IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

LANE COUNTY ASSESSOR,	)	
	)	
Plaintiff	)	TC-MD 030411C
	)	
v.	)	
	)	
JACK LOUIE and ILLINE LOUIE,	)	
	)	
Defendants.	)	**DECISION**

Plaintiff (the county) appeals from an order of the Lane County Board of Property Tax Appeals (board) that reduced the real market value of Defendants' (taxpayers) property for the 2002-03 tax year from $368,700 to $307,800. The county seeks an increase in value and the taxpayers seek a reduction.

Trial was held by telephone August 4, 2004. Bill Weeks (Weeks), registered appraiser for the Lane County assessor, represented the county and testified at trial. Taxpayers were represented by David E. Carmichael (Carmichael), attorney-at-law, Eugene. Carmichael presented testimony through three witnesses: Jack Louie (Louie), who testified for the taxpayers' case-in-chief, and Patty Jaszkowski (Jaszkowski) and Jeff Cole (Cole), who appeared as rebuttal witnesses.

In its Complaint, the county requested an increase in the real market value to $510,000, but modified that request to $466,560 at trial, consistent with the value conclusion set forth in Weeks's written report. The county's estimate translates into a value of $45.74 per square foot. The court granted taxpayers' oral motion, made during trial, to amend its Answer to include a counterclaim for a reduction in the real market value to $275,000. Taxpayers' estimate yields a per foot value of $26.96.

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I. STATEMENT OF FACTS

The subject property is a 10,200 square foot[1] multi-tenant, light industrial warehouse situated on a 25,282 square foot lot in an area predominated by multi-tenant warehouses under 20,000 square feet. The subject is physically located at 180 Grimes Street in Eugene, and is identified in the assessor's records for the 2002-03 tax year as Account 1548468. The subject is three miles from downtown Eugene and two miles from two major thoroughfares, Highway 99 and Beltline, the latter of which is a four-lane highway leading to Interstate 5.

Louie bought the property as a vacant lot in October 1999; Weeks reports that stated consideration in the deed is $80,000. (Ptf's Ex 4.) Construction of the building, which has a metal clad exterior and a metal roof, was begun in late 1999 and completed in 2000. According to taxpayers' federal Supplemental Income and Loss statement (Schedule E) for 2001, the building cost $235,000 to construct.[2] (Defs' Ex 4.) Louie testified that the building was built as an empty shell with a small office. Louie further testified that the building is occupied by four tenants leasing spaces ranging in size from 1,900 square feet to 3,200 square feet, who pay rents ranging from 26 cents to 31 cents per foot gross. Louie reports monthly rents of $950, $850, $650, and $500, for a total of $2,950. (Defs' Ex 2A.) That equates to an annual gross income of $35,400. Taxpayers' federal Schedule E's show rents received for the subject property of

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[1] The parties differed in the size of the improvement when making their calculations. The Plaintiff found that the square footage was 10,200 square feet and the Defendants used 10,500 square feet. The court used 10,200 square feet for its analysis.

[2] Page 2 of taxpayers' Schedule E shows $235,000 as the basis for depreciation, and $5,783 as a depreciation deduction for 2001. (Defs' Ex 4.) The $5,783 depreciation is carried over to page 1, column C, of taxpayers' Schedule E, which is the income and expense column for the subject property (180 Grimes). (*See* Defs' Ex 3.)

$34,820 in 2001 and $24,550 in 2002. (Def's Exs 3 and 5.) Reported expenses were $20,269 and $10,032, respectively, for 2001 and 2002. (*Id*.)[3]

Both parties value the property under the income capitalization approach, but they disagree as to each component of the equation. The county estimates income based on rents of 40 cents per square foot triple net, whereas taxpayers use 30 cents per square foot gross. Those numbers yield potential gross incomes (PGI) of $48,960 and $37,800, respectively. The county's data is extracted from market leases and lease offers; taxpayers' estimate comes from Louie's experience with the subject property and other warehouse properties he owns and is supported by the testimony of Jaszkowski. The county estimates effective gross income (EGI) based on vacancy and collection losses of 10 percent, whereas taxpayers relied on a more modest 5 percent.[4] The county's vacancy factor is based on a report by Duncan & Brown Appraisal Service.[5] The county's net operating income (NOI) is $39,658 and is based on an expense ratio of 10 percent; taxpayers' use a 20 percent expense ratio, which yields a NOI of $28,718. The county selected a combined capitalization rate (cap rate) of 8.5 percent and the taxpayers applied a combined rate of 10.5 percent, comprised of a base rate of nine percent, plus 1.5 percent for taxes. Dividing the parties' NOI estimates by their respective cap rates yields value estimates of $466,560 for the county and $273,600 for the taxpayers. Taxpayers round their value estimate to $275,000.

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[3] The court subtracted mortgage interest, taxes, and depreciation from total reported expenses on taxpayers' federal Schedule E. That amounted to $26,766 for tax year 2001 and $26,325 for tax year 2002.

[4] The county's EGI is $44,064 and the taxpayers' EGI is $35,910.

[5] West Eugene Industrial Report, Duncan & Brown Real Estate Analysts, edited by Richard J. Duncan, MAI, SRA.

The county also valued the property under the comparable sales approach. (Ptf's Exs 5-8.) Weeks used seven sales he deemed comparable to the subject property that had sale prices on a per square foot basis ranging from a low of $34.65 to a high of $51.60. (*Id*. at 5.) Weeks concluded that $50 per square foot was an appropriate figure for the subject property, yielding a value of $510,000. (*Id*. at 8.) Weeks placed primary reliance on the income approach, and thus concluded that the value as of January 1, 2002, was $466,560. *(Id*. at 13.)

II. ANALYSIS

The issue before the court is the real market value of the subject property as of January 1, 2002. Real market value is defined in ORS 308.205(1)[6] as:

> "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."

The administrative rule promulgated by the Department of Revenue to implement that statute provides that "all three approaches: sales comparison approach; cost approach; and income approach, shall be considered" in valuing real property. OAR 150-308.205-(A)(2)(a).[7] The rule recognizes that in appraising any particular property "it may be that all three approaches can not be applied," but the appraiser is nonetheless required[8] to investigate each approach for its merit. *Id*.

As indicated above, each party estimated the value of the property based on the income approach, and the county also employed a sales comparison approach. Neither party valued the

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

[7] All references to the Oregon Administrative Rules (OAR) are to 2001.

[8] The mandatory nature of the admonition in the rule is evidenced by use of the word "shall."

property under the cost approach, although it is one of the three standard approaches to valuation and is particularly well-suited for new construction such as the subject property.

A. *Income Approach*

1. *PGI*

The starting point is to determine the PGI for the property. The objective is to determine "the economic rent that the property would most probably command in the open market as indicated by current rents being paid, and asked, for comparable space." OAR 150-308.205-(A)(2)(g). The rule cautions against using the actual income from the subject property except for property not typically leased. It provides that "[i]ncome from the operation of the [subject] property *may* be utilized for property types, such as industrial plants, which are not typically leased or rented." *Id*. (Emphasis added.)

The parties are apart in their income estimates by $11,160. The county used market evidence and estimated rent for the subject property of 40 cents per square foot on a triple net basis,[9] which yielded an annual PGI of $48,960. (Ptf's Ex 11.) Taxpayers use 34 cents per square foot gross,[10] based on actual income for the subject property, and Louie's experience with the subject property and other warehouse properties he owns. It is supported by the testimony of Jaszkowski, who testified that 30 cents per square foot was a "fair" rent. The actual rents for the subject property range from 26 cents to 31cents per square foot gross. Taxpayers' calculate a PGI of $37,800.[11]

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[9] Although lease terms may vary in different markets, generally under a triple net lease the "tenant pays utilities, taxes, insurance, and maintenance, and [the] landlord pays for structural repairs only." Appraisal Institute, The Appraisal of Real Estate 477 (12th ed 2001).

[10] Under a gross rent lease, the lessor is responsible for taxes, insurance, and maintenance.

[11] Taxpayers' PGI is based on 10,500 square feet. The county reports a building size of 10,200 square feet. Factoring in the smaller size reduces taxpayers' PGI to $36,720, and reduces their overall value estimate to $265,783.

Weeks has been an appraiser in both California and Oregon since 1977, and has worked for the Lane County Assessor's Office since 1988, with a two year hiatus between 1997 and 1999. Weeks has taken various appraisal courses in both states and has considerable experience valuing various kinds of property, including commercial and industrial. Weeks's income estimate came from a study of six comparable leased properties built between 1977 and 2000. Five of the six properties are located within 1 ½ miles of the subject property, and, of those, two are located in the same industrial park. Those two properties are similar in age and size (comparable lease one is 11,628 square feet and comparable lease six is 12,300 square feet, compared to 10,200 square feet for the subject property) and rent for 45 cents and 40 cents per square foot triple net. They were built in 1998 and 1997, just two and three years before the subject property. Another of Weeks's comparable leases (number five at 90500 Hwy 99N) is also similar in age, size, and appearance, and rents for 40 cents per square foot. That property has shared access and is not directly visible from the highway, but appears to have more space in the parking area in front of the building for trucks to maneuver, which makes the property desirable to a wider range of tenants. Weeks's comparable lease two (3925 Cross) is within a half mile of the subject property, and was built the same year as the subject property, but is over 8,000 square feet smaller. It too is similar in appearance and was being offered for lease at 44 cents per square foot, with the owner paying taxes. Comparable lease three (1055 Bertelsen) is considerably older (built in 1977), is approximately 1½ miles from the subject property, and is divided into smaller units (1250 square feet compared to 1900 to 3200 square feet for the subject property). Historically, that property has suffered from higher vacancies and spaces were being offered for 40 cents per square foot. Finally, Weeks's comparable lease four (1030 Tyinn Street) was leased for 45 cents per square foot with the owner paying taxes and the tenants paying utilities.

Louie testified that none of the county's properties are comparable, especially the two nearby on Grimes. The property at 260 Grimes (Ptf's comparable lease one) was a build-to-suit with a tenant in tow and is a superior quality building with a better truck turnaround and more parking. It rents for 45 cents per square foot. The photograph, submitted by the county, supports Louie's claim that the building is superior, and Weeks describes the building as having "exterior fenestration," which is a technical way of saying that the building has designer windows that add curb appeal. The other warehouse, located at 280 Grimes (Ptf's comparable lease six), is slightly larger than either the subject property or Plaintiff's comparable lease one and, although not as upscale as the property at 260 Grimes, it too is superior in construction to the subject property. Louie testified that Plaintiff's comparable leases four and five, which rent for 45 cents and 40 cents per square foot, were also superior quality buildings. Weeks did not challenge that assertion and the court accepts it as true. Louie challenges Plaintiff's other two comparable leases, which were offered at 40 cents (Ptf's comparable lease three) and 44 cents (Ptf's comparable lease two) per square foot. Louie testified that the county's comparable lease three is superior because it is in a better location, has a dual use potential as a warehouse or retail space, has smaller individual spaces which rent for a premium, and has loft space for the tenants that is not reflected in the official leased space. Louie contends that the county's Cross Street warehouse (Ptf's comparable lease two) receives above market rent because it is leased to high risk tenants (glass blowers who use highly flammable products) that presumably have difficulty renting such space. Louie testified he does not rent to such individuals because insurance rates increase precipitously.

Taxpayers' PGI is based on Louie's testimony on actual rents and his experience. Louie has been in real estate 25 years and owns 60 properties, including 5 warehouses. Louie testified that his rents (ranging from 26 cents to 31 cents per square foot) are fair market rents, derived from conversations with local real estate investors and agents, and his own experience renting his warehouses. Louie testified that he typically advertises in the newspaper and, if the property is on the market too long, he drops the rent a penny or two to attract a tenant. He concluded by saying that he never "gives anything away." Jaszkowski supported Louie's PGI estimate of 30 cents per square foot. Jaszkowski has been the property manager for Empire Development since 1991 and manages a pool of leased properties that includes 300 to 400 residential apartments, 13 commercial buildings (with tenants such as Wendy's International, Inc.), and 60 industrial tenants. Jaszkowski previously testified in this court in an appeal involving a warehouse property owned by her employer in a case in which Louie appeared as a witness. *See Wingard v. Lane County Assessor*, TC-MD No 030762D (Jan 5, 2004). The court notes that, while Jaszkowski's testimony in the instant appeal was consistent with her testimony in the *Wingard* case, at least some of the subject warehouses involved in that appeal were 30 years old. Moreover, according to the court's decision in *Wingard*, Louie testified that he rents his properties for 30 cents to 32 cents per square foot, whereas here, Louie testified to rents ranging from 26 cents to 31 cents per square foot. The court will confine its analysis to the testimony in this case.

Although there was much testimony about warehouse rents, taxpayers' rents were not substantiated by the underlying lease agreements. Moreover, taxpayers did not present market-derived data on specific leased comparables to support their income estimate. Finally, the court has carefully reviewed the photographs and written analysis of the county's six comparable leases and is not persuaded that they are all superior in location or quality so as to render them not comparable to the subject property. Nonetheless, the terms of the leases do present a problem, although not insurmountable.

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How shall the court reconcile these disparate views as to the income potential of the subject property? Cole, who was called by taxpayers as a rebuttal witness, testified that 40 cents per square foot triple net was not achievable for the subject property in 2002 because of the downturn in the Eugene-area economy following the terrorist attacks on United States soil on September 11, 2001. Cole has been in real estate in the Eugene/Springfield area for 21 years, and has worked as a principal broker for the past nine years, supervising five real estate agents. Cole opined that pre-September 11 leases do not provide an accurate picture of the market on January 1, 2002. Cole testified that he did achieve a rent of 40 cents per square foot for a nearby property prior to September 11, 2001. Cole noted that the leases in every one of the county's comparables were entered into before September 11, 2001. Cole's testimony seemed credible, but was undermined somewhat by Louie, who testified that there were tenants available on January 1, 2002, and that the market was "okay." Louie is an experienced market participant. Moreover, Weeks presented a 2002 market trend study for industrial properties in the West Eugene area prepared by a local real estate appraiser with the senior appraiser designation that reported an active market for those properties. (Ptf's Ex 28.)[12] That report states that rents were flat and vacancies high in 2002, as they had been in 2001, which means rents were the same in 2000, 2001, and 2002. (Ptf's Ex 27.) That opinion contradicts Cole's testimony of pre- versus post-September 11 rents, but Cole disagrees with the author's conclusions. That is but one of

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[12] West Eugene Industrial Report, Duncan & Brown Real Estate Analysts, edited by Richard J. Duncan, MAI, SRA.

many areas where the divergent opinions of the various experts complicates the court's task of determining the value.[13]

The burden of proof in a Tax Court appeal is a preponderance of the evidence and falls on the party seeking affirmative relief. ORS 305.427. In this case both parties seek affirmative relief. A "[p]reponderance 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.).

After careful consideration, the court concludes that a fair market rent for the subject property was 35 cents per square foot. That rent is based on a modified gross lease, with lessor and lessee splitting the expenses for utilities, taxes, insurance, and maintenance. The court's rent translates into a PGI of $42,840.

2. *Vacancy Rate*

EGI is calculated by deducting market extracted vacancy and collection losses from the property's income potential. As indicated above, the county uses a rate of 10 percent compared to the taxpayers' 5 percent figure. Each party's rate is tied to its respective PGI. The consensus of the witnesses was that vacancy rates increase with higher rent. Because the court chose a market rent midway between the two parties, it finds 7.5 percent to be a reasonable rate for vacancy and collection losses. That translates into a deduction of $3,213.

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[13] The author of that report was not called to testify and there is no evidence concerning the general reliability of the report in the real estate community. Although the report would generally not be admissible in court for lack of foundation, the Magistrate Division of the Tax Court is not bound by the formal rules of evidence and the report tends to support Louie's testimony. *See* ORS 305.501. The court finds the evidence somewhat helpful in informing its opinion as to market conditions and PGI.

3. *Expenses*

The county used a 10 percent expense ratio, but that ratio is based upon triple net leases. Taxpayers used a 20 percent ratio because they reportedly pay all expenses.

There was very little testimony on expenses. Weeks testified that warehouse tenants typically pay utilities and taxes and take care of the interior and, in his opinion, there is very little exterior maintenance to a new, metal clad warehouse. The court finds the county's expenses to be low because they assume triple net leases and the court's determination of rent is based on a modified gross. Moreover, three of Weeks's six comparable leases have modified gross leases with the tenants paying some expenses.

Louie testified that actual expenses, excluding insurance, exceeded the amount derived using taxpayers' 20 percent ratio (which came to $7,182).[14] As indicated above, taxpayers' Schedule E expenses (excluding mortgage and other interest and property taxes) were $20,269 in 2001 and $10,032 in 2002. The court finds taxpayers' reported expenses to be high. For example, in 2001 taxpayers reported cleaning and maintenance expenses of $4,905, and $9,810 in repairs. (Def's Ex 3.) In 2002, taxpayers reported repairs of $4,978. There was no testimony regarding the nature of the repairs, nor any documentation to substantiate the amounts reported. The subject property was built in 2000 and is constructed of metal. A building that new and uncomplicated should have relatively low expenses. Jaszkowski testified that a 25 percent expense ratio seemed fair, but she did not elaborate on that opinion. Notably, there is no market evidence to support either party's ratio.

Based on the evidence, the court concludes that 15 percent is a reasonable expense ratio for the subject property, given its age and property type (*i.e.*, warehouse).

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[14] Louie testified that he neglected to report insurance expenses on taxpayers' Schedule E.

4. *NOI*

The court has determined that the PGI for the subject property is $42,840 as of January 1, 2002. Deducting $3,213 for vacancy and collection losses (based on the court's 7.5 percent vacancy and collection loss ratio), and $5,944 for expenses (15 percent expense ratio), yields a NOI of $33,683.

5. *Cap Rate*

The county uses a rate of 8.5 percent and taxpayers use a rate of 10.5 percent. The county's rate is based on five sales that show a range from a low of 6.66 percent to a high of 8.94 percent. (Ptf's Ex 5.) Those rates appear in a comparable sales table prepared by Weeks that show two things: sale prices per square foot and cap rates. There are seven sales in the table and cap rates reported for five of the seven (there are per square foot values for all seven). Taxpayers would have the court reject, or at least view suspiciously, the county's cap rate evidence because, in the *Wingard* case, Weeks reported higher rates for two of the five properties presented in this appeal. Here, Weeks reported rates of 6.66 (comparable sale three) and 8.5 (comparable sale four), compared to rates of 9.47 and 9.87, respectively, in *Wingard*. Additionally, county records show a higher rate than Weeks reported for a third property. In this case, Weeks reported a rate of 8.24 percent for his comparable sale six and the rate in the county's records is 9.32 percent. Finally, although Weeks did not report cap rates for two of the seven sales, county records submitted by taxpayers show cap rates of 9.38 percent and 9.2 percent for those properties (Ptf's comparable sales two and five). Those changes alter the range to a low of 8.14 percent to a high of 9.87 percent, with five of the seven sales between 9.2 and 9.87. Again, Weeks selected a rate of 8.5 percent.

The record was left open after trial for taxpayers' representative to submit an excerpt from the report Weeks submitted in the *Wingard* case to demonstrate the difference in reported cap rates between the two cases. Weeks responded in writing to taxpayers' submission, explaining that in *Wingard*, taxes were not included in expenses in calculating NOI, whereas in this case the cap rates are lower for two properties (comparable sales three and four) because taxes were deducted as an expense.[15] According to Weeks's post-trial response, that explanation similarly accounted for the difference between the rate reported and the rate appearing in the assessor's records for the property at 1030 Tyinn (Ptf's comparable sale six).[16] That explanation appears to resolve the discrepancy in three challenged rates reported by Weeks, but is nonetheless troubling. An appraiser is not prohibited from ever changing his or her cap rates between cases, or reporting a rate different than the rate appearing in its own records, but when such a change

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[15] Technically, the record was not left open for the county to respond. Taxpayers' representative filed a Surrebuttal to Weeks's response, asking the court to give no credence to Weeks's response because it conflicts with Weeks's sworn testimony at trial. Taxpayers also object to the fact that the response by Weeks goes beyond the scope of taxpayers' rebuttal evidence.

The court accepted only the first three paragraphs of Weeks's response. It did so for several reasons. First, because the trial was conducted by telephone, Weeks was not given an opportunity to review the document that was the subject of the cross-examination. Proper procedure is to allow the witness the opportunity to look at the potentially impeaching document. It is a shortcoming inherent in telephonic proceedings that can be overcome by allowing post-trial submission of the document, and a written response by the witness. Second, Weeks had presented his case and rested, and was surprised when called to testify as a "rebuttal" witness. Weeks objected to the procedure. As it turned out, the testimony elicited from Weeks was not in the nature of rebuttal because, rather than adding to taxpayers' case-in-chief, the line of questioning was designed to demonstrate inconsistencies or inaccuracies in Weeks's earlier testimony. As such, it was cross examination and the line of questioning could have been halted by the court. Third, the Magistrate Division "is not bound by common law or statutory rules of evidence or by technical or formal rules of procedure, and may conduct the hearing in any manner that will achieve substantial justice." ORS 305.501(4)(a). The interests of justice are best served by affording Weeks a limited opportunity to respond directly to the information submitted by taxpayers regarding the change in cap rates.

[16] For example, in this case Weeks reported a rate of 8.24 percent for the property at 1030 Tyinn (comparable sale six) compared to a rate of 9.32 in the county records. Weeks explained that the evidence submitted by the parties shows that the owner of that property is responsible for taxes. According to taxpayers' Exhibit 22, the NOI for that property was $102,484 and the sale price was $1,100, 000, yielding a cap rate of 9.32 percent. In his post-trial submission, Weeks states that property taxes were $11,731. Subtracting that amount from the $102,484 NOI yields a NOI of $90,753. Dividing that NOI by the $1,100,000 sale price yields a cap rate of 8.25 percent, which is essentially the rate Weeks reported in this case.

occurs, the appraiser should inform the court and the opposing party of the existence of the disparity and the reason therefore.[17] Weeks was on notice that the issue would likely come up because taxpayers included a copy of the *Wingard* decision in their pretrial evidentiary submissions.

That leaves the two other comparable sales in which Weeks omitted from his evidence the cap rates appearing in the assessor's tax records. The court is not prepared to infer ill intent from those omissions. It must be kept in mind that the "Sales Comparable Tabulation Chart" prepared by Weeks and submitted as Exhibit 5 was developed for two purposes; the sales were used to extract, from the various sales prices, a per-square foot value and a cap rate. It was not incumbent upon Weeks to provide both types of information for each sale. Nevertheless, the omissions have the effect of lowering the county's cap rate data, and it is not lost on the court that the five reported rates are all at or below 8.94 percent, whereas the two omitted rates are higher, at 9.38 and 9.2 percent. And, of course, higher cap rates produce a lower value.

For its part, taxpayers' 10.5 percent cap rate is comprised of a base rate of 9 percent, with 1.5 percent added as the tax rate. The county's data easily supports a base rate of 9 percent. The testimony of Louie and Jaszkowski supports the 9 percent base rate. Louie testified that Weeks omitted cap rates of 9.38 percent and 9.2 percent from his data and that, according to the county's own tax records, the rate reported for another of Weeks's sales should have been 9.32 percent rather than 8.24 percent. Those discrepancies are addressed above. Louie further testified to a rate from another sale in the county's records not introduced by Weeks. A 4,200 square foot

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[17] This court has previously ruled that "the filing of a [personal property] return does not bar a taxpayer, on a subsequent appeal, from correcting inaccurate or incomplete information." *Northwest Hospital Service v. Multnomah County Assessor*, TC-MD 981765A, WL 1060553 at *3 (June 30, 2000), *citing Benj. Franklin Savings and Loan v. Dept. of Rev*, 310 Or 651, 801 P2d 771 (1990). A personal property return is filed under oath and subject to penalties for false swearing. Thus, the return and the testimony are sworn.

warehouse located at 1250 Ocean had a cap rate of 9.07 percent.[18] Jaszkowski testified that she felt taxpayers' 9 percent cap rate was fair, but her opinion can be given little if any weight because Jaszkowski could not explain why she felt that was a fair rate and it was clear from cross examination that the witness was unfamiliar with the intricacies of the cap rate principle. Nonetheless, the 9 percent rate seems appropriate.

Taxpayers are correct that the tax component must be added to the base rate derived from the comparable sales because taxes were not expensed. Taxpayers assert that a tax rate of 1.5 percent should be added. The county did not challenge that number and there is insufficient evidence in the record to evaluate the validity of that number. The court assumes taxpayers' rate is the actual millage rate. It would probably be more accurate to add the nominal rate because taxes typically are not applied to real market value in Oregon. *See Allen v. Dept. of Rev.*, 17 OTR 248, 259-60, n12 (2003) (noting that although adding the millage rate to the cap rate is "an accepted method of dealing with property taxes in a value appeal where the amount of taxes is a function of the ultimate value that has yet to be determined[,] * * * that method does not best approximate the proper tax burden because of the impact of Article XI, section 11 (Measure 50)" and that the "iterative approach may be needed" because the nominal rate may not be the actual tax rate.) Nonetheless, on the evidence before it, the court will add the proffered rate of 1.5 percent. That results in a combined rate of 10.5 percent, which when applied to the NOI of $33,683, yields a value of $321,000 (rounded).

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[18] Louie was allowed to testify to information in the county's tax records, although he was not asked to authenticate those documents, and likely is not qualified to do so. The county did not object to the testimony and, as indicated in footnote 15 above, the Magistrate Division of the Tax Court is not bound by common law or statutory rules of evidence or procedure.

B. *Market Approach*

As a check on value, the county utilized the market approach, which yielded a value estimate of $510,000. That value is approximately $45,000 higher than the county's estimate under the income approach. Weeks analyzed seven sales occurring between February 2000 and July 2003. Two of the sales are post-assessment date transactions (Ptf's comparable sales one and seven). Removing those two comparables, the range in value on a per square foot basis is between a low of $34.65 for a warehouse considerably older (built in 1977, 23 years before the subject property) and a high of $51.35 for property very similar in size (11,880 square feet) that was built just one year before the subject property. In his appraisal report, Weeks states that "[t]he three best sales indicate a value in excess of $50.00 per square foot." Weeks chose $50 per square foot as a fair indicator of value. (Ptf's Ex 8.)

In terms of age, size, and appearance, the two best comparables appear to be the properties at 90500 Highway 99N (Ptf's comparable sale two) and 3925 Cross (Ptf's comparable sale three). Weeks concluded that the 90500 Highway 99N property was "nearly identical." (Ptf's Ex 7.) However, the court was persuaded by Louie's testimony that that warehouse is a superior building because it was specially built with concrete block, garage doors in the front and back, a clear span interior, and a heavy-duty concrete floor. Louies's only critique of the Cross Street warehouse pertained to the rental income (the warehouse spaces are rented to glass blowers, who are higher risk tenants that pay a premium to rent because of the risk of fire or explosion). The Cross Street property sold for $47.62 per square foot. That figure suggests a value for the subject property of $485,724.

Taxpayers challenge the county's market approach based on the opinions of both Louie and Cole. Louie testified that a buyer would be concerned with the income potential of the subject property and that it would therefore be appropriate to give more weight to the income approach. Cole went even further than Louie, testifying that he places virtually no reliance on the sales approach for light industrial properties like the subject property. Cole, who deals extensively with commercial and industrial property in the Eugene area, testified that he relies exclusively on the income and cost approaches because those numbers can be easily obtained and verified, whereas buyers often purchase at a premium for reasons peculiar to their personal or financial situation, rendering sales data unreliable as an indicator of the value of another property; at least, that is how the court understood the testimony.

The court agrees with Cole that the cost approach is a good indicator of value for newer properties like the subject property. However, Cole's rationale for excluding the comparable sales approach would apply equally to the income capitalization approach, which relies on market data for income and expenses, and particularly a cap rate, the latter of which is derived by dividing NOI by sales price. The court is therefore not prepared to reject the comparable sales approach.

Taxpayers' representative attempted to buttress the testimony of Louie and Cole by reference to a widely respected text on property valuation. Taxpayers argue that income potential is critical for income-producing property purchased as an investment and that greater weight is given to the income approach to valuation. Appraisal Institute, *The Appraisal of Real Estate* 471 and 480 (12th ed). In fact, taxpayers contend that the sales comparison approach is not applicable to income-producing properties. *Citing id.*, *The Appraisal of Real Estate* 419. Taxpayers read too much into that text. The Appraisal Institute's text does state that the "sales comparison approach usually provides the primary indication of market value in appraisals of properties that are not usually purchased for their income-producing characteristics" and that "[b]uyers of income-producing properties usually concentrate on a property's economic characteristics." *Id.* 419-20. However, the author goes on to state:

> "The sales comparison approach is a significant and essential part of the valuation process, even when its reliability is limited. Although appraisers cannot always properly identify and quantify how the factors affecting property value are different, they can still use the sales comparison approach to determine a probable range of value in support of a value indication derived using one of the other approaches. Furthermore, the comparison process often provides data needed to apply the other approaches."

Id. 421.

Finally, Louie challenged the comparability of each of the county's sales, arguing that the properties chosen either had better features or a better location. Those differences are discussed above. Although the evidence shows that some of the comparable sales are superior quality structures, that is not true of all of them, and the minor locational differences do not trouble the court.

The court agrees that primary reliance should be given to the income approach in this case. However, the comparable sales approach is also helpful to informing the court's opinion. The county's comparable sales data suggests a value of $45 per square foot, which translates to a value of $459,000.

C. *Cost Approach*

As indicated above, neither party valued the property under the cost approach but there is evidence showing that taxpayers built the property for $315,000 in 2000. That equates to a value of just under $31 per square foot in 2000, which is considerably less than the indicated value under the county's comparable sales approach. Taxpayers built the property less than two years before the applicable assessment date. Trending for market forces does not seem appropriate here, based on the evidence discussed above, suggesting that the market was flat between 2000 and 2002. Louie may have saved some money on construction because of contacts developed through his extensive dealings in real estate. However, there was no testimony on that point.

/ / /

D. *Reconciliation*

The evidence is difficult to reconcile. The court's value under the income capitalization approach is $321,000 (rounded). The cost approach suggests a value of $315,000 for the property ($80,000 for the land and $235,000 for the building). The county's comparable sales data suggests a value of at least $45 per square foot, which translates into a value of $459,000. Placing primary reliance on the income capitalization approach, the court concludes that the value of the property for tax year 2002-03 was $325,000.

III. CONCLUSION

After a careful review of the evidence, the court concludes that the value of the subject property, identified as Account 1548468, was $325,000 as of January 1, 2002. Now, therefore,

IT IS THE DECISION OF THIS COURT that the county's appeal is granted and the real market value as ordered by the board is increased to $325,000.

IT IS THE FURTHER DECISION OF THIS COURT that neither party is awarded costs.

Dated this _____ day of April, 2005.

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 April 12, 2005. The court filed this document April 12, 2005.