

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

HARBOR OIL, INC.,)	
)	
Plaintiff,)	No. 010564F (Control)
)	010578F
v.)	
)	
MULTNOMAH COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

This matter is before the court on the Plaintiff's appeal concerning the assessment of real¹ and personal² property for the 2000-01 tax year. A trial was held in the courtroom of the Pioneer Courthouse, Portland, Oregon, on February 20, 2002. The Plaintiff was represented by Kenneth S. Antell,³ Dunn Carney Allen Higgins & Tongue, LLP. Wilmer Briggs, majority interest holder in the property was also present. Richard Sanderman, Commercial Supervisor, Multnomah County Division of Assessment and Taxation, appeared for the Defendant.

STATEMENT OF FACTS

The property at issue is a 4.1 acre parcel located in the historic stockyards area of North Portland. It is in the 100-year flood plain of the Columbia River. (Def's Ex M at 3; Ex P at 1.) Force Lake is immediately south of the property; wetlands which drain into the lake are located west and south of the property. Heron Lakes Golf Course, a nesting area for the Great Blue Heron, is immediately south of the lake. The Columbia Slough is north of the site. (Def's Ex P at 1.) A number of zoning overlays impact the

¹ In Case No. 010564F, the property is identified as Multnomah County Account No. R238511.

² In Case No. 010578F, the property is identified as Multnomah County Account No. P426646.

³ Mr. Antell's first appearance in the case was at the trial. The court gave the Defendant an opportunity for either a postponement or a recess so Mr. Sanderman could consult with counsel. Mr. Sanderman stated that he was ready to proceed. The trial was held as scheduled.

property including an "h" restriction for height due to being on a flight path to the Portland International Airport, a "d" overlay requiring design review, and a "p" overlay on a small portion of the property designating that portion for environmental protection. (Def's Ex M at 5.)

History of the Property

The property's historical use as an industrial site dates back to its 1908 use as a stockyard. Oil reprocessing has been the main activity on the property since approximately 1961. (Def's Ex P at 1.) An oil reprocessing plant operates on the property today. Buildings, structures, and improvements on the property include a shop/office, warehouse, truck wash with canopy, boiler house, loading racks, and various oil tanks. (See Def Ex M at 20-22.)

According to the March 2001 Oregon Department of Environmental Quality (DEQ) Annual Status Report on the site, several events on the property have contributed to its current state of contamination. In May 1973, the DEQ visited the site and "found 'extreme oil runoff' into Force Lake." (Def Ex P at 1.) An oil spill from the property in 1974 covered surrounding wetlands and caused a petroleum sheen over Force Lake killing an estimated 400 fish. A fire destroyed the entire recycling facility in October 1979, "resulting in a spill of thousands of gallons of used oil and similar volumes of waste paint products and thinner, some of which reached the adjacent wetlands and Force Lake. The facility was rebuilt in 1980[.]" (*Id.*) During a 1988 DEQ site visit, a water sample detected 70 parts per million of Trichloroethene (TCE)⁴ in the oil/water separator on the site. (*Id.*) A June 1992 inspection of the property found hazardous waste, including TCE sludge, on the property including large quantities in

⁴ TCE is a solvent that was used to clean out tank trucks. (Def's Ex P at 3.)

drums some of which "were open and/or leaking." As a result of this inspection, a civil penalty was assessed for storage of hazardous waste without a permit and other violations. (*Id.*)

Due to the events on the property including the historical releases of hazardous substances including waste oil, TCE, and other petroleum products, the DEQ listed the property as a medium priority site in February 1995. (*Id.* at 4.) Following a reevaluation of the site in February 1998, the DEQ recommended a high priority listing of the site. In January 2000, DEQ referred the site to the Environmental Protection Agency (EPA) for further site assessment and a determination as to whether the property qualifies for the National Priority List, commonly referred to as superfund designation. (*Id.* at 2.) A preliminary assessment of the site was submitted to the EPA on May 18, 2001. (Ptf's Ex 43.) A final assessment by the EPA is pending.

Wilmer Briggs, the current CEO of Harbor Oil, Inc., and majority interest holder of the property, has obtained an estimate of \$486,000 to clean the contamination from the site. (Ptf's Ex 14 at 2.) This figure includes \$340,000 for soil cleanup; groundwater monitoring; DEQ oversight; legal, staff, and consulting costs; and risk assessment. (*Id.*) An additional \$146,000 is estimated for oil tank cleaning. (*Id.*)

Ownership of the Property

At trial, Mr. Briggs testified about his experience in the oil reprocessing industry and the current ownership and operations of the property under appeal. Mr. Briggs is an experienced businessman specializing in the oil reprocessing industry. Early in his career he worked for Chevron; in 1971 left Chevron to begin work as an independent businessman. From 1971 through 1979, Mr. Briggs' businesses included gasoline

stations with car washes, truck stops, and other types of oil and gas operations. Since 1979, his business enterprises have focused on the oil reprocessing industry.

Mr. Briggs explained that over the more than 20 years he has worked in the oil reprocessing industry he has bought, sold, and managed more than 30 properties impacted by hazardous wastes and contaminants. Because of his experiences with numerous contaminated sites, Mr. Briggs is well versed in the procedures and rules involved with the operation and clean-up of contaminated sites.

It was uncontested at trial that the last recorded purchase of the subject property was in 1994 for \$240,000.⁵ Mr. Briggs testified that in 1999 Bill Cundruff was the owner and operator of Harbor Oil, Inc. In October 1999, Mr. Cundruff told Mr. Briggs that he was having financial difficulties and intended to abandon the business. Mr. Briggs testified that, in spite of his knowledge that the property was contaminated, he viewed the situation as an opportunity to increase his market share by purchasing a nearby competitor. Consequently, Mr. Briggs offered Mr. Cundruff \$250,000 for the business, less any costs to clean up the site contamination.

In order to obtain full ownership and control of the property, however, Mr. Briggs discovered he had to purchase the interests of three secured creditors. In January 2000, Mr. Briggs purchased the first secured interest for \$51,627.39 (See Ptf's Ex 4 at 2) and the second secured interest for \$114,500 (See Ptf's Ex 3 at 2). Mr. Briggs testified that he is currently negotiating to purchase the third security interest after which he will hold fee title to the property.

During the process of purchasing the property, Mr. Briggs has consistently appealed the assessments of the property. In 1999, Mr. Briggs appealed to the

⁵ No documentation of this transaction was submitted to the court.

Department of Revenue (the department) requesting it exercise supervisory authority over the property. The department declined.⁶ On January 31, 2000, Mr. Briggs filed a Complaint in this court appealing the assessed value of personal property for the 1997-98, 1998-99, and 1999-2000 tax years. No prior appeal had been made to the Multnomah County Board of Property Tax Appeals (the board) for the years under appeal. Consequently, that appeal was dismissed because of failure to appeal to the board pursuant to ORS 309.100⁷ and failure to prove good and sufficient cause under ORS 305.288(5)(b). See *Harbor Oil, Inc. v. Multnomah County Assessor*, OTC-MD No. 000099F (May 12, 2000). In March 2001, Mr. Briggs filed an appeal of the real and personal property assessments with the board for the 2000-01 tax year. After the decision of the board sustaining the roll, a Complaint was filed in this court on April 16, 2001.

Plaintiff's Opinion of Value

To support the \$165,000 real market value (RMV) for the real property, the Plaintiff presented the testimony of Mr. George Miller, a certified general appraiser in both Oregon and Washington. (Ptf's Ex 1.) Mr. Miller testified about his familiarity with the oil industry, including years of work at Fletcher Oil; he also testified to his experience appraising contaminated properties such as the subject property. Mr. Miller prepared two letters discussing the impact of contamination on the value of the subject property. (See Ptf's Exs 8 and 40.) These letters are not formal appraisals of the property. Rather they provide an estimate of the value of the property in light of the

⁶ No documents were submitted to the court regarding this appeal or the Department of Revenue's decision.

⁷ Unless otherwise noted all references to the Oregon Revised Statutes and Oregon Administrative Rules are to 1999.

contamination. Mr. Miller's February 8, 2002, letter concluded that the total value of all the property, excluding only the general personal property, was \$440,000 before subtracting the costs to clean the contamination. (Ptf's Ex 40 at 4.)

When estimating the value of the land component of the real property, Mr. Miller was not able to find any sales of similar industrial land with contamination. Therefore, he looked "at the two most recent transactions dealing with the subject property." (*Id.* at 2.) The most recent transaction was Mr. Briggs' dealings to purchase "the ownership rights to the property by buying the mortgages held against the property." (*Id.*) The next most recent transaction was the \$240,000 purchase of the property and improvements in 1994. (*Id.*) According to Mr. Miller's analysis, the 1994 transaction was a "clear armslength transaction, the value of which is closely upheld by the next year's assessment." (*Id.*)

Because no other sales of contaminated industrial land were available, Mr. Miller turned his analysis to "other parcels involved in similar industry." (*Id.*) Using the assessed values for two similar properties, Mr. Miller arrived at his estimate of land value for the subject property. The assessed values for these similar properties already included an adjustment for contamination.

The first site, NuWay Oil (NuWay), was described as "a similarly environmentally impacted property" with "no assessment for the land." (*Id.*) The lack of assessment for the land indicated to Mr. Miller that the "land is so limited in use and affected by potential clean up costs, that the land has no tax roll value to Multnomah County." (*Id.*) The other site used was Merit USA, Inc. (Merit). (*Id.*) Merit has an "assessed value for the 2000/01 tax year of \$215,450 for the 6.57 acre site * * * an estimated value of \$32,793 per acre." (*Id.*) Mr. Miller's understanding was that this site also "has similar

environmental impacts when compared to the Harbor Oil location and estimated associated clean up costs are relatively similar." (*Id.*)

Based on four sources of evaluation, the two recent sale transactions involving the subject property and the tax roll or assessed values of the two "similar" contaminated properties, Mr. Miller reached an estimated land value of \$135,000 before subtracting the estimated clean up costs. (*Id.* at 3.)

Mr. Miller's letter also included an estimate of value for the improvements. His estimate of value for the building and structures was "based on drawings found on the building card, and [his] own measurements of the improvements." (*Id.*) He did not use the Marshall Valuation Service to check or confirm his value. Rather he based his estimate on his years of experience and professional judgment. After depreciating the improvements by 72 percent, Mr. Miller estimated the total value of the improvements at \$60,000. (*Id.* at 4.) As to the tanks, piping, and other processing components that were reported as part of the personal property, Mr. Miller used the value of \$245,000 as agreed upon by the county and the Plaintiff for these items. (*Id.*)

After reaching his total estimated value of \$440,000 for the land, all improvements, and the personal property, Mr. Miller then subtracted the \$486,000 cost-to-clean estimate the Plaintiff obtained from Cole's Environmental Consulting. Consequently, Mr. Miller determined that "the cost to cure the environmental deficiencies * * * exceeds the sum of the depreciated value of the improvements and the estimated land value." (*Id.* at 5.) At trial Mr. Miller testified that he believed the Plaintiff's requested value of \$165,000 to be reasonable considering the contamination on the site and his estimate of a \$0 (zero) net taxable value for the property.

Defendant's Opinion of Value

Richard Deich, commercial appraiser with the Defendant, prepared an appraisal for the real property. Mr. Deich testified that he followed ORS 308.205 and the provisions of OAR 150-308.250(E) in valuing the subject property. He further testified that, in conformity with the statute and administrative rule, his appraisal considered the highest and best use of the property. The appraisal further evaluated the site including its location and contamination. To estimate RMV of the land Mr. Deich selected four comparable sales of industrial land in the area of the subject property. (Def's Ex M at 6-7.) Uncontaminated properties were used in the appraisal because no similarly contaminated properties were available. See OAR 150-308.205-(E) (3)(a). After an estimate of value was reached assuming no site contamination, the value of the subject property was then adjusted by the estimated \$340,000 cost-to-clean the property. (Def's Ex M at 7-8.) The total estimated market value of the land after subtracting the contamination clean-up costs was \$360,000. (*Id.* at 8.)

To estimate the value of the improvements to the property, Mr. Deich used only the cost approach.⁸ Using the Marshall Valuation Service, Mr. Deich's appraisal estimated the "replacement cost, or the cost to build a similar structure based on market standards[.]" (*Id.* at 9.) The costs used were adjusted to the assessment date of January 1, 2000. (*Id.*) Following the guidelines from the Marshall Valuation Service, he then estimated the effective age of the buildings and determined the available remaining life. From there he determined an overall depreciation of 50 percent was appropriate for the buildings and structures. The yard improvements received an overall depreciation of 75 percent because they wear out faster and receive little

⁸ The market approach was not used because of the difficulty in finding properties with similar land, building, and site contamination characteristics. The income approach was determined to be inappropriate for this type of property. (Def's Ex M at 8.)

maintenance. (*Id.* at 11.) Based on the cost approach, Mr. Deich concluded the total estimated value for the improvements to be \$161,400.⁹

An appraisal of the personal property was prepared by Chris Johnson, a personal property appraiser with the Defendant. Mr. Johnson used the cost approach to estimate the value of the property based on the replacement cost or the used market price for the property. (Def's Personal Prop Appraisal at 5.) At trial Mr. Johnson testified that his conclusions of value were based on what it would cost to replace the asset on the used market in an arms length transaction. After completing his appraisal of the property and negotiating with the Plaintiff, the total value of the personal property was agreed to be \$274,900. (Def's Personal Prop Appraisal, Ex A.)

Prior to trial, the dispute relating to personal property was whether the tanks and other processing equipment, which had been classified as personal property, should have been classified as real property. During trial, however, the Defendant agreed that the oil tanks and other equipment labeled "industrial" are fixtures and therefore meet the definition of real property. See ORS 307.010. The appraisal report prepared by Mr. Johnson valued the personal property without regard to the issue of classification of the property as industrial equipment or whether the property is real property or business personal property as these terms are defined under ORS 307.010 and ORS 307.020 respectively. (Def's Personal Prop Appraisal at 2.)

PARTIES' ARGUMENTS

Prior to trial, the parties reached an agreement on the value of the personal property as filed for the 2000-01 tax year. The following values were agreed upon:

General Personal Property	\$ 24,660
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⁹ The improvement value for Building and Structures was \$153,340 and the yard improvements value was \$8,100, totaling \$161,440. He then rounded that figure to \$161,400.

Industrial Property, Tanks	\$161,820
Industrial Equipment List	\$ 37,460
Industrial Equipment Found on Tax Return	<u>\$ 50,960</u>
Total Value	\$274,900

(See Def's Ex A.)

At trial it was uncontested that the property is contaminated. While the Defendant accepted the Plaintiff's estimate of \$340,000 as the cost-to-clean the contamination on the property, there was no agreement as to whether the cost of \$146,000 to clean the oil tanks should be subtracted from the value of the property. (See Ptf's Ex 14 at 2.) The primary disagreement between the parties relates to the extent that the contamination on the property is accounted for in the Defendant's assigned RMV of the property.

Plaintiff's Argument

The Plaintiff argues that, if the personal property labeled "industrial" is valued as part of the real property, then in addition to the \$340,000 cost-to-clean the property, the Plaintiff asserts that the oil tanks on the property would also have to be cleaned at an estimated cost of \$146,000. The Plaintiff argues that the total cost of \$486,000 to clean the site contamination should be used to reduce the roll value. (See *generally* Ptf's Ex 14 at 2.) In support of this position, the Plaintiff contends that the best evidence of the RMV of the property is the most recent purchase by Mr. Briggs. After making the cost-to-clean adjustment of \$486,000 the Plaintiff requests the RMV of the real property be reduced to \$165,000 which is the amount paid by Mr. Briggs to the secured creditors to acquire his interest in the property.

Defendant's Argument

As a result of this appeal, the Defendant agreed to make a further negative adjustment based on the estimated cost of \$340,000 to clean the property. The

Defendant opposes any further reduction in the value of the property to account for costs associated with clean up of tanks, arguing that such clean up was not indicated as necessary in the DEQ report. (See Def Ex P.) The Defendant argues that its appraisal correctly determines the value of the property by following the method for valuing contaminated property as set forth in OAR 150-308.205(E) and taking into consideration the cost-to-clean estimate of \$340,000 submitted by the Plaintiff. Based on its real property appraisal, the Defendant argues that the market value of the land is \$360,000 and the market value of the improvements is \$161,440 for a total market value of \$521,440. (Def's Ex M at 12.) The Defendant also argues that the property should be classified as industrial real property under ORS 308.408 and, therefore, appraised according to the method set forth under ORS 308.411. This change in classification and appraisal approach, according to the Defendant, could lead to a change in the value of the property.

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ISSUES PRESENTED

Two issues are presented to the court for decision:

- (1) What is the RMV of the real property in light of the contamination?
and
- (2) Should the real property be classified and valued as industrial rather than commercial property?

COURT'S ANALYSIS

The statutory value standard for assessment purposes is RMV. *Gangle v. Dept. of Rev.*, 13 OTR 343, 345 (1995). RMV is defined in ORS 308.205(1) which reads:

"Real market value of all property, real and personal, means the amount in cash that could reasonably be expected to be paid by an

informed buyer to an informed seller, each acting without compulsion in an arm's length transaction occurring as of the assessment date for the tax year."

The method for determining RMV is set forth by ORS 308.205(2):

"Real market value in all cases shall be determined by methods and procedures in accordance with rules adopted by the Department of Revenue and in accordance with the following:

"(a) The amount a typical seller would accept or the amount a typical buyer would offer that could reasonably be expected by a seller of property.

"(b) An amount in cash shall be considered the equivalent of a financing method that is typical for a property.

"(c) If the property has no immediate market value, its real market value is the amount of money that would justly compensate the owner for loss of the property.

"(d) If the property is subject to governmental restriction as to use on the assessment date under applicable law or regulation, real market value shall not be based upon sales that reflect for the property a value that the property would have if the use of the property were not subject to the restriction unless adjustments in value are made reflecting the effect of the restrictions."

The department has adopted rules "proper to regulate its own procedure and to effectually carry out the purposes for which it is constituted." ORS 305.100(1).

Accordingly, the department has adopted a rule setting forth the procedures and methods for valuation of contaminated property.¹⁰ OAR 150-308.205-(E) provides In relevant part:

"(3) APPRAISING CONTAMINATED SITES

"The real market value of a contaminated site shall be determined in accord with this rule. The appraiser shall consider the Sales Comparison Approach, the Cost Approach, and the Income Approach. For a particular contaminated site, it may be that all three approaches cannot be applied, however, each shall be investigated for its merit. In all cases, actual market data are the most reliable indicators.

¹⁰ First adopted in 1989, OAR 150-308.205-(E) was subsequently amended in 1995 and 1997.

"(a) The Sales Comparison Approach may be used to determine the real market value of a contaminated site by comparison with verified sales of similarly contaminated sites. **If no sales exist of property similarly contaminated, a comparison may be made to sales of properties without contamination.** Adjustment factors shall be developed to account for the influence of contamination based upon a cost to cure analysis. These factors shall be applied to the subject property.

" Adjustments shall be considered for the following:

"(A) Limitations upon the use of the contaminated site due to the nature and extent of the contamination or due to governmental restrictions related to contamination;

"(B) The increased cost to insure or finance the property;

"(C) The potential liability for the cost to cure;

"(D) Governmental limitations and restrictions placed upon the transferability of all or any portion of the contaminated sites;

"(E) Other market influences.

"(b) The Cost Approach may be used to determine the value of the contaminated site without the contamination. The cost to cure may be deducted as a measure of functional obsolescence.

"(c) The Income Approach should use market rental data. If market rental data are not available, the property's actual income may be used.

"* * * * *

"(d) The market may respond to contamination in a variety of ways. In all cases, actual market sales and income data are the most reliable indicators." (Emphasis added.)

There is no dispute that the subject property is contaminated and that substantial clean up costs will be incurred to meet requirements yet to be established by the DEQ and possibly the EPA. The Defendant has accepted the cost to cure estimate of \$340,000 submitted by the Plaintiff. (See Ptf's Ex 14 at 2.) However, the parties do not agree on the total reduction in value to the subject property.

Value of Real Property

The Plaintiff submitted an "estimate of value" prepared by George Miller. The conclusion of value for the real property and improvements reached by Mr. Miller was the result of an informal estimate rather than a formal appraisal of the property. His estimate and testimony focused on the negative impacts on value attributable to the contamination of the property and various environmental or zoning overlays. The court

found Mr. Miller to be knowledgeable about the oil reprocessing industry and his expertise in the valuation of contaminated sites credible. However, the court cannot give his conclusion as to the value of the subject property significant weight because it does not conform to the statutory standard for valuing contaminated property. See ORS 308.205; OAR 150-308.205-(E).

In valuing the buildings and structures, Mr. Miller admitted that he did not use any verifiable reference sources, such as the Marshall Valuation Service, to support his conclusions of value. While the court does not doubt that Mr. Miller is a seasoned appraiser and has a great deal of personal knowledge to draw upon, the court cannot rely on that experience alone to support a valuation of property. To estimate the value of the land, Mr. Miller did not use the method set forth in OAR 150-308.205-(E), rather, his estimate is based on the two most recent transactions involving the property and comparison with the taxable assessed values of two similarly contaminated properties. Based on these sources of evaluation, Mr. Miller estimated the subject property to have a \$0 (zero) net taxable value. (Ptf's Ex 40 at 5.)

With respect to Mr. Miller's reliance on the two most recent transactions relating to the property, the court agrees that the property sold in 1994 for \$240,000. However, the court cannot determine whether this sale was an arms length transaction within the meaning of ORS 308.205 because no evidence was submitted to the court about the transaction. As for the "purchase" of the property in 1999 by Mr. Briggs, the court finds that this transaction does not meet the standard of ORS 308.205. According to Mr. Briggs' testimony, the former owner, Mr. Cundruff, shared detailed information about financial difficulties and an intent to abandon the property. Further, Mr. Briggs has yet to obtain fee title to the property because he is still negotiating to purchase the

security interest of a third secured creditor of the property for an unknown amount. Based on these facts, the court concludes that Mr. Briggs' "purchase" of the property was not between parties "each acting without compulsion in an arm's length transaction." ORS 308.205.

The court also rejects Mr. Miller's reliance on the assessed value of other similarly contaminated properties as valid bases of comparison. This approach does not conform to the definition and method for determining RMV as set forth by the statutes and administrative rules. See ORS 308.205(2); OAR 150-308.205-(A) (2). The court cannot accept an estimate of value based on a straight comparison of assessed value between similar properties. See generally *Chen v. Multnomah County Assessor*, OTC-MD No. 000445C, WL 1060544, at *3 (June 26, 2000).¹¹

Using the assessed value (AV) of other contaminated properties is also inappropriate because the AV already includes an adjustment for contamination. Mr. Miller's estimate of value is based on: (1) the two recent sales transactions of the property; (2) the AV of similarly contaminated properties that includes an adjustment for contamination; and then (3) subtracting the cost-to-clean the subject property. The court finds that this method double counts the contamination adjustment in order to reach the conclusion of value put forth in Mr. Miller's estimate.

The Plaintiff requests a value of \$165,000. This represents the amount Mr. Briggs has paid to purchase his current majority interest in the property. As explained above, the court finds that Mr. Briggs' purchase of the property does not meet the standard of an arms length transaction as set forth in ORS 308.205. Because

¹¹ The assessed value (AV) of a property is the lesser of the property's RMV or maximum assessed value. ORS 308.146(1). AV, therefore, bears no relationship to RMV; there can be no reduction in AV unless RMV drops below maximum assessed value. Or Const, Art XI, §11(1)(f); ORS 308.146(2).

the Plaintiff's method for valuing the property fails to meet the statutory requirements, the court cannot accept that value for the property. Additionally, the value of the third secured interest in the property will continue to be unknown until Mr. Briggs completes his negotiations with the holder of that interest.

The Defendant's appraisal followed the methods set forth in OAR 150-308.205-(E) for valuing contaminated property. The appraisal examined the highest and best use of the property and the general neighborhood and market of the property. Sales of four comparable properties were selected with similar uses or markets and a "[g]eneral analysis of each sale [was] utilized to establish value parameters for the subject and allow for a final value conclusion." (Def's Ex M at 6.) Because of the difficulty in finding similar properties with contamination, the four comparable properties were uncontaminated. Adjustments were made to account for the general differences between the comparable sales and the subject property assuming no site contamination. This resulted in a land market value estimate of \$700,000 for the subject property if it was not contaminated. (*Id.* at 8.) After reaching this conclusion of value as uncontaminated, an adjustment was then made to account for the cost to cure the contamination on the property. The Defendant subtracted \$340,000 as the cost-to-clean to arrive at an estimated market value for the land **as contaminated** of \$360,000. The court notes that the Plaintiff submitted a total cost-to-clean estimate of \$486,000, which included \$340,000 to clean the land and \$146,000 to clean the tanks. The Defendant objected to subtracting the cost-to-clean the tanks arguing that none of the DEQ reports indicated tank cleaning would be a necessary part of rededication on the property. Because no evidence was submitted to support that tank cleaning was

required to clean the property, the court finds that \$340,000 is the cost-to-clean the contamination on the property.

The Plaintiff objected to the use of uncontaminated properties as sources of comparison. The court finds that the use of uncontaminated properties is specifically approved by the relevant administrative rule and that appropriate adjustment factors were included in the Defendant's appraisal to account for the cost-to-clean the contamination on the property. See OAR 150-308.205-(E) (3)(a). The Plaintiff also objected to two of the comparable properties on the grounds that the sales occurred after the relevant assessment date. However, there was no showing that the condition of the property or the market was any different at the time of the sale than at the time of assessment. See *Sabin v. Dept. of Rev.*, 270 Or 422, 427-428 n11, 528 P2d 69 (1974) (admitting evidence of post assessment sales data where there was no showing of a difference in the market at the time of sale than at the time of assessment). Therefore, the court finds that the Defendant's appraisal of the land conforms with the statutory requirements of ORS 308.205 for valuing contaminated property.

The Defendant's appraisal report included discussion and analysis of the three valuation approaches. Following a brief discussion rejecting the market and income approaches, the appraisal contained a complete analysis of the value of the improvements on the subject property under the cost approach. This analysis was verified using the Marshall Valuation Service and all costs were adjusted to the assessment date of January 1, 2000. (Def's Ex M at 9-10.) After reaching a conclusion of the replacement cost new for the improvements, a depreciation factor was calculated to account for the physical and functional depreciation of the buildings and improvements. Marshall Valuation Service depreciation guidelines were used to

determine the amount of depreciation for the improvements. As a result of this analysis, the Defendant estimated the market value of improvements to be \$161,440. (*Id.* at 12.)

The Plaintiff bears the initial burden of proof and must establish its case by a preponderance of the evidence. ORS 305.427.¹² "Preponderance of the evidence means the greater weight of evidence, the more convincing evidence." *Feves v. Dept. of Revenue*, 4 OTR 302, 312 (1971). The Plaintiff submitted a great deal of evidence to the court establishing the extent of contamination and the estimated costs to clean the property. However, the Plaintiff did not submit an appraisal of the property estimating the market value of the property in conformity with ORS 308.205. Consequently, the court finds that the Plaintiff has failed to carry its burden of proof. The Defendant has submitted an appraisal in conformity with ORS 308.205 and estimates the value of the contaminated property in accordance with OAR 150-308.205-(E). The court, therefore, accepts the Defendant's conclusion that the total market value for the land and improvements is \$521,440 for the 2000-01 tax year. (Def's Ex M at 12.)

Fixtures Analysis

ORS 308.250(1) requires that, "[a]ll personal property not exempt from ad valorem taxation or subject to special assessment shall be valued at 100 percent of its real market value[.]" The definition of RMV in ORS 308.205 applies to personal property. The parties agree that the value of the personal property is \$274,900. (See Def's Personal Prop Appraisal, Ex A.) Of the \$274,900, \$24,660 is attributable to

¹² ORS 305.427 provides:

"In all proceedings before the judge or a magistrate of the tax court and upon appeal therefrom, a preponderance of the evidence shall suffice to sustain the burden of proof. The burden of proof shall fall upon the party seeking affirmative relief and the burden of going forward with the evidence shall shift as in other civil litigation."

general personal property; the remaining \$250,240 is attributable to items labeled "industrial." At trial, the Defendant agreed that the items of personal property identified as "industrial" should be considered fixtures.

The test for whether personal property retains its separate identity or whether it has become so attached to the real property to be characterized as a fixture considers three factors: (1) annexation, (2) adaption, and (3) intention. *Marsh v. Boring Furs, Inc.*, 275 Or 579, 581-82, 551 P2d 1053 (1976). The degree of annexation necessary to transform a piece of property into part of the realty depends on the facts and circumstances of the case. *Marsh*, 275 Or at 582. The personal property at issue includes oil tanks and other industrial equipment affixed to the ground on concrete foundation blocks. The court affirms the agreement of the parties that the personal property is annexed and adapted to the real property such that they are fixtures.

Real property is defined, in pertinent part as: "the land itself * * * all buildings, structures, improvements, machinery, equipment or **fixtures** erected upon, above or affixed to the same[.]" ORS 307.010(1) (emphasis added). Therefore, because the industrial property meets the definition of a fixture the court finds the value of these fixtures should be added to the real property account for assessment purposes.

Classification as Industrial

The remaining issue before the court is whether the subject property should be classified as industrial rather than commercial property. Different classifications of property are used for determining methods of valuation and administering the property tax system. *Brummell v. Dept. of Rev.*, 14 OTR 303, 311 (1998).

Industrial property is appraised under ORS 306.126. In the context of the statute, a unit of industrial property is defined as "a single facility or an integrated

complex currently engaged in manufacturing or **processing** operations[.]” OAR 150-306.126(1) (1)(c) (emphasis added). "Processing" is defined as "the treatment of materials to produce a new product." OAR 150-306.126(1) (1)(h). The evidence demonstrates that the property has been and continues to be used as a plant where used oil is reprocessed into industrial grade fuel to be sold to heavy industry. At trial, Mr. Sanderman stated that he believed the use of the property falls within the above definition of processing and should be reclassified from commercial to industrial property in a future tax year. The court agrees that the real property should be classified as industrial property and appraised under the relevant statutes.

CONCLUSION

Based on the evidence presented and discussed above, the court finds that Plaintiff has failed to meet its burden of proof to support a value of \$165,000 for the subject property. However, the parties have reached an agreement on the value of items of personal and industrial property. Now, therefore,

IT IS THE DECISION OF THIS COURT that real market value of the property identified in the Multnomah County tax records as Account No. R238511 for the 2000-01 tax year is \$521,440.

IT IS FURTHER DECIDED that the items of "industrial" property previously treated as personal property identified in the Multnomah County tax records as Account No. P426646 are fixtures. Thus, the value of \$250,240 shall be added to the real property account, leaving a balance of \$24,660 of personal property in the account. This shall be effective in the 2000-01 tax year.

IT IS FURTHER DECIDED that all of the real property shall be classified as industrial property for assessment purposes.

Dated this _____ day of May, 2002.

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 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 SALLY L. KIMSEY ON MAY 22, 2002. THE COURT FILED THIS DOCUMENT ON MAY 22, 2002.