

IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT
Property Tax

COPPEROPOLIS MINING CO.,)
)
Plaintiff,) No. 010771F
)
v.)
)
GRANT COUNTY ASSESSOR,)
)
Defendant.) **DECISION**

This appeal concerns the real market value of a parcel of property for tax year 2000-01. A telephone trial was held on October 29, 2001. Thom Seal, Secretary/Treasurer of the Plaintiff, appeared for the Plaintiff. Sean Armstrong, President of the Plaintiff, appeared as a witness for the Plaintiff. Mike Kilpatrick represented the Defendant. Lane Burton, Assessor, appeared as a witness for the Defendant. The property is identified in the Grant County tax records as Account No. 2631.

STATEMENT OF FACTS

The subject property is a 111 acre parcel located in Grant County. As the crow flies, it is 6.75 miles north of Prairie City. By the road most frequently used by the Plaintiff's principals, it is 14 miles, over very primitive roads.¹ The road is not maintained year round. The route is circuitous, over rough terrain. (See Ptf's Ex 9.) There is a more direct route to the property, over Standard Creek Road. However, Mr. Seal testified that the Plaintiff has no agreements to use Standard Creek Road. Mr. Seal also testified that he traveled to the property using the circuitous route "the vast

¹Several months of the year the property is accessible only by foot, plane or helicopter.

majority of time." The parties disagreed as to which route has historically provided access to the property.

The property consists of six patented mining claims. Included in these mining claims is one mine, the Copperopolis Mine. Mr. Seal testified that he is aware of two tunnels at the mine. One tunnel, although "rudely accessible," is mostly caved in. The second tunnel is completely caved in. The ore on the property is of a low grade. The timber on the property is second growth. The Plaintiff purchased the property for "mining, timber and recreation." (Ptf's Ex 4.)

At the time of the Plaintiff's purchase, the property had been on the market for two years. At least two realtors marketed the property. (Ptf's Ex 8 and 10.) There were multiple inquiries about the property. (Ptf's Ex 10.) At least two other parties visited the property. There was at least one other offer. (Ptf's Ex 11.) The property was initially offered for sale at \$60,000. (Ptf's Ex 8.) At the time the Plaintiff made its initial offer, the property was listed at \$44,580. (Ptf's Ex 10.) The Plaintiff ultimately paid \$11,145, or approximately \$100 per acre, for the property in February 2000.

Mr. Seal presented one comparable sale. A 26 acre parcel of property sold for \$4,000, or \$153 an acre, in October 1992. (Ptf's Ex 14 at 2.) He testified that the comparable sale has better access than the subject property. (See Ptf's Ex 9.) The same property sold a year earlier, in August 1991, for \$14,000. Mr. Seal testified that the comparable sale was logged between the first sale in August 1991 and the second sale in October 1992.

Notwithstanding the patented mining claims, the Defendant views the subject property as recreational property. Mr. Burton testified that a property of this size is very desirable because it is affordable for many people. The Defendant does not consider

the Plaintiff's purchase of the property a reliable indicator of value, believing that the Plaintiff made a bargain purchase of the property. Additionally, the Defendant believes that the property is undervalued at \$340 per acre. Recreational property is generally worth \$1,000 per acre county-wide, although Mr. Burton did testify that values of property can vary significantly based on access.

In support of the Defendant's assigned real market value, Mr. Burton testified² about two comparable sales of mining property. The first comparable sale is a property known as the Standard Mine. It is approximately one-half mile south of the subject property on Standard Creek Road. The 287 acre parcel of property sold for \$240,000, or \$900 per acre, in 1996. Mr. Burton testified that the Standard Mine has the same topography and similar access as the subject property. Mr. Seal countered this comparable sale by pointing out that the person who purchased the Standard Mine is in the timber business and the property is "extremely well timbered." The second comparable sale is two and one half miles north of the subject property. The 267 acre parcel sold for \$75,000, or \$280 per acre, in 1986. Since 1994 there have been eight sales of property in the appraisal area. Those properties sold from \$553 to \$1,287 an acre.³

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COURT'S ANALYSIS

²All of the Defendant's evidence came in through testimony. The Defendant did not submit any exhibits.

³These figures are not trended or otherwise adjusted for any differences.

The Plaintiff purchased the subject property in February 2000, less than two months after the assessment date of January 1, 2000. The Oregon Supreme Court has held that "[a] recent sale of a piece of real property is persuasive evidence of the market value of that property for assessment purposes." *Ernst Brothers Corp. v. Dept. of Rev.*, 320 Or 294, 300, 882 P2d 591 (1994) (citing *Kem v. Dept. of Rev.*, 267 Or 111, 114, 514 P2d 1335 (1973)). The Court in *Ernst Brothers* also held that "[i]n the absence of data indicating that 'the price paid was out of line with other market data material, we believe [a recent sale] to be one of the best and most satisfactory standards for the estimation of actual value although, admittedly, it is not conclusive.'" *Id.* (quoting *Equity Land Res. v. Dept. of Rev.*, 268 Or 410, 415, 521 P2d 324 (1974)) (other citation omitted) (brackets in original).

The two comparable sales testified to by Mr. Burton sold for \$900 and \$280 per acre. The eight sales of property in the appraisal area that have occurred since 1994 sold for between \$553 to \$1,287 an acre. None of the sales were adjusted for access of other factors such as marketability of timber. By Mr. Burton's own testimony, the value of property can vary significantly depending on the access to the property. Mr. Seal testified that the property is not accessible by vehicle for several months of the year. There was no testimony by either side if such limited access is typical of this type of property. Additionally, both of the Plaintiff's witnesses testified as to the circuitous route to the property and the primitive quality roads.

The Defendant made the identical argument made by the plaintiff in *Rhodes v. Dept. of Rev.*, 12 OTR 24 (1991). In *Rhodes* the subject property was a manufactured home. The plaintiff, the county assessor, asked the court to ignore the sale of the subject property, arguing that comparable sales showed that the manufactured home

should have sold for more than it did. *Id.* at 26. The court disagreed, finding that even though "mobile homes are mass produced and easier to compare than 'stick built' houses, there may still be a significant variance in basic price." *Id.*

It is not clear to the court whether the Defendant's mentioned sales were actually comparable. This is particularly so since Mr. Burton's familiarity with the property is through aerial photographs and topographical maps. Nor were any adjustments made for any differences. Without more, the court cannot determine whether the comparable sales support a higher value for the subject property.

The subject property was on the market for over two years, marketed by two different realtors. The realtors representing the seller received numerous inquiries. At least two other potential purchasers visited the property. There was at least one other offer on the property. The seller did not accept the Plaintiff's initial offer.

Notwithstanding the Defendant's contention otherwise, there is no evidence that the Plaintiff's purchase of the property was anything other than an arm's-length transaction.

The court agrees with the reasoning in *Rhodes* where it stated that:

"In weighing the evidence, reason dictates that sale of the subject property is better evidence than an estimate based upon sales of other properties. Other properties may be similar, but they are not exactly like the subject. The actual sale of the subject eliminates all speculation, estimation, comparisons and distinctions." *Id.*

CONCLUSION

In any proceeding before the Magistrate Division, the party seeking affirmative relief bears the burden of proof. ORS 305.427. The court finds the Plaintiff's purchase of the subject property was an arm's-length transaction between unrelated parties. The Plaintiff carried its burden of proof

IT IS THE DECISION OF THE COURT that the real market value of property identified as Grant County Account No. 2631 shall be \$11,145 for tax year 2000-01.

IT IS FURTHER DECIDED that the county correct the assessment and tax rolls to reflect the above value. Any refund due shall be promptly paid with statutory interest pursuant to ORS 311.806 and 311.812.

Dated this _____ day of January, 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 JANUARY 31, 2002. THE COURT FILED THIS DOCUMENT ON JANUARY 31, 2002.