01-0859,02-1051,02-1093,03-0139,03-0912 & 03-0913
Centrally Assessed Property
Signed 09/01/2004

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER, Petitioner, v. PROPERTY TAX DIVISION OF THE UTAH STATE TAX COMMISSION, Respondent, COUNTY, a Political Subdivision of the State of Utah, Intervener-Respondent.	)	**FINDINGS OF FACT, CONCLUSIONS OF LAW, FINAL DECISION AND PROTECTIVE ORDER** Consolidated Appeal Nos. 01-0859, 02-1051, 02-1093, 03-0139, 03-0912 & 03-0913 Tax Type: Centrally Assessed Tax Years: 2001 & 2002 Judge: Phan

This Order may contain confidential "commercial information" within the meaning of Utah Code Sec. 59-1-404, as well as information covered in a Protective Order issued on November 11, 2002. Such information is protected from disclosure pursuant to the Protective Order included herein.

Presiding:

Pam Hendrickson, Commission Chair
Palmer DePaulis, Commissioner
Marc Johnson, Commissioner
Jane Phan, Administrative Law Judge

Appearances:

For Petitioner:	PETITIONER REPRESENTATIVE 1, Attorney PETITIONER REPRESENTATIVE 2, Attorney
For Respondent:	RESPONDENT REPRESENTATIVE 1, Assistant Attorney General RESPONDENT REPRESENTATIVE 2, Assistant Attorney General
For Intervener-Respondent:	COUNTY REPRESENTATIVE, COUNTY Attorney

STATEMENT OF CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on January 27, 2004 through January 29, 2004, and is before the Utah State Tax Commission on six consolidated appeals of the 2001 and 2002 property tax assessments of Petitioner's real and tangible personal property at the MANUFACTURING PLANT (the "manufacturing plant") and QUARRY 1 (the "quarry") located in COUNTY, Utah.

Based upon the oral and written pleadings, as well as the evidence, testimony and exhibits presented at the Formal Hearing, the Commission makes and enters its:

FINDINGS OF FACTS

1. The assessments at issue include Respondent Property Tax Division's ("Division") assessments of PETITIONER real and personal property at PETITIONER quarry and Intervener-Respondent COUNTY'S (the "County") assessments of PETITIONER real and personal property at PETITIONER manufacturing plant as of January 1, 2001 and January 1, 2002.

The Assessments

2. This matter originally came before the Commission under appeal number 01-0859 relating to the assessment by the Division for both the manufacturing plant and quarry for the lien date January 1, 2001. In that appeal, the Commission issued an Amended Order Granting Petitioner's Partial Motion for Summary Judgment, dated March 4, 2002, and an Amended Order Denying Reconsideration, dated May 2, 2002, in which the Commission ordered that the manufacturing plant be assessed by COUNTY and the quarry assessed by the Division. The Division then issued a revised 2001 assessment for only the quarry and the County issued a 2001 assessment for the manufacturing plant. Both PETITIONER and the County appealed the Division's 2001 assessment for the quarry. The County's appeal was protective in nature and at the Formal Hearing the County did not request a value different than the one requested by the Division. These are appeal numbers 03-0912 and 03-0913. In addition PETITIONER also appealed the County's 2001

assessment for the manufacturing plant and the parties stipulated that this County assessment be included in the consolidated appeal.

3. For lien date January 1, 2002, the Division issued an original assessment on the quarry while the County issued an assessment on the manufacturing plant. Both PETITIONER and the County filed an appeal of the Division's assessment for the quarry for 2002. These are appeal numbers 02-1051 and 02-1093. PETITIONER also filed an appeal of the County's assessment for the manufacturing plant that was assigned appeal number 03-0139.

4. For all of the assessments, however, the Division and the County valued both the quarry and manufacturing plant on a combined, unitary basis using a discounted cash flow method based on the cement produced and then allocating the total value between quarry and plant to determine the value for the property under their separate assessment jurisdiction. The assessments for each of the tax years at issue are as follows:

	Combined Value	Quarry	Plant
2001			
Division's Original 2001 Assessment:	$$$$$	$$$$$	$$$$$
Division's 2001 Preliminary 5/1/03:		$$$$$	
Division's 2001 Notice dated 1/12/04		$$$$$	
County's 2001Assessment dated 7/21/03			$$$$$
2002			
Division's 2002 Assessment dated 5/2/02		$$$$$	
Division's 2002 Assessment dated 1/12/04		$$$$$	
County's 2002 Assessment			$$$$$

5. For many years prior to 2001, the Division had assessed both the quarry and manufacturing plant and had prepared both a cost and income approach in determining the value. For the year 2000 the value was based on the cost approach. For the years 2000 and 2001 the Division had also prepared a cost approach value of the plant and quarry but it was given no weight in

determining the assessment value, as the assessment value was based solely on the discounting of the combined unit's cash flow related to the cement.

6. COUNTY valued all other locally assessed manufacturing properties based on a cost approach. [1]

7. The subject property is the real and taxable personal property owned and operated by PETITIONER in COUNTY, Utah. The property consists of cement manufacturing plant and a limestone quarry, which is commonly referred to as QUARRY 1. As noted above, the Commission had previously determined that COUNTY assess the cement manufacturing plant, and the Division assess the QUARRY 1.

8. The assessable taxable assets at the manufacturing plant include land, land improvements, support buildings and structures, manufacturing process computer equipment, manufacturing process machinery, equipment and structures, manufacturing process silos and tanks, construction work-in-process, computer equipment, computer software, office furniture and signs, office equipment, forklifts, lab equipment, general machinery and equipment, heavy equipment, off-road vehicles, trailers, unlicensed vehicles, cement solos and shipping equipment.[2] The assessable taxable assets at the quarry include land, land improvements, support buildings and structures, heavy equipment, machinery, unlicensed vehicles and mineral reserves.[3]

Quarry and Cement Manufacturing Plant

9. During the period at issue all limestone extracted from the subject quarry was consumed by PETITIONER in the subject cement plant. At the current rate of consumption the quarry can supply stone to the cement manufacturing plant for sixty years. [4]

1 Testimony of (X), COUNTY Assessor, Hearing Transcript pgs. 730-734.
2 PETITIONER Ex. 3.
3 PETITIONER Ex. 3.
4 Testimony of (X).

10. All experts acknowledged in this matter that it is unlikely that the quarry would be sold separately from the cement plant in the foreseeable future. The most likely arrangement would be that they were sold together.

11. The highest and best use of the quarry is to furnish limestone to the cement plant and the highest and best use of the cement plant is to produce cement.[5]

12. The type of cement produced at the plant is (X). In order to make this cement product a specific chemical content of limestone and other raw kiln feed materials is required. During the period at issue PETITIONER purchased about 13% of the raw kiln feed materials from other quarries to use as "sweetner." The "sweetner" was mostly comprised of limestone that had a lower-alkali chemical composition.[6]

13. During the period at issue PETITIONER purchased the necessary sweetner mostly from a non-affiliated quarry referred to as QUARRY 2. For the sweetner limestone from QUARRY 2, PETITIONER paid a lease royalty to COMPANY A who owned the mineral right and an additional amount to the owner of the surface right who extracted the limestone and shipped it to PETITIONER. The amount paid to COMPANY A is discussed in detail with PETITIONER Appraisal Findings. The amount PETITIONER paid to the surface owner at QUARRY 2 was $$$$$ per ton.[7] The evidence submitted indicated that approximately $$$$$ of this amount was for shipping.[8] In addition a small percentage of the sweetner came from a limestone quarry referred to as QUARRY 3.

14. The quality of the chemical components in the limestone vary by layers both at the subject quarry and the QUARRY 2 quarry. Although the quality of the chemical components of the

5 Hearing Transcript, pg. 445.
6 PETITIONER'S Exhibits 2 & 3, Addendum 2.
7 Division's Exhibit 30, Hearing Transcript, pg. 672.
8 Hearing Transcript, pg. 672.

layers at QUARRY 2 was similar to the quality in the layers of the subject quarry, the limestone acquired from QUARRY 2 was selectively the high-quality, low-alkali calcium carbonate limestone.[9]

15. For the year 2001 PETITIONER used ##### tons of limestone in its cement production from the QUARRY 1.[10] For 2002 the limestone production from the QUARRY 1 was ##### tons.[11]

16. (X) is sold like a commodity. Purchasers generally do not consider who manufactured the (X), it is the price that drives the purchase.[12]

17. In the process of manufacturing cement the limestone from the quarry as well as the purchased limestone are transported to a 1500 horsepower impact crusher that reduces the limestone so that 90% will pass through a 76 millimeter screen.[13] Once the limestone is crushed, it is conveyed through a cross-belt neutron analyzer. The analyzer allows the quality of the materials fed to the stockpiles to be controlled so the storage piles have the correct chemical composition. The crushed limestone is then transported by conveyors to the pre-blending hall were it is stockpiled. The stockpiled limestone is extracted by a bridge type reclaimer, which deposits the material onto a belt conveyor. The belt conveyor transports the limestone to the raw mill feed bins, while an additional 42-inch belt conveyor in the pre-blending hall feeds non-limestone corrective materials to the feed bins. This conveyor is fed by a front-end loader. The pre-blended raw mix is then withdrawn from the feed bins on constant weigh feeders and discharged onto the raw mill feed conveyor belt, which delivers the raw material to the raw mill. The raw mill provides additional grinding and processing that reduces the raw materials into finely ground raw meal for use in the kiln.

9 Hearing Transcript, pg.210.
10 Hearing Transcript pg. 670, Respondent's Exhibit 21.
11 Division's Exhibit 21.
12 Hearing Transcript, pgs. 133 & 443.
13 Cement Manufacturing Process findings are from the testimony of (X), Hearing Transcript, pgs. 100-130.

18. The raw meal is then transported to a silo and then extracted from the silo and fed into a weigh feeder then onto a belt type bucket elevator that transports the meal into the top of a five stage preheater /precalciner. From the preheater/precalciner, the material goes to the kiln that converts the material to clinker by heating the material to approximately 1,482 degrees centigrade. The clinker is then cooled and moved by conveyor, fed into metering silos and extracted from the silos by constant weigh feeders that transport it to the finish mills.

19. As of January 1, 2001, the manufacturing plant had two finish mills and a third was under construction. The two mills had been converted from an old "wet process" and are contained in the old mill building. The third mill is housed in a separate mill structure.

Petitioner's Appraisal

20. Petitioner submitted an appraisal for each of the years at issue that had been compiled by APPRAISER 1 of COMPANY B, a property tax consulting firm. The Petitioner's appraisals were based on a summation type approach in which APPRAISER 1 added the valuations of three subparts for tax years 2001 and 2002. APPRAISER 1 appraised PETITIONER machinery and equipment, which was one subpart. The COMPANY B appraisals also included subparts by APPRAISER 2, a Utah certified appraiser, who appraised the land and improvements, and APPRAISER 3, who appraised the minerals in place at the quarry. APPRAISER 1 acknowledged that his appraisal valued only the tangible property of the plant and the tangible property of the quarry. It did not include a value related to such items as permits, assembled workforce, favorable supply agreements and contracts.[14]

21. It was the COMPANY B appraisal conclusions that the values for the years at issue for the manufacturing plant and quarry were as follows:

2001	Quarry	Plant

14 Testimony of (X), Hearing Transcript pgs. 441-442.

COMPANY B Value	Land	$$$$$	$$$$$
	Improvements	$$$$$	$$$$$
	Quarry Reserves	$$$$$	n/a
	Personal Property	$$$$$	$$$$$
	Total (rounded)	$$$$$	$$$$$

2002

COMPANY B Value	Land	$$$$$	$$$$$
	Improvements	$$$$$	$$$$$
	Quarry Reserves	$$$$$	n/a
	Personal Property	$$$$$	$$$$$
	Total (rounded)	$$$$$	$$$$$

22. Land & Improvement Value. The property items which consisted of the land, improvements, support buildings and structures were appraised by APPRAISER 2, real property appraiser and Vice President at COMPANY C.[15] Specifically excluded from his value was the value of the mineral deposits located on the subject property. In his appraisal, APPRAISER 2 relied on the cost approach to determine a value for the real property components of the subject properties. His cost approach consists of a land value based on comparable land sales to which he then added a cost estimate of the real property improvements and structures. It was his conclusion that the total value of the real property of the plant for the 2001-year was $$$$$ and of the quarry for 2001 was $$$$$. For the 2002 tax year it was his conclusion that the total real property value of the plant was $$$$$ and the quarry was $$$$$.

a. Land. For the subject property APPRAISER 2 indicated the subject site is a total 667.81 acres of which 270.21 acres are used for the cement plant and 397.6 acres are used for the quarry site. APPRAISER 2 indicates that the subject property is zoned M-G or General Industrial and is the only parcel of property in

COUNTY with that zoning. Production of cement is a conditional use in the zoning district. He indicated in the appraisal that if the subject property was vacant and available for development, it was his opinion that the highest and best use would be for residential development. However, as improved it was his opinion that the existing use was the highest and best use. He considered four land sales located in COUNTY. These properties were agricultural or recreational properties. At least two of the properties are not serviced by utilities and most had inferior road access. The properties ranged in size from 80 to 641 acres and had sold for prices ranging from $$$$$ to $$$$$ per acre. An additional sales listing was included in the appraisal for a 1,460-acre parcel. The asked price was $$$$$ per acre. It was APPRAISER 2's conclusion that value of the subject property was $$$$$ per acre.

b. To find the cost value of the real property improvements APPRAISER 2 determined the class, type and size of each building located on the subject property and used the Marshall & Swift cost calculators to determine the cost new for each structure. To the cost new he subtracted depreciation based on a 20-year property life.

23. Mineral Reserve Value. APPRAISER 3, performed an appraisal of the mineral reserves located on the subject property to be added to the value of land and improvements.[16] To determine the value he used an income type approach that he indicated was based on a "relief-from royalty" method. He explained in his appraisal that as PETITIONER owns the reserves it does not have to pay a royalty to the owner of the reserves. In the appraisal he explains, "Thus, the pretax

15 PETITIONER'S Exhibit 2, Addendum 1 and Exhibit 3, Addendum 1.
16 See Appraisals of Limestone Reserves by APPRAISER 3, PETITIONER'S Exhibit 2, Addendum 2 and Exhibit 3, Addendum 2.

"royalty savings" can be capitalized at an appropriate rate for the industry, and the nature of the property, since the reserve life is conservatively estimated at 50 years."[17]

24. APPRAISER 3 based the value of the reserve on the price PETITIONER paid pursuant to a mineral lease with COMPANY A for limestone at QUARRY 2. The lease term is 20 years. It requires a minimum annual lease payment of $$$$$ and earned royalties are calculated on a formula based on $$$$$ per short ton, indexed by the lagging Producer Price Index Series. For the January 1, 2001 lien date the royalties were $$$$$ per short ton or $$$$$ per metric ton. For the 2002 lien date the royalties were $$$$$ per short ton or $$$$$ per metric ton. APPRAISER 3 considered the clinker capacity at QUARRY 1 and made the determination that if all limestone were imported from QUARRY 2, the royalty payment to COMPANY A would have been $$$$$ for the 2001 tax year. Capitalized at a %%%%% weighted average cost of capital ("WACC"), he concluded the value of the mineral rights was $$$$$. For the 2002 year the royalty payment would have been $$$$$ and capitalized at %%%%% WACC would indicate a value to the holder of the mineral rights of approximately $$$$$ for that year.

25. The factors used by APPRAISER 3 in determining the %%%%% and %%%%% WACC for the years 2001 and 2002 were a capital structure of %%%%% debt and %%%%% equity for 2001 and %%%%% debt and %%%%% equity for 2002.[18] For 2001 the long-term debt rate used by APPRAISER 3 was %%%%%. APPRAISER 3 concluded that the equity rate would be %%%%% using both the capital asset pricing model and bond yield and risk premium data. For 2002 APPRAISER 3's long-term debt rate was %%%%% and equity rate %%%%%.

26. The appraisal did not include the substantially higher amount paid to the owner of the surface rights at QUARRY 2. PETITIONER paid an additional amount to the owner of the surface rights, which included payment for extraction of the limestone, removal of overburden as well as

17 PETITIONER's Exhibit 2, Addendum 2, pg. 9.

shipping it to the subject cement plant. The owner of the surface rights was not affiliated with COMPANY A or PETITIONER.

27. Personal Property Value. The bulk of the taxable value at issue in this matter is attributable to the personal property that includes the machinery and equipment used for mining the limestone and manufacturing cement. APPRAISER 1 determined the value of the personal property. For the year 2001 his conclusion was that the personal property of the cement plant was $$$$$ and of the quarry was $$$$$.[19] For 2002 his conclusion was that the personal property of the cement plant was $$$$$ and the quarry $$$$$.[20] APPRAISER 1 valued the personal property using the cost approach method, indicating that it was reliable for valuing the personal property, as most of the operating process equipment was relatively new. In determining the cost value of the personal property, APPRAISER 1 applied the percent good schedules promulgated by the Property Tax Division at Utah Admin. Rule R884-24P-33, to the historic cost of the machinery and equipment and then made additional adjustments for functional and economic obsolescence.

28. APPRAISER 1 concluded that the manufacturing process machinery and equipment, manufacturing silos and manufacturing process structures were appropriately categorized as Class 8 properties under the schedules. However, he determined that the manufacturing process computer equipment would more appropriately fall under Class 12, which is a category for computer hardware. He went through all other items of personal property and applied the Utah percent good schedule based on what he determined to be the proper class.

29. APPRAISER 1 also made adjustments for functional obsolescence, which he found in the finish mill area, cement storage silos, and an adjustment that he called both functional and

18 PETITIONER'S Exhibit 2, Addendum 2, Exhibit C & Exhibit 3, Addendum 2, Exhibit C.
19 PETITIONER'S Exhibit 2.
20 PETITIONER'S Exhibit3.

economic obsolescence for the size of the cement plant. The total of these adjustments rounded were $$$$$ for 2001 and $$$$$ for 2002[21] and are discussed in detail below.

a. Finish Mill. APPRAISER 1 testified that in his opinion a modern facility would have only two finish mills with the equivalent capacity of the three finish mills of the subject property. In 2001 PETITIONER had two complete finish mills, one of which had been converted from a wet process raw mill to a finish mill. However, during the period at issue, PETITIONER was in the process of constructing the third finish mill. APPRAISER 1 used a cost/capacity formula to determine an amount for functional obsolescence from this factor of $$$$$ for tax year 2001 and $$$$$ for tax year 2002.

b. Cement Storage Silos. The cement plant had two groups of silos and PETITIONER was in the process of constructing a third group. Each group of silos has its own shipping facilities. It was APPRAISER 1's opinion that a modern plant would have only one group of silos, which would require only one shipping facility. Again using the cost/capacity formula he determined a functional obsolescence penalty for the silos in the amount of $$$$$ for 2001 and $$$$$ for 2002.

c. Size Adjustment. In addition, APPRAISER 1 indicated that a functional and economic penalty could be taken due to the size of the plant. It was his opinion that the newer battery limit portion of the plant was undersized compared to the size of a "green field" or new plant constructed from the ground up as opposed to the retrofitting of a plant already in existence. It was his opinion that because the plant is undersized it represents an excess

21 See PETITIONER'S Exhibit 2, pgs. 24-32, & Exhibit 3, pgs.24-32.

investment per ton of clinker capacity, or excess cost of doing business compared to the size of a "green field" plant. The amount of the size obsolescence adjustment calculated by APPRAISER 1 for 2001 was $$$$$ and for 2002 the adjustment was $$$$$.[22]

County Appraisals

30. After the Tax Commission had ordered in its previous decision that COUNTY had assessment jurisdiction over the manufacturing plant, and the Division had assessment jurisdiction only over the quarry, the County issued tax assessments for PETITIONER manufacturing plant. In support of its value for the plant, the County submitted Consulting Service Reports for tax years 2001 and 2002 that had been prepared by APPRAISER 4, ASA. In these reports he reviewed the work and appraisal of the Property Tax Division and determined a market value on a combined unitary basis of both the plant and quarry based on the income stream from the cement, from which he allocated a portion of the total value to the plant based on the percentage of costs. APPRAISER 4's value conclusions are as follows:

		Combined Value	Plant Value
APPRAISER 4 Report	2001	$$$$$	$$$$$
	2002	$$$$$	$$$$$

31. It was APPRAISER 4's opinion that the plant and mine were physically, functionally and economically integrated. For these reasons he argued that it was appropriate to value the combined unit based on the discounted cash flow model using the income from the cement manufacturing plant.

Divisions Appraisals

22 PETITIONER's Exhibit 2, pgs. 29-32, & Exhibit 3, pgs.29-32.

32. The Division submitted appraisals in support of its assessment of the quarry that had been prepared by APPRAISER 5, Assistant Director, Property Tax Division and Certified General Appraiser. Although the Commission had ordered previously that the Division had assessment jurisdiction only over the quarry, the Division's valuation was based on the combined unit of plant and quarry, with a portion then allocated to the plant. It was APPRAISER 5 appraisal conclusion that the market value of the quarry for 2001was $$$$$ and for 2002 was $$$$$

33. Cost Approach. APPRAISER 5 did consider a cost approach of the taxable property of the quarry but gave it no weight in the correlation with his income approach value.[23] It was his determination that the acquisition cost of the machinery and equipment associated with the quarry for 2001 was $$$$$ and for 2002 was $$$$$. To this he applied the percent good factor from the Personal Property Valuation Schedules to conclude that the replacement cost less depreciation value of the personal property for the 2001 lien date was $$$$$ and for the 2002 lien date was $$$$$. His cost value indicators were as follows:

	2001	2002
Division Cost Value of Quarry		
Land	$$$$$	$$$$$
Improvements	$$$$$	$$$$$
Personal Property	$$$$$	$$$$$
Total	$$$$$	$$$$$

34. In his cost approach APPRAISER 5 based the land value on $$$$$ per acre. It was APPRAISER 5's conclusion that there was only one building on the subject property that related to the quarry, a truck garage. He valued the building based on the replacement cost minus depreciation using the Marshal and Swift Valuation Service. APPRAISER 5 did not add a value in his cost approach for the mineral reserves. It was his conclusion that reserve value would be better captured

23 Division's Exhibits 5 & 6, pg. 6.

in the income approach. This was also a reason given by Respondent for relying on the income approach to value the quarry.

35. The Division had for prior tax years performed a cost approach valuation of the cement plant. For the subject years the Division had also determined a cost value of the cement plant finding based on a cost approach that the value of the cement plant for 2001 was $$$$$ and for 2002 was $$$$$.[24]

36. Division's Income Approach. In performing an income approach to determine the value of the quarry, APPRAISER 5 performed a discounted cash flow analysis in his appraisal. However, the cash flow he discounted was not a cash flow derived from the sale of limestone by the quarry, nor based on a representative price for limestone extracted from the quarry and the available information on the tonnage of limestone removed from the quarry. Instead the cash flow was based on the sale of cement by the manufacturing plant.[25] Once APPRAISER 5 determined a value based on the cash flow from the cement plant he allocated a portion of the value to the quarry based on cost factors. The underlying assumption on which he premised his appraisal was that the quarry and cement plant functioned as a unit.

37. Division's Capitalized Net Revenue Method. Although not included in his appraisal, APPRAISER 5 also calculated the value of the quarry using the capitalized net revenue ("CNR") approach in which he estimated the value of the quarry based on the amount of limestone produced from the quarry during the subject years and a representative price of the limestone. APPRAISER 5 indicated that PETITIONER had not provided information necessary to prepare a discounted cash flow based on the limestone production, so he prepared a CNR valuation. APPRAISER 5, however, did not present the CNR value as the Division's proposed market value for the subject property. In his testimony concerning the CNR values that he submitted he states, "and I'm not proposing that

24County Exhibits 1 & 2, pg. 2.

this represents market value. I'm doing an exercise if we were going to use a CNR."[26] APPRAISER 5 used the numbers provided by PETITIONER concerning the amount of limestone produced and expenses to calculate the CNR value. In one set of CNR's, for the representative price of the limestone, APPRAISER 5 used the amount that PETITIONER paid to QUARRY 2 for limestone, minus the amount he determined was attributable to shipping costs. The resulting value for the quarry was $$$$$ for 2001 and $$$$$ for 2002. For 2001 he also used a lower representative price for limestone of $$$$$ per ton which resulted in a value of $$$$$ for the quarry[27]

Appraisal Conclusions

38. The appraisers for the parties in this matter had various approaches to valuing the property at issue and the approaches are summarized as follows:

	PETITIONER	Division	County
2001			
Cost Approach Quarry			
-land	$$$$$	$$$$$	
-improvements	$$$$$	$$$$$	
-personal property	$$$$$	$$$$$	
-mineral reserves	$$$$$		
Quarry Cost Total	$$$$$	$$$$$	
Income of Quarry		$$$$$	
Appraisal Value Quarry	$$$$$	$$$$$	
Cost Approach Plant			
-land	$$$$$		
-improvements	$$$$$		
-personal property	$$$$$		
Plant Cost Total	$$$$$		$$$$$[28]
Income Approach Plant			$$$$$
Appraisal Value Plant	$$$$$		$$$$$
2002			
Cost Approach Quarry			
-land	$$$$$	$$$$$	

25 Division's Exhibits 5 & 6.
26 Testimony of APPRAISER 5, Hearing Transcript pg. 670.
27 Division's Exhibit 21, Hearing Transcript pg. 670-672.
28 See County Exhibit 1, APPRAISER 4's Report, pg 2. However, APPRAISER 4 attributes this number to the Division.

-improvements	$$$$$	$$$$$	
-personal property	$$$$$	$$$$$	
-mineral reserves	$$$$$		
Quarry Cost Total	$$$$$	$$$$$	
Income of Quarry		$$$$$	
Appraisal Value Quarry	$$$$$	$$$$$	
2002			
Cost Approach Plant			
-land	$$$$$		
-improvements	$$$$$		
-personal property	$$$$$		
Plant Cost Total	$$$$$		$$$$$[29]
Income Approach Plant			$$$$$
Appraisal Value Plant	$$$$$		$$$$$

39. Quarry Value. In determining the value of the quarry, neither party followed in its appraisals the approaches specifically described in the statute and rule for valuing operating mines. Utah Code Sec. 59-2-201(3) specifies a capitalized net revenue method ("CNR"). Utah Admin. Rule R884-24P-7B discusses the CNR method as well as a discounted cash flow method ("DCF"). As described in the statute and rule these approaches are based on the capitalization or discounting of a cash flow related to the mineral extracted from the mine. The Commission affirms the DCF or the CNR are the preferred methods for the valuation of operating mining properties. Valuing operating mines on this basis leads to uniformity in assessments and may reduce the need for litigation in this area. Although this method was not employed in this proceeding, the Commission has several observations. First, had the quarry been valued using this approach it appears that the CNR method may have been higher than the value determined by Petitioner in its cost summation appraisal. Second, this approach is not consistent with the Division's theory that the quarry should be valued based on the income stream generated from the manufacture of cement. This notwithstanding, the Division prepared CNR valuations for the years at issue based on a representative price for the

29 See County Exhibit 2, pg. 2. Again this number was attributed to the Division.

limestone, but then disclaimed any contention that the CNR value represented the market value of the quarry. Had the Division based its appraisal on a CNR valuation or even offered Exhibit 21 as representing fair market value, the Commission would have considered that method.

40. PETITIONER used a cost approach to value the quarry. The Commission notes that a cost approach is one of the methods discussed in the statute applicable to valuing operating mining properties at Utah Code Sec. 59-2-201(3). However, the statute indicates, "In no event may the fair market value of the mining property be less than the fair market value of the land, improvements, and tangible personal property upon or appurtenant to the mining property." In its cost approach, PETITIONER not only added a value for the land, improvements and tangible personal property it additionally determined and added a value for the mineral reserve. One appraiser for PETITIONER valued the land and buildings, another the personal property, which when added for the 2001 appraisal totaled $$$$$. The Commission notes that this is similar to the value derived by the Division' in its cost approach, which was $$$$$. The Division did not place any weight on its cost approach indicating that the cost approach failed to value the mineral reserves. PETITIONER appraisers also recognized that adding only the value of the land, buildings and personal property failed to account for the mineral reserves and for this reason the third expert for PETITIONER determined a value for the mineral reserves, which was added in PETITIONER cost approach. APPRAISER 3's value for the reserves in place for 2001 was $$$$$ and when added to the cost of land, buildings and personal property this increased the cost approach value to $$$$$. The same method was used by PETITIONER to determine a value for the quarry of $$$$$, for the 2002 lien date.

41. APPRAISER 3 valued the reserve in place using what he referred to as a "relief-from royalty" method, which was based on the royalties that PETITIONER paid to the holder of the mineral rights, COMPANY A, for limestone acquired from QUARRY 2. These amounts were

approximately $$$$$ per metric ton. The Division criticized APPRAISER 3 for considering only the amount paid to the holder of the mineral rights, not the additional, and substantially higher amount, paid to QUARRY 2. However, the amount paid to QUARRY 2 was for extraction of the limestone from the quarry and shipping to QUARRY 1. If some portion of the amount paid to QUARRY 2 was also compensation for surface ownership rights, there is no evidence as to how much that would be, or in fact if that type of right existed. Absent evidence that there was some surface ownership right payment included in the price paid to QUARRY 2 that is separate from the amount for extraction, removal of overburden and shipping, the Commission agrees with APPRAISER 3 that in the cost approach summation appraisal submitted by PETITIONER, the appropriate amount to capitalize would be the approximately $$$$$ per metric ton paid to COMPANY A. As APPRAISER 3 value is added to a land, structure and personal property value, it should be a value for the mineral reserves in place, not a value for the extraction and shipping. Clearly if one were performing a CNR the value for the limestone should be based on an amount that includes the cost of extraction and removal of overburden and the larger amount paid to QUARRY 2 taken into consideration. However, in a proper CNR an additional value for land, improvements and personal property is not then added to the capitalized revenue stream.

42. It is the Division's position that the summation of a land value, improvement value, mineral reserve value and personal property value does not capture the synergies generated by having permits, a workforce in place and an operating quarry. In addition the Division argues that the comparables relied on by APPRAISER 2 to determine the land value are not good comparables pointing to zoning, railroad and road access issues. Although the Commission agrees that PETITIONER properties are dissimilar, the Commission notes that PETITIONER land value is supported by the Division's land value in the Division's cost approach. The Division also argues that PETITIONER land value does not include a value for any of the land development, and nothing

accounts for the cost or the added value of having the overburden removed, or the quarry opened. The Commission finds no evidence in the record, however, that would allow it to quantify these costs. The Division's appraisal value for the quarry was based on a discounted cash flow model using the income stream from the cement manufacturing plant instead of the income from the limestone.[30] This results in a combined unitary value of both the quarry and the cement manufacturing plant of $$$$$ for 2001and $$$$$ for 2002. Then the Division calculated an allocation factor of %%%%% for 2001 and %%%%% for 2002 to allocate the portion of the combined value attributable to the quarry.

43. The Commission finds the Division's appraisal approach to be inappropriate. The Division has assessment jurisdiction over only the quarry and should be determining a value of the quarry for property tax purposes. Instead the Division chose to value the much larger unit, the cement plant and quarry. However, based on the Division's own allocation factor, only a small fraction of the unit value is attributable to the quarry. The Commission has several concerns with this method, one of which is that the resulting value is the business value of the cement manufacturing plant, and does not necessary reflect the value of the quarry. The Commission notes that by using the income derived from the production of cement in its DCF, the Division has not, in fact, valued the mine at all. Another is that it is a less reliable method as many variables are introduced at the cement plant level and in determining the allocation percentage. In addition, despite the Division's arguments to the contrary, Respondent's approach is inconsistent with the rule and statute as discussed in the Conclusions of Law below.

44. Based on the weight of the evidence presented and the applicable law the Commission rejects the approach chosen by the Division in its appraisal. Taking into account that although CNR values were submitted in an exhibit they were not offered by the Division as

30 Division Exhibits 5 & 6.

representing market value, the Commission concludes that the best supported values for the quarry are those offered by PETITIONER in its appraisals for tax year 2001 and 2002. The Commission agrees with the Division that PETITIONER value may not include the synergies of an operating mine that would be captured in a DCF or CNR valuation, the preferred methods for valuing operating mining properties, and this is evidenced by the significantly higher values that resulted from the Division's CNR. However, the Commission must base its decision on the evidence before it.

45. Cement Manufacturing Plant. In determining the value of the locally assessed manufacturing plant, PETITIONER valued the plant based on a cost approach. Although the County had valued every other locally assessed manufacturing property on a cost approach basis, for the subject cement plant the County determined a unitary business valuation based on the combined plant and quarry, then allocated out the value of the quarry. In years prior to those at issue the Division had used a cost approach in determining the value for the cement plant and in fact for the subject years the Division had determined a cost value. It is clear that the County could have valued the cement plant on a cost basis, but chose not to use the approach.

46. In support of its approach, the County argues that the highest and best use of the quarry and plant are to operate as a unit and that they would be sold together as a unit. In considering this issue it is the position of the Commission that it is not dispositive for valuation and appraisal purposes that the separately assessed quarry and plant would be sold together if the fair market value can be determined through separate valuations. In this instance where the quarry is centrally assessed and the plant locally assessed, the Commission disagrees with the County and Division's combined discounted cash flow approach based on the income from the cement plant. Furthermore, the County and Division's position is clearly not supported by the statue and rule concerning the valuation of mining properties as argued by the County. The Commission rejects the Division and County's valuation of the cement plant.

47. The appraisal prepared by APPRAISER 1 and other experts for the cement plant was a cost approach, which summed the value of the land, improvements and personal property of the cement plant. Upon review of the evidence presented the Commission finds PETITIONER appraisal value as it pertains to the land and improvement values of the plant to be reasonable and not substantially refuted. The Commission also finds that APPRAISER 1's historic cost of the personal property was comprehensive and well supported. However, the Commission does take issue with the obsolescence adjustments for finish mills, cement storage silos and size.

48. In addition to applying the Personal Property Valuation Guides and Schedules set out at Utah Admin. Rule R884-24P-33 ("Valuation Schedules"), which he indicates accounted for physical deterioration,[31] APPRAISER 1 made additional obsolescence adjustments in the amount of $$$$$ for 2001 and $$$$$ for 2002. The Commission notes, however, that the Valuation Schedules are developed to account for all types of depreciation and obsolescence, not just physical deterioration.[32] APPRAISER 1's attempt to determine the obsolescence for the silos, finish mills and plant size appears to capture all functional obsolesce related to these items, not merely the excess functional obsolescence over the amount already addressed in the Valuation Schedules. Nevertheless, there could be adjustments for economic obsolescence or functional obsolescence attributable to the facility's size and configuration that would not be reflected in the tables.

49. APPRAISER 1 used a cost estimating method to establish the replacement cost for larger units-silos and finish mills. He then used the cost differential between the two as a measure of functional obsolescence. The Commission recognizes, as a general principle, that larger items or components of any type are generally less costly to construct than smaller ones, on a per unit basis. This cost differential in and of itself, however, is insufficient to establish functional obsolescence,

31 PETITIONER'S Exhibits 2&3 pg. 21.
32 "Percent good" means an estimate of value, expressed as a percentage, based on a property's acquisition cost or cost new, adjusted for depreciation and appreciation of all kinds." Utah Admin. Rule R884-24P-28.

particularly for property valued in the magnitude of $$$$$, and for a process as complex as the cement plant. The Commission believes that PETITIONER failed to demonstrate that functional inutility (not its measure) exists. That is, there is no evidence that the hypothetical larger units offer the same functional utility that the smaller units provide. The fact that two larger finish mills are less costly to replace than three smaller ones is not dispositive if PETITIONER actually needs or requires the three. The same holds true for the silos; no evidence was presented to persuaded the Commission that fewer, but larger, silos would have enhanced the functionality of the plant.

50. APPRAISER 1 testified, in part, that a green field facility would be built with an 800,000-ton capacity, or it would not be built at all.[33] PETITIONER, on the other hand, had entered into extensive studies to determine the proper sizing and configuration of the plant (admittedly not a green field plant) based, among other things on the expected demand.[34] Moreover, the majority of PETITIONER improvements were newly installed or CWIP as of the lien dates in question.

51. We find PETITIONER actual investment, after careful study, to be better evidence of fair market value than APPRAISER 1's mechanical calculations based on economies of scale. We found nothing in the record to indicate the existence of functional obsolescence such as excess operating inefficiencies, procedures, process, costs, etc. We also note that APPRAISER 4 effectively rebutted some of APPRAISER 1's contentions, considering, for example, PETITIONER internal memorandum stating that the third finish mill had some additional functionality that two mills would not have had.[35] We are not persuaded that PETITIONER additions were worth $$$$$ less than they paid for them before they even became fully operational.[36]

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33 Hearing Transcript, pg. 861.
34 Testimony of APPRAISER 4, Hearing Transcript, pg. 757-762, & County Exhibit 3.
35 Hearing Transcript, pg. 791 and County's Exhibit 3. (We reject, however, APPRAISER 4's contention that the cost of the (X) facility should be increased by $$$$$ to $$$$$. Hearing transcript, pgs. 784-785. We find no evidence in the record to establish what the additional cost would have been had the (X) facility been properly designed and built in the first place. The incremental cost of tying in the rebar may or may not have been significant. See Hearing Transcript, pgs.830-831. It is clear, however, that the true replacement cost would not have equaled the cost of building the facility, removing the construction flaw,

52. Based on the reasons listed above, the Commission accepts the portions of the cost approach set out in PETITIONER appraisal with the exception of the additional obsolescence adjustments made for the silos, finish mill and plant size. The Commission concludes the value of the cement manufacturing plant is $$$$$ for 2001 and $$$$$ for 2002.

APPLICABLE LAW

The Utah Constitution mandates that all tangible property in the state shall be taxed. Utah Const. Article XIII, Section 2(1) provides as follows:

> All tangible property in the state, not exempt 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.

The Utah Constitution also requires the Legislature to enact provisions to equalize the tax burdens. Article XIII, Section 3(1) provides in relevant part:

> (1) The Legislature shall provide by law a uniform and equal rate of assessment on all tangible property in the state, according to its value in money, except as otherwise provided in Section 2 of this Article. The Legislature shall prescribe by law such provisions as shall secure a just valuation for taxation of such property, so that every person and corporation shall pay a tax in proportion to the value of his, her or its tangible property, . . .

Consistent with the Constitutional provisions to tax all property at its fair market value, the Legislature enacted Utah Code Ann. Sec. 59-2-103, which provides as follows:

> (1) All tangible 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.

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and rebuilding the flawed portion again.)

36 We acknowledge the examples of (X) and the (X) raised by APPRAISER 1 in his testimony. Hearing Transcript pgs. 868-869. Absent a more persuasive explanation of why similar economic or functional obsolescence should be applied here, however, we believe the actions taken by PETITIONER are more indicative of fair market value than APPRAISER 1's testimony.

Utah Code Ann. Sec. 59-2-201 describes which classes of property must be centrally assessed. The relevant parts of section 59-2-201 provide:

> (1) By May 1 of each year the following property . . . shall be assessed by the Commission at 100% of fair market value, as valued on January 1, in accordance with this chapter: (a) all property which operated as a unit across county lines, if the values must be apportioned among more than one country or state; (b) all property of public utilities; (c) all operating property of an airline, air charter service, and air contract service; (d) all geothermal fluids and geothermal resources; (e) all mines and mining claims except in cases, as determined by the commission, where the mining claims are sued for other than mining purposes, in which case the value of mining claims used for other than mining purposes shall be assessed by the assessor of the county in which the mining claims are located; and (f) all machinery used in mining, all property or surface improvements upon or appurtenant to mines or mining claims. For the purposes of assessment and taxation, all processing plants, mills, reduction works, and smelters which are primarily used by the owner of a mine or mining claim for processing, reducing, or smelting minerals taken from a mine or mining claim shall be considered appurtenant to that mine or mining claim, regardless of actual location.

Utah Code Ann. Sec. 59-2-102(9) defines "fair market value" in relevant part, as follows:

> (9) "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. Sec. 59-2-201(3) provides the method to be used in determining the value of mining property as follows:

> The method for determining the fair market value of productive mining property is the capitalized net revenue method or any other valuation method the commission believes, or the taxpayer demonstrates to the commission's satisfaction, to be reasonably determinative of the fair market value of the mining property. The rate of capitalization applicable to mines shall be determined by the commission, consistent with a fair rate of return expected by an investor in light of that industry's current market, financial, and economic conditions. In no event may the fair market value of the mining property be less than the fair market value of the land, improvements, and tangible personal property upon or appurtenant to the mining property.

The Commission has adopted Utah Admin. Rule R884-24P-7 for further guidance on the valuation of state assessed mining properties. The relevant portions of that rule are:

12. "Net cash flow" for the discounted cash flow method means, for each future year, the expected product price multiplied by the expected annual production that is anticipated to be sold or self-consumed, plus related revenue cash flows, minus allowable costs.
13. "Net revenue" for the capitalized net revenue method means, for any of the immediately preceding five years, the actual receipts form the sale of minerals)or if self-consumed, the value of the self-consumed minerals), plus actual related revenue cash flows, minus allowable costs.
. . .
16. "Product price" for each mineral means the price that is most representative of the price expect o be received for the mineral in future periods.
. . .
b) If self-consumed, the product price will be determined by one of the following tow methods:
(1) Representative unit sales price of like minerals. The representative unit sales price is determined from: (a) actual sales of like mineral by the taxpayer; (b) actual sales of like mineral by other taxpayers; or (c) posted prices of like mineral; or
(2) If a representative unit sales price of like minerals is unavailable, an imputed product price for the self-consumed minerals may be developed by dividing the total allowable costs by one minus the taxpayer's discount rate adjusted to a cost that includes profit, and dividing the resulting figure by the number of units mined.
. . .
18. "Self-consumed minerals" means the minerals produced from the mining property that the mining entity consumes or utilized for the manufacture or construction of other goods and services.
. . .
B. Valuation.
1. The discounted cash flow method is the preferred method of valuing productive mining properties. Under this method the taxable value of the mine shall be determined by: a) discounting the future net cash flows for the remaining life of the mine to their present value as of the lien date; and b) subtracting from that present value the fair market value, as of the lien date, of licensed vehicles and nontaxable items.
2. The mining company shall provide to the Property Tax Division an estimate of future cash flows for the remaining life of the mine. These future cash flows shall be prepared on a constant or real dollar basis and shall be based on factors including the life-of-mine, mining plan for proven and probable reserves, existing plant in place, capital projects underway, capital projects approved by the mining company board of directors, and capital necessary for sustaining operations. All factors included in the future cash flows, or which should be included in the future cash flows, shall be subject to verification and reviewed for reasonableness by the Property Tax Division.
3. If the taxpayer does not furnish the information necessary to determine a value using the discounted cash flow method, the Property Tax Division may use the capitalized net revenue method.
. . .

CONCLUSIONS OF LAW

1. When a taxpayer protests its property tax assessment, the Division "must present the available evidence supporting the original valuation" and "[o]nce that is done, the taxpayer" is required to "meet its twofold burden of demonstrating substantial error or impropriety in the [original] assessment, 'and providing' a sound evidentiary basis upon which the Commission could adopt a lower valuation." Utah Railway Co. v. Utah State Tax Comm'n, 5 P.3d 652, 655, 656 (Utah 2000), quoting, Utah Power & Light Co. v. Tax Comm'n, 590 P.2d 332 (Utah 1 979). As a general rule, the "original valuation is entitled to a 'presumption of correctness.'" Id. at 656. "This presumption does not arise, however, unless and until available evidence supporting the original property valuation is submitted to the Commission." Id. In the present matter, the original assessment was abated by the Commission's Amended Order Granting Petitioner's Partial Motion for Summary Judgment, dated May 2, 2003. The County then issued its original assessment of the cement plant as ordered in the Summary Judgment proceeding. However, the County did not present at the Formal Hearing the evidence supporting its original assessment. The appraisals submitted by the County as evidence at the Formal Hearing indicated new values for the locally assessed properties. For that reason County is not entitled to the presumption of correctness on its appraisal values.

2. The Tax Commission has already determined that the limestone quarry is a centrally assessed property and the cement plant a locally assessed property for the reasons indicated in its Amended Order Granting Petitioner's Partial Motion for Summary Judgment, dated March 4, 2002 and Amended Order Denying Reconsideration, dated May 2, 2002. The Commission incorporates those decisions into this record by reference. In addition the Commission notes that the separate value conclusions for the quarry and cement plant, with a quarry being only a small fraction of the value of the plant, supports the Commission's conclusion in the prior orders that the cement plant was not appurtenant to the quarry for purposes of determining whether it was subject to central assessment.

3. Despite the Division's arguments, the Division's valuation of the quarry based on the cash flow generated from the cement plant is contrary to the applicable statute and rule on mine valuation. The Commission recognizes that for years prior to the subject years the Division assessed both quarry and cement plant. However, the Commission now expects the Division to value the centrally assessed property as a limestone quarry. Utah Code Sec. 59-2-201 and Utah Admin. Rule R884-24P-7 indicate the preferred method to value productive mining property is a capitalized net revenue or discounted cash flow analysis based on the net cash flow from the mineral extracted from the mine. The net cash flow is based in part on the "product price" times the amount of production that is anticipated to be sold or self-consumed. Utah Admin. Rule R884-24P-7(12). The "product price" is specifically defined at Utah Admin Rule R884-24P-7(16)(b), which indicates that if "self-consumed, the product price will be determined by one of the following two methods." One of the methods specified is a representative unit sales price. The rule specifically considers valuation of mining operations where the product is self-consumed as is the case with PETITIONER QUARRY 1. Nowhere in the rule is it suggested that the self-consumed minerals should be valued based on the price of the final manufactured product whose manufacture consumes the mineral. The rule indicates to the contrary, that the value of the self-consumed mineral should be based on a representative or imputed price for the mineral. The limestone extracted from QUARRY 1 is self-consumed for purposes of Utah Admin. Rule R884-24P-7(A)(18) and the Division's Appraisal approach to valuing the quarry is contrary to the rule.

4. The County's method of valuing the cement plant using a unitary business valuation technique for both quarry and cement plant and then allocating a portion of the value to the cement plant is not supported by statute and rule as claimed by the County. The expert for COUNTY, APPRAISER 4, argued that the unitary income approach he relied on was appropriate and "in line with Utah statute [59-2-201(3)] and Tax Commission Administrative rules[R884-24P-7B(1).]"[37] The Commission notes that neither

37 County's Exhibit 1 & 2, pg. 2.

the cited statute or rule support the County's position, as they apply specifically to the valuation of productive mining property, not manufacturing plants.

5. The County points out that the highest and best use of the quarry and plant are to operate together as a unit and that they would be sold together as a unit. Based on this it was the County's conclusion that the value should be determined using a unitary business valuation approach of the combined mining and manufacturing operation. In considering this issue, and the fact that only the cement plant is locally assessed, it is the position of the Commission that it is not dispositive for valuation and appraisal purposes that the quarry and plant would be sold together, if the fair market value can be determined separately. In addition the County's method is not uniform with other manufacturing properties located within the County. Typically when a locally assessed property is valued on an income approach for property tax purposes, the income stream used comes from what the property would rent for, not the income generated from the business activity. For example, for locally assessed property tax purposes a grocery store property is valued based on typical rental income, not the income generated from the sales of the food items. In COUNTY, moreover, for the years at issue, other locally assessed manufacturing properties were valued on a cost basis, not an income basis. Regardless, the County argues that the ties between the mining property and manufacturing property require a business valuation typical of that done for centrally assessed properties to be performed on the locally assessed cement plant, regardless of the fact that less than 8% of the total value is attributable to the centrally assessed property. The Commission regrets the County's methodology and concludes that it would be appropriate to value the subject manufacturing plant on a cost basis, the same basis as other similar properties in the County.

6. The County argued PETITIONER should be restricted to the same valuation method as the County based on the County's budget limitations. A property owner is not limited by law to the same valuation method used by the County, or the method that may be the less costly for the County to apply for mass assessment purposes. Considering the County has valued all other manufacturing properties within its

boundaries on a cost basis and the complexities of the approach used by the Division and County in their appraisals, this is a curious argument. Furthermore, it is possible, in fact probable, that an individual taxpayer may not have the resources necessary to do a mass appraisal, especially when statistical techniques are involved. It is not logical, and would be a denial of due process, to force taxpayers to use county appraisal methods that are cost prohibitive for the taxpayer, while at the same time forcing other taxpayers to use county methods because other methods are cost prohibitive to the county. The Commission is charged by law to determine the fair market value based on the weight of the evidence presented and it would be improper for the Commission to deny taxpayers the right to use acceptable valuation and appraisal methods. There are no grounds for the Commission to base its decision on the budgets constraints of the County under the current applicable constitutional and statutory provisions.

7. The Valuation Schedules were intended to take into account obsolescence of all kinds. Utah Admin. Rule R 884-24P-33 (4) provides, "Percent good" means an estimate of value, expressed as a percentage, based on a property's acquisition cost or cost new, adjusted for depreciation and appreciation of all kinds." Certainly how fast categories of property are likely to become technologically or functionally obsolete is taken into account in determining the percent good. However, it appears that APPRAISER 1 applied the schedules as a means to account only for the physical deterioration of the personal property, not the other types of obsolescence that are also included. It is possible that the schedules may not account for types of economic obsolescence and also possible that there is excess functional obsolescence in the subject property over the amount included in the schedules. However, the Commission notes that the obsolescence adjustments made by APPRAISER 1 in this matter were primarily functional and his calculation of the amount of obsolescence would have captured all obsolescence and were not directed to determining the excess obsolescence over the amount included in the Schedules. In addition, the Commission has concerns that the size adjustment was not appropriate, based on the issue of excess capacity, the intense design work

done by PETITIONER, PETITIONER actual investment decisions, as well as other arguments offered by the County. For that reason allowing APPRAISER 1's additional obsolescence adjustments is rejected.

8. Based on the evidence submitted into the record in this matter, the Commission finds that PETITIONER established errors in the original assessment and that the appraisal and valuation testimony provided by PETITIONER provides a sound evidentiary basis for a lower value for both the quarry and cement plant. However, the evidence does not support reducing the value of the subject property to PETITIONER appraisal values.

DISCUSSION

In this matter it is apparent that despite the Tax Commission's earlier decisions that the plant should be locally assessed, the Division and County continued to value the subject properties on the same combined unitary basis as had been done when both plant and quarry were centrally assessed. They offered various arguments for this approach. For one, they argued that it was supported by the statute and rule concerning the valuation of mining property, an argument that the Commission determines to be clearly erroneous. They point out that if sold, the mine and quarry would most likely be sold together and that the highest and best use was to operate them together, so they should be valued on a unitary approach. In addition they argue that the combined valuation approach is easier for the County to implement.

However, the Commission concludes that in these circumstances where one property is locally assessed and one centrally assessed, it is not dispositive for valuation and appraisal purposes that the mining and manufacturing property would be sold together if fair market value can be determined through separate valuations. Furthermore, there is no statutory provision for any property to be valued on a unitary basis other than specified in Utah Code Sec. 59-2-201 and Utah Admin. Rule R884-24P-62. Both of these refer specifically to property operating as a unit across county lines, utilities, energy, transportation companies and possibly mines. Nothing provides for unitary valuation on locally assessed property or property that would "sell" as a unit. There is no basis for the value of a manufacturing/industrial operation to be allocated

to its raw material base or source. There is no basis for the value of a locally assessed property to be allocated to a centrally assessed property. The assessment of mines is a separate and distinct statutory requirement from utilities, energy, and transportation companies, i.e., unitary property. It is only the latter, along with other property that crosses county lines, where apportionment is required.

Generally, for tax purposes, different approaches have been used for the valuation of centrally assessed or locally assessed property. For centrally assessed purposes the income approach is based on the income stream from the business operations. This type of business valuation is expressly allowed in statutes and rules governing the valuation of centrally assessed property, including the statutes and rules applicable to valuing operating mining property.[38] The resulting value includes the added value of synergies present in an operating concern. The courts have indicated in the centrally assessed arena it is proper to include for assessment purposes the added value of the synergies of a going concern, after proper deductions for intangibles.[39]

Counties traditionally do not use a business valuation approach for locally assessed properties and, unlike the centrally assessed properties, the statutes and rules do not specifically provide for this type of method. Counties value locally assessed properties using one or a combination of cost methods, market sales methods and income approaches. However, the income approach is typically limited to the rental income that would be generated if the property was leased, not the income generated from the business operation. The evidence in this matter indicated that COUNTY had valued all other manufacturing properties in the county using a cost approach. The Commission finds that the subject cement manufacturing plant should be valued in a manner consistent with all other locally assessed manufacturing plants in the County.

Additionally Respondent and the County argued that the cost approach was too difficult or costly to perform. It would be improper for the Commission to issue a decision in this matter solely on the basis of what type of valuation method would be less costly for the County to perform. In addition,

38 See Utah Code Ann.59-2-201(3) & Utah Admin. Rules R884-24(P)-7 & R884-24(P)-62.

considering a cost approach had been performed on the subject property for prior years, on the subject property for the years at issue, as well as for all other manufacturing plants in COUNTY, it is difficult to accept the County's argument. The Commission notes the cost approach is generally performed by the Division for all centrally assessed properties and along with the income approach given some weight. In this matter, although a cost approach value had been prepared by the Division it was given no weight. The Division argued it gave its cost approach no consideration in determining the value of the quarry because it did not include a value for the mineral reserves. PETITIONER attempted to correct this deficiency in its own cost approach by adding a value for the mineral reserves. The County, in explaining why it disregarded the cost approach in its assessment for the cement plant, also argued that it failed to take into account the reserves. This, however, is not relevant to the value of the cement manufacturing plant, which has no reserves.

After reviewing the evidence, appraisals and various arguments presented by the parties the Commission notes that in their appraisals both PETITIONER and the Division disregarded Utah Admin. Rule R884-24P-7 which specifically dictates the preferred method for valuing productive mining properties to be a DCF method and goes on to indicate if the property owner does not furnish information necessary to perform the DCF valuation, than the Division may use the CNR. It is the Commission's position that it was certainly possible to perform the CNR based on the information available, and in fact the Division did so and submitted it as a separate exhibit. Had the Division offered the CNR exhibit as being representative of market value or made it the basis for its appraisal of the quarry, the result may have been a different decision on the value of the quarry. Had the approach been offered, of course, PETITIONER would have had the chance to refute it.

Considering the valuation of the cement plant, the Commission concludes that it is inappropriate to perform a centrally assessed type business valuation of the locally assessed property, when other locally assessed properties in the County are not valued on that basis. However, based on the evidence

39 Wiltel, Inc. v. Beaver County v. Property Tax Division, 995 P.2d 602 (Utah 2000).

submitted in this matter concerning the issue of obsolescence and considering the intent of the Valuation Schedules, it is the position of the Commission that PETITIONER has over deducted obsolescence in the personal property.

DECISION AND ORDER

Based on the evidence and argument presented in this matter the Commission finds that the market value of the taxable centrally assessed property for the lien date January 1, 2001, to be $$$$$ and for the lien date January 1, 2002 to be $$$$$. For the locally assessed property the Commission finds the value for the January 1, 2001 lien date to be $$$$$ and for the 2002 lien date to be $$$$$. It is so ordered.

In addition, to the extent that this order contains confidential "commercial information" pursuant to Utah Code Sec. 59-1-404 or protected pursuant to the Protective Order, the parties are hereby ordered to refrain from disclosing such information outside this proceeding.

DATED this ____ day of _____, 2004.

_____
Jane Phan
Administrative Law Judge

BY ORDER OF THE UTAH STATE TAX COMMISSION:

The Commission has reviewed this case and the undersigned concur in this decision.

DATED this ____ day of _____, 2004.

Pam Hendrickson
Commission Chair

R. Bruce Johnson
Commissioner

Palmer DePaulis
Commissioner

Marc B. Johnson
Commissioner

NOTICE: You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Commission pursuant to Utah Code Ann. Sec. 63-46b-13. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Ann. Secs. 59-1-601 and 63-46b-13 et. seq.

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