

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>HOLNAM INC., NOW KNOWN AS HOLCIM (US) INCORPORATED,</p> <p>v.</p> <p>Respondent:</p> <p>FREMONT COUNTY BOARD OF EQUALIZATION.</p>	
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: Alan Poe Holland & Hart Address: 8390 East Crescent Pkwy Suite 400 Greenwood Village, Colorado 80111 Phone Number: (303) 290-1616 E-mail: Attorney Reg. No.: 7641</p>	<p>Docket Number: 38244</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on September 23, 2002, Judee Nuechter and Karen E. Hart presiding. Petitioner was represented by Alan Poe, Esq. Respondent was represented by Brenda L. Jackson, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

Fremont County Schedule Number 99920372

Petitioner is protesting the 2001 actual value of the subject property, a cement manufacturing plant located 5 miles east of Florence, Colorado.

ISSUES:

Petitioner:

Petitioner contends that their real property is overvalued. Additionally, there are certain items that are listed as real property by the Respondent, which Petitioner believes are personal property. Petitioner experienced a name change to Holcim (US) Inc. in December of 2001, which was after the filing of the petition. From 1999 to 2002, there was an expansion project at the cement plant. As of January 1, 2001, the expansion project was not yet complete and the site was not in business. Portions of the existing facility were incorporated into the new plant. The only issue is the value of the new property improvements and whether certain elements should be taxed.

Respondent:

Respondent contends that the subject property has been correctly valued and the disputed improvements are real property, not personal property. The Respondent used the best information available to value the subject. The assessor was not granted access to the site. The value was established using Holnam data furnished to the assessor via the Fremont County Finance Officer.

FINDINGS OF FACT:

1. Petitioner's witness, Mr. Eric Ervin, Holcim (US) Inc. project manager, testified that the subject property is a Portland cement facility.
2. Mr. Ervin described the process used to produce cement. The facility began production in 1897. In 1947-1948 there was new construction to increase the capacity of the facility. The plant pre-kiln was constructed in the early 1970's and was in operation until recently.
3. Mr. Ervin testified that in late 1997, they started considering the current facility capacity and market demand. They decided to expand the facility capacity from 800,000 tons of cement per year to 1.9 million tons of cement per year.
4. Petitioner's Exhibit 2 is an aerial photo of the plant, basically as it was on January 1, 2001, at which time the plant was not operating. The crusher, conveyor belt, pre-blending equipment, raw feed bins, and et cetera were tested but not commissioned at that time; the plant was not producing a product.
5. Mr. Ervin testified that they started commissioning the expansion project in late January/early February of 2001. They did not start manufacturing clinker until July of 2001. The facility finally came into production in May of 2002.
6. In cross-examination, Mr. Ervin testified that he was the owner's representative on site during the construction process and he had full oversight of the project. The original budget was estimated at \$190-200 million. The completed costs were \$233.8 million, which did

not include the additional project to rehabilitate the existing tower. The budget included breakdowns in two categories: general plant area, and equipment and installation costs. Their cost accounting reports were not furnished to the assessor, but he does not recall if they were asked for.

7. In redirect, Mr. Ervin testified that they did not break down the costs by real or personal property.

8. Petitioner's witness, Mr. Dennis C. Neilson, PE, ASA, CMI, Director of Advantax Management Corporation, an appraiser and property tax consultant, presented the following indicators of value:

Market:	Not Applicable
Cost:	\$7,130,000.00
Income:	Not Applicable

9. In May of 2002, Mr. Neilson was contacted to prepare an appraisal report for the subject property, with an effective date of January 1, 2001, and a value date of June 30, 2000. He toured the facility and attempted to distinguish real from personal property; specifically property not associated with the operation of the business. He reviewed the drawings, blueprints and other documents. He was to exclude anything that was pre-existing prior to the expansion, including the land.

10. Typically about ten percent, plus or minus five percent, of a cement plant is real property. Mr. Neilson testified as to the Group 1 buildings listed in Petitioner's appraisal report and why he felt they were real property.

11. Mr. Neilson also identified the Group 2 assets, which he considers to be assets that are integral to the cement manufacturing process. They look like brick and mortar, but they would have minimal if any use if the cement plant were shut down.

12. The Group 2 properties are required for the manufacturing process and are totally related to the cement process; some are affixed more than others to the real property. They have no purpose other than as part of the manufacturing process; he believes that they are personal property.

13. Mr. Neilson testified that he subcontracted with Mr. Paul Bauer to assist with valuing the real property items. The concluded value was \$7,130,000.00. Mr. Bauer also valued the Group 2 improvements, in case they were found to be real property in the appeal process.

14. Under cross-examination, Mr. Neilson testified that he would not categorize the Group 2 properties as buildings. He would define them as structures or enclosures that are part of the manufacturing process. Several of the structures house electrical equipment. The analyzer building on page 38 of Petitioner's Exhibit 3 is a hazardous structure; there are hazardous materials in the structure which makes it dangerous to enter without proper apparel. Several structures are not free standing, they are merely fills inserted between upright supports. He admitted that all of the Group 2 properties were affixed to the land, except the structure listed on page 48 of Petitioner's Exhibit 3. The Group 2 properties appear to be real property, but he

thinks they are part of the manufacturing process. He included and valued them in case they are found to be real property. All of the Group 2 facilities would have little alternative use if the cement process ceased; they are related totally to the cement operation.

15. In redirect, Mr. Neilson testified that he relied upon statutory definitions to determine whether the disputed items were real property.

16. Petitioner's witness, Mr. Paul M. Bauer, Vice President of Appraisal & Research Group, Ltd., testified that he inspected the subject property in August of 2002. He reviewed the plans, converted measurements from the metric system, measured the structures when needed, and conducted interior inspections. He also valued the land improvements. Mr. Neilson gave him the listings of the Group 1 and Group 2 properties to value. He was not asked to value the land, pre-existing improvements, or personal property.

17. Mr. Bauer testified that he was to value the improvements as they were in place on January 1, 2001, with a level of value date of June 30, 2000. He considered the income approach and sales comparison approach and determined they would not provide a reliable indication of value for the subject property.

18. Petitioner's witness presented a cost approach to derive a market-adjusted cost value for the subject property of \$7,130,000.00 for the Group 1 improvements, and \$3,450,000.00 for the Group 2 improvements.

19. Mr. Bauer testified that he considered the cost approach and applied it to the subject property. He used the segregated cost section of the Marshall Valuation Cost Service to determine a replacement cost. He added a 15% adjustment for soft costs, including administration and overhead. He used a 50-year life with a 2% per year depreciation rate. He then applied a factor to the improvement values to bring them to the appropriate value date. He also derived a value for land improvements, using the same cost valuation method.

20. In cross-examination, Mr. Bauer testified that the economic life of a property probably begins when the decision is made to construct it; buildings can become economically obsolete before the construction process is completed. His report is retrospective. Based on the history of the plant, a 50-year life was appropriate. He read the definition of "replacement cost new" on page 63 of Petitioner's Exhibit 3. He did not appraise the buildings according to the actual construction costs, particularly in the areas of roof material and support columns. The use of replacement cost will eliminate some, but not necessarily all, of the functional obsolescence that may be in place at a property. He used 3% depreciation for Group 2 improvements as they had an economic life more similar to the equipment they serve. The actual cost of construction may or may not be relevant. He did not have expenditures for specific items in the subject cost reports given to him. He did not inspect the tower on the property beyond the electrical control area. He believes that everything except the cement silos is related to the business operation.

21. In redirect, Mr. Bauer testified that the total applied depreciation was just over \$200,000.00 for Group 1, and \$107,334.00 for Group 2.

22. Upon questioning by the Board, Mr. Bauer testified that he used a 30-year life for the Group 2 improvements.

23. Petitioner is requesting a 2001 actual value of \$7,130,000.00 for the subject property.

24. Respondent's witness, Mr. James W. Deatherage, Fremont County Assessor and a Certified General Appraiser, presented an indicated value of \$37,663,925.00 for the subject property, based on a percentage of costs shown in documents obtained from the Fremont County Finance Officer.

25. Mr. Deatherage testified that he had to rely on the contract between Holnam and Fremont County School District RE2 for the value of the plant. He used a total project cost of \$190 million. He used a 10.5% completion percentage for the first year and a 44.75% completion percentage for the second year, for a total of 55.25% complete for tax year 2001. He relied entirely on the cost amounts stated in the agreement; he was not supplied any other information prior to the appraisal presented by Petitioner for this hearing. He admitted that he did not request other information from Petitioner.

26. Mr. Deatherage testified that he does not agree with how Petitioner has classified the disputed Group 2 property as personal property versus real property. He believes buildings or structures with walls and roofs are real property. Property affixed to the land (real estate) is real property. A building is real property, regardless of what it houses.

27. Mr. Deatherage testified that the use of a building does not matter. Regarding the walls built between columns, he would appraise the entire building together, including the columns. The tower is real property; it is affixed to the ground. He sees no difference between the tower and a silo. He pointed out that the building on page 50 of Petitioner's Exhibit 3 is similar to a pole shed.

28. Mr. Deatherage testified that personal property is usually brought in and attached to the building, has a lesser economic life, can be replaced, and will be totally depreciated while the building would still have some life. If the property is movable chattel, it is personal property.

29. Mr. Deatherage testified that there is no depreciation for new construction, and replacement cost can be used, unless you need to allow for super-adequacies. He cannot verify Petitioner's cost approach calculations, as the Marshall & Swift valuation pages were not included in Petitioner's appraisal report. The best information available to him was the figures supplied to him in the RE2 school district agreement, as well as those in the agreement with Fremont County. His first indication of the issue of real versus personal property was at the time Petitioner filed a protest. The first time he knew what items Petitioner claimed as personal property was when he received Petitioner's appraisal for this appeal.

30. In cross-examination, Mr. Deatherage testified that he believes he had adequate information to value the property in the ad valorem process. He relied on conversations with Ms. Tattershall and the contract information to value the property. He admitted that he has never requested additional information from Petitioner.

31. Mr. Deatherage testified that he visited the facility on a tour arranged by Ms. Tattershall.

32. Respondent assigned an actual value of \$37,663,925.00 to the subject property for tax year 2001.

33. In rebuttal, Petitioner's witness, Ms. Linda J. Tattershall, property tax manager for Holnam Inc., testified that she prepared the document marked as Respondent's Exhibit A, section 3 for internal meetings with the Fremont Board of County Commissioners. The \$190 million was for the estimated total expense of the entire project. She also was the person that filled in the blanks in Respondent's Exhibit A, section 4 agreement. She would determine 95% of the total project cost would be personal property.

34. In cross-examination, Ms. Tattershall admitted that she did not give the Fremont County Board of Equalization information regarding the personal property percentage amount.

CONCLUSIONS:

1. Petitioner presented sufficient probative evidence and testimony to prove that the subject property was incorrectly valued for tax year 2001.

2. Respondent's valuation was based on an allocated amount of a projected total project cost, as reported for a tax credit. The Board understands that Respondent's witness used the best information available to him, but Mr. Deatherage admitted he did not request additional information from Petitioner. Mr. Deatherage did not attempt to independently value the subject property by any of the approaches to value; he relied solely upon the information in the tax credit documents. The Board is not convinced that this methodology results in an "actual value" of the subject property, as required in 39-1-103(5)(a) C.R.S. The only "actual value" data before the Board is that of the Petitioner. Therefore, the Board must rely upon Petitioner's appraisal report for the actual value of the real property in question.

3. There are two primary issues in this case:

A. Are the Group 1 properties properly valued?

B. Should the Group 2 properties be classified as real property and if so, what is the correct value?

4. The Board will first address the Group 1 properties. There is no dispute that the Group 1 properties are real property. What is at issue is the value of these properties, including whether depreciation should be applied, as they are new construction. Testimony and evidence indicate that construction began on the expansion project in 1999. Those items built prior to the level of value date should be properly depreciated for a one-year effective life; there was no evidence to indicate these specific buildings were constructed after that date. Respondent used a one-year effective life depreciation according to a 50-year total life of the property. The Board affirms Petitioner's methodology and valuation of \$7,130,000.00 for the assets in Group 1.

5. As to the Group 2 properties, Petitioner disputes that these assets are real property. Respondent's witness testified that these assets are in fact buildings and should be classified as real property; they are not movable chattel, they are affixed to the land, and they have walls and roofs.

6. The Board referred to the following statutes:

- A. 39-1-102-(14)(c) C.R.S. defines "Real property" as "Improvements".
- B. 39-1-102 (7) C.R.S. defines improvements as, in part, "...all structures, buildings, fixtures, ...erected upon or affixed to land..."
- C. 39-1-102 (4) C.R.S. defines fixtures as, in part, "those articles which, although once movable chattels, have become an accessory to and a part of real property by having been physically incorporated therein or annexed or affixed thereto..."
- D. 39-1-102 (11) C.R.S. defines personal property as "everything that is subject to ownership and that is not included within the term "real property".

7. The Board does not believe the disputed items are fixtures; they were not once moveable chattel. They are constructed of typical building materials such as concrete and steel. Neither does the Board believe they are personal property, as we believe they meet the definition of improvements under the "real property" definition.

8. The Board finds the items in Group 2 to be real property. We believe these items are either structures or buildings that are erected upon or affixed to the land. We agree with Mr. Deatherage that the actual use of these buildings is irrelevant. Although they may be used primarily to house and/or protect personal property or fixtures from the elements, they are still buildings or structures, which have walls and roofs, and in some cases doors and windows.

9. As to the value of these properties, the Board believes that these buildings should have the same life as those in Group 1. Therefore the Board adjusted Petitioner's values to reflect a one-year effective life for a 50-year total life span. The Board determined that the actual value of the properties in Group 2 should be \$3,485,560.00.

10. The Board concluded that the 2001 actual value of the subject property should be reduced to \$10,615,560.00.

ORDER:

Respondent is ordered to reduce the 2001 actual value of the subject property to \$10,615,560.00.

The Fremont County Assessor is directed to change his records accordingly.

APPEAL:

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

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

DATED and MAILED this 25th day of October, 2002.

BOARD OF ASSESSMENT APPEALS

Judee Nuechter

Judee Nuechter

Karen E. Hart

Karen E. Hart

This decision was put on the record

OCT 24 2002

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

Penny S. Bunnell

Penny S. Bunnell

