

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Property Tax

KEY CORPORATE CAPITAL, INC./GECC,	)	
	)	
Plaintiffs,	)	No. 010481D
	)	
v.	)	
	)	
HOOD RIVER COUNTY ASSESSOR and	)	<b>DECISION ON PLAINTIFFS'</b>
DEPARTMENT OF REVENUE,	)	<b>MOTION FOR [PARTIAL]</b>
STATE OF OREGON,	)	<b>SUMMARY JUDGMENT AND</b>
	)	<b>DEFENDANT'S MOTION FOR</b>
Defendants.	)	<b>SUMMARY JUDGMENT</b>

Plaintiffs appeal the board of property tax appeals (BOPTA) denial of Plaintiffs' 2000-2001 Personal Property Tax Petitions. This matter is before the court on Plaintiffs' Motion for [Partial] Summary Judgment<sup>1</sup> and Defendant's (Department of Revenue) Motion for Summary Judgment. The court has considered the stipulated facts and motions of the parties. Oral argument was held on Wednesday, May 1, 2002.

**STATEMENT OF FACTS**

During the oral argument, the parties confirmed their agreement of the following stipulated facts. Plaintiffs, Key Corporate Capital, Inc. and GECC, own the property<sup>2</sup> identified by the Hood River County Assessor as Account Nos. 67317 and 67880. Plaintiffs leased the property to B. C. Marketing Concepts, Inc. which does business under the name of Full Sail Brewing Company.

On February 20, 2001, Plaintiffs and B. C. Marketing Concepts, Inc. filed two

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<sup>1</sup>At the suggestion of Defendant, Plaintiffs agreed that their pleading is a Motion for [Partial] Summary Judgment.

<sup>2</sup>Even though the Plaintiffs filed a petition entitled "personal property" the parties have agreed that the property is real property.

separate 2000-2001 Personal Property Petitions with BOPTA.<sup>3</sup> On the same day, BOPTA issued an Order of Dismissal for each of Plaintiffs' petitions. (Ptf's' Complaint at 2-3; BOPTA Petition Nos. 36 and 37.) BOPTA concluded that it lacked jurisdiction to hear the issue(s) appealed because the petitions were filed past the filing deadline. In the portion of the petition labeled "When and Where to File Your Petition, the following appeared: "Appeal petitions must be filed with the Board of Property Tax Appeals by January 2, 2001."

Plaintiffs allege that BOPTA erred when it denied Plaintiffs' the opportunity to amend two other petitions timely filed by Plaintiffs' lessee, B.C. Marketing Concepts, Inc. The original petitions filed by B.C. Marketing Concepts, Inc., specified two accounts, Nos. 11594 and 67049<sup>4</sup>, as appealed. In Plaintiffs view, these two accounts are part of a "unit of property" (a brewing facility), which is identified by the Hood River Assessor in four different accounts. The original petition omitted two accounts, Nos. 67317 and 67880, which are the subject of this appeal.

Plaintiffs, citing OAR 150-309.100(1)-(A)(5)(b), argue that a taxpayer "may amend a petition to the Board of Property Tax Appeals to include a separate account that is part of the 'parcel' that makes up the property." (Ptf's' Mot for [Partial] Summ J at 5.) Plaintiffs conclude that because the property is real property the "parcel at issue supports all the property in question and meets the definition in OAR 150-308A.256(1)(a)."<sup>5</sup> (*Id.*) In keeping with the guidelines for valuation of industrial

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<sup>3</sup> The petition form instructed the petitioner to "[c]omplete **one petition** form for **each account** you are appealing." (Ptf's' Ex 8 and 9.)

<sup>4</sup> These accounts are also the subject of an appeal in this court, OTC-MD Case No. 010322D, which is in abeyance pending resolution of this case.

<sup>5</sup> Plaintiffs conclude that because ORS 308.377 was renumbered ORS 308A.256 in 1999, OAR 150-309.100(1)-(A)(5)(b) defining parcel within the meaning of OAR 150-308.377(1)(b) should be read as *defining parcel within the meaning of OAR 150-308A.256(1)(a)*. See OAR 150-309.100(1)-(A)(5)(b).  
DECISION CASE NO. 010481D

property, Plaintiffs argue that in this case the four accounts are part of an operating integrated plant, which must be valued together, not separately, as a going concern. *Id.* at 6.

Defendant alleges that BOPTA has no statutory authority “to take jurisdiction over an appeal of property assessment that is made after December 31 of the respective tax year.” ORS 309.100(2). (Def’s Mot for Summ J at 3.) Defendant concludes that Plaintiffs in this appeal did not have the right to file an amended petition because they failed to file an “original” petition by the due date, January 2, 2002.

Defendant argues that through an administrative rule promulgated by the Oregon Department of Revenue, BOPTA may permit a timely appeal to be amended “to include property in another account, which, together with property in the account(s) that was timely appealed, creates a homesite parcel.” (*Id.* at 3-4.) Defendant concludes that the two accounts at issue are not part of a homesite parcel. (*Id.* at 4.)

Defendant alleges that Plaintiffs’ request to amend timely filed petitions on two other accounts was not properly filed. Defendant alleges that B. C. Marketing Concepts, Inc., the original petitioner, did not attach copies of the lease agreement(s) for the property at issue with its amended petitions to evidence its obligation to pay taxes. ORS 309.100(1). By failing to include copies of the lease agreement(s)<sup>6</sup>, B. C. Marketing Concepts, Inc.’s petitions were deficient. In addition, Defendant questions the standing of Plaintiffs to amend the original petitions filed with BOPTA.

### **COURT'S ANALYSIS**

The parties agree that Plaintiffs’ petitions were filed beyond the filing date

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<sup>6</sup>The parties stipulate that lease agreements were not attached to B. C. Marketing Concepts, Inc.’s petitions to amend. In Plaintiffs’ Exhibit 7, a copy of a letter to BOPTA concerning petitioners request to amend their petition, it is stated that “bills from the leasing companies to B. C. Marketing Concepts, Inc./Full Sail Brewing showing its liability for the property taxes” are enclosed.

(January 2, 2001) and can only be accepted by BOPTA as amendments to timely filed petitions. Plaintiffs allege that they and their lessee, B. C. Marketing Concepts, Inc., should have been permitted by BOPTA to amend petitions filed by B. C. Marketing Concepts, Inc. Plaintiffs rely on the Oregon Administrative Rule titled Board of Property Tax Appeals Deficient Petition Process, OAR 150-309.100(1)-(A), and the right to amend for the following permitted change to a petition:

“(b) Addition of a separate account number which, together with the original account appealed, creates a ‘parcel’ within the meaning of OAR 150-308.377(1)(b). Petitioner may not amend a petition to include a separate account which is not part of an identified parcel.”

Plaintiffs ask the court to substitute OAR 150-308A-256(1)(a) for OAR 150-308.377(1)(b) because the underlying statute was renumbered.<sup>7</sup> OAR 150-308A-256(1)(a) reads:

“‘Parcel’ is a **quantity of land** that is capable of being described in a single description by a closed traverse, or as one of a number of subsections or sections in a township(s), or as lots, blocks, or tracts in a subdivision \* \* \*.” (Emphasis added.)

In this case, the real property at issue consists of items employed in a brewing facility. This real property at issue is clearly not a “quantity of land” and, within the meaning of the administrative rule, is not a parcel.

Arguing that there is “no limitation restricting the application of the rule to land accounts only”, Plaintiffs contend that the “application of the rule to the circumstances of this case is particularly appropriate given the valuation methods for industrial property that look at a going concern value for the unit of property.” (Ptf’s Mot for [Partial] Summ J at 6.) If the court were to agree with Plaintiffs, it would be defining

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<sup>7</sup>OAR 150-308.377(1)(b) defines “parcel” as “a **contiguous quantity of land** in possession of, owned by, or recorded as property of the ‘same ownership’ capable of being described in a single description by a closed traverse \* \* \*.” (Emphasis added.) Both OARs define a parcel in terms of a quantity of land.

land in a context not suggested by the statute or the rule. The court will follow Plaintiffs own warning: “\* \* \* words of common usage should be given their plain, natural and obvious meaning.” (Ptfs’ Mot for [Partial] Summ J at 3.) There is nothing in the statute nor the rule to suggest that the court should look beyond the definition to create a special application of the word “parcel” in the context of the valuation of industrial property. See ORS 174.010.<sup>8</sup>

Having concluded that the property at issue along with the other two accounts previously appealed to BOPTA do not create a parcel as defined by the OAR, the court concludes that Plaintiffs were not entitled to amend their BOPTA petition under OAR 150-309.100(1)-(A).

Defendant’s Motion for Summary Judgment raises other arguments in an effort to persuade the court that it should grant Defendant’s Motion. Since the court has already concluded that Plaintiffs were not entitled to amend their BOPTA petitions, there is no need to evaluate Plaintiffs’ compliance with other statutory or administrative rule requirements.

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## CONCLUSION

Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiffs’ Motion for [Partial]

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<sup>8</sup> ORS 174.010 provides: “In the construction of a statute, the office of the judge is simply to ascertain and declare what is, in terms or in substance, contained therein, **not to insert what has been omitted**, or to omit what has been inserted; and where there are several provisions or particulars such construction is, if possible, to be adopted as will give effect to all.” (Emphasis added.)

Summary Judgment is denied.

IT IS FURTHER DECIDED that Defendant's Motion for Summary Judgment is granted.

Dated this \_\_\_\_\_ day of June, 2002.

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JILL A. TANNER  
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 JILL A. TANNER ON JUNE 18, 2002. THE COURT FILED THIS DOCUMENT ON JUNE 18, 2002.**