BOARD OF ASSESSMENT APPEALS
STATE OF COLORADO
Docket Number 36725

ORDER

STORAGE TECHNOLOGY CORPORATION,

Petitioner,

vs.

BOULDER COUNTY BOARD OF EQUALIZATION,

Respondent.

THIS MATTER was heard by the Board of Assessment Appeals on November 3 through November 6, and on November 17, 2000, Harry J. Fuller, J. Russell Shaw, and Karen E. Hart presiding. Petitioner was represented by James D. Butler, Esq. Respondent was represented by Robert R. Gunning, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

BLDG 1 & LAND OF ID#0031110, BLDG 2 & MEADOW HAY LAND, BLDG 2A & DRY FARM LAND, BLDG 3, BLDG 4, BRICK OFFICE (Boulder County Schedule Nos. 0031110-01 through 0031110-10)

BLDG 5 & LAND OF ID#0080976, BLDG 7 & DRY FARM LAND, BLDG 8 & MEADOW HAY LAND, WELLNESS CENTER & IRRIGATED CROP LAND, BLDG 9 & GRAZING LAND, FCC TEST FACILITY, CENTRAL UTILITIES BLDG (Boulder County Schedule Nos. 0080976-01 through 0080976-07)

BLDG 6 & LAND (Boulder County Schedule No. 0103535)

Petitioner is protesting the 1999 actual value of the subject property, an industrial facility containing 1,674,193 square feet of building improvements located on 151.15 acres of industrial land. There are also 172.37 acres of agricultural classed land that are not under appeal.

ISSUES:

Petitioner:

Petitioner contends that the subject property should be valued as a multi-tenant facility. In advocating this position, Petitioner believes that such a determination would not violate the spirit of highest and best use as applied in appraisal doctrine and Colorado statute. The Petitioner's sales comparison analysis and value conclusion is based on this premise. Auxiliary issues to Petitioner's appeal include: the possible price versus the probable price, and deferred maintenance versus repairs and replacements

Respondent:

Respondent contends that the subject property was appropriately valued using all three approaches to value. The Respondent further believes that qualifying the facility in any context other than current use, which is single-user status, would violate the spirit of highest and best use as applied in appraisal doctrine and Colorado statute. In its sales comparison analysis, Respondent takes a more conservative position with respect to potential purchasers for, and maintenance/repairs applicable to the subject facility.

FINDINGS OF FACT:

1. Both parties stipulated as to the property under appeal being the industrial portion of the facility. The building square footage is 1,674,193 square feet located on 151.15 acres of industrial land. The additional 172.37 acres of Petitioner's property is classified as agricultural and is not under appeal. Any value conclusion of the Board will need to have the value of the agricultural land, $13,100.00, added to the total value. The assessment date is January 1, 1999, with a level of value date of June 30, 1998.

2. The Board conducted a "view" of the subject property on November 3, 2000.

3. Petitioner's witness, Mr. Dennis J. Foote, Director of Facilities Management Services for Storage Technology Corporation (STK), testified that he oversees the building maintenance, construction, security, environmental health and safety, etc., at the Louisville facility.

4. Mr. Foote identified the location of the facility and buildings on a series of exhibits. He testified that the East Side Café, shown as Building 13 on the facility maps, was built after January 1, 1999, the assessment date for this hearing.

5. Mr. Foote reviewed the list of 13 improvements on Exhibit F and verified the square footage and year of construction for each of the buildings on the list. The buildings ranged in size from 3,264 to 482,734 square feet and in year of construction from 1970 to 1995.

6. Mr. Foote identified a series of photographs of both the exterior and interior of the subject property that he believed were taken in either May or June of 2000 by a STK photographer. Exhibit W was offered as a basic configuration of a clean room. It was functioning on the assessment date, but has since been discontinued.

7. Mr. Foote then proceeded to testify as to further detail for each of the buildings, noting the year built, the number of stories, any area located below grade, and the direction from which the photographs had been taken. Building 1 is the first building that was constructed. Buildings 1 and 2 share a wall. Building 3 has a passenger elevator. Building 4 has a unique, stamped concrete entrance. Buildings 4 and 5 are connected by the interconnect lobby. Building 5 has a 2-story, auto-retrieving warehouse unit. Building 6 is the only building located on the south side of Tape Drive. Building 7 has a mezzanine area. Buildings 8 and 9 were originally constructed as warehouses but are currently utilized as a combination of office, manufacturing and lab space.

8. The Wellness Center has a running floor over the gymnasium, which is considered the 2nd floor of the building. The Wellness Center and some smaller outbuildings are the only buildings built with a different type of construction. All of the other buildings have an exterior of exposed aggregate pre-cast panel construction with black painted concrete seams. The windows are “slit” type, which are narrow and tall and provide little lighting.

9. The Central Utilities Plant (CUP) contains the centralized utilities for the manufacturing and laboratory buildings. It provides chilled water to Building 8, hot water to Buildings 7 & 8, and compressed air to the entire campus.

10. The FCC building is used to test products for FCC compliance, such as verifying that their products do not cause radio interference for aircraft.

11. Mr. Foote testified that the space at the facility is classified as Type A through Type H. The various classifications are assigned according to use of the space and particular physical features, such as raised floors or ceilings types. Some of the space has been remodeled subsequent to the assessment date, but Exhibits H and J are records of the type of space as of January 1, 1999. The executive offices were 80% complete as of the assessment date. The newly remodeled cafeteria, which included enlarged windows, was completed as of January 1, 1999.

12. Mr. Foote gave a general description of the different types of space, including the differences between typical, above typical and below typical office space, common areas, lab differences, and classrooms. Due to the type of building construction, there is very little natural lighting and many areas have no windows. Some remodeling has occurred to add skylights, larger windows, and indirect lighting fixtures. Some of the hallways were remodeled after the assessment date.

13. The portions of Exhibit I that are pertinent to the subject property are the codes LSVL-01 through LSVL-09, MISC, and Well (for Wellness Center).

14. Mr. Foote then proceeded to conduct a tour of the facility. The Board was shown samplings of the different types of facility space. The majority of office space consists of modular office area. Various portions of the buildings have been upgraded and remodeled since 1997. There are four passenger elevators located at the facility. Building 8 has the largest floorplate and a backup system for chilled water. Building 8 also has chemical contamination in the duct system from the clean-room operations. Building 4 has the only area of glass-walled offices. The running area in the Wellness Center is not included in the building square footage. Building 6 had been previously sold by STK and then was subsequently reacquired. The electrical service for the facilities is provided by Public Service. The water and sewer service is provided by the City of Louisville, but STK has a sewage pump station connected to the Louisville system. Buildings 1, 2, and 3 share common boilers. Building 3 has separate rooftop coolers. Buildings 2, 4, 6, and 9 have backup heating and cooling systems. The CUP plant was designed for expansion.

15. Mr. Foote testified as to some physical condition issues. The exposed aggregate rock exterior of the building requires periodic sealing. The sealing has not been done due to a lack of budgeting, and some damage has occurred. The joints between the aggregate panels require periodic caulking. The majority of the parking lots have numerous cracks and some areas are heaving. Three parking lots have been replaced since 1997.

16. The hearing resumed on November 6, 2000, with Petitioner's witness, Mr. Dennis Foote recalled.

17. Mr. Foote described his educational background in civil engineering. He has worked at STK for 2.5 years, having started his employment in March of 1998. He was hired as the facilities manager and was promoted to director of facilities. His expanded duties involve issues related to STK land holdings located throughout the world, as well as environmental issues.

18. Mr. Foote testified that the STK facility has many inefficiencies due to the way it was constructed and subsequently utilized. The campus is spread out. There is no particular Research and Development (R&D) space in a central location, which results in equipment duplication. Employees spend a lot of time going to other buildings on campus. Employees must use their cars to go from one building to another. STK is in a competitive market for employees with many other high-tech companies in the area. They have interviewed employees and potential employees after their employment decisions were made. Frequently, the condition of the facilities, specifically the office space, contributed their decision to work elsewhere.

19. If Mr. Foote were to design a facility for STK, he would do so with a single location R&D lab area with support office areas surrounding it. If the facility had been available for sale on the assessment date, he would have recommended that it not be purchased due to problems with employee hires, the cost to maintain the buildings, and the inefficiency of the campus. Exhibit BB contains the floor plans of the major buildings as they were on January 1, 1999.

20. Mr. Foote identified a series of photos contained in Exhibit EE that were

examples of deferred maintenance at the STK facility, including caulking needs and parking lot repairs. The parking lots have never been properly maintained. The cracks and alligatoring in the pavement should have been sealed on an annual basis. The only parking lot repairs that were made were patching of areas that suffered repair needs of at least 100 square foot.

21. Mr. Foote testified that the Facilities Management Office maintains records of projected capital and expense items that need repaired, replaced and improved. The project spending is calculated for a 10-year period. Exhibit CC is a summary of the projected expenditures for Repairs and Replacements (R&R) of equipment, buildings, and grounds. Mr. Foote proceeded to explain the various headings and entries in the exhibit. The chart is a work in progress. Everything on the chart would have been discoverable on January 1, 1999, with the exception of the Honeywell fire detection system. It was not discovered until this summer that it needed replaced, at a cost of $2.5 million.

22. Mr. Foote described various areas of the chart repairs in detail. The electrical panels, switch gears, etc., have become obsolete or do not meet code, and there are some general short circuit issues throughout the campus.

23. The fire protection issues include the replacement of buried pipe that has deteriorated for Buildings 1, 2, and 3, as well as the replacement of fire pumps at the duck pond. The current pumps are below grade and subject to flooding, due to a design flaw. The concrete bunkers the pumps are located in are cracked and seep water. The pumps are located less than 15 feet from the pond. STK was asked to replace them by their insurance carrier.

24. The HVAC systems included replacement and repair of cooling towers, chillers, and boilers, as the equipment has reached the end of its useful life. They are functioning but are failing. A typical life would be 15 to 20 years. Most of the buildings have reached this range of life.

25. The lighting is for the replacement of older lighting systems on the campus, which would be an energy efficiency upgrade.

26. The major plumbing item is the replacement of the water system in Building 2. The system is made of PVC, and numerous fittings have cracked and caused leakage and emergency shutdowns.

27. The painting category is for the sealing of the exterior aggregate, interior painting through the campus, and the repainting of the black stripes on the exterior walls.

28. Roofing is for the replacement of Building 5's roof and the recoating of metal roofs on some buildings, as well as repair of some small outbuilding roofs. Building 5's roof has been leaking and requires buckets and trays set in the ceiling to catch the leakage. There has been water damage to computer equipment, ceiling tiles, carpet, etc. The Building 5 roofing problems were anticipated because of its age.

29. Mr. Foote testified that the projected level of expenditures over the 10-year

period is approximately $2.4 million per year.

30. Mr. Foote testified that STK keeps historic records of these types of repairs. Exhibit DD is a summary of what was spent for R&R for 1997 and 1998. The following pages are the tracking of projects and the actual expenditures can be found in column H. Each project is tracked by major categories. It does not reflect all categories, just the four main categories listed on the summary page. The $2.4 million is an expected cost and may even be low due to the age of the buildings.

31. Mr. Foote testified as to the type of space that STK had at the Longmont facility and explained the related exhibits. STK still owned the Longmont facility in the fourth quarter of 1996. They sold the property, but were leasing back a portion of the facility as of the assessment date.

32. Under cross-examination, Mr. Foote described the subject property as an industrial site for manufacturing, R&D, and supporting office personnel. He testified that campus-type facilities were more popular years ago than today. Other facilities he is aware of have a campus type setting, with the buildings connected.

33. Mr. Foote agreed that the cafeterias and the Wellness Center would be considered employee amenities. He estimated approximately 25% of employees need to traverse from building to building on a daily basis. As of January 1, 1999, there were approximately 3,500 employees. Regarding the surveys of potential employees, factors other than the conditions of the office space were career opportunities, the years the company had been in business, and the company's financial stability. As of January 1, 1999, the most preeminent factor according to potential employees was the condition of the buildings.

34. He has been involved in and made recommendations regarding the acquiring of properties. He admitted that his ideal campus would cost more than $45 per square foot for new construction. He interprets finished space as having dropped ceilings, finished walls, drywall construction, and having either tile or carpet on the floor. He referred to Exhibit J and testified that he considers 7% of the facility to be finished. He agreed that it is less expensive to retrofit modular office space than fixed office space. Modular office space at the facility has increased over time; 69% of the offices, in number, are modular office space.

35. Mr. Foote explained the differences between Respondent's Exhibit 7 and Petitioner's Exhibits H and J. Exhibit J is more current than Exhibit 7. The pre-1997 space is the mezzanine space shown in Exhibit Z. All of the type A office space has been built or renovated throughout the 1990s, with a good portion being renovated between 1996 and 1999. He agreed that the office space could be further divided into other categories. A below typical office space is equivalent to or better than pre-1990 office space.

36. The CUP plant was constructed in 1995. It was intended to centralize utilities to increase efficiency. It has not been expanded to support all of the buildings yet, however, he believes it has resulted in lower monthly operating costs. Only Building 8 has

experienced lower equipment replacement costs, which is due to the chilled water provided by the CUP. Most of the buildings have a back-up source of heating, cooling, and compressed air, except Building 4, first floor manufacturing, which is supported by Building 5, and Buildings 1 and 2, that share chillers and boilers. Also, Building 2 does not have a backup of compressed air.

37. Mr. Foote reiterated that the buildings have not been adequately maintained. Specifically, the roofs and parking lots, building interiors including carpeting and paint, exterior paint and coating, plumbing systems, i.e., fire main system in Building 2, water main system, and lighting systems. The Storage Tek facility met only bare minimum requirements of the company as of January 1, 1999. His definition of deferred maintenance is maintenance that was not taken care of in time. If something has reached the end of its life, even through normal wear and tear, and has not been repaired, it would be deferred maintenance.

38. Regarding Exhibit 8, Mr. Foote testified that his department compiled the data. Some of the items were capitalized. Information in this exhibit has been superceded by the wall chart used for the development of Exhibit CC. A good portion of Exhibit 8 is still accurate, but items such as HVAC are different. Exhibit 8 was prepared by people that no longer work for STK, and he has less confidence in it. He discussed certain repair and replacement issues and certain deferred maintenance with Mr. Letman when he toured the facility.

39. Regarding Exhibit CC, Mr. Foote testified regarding the difference between repairs and replacement versus deferred maintenance. Examples of non-deferred maintenance would be a chiller that is functioning but reaching the end of its life, and flooring materials like carpet showing signs of wear but not needing replaced immediately. The items scheduled for replacement in years 6 through 10 are more replacements than deferred maintenance. None of the lighting or plumbing issues are due to a lack of preventative maintenance. Mr. Foote then proceeded to explain some of the line items in Exhibit CC in more detail.

40. The American Disabilities Act (ADA) issues in Exhibit CC are what they feel should be done for the employees according to ADA, but are not a legal obligation. STK is in full compliance with the ADA, according to the letter of the law.

41. Regarding the asphalt line item, the amounts are a result of a lack of maintenance and normal wear and tear. Some of the parking lots are original and most need replaced. Asphalt usually has a 15-year life. All of the lots are at least 18 years of age, except the lots around the CUP and Wellness Center. Three lots were replaced in 1998 and 1999. The replacement schedule for the parking lots is spread out fairly equally over time by design, even though they need repair now.

42. The electrical expenditures will not increase the efficiency of the electrical systems. The only repair due to a lack of maintenance would be the short circuit repairs: Item 253 for $100,000.00. The HVAC is primarily needed due to the equipment age and useful life. It does not include the office space thermostat controls.

43. Regarding Exhibit 18, Mr. Foote admitted that it was prepared by STK employees. Generally he agrees with the information, with the exception of what they considered a condition rating. He would consider the condition to be how well it is performing today. He would also consider the age of the equipment. The HVAC's are in varying states of condition. Most are in good condition. The HVAC's in Buildings 3 and 6 are in average condition. Only Buildings 7 and 9 are in poor condition. An HVAC usually will operate for 15 years, chillers and boilers in the 20-year range. The HVAC's on the majority of the buildings are less than 15 years old.

44. The painting is an ongoing maintenance program. Unless it is needed in the customer or executive area, the painting will fall to the bottom of the priority list. The exterior aggregate sealing expense amount was determined in conversations with coating contractors, not by written bids. That is typically the way they budget due to the large number of projects. Typically, they use their own engineering staff estimates on a per square foot basis.

45. Exhibits 13 and 14 were prepared in the summer of 2000 and are accurate as of November of 2000. Only 4.5 of the buildings had roofs 10 years old or older as of the assessment date. The Building 2 roof was replaced after January 1, 1999, but some portions of the roof were replaced prior to 1999. The roof on the lower portion of Building 2 was not obligated for repair as of the assessment date. Three of the roofs are metal roofs that must be recoated periodically to prevent moisture getting to the metal. Usually they are re-coated with foam or an ultra-violet resistant, vinyl-type coating that is flexible.

46. Regarding Exhibit DD, AR's are Appropriation Requests for capital expenditures. They were not entered into contracts on January 1, 1999. The funds were approved earlier in the year, but the purchase orders were canceled due to the financial situation of STK.

47. Exhibit 12 was prepared by Bill Bachelor, an ex-employee who was Manager of Facilities for STK. It was prepared to document deferred maintenance as of January 6, 1997. The information is updated once a year. It was relied upon to prepare Exhibit 8. The exhibit reflects deferred maintenance for the Longmont facility, which was sold. The Longmont facility suffered deferred maintenance of $4,584,900.00 for the projects identified in the report. The Longmont projects included parking lot and roadway replacement and roofing repair and replacement. He does not know if any of the items were repaired or replaced.

48. Regarding Exhibit CC, the repairs listed in the 6 to 10 year category are not as pressing as those in the 1 to 5 year category. About $3 million is deferred maintenance. The balance of the repair or replacement amounts is due to age. The annual projected amounts are less than the actual amounts spent in 1997 and 1998. It is a schedule only. What is actually spent may be more than planned, depending on the failing of equipment. He considers the facility to be below average in condition for a facility of its age, due to the conditions of the parking lots and the Buildings 2 and 5 roofs.

49. Upon questioning from the Board, Mr. Foote testified regarding the budgets. STK ran into financial problems that caused projects to be delayed. If a repair and

replacement is scheduled and pushed out too far, it becomes deferred maintenance. If it is put off too long, it becomes an emergency repair. Anything included in the 2001 budget deferred maintenance is in that (emergency) category.

50. Under redirect, Mr. Foote explained that you could create an infinite number of subcategories for types of offices, based on characteristics of carpet, ceiling tiles, HVAC controls, etc. He selected his three categories based on the aesthetics of the office areas; how the space was visually.

51. Regarding the mezzanine space, if you were to include the mezzanine space in another category, it would be below typical office space. It has lower ceilings, older carpeting, is interior space with no windows, and has old florescent lighting. It is raised above the floor; you must climb stairs to get there.

52. Mr. Foote clarified that he now relies on the wall chart summarized as Exhibit CC and not on Exhibit 8. Neither Exhibit 8, nor the original documents it was derived from, contained the level of detail needed to do planning. He does not know where the numbers come from; it was prepared by a previous employee. He can not rely upon them.

53. Regarding the parking lots, if they are properly maintained, you prevent them from experiencing higher maintenance costs. You can merely overlay the existing asphalt. If they are not properly maintained and the base is deteriorated, you must remove the asphalt, put in a new base, and then lay down the new asphalt. In all cases, based on core samples they have taken, the subject property parking lot bases have deteriorated. The costs for replacement include the removal of the asphalt, replacement of 6 to 8 inches of base materials, and repaving. He had this experience with the lots they already replaced.

54. Regarding Exhibit 18, Mr. Foote testified that the descriptive "average" age was based on the average age of many components. It does not mean all components are the same age. More than likely, the components within the building themselves, like ductwork, etc., would be original and the same age as the building. The average age does not indicate how long it will be until an item needs replaced.

55. Regarding Exhibit 8, Mr. Foote testified that he did not recall Mr. Foster ever questioning him regarding this exhibit or deferred maintenance items. He was not sure if there were any discussions about the age of the items.

56. In recross-examination, Mr. Foote testified that he did not know what asphalt maintenance was performed at the Longmont facility. The fire pump problem at the duck pond was identified in 1997. The scheduled expenditures as shown on Exhibit CC for STK are greater than would be expected at other facilities of comparable age.

57. Petitioner's witness, Mr. Steve Letman, MAI, CRE, a Certified General Appraiser and President of Consultus Asset Valuation, Inc., was accepted as an expert in general real estate valuation, and more specifically in large industrial facilities.

58. Mr. Letman presented the following indicators of value:

Market:	$28,500,000.00
Income:	$29,500,000.00
Cost:	$24,138,560.00 to $32,549,267.00

59. Based on the market approach, Petitioner's witness presented an indicated value of $28,500,000.00 for the subject property.

60. Petitioner's witness presented 8 comparable sales ranging in sales price from $5.95 to $34.35 and in building size from 553,059 to 2,507,935 square feet. After adjustments were made, the sales ranged from $5.95 to $21.63 per square foot.

61. Mr. Letman testified that he first appraised the subject property for a 1995 tax appeal. Exhibit LL is his appraisal report for the subject property, prepared by him and two others. Mr. Letman made a number of corrections to his report. He testified that none of the corrections affected his value conclusion of $28,500,000.00.

62. Mr. Letman testified that actual value is the value that the assessor is to apply to the property. Actual value is commonly considered market value, and he uses the terms synonymously. In Colorado there are time frame restrictions when concluding actual value for property taxation. He concluded to a value as of June 30, 1998, considering the condition of the property as of January 1, 1999, and considered information from the 5 years preceding the level of value date. His report meets all the requirements in the Assessor's Reference Library (ARL).

63. Mr. Letman testified that he reviewed his last appraisal of the property, and he then did a site tour and walk through of the buildings, looking for any changes. He has walked through the site 5 or 6 times. The subject property boundary to be used for this hearing is as delineated on Exhibit D.

64. Mr. Letman testified that the assessor must give consideration to all three approaches to value. He has considered all three approaches. Market approach and sales comparison approach are synonymous. He gave no weight to the cost approach and little weight to the income approach. He placed all his weight on the market approach.

65. Mr. Letman testified that they looked for sales throughout the 5-year period. They looked first in the Boulder area, then the metro Denver area, then the front range, then all of Colorado, then regional, and finally on a national level. Mr. Letman testified that the subject property is unusual. To find a purchaser, you must look to a national market. The items considered were size (a very big factor), age, use, and pure real estate sales without business included. They initially looked at more than 200 sales and eliminated all but the 8 sales he finally used. Mr. Letman testified to the basic elements of the 8 comparable sales, and explained they were arrayed in his report according to the square footage of the buildings.

66. Regarding Sale 1, it is a former STK facility located in Longmont, Colorado. A small amount of the facility is below grade, but it is really a two-story building. Most of the exterior wall finish is aggregate, the same as the subject property. Most of the

Longmont facility has this finish, but a small part of it is metal and metal sandwich. Exhibit MM is an advertisement showing an aerial photo and map of the Longmont facility. The ad shows the particulars regarding the facility, such as size, type of finish, location, and view.

67. Mr. Letman testified that his information regarding the interior finish type was revised according to figures from Exhibit HH, the STK master list of space as of December 12, 1996. He inspected the Longmont facility during his earlier appraisal and during 1996 when it was listed for sale. He would say that generally the office area of the Longmont facility was nicer than the subject property. There was no closed in feeling; it seemed like there was more open area due in part to having more windows. They are not the "slit" windows as found in the subject property.

68. There is approximately 15 acres of land located within the road areas at the lower right of the photo labeled D in Exhibit VV. Excess land surrounds the property. He considers the excess land to be 94 acres. The purchaser, a real estate investment company, considered the excess land to be 85 acres at a value of $1.90 per square foot. This is the value he used to adjust the sale for excess land.

69. His initial investigation brought him to a land value conclusion of $2.25 per square foot, based on sales of property in Longmont and throughout Boulder County. The assessor's value was $1.78 per square foot. However, the buyer's estimate was most important. An appraiser's job is to reflect what the market place is doing and the buyer's thoughts are important.

70. A rezoning took place after the sale of the property. The land-to-building ratio showed only about 45 acres was needed to operate the property. A typical land-to-building ratio is in the 3:1 to 5:1 range.

71. Mr. Letman testified that the Longmont facility was purchased to split into multi-tenants, without too much expected difficulty and very little interior change. The purchasers intended to sell off the excess land for development. They anticipated an 18-month fill-up period, intended to hold the property for 4 years, and then sell. They had limited success in leasing. 20% of the property was leased to Iomega. The only other leased area was to STK, which was part of the purchase agreement. Within 6 months, the purchasers decided to demolish the inside of the building.

72. The property was built in 1982 by STK. They occupied it for 4 years, then vacated and the facility was taken over by a lender. In 1991, STK acquired the property again, remodeled it for approximately $5 million, and then moved back in. The building sat vacant during the years before STK repurchased it.

73. Mr. Letman explained the different columns on the grid on page 48. The column for market conditions is for time adjustment. The adjustments are to show a direction to value, not a specific amount of adjustment.

74. One of the biggest indicators for location adjustments would be the difference or similarity of the land value. The Longmont facility land value is in the $2.00 per square foot range. The subject property land value was estimated at $1.75 by Consultus, and

$1.78 by Respondent. Therefore, he felt the location was fairly equal. The Longmont facility is approximately 9 miles from Boulder. Mr. Letman did not believe a buyer would consider much difference in the locations, as both are on highways, even though Longmont is further from Interstate 25 (I-25).

75. Regarding size, Mr. Letman testified that Sale 1 is one-third the size of the subject property. His experience shows there is a huge difference in value regarding size. He only used this sale as a comparable because it was the only sale in Boulder County and one of the biggest sales in Colorado. It is also important that it was a former STK facility.

76. The Longmont property is 3 years newer than the Louisville facility. The purchasers identified the only deferred maintenance problem was that a new roof was needed, but it was not replaced as of the assessment date. Mr. Letman later testified that the roof repair cost was estimated to be $1.30 per square foot. The electrical and mechanical systems were in very good shape. There were no significant things needing to be done to the comparable. The subject property has a lot of maintenance needs.

77. Mr. Letman testified that the overall adjustment total would indicate the subject square foot value would be significantly less that $21.63 per square foot.

78. Regarding Sale 2, Mr. Letman testified that Mr. Sommers performed an exterior inspection of the property and took the photos. Exhibit NN is the brochure that was used when the property was for sale. The facility was built by Texas Instruments and is located near Houston, Texas. The improvements consist of 7 interconnecting buildings set up for offices or light manufacturing. There is a health center, cafeteria, and auditorium. At the time of the sale, 85% of the buildings had carpeting on the floor and tile roofs. The buildings were built between 1979 and 1981 and all are single stories with most being of masonry construction.

79. This property is vastly more efficient than the subject property. There is easy access for the employees to move from building to building. The warehouse is located at a good point to load or unload materials. This property has a superior aesthetic quality. He verified the sale with the seller. It was well maintained and had no deferred maintenance. At the time of sale, the facility was only about 14 years old.

80. The property sits on 255 acres, with 192 acres of excess land. The land is valued at $15,000.00 per acre or $2.8 million. The brochure shows that zoning would allow for development that would double the size of the facility. The brochure states that 80 acres is undeveloped. Mr. Letman testified that the estimate of excess land may or may not be correct, but the adjustment is reasonable.

81. The sale occurred in December of 1994, so he made an adjustment for time. There was no market information to determine a time adjustment, but the national market has increased since 1994.

82. Regarding the location adjustment, Addendum G is a detailed chart used to derive his adjustments, with a summary of the adjustments in Exhibit BBB. He concluded

that the Denver market is better than the Houston market. There was very little difference in industrial rent rates and a slight difference in R&D rental rates. He considered the land value to be equal. The overall location adjustment was moderate.

83. Regarding the building size adjustment, the sale property is 700,000 versus 1.7 million square feet. The age of the property is similar to the subject, and condition was better than the subject at the time of sale. Mr. Letman later testified that there was still a remaining 6-year life for the short-lived items, so condition would not be a factor for a purchaser. The overall adjustment indicates a value similar to $13.25 per square foot.

84. Under cross-examination, Mr. Letman testified that Sale 2 had been vacant for around 2 years prior to the sale, and was offered for sale for 3 years. He was informed, towards the end of 1995, that the property was in good condition at the time of sale and that there was no deferred maintenance. The property does not have a tile roof. The property is located 18 miles northwest of the beltway surrounding Houston. It is outside of the developed area of Houston, but he does not believe it is located in an isolated area. He did not know the 1994 population of Cypress. He used Houston data. Some of the land may be in a flood plain, and that was part of his excess land determination. He used 192 acres of excess land at $15,000.00 per acre.

85. Under redirect, Mr. Letman testified that he felt the lease rates were very similar between Houston and the Denver area. The Houston rates are shown as a range versus single numbers for Denver. The Denver area falls within the Houston rate ranges.

86. Regarding Sale 3, it is the Acme distribution center located in Aurora and is the largest comparable sale in Colorado with a size of 875,000 square feet. He conducted an exterior only inspection of the property. There are 165 doors. The building is one story with an unfinished interior. It is used for storage and transfer of materials, with a 1% total square footage office area. It was a "built-to-suit" building constructed in 1987. The purchaser was a tenant from the beginning. The property went to Citicorp in lieu of foreclosure. The tenant renegotiated the lease. It is not comparable to the subject property. It was only included because it is the biggest sale he could find in Colorado. He feels the land is inferior to the subject. There is no excess land with this property.

87. The sale was adjusted for time and size. He made no location adjustment. It is in a good area close to the airport, Interstate 70 (I-70), and other industrial parks. The comparable is 8 years newer than the subject property and had no repairs or replacements necessary at the time of sale, so he made a downward adjustment for age and condition. Mr. Letman later testified that there was still several remaining years of life for the short-lived items, so condition would not be a factor for a purchaser. He made an upward adjustment for office/industrial ratio as well as land ratio. He believes this is his worst comparable sale. Although it has the most adjustments, they net out to zero. He concluded the subject property value should be similar to $16.11 per square foot.

88. Under cross-examination, Mr. Letman testified that the seller was Citicorp, not Tower Distribution as noted on page 39 of his report. Mr. Letman testified as to deed transfers found in Exhibits 33 and 35, some occurring on the same date. They involve Mr.

Grunwald, JJS Incorporated, Tower Distribution, Inc, and Acme Tower Partnership. He was not sure if there were related parties involved in these deeds. Mr. Letman testified that Sale 2 was arm's length; Citicorp got it in lieu of foreclosure and they were the seller in 1995 to Acme Distribution Center, which is owned by Mr. Grunwald.

89. Under cross-examination, Mr. Letman testified that he found no offering materials on this property. The property was never on the market and there were no brokers involved in the sale. He believes the lease was reflective of market rates. To his knowledge, there was no undue pressure to any of the parties. Mr. Grunwald had just renegotiated a downward lease, but it was still at market rates.

90. Under cross-examination, Mr. Letman testified that this property is a distribution warehouse with 1% office space. He admitted that he testified in 1995 that there was no relationship between the Longmont facility and warehouses. The price per square foot is generally higher for an R&D facility than for a warehouse when all other things are the same.

91. Under cross-examination, Mr. Letman testified that he made no location adjustment. He believes its location to I-70 is a positive attribute because it is a transportation corridor throughout the metro area and other cities. He testified that Highway 36 is also a transportation corridor from Denver to Boulder. Regarding land value, they looked at a lot of industrial land sales throughout the metro Denver area. Generally, he felt the subject land value was somewhere in the neighborhood of $1.75 per square foot at the date of value. He does not know the actual value of land in Aurora as of the date of sale, but believes it was probably within 25 to 50 cents a square foot of the subject land value. He does not know if he made a specific estimate of land value in 1995. No one conducted an interior inspection of the property. His condition estimate was based on the property's age and the fact that it was a warehouse. They were not told about any deferred maintenance or needed repairs prior to the sale.

92. Regarding Sale 4, Mr. Letman testified that it is located in Phoenix, Arizona, and had been owned by a subsidiary of Honeywell. He did an exterior inspection in 1996. Mr. Sommers took the photographs and inspected the property a couple of months ago. Exhibit OO is the sales brochure for the property.

93. There is a large building with support facilities. The buildings are one and two stories, constructed of block and metal. The finished space area is similar to the subject. It was in fair to average condition with some deferred maintenance for the roof, electrical and HVAC systems, and plumbing, at the time of sale.

94. There is approximately 20 acres of marketable excess land. Based on conversations with the buyer and broker, he understands it was purchased due to the excess land. The land was valued at $4.00 per square foot. The adjusted selling price, after the excess land adjustment, is $10.14 per square foot. The seller leased back 430,000 square feet after the sale. The leased portion consisted of both R&D and office area. Making an adjustment for the leased back portion, 5-year income stream, results in an adjusted sales price of about $9.00 per square foot, not considering any excess land. The purchaser acquired the property to change the use to multi-tenant and to sell off the

excess land.

95. He adjusted the sale upward for market conditions, time, and location. The industrial vacancy in the area was nearly twice that of the subject property, but the industrial and R&D rental rates were similar. Phoenix had a greater absorption rate, which offset the vacancy. The land value was $4.00 per square foot and thus was considered superior to subject.

96. Under cross-examination, Mr. Letman testified that, in some ways, he considered this a good comparable to the subject; it is almost a million square feet, the age is older, and Phoenix is a somewhat comparable market. The amount of finish at time of sale is similar to the subject. It sold in October of 1994, but was under contract in March of 1994. The 20 acres of excess land value at $4.00 per square foot was determined primarily due to discussions with the broker at the time of the transaction. He also looked at a Phoenix sales listing from COMPS Inc., and he feels they support the $4.00 land value. He admitted that he does not have the list or a description of the land on the list.

97. Under cross-examination, Mr. Letman testified that if his estimate of land value in the 1995 hearing for this sale was estimated at 33 cents, it was based on information that he had at the time. Since then, he has gotten other information. Without the excess land, the land-to-building ratio is in the range. Prior to the sale, the property was in fair to average condition; however, the condition is not in the listing brochure, Exhibit OO. He thinks there are two floors in the larger building, and he admitted that the floor plate is more than twice as large as the largest floor plate for the subject property. In 1995, he believes that all of the comparable was rentable. In the 1995 hearing, he testified that this sale represented the low end of the market, at least in part because it was purchased by an investor, but he no longer believes that. He has seen lower prices on similar properties. Generally, 20,000 to 50,000 square foot properties have increased over time, but that is not true of million square foot facilities.

98. Under redirect, Mr. Letman testified that the Phoenix 1995 appraisal indicated it was at the low end of the market because his value conclusion was premised on the property being sold to a single tenant. However, his conclusion has changed. He now believes that Phoenix is representative of the market due to a change in the probable purchaser being for multi-tenant conversion.

99. Mr. Letman skipped any discussion of Sale 5 at this point and proceeded with Sale 6.

100. Regarding Sale 6, it is located in Springfield, Missouri. Mr. Sommers took the pictures a month ago. The property was originally a Zenith television manufacturing plant. The building area is similar to the subject. The property has a year built range of 1967 to 1981, with a weighted building age of 1974, about 5 years older than the subject. It was sold to Bass Pro Shops and converted from primarily a manufacturing facility to their corporate headquarters. Springfield is located approximately 170 miles from Kansas City. It is located on 123.60 acres. The property does not compare well with the subject, as it is approximately 97% manufacturing and warehouse space, and 3% office. He used it

because it was close in size to the subject property.

101. The sale was adjusted for time and the office/industrial ratio. The location, size, and age were similar to the subject property. Mr. Letman later testified that there should be a downward adjustment for condition, as the property was in good condition and that there was no deferred maintenance at the time of sale. He concluded the sale indicated the subject property value to be more than $5.95 per square foot.

102. Under cross-examination, Mr. Letman testified that Sale 6 was never offered on the open market and there were no brokers involved. The purchaser was a tenant of about one-fourth of the facility. He made no location adjustment for the sale. His Addendum G information was compiled from Kansas City data. He admitted that Kansas City was 170 miles from the sale property, but that it was the closest area to find information, and he tried to use the best information available. He pointed out that the property sold for $5.95 per square foot and that his conclusion of value was $17.00 a square foot. He did not give much weight to this sale.

103. The hearing resumed on November 7, 2000, with Petitioner's witness, Mr. Steve Letman recalled.

104. Sales 5, 7, and 8 are former IBM facilities. Mr. Letman has personally inspected 5 large IBM facilities. IBM maintains a high level of maintenance of their properties. They keep their facilities in good condition.

105. Regarding Sale 5, Mr. Letman testified that it is located in Endicott, New York. The sales brochure is Exhibit PP. He did an exterior inspection. He was able to gain access to a couple of buildings, including the main building office area, but was not given a tour.

106. This property has a sprawling campus with a size of just over a million square feet. It was a former IBM facility. It is located on 127 acres with no excess land. The seller told them there was asbestos in the property and that the buyer was responsible for the cleanup. The seller estimated the cleanup expense to be $1.8 million, and Consultus adjusted the sale for that amount. At the time of sale, the property was 68% office and R&D. The balance was auxiliary support uses including shipping docks and cafeterias. The general look of the buildings is superior, there is more landscaping, and there is more aesthetic appeal.

107. The closest large city to Endicott is Binghamton, which is comparable in size to Boulder. There are major technology employers in the area, with employee commutes of 60 miles. The property was purchased to convert to multi-tenant occupancy. It was 29% leased at the time of sale according to the broker, 35% according to the purchaser.

108. The property was adjusted for time, size, age, and location. There was no published information on Endicott, so they looked at Syracuse data. Vacancy rates were higher in Endicott than in the metro Denver area. The industrial rents were less, but the R&D rental rates were higher. The condition was similar and there was a slight upward adjustment for age, as the property is 5 years older than the subject. The year built was

determined using a weighted average. The most important item was the asbestos. However, the broker informed them that the actual asbestos problem was not as large as anticipated. There was no adjustment for land. The property was on the market for 2.5 years and was purchased for conversion to multi-tenant occupancy. He concluded that the indicated value of the subject property would be substantially higher than $8.21 per square foot.

109. Under cross-examination, Mr. Letman testified that the photos in the report are incorrect. He was inside at least two of the comparable's buildings, including the lobby area, about a month ago, after the completion of his report. He was also inside another IBM facility in the area, which consisted of approximately 3 million square feet, that he visited for future reference purposes. In his deposition, he said he was not aware of any other high tech buildings in the Endicott area and he does not know why he did not mention the other IBM facility.

110. Under cross-examination, Mr. Letman testified that he used Syracuse, New York data for the location adjustment. Syracuse is not in the MSA. He did not research land sales in the Endicott area to establish the excess land value. He confirmed the asbestos contamination at the time of sale. He thinks that most of the buildings were constructed in the 1960s. He spoke with several people about the property condition at the time of sale, including the real estate manger, Paul Murray, who mentioned the asbestos and also issued the opinion that the general condition of the property was pretty typical for its age. Mr. Letman obtained some news articles regarding the state of economy in upstate New York at the time of sale. There was an article indicating a net gain of 3,000 jobs in the area, and also had a survey about hot markets, which included both Boulder and Binghamton. He did not know if the property was in an economic development zone at the time of sale. Endicott is a rather small place; there is no major metropolitan area in the immediate area.

111. Under redirect, Mr. Letman clarified that the newspaper article for job changes in the Endicott area was a net gain of 3,000 jobs in Binghamton, which is approximately 10 miles east of Endicott. Another article shows that Boulder and Binghamton are both part of the "20 hottest domestic markets in the U.S."

112. Regarding Sale 7, Mr. Letman testified that it was a former IBM facility located in the heart of Boca Raton, Florida, near Interstate 95 (I-95). He took the photos and conducted both an exterior and interior inspection of the property in 1999. Exhibit QQ is the marketing brochure for the property. A portion of the property was leased back to IBM as a part of the sale transaction. There is an airport across the road. Miami is about 50 miles to the south of the comparable.

113. The property features an award winning building designed by a famous architect. It was built around 1969 or 1970. The building area is 1,950,566 square feet with about 50% interior finish. Aesthetically, this property is superior to the subject. There are several flex buildings attached to the main building. The functional utility is better than the subject property, as all buildings can be reached through interior corridors. It is air conditioned throughout.

114. It would probably cost several million dollars to keep this property in operation. The purchaser said that, even in unoccupied buildings, the air conditioning must be kept on to prevent moss growth. He figured the expenses could be as high as $4.00 to $5.00 per square foot to maintain the property, even if vacant.

115. The property was marketed for 8 months, and was sold by sealed bid. It was purchased for conversion to multi-tenant occupancy. A big part of the purchaser's decision to buy was consideration of the need to get approvals to develop the considerable amount of excess land. He reviewed a 1997 appraisal of the property, which showed approximately 277 acres of excess land with an assigned value of $1.55 per square foot.

116. The sale was adjusted for time, age, and location. The industrial vacancy rate and the R&D rents were similar, but the industrial rental rates were slightly lower. He concluded that it is still a strong market, in spite of the vacancy rates. The condition was similar, but the property is 6 years older than the subject. Mr. Letman later testified he had been told by the purchaser that there was a need for a large amount of repairs and replacements. There was no adjustment for size. He concluded that the subject property value would be more than $14.03 per square foot.

117. Under cross-examination, Mr. Letman testified that this property was converted to an alternative use. It was vacant at the time of sale and was sold through a sealed bid process, with maybe 3 to 5 bidders. He does not know if the bid process might have affected the purchase price. His understanding was that IBM was not under pressure to sell. IBM was financially well off. He believes that they wanted to sell the property by December of 1996 because it costs a lot to maintain the property. He admitted that he does not know the specific reason why there was a deadline. The purchaser needs approval to develop the excess land and to renovate the property. He believes the restrictions could have had a very large affect on the sales price of the property. Without the restrictions, he believes the sales price would have been substantially higher. IBM was still leasing 147,100 square feet for a 5-year term. The appraiser of the property at that time had valued the IBM leased-back building separately. There is similar development in the area. He did not feel that an adjustment for the Offc/Indl ratio was warranted as the buyers told him they were going to remove some interior finish, and he didn't think it would be a consideration.

118. Under cross-examination, Mr. Letman testified that he was advised by the purchaser that they needed to bring the property up to code before they could multi-tenant the building. IBM had a lot of things that had been grandfathered in. They had to get building permits. The purchasers did not know about the need for code compliance changes or the costs involved when they purchased the property.

119. Under redirect, Mr. Letman testified that he did an alternative analysis of the Boca Raton excess land in Sale 7. He did an analysis by extracting the excess land, and also capitalized the IBM lease. He calculated a revised sales price of $10.10 per square foot. The portion of the facility that was leased back by IBM was separated from the main campus. The appraiser that appraised the property prior to the sale had analyzed it in the same manner. He ultimately used $14.03 per square foot for the property. He had not broken out leases in the other sales and felt that they should do all sales in the same

manner. Concerning the restrictions on the development, it applied to the excess land, not the buildings constructed at the time of purchase. He took those restrictions into account when valuing the excess land. The appraiser he relied upon had taken them into consideration.

120. Regarding Sale 8, Mr. Letman testified that it was a former IBM facility located in Ulster, New York. He took the photos and inspected it a month ago, but only saw the interior of a couple of buildings. Exhibit RR is the marketing brochure. This is the most current sale and the largest comparable he used, at 2,507,935 square feet. The buildings were built between 1955 and 1990, with an average year built of 1967. Some of the buildings are located across the road but are connected by a bridge. Some of the buildings were leased at the time of sale, but most of the facility was vacant. Overall, he considers the campus to be pretty similar to STK.

121. The property was purchased for conversion into a multi-tenant facility, which would become part of an R&D technology corridor between New York to Albany. Albany is 50-60 miles to the north, New York is 90 miles to the south, and the IBM world headquarters is located in White Plains, New York.

122. The property was adjusted for time, size, and location. The land value was similar. The comparable is substantially larger than the subject, 12 years older and had no deferred maintenance. Mr. Letman later testified that the property was in very good condition at the time of sale. He concluded that the indicated value of the subject property would be substantially higher than $6.62 per square foot.

123. Under cross-examination, Mr. Letman testified that he did not give much weight to this sale. It was converted to an alternative use. He used area data from Albany, New York. He acknowledged that the land value adjustment shown on Exhibit BBB for Sale 8 should actually be shown as Sale 7 data. He could not think of any other R&D facilities in the Kingston area as of 1998. He did not account for adverse environmental conditions. His notes did not indicate any asbestos contamination at this facility. He was aware there was a ground water contamination issue in a property next to this property, but IBM was granted an indemnification. He does not think it had an impact on the sales price. It was vacant for 3 years while it was being marketed. He answered questions regarding the buildings' year of construction, and he calculated an average year built of 1967. The brochure shows 1955. The property is located in an economic development center. The State of New York was going to purchase the property, but did not get it approved. Mr. Ginsberg bought the property about 2 years later. It was a very political issue. It is in a good location along a corridor between Albany and New York City.

124. Under redirect, Mr. Letman testified that newspaper articles regarding the Ulster property indicated that the State of New York was committed to promoting ways to fill IBM's former facility.

125. Mr. Letman testified that he regarded Sale 1 to be a reasonable indicator of value for the subject property. As shown on page 53 of his report, he took the sale price of $21.63 per square foot minus $4.50 per square foot for deferred maintenance and

concluded to a value of $17.13 per square foot.

126. Mr. Letman testified that the value was indicated to be similar to $13.25 to $16.11 per square foot, with a bracketing midpoint of $17.83 per square foot. Therefore, he felt $17.00 per square foot was correct. Sale 1, the Longmont sale, was not the basis of his conclusion, but was used only as a test for reasonableness of the value conclusion. He concluded to a value via the sales comparison approach of $17.00 per square foot, or $28,500,000.00 for the subject property.

127. Mr. Letman testified that he placed the most weight on Sale 7, the Boca Raton sale, as it had the least amount of total adjustments. He did not give Sale 6, the Springfield sale, much weight for a number of reasons, even though it had few adjustments. He considered Sale 5 but did not put much weight on it, as it was half of the concluded value. Sales 3 and 6 were least similar to the subject and would have been given the least weight. He was not sure how much weight he put on Sale 4. It was hard to know how much weight was placed on individual sales, as they were looking at a range of value.

128. He rated the sales in the following order:

A. Sale 1 is the best sale, however there is a size problem;
B. The next best sales would be 5, 7, and 8, due to their size and use;
C. Sale 4;
D. The worst sales were Sales 2, 3, and 6.

129. Mr. Letman testified that he had not been aware of Mr. Foote's repairs and replacements and deferred maintenance estimates, but he had other information regarding repairs. The new information from Mr. Foote does not change his value opinion, which was based on the market approach. The relevant amount of repairs and replacements would be useful in a cost approach.

130. Petitioner's witness presented an income approach to derive a value of $17.62 per square foot, or $29,500,000.00 for the subject property.

131. Mr. Letman testified that he calculated an income approach for the property, as shown in Exhibit LL, pages 54 through 59. However, they gave little weight to this approach. It was used as a reasonableness test. The analysis assumed the subject property would be leased to a single tenant, but there was little information available. He presented information from 3 leases.

132. Lease 2 was the largest lease they could find. It was the Acme lease, which was also known as his Comparable Sale 3. The lease began in 1995 and was for 875,000 square feet. Under cross-examination, Mr. Letman testified that to his knowledge there was no undue pressure to any of the parties involved in this lease. Acme had just renegotiated a downward lease, but he believes it was still reflective of market rates.

133. Lease 1 was the next largest lease. It was the Cypress, Texas property, also known as his Comparable Sale 2. The lease began in 1994 and was for 694,082 square

feet.

134. Lease 3 was the Hughes Missile System lease, let in 1994 for 545,815 square feet.

135. Based on these three leases, Mr. Letman concluded that, if leased to a single occupant, the subject property would lease for $3.00 per square foot. He used a vacancy rate of 10%. His expense deduction was 15% of effective gross income, which included 8 cents per square foot for vacant building expenses and 25 cents per square foot for replacement reserves. He used a 13% overall capitalization rate. The capitalization rate was chosen from the upper end of the indicated range due to the size of the facility, its condition, and increased risk. The indicated value was $29,500,000.00, or $17.62 per square foot.

136. Mr. Letman testified that he now believes the 25 cents per square foot for replacement reserves should have been more, as much as $1.00 per square foot.

137. Although his income calculation was based on a single tenant, Mr. Letman does not believe the subject property would be sold to a single tenant; at best it would be converted to multi-tenant use. Five of Consultus' eight comparable sales were for multi-tenant use. Of the remaining three sales, Sale 2 was purchased to develop the excess land and the building was under lease at the time of sale, Sale 3 was a "build to suit" building that the tenant eventually purchased, and Sale 6 was purchased for the buyer's use. They were unable to find a single facility in excess of 500,000 square feet that sold for a purpose other than multi-tenant development.

138. Mr. Letman testified that he has been appraising large industrial facilities for 13 years. Over that period of time, it is evident that there are no purchasers of these facilities for their own use. Potential users will build their own facilities, due to the tremendous costs to retrofit existing buildings for their use. This conclusion is based on conversations with many large companies. Everyone said that they would build their own facilities rather than buy an existing 1 million-plus square foot facility.

139. Petitioner's witness presented a cost approach to derive a market-adjusted cost range of value for the subject property of $24,138,560.00 to 32,549,267.00.

140. Mr. Letman testified that he did not conclude to a value by the cost approach. He did conclude to a land value of $1.75 per square foot. He calculated a replacement cost new (RCN) of $105,133,834.00 or $62.80 per square foot, including profit and soft costs. The RCN without profit and soft costs was approximately $98.3 million.

141. Mr. Letman testified that he used Sales 1, 2, and 7 to attempt to extract market depreciation. The indicated range of depreciation was 80% to 88%. The indicated range of value was $24,138,560.00 to $32,549,267.00. Although this bracketed the sales approach value conclusion, he felt that the cost approach was meaningless; therefore, they did not conclude to a value from the cost approach.

142. Petitioner's witness, Mr. Letman, presented a final conclusion of value of

$28,500,000.00, with $11,522,500.00 allocated to land and $16,977,500.00 allocated to buildings.

143. Under cross-examination, Mr. Letman testified regarding highest and best use. He read the Appraisal Institute definition from page 31of Exhibit LL. In his opinion, the highest and best use for the subject is as an industrial facility. He agreed that the most probable use is the highest and best use, and would result in the highest value. He explained the difference between "use" and "occupancy." He clarified that in his opinion, the highest price would be to a purchaser that would be a single occupant, owner user. However, he could not find any single user purchasers. The most probable purchaser would be a multi-tenant investor.

144. Mr. Letman testified that it was physically possible and legally permissible to convert the property to multi-tenant use. As to being financially feasible, if the price were right it would be; however, it would be costly. He believes the conversion to multi-tenant use would result in the highest value for potential purchasers. For a single user, it is physically and legally permissible. He is not sure it would be financially feasible.

145. Mr. Letman testified that he relied on a tremendous amount of published and non-published materials to arrive at his initial conclusion to value, including his 1995 appraisal of the subject property and the Longmont facility.

146. Mr. Letman testified that 6 of his sales constitute a change in use. Sales1, 4, 5, 7, and 8 were purchased by investors seeking to convert the properties to alternative uses. Sale 6 was changed from office use to warehousing and a call center.

147. Mr. Letman reiterated that he would not have used Sale 1 if it were not in Colorado. The zoning changed at least a year after the sale; the final zoning was approved at the end of 1999. The minimum acreage for MIU zoning is 80 acres. The Longmont sale was part of the 1995 appeal and his appraisal. At that time, he considered 60 acres to be excess land. His 1995 appraisal valued the land at 34 cents per square foot, and he considered the Louisville property to be superior in location as of the level of value date of June 30, 1994. The Louisville exit has since been completed. The Interlocken Business Park has expanded considerably, is located across the highway from the subject property, and he considers it very superior to the subject property location. He feels that Interlocken has little effect on the subject property, and still contends that the Longmont location is similar to the subject property.

148. Mr. Letman testified that rental rates provide assistance in determining a location adjustment. He used data from the Ross report, which is included in Addendum B of Exhibit LL. He read a portion of pages 4 and 7of Addendum B that referred to lower rents and lower values for industrial buildings in Longmont. However, he still thinks that Longmont is similar to Louisville, as he relied on land value. He admitted that a location near to a major highway could be a value factor. He guessed that the Boulder turnpike has more traffic than the Diagonal Highway. He agreed that higher traffic volume can affect employee traffic; it may be easier to get to Longmont during the rush hour.

149. Mr. Letman testified that Sale 1 had no deferred maintenance at the time of

sale, based on discussions with the purchaser, broker, and project manager. He considered the roof replacement to be more of a long-term replacement, not deferred maintenance. He relied on information that Mr. Foote now testified was unreliable regarding the Longmont facility. He agreed that Exhibit 12 showed a deferred maintenance amount of $4,584,900.00, and testified that he had no evidence as to whether there was any repair done prior to the sale. He would accept Mr. Foote's description of the Louisville roofing situation as to whether it would be long term rather than deferred.

150. Mr. Letman agreed that his Longmont condition adjustment on page 48 of his report was a substantial negative adjustment. On Exhibit BBB, the adjustment is shown to be due to the Longmont facility being 3 years newer than Louisville, with no deferred maintenance. He made the adjustment based on the conclusion that the subject property had $7.5 million in deferred maintenance versus Longmont at $700,000.00. These were the figures he had received initially. He restated that the roof repairs constitute a need for replacement, not necessarily deferred maintenance. He agreed that the Longmont floor plate was larger than Louisville.

151. Mr. Letman estimated the subterranean first floor space at the Longmont facility to be 30 to 35%. He made no adjustment for subterranean area. The Longmont facility has more exterior windows in general than the subject. A portion of the subject property would not benefit from the windows. There was no mention regarding asphalt replacement at the Longmont facility. He presumed it was in good condition.

152. Mr. Letman testified that each + and – on his adjustment chart were given equal weight. One unit of comparison for location was industrial rental rates. The rates they used were from the Society of Industrial and Office Realtors (SIOR). The 1994 data was obtained from the 1995 volume and the 1998 data is from the 1999 volume. He used the rates from the category above 60,000 square feet in the suburban category for both Houston and Denver. The charts are shown in Exhibit 52.

153. He used the Appraisal Institute's definition of deferred maintenance. Typically, it is something a buyer wants to fix before renting a property to someone. There are differences for investors versus owner occupants. Many investors do not spend the money until the property is leased up. STK would not have to repair the asphalt before selling the property, but they might chose to, in order to get a higher price. From his observation, most of the lots at STK are useable and are being used. He did not believe a purchaser would feel compelled to fix them immediately. He did not investigate deferred maintenance for the subject property. He relied upon STK furnished information. He assumed Mr. Foote's information was reliable. For the 1995 STK hearing, STK provided the deferred maintenance information for the Longmont facility and he relied upon it.

154. Mr. Letman testified regarding his 1995 conclusion of value for the subject property and described the changes that had occurred since 1995 through the assessment date of January 1, 1999. His value conclusion for the Louisville facility in 1995 was $34,800,000.00, or $21.26 per square foot. The CUP and the interchange on Highway 36 were both completed in 1995. There was a significant amount of office space upgraded and 3 new roofs were installed between 1995 and January 1, 1999. A new cafeteria in Building 4 was installed in 1998. The executive suites were remodeled at 80% complete

as of January 1, 1999. The national and local economy improved. Land values significantly escalated in Boulder County and the Interlocken Business Park took off.

155. In redirect, Mr. Letman testified that the change in his location adjustment for Louisville versus Longmont as relating to the 1995 appraisal versus the current appraisal is due to a change in the market. There were material improvements during that time. He took the Longmont property zoning change into consideration.

156. Mr. Letman testified that adjustments to comparable sales for condition are suppose to mirror what the market is doing. Purchasers would look at both deferred maintenance and short-lived items.

157. Mr. Letman testified that the market has changed for million-plus square foot facilities between 1995 and 1999. The nature of buyers changed to investors buying properties to be redeveloped. The subject property has a value that has gone down and 4 years have lapsed, causing more repair and replacement of items due to older age.

158. Mr. Letman testified that if an owner spends money to rehabilitate a facility, it does not automatically increase the value by the amount of money spent. A cafeteria upgrade would not increase the value. A purchaser will tear out interior finish, 9 out of 10 times.

159. Testimony continued on November 8, 2000, with Petitioner's witness, Mr. Steve Sommers being called.

160. Petitioner's witness, Mr. Steve Sommers, a Certified General Appraiser with Consultus Asset Valuation, Inc., was qualified as an expert in real estate valuation.

161. Mr. Sommers testified that he had participated in the preparation of the appraisal report marked Exhibit LL. He clarified that the source of the $2.40 per square foot rent rate for the Houston industrial space, as found in appendix G page 81, was calculated from the midpoint of the three categories. They took the average and rounded.

162. He also clarified that on page 40 of the appraisal, the source of the $4.00 per square foot for the excess land for Sale 4 was initially arrived at from conversations with the people Mr. Letman had verified the sale with. The second source of information was from the Urban Land Institute (ULI) Market Profiles on page 230 of Exhibit 55, which bracketed the value with a range of $3.00 to $7.00 per square foot. The information used for the Endicott Sale 5, R&D rental rates, was $9.50 per square foot, which was the midpoint from the High Tech R&D, in the SIOR source, as found in Exhibit 53, page 166. This needs corrected in Appendix G of the report, to reflect that it is from SIOR, not ULI.

163. Mr. Sommers testified that he spoke with Paula Mathews at the Longmont facility. She reported that at the time of sale, the purchasers estimated the excess land to be 85 acres at a value of $1.90 per square foot.

164. Under cross-examination, Mr. Sommers testified that his opinion was that the subject property's highest and best use was improved industrial use. The most probable

use is as a conversion for multi-tenancy occupancy. He does not feel this opinion is inconsistent with the definition of highest and best use as found on page 32 in Exhibit LL, when you take the whole paragraph into account. He admitted that at the time of his deposition, he had the opinion that the highest and best use would have been use by a single tenant.

165. Regarding the sale marked as Exhibit 27, Mr. Sommers testified that they did not use this sale for two reasons. One reason was its large land-to-building ratio. However, he admitted that the ratio of 13:1 was approximately the same ratio as Comparable 7, and less than the ratio for Comparable 2. However, that was also why Comparable 2 had a large adjustment. The second reason it was not used was because there was not a good source of information for the sale. It was not listed, and they thought that there might have been a lease involved. He admitted that he did not seek additional information on the sale.

166. Mr. Sommers testified that they did not use California sales, as the land value is exorbitant, among other factors. He admitted that they could make adjustments, but that they may not be particularly meaningful due to the magnitude of the adjustments needed. He admitted that the more significant the adjustments were, the weaker the sale became.

167. Regarding Sale 1, the Longmont facility sale, he testified that he asked Paula Matthews about the condition of the property at the time of sale and whether there was any deferred maintenance. She said the purchasers had spent $1 million on improvements to the exterior appearance and signage.

168. Mr. Sommers verified that in Exhibit 52 on page 126, the site prices for properties over 10 acres were $1.35 to $2.00 per square foot, and the prices for properties over 100 acres were $.35 to $.50 per square foot, which were different than the ULI values. He also indicated that the information for Sale 5, the Endicott sale, was from the R&D category of SIOR, from the Syracuse area, which was 74 miles from Endicott. He confirmed that Comparable 6 was not an R&D facility at the time of sale.

169. Regarding the adjustment grid on page 48 of Exhibit LL, Mr. Sommers admitted that Sales 5, 6, and 8 were adjusted more than 100%. However, he also pointed out that even if you doubled any of those sales adjusted values, you would still have a value less than the concluded value of the subject property. He also testified that these sales were given less weight than some of the other sales on the grid.

170. Mr. Sommers agreed that Sale 4 had a net adjustment of 68%. He gave it a reasonable amount of weight, as it was closer to the value conclusion than Sales 5, 6, and 8, tempered by the facts that it was just under 1 million square feet in size, was a 1994 sale, and was located in the western part of the country. He testified that he did not place much weight on Sale 3. He would place more weight on Sale 2 than Mr. Letman had, and give it more weight than Sale 4.

171. Upon questioning from the Board, Mr. Sommers explained that the High Tech R&D category in Exhibit 52 was included as part of the data used to establish a uniform comparison basis, not so much for looking for R&D rental rates. In looking at more generic

industrial rental rates, ULI does not report on all markets. They thought that SIOR would give most uniform information. The high tech data does not give information regarding the size of the facilities. He does not think of the subject property as High Tech R&D. To fit his definition of high tech, there would need to be more lab space.

172. Mr. Sommers testified that they included an income approach in their report, based on a single use of the space. They knew there would be another presentation in this hearing, based on smaller property rental rates, which is why they did not prepare that type of analysis.

173. Mr. Sommers then answered questions from the Board regarding the jurisdictional exceptions applied to "present use" and why he felt a market approach towards multi-tenants would be appropriate. He believes that their market approach reflects the definition of market value and what the subject property would sell for without STK as a tenant in place.

174. Mr. Sommers testified that since Sale 1 was given the most weight, the calculation deducting the $4.50 per square foot for deferred maintenance as found on page 53 was done to see if the value conclusion would be supported. They considered deferred maintenance to be an important factor. They did not do the same calculation on the other sales, as they were given less weight.

175. Regarding the weighting of the sales, Mr. Sommers testified that it was difficult to assign weight to each sale, as the process used was to bracket the subject property value, rather than use specific adjustments. However, if he were to rate the sales on the page 48 grid, he would rate them as follows in the order of greatest to least weight:

A. Sale 1 sets the upper limit, is most important and given the most weight;
B. Next level is a grouping of Sales 2 and 4;
C. The next level is a grouping of Sales 5, 7, and 8;
D. Next is Sale 6;
E. The least weight would be given to Sale, 3.

176. Regarding the sale marked as Exhibit 27 that was not used, it was on a master list of sales, but was not gridded. They initially excluded sales that had high land-to-building ratios. It is difficult to gather information in Texas, as it is a non-disclosure state.

177. Under redirect testimony, Mr. Sommers testified that he considered it was <u>probable</u> that the subject property could be purchased by an owner occupant, but <u>not</u> <u>as</u> <u>likely</u> as for a multi-tenant property.

178. Under recross-examination, Mr. Sommers testified that he believes Sale 1 is important due to its location in the State of Colorado and its nearby location to the subject property.

179. Petitioner's witness, Mr. Steve Letman, was recalled. He answered several questions regarding newspaper articles marked as Exhibit CCC. He read portions of three of the articles into the record. He testified that he was not aware of whether Boulder had

lost jobs in 1998, why the top 20 cities in one article were shown in the order that they were, or what the exact radius of the circle on the map in Exhibit VV would measure.

180. Under direct testimony, Mr. Letman testified that he did not believe it was probable that an owner-occupant would purchase the subject property. If he had used only owner-occupant sales, he would have had far less sales to consider, in fact, only 3 sales. Those sales would be: Sale 2, the Cypress sale, which had excess land; Sale 3, the distribution center in Aurora; and Sale 6, the Springfield sale purchased by Bass Pro Shops. There was one additional sale that occurred in New York that was considered but not used. That sale was for $3.00 a square foot, but they did not have enough information about the sale to include it in the appraisal. If they only used the 3 sales, the value conclusion would still be the same.

181. Petitioner's witness, Mr. James D. Cochran, President of Aspen Capital Partners, testified that he works in the commercial real estate field and explained his experience and education. Mr. Cochran was qualified as an expert in the field of commercial real estate, including acquisitions, property management, leasing, disposition, and development.

182. Mr. Cochran testified that he was asked to provide a determination, which is in Exhibit TT, section 6, of the maximum amount that a purchaser would pay for the STK facility on a multi-tenant basis. He has prepared similar reports in his ordinary course of business. He explained some of the projects that had been analyzed by him, both acquired and not. <u>His report is not an appraisal or an opinion of value</u>. He did a direct capitalization income approach. He did not consider whether a potential purchaser would be a single tenant. He has not discussed highest and best use in his report.

183. Mr. Cochran testified as to what property boundaries he used in his report and corrections that needed to be made to his report due to an error in the square footage of the Wellness Center. His price estimate opinion is now corrected to $21,981,205.00.

184. Mr. Cochran explained that his price opinion is based on the limitations as set forth in his report, and that he had no knowledge of Consultus's appraisal or value when he prepared his pricing report. He spent about 100 hours on his report, visited the facility 5 times, and was furnished floor plans of the facility.

185. Mr. Cochran testified as to the process he used to develop his opinion of price. He used his usual methodology, other than for the date not being current. Mr. Cochran explained that there were very few instances where the price determination would subsequently increase during the process. More often, there is nothing uncovered during due diligence and there is no difference. However, if something is found that was not discovered in due diligence, they would ask the seller for a reduction in the price.

186. Mr. Cochran testified that he felt the subject property was generally outdated. He did an analysis to see what the maximum price would be, considering its limitations and deferred maintenance. Purchasers would have to pay for the deferred items. The overall market is well defined and his conclusions were that office industrial bulk distribution and office R&D were viable uses. The market was in its infancy with little new development.

The demand was primarily a smaller user market for 50,000 square feet and below. It was an unproven office market. The vacancy for office space was 29%.

187. Mr. Cochran testified that he did a building-by-building analysis. The general format is to run an analysis that assumes revenue once the facility is leased, then deducts vacancy and expenses. He also used a Basis Computation, which includes associated costs incurred during the lease-up period and capital outlay for the project. He used a yield of 12%.

188. He explained each of his income and expense assumptions for each of the buildings. His rent rates were derived according to his knowledge of market rent and are not directly comparable to new office building rents. He looks at the office dynamics. There was a lot of office space under construction. The market absorption rate was low compared to the space that would be coming onto the market from the subject property.

189. Mr. Cochran used excerpts from Ross Consulting in Exhibit UU to reach his income conclusion. He used the lease that was dated July 10, 1998, as a letter of intent was issued prior to the June 30, 1998 level of value date. The leases in Exhibit UU were the basis for his base rent calculation. He used the new building rents and applied a discount of at lease 30% for the age of the subject property.

190. Mr. Cochran testified that he also did research on the Longmont facility. The asking rates were $10.00 to $12.00 per square foot for 2nd floor space, and the facility had no significant leasing during the 14 months following acquisition.

191. He used a standard multi-tenant vacancy allowance of 7%.

192. For expenses, Mr. Cochran used a property tax calculation based on the tax mill rate and the asking price per square foot. The other expenses were based on his experience and industry standard expenses. Expenses are not that critical to his price analysis; they are paid by tenants under triple net (NNN) leases and are shown as recoveries on the proforma pages. The Basic Computation is the expense that will be incurred during the lease-up period.

193. Mr. Cochran testified that, based on his experience, there may need to be some immediate repairs due to deferred maintenance, but the roof will not need replaced immediately. He testified that a contingency allowance is standard for this type of analysis, and he explained the basis of his expense determinations. The total is under Basic Computation in his analysis because it is an expenditure the owner would expect to incur in a reasonably short period of time.

194. Mr. Cochran then explained the various items he considered extraordinary improvement expenses. These included increasing window areas, demolition costs, and additional building entries. The power did not need upgraded. The contingency is due to a due-diligence-experience standard number.

195. Mr. Cochran's tenants' improvement allowance is $25.00 per square foot.

This is based on a lot of research and is consistent with his experience. This is the amount that the landlord agrees to put into the total tenant construction cost. The tenant bears the balance. It would take $40.00 to $45.00 total per square foot to do the finish.

196. His leasing commission rate is based on his experience and information from brokers. His lease term is for a 5-year contract.

197. Mr. Cochran explained his calculation for absorption loss, which involved using estimated income, vacant building expenses and an 18-month estimated lease-up period. The actual lease up is estimated to be 3 years, but, as the lease up will be staggered over time, he used the midpoint of 18 months. This is a real cost to the landlord, as he will still have expenses for the non-leased portions of the property. The closing cost is an estimate based on his experience.

198. Mr. Cochran then explained the calculation he used to achieve the actual maximum price a purchaser would pay for the building.

199. Mr. Cochran explained his methodology for calculating the differing rental rates, tenant improvements, and lease-up periods for each of the subject property buildings. There is no analysis in the report for Building 8, as the purchase price is a negative number. It would not be feasible to redevelop this building. There is a maze of lab and cleanup space with much higher demolition costs. In addition, with the square footage of Building 9 being assumed on the market, Building 8 would be too much space for the market to absorb. It would be better to scrape it, as the redevelopment costs would exceed the land value.

200. Mr. Cochran testified that he used a 12% rate of return throughout his analysis, with the exception of the Wellness Center. The Wellness Center is a unique property. It would not be cost effective to rehabilitate. He believes this building would remain as is, with a low tenant improvement cost. However, it would take probably 5 years to lease it.

201. Mr. Cochran's total price estimate was $21,981,205.00 for the entire subject property.

202. Under cross-examination, Mr. Cochran testified that he was not familiar with the term "actual value." He primarily deals with warehouse distribution centers and purchases properties for investment, not for occupying. His analysis assumes the property is vacant on the level of value date. He used the Boulder market from the Ross report, but the office market was unproven as of the level of value date. There was no proof that there was demand in the market to handle the influx of space coming onto the market.

203. Mr. Cochran admitted that an article in Exhibit CCC and portions of the Ross report indicate that Boulder is an exploding market and will continue to grow. However, he still feels the Boulder market was unproven, as he defined it.

204. Mr. Cochran clarified that Koll/Bren is the property owner of the former STK

facility in Longmont. In his opinion, the Longmont facility has similar characteristics but has a more updated exterior than the subject property. It does not have the aggregate construction and has more window area. He did not go into the interior. He does not know precisely what the condition of the Koll/Bren facility was at the time of sale. The large floor plates of the Koll/Bren facility hinder its leasing; it is larger than STK. He admitted that, as of January 1, 1998, the STK facility was functional for their needs; it was maintained.

205. Mr. Cochran testified that lease rates varied widely during the data-gathering period. He admitted that without the new building rental rates, the rents in Longmont would not be less than the rents in Louisville. He believes the market consists of primarily smaller users, although there are larger users. He is looking at tenants not owner-users.

206. Mr. Cochran testified that Building 7 is primarily warehouse space. However, it has a higher wall height at 22 feet, than the Longmont facility at 15 feet. Regarding Building 8, one of the reasons the costs to renovate would be negative is due to the floor plate. He admitted that the floor plate is smaller than the Longmont facility, but pointed out that he is more concerned with building depth.

207. Mr. Cochran testified that his analysis is a direct capitalization approach. The terms “cap rate” and “yield rate” are used interchangeably in his business. The Basis Computation is a year-one perspective. In his opinion, a sophisticated purchaser would use this type of analysis. Extraordinary tenant improvements and absorption loss expenses are typically used in a direct capitalization of <u>vacant</u> buildings. One way or another, the costs to get the building stabilized must be accounted for.

208. Mr. Cochran testified that there is a five-year supply for warehouse space, and that is important to his conclusion. He assumes that the STK facility will capture a greater than market share. To determine the estimated lease-up period of the buildings, he looks at every piece of information available, including the amount of vacant office space on the market and the space under construction. He also considered that the Koll/Bran facility had problems in leasing for 14 months. The bottom line is, there was lots of space on the market and Koll/Bran was having trouble leasing.

209. Mr. Cochran testified that the new development construction was knowable at the assessment date in the market. He admitted that price is very sensitive to the absorption period. His analysis assumes 75% of the non-executive space would be demolished, but 25% would remain.

210. Regarding the Wellness Center, Mr. Cochran testified that, in his opinion, it would take 5 years to find two users of the facility. The demand will be needed from the surrounding buildings to support this facility. He assumes the whole building would be vacant for 2.5 years, then the healthcare clinic would lease, and then the health club would lease at the end of the 5-year period.

211. Mr. Cochran testified that he believes median numbers found in reports might be misleading. The reported rents at $14.00 are higher, but are heavily weighted by new construction. He pointed out that some rents in the reports were $9.00 and $10.00. He

used rents of $11.00 to $11.50. He relied on more than surveys to reach his conclusion. He did not consider the Omega lease rental rates, but now believes that it indicates his rental rate is too high.

212. Mr. Cochran testified that landscaping and window improvements are necessary to achieve the $11.50 in rental rates. Without those improvements, the rental rates would be less. He admitted that the skylight expense should have been shown as an Extraordinary Tenant Improvement expense.

213. Upon questioning from the Board, Mr. Cochran clarified that an aggressive buyer pays the highest price for a property. Based on his experience, those buyers that compete with him and win are usually the most aggressive. They are “opportunity fund” buyers. He is very comfortable with his absorption loss time frames. It is reasonable for the absorption loss to be higher than the purchase price. He would classify this as an opportunity fund property. Ultimately, a buyer would look at total project costs and consider those to be replacement costs.

214. Regarding page 4 of Exhibit UU, the Board pointed out some lease location errors in the report. Mr. Cochran testified that the errors in location of the leases would not affect his rental assumption; if anything, he would adjust downward.

215. Under redirect, Mr. Cochran testified that a buyer would not base purchasing decisions on the Ross report. They would need more detailed information. The Ross report is based on net rents. He assumes that for gross rent leases, Ross staff would deduct reasonable expenses to arrive at a net rent. You could never rely exclusively on the Ross report; sometimes it contains mistakes. He believes that he may have overstated the total absorption figure due to the STK Longmont location error in the report. His rental information is based on the 18-month level of value period ending June 30, 1998.

216. He believes the Koll/Bran lease experience supports his conclusion. The lease was let at a premium, due to its short term. The lease-up period would be affected by rent rates and tenant improvements.

217. Under recross, Mr. Cochran testified that his analysis was based on a multi-tenant purchaser. He did not do the analysis for the seller. Once the property is stabilized, there is no absorption loss. His analysis is an initial acquisition analysis. For a longer period of time, he would use a discounted cash flow analysis.

218. Petitioner is requesting a 1999 actual value of $21,981,205.00 for the subject property.

219. Respondent began their case by presenting a video of the subject property for the Board to view. The video showed various exterior and interior portions of the STK facility, including samples of the different types of areas located within the buildings. There were views of the executive offices, warehouse areas, learning area, skylights, modular offices, cafeteria, executive marketing area, distribution center, labs, tape library manufacturing area, rooftop area, abandoned clean room, customer call center, views from the larger window areas within the building, the gold lab, the Central Utility Plant (CUP), the

tunnel and equipment at the CUP, the Wellness Center, and an aerial view of the facility.

220. Respondent's witness, Mr. W. West Foster, MAI, CRE, a Certified General Appraiser, and a partner in Foster Valuation Company, LLC., testified that 60% of his appraisal business is income producing property. He has done several large company appraisals, including eminent domain work. He was involved in developing appraisal materials for the Appraisal Institute's "The Appraisal of Real Estate", numerous editions. Mr. Foster was admitted as an expert in the area of real property valuation.

221. Testimony resumed on November 9, 2000 with Mr. W. West Foster recalled.

222. Respondent's witness, Mr. Foster, presented the following indicators of value:

Market:	$60,855,000.00
Cost:	$54,900,000.00

223. Mr. Foster testified that Exhibit 4 was his appraisal report. His level of value date was June 30, 1998, with an assessment date of January 1, 1999. He used sales from 1995 to June 30, 1998. It is a self-contained appraisal for ad valorem tax purposes. He has inspected the subject property 3 times and was provided with floor plans as well as some building plans by STK personnel.

224. Mr. Foster testified that the subject property is an R&D facility in which research and lab activities occur. His acreage for the property varies slightly from the agreed upon acreage, which affects his land value by $50,000.00. However, this does not affect his final value, as he rounded his value, which absorbs the difference. He put a lot of weight on the sales approach.

225. Mr. Foster read his definition of highest and best use into the record. In his opinion, the highest and best use for the subject property is continued use as an office, R&D and manufacturing facility. This would result in the highest value for the property. He explained that "value-in-use" is different than "value-in-exchange", which is market value. He read the definition of market value into the record.

226. Mr. Foster testified that he performed a "value-in-exchange" appraisal. "Value-in-use" includes the value of components that are germaine to a particular user, and would be a higher value than "value-in-exchange." He tried to find sales for continued use. His comparable Sales 3, 4, and 6 were used in a similar manner after the purchase as were used prior to the sale. The market value is premised on its highest and best use. He uses a weighted value concept.

227. Mr. Foster commented on the photographs in his report, made some corrections to captions, and pointed out areas that were not complete on January 1, 1999.

228. Regarding location issues, Mr. Foster testified that the subject property is located in a high-tech corridor, and he included demographic and economic factors in his report. He explained the areas on his map that were part of the appeal. He accepted Boulder County's agricultural land value for the portion of the property not being appealed.

229. Mr. Foster testified regarding deferred maintenance on Buildings 7, 8, and 9, which have Butler MR roof systems. He spoke with the Butler roof salesman, who indicated these roofs could last 100 years. They are designed to minimize movement and the only maintenance needed is to keep them clear of debris. They do not need sealed, but the fasteners may work loose and need examined periodically.

230. In his opinion, the facility is in average condition for a facility of its age. It does have some deferred maintenance due to age, but so do the comparables of similar age. He received information about the building maintenance issues and ongoing remodeling, but was not made aware of the exposed aggregate or caulking problems. By and large, the facility appears to be kept up very well. It was indicated to him that the HVAC did need some replacement due to its reaching the end of its economic life, but he took that into consideration. It was obvious that some parking lots needed replaced. He has not changed his opinion of the condition of the property. He took the necessary items into consideration.

231. Based on the market approach, Respondent's witness presented an indicated value of $60,855,000.00 for the subject property.

232. Respondent's witness presented 6 comparable sales ranging in sales price from $34.29 to $60.68 per square foot and in size from 554,100 to 1,398,142 square feet. After adjustments were made, the sales ranged from $28.69 to $38.26 per square foot.

233. Mr. Foster testified regarding the sales approach. He believes the market for the subject property, due to the size of the facility, is national or international. There are very few potential users for this type of facility. He located six comparable sales. He looked for buildings over 1 million square feet in size, with continued use after the sale. This resulted in a national search for data. He looked at California sales and ignored them as being a different market than Colorado. He looked for R&D and manufacturing facilities with supporting office space. He tried to limit the sales to single occupancies. However, Sale 5, the Longmont facility, sold for multi-tenancy. He used the percent of finished space as a criteria, as the subject property has + or - 75% of finished space, and buildings of lesser space would not be comparable.

234. Mr. Foster explained his methodology regarding his adjustments as listed on his sales chart. He made adjustments to the sales for property rights, financing and conditions of the sale, removed the allocated land value, and arrived at a building only sales price. He then made additional adjustments for location, access, age and condition, quality of construction, size, finished space and functional utility. He used a weighted year average to determine the age of the buildings, as shown in Exhibit 20. He prefers to calculate an indicated value for each sale, not plus and minus adjustments, which can be used when there is a tight range of prices. In a wide range of sales prices per unit of comparison, the plus and minus system is not appropriate, according to procedures found in The Appraisal of Real Estate, 11th Edition. His adjustments are qualitative. They are not supported by market extracted adjustments, but are based on his experience and observations. He believes there are adjustments to more than just land; the location of the

building may require a building location adjustment.

235. Regarding Sale 1, Mr. Foster testified that it was built as an alpha chip manufacturing facility. There are several major buildings, with the latest building constructed in 1992. It sold for continued use for the manufacturing of computer chips. At the time of sale, the complex was reworked to accommodate Intel's manufacturing process. The facility is 1,398,142 square feet and has 80% finish. It sold on May 15, 1998. The allocated sales price was $52,620,000.00 for the real property purchase.

236. Mr. Foster testified that it was difficult to confirm the sales, due to confidential agreements. He obtained property record cards and a copy of the quit claim deed from Digital to Intel. The consideration on the deed is the value of the real property, according to Massachusetts' state law. The facilities people could not disclose particulars of the sale. He spoke with the signors on the deed regarding the consideration on the deed and confirmed it to be correct. The allocated price was $52,620,000.00. The sale has been used in a Motorola property appraisal, and the price is reliable. The town appraiser, Mr. Jim Keene, said that his appraised value was similar at $52,918,000.00. He has been in the facility, but was not allowed beyond the lobby.

237. Regarding the larger transaction, there were lawsuits and countersuits between the parties and the final agreement involved a total acquisition cost of $625 million, as well as a variety of real, personal, and intangible property located throughout the world. He feels the allocated portion is reasonable. Real property must be allocated according to the Internal Revenue code, section 1060. He allocated a land value that is similar to the assessed value of the property. Mr. Keene said he had appropriate sales to support his value and therefore convinced Mr. Foster that his land value was accurate.

238. Regarding the allocated land values for the sales, Mr. Foster testified that all of the campuses have different storied buildings. The only way he could rationalize calculating the land-to-building ratios was to use the entire site, which is an acceptable method found in the industrial valuation textbook published by the Society of Industrial Realtors. He then calculated an indicated value for the building and compared building only values. Then he added the land value. He followed the same procedure for each sale. Each sale has an allocated land value.

239. Under cross-examination, Mr. Foster testified that he did not examine the allocations of the other parts of the transaction and does not know how the allocation was done. He was aware that the transfer was pursuant to a settlement agreement. He agreed that net book value is not the same as market value. However, he does not think the purchase price of the real estate is net book value. He thinks they agreed on a value for the real property. He admitted that his Sale 1 was not exposed on the market. He does not think the lawsuit affected the real estate value.

240. Under redirect, Mr. Foster testified that some assets were excluded from the purchase. The entire business assets were not sold. The real property allocation amount was $52,620,000.00. As part of the settlement, they would continue to manufacture the alpha chip, which was the fastest computer chip available at the time. He does not think net book value is an accounting trick. Mr. Lutz is not an appraiser and did not prepare the

appraisal for the property.

241. Upon questioning from the Board, Mr. Foster testified that he could not quantify the retrofitting costs on his Sale 1. The assessor said that they routinely have $3 million building permits come through for the property. When he was there, there was a lot of construction activity, but he did not see any new buildings.

242. Regarding Sale 2, Mr. Foster testified that it was sold by Mobile Tech to Bristol Myers Squibb. He selected this sale because it is a large facility and had similar continued use after the sale. It sold on July 3, 1997 for $41,700,000.00. There are numerous buildings totaling 829,655 square feet with 79.5% finished area. It has a Central Utilities Plant (CUP) building, as does the subject. There was a lot of lab space that was modified for the new user.

243. Mr. Foster obtained a copy of the property record cards and deed from the assessor's office. He had trouble contacting the signors of the deed. The affidavit showed $41,700,000.00. He confirmed the sales price with the broker that had the property listed for sale. The marketing time was about 15 months. He later discovered that the State of New Jersey awarded Bristol Myers a business employment incentive grant, but the broker for the buyer said the grant did not affect the sales price. The weighted age is 18.2 years, and he confirmed that, although the buildings were vacated, they were in reasonably good condition.

244. Mr. Foster testified that the land value was essentially the assessor's land value. He contacted an appraiser in Trenton, New Jersey, who was familiar with the area of the plant and who supported the assessor's valuation. The land had a conservation easement placed on it by the prior owner. This property is about 8 miles west of Princeton and is northwest of Trenton. It is about 60 miles west of Boston.

245. Mr. Foster testified that Exhibit 21 is a letter from Bristol Myers to the building inspection official of the Township. It indicates a construction budget after the purchase of almost $25 million. It was in fairly good condition for continued use, but went from a petroleum research facility to a pharmaceutical research facility, so there was some needed retrofitting. After the purchase, they built a corporate data center and added on to the CUP. The full $25 million may not be for the retrofit; some may have been new construction.

246. Exhibit 23 is a sales confirmation document. The purchase price was not influenced by excess land or by the minor amount of personal property included in the sale. The sale was adjusted through the same process as described previously. He also commented on his perception of size considerations for industrial R&D and manufacturing facilities. The total net adjustment is a negative 25%, for an indicated total value of $37.28 per square foot.

247. Under cross-examination, Mr. Foster testified that he drove around the property, and the photos in the marketing brochure appear to be representative. He personally finds Sale 2 more appealing than the subject, but wishes it were in a better location. He accounted for the appeal in the quality of construction. The landscaping is

natural in both the sale and the subject properties. He may have taken some consideration of the landscaping in the overall adjustment, but would not adjust for it individually. He discussed the tax credit with the buyer, who said it was almost an afterthought. He would think the absence of a personal property tax might be a factor in a sales price. He did not know that New Jersey did not have a personal property tax.

248. Under cross-examination, Mr. Foster testified that this property is located in the heart of the drug research community. It is within 50 miles of Princeton and is near many other large cities. He considered these factors in his location adjustment. He admitted that there was a potential for the facility to expand up to 3.5 million square feet, but he does not believe it is reasonable; 2 million square feet is what was approved in the brochure. A portion of the property has a conservation easement: all but 180 acres. The property was on the market for 18 months. He does not think it is superior to the subject. He feels the Longmont property took 2 years to sell because it was not on the Boulder Turnpike. His location adjustment is 10% for Longmont.

249. Under redirect, Mr. Foster testified he believes the excess vacant land sale located near Sale 2 has little relevance, due to its location near the interstate highway intersection and the Mercer County airport.

250. Under redirect, Mr. Foster testified that landscaping has some intrinsic value but is not an important value factor. The Authority determined the tax credit grant, not the purchaser. He specifically asked if it affected the price paid and was told no. Colorado's personal property tax has not seemed to deter high tech companies from moving to the state.

251. Regarding Sale 3, the property was sold by Sterling Drug to SmithKline and had continued use after the sale. Mr. Foster had difficulty in confirming the sale and could not gain access to the property. He conducted more investigation after his deposition, and has now concluded that this is not a good sale. He initially only gave the sale a 10% weighting consideration and the removal of the sale does not affect his conclusion, even though it would actually increase his final conclusion of value to exclude it.

252. Regarding Sale 4, the property was sold by Lucent Technology to Circo Craft Technologies in 1996. It is located southeast of Richmond, Virginia. Viasystems Technologies and Circo Craft are related companies; one is a parent company of the other.

253. He selected this sale due to its campus setting, its being an R&D facility with supporting office space, and its being sold for continued use to manufacture computer parts. The complex is clustered together and was built in phases from 1973 through 1985, with additions added through 1996. Mr. Foster inspected the property in August, but only gained access to the office lobby.

254. He confirmed the allocated sales price of $36 million, and the county assessor's office sent him copies of their property record cards and the special warranty deed. He confirmed that the property was bought for continued use, and that the purchasers continued to receive business from Lucent Technology. At the time of the transaction, 35% of their business was with Lucent. Mr. Foster felt that the business

transaction did not affect the value.

255. The allocated price was based on an appraisal prepared by Marshall and Stephens. He talked to the appraiser, whose value was estimated for continued industrial use. The appraiser had also calculated an estimate of value for an alternative use, which produced a considerably lower value.

256. The total transaction was $170 million, including personal property, intellectual property rights, etc. He considers the $36 million to be indicative of the real property value. The allocation was made in accordance with Internal Revenue Code 1060 and was based on an appraisal by Marshal and Stevens. The assessor's value, based on cost, was at $24 or $25 million and was a value that resulted from valuation protests every year. The assessor's office used the Marshal and Stevens appraisal land value, so that is the land value Mr. Foster adopted.

257. Mr. Foster proceeded to explain his adjustments. He utilized the same square footage figures as those used in the Marshal and Stevens' appraisal, although the assessor felt the area was substantially smaller. The actual age is superior due to an overall good condition; the facility was well maintained with minimal deferred maintenance. The overall adjustment was a negative 25%, with an indicated value per square foot of $37.87.

258. Under cross-examination, Mr. Foster agreed that there was a supply agreement entered into with the seller. He confirmed the sales price, and he also relied on the 1060 report. The total purchase price was more than $170 million, and he used an allocation price of $36 million. His allocation was based on an appraisal that he has not seen. The appraiser valued the property as highest and best use for its continuing similar use. He confirmed it was "value-in-exchange" per his discussions with the appraiser. He has used other appraisers' values to base a sales analysis on when the property sold for the same value. If it did not sell, he would not use it. He pointed out that the value was confirmed by a party to the transaction to be the price allocated, as well as by the appraiser. The appraisal report as prepared was for two values, as he testified earlier.

259. Regarding Sale 5, this is the Longmont sale, from STK to K/B (Koll/Bran) Fund IV, and is also Petitioner's Sale 1. He toured the facility in 1992. He did not think it was comparable to the subject, but as he had no good sales in Colorado, he thought he should not ignore it. He disagrees with Petitioner regarding the property's condition. He pointed out that the red trim in the photograph was added after the sale.

260. He obtained a copy of the special warranty deed. He confirmed the sale price of $19 million with another appraiser and with COMPS. Iomega had leased a portion of the property and he confirmed the lease rates and the poor condition of the property. He talked to the leasing broker, who told him there was a need for a lot of demolition.

261. He used an allocated land value, based on four land transactions. He considered the land to be very similar to the subject property site and concluded to a land value of $1.30 per square foot. This is where he differs with Consultus. Consultus valued

the property with excess land. Mr. Foster is valuing the entire site; he valued all the area conveyed to K/B.

262. Mr. Foster testified that he feels the Longmont location is inferior to Louisville. There is far more traffic on the Boulder Turnpike than on the Diagonal Highway, as shown by the traffic counts in Exhibit 19. He considered the condition to be inferior to the subject property, even though the age is newer. He made a quality of construction adjustment because a portion of the northern wall is metal rather than precast concrete. The property is smaller. His 57% estimate for finished space was taken from the Consultus report.

263. Mr. Foster testified that the percent of office space in Longmont was changed after he prepared his report. He does not know where the 65% office figure came from, but it is not materially different from 57%. There was no value for the interior finish to K/B, as they would gut the structure. He said that if the use of the facility had continued in a similar manner, the interior finish probably would have had some value. The total adjustment was 60%, for an adjusted value of $36.44 per square foot. Since the total adjustment factor was so large at 60%, he placed zero weight on it.

264. Under cross-examination, Mr. Foster testified that he has now given more weight to this sale after he has thrown out two other sales, as it would now carry some weight, given the remaining comparables. He demonstrated the location of the land sales that he used to establish his land value. He admitted that properties located on the Diagonal Highway would probably sell for more than those located away from the Diagonal.

265. Under cross-examination, Mr. Foster discussed his functional utility adjustments that were based in part on the percentage of buildings located below grade at Longmont being larger as compared to the subject property. He might change his functional utility adjustment if they were in fact similar. His adjustment also considers the large floor-plate of the building. He understands that the first time STK vacated Longmont was because of bankruptcy. The second time was that they did not need the capacity.

266. Under cross-examination, Mr. Foster testified that the quality of construction difference was partly due to the fact that Louisville was all pre-cast concrete walls. The Longmont walls in the L-shape portion of the building are pre-engineered steel construction. He testified that the subject property Building 7 has the MR24 roofing system, which is completely different from the Longmont building roof system, which consists of metal panels. He then answered a series of questions regarding the type of construction on other buildings at the Louisville facility. Mr. Foster explained the information he used to calculate the different types of space at Longmont. It might change his adjustment to 10% rather than 15% if the percentage was different.

267. Under redirect, Mr. Foster testified that most of the excess land for Sale 5 is located north of the facility and is not immediately adjacent to the Diagonal. He considered the size of the entire site when determining his allocated land value, but size was only a little factor. STK did not abandon Louisville when they declared bankruptcy. The second time Longmont left, he guessed it was because they used to produce the iceberg product there and they no longer produced it. He reviewed the floor plans and a wall section detail for each building at STK as provided by their personnel, which is where he got his building

descriptions.

268. Regarding Sale 6, the property was sold by IBM to Multilayer Tek. It has a campus environment and was sold for continued use for circuit board manufacturing. He drove the campus, but only gained access to the lobby. He conducted extensive research of the allocated portion of the sales price to the real property. His research resulted in various allocation amounts, but the majority of his conversations indicated a sales price of $40,000,000.00. However, Mr. Foster concluded that he could not use this sale, and he withdrew it from consideration in his conclusion of value.

269. Mr. Foster testified that he originally weighted his sales as follows:

Sale 1 at 20%
Sale 2 at 25%
Sale 3 at 10% (subsequently removed)
Sale 4 at 25%
Sale 5 at 0%
Sale 6 at 20% (subsequently removed)

His original indicated value was $36.90 per square foot of gross building area.

270. Mr. Foster has now revised his weighting of the sales to the following:

Sale 1 at 25%
Sale 2 at 35%
Sale 3 at 0%
Sale 4 at 35%
Sale 5 at 5%
Sale 6 at 0%

His revised indicated value is $37.61 per square foot.

271. Mr. Foster then corrected some age calculations as per Exhibit 20. Consequently, he now has concluded to an indicated value of $36.42 per square foot, or $60,855,000.00. This revision still does not change his opinion of value, which is $60,000.000.00.

272. Mr. Foster testified that he had reviewed the Consultus appraisal. He agrees that the highest and best use is as a continued single-occupant office/manufacturing facility.

273. Regarding Petitioner's Sale 1, the Longmont sale, Mr. Foster believes the biggest difference in his and Consultus' opinions is the condition and location adjustments. He feels both are inferior to the subject property. There is some functional deficiency and the quality is low due to the metal construction wall.

274. Regarding Petitioner's Sale 2, the Cypress Texas sale, Mr. Foster testified

that he visited and spoke with the manager, and viewed the corridors that connect the pods. It was on the market for 7 years before it sold. The facility had been vacant for some time and Compaq only wanted a small portion of the building. An investor made a deal for the entire building, and a low lease rate may have affected the value. It is in a remote location. The sale occurred in 1994. At that time, the area was recovering from a recession. The condition was such that Compaq had to redo the tenant finish and the roof had to be replaced.

275. Regarding Petitioner's Sale 3, the Aurora sale, the deed in lieu of foreclosure was issued for the stated debt relief. The tenant was weak financially, and just prior to the sale, had renegotiated the lease downward. Since the sellers renegotiated the lease down by 35 to 40%, it indicated to him they were under some duress. The tenant then purchased the property and immediately deeded it to JJS, Inc. He investigated land sales and found the land value to be indicated at $.80 per square foot as compared to subject property land value of $1.78. The location is generally inferior. It is a 1% finish, distribution warehouse.

276. Regarding Petitioner's Sale 4, Mr. Foster talked with two Phoenix area appraisers regarding land values. Sales information from north of Phoenix indicated prices were $1.26 per square foot. There was a big difference in market conditions in 1994 as compared to 1998. The seller leased back a part of the facility, and he understands that the balance was purchased for conversion to multi-tenancy.

277. Regarding the IBM sales used by Petitioner, Sales 5, 7, and 8, Mr. Foster commented on a news article marked as Exhibit 46. He read portions of the article concerning the overall drop in property that IBM owned and leased, being from 175.1 million square feet in 1993 to 130.4 million square feet in 1997. He also read the portion of the article that stated IBM had been selling property in a cost-cutting effort sparked by the company's once-glaring financial problems. He felt that the company had been in distress when they sold these properties and that could have affected the sales prices.

278. Regarding Petitioner's Sale 5, the Endicott sale, Mr. Foster spoke with a Syracuse, New York appraiser regarding land values. He indicated a land value of $8,000.00 per acre, nearly 10 times less than the subject property land value. Exhibit 47 contains demographic information that he feels indicates the Endicott location is inferior. The purchase was for a change in use to multi-tenancy.

279. Regarding Petitioner's Sale 6, the Springfield Missouri sale, Mr. Foster spoke with the appraiser that did the appraisal for Zenith. Bass Pro Shops leased a portion of the property in 1991 and had a purchase option in place at that time, but the sale did not close until 1994. There was also another tenant there during that time frame. The building was about 58% warehouse, and Bass Pro Shops is running their catalogue business out of this property. Zenith was under dire financial straits when this sale took place. He believes that Zenith's distress and the lease purchase agreement being entered into in 1991 would have an effect on the price. He understands that the option was for the entire facility, but the lease was only for a portion of the property. Land values in the area were $16,000.00 to $20,000.00 per acre. Based on those values and the description of the area, he feels this location is vastly inferior to the subject property. He also thinks there is a vastly

different market in Springfield as compared to Kansas City.

280. Regarding Petitioner's Sale 7, the Boca Raton sale, he has not seen the property but has spoken with Max Derbes, who inspected the property shortly after the sale. Some of the newspaper articles he has read are Exhibits 38, 39, 40, and 41, and he relied on them for his report. Local brokers were speculating that the sale should be over $100 million. The broker involved in the listing said IBM decided to go to sealed bid. Buyers could not conduct due diligence due to the rush to close and, therefore, the prices were reduced substantially, as much as 50%. Just after the transaction, Building 51 sold for $63.56 per square foot. He initially understood that IBM remained in the building, but is now not sure. The property was converted to multi-tenancy and sold without contingencies. Any change in use would have to go through an extensive approval process.

281. Regarding Petitioner's Sale 8, the Kingston, New York sale, Mr. Foster spoke with a local appraiser to get land values. He was provided with land sale transactions that occurred close to the date of this sale. They indicated that land should sell for $50,000.00 or $60,000.00 per acre, which is less than the subject property land. The buildings are much older, many of which were built in the 1950s. It had been on the market for 3 years, and was15% occupied. Contamination issues were part of the transaction. It is located in an economic development zone, which indicates that the economic base needs revived by government incentives. There are no incentives in Boulder County. He pointed out demographic declines, as shown in Exhibit 47, for Ulster County.

282. Mr. Foster testified that his primary concern regarding Petitioner's sales comparison approach is that 3 of the sales occurred in 1994, and the 1998 market conditions are superior. Petitioner's Sale 3, a distribution warehouse, does not appear to be a reasonable indicator of value. Regarding Petitioner's income approach, the rental rate should have been considerably higher.

283. Respondent's witness did not present an income approach value for the subject property.

284. Mr. Foster testified that he considered an income approach, but only found one rental of a large facility that was put to a continued use. This was the Cypress, Texas property, which was leased at $3.00 a square foot. This lease was negotiated in 1994, and they got a sweetheart deal to take the whole building. He does not believe there is sufficient market data to develop an income analysis; only if you do a multi-tenant analysis, and that is not the highest and best use.

285. Mr. Foster believes Mr. Cochran's approach is a good case for multi-tenancy <u>not</u> being the highest and best use for the subject property, due to the lower price estimate. Mr. Foster's value estimate of $60 million is much higher as a continued use to a single user. In a direct capitalization approach, you do not use a yield rate. Yield rate is not synonyms with discount rate. Tenant improvements, capital improvements, etc., are usually seen in a discounted cash flow, especially over a long lease-up time.

286. Respondent's witness used a state-approved cost estimating service to derive

a market-adjusted cost value for the subject property of $54,900,000.00.

287. Mr. Foster testified that he performed a cost approach, but placed very little weight on it. He used Marshal & Swift, but would have preferred a "quantity survey" cost estimate. He did not have a lot of good data to measure accrued depreciation.

288. Mr. Foster separately calculated curable and incurable depreciation. He used $15,216,768.00 for deferred maintenance (curable physical deterioration), which was similar to everyone else's figures. His incurable physical depreciation was $32,412,907.00. He deducted another 15% for functional obsolescence. He did not deduct anything for external obsolescence. Virtually all of the properties in this report are affected by the same issues: functional and external obsolescence.

289. Mr. Foster performed a market-derived depreciation schedule and explained the differences between his calculations and the Consultus report. They involved varying land values and replacement cost new estimates. His calculation of depreciation from all sources totaled 56.17%. His indicated value via the cost approach was $54,900,000.00.

290. Mr. Foster felt his market approach was by far the best approach to value and he correlated to $60,000,000.00 for the subject property.

291. Under cross-examination, Mr. Foster testified that he valued the subject property for continued use using "value-in-exchange." He admitted that his Sales 1, 4, and 6 involved business assets as well as real property. He did not feel the real estate would bring more when additional assets were also being acquired. He admitted that his Sales 4 and 6 continued with identical use after the sale. His Sale 1 continued for chip manufacturing but was not identical.

292. He did not attempt to determine a use value. He confirmed the sales extensively and does not believe that the allocation of the real estate reflected use value. He is satisfied that these allocations represent "value-in-exchange" for continued use. The IRS 1060 allocation requires market value and he must assume that what he has confirmed as market value assets is what they used and that they are being honest.

293. In redirect testimony, Mr. Foster responded to Petitioner's criticism of his using other appraisers' values in his report. Mr. Foster pointed out that for the Boca Raton sale, their Sale 7, Consultus utilized an excess land value adjustment that was based on an appraisal prepared by another appraiser.

294. Mr. Foster reiterated that "use value" is not the same as "value-in-use." They are similar but he is not clear on the distinction of the difference. Use value is more a value assigned a specific property has for a specific use. It is not quite the same as "value-in-use." Use value means there is something of value that is very specific to that particular property owner. "Value-in-use" is the value of the property for a specific use.

295. Mr. Foster testified that the Longmont sale was zoned industrial use with a minimal lot size of 80 acres. The Xilinex sale was zoned industrial PUD. The Amgen property and the LM Venture property were zoned business light industrial, the same

zoning that the Longmont property was changed to after the sale. The business light industrial zoning is more flexible and allows higher density. It would need a downward adjustment as compared to the Longmont zoning at the time of sale.

296. Respondent assigned an actual value of $56,021,200.00 to the subject property for tax year 1999, including the portion of the property classified as agricultural land. A breakdown of the schedules and their assigned values is as follows:

Schedule Number	Land Value	Building Value	Total Value
0031110-01	$ 6,947,100.00	$ 2,223,100.00	$ 9,170,200.00
0031110-02	$ 1,200.00	$ 4,536,700.00	$ 4,537,900.00
0031110-03	$ 200.00	$ 3,712,100.00	$ 3,712,300.00
0031110-04	$	$ 1,835,700.00	$ 1,835,700.00
0031110-07	$	$ 7,156,400.00	$ 7,156,400.00
0031110-08	$	$ 33,600.00	$ 33,600.00
0080976-01	$ 8,783,400.00	$ 3,194,500.00	$11,977,900.00
0080976-02	$ 2,900.00	$ 1,019,000.00	$ 1,021,900.00
0080976-03	$ 6,700.00	$ 4,018,100.00	$ 4,024,800.00
0080976-04	$ 1,000.00	$ 3,055,900.00	$ 3,056,900.00
0080976-05	$ 1,100.00	$ 5,150,000.00	$ 5,151,100.00
0080976-06	$	$ 43,300.00	$ 43,300.00
0080976-07	$	$ 1,712,700.00	$ 1,712,700.00
0103535	$ 718,800.00	$ 1,867,700.00	$ 2,586,500.00
Totals	$16,462,400.00	$39,558,800.00	$56,021,200.00

297. Testimony resumed on November 17, 2000, with Mr. Stan Crouse called.

298. Respondent questioned Mr. Stan Crouse, State Tax Manager for STK, who clarified that Petitioner's requested value is Mr. Cochran's value.

299. Petitioner is requesting a 1999 actual value of $21,981,205.00 for the subject property.

300. Petitioner recalled Mr. W. West Foster for rebuttal testimony. Mr. Foster admitted that the only building he had appraised previously that was in excess of 1.5 million square feet, was the Kodak manufacturing facility in Weld County. He admitted that his Comparable Sales 1 and 4 included the sale of business in the gross selling price. He did not investigate the value of either tangible or intangible assets in those sales.

301. Petitioner's rebuttal witness, Mr. Jack Hanna, a Certified General Appraiser and Senior Property Tax Consultant with CBIZ Property Tax Solutions, Inc., was accepted as an expert in the field of real estate appraisal.

302. Mr. Hanna testified that he is familiar with the Longmont facility and its land. He was asked to give an estimate of value for the 60 acres of agricultural land in Longmont. He concluded that the value was $4,835,160.00, or $1.85 per square foot. He also investigated the assessor land value for the industrial classed land and found it to be

valued at $1.78 per square foot. Based on that value, as well as other land values in the area, he felt his value of $1.85 was supported.

303. Under cross-examination, Mr. Hanna testified that his opinion of value was based on instructions from his client. It is not an appraisal. He personally inspected the property at Clover Drive. His value is based on the fact that it was agricultural land. Generally, land values decrease per square foot as land size increases, but not in all cases. His value is as of June 30, 1998. He did not have an opinion of value for May of 1997, although he was aware of the 1997 sale.

304. Under cross-examination, Mr. Hanna admitted that his Comparables 1 and 4 are the same property, selling first in January of 1998 and again in May of 1998. He did not feel that these paired sales indicated a significant land value increase. He believed the value increase was due to a large down payment and a financing assumption. The 60-acre parcel zoning was MIU as of June 30, 1998. The zoning for Sales 1, 2, and 4 is BLI and the zoning for Sale 3 is PUD. MIU is a more restrictive zoning; it is similar to PUD, but is only for industrial development. He accounted for zoning differences in a qualitative manner. His analysis was a market value as if the property was not classified as agricultural.

305. Under redirect, Mr. Hanna testified that his report date is as of July 1, 1998. Sale 4 is a transfer between related parties and includes a $4.5 million down payment and the financing of the Sale 1 transaction. Sale 3 occurred at the same time as Sale 1.

306. Upon questioning from the Board, Mr. Hanna testified that he now would rely less on Sale 4, but it still does not affect his conclusion.

307. Petitioner recalled Mr. Steve Letman for rebuttal testimony. He explained that the Dictionary of Real Estate Appraisal defines “use value” as synonymous with “value-in-use.” Use value is the value a specific property has for a specific use. The dictionary definition for “value-in-use” says “see use value.” Mr. Letman testified that there are DPT guidelines for valuing industrial properties. They do not distinguish between single tenant, multi-tenant, or owner-occupied properties. Exhibit AAA is an article in the Appraisal Journal that suggests guidelines to be used in the allocation of sales prices.

308. Mr. Letman testified that Exhibit EEE is a second letter from Mr. Lutz regarding Respondent’s Sale 4. Mr. Lutz never meant to say that the value was equal to “value-in-exchange.”

309. Regarding Respondent’s Sale 1, Mr. Letman testified that he spoke with the property tax manager at Intel. The real property value assigned for the transaction was the assessed value on the tax roll at the time of sale. He believes that new construction was done to the property after the sale, including new structures, based on articles he has read. The new facility has a substantial clean room, which would contribute in part to the high cost of construction.

310. Regarding the subject property, Mr. Letman testified that the existing zoning

would permit multi-tenant occupancy, according to the Louisville planning department.

311. Mr. Letman testified that the marketing period for his Sale 5, the Endicott property, was 2.5 years. The marketing period for his Sale 8, the Ulster property, was 3 years. His Sale 6, the Springfield sale, was not an exercise of an option. There was an option, but it was only for about 25% of the facility. The sales price was newly negotiated, and the option had no bearing on the transaction. His Sale 1, the Longmont property, went on the market in December of 1995 and sold in May of 1997. They only received 6 offers during that time, and none of the offers were made by owner-occupants.

312. Regarding Mr. Foster's Sale 2, the Mobil Tech sale in New Jersey, Mr. Letman spoke with 2 MAI appraisers. This facility is very complex and highly specialized. There is a lot of wet space, as well as a state-of-the-art animal testing area. They called it very high quality construction.

313. Under cross-examination, Mr. Letman admitted that Mr. Lutz is not an appraiser. He did not speak with the appraiser for Respondent's Sale 4, and he has not seen the appraisal. Regarding Exhibit AAA, Mr. Letman testified that the shape of the subject building lends itself well to multi-tenancy. It could be used as separated buildings, but would be easier to use by building clusters. The subject property Building 6 is located on its own plat. As of June 30, 1998, Building 6 could have been sold separately, but not the remaining buildings without a split of various parcels.

314. Under cross-examination, Mr. Letman testified that he relied on the opinion of Paula Matthews, an employee of the buyer, for his estimate of $1.90 per square foot for the excess land in Longmont. He does not know if STK agreed with that value for the excess land and does not feel it is relevant. The more important question was what the purchasers anticipated they were buying. The opinion of the purchaser, as well as his analysis, is what was used for the land value.

315. Petitioner's rebuttal witness, Mr. Eric Dienstbach, an industrial commercial real estate broker for the Chesterton Blumenuer Binswanger companies was accepted as an expert in the marketing of large industrial properties. His company focuses on sales of larger industrial properties worldwide. He has been involved in at least 4 transactions of properties in excess of 1,000,000 square feet.

316. Mr. Dienstbach testified that he is familiar with the subject property. He saw the facility 2 years ago and again within the last two months. Exhibit WW is a letter from him. He was asked to answer two questions in his report, as though he was acting as a broker for STK, as of the June 30, 1998 date.

317. Regarding the first question, Mr. Dienstbach testified that he was to determine what kind of buyer would most likely purchase the STK facility. It is his experience that there are two categories of buyers: user/buyer and investor/developer. It is most likely that an investment/developer would purchase the subject property. A user/buyer would be more inclined to build their own facility. Any purchaser that could financially need and acquire that much square footage, would want their own identity on

the facility, as well as a more modern facility. The retrofit costs would be prohibitively. The subject property would not be aesthetically or functionally sufficient to meet their need. It is not likely that a single occupant/owner would purchase it.

318. Regarding the second question, Mr. Dienstbach testified that he was asked to determine whether a potential purchaser would be willing to pay more, less, or the same price per square foot as K/B Opportunity Fund IV paid for the Longmont facility. He testified that he is familiar with the Longmont facility. He would expect a lesser amount to be paid for the Louisville facility, primarily because the larger and more cumbersome the complex, the less per square foot can be anticipated, plus there would be the additional cost to bring the facility up to date.

319. Mr. Dienstbach testified that he had prepared a preliminary data sheet of what he observed during his inspection and which was the basis of his marketing proposal. It reflects the condition of the Longmont property at the time of sale. The amount of finished space in Longmont versus Louisville is too small a difference to impact the price. In fact, it could be a detriment due to demolition needs. He is familiar with the overall construction of both sites and considers both to be comparable. If given a choice between the two facilities, he would take Longmont.

320. Mr. Dienstbach testified that a 5 to 15 mile radius to a corporate airport could be an asset, but beyond that it would not be an influence.

321. Mr. Dienstbach testified that his firm represented the seller, Bull HN Information Systems, Inc, in the Phoenix facility, Petitioner's Sale 4. The improvements are comparable to Louisville. There is a lot of similarity in the square footage, surplus land, etc. Excess land was a significant feature in the sale. They agreed upon an in-house value of $2.50 per square foot for the excess land, knowing there could need to be some zoning changes. It was the value they placed on it for marketing. They considered approximately 50 acres as excess land.

322. Under cross-examination, Mr. Dienstbach testified that the Phoenix facility was somewhat outdated at the time of sale, except for the new office area. Without the excess land, the ratio would be closer to 3 to 1. He is not an appraiser and his report is not an appraisal. <u>His letter is not an opinion of value</u>. It is his opinion based on his professional experience. He agreed that a purchaser for multi-tenancy would result in a sales price considerably less for a facility used for a single tenant.

323. Mr. Dienstbach testified that in comparing the subject property with Longmont, he assumes it will be more likely to be purchased by a multi-tenant investor. The STK facility is not considered to be a modern R&D manufacturing facility. He considered the Longmont facility to be modern, according to his observations in 1996 of the finished space and how it was utilized, although most of the building was vacant. The excellent condition was based on his observation. He does not recall the condition of the roof when he was at Longmont, but he would probably have understood there would have been another 5 years of life to it.

324. Whether location was a factor for a buyer would depend on its use. Mr.

Dienstbach testified that many of these facilities are in fairly isolated areas. R&D facilities typically need to be closer to a high population area. The subject property's location being close to the Boulder Turnpike, would be better than Longmont's Diagonal road location when referring to vacant lots, but the facilities would be minimally influenced. He would avoid distribution warehouse sales in determining a price for the subject property.

325. Upon questioning from the Board, Mr. Dienstbach clarified that the 50 excess acres at $2.50 per square foot involved in Petitioner's Sale 4, the Phoenix sale, could have been calculated at that rate due to the owner's need on the books. However, it was probably close to market value. The challenge of this sale site is the building itself. They were inclined to throw in the land in their marketing. The excess land, the lease back, and the ease to make it a multi-tenant property were "carrots" to the buyers. There was about 200,000 square feet leased back for 5 years.

326. Mr. Dienstbach would consider the overall locations of Phoenix and Louisville to be similar, both having good freeway exposure and good access. Regarding size, the smaller the size of a building, the easier it is to market. He believes the overall condition is similar. The original structure was older and more obsolete, but with the new addition, he feels they would be similar to the subject. Phoenix sold for $13.77 per square foot. He would probably put the subject property on the market for more, somewhere around $15.00 per square foot to a user/developer.

327. Under redirect, Mr. Dienstbach testified that configuration was more of an issue in marketing 1 million plus square foot properties than size. There are many more users for 500,000 square foot properties. Once you get beyond 500,000 square feet, you lose potential buyers and that affects the selling price.

328. Petitioner's rebuttal witness, Mr. Dennis Foote, testified that the MR30 metal roofs have a standard, 20-year warranty. Approximately 20% of Longmont's total roof space is steel. The L-shape portion of the Longmont facility has the same metal roof as the buildings at Louisville. The metal wall at Longmont is approximately 400 linear foot long. He estimated a difference in costs for metal versus aggregate wall construction to be approximately $21,000.00, including overhead and profit for the contractor.

329. Mr. Foote considers the wider column spacing at Longmont to allow more flexibility for the interior space, as does its higher clear heights and larger window sizes than the Longmont facility. The soil conditions in Longmont have less expansive clay; the slab floor in Longmont is still intact but there are a number of cracked floors in the Louisville facility. 7% of the Louisville facility is located below ground level. He would prefer to occupy the Longmont facility.

330. Under cross-examination, Mr. Foote testified that 20% of the Longmont space is underground. His repairs and replacement worksheets contain estimates for a re-coating of the Butler roofs, due to corroding or rusting, but no expense for replacing them.

CONCLUSIONS:

1. Petitioner presented sufficient probative evidence and testimony to prove that the subject property was incorrectly valued for tax year 1999.

2. The Board carefully reviewed Petitioner's witness Mr. Cochran's price analysis for the subject property. In order to conduct his analysis, Mr. Cochran had to determine what occupancies "might" occur for each of the subject property buildings, as well as when the occupancy "might" begin. The Board believes that an income approach based on what "might" occur in the future, rather than on actual property experience is too speculative in nature. Therefore, the Board did not rely upon his price estimate.

3. The Board has rendered a decision based on the market approach to value. Petitioner's witness, Mr. Letman, did not conclude to any value from the cost approach. He placed little emphasis on the indicated value from the income approach. Respondent's witness, Mr. Foster, did not conclude to a value from the income approach. He placed little weight on the indicated value from the cost approach. Both witnesses placed little or no weight on any indicated value from either the cost or income approaches to value. The market approach becomes not only the most weighted approach; it is the only approach used by both experts.

4. The record indicates that the sale of a single-tenant facility to a single-tenant user would result in a higher sales price than if it were sold to a multi-tenant user. That fact is not in dispute by either party. The "touchstone" for this appeal is whether the highest and best use of the subject indicates a single tenant or multi-tenant user. The Respondent contends that a single-tenant user is most probable and most profitable. The Petitioner contends that a multi-tenant analysis is most appropriate. We agree with Petitioner. The definition of highest and best use combines "probable use" with "highest value" requirements. We believe that Respondent relied upon an improbable use to calculate the maximally productive value.

5. The record indicates a lack of sales of single-tenant facilities to single-tenant end users. Both experts searched the entire country for sales of single-tenant properties that occurred during the 5-year period ending June 30, 1998. No single-tenant sales were located that were of a similar square footage to the subject property. Mr. Letman's sales of similarly sized properties were all multi-tenant sales or converted to alternative uses after the sale. Mr. Foster presented one property that was similar in size to the subject; however, this property had an allocated sales price as it was a part of a larger transaction. The Board will address this sale later in its market analysis. Respondent's argument that a value based on multi-tenant use would result in a lesser value is not supported, as the Board finds no preponderance of evidence to support what a market value of the subject property would be if based on a single-tenant user.

6. Both Mr. Foster and Mr. Letman relied upon the definition of highest and best use as found in The Appraisal of Real Estate, 11th Edition, 1996. The highest and best use of improved property must meet four criteria: it must be legally permissible, physically possible, financially feasible, and maximally productive. Consequently, the Board finds that a multi-tenant use for the subject property meets all four of the criteria for highest and best use.

7. Respondent contends that the current use will be the highest and best use, unless there is ample evidence to demonstrate that there is another use that is even more optimal than the present use. Based on the lack of sales of large, single tenant properties, the Board finds there is a preponderance of evidence to support a use other than the present use. Petitioner’s witness, Mr. Letman, presented numerous sales of multi-tenant occupancy properties. However, Mr. Letman testified that he was unable to find a single facility in excess of 500,000 square feet that sold for a purpose other than multi-tenant development. The Board concluded that the market is dominated by multi-tenancy properties.

8. The Board was also persuaded by the testimony of Petitioner’s witness, Mr. Dienstbach, that once facilities reach a threshold of 500,000 square feet, there is a lack of potential buyers. Mr. Dienstbach also testified that any purchaser that was in a financial position to acquire property as large as the subject property would prefer to build their own facility, as the retrofit costs would be prohibitive. The Board finds that Mr. Dienstbach’s testimony is supported by the lack of sales of single-tenant facilities to single-tenant end users.

9. In *Board of Assessment Appeals v. Colorado Arlberg Club*, 762 P.2d 146, 151 (Colo. 1988), the Colorado Supreme Court held that “…reasonable future use is relevant to a property=s current market value for tax assessment purposes.” The court explained that Colorado=s tax statute “does not preclude consideration of future uses.” The court contrasted “reasonable future use” with “speculative future uses,” which the court said could not be considered in determining market value for property tax purposes.

10. The Board has determined that a multi-tenant use is a “reasonable future use” and is not a “speculative future use.” During the statutory time frame ending June 30, 1998, there was a lack of market sales for this type of a facility for a single tenant user. We are convinced, based on the evidence and testimony presented in this case, that the highest and best use of the subject property is for multi-tenant use.

11. Once the highest and best use is determined, the highest value can be estimated. Consequently, sales involving multi-tenant uses or sales of facilities converted from single to multi-tenant uses would be most appropriate and would be given most weight.

12. A second major contention was the issue of “excess land.” The Petitioner’s witness adjusted for excess land and the Respondent did not. We agree with the Petitioner. The Petitioner’s witness analyzed the comparable sites, determined the excess acreage where appropriate, estimated a value for the excess land and then deducted this value on a per square foot basis. The Respondent’s witness first “allocated” a land value for the entire comparable parcel and deducted this amount from the sales price. After adjusting the sales price per square foot of improvements for significant market differences, the witness then added in a lump sum $7.06 per square foot to each comparable. This amount represents the subject’s estimated land value of $11,800,000.00. We reject this valuation scheme as incomplete. “Excess land” is an issue

for the subject and comparables, and must be addressed in the valuation grid.

13. The Board recognizes the challenges involved in performing an accurate market approach to value. We recognize the complexities in verifying sales that often involve secretive, proprietary information gathered from disinterested grantors, grantees and third-party participants. We recognize that both appraisal experts took differing routes in the sales verification process. Mr. Letman relied on fellow Members of the Appraisal Institute (M.A.I.) for information and then proceeded. Mr. Foster started with the local assessor's office and commenced with the verification process. We recognize that both experts made liberal use of third party information and judgment, especially as it relates to allocated land values and estimates of excess land area and excess land value.

14. The Counsels for both parties attempted to point out fatal flaws in the other's market sales. Mr. Foster voluntarily withdrew two sales (#3 & #6) on the record. Mr. Letman admitted that I.B.M. disposed of roughly 18 million square feet during the period it sold Respondent's Comparables #5, #7, and #8. Both parties were reasonably successful in impeaching certain market characteristics of each sale. The Board must in fact weigh these impeached sales and rule on the appropriateness of the Respondent value.

15. All of the comparables were considered, but with the exception of the Longmont sale, were assigned little weight.

16. The Petitioner presented 7 comparables in addition to Longmont. Comparable #2 in Cypress, Texas, had a sales date more than 3 1/2 years before the valuation date. The improvements had been vacant for 2 years and the property was marketed for 3 years. It is 18 miles from the Houston beltway in an arguably remote area. Comparable #3 is the sale of a warehouse in Aurora, Colorado. Mr. Letman assigned little weight to this sale. The Board was not convinced that a warehouse property would be comparable to the subject property. The fourth comparable is a multi-tenant sale in Phoenix, Arizona. The contract date in March of 1994, places it more than 4 years before the valuation date. The sale was further complicated by a 5-year lease back involving 200,000 square feet. Mr. Letman placed this sale fifth in terms of comparability. The Springfield, Missouri sale was never offered on the open market and was sold to an existing tenant. We can take little direction from such a sale. Comparables #5, #7, and #8 involved former IBM properties. The Board is not convinced that these transactions were arm's length. Comparable #7 was sold in a sealed bid procedure. Mr. Letman testified that he assigned little weight to Comparable #8. The Board could take little direction from any of these seven sales.

17. The Respondent presented five sales in addition to Longmont. Mr. Foster withdrew Sales #3 (Montgomery County Pennsylvania) and #6 (Austin, Texas) on the record. Sales #1 (Hudson, Massachusetts) and #4 (Richmond, Virginia) involved an allocation of land and improvement values from sales prices that included real and personal property and intellectual property rights, as well as employees. The Board cannot derive a reasonable valuation conclusion from the allocation of such sales. Sale #2 (Pennington, New Jersey) involved a sale from a petroleum research facility to a pharmaceutical research facility. The property is situated in the heart of the drug research community. It is situated within 50 miles of Princeton and is proximate to other large cities.

The sale involved a sizable conservation easement and a State of New Jersey business employment incentive grant. The Board could place little weight on this sale.

18. The Petitioner's witness presented eight sales. The Respondent's witness presented six sales. The only common sale was the "Longmont" sale involving the Petitioner as the grantor and "KB Fund IV" as the grantee. The Board is drawn to this sale for a number of reasons. It is in Colorado. It is in the same county as the subject. It involves the Petitioner as the seller. It was sold from a single tenant user to a multi-tenant end user. It was constructed with materials that are similar to portions of the subject. It was constructed at a time when portions of the subject were constructed. The date of sale is roughly one year before the valuation date. It has an office area to industrial area percentage that is similar to the subject. The acreages used for industrial use are nearly identical.

19. None of the other comparables can claim such similarities. The Board is aware of the appraisal maxim that "one sale does not a market make." However, we are convinced the record indicates that, in fact, Longmont is the only credible sale.

20. Mr. Letman presented a market approach based on a "qualitative" analysis of the comparables. He analyzed the "market conditions," "location," "building size," "age & condition," "office/industrial ratio," and "land ratio" of the comparables. The comparables were determined as being either "equal" to the subject, "slightly" inferior or superior to the subject, "moderately" inferior or superior to the subject, or "substantially" inferior or superior to the subject. These qualitative determinations were then correlated to a net adjustment indicating either "similar," "slightly upward," or "substantially upward" when compared to the subject. For instance, Mr. Letman determined the "Longmont" sale indicated a slight upward adjustment for time, an equal location with Louisville, a substantial negative adjustment for building size, a slightly negative adjustment for age and condition, and an office to industrial ratio and a land ratio that were equal to the subject. This resulted in a "similar" classification when compared to the $21.63 per square foot indicated value of the subject. This amount is after the "excess land" has been removed. We have accepted the excess land calculations, but find the balance of this analysis too subjective and too open to interpretation. We were not convinced of the differences among the slight, moderate or substantial adjustments. We do not see the consistency of the seven cumulative plus adjustments of Comparable #8, compared to the three cumulative plus adjustments of Comparable #7, both of which indicate a "substantially upward" adjustment. We reject Mr. Letman's "qualitative" adjustment analysis.

21. Mr. Foster presented a "quantitative" adjustment analysis where distinct percentages were applied to market differences. In his market approach, he first deducted an allocated land value from the comparables' sales price to arrive at the building allocation. This amount is then divided into the gross building area to yield a sales price per square foot of improvement. This sales price per square foot of improvement area was then adjusted for significant market differences. We accept Mr. Foster's "quantitative" adjustment analysis as more market oriented. While we accept the adjustment scheme, we reject deducting the allocated land value and the subsequent addition of the subject land value.

22. Mr. Foster did not adjust for time. Mr. Letman made a "slight adjustment" for time. We believe that a slight positive adjustment of 5% is warranted in light of the changing market conditions in the Boulder/Louisville area.

23. Mr. Foster determined the "location" of the Longmont sale was inferior to that of the subject and adjusted a positive 10% for this difference. We agree with this adjustment. We are convinced that an informed purchaser would not equate the subject's location on the Denver/Boulder Turnpike with the comparable's location on the Longmont Diagonal. The record states the relative traffic counts at the two locations. The map exhibits reveal their proximity to urban areas and proximity to Interstate 25, Boulder and Downtown Denver. Mr. Letman viewed their locations as similar. We disagree.

24. Mr. Foster graded the "access" of Longmont as similar to the subject and this is acceptable. Access was not a substantive issue.

25. Mr. Foster determined the "age and condition" of the Longmont sale was inferior to that of the subject and made a positive 10% adjustment. Mr. Letman determined Longmont to be in superior condition and made a "slightly downward adjustment." This is a rather substantial difference between the experts. The Longmont building is three years newer than the effective age of the subject. It had been vacant from 1984 to 1991; $5 million had been spent on remodeling and retrofitting. The building does need a new roof with a replacement cost of approximately $600,000.00. The Board found neither side entirely convincing and has made a nominal positive 5% adjustment for the presumed inferior condition of the comparable.

26. Mr. Foster determined the comparable's construction quality was inferior and adjusted 20%. This adjustment is based primarily on the portion of the northern/western wall that is metal rather than pre-cast concrete. The Board finds this adjustment to be excessive and has revised the positive adjustment from 20% to 10% to reflect this difference in construction quality.

27. Mr. Foster made a 10% adjustment for the difference in building size. Mr. Letman indicated a "substantial adjustment" for the difference in building size. We agree that the market would recognize the more than one million square feet difference. Mr. Dienstbach's testimony would further support Mr. Foster's more nominal adjustment. We affirm this negative10% adjustment.

28. Mr. Foster made a "finished space" adjustment of 15% to reflect the lesser amount of office space in the Longmont sale. Mr. Letman recognized the relationship between office area and industrial space as "equal." Mr. Foster originally had calculated a 57% "finished space" ratio for Longmont, compared to the subject's 75.9% ratio. The Longmont percentage was subsequently recalculated to 65% during the hearing. The Board believes that a positive 5% adjustment is warranted for the roughly 10% difference in finished area percentage.

29. The final adjustment was 15% for the inferior functional utility of the comparable. Mr. Letman chose not to adjust any comparable for functional utility. The

Board is not convinced that a functional inutility existed for the Longmont comparable. Mr. Foster states on page 102 of his appraisal, that “Because of their ages and the changes that evolved in the design of these types of facilities, the selected sales feature buildings that possess dome functional inutility, as well. As a result, no adjustments for functional utility are being employed.” We agree.

30. We have accepted the Petitioner’s “excess land” adjusted value of $21.63 per square foot of improvement for the Longmont sale. We have applied net positive “quantitative” adjustments of 25%, or $5.37 per square foot, to arrive at the adjusted value.

31. We reject Mr. Letman’s additional deduction of $4.50 per square foot for “deferred maintenance” as too subjective and inconsistently applied. The adjustment involved a series of assumptions that reduced a deferred maintenance figure (an amount that exceeded the entire appraised value by more than $12,000,000.00) to a present value. We are unconvinced that the “critical repair items’” estimate is accurate and as such have disregarded the adjustment. This dollar adjustment was not applied to any other sale. He stated in his appraisal that Sales 1, 2, 3, 6, & 8 had no significant deferred maintenance. He further stated this adjustment “is indicative of the magnitude of the impact of deferred maintenance when compared to a property that is not similarly impacted.” Sale #1 is the Longmont sale. Deducting the $4.50 per square foot from Sales 2, 3, 6, & 8, would yield adjusted values of “similar” to $8.75 per square foot (#2), “similar” to $11.61 per square foot (#3), “more than” $1.45 per square foot (#6), and “more than” $2.12 per square foot (#8). These calculations are indicative of the inconsistent and subjective nature of the adjustment.

32. Consequently, after carefully considering all admitted evidence and testimony, we have adjusted the subject value to $27.00 per square foot of improvement based on the market approach to value. Using the stipulated improvement area of 1,674,193 square feet, the Board calculated a total value of $45,203,210.00 for the industrial facility, and affirms the stipulated agricultural land value of $13,100.00.

33. The Board concluded that the 1999 actual value of the subject property should be reduced to $45,216,310.00, with $16,462,400.00 allocated to land and $28,753,910.00 allocated to improvements.

34. Finally, Petitioner asked the Board to enter a finding regarding the DPT non-qualifying sales coding list as found in the Addendum of Petitioner’s Exhibit VV. Petitioner argued that if the circumstances of a sale appeared on the list, it could not be considered a good sale. We disagree. If the confirmation process produces results that indicate the sale is not arm’s length, then it must be disregarded. However, an appraiser could thoroughly confirm a sale and be confident that the sales price is a result of an arm’s-length transaction that is indicative of the market. Under these circumstances, there is nothing to prevent the sale from being considered in the valuation process. An example might be a sale that involved multiple properties. The circumstances of the sale would be controlling as to whether it were an arm’s-length transaction, not the appearance on the list of a code involving multiple properties.

ORDER:

Respondent is ordered to reduce the 1999 actual value of the subject property to $45,216,310.00, with $16,462,400.00 allocated to land and $28,753,910.00 allocated to improvements.

The Boulder County Assessor is directed to change her records and to allocate the reduction to improvements of the schedule numbers at issue.

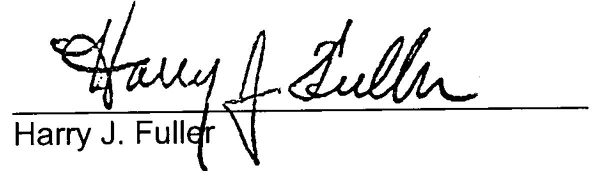
APPEAL:

Petitioner may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

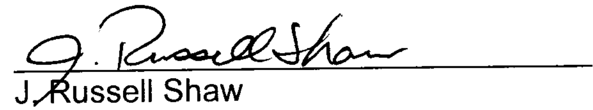
If Respondent alleges procedural errors or errors of law by this Board, Respondent may petition the Court of Appeals for judicial review within 30 days from the date of this decision.

DATED and MAILED this 16th day of January, 2001.

BOARD OF ASSESSMENT APPEALS



Harry J. Fuller



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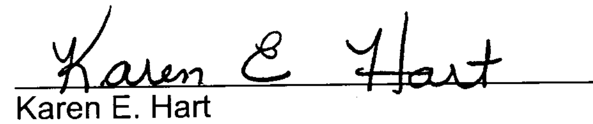


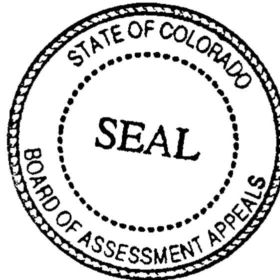
Karen E. Hart

This decision was put on the record

JAN 16 2001.

I hereby certify that this is a true and correct copy of the decision of the Board of Assessment Appeals.

Diane Von Dollen



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