

1993

Hercules Incorporated v. Utah State Tax Commission : Brief of Respondent

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

HERCULES INCORPORATED,

Appellant,

-VS-

UTAH STATE TAX COMMISSION,

Respondent.

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APPEAL FROM THE FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND FINAL DECISION
OF THE UTAH STATE TAX COMMISSION
DATED JUNE 10, 1993

BRIEF OF SALT LAKE COUNTY BOARD OF EQUALIZATION

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UTAH COURT OF APPEALS

BRIEF

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JURISDICTION OF THE COURT

This Court has jurisdiction in this appeal pursuant to Rule 14 of the Utah Rules of Appellate Procedure and the provisions of Utah Code Annotated § 78-2-2(4).

ISSUES PRESENTED FOR REVIEW AND STANDARD OF REVIEW

1. Did the Utah State Tax Commission (the "Commission") err when it concluded, as a matter of law, that the appellant ("Hercules") had the burden of proof to "establish that the market value of the subject property is other than that as determined by the Respondent" (the "County")?

This issue should be reviewed under the "correction of error" standard. No deference is given to the Commission's conclusions of law. See U.C.A. § 59-1-610(1)(b); OSI Industries, Inc. v. Utah State Tax Commission, 221 Utah Adv. Rep. 34 (Sept. 10, 1993).

2. Are the Commission's factual findings concerning the value of Hercules' property supported by substantial evidence?

This Court is required to give deference to the factual findings of the Commission and to review the Findings of Fact under a "substantial evidence" standard. Id.; U.C.A. § 59-1-610(1)(a).

3. Did the Commission err in reviewing the value of Hercules' land when the value of the land had not been specifically

disputed?

This is a mixed issue of fact and law and should be reviewed under the "correction of error" standard. No deference is given to the Commission's conclusions of law. See U.C.A. § 59-1-610(1)(b); OSI Industries, Inc. v. Utah State Tax Commission, 221 Utah Adv. Rep. 34 (Sept. 10, 1993).

CONSTITUTIONAL AND STATUTORY PROVISIONS

Utah Code Ann., § 59-2-102 (7):

"Fair market value:" means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts, and includes the adjustment for intangible values under Sections 59-2-304 and 59-2-201 for real property assessed by the county assessor or the commission.

Utah Code Ann., § 59-2-103 (1):

All tangible taxable property shall be assessed and taxed at a uniform and equal rate on the basis of its fair market value, as valued on January 1, unless otherwise provided by law.

Utah Code Ann., § 61-2b-3:

(1) It is unlawful for anyone to prepare an appraisal, an appraisal report, or a certified appraisal report relating to real estate or real property in this state without first being registered or certified in accordance

with the provisions of this chapter.

(2) This section does not apply to:

(a) a real estate broker or sales agent licensed by this state who, in the ordinary course of his business as defined by Section 61-2-2, given an opinion:

(i) regarding the value of real estate;
(ii) to a potential seller or third party recommending a listing price of real estate; or

(iii) to a potential buyer or third party recommending a purchase price of real estate;

(b) an employee of a company who states an opinion of value or prepares a report containing value conclusions relating to real estate or real property solely for the company's use;

(c) any official or employee of a government agency while acting solely within the scope of his duties, unless otherwise required by Utah law;

(d) an auditor or accountant who states an opinion of value or prepares a report containing value conclusions relating to real estate or real property while performing an audit;

(e) an individual except an individual who is required to be registered or certified under this chapter, who states an opinion about the value of property in which he has an ownership interest;

(f) an individual who states an opinion of value if no consideration is paid or agreed to be paid for the opinion and no other party is reasonably expected to rely on the individual's appraisal expertise;

(g) an individual, such as a researcher or a secretary, who does not render significant professional assistance, as defined by the board, in arriving at a real estate appraisal analysis, opinion, or conclusions; or

(h) an attorney authorized to practice law in this state who, in the course of his practice, utilizes an appraisal report governed by this chapter or who states an opinion of the value of real estate.

Utah State Constitution, Article XIII, Section 2(1):

All tangible property in the state, not except under the laws of the United States, or under this Constitution, shall be taxed at a uniform and equal rate in proportion to its value, to be ascertained as provided by law.

STATEMENT OF THE CASE

The County does not disagree with Hercules' Statement of the Case as set forth in items I (Nature of Case), II (Course of Proceedings), and III (Decision of the Commission). Hereinafter, the Findings of Fact, Conclusions of Law, and Final Decision of the Commission, dated June 10, 1993, which is the subject of this appeal, will be referred to as the "Final Decision".

The County does, however, take issue with certain of the statements contained in Hercules' Statement of Facts and submits the following clarifications and additional factual statements.

A. CLARIFICATION OF HERCULES' STATEMENT OF FACTS

1. Paragraph 2 of Hercules' Statement of Facts states that one of Hercules' eight business groups is the Aerospace business group which designs and produces aerospace propulsion systems and products, and composite structures. The County would note that the Bacchus Works is responsible for 83% of the business of the Aerospace group.¹

2. Paragraph 7 of Hercules' Statement of Facts states that the U. S. government is the sole customer of the Bacchus Works' strategic missiles and missile systems production. Karen Watson

¹ Tr., pp. 98-99:

Q. Have you made a breakdown with respect to the amount of business conducted by Bacchus Works as a percentage of the total business conducted by Hercules Aerospace Company?

A. Yes, I have.

* * *

Q. All right. Why don't you tell me how you calculate it first. How do you make a calculation as a percentage of what is manufactured at Bacchus Works as compared to the other aerospace plants?

A. You could do it basically as total assets at Bacchus over the total assets of the aerospace business.

Q. Is that how you do it?

A. That's the way I calculated it. And it's approximately 83 percent of all of aerospace.

testified that there was one exception.²

3. In paragraphs 14, 16, and 19, Hercules states that because of the Challenger disaster and world events, Hercules experienced significant business reverses. However, the testimony of David R. Peirson, Hercules' manager of state and local taxes, indicated that, as of the lien date, prospects for business growth were good.³

² Tr. pp. 61-62:

Q. So am I correct in saying that your only customer for the production at the Bacchus Works, the rocket motor production at the Bacchus Works is the U.S. Department of Defense?

* * *

THE WITNESS: With one exception.

³ Tr. at 108-109:

Q. I'll ask a preliminary question first and then I will reask the same question.

Was there a production by Hercules of the Titan as of January 1, 1990?

A. The Titan is a research and development contract. There were expenses in research and development prior to and during 1990.

Q. Could I stop you right there and have you define what you meant by a research and development contract?

A. It was a contract to develop this particular rocket motor for the United States government.

Q. Was it an unlimited supply of Titans?

4. Paragraph 18 of Hercules Statement of Facts states that in 1989, the Hercules Aerospace Group suffered a \$243 million loss, including a \$323 million loss at the Bacchus Works. On cross-examination, however, Mr. Peirson acknowledged that the loss might be recoverable.⁴

A. No. The contract, the original contract, was for the production of 15 motors.

Q. So what were the prospects, then, of production as of January 1, 1990?

A. As of January 1, 1990, the prospects looked pretty good.

MR. PETERS: I'll object. He certainly can talk about the prospects of January 1, 1990, but what has happened since then is totally irrelevant to this evaluation issue.

MR. IWASAKI: Sustained.

⁴ Tr. at 135:

Q. Now, a good portion of that write-off is potentially recoverable, isn't it?

A. No, sir, it's not, not under these contracts.

Q. I would like you to turn to page 3 of the annual report, if you would.

* * *

Q. Could you read the last two sentences of that report that starts off, as much as two-thirds?

A. "As much as two-thirds of these charges may be recoverable, and their recovery, should that occur, would have the effect of increasing future profitability. The charges relate primarily to the solid propulsion contracts for Titan IV and Delta II space-launch vehicles and SRAM."

5. Paragraph 23 of Hercules Statement of Facts notes that the accrued depreciation reduction includes physical deterioration (depreciation), functional obsolescence and economic (external) obsolescence. Paragraphs 25, 27, 29, and 31 note the amount of accrued depreciation assigned by Hercules' appraiser, Mr. Shoup, to each of the four Bacchus Works facilities. These statements acknowledge that the amounts for physical deterioration, functional obsolescence and economic obsolescence are not broken down by Hercules' appraiser, consistent with the Commission's Finding of Fact No. 7.

SUMMARY OF ARGUMENT

The County takes the position that the factual findings entered by the Commission in support of the Conclusions of Law and Final Decision are supported by substantial evidence, viewing the record as a whole. While the record contains evidence which could support Hercules' position, as it does the position of the County, § 59-1-610(1)(a) requires that deference be given to the factual findings of the Commission and that such findings not be disturbed if there is substantial evidence contained in the record to support them.

POINT I

**THE COMMISSION DID NOT ERR IN IMPOSING
THE BURDEN OF PROOF ON HERCULES TO
ESTABLISH THAT THE VALUE OF ITS PROPERTY
WAS OTHER THAN THE COUNTY'S ASSESSMENT OF VALUE**

Hercules asserts that the Commission erroneously afforded a presumption of correctness to the County's valuation and that the imposition of the burden of proof to rebut that presumption upon Hercules, alone, is sufficient reason for this Court to reverse the decision of the Commission and remand this case to the Commission for a new determination of value.

A clarification of the factual background is necessary to an understanding of the appropriateness of the Commission's legal conclusion. Prior to these proceedings, to accommodate the need of Hercules for security, confidentiality, and safety, Hercules and the County entered into an arrangement by which Hercules would report its construction costs to the County and those costs were aggregated over time and eventually reached a total of \$211,397,230. Tr. 845-845. This method of determining the value of Hercules' property was mutually agreeable to the County and the taxpayer until the 1990 assessment was challenged by Hercules. As a result of Hercules' appeal to the Commission, and in light of additional information made available to the County in connection with the proceedings below, the County made certain adjustments to the assessed value of the property to account for depreciation and

other reductions to value which the County, through its employee, appraiser, and representative, Ed Kent, determined were appropriate.

The reality is that the Commission afforded a presumption of correctness to the County's appraised value, but made adjustments to that value where the Commission, in the exercise of its discretion and supervisory responsibilities, and based upon substantial evidence, determined adjustments to be appropriate. To accept Hercules' argument, this Court must find that it is incumbent on the Commission to adopt an "all or nothing" approach in discharging its duty to review the decisions of county Boards of Equalization. Hercules has pointed to no authority which mandates this approach.

Hercules asserts that the value to which Ed Kent testified is not the "County's statutory assessment"; that Mr. Kent's assessment is not entitled to a presumption of correctness; and that "the presumption of correctness only applies to property 'assessed by a state or county assessor'". In support of this proposition, Hercules cites Rio Algom Corp. v. San Juan County, 681 P.2d 184, 197 (Utah 1984). Rio Algom does not address this issue in any substantive manner and notes only that:

"Although there usually is a presumption that property assessed by a state or county assessor has been appraised at full value, the presumption applies only when a taxpayer

challenges the valuation of his own property and not when he challenges the appraised value of another's property.

Id.

The distinction that Hercules would have this Court draw is a distinction without a difference. Mr. Kent is an employee of the County Assessor's Office. He is employed as an appraiser and made the appraisal of the subject property in his official capacity. Taken to its logical conclusion, Hercules' argument would make it impossible for the County to correct errors in assessments when errors are discovered because to do so would nullify the "official" character of the assessment.

Further, Hercules' argument ignores specific facts involved in this matter that nullify its position. Prior to the time that Hercules called the amounts of its assessment into question, the method by which Hercules' property was valued was unique to this taxpayer by virtue of the safety and national security aspects of its business. Hercules would annually report the amount it expended to improve its property. The reported amount would be added to the prior year's aggregate total to arrive at the new taxable value of the property.⁵ After Hercules called the value of its property for assessment purposes into question, the County reevaluated its use of this historical method, determined it to be

⁵ Tr. 279, 1006-1008.

incorrect and modified its original value, which resulted in a decrease of approximately \$28 million. As the Utah Supreme Court noted in Utah Power & Light v. Utah State Tax Com'n., 590 P.2d 332 (Utah 1979):

. . . The fact that the Commission has followed a certain procedure in the past does not commit it to do so eternally. We can see no reason why it may not adopt new methods of appraisal procedure which are deemed to improve them.

590 P.2d at 334.

The Utah Power and Light court determined that in a case where the taxpayer claims an error in its assessment, the taxpayer has the obligation to show substantial error in the assessment and to provide a sound evidentiary basis upon which the Tax Commission may adopt a lower valuation (id. at 335) and noted:

. . . The universally recognized rule of the actions of administrative agencies requires this Court to take some cognizance of the expertise of the agency in its particular field and accordingly to give some deference to its determination, and not to upset the decision unless it appears that the action of the Commission is so in error or so unfair or unreasonable, that it must be regarded as arbitrary, a circumstance which we have not found present here.

Id. [Footnote omitted.]

Far from being discarded as an "unofficial assessment", the County's assessment, modified to take depreciation into consideration (including an economic obsolescence factor), is entitled to

a presumption of correctness, the taxpayer (Hercules) having failed to provide a sound evidentiary basis to support its assertion of a lower valuation.

POINT II

THE FACTUAL FINDINGS IN THE COMMISSION'S FINAL DECISION ARE AMPLY SUPPORTED BY THE RECORD

The factual findings of the Commission may not be overturned for the reason that this Court, or any other reviewing court, finds evidence in the record more convincingly supportive of Hercules' position than of the Commission's decision. The factual findings of the Commission may only be reversed if there is such an absence of evidence to support those findings that they may only be viewed as arbitrary, capricious or unreasonable. Utah Power & Light v. Utah State Tax Com'n., 590 P.2d 332, 334 (Utah 1979). See, also, National Sun Industries v. Ransom County, 474 N.W.2d 502, 506 (N.D. 1991). As noted by the court in Truitt v. Dept. of Rev., 732 P.2d 497, 499 (Or. 1987):

The tax court commented: "This case is a classic illustration of the problems encountered in valuing industrial property for ad valorem tax purposes. The disparate positions of the parties, both in attitude and results, would leave reasonable [persons] scratching their heads." [Citation omitted.] . . .

This case presents precisely the type of situation described

in Truitt. In its opening brief, Hercules accurately identified the major source of dispute in this case -- the appropriate amount of economic and/or functional obsolescence to be assigned to Hercules' property. That was the major source of contention during the entire appraisal process and Hercules did little to clarify matters during the formal hearing. In fact, Hercules presented two witnesses with entirely different points of view relative to this pivotal issue. Further, this wasn't something inadvertent which occurred, unforeseen, during the hearing. It was anticipated and planned by Hercules.⁶

⁶ In his opening statement, counsel for Hercules made the following statement (Tr. at pp. 22-23):

"One of the principal differences is, or perhaps the principal difference, as I mentioned a moment ago, is that in Shoup's opinion some of that property should be valued as personal property and not real property improvements. The physical depreciation was assigned a value of approximately \$23 million by the county, zero by Shoup and zero by Crawford. The functional obsolescence was assigned a value of approximately four million by the county, zero by Shoup, and \$33 million by Dr. Crawford.

"The big area of contention in this case is external obsolescence. Again, going back to the analogy of the glass half full. The county simply took an arbitrary percentage of 10 percent of the value of the property for approximately \$21 million. Shoup valued or assigned a value of external obsolescence or assigned appropriate numbers for external obsolescence, which he believes includes functional obsolescence, physical obsolescence and external obsolescence, at approximately \$90 million. And Dr. Crawford assigned a value of approximately \$134 million."

Hercules acknowledges in its opening brief that the amount of depreciation deducted by its appraiser, Paul Shoup, was not separated into its separate components (physical depreciation, economic obsolescence, and functional obsolescence), but was lumped into one figure for "accumulated depreciation".⁷ In contrast, Ed Kent, the County's appraiser accounted separately for each aspect of his depreciation deduction.⁸ It is clear, then, that the Commission did not simply reject the amount of accumulated depreciation Shoup asserted should be deducted, but also rejected the lack of specific testimony to support the various aspects of Shoup's determination.⁹

Further, when the Commission concluded that Shoup's "lump-sum depreciation without distinguishing the factors that went into that figure and their relative impact on the final figure is unsatisfactory and unacceptable"¹⁰, it did not determine that the "valuation methodology" was "unsatisfactory and unacceptable", as asserted by

⁷ Brief of Petitioner, p. 9, ¶¶ 25, 27, 29, and 31.

⁸ Id., ¶¶ 24, 26, 28, and 30.

⁹ See Findings of Fact Nos. 14, 15, 16, and 17.

¹⁰ See Conclusions of Law, p. 11, ¶ 7.

Hercules in its opening brief¹¹, but merely found the manner in which Shoup employed the methodology to be inappropriate.

The evidence in the record supporting the County's assessment is discussed below.

A. The Original County Assessment:

In 1989, the Salt Lake County Assessor's Office reappraisal program included Hercules Bacchus Works located in West Valley, Utah, at approximately 4600 South 7200 West.¹² Two County appraisers, Eddie J. Kent ("Kent") and Jona Hansen, were assigned to inventory the property. The inventory included documenting construction since 1978 and verifying and updating County records from the 1978 reappraisal conducted by the State Tax Commission.¹³ In May 1989, representatives of the Assessor's Office, including Kent and Hansen, met with Hercules representatives. The purpose of the meeting was to arrange for the on-site inventory by Kent and Hansen, identify the Hercules participants and the reappraisal schedule.¹⁴ As a result of the meeting, Hercules permitted the

¹¹ See Brief of Petitioner, p. 22, n. 10.

¹² Tr. 836, Testimony of Ed Kent.

¹³ Id.

¹⁴ Tr. 270, Testimony of Jona Hansen.

inventory to occur from June 1 to September 1.¹⁵ During the meeting the County appraisers were told that Hercules was proceeding with cautious optimism that it would experience growth and that was the reason for expanding its facility.¹⁶

Thereafter, Kent and Hansen personally inspected over 700 primary and support buildings and other improvements in the four facilities; Plants 1, 3, NIROP, and Bacchus West. Each improvement constructed since 1978 was inventoried, photographed; grade and condition assigned; and measured.¹⁷ A commercial inventory card reflected the data collected.¹⁸ All improvements identified in the 1978 state reappraisal were also verified. Pictures of all significant structures were taken by the County. Most of the pictures used by Shoup in his appraisal were taken by the County appraisers.

As a result of the inventory, the County's records reflect a gross building area of 2,127,643 square feet in 316 primary

¹⁵ Tr. 836.

¹⁶ Tr. 872.

¹⁷ Tr. 271-272; Tr. 842. The personal involvement of the County appraisers is in stark contrast to the involvement of Shoup, relied upon the photographs taken by the County appraisers (Tr. 344-345) and inspected only a fraction of the buildings contained within the Bacchus Works (Tr. 343-348).

¹⁸ Tr. 271.

buildings and 431,549 square feet in 386 support buildings, storage structures, and ingredient mix haulway and mix bowl tramway.¹⁹

Once the inventory was completed, the County assigned a value to the property for the lien date of January 1, 1990. The County added the 1989 construction costs Hercules reported to the County to the 1988 assessed value.²⁰ This method was based on an agreement between Hercules and the County dating from 1974. The purpose of the agreement was to protect Hercules and County employees and to limit interruptions of Hercules operations.²¹ The County solely relied on information supplied by Hercules to determine assessed value. Until 1990, Hercules had not appealed the assessed values of its real property. Each year David Peirson, the property tax manager of Hercules reviewed the reported costs of additional improvements submitted to the County for compliance with State law.²²

Hercules reported approximately \$44 million in construction costs incurred in 1989. Between 1986 and the end of 1989, it incurred over \$147 million in construction costs in developing its

¹⁹ R-4; p. 21.

²⁰ Tr. 845.

²¹ Tr. 1006-1008, Testimony of Larry Butterfield; Tr. 279.

²² Tr. 89, Testimony of David R. Peirson.

rocket motor facility.²³ Construction increased significantly each year with approximately 35% of the costs incurred in 1989.²⁴ The most significant construction occurred at the rocket motor facility at Bacchus West.²⁵ Of the \$147,359,000 in new construction, approximately \$95 million was incurred at Bacchus West and \$32 million at Plant 1. These costs were in addition to what was already there prior to 1986.

The County appraisal describes Hercules Bacchus Works as an aerospace propulsion and composite structures development and manufacturing facility. It is comprised of four separate plants; Plant 1, NIROP, and Bacchus West which are dedicated to rocket propulsion development and manufacturing and Plant 3 for graphite fiber manufacturing and composite structures development.

B. Replacement/Reproduction Cost.

Kent then determined the replacement or reproduction cost new for each of the improvements. He used the actual construction costs reported by Hercules, Inc.; if actual construction costs were not available he used costs reported in Marshall Valuation Services.²⁶ Since the actual costs date from 1980, they were

²³ Ex. 15

²⁴ Ex. 15B.

²⁵ Ex. 15A.

²⁶ Ex. R-4; p. 50.

factored to current construction cost estimates. The factors were obtained from Marshall Valuation Service.²⁷

Utilizing the County's inventory, Kent identified each improvement; established the year built; the effective age; size; reported cost and cost per square foot. He then applied the cost factor from Marshall Valuation Service to arrive at the total present cost for each improvement.²⁸

The cost of the improvements were then added to obtain a reproduction cost new for each plant. Costs associated with each plant were added to arrive at the total cost new of the Hercules improvements of \$217,278,420.²⁹

C. Economic Obsolescence:

As to Plant 1, ten percent economic obsolescence resulted in a reduction in the Replacement Cost New of improvements of \$5,153,230; for NIROP, a reduction of \$3,218,118; for Plant 3, a reduction of \$4,408,944; and for Bacchus West, a reduction of \$10,874,056. In his analysis of economic obsolescence, Kent stated that there were two methods to measure economic obsolescence: the income approach or the sales comparison approach.³⁰ The income

²⁷ Ex. R-4; pp. 50-51.

²⁸ Ex. R-4; pp. 52-65 (unnumbered in R-4).

²⁹ Ex. R-5; p. 66.

³⁰ Ex. K-4, p. 70; R. 4, pp. 71-73.

approach could not be used because Hercules refused to provide any income and operating information, claiming it was proprietary.³¹

The second method is to compare similar properties subject to the same negative influence and others that are not. Mr. Kent noted that if pertinent sales data are abundant, this is a preferable procedure, but because the property is so specific in design and use, the availability of comparable sales is virtually non-existent. Empirical data was, therefore, limited due in part to Hercules' refusal to provide income data and the special use of

³¹ Tr. 996-997:

Q. You were asked to look at what's been marked as Exhibit P-31, specifically that portion dealing with external obsolescence. Do you have that in front of you? Now, you did make a determination of external obsolescence. And what did you rely on for purposes of determining your external obsolescence?

A. I used Hercules' actual cost reportings. I also read and familiarized myself with their annual business reports and the 10-K report that Mr. Jones had discussed earlier.

Q. Now, I believe you had indicated that you had requested information regarding the income attributable to the facility but you were not allowed to have access to that; is that correct?

A. Yes. That was my understanding.

Q. Had you had access to that kind of information, would that have been a way to measure external obsolescence?

A. Yes.

the property.

Kent assigned 10% economic obsolescence to each facility for a total of \$22 million.³² This was based on Hercules' reported construction costs; Hercules' annual reports from 1988 and 1989, its "10-K" report,³³ and Hercules' expectation for growth.³⁴ For example, the actual construction cost reports evidence that from 1985 through the end of 1989, Hercules expended \$147,458,667 on additional plant construction.³⁵ Hercules' "10-K" report as of December 31, 1989, shows a backlog of orders for Hercules Aerospace of approximately \$2.4 billion compared with \$2.2 billion on December 31, 1988. Bacchus Works represents 83% of Hercules Aerospace assets.³⁶ Expenditures for research and development increased in 1989 over expenditures in 1987 and 1988. The 1990 annual report reflects net sales in the Aerospace segment of

³² Ex. R-4, pp. 70-71; Tr. 869.

³³ Tr. 1003.

³⁴ Tr. 870.

³⁵ Contrary to Hercules' assertion, Kent did not ignore the fact that the construction of the Bacchus West facilities took years to construction and years to design. Hercules' transcript citation in support of this outrageous statement is actually to the testimony of Richard Cloward, an employee of Hercules, and not to any evidence presented by Kent or any data relied upon by him.

³⁶ Ex. R-9, p. 1.

Hercules increased in 1989 over reported sales in 1987 and 1988.³⁷

Kent did, however, qualify his opinion of 10% economic obsolescence, believing it may be overstated.³⁸ The amount of growth experienced each year in construction costs alone led him to believe that the facility does not exhibit external obsolescence by the amount of growth experienced each year.³⁹ The testimony of Eckhardt Prawitt, Dr. Ted Jones and Russ Sanderson support the conclusion that there was no economic obsolescence present at the Hercules Bacchus works.

Eckhardt Prawitt analyzed Hercules' share of the aerospace market. During 1989, Hercules' performance relative to the market did not decline. If it had declined, one would conclude economic obsolescence existed. Also, Prawitt testified that if Hercules were suffering from obsolescence during 1989, its price-to-book ratios would have dropped relative to the two industry groups. T. p. 114, lines 1 - 5. There was no discernable drop in Hercules' stock during the period pertinent to 1-1-90. The only dip related to defense industry companies without missile contracts, which would not include Hercules. T. p. 714, lines 18 - 24.

In addition, Prawitt determined the price-to-book ratio to

³⁷ Ex. P-18(c), and 18(d).

³⁸ Tr. 868; Tr. 1002.

³⁹ Tr. 868.

ascertain whether there was any obsolescence in those assets. R-11 (Herc. 6 & 7). In his opinion, the presence of heavy discounts from price to book ratio would reflect obsolescence. His analysis reflected no heavy discounts, and therefore no obsolescence was present. T. p. 715, lines 14 - 24. Dr. Ted Jones, who analyzed Hercules 10-K report and Value Line, concluded that the reports painted a relatively optimistic outlook for Bacchus Works. Russell Sanderson confirmed this positive view through his testimony of meetings he attended wherein Hercules' representatives painted a very optimistic view of its business.

In conclusion, economic obsolescence may not exist at all. Kent concluded that there may be no economic obsolescence and that ten percent may be overstated. Two experts analyzed the data provided to investors. One concluded no economic obsolescence existed. The other concluded that the data painted an optimistic view of the company to investors. This picture is consistent with the one painted by Hercules to local government, its shareholders and the bonding agencies. The Commission could reasonably conclude that no economic obsolescence existed, or it could accept Kent's determination of obsolescence, which it did.

D. Functional Obsolescence.

Kent examined the property for functional obsolescence. Since he used replacement cost in Plants 1 and NIROP on all but five

percent of the improvements, only 5% of the improvements in these plants suffer from functional obsolescence.⁴⁰ Because Plant 3 and

⁴⁰ Ex. R-4, p. 69 and Tr. 861-862:

A. I then estimated the functional obsolescence. In doing that I used replacement cost on the majority of buildings in Plant 1 and NIROP. And by using replacement cost as opposed to reproduction cost, I am constructing a building of similar utility, therefore not constructing an exact replica and building in the functional obsolescence that may or may not be prevalent with the structure, special use structure.

I then went back through in Plant 1 and NIROP, estimated the substantial, or what we categorized as major buildings built from 1980 through 1989 that we had complete costs on, calculated the ratio of those buildings compared to the total buildings to come up with a ratio of functional obsolescence that would be applied to the cost new of each one of those plants.

I did not consider any functional obsolescence in Plant 3. Those structures are basically typical manufacturing buildings, could easily be adapted to an alternative use, and in my opinion did not suffer from functional obsolescence.

The Bacchus West facility is the most recently constructed and modern facility out there, and I do not believe that there's any functional obsolescence attributed to those improvements.

Q. And so for Plant 1 and NIROP, you attributed a certain percentage, I believe?

A. Yes. The ratio that I calculated on Plant 1 was 6.7 percent and the ratio on NIROP was 6.87 percent. I rounded them to five percent.

Q. And if you look down at page 7 -- page 71 of your appraisal, does that reflect your determination of functional obsolescence on Plant 1 and NIROP?

A. Yes.

Q. And does it also reflect the physical deterioration

Bacchus West were built within the last five years, Kent found that the improvements did not suffer from functional obsolescence.⁴¹ This conclusion was also supported by Shoup, Hercules' appraiser, who stated that Plant 3 suffers "minor functional inutility" and "little functional obsolescence would be inherent in Bacchus West because of its relatively new specialized design."⁴²

or physical depreciation which you attributed in total to each of those plants?

A. Yes, it does.

Tr. 964-965:

A. As I stated earlier in my testimony, in Plant 1 and NIROP, I used replacement cost on those buildings, that I did not have a total reported cost from Hercules. That would exclude functional obsolescence.

Q. Incurable functional obsolescence?

A. Yes.

Q. Well, you gave five percent any way, didn't you?

A. Yes. Because five percent of the costs, five percent of the buildings in those plants, I utilized Hercules' costs for.

Q. Why didn't you use 25 percent rather than five percent?

A. Because that was the ratio.

⁴¹ Ex. R-5, p. 69.

⁴² Ex. P-26(a), p. 85.

E. Land Value.

Kent identified eight comparable land sales.⁴³ He made adjustments to each as necessary. The adjustment considered property rights conveyed; financing; conditions of sales; market conditions or adjustments for the sale; location; topography; size; utilities; and zoning.⁴⁴ He determined the adjusted price per acre on each sale. He then averaged them and determined the average price per acre was \$10,500. The total land value for 1,514.66 acres was \$16,550,000.27.⁴⁵ This is the only evidence in the record relative to the land value. Shoup merely adopted the County's original land value rather than make his own independent appraisal determination.

F. Depreciation.

Physical depreciation was estimated for each improvement using Marshall Valuation Service's physical depreciation tables. Kent examined each building and because of the difference in age and degrees of curable and incurable physical depreciation observed by him, he estimated physical depreciation for each.⁴⁶ The physical depreciation estimated was 15.8% (\$8,168,963) for Plant 1; 16.8%

⁴³ Ex. R-4; pp. 35-42.

⁴⁴ Ex. R-4; pp. 43-47.

⁴⁵ Ex. R-4; pp. 48-49; Tr. 852, 856.

⁴⁶ Ex. R-4; pp. 68; 52-65 (unnumbered pages).

(\$5,390,430) for NIROP; 7.8% (\$1,926,506) for Plant 3; and 7.7% (\$8,380,614) for Bacchus West. The County appraisers testified that the Hercules facilities were extremely well maintained.⁴⁷ Hercules' Securities and Exchange Commission report supports this conclusion.⁴⁸

Kent then examined the property for functional obsolescence. Since he used replacement costs in Plants 1 and NIROP on all but five percent of the improvements, only five percent of the improvements in these plants suffer from functional obsolescence.⁴⁹ Because Plant 3 and Bacchus West were built within the last five years, Kent found that the improvements did not suffer from functional obsolescence.⁵⁰ This conclusion was also supported by Shoup who stated that Plant 3 suffers "minor functional inutility" and little functional obsolescence "would be inherent in Bacchus West because of its relatively new specialized design."⁵¹

The above detailed outline of the evidence adduced at the formal hearing more than amply supports the factual findings of the Commission and meets the "substantial evidence" standard which is

⁴⁷ Tr. 844; Tr. 277-278.

⁴⁸ Ex. 9, p. 3.

⁴⁹ Ex. R-4; p. 69, Tr. 861.

⁵⁰ Ex. R-5; p. 69.

⁵¹ Ex. P-26(a), p.85.

required to sustain the Findings of Fact of the Commission.

POINT III

THE EVIDENCE PRESENTED BY HERCULES WAS FLAWED AND INSUFFICIENT TO OVERCOME THE EVIDENCE PRESENTED BY THE TAXING AUTHORITIES

The Commission found the evidence presented by Hercules unpersuasive and one-sided. Examples of the pre-determined opinions of Hercules' experts abound in the record. Dr. Crawford⁵² testified that, far from participating to present objective evidence and assist the Commission in determining the true cash value of Hercules' property, he considered himself a part of the "Parsons, Behle advocacy team" (Tr. 666).

Shoup's testimony indicated that he was unsure concerning the cost methodology used in reaching his ultimate determination of

⁵² Hercules asserts that the Commission misunderstood the purpose of Dr. Crawford's testimony, when the Commission determined to give no weight to the testimony because Dr. Crawford was not certified in the field of real property appraisal. Hercules now argues that Dr. Crawford was not called to opine concerning the fair market value of the property, but rather to support Shoup's determination of accrued depreciation. However, Mr. Miller represented to the Commission that he intended to offer into evidence an "appraisal" that Dr. Crawford had prepared (Tr. 550) and Dr. Crawford identified Exhibit 28-A as a report on the appraised value of Hercules Bacchus Works (Tr. 551).

value.⁵³ Shoup agreed that the highest and best use of the facility was as propellant and rocket motor production plant. (Tr. 360). The economic obsolescence assigned by Shoup to the production facilities was based upon its use as a propellant and rocket motor production plant and the alleged decline in that industry. (Tr. 367-368) Yet Shoup's determination of "replacement cost" does not include the cost of replacing those very improvements which make the facility suitable for use as a rocket/missile production plant; i.e., the foundations, piping, fire control sprinklers and electrical wiring. Shoup testified that these improvements were "excess" and should be characterized as personal property. (Tr. 348-353). The Shoup appraisal, therefore, contains a replacement or reproduction cost which renders the plant totally useless for its "highest and best" use, while assigning economic obsolescence based upon that "highest and best use". This inconsistency results in a double reduction which explains much of the disparity between Shoup and Kent. The first reduction by costing the improvements at something other than highest and best use and the second by determining the presence of unmeasured economic obsolescence.

The differences in value occasioned by the reproduction cost

⁵³ Shoup testified that "in all probability, what we did was we selected, for foundation, a price that was probably in this instance, from somewhere in terms of the square foot cost of class C type building." Tr. 452.

method used in the Shoup appraisal is staggering. The Bacchus Works facilities contains in excess of 2,366,000 square feet (Tr. 334). The differences in reproduction costs between the improvements as they exist and as Shoup determined they should be reproduced in a regular manufacturing plant varies from a few cents to \$12 per square foot. (Tr. 348-353). The Commission found this conflict in the methodologies used by Shoup to arrive at a value inappropriate and unpersuasive. (Conclusions of Law ¶ 6, p. 10).

POINT IV

WHEN HERCULES PLACED THE VALUE OF ITS PROPERTY AT ISSUE, THE COMMISSION WAS THEN ENTITLED TO EVALUATE THE ASSESSED VALUE OF ALL HERCULES' PROPERTY

In its notice of appeal to the Commission, Hercules objected to the decision of the Salt Lake County Board of Equalization:

. . . for the following reasons, among others:

(a) The Findings and Conclusions of the Salt Lake County Board of Equalization are erroneous and without factual and legal support.

(b) There is no legitimate or proper basis for the assessed value assigned by the Salt Lake County assessor, and this assessed value is not based upon any accepted, or proper valuation methodology.

R. 683.

In essence, Hercules in its appeal to the Tax Commission put at issue the entire value of its property, as determined by the

taxing authorities, but, on appeal to this Court, seeks to limit the scope of review to the value of improvements, exclusive of land. The Utah Supreme Court rejected a similar attempt by the taxpayer in Kennecott Corp. v. Salt Lake County, 702 P.2d 451 (Utah 1985), and held:

. . . In this case, Kennecott itself complained that the 20% reduction of county-assessed property values had unlawfully increased Kennecott's tax burden, and the County responded by a counterclaim and cross-claim challenging the valuation of Kennecott's properties. On general equitable principles, Kennecott is in no position to ask a court to adjudicate the allegation that its taxes are too high and then claim that the court cannot adjudicate the allegation that the valuation of Kennecott's property is too low because of an allegedly unconstitutional statute. *By alleging underassessment of locally assessed properties, Kennecott put the valuation of its own state-assessed properties at issue.* [Citation and footnote omitted.] Accordingly, Salt Lake County was entitled to raise the issue of the valuation of Kennecott's property.

702 P.2d, at 456.

Here, Hercules challenged the method by which the County assessed real property and improvements to real property, challenged the County's conclusions as to the value of its property, and challenged the County's classification of the property as between real and personal property. The scope of the challenge by the taxpayer required the Commission's review of virtually every aspect of the valuation. Having initiated the process and placed

the value of its property at issue, Hercules should not now be allowed to selectively limit the results of that challenge.

The fact that the appraiser for Hercules failed to independently appraise the value of the land and chose to rely upon the initial land value determined by the County cannot be overcome merely by attempting to limit review by this Court.

CONCLUSION

The factual findings of the Commission are amply supported by substantial evidence, considering the record as a whole. The appraisal submitted by Hercules is based upon contradictory assumptions, which ignore the business purpose of the facility and its highest and best use, when arriving at the replacement cost of the improvements, but give almost exclusive consideration to the business purpose and its highest and best use when assigning economic obsolescence. The testimony of Dr. Crawford was properly excluded from consideration for the reason that Dr. Crawford was not a certified real estate appraiser and is precluded, by statute (U.C.A. § 61-2b-3), from giving an opinion concerning the value of the property. His testimony on cross examination demonstrated he was not an appraiser and did not understand appraisal methodology.

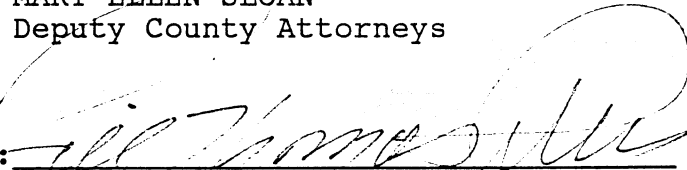
The evidence supports the value assigned to the property by the County's appraiser. Contrary to the assertions of Hercules,

the amount of depreciation assigned by Kent, who unlike Shoup, personally visited nearly all of the subject property, are broken down into various components and the factors which were considered by Kent in reaching those conclusions are set forth in detail. Shoup, on the other hand, did not and could not identify the amount of economic obsolescence.

Hercules has not met its burden and has failed to establish that the value of its property was other than that originally established by the County, as modified by the appraisal submitted by Kent at the formal hearing. For these reasons, the Findings of Fact, Conclusions of Law, and Final Decision of the Commission should be affirmed.

DATED this 17th day of January, 1994.

DAVID E. YOCOM
Salt Lake County Attorney
KARL HENDRICKSON
MARY ELLEN SLOAN
Deputy County Attorneys

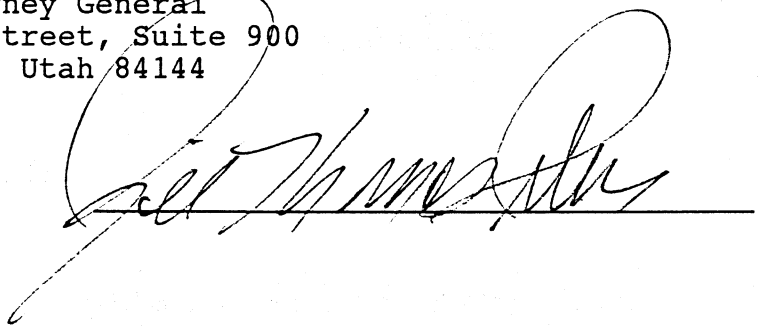
BY: 
BILL THOMAS PETERS
Special Deputy County Attorney

CERTIFICATE OF SERVICE

The undersigned hereby certifies that four true and correct copies of the foregoing Brief of Salt Lake County were mailed, postage prepaid, this 18th day of January, 1994, to the following:

Keith E. Taylor, Esq.
Kent W. Winterholler, Esq.
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Jan Graham, Esq.
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A handwritten signature in black ink, appearing to read "Richard M. Marsh", is written over a horizontal line.

BEFORE THE UTAH STATE TAX COMMISSION

| | | |
|------------------------------|---|--------------------------|
| HERCULES, INC., |) | |
| | : | |
| Petitioner, |) | FINDINGS OF FACT, |
| | : | CONCLUSIONS OF LAW, |
| v. |) | AND FINAL DECISION |
| | : | |
| COUNTY BOARD OF EQUALIZATION |) | Appeal Nos. 91-0603 to |
| OF SALT LAKE COUNTY, | : | 91-0678 |
| STATE OF UTAH, |) | |
| | : | Serial Nos. See Attached |
| Respondent. |) | |

STATEMENT OF CASE

This matter came before the Utah State Tax Commission for a formal hearing beginning May 19, 1992 and concluding on May 28, 1992. Paul F. Iwasaki, Presiding Officer, Joe B. Pacheco, Commissioner, and S. Blaine Willes, Commissioner, heard the matter for and on behalf of the Commission. Present and representing the Petitioner were Kent W. Winterholler and Maxwell A. Miller of Parsons, Behle & Latimer. Present and representing the Respondent were Bill Thomas Peters, Special Deputy Salt Lake County Attorney and Mary Ellen Sloan, Deputy Salt Lake County Attorney.

Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. The tax in question is property tax.
2. The lien date in question is January 1, 1990.
3. The subject property consists of six parcels of land and improvements thereon owned by the Petitioner and located in Salt Lake County.

4. The Petitioner is a producer of various products and operates a number of major plants throughout the United States. At its facilities in Salt Lake County, the Petitioner builds rocket motors and manufactures carbon graphite fibers. The Bacchus Work's property is comprised of four major plants: Plant 1; NIROP; Plant 3; and Bacchus West.

5. For the lien date in question, the Salt Lake County Assessor's Office originally valued the subject property at \$211,397,230. The Petitioner appealed that determination to the Salt Lake County Board of Equalization which, after a hearing, sustained that value.

6. The Petitioner filed its appeal to this body on or about March 29, 1991.

7. Both parties utilized a Reproduction/Replacement Cost New Less Depreciation ("RCNLD") approach to determine the market value of the subject property.

8. The Petitioner's valuation witness, Paul Shupe, utilized the following methodologies in arriving at his estimate of value:

(a) Plant 1:

Mr. Shupe examined 25 buildings and used those buildings for pricing models for other buildings that were either identical or so similar that adjustments could easily be made. Mr. Shupe then priced those

buildings using Marshall Swift Valuation Service as a guide to each building's cost. On those buildings constructed since 1985, Mr. Shupe used historical cost and then made adjustments for time and any additional costs as provided by the Petitioner.

(b) NIROP:

Mr. Shupe followed the same methodology as used in appraising Plant I.

(c) Plant 3:

Mr. Shupe priced the buildings using Marshall Swift Valuation Service as a guide to determine each buildings cost.

(d) Bacchus West:

With the exception of nine buildings where Mr. Shupe used the Marshall Swift Service, Mr. Shupe used the historical costs provided by the Petitioner and then made adjustments to those costs by deducting costs for those amounts he determined to be in excess of those listed by the Marshall Swift Service for items such as foundation costs, electrical systems costs, and plumbing costs. Mr. Shupe testified that, in his opinion, amounts in excess of the Marshall Swift guidelines represented personal property costs and therefore should not be included in the determination of value for the real property.

9. Mr. Shupe determined the Replacement Cost New ("RCN") for each plant, including yard and outside as follows:

| | | |
|------------------|---|----------------------|
| (a) Plant 1 | = | \$ 50,998,223 |
| (b) NIROP | = | \$ 22,292,733 |
| (c) Plant 3 | = | \$ 19,806,006 |
| (d) Bacchus West | = | <u>\$ 38,292,223</u> |
| TOTAL | = | <u>\$131,389,185</u> |

11. Mr. Shupe, applying the formula of effective age over economic life to determine the amount of depreciation, found the percentage of depreciation for each plant to be as follows:

| | | | |
|-------------------|-------|---|-----|
| (a) Plant 1: | 40/45 | = | 89% |
| (b) NIROP: | 35/45 | = | 78% |
| (c) Plant 3: | 25/45 | = | 56% |
| (d) Bacchus West: | 20/45 | = | 44% |

12. Based upon such depreciation, Mr. Shupe valued the subject property at \$45,500,000 which includes a land value of \$4,805,000.

13. Mr. Shupe determined the land value should be \$4,000 an acre. This was based upon the county's original land value of approximately \$4,100 per acre and his discussions with other real estate brokers and appraisers. From those discussions he concluded the land value as previously determined by the county to be equitable.

14. To determine the effective age, Mr. Shupe considered such factors as physical depreciation, utilization, and functional and external obsolescence. Each factor was then combined with the others to arrive at a lump-sum figure of accrued depreciation. With no differentiation or segregation between those items. Mr. Shupe did not demonstrate within his appraisal the mathematics used to conclude the reasons why the economic life and effective age were as asserted for each property.

15. In considering functional obsolescence, Mr. Shupe examined the amount of rocket propellant manufactured in each facility per month in relation to the square footage of that facility. The lower the ratio of propellant manufactured to square footage, the greater the amount of functional obsolescence. No numerical amounts were assigned to this aspect of depreciation.

16. In considering external or economic obsolescence, Mr. Shupe attempted to determine what the demand for rockets and rocket propellants would be in the future. He then determined that demand for such products would decrease due to the perceived easing of tensions between this country and the then communist countries. No numerical amounts were assigned to this aspect of depreciation.

17. In considering the lump-sum accrued depreciation, Mr. Shupe compared the subject property with other facilities in different areas of the country, none of which were engaged in the same business as the Petitioner. From those comparisons, he

arrived at a percentage which he attributed to the combined economic and functional obsolescence and physical depreciation which was factored into his determination of market value of the subject property and concluded that this confirmed his analysis of economic life and effective age.

18. The Petitioner also presented an expert witness in the field of economics, Dr. Robert Crawford, who testified that from an economic standpoint, the "value" of the subject property under the cost approach was \$32,205,000 and under the income approach was between \$50-65 million depending upon the capitalization rate used.

19. Dr. Crawford has expertise in economic theory but no demonstrated expertise or training, nor is he certified, as a real property appraiser.

20. The Respondent's witness, Mr. Eddie J. Kent who is a certified real property appraiser, also used the cost approach ("RCNLD") to determine the fair market value of the subject property. In so doing, Mr. Kent arrived at a land value of \$16,550,000 based upon sales of comparable parcels of property.

21. Mr. Kent established a reproduction or replacement cost new for the improvements, using whenever possible, the Petitioner's actual reported costs for those improvements. For those buildings where actual costs were not available, the Petitioner used Marshall Swift Valuation figures.

Appeal Nos. 91-0603 to 91-0678

22. Based upon the above, Mr. Kent determined the RCN for each of the facilities which are summarized in Schedule 1. See Schedule 1, Page 9.

23. Mr. Kent also included in his appraisal as real property improvements a tramway, haulageway and bridge located at the Bacchus West facility. The values were determined by Mr. Kent to be \$3,992,918, \$3,581,321 and \$1,367,447 respectively.

24. Mr. Kent made adjustments for physical depreciation based upon a comparison of effective age to remaining economic life of each of the structures, and also by referring to Marshall Swift Depreciation Schedules to arrive at the physical depreciation percentages and figures for each facility as shown in Schedule 1.

25. Mr. Kent made adjustments for functional obsolescence to Plant 1 and NIROP by using a replacement cost analysis which, in theory and when used properly, eliminates functional problems. The percentage and amount of adjustments are summarized in Schedule 1.

26. No adjustments for functional obsolescence to Plant 3 were made because, in the appraiser's opinion, the buildings were typical manufacturing buildings and could be adapted for alternate use.

27. No adjustments for functional obsolescence for Bacchus West were made because those buildings were of recent

Appeal Nos. 91-0603 to 91-0678

construction and, in the appraiser's opinion, no functional obsolescence existed.

28. The appraiser also made adjustments for economic obsolescence and estimated that a 10% adjustment was necessary. This opinion was based upon the Petitioner's appraisal experience and his evaluation of the effect of ongoing peace negotiations and the decreased threat by the Soviet Union and also based upon examination of the Petitioner's construction documents and its business reports. These adjustments are also summarized in Schedule 1.

29. After having made the above described adjustments, Mr. Kent appraised the subject property at \$183,000,000. See summary on Schedule 1.

HERCULES, INC.
Appeal Nos. 91-0603 to 91-0678

SUMMARY OF RESPONDENT'S APPRAISAL

SCHEDULE 1

| | <u>RCN for Each Facility</u> | | <u>Adjustment for Physical Depreciation</u> | | <u>Adjustment for Functional Obsolescence</u> | | <u>Adjustment for External Obsolescence</u> | <u>Cost New Less Depreciation</u> | <u>Cost New Summary Rounded</u> |
|---|----------------------------------|-------|---|----|---|-----|---|---------------------------------------|---|
| Plant 1 | \$ 51,532,298 | 15.8% | \$ 8,168,963 | 5% | \$2,576,615 | 10% | 5,153,230 | 35,633,490 | 35,633,000 |
| NIROP | 32,181,178 | 16.8% | 5,390,430 | 5% | 1,609,059 | 10% | 3,218,118 | 21,963,571 | 21,964,000 |
| Plant 3 | 24,824,380 | 7.8% | 1,926,506 | 0% | -0- | 10% | 2,482,438 | 20,415,436 | 20,415,000 |
| Bacchus West | <u>108,740,564</u> | 7.7% | <u>8,380,614</u> | 0% | <u>-0-</u> | 10% | <u>10,874,056</u> | <u>89,485,894</u> | <u>89,500,000</u> |
| | <u>\$217,278,420</u> | | <u>\$23,866,513</u> | | <u>\$4,185,674</u> | | <u>\$21,727,842</u> | <u>\$167,498,391</u> | \$167,512,000 |
| Land Value Estimate | | | | | | | | | <u>16,055,000</u> |
| Total Indicated Value of Subject Property | | | | | | | | | <u>\$183,567,000</u> |
| Rounded | | | | | | | | | <u>\$183,000,000</u> |

CONCLUSIONS OF LAW

1. The Tax Commission is required to oversee the just administration of property taxes to ensure that property is valued for tax purposes according to fair market value. (Utah Code Ann. §59-1-210(7).)

2. The Petitioner has the burden of proof to establish that the market value of the subject property is other than that as determined by the Respondent.

3. "Personal Property" includes: . . . (c) bridges. . . (Utah Code Ann. §59-2-102(17).)

4. The cost method of appraisal in establishing the fair market value for the subject property is an appropriate and acceptable methodology in this case.

5. The testimony of Dr. Crawford who has no demonstrated expertise or certification in the field of real property appraisal is given no weight in determining the fair market value of the subject property.

6. The determination of Mr. Shupe that foundation costs, electrical costs, and plumbing costs in excess of those amounts allocated by Marshall Swift Valuation Service represents personal property is unpersuasive and erroneous. The Commission finds that such items are parts of improvements to real property and are legitimately used for the unique purposes required of such improvements.

7. The Commission finds Mr. Shupe's determination of accrued depreciation is also unacceptable. Specifically, the Commission finds that Mr. Shupe's measurement of economic obsolescence by comparing the Petitioner's plant to other plants in other industries in other parts of the country to be a an attempt to draw conclusions from properties that are not comparable with the subject property. The Tax Commission further finds Mr. Shupe's lump-sum depreciation without distinguishing the factors that went into that figure and their relative impact on the final figure is unsatisfactory and unacceptable.

8. The Tax Commission finds the appraisal submitted by the Respondent to be superior to that submitted by the Petitioner by a preponderance of the evidence, and the Respondent's final estimate of value to be reasonable based upon accepted principles of real property appraisal. The haulageway and bridge included in Mr. Kent's appraisal, however, as improvements to real property should have been excluded from the appraisal because they are items of personal property.

DECISION AND ORDER

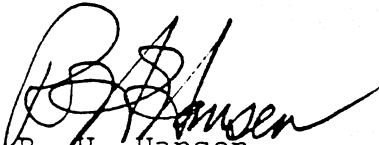
Based upon the foregoing, the Tax Commission finds that the fair market value of the subject property as of the lien date January 1, 1990 to be \$183,000,000, less the amounts attributable to the tramway, haulageway and bridge located at Bacchus West. In addition, a deduction of 10% from each of those items should be

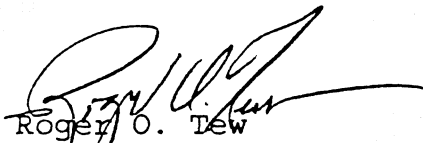
Appeal Nos. 91-0603 to 91-0678

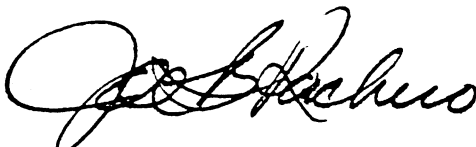
made to reflect the adjustment made for external obsolescence. The Salt Lake County Auditor's office is ordered to adjust its records in accordance with this decision. It is so ordered.

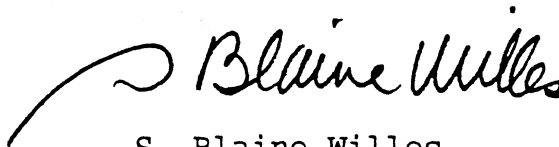
DATED this 10th day of June, 1993.

BY ORDER OF THE UTAH STATE TAX COMMISSION.


R. H. Hansen
Chairman

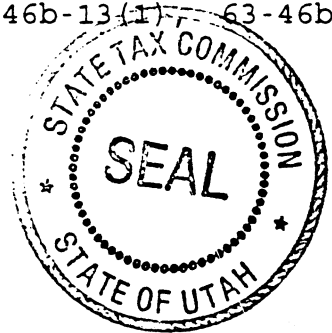

Roger O. Tew
Commissioner


Joe B. Pacheco
Commissioner


S. Blaine Willes
Commissioner

NOTICE: You have twenty (20) days after the date of the final order to file a request for reconsideration or thirty (30) days after the date of final order to file in Supreme Court a petition for judicial review. Utah Code Ann. §§63-46b-13(1) - 63-46b-14(2)(a).

PFI/sd/91-0603.1of



Appeal Nos. 91-0603 to 91-0678

MAILING CERTIFICATE

I hereby certify that I mailed a copy of the foregoing
Decision to the following:

Hercules Incorporated
c/o Kent W. Winterholler
PARSONS, BEHLE & LATIMER
185 South State Street #700
Salt Lake City, UT 84147

Robert L. Yates
Salt Lake County Assessor
2001 South State Street, N2200
Salt Lake City, UT 84190

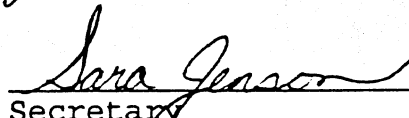
Mike Reed
Salt Lake County Auditor
2001 South State Street, N2200
Salt Lake City, UT 84190

Karl Hendrickson
Salt Lake County Attorney
2001 South State Street, N3600
Salt Lake City, UT 84190

Marc B. Johnson
Tax Administrator
2001 South State Street, N2200
Salt Lake City, UT 84190

Bill Thomas Peters
Special Deputy Attorney
310 South Main Street, Suite 1100
Salt Lake City, UT 84101

DATED this 10th day of June, 1993.


Secretary