STATE OF MINNESOTA

COUNTY OF SCOTT

TAX COURT
REGULAR DIVISION
FIRST JUDICIAL DISTRICT

Certain Teed Corporation,

Petitioner,

v.

County of Scott,

Respondent.

FINDINGS OF FACT CONCLUSIONS OF LAW, AND ORDER FOR JUDGMENT

File Nos.: 70-CV-11-8148
70-CV-11-24964
70-CV-13-8725
70-CV-14-5741

Dated: July 9, 2015

This matter came on for trial before the Honorable Thomas G. Haluska, Judge of the Minnesota Tax Court, on January 7, 2015 and January 8, 2015.

Nicholas A. Furia, Attorney at Law, represented petitioner Certain Teed Corporation.

Steven R. Ott, Assistant Scott County Attorney, represented respondent County of Scott.

The court, having considered the evidence produced at trial and arguments of counsel, and based upon all of the files, records and proceedings herein, now makes the following:

FINDINGS OF FACT

1. Certain Teed Corporation has sufficient interest in the property to maintain this petition; all statutory and jurisdictional requirements have been fulfilled; and the court has jurisdiction over the subject matter of the action and the parties hereto.

2. The subject property is located in Scott County, Minnesota, and consists of parcel identification numbers 27-904-006-0 and 27-905-016-0.

3. The subject property consists of 55.59 total acres: 36.89 acres of land necessary to support structures and 18.7 acres of excess land.

4. At issue is the subject property's market value as of January 2, 2010; January 2, 2011; January 2, 2012; and January 2, 2013.

5. The industrial manufacturing building was initially constructed in 1973, and was subsequently expanded in 1974, 1988, and 2003.

6. The building has an effective age of 26 years as of the first assessment date.

7. As of January 2, 2010, 2011 and 2012, the property had a total gross building area of 451,705 square feet.

8. As of January 2, 2013, the property had a total gross building area of 409,200 square feet.

9. Approximately 51% of the subject property is warehouse space and the remaining space is production/manufacturing and office space.

10. The warehouse, production/manufacturing space have, on average, 20-foot ceiling heights.

11. The subject property is not unique in either its function or design, and is therefore likely to be sold on the market or readily converted to another use.

12. The Scott County Assessor's estimated market value of the subject property was $16,000,000 for each valuation date.

13. Petitioner's expert appraiser, Mr. Darren L. Browen, MAI, opined that the value of the subject property was $10,300,000 as of January 2, 2010; $9,910,000 as of January 2, 2011; $10,110,000 as of January 2, 2012; and $9,980,000 as of January 2, 2013.

14. The County's expert appraiser, Mr. Terence G. Chacka, MAI, SAMA, opined that the value of the subject property was $13,150,000 as of January 2, 2010; $15,950,000 as of January 2, 2011; $16,900,000 as of January 2, 2012, and $16,250,000 as of January 2, 2013.

15. The Minnesota Department of Revenue 2013 Scott County Nine-Month Assessment-Sales Ratio Study shows a ratio of 88.9% based on 15 sales.

CONCLUSIONS OF LAW

1. Certain Teed provided credible evidence that the assessment was excessive as of each valuation date and, therefore, met its burden of overcoming the assessment's prima facie validity.

2. The subject property is not a special purpose property.

3. The market value of the subject property is $10,500,000 as of January 2, 2010; $10,300,000 as of January 2, 2011; $10,500,000 as of January 2, 2012; and $9,900,000 as of January 2, 2013.

4. The subject property was unequally assessed as of January 2, 2013, requiring a further reduction in value to $9,296,100 as of January 2, 2013.

ORDER FOR JUDGMENT

1. The Scott County Assessor's estimated market value for the subject property shall be decreased on the books and records of Scott County from $16,000,000 to $10,500,000 as of January 2, 2010; from $16,000,000 to $10,300,00 as of January 2, 2011; from $16,000,000 to $10,500,000 as of January 2, 2012; and from $16,000,000 to $9,296,100 as of January 2, 2013.

2. Real estate taxes due and payable in 2011, 2012, 2013 and 2014 shall be recomputed accordingly and refunds, if any, paid to Certain Teed as required by such computations, together with interest from the original date of payment.

IT IS SO ORDERED. THIS IS A FINAL ORDER. ENTRY OF JUDGMENT IS STAYED FOR 15 DAYS. LET JUDGMENT BE ENTERED ACCORDINGLY.

BY THE COURT:

Thomas G. Haluska, Judge
MINNESOTA TAX COURT

DATED: July 9, 2015

MEMORANDUM

Introduction

The subject property, located at 3303 4th Avenue East, Shakopee, Minnesota, is an industrial manufacturing building currently used for manufacturing asphalt shingles. The subject property consists of 55.59 total acres: 36.89 acres of land necessary to support the manufacturing building and 18.7 acres of excess land. The building was initially constructed in 1973, and was subsequently expanded in 1974, 1988, and 2003.[1] The building's effective age is 26 years as of the first assessment date.[2] As of January 2, 2010, 2011 and 2012, the building had a total gross building area of 451,705 square feet.[3] As of January 2, 2013, the property had a total gross building

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1 Ex. 2, at 29.

2 Ex. A1, at 97.

3 Ex. 2, at 10; Ex. A1, at 56 (difference in building size); Tr. 98 (same), 156-57. Mr. Chacka's estimation of GBA erroneously included an outdoor loading area covered by an awning on the western side of the building. Tr. 156-57. Outdoor space should not be included in a building's GBA.

area of 409,200 square feet.[4] Approximately 51% of the subject property is warehouse space and the remaining space is production/manufacturing and office space.[5] That space has, on average, 20-foot ceiling heights.[6]

Burden of Proof

The assessor's estimated market value is prima facie valid.[7] A petitioner may overcome prima facie validity by introducing substantial evidence that the subject property's market value differs from the assessment.[8] If a petitioner overcomes prima facie validity, the court must "use its independent judgment in evaluating all testimony and evidence before the court."[9] In this case, Certain Teed provided credible evidence that the assessment of the subject property was excessive as of each valuation date. Thus, Certain Teed has met its burden and overcome the assessment's presumptive validity.

Highest and Best Use

A highest and best use analysis identifies "the most profitable, competitive use to which the subject property can be put."[10] Highest and best use is "[t]he reasonably probable use of

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4 *Id.*

5 Ex. 2, at 10; Ex. A1, at 100-01.

6 Ex. 2, at 31.

7 Minn. Stat. § 271.06, subd. 6 (2014) (stating that "the order of . . . the appropriate unit of government in every case shall be prima facie valid"); Minn. Stat. § 272.06 (2014) (providing that the assessment is "presumed to be legal until the contrary is affirmatively shown").

8 *S. Minn. Beet Sugar Coop. v. Cnty. of Renville*, 737 N.W.2d 545, 558 (Minn. 2007) ("[I]n order to defeat the prima facie validity of the assessment, the taxpayer must offer evidence to invalidate the assessment.").

9 *McNeilus Truck & Mfg., Inc. v. Cnty. of Dodge*, 705 N.W.2d 410, 413 (Minn. 2005).

10 The Appraisal Institute, *The Appraisal of Real Estate* 331 (14th ed. 2013).

property that results in the highest value." [11] To be reasonably probable, the use must be physically possible, legally permissible, and financially feasible.[12]

Here, the parties disagree on the subject property's highest and best use. Although both appraisers concluded that the property's highest and best use is heavy industrial,[13] the County's appraiser, Mr. Chacka, also determined that the property was a special purpose property.[14]

"Special purpose property is property that is treated *in the market* as adapted to or designed and built for a special purpose. This definition combines both functional and structural aspects: a special purpose property becomes such either by its use for unique functions or by its distinctive, specially-designed structural details." [15] Thus, "a special purpose property is one that, due to its unique function or design, is not likely to be sold on the market and cannot readily be converted to other uses without a large capital investment or a substantial loss in the investment value of the property's special features." [16]

Chacka provides no support for his assertion that the subject property is a special purpose property, stating only that the property has three production lines for manufacturing asphalt

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11 Appraisal of Real Estate 332.

12 *Id.*

13 Certain Teed's appraiser concluded that "the subject property could also be utilized for warehousing purposes on an interim basis until either a large manufacturing user is identified and/or the land value appreciates to around $6.00 per square foot as the demolition of the existing improvements for a new industrial development would then be warranted assuming the value of the improved property stays flat into the future." Ex. 2, at 78.

14 Ex. A1, at 118; Tr. 142.

15 *Am. Exp. Fin. Advisors, Inc. v. Cnty. of Carver*, 573 N.W.2d 651, 656 (Minn. 1998) (quoting *Fed. Reserve Bank of Minneapolis v. State*, 313 N.W.2d 619, 621-22 (Minn. 1981)).

16 *Id.*

shingles.[17] In fact, Chacka admitted that he reached his conclusion without performing an analysis.[18] In an attempt to justify Chacka's naked conclusion, the County argues that the property is special purpose because it is

> (1) not likely to be sold on the market due to its uniqueness, and (2) cannot be readily converted to other uses without a large capital investment or a substantial loss in the investment value of the property's special features.[19]

There is no evidence to support this argument. Chacka neither explained why a building used to manufacture asphalt is "unique" nor why it "cannot readily be converted to other uses." Moreover, Chacka acknowledged that the property was not unique and that another purchaser could put the property to a use other than manufacturing asphalt shingles.[20] Finally, both Certain Teed's appraiser and property manager provided clear and creditable testimony that the property could easily be converted to alternative uses and identified the market for those uses.[21] Accordingly, we conclude that the property is not special purpose property and that its highest and best use is as a heavy industrial property.

Excess Land

As a preliminary matter, we address the parties' dispute regarding whether the subject property includes "excess land." Excess land means "[l]and that is not needed to serve or support the existing use." [22] Consequently"[e]xcess land has the potential to be sold separately and must

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17 Tr. 142.

18 Tr. 146.

19 Resp't's Post Trial Br. 11.

20 Tr. 144-45.

21 Ex. 2, at 84-85.

22 Appraisal of Real Estate 200.

be valued separately."[23] Certain Teed's appraiser, Browen, opinhed that the property has 814,572 square feet (about 18.7 acres) of excess land.[24] Browen further opined that the highest and best use of the excess land was to sell it off separately and, therefore, that the 18.7 acres could be divided from the main parcel and sold separately.[25] The County does not directly challenge the size of the excess land, but instead argues that the current owner uses the land as outside storage and, therefore, that the property is not excess land.[26] This argument is misguided, however, because Certain Teed's incidental use of the property for outside storage does not affect its highest and best use or proper designation. We agree with Certain Teed that 814,572 square feet (18.7 acres) of the subject property is excess land not necessary to support the industrial building.

Valuation Analysis

Minnesota law requires that all real property be valued at market value.[27] Market value means "the price for which property would sell upon the market at private sale."[28] In determining market value, this court recognizes three basic approaches:

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23 *Id.*

24 Ex. 2, at 24.

25 Tr. 76.

26 Tr. 146; Pet'r's Proposed Findings of Fact ¶ 6.

27 Minn. Stat. § 273.11, subd. 1 (2014).

28 *Equitable Life Assur. Soc'y of U.S. v. Cnty. of Ramsey*, 530 N.W.2d 544, 555 (Minn. 1995) (quoting *State v. Fridley Recreation & Serv. Co.*, 288 Minn. 218, 220, 179 N.W.2d 172, 174 (1970); *Dulton Realty, Inc. v. State*, 270 Minn. 1, 3 n. 2, 132 N.W.2d 394, 397 n. 2 (1964)).

> (1) the market approach, which is based on prices paid in actual market transactions involving comparable properties; (2) the cost approach, which is founded on the proposition that an informed buyer would pay no more for the property than the cost of constructing new property having the same utility as the subject property; and (3) the income approach, which is predicated on the capitalization of the income the property is expected to generate.[29]

The three valuation approaches "are suggested but are neither exclusive nor mandatory upon either the assessor or the factfinding court." [30] Additionally,

> [w]henever possible, appraisers should apply at least two approaches to market value because the alternative value indications derived can serve as useful checks on each other. In a given valuation assignment, more than one approach to value is usually appropriate and necessary. A final determination of value, however, may require that one approach be given greater emphasis in making a final value estimate. The appraiser's judgment and experience, and the quantity and quality of data available, may determine which approach or approaches are used and what weight each deserves.[31]

The priority and weight of reliance on each approach depends on the facts of each case.[32] Thus, although Minnesota law requires each assessor to "consider and give due weight to every element and factor affecting the market value" of real property,[33] the term "due weight" implies that every element and factor deserves only so much weight as is appropriate to the valuation problem at hand.

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29 *Id.* at 552 (citing *Lewis & Harris v. Cnty. of Hennepin*, 516 N.W.2d 177, 178 (Minn. 1994); *Montgomery Ward & Co., Inc. v. Cnty. of Hennepin*, 450 N.W.2d 299, 302 (Minn. 1990); *Fed. Reserve Bank of Minneapolis v. Cnty. of Hennepin*, 372 N.W.2d 699, 700 (Minn. 1985)).

30 *Id.* at 554 (quoting *Alstores Realty, Inc. v. State*, 286 Minn. 343, 352, 176 N.W.2d 112, 118 (1970)).

31 *Id.* at 553 (internal citations omitted).

32 *Lewis & Harris*, 516 N.W.2d at 180.

33 Minn. Stat. § 273.12 (2014).

Having determined that the subject property was a special purpose property, the County's appraiser used only the cost approach to determine market value.[34] Because we find that the property is not a special purpose property, we consider all three approaches to determine the market value of the subject property.

Cost Approach

In deriving a value estimate using the cost approach, an appraiser "estimates the market's perception of the difference between the property improvements being appraised and a newly constructed building with optimal utility (i.e., the ideal improvement identified in [the] highest and best use analysis)." [35] An appraiser must "[e]stimate the value of the site as though vacant and available to be developed to its highest and best use." [36] The appraiser must then determine the depreciated value of the improvements.[37]

Land Value

The parties reached substantially similar conclusions on the vacant land's value.[38] Browen valued the excess land and the land necessary to support the improvements separately, thus arriving

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34 *S. Minn. Beet Sugar Coop.*, 737 N.W.2d at 556-57 ("[T]he general rule in cases involving special purpose property is that because comparable sales are not available, a court may rely on the cost approach alone."). *See* Ex. A1, at i (determining that the "cost approach was the only valuation means that would produce credible appraisal results").

35 Appraisal of Real Estate 562.

36 *Id.* at 568.

37 *Id.* at 568-69.

38 The parties do not contest land value. *See* Pet'r's Post Trial Br. (failing to address land value); Resp't's Post Trial Br. 19 (stating that "[s]ince both appraisers' land cost analyses are similar, no additional comment on this is necessary.").

at a slightly higher cost per square foot for the excess land.[39] Browen did not explain how he determined the cost differential between the excess land and main property.[40] Thus, Browen's value of the excess land lacks foundation.[41] Chacka valued all the land using the same price per square foot value of $2.30 per square foot as of January 2, 2010 and January 2, 2011 and $2.50 per square foot as of January 2, 2012 and January 2, 2013. Certain Teed did not challenge the County's land value analysis. Thus, we adopt Chacka's value for the vacant land as follows: $5,350,000 for January 2, 2010 and January 2, 2011; $5,800,000 for January 2, 2012 and January 2, 2013.[42]

Structure Value

Certain Teed argues that the County's structure value analysis is incorrect because Chacka: (1) used a reproduction cost rather than a replacement cost;[43] (2) testified to an unsupported conclusory economic life calculation;[44] (3) failed to extract depreciation and economic life from

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39 Ex. 2, at 90; Ex. A1, at 131-32.

40 Although Browen stated that "the smaller the land parcel, the higher the per unit purchase price," he did not explain how he specifically reached a price differential of $0.25 per square foot. Ex. 2, at 90.

41 Minn. R. Evid. 702, which governs the admissibility of expert evidence, requires foundational reliability before the evidence can be considered. *Cf. Kohl's Dep't Stores, Inc. v. Cnty. of Washington,* No. CO–06–8287, 2008 WL 80841, at *3-4 (Minn. T.C. Jan. 3, 2008) (rejecting external obsolescence adjustments where the appraiser provided no market data supporting them); *Kmart Corp. v. Cnty. of Crow Wing,* No. CX–00–768, 2001 WL 1007798, at *1 (Minn. T.C. Aug. 28, 2001) ("Assuming a zero [market] adjustment without market support data, as Mr. Leirness did however, is . . . no more justifiable than making any other adjustment without market support data.").

42 Ex. A1, at 131-32.

43 Pet'r's Post Trial Br. 17.

44 *Id.*

the marketplace; [45] (4) failed to consider any other improved properties besides the subject; [46] and (5) has an incomplete understanding of the property as of each assessment date.[47]

The County argues that Certain Teed's structure value is unreliable because Browen: (1) used an insufficiently detailed cost approach; [48] (2) used an incorrect story height multiplier; [49] (3) failed to include costs to replace some processing structures; [50] (4) incorrectly determined depreciation; [51] and (5) incorrectly determined economic life expectancy.[52]

Replacement Cost v. Reproduction Cost

In estimating the value of the improvements, "an appraiser must distinguish between two costs bases—reproduction cost and replacement cost—and use one of the two consistently throughout the analysis." [53] Reproduction cost is the estimated cost to create "an exact duplicate or replica of the building being appraised, insofar as possible, using the same materials, construction standards, design, layout, and quality of workmanship, and embodying all the

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45 *Id.*

46 *Id.*

47 *Id.*

48 Resp't's Post Trial Br. 19.

49 *Id.* at 20.

50 *Id.* at 21. Some processing structures for the facility referred to as the core material tower and the stillyard tower.

51 *Id.*

52 *Id.* at 22-23.

53 Appraisal of Real Estate 562.

deficiencies, superadequacies, and obsolescence of the subject improvements." [54] Replacement cost is the estimated cost to create "a substitute for the building being appraised, using modern materials and current standards, design, and layout." [55]

Both appraisers stated they used a replacement cost analysis in valuing the improvements.[56] However, each party criticizes the other's analysis.

Certain Teed argues, Chacka actually performed a reproduction cost analysis and his analysis should therefore be disregarded.[57] Moreover, Certain Teed argues that Chacka does not, as required by a replacement cost analysis,

> consider whether, as of the assessment date, the subject would have been built any differently than it was in 1973, despite admitting that design standards for buildings like the subject may have changed since the 1970s. He did not consider whether the building might be a different size, have a different shape, or have different physical attributes, such as a heated warehouse space, different clear heights, or a different number of dock doors.[58]

We disagree. Chacka considered these issues in his functional obsolescence analysis.[59] Chacka's obsolescence analysis is flawed, however, because he failed to explain how he arrived at his

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54 *Id.* at 569-70; *Fed. Reserve Bank of Minneapolis*, 372 N.W.2d at 701 (stating that reproduction cost is "the cost of construction at current prices of an exact duplicate or replica using the same materials, construction standards, design, layout and quality of workmanship, embodying all the deficiencies, superadequacies and obsolescence of the subject building").

55 Appraisal of Real Estate 570; *Fed. Reserve Bank of Minneapolis*, 372 N.W.2d at 700 ("Replacement cost is the cost of construction at current prices of a structure having utility equivalent to the subject building but built with modern materials and according to current standards, design and layout.").

56 Ex. A1, at 133; Ex. 2, at 79.

57 Pet'r's Post Trial Br. 17, 20-21.

58 *Id.* at 20 (citing Tr. 196, 199-200).

59 Ex. A1, at 144-47.

adjustments[60] and he based his obsolescence adjustment on the incorrect determination that the subject property was special purpose property.[61] Additionally, Chacka's analysis of physical depreciation is also flawed. Chacka first testified that he determined the property's economic life by referring to *Marshal Swift*.[62] He subsequently testified, however, that *Marshal Swift* does not provide estimates of economic life[63] and that he "assumed or made a conclusion that 50 years at the top of the range would be reasonable" to account for the property's significant expansion in 2002.[64] We therefore find that Chacka's testimony regarding the value of the structure was not credible and lacked foundational reliability.[65]

The County challenged Browen's structure valuation alleging that he used an incorrect story-height multiplier.[66] Certain Teed concedes that this criticism is valid[67] and that it incorrectly increased Browen's estimated replacement cost before time adjustments and adjustments for depreciation and obsolescence from $38,310,000 to $42,636,131.[68]

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60 *Id.*

61 Tr. 212-13.

62 Tr. 188.

63 Tr. 190.

64 Tr. 191.

65 Minn. R. Evid. 702.

66 Resp't's Post Trial Br. 20.

67 Pet'r's Post Trial Reply Br. 7.

68 *Id.* (citing Resp't's Post Trial Br. 21).

The County next argues that Certain Teed should have included the replacement costs of the core material tower and the stillyard tower.[69] Certain Teed responds that such costs are "not necessary in a replacement cost, which creates a substitute for the subject, 'using modem materials and current standards, design, and layout.' " [70] We agree with Certain Teed that the replacement cost of the processing structures is not necessary to include in a replacement cost analysis. Because the subject property is not special purpose property, Browen used a replacement cost analysis as opposed to a reproduction cost analysis, and the County failed to provide authority or evidence to support its argument that the costs were necessary. Thus, we will not consider the cost to replace the core material tower and the stillyard tower.

The County also challenges Browen's depreciation analysis. Browen utilized a market extraction analysis to determine the economic life of the subject's structures.[71] The County argues that Browen improperly excluded six sales from the analysis.[72] Browen explained:

> I chose these depreciation comps because three of the four I personally toured inside and outside, so I wanted to choose things for depreciation that I was as familiar with as I possibly could. That's why I chose them. And for the most part these are also—three of the four are also, in my opinion, the most comparable to the subject property.[73]

The County hypothesizes that the only reason Browen did not use additional sales is because they would have favored the County.[74] However, the County did not identify any evidence in the record

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69 Resp't's Post Trial Br. 21

70 Pet'r's Post Trial Reply Br. 7 (citing Resp't's Post Trial Br. 19 & Ex. A1, at 133); *see* Appraisal of Real Estate 570.

71 *See* Ex. 2; *see also* Appraisal of Real Estate 602, 605-10.

72 Resp't's Post Trial Br. 21-22.

73 Tr. 73.

74 Resp't's Post Trial Br. 22.

to support its argument and, after a careful review of the record, we can find none. Therefore, we accept Browen's market extraction analysis.[75]

Correcting for Browen's story-height error, we conclude that the value of the property, including excess land, under the cost approach as of each assessment year is as follows: $11,152,000 in 2010; $11,325,000 in 2011; $11,827,000 in 2012; and $10,763,000 in 2013.

Market Approach

Under the market approach, the appraiser evaluates sales of similar properties and makes adjustments for factors such as a property's physical characteristics, location, conditions of sale, terms of sale, market conditions, and rights conveyed.[76] Certain Teed's expert, Browen, considered ten sales.[77] Noting that there was a lack of directly comparable large manufacturing facilities, Browen's comparable sales included large facilities that had a similar construction and effective age as the subject property.[78] In addition, four distribution facilities were included

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[75] The County made no other substantive challenges to Browen's cost approach. We therefore accept Browen's obsolescence calculations.

[76] Appraisal of Real Estate 45-46.

[77] Chacka did not perform a Sales Comparison Approach.

[78] Ex. 2, at 99. *See* Ex. 2, at 101 (Sales Comparable No. 1 "Former Nestle Plant" located at 5320 23rd St. W., St. Louis Park, MN 55416); Ex. 2, at 104 (Sales Comparable No. 2 "Former K-Mart Distribution Center" located at 901 Canterbury Rd. S., Shakopee, MN 55379); Ex. 2, at 106 (Sales Comparable No. 3 "Proto Labs" located at 2600 Niagara Ln. N., Plymouth, MN 55447); Ex. 2, at 108 (Sales Comparable No. 4 "Mid-City Business Center North" located at 1301 Industrial Blvd. NE, Minneapolis, MN 55413); Ex. 2, at 110 (Sales Comparable No. 5 "Twin Cities Distribution Center" located at 905 Yankee Doodle Rd., Eagan, MN 55121); Ex. 2, at 112 (Sales Comparable No. 6 "IGH Distribution Center" located at 3747 117th St., Inver Grove Heights, MN 55077); Ex. 2, at 114 (Sales Comparable No. 7 "Genpack" located at 8235 220th St. W., Lakeville, MN 55044); Ex. 2, at 117 (Sales Comparable No. 8 "Johnstone Supply" located at 1401 W. 9th St., Bloomington, MN 55431); Ex. 2, at 120 (Sales Comparable No. 9 "Champions Hall" located at 7000 Washington Ave. S., Eden Prairie, MN 55344); Ex. 2, at 122 (Sales Comparable No. 10 "PAI" located at 3800 Washington Ave. N., Minneapolis, MN 55411).

because of their size, age, and location,[79] three of which were non-traditional distribution centers (Sales Comparables 5 and 6 were originally designed for manufacturing and distribution purposes and Sale Comparable 4 was a mail processing center).[80]

The County challenges Browen's sales comparison analysis arguing: (1) that Browen's comparable properties do not reflect his highest and best use; [81] (2) that Browen's comparable properties "are not truly comparable to the subject property" [82]; and (3) that Browen's sales data is inaccurate.[83] We address each in turn.

First, the County argues that because Browen determined that the highest and best use of the property was for heavy manufacturing, he was limited to sales of comparable heavy manufacturing properties. We disagree. As previously determined, the subject property could readily be converted to an alternate use by removing the existing production lines.[84] Additionally, Browen selected sales of comparable properties that had similar highest and best uses (including

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79 Ex. 2, at 99.

80 Ex. 2, at 99.

81 Resp't's Post Trial Br. 26.

82 *Id.* at 27.

83 *Id.* at 29.

84 Jay McKinney, the engineering maintenance manager for the facility, testified that the production lines at the subject could be removed to create "[b]asic open flooring space." Tr. 32. Browen also testified that the manufacturing and production areas could be converted into warehouse areas upon sale. Tr. 84-85. Chacka also agreed that, with the removal of the production lines, the property could be marketed to other users. Tr. 130-31, 144.

heavy industrial,[85] medium industrial,[86] light industrial,[87] limited industrial,[88] general industrial,[89] and industrial park).[90] We therefore conclude that Browen's comparable sales are consistent with his conclusion that the highest and best use of the subject property is heavy industrial.

Second, the County argues that the comparable sales Browen selected are not comparable because they require excessive adjustments, citing *Macy's Retail Holdings, Inc. v. County of Hennepin*[91] and *Continental Rogers, LLP v. County of Hennepin*,[92] arguing that total gross adjustments of greater than 50% are suspect and, thus, that we should not consider Browen's 2010 sales comparables 4, 6, 8, 9 and 10.[93] We disagree.

The County points to no specific issues relating to any of the adjustments Browen made. Although we agree that, in general, the greater the amount of adjustments made to a comparable property, the less persuasive the property is as a comparable, there is no "bright line" rule based on the total gross adjustments. Indeed, one of the cases cited by the County expressly holds that

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85 Improved sale comparable 2, Ex. 2, at 104; improved sale comparable 7, Ex. 2, at 114.

86 Improved sale comparable 10. Ex. 2, at 122.

87 Improved sale comparable 4. Ex. 2, at 108.

88 Improved sale comparable 5, Ex. 2, at 110; improved sale comparable 6, Ex. 2, at 112; improved sale comparable 8, Ex. 2, at 117.

89 Improved sale comparable 1, Ex. 2, at 101; improved sale comparable 3, Ex. 2, at 106.

90 Improved sale comparable 9. Ex. 2, at 120.

91 *Macy's Retail Holdings, Inc. v. Cnty of Hennepin,* No. 27-CV-09-15221 et al., 2014 WL 5823033, at *9 (Minn. T.C. Nov. 6, 2014) ("[W]e acknowledge a reluctance to rely upon sales comparables with gross adjustments of 50% or more without good reason for doing so.")

92 *Cont'l Rogers, LLP v. Cnty. of Hennepin*, No. 27-CV-08-09499 et al., 2012 WL 360455, at *8, *12, *15, *18 (Minn. T.C. Jan. 31, 2012). ("We have consistently held that comparables requiring excessive adjustments are less persuasive or not persuasive at all.").

93 Ex. 2, at 124-127.

there is no litmus test. [94] We therefore reject the County's generalized argument relating to Browen's total gross adjustments for his sales comparables 4, 6, 8, 9 and 10.

Third, the County also argues that Browen wrongly excluded the excess land from his land to building ratios.[95] We disagree. The County does not identify, nor can we find, any evidence that the excess land identified by Browen is necessary to support the industrial building and therefore should not be considered separately.[96]

The County also criticizes Browen's sales comparison approach for the "numerous subjective adjustments and the absence of specific explanations for these adjustments." [97] An appraisal is an *opinion* of value necessarily based on comparisons among seemingly similar properties that often require adjustments to be made before a value conclusion is reached. The adjustments, by necessity, are based on the education, training, experience, and integrity of the appraiser. Although Browen made subjective adjustments to his selected comparable properties, Chacka also made numerous subjective adjustments in his cost approach. Additionally, Chacka's adjustments were less transparent than Browen's. Further, the County does not cite any support justifying its criticism of Browen's "subjective" adjustments. Without more, we reject the County's arguments as hyperbole.[98]

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[94] *See Macy's Retail Holdings, Inc. v. Cnty of Hennepin,* No. 27-CV-09-15221, 2014 WL 5823033, at *9.

[95] Resp't's Post Trial Br. 27-28.

[96] *See* Appraisal of Real Estate 200 ("The portion of the property that represents the optimal site for the existing improvements will reflect a typical land-to-building ratio. Land area needed to support the existing use or the ideal improvement can be identified and quantified by the appraiser. Any remaining land is either excess or surplus land.").

[97] Resp't's Post Trial Br. 28.

[98] The County also notes that the terms and dates of sale of comparable properties can affect how they relate to the subject property's value. We agree; however, Browen made adjustments

After a careful review of the record, we find no support for the County's argument that "Mr. Browen's sales comparison approach should be rejected and given little weight." [99] The County presented no evidence even suggesting that Browen made any error in selecting and making adjustments to his comparable sales. Accordingly, we adopt Browen's sales comparison conclusion of value and find that the indicated market value of the subject property on each valuation date under the sales comparison approach was as follows:

January 2, 2010	$8,130,000 + $2,040,000 (excess land) = $10,170,000
January 2, 2011	$7,680,000 + $2,040,000 (excess land) = $9,720,000
January 2, 2012	$7,900,000 + $2,040,000 (excess land) = $9,940,000
January 2, 2013	$7,570,000 + $2,040,000 (excess land) = $9,610,000

Income Approach

The income capitalization approach determines the value of income-producing property by capitalizing the income that the property is expected to generate over a specific period of time at a specified capitalization rate.[100]

Browen used ten rent comparables to construct operating statements and calculate market rents as of each assessment date.[101] Five of the rent comparables were actual rental rates[102] and

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for the terms and dates of the comparable sales. Ex. 2, at 124-30. Further, the County provides no evidence indicating that Browen's adjustments for terms and dates of sale were erroneous.

99 Resp't's Post Trial Br. 30.

100 The County's appraiser did not perform an income approach analysis.

101 Ex. 2, at 139-40

102 *See* Ex. 2, at 137 (Recent Rent Comparable 1 located at Valley Oaks in Shakopee, Minnesota; Recent Rent Comparable 2 located at 865 Xenium Lane North, Plymouth, Minnesota; Recent Rent Comparable 3 located at Delkor in Arden Hills, Minnesota; Recent Rent Comparable 4 located at MN Valley Distribution Center II in Shakopee, Minnesota; Recent Rent Comparable 5 located at Toro in Lakeville, Minnesota).

five were asking rates.[103] Browen estimated an office rental rate of $8.00 per square foot for each of the assessment dates and a warehouse rate of $2.50 per square foot for January 2, 2010, through January 2, 2012, and $2.75 per square foot for January 2, 2013.[104]

The County argues that we should disregard Browen's income approach because the rent comparables that Browen selected are not-owner occupied and one of the five rent comparables may not match Browen's determination of highest and best use.[105] In other words, the County argues that rent comparables are not appropriate because the subject property is owner-occupied.[106] However, as Browen succinctly points out, rent comparable properties are by their nature "all tenant-occupied. That's why they're rent comps." [107] For an appraiser to perform an income approach to value, the appraiser must use tenant occupied properties to determine market rent.

The County also argues that Browen's appraisal understates income because it does not include rental income for outside storage of the excess land.[108] We disagree. The County's argument misconstrues the concept of excess land. By definition, excess land is

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103 *See* Ex. 2, at 137 (Browen's asking rent comparables include the Former K-Mart Distribution Center located at 901 Canterbury Rd. S., Shakopee, Minnesota; the Former Navarre Corporation" located at 7400 49th Ave. N., New Hope, Minnesota; the Liberty Industrial Park–Building III located at 13225 Brockton Ln. N., Rogers, Minnesota; the Valley View Business Center located at 2700 4th Ave. E., Shakopee, Minnesota; and "312-322 Lake Hazeltine Blvd." located at 312-322 Lake Hazeltine Blvd., Chaska, Minnesota).

104 Ex. 2, at 136.

105 Resp't's Post Trial Br. 24.

106 *Id.* at 23.

107 Tr. 74.

108 Resp't's Post Trial Br. 23.

> [l]and that is not needed to serve or support the existing improvement. The highest and best use of the excess land may or may not be the same as the highest and best use of the improved parcel. Excess land may have the potential to be sold separately and is valued separately.[109]

Because we have found that the land used for outside storage is excess land, Browen properly valued it separately.[110]

Lastly, the County criticizes Browen's derivation of the capitalization rate, stating that he failed to treat comparable properties in the same manner as the subject property.[111] In deriving a capitalization rate from comparable sales, an appraiser "must make certain that net operating income of each comparable property is calculated and estimated in the same way that net operating income of the subject property is estimated." [112] The County argues that Browen did not, as required, make the same deductions for vacancy, replacement reserves, and expenses to both the subject property and rent comparables[113] and, therefore, Browen's market extracted capitalization rates "render his entire income analysis inaccurate, unreliable, and not credible." [114] We disagree.

In deriving the capitalization rate from comparable sales to value a fee simple interest, the "income streams for the comparable properties analyzed must be at or around the level of market

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109 Appraisal Institute, *The Dictionary of Real Estate Appraisal* 71 (5th Ed.).

110 Tr. 76

111 Resp't's Post Trial Br. 24.

112 *Appraisal of Real Estate* 493.

113 Ex. 2, at 139-40; Resp't's Post Trial Br. 24-25 (citing Tr. 78 ("In all the single-tenant comps we make no deduction for vacancy when we extract cap rates."); Tr. 79 ("[S]o if the lease is a triple net lease where the landlord doesn't have to do the reserves, then we don't do it."); Tr. 79 ("Most of them on the triple net leases we do not do a deduction for nonreimbursable expenses because the buyers don't.")).

114 Resp't's Post Trial Br. 26.

rent, or adjustments must be necessary." [115] Browen testified that he consistently applied the data[116] and treated it in the same manner as the market.[117] Thus, despite some confusing and unclear testimony, we find that, based on all the evidence in the record, Browen used a consistent and valid method to determine net operating income and to derive his capitalization rate.

However, we disagree with Browen's application of asking rents as opposed to actual rents. As noted, five of Browen's rent comparables were actual rental rates and five were asking rental rates.[118] Certain Teed presented no evidence that the asking rents reflected market rents.[119] In fact, the average asking rental rates were significantly greater than actual rents.[120] Thus, we do not consider any of Browen's asking rent comparables.

The County did not challenge any of Browen's remaining rental comparables or the adjustments used to determine effective office and warehouse rent. Thus, based on the remaining rental comparables and our review of the record, we conclude that the market rent of the subject property for each of the assessment years is $7.78 per square foot for office, $3.69 per square foot

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115 Appraisal of Real Estate 493.

116 Tr. 78.

117 *See* Tr. 78-80.

118 Ex. 2, at 136-38.

119 *Eden Prairie Mall, LLC v. Cnty. of Hennepin*, 797 N.W.2d 186, 195 (Minn. 2011) ("In valuing a fee simple interest in property, the value of rentable space is estimated using market rent levels."); *Appraisal of Real Estate* 444 ("To develop an opinion of market value with the income capitalization approach, the appraiser must be certain that all the data and forecasts used are market-oriented and reflect the motivations of a typical investor . . . .").

120 Ex. 2, at 137.

for warehouse, and $3.19 per square foot for unheated warehouse as of each valuation date.[121] Finally, we adopt Browen's estimate of expenses, as the County did not challenge any of the expenses he usedto calculate net operating income. We therefore find that the indicated market value of the subject property under the income approach is:

January 2, 2010	$9,622,000 + $2,040,000 (excess land) = $11,662,000
January 2, 2011	$9,451,000 + $2,040,000 (excess land) = $11,491,000
January 2, 2012	$9,246,000 + $2,040,000 (excess land) = $11,286,000
January 2, 2013	$7,919,000 + $2,040,000 (excess land) = $9,959,000

Reconciliation of Value

In determining the subject property's final value, we give primary weight to the market approach to value. We give less weight to the cost approach because of the subject property's' effective age of 26 years as of the first assessment date. We also give less weight to the income approach because of Browen's concerns regarding the comparable properties that he used in his income approach.[122] After a complete review of the record (including the trial transcript, the post-trial briefs, and the appraisal reports), we conclude the subject properties final value for each assessment date as follows:

January 2, 2010	$10,500,000
January 2, 2011	$10,300,000
January 2, 2012	$10,500,000
January 2, 2013	$9,900,000

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[121] As the County provided no contrary evidence, we accept Browen's opinion that "[t]he unheated warehouse area was projected to have a rent level $0.50 per square foot lower than the heated areas." Ex. 2, at 136.

[122] Ex. 2, at 136 ("There is a lack of comparable data with regards to signed leases for 400,000+ square foot manufacturing facilities. Thus, it is admittedly more subjective to assign a market rent to the subject property.").

Unequal Assessment

Certain Teed argues that it is entitled to a further reduction in value for the January 2, 2013 valuation date because the property was unequally assessed. To grant relief for unequal assessment, the median ratio must be below 90%. Minn. Stat. § 278.05, subd. 4(d) (2014). Minnesota Statutes § 278.05, subd. 4 (2014), provides:

> The Department of Revenue sales ratio study shall be prima facie evidence of the level of assessment. . . . No sales ratio study received into evidence shall be conclusive or binding on the court and evidence of its reliability or unreliability may be introduced by any party including, but not limited to, evidence of inadequate adjustment of sale prices for terms of financing, inadequate adjustment of sales prices to reflect the difference in the date of sale compared to the assessment date, and inadequate sample size.
>
> No reduction in value on the grounds of discrimination shall be granted on the basis of a sales ratio study unless
>
> a) the sales prices are adjusted for the terms of the sale to reflect market value,
> b) the sales prices are adjusted to reflect the difference in the date of sale compared to the assessment date,
> c) there is an adequate sample size, and
> d) the median ratio of the same classification of property in the same county, city or town as the subject property is lower than 90 percent.

The County urges us to accept the City of Shakopee's twelve-month s ratio study instead of the county-wide nine-month study. However, historically, "[i]n considering the Department of Revenue Sales Ratio Studies, this Court has favored the nine month studies over the twelve month studies." [123] The County provides no legal support or rational argument to support its position. Thus, we conclude that the appropriate study to apply is the 2013 Scott County Nine-Month Assessment-Sales Ratio Study, which shows a ratio of 88.9% based on 15 sales. We therefore

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123 *Rinkel Family Ltd. P'ship v. Cnty. of Ramsey*, No. CX-01-6589, 2003 WL 21359576, at *4 (Minn. T.C. June 10, 2003) (citations omitted).

order a further reduction of 6.1% to the January 2, 2013 value, [124] arriving at a final value of $9,296,100.

T.G.H.

[124] Minn. Stat. § 278.05, subd. 4(d) ("If a reduction in value on the grounds of discrimination is granted based on the above criteria, the reduction shall equal the difference between 95 percent and the median ratio determined by the court.").