

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

TOM MOYER THEATRES,)
)
 Plaintiff,) TC-MD 000667A
)
 v.)
)
 MARION COUNTY ASSESSOR,)
)
 Defendant.) **DECISION**

The issue in this appeal is the assessment of Marion County property, Account R24341, for the 1999-2000 tax year. Plaintiff was represented by W. Scott Phinney, Attorney at Law. Walt Aman and Daniel R. Orman testified for Plaintiff. Defendant appeared through Jane Stonecipher, Assistant County Counsel, and used Robert Weirick and John Lockwood, both of Defendant's staff, as witnesses.

As a preliminary matter Plaintiff requested that it be permitted to substitute appraisals. Defendant did not object. The motion was granted at trial.

Trial in this case was held on January 17, 2002. This case is removed from abeyance and the decision was delayed to permit the court to consider the implications of the Supreme Court's opinion in *Flavorland Foods, Inc. v. Washington County Assessor and Dept. of Rev.*, 334 Or 562, 54 P3d 582 (2002).

STATEMENT OF FACTS

The property in dispute is located at 365 Lancaster Drive SE in Salem, in a commercial district approximately three miles east of the city's central business sector and accessed by Hawthorne Avenue, Cordon Road, and Market, Center, and State Streets. The neighborhood is anchored by shopping centers and big box retailers, and features

strip developments, with some industrial properties as well as single and multifamily housing. The specific features of the property are that it is located between Lancaster Drive and Interstate 5 but with limited exposure to either, is roughly rectangular in shape, and slopes away from Lancaster Drive before becoming level at its central and western portions. An 11 screen multiplex movie theater occupies approximately a third of the area; the balance is not improved with any buildings. Only the land is at issue. The land's total real market value on the roll is \$4,768,470.

Plaintiff's appraisal of the property was prepared by Daniel R. Orman.

Mr. Orman observed that, while the total area of the parcel was 19.26 acres, 1.90 acres were placed in a separate taxing district, and chose to value 17.36 acres. He further distinguished his analysis by treating the land supporting the movie theater as 6.39 acres of developed property, rectangular in shape, level, with fair exposure to Lancaster Drive. The remaining 10.98 acres were regarded as "L" shaped, generally level, with fair to poor exposure to Lancaster Drive.

Mr. Orman next looked to six sales and one failed transaction which occurred between 1996 and 2000 at unadjusted prices from \$1,306,800 to \$2,300,000. Two of the transactions were from Albany. The balance were as to Salem properties. The largest property was approximately 615,000 s.f.; the smallest was some 182,500 s.f. The resulting price per square foot ranged from \$3.74 to \$8.00. Mr. Orman opined that the strongest indicators were sales at 1135 Lancaster Drive SE and 630 Hawthorne Avenue, each at \$6.00 per s.f. The witness went on to testify that these properties had superior access and exposure relative to the subject, the former to Highway 22 and the latter to Interstate 5.

After considering this point, and balancing smaller properties, with superior access and exposure to Lancaster Drive, against larger properties located off Lancaster Drive, Mr. Orman chose \$5.00 per s.f. as the indicator for the value of the land supporting the movie theater, for a result of \$1,390,000. These same sales led Mr. Orman to select \$4.25 per s.f. as his opinion of the value of the balance of the land, resulting in \$2,030,000. The resulting sum of his opinions of value led Mr. Orman to conclude that the total real market value of the land was \$3,420,000.

Defendant's estimate of the real market value of the property was prepared by Mr. Weirick, whose conclusion of \$5,000,000 was greater than the sum carried on the roll. Eleven sales occurring between 1996 and 2001 were analyzed by Mr. Weirick. One of the sales was located in Canby; the balance were from Salem. These sales ranged from less than half an acre to 14 acres in area. The unadjusted prices were from \$275,000 to just over \$4,000,000, for prices per square foot between \$6.00 and \$24.59.

A sale upon which both Mr. Weirick and Mr. Orman relied was the April of 1996 purchase of five acres, for \$1,306,800, or \$6.00 per s.f., at 630 Hawthorne Avenue SE, directly across I-5 from the subject. Aside from this, more differences than similarities mark the two appraisals. Unlike Mr. Orman, Mr. Weirick valued the 19.26 acres without regard to its division into two taxing districts. Another distinction between the two appraisers was their perspective as to how to value the land supporting the movie theater relative to the balance of the property. While Mr. Orman viewed the 6.39 acres under lease to the movie theater as developed land, and the balance as excess, Mr. Weirick made no such distinction. In Mr. Weirick's appraisal, 14.95 acres are treated as developed property, as to which he concluded a value of \$7 per s.f. was appropriate.

Mr. Weirick found only 3.33 acres to be undeveloped, to which he applied a value of \$3 per s.f.

COURT'S ANALYSIS

Plaintiff appealed the value of the land. Its method was to divide the property into two segments, the first the land supporting the movie theater and the second the balance of the property. Using seven sales, Plaintiff argued the real market value of the property, to be used in the subsequent calculation of assessed value, was \$3,420,000. The court is not so persuaded.

Beginning with the value of the land supporting the movie theater, Plaintiff's appraisal is handicapped by the fact that it did not adjust for an important difference between the subject property and its seven comparables. All of Plaintiff's sales were of bare land. The land supporting the movie theater, however, has been developed into a successful commercial property. The process of developing land to support a higher and better use requires the expenditure of substantial sums in development costs. The court would have found Plaintiff's proofs more persuasive had they adjusted for this factor.

The importance of accounting for this point is most dramatically seen in property at the west side of 25th Street, between McGilchrist and Mission Streets. This was the only sale presented by Plaintiff on the order of Plaintiff's recommended value for the land supporting the movie theater of \$5 per s.f. This was a sale of bare land. Plaintiff did not adjust for any costs to develop the land. Defendant testified that significant development expenses burdened the unimproved McGilchrist property. These included engineering studies, the cost of moving a ditch, the widening of a road for the property's access and

egress, traffic studies, and providing additional turn lanes for the property. Plaintiff did not deny that these expenses are necessary. Plaintiff's own testimony also conspicuously demonstrated that all these problems had been encountered, and solved, in the development of the movie theater. It follows that the value of the land supporting the movie theater must be worth more than the unimproved McGilchrist property.

There is no way for the court to derive this information from the sales. Of the six other comparables Plaintiff presented, two were from Albany and one was from an unconsummated transaction. That information, at \$3.74 to \$4.50 a square foot, is useful only in terms of defining the lower range of possible value. The court agrees with Plaintiff that the property lacks the exposure and access from Lancaster Drive of the sale at 3535 Lancaster Drive, which sold for \$8 per s.f. This sale sets out the ceiling of the property's range of value. Within these confines Plaintiff and Defendant have set out sales at Hawthorne, Lancaster, and Mission Streets at values of \$6 and \$7 per s.f. Plaintiff has described the access and exposure of these properties as superior to the subject. Defendant has disagreed. This juxtaposition of bare opinion is not persuasive.

As to the balance of the property, Plaintiff has proposed a value of \$4.25 per s.f. As to this aspect of Plaintiff's case the court's conclusion is that Plaintiff has reasoned too far beyond the available evidence.

Plaintiff, pointing to the fact that it decided to reduce the size of the theater from 16 screens to 11, and after averring that it was denied an opportunity to place a fast food restaurant on the property, asserted that the property has restrictions on its use. Even if these statements are given their greatest possible weight, they stop short of making Plaintiff's case. Every property in an urban area has dramatic restrictions on its use.

Stating that a property cannot be developed with uses that require a high traffic count is not the same as demonstrating that it will be denied a use that makes it a valuable property. Lacking more developed testimony on this point, the court will not presume that the range of possible uses of this property is so significantly diminished.

Accompanying this conclusion that Plaintiff has not demonstrated an actual, as opposed to a suggested, reduction in the proposed uses of the property is the sense that \$4.25 per s.f. is simply too low a value. The court does not dispute that this portion of the property's access and exposure to Lancaster Drive are inferior, its overall shape is less than ideal, and the city of Salem imposes real constraints on its development. However, at issue is the last piece of large undeveloped land located in an important commercial district with some exposure and access to thoroughfares with high traffic counts. Utilities are available, and a substantial amount of fill and associated site development is already in place. Plaintiff has not presented a sale of a Salem property which approaches the \$4.25 per s.f. it proposes. In the absence of such a demonstration the court is not persuaded.

For its part Defendant, while it has presented evidence that the real market value of the property was \$7 per s.f., has not requested that the exception value of the property, calculated at \$6.50 per s.f., be redone. On its review the court is satisfied that \$6.50 per s.f. is within the range of the property's real market value. As to the balance of the determination of exception value, Oregon's constitution specifies that certain changes to existing property after July 1, 1995, are considered in redetermining maximum assessed value. One such change to the property that can redetermine maximum assessed value is "new property or new improvements to property." Or Const, Art XI, § 11(1)(c)(A). "New

property or new improvements” to property is defined by ORS 308.149(5)(a)(1)¹ to mean changes in the value of property as the result of new construction, reconstruction, major additions, remodeling, renovation or rehabilitation of property. In this case a potent indicator of how much of the property is “new construction” is the permit which authorized the construction of the multiscreen movie complex. The face of the permit explicitly states it is for a parcel of 19.2 acres. Site plans confirm that this reference to the property as a whole was not accidental. In the conversion from a drive-in theater the property as a whole was changed, with extension of utilities, storm drains, and fill. Defendant’s calculation of the exception value is correct.

CONCLUSION

IT IS THE DECISION OF THIS COURT that the appeal is denied.

Dated this _____ day of April, 2003.

SCOT A. SIDERAS
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 97301-2563. 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 SCOT A. SIDERAS ON APRIL 10, 2003. THE COURT FILED THIS DOCUMENT ON APRIL 10, 2003.

¹ All references to the Oregon Revised Statutes are to 1999.