

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Property Tax

RON GRABOWSKI	)	
and DEBRA GRABOWSKI,	)	
	)	
Plaintiffs,	)	TC-MD 030375A
	)	
v.	)	
	)	
COOS COUNTY ASSESSOR,	)	
	)	
Defendant.	)	<b>DECISION</b>

Plaintiffs have appealed the assessment of their property for the 2002-03, 2003-04, and 2004-05 tax years.<sup>1</sup> For the 2002-03 and 2003-04 tax years, Defendant filed counterclaims. Plaintiffs appeared and made their arguments. Defendant appeared through its counsel, David Koch. The appeal is resolved through motion for summary judgment.

I. STATEMENT OF FACTS

The property in dispute is the Plaintiffs' home, located at 94344 Highway 42S in Coquille. Known as Tax Lot 1000, it consists of two Accounts, 9027.00 and 9027.90. (Def's Ex F, Tax Records; Aff of Robert Main in Supp of Mot for Summ J at 2.) Account 9027.00 is 5.05 acres of specially assessed forestland. Account 9027.90 consists of a 1 acre homesite, 2.6 acres assessed at market value, and 1.4 acres of specially assessed forestland. (*Id.*)

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<sup>1</sup> At the November 16, 2004, case management conference, the parties verbally requested the Complaint be amended to include tax year 2004-05. The request was granted.

The total roll values<sup>2</sup> are as follows:

<u>Tax Year</u>	<u>Real Market Value On The Roll</u>	<u>Assessed Value</u>
1998-99	\$84,731	\$73,040
1999-2000	\$75,231	\$75,231
2000-2001	\$81,784	\$75,231
2001-02	\$85,184	\$77,487
2002-03	\$85,184	\$79,811
2003-04	\$95,841	\$86,516 ( <i>Id.</i> )

The events of note in this appeal are best set out in a chronological fashion.

1981: Coos County acquires the mineral rights of Riverton Coal Company, as recorded in Volume 143, Page 43. (Def’s Ex H, Mineral Rights; Aff of Robert Main at 3.)

December 20, 1989: Plaintiffs purchase their home for \$74,000. (Def’s Ex A, Warranty Deed; Def’s Ex B, Trust Deed). Their warranty deed excepted the “[r]eservations, restrictions and conditions as contained in deed from Riverton Coal Company \* \* \* recorded November 3, 1924, in Book 95, Page 85”. (Def’s Ex A at 2.)

March 28, 2000: The board of property tax appeals lowers the real market value of the property for the 1999-2000 tax year. (Def’s Ex O, Real Property Order.)

September and October 2001: An independent appraiser estimates the value of the subject property to be \$135,000. (Def’s Ex P, 2001 Appraisal.) Plaintiffs record a trust deed in the amount of \$90,000. (Def’s Ex D, Trust Deed.)

June 19, 2002: Defendant entered into a lease agreement with Wellfleet Drilling, L.L.C., (Wellfleet) giving Wellfleet the right to extract methane from some of the properties for which it owned the mineral rights. (Def’s Ex Q, Lease.) The lease ran to the rights reserved to Riverton Coal Company in the deed recorded at Book 95, Page 85. (Aff of Robert Main at 3.)

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<sup>2</sup> These amounts are taken from the Affidavit of Robert Main in Support of Motion for Summary Judgment. The court notes that, in reviewing the County’s records, a different monetary amount is stated for tax year 2003-04. That difference has no bearing on the outcome and decision of the case.

Defendant's lease to Wellfleet included the reservation that "[o]n property where County does not own the surface rights, Lessee shall not engage in exploration activities without the consent of the surface owner(s)." (Def's Ex Q, Lease). On May 17, 2004, Wellfleet assigned its rights under the lease to Methane Energy Corp. (Def's Ex R, Assignment.) The assignment specifically acknowledges that it is subject to the reservation of the specific written consent of the surface owners. (*Id.*)

The following points are additional facts supplementing this chronology:

- The mineral rights only reach 1.1 acres of the southern tip of Plaintiffs' property, in the area assessed as forestland. (Aff of Robert Main at 3; Aff of Karlas Seidel in Supp of Mot for Summ J at 2.)
- The increase in the real market value during the tax years following the decision of the board of property tax appeals was due to the annual trending applied to all properties of a similar character. (Aff of Larry Rescorla in Supp of Mot for Summ J at 2; Def's Ex N, Office Index.)
- The property does contain a hole, or at least a depression, probably due to an airshaft from an abandoned mine.

## II. ANALYSIS

Plaintiffs request that the court halve the market value of their home on the reasoning that Defendant owns, and is exploiting, the mineral rights under their property; that their property contains an air shaft left from previous coal mining; that Defendant violated ORS 309.115(2);<sup>3</sup> and that Defendant's appraisal exaggerated the living area of the house and therefore its value.

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<sup>3</sup> All references to the Oregon Revised Statutes (ORS) are to 2003.

Defendant's counterclaims are that the real market value of the property for the 2002-03 and 2003-04 tax years exceeds that shown on the tax roll.

Plaintiffs' most vivid argument points to the consequences to their home if attempts were made to extract the minerals located beneath their land. Looking to the experience of communities where that has occurred, Plaintiffs identify a loss of privacy, noise, damages from water pumped to the surface, erosion, heavy traffic and deteriorating roads, the industrial character of the sites, noxious gases, poisoned water, a reduced flow of water, and the storage of construction materials as events which would make their home unlivable.

The court agrees that in other places where subsurface rights have been pursued there have been dramatic consequences to neighboring residences. However, the particular point that must be stressed is that to date nothing like that has happened here. On all the assessment dates in question, Plaintiffs' home was a residence in a rural setting free from any detrimental effects from mineral exploitation. That point is made particularly clear by the 2001 appraisal of the property which notes there are no adverse conditions on any site within Plaintiffs' immediate vicinity.

Plaintiffs reason that, even though their home is pleasant now, the consequences of any mining are so adverse that its potential must have a deleterious effect on present value. However, the perspective of the court is that for the years at issue, that possibility is just too distant. In that respect, Defendant's conduct is especially important. Defendant, in conditioning its transfer of the rights to exploit the minerals upon the express written consent of the owner of the surface rights, has evidenced an intent to avoid the situation feared by Plaintiffs. Plaintiffs speculate that this restriction is a nullity. However, speculative musing as to events that may or may not occur, either as to the validity of contracts or as to the consequences of mining, do not

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support changing the assessment of the property. *See Schaefer v. Dept. of Rev.*, 2001 WL 914208 (2001).

Moreover, another important point is that the mineral rights at issue only reach an area of 1.1 acres in the southern tip of Plaintiffs' property. Because the 6.45 acres are specially assessed as forestland, the property is already assessed at considerably less than its real market value, as certified by no less an authority than the Department of Revenue. ORS 321.352(4). With respect to Plaintiffs' arguments as to ORS 309.115, that statute does permit the value ordered by a board of property tax appeals to increase due to trending, which is what happened here. Further, any increase to real market value in this instance may be a nullity, because with no showing of compression under Measure 5, real market value is not as relevant as assessed value.

The remaining points include Plaintiffs' assertion that Defendant's appraisal overstated the value of their home. Even if Plaintiffs' thoughts are given their strongest weight, they do not show what the value of their property is, which is part of their burden of proof. Plaintiffs' presentation of the hole in their property, probably from an airshaft, has a similar problem. The demonstrated size, location, and apparent danger posed by the hole do not support Plaintiffs' conclusion that their property must be so dramatically reduced in value.

The last item is Defendant's counterclaims for the 2002-03 and 2003-04 tax years. The conclusion of the court is that, although there is some evidence to support Defendant's request, the record as a whole shows the real market value currently carried on the roll is the best expression of its value.

### III. CONCLUSION

Plaintiffs sincerely believe that their property has lost at least half of its value due to what might happen to it in the future. The court has patiently examined their evidence and heard their arguments. Its conclusion, much like that of the credit unions and lenders which Plaintiffs spoke

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of, is that future valuations of the property will be governed by the conditions in effect at that time. However, for the years at issue here, the court cannot agree that the property is over assessed. Now, therefore,

IT IS THE DECISION OF THIS COURT that this appeal is denied, as are Defendant's counterclaims.

Dated this \_\_\_\_\_ day of October 2005.

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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 October 7, 2005. The Court filed and entered this document October 7, 2005.***