

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

JLH PROPERTIES LLC,)	
)	
Plaintiff,)	TC-MD 040091A
)	
v.)	
)	
LANE COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

Plaintiff appealed the assessment of two accounts, 466183 (Tax Lot 2400) and 466084 (Tax Lot 2500), for the 2003-04 tax year. Only the value of the land is at issue. Plaintiff's counsel was David Carmichael. Defendant was represented at various times by Marc Kardell, of the office of Lane County Counsel, and Bill Weeks, of Defendant's staff.

Trial of this matter was held on August 26, 2004. After the trial concluded, the parties requested, and the court granted, the reopening of the record to correct a mistake in the evidence. The record closed for the final time on November 29, 2004.

I. STATEMENT OF FACTS

The property at issue in this appeal are two contiguous tax lots located at 730-760 Conger Street in West Eugene. Tax Lot 2400, at 1.25 acre, is the largest of the two, rectangular in shape, with frontage on Conger Street. Tax Lot 2500 is also rectangular, but with approximately half the area. Their zoning is for an industrial use.

The events of note as to these properties began in 1995 when Plaintiff, the owner of adjacent property, desired to expand its business. Plaintiff wanted to purchase the lots at issue; however, their owner could only be persuaded to lease. The life of the lease was fifty years. Under its terms, Plaintiff was given the option to purchase within four months of the death of the lessor's trustee, at a price to be fixed by a subsequent appraisal.

The trustee died in late 2002. According to the terms of the lease, the price at which Plaintiff might choose to purchase the property was subsequently fixed by an appraisal performed by Roxanne Gillespie (“Gillespie”). Gillespie’s work is important enough for it to be examined in some detail. Her Complete Appraisal in a Summary Appraisal Report valued the property at \$328,000, or \$4.00 per square foot, as of December 9, 2002.

A principle of Plaintiff, Jeff Hansen (“Hansen”), testified that he was distressed by Gillespie’s appraisal and, at the time, attempted to persuade her that her opinion placed too high a value on the property. Gillespie was described as adamant. During the course of the lease Plaintiff constructed warehouses of considerable value that were essential to its business. Plaintiff purchased the two tax lots at issue for the appraised value on June 6, 2003.

For the 2003-04 tax year, Defendant placed respective real market values on the roll for tax lots 2400 and 2500 of \$214,316 and \$111,516, for a total value of \$325,832, or \$4.00 per square foot. Plaintiff contends that their respective values were \$160,737 and \$83,367, whose total, \$244,104, is consistent with a value of \$3.00 per square foot.

Both parties focused on the Gillespie report as a key element of their case. The appraisal presented five sales of comparable property as support for her conclusion the property was worth \$4.00 per square foot. Only one of those transactions occurred at a price greater than \$3.00 per square foot. That sale was at 530 Conger Street, which sold in October 2001 for \$116,100, or \$4.27 per square foot.

Hansen testified that the sale was not a typical market transaction because the purchaser approached the seller, who had not listed the property, with an offer. The balance of Plaintiff’s testimony regarding the sale at 530 Conger came from Clayton Walker (“Walker”). Walker is a commercial and industrial real estate broker with more than three decades of experience. The Gillespie appraisal specifically discusses the property at 530 Conger as having been purchased

with the intent of developing the site for an owner-user building, noting that the premises were subsequently prepared for development at a cost of \$90,000, and commenting that the lot was now held out for resale at the time of the report at a list price of \$135,000, or \$5.00 per square foot. Walker agreed with those points insofar as they went. However, Walker testified that as the broker who handled the resale of the property, he had particular reason to know that the price at which the property subsequently resold in February 2004 was \$99,500, an amount less than half his client's costs to acquire and partially develop the lot. Walker went on to testify that, on the basis of his experience, a value of \$3.00 per square foot was appropriate for the subject properties.

The balance of Plaintiff's presentation consisted of discussing three sales taking place between May and September 2003 of parcels from 100,187 to 173,804 square feet. Those properties, at West 11th and Renie, and West 1st Avenue west of Seneca, sold for between \$2.65 and \$2.89 a square foot.

For its part, Defendant presented the Gillespie report and went on to add two additional transactions. The first of these was a sale at South Bertelsen which took place in May 2001. By its terms a 31,019 square foot parcel, some of which was wetlands, sold at an adjusted price per square foot of \$4.79. Plaintiff stated this sale was of an unlisted property to a neighboring business that needed the premises for parking and storage. Defendant also presented a June 2002 sale at Roosevelt Boulevard in support of its conclusion. That sale was the reason the trial of this matter was reopened. Contrary to the representations of Defendant at trial, that sale was not of unimproved land, but included a building and related improvements.

II. ANALYSIS

The record in this case is more fragmented than the court would prefer. That being said, the outcome of this case becomes clearer when the evidence is analyzed in a sequential basis.

The first individual to proffer an opinion as to the value of the property was appraiser Gillespie in her report. While that opinion was all-important in terms of fixing the price at which Plaintiff acquired the property, it is not conclusive for purposes of placing a value on the property for tax purposes. Gillespie was not present before the court. Her report, for purposes of this tribunal, is a classic example of hearsay. Moreover, the court has the advantage of examining her conclusions through the benefit of hindsight.

Only one of the transactions presented in the Gillespie discussion occurred at a price per square foot greater than that requested by Plaintiff. As to that transaction, Hansen testified that it was an atypical transaction as to property not held out in a listing for sale. That point was dramatically reinforced by the testimony of Walker, who as the broker for the subsequent resale of the property, identified just how greatly that particular purchaser misjudged the market. The Gillespie appraisal, while interesting, is neither competent, nor persuasive, proof of the value of the property.

With the Gillespie report aside, what is left of the two presentations? Defendant initially presented two sales, then withdrew one after trial because the transaction was not just bare land, but in fact included improvements. The remaining sale was, the court finds, of an unlisted property purchased by an adjacent business, who acquired the property to meet its needs at its immediate site. Those are factors that cause the court to conclude that this sale has atypical elements that overstate its indicated purchase price relative to general industrial property. The defense is left with no transactions that demonstrate the reliability of \$4 per square foot for the subject property.

Against this, Plaintiff has presented first, the opinion of a knowledgeable owner, next the observations of an experienced broker, and finally three specific transactions of properties whose

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typical character and comparability to the subject were not challenged. That is enough to carry the day.

III. CONCLUSION

The preponderance of the evidence supports relief. Now, therefore,
IT IS THE DECISION OF THIS COURT that the appeal is granted.

Dated this _____ day of December 2004.

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 DECEMBER 23, 2004 . THE COURT FILED THIS DOCUMENT ON DECEMBER 23, 2004.