Id.*)

Considering all of the Property's taxable real property improvements as a whole, the Tax Court found that only at a sugarbeet processing plant would one find the unique combination of large, varied, and specialized processing buildings; large tanks for storing tens of millions of gallons of thick juice; concrete sugar storage silos and the Weibull bin; extensive rail service; acres of settling ponds; and acres of beet piling strips. (Order at 29.)

SMBSC's own witnesses supported this conclusion. Mr. Counsell testified that the Property is "a custom-made suit that's designed for the sugar beet co-op to do exactly what they do in terms of the size, the configuration, the tankage, the rail, the throughput of the plant." (Tr. 479:4-7.) In other words, each of the Property's improvements was tailored to the requirements of sugarbeet processing. Mr. Battuello likewise testified: "Various characteristics of, you know, Renville are special design, they're there for making beets." (Tr. 542:10-15.)

The Tax Court next found that the Property is not likely to be sold on the market, relying on both expert appraisers' agreement that the Property is a limited-market property. (Order at 30.) It was undisputed that there have been no sales of sugarbeet processing plants in the Property's geographic area, the Upper Midwest. (*See* Ex. 108 at

63, 67 (listing recent sales of sugarbeet businesses, none of which took place in the Upper Midwest, and noting that the locations of all of the plants involved in the listed transactions are not as good as the Property's location).)

Finally, the Tax Court found that although it would be possible to convert the Property to another use, "such conversion would require a large capital investment and would result in a massive loss in the investment value of the Subject Property's special features." (Order at 30.) "For example, if the Property were converted to another use, the investment in the piling areas, ponds, and tanks, bins, and silos would be lost or underutilized." (*Id.*) The same conclusion could be reached for each of the unique attributes of the Property identified above.

Chief Judge Perez's detailed findings concerning the Property's unique attributes are especially compelling considering that he and the parties toured the plant the day before the trial. He personally observed the Property's unusual building designs, unique structures, and massive land improvements; his findings as to the elements that create the special purpose nature of the Property should be accorded great deference.

**B. The Tax Court's Special Purpose Property Determination Is Consistent With All Relevant Caselaw**

In *Am. Express*, the Tax Court held that American Express' conference center in Chaska, Minnesota was a special purpose property. On appeal, this Court reversed the Tax Court on the basis that neither the design nor the current use of the conference center rendered it incapable of being adapted to other uses at only minimal cost. 573 N.W.2d at 657. In his Order, Chief Judge Perez specifically distinguished *Am. Express*, explaining

that in contrast to the conference center in that case, SMBSC's Property was designed for one use, and conversion to any other use would require a large capital investment and would result in a massive loss in the investment value of the Property's special features. (Order at 30.)

Large, specialized agricultural processing facilities are commonly valued as special purpose properties.<sup>23</sup> The Rahr Malting facility in Shakopee is a large multi-building plant which is quite similar to the Property. (Tr. 1000:20-23.) When the valuation of the Rahr facility was before the Tax Court, the parties agreed that it was a special purpose property. *Rahr Malting Co. v. County of Scott*, Nos. 99-03807, 00-01171, 2000 WL 967457 at \*1 (Minn. Tax Ct. July 15, 2000).

Breweries and grain elevators are often cited as common examples of special purpose properties. *See, e.g., Fed. Reserve Bank*, 313 N.W.2d at 621 n. 2 (breweries); Tr. p. 796:12-17 (Mr. Battuello's testimony that grain elevators are a "great example" of special purpose properties); *Cont'l Grain Co. v. County of Goodhue*, No. C0-93-568, 1994 WL 660286 at \*2 (Minn. Tax Ct. Nov. 15, 1994) (finding a river terminal grain

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<sup>23</sup> In arguing that food processing facilities are not special-purpose properties, SMBSC misleadingly cites to page 355 of *Appraising Industrial Properties* (A.132.) (SMBSC Brief at 21.) The article actually states that such facilities are usually in the "special-purpose property classification," and notes: "[a]ppraisals of food processing facilities are commonly required for sale or purchase, finance, or taxation purposes." *Id.* at 349, 353. Page 355 deals with financing appraisals. The following page, which SMBSC failed to cite, concerns taxation appraisals: "appraisals [of food processing facilities] are often problematic because a sufficient number of transactions are usually not available in a specific market area." *Id.* at 356.

elevator to be a special purpose property).<sup>24</sup> The Property shares many attributes of grain elevators and breweries, including having massive amounts of silo-type storage and the ability to load and ship large quantities of raw materials and product by rail and other means. Since breweries, malting plants, and grain elevators are all special purpose properties, it would be unfair to owners of such facilities to create a special exception for just sugarbeet processing facilities.<sup>25</sup>

SMBSC contends that the Tax Court engaged in the disfavored practice of “value-in-use” valuation. (SMBSC Brief at 30-34.) This Court has previously rejected SMBSC’s argument, distinguishing between a proper special purpose property designation and an impermissible value-in-use analysis:

*McCannel* [affirming the identification of an airport hangar as a special purpose property] and *Space Center* [302 N.W.2d 17 (Minn. 1981); rejecting value-in-use valuation of a general-purpose warehouse] set up separate theoretical approaches to distinctly different types of factual situations. Whereas the special purpose exception is applied to a building in good condition being used currently and for the foreseeable future for the unique purpose for which it was built, the *Space Center* doctrine, by contrast, is applied...to a general purpose building, the design of which is inappropriate or incongruous for its current use. The former approach, more relevant here, is designed to prevent the owner of a distinctive but highly useful building from escaping full property tax liability, while the

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<sup>24</sup> Special purpose properties are often “appropriate for only one use or for a very limited number of uses...” *Appraisal of Real Estate* at 326 (A. 134a). For example, “the highest and best use of a grain elevator is probably continued use as a grain elevator.” *Id.*

<sup>25</sup> The Chamber’s concern that the Tax Court’s holding will result in improper valuation of gas stations as special purpose properties is based on circular reasoning. (Chamber Brief at 10). For properties for which there is a vigorous market (such as gas stations), comparable sales data will be available and the special purpose property designation is not necessary; for properties for which there is no valid comparable sales data or rental income data available (as here) it is necessary to consider the cost approach.

latter approach is designed to reduce the harshness of applying “intrinsic use” values to an obsolete building.

*Fed. Reserve*, 313 N.W.2d at 623 (emphasis added, footnotes omitted). The Property is in good condition,<sup>26</sup> is in an excellent location for its use,<sup>27</sup> and is currently, and for the foreseeable future, being used for the unique purpose for which it was built.<sup>28</sup> This is not a case where an obsolete property is being over-valued, but rather is a case where a distinctive, highly useful real estate complex fulfills all of the requirements for valuation as a special purpose property.

SMBSC also argues that the Tax Court erred by using its designation of the bins, tanks, and silos as real property to “prop up” the special purpose property determination. (SMBSC brief at 20-21.) SMBSC’s erroneous argument is the consequence of its refusal to analyze the issues in a logical order. SMBSC starts from the premise that the comparable sales approach must be used, whereas there is no way to know which valuation analysis to use, or to determine the highest and best use, until the real property itself is identified. This Court should reject SMBSC’s outcome-driven speculation and affirm the Tax Court’s well-supported special purpose property determination.

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<sup>26</sup> Tr. 123:15-124:3 (Mr. Richmond’s testimony that “we repair the things that we need to” and that the Property is in “fair” condition); 982:1-9.

<sup>27</sup> Ex. 108 at 45-46; Tr. 949:23-950:6.

<sup>28</sup> Tr. 1116:16-1117:5, 1118:9-15.

V. **THE TAX COURT'S VALUE CONCLUSION IS NOT CLEARLY ERRONEOUS**

A. **The Tax Court Properly Rejected SMBSC's (Non)Comparable Sales**

SMBSC argues vigorously that the Tax Court rejected SMBSC's appraisal solely with regard to the cost approach, thus erroneously disregarding SMBSC's evidence of allegedly comparable sales. (SMBSC Brief at 22-28.) SMBSC ignores the Tax Court's statement that SMBSC's appraisal was rejected because it did not provide "sufficient evidence to allow the Court to reach a well supported and reasonable determination as to the market value...." Stated in the inverse, SMBSC's appraisal was rejected because it was insufficient, not well supported, and not reasonable.

"Because appraising property is, at best, an 'inexact value determination,'...the appropriate valuation approach...will depend on the specific facts of each case." *Evans v. County of Hennepin*, 548 N.W.2d 277, 278 (Minn. 1996), quoting *Lewis & Harris*, 516 N.W.2d at 180. "We accord the Tax Court broad discretion in choosing which valuation approach to use." *Evans*, 548 N.W.2d at 278. "The Tax Court is wholly capable of assessing the weight of conflicting expert testimony [concerning which valuation approach to use] and reaching an intelligent conclusion." *Hansen*, 527 N.W.2d at 94-95. Since property valuation involves the resolution of disputed issues of fact, Chief Judge Perez's decision to reject SMBSC's flawed appraisal may only be reversed if it was clearly erroneous.

Chief Judge Perez's rejection of SMBSC's appraisal is no different from other Tax Court cases where the judge rejects comparable sales because insufficient information is

presented or because the comparables are dissimilar from the subject. *See Lewis & Harris*, 516 N.W.2d at 180 (affirming Tax Court's rejection of the market approach where the highest and best use determination resulted in the exclusion of all but one of the taxpayer's comparables). Because Chief Judge Perez found that the Property's highest and best use was continued use as a sugarbeet processing plant, SMBSC's comparables (none of which were operational sugarbeet processing facilities) were so dissimilar from the Property that SMBSC's appraisal did not provide sufficient evidence to allow the Tax Court to make a value determination, and had to be disregarded.

A review of SMBSC's alleged comparables reveals just how dissimilar they are from the Property. Mr. Battuello's first three comparables were all failed former sugarbeet processing plants which were sold for different uses. Comparable 1, the Hereford, Texas plant, ceased operations in 1997 but the sale upon which Mr. Battuello relied took place in 2004. (Tr. 202:22-24; Ex. 16 p. 21.) He acknowledged that the terms of sale prevented it from being used as a sugarbeet processing plant. (Tr. p. 629:2-15, 832:20-833:3.) Comparable 2, the Moses Lake, Washington plant, was not a completed sale at the time of trial, never operated successfully, and was sold with a caveat that it could not be used for processing sugarbeets. (Tr. 213:24-214:6, 834:5-7.) Comparable 3, the Hamilton City plant, is a derelict – it closed in the mid-1990s and its structures are “deteriorated or partially demolished.” (Ex. 16 p. 25; Ex. 29 at 4, 5 (showing dilapidation of buildings); Tr. 205:6-206:2.) In contrast to these three failed plants, the Property is the newest and one of the most efficient such facilities in the United States and is located in the center of a thriving sugarbeet-growing region. (Ex. 108 at 43-47; Tr. 1018:19-1021:17.)

SMBSC's remaining comparables, 4 through 15, do not have the attributes of the Property necessary for sugarbeet processing. They do not have sufficient acreage, tall buildings, ponds, sugar storage (Weibull bins, silos, or thick juice storage tanks), piling strips, beet loading facilities, or rail trackage. (Ex. 16 at 26-42.) None of these Comparables can be used for the Property's highest and best use, sugarbeet processing, so the Tax Court logically determined that they provide no useful information about the Property's value if marketed for its highest and best use.

Finally, SMBSC fails to mention in its Brief that Mr. Battuello also considered and rejected the five "going-concern" transactions (Ex. 16 at 43-48) which SMBSC now argues Chief Judge Perez should have considered. (SMBSC Brief at 7-8, 24-25.) Since the parties' appraisers agreed that these going-concern transactions did not provide competent evidence of the fee simple market value of the Property,<sup>29</sup> there is no evidence in the record to support SMBSC's argument that they are comparable sales. (Ex. 16 at 48; Ex. 108 at 63-70.)

In sum, SMBSC did not present "numerous comparable market sales of beet sugar plants" as it argues. The Tax Court's decision not to address this patently non-probative evidence was an appropriate exercise of its discretion.

**B. It is Appropriate to Rely on the Cost Approach When Valuing a Special Purpose Property**

Generally, the Tax Court should apply at least two of the three traditional market

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<sup>29</sup> See RSRA 14 (summarizing reasons why each going-concern transaction could not be used as a comparable sale).

value approaches – the cost approach, the income approach, and the sales approach – to determine a market valuation. *Equitable Life Assurance Soc’y v. County of Ramsey*, 530 N.W.2d 544, 553 (Minn. 1995). However, *Equitable* further provides that “under appropriate circumstances, a single approach may be used to determine the market value of the property being appraised.” *Id.* at 554. The two examples cited in *Equitable* of when such reliance on a single valuation approach might be appropriate are two of the seminal cases concerning special purpose properties: *McCannel* and *Fed. Res. Bank. In Am. Express*, this Court stated that “[i]n the narrow context of special purpose properties, we have generally permitted the use of a cost approach alone because ‘[t]he 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.’” *Id.*, 573 N.W.2d at 657. That is the precise situation presented here – there was no competent evidence of market sales of sugarbeet processing plants upon which the Court could rely.

The Tax Court was clearly cognizant of the caselaw on this issue: it cited the major cases and began its analysis with the general rule from *Equitable*. (Order at 31.) Citing to *Am. Express*, and recognizing that the Property was a special purpose property, the Tax Court stated that at a minimum, it would be necessary to have a thorough and complete analysis under the cost approach. (*Id.*) Ultimately, though, the Tax Court rejected both sides’ appraisals.

**C. No Per Se Rule Was Established**

The Chamber asserts that the Tax Court adopted a “per se rule establishing the

cost approach as the sole method for valuing special purpose properties,” and argues that this alleged new per se rule should be disallowed by this Court, just as the per se rule against out-of-state comparables was disallowed in *McNeilus Truck & Mfg., Inc. v. County of Dodge*, 705 N.W.2d 410 (Minn. 2005). (Chamber Brief at 3, 6-9). The Tax Court did not rely solely on the cost approach; to the contrary, it reached no valuation decision at all, and thus no approach was either established or applied. (Order at 31-32.)

The Chamber’s contention misconstrues the Order. The middle paragraph on page 31 of the Order does nothing other than paraphrase well-established caselaw. The final sentence in that paragraph, “...neither appraisal provided sufficient evidence to allow the Court to reach a well supported and reasonable determination as to the market value...” does not mean that Chief Judge Perez believed he was free to disregard evidence of market value, as the Chamber alleges. (Chamber Brief at 7.) To the contrary, it means that Chief Judge Perez considered SMBSC’s appraisal and rejected the market evidence therein as insufficient, inadequately supported, and unreasonable. The Chamber’s argument about the adoption of a per se rule is a straw man that should be ignored by this Court, for no such rule was stated, adopted, or implemented.

**D. The Tax Court’s Decisions to Affirm the Assessed Value and Deny Sales Ratio Relief Were Not Clearly Erroneous**

SMBSC contends that the Tax Court’s decision to adopt the valuation of the Renville County Assessor, after rejecting the parties’ appraisals, is erroneous because there is no evidence in the record to support the Assessor’s EMV. (SMBSC Brief at 34-

37.) SMBSC further contends that sales ratio relief should be applied, even though the Tax Court affirmed the Assessor's EMV. (SMBSC Brief at 46-47.)

SMBSC's contentions are inconsistent with long-standing caselaw. The assessor's real property tax valuation is prima facie valid, and the burden rests on the taxpayer to prove that the valuation is excessive. *Schleiff v. County of Freeborn*, 43 N.W.2d 265, 269 (Minn. 1950); *see also* Minn. Stat. § 272.06 (2006) (legality of assessment is presumed). "[E]ven should the taxpayer show an assessor failed to observe proper standards or procedures, no relief is available unless the taxpayer proves he was prejudiced thereby. . . .plaintiffs must prove their property was...unequally assessed or overvalued." *Anacker v. County of Cottonwood*, 302 N.W.2d 342, 345 (Minn. 1981) (emphasis added).<sup>30</sup> SMBSC failed to meet its burden to provide such proof.

SMBSC did not meet its burden to prove that sales ratio relief was warranted. The sole unequal assessment evidence SMBSC introduced was the Minnesota Department of Revenue's 2004 commercial/industrial sales ratio study for Renville County. In response, Renville County introduced evidence through Deputy County Assessor Doug Bruns which showed that seven of the twelve sales from which the sales ratio was derived involved non-arms-length transactions or were otherwise flawed, resulting in an impermissibly small sample size. (Tr. 891:9-900:5; Ex. 110.)

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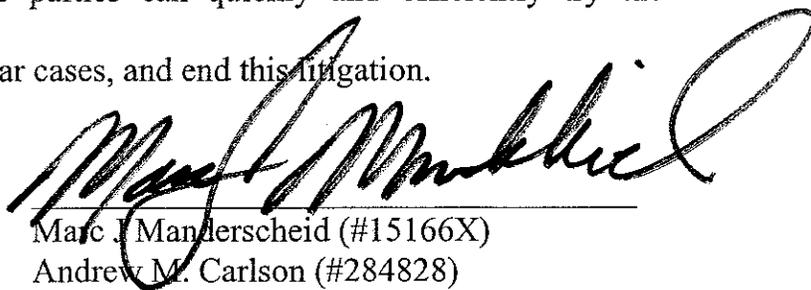
<sup>30</sup> Moreover, SMBSC's citation to *Weed v. County of Fillmore*, 630 N.W.2d 419, 426 (Minn. 2001) is misplaced. The Court should disregard SMBSC's reference to counsel's argument as proof of the County's appraisal approach. (SMBSC Brief at 36.) As any trial lawyer knows, statements of counsel are not evidence. Minn. CIVJIG 10.25.

## CONCLUSION

The Tax Court's Order is detailed and analytically sound. Its factual findings are grounded closely in the record evidence, and are informed by Chief Judge Perez's opportunity to assess the credibility and demeanor of the witnesses and to personally tour the Property. The Order's factual findings and legal conclusions concerning the identification of the taxable real property, the Property's highest and best use, and the special purpose property determination should all be affirmed.

The Tax Court's adoption of the Assessor's EMV was within its discretion. No purpose would be served by remanding for a new trial on valuation for Pay 2004 and Pay 2005; SMBSC has already filed petitions for subsequent tax years. Once the Court affirms Chief Judge Perez's Order, the parties can quickly and efficiently try the valuation dispute in the subsequent tax year cases, and end this litigation.

Dated: April 20, 2007



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STATE OF MINNESOTA  
IN SUPREME COURT

No. A07-0384

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Southern Minnesota Beet Sugar Coop.,

Relator,

vs.

County of Renville,

Respondent

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**CERTIFICATION OF BRIEF LENGTH**

I hereby certify that this brief conforms to the requirements of Minn. Civ. App. P. 132.01, subd. 1 and 3, for a brief prepared with a proportional font. The length of this brief is 13,997 words. This brief was prepared using Microsoft Word 2003 software.

Dated: April 20, 2007



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This is to certify that two copies of Respondent's Brief and Addendum were served upon each of the following by messenger on April 20, 2007:

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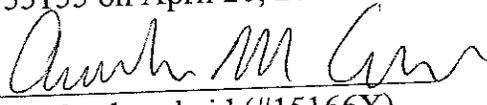
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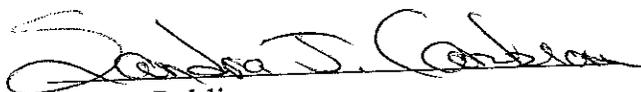
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In accordance with Minn. R. Civ. App. P. 131.03, subd. 1(a), an original, an unbound copy, and twelve bound copies of Respondent's Brief and Addendum were sent for filing by messenger to Clerk of Appellate Court, 305 Minnesota Judicial Center, 25 Rev. Dr. Martin Luther King, Jr. Blvd., St. Paul, MN 55155 on April 20, 2007.

  
\_\_\_\_\_  
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Subscribed and sworn to before me  
this 20<sup>th</sup> day of April, 2007.

  
Notary Public

