

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

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|-----------------------------------|---|-----------------|
| K-4, INC., an Oregon Corporation, |) | |
| |) | |
| Plaintiff, |) | TC-MD 020800D |
| |) | |
| v. |) | |
| |) | |
| BENTON COUNTY ASSESSOR and |) | |
| DEPARTMENT OF REVENUE, |) | |
| STATE OF OREGON, |) | |
| |) | |
| Defendant. |) | DECISION |

Plaintiff appeals the real market value of its real property for tax year 2001-02. A trial was held on Wednesday, December 17, 2003, in the Oregon Tax Court, Salem, Oregon.¹ Clarence H. Greenwood, Attorney at Law, appeared on behalf of Plaintiff. Kenneth J. Roth (Roth), President of K-4, Inc., and John Dilworth (Dilworth), property manager for Plaintiff, testified on behalf of Plaintiff. Rochelle A. Nedeau, Assistant Attorney General, appeared on behalf of Defendant, Department of Revenue (Department). Vance M. Croney, Benton County Counsel, appeared on behalf of Defendant, Benton County Assessor (County). Joanne Gough (Gough), Commercial Appraiser III, testified on behalf of Defendant County. Monica Warren (Warren), Appraiser Analyst III, testified on behalf of Defendant Department. Andrew M. Martin (Martin), property owner and recent purchaser of the subject property, testified on behalf of both Defendants.

I. PRELIMINARY MATTERS AND BACKGROUND

Plaintiff's original Complaint, filed May 2, 2002, appealed three property tax

¹ Plaintiff also filed an appeal for the subsequent tax year (2002-03). The subsequent tax year case (TC-MD 030790D) was scheduled for trial on the same day as the above-entitled matter.

accounts. Plaintiff withdrew its appeal of Tax Account 389958 after receiving Defendant County's Answer and Motion to Dismiss, filed May 14, 2002.

Tax Account 314680 was created to record the value of improvements placed on the subject property (designated as Tax Lot 501) by tenant/lessee, TreeSource Industries, Inc., dba Midway Forest Products Co. (Midway). Defendant Department challenged Plaintiff's standing to appeal Tax Account 314680. In the court's Order, filed April 8, 2003 and reissued April 10, 2003, the court concluded that under the terms of the lease agreement between K-4, Inc. and Midway, Midway was the designated owner of all improvements and paid the property taxes assessed for Tax Account 314680. Further, the court concluded that K-4, Inc. had no standing to file an appeal for Tax Account 314680 because it was not aggrieved under ORS 305.275(1)(b).²

The only tax account under appeal in this case is Tax Account 311791.³ That tax account assessed the 18.74 acres of land and all other improvements to Tax Lot 501.

Plaintiff submitted and the court received Exhibits 1-6 and 8-12. Plaintiff withdrew Exhibit 7. Defendant Department submitted and the court received Exhibits A, B, C, D, H, I, K, L, M, N, O, P, Q, R, S, T, U, V, W, and X. Defendant Department's Exhibit E was excluded, Exhibit F was withdrawn, and Exhibit G was not offered. Defendant Department's Exhibit J (lease), which was not offered, was the same as

² At trial, Plaintiff continued to argue that its ownership of land gave it standing to appeal the "improvement only" Tax Account 314680. The Oregon Supreme Court held that "each unit of property in this state" refers to "all the property in a **property tax account**." *Flavorland Foods v. Washington County Assessor*, 334 Or 562, 578, 54 P3d 582 (2002) (internal quotations omitted) (emphasis added). Plaintiff did not own the improvements recorded in Tax Account 314680 and there was no evidence that it paid the property taxes assessed to those improvements. As explained in the court's Order, Plaintiff is not aggrieved and has no standing to appeal Tax Account 314680 for tax year 2001-02.

All references to the Oregon Revised Statutes (ORS) are to 2001.

³ Because of its ownership of land and improvements assessed in Tax Account 311791 and its payment of the property taxes assessed to that unit of property, Plaintiff has standing to appeal Tax Account 311791.

Plaintiff's Exhibit 6 that was received. Defendant County submitted and the court received Exhibits AA, BB, CC, DD, EE, FF, GG, HH, II, JJ, LL, MM, NN, and OO. Defendant County's Exhibit KK (rental income), which was not offered, was the same as Defendant Department's H that was received.

On December 12, 2003, Defendant County submitted supplemental Exhibits RR, SS, TT, UU, VV, WW, XX, and YY. On December 16, 2003, Plaintiff filed a Motion in Limine (Motion), requesting the court to deny Defendant County's request to introduce into evidence Exhibits TT, WW, XX, and YY. At trial, Defendant County withdrew Exhibit TT. Exhibits RR and UU were the same as Defendant Department's Exhibit R that was admitted. Because Plaintiff had no objections to Defendant County's Exhibits SS and VV, those exhibits were received by the court. Plaintiff's Motion was granted in part with respect to Exhibits WW and XX and those exhibits were not admitted. Defendant County offered Exhibit YY as rebuttal evidence and it was received by the court.

II. STATEMENT OF FACTS

The subject property under appeal (Tax Account 311791, Tax Lot 501) is an 18.74 acre parcel of land with various improvements as follows: an office building built in the 1960s, measuring approximately 2,684 square feet; a mechanic's shop, measuring approximately 2,520 square feet; an oil shed, measuring approximately 200 square feet; and a metal-framed storage building with a concrete floor, measuring approximately 3,800 square feet. (Def Department's Ex G.)

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Roth testified that the subject property had been in his family's name since the 1940s. The subject property, along with adjoining Tax Lot 500 and its log ponds, was the location of a cutting sawmill until 1970 when Roth's father closed the mill. From that date

the subject property was leased to others. The last tenant vacated the property when it filed for bankruptcy in 1999.

Roth testified that initially he attempted to find another lessee for the subject property, but he was not successful. In 2001, Roth decided to offer the property for sale because of the “economic and political climate.” Through his partner, Thomas Hayes (Hayes), he received two cash offers and took the higher of the two offers.

On October 17, 2003, a statutory warranty deed was recorded in Benton County transferring ownership of the subject property from K-4, Inc. to Martin for “THE TRUE AND ACTUAL CONSIDERATION FOR THIS CONVEYANCE” of “\$54,000 (\$254,000 less a \$200,000 credit to buyer for remediation of an obsolete concrete pad).”

(Def Department’s Ex R at 3.) In addition to selling Tax Lot 501, Roth sold two other properties to Martin, one owned by K-4, Inc. (Tax Lot 500) and another he owned personally (Tax Lot 600). The total purchase price after the purchase price credit was \$1,025,000. (Def Department’s Ex K.) Roth testified that Hayes allocated the purchase price to the three properties as follows: Tax Lot 600, \$125,000; Tax Lot 501, \$54,000; and Tax Lot 500, \$846,000. (Def Department’s Ex R at 1, 3, and 6.) Martin’s testimony concurred with Roth’s statement that K-4, Inc. allocated the purchase price and stated that the documents were revised to separate the properties into “three legal descriptions.”

Roth testified that he “sold the dirt” and attributed no value to the buildings on Tax Lot 501; there were no buildings on Tax Lots 500 and 600. Roth testified that there have been no significant repairs to the structures and, in his opinion, at the time of the sale, the structures were in “less than poor” condition. Defendant Department concluded that the real market value of the improvements for tax year 2001-02 was \$93,450. (Benton County Board of Property Tax Appeals, Real Property Order, dated April 10, 2002.) Warren

testified that the Department used depreciated replacement cost to determine the value. Warren explained that in 1989 the County appraised the improvements for a total improvement value of \$142,400. In 1999, the account was transferred to the Department. To the depreciated value as of the 1999 transfer date, Warren applied Marshall and Swift valuation trending depreciation factors to determine the real market value of the improvements as of January 1, 2001. (Def Department's Exs A, B, and D.) She testified that the improvements were estimated to be "20.5 percent good" with no perceived economic or functional obsolescence adjustment required. The County's determination of value was compared to the property tax return prepared by Roth for the tax reporting period January 1, 2001 to December 31, 2001. In his return, Roth stated that the total completed costs of the various structures were approximately \$331,000. (Def County's Ex OO.)

Roth testified that the value of the land was "depressed" because the County "arbitrarily placed an identifier" on the land it concluded was "locally significant wetlands." Gough testified that the County had not changed the value of the land for the last five years. She testified that the real market value of Tax Lot 501 on the tax roll was \$443,790. Gough testified that in the early 1990s a field appraisal was done. The real market value has not been adjusted since the state adopted Measure 50.

Martin, an owner of various large land tracts in Benton County and other counties, testified that he wanted all three parcels of the land he purchased from Roth. He described himself as a motivated buyer who "paid a little more" because of the location of the properties (close to the fairgrounds and within the city limits) and their development potential (as a trail network and interpretative center or planned unit development). He testified that the parties negotiated for 12 months. When asked about the condition of the

structures, Martin testified that the office building was in “pretty good shape.” He had the windows replaced and is currently using the building as a farm office. Martin testified that the metal frame storage building is being used to store hay and as a work area with covered storage and concrete floors. A shop was built by the last tenant and Martin described it as “nice.” He estimated that the value of the buildings would range from \$100,000 to \$200,000, assuming some lease or rental income.

With respect to the land value of Tax Lot 501, Martin estimated that the real market value would range from \$10,000 to \$15,000 per acre because of the location, road access, and rail spur to the land. He is unaware of any real or potential wetland restrictions on this parcel. Gough testified that there are “no restrictions to use” and there is a “potential for industrial use.” She testified that, even though she had not done a highest and best use study, the land is zoned industrial.

Martin testified that Tax Lot 500, approximately 62 acres, had two log ponds and Squaw Creek flowed through the land parcel. Because of the potential wetland issues and the active study he has commissioned, Martin concluded that the potential value of this parcel would be \$5,000 to \$7,000 per acre for a total value of \$310,000 to \$434,000. Gough testified that there are “impairments including water and topography issues.” However, she testified that she did not review the comprehensive plan for the County nor examine the wetlands overlay issue. The County’s real market value of Tax Lot 500 for tax year 2001-02 was an adjudicated value of \$44,830. (Def County’s Ex SS at 2.)

Gough testified that a neighboring property (Brand S Warehouse), including approximately 17 acres of land and improvements, was sold in August, 2001 for \$1,070,000. She testified that another appraiser in her office verified the sale. After

subtracting the real market value of the improvements on the tax roll, Gough determined a residual land value of \$778,600 or \$45,347 per acre. Gough did not appraise the property. Dilworth, a longtime resident of Corvallis and Benton County, managed the Roth property from 2000 to 2002 and rebutted Gough's testimony. In contrast to those improvements on the Roth property, which were vandalized and in disrepair, Dilworth testified that the Brand S Warehouse improvements were occupied by full time tenants, maintained, and completely secured by a fence and onsite security. In aid of his testimony, he reviewed photographs taken the day before trial. Dilworth could not estimate the real market value of the improvements in relation to the land value.

In sum, Plaintiff alleges that the real market value of Tax Account 311791 was the allocated purchase price of \$54,000. Defendants allege that the total real market value of Tax Account 311791 was \$537,240. Specifically, Defendants conclude that the real market value of the land and improvements for tax year 2001-02 was \$443,790 and \$93,450, respectively.

III. ANALYSIS

The issue before the court is the real market value of Plaintiff's property. Real market value is defined in ORS 308.205(1) as:

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“[T]he 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.”

There are three traditional methods (cost approach, income capitalization or income approach, and sales comparison or market approach) used to determine the real market value of property. Defendant used a combination of the market approach and cost

approach to determine the value of Plaintiff's property. Plaintiff relied on an arm's length sale of the property and its own allocation of the purchase price to determine the value.

Plaintiff has the burden of proof, by a preponderance of the evidence, that it is entitled to the relief requested. ORS 305.427. "Preponderance of the evidence means the greater weight of evidence, the more convincing evidence." *Feves v. Dept. of Revenue*, 4 OTR 302, 312 (1971) (citation omitted). "[I]f the evidence is inconclusive or unpersuasive, the taxpayer will have failed to meet his burden of proof." *Reed v. Dept. of Rev.*, 310 Or 260, 265, 798 P2d 235 (1990).

Plaintiff presented "convincing evidence" that the real market value of the three tax lots (Tax Lots 500, 501 and 600) was \$1,025,000 as of August 16, 2003. (*Feves*, 4 OTR at 312; Def Department's Ex K.) The parties agree that after 12 months of negotiation the sales transaction was arm's length. The buyer, Martin, testified that because he wanted the property he may have paid more than the real market value. However, no appraisal evidence was offered to substantiate his assertion. The court accepts Plaintiff's assertion that the real market value of the three tax lots was \$1,025,000.

Next, Plaintiff requests the court accept its allocation of the purchase price among the three properties as the real market value of Tax Account 311791 under appeal. Unfortunately for Plaintiff, the court does not accept its allocation because the evidence presented to the court by Plaintiff was insufficient to meet its burden of proof. The individual who made the allocation, Hayes, did not testify. The court was denied an opportunity to verify his professional experience and background, and to review the basis for his allocation. No other evidence, such as a certified appraisal or testimony, was submitted by Plaintiff to explain or support its allocation.

Plaintiff's one witness, Roth, transferred the responsibility for managing and selling

the property to others and he had no formal training in the valuation of property. Roth's testimony was rebutted by the buyer, Martin, who testified that he estimated the buildings had a real market value of at least \$100,000 and the land \$180,000; the sum of those two amounts is far in excess of Plaintiff's total purchase price allocation. Both Roth and Martin are experienced investors in commercial real estate located in the Benton County area. However, neither Roth nor Martin is a trained certified appraiser and their estimates of value are based on their prior investment experiences, not on generally accepted principles of appraisal. Based on the testimony of Roth and Martin, the court finds the "evidence in such a position of equipoise" that "it is necessary to" look to Plaintiff because it "has the burden of proof on the matter." *U.S. Bancorp and Subsidiaries v. Dept. of Rev.*, __ OTR __ (TC 4531) (October 16, 2003.) Absent supporting evidence and testimony, Plaintiff's one witness, Roth, did not persuade the court that the real market value of more than 18 acres of easily accessible land located within the city limits with some usable structures was no more than \$54,000.

This court has previously noted that "it is not enough for a taxpayer to criticize a county's position. Taxpayers must provide competent evidence of the RMV of their property." *Woods v. Dept. of Rev.*, 16 OTR 56, 59 (2002) (citing *King v. Dept. of Rev.*, 12 OTR 491 (1993)). Plaintiff effectively challenged Defendants' method of determining value. However, as previously stated, Plaintiff's limited evidence failed to persuade the court that Plaintiff's allocation of the purchase price accurately determined the real market value of the subject property.

IV. CONCLUSION

Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiff has failed to carry its burden of

proof and its appeal is denied.

IT IS FURTHER DECIDED that because Plaintiff failed to carry its burden of proof it shall not be entitled to an award of reasonable attorney fees or costs.

Dated this _____ day of February, 2004.

JILL A. TANNER
PRESIDING 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 JILL A. TANNER ON FEBRUARY 10, 2004. THE COURT FILED THIS DOCUMENT ON FEBRUARY 10, 2004.