BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203 Petitioner: **LEFT HAND & TABERNASH BREWING CO.,** v. Respondent: **BOULDER COUNTY BOARD OF EQUALIZATION.**	**Docket No.: 75266**

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on June 18, 2019, Diane M. DeVries and Sondra W. Mercier presiding. Petitioner was represented by Alan Poe, Esq. Respondent was represented by Michael A. Koertje, Esq. Petitioner is protesting the 2018 actual value of the subject property.

The Board admitted Petitioner's Exhibits 1-9 and Respondent's Exhibits A, B and C.

Subject property is described as follows:

> **Personal Property of Left Hand & Tabernash Brewing Company**
> **located at 1265 Boston Avenue, Longmont**
> **Boulder County Schedule No. P0268963**

The subject includes brewing, bottling, and canning equipment, along with general equipment necessary for operation of a regional brewery. Left Hand & Tabernash Brewing Company is classified as a regional craft brewery based on product, production size and expanse of distribution.

Petitioner is requesting an actual value of $5,934,393 for the subject property for tax year 2018. Respondent assigned a value of $8,504,250 for the subject property for tax year 2018.

The parties concurred that the cost approach represented the most relevant methodology in valuing the equipment. Both relied on the same asset list, trend factors, age, economic life, percent good, and concluded to the same replacement cost new less physical depreciation. The parties differed on the application of external (in the form of economic) obsolescence.

Petitioner's first witness, Mr. Mark Boelman, Director of Accounting & Administration, Left Hand Brewing Company, testified to the nature of the company's business as a regional brewer, described various expansions of the brewery since 2013, and reported unfavorable market trends that resulted in decreased demand for the brand. Mr. Boelman noted that from 2012 through 2014, production represented 70% of the 90,000-barrel capacity. However, the figure declined to 50% in 2015 when the production line was expanded to 126,000 barrels. He also reported that production declined in 2016 as a result of a re-call of a portion of the product due to contaminated yeast. He reported that the decline in 2017 had resulted in employee layoffs.

Mr. Andres Gil, Executive Director of the Colorado Brewers Guild, testified to economic challenges that influence regional craft breweries, citing increased capacity. He testified that between 2016 and 2018, U.S. production capacity increased from 40 to 46 million barrels; whereas actual production only increased from 24 to 26 million barrels. Mr. Gill noted that regional brewers face competition-related pressure from corporate breweries offering "faux" craft brews as well as micro and nano breweries.

Petitioner's witness, Mr. David B. Koller, Accredited Senior Appraiser with the American Society of Appraiser Institute and a Member of the Royal Institution of Chartered Surveyors, presented a cost approach to derive a market-adjusted cost value for the subject of $5,934,393. Physical deterioration was based solely on the Division of Property Taxation factors. Mr. Koller considered the potential for functional obsolescence and concluded that the subject assets were modern, fully utilized, and were expected to continue in use. No deduction for functional obsolescence was indicated. Petitioner's witness concluded to the actual replacement cost new less depreciation of $8,801,145.32.

Mr. Koller determined there was external (economic) obsolescence based on production levels compared to capacity. During 2017, the rated capacity of the facility was 126,000 BBLs. However, in that year, the facility produced 69,605 BBLs or 55.24% of the rated capacity. Mr. Koller applied a 0.7 scale factor resulting in a 34% deduction for inutility obsolescence on those assets related to the production of beer.

Respondent's witness, Ms. April Mycock, Personal Property Appraisal Supervisor with the Boulder County Assessor's Office, relied on a cost approach to derive a market-adjusted value for the subject property of $8,504,250. Ms. Mycock also relied on factors derived by the Division of Property Taxation to determine physical deterioration. Like Petitioner, Ms. Mycock also concluded that no deduction was warranted for functional obsolescence.

Ms. Mycock researched the craft brewery industry to determine if economic obsolescence was present. Ms. Mycock determined that the bottling line equipment, purchased by Petitioner in 2012 and 2013, was not being used to the extent anticipated, as the demand for bottled beer declined when canning became the preferred packaging in the industry. Ms. Mycock applied a 30.26% deduction for economic obsolescence to six asset lines that were directly related to the bottling line. Ms. Mycock calculated inutility based on highest achieved capacity of 116,487 BBLs.

The evidence submitted by both parties was reviewed and the Board notes the following external economic trends:

- Articles provided by the parties indicated mixed trends for breweries, with some companies reporting growth and some decline. The Board was convinced that while demand for the beer product continued to grow during the relevant valuation period, the number of companies entering the market also increased significantly, causing increased competition. Most changes were related to product offerings from individual breweries, not overall market economics, with most trends showing growth between 2016 and 2017.

- As stated in Petitioners Exhibit 1, at page 12, "The Craft Beer Production industry has transformed into one of the fastest-growing and most popular alcoholic beverage segments in the United States. The industry has experienced significant revenue growth over the five years to 2018, increasing at an annualized rate of 11.8% to reach an estimated $6.8 billion…"

- Between 2016 and 2017, craft beer sales (in barrels) increase from 24.5 to 25.1 million, an increase of 2.75%. Over that same period, sales by regional craft breweries decreased 0.7% from 18 million barrels to 17.9 million. Despite a decrease in barrels sold, the dollar volume increased 4%, from $22.5 million in 2016 to $23.4 million in 2017.

- Until 2015, the subject's capacity was 90,000 barrels. To accommodate future growth, Petitioner expanded its capacity to 126,000 barrels. Similar facility expansions were reported by Odell Brewing Company, New Belgium Brewing, Avery, Thirsty Monk, Oasis Brewing Company, Dos Lucas.

Although both parties agreed that a deduction for economic obsolescence was required, the level of deduction was significantly different between the parties. Respondent limited their deduction for economic obsolescence to the bottling lines after a national trend indicated a preference for cans.

The American Society of Appraisers publication, Valuing Machinery and Equipment: The Fundamentals of Appraising Machinery and Technical Assets 3rd Ed chapter 3, page 76 states:

> Economic obsolescence (sometimes called "external obsolescence") has been previously defined as the loss in value or usefulness of a property **caused by factors external to the asset**. These factors include increased cost of raw materials, labor, or utilities (without an offsetting increase in product price); reduced demand for the product; increased competition; environmental or other regulations; or similar factors. (Emphasis added by the Board).

Petitioner based the deduction for economic obsolescence solely on actual production as a percentage of total capacity. No other data regarding sales, gross profit was provided. The Board notes that production capacity was increased 40% by Petitioner between 2014 and 2015; yet, production remained at a relatively consistent level, even despite a self-directed product re-call. The decision to increase production capacity was internal to the company, most likely influenced by a desire to meet projected increases in future demand. The differential between capacity and actual production is more accurately described as a temporary super adequacy as a company attempts to step-up to meet growing demand. Petitioner presented insufficient probative evidence and testimony to tie the percentage decline between production and capacity to broader external economic factors.

The Board was convinced that application of economic obsolescence to six asset lines that were directly related to the bottling line was appropriate. However, the Board found that Respondent deviated from the established formula for calculating inutility. Specifically, instead of using the subject's rated capacity in the calculation of inutility, Respondent erroneously applied the subject's highest achieved capacity. The Board determined that inutility of 55.24% as calculated by Petitioner should be applied to the six bottling line assets. The application of the inutility at 55.24% to the six bottling line assets produces a valuation of $8,199,375.

Petitioner presented sufficient probative evidence and testimony to prove that the subject property was incorrectly valued for tax year 2018. The Board concludes that the 2018 actual value of the subject property should be reduced to $8,199,375.

ORDER:

Respondent is ordered to reduce the 2018 actual value of the subject property to $8,199,375.

The Boulder County Assessor is directed to change her/her records accordingly.

APPEAL:

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-nine days after the date of the service of the final order entered).

If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation of the respondent county, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-nine days after the date of the service of the final order entered).

In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

Section 39-8-108(2), C.R.S.

DATED and MAILED this 14th day of August, 2019.

BOARD OF ASSESSMENT APPEALS:

Drafting Board Member:

Sondra W. Mercier

Concurring Board Member:

Diane M. DeVries,
concurring without modification pursuant to Section 39-2-127(2), C.R.S.

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

Milla Lishchuk

STATE OF COLORADO
SEAL
BOARD OF ASSESSMENT APPEALS