BEFORE THE COURT OF TAX APPEALS
STATE OF KANSAS

IN THE MATTER OF THE EQUALIZATION APPEAL OF COFFEYVILLE RESOURCES NITROGEN FERTILIZERS, L.L.C. FOR THE YEAR 2008 IN MONTGOMERY COUNTY, KANSAS	Docket Nos. 2008-7226-EQ and 2008-7227-EQ

ORDER

Now the above-captioned consolidated matters come on for consideration and decision by the Court of Tax Appeals of the State of Kansas.

An evidentiary hearing was conducted January 31; February 2-4; and February 7-10 of 2011.

Taxpayer, Coffeyville Resources Nitrogen Fertilizers, L.L.C. ("Taxpayer"), appeared by and through its attorneys of record, Lynn D. Preheim and Jarrod C. Kieffer of Stinson Morrison Hecker LLP. Montgomery County, Kansas (the "County") appeared by and through its attorneys of record, Jeffery A. Jordan, Jay F. Fowler, and Scott C. Palecki of Foulston Siefkin LLP.

Jurisdiction of the subject matter and of the parties is proper pursuant to K.S.A. 79-1448 and K.S.A. 79-1609. The tax year at issue is 2008.

The subject parcels are identified as Parcel ID Nos. 197-36-0-10-07-002.00-0 and 197-36-0-10-01-004.00-0.

Procedural Background and Summary of Facts

The Subject Property

These appeals are brought by the Taxpayer from the County's 2008 classification, valuation, and assessment of the subject property. The subject property is comprised of approximately fifteen acres of land; a concrete-block control building; concrete piers, pads, foundations, and other structural improvements; infrastructure systems; assorted steel structures; and hundreds of other assets which the Taxpayer owns and uses for a fertilizer manufacturing operation in Coffeyville, Montgomery County, Kansas. The assets and improvements comprising Taxpayer's manufacturing operation are at times referred to collectively herein as the "subject facility."

The subject facility was originally designed for, constructed, and owned and operated by Farmland Industries, Inc., with a combination of new and used parts that were relocated from other sites to Coffeyville. Most of the used parts were relocated from a power generation plant in California known as the Coolwater plant. Farmland hired Black and Veatch Partners to disassemble the Coolwater plant and move certain assets from that plant to the Montgomery County site. Farmland incorporated the used assets into the subject facility according to unique design and engineering specifications. Although most of the used assets were disassembled at Coolwater, shipped to Coffeyville, and re-assembled there without modification, some were modified before being incorporated into the subject facility.

Before commencing construction of the subject facility, the site was excavated, treated and shaped to accommodate the subsurface concrete piers, foundations and utility systems that would support the above-ground structures and production assets. In preparing the site, significant dirt work was required, and millions of pounds of concrete and steel rebar were used to construct the below- and above-grade structural elements. Design engineers determined how the new and used assets would be placed on the structural improvements and integrated into an operating fertilizer facility, giving consideration to their size, weight and operational requirements. The construction project lasted approximately four years, from preliminary development in late 1996 to completion in 2000.

The components of each section of the subject facility are interconnected with miles of piping, conveyors, cables and wiring and are supported by steel structures

attached to concrete footings and piers. In some instances the equipment is fitted with covers, which are sometimes referred to as "buildings." These covers are not buildings in the traditional sense; rather, they are sheets of metal connected to structural steel for the purpose of protecting the underlying production assets from the elements.

As is typical of plant facilities constructed using both new and used assets, most of the cost and time devoted to the subject project went toward engineering, labor, and new asset purchases. A relatively minor portion of the total cost of the project went toward purchases of used assets.

An active market exists for used plant assets. Through this market businesses acquire assets, not only for replacement parts, but also for plant and unit reassembly projects, sometimes referred to as plant or unit "relocations." Relocations are relatively rare, but do occur in some instances; worldwide, only a small fraction of fertilizer plants are sold, disassembled, moved and reassembled according to their original design and engineering plans.

In most cases, when salvaged plant assets are used in the construction of a new facility, the assets are taken from a facility that has been shut down after ceasing to be economically viable. When mothballed assets from a shut-down facility are relocated, large portions of the facility typically remain in place. Rarely is it feasible to salvage and relocate elements such as foundations, piers, underground piping, electrical equipment, cooling towers, and large tanks.

For purposes of analysis, the subject facility may be divided into six sections: the gasification unit, the selexol unit, the ammonia unit, the urea unit, the nitric acid unit, and the urea ammonium nitrate (UAN) unit. UAN is the main fertilizer product manufactured at the facility. The subject facility is the only facility of its kind in the United States. No other facility makes fertilizer products using gasification to convert petroleum coke into forms of carbon and hydrogen suitable for ammonia-based fertilizer manufacturing. Other fertilizer plants in the United States use natural gas, both as a power source and as feedstock.

The subject facility receives most of its supply of petroleum coke from an oil refinery located on adjacent property. Other operations at the subject facility, as well, are integrated with nearby facilities. One company supplies the subject facility with oxygen, nitrogen and argon produced by an air separation unit.

Another company recovers sulfur from the subject facility's waste hydrogen sulfide gas and uses it to manufacture sulfur-based liquid fertilizers.

While the sections of the subject facility are interconnected and are typically operated as an integrated whole, it is possible to operate certain units of the facility independently. Taxpayer has operated the gasifier without the ammonia unit and the gasifier and ammonia units without the UAN unit.

Following is a summary of the production process at the subject facility, as described by James Watson, one of the County's expert witnesses:

> "In very simple terms, the manufacture of ammonia and UAN requires the building blocks of nitrogen, hydrogen, carbon and oxygen. The third-party owned air separation unit (ASU) provides nitrogen and oxygen, the gasification of the petroleum coke provides the carbon and hydrogen, and water added to the gasification shift reactors provides additional hydrogen and oxygen. The nitrogen and hydrogen are converted into ammonia. The carbon and oxygen are converted into carbon dioxide. The ammonia and carbon dioxide, along with the hydrogen are processed into the UAN. Impurities and undesired compounds such as slag, metals, sulfur, hydrogen sulfide, carbon monoxides, and nitric oxides are removed at various points in the facility."

The original owner, Farmland, filed for bankruptcy in 2002. Taxpayer purchased the subject facility out of Farmland's bankruptcy estate in 2004. The subject facility was exempt from property tax for the ten-year period beginning January 1, 1998, and ending December 31, 2007. The subject facility was placed on the County tax rolls for the first time in 2008.

The Assets in Dispute

The parties agree that the land, the control building, and the three large final product storage tanks at the subject facility are properly classified as real property. They also agree that the value of the land as vacant is $38,660 and that the value of the control building is $385,256. The parties agree, as well, that certain assets used by Taxpayer at the plant are properly classified as personal property.

What is in dispute is the classification and valuation of 699 items such as valves, pumps, filters, coolers, condensers, tanks, drums, motors, hoists, heaters, cranes, generators, conveyors, gasifiers, and rod mills. These items are referred to herein as the "assets in dispute."

The assets in dispute vary in size, shape and character. Some are small enough to be moved by hand; others can be moved only by truck or by rail. Fourteen of the assets in dispute must be dismantled before they can be moved. Approximately 134 of the assets in dispute were salvaged from the Coolwater plant, including the main and secondary gasifiers, rod mills, coke silo conveyor, syngas scrubbing unit, radiant cooler, shift converters, and parts of the Selexol equipment.

All of the assets in dispute are bolted down with the exception of the gasifier units, which are fastened to their foundations with bolts and cemented with concrete. A number of the assets were designed with lifting lugs which, while necessary for installation, provide a means for the assets to be moved in and out of the facility as needed. Some of the assets in dispute are also skid mounted for ease of transport and installation.

From time to time assets such as pumps, compressors and heat exchangers are removed for maintenance or repair, and some assets are removed and replaced with upgraded components. Capital spares of some of the assets are stored on site. Removing and replacing assets at the subject facility typically can be accomplished without causing physical damage to the land, foundation structures, or other machinery and equipment. Taxpayer keeps forklifts, a crane, and other hauling machines on site, and several integrated hoists have been installed in various areas of the facility for purposes of moving and replacing assets.

Prior Description of
Assets in Dispute

On or about July 31, 1997, the Montgomery County Action Council prepared a tax abatement cost/benefit analysis for the subject facility, as required by the Kansas industrial revenue bond statutes. That analysis allocated $252,270,000 of the estimated cost of the project to personal property. Approximately five months later, Farmland entered into an easement agreement and a head lease with the City of Coffeyville and the Wilmington Trust Company for purposes of constructing the subject facility. Those documents describe the production assets of the plant as "personal property."

Farmland began the industrial revenue bond exemption process before commencing construction of the subject facility. The company filed its exemption application with the County on October 23, 2003. In its application Farmland provided a list of property denominated "personal property." That list comprised all of the facility's production assets, including the assets in dispute.

On November 14, 2003, the Kansas Board of Tax Appeals (BOTA) issued an order granting Farmland's industrial revenue bond exemption application. The BOTA order identified the subject plant's production assets as "machinery and equipment." For tax year 2004, the Montgomery County Appraiser's office prepared an annual claim of exemption for Farmland's approval. That document incorporated the list of assets contained in the BOTA exemption order and identified the subject facility's production assets, including the assets in dispute, as "personal property."

Farmland and its successors in interest, including Taxpayer, filed annual claims of exemption as well as annual personal property renditions describing the assets in dispute as "personal property." The Montgomery County Appraiser's office accepted those annual claims and renditions without modification or objection.

In 2005, Taxpayer, through one of its property tax consultants, met with the County assessor's office and presented a proposed valuation methodology with respect to how the assets at the subject facility should be reported beginning in tax year 2005. During the course of those meetings, the parties discussed and exchanged correspondence concerning the reporting and classification of the assets in dispute.

In 2006, the Kansas legislature enacted legislation known as the commercial and industrial machinery and equipment (CIME) tax exemption statute, codified at K.S.A. 79-223. After the CIME exemption was enacted, the Montgomery County appraiser began re-evaluating the classification of assets throughout the county. When the subject facility was placed on the tax rolls in 2008, the assets in dispute were classified as real property.

Classification of Other Plant Facilities

At least eight different commercial and industrial properties within Montgomery County utilize assets similar to those utilized at the subject facility. The production assets at those facilities were classified as personal property for tax year 2008. Those facilities include an air separation plant, a sulfur processing plant, two metal castings foundry facilities, a cement manufacturing plant, a wire manufacturing plant, an aircraft assembly plant, and a farm equipment manufacturing plant. Outside of Montgomery County there are two natural gas-fueled nitrogen fertilizer facilities. Although those two facilities differ from the subject facility in how they process chemicals, the assets utilized to operate the facilities are largely similar in scale and function to those utilized at the subject facility. According to testimony presented at trial, the assets of those two facilities are classified as personal property.

Issues Presented

The focus of Taxpayer's challenge is classification. Taxpayer contends the County improperly classified the assets in dispute as fixtures (real property) for tax year 2008, asserting the assets should have been classified as personal property. Taxpayer also challenges the County's assessment based on the doctrines *res judicata* and collateral estoppel, breach of contract, and the "uniform and equal" clause of the Kansas Constitution. In addition, Taxpayer contends that regardless of the validity of the County's classification, the County's valuation of the subject facility is invalid because it does not comport with Kansas law or the Uniform Standards of Professional Appraisal Practice (USPAP).

For tax year 2008, the County asserts the value of the subject facility's real property, including fixtures, is $303,066,836. Taxpayer asserts the value of the real property is $420,000 and that the value of the assets in dispute, classified and appraised as personal property, is $25,930,021.

The parties stipulate that in the event any property classified by the County as real property is determined by this court to be personal property, the value of such property shall be as it was rendered by Taxpayer in 2008.

The parties have presented this case as an absolute "either/or" decision. The County contends the assets in dispute must all be classified as real property, while Taxpayer contends the assets in dispute must all be classified as personal property.[1]

Discussion

I. *Did the County properly classify the assets in dispute as real property for purposes of the 2008 assessment?*

Taxpayer has the evidentiary burden with regard to classification. *See* COTA Order on Evidentiary Burden, January 5, 2011. Taxpayer must therefore prove by a preponderance of the evidence that the assets in dispute were misclassified by the County as fixtures (real property) for tax year 2008.

Article 11, Section 1 of the Kansas Constitution delineates how property shall be classified for purposes of *ad valorem* property taxation. Under that section, property subject to the tax is divided into two principal classes—real property and tangible personal property. Both classes contain several subclasses, each with its own assessment rate.

For purposes of the *ad valorem* property tax in Kansas, the terms of classification are defined by statute. "Real property," "real estate," and "land" are defined to include "not only the land itself, but all buildings, fixtures, improvements, mines, minerals, quarries, mineral springs and wells, rights and privileges appertaining thereto." K.S.A. 79-102 (emphasis added). "Personal property" is defined as "every tangible thing which is the subject of ownership, not forming part or parcel of real property." *Id.*

The term that is the focus of this dispute—"fixture"—is not defined by statute. Whether an item of personal property has become a fixture of the freehold to which it is attached is a matter of common law. The question presents a mixed question of fact and law that should be decided on a case-by-case basis. *See City of Wichita v. Eisenring*, 269 Kan. 767, 783, 7 P.3d 1248 (2000).

---

[1] Taxpayer does, however, identify in its post-hearing briefing certain "close calls," such as the coke silo, the UAN shift tanks, the cooling tower, the equipment covers, and the slurry run tanks. These close calls are large assets that cannot be moved in one piece and likely would never be moved for use in another location.

As a practical matter, everything found on a given tract of real estate, with the exception of the raw ground, is or at one time was personal property. Buildings and other such improvements are, in essence, amalgams of lumber, cement, bricks, glass, piping, shingles, nails and other building materials. These materials lose their identity as separate items of personal property when they are combined and become part of the real estate by accession. In contrast, a fixture is an item that retains its separate identity when it becomes part of the realty. In short, "a fixture is a former chattel which, while retaining its separate physical identity, is so connected with the realty that a disinterested observer would consider it to be a part thereof." *See* 5 *American Law of Property* §19.2 (Casner ed., 1952). *See also* 35A Am. Jur. 2d Fixtures §2.

There is no bright-line rule for determining under what conditions a chattel loses its character as personal property and becomes a fixture of the freehold. That determination must be made through an analysis of "all the individual facts and circumstances attending the particular case." *In re Equalization Appeals of Total Petroleum, Inc.*, 28 Kan. App. 2d 295, 300, 16 P.3d 981 (2000); *see also Kansas City Millwright Co. v. Kalb*, 221 Kan. 658, 562 P.2d 65 (1977), *modified* 221 Kan. 752, 564 P.2d 1280 (1977) (citing 35 Am. Jur. 2d, Fixtures, § 1). As our state's highest court observed long ago, it is "frequently a difficult and vexatious question to ascertain the dividing line between real property and personal property and to decide on which side of the line certain property belongs." *Atchison, Topeka & Santa Fe Ry. v. Morgan*, 42 Kan. 23, 27-28, 21 P. 809 (1889).

In order to ascertain on which side of the real/personal property dividing line an item falls in a given case, Kansas has adopted a long standing common law test known as the "fixtures test." This three-part test requires united consideration of the following: (1) the item's annexation to the realty; (2) the item's adaptation to the use of that part of the realty with which it is attached; and (3) the intention of the party making the annexation. *Total Petroleum*, 28 Kan. App. 2d at 299-30. All three parts of the test—annexation, adaptation, and intention—must be considered when determining whether an item has become a fixture of the real estate to which it is attached. *See* 2008 PVD Personal Property Valuation Guide (hereinafter "PVD Guide") at p. ii; 35A Am. Jur. 2d *Fixtures* § 4 (instructing that "[g]enerally all three criteria in the three-part test must exist for an item to be deemed a fixture").

A review of the cases reveals that the three-part fixtures test is not conducive to rigid application. The test is applied within the context of the legal problem presented and in view of the relationships, ownership rights, and reasonable

expectations of the parties in conflict. *See, generally, Shoemaker, Miller & Co. v. Simpson*, 16 Kan. 43, 1876 WL 993 (in *replevin* action, discussing legal status of railroad track iron attached to land depending on circumstances, equities and relationships of parties).

According to one commentator, there is no single operative definition of the term "fixture." The issue that must be determined in fixture cases is the relative rights of the parties, based on the particular fact pattern presented. *See* R. Brown, The Law of Personal Property § 16.1 at 515 (W. Raushenbush 3d. ed. 1975). Three fact patterns are commonly found in fixture cases: (1) cases where the chattel owner attaches the item to his own real estate; (2) cases where the chattel owner attaches the item to the real estate of another; and (3) cases where the person attaching the chattel does not own it. *See id.*

The latter two fact patterns—which involve divided ownership and possessory rights—often implicate special, case-specific considerations. *See, e.g., Stalcup v. Detrich*, 27 Kan. App. 2d 880, 10 P.3d 3 (2000) (considering oral agreement between holder of life estate and holder of remainder interest in determining legal status of farm building); *Boxer v. Sears,* 119 Kan. 733, 241 P. 443 (1925) (considering statute relating to taxation of improvements on leased land in determining legal status of filling station property); *Bromich v. Burkholder*, 98 Kan. 261, 158 P. 63, 64 (1916) (considering fact that title to boiler in mill was reserved in seller until purchase price was paid in determining legal status of boiler); *St. Louis K. & S.W.R. Co. v. Nyce*, 61 Kan. 394, 59 P. 1040 (1900) (finding improvements built on railroad right-of-way to be removable "trade fixtures" regardless of their physical nature); *Morgan*, 42 Kan. at 30-31 (considering innocent trespasser status of railroad in concluding railroad retained right to remove pump and boiler installed on land of another without compensating landowner).

Special considerations arising in cases of divided ownership and possessory rights are of little moment in the present case. This is a property tax appeal, and as such, the relevant inquiry goes to the classification, valuation and assessment of the subject property's undivided fee simple estate. *See Topeka Cemetery Ass'n v. Schnellbacher*, 218 Kan. 39, 42-43, 542 P.2d 278 (1975). For purposes of taxation, each parcel is to be assessed using methods tied to factors associated with the property itself, not the status of the owner. *See Kroeger v. Board of Woodson Cty.* Comm'rs, 31 Kan. App. 2d 698, *aff'd at* 277 Kan. 486 (2004); *see, also, Michigan Nat'l Bank v. City of Lansing*, 96 Mich. App. 551, 555-56, 293 N.W.2d 626 (1980) (declaring that as between lessor and lessee trade fixtures are personal property,

but for purposes of taxation they are real property); *accord* 71 Am. Jur. 2d, *State and Local Taxation* § 143.

In light of the foregoing, we find it appropriate here to emphasize certain case authorities, and to de-emphasize others, based on the degree to which each is factually similar to the case at bar. Particularly relevant to our analysis here are fixture cases involving manufacturing and industrial machinery and equipment, as well as cases in which the personal property in question was attached to the realty by an entity owning both the personal property and the freehold estate.

Annexation

The first part of the fixtures test is annexation. Annexation is "[t]he act of attaching, adding, joining, or uniting one thing to another; generally spoken of the connection of a smaller or subordinate thing with a larger or principal thing." Black's Law Dictionary, Sixth Ed (1990). "Annexation" is the union of property with a freehold. *Webster's Third New Int'l Dictionary* 87 (1981). Whether an item is sufficiently annexed to the freehold under the fixtures test is a matter of degree and is driven by the attendant circumstances. *See Shoemaker,* 16 Kan. at 44.

In determining whether an item is annexed to real estate, the nature and extent of its physical attachment are relevant considerations. *See Dodge City Water and Light Co. v. Alfalfa Land and Irrigation Co.*, 64 Kan. 247, 252, 67 P. 462 (1902) (declaring that an item is permanently attached to the real estate if "its removal would interfere with the practical use of the land, or in any way injure" the land for its usual use). Annexation is not necessarily indicated where removal of the property in question requires that it be disassembled. *See Stalcup*, 27 Kan. App. 2d at 886 (finding metal farm building not annexed to realty where removal required the unfastening of bolts anchoring it to a concrete pad). However, where removal requires a more complex and costly disassembling process in order to preserve the property's future usefulness, annexation may obtain. *See Farmland Indus., Inc.,* 298 B.R. 382, 388-89 (Bankr.W.D.Mo. 2003) (applying Kansas law to find oil refinery equipment annexed to realty where its removal required a costly process, including match-marking components for reassembly).

Still, an item's physical attachment and ease of removal are not determinative factors under the fixtures test. As explained by the Kansas Supreme Court,

> "There is scarcely any kind of machinery, however complex in its character, or no matter how firmly held in its place, which may not with care be taken from its fastenings, and moved without any serious injury to the structure where it may have been operated, and to which it may have been attached... . On the other hand, there are very many things although not attached to the realty, which become real property by their use, —keys to a house, blinds and shutters to the windows, fences and fence-rails, etc."

Morgan, 42 Kan. at 29.

It has long been held that certain unattached items may become part of the real property by means of "constructive annexation." *See, generally, Green v. Chicago R.I. & P.R. Co.*, 8 Kan. App. 611, 56 P. 136 (1899) (in *replevin* action, finding heavy lathe not fastened to ground to be a fixture because it was an essential part of the machinery of a manufactory as originally planned and operated). Constructive annexation may be found where items specially fabricated for installation in a particular structure are introduced upon the land, even though not through physical attachment. *See* 35A Am. Jur. 2d *Fixtures* § 4. The doctrine also may apply in cases where an item, although not attached to the real estate, "comprises a necessary, integral or working part of some other object which is attached" to the real estate. 35A Am. Jur. 2d *Fixtures* § 10 (observing that constructive annexation occurs "when removal leaves the personal property unfit for use so that it would not of itself and standing alone be well adapted for general use elsewhere.")

In the instant case, we acknowledge that most of the assets in dispute are movable, are equipped with design features that make them movable, and are in fact moved from time to time. We nonetheless find the assets in dispute are annexed to the real estate. All of the assets in dispute are interconnected, according to unique design specifications, to function as a working system—a system that has been operating efficiently since October 2000. Each asset is attached, directly or indirectly, to massive concrete structures specifically formed to support the assemblage. Construction of these below- and above-grade support structures required considerable engineering work and millions of pounds of concrete and steel.

The assets in dispute were attached to the freehold on January 1, 2008 (the effective date of this appeal), and they remain so attached to this day. Based on the weight of the evidence presented, the annexation prong of the fixtures test has been satisfied.

Adaptation

The second prong of the fixtures test is adaptation. The focus of the adaptation prong is the use to which the item in question is put relative to its surroundings. *See generally, Morgan*, 42 Kan. 23, 21 P. 809 (1889). If an item of property is "placed on the land for the purpose of improving it and to make it more valuable, that is evidence that it is a fixture." *Id.* at 29. If the property is an integral or essential part of the use that is being made of the realty, that too is evidence that the property is a fixture. *See Total Petroleum*, 28 Kan. App. 2d at 301; 35A Am. Jur. 2d Fixtures § 11 (observing that "[a]n article loses its status as simple unrelated personalty and becomes a fixture when it becomes so integrated into the efficient use of the particular parcel of real estate that it has become logically considered more a part of real estate than not.")

Property attached for purposes unrelated to the use to which the real estate is devoted, however, fails the adaptation test. *See, e.g., Dodge City Water & Light Co.*, 64 Kan. at 248 (finding pipe installed on land platted for development but later returned to farmland was part of water works and not adapted for farm use). Adaptation also may be lacking where the property in question has no special connection with the real estate to which it is attached and can be put to a similar use at other locations. *See Stalcup*, 27 Kan. App. 2d at 886 (finding metal farm building of a type found across the state not adapted to use of realty).

The Kansas Supreme Court highlighted the distinction between adapted property and general use property in *Board of Education, Unified Sch. Dist. No. 464 v. Porter*, 234 Kan. 690 (1984). In *Porter*, a condemnation case, the court found an above-ground storage tank was not a fixture of the freehold based in part on the adaptation prong. The court noted that the storage tank was not the kind of machinery that when severed "commands only the prices of second-hand articles," but when attached to an operating plant "may produce an enhancement of value as great as it did when new." *Id.* at 695. The storage tank, the court said, "had none of those characteristics and [was] as usable at another location as on the land in question." *Id.*

The Kansas Department of Revenue, Property Valuation Division, has provided illustrative guidance on the adaptation prong of the fixtures test:

> "In the adaptability test, the focus is on whether the property at issue serves the real estate or a production process. For example, a boiler that heats a building is considered real property, but a boiler that is used in the manufacturing process is considered personal property."

2008 PVD Guide at p. ii.

Taxpayer relies heavily on the PVD boiler illustration in arguing that the assets in dispute are personal property, not fixtures. Taxpayer likens the subject facility to a large assemblage of standard components which may be readily disassembled, moved and reassembled, like an erector set, with little regard to location. Applying its "erector set" characterization to the PVD boiler illustration, Taxpayer argues that the assets in dispute are more like a boiler used in a manufacturing process (personal property) than they are like a boiler used to heat a building (real property). We respectfully disagree.

In this case we are not presented with a system of production assets housed in, or supported by, a general purpose building or structure. Instead, under the facts presented, we find a manifest interdependence between the production assets and the land and improvements supporting them. The land was shaped, and the structural improvements were engineered, to accommodate the assets in dispute. The entire facility was designed and constructed for the specialized demands of a singular industrial process: making fertilizer products using gasification to convert petroleum coke into forms of carbon and hydrogen suitable for ammonia-based fertilizer manufacturing.

Although the assets in dispute each may be useful apart from the subject facility, according to the evidence, they would not be of comparable utility elsewhere without considerable site preparation and extensive engineering work at the new location. As County expert Watson explained: "[T]he entire facility is adapted to the specific parcels of land upon which it is built, and the land likewise is adapted for the facility." We credit Mr. Watson's description of the subject facility.

In sum, we conclude that the assets in dispute were installed to carry out the particular purpose to which the real estate has been devoted, and each asset is

important to the effective utilization of the real estate for that purpose. *See In re Farmland Indus., Inc.*, 298 B.R. 382, 389-90 (Bankr.W.D.Mo. 2003) (finding oil refinery equipment adapted to use of realty because structures were built specifically to meet the needs of the subject site and to house the subject equipment); *accord, Total Petroleum*, 28 Kan. app. 2d at 301 (considering degree to which items of oil refinery property were integral or essential part of use being made of realty); *see also Green*, 8 Kan. App. 611 (finding unattached lathe to be a fixture because it was essential part of machinery of the manufactory as originally planned and operated); *Cook v. Condon*, 6 Kan. App. 574, 51 P. 587 (1897) (finding items used in mill to be fixtures, as they were part of a complete system of machinery necessary for its operation).

Based on the weight of the evidence presented, the adaptation prong of the fixtures test has been satisfied.

Intention

The third prong of the fixtures test is intention; that is, whether the annexing party intended to make the personal property in question a permanent part of the real estate. *See Total Petroleum*, 28 Kan. App. 2d at 301. At the outset we note that "permanent" should not be taken to mean in perpetuity. *See id.*; *see, also, Kansas City Millwright Co., Inc. v. Kalb*, 221 Kan. 658, 562 P.2d 65, 70 (1977) (stating that permanency is a matter of degree based on facts and circumstances of particular case). Permanency may be found if the property in question was intended to remain in place until it wore out or became functionally or economically obsolete. *See Michigan Nat'l Bank*, 96 Mich. App. at 554.

Intention is determined as of the time of annexation and may be inferred from the nature of the annexed article, the purpose or use for which the annexation is made, and the structure and mode of the annexation. *Eaves v. Estes*, 10 Kan. 314, 316 (1872). The PVD guidance on the topic of intention provides as follows:

> Intent is not determined simply by what a person verbally expresses. Rather, the courts have stated that *it is inferred from the nature of the item affixed; the relation of the party making the annexation; the structure and mode of annexation; and the purpose or use for which the annexation was made.* In other words, the courts will look back at the objective data garnered from the first two

> tests, or from independent documents (documents prepared for purposes other than for a hearing on the issue of whether the property is real or personal). For example, a lease agreement may reveal intent. The courts look for objective data to determine whether the owner of the property at issue intended for it to become part of the real property.

2008 PVD Guide at p. ii (emphasis original).

In the present case, we acknowledge that many of the assets in dispute are skid mounted or equipped with lifting lugs. According to the evidence, however, these design features not only enhance an asset's mobility; they also allow for efficient installation. We acknowledge as well that an active market exists for used plant components and that plant assets are acquired through this market not only for replacement parts, but also for plant or unit "relocations." According to the evidence, however, fertilizer plant "relocations" are relatively rare. Only a small fraction of fertilizer plants worldwide are sold, disassembled, moved, and then reassembled in a new location according to their original design and engineering plans.

Although perhaps merely a matter of semantics, we are not persuaded that the subject facility's construction can be fairly characterized as a plant "relocation." According to the evidence, Farmland incorporated selected pieces from the Coolwater plant into the subject facility according to new engineering and design plans. Farmland invested millions of dollars in the subject facility, and most of the cost and time devoted to the project went toward engineering, labor, and new asset purchases. Farmland also entered into long-term contracts for continuing operation at the subject location.

Based on the weight of the evidence, we find an absence of proof that Farmland annexed the assets in dispute with the intention that they retain their character as items of personal property. The weight of the evidence suggests instead that Farmland intended for the assets to remain in place until they either wore out or became obsolete. In light of the character and nature of the assets, the use to which they have been put relative to the real estate, and the structure and mode of their annexation, we must infer from the evidence that the assets were annexed with the intention that they become a permanent part of the freehold. The intention prong of the fixtures test is therefore satisfied.

Having found all three prongs of the fixtures test satisfied, we conclude that the County properly classified the assets in dispute as real property for tax year 2008.

II. *Was the County's classification of the assets in dispute in 2008 barred by the doctrines res judicata or collateral estoppel?*

Taxpayer asserts the County is precluded from classifying the assets in dispute as real property based on the doctrines *res judicata* and collateral estoppel. On January 3, 2011, Taxpayer moved for summary judgment on this issue. In a January 27, 2011 order, this court denied Taxpayer's motion, concluding as follows:

> *Res judicata* and collateral estoppel are not applicable in the present case for the reasons cited by the County in its responsive papers. In particular, we note that the issue of classification of the Assets in Dispute was not litigated, determined or necessary to this Court's determination in the preceding exemption case. In fact, Taxpayer has made no showing that the tax classification of property was even relevant to this Court's decision in the earlier exemption matter. During the exemption application process, the parties' characterization of assets at the facility was merely descriptive and done to identify the various items of property covered by the exemption. The Court is unwilling to extend preclusive effect to an agreed order regarding ancillary matters in an earlier action which was not "broad enough to comprehend all that was involved in the issues of the second action." *See Wells v. Ross*, 204 Kan. 676, 679, 465 P.2d 966 (1970). The parties did not litigate—and indeed could not have litigated—the issue of constitutional classification in the earlier exemption action. That issue is therefore not precluded in the present case.

No evidence or arguments were presented at trial or in the post-trial briefing to persuade this court that it should reverse or modify the conclusions set forth in the January 27, 2011 order.

We do, however, wish to comment on Taxpayer's suggestion that the doctrine collateral estoppel may be applicable here based on this court's statutory review obligations. As Taxpayer correctly notes in its post-trial briefing, this court does have certain statutory obligations under K.S.A. 79-213 with respect to exemption applications. This court does not, however, perform its own substantive investigation and review of the predicate facts averred or stipulated by the parties in interest.

Although an agency of the executive branch, this court functions as a quasi-judicial body bound by the rules of judicial conduct. *See* K.S.A. 74-2433(a). These rules protect a judge's role as a neutral, detached, and passive decision maker and prohibit *ex parte* communications and independent factual investigations. Accordingly, this court is neither an advocate nor a party in its own proceedings. The role of this court is to consider the evidence presented by the interested parties and to render findings of fact and conclusions of law based on the record. *See* K.S.A. 77-525 and 77-526.

As a final matter, we note that *In re Emporia Motors, Inc.*, 30 Kan. App. 2d 621, 44 P.3d 1280 (2002), cannot be read to support the proposition that this court has broad authority—and thus, by implication, an affirmative obligation—to look behind the sworn written statements of fact submitted and agreed to by the interested parties. *Emporia Motors*, instead, makes the important point that this court risks denying due process when it rejects party stipulations and denies an exemption request after having "lull[ed] the Taxpayers into a false feeling of security" that the exemption would be granted based on the documents submitted. *See id.* at 624-25. In short, the case admonishes this court that if it intends to deny, summarily, an exemption request based on deficiencies found in the documents submitted by the parties, it must first notify the parties and provide them with the opportunity for a full and complete hearing on the merits. *Id.*

III. *Was the County contractually obligated to classify the assets in dispute as personal property for property tax purposes in 2008?*

Taxpayer asserts it entered into a binding agreement with the County requiring the County to classify the assets in dispute as personal property beginning in tax year 2005. Taxpayer seeks specific performance of this alleged agreement. We find the record devoid of evidence tending to prove the existence of any such agreement.

According to the evidence, in 2005, a property tax consultant for Taxpayer met with the Montgomery County assessor and presented a proposed valuation methodology with respect to how the assets at the subject facility should be reported. During the course of those meetings, the parties discussed and exchanged correspondence concerning the assets in dispute. There is no indication from the record, however, that the parties ever reached a mutual understanding, with the intent to be bound, regarding classification of the assets in dispute for tax year 2008. Further, no writing executed by the parties on the subject of classification was presented in evidence—or was even alleged—in this case.

Having found no basis for holding the County contractually obligated to classify the assets in dispute as personal property in 2008, we need not reach the question whether such an agreement would be enforceable under the statute of frauds or as a matter of public policy.

IV. *Is Taxpayer entitled to relief under the uniform and equal provision of the Kansas Constitution?*

Taxpayer contends that by classifying the assets in dispute as real property, the County violated the constitutional requirement that property taxes be assessed on a uniform and equal basis. The Kansas Constitution declares that "the legislature shall provide for a uniform and equal basis of valuation and rate of taxation of all property subject to taxation." Kan. Const. Art. XI, section 1(a). Pursuant to this mandate, the legislature has provided that "[a]ll real and tangible personal property which is subject to general ad valorem taxation shall be appraised uniformly and equally as to class and, unless otherwise specified herein, shall be appraised at its fair market value...." K.S.A. 79-1439(a).

Uniformity of taxation protects against the systematic, arbitrary or intentional valuation of the property of one or a few taxpayers at a substantially higher valuation than that placed on other property within the same taxing district. *Addington v. Board of County Comm'rs*, 191 Kan. 528, 531, 382 P.2d 315 (1963). The state constitutional guarantee of uniform and equal taxation is coextensive with the guarantee of equal protection afforded by the Fourteenth Amendment to the United States Constitution. *In re City of Wichita*, 274 Kan. 915, 920, 59 P.3d 336 (2002)

To prove a state or federal constitutional violation, the taxpayer "must demonstrate that his or her treatment is the result of a deliberately adopted system

which results in intentional systematic unequal treatment." *Id.* It has been held that mere excessiveness in assessment, judgment errors, or mistakes do not invalidate an assessment. *See McMonaman v. Board of Comm'rs*, 205 Kan. 118 (1970). Taxpayer bears the burden of proving a violation of the "uniform and equal" provision of the Kansas Constitution. *See In re City of Wichita,* 274 Kan. at 922.

In this case, Taxpayer's challenge is not based on the assessment rate; nor is it based on the subject property's total value in relation to other properties within the taxing jurisdiction carrying similar real property classifications. The crux of Taxpayer's challenge is its assertion that the County's classification of the assets in dispute as real property was not uniform and equal because similar assets used in other manufacturing facilities, both inside and outside Montgomery County, were classified as personal property.[2]

Taxpayer presented testimony and documentary evidence concerning the classification of ten comparison properties—eight located inside and two located outside of Montgomery County. The evidence adduced by Taxpayer concerning those ten comparison properties went to the general character and configuration of the properties, as well as their tax classifications.

On the whole, Taxpayer's evidence may have established that the subject facility is comprised of assets that are similar in nature and configuration to those assets used at the ten comparison properties. Yet the evidence falls short of providing a basis for this court to determine whether the assets used at the comparison facilities were properly classified in 2008, an analysis requiring consideration of "all the individual facts and circumstances attending the particular case." *Total Petroleum*, 28 Kan. App. 2d at 300. Without sufficiently detailed evidence about the comparison properties, this court is unable to apply the three-part fixtures test to determine the validity of the classifications of the comparison properties, a necessary finding in any case alleging non-uniform and unequal tax treatment based on disparate classification.[3]

Taxpayer has failed to make an adequate showing that it is entitled to relief under the "uniform and equal" clause of the Kansas Constitution.

---

[2] The operative difference between real property subclass (6) and tangible personal property subclass (5) is the prescribed appraisal methodology; the former is valued at fair market value whereas the latter is valued at retail cost when new, less depreciation.

[3] It also is unclear from the record whether any of the comparison properties were taxable in 2008.

V. *Is the County's valuation of the subject facility for tax year 2008 valid and correct based on the evidence presented?*

Having concluded that the assets in dispute were properly classified as real property in 2008, it falls to this court to determine the fair market value of those assets based on the record evidence. The parties agree that the County bears the evidentiary burden with regard to issues of valuation.

In support of its 2008 valuation, the County relies on a retrospective appraisal performed by Hadco International. In the April 15, 2010 appraisal report, Hadco estimated the fair market value of the subject facility's real property under the cost approach at $303,379,000 (plus or minus five percent). Mr. Duke Coon, Hadco's lead appraiser on the project, later discovered that several items originally classified in the appraisal as real property were capital spares and should have been classified as personal property. Mr. Coon also discovered a transposition error in the original appraisal report. Mr. Coon revised the Hadco appraisal to reflect a value of $302,589,080 (plus or minus five percent).[4]

Hadco specializes in appraisals of commercial property and improvements, in addition to businesses, machinery and equipment. The company appraised the subject facility's fee simple interest, unencumbered by any other interest or estate, and determined the classification of the facility's constituent assets under the three-part fixtures test. The assets in dispute were all classified and valued as real property in the Hadco appraisal.

In arriving at its 2008 appraisement, Hadco considered all three major approaches to value but relied on the cost approach. Hadco deemed the subject facility to be designed and constructed to meet the unique requirements of Taxpayer's business. Through the cost approach, Hadco estimated the current cost of constructing or assembling the improvements, with deductions for accrued depreciation, and added that estimate to the land value. Contributions to value owing to the facility's design, engineering, purchasing, transportation, feasibility studies, inspections and other indirect inputs also were analyzed.

---

[4] Hadco's appraisal assignment was to estimate the total fair market value of the subject facility's real property, excluding certain items such as buildings, railroad track, loading docks, roads, and the raw land. The value of the excluded items were either agreed to by the parties or derived through alternative means.

Hadco applied the age-life method of depreciation and found the subject facility suffered from normal curable physical deterioration. Finding no impairment attributable to outdated design or configuration and no loss in value due to external factors, Hadco opined that the subject facility suffered no appreciable functional or economic obsolescence as of the appraisal date.

Taxpayer elected not to designate any witness to provide an opinion of the fair market value of the assets in dispute. Taxpayer's only valuation witness, Mr. Daniel Craig, provided limited testimony estimating the value of the concrete block control building, a matter about which the parties are in agreement.

Taxpayer offered the testimony of Mr. David Lennhoff for purposes of rebuttal. Mr. Lennhoff is a well-qualified MAI appraiser with extensive experience in the area of professional standards compliance. He acknowledged, however, that he was not qualified as an appraiser of machinery and equipment and had no experience appraising plants such as the subject facility.

In his review appraisal, Mr. Lennhoff criticized Hadco's cost data, which came from a listing of fixed assets supplied by Taxpayer. According to Taxpayer, this listing represents the cost of constructing the entire plant allocated over all of the individual assets. Mr. Lennhoff opined that there are just two reliable ways to develop a valuation of the subject facility by the cost approach: (1) hire an engineer or cost estimator to determine what it would have cost to build the facility as of January 1, 2008; or (2) use cost data from a reliable replacement cost service such as Marshall & Swift.

Mr. Lennhoff described Hadco's analysis as "cost trending," which he said is reliable only as a check on values estimated through other valuation methodologies. According to Taxpayer, Hadco's cost approach utilizing Taxpayer's fixed assets listing was a violation of USPAP. Mr. Lennhoff acknowledged, however, that he was not testifying that Hadco's final conclusion of value was wrong, and he conceded that a valuation performed under his proposed methodology might in fact result in a higher value.

Kansas law requires that the *ad valorem* tax appraisal process shall conform to generally accepted appraisal procedures which are adaptable to mass appraisal and consistent with the definition of fair market value, unless otherwise specified by law. *See* K.S.A. 79-505; *see, also, In re Yellow Freight System, Inc.*, 36 Kan. App.2d 210, 213, 137 P.3d 1051 (2006). Pursuant to K.S.A. 79-505 and K.S.A. 79-

506, as well as rules and regulations adopted by the director of property valuation[5], *ad valorem* property tax appraisal practice is governed by USPAP (1992 ed.). *See Board of Saline County Comm'rs v. Jensen*, 32 Kan.App.2d 730, Syl. ¶ 4, 88 P.3d 242, *rev. denied* 278 Kan. 843 (2004). These professional standards are embodied in the statutory scheme of valuation, and failure to adhere to them may constitute a deviation from a prescribed procedure or an error of law. *See id.* at 735.

In considering the evidence before us, we are mindful of the standards of appraisal practice embodied in USPAP. We note that while USPAP deviations not materially detrimental to a party's overall opinion of value may not be fatal, (s*ee In re Amoco Production,* 33 Kan. App. 2d. 329, 337, 102 P.3d 1176 (2004)), a valuation premised on an appraisal approach expressly prohibited by USPAP may be erroneous as a matter of law. *See Board of Saline County Comm'rs v. Jensen*, 32 Kan. App. 2d 730, Syl. ¶ 4, 88 P.3d 242, *rev. denied* 278 Kan. 843 (2004).

Taxpayer seeks to have the County's appraisal evidence excluded based on the assertion that it fails to satisfy the minimum level of USPAP compliance required by Kansas law. For this assertion Taxpayer appears to rely on USPAP Standards Rule 1-4(e)[6], which provides that

> When analyzing the assemblage of the various estates or component parts of a property, an appraiser must analyze the effect on value, if any, of the assemblage. An appraiser must refrain from valuing the whole solely by adding together the individual values of the various estates or component parts.

The Kansas Court of Appeals recently addressed this provision of USPAP in the case of *In re Protests of City of Hutchinson/Dillon Stores for Taxes Paid in 2001 and 2002*, 221 P.3d 598 (Kan. App. 2009). There the Court of Appeals considered an

---

[5] The director of the property valuation division (PVD) for the State of Kansas is required to adopt rules and regulations prescribing appropriate standards for performing appraisals in accordance with generally accepted appraisal standards, as evidenced by the standards promulgated by the Appraisal Standards Board. *See* K.S.A. 79-505. The Appraisal Standards Board publishes the Uniform Standards of Professional Appraisal Practice (USPAP). In November 1992, the PVD director adopted Directive #92-006, requiring county appraisers to perform all appraisal functions in conformity with Standard 6 of the 1992 USPAP. Standard 6 governs the development and reporting of mass appraisals, which is the appraisal system used throughout Kansas and approved by the PVD director for ad valorem tax appraisals.

[6] Mr. Lennhoff, Taxpayer's expert on USPAP compliance, identified USPAP Rule 1-4 in his expert report. At trial, however, he did not identify the specific USPAP standard he believed had been violated in Hadco's cost approach valuation.

appraisal that estimated the total value of a complex taxable unit by summing the value estimates of each individual segment of the unit. The Court of Appeals affirmed the administrative findings below and held the appraiser's USPAP violation "so contaminated his appraisal that it is of no utility in valuing this property...." *Id.* at 605-06; *see, also, Jensen*, 32 Kan. App. 2d at 735 (finding aggregated sales comparison approach was not USPAP compliant).

We find the *Dillon* and *Jensen* cases are readily distinguishable. In those cases, the appraiser divided the subject real estate into segments, valued each segment individually, and then summed the values in order to arrive at a total value for the taxable unit. In this case, Hadco arrived at a total value by summing input costs for the improvements, less depreciation, and then adding that sum to the stipulated site value. In short, Hadco performed a cost approach analysis. USPAP Standards Rule 1-4(e) cannot be read to prohibit valuations under the cost approach.

More to the point, USPAP Standards Rule 1-4 instructs that in applying the cost approach, the appraiser should, among other things,

> (b) collect, verify, analyze, and reconcile:
>
> i. such comparable cost data as are available to estimate the cost new of the improvements (if any);
>
> ii. such comparable cost data as are available to estimate the difference between cost new and the present worth of the improvements (accrued depreciation)....

USPAP, Standards Rule 1-4 (1992 ed.).

In its cost-based appraisal, Hadco relied heavily on the fixed assets listing supplied by Taxpayer. A basic assumption of the Hadco appraisal was that the cost data contained in that document was true and correct. Mr. Coon testified that data such as that contained in the fixed assets listing, if true and correct, is the best source of information for cost-based appraisals of unique industrial property such as the subject facility.

Other than testifying that the fixed assets listing was an allocation of actual project costs, Taxpayer offered nothing to abase the credibility of the data contained in that document. In fact, the weight of the evidence reinforces the reasonableness of Hadco's reliance on that data. We note that Taxpayer's own witnesses testified that the actual cost to construct the subject facility was approximately $263 million, which was the total cost reflected in the fixed assets listing utilized by Hadco. We also note that in June 2005, the subject facility was appraised for purposes of financing at $367,800,000. That appraisement was based on the cost approach to value.

Other issues were raised by Taxpayer as well. They involved Hadco's inflation factor, physical depreciation adjustments, and functional and external obsolescence analysis. Based on the record evidence, we find the impact of those issues, if any, does not materially affect Hadco's overall opinion of value.

The Hadco appraisal is in substantial compliance with USPAP, provides a valid basis for estimating the subject facility's fair market value for tax year 2008, and is generally supported by the other indications of value contained in the record. After adding in the values stipulated by the parties, as well as the uncontroverted value of the rail system, the weight of the evidence supports the County's asserted value of $303,066,836.

IT IS THEREFORE ORDERED AND ADJUDGED that the assets in dispute are properly classified as real property used for commercial and industrial purposes and that the fair market value of the subject facility's real property as of January 1, 2008, shall be $303,066,836.

Any party to this action who is aggrieved by this decision may file a written petition for reconsideration with this Court as provided in K.S.A. 2010 Supp. 77 529. The written petition for reconsideration shall set forth specifically and in adequate detail the particular and specific respects in which it is alleged that the Court's order is unlawful, unreasonable, capricious, improper or unfair. Any petition for reconsideration shall be mailed to: Secretary, Court of Tax Appeals, Docking State Office Building, Suite 451, 915 SW Harrison St., Topeka, KS 66612-1505. *A copy of the petition, together with any accompanying documents, shall be mailed to all parties at the same time the petition is mailed to the Court. Failure to notify the opposing party shall render any subsequent order voidable.* The written petition must be received by the Court within fifteen (15) days of the certification date of this order (allowing an additional three days for mailing pursuant to

statute). If at 5:00 pm on the last day of the specified period the Court has not received a written petition for reconsideration of this order, no further appeal will be available.

IT IS SO ORDERED.

THE KANSAS COURT OF TAX APPEALS

BRUCE F. LARKIN, CHIEF JUDGE

Dissent Opinion Below
J. FRED KUBIK, JUDGE

TREVOR C. WOHLFORD, JUDGE

ATTEST:

JOELENE R. ALLEN, SECRETARY

DISSENT

I have no significant disagreement with the majority's finding of facts and statements of the applicable law. Nor do I disagree with the majority's conclusions of law on the issues of preclusion, non-existence of an agreement, and equal protection et al. I do find fault, however, in its legal conclusions concerning the classification of the assets in dispute and the County's valuation of the subject facility.

Classification

Both parties agree *Total Petroleum* controls. I would, however, interpret and apply that decision more narrowly than the majority has done in this case. In particular, it should be noted that under the facts of *Total Petroleum*, the key operating components of the subject refinery had already been removed from the site, presumably because they were personal property of the business, not permanent fixtures to the realty. What remained were large tanks and structural assets. By implication, then, I would argue *Total Petroleum* provides a line of demarcation between what is realty and what is personalty in cases involving industrial property. To my mind, the case instructs that realty includes the land and those large assets that are not feasible to move, while personalty includes assets of a kind that may be feasibly removed from the premises and relocated as the economics of the business enterprise dictate.

Accordingly, under a narrow reading of the three-prong fixtures test, I would conclude that the County's classification of the assets in dispute as real property was incorrect.

Annexation

The assets in dispute were not annexed to the realty; they were merely attached to piers and foundations in the realty. Some assets in dispute were attached to certain assets attached to the foundations and piers, and not attached to the realty at all. This is demonstrated by the mobility of most, if not all of the assets in dispute. The assets in dispute were designed to be removable, and are in fact removed and replaced from time to time as they reach the end of their economic life or simply break down.

Adaptation

Even to the limited extent the assets in dispute were attached or annexed to the realty, they were not adapted to the use of that part of the realty to which they are attached. Rather, the land was adapted to hold and support some of the assets in dispute. Although the relocation of the Coolwater assets to the subject facility required extensive planning and engineering work, and the land itself was excavated and adapted to hold the foundations and piers that hold the assets in dispute, the assets themselves were not specifically adapted to the land. In fact, the evidence shows most of the assets could be removed and used at another nitrogen fertilizer production facility without any further modification.

Intent

The evidence shows Farmland did not intend to make the assets in dispute permanent. The portion of the assets in dispute that originated in the Coolwater Project illustrates the impermanent nature of such machinery and equipment in one place. The assets in dispute are all movable, though some assets, such as the coke silo and the large storage tanks, are more burdensome and expensive to move than others.

Taken from the Taxpayer's Exhibit 402, the following assets in dispute are those I would find are fixtures of the realty because they meet all three prongs of the fixtures test as set forth in *Total Petroleum.* Those assets not listed I would find are personal property:

100604 - Coke Silo
100606 - Slurry Run Tank
100607 - Slurry Run Tank
100718 - Service Water Storage Tank
100719 - Demin Water Tank
100733 - Cooling Tower
100788 - UAN Shift Tank
100789 - UAN Shift Tank

Valuation

I would further differ from the majority opinion in finding the County's evidence of value for the assets in dispute, classified as real property, to be unreliable and not indicative of their fair market value. The Hadco appraisal was shown to be USPAP noncompliant, and I find its method of calculating the cost approach to valuation lacks credibility and thus evidentiary weight.

In particular, I note three defects in Hadco's appraisal which I believe are materially detrimental to the County's overall valuation and thus render the appraisal erroneous as a matter of law. First, Hadco utilized raw cost data from a company allocation and failed to confirm whether the data bore any reasonable relation to current market prices. Second, Hadco indexed the book costs for inflation without providing any market support for its conclusions. These were mechanical calculations based on inappropriate assumptions, and any relationship they may have to actual market value is pure happenstance. Finally, Hadco applied a cursory "assemblage" adjustment for design, engineering, and other indirect costs associated with constructing the facility. But in doing so, Hadco neither analyzed the market nor investigated whether any of the costs listed as assemblage costs were already included in the allocated cost figures provided by Taxpayer.

In short, I do not regard the County's appraisal as evidence which is probative of market value in the least. In any event, the Hadco appraisal would be inaccurate were the above-listed assets classified as real property and the remaining assets classified as personal property.

In my opinion, this case requires an additional evidentiary hearing to determine the value of the real property regardless of whether the County's classification of the assets in dispute was correct. The County's appraisal is so flawed as to be useless in determining value, and no other indicator of fair market value was presented. I would submit that the County has failed to satisfy its evidentiary burden on the issue of valuation.

J. FRED KUBIK, JUDGE

CERTIFICATION

I, Joelene R. Allen, Secretary of the Court of Tax Appeals of the State of Kansas, do hereby certify that a true and correct copy of this order in Docket Nos. 2008-7226-EQ and 2008-7227-EQ and any attachments thereto, was placed in the United States Mail, on this 13th day of January, 2012, addressed to:

Edmund Gross, Vice President
Coffeyville Resources Nitrogen Fertilizers, L.L.C.
10 E Cambridge Circle Drive, . Suite 250
Kansas City, KS 66103

Lynn Preheim, Attorney
Jarrod Kieffer, Attorney
Stinson Morrison Hecker LLP
1625 N Waterfront Parkway, Suite 300
Wichita, KS 67206-6620

LeRoy Burk, Montgomery County Appraiser
Montgomery County Courthouse
PO Box 507
Independence KS 67301

Scott Palecki, Montgomery County Special Counsel
Jeffery A. Jordan, Montgomery County Special Counsel
Jay Fowler, Montgomery County Special Counsel
Foulston Siefkin LLP
1551 N Waterfront Parkway Suite 100
Wichita KS 67206-4466

IN TESTIMONY WHEREOF, I have hereunto subscribed my name at Topeka, Kansas.

Joelene R. Allen

Joelene R. Allen, Secretary