IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

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| RRR GOLF, INC. and RRR LODGING, INC., dba The Resort At The Mountain, | ) | |
| Plaintiffs, | ) | TC-MD 020681A |
| v. | ) | |
| CLACKAMAS COUNTY ASSESSOR, | ) | |
| Defendant. | ) | **DECISION** |

This appeal is a dispute as to property taxes for the 2001-02 tax year. At issue are the assessed values of properties known as the Resort At The Mountain ("Resort"), located at 68010 East Fairway in Welches, Oregon. The specific account numbers in controversy are identified in the attachment to Plaintiffs' Complaint.

The total assessed value of the appealed Resort properties is $5,905,502. Plaintiffs argue that their real market value is instead in the range of $4,300,000, and that assessed value should be reduced to that amount. Plaintiffs' case was presented by Ken and Liz Ross (Rosses), of its staff.

Defendant's conclusion is that the total real market value of the appealed property is on the order of $7,960,000, and that the roll should remain unchanged. Defendant's case was presented by Neil Hundtoft, of the Department of Revenue, and John Taylor and Joe Honl, of Defendant's staff.

## I. STATEMENT OF FACTS

The Resort is located some 50 miles east of Portland, on the west slope of Mt. Hood, approximately an hour from Portland. It has been the site of a hotel since at least 1902, and when its golf course was built in 1928, this property became Oregon's first golf

resort. During the tax year in dispute, the Resort consisted of a 27-hole golf course, a pro shop, two other retail outlets, two restaurants, and a lodge and convention center. The bulk of its facilities was completed in 1973 and 1979. Ownership has not changed since 1989. Plaintiffs and Defendant agreed that the Resort's management has been competent.

This location, between Portland and Mt. Hood's recreational facilities, is a mixed blessing. Although some 30,000 vehicles will pass the Resort on their way to Mt. Hood during the ski season, the problem is that they pass and do not stay at the Resort. The Resort is a half hour drive from the ski lifts. It is at an elevation too low to produce snow. The abundant rain which falls on the west side of the Cascades limits the golf season. Those factors discourage individual travelers from staying at the Resort. They account for only 30 percent of its clientele. The bulk of its business comes from conferences, weddings, and association meetings. Its location, too far from Mt. Hood and too close to Portland, has made the Resort especially susceptible to declining trends in business travel, and has led to high marketing costs.

Another idiosyncratic factor besides its location must be considered in valuing the Resort, and that is its mix of lodging units. More than a quarter of the units available for rent are not owned by the resort. Instead, these 43 units are individual condominiums held by private owners. The Lodge Center Condominium Association must make its units available as part of the Resort's room inventory. Owners of the units are restricted to using them only 14 days a year. These condominium owners hold a minority interest in the Resort.

Plaintiffs and Defendant valued the Resort by a discounted cash flow analysis. For

their part Plaintiffs proposed two models.[1] Each model was based on eight years of historical operating results from the Resort, spanning the period from 1993 to 2000. Both looked forward six years, using a discount factor of 13 percent. The difference in the models was that in the first earnings before debt, interest, and taxes rose from zero to $750,000 with a $6,250,000 reversion. In the second model earnings before debt, interest, and taxes rose from zero to $900,000, with a $7,500,000 reversion. The resulting range in total present value was from $4,300,000 to $5,325,000.

The operating results on which Plaintiffs' models were based require a detailed focus. The results of the spreadsheet, earnings before debt, interest, and taxes, were respectively $404,000; $519,000; $586,000; $328,000; $660,000; $1,006,500; $650,602; and $182,000 from 1993 to 2000. Management fees were less than 1 percent of total revenues for all years except 1997, in which they rose to 2.5 percent. No recognition, either by way of payment for the use of the condominiums or a subtraction of the value of the condominiums from the final indicated value for the Resort, was given to the fact that the Resort did not own all the lodging units in its inventory.

Plaintiffs used this spreadsheet to argue that, although its two discounted cash flow models show a range in the value of the Resort from $4,300,000 to $5,325,000, errors in the described historical operating results on which the models were based show the lower end of the range captures the property's value. Those errors were of two parts. The first was as to management fees. Plaintiffs argued that the high costs associated with marketing the Resort to business clientele made the 2.5 percent used for management fees for 1997 more appropriate for all years than the less than 1 percent used in the

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[1] The source of these models was a March 3, 2003 memo from one appraiser, David Pietka, to another appraiser, Todd Liebow. Neither individual was present at trial. Plaintiff's representatives vouched for the models on the basis of their experiences in the industry.

models. Plaintiffs' version of historical operating results for that same period reported management fees ranging from 1.2 to 3.1 percent.

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The second shortcoming Plaintiffs discussed as to its models was the fact that the models' conclusions did not reflect the fact that the Resort did not own all the lodging units in its inventory. Some of the room inventory consisted of condominiums held by private owners. Plaintiffs accounted for that point by presenting, as their historic operating results for that same period, payments to the minority unit owners. Shown as a fixed expense, those payments ranged from 5.1 percent in 1993 to 4.3 percent in 2000. The net effect of increasing management fees and showing payments to the minority interests was to reduce earnings before debt, interest, and taxes dramatically. Revenues for the best year, 1997, fell to $681,000. Revenues for less successful years became negative.

Against this opinion, Defendant presented the conclusion that the real market value of the property in question was $7,960,000. Like Plaintiffs, Defendant also used a discounted cash flow analysis. The key distinction between the two approaches is as to the revenue forecasts. Defendant predicted a cash flow rising from $25,823 in the first year to $1,778,439 in the sixth, an amount almost twice as great as Plaintiffs' most optimistic model. That cash flow continues to grow in Defendant's model during the subsequent periods, rising to $2,180,414 in the 10th year. Although Defendant presented the same historical operating expenses as Plaintiffs' model, in projecting revenues and expenses Defendant increased management fees to 3 percent. The fact that the Resort did not own all of its room inventory was accounted for by Defendant through determining the total value of the Resort, and then subtracting from this result the value of the condominiums held by the minority owners.

Another point emphasized by Defendant was the quantity of capital additions done to the property. Following the purchase of the property in 1989, $1,500,000 was spent to renovate the conference center. Between 1997 and 2001 more than $7,000,000 was spent in capital additions. Defendant went on to opine that the current owners had spent more than $14,000,000 to improve the property. Although Plaintiffs argued that not all that money had been spent on accounts subject to this appeal, the conclusion of the court is that Plaintiffs have laid out significant sums by way of capital additions.

## II. ANALYSIS

The testimony for Plaintiffs' case came exclusively from the Rosses. The court is satisfied that they have detailed knowledge as to the property, and can speak with authority as to its historical revenues and expenses. That is an important part of any demonstration of an income-producing property's value. However, there is another element in a successful appeal, and that is the expert analysis of this data by means of an appraisal that weighs all the factors that determine a property's value. That analysis is missing in Plaintiffs' case.

None of Plaintiffs' witnesses was an appraiser. In order to work around this shortcoming, Plaintiffs presented models produced by an appraiser who did not appear in this court, reasoning that the models must be reliable because the statement of historical operating results on which they were based understated expenses as to management fees, and neglected to value the interest of minority owners, and so produced a conservative estimate of value. However, another explanation is that the models were produced for a purpose that does not require the degree of care expected in a matter as consequential as determining the value of a property in court. A specific point demonstrating the validity of this perspective is the statement in the memorandum setting

out the models that "this document doesn't represent an appraisal."

The reason an appraisal is all but essential to the valuation on a complex income-producing property is because the court must identify the elements in a property that contribute, or detract, from its value, and anticipate how the market would respond to those factors. When the court must pursue this task without an appraisal, it leads to complications, not so much because no expert is present to declare an opinion, but because no expert is able to declare the reasoned basis behind his or her opinion and the thinking that led to its formation. Plaintiffs' case is marred by a series of missing links.

One such missing link is an explanation as to the selection of a discount rate. Although the Rosses were able to talk about current and future revenue streams as to the property, the discount rate is the key element that translates the property's anticipated cash flow to its present value. The models selected, without explanation, a rate of 13 percent. As even a slight variation of the discount rate can produce significant changes in value, an explanation of the reason for choosing a particular rate is important.

Another missing link is as to the treatment of the interests of the minority owners, that is, the owners of the condominiums included in the room inventory of the Resort. As the models proposed by Plaintiffs did not account for that factor, Plaintiffs offered the subtraction, as a fixed expense, of the payments to the minority owners. Those payments to the minority owners were the largest of the fixed expenses, and exceeded even some of the undistributed expenses. Without at least some discussion as to the manner in which the minority distribution was determined and the factors that control the bargaining position of the majority and minority owners, the court cannot say that the method and amount presented by Plaintiffs necessarily captures the atypical nature of this characteristic of the Resort.

Finally, and most important, a critical element is missing in the matter of earnings before debt, interest, and taxes. No element is more important in an analysis of an income-producing property than the estimate of its future income streams. This is especially challenging as to this property, where Plaintiffs' spreadsheets show a historical fluctuation in earnings before debt, interest, and taxes on the order of a factor of 10 over an eight-year period. The court is simply not satisfied that Plaintiffs' presentation demonstrated what the future income streams might be with sufficient certainty to say that the roll is in error, particularly when the characteristics that detract from the Resort's value are balanced against the relative scarcity of parcels of land large enough to assemble into a resort and for which it would be possible to secure the necessary permits.

There is a natural temptation for the court to apply its own appraisal expertise when it is absent in a party's presentation. Aside from arguments as to whether or not this is the best practice, the court will not do so in this instance. The assessed value of this property is on the order of $5,900,000. Defendant argues the property is already assessed at a third of its relatively recent cumulative investment. Although Plaintiffs dispute the amount of this disparity, the court does not believe that reduction to the roll would necessarily more accurately capture its real market value. If Plaintiffs' evidence is given its greatest possible weight, and Defendant's evidence is ignored, there is a difference of some 25 percent between Plaintiffs' asserted value and the roll. If Defendant's points are given some weight, it may well follow that the Resort's actual value is within the range of value contemplated on the roll.

## III. CONCLUSION

Plaintiffs attempted to value a multimillion dollar resort property without an appraiser. The court is not declaring that an appraiser is essential to such a case. It is

stating that in this instance gaps in appraisal evidence lead to the conclusion that Plaintiffs have not carried their burden of persuasion. An additional point is Plaintiffs were seeking a smaller, rather than a larger, reduction as to property whose assessed value is less than its level of recent investment. Now, therefore,

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

Dated this _____ day of January, 2004.

SCOT A. SIDERAS
MAGISTRATE

**IF YOU WANT TO APPEAL THIS DECISION, FILE A COMPLAINT IN THE REGULAR DIVISION OF THE OREGON TAX COURT, BY *MAILING* TO: 1163 STATE STREET, SALEM, OR 97301-2563; OR BY *HAND DELIVERY* TO: FOURTH FLOOR, 1241 STATE STREET, SALEM, OR. 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 JANUARY 22, 2004. THE COURT FILED THIS DOCUMENT ON JANUARY 22, 2004.**