

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Property Tax

ANITA RUNYAN, )  
 )  
 Plaintiff, ) TC-MD 030112B  
 )  
 v. )  
 )  
 DESCHUTES COUNTY ASSESSOR, )  
 )  
 Defendant. ) **DECISION**

This matter is before the court on Plaintiff's appeal of the real market value (RMV) of her property for the tax year 2002-03. Plaintiff owns a one-fifth undivided interest in a "time share" condominium. The property is identified as Deschutes County Assessor's Account R 1-001 181207-BA-60328 U5. A telephone trial was held on July 1, 2003. Anita Runyan appeared on her own behalf. Theresa Maul, Lead Residential Appraiser, appeared on behalf of Defendant.

**I. STATEMENT OF FACTS**

Plaintiff purchased a one-fifth undivided interest in the subject property in 1992 for \$54,750. Defendant found that the RMV for the property for the 2002-03 tax year was \$67,675, with an assessed value of \$63,640. Plaintiff appealed to the county board of property tax appeals (BOPTA), requesting an RMV of \$46,500. Plaintiff's asserted value was based on a comparison with four recent sales of one-fifth interests during the past year. BOPTA ordered that the RMV be reduced to \$56,000. Plaintiff timely appealed the BOPTA order to the Magistrate Division.

The subject property is a two-bedroom condominium located in a development called River Ridge. River Ridge is part of Mount Bachelor Village in Bend and is divided

into two subdivisions, River Ridge One and River Ridge Two, consisting of eleven and nine buildings, respectively. Each building has four condominium units, with two-bedroom units on the ground floor, and three-bedroom units on the second floor. Aside from the number of bedrooms, all of the units are essentially identical in design. The only relevant difference is that the units in River Ridge One were sold as “partial units,” that is, one-fifth undivided interests, whereas the units in River Ridge Two were sold as whollyowned units.

The units in River Ridge One were intended to be marketed as time share condominiums, with buyers purchasing a one-fifth undivided interest in the condominiums. Owners purchase the right to use the property for 10 weeks out of the year. In almost all of the units, the interests allow the owners one specified week out of every five. The prices of these undivided interests are fairly constant. In one unit, the interests are sold in blocks of ten consecutive weeks. The undivided interests in this unit have a much greater variation in sale prices due to the increased demand for certain times of the year and the decreased demand for other times of the year. Plaintiff’s unit allows her one week out of every five.

Plaintiff claims that Defendant erred in setting the RMV for her property “due to incomplete or incorrect information” provided by the original assessor. (Ptf’s Compl at 2.) Plaintiff argues that the RMV should be determined by a comparison with sales of other one-fifth undivided interests in River Ridge One. With the Complaint, Plaintiff submitted a memo from Diane Wilcox, general manager at Mount Bachelor Village, detailing the recent sales of four one-fifth undivided interests similar to Plaintiff’s. They range in price from \$45,000 to \$49,000, and were sold between March 2002 and October 2002. Plaintiff also submitted an e-mail from Ms. Wilcox detailing two additional sales of

one-fifth undivided interests in River Ridge One, one each in 2000 and 2001, for \$52,000 and \$47,000, respectively. Plaintiff requests that the RMV be set at \$46,500, the average of the 2002 sales.

At trial, Pattie Serbis (Serbis) testified as a witness for Plaintiff. Serbis is a real estate broker and familiar with River Ridge One and Two. Serbis testified that she considers the sales of the one-fifth interests and of the wholly owned properties to be two distinct markets. Due to variations in market demand and availability of units, as well as the different income levels of the typical buyers of the two types of property, Serbis claimed that the sale prices of one-fifth interests and wholly owned properties are not comparable. There tend to be more one-fifth interests available than there are wholly owned units. In fact, there has been only one sale of a wholly owned unit in the last two years, whereas the one-fifth interests turn over much more frequently. Furthermore, the time share properties are generally used as vacation homes, whereas the wholly owned properties are residences or rental properties.

Defendant's representative stated that the BOPTA order was based on *Talarico v. Deschutes Cty. Assessor*, 17 OTR-MD 37 (2001). As Defendant reads the case, *Talarico* stated that "improvements were to be appraised as a whole and the tax [is] to be divided on undivided interest properties." (Def's Answer at 1.) That is, the condominium units must be valued as a whole unit of property and the tax burden must be divided evenly among the five interest holders. Defendant testified that RMV was determined by evaluating comparable sales of condominium units in the same development as Plaintiff's property. The last unit, identical to the subject property, sold for \$300,000. That amount was lowered to \$280,000 in order to take into account furnishings supplied with the unit.

Applying *Talarico*, Defendant divided the RMV by five, reaching an RMV for Plaintiff's share of the property of \$56,000.

## II. ANALYSIS

Oregon's Constitution requires that "all taxation \* \* \* be uniform on the same class of subjects within the territorial limits of the authority levying the tax." Or Const, Art I, § 32. The constitution further empowers the state legislature to "provide by law uniform rules of assessment and taxation." Or Const, Art IX, § 1. The Oregon Supreme Court has interpreted these Constitutional provisions to give the legislature "wide discretion" in tax matters. *Knight v. Dept. of Rev.*, 293 Or 267, 271, 646 P2d 1343 (1982). However, "valuation methods and tax rates must be uniform within 'the same class of subjects' of *ad valorem* taxation throughout a taxing authority." *Mathias v. Dept. of Rev.*, 312 Or 50, 60, 817 P2d 272, (1991).

The legislature has spoken specifically to the process of condominium valuation: "(1)(a) **Each unit** with its allocation of undivided interest in the common elements **shall be considered a parcel of real property**, whether fee simple, leasehold, easement or other interest or combination thereof, subject to separate assessment and taxation by any taxing unit in like manner as other parcels of real property.

"(b) The common elements **may not be considered a separate parcel** for purposes of taxation."

ORS 100.555(1)<sup>1</sup> (emphasis added).

As this court stated in *Talarico*, "each condominium unit is considered a parcel of real property and is valued as such." *Talarico*, 17 OTR-MD at 41. The undivided interests held by the five time share owners are merely undivided interests in the parcel of real property. There is some statutory basis for individual assessment of each undivided

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<sup>1</sup> All references to the Oregon Revised Statutes (ORS) are to 2001.

interest, however, this is merely an “administrative convenience” for the interest holders. *Id.* See also ORS 308.125(1). There is no requirement that undivided interests be separately valued and, in fact, ORS 308.125 provides for proportional payment of the taxes on a unit. *Id.* Separate valuation for essentially identical properties would run contrary to the statutory provision for proportional payment, as well as the constitutional requirement of uniformity. *Talarico* decisively established that time share condominium units should be valued as a whole unit, and interest holders should pay an equal proportion of that valuation. Defendant correctly relied on this court’s holding in *Talarico*.

The relevant valuation in this case is the RMV of the entire condominium unit. Thus, this court does not give much weight to the information provided by Plaintiff describing sales of other one-fifth interests in the area. Plaintiff’s argument that the one-fifth interests consist of a different market than the wholly owned units is appealing, but not convincing. Plaintiff did not attempt to compute an RMV for a whole unit based on sales data of one-fifth undivided interests in that unit. Such an argument may have given weight to Plaintiff’s argument, while staying within the statutory requirement of valuing the property as a whole, and the constitutional requirement that taxes be assessed uniformly within a classification throughout a taxing authority. However, because Plaintiff did not pursue that argument, the court must conclude that Plaintiff is attempting to value her undivided one-fifth interest instead of the actual property.

### **III. CONCLUSION**

Defendant was correct to rely on this court’s decision in *Talarico*. Individual condominium units should be valued as a whole parcel of real property, not as separate undivided interests. Now, therefore,

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IT IS THE DECISION OF THIS COURT that Plaintiff's appeal is denied.

Dated this \_\_\_\_\_ day of July, 2003.

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SALLY KIMSEY  
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 SALLY KIMSEY ON JULY 30, 2003. THE COURT FILED THIS DOCUMENT ON JULY 30, 2003.**