

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

PRADO PARTNERS,)
)
 Plaintiff,) TC-MD 030536F
)
 v.)
)
 LANE COUNTY ASSESSOR,)
)
 Defendant.) **DECISION**

Plaintiff appeals the real market value of its property for the 2002-03 tax year. The property is identified in the Lane County tax records as Accounts 1400678, 1537933, 1537941, and 1610466. A telephone trial was held on November 25, 2003. David Carmichael represented Plaintiff. Thomas Connor (Connor), Plaintiff's principal, and Sue Pritchard (Pritchard), Real Estate Broker, appeared as witnesses for Plaintiff. Bill Weeks appeared for Defendant.

The trial was originally scheduled for September 22, 2003. At the start of that trial, Plaintiff moved to exclude Defendant's exhibits pursuant to TCR-MD 10C. The trial was rescheduled to November 4, 2003. In an order dated October 27, 2003, the court granted Plaintiff's motion. At the start of the trial, Defendant moved to admit its exhibits reasoning that the trial was rescheduled from November 4, 2003, to November 25, 2003, at Plaintiff's request and Defendant's exhibits were timely for the rescheduled November 25, 2003, trial date. The court denied Defendant's motion.

///

///

///

///

I. STATEMENT OF FACTS

The subject property is the former J.C. Penney store in downtown Eugene. The property was built in 1927. It has approximately 50,446 in net leasable square feet with 74,200 total square feet. (Ptf's Ex 1 at 2 and Ex 3 at 2.) It includes five floors above grade and a basement. Plaintiff acquired the property in 1997 as part of an IRC section 1031 (1999) exchange, assigning \$1,500,000 as its purchase price.

Connor testified that in 1997 the property was close to 100 percent rented with "stronger, better rents." Since then the market has suffered an economic downturn, with downtown Eugene hit particularly hard. A rent roll as of December 4, 2001, showed 19 of 39 spaces leased, or 47 percent of the available 50,446 square feet. (See Ptf's Ex 1 at 2.) Tenants continued to leave until the last tenant left in August 2002. He testified that he had difficulty in attracting and keeping tenants. The building is difficult to maintain because of its age. For example, utility costs are high due to the building's antiquated heating system. He expects the downtown Eugene market to improve in three to five years.

As principal in Plaintiff, Connor is an experienced real estate developer who has owned and developed 50 properties in the 30 years he has been in business, including a number of properties in Eugene. In valuing the property as of its assessment date of January 1, 2002, he testified that the income approach to valuation is the most appropriate method of valuing the subject property. Specifically, he testified that a typical buyer would look at the two most recent years' income. Accordingly, he took the average of income and expenses for 2000 and 2001 and developed an average net operating income of \$67,397. (See Ptf's Ex 1 at 1.) He applied a capitalization rate of 11.2 percent to the

income resulting in an estimate of the real market value of the subject property of \$606,580 as of January 1, 2002. The capitalization rate was selected based on the sale of a nearby building on Willamette Street with similar issues. The capitalization rate used in that building by Defendant was 10.75 percent. Connor used a slightly higher capitalization rate because the subject property has five floors above grade compared to two for the Willamette Street building. Thus, he reasoned, the subject property would be more difficult and expensive to rehabilitate.

Also testifying was Sue Pritchard, a commercial real estate broker since 1978. She specializes in the downtown Eugene market, handling more business there than any other broker. She testified that the office vacancy rate downtown "skyrocketed" from 9.06 percent to 23.44 percent between 2001 and 2003. She further testified that even where an area of downtown looks healthy, its health is "fragile." As an example, she noted a fully leased block where the leases were renewed at lower rents. In her opinion, 11.2 percent is the appropriate capitalization rate reasoning that the subject property carried a higher risk due to the multiple floors. While Connor estimated that it would cost a minimum of \$30.00 per square foot to rehabilitate the subject property, Pritchard testified that \$50.00 to \$60.00 per square foot was a more realistic figure. As to Connor's estimate of value of \$606,580, she testified that she did not believe that she could find a buyer for the property at \$600,000.

Weeks testified that at \$606,580, the property would be valued at approximately \$8.00 per square foot of gross building area. He disagreed with the capitalization rate of 11.2 percent, calling it unsubstantiated. He believes that if the property was totally leased it would be worth considerably more. He also noted that the board of property tax appeals lowered the real market value to \$1,500,000, Plaintiff's acquisition price.

///

///

II. ANALYSIS

In any proceeding before the magistrate division, the party seeking affirmative relief bears the burden of proof. ORS 305.427 (2001). The source of the facts stated above was Plaintiff's exhibits as well as Plaintiff's two highly credible witnesses. Connor has been a property developer for 30 years with a number of successful projects. As Plaintiff's principal, he is intimately familiar with the property. Pritchard has been a real estate broker for 25 years and is very familiar with the realities of leasing property in downtown Eugene. Both ably testified to the difficulties of the economy and other factors that negatively impact the value of the subject property. Notwithstanding Plaintiff's acquisition price of \$1,500,000¹ in 1997, Defendant could not counter the persuasive testimony of Connor and Pritchard. Plaintiff met its burden of proof.

III. CONCLUSION

The court finds that the value of the subject property was \$606,580 as of January 1, 2002. Now, therefore,

///

///

///

///

¹ In addition to the more than four years that elapsed from Plaintiff's acquisition to the assessment date, this court has previously ruled that "[b]ecause of the tax planning issues inherent in section 1031 exchanges, the court views such transactions as not necessarily reflective of the market." *Talarico v. Deschutes Cty. Assessor*, 17 OTR-MD 37, 43 (2001).

///

///

///

///

IT IS THE DECISION OF THIS COURT that the real market value for tax year 2002-03 is as follows:

<u>Account</u>	<u>Land</u>	<u>Improvement</u>	<u>Total</u>
1400678	\$197,176	\$309,950	\$507,126
1537933	\$ 15,799	\$ 24,835	\$ 40,634
1537941	\$ 12,500	\$ 19,649	\$ 32,149
1610466	<u>\$ 10,370</u>	<u>\$ 16,301</u>	<u>\$ 26,671</u>
Totals	\$235,845	\$370,735	\$606,580

Dated this _____ day of December, 2003.

SALLY L. 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 L. KIMSEY ON DECEMBER 9, 2003. THE COURT FILED THIS DOCUMENT ON DECEMBER 9, 2003.