

IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT

Property Tax

HAMMER-ALBERTS LLC,)
)
 Plaintiff,) No. 000406F
)
 v.)
)
 LANE COUNTY ASSESSOR,)
)
 Defendant.) **DECISION**

Plaintiff appealed the real market value of property for the 1999-00 tax year.

The property is listed as Account Numbers 1615523, 1615531, 1625549, 1615556, 1615580, 1615598, 1615606, 1615614, 1615622, 1615630, 1615309, 1615317, 1615325, 1615333, 1615366, 1615374, 1615382, 1615390, 1615432, 1615440, 1615424, 1615416, 1615408, 1615473, 1615481, 1615507, 1615499 and 1615515 by the Lane County Assessor. A telephone trial was held June 21, 2000. David Carmichael represented the plaintiff. John Hammer appeared as a witness for plaintiff. Defendant waived participation in the trial.

STATEMENT OF FACTS

The property is a commercial subdivision located next to Interstate 5 in Creswell. It is zoned general commercial. Plaintiff purchased the property in four different parcels. The first, and largest parcel was purchased in June 1998. The other parcels were purchased in July, September and October 1998.¹ After assembling the four parcels,

¹ Plaintiff's exhibit indicated that the fourth parcel was purchased in October 1999. (Ptf's Ex 1 at 4.) The court believes that this is a typographical error since it would

plaintiff subdivided the property. The plat map was recorded on November 18, 1998. The total property of 54.82 acres consists of 30 lots. Plaintiff is appealing 24 of the lots or 28 accounts.² These 24 lots total 39.33 acres. Three of the lots not appealed are wetlands valued at \$1,000 an acre. Plaintiff does not dispute their values. The last three lots, while owned by plaintiff on the assessment date of January 1, 1999, have since sold.

Plaintiff paid \$2,569,536 for the four parcels of land. Plaintiff incurred \$152,085 in additional costs relating to the development of the property before January 1, 1999. Plaintiff's total basis in the property is \$2,721,621. The real market value of the lots that sold and the wetlands lots total \$1,048,330. Plaintiff argues that its property should be valued at its total basis less the real market value for the lots that sold and the wetlands lots. Plaintiff asks the court to value the 28 accounts a total of \$1,673,291 or \$.9767 per square foot.

Mr. Hammer is a principal in plaintiff. He became involved with plaintiff after the four parcels were assembled. He testified that plaintiff overpaid for the parcels. On the assessment date of January 1, 1999, the property was bare land. It had no sewer, no water, no electricity and had not been graded. It had, of course, been subdivided. He testified that the three lots that sold were the most desirable lots in the subdivision. Mr. Carmichael argued that the subdivision is 50 acres of commercially zoned property in an area that can not support 50 acres of commercially zoned property. He further argued that the subdivision's eventual use will be for a transient population.

have been difficult for later events to have occurred if plaintiff did not own the fourth parcel.

² Four lots have two account numbers. This is because those lots straddle two taxing districts. This is commonly referred to as a code split.

Defendant's assigned real market value for the property at issue is \$3,206,600. In assigning a real market value, defendant also assigned a percentage of completion to each lot. The percentages of completion ranged from 25 to 50%. Defendant valued 14 of the lots between \$1.50 and \$2.00 per square foot. These lots total 28.72 acres. Four lots with limited access were valued at \$.75 per square foot. These lots total 3.61 acres. The remaining six lots at issue were valued between \$2.70 and \$4.00 per square foot and total seven acres. Five of those lots appear to have the best access of the 24 lots. Two of the lots are on a corner and will have access to two roads. The other three lots are next to Interstate 5.

COURT'S ANALYSIS

As noted above, plaintiff argues that its property should be valued at its total basis less the real market value for the lots that sold and the wetlands lots. This is precisely the argument the plaintiffs made in *Ward v. Dept. of Revenue*, 293 Or 506, 650 P2d 923 (1982). The Court in *Ward* was not persuaded by plaintiffs' argument. The property involved was a 26 acre parcel. It included 20 condominium units and some undeveloped tax lots. The appeal involved the valuation of a 14 acre undeveloped portion of the property. The property at issue included 10 tax lots. *Id.* at 508. Plaintiffs argued that the court "should compute the fair market value of the 14-acre tract by the price which they had recently paid for the entire 26-acre parcel subtracting the undisputed assessed value of the remainder of the parcel." *Id.* The court found that "[t]he market value of a large parcel does not necessarily equal the sum of the market value of the parts into which that parcel may be divided or subdivided because smaller parcels may be more readily marketable." *Id.* at 510. Further, the court found that,

“[p]laintiffs' evidence of the value of the undivided whole is strong, but their formula for determining the value of the 14-acre part does not take into account the distinction in marketability of larger and smaller parcels. Nor does it take into account that a hypothetical division of the property may be considered in determining the highest and best use of the property as a measure of true cash value[.]”

Id. at 511 (citation omitted).

In the present case, there is no “hypothetical division of the property.” It has, in fact, been subdivided. The fact that the property was essentially bare land on the assessment date appears to have been taken into account by defendant’s percentage of completion calculation for each lot.

Also relevant is the Oregon Supreme Court’s decision in *First Interstate Bank v. Dept. of Rev.*, 306 Or 450, 760 P2d 880 (1988). There the Court stated that, “ORS 308.205 requires the true cash value of each tax lot to be assessed separately. The value of each lot by itself, **not as a portion of a larger piece of property**, must be assessed.” *Id.* at 453 (emphasis added) (footnote omitted). While *First Interstate* was concerned with the application of a developer’s discount, the principle enunciated above also applies to the present case.

CONCLUSION

The court has seriously weighed and considered the testimony of Mr. Hammer and the exhibits. After considering the evidence, plaintiff has not demonstrated that the value of the 28 accounts should be reduced to a total of \$1,673,291. This court finds the decisions of the Oregon Supreme Court in *Ward* and *First Interstate* controlling. Notwithstanding defendant’s lack of appearance, as this court stated in *Ekstrom v. Dept. of Rev.*, No. 3595, 1995 WL 60549 at *1 (Or. Tax Feb. 3, 1995), “[a] trier

of fact may find evidence is not persuasive even though it is uncontroverted.”

IT IS THE DECISION OF THE COURT that plaintiff’s appeal is denied.

Dated this _____ day of July, 2000.

SALLY L. KIMSEY
MAGISTRATE

IF YOU WANT TO APPEAL THIS DECISION, FILE A COMPLAINT IN THE REGULAR DIVISION OF THE OREGON TAX COURT, FOURTH FLOOR, 1241 STATE ST., SALEM, OR 97310. YOUR COMPLAINT MUST BE SUBMITTED WITHIN 60 DAYS AFTER THE DATE OF THE DECISION OR THIS DECISION BECOMES FINAL AND CANNOT BE CHANGED.

THIS DOCUMENT WAS SIGNED BY MAGISTRATE SALLY L. KIMSEY ON JULY 6, 2000. THE COURT FILED THIS DOCUMENT ON JULY 6, 2000.