



# STATE TAX COMMISSION OF MISSOURI

DOE RUN RESOURCES )  
CORPORATION, )  
 ) Appeal No. 19-82500 ET AL.  
Complainant, )  
 ) Parcel Nos. (See Appendix,  
 ) attached.)  
v. )  
 )  
RICK PARKER, ASSESSOR, )  
REYNOLDS COUNTY, MISSOURI, )  
 )  
Respondent. )

## **ORDER AFFIRMING** **HEARING OFFICER DECISION UPON APPLICATION FOR REVIEW**

### **HOLDING**

On February 25, 2022, a State Tax Commission (STC) Senior Hearing Officer (Hearing Officer) entered a Decision and Order (Decision) setting aside the decision of the Reynolds County Board of Equalization (BOE) and finding the aggregate true value in money (TVM) of the subject commercial property on January 1, 2019,<sup>1</sup> was \$137,322,000, with an allocation as follows:

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<sup>1</sup> Missouri operates on a two-year reassessment cycle for valuing real property. See Section 137.115.1. Absent new construction or improvements to a parcel of real property, the assessed value as of January 1 of the odd year remains the assessed value as of January 1 of the following even year. *Id.*

Surface Land (33,140.33 acres)	\$32,300,000
Buildings and Improvements	\$9,480,274
Mineral Interests	\$95,541,567
Total	\$137,321,841
<b>TVM (rounded)</b>	<b>\$137,322,000</b>

On or about March 25, 2022, Rick Parker, Assessor, Reynolds County, Missouri, (Respondent) filed a timely Application for Review of the Decision of the Hearing Officer. The Commission provided Doe Run Resources Corporation (Complainant) with time to file its response. On or about April 29, 2022, Complainant filed its response.

We AFFIRM the Decision of the Hearing Officer. Segments of the Hearing Officer’s Decision may have been incorporated into our Order without further reference.

**FINDINGS OF FACT AND PROCEDURAL HISTORY**

Complainant operates mines in southeastern Missouri. The subject property is mining property located Iron County, Missouri. The predominant mineral produced from Complainant's Reynolds County mines is lead, with smaller amounts of zinc and copper. The subject properties include surface lands, office and industrial buildings, real property improvements, construction work in progress, and mineral interests. Complainant is the fee owner of some mineral interests and leases other mineral interests from private owners and the United States government, a tax-exempt entity, pursuant to leases administered by the Bureau of Land Management (BLM).

The subject properties comprise 279 parcels including 185 parcels of surface land totaling 33,140.33 acres. The surface lands are improved with office and industrial buildings

in support of Complainant's mining operations.

In addition to specialized mining machinery and equipment, the subject properties include two items Respondent characterizes as construction work in progress (CWIP), referred to as the “Brushy Creek Main Bridge Crane” and the “Fletcher Production Hoist Brake.” Complainant originally declared the Brushy Creek Main Bridge Crane and the Fletcher Production Hoist Brake as personal property and paid personal property tax on them, which Respondent did not challenge. Respondent later asserted the Brushy Creek Main Bridge Crane and the Fletcher Production Hoist Brake and other machinery are real property fixtures. Complainant argued these items are personal property “upon which [Complainant] has already paid personal property tax.”

The subject mineral interests are associated with the Brushy Creek Mine, Fletcher Mine, and Sweetwater Mine. Complainant owns some mineral interests and leases others from private landowners and from the United States pursuant to the BLM leases. Approximately 59% of Complainant's Reynolds County mineral production comes from lands owned by Complainant or leased from private landowners. The remaining 41% of Complainant's mineral production comes from land leased from the BLM.

The BOE valued the subject properties as commercial real property with an aggregate TVM of \$151,665,934 as of January 1, 2019. Complainant filed a timely appeal with the STC, and the case proceeded to a decision after the parties filed opposing briefs.<sup>2</sup>

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<sup>2</sup> The parties agreed the TVM of Complainant's Reynolds County surface land was \$32,300,000 as determined in Complainant's Exhibit A. The Hearing Officer found the TVM of Complainant's 33,140.33 acres of surface land as of January 1, 2019, was \$32,300,000.

The Hearing Officer subsequently issued the Decision containing Findings of Fact and Conclusions of Law finding that neither party produced substantial and persuasive evidence supporting *all* of their proposed values for the various components of the subject properties. The Hearing Officer further found that both parties produced substantial and persuasive evidence supporting *some* of their proposed values and produced substantial and persuasive evidence rebutting the BOE's presumptively correct decisions. The Hearing Officer found that the concluded TVM of \$137,322,000 reflected the most persuasive evidence and testimony in the record.

Respondent subsequently filed his Application for Review. The Commission issued its Order allowing Complainant time to file its Response. Complainant filed its Response.

## **CONCLUSIONS OF LAW**

### **Respondent's Points on Review**

In his Application for Review, Respondent did not assert specifically that the Hearing Officer's Decision contained reversible error but, rather, argued disagreement with the Hearing Officer's Decision. Respondent's Application for Review generally argued that the valuation of mining property in Missouri and valuation methodologies used in valuation appeals is not "systemized" as it is in other states, such as Arizona and Minnesota. Respondent's Application for Review argued that the lack of a "systemized" valuation method for mining property in Missouri for the purpose of taxation has resulted in appeals taking many years to resolve, including a 2011 case involving Complainant that took seven years to be fully resolved by the courts in *Parker v. Doe Run*, 553 S.W.3d 356 (Mo. App. S.D. 2018).

Respondent's Application for Review stated:

Here Respondent asks the Commission to take up a key question: the valuation of the ore body that Doe Run acquired through mineral extraction leases from the [BLM].

...

The success of Doe Run's operation in Reynolds County is dependent on its possession of a property interest in the portion of the lead ore body that is on land owned by the United States and managed by the U.S. Bureau of Land Management. Without the ore body, there is no mine, no revenue, no profit.

...

All the legal agreements through which Doe Run acquired its interest in the ore body underlying lands that Doe Run does not own may be titled "leases." . . . [The leases] allow Doe Run to actually take away a portion of the subsurface – to dig out lead ore, process it, and sell it. At the end of the lease, Doe Run doesn't return the land to the lessor intact. It returns the land with a hole, underground, where ore used to be. The mineral extraction lease allows Doe Run not just to use the real property, but also take it away – to convert its real property (the ore body) into personal property (the mined ore) and process and sell it. . . .

...

Doe Run has the same ability to remove a portion of the ore body and the same potential for selling the lead and other metals whether the ore body is owned by Doe Run or leased from a private landowner.

So why did the hearing officer [say] the method for valuing the 'leased' ore body is entirely different when the landowner is the United States? Using that different methodology, the hearing officer found that although the ore body acquired through private mineral leases is valued for tax purposes in the millions, the ore body acquired through BLM mineral leases has no taxable value at all!

...

Rather than find a line anywhere in the appraisal realm, the hearing office[r] drew a line from the legal realm.

In its Response, Complainant argued:

Respondent's sole challenge to the Decision and Order of the Senior Hearing Officer asks the Commission to ignore the Missouri Supreme Court's holding on how the value of a leasehold interest in tax-exempt property is to be determined. The Commission previously addressed this identical issue in the 2011 Reynolds County tax appeal and correctly followed Missouri law on this issue. The Senior Hearing Officer in this appeal also correctly followed Missouri law on this issue. This is settled law, and Respondent fails to identify *any* precedent that would support his novel argument to ignore such binding precedent on the methodology of determining the taxability of a leasehold interest in tax-exempt property.

...

Land owned by the United States is constitutionally exempt from taxation. Mo. Const. art. III, § 43. This is not disputed by Respondent. Respondent also does not dispute that, under settled Missouri law, leasehold interests in government-owned estates are taxable *only if* they have value. *Frontier Airlines, Inc. v. State Tax Comm'n*, 528 S.W.2d. 943, 946–47 (Mo. banc 1975). The Missouri Supreme Court has already established *how* such value is to be determined: a lease of tax-exempt property does not have a value for *ad valorem* taxation purposes unless the lease has a bonus value, which exists only when the contract rent being paid is less than the market rent for the leased property. *Id.* at 947.

...

Doe Run's leases with BLM afford Doe Run only the right to sever ore from the BLM-owned land in exchange for a lease payment of 5% of net smelter return. Both Respondent's appraiser and Doe Run's appraiser agreed that this is the market rent for the leasehold interest and, therefore, there is no bonus value. Until the ore is severed from the ore body, it remains the property of the United States and, as such, is constitutionally exempt from tax. It is the tax-exempt nature of the ore body in government-owned lands that distinguishes it from the ore body in either Doe Run-owned or privately-owned lands. . . .

The leasehold interest that Doe Run has in the ore body also does not sever BLM's ownership in the mineral estate. In fact, to the contrary, it is BLM's ownership of the ore body that allows it to realize income from the rental payments under the lease. Doe Run's right to enter the BLM property and

sever ore from the ore body is no different from the right that any lessee of government property has to use that property during the term of the lease.

Moreover, the Commission has already held that the holding of *Frontier* is applicable to this very property. In *Doe Run Co. v. Parker*, the Commission relied upon *Frontier* to hold that:

Leaseholds in government owned estates are taxable if they have value. A lease of tax exempt property does not have a value for ad valorem taxation purposes unless the lease has a bonus value. Bonus value exists only when the contract rent actually being paid is less than the market rent for the leased property.

Appeal Nos. 11-82500, 82502–82505, at \*20 (Mo. Tax Comm’n June 28, 2016) (internal citation omitted) (citing *Frontier Airlines, Inc.*, 528 S.W.2d 943). Because, like here, there was no bonus value for the mineral lease, the leasehold interest was not taxable. *Id.*

### **Standard of Review**

A party subject to a decision and order of a hearing officer of the STC may file an application requesting the case be reviewed by the STC. Section 138.432. The STC may then summarily allow or deny the request. Section 138.432. The STC may affirm, modify, reverse, set aside, deny, or remand to the hearing officer the decision and order of the hearing officer on the basis of the evidence previously submitted or based on additional evidence taken before the STC. Section 138.432.

The Commission reviews the hearing officer’s decision and order de novo. *Lebanon Properties I v. North*, 66 S.W.3d 765, 770 (Mo. App. 2002); *Union Electric Company, d/b/a Ameren Missouri, v. Estes*, 2020 WL 3867672 (Mo. St. Tax Com., July 2, 2020); *AT&T Mobility, LLC, v. Beverly Alden, Assessor, Caldwell County, Missouri, et al.*,

2020 WL 3867819 (Mo. St. Tax Com., July 2, 2020). “The extent of that review extends to credibility as well as questions of fact.” *Lebanon Properties I*, 66 S.W.3d at 770. The Commission “is free to consider all pertinent facts and estimates and give them such weight as reasonably they may be deemed entitled to.” *St. Louis Cty. v. State Tax Comm'n*, 515 S.W.2d 446, 450 (Mo. 1974).

### **Commission’s Ruling**

For the reasons that follow, the Commission finds Respondent’s Application for Review to be unpersuasive. The Commission, having reviewed the whole record and having considered the Hearing Officer’s Decision, the Application for Review of Respondent, and the Response of Complainant, affirms the Hearing Officer’s Decision.

There is a presumption of validity, good faith and correctness of assessment by the BOE. *Hermel, Inc. v. STC*, 564 S.W.2d 888, 895 (Mo. banc 1978); *Chicago, Burlington & Quincy Railroad Co. v. STC*, 436 S.W.2d 650, 656 (Mo. 1968); *May Department Stores Co. v. STC*, 308 S.W.2d 748, 759 (Mo. 1958). This presumption is a rebuttable rather than a conclusive presumption. The presumption of correct assessment is rebutted when the taxpayer presents substantial and persuasive evidence to establish that the BOE’s assessment is erroneous and what assessment should have been placed on the property. *Id.*

The taxpayer in a STC appeal bears the burden of proof. The taxpayer is the moving party seeking affirmative relief. Therefore, Complainant bears the burden of proving by substantial and persuasive evidence the vital elements of the case, i.e., the assessment was “unlawful, unfair, improper, arbitrary, or capricious.” *See, Westwood Partnership v.*

*Gogarty*, 103 S.W.3d 152 (Mo. App. E.D. 2003); *Daly v. P.D. George Co.*, 77 S.W.3d 645 (Mo. App E.D. 2002); *Reeves v. Snider*, 115 S.W.3d 375 (Mo. App. S.D. 2003); *Industrial Development Authority of Kansas City v. State Tax Commission of Missouri*, 804 S.W.2d 387, 392 (Mo. App. W.D. 1991). *Substantial evidence* can be defined as such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *Cupples Hesse Corp. v. State Tax Commission*, 329 S.W.2d 696, 702 (Mo. 1959). *Persuasive evidence* is evidence that has sufficient weight and probative value to convince the trier of fact. *Cupples Hesse Corp.*, 329 S.W.2d at 702. The persuasiveness of evidence does not depend on the quantity or amount thereof but on its effect in inducing belief. *Brooks v. General Motors Assembly Division*, 527 S.W.2d 50, 53 (Mo. App. 1975).

The Hearing Officer is not bound by any single formula, rule or method in determining true value in money, but is free to consider all pertinent facts and estimates and give them such weight as reasonably they may be deemed entitled. The Hearing Officer is the fact finder, and the relative weight to be accorded any relevant factor in a particular case is for the Hearing Officer to decide. *St. Louis County v. Security Bonhomme, Inc.*, 558 S.W.2d 655, 659 (Mo. banc 1977); *St. Louis County*, 515 S.W.2d at 450; *Chicago, Burlington & Quincy Railroad Company*, 436 S.W.2d at 650.

The Hearing Officer as the trier of fact may consider the testimony of an expert witness and give it as much weight and credit as he or she may deem it entitled to when viewed in connection with all other circumstances. The Hearing Officer is not bound by the opinions of experts who testify on the issue of reasonable value, but may believe all or none

of the expert's testimony and accept it in part or reject it in part. *St. Louis County v. Boatmen's Trust Co.*, 857 S.W.2d 453, 457 (Mo. App. E.D. 1993); *Vincent by Vincent v. Johnson*, 833 S.W.2d 859, 865 (Mo. 1992); *Beardsley v. Beardsley*, 819 S.W.2d 400, 403 (Mo. App. 1991); *Curnow v. Sloan*, 625 S.W.2d 605, 607 (Mo. banc 1981).

Proper methods of valuation and assessment of property are delegated to the STC. It is within the purview of the Hearing Officer to determine the method of valuation to be adopted in a given case. *See, Nance v. STC*, 18 S.W.3d 611, at 615 (Mo. App. W.D. 2000); *Hermel*, 564 S.W.2d at 896; *Xerox Corp. v. STC*, 529 S.W.2d 413 (Mo. banc 1975). Missouri courts have approved the comparable sales or market approach, the cost approach and the income approach as recognized methods of arriving at fair market value. *St. Joe Minerals Corp.*, 854 S.W.2d at 529 (App. E.D. 1993); *Aspenhof Corp. v. STC*, 789 S.W.2d 867, 869 (App. E.D. 1990); *Quincy Soybean Company, Inc., v. Lowe*, 773 S.W.2d 503, 504 (App. E.D. 1989), *citing Del-Mar Redevelopment Corp v. Associated Garages, Inc.*, 726 S.W.2d 866, 869 (App. E.D. 1987); and *State ex rel. State Highway Comm'n v. Southern Dev. Co.*, 509 S.W.2d 18, 27 (Mo. Div. 2 1974).

The taxpayer in a STC appeal bears the burden of proof. The taxpayer is the moving party seeking affirmative relief. A Hearing Officer sits as the trier of fact with discretion to weigh the evidence admitted into the record. A Hearing Officer may consider the testimony of an expert witness and give it as much weight and credit as he or she may deem it entitled when viewed in connection with all other circumstances. A Hearing Officer is not bound by the opinions of experts who testify on the issue of reasonable value, but may believe all,

some, or none of the expert's testimony and accept it in part or reject it in part. A Hearing Officer is not bound by appraisal industry standards; rather, he or she applies the law to the facts in evidence, weighing the evidence to determine which evidence is more persuasive.

Here, Complainant had the burden of proving that the BOE's determination regarding the TVM of the subject property was erroneous and establishing the correct TVM to place upon the subject property. The Hearing Officer found that the "complex appraisal problem posed by a large, multi-parcel mining operation illustrates the reality that the TVM 'is never an absolute figure . . . but is merely an estimate of the fair market value on the valuation date.' *St. Joe Minerals Corp. v. State Tax Comm'n*, 854 S.W.2d 526, 529 (Mo. App. E.D. 1993)." In the 53-page Decision, the Hearing Officer made detailed findings of fact and conclusions of law examining the parties' evidence and analyzing the facts under established legal precedent and established valuation methods. The Hearing Officer specifically found that:

the record shows neither party produced substantial and persuasive evidence supporting all of their proposed values for the various components of the subject properties . . . [but] [b]oth parties produced substantial and persuasive evidence supporting some of their proposed values. Collectively, the parties produced substantial and persuasive evidence rebutting the BOE's presumptively correct decisions. The concluded TVM [of \$137,322,000] reflects the most persuasive evidence and testimony in the record.

To the extent Respondent's Application for Review requests the Commission to make findings and conclusions that would require the application of legal principles to the facts in a manner contrary to established legal precedent and declare the BLM leases have bonus value, we remind Respondent that the STC, a quasi-judicial agency with limited

authority under the Missouri Constitution and the Revised Statutes of Missouri and not a court sitting in equity, is constrained to apply current Missouri law to the facts as established by the evidence in the record. We find that the record supports the Hearing Officer's findings and conclusions and that a reasonable mind could have conscientiously reached the same result as the Hearing Officer based on a review of the entire record. *Hermel*, 564 S.W.2d at 895-96; *Black v. Lombardi*, 970 S.W.2d 378 (Mo. App. E.D. 1998). The Hearing Officer did not err in finding the aggregate TVM of the subject property to be \$137,322,000 as of January 1, 2019.

### **ORDER**

The Decision of the Hearing Officer is AFFIRMED. Segments of the Hearing Officer's Decision, including the findings of fact and conclusions of law therein, may have been incorporated into our Order without further reference, as if set out in full, in this final decision of the Commission.

Judicial review of this Order may be had in the manner provided in Sections 138.432 and 536.100 to 536.140 within 30 days of the mailing date set forth in the Certificate of Service for this Order.

If judicial review of this Order is made, any protested taxes presently in an escrow account in accordance with this appeal shall be held pending the final decision of the courts unless disbursed pursuant to Section 139.031.8.

If no judicial review is made within 30 days, this Order is deemed final and the Collector of Reynolds County, as well as the collectors of all affected political subdivisions

therein, shall disburse the protested taxes presently in an escrow account in accord with the decision on the underlying assessment in this appeal.

SO ORDERED June 16, 2023.  
STATE TAX COMMISSION OF MISSOURI

Gary Romine, Chairman

Victor Callahan, Commissioner

Debbi McGinnis, Commissioner

**APPENDIX**

19-82500	03-3.1-005-000-000-001.00000
19-82501	03-3.1-008-000-000-016.00000
19-82502	03-3.2-006-000-000-001.00000
19-82503	03-3.2-006-000-000-001.00M01
19-82504	03-3.2-007-000-000-002.00000
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19-82506	03-3.2-007-000-000-007.00000
19-82507	03-3.2-007-000-000-007.00M01
19-82508	03-3.2-007-000-000-008.00M01
19-82509	03-3.2-007-000-000-015.00M01
19-82510	03-4.1-018-000-000-001.00M01
19-82511	03-9.2-030-000-000-001.00M01
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19-82777	15-0.6-024-000-000-002.02000
19-82778	15-0.8-027-000-000-001.00000

Certificate of Service

I hereby certify that a copy of the foregoing has been electronically mailed and/or sent by U.S. Mail on June 16, 2023, to:

Complainant(s) and/or Counsel for Complainant(s), the County Assessor and/or Counsel for Respondent, and County Collector.

Stacy M. Ingle  
Legal Assistant



# STATE TAX COMMISSION OF MISSOURI

DOE RUN RESOURCES )  
CORPORATION, )  
) )  
Complainant, )  
) Appeal Nos. 19-82500 et al.  
v. )  
) )  
RICK PARKER, ASSESSOR, )  
REYNOLDS COUNTY, MISSOURI, )  
) )  
Respondent. )

## DECISION AND ORDER

Doe Run Resources Corporation (Complainant) appeals the Reynolds County Board of Equalization's (BOE) decisions finding the aggregate true value in money (TVM) of the subject properties on January 1, 2019, was \$151,665,934. Complainant asserts the aggregate TVM was \$91,680,000.<sup>3</sup> Respondent asserts the aggregate TVM was \$271,460,000.

The BOE decisions are set aside. The aggregate TVM of the subject properties on January 1, 2019, was \$137,322,000. The allocation is as follows:

Surface Land (33,140.33 acres)	\$32,300,000
Buildings and Improvements	\$9,480,274
Mineral Interests	\$95,541,567
Total	\$137,321,841

<sup>3</sup> Complainant timely filed complaints for review of assessment alleging overvaluation, discrimination, and misclassification. The State Tax Commission (STC) has authority to hear and decide Complainant's appeals. Mo. Const. art. X, sec. 14; Section 138.430.1, RSMo 2000. All statutory citations are to RSMo 2000, as amended.

<b>TVM (rounded)</b>
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<b>\$137,322,000</b>
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Complainant is represented by Thomas Caradonna and Sarah Milunski. Respondent is represented by James Layton and John Reynolds. The parties waived an evidentiary hearing, and submitted the appeals on the record.<sup>4</sup> Both parties filed an opening brief and a reply brief.

### **Background**

Complainant operates mines in southeastern Missouri. The predominant mineral produced from Complainant's Reynolds County mines is lead, with smaller amounts of zinc and copper.

The underlying appeals involve properties comprising some of Complainant's Reynolds County mining operations. The subject properties include surface lands, office and industrial buildings, real property improvements, construction work in progress, and mineral interests. Complainant is the fee owner of some mineral interests and leases others from private owners and the United States pursuant to leases administered by the Bureau of Land Management (BLM).

Complainant's private and BLM leases grant Complainant temporary possession of land in exchange for royalty payments to the owner. Complainant's royalties are based on net smelter returns (NSR), which represent the net income from Complainant's sales of mineral concentrates. The royalties are analogous to rent. Thus, the value of a mineral interest may be valued by capitalizing the royalty income it generates.

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<sup>4</sup> Complainant alleged overvaluation, discrimination, and misclassification. The evidence and argument is limited to Complainant's overvaluation claims.

The parties' proposed values are \$179,780,000 apart. The bulk of this difference stems from four points of disagreement. First, Complainant asserts Respondent's proposed value erroneously includes approximately \$42,350,000 of machinery, equipment, and construction work in progress previously declared and taxed as personal property. Second, Complainant's proposed building value is approximately \$24,760,000 less than Respondent's proposed building value. Third, Respondent asserts the TVM of Complainant's BLM leases is approximately \$66,710,000, while Complainant the BLM leases have no taxable "bonus value" because the royalties are at market rate. Finally, Complainant asserts Respondent's use of direct capitalization and a 7.25% capitalization rate results in an inflated estimate of the TVM of the privately owned and leased mineral interests (\$95,541,567) relative to Complainant's estimated TVM of \$49,900,000.

The complex appraisal problem posed by a large, multi-parcel mining operation illustrates the reality that the TVM "is never an absolute figure ... but is merely an estimate of the fair market value on the valuation date." *St. Joe Minerals Corp. v. State Tax Comm'n*, 854 S.W.2d 526, 529 (Mo. App. E.D. 1993). Against this backdrop, the record shows neither party produced substantial and persuasive evidence supporting all of their proposed values for the various components of the subject properties. Both parties produced substantial and persuasive evidence supporting some of their proposed values. Collectively, the parties produced substantial and persuasive evidence rebutting the BOE's presumptively correct decisions. The concluded TVM of \$137,180,000 reflects the most persuasive evidence and testimony in the record.

## FINDINGS OF FACT

**1. The Subject Properties.** The subject properties comprise 279 tax parcels located in Reynolds County, Missouri. The subject properties include Complainant's fee simple interests in surface land, improvements, and mineral interests. The subject properties also include Complainant's mineral interests leased from the BLM and private landowners.

The subject properties include 185 parcels of surface land totaling 33,140.33 acres. (Ex. A at 23) The surface lands are improved with office and industrial buildings in support of Complainant's mining operations. (Ex. A at 24; Ex. 1 at 25-26)

In addition to specialized mining machinery and equipment, the subject properties include two items Respondent characterizes as construction work in progress (CWIP), referred to as the "Brushy Creek Main Bridge Crane" and the "Fletcher Production Hoist Brake." (Resp. Br. at 10-11) Respondent asserts these items are real property fixtures. (Id.) Complainant asserts these items are personal property consisting of machinery and equipment "upon which [Complainant] has already paid personal property tax." (Compl. Br. at 22)

The subject mineral interests are associated with the Brushy Creek Mine, Fletcher Mine, and Sweetwater Mine. Complainant owns some mineral interests and leases others from private landowners and from the United States pursuant to the BLM leases. (Ex. 1 at 11; Ex. C at 13) Approximately 59% of Complainant's Reynolds County mineral production comes from lands owned by Complainant or leased from private landowners. (Ex. 1 at 31) The remaining 41% of Complainant's mineral production comes from land leased from the BLM. (Id.; *see also* Ex. C, Beck Report at 26, 28-32)

**2. Assessment and Valuation.** The BOE valued the subject properties as commercial real property, with an aggregate TVM of \$151,665,934 as of January 1, 2019.

**3. Complainant's Evidence.** Complainant introduced Exhibits A through E, Rebuttal Exhibits A through L, and Surrebuttal Exhibits A and B. Complainant's exhibits are summarized as follows:

Exhibit A	Valbridge Property Advisors appraisal report estimating the fair market value of 33,140.33 acres land and surface improvements owned by Complainant was \$41,780,000 as of January 1, 2019. Jessica Perryman, MAI, and Jason Roos, MAI, prepared the Valbridge appraisal report.
Exhibit B	Written Direct Testimony (WDT) of Jessica Perryman, MAI.
Exhibit C	Gustavson Associates appraisal report estimating the value of Complainant's mineral interest as of January 1, 2019, was \$49,900,000. Briana Lamphier prepared the Gustavson appraisal report. The Gustavson appraisal valued the mineral interests owned by Complainant or leased by Complainant from private landowners. The appraisal report did not value Complainant's mineral interests arising from the BLM leases. The appraisal report is appended with an expert report prepared by James Beck, P.E., analyzing Complainant's company-held and privately leased mineral reserves in Iron County. Gustavson used the Beck report to estimate the remaining economic life of the Brushy Creek, Fletcher, and Sweetwater mines.
Exhibit D	WDT of Briana Lamphier.
Exhibit E	WDT of James Beck.
Rebuttal Exhibit A	BLM Preference Right Lease, Form 5320-7 (May 2014). Renewed lease effective February 1, 2015, for 1,480 acres in Reynolds County. The United States is the “lessor.” Complainant is the “lessee.” The renewed lease term is for 10 years, with a preferential right for successive 10-year renewals subject to approval by the Secretary of the Interior. The form lease provides that in consideration of “any bonuses, rents, and royalties to be paid, the United States grants Complainant “the exclusive right” to extract and remove from the described lands “leased deposits” consisting of “lead, zinc, iron, and copper[.]” The lease also grants Complainant the “right to construct such

	works, buildings, plants, structures, equipment, and appliances ... necessary and convenient” to exercise the lease rights and privileges.
Rebuttal Exhibit B	BLM Preference Right Lease, Form 5320-7 (May 2014). Renewed lease effective February 1, 2015, for 2228.83 acres.
Rebuttal Exhibit C	BLM Preference Right Lease, Form 5320-7 (May 2014). Renewed lease effective February 1, 2015, for 460 acres in Iron County.
Rebuttal Exhibit D	BLM Preference Right Lease, Form 5320-7 (May 2014). Renewed lease effective February 1, 2015, for 2,518.66 acres in Iron and Reynolds counties.
Rebuttal Exhibit E	BLM Preference Right Lease, Form 5320-7 (May 2014). Renewed lease effective February 1, 2015, for 760 acres in Reynolds County.
Rebuttal Exhibit F	Written rebuttal testimony of Richard Anderson. Anderson is employed by Complainant as Manager of the Land Department. Anderson authenticated Rebuttal Exhibits A through E and testified the leases do not grant Complainant ownership rights in the leased lands. Anderson testified Complainant utilizes “[m]ining related equipment” on the leased lands and that “there are no significant buildings or structures on the surface of the leased land.”
Rebuttal Exhibit G	Complainant's 2019 Reynolds County business personal property declaration and assessment list.
Rebuttal Exhibit H	Complainant's 2020 Reynolds County business personal property declarations and assessment list.
Rebuttal Exhibit I	Summary of Complainant's 2019 Reynolds County Business Personal Property return filed with Respondent.
Rebuttal Exhibit J	Detail of the summary business personal property cost reporting filed with Respondent.
Rebuttal Exhibit K	Table prepared by Stephen Ballweg, Complainant's Tax Coordinator, and comparing Ross' list of real property improvement costs with Complainant's classifications of those items as personal property.
Rebuttal Exhibit L	Written rebuttal testimony of Stephen Ballweg. Ballweg testified Complainant “already reported as business personal property” and paid 2019 and 2020 taxes on “most of the property” Ross listed as real property improvements. Ballweg testified Respondent never disputed Complainant's personal property tax declarations.

Surrebuttal Exhibit A	Written surrebuttal testimony of Jessica Perryman, MAI. Perryman testified a software error caused a typographical error in the Valbridge appraisal report mistakenly identifying copper as the primary generator of revenue.
Surrebuttal Exhibit B	Five-part exhibit consisting of 2011 Appraisal Report prepared by Ross Consulting and filed in the Circuit Court of Reynolds County and the Missouri Court of Appeals, Southern District, as part of Complainant's appeal of the 2011 Reynolds County assessment.

**Valbridge Property Advisors Appraisal: Surface Land and Improvements**

Valbridge appraised Complainant's Reynolds County surface land and improvements. The surface improvements include multiple buildings, structures, roads, and fencing. Valbridge characterized the buildings as special purpose industrial buildings used to support Complainant's mining operations, (Ex. A at 24), and concluded the highest and best use of the subject properties “is continued industrial use in support of mining operations.” (Ex. A at 60) Valbridge estimated the fair market value of the surface land and improvements as of January 1, 2019, was \$41,780,000. (Id. at 96)

Valbridge noted two items of CWIP, described as a septic system and waste water component. (Ex. A at 1, 3) Valbridge concluded the value of these items “is implied in the value of the buildings and it has not been further considered in this appraisal.” (Id.) Valbridge also noted Respondent listed, and the BOE valued, \$22,596,226 in CWIP “already reported on the property owner's business personal property tax return” and associated with mine development. Valbridge concluded “[t]hese items have also been excluded as they are not deemed to be real property.” (Id. at 58)

### Surface Land

Valbridge used the sales comparison approach to estimate the land value. Valbridge identified six comparable sales of undeveloped land occurring from March 2017 through January 2019. After adjusting for time of sale, location, size, and marketable timber, the sales ranged from \$760 to \$1,135 per acre. (Ex. A at 75) Valbridge also considered 54 land sales in Iron and Reynolds counties. The sales ranged from \$450 to \$1,850 per acre, with a median sale price of \$965 per acre. (Id. at 76-77) Valbridge concluded the market value was \$975 per acre, resulting in an estimated TVM of \$32,300,000. (Id. at 78) Respondent agrees the TVM of the surface lands was \$32,300,000 as of January 1, 2019. (Resp. Br. at 4)

### Improvement Value

Valbridge used the cost approach to appraise Complainant's office and industrial buildings. Valbridge estimated the replacement cost new (RCN) of the buildings with the Marshall Valuation Services (MVS) Calculator Method. (Ex. A at 80-84) Valbridge determined base replacement costs according to construction type, quality and condition. (Id. at 80) Valbridge refined the base cost of each building with MVS multipliers accounting for divergences from standard height and floor area, variances in local construction costs, and inflation. (Id. at 80, 83-84) Valbridge detailed its MVS cost calculations and depreciation estimates for each building, resulting in an aggregate RCN of \$45,197,875. (Id. at 84)

Valbridge also appraised “direct site improvements” including fencing, roads, and asphalt surface lots. The “total base cost” of the site improvements was \$3,192,629. Additional

“indirect costs” totaled \$2,419,525. Adding the site improvement cost to the building cost resulted in a total RCN of \$50,810,029 for all buildings and improvements. (Ex. A at 85)

Valbridge estimated incurable physical depreciation by dividing each building's “effective age” by its “economic life.” (Ex. A at 86) The effective age and economic life of each building is based on the actual age, type of construction, and condition. (Id.) For instance, the water treatment plant at the West Fork Mine was built in 2017 and was assigned an “effective age” of two years as of January 1, 2019. Dividing the effective age by the estimated economic life of 40 years yields 5% depreciation ( $2/40 = 0.05$ ). (Id. at 83) By contrast, the “changeroom” at the West Fork Mine was built in 1984 and had an effective age of 40 years and an economic life of 45 years, resulting in estimated depreciation of 89% ( $40/45 = 0.89$ ). (Id.) To account for this variability, Valbridge utilized a weighted average according to the relative cost of the improvements, resulting in estimated total incurable physical depreciation of 70.5%, or \$35,844,493. (Id. at 86)

Valbridge concluded there was no functional obsolescence because the “subject property was built for the sole purpose of mining and, as such, is considered to be a special purpose property.” (Ex. A at 87)

Finally, Valbridge estimated economic obsolescence by analyzing the subject's “production utilization,” or the ratio of production capacity to actual production. (Ex. A at 88)<sup>5</sup>

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<sup>5</sup> Exhibit A erroneously states “Mineral pricing and production for the subject's primary mineral (*copper*) has generally decreased over the past 10 years.” (Id. at 87) (emphasis added). Lead, not copper, is the primary mineral produced in Complainant's mines. The primary author of the Valbridge report, Jessica Perryman, testified she knew lead was the primary mineral resource and that inadvertent references to copper as the primary mineral were due to a software error.

From 2014 through 2018, the percentage of underutilization increased from 19.69% to 32.44% in 2018, with a high of 33% in 2017. (Id.) Valbridge concluded that as of January 1, 2019, the trend toward a higher percentage of underutilization indicated 33% is “a reasonable estimate of what would have been as of the date of valuation.” (Id. at 89)

To quantify the economic obsolescence deduction, Valbridge multiplied the 33% underutilization rate by Complainant's estimated 20% gross profit margin, resulting in a 6.60% economic obsolescence factor; i.e.,  $[0.33 \times 0.20 = 0.066]$ . (Ex. A at 91) Multiplying the 6.60% economic obsolescence factor by the estimated aggregate value of the land and RCN of the improvements (\$83,110,029) produces a \$5,485,262 external obsolescence deduction. (Id. at 91)

Valbridge's cost approach reconciliation is as follows:

RCN	\$50,810,029
Physical Deterioration	(-\$35,844,493)
External/Economic Obsolescence	(-\$5,485,262)
Total Depreciation	(-\$41,329,755)
Depreciated Improvement Cost	\$9,480,274
Land Value	\$32,300,000
Estimated Value of Land and Improvements as of January 1, 2019	\$41,780,000

(Ex. A at 92)

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(Surrebuttal Exhibit A at 2-9) The inadvertent reference to “copper” rather than “lead” does not undermine the credibility of the Valbridge appraisal. All citations to written testimony are to the numbered paragraph and answer.

### **Gustavson Associates Appraisal: Mineral Interests**

Gustavson appraised “the mineral estate” consisting of economically recoverable “ores of lead, zinc and copper ... owned or controlled under private leases by” Complainant. (Ex. C at 6) Gustavson did not value “mine improvements” or “construction work in progress” because these items “generate income to the mineral estate” and a separate valuation would “constitute double counting.” (Id.) Gustavson also did not appraise Complainant's BLM leases. (Id. at 13-14). Gustavson noted Complainant was “paying a market rent in the form of a NSR royalty” and “[t]his indicates there is no bonus value associated with [Complainant's] leasehold interest.” (Id. at 49) Gustavson concluded the highest and best use of the subject properties “is production of metallic ore and concentrates within the constraints of cutoff grades.” (Id. at 29)

Gustavson estimated the value of Complainant's mineral interests by capitalizing the royalty income.<sup>6</sup> Gustavson utilized the analysis presented in the Beck Report to estimate the remaining economic lives of the Brushy Creek, Fletcher, and Sweetwater mines. (Ex. C at 33; *see also* Beck Report at 29) Gustavson, however, also recognized Complainant “continues to explore and define the resource” including “within areas of the operations[.]” (Ex. C at 21; *see also* Beck Report at 35) To account for the projected decrease in income over the estimated remaining mine life, Gustavson utilized a discounted cash flow model to estimate the fair market value of Complainant's privately owned and privately leased mineral interests was \$49,900,000

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<sup>6</sup> Gustavson noted “generally accepted appraisal procedure” provides the market royalty rate generated by leased mineral interests is imputed to “the portions that are in fee ownership.” (Ex. C at 37-38) Respondent's appraiser utilized the same income-based approach to value all of Complainant's Reynolds County mineral interests, including those arising from the BLM leases.

as of January 1, 2019. (Ex. C. at 32-33; 68)<sup>7</sup>

Gustavson's value estimate is premised on a discount rate based on the weighted average cost of capital (WACC). The WACC “accounts for the cost of financing.” (Ex. C at 52) To determine the WACC, Gustavson reviewed data from “eight publicly traded companies whose business involves royalty and other financial streams.” (Id.) The surveyed companies have mineral interests in North America, South America, Australia, Europe, and Africa. (Id. at 53-56) The companies have interests in mines in both the operating and development stages and derive income from minerals including gold, silver, copper, uranium, vanadium, palladium cobalt, and nickel. (Id.) Some of the surveyed companies also have interests in energy production and other mine products such as iron ore and potash. (Id.) The median pre-tax WACC for these companies was 11.1%, (Id. at 56), which Gustavson used as the discount rate. (Id. at 61). Applying the 11.1% discount rate to the revenue forecasts from Complainant's privately owned and leased mineral interests yielded an estimated TVM \$49,900,000 as of January 1, 2019. (Id. at 66; 69-71)

For comparison, Gustavson also estimated a direct capitalization rate of 14.7% for Complainant's Reynolds County mines. Gustavson divided the royalty income by the estimated capitalization rates to estimate the market value of Complainant's privately owned or leased mineral interests was \$40,970,000 (rounded to \$41,000,000) as of January 1, 2019. (Ex. C at 63-64). Gustavson placed “no weight” on the direct capitalization estimate and concluded the

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<sup>7</sup> Gustavson estimated the aggregate value of Complainant's mineral estate in Reynolds County due to a lack of data permitting separate valuation of each tax parcel. (Ex. C at 12)

TVM of Complainant's privately owned and leased mineral interests was \$49,900,000 as of January 1, 2019. (Id. at 68)

**4. Respondent's Evidence.** Respondent introduced Exhibits 1 through 4 and Rebuttal

Exhibit 1. Respondent's exhibits are summarized as follows:

Exhibit 1	Appraisal Report prepared by Bradley Ross, a licensed Missouri appraiser and certified professional geologist. Ross estimated the fair market value of the subject properties was \$103,300,000 as of January 1, 2019.
Exhibit 2	Appraisal Report prepared by Michael Brawley, a certified Missouri residential trainee. Brawley estimated the market value of Complainant's Reynolds County surface lands was \$950 per acre as of January 1, 2019.
Exhibit 3	WDT of Bradley Ross
Exhibit 4	Review Appraisal Report prepared by Bradley Ross. Ross concluded the Valbridge Property Advisors appraisal was unreliable because it states Complainant's mines are primarily copper mines, excludes real property fixtures, and employs an unreliable cost approach analysis.
Rebuttal Exhibit 1	Ross Rebuttal Testimony

**Ross Appraisal**

Ross concluded the aggregate TVM of the subject properties as of January 1, 2019, was \$271,460,000. (Ex. 1 at 60) Like Gustavson and Valbridge, Ross concluded the highest and best use of the subject properties is for mining. Ross further explained the significance of his highest and best conclusion, stating “[t]he current value-in-exchange is the same as the value- in-use because the buildings and improvements are currently being used at their highest and best use of mining and would be exchanged as such for as long as there is a remaining orebody.” (Ex. 1 at 25-26)

**Surface Land**

Ross concluded the TVM of Complainant's Reynolds County surface lands was \$950 per acre, or \$31,483,000 as of January 1, 2019. (Ex. 1 at 42) Respondent, however, agrees with Complainant's assertion the TVM of the surface lands was \$32,300,000 as of January 1, 2019. (Resp. Br. at 4)

### Office Buildings

Ross emphasized the sales comparison approach to value Complainant's office buildings. The office buildings range from 11,620 to 29,514 square feet, with a total area of 113,230 square feet. (Ex. 1 at 37) Ross compared Complainant's office buildings to sales of five commercial office buildings located near intersections in the towns of Potosi, Bonne Terre, Festus, Jackson, and Rolla. (Ex. 1 at 37-38) Unlike the subject office buildings, there is no indication the highest and best use of the five comparable office buildings is for continued support of mining operations.

Ross made qualitative adjustments accounting for “superior” and “inferior” characteristics in terms of size, date of sale, location, utility, quality, size, and amenities. The individual qualitative adjustments are not quantified. Ross relied on the qualitative adjustments to conclude overall adjustments of “up” or “down.” (Ex. 1. at 37-38) There is no sales comparison grid.<sup>8</sup> Ross concluded the “estimated sales comparison approach indicator of value for the office space is \$25 per square foot.” (Id. at 37) Multiplying \$25 per square foot by 113,230 square feet yields an indicated value of \$2,830,750.

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<sup>8</sup> Ross utilized the same comparable properties in the Iron County appeals and included a sales comparison grid on page 34 of his Iron County appraisal report.

Ross also developed the cost approach to value the office buildings. Ross utilized the MVS Calculator Costs effective January 2019 to estimate the RCN. (Ex. 1 at 46) Unlike Valbridge, Ross' report does not include a detailed explanation of the RCN estimate. Ross estimated the depreciated value of the office buildings was \$2,101,302. (Id. at 56) Ross relied on the sales comparison approach to estimate the value of the office buildings. (Id. at 57-58)

### Industrial Shells

Ross relied on the sales comparison approach to value several “industrial shells” totaling 129,800 square feet. (Ex. 1 at 38) Ross compared the industrial shells to the sales of four industrial buildings and the listing price of another. The comparable sales were located in or near the towns of Catawissa, Waynesville and Van Buren, with the fourth sale located in Bollinger County, near the intersection of Highway 34 West and County Road 808. The listed building was located in Ironton, Missouri. (Id. at 39-40)

As with the office buildings, Ross made qualitative adjustments accounting for “Superior” and “Inferior” characteristics in terms of size, date of sale, location, utility, quality, size, and amenities. Ross relied on the qualitative adjustments to conclude overall adjustments of “Up” or “Down.” (Id. at 39) None of the individual qualitative adjustments are quantified. The range of adjusted sale prices per square foot ranged from \$19.73 per square foot to \$53.69 per square foot. (Id.) Ross concluded the value of the industrial shells was \$20 per square foot, resulting in an estimated value of \$2,596,000. Ross also estimated these buildings had a value of \$1,034,278 under the cost approach. (Id. at 56)

## CWIP

Ross included two items of CWIP referred to as the “Brushy Creek Main Bridge Crane” and the “Fletcher Production Hoist Brake” with a total value of \$68,879. (Ex. 1 at 53-54)

### Industrial Buildings and Improvements

Ross valued the remaining industrial buildings and improvements by splitting them into two categories: (1) buildings and improvements constructed by Complainant; and (2) older buildings and improvements pre-dating Complainant's acquisition of the land. (Ex. 1 at 57) Ross defined “improvements” as those “assets that are affixed to the land, a foundation, a building, or a structure[,]” including “mills, hoists, and crushers, that are affixed to concrete foundations.” (Id. at 43)

#### 1. Complainant-Constructed Buildings and Improvements

Ross used reproduction cost less depreciation to value the newer Complainant-constructed buildings and improvements. The reproduction cost estimates are based on historical costs reported by Complainant in conjunction with MVS cost multipliers. Ross asserted the “replacement cost and reproduction cost are essentially the same for the [Complainant] constructed assets” because “[a]ny replacement asset would need to be constructed using the same specifications and requirements of the current assets.” (Id.) The cost approach conclusions for the individual buildings and improvements constructed by Complainant are included in Tables A1 and A3. (Ex. 1 at 50, 52)

Unlike Valbridge, which estimated depreciation according to the remaining economic life of the buildings according to their age, construction type, and condition, Ross tied his

depreciation analysis to the remaining economic life of the mines. (Ex. 1 at 47-48) Ross concluded “[t]he mining industry is generally more concerned with remaining economic life instead of the remaining physical life because the orebody is the primary source of value.” (Id.) Consistent with this conclusion, Ross depreciated the reproduction cost with a “% Good” reflecting the percentage of remaining economic life relative to the total economic life.<sup>9</sup>

Ross' “% Good” calculation is similar to a standard straight-line depreciation calculation in which the effective age is divided by the economic life. For instance, the “Concentrate storage” building at the Brushy Creek Mine was constructed in 2011. The estimated “Orebody end of life” for the Brushy Creek Mine is 2040. (Ex. 1 at 50) Thus, the concentrate storage building has an estimated economic life of 29 years (2040 – 2011 = 29). Based on Ross' analysis, the building would have an estimated remaining economic life of 21 years (2040 – 2019 = 21) as of January 1, 2019. The 21 years of remaining economic life is 72.41% of the total economic life of 29 years (21/29 = 0.7241). The 72.41% is the “% Good” and accounts for “the external obsolescence on the assets that results from the physical depletion of the natural resource.” (Ex. 4 at 14)

Based on the foregoing analysis, Ross estimated the TVM of the Complainant-constructed industrial buildings was \$23,240,476 and that the TVM of the Complainant-constructed real property improvements was \$36,229,605. (Id. at 57)

## 2. Older Buildings and Improvements

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<sup>9</sup> Ross does not explain the “% Good” in his appraisal report, but does provide an explanation in his review appraisal. (Ex. 4 at 14)

Ross estimated the RCN of the buildings and improvements pre-dating Complainant's acquisition of the land by using the MVS Calculator Costs effective January 2019 in conjunction with Complainant's cost data and sales data for similar assets. (Ex. 1 at 46) Unlike Valbridge, Ross' summation of his RCN estimates does not use MVS multipliers to adjust for divergences from standard height, floor area, local construction costs, and increased construction costs over time.

Ross deducted two forms of obsolescence from the older buildings and improvements, the “% Good” and a functional obsolescence “inutility” adjustment. (Ex. 1 at 50-51) Ross attributed “9% Good” to the RCN of the buildings and improvements older than the MVS life expectancy guidelines. (Id. at 46) The “9% Good” accounted for the MVS 8% salvage factor plus 1% to “reflect minimal useful life.” (Id.)

The inutility adjustment accounts for the fact that as of January 1, 2019, the average annual production was less than what the buildings were constructed to accommodate. (Ex. 1 at 53)<sup>10</sup> Ross estimated the inutility adjustment by dividing the “Current Production” by the “Rated Production” and multiplying that quotient by an “ efficiencies of scale factor of 0.60[.]” (Id. at 54) Ross asserts the efficiencies of scale factor, referred to as the “rule of six-tenths,” is typically “used in industrial engineering, especially for the design of industrial chemical manufacturing plants ... which if applied to the subject property would result in a measure of inutility.” (Id.) Ross asserts “research” indicates the rule of six-tenths is reasonable when

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<sup>10</sup> Ross' inutility formula is derived from an appraisal text pertaining to personal property and titled “Valuing Machinery and Equipment.”

applied to the subject property. (Id.)

Ross did not apply the inutility adjustment to the newer buildings and improvements constructed by Complainant because those assets “are assumed to have been designed to meet the production levels that (Complainant) has maintained since acquiring the subject.” (Id. at 54)

Ross estimated inutility adjustments of 81.58% at the Brushy Creek Mine, 77.76% at the Fletcher Mine, and 60.82% at the Sweetwater Mine. (Ex. 1 at 50-51) Using the Brushy Creek Mine “Office 1<sup>st</sup> Floor” as an example, the RCN of \$3,249,787 is multiplied by the “% Good” (0.3134) and the inutility adjustment (0.8158), resulting in an estimated depreciated value of \$830,966. (Id. at 50) Ross estimated the value of the industrial buildings and improvements pre-dating Complainant's acquisition of the land was \$5,575,910 and \$6,056,661, respectively. (Ex. 1 at 56)

#### Mineral Interest

Ross estimated the value of Complainant's mineral interest by direct capitalization of the market-based royalty income for all of Complainant's Reynolds County mineral interests. Ross estimated the capitalization rate by considering the 8.5% capitalization rate utilized by the STC in the 2011 Reynolds County appeals, the decline in long-term Treasury yields since 2011, the WACC for mining corporations, reported discount rates for interests in orebodies containing lead and zinc, and his personal knowledge mining industry capitalization rates. (Ex. 1 at 32-36) Ross noted the 20-year Treasury yield declined by 1.32% from 2011 through the end of 2018, indicating a corresponding downward adjustment of 1.32% from the 8.5% capitalization rate used by the STC in the 2011 Reynolds County appeals. Ross also noted the median pre-tax

WACC for mining corporations declined from approximately 18% in 2011 to approximately 12% in 2018. (Id. at 31) Next, Ross noted public filings of nine mining companies involved in lead and zinc mining indicated an average “8.0% discount rate for the working interest[.]” (Id. at 35) Ross qualified the 8% discount rate by observing “the royalty position assumes less risk than the working position because the royalty position is not subject to operating cost fluctuations and is typically protected by minimum payment obligations from the working position.” (Id.) In addition to the market data, Ross stated his “personal knowledge of the capitalization rates used in the marketplace also indicates that the trend has been downwards in recent years.” (Id.) Ross concluded a pre-tax capitalization rate of 7.25% should applied to the royalty income generated by Complainant's mineral interests. (Id. at 28, 36; Ex. 3 at 19)

To estimate royalty income, Ross utilized production and lead equivalency data supplied by Complainant, the US Geological Survey Mineral Commodity Summary regarding 2018 lead prices, and the market royalty rate (5%). (Ex. 1 at 27-28) Ross estimated the TVM of Complainant's mineral interest was. \$163,378,679 (Id. at 28)

Ross allocated the \$163,378,679 value estimate between Complainant's private mineral interests and the BLM leases. Ross estimated 59% of Complainant's ore production came from privately held reserves, with an estimated value of \$95,541,567 [0.59 x \$163,378,679 = \$95,541,567]. (Ex. 1 at 21)

Ross' value estimates are summarized as follows:

Surface Land	\$31,483,000
CWIP	\$68,879
Buildings and Improvements	\$76,529,402

Orebody	\$163,378,679
<b>Total</b>	<b>\$271,459,960</b>

(Ex. 1 at 57)

### **Ross Review Appraisal**

Ross' review appraisal offered five main critiques of the Valbridge and Gustavson appraisal reports. (Ex. 4 at 1-2) Ross' first, second, and fourth critiques fault the Valbridge appraisal for referring to copper as the primary mineral produced in Complainant's Reynolds County mines. Ross also notes the Valbridge appraisal estimated economic obsolescence in part by analyzing Complainant's gross profit margin for the Reynolds County facilities. Complainant's gross profit is based on the revenues and operating costs associated with the subject property's real property and personal property, including business intangibles. (Ex. 4 at 11)

Ross' third critique asserts the Valbridge appraisal omits real property fixtures. Ross asserts his site visits and photographs in the Valbridge appraisal report show assets that “have been welded or bolted to the buildings, resulting in the annexation and adaptation of the assets to the realty so that they would have to be cut into pieces to be removed, which would constitute a major modification and likely be economically prohibitive.” (Ex. 4 at 12) Ross asserts it would be cost prohibitive to remove and sell assets such as crushers, hoists, cranes, mills, flotation circuits, truck scales, ore bins, thickeners, and water treatment fixtures because they have been annexed and adapted to the ongoing mining operations. Moreover, removal of these assets “would constitute a major modification” because the highest and best use of mining “is

due in large part to the real property fixtures that have been annexed to the individual buildings.” (Id. at 12) Ross concluded that “[f]or the real property at the subject to be exchanged based on true value in money, the realty fixtures are essential to the marketability of the subject property at its current highest and best use.” (Id. at 13)

Finally, Ross asserts the total economic life analysis used to estimate depreciation should be based on the remaining economic life of the mineral resource rather than the individual improvements because their value is a function of the mineral value. (Ex. 4 at 13-15)

**5. Value.** The aggregate TVM of the subject properties on January 1, 2019, was \$137,321,841, rounded to \$137,320,000.

## **CONCLUSIONS OF LAW**

**1. Assessment and Valuation.** Commercial real property is assessed at 32% of its TVM as of January 1 of each odd-numbered year. Section 137.115.5(1)(c). “True value in money is the fair market value of the property on the valuation date, and is a function of its highest and best use, which is the use of the property which will produce the greatest return in the reasonably near future.” *Snider v. Casino Aztar/Aztar Mo. Gaming Corp.*, 156 S.W.3d 341, 346 (Mo. banc 2005) (internal quotation omitted). The fair market value is “the price which the property would bring from a willing buyer when offered for sale by a willing seller.” *Mo. Baptist Children's Home v. State Tax Comm'n*, 867 S.W.2d 510, 512 (Mo. banc 1993). “True value in money is defined in terms of value in exchange not value in use.” *Tibbs v. Poplar Bluff Assocs. I, L.P.*, 599 S.W.3d 1, 7 (Mo. App. S.D. 2020) (internal quotation omitted). “Determining the true value in money is an issue of fact for the STC.” *Cohen v. Bushmeyer*, 251 S.W.3d 345, 348 (Mo.

App. E.D. 2008).

“For purposes of levying property taxes, the value of real property is typically determined using one or more of three generally accepted approaches.” *Snider*, 156 S.W.3d at 346. The three generally accepted approaches are the cost approach, the income approach, and the comparable sales approach. *Id.* at 346-48. The STC has wide discretion in selecting the appropriate valuation method but “cannot base its decision on opinion evidence that fails to consider information that should have been considered under a particular valuation approach.” *Id.*, at 348.

**2. Evidence.** “Although technical rules of evidence are not controlling in administrative hearings, fundamental rules of evidence are applicable.” *Mo. Church of Scientology v. State Tax Comm’n*, 560 S.W.2d 837, 839 (Mo. banc 1977). The hearing officer is the finder of fact and determines the credibility and weight of the evidence. *Kelly v. Mo. Dep’t of Soc. Servs., Family Support Div.*, 456 S.W.3d 107, 111 (Mo. App. W.D. 2015).

**3. Burden of Proof.** The value set by the BOE is presumptively correct. *Tibbs*, 599 S.W.3d at 7. The “taxpayer may rebut this presumption by presenting substantial and persuasive evidence that the valuation is erroneous.” *Id.* (internal quotation omitted). The taxpayer also must prove “the value that should have been placed on the property.” *Id.* An assessor advocating a value different than that set by the BOE must also produce substantial and persuasive evidence of his or her proposed value. *See Drury Chesterfield, Inc. v. Muehlheausler*, 347 S.W.3d 107, 112 (Mo. App. E.D. 2011) (noting “[t]he burden of overcoming [the BOE] presumption lies with the party challenging the tax

assessment”).

“Substantial evidence is that evidence which, if true, has probative force upon the issues, and from which the trier of fact can reasonably decide the case on the fact issues.” *Savage v. State Tax Comm'n*, 722 S.W.2d 72, 77 (Mo. banc 1986) (internal quotation omitted). Evidence is persuasive when it has “sufficient weight and probative value to convince the trier of fact.” *Daly v. P.D. George Co.*, 77 S.W.3d 645, 651 (Mo. App. E.D. 2002); *see also White v. Dir. of Revenue*, 321 S.W.3d 298, 305 (Mo. banc 2010) (noting the burden of persuasion is the “party’s duty to convince the fact-finder to view the facts in a way that favors that party”). The preponderance of the evidence standard applies. *Westwood P’ship v. Gogarty*, 103 S.W.3d 152, 161 (Mo. App. E.D. 2003); *see also Spencer v. Zobrist*, 323 S.W.3d 391, 399 (Mo. App. W.D. 2010) (holding the “preponderance of the evidence standard” applied to an administrative proceeding). While both parties can produce substantial evidence, “only one can meet the preponderance of the evidence standard.” *Fujita v. Jeffries*, 714 S.W.2d 202, 206 (Mo. App. 1986).

**4. Surface Land.** The parties agree the TVM of Complainant’s Reynolds County surface land was \$32,300,000 as determined in Complainant’s Exhibit A. (Resp. Br. at 4; Compl. Reply Br. at 1; Ex. A at 78) The TVM of Complainant’s 33,140.33 acres of surface land as of January 1, 2019, was \$32,300,000.

**5. Real Property Improvements.** Respondent asserts the value of “Real Property Improvements” as of January 1, 2019, was \$42,286,266. (Resp. Br. at 4; Ex. 1 at 57) Complainant asserts the alleged real property improvements are in fact personal property

consisting of machinery and equipment previously declared and taxed as personal property. (Compl. Br. at 21 – 25) Respondent asserts Complainant's personal property declarations are not dispositive and that Ross valued only the land, buildings, and fixtures comprising Complainant's taxable real property. (Resp. Reply Br. at 6-8)

Taxpayers generally bear the burden of proof in an STC appeal because the taxpayer is generally the party seeking “affirmative relief.” *Cupples Hesse Corp. v. State Tax Comm'n*, 329 S.W.2d 696, 702 (Mo. 1959). Here, in response to Complainant's appeal from the BOE decisions setting an aggregate value of \$151,665,934, Respondent challenges the BOE value and asserts the assessment should be increased by approximately \$120,000,000. Respondent's higher proposed value is, in part, based upon Respondent's assertion certain property declared and taxed as personal property now must be taxed as real property with a market value in excess of \$42,000,000. Therefore, like Complainant, Respondent is challenging the BOE's presumptively correct value and bears the burden of proving the components of its substantially higher proposed value. *See Drury Chesterfield*, 347 S.W.3d at 112 (noting “[t]he burden of overcoming [the BOE] presumption lies with the party challenging the tax assessment”). This is consistent with the general rule that the party asserting an item to be a fixture bears “the burden of showing that the circumstances of the annexation are such as to make an article a fixture[.]” *Herron v. Barnard*, 390 S.W.3d 901, 909 (Mo. App. W.D. 2013).<sup>11</sup>

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<sup>11</sup> *Herron* is procedurally distinguishable but instructive. In *Herron*, the defendant landlord asserted certain items were real property fixtures as an affirmative defense to a former tenant's action for replevin of alleged personal property. *Herron*, 390 S.W.3d at 909. Here, Respondent is attempting to alter the status quo and assess as real property items previously declared and taxed as personal property. Consistent with the general rule stated in *Herron*, Respondent bears

## Fixtures

In pertinent part, Section 137.010(4) defines “real property” as including the “land itself, whether laid out in town lots or otherwise, and all growing crops, buildings, structures, improvements and fixtures of whatever kind thereon[.]” “Property permanently affixed to the real estate, or which has become a part thereof, generally speaking, becomes taxable to the owner as a part of the real estate, at least until its removal (if permitted as between the lessor and lessee).” *Greene Cty. v. Hermel, Inc.*, 511 S.W.2d 762, 771 (Mo. 1974). Consequently, if the items at issue are in fact real property fixtures, then they must be assessed as real property.

“A fixture is property annexed to the realty, adapted to the location, and that the annexor intended the property to be a fixture at the time it was annexed.” *Cuivre River Elec. Co-op., Inc. v. State Tax Comm'n*, 769 S.W.2d 431, 435–36 (Mo. banc 1989). “Each of the elements ... must be present to some degree, however slight.” *Herron*, 390 S.W.3d at 909 (internal quotation omitted). Determining whether a specific item is a fixture is a question of fact that “depends upon the facts and circumstances of a particular case. *Id.* at 911. (Internal quotation omitted). The latter two elements – adaptation and intent – are the most important. *Id.* at 913.

“The adaptation element refers to the characteristics of fitness or suitability for the building or premises in question.” *Bedford*, 631 S.W.3d at 670 (internal quotation omitted).

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the burden of proving the items are in fact real property fixtures. *See also Bedford v. Audrain Cty. Motor Co., Inc.*, 631 S.W.3d 663, 670 (Mo. App. E.D. 2021) (noting “the burden is on the party asserting the existence of a fixture to prove the elements” of the fixture analysis); *Curry Inv. Co. v. Santilli*, 494 S.W.3d 18, 29 (Mo. App. W.D. 2016); *Wisdom v. Rollins*, 664 S.W.2d 37, 39 (Mo. App. S.D. 1984).

The adaptation element is satisfied if an item is “peculiarly adapted to the real property.” *Id.* Therefore, when “the alleged fixture [is] necessary for the particular use to which the premises are devoted, the element of adaptation is satisfied.” *Herron*, 390 S.W.3d at 912.

The substantial and persuasive evidence in the record shows the subject properties include buildings and improvements, which the appraisers for both parties refer to as “special purpose” or “special use.” (Ex. A at 24; Ex. 1 at 40-41) Ross reported his annual inspections of the subject properties led him to conclude the machinery and equipment affixed to the realty is part of an “interconnected and integrated structure” that is “adapted to the location” and intended “to be fixed in place for the life of the mine.” (Ex. 4 at 13; *see also* Rebuttal Ex. 1 at 4) Both parties' appraisal reports include photographs depicting machinery and equipment that appears to be physically attached to the realty. (Ex. 1 at 69-88; Ex. A at 28-29, 37-39, 46-50)

Ross' general narrative explanation and the photographs in both appraisal reports demonstrate Complainant's machinery and equipment can be annexed and adapted to the realty so as to become real property fixtures. This general proposition is not in dispute. The dispute centers on Ross' conclusion that all of the approximately 120 items listed as “Real Property Improvements” – each of which was previously declared and taxed as personal property – are in fact real property fixtures. Respondent's conclusion is not supported by substantial and persuasive evidence.

Neither Ross' general narrative explanation nor the photographs explain or depict with specificity how any of the approximately 120 individual “improvements” listed on pages 51 and 52 of Exhibit 1 are “peculiarly adapted to the real property.” *Bedford*, 631 S.W.3d at 670

(internal quotation omitted).<sup>12</sup> None of Ross' general narrative is tied to any specific item listed as a real property improvement. Ross generally references types of equipment that may be fixtures, but offers no specific testimony pertaining to the annexation or adaptation of any listed item. Similarly, the photographs do not depict every item and none cross-reference any individual items on Ross' improvements list to enable factual confirmation of annexation or adaptation.

Ross' assertion the 120 listed improvements are in fact fixtures is further undermined by the fact that some mining equipment, such as “concentrating equipment,” is generally considered personal property within the mining industry because it “can be readily removed and sold, and frequently is moved and sold in the mining industry.” (Ex. C at 6-7) The fact mining equipment is frequently moved and sold undermines Ross' general assertion the items at issue are uniquely adapted to a particular building or property. *See Rothermich v. Union Planters Nat. Bank*, 10 S.W.3d 610, 617 (Mo. App. E.D. 2000) (holding bowling alley pinspotters were not fixtures in part because they were sold and used in a different facility).

On this record, the only way to conclude each of the approximately 120 items Respondent asserts is in fact a real property fixture is to assume Ross' general assertions and testimony apply specifically and accurately to each listed item. For instance, the listed improvements in the Sweetwater Mine include an “SW WEST RAIL 1900,” “SW WATER TREATMENT EQUIP,”

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<sup>12</sup> The lack of factual specificity distinguishes this case from *Thomas v. Davis*, 76 Mo. 72 (Mo. 1882), in which the Missouri Supreme Court held a steam engine, boiler, and water pump affixed to the foundation of a building used for lead smelting were fixtures. *Id.* at 74, 79. Unlike this case, *Thomas* involved specific testimony applicable to each of the few items at issue. *Id.* at 74-75.

and an “SW DUST COLLECTOR.” (Ex. 1 at 52) The record does not show with specificity what these items are, how or if they are affixed to the realty, or whether they are specifically adapted to or necessary for the building to function. Thus, concluding that Ross' general observations apply to each of the approximately 120 specific items rests on an item-by-item series of speculative inferences than substantial and persuasive evidence specific to each disputed item.<sup>13</sup> Respondent's evidence does not persuasively demonstrate the listed items previously declared and taxed as personal property now must be taxed as real property with a market value in excess of \$42,000,000.

This conclusion is reinforced when compared to the facts of cases holding that specific items of machinery or equipment were shown to be fixtures. Unlike Ross' general narrative explanation and non-specific photographs, the cases holding an item was shown to be a fixture typically involve a specific item that is the subject of a trial or hearing involving evidence specific to the item of property at issue.<sup>14</sup> As established, that evidence is lacking in this case.

The final element is intent, which refers to whether the annexation was intended to make the item “a permanent accession to the land.” *Bedford*, 631 S.W.3d at 670. This is an objective

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<sup>13</sup> Ross' list also includes paving and a road. Valbridge included paving and roads in its cost approach.

<sup>14</sup> *See eg.*, *Bedford*, 631 S.W.3d at 671 (affirming a judgment following a bench trial and holding the “overwhelming” evidence showed six outdoor lights at car lot were fixtures); *Freeman v. Barrs*, 237 S.W.3d 285, 290 (Mo. App. S.D. 2007) (affirming a judgment following a bench trial and holding specific testimony regarding a 6,500-pound mobile cattle scale was substantial evidence supporting the court's judgment finding the scale was a fixture); *Oberjuerge Rubber Co. v. State Tax Comm'n*, 674 S.W.2d 186, 188 (Mo. App. E.D. 1984) (holding two overhead cranes with a “useful life” of 15 years were fixtures because they were annexed and adapted to a warehouse).

test of whether, at the time of the annexation, the annexor's actions indicate an intent to make the property a fixture or retain its status as personal property. *Oberjuerge*, 674 S.W.2d at 188; *see also Cuivre River*, 769 S.W.2d at 436 (holding intent is gauged “at the time of the annexation”).

The machinery and equipment included in Ross' appraisal either pre-dates Complainant's acquisition of the mines, (Ex. 1 at 51), or was acquired prior to 2018. (Ex. 1 at 52)<sup>15</sup> Complainant's 2019 and 2020 personal property declarations post-date any annexation of the machinery and equipment at issue and are not dispositive of Complainant's intent “at the time of the annexation.” *Cuivre River*, 769 S.W.2d at 436; *Oberjuerge*, 674 S.W.2d at 188.

While Complainant's post-annexation declarations are not dispositive, the record also shows Respondent never contested Complainant's multiple personal property declarations that included the same items Respondent now asserts are personal property. (Rebuttal Ex. L at 17) The law recognizes “[t]he assessor has a job to do [and] he should not be compelled to make a laborious inquiry into the possible real or personal nature of annexations.” *Oberjuerge*, 674 S.W.2d at 188 (quoting V American Law of Property section 19.13 (1952)). This rule of expediency, however, does not negate Complainant's statutory obligation to accurately report its business personal property pursuant to Section 137.122 or the necessity of evidence showing that items previously declared and taxed as personal property are in fact real property fixtures.

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<sup>15</sup> The fact Complainant acquired some machinery and equipment upon acquisition of the Reynolds County mines could support an inference these items were real property, rather than the personal property of the previous owner. It is equally possible, however, that Complainant's acquisition included personal property. There is no substantial and persuasive evidence resolving this question.

There is no persuasive evidence establishing the items Complainant declared as personal property, that Respondent accepted as personal property, and upon which Complainant paid personal property taxes are now real property fixtures worth over \$42,000,000.

**6. Construction Work in Progress (CWIP).** Respondent asserts the “Brushy Creek Main Bridge Crane” and “Fletcher Production Hoist Brake” are CWIP taxable as real property. (Resp. Br. at 10) Respondent's appraiser, Ross, concluded the TVM of these items was \$68,879 as of January 1, 2019, based on the value reported by Complainant. (Ex. 1 at 55)

Complainant asserts its appraiser, Valbridge, properly excluded CWIP because the value of these items is implicit in “the capitalization of the royalty income stream.” (Compl. Br. at 9) Complainant also asserts it reported both the bridge crane and hoist brake as personal property and paid personal property taxes accordingly. (Compl. Reply Br. at 7-8)

In Complainant's appeal of the 2011 Reynolds county assessment, the STC concluded “the appraiser should have included such items as the construction work in progress and presented a supportable position as to their market value, or stated why those items do not have a market value.” *Doe Run Co. v. Parker*, No. 11-82500 (Mo. State Tax Comm'n, June 28, 2016, at 15) (affirmed in *Parker v. Doe Run Co.*, 553 S.W.3d 356, 362 (Mo. App. S.D. 2018)). In the 2011 decision and order, the STC did not analyze whether the items denominated as “construction works in progress” were in fact real property fixtures. Further, there is no indication the items at issue in that case are the same as the two items characterized as CWIP in this case.

In these appeals, Complainant and its appraiser assert the two items characterized as

CWIP are personal property and should not be included in the real property assessment. As with the other items Respondent asserts are fixtures, Complainant declared both items as personal property and paid taxes accordingly. (Rebuttal Ex. J at 12, 26) As with the other alleged fixtures, there is no persuasive evidence specific to either item establishing they are in fact real property that must be included in the assessment.

**7. Buildings and Improvements.** Complainant's appraiser, Valbridge, relied on the cost approach to estimate an aggregate building and improvement value of \$9,480,274. (Ex. A at 92) Respondent's appraiser, Ross, relied on the sales comparison and cost approaches to estimate an aggregate building value of \$34,243,136. (Ex. 1 at 57) Valbridge's estimated building and improvement value is persuasive.

Respondent's Sales Comparison Approach is Unpersuasive

Ross valued Complainant's office buildings and “industrial shells” with the sales comparison approach. Ross' sales comparison approach is unpersuasive.

Like Complainant's appraiser, Ross concluded the highest and best use of the subject properties is for mining. Ross further observed “[t]he current value-in-exchange is the same as the value-in-use because the buildings and improvements are currently being used at their highest and best use of mining and *would be exchanged as such* for as long as there is a remaining orebody.” (Ex. 1 at 25-26) (emphasis added). Ross' observation is consistent with the principle that a “subject property's highest and best use provides the basis for the research and analysis of comparable sales,” including the identification of “comparable properties [that] match the highest and best use of the subject property[.]” Appraisal Institute, *The Appraisal of*

*Real Estate* (14th ed. 2013) 379-80; *see also Snider*, 156 S.W.3d at 346 (noting “[e]ach valuation approach is applied with reference to a specific use of the property—its highest and best use”). It follows that identifying the highest and best use “set[s] the stage for the selection of appropriate comparable sales.” *The Appraisal of Real Estate* at 381. Ross' comparable sales approach fails at this juncture.

Ross compared Complainant's office buildings to five commercial office buildings located at intersections in the towns of Potosi, Bonne Terre, Festus, Jackson, and Rolla. (Ex. 1 at 37-38) Unlike the subject office buildings, there is no indication the highest and best use of Ross' comparable properties is in support of mining or any similar industrial activity. Because Ross' comparable properties do not share the highest and best use of the subject properties, they are subject to different market dynamics and may not have the same range of financially feasible or maximally productive uses. Ross' five sales do not share the same market characteristics as the subject office buildings and are not sufficiently comparable to develop a persuasive value estimate.<sup>16</sup>

The persuasiveness of Ross' sales comparison approach is further undermined by the lack of quantified adjustments based on market data. Rather quantifying the effect of different

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<sup>16</sup> Respondent asserts criticizing Ross' sales comparison approach on this basis confuses “building types with highest and best use” because “[a]n office building type can have a highest and best use of mining, or as a doctor's office, or as a lawyer's office, etc.” (Resp. Reply Br. at 5) While a generic “office building type” can have a multitude of highest and best uses, the highest and best use for the subject office buildings is in support of the ongoing mining operation upon which they are located. (Ex. 1 at 25) Respondent's attempt to save Ross' sales comparison analysis incorrectly focuses on generic building types rather than the market realities expressly stated in Ross' highest and best use conclusion.

characteristics, Ross made unquantified, qualitative adjustments for “Superior” and “Inferior” characteristics resulting in adjustments of “Up” or “Down.” (Ex. 1 at 37-38) For instance, Ross does not provide a quantified, market-based adjustment accounting for the fact the subject office buildings are located in a relatively less populous area and at a greater distance from interstate highways. (See Ex. C at 7) The fact Ross concluded the office buildings fell near the bottom of the range of adjusted sales prices does not change the analysis because the range of adjusted prices lacks persuasive, market-based support. The STC “cannot ignore a lack of support in the evidence for adjustments made by the expert witnesses in the application of a particular valuation approach.” *Snider*, 156 S.W.3d at 348.

Ross' sales comparison analysis of the “industrial shell” or “light manufacturing” buildings fails for the same reasons. Ross compared Complainant's light industrial buildings to sales of five industrial buildings located at in Franklin, Pulaski, Iron, Carter, and Bollinger counties. (Ex. 1 at 36) Like the office building valuation, Ross' sales comparison approach does not yield a persuasive value estimate for the industrial buildings because there is no indication the comparable sales share the highest and best use of the subject properties and there are no persuasive market-based adjustments.

As established below, the best evidence of the value of Complainant's buildings comes from Valbridge's cost approach utilizing a detailed, transparent application of the Marshall Valuation Service Calculator Method.

#### Complainant's Cost Approach is Persuasive

A critical step in the cost approach is estimating the replacement or reproduction cost

from which depreciation is deducted. *Snider*, 156 S.W.3d at 347; *The Appraisal of Real Estate*, at 569. Valbridge utilized the replacement cost new (RCN). Ross utilized the RCN for buildings pre-dating Complainant's acquisition, (Ex. 1 at 46), and the reproduction cost for approximately 20 buildings constructed by Complainant. (Ex. 1 at 47, 50) Valbridge's RCN estimates are more persuasive than Ross' blended use of RCN and reproduction cost estimates.

First, unlike Ross's RCN estimates, Valbridge's RCN estimates are prefaced by a clear explanation of the MVS Calculator Method and include detailed, step-by-step descriptions of the data and calculations utilized to estimate the RCN for each building. (Ex. A at 80-84) Ross' summation of RCN estimates includes no evident use of MVS multipliers to adjust for divergences from standard height, floor area, local construction costs, and increased construction costs over time. Valbridge's RCN estimates are persuasive.

Second, Ross' reproduction cost estimates are relatively unpersuasive. Although replacement cost is often lower than reproduction cost, *The Appraisal of Real Estate*, at 570, reproduction cost is often “the best indicator of value for newer properties where the actual costs of construction are available[.]” *Snider*, 156 S.W.3d at 347. Ross, however, concluded “[a]ny replacement asset would need to be constructed using the same specifications and requirements of the current assets, which means that in the case of the unique, special use subject property that replacement cost and reproduction cost are essentially the same for the [Complainant] constructed assets.” (Ex. 1 at 47) The record does not support this assumption.

Ross' assumption that reproduction and replacement costs are essentially the same is refuted by Valbridge' persuasive RCN estimates. For instance, Ross estimated the aggregate

pre-depreciation **reproduction** cost of Complainant's 8,500 square foot water treatment plant building at the West Fork Mine was \$6,790,240 (\$6,223,868 reported cost x 1.091 MVS multiplier = \$6,790,240). (Ex. 1 at 50) Ross described the building as constructed of steel, with metal siding. (Id.) Valbridge estimated the RCN of the same “light manufacturing” building was \$681,485. (Ex. A at 83) The \$6,109,744 difference in pre-depreciation cost estimates undermines Ross' assumption the “replacement cost and reproduction cost are essentially the same.” The discrepancy between Ross' higher reproduction cost estimates and Valbridge's persuasive RCN estimates is persistent and undermines Ross' operating assumption that reproduction and replacement costs are essentially the same.

Finally, in light of Valbridge's persuasive RCN estimates, some of Ross' reproduction cost estimates strain credulity. Using the West Fork Mine water treatment building as an example, Ross' estimated pre-depreciation reproduction cost of \$6,790,240, equates to **\$799 per square foot** for an 8,500 square-foot steel light manufacturing building with metal siding. (Ex. 1 at 50) On this record, given Valbridge's persuasive RCN estimates and Ross' assumption that “replacement cost and reproduction cost are essentially the same,” the only plausible scenario supporting Ross' extraordinary reproduction cost estimate is if – consistent with Respondent's position – it includes machinery and equipment within the building. Ross, however, separately values the water treatment plant machinery and equipment as real property. (Id. at 52) If the alleged improvements are included in the reproduction cost estimate and also valued as real property fixtures, then they are double-counted. If not, then Ross' operating assumption that replacement cost and reproduction cost are essentially the same is incorrect. Either way, the

validity of Ross' reproduction cost estimates are undermined and rendered unpersuasive.

After estimating the RCN or reproduction cost, “a proper deduction must be made for depreciation” to properly apply the cost approach. *Union Elec. Co. v. Estes*, 534 S.W.3d 352, 370 (Mo. App. W.D. 2017). Again, Valbridge's approach is more persuasive.

Valbridge estimated a different economic life and effective age for each building based on the year of construction, the type of construction, and the building condition. This is a typical approach. *The Appraisal of Real Estate* at 600-601.

Ross determined the remaining economic life of improvements by reference to the remaining mine life because the remaining mineral reserve is the primary source of value. (Ex. 1 at 47) Ross' observation is consistent with the principle that an improvement's economic life begins when it is built and “ends when the improvement no longer contributes value for the use for which it was originally intended and is no longer the highest and best use of the underlying land.” *The Appraisal of Real Estate* at 601.

While Ross' decision to tie the economic life of the buildings and improvements to the remaining economic life of the mine is plausible, the depreciation analysis is undermined by the “inutility” adjustment applied to the older assets. Ross estimated the inutility adjustment by dividing the “Current Production” by the “Rated Production” and multiplying that quotient by an “efficiencies of scale factor of 0.60[.]” (Ex. 1 at 54) Ross asserts this “rule of six-tenths” is typically “used in industrial engineering, especially for the design of industrial chemical manufacturing plants” and that “research” indicates the rule of six-tenths is reasonable when applied to the subject property. (Id.) This appeal does not involve a chemical manufacturing

plant. The subject properties are part of a lead mining operation. The research supporting use of a rule-of-thumb used for designing chemical plants as a guide for valuing lead mines in Missouri is not disclosed. The inutility adjustment is unpersuasive.

Ross' RCN and reproduction cost estimates provide an unpersuasive starting point for estimating value. The unpersuasive “inutility” adjustment further undermines Ross' cost approach. Valbridge's cost approach is persuasive. The TVM of the subject buildings and improvements was \$9,480,274 as of January 1, 2019.

### **Mineral Interests**

Respondent asserts the TVM of Complainant's mineral interests was \$163,378,679 as of January 1, 2019. (Resp. Br. at 4) This value estimate is based on the direct capitalization of the royalty income.

Complainant uses a discounted cash flow analysis of royalty income to estimate the TVM of its fee simple mineral interests and privately leased mineral interests was \$49,900,000 as of January 1, 2019. (Compl. Br. at 17) Complainant excludes the BLM leases because they have no taxable bonus value. The \$113,478,679 difference in proposed values results primarily from Respondent's inclusion of the BLM leases and use of direct capitalization with a lower capitalization rate.

### **BLM Leases**

The income approach is the preferred method for valuing mineral interests for *ad valorem* taxation. (Ex. 1 at 27; Ex. C at 1) Capitalizing the market-based estimate of royalty income yields a value estimate based on the mineral interest rather than the business value created by

handling, milling, and concentrating the ore. For mineral interests owned in fee simple, the market royalty rate generated by leased mineral interests is imputed to the fee simple interest. (Ex. C at 42)

Although the income-based royalty approach is typically used to value mineral interests, Missouri law requires use of the bonus value method to value leasehold interests in tax-exempt property. *Frontier Airlines, Inc. v. State Tax Comm'n*, 528 S.W.2d 943, 947 (Mo. banc 1975); *see also Avis Rent A Car Sys., Inc. v. State Tax Comm'n*, 716 S.W.2d 871, 875 (Mo. App. W.D. 1986) (noting that “[i]n *Frontier*, the court **held** that a lease of tax exempt property does not have a value that can be assessed for ad valorem taxes unless the lease has a bonus value”) (emphasis added). “The bonus value, sometimes referred to as the leasehold savings or profit, is the difference between the economic rental and the contract rental.” *Frontier Airlines*, 528 S.W.2d at 947 (quoting *Land Clearance for Redevelopment Corp. v. Doernhoefer*, 389 S.W.2d 780, 784 (Mo. 1965)). Therefore “[a] leasehold interest will have value under the bonus value method of valuation only where the rent to be paid under the terms of the lease is less than the market rents being paid for comparable properties[.]” *City of Riverside v. Progressive Inv. Club of Kansas City, Inc.*, 45 S.W.3d 905, 911 (Mo. App. W.D. 2001) (citing *Doernhoefer*, 389 S.W.2d at 784).

Ross and Gustavson both concluded Complainant's 5% royalty is analogous to rent and reflects the market rate. (Ex. 1 at 30; Ex. C at 49) Both appraisers concluded the BLM leases have no bonus value. (Ex. 1 at 31-32; Ex. C at 49) Because Complainant's BLM leases have

no bonus value, they have no taxable value. *Frontier Airlines*, 528 S.W.2d at 947.<sup>17</sup> The TVM of the BLM leases was \$0 as of January 1, 2019.

### Privately Owned and Privately Leased Mineral Interests

Complainant asserts the TVM of its privately owned and privately leased mineral interests was \$49,900,000 as of January 1, 2019. (Compl. Br. at 2) Ross concluded the TVM of Complainant's privately owned and privately leased mineral interests was \$95,541,567 as of January 1, 2019. (Ex. 1 at 31) The \$45,641,567 difference results largely from Ross' use of direct capitalization with a 7.25% capitalization rate and Gustavson's use of a DCF model with an 11.1% discount rate. Ross' approach is more persuasive.

Complainant utilized direct capitalization in its appeal of Respondent's 2011 assessment and successfully defended that approach on appeal. *Parker*, 553 S.W.3d at 364. Complainant

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<sup>17</sup> Respondent does not cite *Frontier Airlines* but asserts the bonus value method is inapplicable because the proper valuation method is an income-based approach. (Resp. Reply Br. at 3) Unlike the leases in *Frontier Airlines*, which granted the use of office and hangar space, the BLM leases literally entitle Complainant to extract the constituent elements of the real property, convert them to personal property, and sell them for profit. The tax-exempt status of the lessor does not necessarily dictate a particular valuation method when valuing the lessee's taxable interest. Necessarily, the tax is imposed solely on the lessee's interest and “[t]he tax-exempt status of the fee owner does not ... extend to a leasehold interest in the same land, granted to another for a term of years.” *St. Charles Cty. v. Curators of Univ. of Missouri*, 25 S.W.3d 159, 161 (Mo. banc 2000); *cf. United States v. City of Detroit*, 355 U.S. 466, 470 (1958) (affirming the constitutionality of a state statute authorizing taxation of a private party's use of tax-exempt federal property and noting “[o]ther things being the same, it seems obvious enough that use of exempt property is worth as much as use of comparable taxed property during the same interval”). Nonetheless, even if Respondent's argument was persuasive, the STC's “adjudicative power extends only to the ascertainment of facts and the application of existing law thereto in order to resolve issues within the given area of agency expertise.” *State Tax Comm'n v. Admin. Hearing Comm'n*, 641 S.W.2d 69, 75 (Mo. banc 1982). The “existing law” requires the STC to value the BLM leases by the bonus value method. *Frontier Airlines*, 528 S.W.2d at 947; *Avis Rent A Car*, 716 S.W.2d at 875.

produced no persuasive evidence requiring use of a method different than the direct capitalization method Complainant previously advocated and successfully defended on appeal.

Respondent's proposed 11.1% capitalization rate is based on the same type of WACC estimate the STC rejected in Complainant's 2011 appeal. The STC concluded the WACC “may not accurately reflect the royalty position” because “[t]he royalty position has a lower risk.” *Doe Run Co. v. Parker*, Appeal Nos. 11-82500, 11-82502 - 82505 (Mo. St. Tax Comm'n, June 28, 2016). This observation is crucial because determining the appropriate discount rate is primarily a function of investment risk. *Equitable Life Assur. Soc. of U.S./Marriott Hotels, Inc. v. State Tax Comm'n*, 852 S.W.2d 376, 380 (Mo. App. E.D. 1993); *see also The Appraisal of Real Estate* at 514 (noting the yield rate utilized in a discounted cash flow analysis is “primarily a function of perceived risk”).

Gustavson's 11.1% discount rate is based on the median WACC of eight companies with interests in operating and developing mines in North America, South America, Australia, Europe, and Africa. (Ex. C at 52-56) The WACC “accounts for the cost of financing.” (Ex. C at 51) The surveyed companies produce minerals other than lead; namely, gold, silver, copper, uranium, vanadium, palladium cobalt, and nickel. (Id. at 52-55) Some of these companies have also have interests in energy production and other mine products such as iron ore and potash. (Id.) Gustavson's 11.1% discount rate, therefore, is based on the median financing costs for companies operating on five different continents, with mineral interests other than lead, and holding positions in market sectors other than mineral production.<sup>18</sup> The risk profile represented

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<sup>18</sup> Financing costs may factor into capitalization rate estimates. *The Appraisal of Real Estate*,

by the WACC of the surveyed companies is different than the royalties generated by Complainant's Reynolds County mineral interests. On this record, as in 2011, the “WACC may not accurately reflect the royalty position” because “[t]he royalty position has a lower risk.” *Parker*, (Mo. St. Tax Comm'n June 28, 2016). Complainant's proposed 11.1% discount rate is unpersuasive.

Ross' approach is more persuasive. Ross followed the direct capitalization approach utilized by the STC in 2011 and affirmed by the court of appeals. Ross began with the 8.5% capitalization rate utilized by the STC in the 2011. As Complainant notes, the remaining mine life as of January 1, 2019, is less than in 2011, thus indicating a higher capitalization rate. Ross, however, relied on a number of other factors indicating a decreased capitalization rate as of January 1, 2019. Specifically, Ross noted the decline in long-term Treasury yields since 2011, the decline in the WACC for mining corporations from 2011 through 2018, and the average 8% discount rate for the “working interest” in orebodies containing lead and zinc based on reports from nine mining companies. (Ex. 1 at 32-36)

The decline in long-term Treasury yields is relevant because the discount rate must reflect the return required to attract investment capital. *The Appraisal of Real Estate*, at 457; *see also Equitable Life*, 852 S.W.2d at 380 (noting capitalization rates are a function of investment risk).

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at 457-458. In this case, however, both appraisers agree Complainant's mineral interests should be valued by capitalizing royalty income to isolate the value of mineral interests from the business value. The WACC reflects the overall corporate capital structure and reflects a different risk profile than the risks specific to the contractual royalty payments underlying both experts' value estimates. Consequently, even if the WACC is emphasized, the substantial and persuasive evidence in this case indicates this is a case where there is “reason to select a yield rate ... below the indicated range.” *Id.* at 513.

Long-term Treasury yields set a reasonable minimum level of risk-free return and therefore often serve as a starting point for determining capitalization rates. *The Appraisal of Real Estate*, at 458. Ross noted that between 2011 and 2019, the 20-year and 30-year Treasury yields exhibited respective declines of 1.32% and 1.38%, warranting a corresponding downward adjustment from the 8.5% capitalization rate utilized in the 2011 appeal. (Ex. 1 at 32) Considered in conjunction with the decline in the WACC for mining companies between 2011 and 2019, the downward trend in long-term Treasury rates supports a lower capitalization rate.

Ross' capitalization rate estimate is further supported by his conclusion the “working interest” in orebodies containing lead and zinc exhibits an average 8% discount rate. Because “the royalty position assumes less risk than the working position,” (Ex. 1 at 35), the contractual royalty position indicates a lower capitalization rate than that applied to the working interest. Of course, the economics of the surveyed mines may not be identical to Complainant's Reynolds County mines, but they provide additional market-based data points supporting Ross' estimated 7.25% capitalization rate. Respondent's proposed 7.25% capitalization rate, though not free from critique, is based on substantial and persuasive evidence.

Applying Respondent's 7.25% capitalization rate to Complainant's privately owned and privately leased mineral interests results in an estimated value of \$95,541,567. (Ex. 1 at 31)<sup>19</sup>

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<sup>19</sup> There is an unexplained discrepancy in Ross' calculation. Ross calculated the value of the private mineral interests as follows:  $59\% \times \$163,378,679 = \$95,541,567$ . Multiplying 0.59 by \$163,378,679 yields \$96,393,420, not \$95,541,567. Neither party explains this arithmetic discrepancy. Having accepted Respondent's valuation methodology and proposed mineral value, and given the inherent uncertainties, it is reasonable to hold Respondent to the asserted value, which is *less* than that indicated by multiplying Ross' aggregate mineral value by the allocation between mineral interests on private lands and tax-exempt federal lands.

The TVM of Complainant's privately owned and privately leased mineral interests was \$95,541,567 as of January 1, 2019.

### CONCLUSION AND ORDER

The BOE's decisions finding the aggregate TVM of subject properties on January 1, 2019, was \$151,665,934 are set aside. The aggregate TVM of the subject properties on January 1, 2019, was \$137,322,000.<sup>20</sup> The allocation is as follows:

Surface Land	\$32,300,000
Building and Improvements	\$9,480,274
Mineral Interests	\$95,541,567
Total	\$137,321,841
<b>TVM (Rounded)</b>	<b>\$137,322,000</b>

### Application for Review

A party may file an application for review of this decision within 30 days of the mailing date set forth in the certificate of service for this decision. The application “shall contain specific detailed grounds upon which it is claimed the decision is erroneous.” Section 138.432. The application must be in writing, and may be mailed to the State Tax Commission of Missouri, P.O. Box 146, Jefferson City, MO 65102-0146, or emailed to Legal@stc.mo.gov. A copy of the application must be sent to each person listed below in the certificate of service.

***Failure to state specific facts or law upon which the application for review is based will result in summary denial.*** Section 138.432.

### Disputed Taxes

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<sup>20</sup> The parties have not provided an adequate basis to allocate the TVM among the 231 subject properties and have not requested the STC to do so. *See Parker*, 553 S.W.3d at 368 (holding “[w]e cannot convict the Commission of error for failure to allocate among the 234 parcels when it was not asked to do so”).

The Collector of the Reynolds County, and the collectors of all affected political subdivisions therein, shall continue to hold the disputed taxes pending the possible filing of an application for review, unless the disputed taxes have been disbursed pursuant to a court order under the provisions of section 139.031.

SO ORDERED February 25, 2022.

Eric S. Peterson  
Senior Hearing Officer  
State Tax Commission

Certificate of Service

I hereby certify that a copy of the foregoing has been electronically mailed and/or sent by U.S. Mail on February 25, 2022, to:

Counsel for Complainant, Thomas Caradonna and Sarah Milunski, [tcaradonna@lewisrice.com](mailto:tcaradonna@lewisrice.com) and [smilunski@lewisrice.com](mailto:smilunski@lewisrice.com)  
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Assessor, Rick Parker, [rparker@reynoldscounty-mo.gov](mailto:rparker@reynoldscounty-mo.gov)  
Collector, Denise Smith, [reycocol@reynoldscounty-mo.gov](mailto:reycocol@reynoldscounty-mo.gov)

Elaina Mejia  
Legal Coordinator

**APPENDIX**

19-82500	03-3.1-005-000-000-001.00000
19-82501	03-3.1-008-000-000-016.00000
19-82502	03-3.2-006-000-000-001.00000
19-82503	03-3.2-006-000-000-001.00M01
19-82504	03-3.2-007-000-000-002.00000
19-82505	03-3.2-007-000-000-004.00M01

19-82506	03-3.2-007-000-000-007.00000
19-82507	03-3.2-007-000-000-007.00M01
19-82508	03-3.2-007-000-000-008.00M01
19-82509	03-3.2-007-000-000-015.00M01
19-82510	03-4.1-018-000-000-001.00M01
19-82511	03-9.2-030-000-000-001.00M01
19-82512	03-9.2-031-000-000-002.00000
19-82513	03-9.2-031-000-000-002.00M01
19-82514	04-0.1-001-000-000-001.00000
19-82515	04-0.1-001-000-000-001.00M01
19-82516	04-0.1-002-000-000-002.00000
19-82517	04-0.1-002-000-000-002.00M01
19-82518	04-0.1-002-000-000-003.00000
19-82519	04-0.1-002-000-000-005.00M01
19-82520	04-0.1-002-000-000-006.00000
19-82521	04-0.1-002-000-000-008.00M01
19-82522	04-0.1-002-000-000-009.00M01
19-82523	04-0.1-011-000-000-001.00M01
19-82524	04-0.1-011-000-000-001.00M02
19-82525	04-0.1-011-000-000-002.00M01
19-82526	04-0.1-012-000-000-001.00000
19-82527	04-0.1-012-000-000-001.00M01
19-82528	04-0.1-012-000-000-004.00M01
19-82529	04-0.1-012-000-000-009.00M01
19-82530	04-0.1-012-000-000-018.00M01
19-82531	04-0.1-012-000-000-018.00M02
19-82532	04-0.2-003-000-000-001.00M01
19-82533	04-0.2-010-000-000-001.00M01
19-82534	04-0.5-015-000-000-010.00000
19-82535	04-0.5-015-000-000-010.00M01
19-82536	04-0.5-022-000-000-001.00M01
19-82537	04-0.5-022-000-000-007.00000
19-82538	04-0.6-013-000-000-001.00M01
19-82539	04-0.6-013-000-000-001.00M02
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