IN THE MAGISTRATE DIVISION

OF THE OREGON TAX COURT

Property Tax

CRAIG L. MYERS,	)	
	)	
Plaintiff,	)	No. 000413B
	)	
v.	)	
	)	
MARION COUNTY ASSESSOR,	)	
	)	
Defendant.	)	**DECISION**

Plaintiff appealed the real market value of his property after its disqualification from forest deferral. The tax years at issue are 1995-96, 1996-97, 1997-98, 1998-99 and 1999-00. The property is listed as Account Number R93565 by the Marion County Assessor. A trial was held in Salem on August 30, 2000. Craig Myers appeared for himself. Richard Kreitzer and Jeff Procter appeared for defendant.

STATEMENT OF FACTS

The subject property is 19.78 acres. It had been in special assessment since 1993. On February 7, 2000, plaintiff hand-delivered to defendant a letter stating his "intent to immediately remove [his] property in South Salem from forest deferral." (Ptf's Ltr dated Feb. 7, 2000.) Defendant inspected the property, noted that it did not have sufficient trees to qualify as forest deferral and sent plaintiff a letter disqualifying the property from forest deferral. That letter stated that, "[t]he additional tax in the amount of $38,924.20 has been extended to the roll and will be due and payable November 15, 2000." (Def's Ltr dated Feb. 9, 2000, at 1.)

Plaintiff, in a Motion for Summary Judgment, argued that the additional taxes imposed as a result of the disqualification should not be effective until tax year 2001-02. By its Order filed August 2, 2000, the court denied plaintiff's Motion for Summary Judgment and ordered that the additional taxes plaintiff will owe are properly imposed in tax year 2000-01.

At trial, plaintiff argued that there are two issues for the court to decide. The first issue is the values to be used in calculating additional taxes owed. The second issue, plaintiff argued, was the real market value as of January 1, 2000, the assessment date for tax year 2000-01. The court ruled at trial that an appeal of the real market value for tax year 2000-01 was premature.

Defendant submitted evidence prior to trial. It was received on August 16, 2000, 14 days before trial. Plaintiff submitted nothing to either defendant or the court prior to trial. At the trial he attempted to submit some materials into evidence. Defendant objected under MDR 12A.[1] The court excluded the materials.[2]

As noted above, defendant's letter of February 9, 2000, originally asserted $38,924.20 owing in additional taxes. Defendant calculated that amount based on a value of $30,000 per acre for tax year 1995-96 or a total value of $593,400. Defendant treated

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[1] MDR 12A requires that "[e]ach party shall provide the court and the other parties with copies of all materials to be introduced into evidence in support of that party's case. While the early exchange of information is encouraged, the materials *must be received no later than 10 days* before the trial date." (Emphasis in original.)

[2] Plaintiff mentioned during the trial that he "was going to be coming in on appeal[.]" There is some question in the court's mind that plaintiff's act of not submitting **any** materials before trial and attempting to submit those materials at trial, contrary to the court rules, may be a failure to exhaust his remedies at the Magistrate Division which could potentially limit his success at the Regular Division.

tax year 1995-96 as a base year and calculated the values for the other years at issue based on tax year's 1995-96 value.[3] (Def's Ltr dated Feb. 9, 2000, at 2.)

On April 4, 2000, defendant sent plaintiff a corrected disqualification letter. That letter asserted $10,901.78 owing in additional taxes. (Def Ex 5.) In calculating the amounts owed, defendant used a base amount per acre of $5,040 for tax year 1990-91.[4] (Def Ex 7.) Defendant derived that number from a 1990 schedule[5] used to calculate farmland values at the south end of the county. Mr. Kreitzer testified that defendant intended to develop a schedule of land values for the land within the urban growth boundary of Salem. Because defendant had not completed that project, they used the 1990 schedule and trended the amount forward to the years at issue. The schedule contains four columns and 29 rows. Each row represents a parcel size, such as two acres, three acres and so on. The columns were labeled "Fair," "Average," "Good" and "Good." The

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[3] The other values assigned by defendant in the February 9, 2000, letter were $39,000 per acre for tax year 1996-97, $27,000 per acre for tax year 1997-98, $27,810 per acre for tax year 1998-99 and $28,644 for tax year 1999-00. (*See* Def's Ltr dated Feb. 9, 2000 at 2.)

[4] The values assigned by defendant in the April 4, 2000, letter were $8,462 per acre for tax year 1995-96, $11,000 per acre for tax year 1996-97, $7,616 per acre for tax year 1997-98, $7,844 per acre for tax year 1998-99 and $8,079 for tax year 1999-00. (Def Ex 7.)

[5] It appears that the schedule may have been developed to comply with the mandate of OAR 150-308.205-(A) (2)(i) which states that "[t]he real value for rural lands shall be based on an average price per acre for each size of parcel. Adjustments to the value shall be made to those acres with more or less utility." "Rural lands are defined as those lands with property classification 400, 401, 500, 501, 600, 601, 800 and 801 as defined by 150-308.215. They are distinguished from platted land as acreages in varying sizes and are either improved or unimproved." OAR 150-308.205-(A) (1)(c). The property classification of the subject property was 420 for the years at issue and was therefore not rural land within the meaning of the regulation. (*See* Def Ex 7.)

first "Good" column represented land with good soil outside of Salem's urban growth boundary. The second "Good" column represented everything inside Salem's urban growth boundary. Because plaintiff's property is inside Salem's urban growth boundary, defendant valued it using the second "Good" column.

Mr. Myers argued that the property should be valued using the first "Good" column. Using the first "Good" column would lead to a value of $3,000 per acre in 1990.[6] He argued that had the property been appraised by someone aware of its limitations it would have been valued at $3,000 per acre in 1990. He asserted that similarly situated property was valued by defendant at $2,960 in 1990. Plaintiff paid $6,400 per acre in 1993. He harvested $25,000 worth of timber in 1995. He listed the property for sale from March 1999 through September 1999 for $30,000 per acre. He testified that the property has no access to water. He argued that at this point in time, the property is not able to be developed. As noted above, however, he submitted no evidence to support his assertions.

Defendant submitted two comparable sales into evidence. Both comparable sales were sales of bare land inside Salem's urban growth boundary. Sale number one is adjacent on two sides to the subject property. It totals 37.73 acres or is nearly twice the size of the subject property. It sold for approximately $35,000 per acre in October 1998. Mr. Kreitzer noted that due to financing terms the sales price per acre was low.[7] He did not attempt to quantify the effect of the financing terms on the price. Mr.

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[6] Based on defendant's trending, plaintiff asks the court to value the property at $5,037 per acre for tax year 1995-96, $6,548 per acre for tax year 1996-97, $4,533 per acre for tax year 1997-98, $4,669 per acre for tax year 1998-99 and $4,809 for tax year 1999-00.

[7] Plaintiff disputed this point and argued that the sales price per acre was high due to favorable financing terms.

Kreitzer testified that to the best of his knowledge, comparable sales number one has the same levels of service as the subject property. Comparable sale number two is less than one half mile away from the subject property. It sold for $37,200 per acre in May 1999. It is slightly less than ten acres or is one half the size of the subject property. Both comparable sales appear to have the same limitations as to their ability to be developed as the subject property.

COURT'S ANALYSIS

The statute that governs the imposition of additional taxes when property was removed from forest deferral prior to July 1, 2000, is *former* ORS 321.372 (1997).[8] That statute provides:

> "If and when the designation of forestland is removed pursuant to ORS 321.359 from any parcel of designated forestland, the assessor shall notify the owner of the land and there shall be added to the tax extended with respect to such property on the next tax roll **an amount equal to the difference between the taxes assessed against the land and the taxes that would otherwise have been assessed against the land had the land not been in forestland designation for each of the last five years** * * * preceding the year in which the land was disqualified for such designation."

Former ORS 321.372(1) (1997) (emphasis added).

If the subject property had not been in forest deferral it would have been assessed at its real market value. Real market value is defined as "the amount in cash that could reasonably be expected to be paid by an informed buyer to an informed seller,

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[8] *Former* ORS 321.372 (1997), *repealed by* Or Laws 1999, ch 314, § 94, effective July 1, 2000. The statutes replacing *former* ORS 321.272 (1997) are encompassed in Oregon Laws 1999, chapter 314. Those statutes are effective for tax years beginning on or after July 1, 2000. Or Laws 1999, ch 314, § 96.

each acting without compulsion in an arm's length transaction occurring as of the assessment date for the tax year." ORS 308.205(1) (1999).[9]

Plaintiff argues that defendant used the wrong column on the 1990 schedule and the property should be valued at approximately 40% less than defendant's assigned values. (*See* Def Ex 7.) He also argues that his property is not equitably assessed compared to surrounding properties. Plaintiff is making a uniformity argument. Article I, section 32 of the Oregon Constitution requires uniformity of taxation within the same class of property. The Oregon Supreme Court held in *Meadowland Ranches v. Dept. of Rev.*, 277 Or 769, 562 P2d 183 (1977), that "[i]n order to constitute an unconstitutional discrimination in such a case we have held that 'arbitrary and systematic discrimination' is required; that it must be shown that 'widespread relative nonuniformity exists,' and that 'relative, not absolute, uniformity' of assessment is sufficient to satisfy the requirement of the Oregon Constitution." *Id.* at 776 (citations omitted). Plaintiff submitted no evidence supporting his argument. His testimony made reference to one property and its assessment for tax year 1990-91. The years at issue are tax years 1995-96 through 1999-00. Any uniformity arguments should have addressed defendant's valuations of comparable properties during the years at issue. Plaintiff has not shown "arbitrary and systematic discrimination" or "widespread relative nonuniformity" within the meaning of Article I, section 32 of the Oregon Constitution.

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[9] The definition of real market value was identical in ORS 308.205(1) (1997). ORS 308.205(1) (1995) defined real market value as "the minimum amount in cash which could reasonably be expected by an informed seller acting without compulsion from an informed buyer acting without compulsion, in an arm's-length transaction during the fiscal year."

Defendant presented evidence showing two ranges of values. Defendant valued the property at $8,402 per acre in tax year 1995-96. As noted above, defendant derived that number from a 1990 schedule used to calculate farmland values at the south end of the county. Defendant also presented evidence of two comparable sales. One of the comparable sales adjoins the subject property. It sold for $35,000 per acre in October 1998. Plaintiff presented no evidence other than his testimony. Plaintiff attempted to rely on a value extrapolated from the 1990 schedule. The court finds that the most convincing evidence of value is comparable sale number one. The court considers an actual sale of a nearly identical property more convincing than bare testimony about a listing of the subject property. Comparable sale number one sold during the period at issue. It is adjacent to the subject property, with the same limitations as to its ability to be developed. It has the same levels of service as the subject property. It is nearly twice as large as the subject property. Additionally, the financing terms may have resulted in a somewhat low sales price per acre. Defendant did not make any adjustments to the price per acre of comparable sale number one. Any adjustments would likely have indicated a higher value per acre for the subject property.

The issue then becomes whether the court has the ability to increase the real market value over what defendant's letter of April 4, 2000, recommended. This situation is similar to the situation before the court in *Clark v. Dept. of Rev.*, 14 OTR 221 (1997). In *Clark*, the assessed values of the properties at issue were $350,135. Taxpayers appealed. On appeal before the Department of Revenue, the assessor's representative argued that the properties should be valued at $731,280 and submitted evidence to support that argument. *Id.* at 222. Taxpayers argued that the assessor could not present

evidence of values greater than assessed values. The Court disagreed. The court stated that "[b]ecause trials are *de novo*, it is possible for the assessor to improve his case." *Id.* at 224. The court reasoned the assessor may improve his or her case because,

> "Assessed values are typically based on mass appraisal techniques. As a property tax appeal proceeds, the property is given more individual attention and, consequently, the determination of value becomes more refined. Because the goal of contested proceedings is to determine the real market value of property, an assessor must be allowed to present evidence of that value."

Id. at 226.

Similarly, taxpayers also argued that the court was prevented from finding a value greater than the assessed value. The court found that "[i]n property tax appeals concerning value, the issue before the Tax Court is real market value, not whether the assessed value is correct. In a *de novo* proceeding, assessed value is irrelevant in determining real market value." *Id.* at 225. Further, the court held that "when the evidence warrants it, both the department and Tax Court are **required to find a higher value**." *Id.* at 226 (emphasis added).

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CONCLUSION

The court has seriously weighed and considered the evidence and the testimony of the parties. The court finds that the real market value of the property was $692,300 or $35,000 per acre for tax year 1999-00.

IT IS THE DECISION OF THE COURT that the real market value of property known as Account Number R93565 by the Marion County Assessor shall be $692,300 for tax year 1999-00.

IT IS THE FURTHER DECISION OF THE COURT that defendant shall calculate the additional taxes owed using the real market value of tax year 1999-00 as a base year.

Dated this _____ day of October, 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 OCTOBER 24, 2000. THE COURT FILED THIS DOCUMENT ON OCTOBER 24, 2000.