IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

GEORGE WINGARD, Plaintiff,	)	TC-MD 030762D
v.	)	
LANE COUNTY ASSESSOR, Defendant.	)	**DECISION**

Plaintiff appeals the real market value of his property for tax year 2002-03.

A telephone trial was held on November 13, 2003. David Carmichael, Attorney at Law, appeared on behalf of Plaintiff. Patty Jaszkowski (Jaszkowski), Plaintiff's property tax manager, and Jack H. Louie (Louie), investor and owner of numerous residential, commercial and industrial properties in the Eugene and Springfield area, testified on behalf of Plaintiff. Bill Weeks (Weeks), Registered Appraiser, appeared and testified on behalf of Defendant.

I. STATEMENT OF FACTS

Plaintiff's subject property is land in excess of 200,000 square feet with 44,400 square feet of improvements. The subject property is located in west Eugene in close proximity to major retailers (Fred Meyer, Safeway, Shopko, WalMart, and Target) and is zoned for light industrial use. The improvements are categorized as multi-tenant warehouses. Jaszkowski testified that the property is rented to the following types of business owners: automobile mechanics, woodworker, and steel fabricators.

Because the subject property is income producing, both parties determined real market value using the income approach. The components of the income approach were discussed by the parties. Jaszkowski testified that the annual potential gross income was computed using 30 cents per square foot of rentable space. Usually, the tenant is required to enter into a six-month lease, and thereafter, rent is month-to-month. Jaszkowski testified that based on her experience as Plaintiff's property manager for the last 10 years the optimum rental rate to minimize vacancy is 30 cents per square foot. She testified that the older buildings built in the 1970s do not have heat and although she tried to rent those spaces and the newer buildings for more than 30 cents per square foot she has been unsuccessful. Louie testified that in his opinion 30 cents per square foot is a reasonable rate. He rents his own properties which are located close to Plaintiff's for 30 to 32 cents per square foot. He usually requires a one year lease agreement before offering a month-to-month arrangement to his tenants. Weeks used a rate of 34 cents per square foot for the newer buildings owned by Plaintiff and 32 cents per square foot for the older buildings. (Def's Ex I.) He concluded those rates were reasonable based on nine comparable properties and their rental rates. (Def's Ex H.) With the exception of one multi-tenant structure built in 1979, all the other properties selected by Weeks were built in 1998, 1999 or 2001. (*Id*.) Weeks testified that he neglected to include additional support for the rental rates (32 and 34 cents per square foot.)

Vacancy and collection loss was estimated by Plaintiff to be 5 percent even though for the assessment year vacancies may have been higher. (Ptf's Ex 1.) Louie confirmed that his vacancy rate is around 5 percent. Weeks used a 5 percent vacancy and collection loss rate. (Def's Ex I.)

Using its income tax returns, Plaintiff computed an operating expense ratio of 30 percent. (Ptf's Exs 6-12.) The ratio was based on all operating expenses including property taxes for a group of properties including the subject property labeled "West 11th St. Properties." (*Id*.) The specific expenses related to the subject property were not segregated from the group. Carmichael commented that the ratio does not include a reserve for replacements. Louie testified that the operating expense ratio for his properties ranges from 27 percent to 32 percent. Weeks testified that based on his experience and those of other county appraisers 10 percent is the correct operating expense ratio. He stated that the county typically uses a 25 percent operating expense ratio in a modified gross rent analysis, and if the 25 percent rate is used, the capitalization rate decreases.

The capitalization rate was discussed at length by the parties. Although both parties used a 9 percent capitalization rate, Weeks testified that he would not stay with that rate if the operating expense ratio increased above the 10 percent he used. He supported his testimony by referencing the sales information found in Plaintiff's Exhibits 13 and 15-17. Weeks computed capitalization rates using the potential annual gross income submitted with the sales information, a 5 percent vacancy factor and operating expense ratios of 25 and 30 percent. In all cases, he testified that the capitalization rate dropped below 9 percent. Weeks concluded that if a 30 percent operating ratio is valid, then the capitalization rate should be 7 or 7.5 percent.

Using the income approach, Plaintiff determined an indicated income approach value for his property of $1,181,040. (Ptf's Ex 1.) Defendant computed an indicated real market value of $1,683,552. (Def's Ex I.)

To support his income approach, Weeks determined a market value for the subject property based on the market approach. (Def's Ex E.) Using seven comparable sales, Weeks computed a price per square foot ranging from $31.04 to $52.27. (*Id*.) He concluded that $45 per square foot for Plaintiff's newer buildings and $35 per square foot for the older properties were appropriate. Using those values, Weeks concluded that the real market value of the subject property was $1,694,000.

Plaintiff challenged the applicability of the sales comparison or market approach. Carmichael read from the Appraisal Institute, *The Appraisal of Real Estate* (12th ed 2001), page 419:

> "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. These types of properties are amendable to sales comparison because similar properties are commonly bought and sold in the same market. Typically, the sales comparison approach provides the best indication of value for owner-occupied commercial and industrial properties."

In response, Weeks testified that passage may be taken out of context and in any case, he used the market approach to show that the indicated value using the income approach was reasonable.

II. ANALYSIS

The issue before the court is the real market value of Plaintiff's property. Real market value is defined in ORS 308.205(1)[1] 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."

There are three traditional methods (cost approach, income capitalization or income approach, and sales comparison or market approach) used to determine the real market value of property. The parties have relied on the income approach and Defendant used the market approach.

A. *Income Approach*

The income approach can be used to value "[a]ny property that generates income."

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

The Appraisal of Real Estate at 472. The method uses the net operating income of the subject property for a single year.

Beginning with the potential gross income of the subject property, the amount is based on "full occupancy before operating expenses are deducted" and may refer to the "level of rental income prevailing on the date of the appraisal * * * or to the periodic income anticipated during the holding period." *Id*. at 484. The best source of rental income is the historical stabilized rent history of the subject property. Plaintiff's income tax returns show that for tax year 2002 rents rebounded from a decline in 2001 to a slight increase from 2000. (Ptf's Exs 6, 8, and 10.) Based on the actual rental income sheets provided by Plaintiff, an average rent rate of 30 cents per square foot is reasonable. (Ptf's Exs 2-5.)

Looking at the operating expense ratio, Plaintiff selected a 30 percent ratio and Defendant a 10 percent ratio. Operating expenses are defined as "the periodic expenditures necessary to maintain **the real property** and continue the production of the revenue" from that property. *The Appraisal of Real Estate* at 486 (emphasis added). Plaintiff's support for its ratio comes from income tax returns where the expenses for all West 11th Street properties owned by Plaintiff are listed. (Ptf's Exs 6-12.) For example in tax year 2000, the expense labeled property taxes included $20,575 in property taxes for a property not part of this appeal and an unexplained tax expense of approximately $10,500. In addition, considering the gross income of the West 11th Street properties, a share of office overhead expenses incurred by Plaintiff on all his properties, including two commercial buildings, was allocated. Defendant's operating expense ratio of 10 percent is based on his experience, but not specifically the subject property.

For tax year 2002, there is an absence of detailed operating expenses for the subject property. Based on Plaintiff's information adjusted for expenses applicable to other properties, unidentified expenses and the absence of a reserve for replacement balanced against the actual repairs and maintenance expenses, the court concludes that the operating expense ratio for the subject property is 25 percent.

With respect to the capitalization rate, Plaintiff used a 9 percent rate as did Defendant. However, Defendant suggested that its rate would increase or decrease with any change in the operating expense ratio. Both parties submitted comparable sales data showing overall rates of between 8 and 9 percent. (Ptf's Exs 13-17; Def's Ex E.) The court concludes that a 9 percent rate of capitalization is reasonable.

With an adjusted net operating income of $113,886 capitalized at a rate of 9 percent, the court concludes that the indicated income value is $1,265,400.

B. *Market Approach*

Weeks prepared a market approach to support his indicated income value. Even though the ages of the buildings sold were comparable to the subject property, there was a significant difference in size between Weeks' comparable properties and Plaintiff's property which was substantially larger than any of the comparables. One property located at 1055 Bertelsen, which the parties agree is most comparable to Plaintiff's, was sold almost two years prior to the assessment date of the subject property. Without a time adjustment, the sales price per square foot was $34.65. In computing an indicated value for the subject property, Weeks used $35 per square foot for the older buildings owned by Plaintiff. However, for the newer buildings owned by Plaintiff, he used $45 per square foot. After reviewing the comparable sales, $45 per square foot appears to be at the high end of the range, especially for multi-tenant warehouses with large useable space. Using the sale price per square foot at the lower end of the range, the indicated market value of the subject property would be approximately $1,500,000. The weight given by the court to

Defendant's market approach will be less than that given to the income approach.[2]

After carefully considering the evidence and testimony, the court concludes that the real market value of Plaintiff's property for tax year 2002 was $1,300,000.

III. CONCLUSION

Now, therefore,

IT IS THE DECISION OF THIS COURT that the real market value of Plaintiff's property identified as Lane County Assessors Accounts 0463420 and 0463438 for tax year 2002-03 was $1,300,000.

Dated this _____ day of December, 2003.

JILL A. TANNER
PRESIDING 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 JILL A. TANNER ON JANUARY 5, 2004. THE COURT FILED THIS DOCUMENT ON JANUARY 5, 2004.

[2] "When more than one approach to value is used to develop an opinion of value for an income producing property, the value indication produced by the income capitalization approach might be given greater weight than that of the other approaches in the final reconciliation of value indications." *The Real Estate of Appraisal* at 472.