

IN THE SUPREME COURT OF THE STATE OF IDAHO

In Re: Board of Tax Appeals, Appeal No. 16-A-1079

Supreme Court Docket No: 46191-2018

BRIAN STENDER, Canyon County Assessor,

Petitioner-Respondent/Cross-Appellant,

vs.

SSI FOOD SERVICES, INC.,

Respondent-Appellant/Cross-Respondent.

APPELLANT-CROSS-RESPONDENT'S REPLY BRIEF

**Appeal from the District Court of the Third Judicial District
of the State of Idaho in and for the County of Canyon**

Honorable Gene Petty Presiding

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I. STATEMENT OF THE CASE

Appellant SSI Food Services, Inc. (“SSI”) first set forth its statement of the case in its Appellant’s Brief at pages 1-15. SSI hereby incorporates into this brief the defined terms originally set forth in its Appellant’s Brief.

While already briefly addressed in the Appellant’s Brief, SSI elects to elaborate on the specific issues addressed in Respondent/Cross-Appellant Canyon County’s (“Canyon County”) Cross-Appeal, specifically the issue related to penalties and interest on taxes due. On May 15, 2018, Canyon County submitted the Affidavit of Brian Stender, requesting penalties and interest on the amount of real property taxes due and owing by SSI as a result of the District Court’s \$17,000,000 valuation. (R., pp. 286-91). That same day, SSI filed its Objection to Request for Penalties and Interest on Tax Due. (R., pp. 292-93). The matter was scheduled for a hearing on June 8, 2018. (R., pp. 296-97). On June 1, 2018, Canyon County filed its Response to Respondent’s Motion for Reconsideration and Objection to Affidavit of Brian Stender. (R., pp. 298-304).

At the hearing on June 8, 2018, SSI and Canyon County were given the opportunity to be heard. Canyon County argued that it should be entitled to interest on the underpayment of taxes during the pendency of the appeal to the district court. (Tr., pp. 456-459). During Canyon County’s argument requesting interest, the District Court noted, “And the question I have, so under 63-1305 specifically interest is allowed to be ordered on a refund. Is there the reverse of that where the code’s actually on - - allows the district court to order not only taxes be paid but interest as well?” (Tr., p. 457, ll. 10-14). Canyon County responded:

You mean – so in – the – the County’s contention would be that while the legislature did not address the situation where there was an underpayment and then the taxpayer would be required to pay interest in addition to the – the amount, we believe that it would be – that the silence of the legislature would not be negative,

I suppose you'd say, but would be – that the equitable reading would be that it would go both ways, I guess would be the way to put it.

That if the taxpayer underpaid, the taxpayer then ought to pay the full amount plus interest. If the taxpayer overpaid, the County refunds with interest.

(Tr., p. 457, ll. 15-25). SSI, of course, disagreed. SSI responded:

To answer the court's question, no, there isn't a statute that gives the County the right to charge interest on underpayments. And there is mechanism for which the County can do that. They can charge interest if it's not paid when due. When due. So that's a very critical factor in this particular case.

...

CTI paid all taxes when due, CTI paid on the \$18 million, which gave CTI a credit and, under the statute, with interest on that credit. That credit applied in 2017. The CTI taxes for 2017 were paid on time when due based on the Board of Tax Appeals and a stipulation between the parties as to what they would pay in 2017. In 2018, Your Honor, CTI has paid their taxes as applied when due. There are no unpaid late taxes for CTI because this court has yet to issue the judgment that makes those taxes due. With respect to the – I understand that the County's position. I understand they want to claim interest. But CTI did comply with every statutory requirement of CTI. Pay their taxes when due. Pay the amount due when due. They paid on the 18 million. They paid on the 10. They paid on the 10.5 in 2017. They paid when due.

(Tr., pp. 458-59, l. 7-25, 1-7) (emphasis added).

The District Court then properly noted:

All right. And I guess that's my ultimate question. There is a framework in the statute for charging late fees and interest if there's delinquency. And ultimately the question is whether there's a delinquency under the statute.

(Tr., pp. 461-62, ll. 24-25, 1-3). On June 21, 2018, the District Court entered its Memorandum Decision and Order on Additional Property Taxes, Late Charges, and Interest (R., pp. 327-332). This District Court specifically held that SSI "paid all taxes when due." (R., p. 330) (emphasis added). The District Court concluded that SSI was not required to pay late charges or interest on the additional taxes due. (R., p. 331). Judgment was entered accordingly that same day. (R., pp. 338-39).

II. ISSUES ON APPEAL

SSI repeats its Issues on Appeal submitted in the Appellant's Brief. Canyon County filed its Respondent's Brief asserting the following arguments with regard to the issues presented by SSI's appeal:

1. Is the District Court's finding regarding the 2016 assessed value of the property supported by substantial and competent evidence?
2. Did the District Court abuse its discretion in permitting the testimony of Cook?

III. ISSUES ON CROSS-APPEAL

In addition to those issues presented in SSI's appeal, the following issues have been presented by Canyon County on Cross-Appeal:

1. Did the District Court err in ruling that SSI was not obligated to pay penalties and interest on the unpaid amount of property taxes ultimately owed based on the assessed value found by the court?

IV. STANDARD OF REVIEW ON CROSS-APPEAL

In this case, the District Court denied Canyon County's request for late fees and interest pursuant to Idaho Code Sections 63-201, 63-903, 63-1001, and 63-3812. The construction and application of a statute are pure questions of law over which the appellate courts exercise free review. *Canyon County Board of Equalization v. Amalgamated Sugar Company, LLC*, 143 Idaho 58, 60, 137 P.3d 445, 447 (2006).

V. ARGUMENT

The District Court erred when it concluded, as a matter of law, that the Board of Tax Appeals' ("BOTA") decision of value was erroneous because Canyon County did not present adequate evidence to meet its burden of proof to allow the District Court to overrule the BOTA decision. The District Court further erred when it concluded as a matter of law that the market

value of the Property was \$17,000,000, an amount seventy-percent (70%) higher than the BOTA market value of the Property. The District Court erred in making this valuation determination because (i) the District Court did not follow Idaho law and administrative procedure rules in rendering its decision on market value, and (ii) the District Court failed to apply the proper formulas to determine market value of the Property, i.e. the income approach, cost approach, and sales comparison approach.

Canyon County did not directly address SSI's Issues Presented on Appeal in its brief. Rather, Canyon County identified its own version of those issues. SSI asserts its original Issues Presented on Appeal as if fully set forth herein, but for purposes of brevity, SSI will address Canyon County's issues in the manner presented in Respondent's Brief.

1. Is the District Court's Finding Regarding the 2016 Assessed Value of the Property Supported by Substantial and Competent Evidence?

Canyon County incorrectly asserts that the "finding" of the assessed value of the Property was that of fact. It is not. The determination of value for real property is an issue of law. Appellate courts exercise free review over the district court's conclusions of law to determine whether the court correctly stated the applicable law and whether the legal conclusions are sustained by the facts found. *PacifiCorp v. Idaho State Tax Com'n*, 153 Idaho 759, 291 P.3d 442 (2012).

In this case, the District Court made three conclusions of law that are challenged by SSI, (1) "Petitioner has met its burden to show that the value of the property exceeds \$10,000,000;" (2) "The conclusion of the Board of Tax Appeals was erroneous;" and (3) "The market value of the property on January 1, 2016 was, for ad valorem tax purposes, \$17,000,000." (R., p. 265).

Canyon County asserts that the District Court's conclusions were "supported by substantial and competent evidence." *Respondent/Cross Appellant's Brief*, p. 16. Canyon County further states, "SSI wants to ignore this standard and re-litigate the matter in this Court, arguing cap rates,

depreciation, comparable sales, obsolescence, the value of improvements, definition of market value, and the three approaches to determining market value.” *Id.*, pp. 17-18. To the contrary, SSI is asking this Court to exercise free review over the three Conclusions of Law made by the District Court, as is the appropriate standard of review for judicial review appeals.

SSI is not trying to “relitigate” the issues in the judicial review litigation. SSI filed its appeal with this Court to make a determination if the District Court properly applied the legal standards to the present property tax appeal. SSI contends that the District Court did not.

In an action tried to a court without a jury, the trial court is required to find the facts specially and state its conclusions of law separately which support its decision. I.R.C.P. 52(a). “The purpose behind requiring the court to ‘find the facts specially and state separately the conclusions of law thereon’ is to afford the appellate court a clear understanding of the basis of the trial court’s decision, so that it might be determined whether the trial court applied the proper law to the appropriate facts in reaching its ultimate judgment in the case.” *Pope v. Intermountain Gas Co.*, 103 Idaho 217, 646 P.2d 988 (1982).

SSI asserts that the District Court incorrectly identified Conclusions of Law in its Findings of Fact. For example, the District Court found, “Based on the testimony and evidence presented at trial, the Court finds that the cost approach was the most appropriate, credible, and reliable appraisal method for determining market value of the Wilder Plant.” (R., p. 262). This is a Conclusion of law and should not be stated in the Findings of Facts. Another example, the District Court found, “the sales comparison approach is less reliable than the cost approach when applied to the Wilder Plant. The sales comparison approach raised too many issues in this case with adjustments made for post-sale investments, as evidenced by the three expert witnesses’ lack of agreement as to how to account for such expenditures.” (R., p. 262). Again, the District Court

included this Conclusion of Law in its Findings of Fact. Likewise, the District Court found, “The income approach is likewise less reliable than the cost approach.” (R., p. 263). These are legal conclusions over which this Court exercises free review.

SSI contends that the District Court should have considered each of the three valuation methods in its Conclusions of Law, so this Court could understand how the District Court concluded that the Property was valued seventy percent (70%) higher than the BOTA found. If the District Court would have conducted the correct legal analysis of the three approaches, SSI trusts it would have concluded that the BOTA did not err. Instead, the District Court simply relied upon the testimony and appraisal of J. Philip Cook (“Cook”), when it concluded the market value of the Property was \$17,000,000.

Canyon County directs this Court to *Wurzburg v. Kootenai County*, 155 Idaho 236, 308 P.3d 396 (Ct. App. 2013), to support the District Court’s Findings of Fact in this matter. While *Wurzburg* is instructive on the issue of establishing who has the burden of proof in property tax appeals, the case is less instructive on how district courts should actually apply the three methods of valuation in any given case. *Wurzburg* was very fact specific to the Kootenai County property tax valuation in that case and did not offer any guidance on how this Court should address conclusions of law based on the facts presented at trial.

SSI, rather, would direct this Court to the Idaho Administrative Procedures Act, which governs how assessors, appraisers, and courts should determine market value of property for *ad valorem* purposes. The relevant provisions of IDAPA states:

Appraisal Approaches. Three (3) approaches to value will be considered on all property. The three (3) approaches to market value are:

- a. The sales comparison approach;
- b. The cost approach; and
- c. The income approach.

IDAPA 35.01.03.217.02.

This Court has, on numerous occasions, discussed the three approaches in decisions related to property tax valuation. *See Pacificorp v. Idaho State Tax Comm'n*. The *Pacificorp* case is more instructive than *Wurzburg* because it confirms that district courts and appellate courts are tasked with making decisions based on the application of the three methods. *Id.* at 782, 291 P.3d at 445. In most cases, decisions are based on competing experts who merely differ on subjective areas in appraising property. In *Pacificorp* and *Wurzburg*, the district courts made factual findings based on the testimony of experts, the deep analysis of those experts at trial, and the specific factual issues in each case. This case, however, is distinguishable. In this case, the expert witnesses did not agree on which of the three approaches were appropriate, nor did the expert witnesses agree on how the three approaches applied to the SSI Property. Furthermore, the expert witnesses fundamentally disagreed on how to analyze each approach. SSI contends that Canyon County's experts, Michael Cowan ("Cowan") and Cook, were incorrect in how they analyzed the three approaches.

A. The Sales Comparison Approach

Canyon County posited that when using the sales comparison approach, large adjustments must be made to the properties, resulting in adjustments which overall ranged from roughly +300% to +480%. Canyon County contended the adjustments were proper because at the time the industrial properties were sold, they needed significant reconfiguration and updating work to become active food processing operations. Canyon County simply took the total costs of the tenant improvements, the sources of which are unknown, for each sale and added them to the respective sale prices. For example, in the case of Amy's Kitchen, the most similarly related property, Cowan added \$25 million in value without explanation or verification. This effectively took the property

from \$23 per square foot to \$112 per square foot, with no further explanation as to why market value should increase 480%.

SSI's expert, Paul Hyde ("Hyde") completely disagreed that these exceptional adjustments were a proper way to analyze the sales comparison approach. To the contrary, SSI did not make these outlandish adjustments to comparable properties. To do so would be an admission that the properties were not comparable at all, if an adjustment of 300-480% were necessary. SSI's expert properly used eleven (11) comparable properties, made appropriate and well-reasoned adjustments, and concluded a value of \$6,500,000 under this approach.

The District Court did not independently analyze the sales comparison approach. It merely found that because the three experts could not agree on how to make costs-after-sale adjustments, that the methodology was "less reliable than the cost approach." (R., p. 262). The District Court did not elaborate as to why it made this factual finding, nor did the District Court make any Conclusions of Law related to the sales comparison approach. Consequently, the District Court clearly erred by failing to properly analyze this recognized appraisal methodology.

B. The Cost Approach

SSI did not rely on the cost approach because its expert deemed it to be too unreliable due to the older age of the Property and the lack of support for accurately estimating potential functional and economic obsolescence. Canyon County, however, relied heavily on the cost approach.

Canyon County did not appear to have a clear understanding as to the applicability of functional and external obsolescence. First Canyon County's expert and employee, Michael Cowan, attributed ten percent (10%) functional obsolescence to the Property (Ex. 1012, p. 12), then twenty-five percent (25%) in his revised report. (Ex. 1013, p. 26). There is no market

evidence of any kind to support these amounts, they were simply guesses on his part. The actual amount of functional obsolescence and external obsolescence is likely much higher than 25%. SSI's plant engineer, Dave Kubosumi, testified that the Property was only ten percent (10%) efficient, or conversely ninety percent (90%) obsolete. (Tr., p. 177, ll. 15-18). Due to the age, configuration, layout, location and many other factors, the quantification of the amount of functional obsolescence and external obsolescence of the Property is unknown. The best way to estimate depreciation from all causes, including obsolescence, is to extract it from the market. In order to extract it, similar properties that have sold must be analyzed in great detail and sufficient information must be available to make this type of analysis. Canyon County made no attempt to provide any evidence to support Cowan's percentage of functional obsolescence to the Property.

The District Court did not do an independent cost approach analysis in its Conclusions of Law. Rather, the District Court found as fact that "the cost approach was the most appropriate, credible, and reliable in determining the market value of the Wilder Plant." (R., p. 262). The District Court failed to address any of the issues discussed by Hyde at trial or addressed at length in his appraisal (Ex. 1001) or appraisal review (Ex. 1002). The District Court erred by relying solely on the cost approach (although no Conclusion of Law indicated as such). Based on the District Court's Findings of Fact, the cost approach was the only "reliable" recognized methodology, therefore, the District Court clearly erred when it presumably used the cost approach to determine market value of the Property.

C. The Income Approach

SSI also used the income approach to value the Property. The income approach is consistent with industry application for valuing properties of this kind. The parties agreed, and the District Court recognized, that special-use industrial properties like the Property are not

typically leased to unrelated entities. (R., p. 263). Rather, such properties are typically owner-occupied and operated. SSI's expert, Hyde, testified regarding the difficulty in getting local lease data, given the nature of the food processing plant, but nonetheless, Hyde was able to identify fourteen (14) comparable leased facilities throughout the United States. (Tr., p. 208, ll. 4-9). After identifying how the income approach is calculated, SSI's expert concluded the value of the Property was \$6,100,000 under the income approach. (Tr., p. 211, ll. 18-22; Ex. 1001, pp. 180-81).

Canyon County offered no evidence to refute SSI's income approach calculation, nor did Cowan do an income approach in his report or revised report.

The District Court simply made the factual finding that "[t]he income approach is likewise less reliable than the cost approach." (R., p. 263). The District Court made no Conclusion of Law that it had analyzed the income approach as a recognized method of appraisal, nor did the District Court make any conclusion as to how the income approach should be applied in determining market value of the Property. Therefore, the District Court clearly erred by failing to consider the income approach as a recognized method for determining market value.

1. Did the District Court abuse its discretion in permitting the testimony of Cook?

When reviewing the trial court's evidentiary rulings, this Court applies an abuse of discretion standard. *Lepper v. Eastern Idaho Health Services, Inc.*, 160 Idaho 104, 369 P.3d 882 (2016); *Dulaney v. St. Alphonsus Reg'l Med. Ctr.*, 137 Idaho 160, 163-64, 45 P.3d 816, 819-20 (2002). A trial court does not abuse its discretion if it (1) correctly perceives the issue as discretionary, (2) acts within the bounds of discretion and applies the correct legal standards, and (3) reaches the decision through an exercise of reason. *O'Connor v. Harger Constr., Inc.*, 145 Idaho 904, 909, 188 P.3d 846, 851 (2008).

Typically, where the disclosure requirements of I.R.C.P. 26 are not met, an improperly disclosed expert will be excluded from testifying. *Aguilar v. Coonrod*, 151 Idaho 642, 646, 262 P.3d 671, 675 (2011). Canyon County's court-ordered deadline to disclose expert witnesses was one hundred-sixty (160) days prior to trial. (R., p. 23). One hundred-sixty (160) days prior to the trial in this case was on or before October 11, 2017. Canyon County retained Cook in October of 2017, to conduct an appraisal of the SSI Property. As part of his responsibilities as Canyon County's expert witness, Cook came up with his own information, new information, and a new theory as to the value of the SSI Property. Cook's appraisal report contained a new valuation and new data relied upon to reach his opinion as to the market value of the Property. The appraisal report was certainly not prepared by Cook to rebut SSI's case, Cook was hired to make his own determination of value of the SSI Property. Canyon County deliberately hid the fact that they retained Cook in October 2017 to gain an advantage over SSI. Canyon County literally kept their competing expert witness and his expert witness report a secret in order to have a better outcome in court. SSI had no knowledge of the expert report until December 20, 2017, allowing no time to meaningfully refute any evidence presented by Cook.

Canyon County continues to assert that Cook was a "rebuttal" expert. Cook was not a rebuttal expert, he offered his own opinions of value that should have been disclosed in accordance with the District Court's scheduling order. Rebuttal evidence is given to explain, repel, counteract, or disprove facts given in evidence by the opposing party and cannot be used to advance new arguments or new evidence. Because Cook's testimony and appraisal report were new evidence, he should not have been allowed to testify as to his own values and his appraisal report.

The District Court should have stricken Cook's appraisal from use at trial and the District Court should not have allowed Cook to testify as to his opinion of value of the SSI Property. In its

Memorandum Decision on SSI's Motion to Exclude Expert Witness, the District Court concluded: "Mr. Cook was designated as a rebuttal expert and his testimony would be limited to rebutting conclusions of Respondent's expert, Mr. Hyde." (R., p. 180). Despite the deadline in the Order Setting Trial, and the recognition that Cook's testimony was limited to rebuttal testimony, the District Court denied SSI's Motion to Exclude Expert Witness. (R., p. 812). The District Court did not set forth the abuse of discretion elements in its Memorandum Decision.

At trial, after SSI's case in chief, Canyon County introduced Cook as a witness. SSI re-raised its motion to exclude the expert witness. (Tr., p. 339, ll. 22-25, p. 340, ll. 1-5). After lengthy discussion on the issue, SSI argued that Cook was not a rebuttal expert, but rather he was going to be testifying to his own opinion of value, with his own appraisal report. Despite the objection, the District Court stated, "I am going to allow the witness to testify. I will allow him to opine as to why he believes the opinion of Mr. Hyde is incorrect. I will also allow him to express his opinion of value." (Tr., p. 345, ll. 21-25) (emphasis added). The District Court ultimately allowed Cook to testify about all matters discussed in the trial, including Cowan's reports, Hyde's appraisal, and appraisal review of Cowan, and the District Court allowed, over SSI's objections, Cook's appraisal to be admitted. (Tr., p. 399, ll. 3-15). The District Court did not do an abuse of discretion analysis when it overruled SSI's objections.

The District Court abused its discretion by allowing Cook to testify because the District Court appeared to rely solely on Cook and his appraisal to determine the market value of the Property, completely prejudicing SSI. With his appraisal in hand, Cook opined that the market value of the Property was \$17,000,000. (Tr., p. 403, ll. 5-10). On cross examination, Cook admitted he was retained prior to December 20, 2017, and up until trial, he had already billed Canyon County approximately \$45,000.00. (Tr., p. 404, ll. 20-23). Cook further testified that he

did not independently research the data given to him by Cowan, and further that he relied on a newspaper article for his final opinion as to value. (Tr., pp. 421-422, ll. 4-25, 1-11).

Accordingly, SSI respectfully requests this Court determine the District Court committed an abuse of discretion in classifying Cook as a rebuttal expert and allowing his testimony and appraisal report to be used at the trial.

VI. ARGUMENT ON CROSS-APPEAL

1. Did the District Court err in ruling that SSI was not obligated to pay penalties and interest on the unpaid amount of property taxes ultimately owed based on the assessed value found by the court?

Canyon County asserts, in its Cross-Appeal, that the District Court erred when it declined to impose penalties and interest against SSI for the 2016 tax year. The District Court did not err when it refused to impose any penalties and interest because no tax was actually due until the District Court entered its final judgment in the judicial review litigation.

Title 63 of the Idaho Code governs the payment of property taxes, late charges, and interest and provides:

Property tax payments may be paid in full or paid in two halves, with the first half being due on or before December 20 of the year in which the property taxes are levied with a grace period extending to June 20 for the second half if the first half is totally paid.

Idaho Code § 63-903(1). Late charges and interest will be assessed if the second one-half of the payment is not totally paid on or before June 20 and if the second one-half has been partially paid, late charges and interest shall be calculated on the remaining property tax due. Idaho Code § 63-903(4). Idaho Code § 63-201(12) defines ‘late charge’ as a charge of two percent (2%) of the delinquency, and a payment is considered delinquent when “any property tax, special assessment, fee, collection cost, or charge collected in the same manner as a property tax has not been paid in the manner and within the time limits provided by law.” Idaho Code § 63-201(7).

When handling an appeal from a Board of Tax Appeals order, a district court has the authority to direct the collection of additional taxes pursuant to I.C. § 63-3812(c). An appeal of a BOTA decision does not suspend the payment of taxes pending any appeal per Idaho Code § 63-381(d).

In 2016, the Canyon County Assessor assessed SSI Property at \$18,286,630.00 and on June 25, 2016 SSI protested this assessment. On August 8, 2016, SSI appealed this assessment to the BOTA. During the pendency of the BOTA appeal, SSI paid the first half of the property tax assessment in December 2016, which was based on the \$18,286,630 valuation. The second half of SSI's property tax assessment was due June 20, 2017, and on March 31, 2017, the BOTA determined the value of the Property was \$10,000,000 instead of \$18,286,630. The parties agreed that the BOTA decision would be controlling and Canyon County adjusted SSI's tax bill accordingly, to which SSI paid the second half of the taxes based on that amount. By 2017, SSI had paid its 2016 property taxes in full.

The District Court, after the trial in March 2018, determined the 2016 value of the Property to be \$17,000,000 and as such an additional \$97,770.12 was due for the SSI 2016 property tax assessment. (R., pp. 327-332) Judgment ordering SSI to pay the property taxes was entered on June 21, 2018, rendering the taxes due at that point. (R., pp. 338-39). SSI promptly paid the assessed taxes. SSI does not owe any late charges or interest payments in accordance with Idaho law because the additional taxes only became due upon the District Court's Judgment, as allowed by Idaho Code § 63-3812. SSI did not receive any delinquent tax notifications, paid each half of the assessed taxes on time, and remitted the additional charges per the Judgment in a timely manner. Because there were no delinquent payments and because there are no outstanding

payments owed, SSI is not responsible for any late charges or interest due as alleged by Canyon County.

VII. ATTORNEY'S FEES ON APPEAL AND CROSS-APPEAL

Canyon County is not entitled to attorney's fees on its Cross-Appeal, nor is it entitled to fees on SSI's appeal. The Idaho Appellate Rules 40 and 41 allow for an award of costs and attorney fees to the prevailing party. Attorney fees on appeal are appropriate under I.A.R. 41 if the appellate court is left with an abiding belief that the appeal has been brought or defended frivolously, unreasonably, or without foundation. *Durrant v. Christensen*, 117 Idaho 70, 74, 785 P.2d 634, 638 (1990).

In this case, SSI appealed the underlying decision of the District Court and SSI has sought attorney fees on appeal. Likewise, Canyon County appealed the District Court's denial of its request for penalties and interest on property taxes not yet due by SSI, seeking fees for its appeal. Because the District Court was correct in denying Canyon County's request, Canyon County would not be the prevailing party on its Cross-Appeal. Therefore, SSI respectfully requests this Court deny Canyon County's request for attorney's fees on its Cross-Appeal. Furthermore, as fully set forth in SSI's Appellants' Brief, SSI should be awarded its fees if it prevails on this appeal.

VIII. CONCLUSION

The District Court erred in issuing insufficient Conclusions of Law that set the Property value at \$17,000,000, without explanation or proper valuation. The District Court further erred in allowing Canyon County's late disclosed expert witness to testify and admit his report into evidence at the trial in this matter. Finally, the District Court properly denied Canyon County's request for penalties and interest on property taxes not yet due by SSI. Accordingly, SSI

respectfully requests this Court to 1) determine that the District Court erred and reverse the decision of the District Court, and 2) affirm the BOTA's Property valuation at \$10,000,000.

DATED: February 13, 2019.

PICKENS COZAKOS, P.A.

By /s/ Terri Pickens Manweiler
Terri Pickens Manweiler, Of the Firm
Attorneys for Respondent-Appellant / Cross-Respondent

CERTIFICATE OF SERVICE

I, the undersigned, certify that on February 13, 2019, I caused a true and correct copy of the foregoing to be forwarded with all required charges prepaid, by the method(s) indicated below, in accordance with the Idaho Rules of Procedure, to the following person(s):

Bryan F. Taylor
Bradford D. Goodsell
Canyon County Prosecuting Attorney
Canyon County Courthouse
1115 Albany Street
Caldwell, Idaho 83605

- Hand Delivery
- U.S. Mail
- Facsimile
- Overnight Mail
- Email – pacivilmail@canyonco.org

 /s/ Terri Pickens Manweiler
Terri Pickens Manweiler