STATE OF VERMONT
ORANGE COUNTY

WASHINGTON ELECTRIC COOPERATIVE, INC.	Orange Superior Court
v.	Docket No. 243-11-02 Oecv
TOWNS OF CHELSEA, ORANGE, TOPSHAM, TUNBRIDGE, and WILLIAMSTOWN	

DECISION ON THE MERITS
Findings of Fact and Order

This tax appeal came before the court for a final evidentiary hearing on May 8-11, 2006. The parties subsequently filed supplementary memoranda of law. Appellant is represented by Attorney Joshua R. Diamond. The Towns of Chelsea, Orange, Topsham, and Tunbridge are represented by Attorneys David A. Otterman and Adrian A. Otterman. The Town of Williamstown is represented by Attorney Robert Halpert.

Based on the evidence and consideration of the legal arguments of counsel, the court makes the following findings of fact:

Washington Electric Cooperative (hereafter WEC) is a rural electric cooperative in central Vermont. It was organized in the 1930's when many rural coops were formed to bring electricity to rural areas not otherwise not served by commercial power companies. It has no shareholders, but is a nonprofit cooperative, such that all persons who obtain service from WEC are not customers but member/owners.

It serves 9,600 members in 41 towns in Washington, Orange, and Caledonia counties, including the five towns involved in this case: Chelsea, Orange, Topsham, Tunbridge, and Williamstown. It has a small plant in Wrightsville, but primarily purchases power from a variety of sources. It owns both transmission lines to send power from switching stations operated by other companies to its substations, and distribution lines to distribute power in single, double, or triple configurations from the substations to the locations where the power is used by the members. The property it owns in the five towns consists of transmission and distribution lines and related facilities such as poles, transformers, and substations.

WEC appeals the April 1, 2002 assessment for property tax purposes of its facilities in the five towns, except that a substation in Tunbridge is not within the scope of this appeal, and other substations were also previously excluded. The outcome will

establish the assessed value for the years 2002, 2003, and 2004, except that for Orange, it will be for 2002 and 2003 only, as there was a town-wide reappraisal for 2004, and the 2004 assessment was not appealed. There is no dispute about the common level of appraisal for each town for each year. Thus, the issue is the fair market value of the property in each town as of April 1, 2002.

When WEC was founded in 1939, most of its members were farmers and rural residents. Its users are still 98% rural and KWH sales are 91% rural, but there are significantly fewer farms than in the past. In 2002, it had 1,255 miles of line. The physical plant is in a condition that is average for rural coops nationwide. Much of it is 29-30 years old. It is adequately maintained. The failure rate is no higher than the norm.

WEC rates are regulated, and it has among the highest rates in the state. Compared to other Vermont utilities, it has a very low customer density: 8 users per mile, the least of any power utility in Vermont.[1] As a consequence, it has low revenue per mile of line. The technology of power distribution has changed over the years, and much of WEC's wire is the smaller, older type of wire that is inefficient compared to wire produced today, resulting in "line loss," and the need to buy 7-10% more power than the amount of power for which it receives revenues.

In 1939, 30-35' poles were the standard height. Such poles cannot support today's conductors or the other utility lines that are currently attached to poles (e.g., cable, telephone). Poles installed now are generally 40' poles. When poles are replaced, the old anchors cannot be used, requiring the purchase of new types of anchors.

Many transformers in the system are 10 kva, which were suitable for farm use when installed, but are now not needed for farm use and are inefficient, resulting in "no-load losses" or power consumed in simply energizing the transformer. Transformers installed today are 5 kva and more efficient for rural residential use.

Every year WEC replaces some of its older lines, poles, transformers, hardware, and related components with newer, more efficient equipment according to a construction work plan designed to gradually upgrade its system over time. Ten miles of line are replaced every year on this schedule.

Dan Weston, who has considerable experience in estimating cost for the projects under the construction work plan, has calculated the cost of replacing the 2002 equipment with appropriately updated new equipment (e.g., 40' poles), rather than with what existed in the system in 2002. He used two methods. The first shows 2006 costs based on construction work plan methods of calculating cost, and the second shows 2002 costs based on figures used for line extension tariffs, which are calculated on prior year actual costs.

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[1] For the five towns, user density per mile of line is as follows: Chelsea 6.8, Orange 9.6, Topsham 8.2, Tunbridge 6.6, and Williamstown 10.3.

The results are as follows:

Method	Chelsea	Orange	Topsham	Tunbridge	Williamstown
#1	3,939,300	2,908,300	4,060,200	2,525,300	5,489,900
#2	3,332,500	2,379,800	3,764,700	2,055,800	4,541,100

He believes the second method more accurately reflects replacement costs in 2002.

When the towns initially assessed the property, they relied on a formula recommended to the towns by the Division of Property Valuation and Review. Once WEC appealed, both sides obtained expert appraisals. The towns no longer rely on the values determined under the DPV formula. Rather, the towns rely on the valuation opinions of their expert appraiser, George Lagassa. While not identical to the values derived from the PVR formula, the extent of variance is not great. WEC relies on the valuation opinion of its expert appraiser, George Silver.

The respective opinions of fair market value, unadjusted for the common level of appraisal, are as shown below:

Town	PVR Formula	Towns (Lagassa)	WEC (Silver)
Chelsea	1,066,222	1,197,000	455,000
Orange	820,482	866,000	460,000
Topsham	1,272,976	1,293,000	600,000
Tunbridge	825,000	750,000	344,500
Williamstown	1,679,138	1,644,000	990,000

Both experts reviewed the three traditional approaches to valuation: sales approach, income approach, and cost approach. Both agreed that the income approach was not suitable in this case. The primary reason is that the income approach can be used to value the property of the cooperative as a whole, but because the lengths of transmission and distribution lines vary within the 41 towns in a manner unrelated to the proportion of its service in that town, an allocation of overall value cannot be made to specific towns. Also, the income generated by utilities results from rates that are regulated and not determined by the market. Therefore, neither expert used the income approach in developing his opinion.

Sales Approach

The sales approach was used quite differently by the two experts. Mr. Silver has amassed an impressive, well-organized amount of data about sales of utilities in the United States over the past several years. He has charted a large number of sales that have come to his attention, and identified their characteristics. He has discussed many of the sales with persons involved to obtain information. He analyzed the data and determined figures for each sale for each of eight market indicators: sale price per customer, indicated gross income multiplier, gross revenues per customer, gross revenues

per mile, KWH sales per customer, percentage of residential customers, percentage of residential KWH sales, and sales price as a percent of book value. He testified that in the market, primary attention is given to the factors of customer density, gross revenue per customer, ratio of residential to nonresidential customers, and condition of property.

Regarding customer density, his sales data shows that of 12 sales of utilities with customer density of less than 12 customers per mile, the contributory value of each customer ranges from $677 to $1,842, whereas of 8 sales of utilities with customer density of over 30 customers per mile, the contributory value of each customer ranges from $1,601 to $3,463. In all five towns, WEC's density is under 12 users per mile.

With regard to gross revenue per customer, his sales data shows that of 7 sales with gross revenue per customer of less than $1,000, the contributory value per customer is from $329 to $1,281, whereas of 5 sales with gross revenue per customer of over $2,000, the contributory value per customer is from $1,923 to $3,463. WEC's gross revenue per customer overall is slightly higher than $1,000, and for the five towns it is: Chelsea $961, Orange $1,046, Topsham $948, Tunbridge $900, and Williamstown $1,212.

With regard to residential customers, his sales data shows that of 6 sales with residential KWH sales greater than 70%, the contributory value per customer is from $723 to $1,294, whereas of 7 sales with residential KWH sales less than 25%, the contributory value per customer is from $1,613 to $3,463. WEC's residential KWH sales in all five towns are 95%.

With regard to condition of property, his sales data shows that of 6 sales of distribution properties in poor condition, gross revenues per customer were from $195 to $677, whereas of 7 sales of very well maintained distribution properties, gross revenues per customer were from $1,923 to $3,463. WEC's properties in all five towns are well maintained.

From his list of national sales, Mr. Silver determined that seven of the sales were of utilities comparable to WEC in characteristics based on their location in rural areas, type of facility (e.g., transmission, distribution), physical attributes, and the eight market indicator factors identified above. All of the utilities varied in some respects from WEC, such as being a significantly larger or smaller system, having no transmission lines, being sold to an investor-owned facility, including personal property or other types of power systems, density level, and so forth.

Mr. Silver testified that the factor used by "people in the industry" to measure market value is sales price per customer. He determined that sales price per customer had a range among the seven comparables of $700 to $1,300. He did not make adjustments to the sales price per customer of the comparables to arrive at one for WEC. Rather, he multiplied the number of customers in each town by $1,200 ($1,300 for Williamstown) to arrive at a figure that he determined to be the value of the property in each town.

He also performed a calculation using annual gross revenue. For each town, he multiplied annual gross revenue by a gross income multiplier of 1.2, which was derived from analyzing 15 out of 58 sales, not just the seven comparables. Some of those sale properties had different characteristics from WEC, such as being larger and located in an urban area, or including other types of power systems. He compared the results with those from the per-customer sales price calculation. He weighted the per customer sales price more heavily. He then added in a calculation for values of transmission lines based on a value per mile derived from his sales data. He reconciled the results, and determined that the values for each town are as follows:

Town	Silver Sales Approach
Chelsea	$455,000
Orange	$460,000
Topsham	$600,000
Tunbridge	$344,500
Williamstown	$990,000

A problem with the methodology is that no adjustments were made from the comparables to the WEC property to reflect such differences as time of sale, location, and differences in regulation to which each utility was subject. Some of the characteristics of the comparables were quite different, such as being much smaller, having greater density, or having other facilities included in the sale (other than transmission and distribution systems).

Mr. Lagassa, the towns' expert, criticized the reliance on sales price per customer on the grounds that it is not an actual sales price, but a "proxy for income." It appears to be more of an income approach, in which sales data is used to identify a price for a recognized unit of measure for which purchasers will pay, rather than a sales approach in which actual sales prices of comparables are adjusted to a subject property. Mr. Silver did not attempt to derive information from the sales data about the effects of the various characteristics on sales prices and adjust either utility sales prices or per customer sales information to arrive at a system-wide sales price or per customer price for WEC property that reflects its actual characteristics. To check the results, he used what is admittedly a form of income approach based on gross revenues.

Moreover, the use of this methodology also suffers, as does the income approach, from the difficulty of allocation of value to each of the five towns. For example, while WEC may have 356 member/users in Chelsea, the amount of its property located in Chelsea may be more or less than that represented by the per-user average. Thus, the result is unreliable as a reflection of fair market value of the property actually located in each town.

Mr. Lagassa undertook a different methodology for the sales approach. He was impressed with Mr. Silver's sales data, analyzed it, and reached the conclusion that sales of truly comparable properties are "thin." Focusing on sales that were in New England,

Vermont, and recent, he concluded that the sales prices of such utilities were close to their "net book value," which is a figure based on original cost of production. It is calculated based on a standardized formula since "net book value" is a figure used by rate regulators for their purposes. He testified that persons interested in utilities have always considered net book value important since it is the basis for the rate base which determines income, and is considered by regulators in considering approval of sales. Sales prices may be more or less, but his view is that it is the "anchor" for determining value.

Mr. Lagassa also identified seven comparables, but he determined as a result of looking at the sales data on those seven sales that fair market value "approaches" net book value. As a result, he determined that the net book value of WEC's property in each town reflects the fair market value of its property in that town. He acknowledges that this approach is actually more of a cost approach than a sales approach, but justifies it on the basis of sales data. He determined values from this approach as follows:

Town	Lagassa "Sales" (Net Book Value) Approach
Chelsea	$1,001,000
Orange	$ 748,000
Topsham	$1,162,000
Tunbridge	$ 734,000
Williamstown	$1,246,000

However, the evidence shows that there are many instances of sales that vary quite a bit from net book value. Specifically, of the seven comparables identified by Mr. Lagassa, as to one there was no information concerning net book value. Two sold at prices close to net book value. Two sold significantly higher than net book value, one at 1.78 times NBV, and one at 2X NBV, and two sold significantly lower than net book value, one 36% below NBV, and one 46.7% below NBV. As a result, this application of the sales approach does not appear to be reliable in fixing fair market value within a narrow range of accuracy. Mr. Lagassa testified himself that his primary reliance was on the cost approach and not this application of the sales approach.

While the court is reluctant to conclude that the sales approach analyses by each of the two well-qualified experts do not produce reliable results, it is to be noted that each expert, while respecting the qualifications of the other, criticized the other's approach on the same basis that the court is using in declining to place full reliance on those results. Each expert, given the complex task of making market adjustments to sales prices of properties with many different characteristics, and allocating them on a town-by-town basis, chose a different "rule of thumb" upon which to place greatest emphasis: Mr. Silver relies primarily on sales price per customer multiplied by the number of customers in a town, and Mr. Lagassa relies on net book value of the assets within a town. Mr. Lagassa's approach tracks most closely the actual location of assets, but the evidence does not support his contention that net book value is a fair reflection of actual market sales.

It is significant that the results of the two sales approach applications are widely divergent.

Town	Silver Sales Approach	Lagassa Sales Approach
Chelsea	$455,000	$1,001,000
Orange	$460,000	748,000
Topsham	$600,000	1,162,000
Tunbridge	$344,500	734,000
Williamstown	$990,000	1,246,000

This fact alone calls into question whether one or both of the methodologies produce results that are reliable. While the results are not without value, especially when compared with results of other approaches, neither alone is reliable enough to be determinative of fair market value.

Reproduction Cost New Less Depreciation Approach

The first step in using this approach is to determine the reproduction cost new. Mr. Silver, WEC's expert, calculated reproduction cost for the plant as it existed in 2002. WEC's records were good, and he used a construction cost index specifically for the utility industry. His method was to start with reproduction cost, then deduct for physical depreciation based on Iowa curves used in the utility industry, then deduct for functional obsolescence to reflect the fact that components are out-of-date and inefficient, and then deduct further for external or economic obsolescence to reflect conditions external to the property. His calculations produced the following results:

Towns:	Chelsea	Orange	Topsham	Tunbridge	Williamstown
Cost	3,671,877	2,835,745	3,989,133	2,655,867	5,353,446
-Phys.Dep.	2,287,454	1,689,166	2,292,745	1,704,640	3,320,905
-Funct. Obs.	391,572	235,222	302,267	214,801	351,222
-Ext.Obs.	525,152	439,751	716,721	333,418	779,219
Net	467,699	471,606	677,400	403,008	902,100
Say	468,000	472,000	677,000	403,000	902,000
Corrected to remove substation				374,000	

The towns question the cost calculations, partly because in many cases original actual cost was used, rather than current cost or original cost trended to current levels. The most serious and fundamental challenge made to Mr. Silver's methodology is his reduction for economic obsolescence in addition to functional obsolescence, and the basis for calculating it.

Mr. Silver testified that once he had deducted for physical depreciation and functional obsolescence, there was something wrong with the results. They were much higher than the results obtained from his use of the sales approach, approximately 20% higher. In his opinion, it was appropriate to make a further reduction for economic obsolescence, which he defined as based on factors external to the property itself: low density, low revenues per customer, and high percentage of residential use. He reasoned that the amount of economic obsolescence should equate to the difference between the values determined under the sales approach and the cost approach, which was approximately 20%. Therefore, he made reductions of up to 20% to reflect economic obsolescence. Mr. Silver considered his cost analysis to be less reliable than his sales analysis, primarily because he considered that it involved more appraiser judgment than the sales method.

WEC then hired an economist with an extensive background in utility rate design and cost of service studies, George McCluskey, to evaluate whether the amount of economic obsolescence Mr. Silver took is supportable. He is familiar with the different methods of determining cost of service for both investor owned utilities (IOUs) and coops, which are different because the financing structures are different, and IOUs pay a return to investors. The towns claim that his opinion is not independent because Mr. McCluskey already had the report and the desired outcome, and he was hired simply to buttress the figure already reached by Mr. Silver. WEC counters by pointing out that when the towns hired their expert, they already had the WEC appraisal done by Mr. Silver. They also already had the results of the PVR formula.

There are two questions: Should a reduction be made for economic obsolescence at all, and if so, is the amount supportable? The court has already found the results of the sales approach unreliable. If it is unreliable, then using it as the measure of economic obsolescence is also unreliable. A methodology that simply brings the cost approach result down to match the sales approach result indicates that the real reliance is on the sales approach, which the court has found to be unreliable. The manner in which economic obsolescence was taken in this case shows that the cost approach was not used as an independent analysis of value, but was applied in a way that made its outcome wholly dependent on the result of the sales approach. This gives the resulting value little independent probative value as a means of determining fair market value, *unless* there is reliable independent support for the reduction for economic obsolescence.

Mr. McCluskey conducted a study in which he compared the rates of return over a 4 year period between: WEC and urban IOUs; WEC and Green Mountain Power Corporation; and coops and urban IOUs. He concluded that location of a utility in a rural service area has a negative impact on net income. He calculated the amount of reduced income to WEC based on this reason ($12,200,000 over 25 years), and allocated it among the five towns to determine the impact for the year 2002. The total for the five towns for 2002 was $2,930,000, which was reasonably close to the total amount of the economic obsolescence deduction Mr. Silver took for the five towns of $2,794,261. He concluded that the effect on net income he found could be attributed to the factors Mr. Silver

identified as his reason for a deduction for external obsolescence: low customer density, unfavorable customer mix, low revenues per customer, and high relative maintenance costs of being in a rural area.

Mr. McCluskey's study appears to be valid and accurate to show the effect on income of operating a coop in a rural area. Indeed, the reason rural coops were given advantageous financing opportunities originally was to overcome this effect. What is unexplained is why such an effect on income should be incorporated into a cost approach to justify a deduction for "external" obsolescence in addition to deductions for functional obsolescence and physical depreciation. The basis for the distinction between functional and external obsolescence was not sufficiently explained by Mr. Silver, nor was the reason for two separate deductions, each of them significant. Mr. Silver himself considered the cost analysis to be less reliable than the sales analysis because of the high degree of judgment involved.

The separate deductions for functional and external obsolescence appear to duplicate reductions attributable to the same reasons: rural electricity distribution inherently involves low density of low volume users and low revenues under a regulated rate structure, resulting in delays in ability to replace equipment and requiring continued use of older inefficient equipment. It is reasonable for a deduction to be made for this reason, in addition to physical depreciation, but the evidence does not support two separate deductions, one up to 15% for functional obsolescence and the other up to 20% for economic obsolescence.

Under Mr. Silver's approach, if all WEC equipment were suddenly replaced with completely efficient up-to-date equipment, such that there was no basis for any functional obsolescence deduction, there should still be a deduction for economic obsolescence of up to 20% simply because the utility operates in a rural area. Such a result would not be fair to the other taxpayers in the towns, as an assessment based on such an economic obsolescence deduction would not accurately reflect the fair market value of the assets at the time of assessment.

Mr. Lagassa, the towns' expert, used reproduction cost as his primary approach. He relied on the work of Mr.Williams from Kleinschmidt, who reviewed the well-maintained records of WEC to make an inventory of WEC's property in each town. Mr. Williams calculated the cost of reproducing the assets in each town new, and deducted straight line depreciation.[2] He testified that the deductions he made for physical depreciation were comparable to Mr. Silver's.

Mr. Williams did not deduct for functional obsolescence because of his conclusion that WEC has a good program for capital replacement over time that is incorporated into its operating budget. He determined that there was not a basis for a

[2] The Kleinschmidt report calculated depreciated reproduction costs for October of 2003. Mr. Lagassa reduced the figures by 3% to adjust back to the level of inventory as of April 1, 2002, based on a demonstrated growth rate of 2% per year.

deduction for economic obsolescence because the assets have not lost utility as a result of changes in the surrounding economy or environment.

When Mr. Lagassa reviewed the Kleinschmidt results, he did not make an independent determination of whether there should be a deduction for functional obsolescence. He defines functional obsolescence as "the loss in value within the property as a result of the development of new technology." His conclusion about WEC assets was that "there appears to be no extra costs associated with the existing transmission or distribution system that could be eliminated by a new replacement system."

He also did not make a deduction for external or economic obsolescence. He adopted the values according to the Kleinschmidt application of the RCNLD approach, and adjusted them as follows:

Town	Chelsea	Orange	Topsham	Tunbridge	Williamstown
Cost	5,486,981	4,006,449	6,005,263	3,437,279	7,426,065
Net after Phys. Deprec.	1,234,482	893,147	1,333,349	773,605	1,695,274
Net after 3% reduction	1,197,000	866,000	1,293,000	750,000	1,644,000

Mr. Weston of WEC criticized the Kleinschmidt cost figures for not taking into account the fact that it is normal in the industry to engage in competitive bidding for purchases, which results in savings, or the fact that the labor cost to WEC is lower than the cost norms reflected in the handbook reasonably relied on by Mr. Williams. Thus, his testimony suggested that the reproduction cost figures calculated by Mr. Williams are somewhat high. However, comparison of the two appraisers' final figures for reproduction cost less physical depreciation shows the following:

Town:	Chelsea	Orange	Topsham	Tunbridge	Williamstown
Silver[3]	1,384,423	1,146,579	1,696,388	951,227	2,032,541
Lagassa	1,197,000	866,000	1,293,000	750,000	1,644,000

This comparison is interesting in that it shows that although WEC claims that the Kleinschmidt cost figures are too high, the Silver figures are higher after deduction for physical depreciation.

WEC criticizes Mr. Lagassa for not making a reduction for either functional or economic obsolescence. Mr. Lagassa's reason for not reducing for functional

[3]

Silver	3,671,877	2,835,745	3,989,133	2,655,867	5,353,446
-Phys Dep	2,287,454	1,689,166	2,292,745	1,704,640	3,320,905
Net	1,384,423	1,146,579	1,696,388	951,227	2,032,541

obsolescence was that his information, which came from the Kleinschmidt engineering analysis upon which he relied, was that WEC's assets were adequately maintained. Mr. Williams's reason for determining that there were no inadequacies was that when he was at the WEC office and being given a tour, he asked the person showing him around whether the system would be replaced identically if there was an ice storm that destroyed everything. The person said, "Yes." Mr. Williams apparently assumed from that there was no older, inefficient equipment.

The question about the extent to which the system includes outdated, inefficient equipment that would not be replaced was never put to Mr. Weston, who is responsible for the construction work plan. Mr. Williams did not know about the construction work plan. The person who answered the ice storm question was a line worker not involved in planning or finance. He does not have the qualifications to determine the extent to which certain equipment should be replaced with more efficient equipment if the opportunity arose. The evidence shows clearly that if all WEC's property were destroyed and the plant had to be reconstructed at once, up-to-date efficient items would be installed to replace some of the items that are currently in use but inefficient and result in loss of power for which no revenue is received. Thus, a deduction for functional obsolescence is warranted.

With regard to external obsolescence, Mr. Lagassa, when asked on cross examination, acknowledged the validity of the definition from the Appraisal Institute: 'a defect caused by negative influences, incurable by the owner,' and acknowledged that this definition does not specifically refer to lapse of time. Nonetheless, he relies on the definition from other professional sources, including examples that show that these incurable negative influences are a function of changes that occur over time. Such examples include: the use of a property becomes illegal or subject to prohibition for environmental reasons; an additional duty is levied on a use; or a property becomes inaccessible or its use becomes commercially infeasible due to changes in a surrounding environment. He testified that these changes inherently occur over time in a manner beyond the control of the owner.

He further testified that no such situation has occurred with regard to WEC assets, which continue to function to distribute electricity for the same purpose and in the same manner as they always have. They have not become burdened by additional regulations or prohibitions and have not become economically obsolete. The court finds this analysis of external or economic obsolescence to be the one that makes the most sense as applied to the WEC assets in this case.

Summary

Overall, the evidence shows that Mr. Silver's cost approach was reasonably reliable except for the extra deduction for economic obsolescence, and that Mr. Lagassa's cost approach was reasonably reliable except that there should be a deduction for functional obsolescence. The court finds that these two methods, if they could be

adjusted in these ways, would provide two reliable calculations upon which to base a determination of fair market value.[4]

The analysis of the evidence shows that there is a basis for a deduction for functional obsolescence. Some of WEC's equipment is out-of-date and inefficient, resulting in needless consumption of power that cannot be paid for (line loss resulting from old, small lines; no-load loss from large unnecessary, inefficient transformers). The town's appraiser, when he decided not to make a deduction for functional obsolescence, relied on an engineering analysis that did not take this into account.

Thus, despite the fact that the equipment is well-maintained, replaced on a schedule calling for annual upgrades, and has a failure rate no greater than average, some reduction for functional obsolescence is warranted due to the inefficiencies resulting from loss of power for which revenues are not collected, and the inability to replace inefficient equipment on a timely schedule due to the fact that revenue is limited not only by rate regulation but because of the rural nature of the utility.

The towns did not demonstrate fault with the amount of Mr. Silver's functional obsolescence deductions, either through cross examination or testimony of its appraiser. The court has no other evidentiary basis upon which to establish deductions for functional obsolescence.

The court cannot determine what the net results would be if functional obsolescence deductions were taken by Mr. Lagassa against his own cost less depreciation figures, since Mr. Lagassa did not make such a determination, and the court has an insufficient evidentiary basis for making its own such determination. For rough comparative purposes, it is interesting to review the effect of taking Mr. Silver's functional obsolescence deductions against Mr. Lagassa's results.

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[4] WEC advocates adoption of Mr. Weston's figures on 2002 replacement cost (Method #2) as the most reliable cost figures. The court declines to do so for several reasons. The figures are based on a methodology that uses prior year cost, and therefore may not accurately reflect 2002 actual cost. Also, the figures represent replacement cost, and not reproduction cost. Third, the figures are calculated by a person with an interest in the outcome of the case, and are lower than those of either independent appraiser. Finally, there is no reliable information of an appropriate amount of physical depreciation to be deducted from them.

If Mr. Silver's physical depreciation deductions are applied to Mr. Weston's Method #2 cost figures, and the three sets of figures for cost less physical depreciation are compared, the result is:

Weston #2	3,332,500	2,379,800	3,764,700	2,055,800	4,541,100
-Silver Ph.Dep.	2,287,454	1,689,166	2,292,745	1,704,640	3,320,905
	1,045,046	690,634	1,471,955	351,160	1,220,195
Silver	1,384,423	1,146,579	1,696,388	951,227	2,032,541
Lagassa	1,197,000	866,000	1,293,000	750,000	1,644,000

Even if the court were to use the Weston figures resulting from this exercise, which the court considers to be inaccurate for the reasons stated above, the court has no basis for a further deduction for functional obsolescence, which is warranted but no reliable figure can be determined. For these reasons, the court declines to rely on the Weston cost figures.

If Mr. Silver's functional obsolescence deductions are applied to Mr. Lagassa's figures for cost less physical depreciation, the comparative results are:

Silver	1,384,423	1,146,579	1,696,388	951,227	2,032,541
-Func. Obs.	391,572	235,222	302,267	214,801	351,222
Net	992,851	911,357	1,394,121	736,426	1,681,319
Lagassa	1,197,000	866,000	1,293,000	750,000	1,644,000
-Silv Func Obs	391,572	235,222	302,267	214,801	351,222
Net	805,428	630,778	990,733	535,199	1,292,778

The court finds that attempting to adjust Mr. Lagassa's methodology in this way provides comparative information with some limited value, but it cannot be justified as a reliable methodology for determining fair market value because it combines calculations from two different applications of the cost approach, using different sets of cost and physical depreciation figures.

Therefore, the most reliable information before the court is Mr. Silver's cost methodology, but without the deduction for economic obsolescence. These figures are:

Town:	Chelsea	Orange	Topsham	Tunbridge	Williamstown
Net	992,851	911,357	1,394,121	736,426	1,681,319
Rounded	993,000	911,000	1,394,000	736,000	1,681,000

Based on the foregoing findings, the court finds that the fair market value of WEC assets in the five towns as of April 1, 2002 (with exclusions previously noted) are:

Chelsea	Orange	Topsham	Tunbridge	Williamstown
993,000	911,000	1,394,000	736,000	1,681,000

The court is aware that there are adjustments to total fair market value to be made in some of the towns for other assets, prior to the application of the common level of assessment in determining total assessed values and resulting tax liabilities. These calculations are better addressed by the parties and their attorneys than by the court.

Order

WEC's attorney shall prepare a judgment in a form approved by all attorneys that incorporates the fair market value results of this decision.

Dated this 24th day of October, 2006.

Mary Miles Teachout

Mary Miles Teachout
Superior Court Judge

FILED
OCT 24 2006
ORANGE SUPERIOR COURT