

**Order of the Thurston County
Board of Equalization**

Property Owner: WASHINGTON STATE EMPLOYEES CREDIT UNION

Parcel Number(s): 99700403800

Assessment Year: 2016

Petition Number: 16-0164

Having considered the evidence presented by the parties in this appeal, the Board hereby:

☒ sustains ☐ overrules the determination of the assessor.

Assessor's True and Fair Value Determination

<input checked="" type="checkbox"/> Land	\$ 0
<input checked="" type="checkbox"/> Improvements	\$ 1,200,700
<input type="checkbox"/> Minerals	\$
<input type="checkbox"/> Personal Property	\$
TOTAL:	\$ 1,200,700

BOE True and Fair Value Determination

<input checked="" type="checkbox"/> Land	\$ 0
<input checked="" type="checkbox"/> Improvements	\$ 1,200,700
<input type="checkbox"/> Minerals	\$
<input type="checkbox"/> Personal Property	\$
TOTAL:	\$ 1,200,700

This decision is based on our finding that: The Board sustains the Assessor's determination of value based on the testimony and evidence presented.

The issue before the Board is the January 1, 2016 fair market value of the Washington State Employees Credit Union (WSECU) building located at 100 71st Avenue SW in Tumwater. The building sits on land owned by the Port of Olympia and leased to WSECU. The Port of Olympia is not a taxpayer because the land it owns is not subject to property taxation.

The building is purpose-built to the specifications of WSECU. From previous experience, the Board is aware that the developer, Herb Simon, is a highly experienced property developer in Thurston County. Also from experience, the Board is aware that WSECU is a sophisticated concern that operates throughout Washington and owns or leases many buildings.

WSECU purchased the building on August 13, 2013 for \$1,266,000.00. Appellant's Ex. A1-6. Olympia Airdustrial Park Associates, L.L.C. (Airdustrial) filed a Real Estate Excise Tax Affidavit on August 21, 2013 that stated the taxable selling price was \$1,266,000.00. Appellant's Ex. A1-3. Herb Simon signed the affidavit for Airdustrial.

At the time of the sale, as on the valuation date of January 1, 2016, the Port of Olympia owned the land. Appellant's Ex. A1-12. At the time of sale, the lease was held by Olympia Airdustrial Park Associates, L.L.C. Id. Thirteen days after the sale, on August 26, 2013, Airdustrial's lease was assigned to WSECU.

At hearing, WSECU's representative contended that more than the building was transferred from Airdustrial to WSECU on August 13, 2013 and that the \$1,266,000 paid by WSECU purchased more than the building. WSECU cited the Bill of Sale in support of the contention because the bill of sale states Airdustrial "sells, assigns, transfers and delivers...all of Seller's right, title and interest in and to all items of personal property...described in Exhibit A."

Exhibit A states:

THAT CERTAIN BUILDING AND ADDITIONAL STRUCTURES AND OTHER IMPROVEMENTS LOCATED IN, ON, OVER, UNDER AND ABOUT THAT CERTAIN REAL PROPERTY PREMISES LEGALLY DESCRIBED AS LOT 1 OF AIRDUSTRIAL BSP (BSP-13-0015-TW), A BINDING SITE PLAN, ACCORDING TO SURVEY RECORDED JULY 30, 2013 UNDER RECORDING NO 44351119, IN THURSTON COUNTY, WASHINGTON

Appellant's Ex. A1-5.

The purpose of WSECU's Representative's contention that more than just the building, structures and improvements transferred for \$1,266,000 was to support WSECU's contention that the building was worth less than the total purchase price of \$1,266,000. The Board rejects WSECU's contention that more than the building was purchased on August 13, 2013 because Exhibit A is the specific statement of the personal property transferred and it describes only the building, structures, and improvements, all of which are personal property. WSECU provided no evidence that some particular thing other than the building, structures, and improvements transferred on August 13, 2013.

WSECU also contended the Assessor's valuation did not take into account the effect of the reversionary interest of the Port of Olympia. The original lease with Airdustrial, assigned to WSECU, had a ten-year term with three options to extend for 15 years under each option and that each option could be exercised unilaterally by the lessee. On the valuation date, WSECU was in a position to retain control of the building for approximately 51 years before the Port could refuse to extend the lease and thereby force the reversion of the building to the Port.

In testimony, the Assessor's representative stated the Office's policy is to consider the effect of governmental reversionary interests in buildings only if there is an appeal of the assessed value, as in this case. WSECU did not argue that the Assessor's failure to consider the reversionary interest in setting the assessment was a flaw in the Assessor's methodology for determining the value of the building. Rather, WSECU's representative argued that the Board should consider WSECU's contention that the value of the building in approximately 51 years would be \$200,000 and that the Board should reduce the Assessor's valuation because of that residual value that would exist at the first opportunity for the Port, through its own action, to obtain the building. In response to a question from the Board, WSECU's representative did not explain exactly how the Board should use the \$200,000 residual amount to revise the Assessor's valuation determination of January 1, 2016.

WSECU provided the Board (and the Assessor) with a copy of *Duwamish Warehouse Co. v. Hoppe*, 102 Wn.2d 249 (1984). The Supreme Court determined the reversionary interest retained by the Port of Seattle "must be considered in determining the subject building's assessable value." *Duwamish*, p. 256.

In *United Airlines, Inc. v. King County et al*, 194 Wn. App. 384 (2016), the Court of Appeals commented on *Duwamish* and stated:

The assessor valued the warehouse at its full market value, even though the lease provided that ownership of the structure would automatically be transferred to the port at the end of the lease term. The Supreme Court held that the assessor was obliged to consider the port's reversionary interest. "To disregard the fact that this building reverts to the Port at the end of the lease term, long before its useful life is up, would be to disregard a factor which plainly would affect the price negotiations between a willing buyer and a willing seller. The result is a nonuniform valuation much higher than the true and fair market value in money which the statute commands."...Unlike in *Duwamish Warehouse Co.*, the department's methodology for valuing airline leaseholds did not fail to consider the port's reversionary interest; rather, the department considered the port's reversionary interest and assigned it a value of nil if it was reasonable to assume that the airline would continue to renew its lease into the foreseeable future.

United Airlines, p. 391.

The Assessor's admission that it did not consider the effect of the reversionary interest on market value when establishing the assessment value, but considered the reversionary interest only after WSECU filed its petition, is an admission the Assessor did not follow *Duwamish*. The Board concludes that the failure to consider the effect of the reversionary interest on fair market value at the time of assessment is clear, cogent, and convincing evidence that the Assessor's methodology is flawed. As a result, the evidentiary standard for WSECU to prevail in this appeal is reduced to the preponderance of the evidence.¹ Notwithstanding the change from the clear, cogent, and convincing standard to preponderance of the evidence, the burden of persuasion remains with WSECU.²

In the hearing, both parties made many statements about the land and the relationship of the land to the value of the building that is the subject of the appeal. Each party also commented on profit considerations of the building's seller and the effect of those profit considerations on the fair market value of the building. The board finds that none of that testimony was relevant and it was given no weight.

/

/

/

/

/

/

/

/

/

/

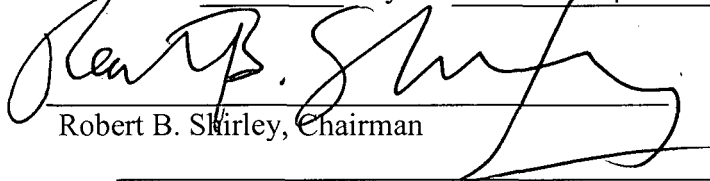
¹ See *Weyerhaeuser Company v. Easter*, 126 Wn.2d 370, 381 (1995) ("...if a taxpayer overcomes the presumption of correctness on a specific value, the standard of proof shifts to preponderance of the evidence for all contested issues related to that value[.]"). See also *Husmann v. Hjelle*, BTA Docket No. 89487 (2016).

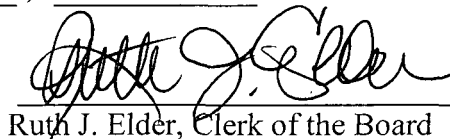
² *Husman*, pp. 5-6.

The Assessor's representative testified that in preparation for the appeal hearing the Assessor reviewed the lease for the Port land on which the building stands.³ The Assessor determined the effect of the value of the reversionary interest on the fair market is negligible because WSECU could retain control of the building for approximately 51 years. The Board finds this argument persuasive.

The Board concludes that the Petitioner did not provide the preponderance of the evidence necessary to overcome the Assessor's presumption of correctness and to warrant a reduction in the valuation. The Board sustains the Assessor's valuation.

Dated this 26th day of April, 2017


Robert B. Shirley, Chairman


Ruth J. Elder, Clerk of the Board

NOTICE

This order can be appealed to the State Board of Tax Appeals by filing a notice of appeal with them at PO Box 40915, Olympia, WA 98504-0915 or at their website at bta.state.wa.us/appeal/forms.htm within thirty days of the date of mailing of this order. The Notice of Appeal form is available from either your county assessor or the State Board.

To ask about the availability of this publication in an alternate format for the visually impaired, please call 1-800-647-7706. Teletype (TTY) users use the Washington Relay Service by calling 711. For tax assistance, call (360) 534-1400.

Distribution: • Assessor • Petitioner • BOE File

REV 64 0058 (6/9/14)

SHIPPED MAY 05 2017

³ The Board does not criticize the Assessor's policy of considering reversionary interests only if there is an appeal. The Assessor has limited resources and the policy is part of managing total workload by striking a balance between effort expended during valuation and effort expended in response to an appeal. However, the Board cannot ignore the command of *Duwamish* because the Assessor does not have the resources to do what *Duwamish* requires. The *Duwamish* case is not like *Niichel*, in which the Court stated the Assessor was not required to meet the statutory deadline of July 15 for certification of the assessment roll after the Assessor stated the deadline was not met because there was "not the necessary staff to complete the work within the time prescribed by statute." *Niichel v. Lancaster*, 97 Wn.2d 620, 622 (1982). *Duwamish*, as with this case, concerns the valuation that was certified, not the date when it was certified.