

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Property Tax

THOMAS CREEK LUMBER & LOG CO.,	)	
	)	
Plaintiff,	)	TC-MD 030113C
	)	
v.	)	
	)	
LINN COUNTY ASSESSOR	)	
and DEPARTMENT OF REVENUE,	)	
STATE OF OREGON,	)	
	)	
Defendants.	)	<b>DECISION</b>

Plaintiff appealed the value of certain real property identified in the county assessor's records as Account No 0005393 for the 2002-03 tax year. Trial was held December 9, 2003. Brent Walker (Walker), President and CEO of Thomas Creek Lumber and Log Company, appeared for Plaintiff. Defendant Linn County was represented by Eugene Johnston, an industrial appraiser with the Linn County assessor's office. Defendant Department of Revenue was represented by Douglas Adair, Assistant Attorney General, Oregon Department of Justice. For ease of reference, the parties will be referred to as Plaintiff, the county, and the department.

I. STATEMENT OF FACTS

The subject property consists of land and improvements, the latter comprised of both buildings and machinery and equipment (M & E). Plaintiff and the department have stipulated to the real market value (RMV) of the buildings and the M & E. Those values are \$102,500 for the buildings and \$107,500 for the M & E, for a total "improvement" RMV of \$210,000.<sup>1</sup> Thus, only the value of the land is at issue.

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<sup>1</sup> The written agreement shows the total to be \$210,500; Defendant advised the court the two components of value were correct but the total was wrong due to a math error.

The land is identified as tax lot 803. It is an irregularly shaped parcel, 9.65 acres in size and located in the town of Lyons. Plaintiff conducts logging activities on the property and has done so for a number of years. There is a large pile of dirt on the property that Plaintiff estimates covers .75 acres. Neither the county nor the department weighed in on that point.

The board of property tax appeals (board) sustained the land RMV of \$114,690, and Plaintiff appealed. Plaintiff contends that the land is worth only \$75,000 because of the limited zoning and problems with access and drainage. The county and the department request that the value be sustained.

A. *Access*

The north side of Plaintiff's lot abuts the south side of Highway 222, which runs east/west at that juncture. Although the lot is approximately 675 feet wide (measuring the north side of the property from west to east along Hwy 222), only about 175 feet of the property abuts the highway because three tax lots (lots 800, 801, and 802) have been carved out of lot 803 along the highway (north side of that lot). As a result, the subject property has two points of contact with the highway that could potentially provide access to the property; one in the northwest corner of the lot that is approximately 151 feet wide and another in the northeast corner that is approximately 23 feet wide. Plaintiff contends that access to the lot from the highway cannot be had through the 151 foot-wide leg of the property because a seasonal creek runs across that entire portion of the property. Moreover, Plaintiff contends that seasonal flooding in that area not only precludes access but also renders two acres of the property unusable. The county does not agree that the creek traverses the entire 151 foot-wide leg of the property and believes that the area affected by flooding encompasses only between 0.18 and 0.24 acres.

The other potential access point is the 23-foot strip in the northeast corner of lot. Plaintiff contends that a local zoning ordinance requires a width of 25 feet for a street or alley to provide access to his property. The department disagrees, arguing that the relevant provision of the zoning ordinance only requires that the lot "adjoin" a street for a width of 25 feet. In the department's view, the lot collectively adjoins the highway by approximately 175 feet and therefore the 25 foot minimum is satisfied.

#### B. *Zoning*

The lot is zoned light industrial (LI) by the town. According to the Lyons Zoning Ordinance, the following uses are permitted outright in a LI zone: an antique shop, second hand store; an automobile, boat, truck, or trailer sales, service, rental, or repair establishment; a contractor's office; a feed or seed store; heavy equipment, implement or machinery sales, service, rental, storage or repair; lumber and/or building materials sales or storage; machine, welding, sheet metal, or similar metal working shop; tire sales or repair shop; a truck terminal, freight depot, warehouse, or wholesale establishment; a veterinarian office, animal hospital. Additional conditional uses permitted in an LI zone include a dwelling or manufactured home; a government structure; a kennel; and recreational uses such as a park, campground, or golf course. The town also has general industrial (GI) zoning, which permits all of the uses permitted outright or conditionally in an LI zone, plus uses involving manufacture, research, repair, assembly, processing, fabricating, wholesaling, storage, or transportation.

## II. ANALYSIS

The issue for the court to decide is whether the RMV of Plaintiff's land for the 2002-03 tax year should be reduced or sustained. The statutory definition of RMV, which is consistent with the generally accepted appraisal definition of market value, is "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." ORS 308.205(1).<sup>2</sup> The assessment date for the relevant tax year is January 1, 2002. See ORS 308.210 (providing for a January 1 assessment date each year) and ORS 308.007 (specifying that the assessment date is the day on which property is assessed and that the assessment year beginning on January 1 corresponds to the tax year beginning on July 1).

According to the administrative rule promulgated by the department, three approaches to value are to be considered in valuing real property: the sales comparison approach, the cost approach, and the income approach. OAR 150-308.205-(A)(2)(a). Neither party used the income approach, and the cost approach is not applicable. That leaves the sales comparison approach. Plaintiff is the appealing party and by statute has the burden of proof. See ORS 305.427.

That statute provides that "a preponderance of the evidence shall suffice to sustain the burden of proof." *Id.* "Preponderance of the evidence means the greater weight of evidence, the more convincing evidence." *Feves v. Dept. of Revenue*, 4 OTR 302, 312 (1971). "It is such evidence that, when weighed with that opposed to it, has more convincing force and is more probably true and accurate." *Riley Hill General Contractor v. Tandy Corp.*, 303 Or 390, 394, 737 P2d 595 (1987) (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 has a realtor's letter estimating the value of the land at \$74,000 to \$76,000, but there is no explanation of the basis for that opinion. As such, it does not constitute market evidence, which is the hallmark of the sales comparison approach.

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<sup>2</sup> All references to the Oregon Revised Statutes (ORS) are to 2001.  
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Plaintiff has another of letter by John Rosenthal, an Oregon licensed broker, that discusses auction sales of a former mill site in Lyons. The property was divided into five separate parcels that sold for prices ranging from a low of \$4,687 per acre for a 16-acre parcel to a high of \$10,187 per acre for an 8-acre parcel. No specific information about those properties was given and the broker does not use those sales to formulate an opinion of value for the subject property, which is 9.65 acres and valued by the assessor at roughly \$11,900 per acre.

Plaintiff will accept the higher value of \$10,187 extracted from the mill-site sales, provided it is applied only to what he considers to be the amount of usable land he owns, which he asserts is 6.9 acres. Plaintiff insists the balance of the 9.65 acres is encumbered by the seasonal creek (2 acres) and the large dirt pile (.75 acres). Alternatively, Plaintiff asserts that a fair value for the whole of 9.65 acres is \$6,100 per acre. That was the average price per acre for three of the parcels that once comprised a portion of the former mill site.

The county makes no adjustment for the dirt pile and insists that only about one quarter acre is encumbered by the creek. That gives Plaintiff 9.4 acres of usable land. The court finds insufficient evidence to choose between the two views and concludes that Plaintiff has failed to meet his burden of proof on the issue of the amount of usable land. The indicated value of 9.4 usable acres, at \$10,187 per acre, is \$95,700 (rounded). The county pointed out at trial that the \$10,187 price was paid at auction, and asserts a true arm's-length sale of the subject would bring that much or more. Absent evidence that the auction price was market value, the court agrees. The evidence at this point suggests a range of value between \$95,700 and \$114,690, the latter being the current roll value. The court rejects Plaintiff's selective averaging method that suggests a \$6,100 per acre value.

The county introduced evidence of a number of sales, focusing on three of them at trial. One involved .74 acres next to the subject that sold for \$85,000. The county indicates that .74 acres is undevelopable, leaving a per-acre price of \$42,500 for the two developable acres. The date of that sale was not given. The county's two other sales brought per-acre prices of \$9,590 and \$10,800. Those properties are located in the town of Sweet Home, which is approximately 40 miles away from a Lyons.

On the evidence before it, the court finds it difficult to know if the subject property is worth \$10,000 per acre, \$12,000 per acre, or even \$20,000 or more per acre. There is certainly insufficient evidence to persuade the court that the property is worth only \$6,100 per acre, as Plaintiff asserts.

Plaintiff devoted considerable time and effort attempting to show that zoning and poor drainage limit the property's value, and that there is a legal question about access that further impacts the value. However, Plaintiff did not adequately develop those points and the county and the department raised doubt about the alleged access problem. Plaintiff has operated a mill on the property for many years and has physical access in the northeast corner. Additionally, the local zoning ordinance that Plaintiff asserts prevents legal access only requires that a lot "adjoin a street other than an alley for a width of twenty five (25) feet." (Ptf's Ex 12 at 13.) Approximately 175 feet of Plaintiff's property adjoins a street and the point of physical access is 23 feet wide. The county also introduced evidence on the cost of a culvert that could be added to the northwest corner where the seasonal creek is located. And, in closing the department argued that, even assuming a single and continuous strip of land 25 feet wide is required, and further assuming the northwest area is too wet for access, a variance could possibly be obtained that would allow access in the northeast corner where Plaintiff currently enters and exits.

### III. CONCLUSION

On the evidence before it, the court concludes that Plaintiff has failed to prove by a preponderance of the evidence that the value of the subject property for the 2002-03 tax year should be reduced. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiff's appeal is denied and the requests of the county and the department that the court sustain the roll value of the land are granted.

IT IS FURTHER DECIDED that the RMV of the improvements is reduced to \$210,000, per the agreement between Plaintiff and the department, with \$102,500 allocated to the buildings and \$107,500 to the machinery and equipment.

Dated this \_\_\_\_\_ day of March, 2004.

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DAN ROBINSON  
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 DAN ROBINSON ON MARCH 26, 2004. THE COURT FILED THIS DOCUMENT ON MARCH 26, 2004.**