No. 2025-0146-SC

In the Utah Supreme Court

MPLD HUSKY, LLC.,

Petitioner/Appellant,

v.

UTAH STATE TAX COMMISSION AND SALT LAKE COUNTY BOARD OF EQUALIZATION,

Respondent, Appellees.

On appeal from the Third Judicial District Court, Tax Division,
Salt Lake County, State of Utah
Trial Court Case No. 220900260

Brief of Amicus Curiae International Association of Assessing Officers

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Introduction

The International Association of Assessing Officers (IAAO) is a nonprofit, educational and research association. It is a professional membership organization

of government assessment officials and others interested in the administration of the property tax. IAAO was founded in 1934, and now has a membership of more than 8,500 members worldwide from governmental, business and academic communities. IAAO's stated goal is to advance fair and equitable property appraisal, assessment administration, and property tax policy through professional development, research, standards, and technical assistance.

IAAO offers this brief to assist the court in the understanding of fundamental appraisal and economic theory which is the underpinning of the dispute at hand. Utah law mandates property tax valuations at 'fair market value' and the court's challenge is to apply those appraisal and economic theories regarding the term 'fair market value' to the facts of the case at bar.

Notice to All Parties

By electronic communication on _____, all parties were notified of IAAO's intent to file an amicus brief.

Consent by All Parties

On _____, counsel for all parties consented to IAAO's filing its amicus brief.

Required Disclosures

No party or party's counsel authored any portion of this amicus brief. No party or party's counsel contributed money used for the preparation of this brief. No other person contributed money used to prepare this brief.

Summary of Points

Factually speaking, the difference between the parties' estimates of value is due to treatment of the upper floors (mezzanines) of the fulfillment center at issue. Of the total 2,312,376 square feet of the property, 1,293,332 square feet is attributable to these upper floor Robotic Storage Platforms – about 56% of the total. (Order pg. 7.)

The disparity between the values arrived at between the two parties is addressed from various angles (fair market value, highest and best use, value-in-use, fundamental obsolescence, etc.) but all emanate from appraisal and economic theory.

Argument

I. Value

Real estate, like any other commodity, derives *value* from *demand* for the product. Without demand for a parcel of real estate, it has no value.

> The market value of a particular property use is largely determined by the demand for that use in the market and the competitive position of that property in its market.

The Appraisal of Real Estate, 15th Ed. pg. 275, Appraisal Institute 2020.

When discussing demand in relation to real estate value however, the demand analyzed is not the demand for the real estate per se, is it an analysis of the demand for the underlying services or products that the real estate helps provide.

> For each particular type of property, demand analysis focuses on the end product or service that the real estate provides. For example, a demand analysis for retail space would attempt to determine the demand for retail services generated by potential customer in the market area. A demand analysis for office space would attempt to identify business in the area that occupy office space and their space or staffing needs.

The Appraisal of Real Estate, 15th Ed. pg. 276, Appraisal Institute 2020.

Demand created by the users of the real estate is demand in the 'fundamental market' as opposed to the 'transactional market,' which is demand between buyers and sellers for the real estate. This is discussed further in the 'obsolescence' section of the brief.

Often, to satisfy the demand for a type of real estate in the market, a large volume of the real estate product is necessary – think residential homes or office buildings or retail stores. But for other types of real estate, demand is satisfied by few or even one parcel of real estate in that market – think hospital, courthouse, public utility, manufacturing plant producing a unique product. Regardless of whether one or a multitude of properties are required to fill the underlying demand, the inherent nature of real estate value is constant – satisfying demand equals value.

Real estate market participants (sellers, buyers, users) determine just how much value to attribute to a parcel of real estate by anticipating the future benefits produced by the real estate.

> Value is commonly perceived as the anticipation of future benefits.

The Appraisal of Real Estate, 15th Ed. pg. 21, Appraisal Institute 2020.)

II. Fair Market Value

A. Fair Market Value Under Utah Law

The Utah Constitution states, in relevant part that,

> So that each person and corporation pays a tax in proportion to the fair market value of his, her, or its tangible property, all tangible property in the State… shall be assessed at a uniform and equal rate in proportion to its fair market value, to be ascertained as provided by law… .

Utah Const. art. XIII, Sec 2(1).

Utah Code §59-2-103(2) simply states that, "All tangible taxable property located with the state shall be assessed and taxed at a uniform rate on the basis of its fair market value… ."

Fair market value is defined as,

> …the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts.

Utah Code §59-2-102 (13)(a).

B. Fair Market Value Principles

The fair market value standard used in Utah is also used in many states in property tax matters and in many other appraisal scenarios. And while not necessarily defined using identical phraseology, the common test is the same willing seller and willing buyer test. See *Utah Code Ann.* §59-102(13)(a); *The Appraisal of Real Estate*, 15th Ed. Pg. 48-49, Appraisal Institute 2020. This "willing seller/willing buyer" test is commonly referred to as a "hypothetical sale." ("…*market value* presumes a hypothetical sale of the asset being valued under certain stated conditions." *The Appraisal of Real Estate*, 15th Ed. Pg. 664, Appraisal Institute 2020.)

> The term 'fair market value' is a term of art that has been commonly used by courts in the United States as a standard for determining the 'price' of property. In arriving at a value for property, the 'fair market value' standard attempts to replicate the market place by assuming a hypothetical sale of the property between a willing seller and a willing buyer in an arm's length transaction.

In re Mahoney, 251 B.R. 748, 755 (Bkrty. S.D. Fla. 2000)

The hypothetical sale is useful and necessary, as it is unlikely that a subject property would happen to sell on the date of valuation required by the appraisal assignment. Moreover, some property types rarely sell at all, on the required date of valuation or otherwise.

Utah recognizes this concept:

> Some types of property sell frequently in an open market and have a market value that may be reasonably estimate on the basis of comparable market sales; some types of property are rarely sold and have no ascertainable market value based on comparable sales.

Rio Algom Corp. v. San Juan County, 681 P. 2d 184, 188-189 (Ut. 1984.)

1. The Hypothetical Sale

i. Hypothetical Parties

When the appraiser begins considering what the subject property would sell for in a hypothetical sale, the parties to the transaction are *hypothetical* parties.

> To utilize that concept, the appraiser attempts to replicate the positions of a hypothetical buyer and a hypothetical seller. To do this, the appraiser must ignore the specific circumstances of peculiarities associated with specific owners of property."

Boise Cascade Corp. v. Dep't of Revenue, 12 OTR 263 (Ore Tax Ct. 1991)

> We are not disposed, however, to give much force to the argument that because there are very few actual buyers for so costly a residence the valuation to be placed upon it under the statutory criterion should be correspondingly depreciated. The criterion established by the statute is a hypothetical sale, hence the buyers therein referred to are hypothetical buyers, not actual and existing purchasers.

Turnley v. Elizabeth, 68 A. 1094 (N.J. 1908.)

ii. Actual Market

As opposed to the hypothetical nature of the parties, the economic and market influences impacting the property are not hypothetical – they are real world. The real estate appraiser must determine the impact of those market influences, including demand – on the subject property.

> The market value of a particular property use is largely determined by the demand for that use in the market and the competitive position of that property in its market.

The Appraisal of Real Estate, 15th Ed. pg. 275, Appraisal Institute 2020.

The analysis of demand for a specific property can be incredibly sophisticated – forecasting trends in national and local economies, building design, competition, etc. It can also be very straightforward – does the property appear to be fully serving a demand in the market and does the current user intend to continue that use of the property?

> The performance of the subject property is likely to be the most reliable indicator of current demand for existing properties in the market.

The Appraisal of Real Estate, 14th Ed., pg. 310, Appraisal Institute 2013.

Even non-appraisers can recognize real estate projects that satisfy or fail to satisfy a need in the market – the busy retail store or the office building that sits half vacant.

> The occupancy of existing properties in the market is a good starting point as an indicator of the total current demand. And, likewise, the performance of the property being appraised can be a reliable indicator of current

> demand for existing properties in the market in the estimation of subject capture potential if the property has been properly managed and has experienced stabilized occupancy.

The Appraisal of Real Estate, 15th Ed., pg. 281, Appraisal Institute 2020.

Appellant's Brief cites cases acknowledging that in a hypothetical sale, the market must not be hypothetical. *Appellant's Brief* page 33. One of the amicus briefs acknowledge that in a hypothetical sale that "the hypothetical buyer be a realistic market participant" and that "the fair market value standard requires a hypothetical buyer in the context of a realistic market". *Brief of Amicus Curiae, The Institute for Professionals in Taxation*, pages 5, 16.

Both those statements are true. However, in considering a "realistic market participant" the appraiser cannot ignore the attributes of the current actual user (a realistic market participant) and in considering the "realistic market" the appraiser cannot ignore the current actual use of the property – for that use is a part of the real market.

Because the market factors (including supply and demand) are actual, the appraiser should not ignore the existence of any market participants (including the owner), nor ignore the actual use of the property as an indicator of value. If the actual user of the subject property were to disappear overnight, the e-commerce consumer goods warehouse market (and our everyday lives) would look markedly

different – but that is not the market in reality. For challenging property types the question is rephrased as: Would a market participant seeking to step into the current user's shoes (and enjoy similar profits) continue to use the subject property in its current form? In other words, do the attributes of the property satisfy a demand in the marketplace?

iii. Actual Obsolescence

All this is not to say that the appraiser should ignore true obsolescence. Here the claim is functional obsolescence in the upper floors, but the factual scenario does not fit the description of functional obsolescence.

> Generally, a building is functional if it successfully serves the purpose for which it was designed or adapted.

The Appraisal of Real Estate, 15th Ed. pg. 233 Appraisal Institute 2020.

> *Functional obsolescence* is loss in value due to inability of the improvement to perform adequately the function for which it is used, as of the appraisal date.

Property Assessment Valuation, 3rd Ed. pg. 282, International Association of Assessing Officers, 2010.

> Functional utility is the overall usefulness and desirability of a property. The ultimate criterion is whether the improvement efficiently satisfies the wants and needs of the market.

Property Assessment Valuation, 3rd Ed. pg. 260-261, International Association of Assessing Officers, 2010.

When functional utility is described as satisfying the "wants and needs of the market," it is the fundamental market that is considered. Fundamental demand is the ability of the real estate to satisfy the wants and needs of end users/consumers. See *The Appraisal of Real Estate*, 15th Ed. pg. 273-274, Appraisal Institute 2020.

Appraisal tests and treatises recognize that the fundamental market predominates over the capital market (buyers, sellers, investors.) In other words, the demand for the *real estate* is a byproduct of the demand for a *service* or end product.

> For each particular type of property, demand analysis focuses on the end product or service that the real estate provides. For example, a demand analysis for retail space would attempt to determine the demand for retail services generated by potential customers in the market area. A demand analysis for office space would attempt to identify businesses in the area that occupy office space and their space or staffing needs.

The Appraisal of Real Estate, 15th Ed. pg. 276, Appraisal Institute 2020.

Appellant's Brief states that a witness for appellant noted the following, "…Amazon's decision to invest in new fulfillment centers is based on the operational needs of the business, not the resale value of the property on the market." Appellant's Brief page 7. The same witness also noted that investment decisions are in part based on "forecast demand" from customers and that Amazon does not focus on "the price at which Amazon would sell the property ultimately" and that "if Amazon can fulfill customer demand, 'then we should be able to make

our payback on the investments.'" Appellant Brief, pg 7-8. This is of course typical of many commercial property types - the benefits of the real estate are derived by the owner in conjunction with its business. Manufacturing plants, restaurants, corporate office buildings, drug stores, etc. all operate on the same premise – it is not unique to Amazon. Market participants focus on 'forecast demand' from their customers and the value is derived from the profit made by satisfying that demand.

In this case, Amazon has figured out how to satisfy that fundamental demand in a manner it deems most efficient via the use of robotics and the upper floors of the subject property. The use of robotics in warehouses, while relatively new, is not an anomaly.[1] Thus, as a reading of the lower court's decision suggests, there are probably not a lot of sales of warehouses designed for robotics due to the relative recency of the concept. Nevertheless, the full use of the subject property –

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[1] *Attabotics, Inc. v. URBX, Inc.*, No. 1:21-cv-11051; 2022 U.S. Dist. LEXIS 100296*; 2022 WL 1989354; 1-2 (Dist. Ct. Ma. June 6, 2022); *Cognex Corp. v. Brown*, No. 22-cv-10498; 2022 U.S. Dist. LEXIS 96285; 2022 WL 1715155 (Dist. Ct. Ma. May 4, 2022); *Ocado Innovation, Ltd. V. AutoStore AS*, 561 F. Supp. 3d 36 (Dist. Ct. N.H. 2021); *Robogistics, LLC v. Dematic Corp.*, No. 1:23-CV-408; 2024 U.S. Dist. LEXIS 98944; 2024 WL 2836576 (E.D. Tx. June 4, 2024); *Gxo Logistics, Inc. v. Cunningham*, 2023 U.S. Dist. LEXIS 84773*; 2023 WL 340894 (W.D. N.C. May 15, 2023)(Integration of robotics into existing warehouses.)

including the fully used upper floors - indicates the demand for services it provides is real.

Functional obsolescence claims typically arise when new technology or design make formerly functional features no longer optimal. Arguing that a newer building design to accommodate technology is functionally obsolete, turns the concept of functional obsolescence on its head. When the automobile came along, it was the buggy-whip factory that became obsolete, not the newly designed automobile manufacturing plant.

III. Highest and Best Use

The same appraisal theory addresses appellant's argument that the court "misapplied the concept of 'highest and best use' to justify its user-specific analysis." Brief of Appellant, pg. 40.

As the name implies, highest and best use analysis determines the 'highest and best use' of the property, sometimes called the 'ideal improvement.'

> An appraiser's conclusion of the ideal improvement should be as specific as the market suggests through market analysis, e.g., to the level of the number of stories or number of units built.

The Appraisal of Real Estate, 15th Ed. pg. 313, Appraisal Institute 2020.

Here, the county determined, and the court agreed, that the highest and best use of the warehouse was the current use, including use of the almost 1,300,000

square feet of upper floors. Appellant concludes that the highest and best use is to virtually not use 1,300,000 square feet of floor space. Appraisal theory suggest the court was correct.

> If all the alternative uses are eliminated and the current use remains financially feasible without modification of the improvements or redevelopment of the site and retains the highest value of the alternative uses, then the current use is the highest and best use of the property as improved.

The Appraisal of Real Estate, 15th Ed. pg. 314, Appraisal Institute 2020.

The difference between the estimated value of the property between the parties suggests which use is the highest and best use and which use is the lesser and mediocre use.

IV. Case Law

The scenario in the case at bar has been addressed numerous times for many years in many jurisdictions. These cases also show the interplay between fair market value, functional obsolescence, highest and best use and special purpose property concepts.

In *Public Service Co. of New Hampshire v. New Hampton*, 136 A. 2d 591 (N.H. 1957) the court addressed the fair market value of a utility plant – a property that obviously has few comparable properties, fewer sales and few possible market participants. There, the court noted,

> The establishment of market value as a test for taxation purposes presupposes a market.
>
> …Yet it is plain that to hold there is no market value in such instances would mean that valuable property would entirely escape its just share of the burden of taxation. Such a policy would make neither good law nor good sense. Courts recognizing this have acted accordingly and have considered all factors calculated to influence an assumed buyer and seller in a free market.
>
> …Since indisputably the property has its greatest value as an electric public utility the purchaser may be assumed to be such. The plaintiff excepted to the granting of requests that it could be considered as a potential customer. However, it appears under the law that the price an electric utility, including the plaintiff itself, or a buyer in its position, would pay to an assumed third person may be considered.
>
> …The evidence of the worth of the property to an electric public utility purchaser including the plaintiff was properly received, and the plaintiff's exceptions are overruled.
>
> …In the present instance, the Court weighed with other factors the worth to the owner which could be transferred to others. Since as previously pointed out, ***the owner may be considered a hypothetical buyer***, it is apparent the price he would have to pay for building a new equivalent plant would influence his judgment in the purchase of this one.

Public Service Co. of New Hampshire v. New Hampton, 136 A. 2d 591, 595-596 (N.H. 1957)(emphasis added.)

In *Nestle USA, Inc. v. Wisconsin Dep't of Revenue*, 795 N.W. 2d 46 (W. 2011) the court heard argument regarding the valuation of a powdered infant

formula production facility, which had unique features relevant to its specialized use. The owner's expert determined the highest and best use of the property as a generic food processing plant (because he could find no sales of powdered infant formula plants within the state) and determined that the specialized features had little value and represented functional obsolescence for a generic food processing plant. The opposing expert determined the highest and best use was exactly what it was used for – a powdered infant formula production facility and embraced the value of the specialized features. The court first addressed the notion that because no sales could be found, that no market existed for such a plant, stating,

> The only evidence that Nestle presented was its expert's testimony that no powdered infant formula production facility had ever been sold in Wisconsin for its continued use as a powdered infant formula production facility. Nestle presented no evidence refuting Stepanek's findings or otherwise suggesting there is no market for the Gateway Plant in its existing use as a powdered infant formula production facility.

Id at 58. The court then went on to the address the alleged obsolescence of the plant's unique features:

> We have already held that the Gateway Plant's 'highest and best use' is as a powdered infant formula production facility. Therefore, the only remaining issue to be resolved is whether the specialized improvements that make the Gateway Plant suitable for the production of powdered infant formula are functionally obsolete for the plant's continued use as a powdered infant formula production facility. … Prudent

> purchasers of powdered infant formula production facilities would value the Gateway Plant's specialized features because these features are required by FDA regulations and are therefore necessary to the operation of such a plant.

Id at 60.

In *STC Submarine, Inc. v. Dept. of Rev*. 890 P. 2d 1370 (Or. 1995), the Oregon supreme court stated,

> Taxpayer's argument that the department's appraisal represents a value-in-use, because it does not deduct for features that are valuable only to another undersea fiber optic cable manufacturer, simply may be another way of saying that the 'highest and best use' of the subject property is not its existing use. We have already determined that the highest and best use of taxpayer's building and structures is to manufacture marine fiber optic cable. The building's special features, designed to accommodate that use, are part of the property's value-in-exchange, because they increase the amount at which the property would change hands in the marketplace.

Id at 1374.

New Jersey follows the same rationale:

> Built to plaintiff's specifications, these lavish improvements serve purposes which, from plaintiff's perspective, are highly utilitarian. Plaintiff is a large international business enterprise, and under worldly standards its interests are concretely promoted by identifying itself with an image of institutional grandeur. Though many features of these structures greatly exceed the bare necessities of a general office building, they clearly serve plaintiff's purpose of visibly enhancing its prestige in the business community by an artful blend of

> function and aesthetics. Such benefits have been held to constitute a value intrinsic to the building itself. …Plaintiff maintains that the likelihood of a buyer with requirements comparable to plaintiff's is so remote that the cost of the buildings' indulgences and special purpose features is not recoverable on the market and was therefore properly adjusted by the Tax Court for functional obsolescence. The argument overlooks two governing propositions. The first is that the sale contemplated as the criterion of market value is a 'hypothetical sale; hence, the would-be buyers are hypothetical buyers, not actual and existing purchasers.'

CPC Int'l, Inc. v. Englewood Cliffs, 473 A. 2d 548, 551-552 (Sup. Ct. N.J. 1984)(citations omitted.)

A Michigan appellate court dealt with valuation of an industrial plant in *Clark Equipment Co. v. Township of Leoni Cnty. Of Jackson*, 318 N.W.2d 586 (Mich. App. 1981). In *Clark Equipment,* the property owner again argued that because of the unique features of the industrial plant, the property would not readily sell on the open market. The court's response firmly rejected the property owner's theory,

> The problem with valuing large industrial plants is a problem with the statutory standard itself. The reality is that these types of industrial plants are rarely bought and sold, so that a determination of 'usual selling price' constitutes a metaphysical exercise which puts the Tax Tribunal in the position of having to resolve a question somewhat akin to how many angels can dance on the head of a pin. Petitioner may well be correct in its assertion that there is no market for its industrial plant at

> its current use. However, as we construe [the statutes] to the extent that an industrial plant is not so obsolete that, if a potential buyer did exist who was searching for an industrial property to perform the functions currently performed in the subject plant, said buyer would consider purchasing the subject property, the usual selling price can be based upon value in use. To apply [the statute], ***a hypothetical buyer must be posited, although, in actuality, such a buyer may not exist***. To construe [the statutes] as requiring the taxing unit to prove an *actual* market for a property's existing use would lead to absurd undervaluations. Large industrial plants are constructed to order, in accordance with the exact specifications of the purchasing user. Such plants are not constructed like small commercial buildings or residential structures with only a mere hope or expectation on the builder's part that the plant will be sold. When a large corporate entity such as Ford or General Motors builds a factory, it is probable that absolutely no market exists for the resale of that factory consistent with its current use. It is ludicrous to conclude, however, that such a brand new, modern, industrial facility is worth significantly less than represented by its replacement cost premised on value in use because, in actuality, such industrial facilities are rarely bought and sold. Thus, we hold that, ***to the extent a large industrial facility is suited for its current use and would be considered for purchase by a hypothetical buyer who wanted to own an industrial facility which could operate in accordance with the subject property's capabilities, said facility must be valued as if there were such a potential buyer (and therefore no such market) actually exists***.

Id at 588-589 (emphasis added).

V. The 'Fair' in Fair Market Value

Utah uses a 'fair market value' premise for property taxation. Some appraisal assignments use the phrase "market value" as opposed to "fair market value." Although many use the terms interchangeably, that is not necessarily correct. The word 'fair' has important connotations. Moreover, Utah's statutory definition must take precedence over other definitions found elsewhere.

In Utah, the definition of "fair market value" is expanded in Utah Code 59-2-103(2) which requires that property "shall be taxed at a *uniform and equal* rate on the basis of its fair market value… " which reiterates the Utah constitution's 'uniform and equal' language. (Emphasis added.)

In *Alta Pac. Assocs. v. Utah State Tax Comm'n*, 931 P. 2d 103 (Ut. 1997) this court weighed two different but compelling approaches to valuing an apartment complex for property tax purposes. In doing so, the court emphasized the constitutional and statutory mandate of uniformity and equality in property taxation, noting,

> The Commission's practice comports with statutory and constitutional mandates. Article XIII, section 2 of the Utah Constitution demands that "[all] tangible property in the state . . . shall be taxed at a uniform and equal rate in proportion to its value, to be ascertained as provided by law." The legislature has decided that "[all] tangible property shall be assessed and taxed at a uniform and equal rate on the basis of its fair market value." Utah Code Ann. § 59-2-103(1). The object of such uniformity and equality is "so that every person and corporation shall pay

> a tax in proportion to the value of his, her, or its tangible property." Utah Const. art. XIII, § 3(1); *see also Rio Algom Corp. v. San Juan County*, 681 P.2d 184, 192 (Utah 1984) ("The objective is to assure that the taxes that are levied in a given county will result in each property's being 'accountable for its pro rata share of the burden of local government.'" (quoting *Appeal of Johnstown Assocs.*, 494 Pa. 433, 431 A.2d 932, 934 (Pa. 1981))); *Kennecott Copper Corp. v. Salt Lake County*, 799 P.2d 1156, 1160 (Utah 1990) ("Reasonable uniformity of assessment is essential if every person and corporation is to be taxed in the same proportion to 'his, her, [**41] and its tangible property.'" (quoting Utah Const. art. XIII, § 3(1))). Thus, Utah law demands that all entities pay taxes in proportion to their property's full market value. *See Kennecott Copper Corp. v. Salt Lake County*, 799 P.2d 1156, 1161-62 (Utah 1990) (holding that formula used to assess mines must yield mines' full cash value); *Rio Algom Corp.*, 681 P.2d at 195 (holding statute unconstitutional which partially froze in time valuation of some properties because it prevented the ascertainment of full market value); *Moon Lake Elec. Ass'n v. Utah State Tax Comm'n*, 9 Utah 2d 384, 387, 345 P.2d 612, 614 (1959) (holding statutory formula unconstitutional that fixed assessments for tax purposes because it prevented the ascertainment of full market value). If some properties could be assessed below full market value, and if taxes could be calculated on that basis, the owners of the properties could avoid accountability for their share of governmental expenses, and the goal of uniformity and equality would be defeated.

Id at 115. In short, uniformity and equity modify the fair market value standard.

Warehouses are storage facilities appraised primarily on their square footage. *The Appraisal of Real* Estate, 15th Ed., pg. 359, Appraisal Institute 2020.

The district court here referenced the Amazon facility as new on the date of valuation and the upper floors as fully functional as designed and constructed. (Initial Brief, pg. 21, ¶ 79.) Yet here, the owner seeks a valuation premise that would result in about 55% of that square footage escaping taxation, as opposed to its single-story competitors. In *Alta Pac.*, this court rejected that argument as being un-uniform and unequal and contrary to Utah law.

Another Utah decision holds the same. In *Walmart Real Est. Bus. Trust v. Tax* Comm'n, 566 P. 3d 796 (Ut. App. 2025), the court reviewed a decision where the property owner argued that the current use (read 'fundamental demand') of the property should be ignored.

> …the court noted that "there is not the slightest indication of any intent by [Walmart] to discontinue using the properties for those purposes, and both sides agree that the properties have significant remaining useful life." The court stated that "to value the properties as if their only possible use is to be converted to 'big box retail' by second-generation users would result in a significant undervaluing of the properties."

Id at 803.

Ultimately, the court rejected the property owner's argument that Utah law required a property tax assessment to ignore the current use of a property and noted,

> Building on the words 'objective test,' Walmart asserts that Utah's statutory definition of "fair market value"

> requires assessors (and district courts, on review) to focus solely on a property's 'value in exchange,' and that it forbids assessors from considering a property's 'value in use.' Indeed, Walmart goes so far as to suggest that "the value-in-exchange approach is the only approach that is consistent with Utah law." And Walmart asserts that the district court violated this principle here by taking into account, as part of its 'fair market value' analysis, the use to which Walmart is currently putting the properties and by ultimately concluding that the properties' 'highest and best use' was their current use. But Walmart's categorical approach misses the mark. Assessment of fair market value is an inherently property-specific exercise; indeed, our supreme court has stated that '[t]he proper application of appraisal techniques depends upon varying factual circumstances that defy generalization.' *Beaver County v. Utah State Tax Comm'n*, 916 P.2d 344, 355 (Utah 1996)
>
> … Indeed, Walmart acknowledges that Utah's statutory definition of "fair market value" sometimes allows assessors to consider a property's current use. For instance, when the property at issue 'is of a class not commonly bought and sold,' then 'the usual test' involving a hypothetical willing buyer and willing seller 'breaks down,' and assessors may—in appropriate cases—factor into their valuation analysis the property's current use.

Id at 809-810.

The same hypothetical sale concept was addressed in *Rio Algom Corp. v. San Juan County*, 681 P. 2d 184, 188-189 (Ut. 1984):

> 'Market value,' the basis for all assessment valuation, is an attempt to create a fictitious sale of the subject property by assuming an owner willing to sell and a buyer desiring to buy. When, as in the instant case, there is no actual buyer desiring to purchase the property for continuation of its special use, the property's highest and best use as a special purpose property must still be considered for valuation purposes. The very nature of special purpose property is such that market value cannot readily be determined by the existence of an actual market, and therefore other methods of valuation, such as reproduction cost, must be resorted to.

Id at 192, quoting *Matter of McCannel, Minn.*, 301 N.W. 2d 910 (1980)

Utah law, consistent with appraisal theory and practice and the above cases supports the analysis made by the lower court in this matter that it is appropriate to consider the current use of the property, including the upper floors.

Conclusion

As an amicus party, the International Association of Assessing Officers was not a party to the lawsuit and is not cognizant as to the underlying facts of the case, except those set forth in the briefs. However, The Third Judicial District Court Tax Division's Findings of Fact, Conclusions of Law and Final Decision appear compatible with appraisal theory and Utah law.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Utah R. App. P. 24(a)(11) because this brief contains _____words, excluding the parts of the brief exempted by Utah R. App. P. 25(f).
2. This brief complies with the typeface requirements of Utah R. App. P. 27(a)(2) and the type style requirements of Utah R. App. P. 27(a)(3) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word for Microsoft 365 MSO (Version 2506) in 14 point Times New Roman.
3. William D. Shepherd authored this brief in whole.

/s/ William D. Shepherd
William D. Shepherd, P.A.