IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

ISAAC OREN; and PONDEROSA RANCH PARTNERSHIP,	)	
Plaintiffs,	)	TC-MD 040687F
v.	)	
GRANT COUNTY ASSESSOR,	)	
Defendant.	)	**DECISION**

This is a value appeal for the 2003-04 tax year, involving six property tax accounts, one of which is personal property. Both real market value (RMV) and special assessed value (SAV) are at issue. The RMV challenge pertains to the improvements on the subject property and to the personal property. Plaintiffs also disagree with Defendant's SAV determinations for the land.

Trial was held June 15, 2006, in John Day, Oregon. Post trial briefing concluded August 23, 2006. Plaintiffs were represented by Michael McGean, Attorney at Law, Bend, Oregon. Defendant was represented by Mike Kilpatrick, Attorney at Law, Mount Vernon, Oregon. Testifying for Plaintiffs were Isaac Oren (Oren), Todd Rolls, ranch manager, and Marlo Dill, an accredited rural appraiser. Testifying for Defendant were Lane Burton, Grant County Assessor, and Greg Pierce,[1] a contract appraiser hired to value the improvements on the subject property.

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[1] Pierce was also called by Plaintiffs as part of Plaintiffs' case in chief.

I. STATEMENT OF FACTS

A. *General Overview of Property*

The subject property is known as the Ponderosa guest ranch. The ranch is large; roughly 29,450 acres, straddling two counties (Grant and Harney). It is located approximately 30 miles south of John Day, on Highway 395. The ranch encompasses an entire valley and is surrounded by mountains. The majority of the property – 23,392 acres – is in Grant County. At the time of the appeal, the property was operated as a working cattle ranch and as a guest ranch (sometimes referred to as a dude ranch) involving overnight guests who pay to be involved in the cattle ranch experience.

The appeal involves approximately 18,785 acres of land (in Grant County), numerous buildings in various locations around the ranch, and an airstrip, described below, plus the personal property associated with the guest ranch. The real property (land and improvements) is identified as Accounts 626, 564, 9661, 622, and 619. The personal property is identified as Account 770218.

The land consists of large tracts of timber, dry range, and irrigated pasture. The timberland is not at issue. Oren bought the property in 1989 and, in 1992, constructed the buildings that comprise the Ponderosa guest ranch. Oren opened the guest ranch to the public in 1993. The most significant improvement on the ranch is a 5,002 square foot log lodge (lodge) associated with the guest ranch. (*See* Def's Ex D-1.) It has a commercial kitchen and a 1,103 square foot second-story used for an office and storage. (*Id.*) The lodge, which is built on a concrete foundation, has a sitting area, a dining room, a bar, a gift shop, public restrooms, and a large covered deck at the rear of the building overlooking a pond and the valley beyond. (*Id.*)

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There are eight log cabins (cabins) and an arena/tack room in the immediate vicinity of the lodge, which collectively comprise the main structures associated with the Ponderosa guest ranch. (*Id.*) There are also two model year 1977, 14 foot by 66 foot (924 square feet) manufactured homes within walking distance of the lodge, one occupied by a ranch employee. (*See* Def's Exs D-2, D-3.)

The eight cabins are identical in design and construction. The buildings are post and beam, and measure 13 feet by 63 feet (819 square feet), with eight-foot covered decks at the front running the length of each building. (*See* Def's Ex D-1.) Each cabin is divided into three separate guest rooms, for a total of 24 guest rooms. (*Id.*) Each room is modestly furnished. The guest ranch buildings are situated off the main highway (Highway 395), nestled in evergreen trees on the edge of a meadow, and accessed by a dirt road owned by Plaintiffs.

Additional buildings and improvements on the ranch include three single family dwellings, two bunkhouses, a third manufactured home, numerous barns and other outbuildings, fencing, corrals, a mile-long paved airstrip (asphalt), and a 3,600 square foot hanger with an asphalt floor adjacent to the airstrip and connected by a paved tarmac. (*See* Def's Ex C-1, C-2, E-1, F-1, F-2.) All of those structures are located along Highway 395, some distance from the lodge.

B. *Roll Value of Improvements (RMV)*

The total improvement RMV(all structures) on the rolls, as adjusted by the county board of property tax appeals (board), is $1,394,230, and is broken down as follows:

1. *Tax Lot 1800 / Account 564*

This is the account with the main lodge associated with the guest ranch. The real property improvements on this account include the 5,002 square foot log lodge, the eight cabins

with a total enclosed area of 6,552 square feet (24 units), the arena/tack room near the lodge, two 1977 manufactured homes, a pump house, and an old barn across the highway that the county places no value on due to its age. (Def's Exs D-1 through D-4.) It has a total improvement RMV, as adjusted by the board, of $990,640. (Ptfs' Compl at 4.)

2. *Tax Lot 500 / Account 626*

The improvements on this account are referred to as the ranch headquarters. The most significant improvement is the 50 foot by 5,000 foot asphalt airstrip and the 60 foot by 60 foot hanger. Across the highway, there is a 1,014 square foot residence,[2] two bunkhouses, three shops, two barns, two sheds, and several corrals and chutes utilized in Plaintiffs' cattle operations. (Def's Exs C-1, C-2.) Defendant initially valued all of the improvements[3] at $239,450, and the board reduced that value to $210,950. (Ptfs' Compl at 3.)

3. *Tax Lot 1100 / Account 622*

This account includes a six acre tract of land with an old store (known as the Old Silvies Store) built out of concrete block that has been converted to a residence, a 22 foot by 52 foot (1,144 square feet) general-purpose shop, and several other older outbuildings (including a machine shed, two shops, and a barn). (Def's Ex E.) The residence is 1,683 square feet, with a 1,146 square foot second-story, and a basement. (*Id.*) The board reduced the RMV of all the improvements (structures, etc., but not the land) from $78,370 to $70,800. (Ptfs' Compl at 7.)

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[2] Pierce testified that the main house is approximately 1,400 square feet, but the related exhibit, C-1, places the size of the house at 1,014 square feet, and Plaintiffs' attorney describes the residence as 1,014 square feet on page 3 of his closing statement.

[3] The land is valued at $222,800. (Ptfs' Compl at 3.)

4. *Tax Lot 100 / Account 619*

The main structure on this tax lot is the manager's house, which is a 2,296 square foot, three bedroom, two bath home on a concrete block foundation. (Def's Ex F at 1.) There is a 654 square foot detached garage located near the house and a model year 1977, 962 square foot, single wide mobile home, located about one mile from the manager's house. (*Id*. at 2-3.) Additional outbuildings include a barn, a general-purpose building, and two pump houses. (*Id*. at 2.) The board reduced the RMV of all the structures associated with this tax lot from $159,860 to $121,840. (Ptfs' Compl at 8.)

C. *Personal Property Roll Value (RMV) - Account 770218*

The personal property is used in conjunction with the guest ranch. The property includes the commercial kitchen appliances associated with the lodge (such as coolers, a range and hood, dishwashers, mixer, and a slicer), the lodge's dining room furniture (including tables and chairs), furniture for the 24 guest rooms (including beds, dressers, and lamps), office equipment, shelving, cash registers, and other personal property associated with the guest ranch and gift shop. (*See* Pltf' Ex 9.) Defendant valued Plaintiffs' personal property at $21,450 (RMV). (Ptfs' Compl at 5.) The board sustained that value. (*Id*.) Plaintiffs request a reduction in value (RMV) to $12,870. (Ptfs' Compl at 2.)[4]

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[4] The value request comes from Plaintiffs' original Complaint, filed in April 2004. In June 2006, the court requested that Plaintiffs amend the Complaint to clarify the relief sought; specifically, whether Plaintiffs were challenging the RMV or assessed value (AV), or both. Plaintiffs amended their Complaint on June 14, 2006. The Amended Complaint, however, does not specify a requested value for the personal property. There was testimony at trial as to the value of the personal property, and Plaintiffs' representative addresses the issue in his post-trial memorandum. Construing the pleadings liberally, the court accepts the personal property values requested in the original Complaint.

D. *Land SAV*

The land value portion of the appeal involves 18,784.36 acres that are under farm use special assessment. (Ptfs' Ex 12; Def's Ex Z.)[5] The property is divided among five tax lots: 1800 (5,291.72 acres), 500 (2,315.19 acres), 100 (11,132.45 acres), 1100 (5 acres), and 900 (40 acres). The total SAV of the land under appeal (all five tax lots) is $857,324. Plaintiffs request that the value (SAV) be decreased to $514,864, a reduction of $342,459.

II. ANALYSIS

Plaintiffs have challenged both Defendant's RMV and SAV determinations. Plaintiffs' primary concern is with the RMV of the main lodge and the SAV of certain portions of the five accounts appealed. The court will address the RMV and SAV issues separately below.

A. *RMV of Improvements*

Plaintiffs believe Defendant has overvalued the structures. Plaintiffs rely on cost information and Oren's personal opinion of value. Plaintiffs did not provide any comparable sales, and cost information is limited and dated. Plaintiffs did hire an appraiser, Marlo Dill (Dill), to value the subject property for estate purposes, but her appraisal encompasses the entire ranch, including property in another county,[6] and she only testified to farm values for the land. Greg Pierce (Pierce) appraised the improvements for Defendant. Pierce toured the property on May 16, 2006, and estimated the value of the various improvements as of January 1, 2003, based on the cost approach to value. Both Dill and Pierce are experienced appraisers whose qualifications and veracity are not questioned by the court.

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[5] All of the information in this paragraph was extracted from reference to the same exhibit, submitted by Plaintiffs as Exhibit 12 and by Defendant as Exhibit Z.

[6] Defendant submitted Dill's appraisal. (Def's Ex X.) Dill's total RMV estimate was $8,500,000. (*Id.* at 5.)

The court's analysis is guided by the following legal principles. As to the burden of proof, ORS 305.427 (2005)[7] provides in relevant part: "[i]n all proceedings before the judge or a magistrate of the tax court and upon appeal therefrom, a preponderance of the evidence shall suffice to sustain the burden of proof." Moreover, Oregon law provides that, for purposes of property assessment and taxation, "[r]eal market value of all property, real and personal, means 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." ORS 308.205(1). Thus, Plaintiffs have the burden of proof as to the assertion of overvaluation, and, to succeed, must satisfy the court that the property would have sold for less than the amount on the assessment and tax rolls as of January 1, 2003.

ORS 308.205(2) provides that RMV is to "be determined by methods and procedures in accordance with rules adopted by the Department of Revenue * * *[,]" and is to reflect the amount typical market participants would offer and accept for the sale of the property in a transaction paid in cash or by typical financing. The Department of Revenue (department) has promulgated an administrative rule requiring that the three standard approaches to value – sales, cost, and income – all be considered, but need not necessarily be applied, depending upon the property. OAR 150-308.205-(A)(2)(a). The statute and the rule make clear that property valuation is a considered, analytical undertaking. The court now turns to the individual accounts under appeal.

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[7] Unless noted otherwise, all references to the Oregon Revised Statutes (ORS) and the Oregon Administrative Rules (OAR) are to 2001.

1. *Tax Lot 1800 / Account 565*

The improvements on this account comprise the guest ranch, with the main log lodge, the eight 3-unit log cabins, the two manufactured homes, the arena/tack room, pump house, and old barn. Oren testified that the cost of constructing the lodge and the eight cabins was $750,000 in 1993, fully 10 years before the applicable assessment date. Oren testified on direct examination that he had no idea what it would cost to build the lodge, cabins, and other buildings, "today," but then acknowledged that it might cost 50 percent more than it cost in 1993. Oren's own estimate suggests a value of $1,125,000. That estimate excludes the value of the two manufactured homes and other improvements. Defendant set the RMV for all of the improvements at $1,026,410, and the board reduced that number roughly $35,000, to $990,640. (Ptfs' Compl at 4.) There is no evidence suggesting a lower value is in order.

Defendant's appraiser, Pierce, believes that both the originally assessed RMV and the board's reduced value are low. Three log home manufacturers reported costs to Defendant of between $145 and $240 per square foot. Nonetheless, Pierce selected a replacement cost new of only $125 per square foot for the 5,002 square foot main log lodge (and $22 per square foot for the covered deck), for an estimated value (RMV) of $649,150 as of January 1, 2003.[8] (*See* Def's Ex D-1, 1-2.) Pierce estimated the value of the eight cabins, with a gross building area of 6,552 square feet, at $69.63 per foot, for a total value of $553,187, including the covered deck areas, which were valued at $22 per square foot (roof and rails). (*Id.* at 2.) Adding the value of the arena and two manufactured homes, on a depreciated cost basis, Pierce arrived at a total estimated RMV for all improvements on tax lot 1800 to be $1,237,068, as of January 1, 2003.

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[8] That figure represents the depreciated value of the lodge's enclosed space and deck, including adjustments for local cost modifier and percent good. (Def's Ex D-1 at 1.)

(Def's Exs D-1, D-2.) Defendant has not requested an increase in value, but instead has asked that the court sustain the board's value determinations. The board's RMV determination of $990,640 is, therefore, sustained.

Plaintiffs insist that Defendant's RMV for this account includes $45,500 worth of personal property used in connection with the lodge's commercial kitchen. The testimony on that point is equivocal. There is some evidence to suggest Defendant's original value included at least some of those items, but Pierce's estimate for trial did not, and his overall estimate exceeds the board's value by many times more than the disputed amount. Assuming a deduction were in order, Pierce's estimate is the best value indicator, and suggests a value close to $1.2 million. Accordingly, the court will not reduce the RMV.

2. *Tax Lot 500 / Account 626*

This account represents the ranch headquarters, with the 1,014 square foot residence, two bunkhouses, three shops, two barns, two sheds, and several corrals and chutes, plus the 50 foot wide, mile-long paved airstrip, the 130 foot by 150 foot paved tarmac, and the 3,600 square foot hanger with an asphalt floor. (Def's Exs C-1, C-2.) The RMV on the rolls, for all of the improvements on the account, as reduced by the board, is $210,950.[9] (Ptfs' Compl at 3.) Defendant's appraiser, Pierce, believes that the improvement value on this account is low. Pierce estimated the total depreciated replacement cost new to be $242,470. (Def's Exs C-1, C-2.) Pierce attributes the majority of the value ($194,470) to the airstrip and hanger. (Def's Ex C-2 at 2.)

The court is uncertain as to Plaintiffs' requested value. The Complaint asserts that the actual *RMV* of the *property* for the account is $250,436, which is more than the current total roll

[9] Defendant had set the value at $239,450. (Ptfs' Comp at 3.)

value for the improvements, set by the board at $210,950. (Ptfs' Compl at 2-3.) The account, of course, includes approximately 2,300 acres of land, with a current RMV of $222,800. (*Id.* at 3.) Plaintiffs do not appear to challenge the land RMV, which might seem to suggest that Plaintiffs seek an improvement RMV of $27,636.[10] Yet, on page 3 of the written closing statement, Plaintiffs' attorney contends that the evidence adduced at trial supports a value of $32,500 for the airstrip alone, which is asserted to be half the cost for that improvement. That is obviously more than the $27,636 figure, and would exceed the total "requested" RMV of $250,436, if the $250,436 request includes the land RMV of $222,800. It is, therefore, unclear to the court what is meant by the $250,436 RMV request.

Ordinarily, the court would hope to gain clarification at trial on a question as fundamental as the relief requested, but in this case, the testimony only added to the confusion. Oren testified that it cost approximately $200,000 to "construct" the airstrip, and Plaintiffs accept Pierce's 50 percent depreciation, which generates a value of $100,000. Assuming that number includes the hanger, which was added in 2000 when the airstrip was expanded, Plaintiffs would seem to be requesting that the other buildings associated with the account be valued at approximately $150,000, if the $250,436 request pertains only to the improvements on the account. That amount ($150,000) is twice Defendant's allocated value for the improvements other than the airstrip and hanger following the board's reduction to $210,950 (where Defendant allocated $73,080 to the main house and other improvements including barns, shops, sheds, corrals and chutes, and $137,870 for the airstrip/hanger),[11] and nearly three times Pierce's $48,000 RMV

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[10] $250,436 - $222,800 = $27,636.

[11] Plaintiffs' Exhibit 2 at pages 18 and 19 shows $24,000 allocated to the house and $111,950 to the other structures.

trial estimate. (*See* Ptfs' Ex 2 at 18-21; Def's Exs C-1 and C-2.) Assuming there is a generalized allegation of overvaluation, the court will briefly review the evidence.

Oren testified that it cost approximately $200,000 to construct the airstrip, acknowledged that Defendant valued the airstrip at $290,000, and opined that he could "do it for less," noting that the base was already there. There was virtually no testimony on the value of the other buildings on this account. Oren's alleged cost, which was not substantiated by contracts or other independent proof, apparently includes the hanger.

The airstrip was there when Plaintiffs bought the property in 1989, although it was unpaved and about half its current size.[12] Plaintiffs paved the airstrip in 1993, and enlarged it in 2000, paving all the additional space, including a 130 foot by 150 foot tarmac near the hanger. The 60 foot by 60 foot hanger was also added in 2000. Oren testified that the entire project cost approximately $200,000. That cost apparently included approximately $45,000 to purchase and erect the hanger, and another $8,000 to "resurface" the airstrip and add culverts. Expansion of the airstrip required a significant increase in the rock base, using rock from the property, yet Oren assigned no value to the rock. Plaintiffs seem to assert that the airstrip and hanger should be valued at one-half cost, which, using Plaintiffs' own numbers, suggests a value of $100,000. Significantly, that estimate excludes the cost (and value) of the airstrip prior to the two upgrades, and attributes no value to the rock used to more than double the size of the airstrip.

Defendant's appraiser, Pierce, valued the airstrip at $1 per square foot, using information from rock contractors and the Marshall & Swift Valuation Service, and reduced the $269,500 indicated value (which includes the 19,500 square foot tarmac) by 50 percent based on his conclusion that the airstrip is an over-improvement for the ranch. The resulting RMV was

[12] The airstrip was originally 35 feet wide and 3,200 feet long (112,000 square feet), and Plaintiffs expanded it to 50 feet wide and 5,000 feet long (250,000 square feet).

$134,750. (Def's Ex C-2 at 2.) Pierce valued the hanger, new in 2000, at $17.29 per square foot, adjusted the value down five percent for depreciation, bringing the value the $59,720. (*Id*.) Pierce's value comes to $194,470 for the airstrip and hanger. (*Id.*) The court finds Pierce's estimate considerably more persuasive than Oren's unsupported testimony.

The account, of course, includes a residence and a half dozen other buildings and corrals. Plaintiffs submitted no evidence on the value of the other improvements. Pierce valued the house at $21,440, and the other improvements collectively at $26,560. (Def's Ex C-1.) Adding those values to his estimate for the airport results in the total estimated RMV of $242,470. Again, the RMV on the tax rolls for the improvements on the subject account is $210,950. Defendant has not requested an increase in value. The court, therefore, concludes that the board's RMV of $210,950 should be sustained.

3. *Tax Lot 1100 / Account 622*

This is the property referred to by the parties as the Old Silvies Store because the main improvement on the account is a 2,800 square foot (approximately) two-story structure built out of concrete block that at one time apparently operated as a store. That structure has since been converted to a residence. Additional buildings associated with this account include a garage/shop, a barn, a general purpose shop, a machine shed, an open storage hay cover structure, and two small sheds. (Ptfs' Ex 2 at 2.) The board reduced the total improvement RMV from $78,370 to $70,800. (Ptfs' Compl at 7.) Defendant allocated the majority of the board's value, $62,200 (approximately $22 per square foot), to the house, and the additional $8,600 to the outbuildings. (Ptfs' Ex 2 at 1-2.) Plaintiffs believe that the improvement value for all of the

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structures on the account should be reduced to $44,572, with no value placed on the outbuildings. Pierce estimates the value of the concrete block house to be $73,760, and the total improvement RMV to be $83,590. (Def's Ex E-1 at 1-2.)

Plaintiffs submitted virtually no value evidence for this account. The basis for Plaintiffs' requested reduction is Oren's opinion that the outbuildings have no value, and his testimony that he would not replace any of the buildings if they were destroyed or removed. Oren is not an appraiser and has not been shown to be qualified to value property. Moreover, Oren admitted on cross-examination that he had maintained, and in fact improved, the house, remodeling the structure from a store to a residence after he acquired the property. Plaintiffs' requested reduction equates to less than $16 per square foot for the house. Pierce believes that the depreciated value of the home is slightly more than $26 per square foot. Plaintiffs have not established an error in value by a preponderance of the evidence. Accordingly, the board's RMV of $70,800 is sustained.

4. *Tax Lot 100 / Account 619*

This account includes the 2,296 square foot home occupied by the manager, a 654 square foot attached garage, a single-wide mobile home, and several outbuildings. (Def's Exs F-1, F-2.) The board reduced the RMV of all the structures associated with this tax lot from $159,860 to $121,840. (Ptfs' Compl at 8.)

The court has no idea what Plaintiffs are requesting for a value. The original Complaint requests an RMV of $322,312, and the Amended Complaint requests an AV of $322,312. The court will assume that Plaintiffs intend the AV to be the same as the RMV because the requested RMV would be less than the existing MAV. Nonetheless, Plaintiffs did not allocate the requested value between land and improvements. The court believes that the values appearing on

the board's order are a composite of land SAVs and improvement RMVs. The best the court can do is extrapolate a requested improvement RMV by subtracting Plaintiffs' requested land SAV of $274,603 from the total request of $322,312, which leaves $47,709 as the asserted improvement RMV. Whether that number is, indeed, the value Plaintiffs believe is appropriate is largely irrelevant because Plaintiffs have provided no evidence that the RMV on the tax rolls, as reduced by the board, is in error. As indicated above, Plaintiffs carry the initial burden of proof and have failed to meet their burden. Accordingly, the board's improvement RMV of $121,840 is sustained.

B. *Personal Property RMV*

Plaintiffs seek a reduction in the RMV of the personal property from $21,450 to $12,870. (Ptfs' Compl at 5.) It is difficult to tell how Plaintiffs arrived at their value estimate. Plaintiffs' 2003 personal property return reflects a total purchase price of $60,152.88, and an estimated market value of $11,997. (*See* Ptfs' Ex 9.) Neither the documentary evidence nor the testimony explains how Plaintiffs established their value. That is a critical flaw, given that Plaintiffs have the statutory burden of proof. Oren testified that he has "learned" that 40 percent of the value of personal property purchased new is lost immediately upon acquisition, and opined that his appliances are only worth about 10 percent of what he paid for them. Oren is not qualified to appraise property and has not established how he arrived at his 10 percent estimate. Oren's valuation percentage estimate is akin to a "rule of thumb," and, while it may be correct as a general principle, there is no evidence to support the application of such a rule to this case. Value is dependent upon factors such as condition and demand, as well as age. There is no evidence how those factors apply here.

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Lane Burton (Burton), Grant County Assessor, testified that his office established Plaintiffs' personal property values by applying the department's depreciation schedule to Plaintiffs' reported costs and year of purchase. Burton testified that there is no variability in that approach. Defendant's personal property values may not be correct; they could be high or low. However, Plaintiffs have the burden of proof under ORS 305.427, and the court concludes that they have failed to demonstrate an error in the record assessment of the subject property by a preponderance of the evidence. In fact, Plaintiffs have submitted virtually no evidence on the value of the personal property. The court toured the property prior to trial and observed that the commercial kitchen equipment and other personal property appeared to be in very good condition. Again, Plaintiffs had a qualified appraiser testify at trial, but that appraiser was not asked to value the personal property, nor was her opinion elicited at trial.

C. *Farm Use SAV*

Although RMV has been discussed at length by the court, the greatest avenue for tax relief lies in Plaintiffs' challenge to Defendant's SAV determinations. Plaintiffs object to Defendant's property classifications, which are tied to soil type, arguing that the values should be based on actual production and income. As indicated above, there are five accounts involved, with a total of 18,785 acres. However, the dispute focuses on only 4,116.68 acres, which Plaintiffs insist should be reclassified from III k to III hd, and from Classes V and VI, to Class VII. The corresponding reduction in value flowing from the requested reclassification is $342,459.

The establishment of farm use values for both exclusive and nonexclusive zoned farmland is governed by ORS 308A.092. The values are to be determined based on an income

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approach, with a capitalization rate consisting of the sum of the five-year average interest rate "charged in Oregon by the Federal Farm Credit Bank" and the local tax rate. ORS 308A.092(2).

That statute provides in relevant part:

> "(2) The values for farm use of farmland shall be determined utilizing an income approach. In utilizing the income approach, the capitalization rate shall be the effective rate of interest charged in Oregon by the Federal Farm Credit Bank system at the time of closing on loans for farm properties estimated as an average over the past five reported calendar years, plus a component for the local tax rate. The Department of Revenue annually shall determine and specify the rate according to the best information available, and shall certify the rate to the county assessors."

ORS 308A.092. The assessor is then required to "develop tables for each assessment year that reflect, for each class and area, the values determined under [subsection (2)] and that express the values as values per acre." ORS 308A.092(3).

Defendant's SAV determinations are based on the capitalized net income from rents reported by tenant farmers and ranchers for different types of land based on soil type. According to the testimony at trial, the following process was used to determine soil types: Some 30 years ago, a department employee determined the different types of land (*e.g.*, Class III tillable cropland, Class V rangeland) by taking soil samples and then determining the boundaries of the different soil types on aerial photographs, which were then given to department cartographers in Salem to determine the actual acreages involved in a given soil-type tract of land. The department employee would visit a particular property with aerial photographs in hand, take samples of the soil from, for example, a meadow, and, based on those samples, draw the boundaries of the meadow on the aerial photograph; the cartographer would then determine the size of the meadow – in acres – based on the lines drawn on the aerial photograph by the soil sample employee.

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Defendant then determined the applicable farm use values against which taxes are imposed, by reference to market data. Defendant interviewed farmers and ranchers to obtain rental data. Burton testified that he used 1999 board-approved farm use value computations, and added data for 2000 and 2003. The assessor then subtracted expenses to arrive at net income to the landowner. Defendant capitalized the net income as provided in the statute, by adding the tax rate component (1.33 percent) to the average five-year Federal Farm Credit Bank interest rate which, in 2003, was reported to Defendant by the department to be 8.08 percent. The resulting cap rate for 2003 was 9.41 percent (.0941). Defendant has no control over the tax rate or the five-year average farm credit service rate supplied by the department. The only variable is net rent.

Plaintiffs assert that Defendant's farm use SAVs for the subject property are wrong because they are based on incorrect property classifications. Plaintiffs insist that the SAVs should be changed based on actual income and production. Plaintiffs object to Defendant's classifications because they are based on soil type, with the result that all land in a particular classification (*e.g.*, irrigated meadow) receives the same value regardless of production capability, which can vary depending upon factors such as elevation, climate and particular farming practices employed. For example, much of Plaintiffs' meadow and rangeland has not been cleared and is overgrown with sagebrush, whereas comparable land elsewhere in the county, including nearby Bear Valley, has been cleared, tilled, and planted in grass, with the result that it is more productive. Plaintiffs' land is also at a higher elevation, which causes lower temperatures and a shorter growing season. Plaintiffs also ask the court to accord little weight to Defendant's classification and assessment of Plaintiffs' property because Defendant's income-approach factors were not subjected to board review as required by ORS 308A.095.

Looking more closely at Plaintiffs' position, Plaintiffs assert that 1,803.5 acres of Class III k land should be changed to III hd because: 1) actual production of 1.5 tons per acre matches Defendant's III hd table, not III k, which, according to Defendant's table should produce 3.5 tons per acre; and 2) the indicated net income in Defendant's table for III hd land more closely approximates Plaintiffs' actual net income for that property than that of III k. (*See* Ptfs' Exs 12, and 8 at 9, 11.) The reclassification would result in a reduction in value from $280.34 per acre to $161.21 per acre, for a total requested reduction of $214,851. (*See* Ptfs' Ex 12.) The same argument is made with respect to 2,313.18 acres of land classified as V and VI,[13] Plaintiffs insisting that the more appropriate classification is VII.[14] (*See* Ptfs' Ex 12.) Changing the classification to VII reduces the farm use values from roughly $67 per acre and $42 per acre, down to $10 per acre for the 2,313.18 acres involved. (*Id.*) The resulting value reduction is $127,607.

Defendant responds that farm use values are not based on the appraisal of a particular property – that they are not market values. (Def's Closing Statement at 3-4.) Rather, farm use values are special values established by a statutorily-prescribed methodology that was followed in this case, and the resulting values apply uniformly to all similar property in the county based on soil classification (*e.g.*, depth of the soil, soil texture, topography, drainage) without regard to the actual performance of a particular property. (*Id.* at 4.) Defendant refers to the process as a "blanket appraisal." (*Id.*) Additionally, Defendant contends that Plaintiffs have not submitted any independent soil test results that contradict Defendant's soil classifications. (*Id.* at 5.)

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[13] The 2,313.18 acres includes 52.68 acres in tax lot 1800 that Plaintiffs assert should be in a different Class VII category with lesser income and value per acre. (*See* Ptfs' Ex 12; Def's Ex Z.)

[14] Defendant has three separate Class VII categories, the best designated as VII plus and the worst as VII minus. (*See* Def's Ex 8 at 15-17.) The indicated average net income, and corresponding SAV, is higher for the VII plus than for the VII minus, with a straight Class VII lying in the middle. (*Id.*)

Finally, Defendant asserts that, while a particular rancher's experience is not particularly relevant to farm use special assessment values, Plaintiffs' proffered testimony on net income actually supports the current classifications. (*Id*.) The court agrees with Defendant's assertions.

Defendant's SAVs are based on income and tied to soil type. Once values are determined for the various soil types, those values are applied to all similar property in the county, regardless of the actual experience of a particular farmer or rancher. That is the whole point behind special assessed values in the area of farm use valuation. The nature of the income approach prescribed by the statute for specially assessed farm values differs from at least one other special assessment program, where an income approach utilizes a particular properties' income in establishing a special assessed value. *See, e.g.*, ORS 308.712(1)(a) (2005) (providing for an SAV for governmentally-restricted multi-unit rental housing "that uses actual income and stabilized operating expenses" and a capitalization rate with statutorily prescribed factors to be considered). SAVs are based on the collective experience of area farmers and ranchers, and the results will not necessarily match many particular landowners. The SAVs are in the range of $10 per acre to $300 per acre, figures likely well below the market value, and to generate taxes considerably lower than would otherwise be imposed but for the special assessment program.

There are other criteria Defendant could use in establishing the farm use value tables; for example, the use of the property (i.e., grazing, crop farming, orchard, etc.). In fact, the administrative rule promulgated by the Oregon Department of Revenue (department) includes examples utilizing a use approach to classification, as opposed to soil type. *See* OAR 150-308A.092(2). Even under such an approach, however, the use of the property is relevant to determining which classification the property fits within, but once the classification is established, the individual farmer's actual income (or productivity) is irrelevant to the property's

SAV.[15] The rule does not require an assessor to use a particular approach to classification. Nor does the rule preclude reliance on soil type, whether or not that is be "best" approach for classifying property under the special assessment program. However, as stated above, Plaintiffs' income and productivity information is irrelevant to Plaintiffs' SAV challenge.

Assuming arguendo that the law does allow an appeal of farm use special assessment values based on actual production and income, Plaintiffs' appeal fails because the evidence adduced at trial is conflicting and does not satisfy the requisite burden of proof, which is a preponderance of the evidence. ORS 305.427. The testimony on productivity supports the requested reclassification to higher class categories (with lower values), whereas the income information suggests the values are low and that lower classifications with higher values are in order.

According to the testimony of Oren, ranch manager Todd Rolls, and Dill, Plaintiffs' Class III k land produces an average of 1.5 tons per acre of hay, compared to production capabilities in Defendant's tables of 3.5 tons per acre for III k land. That evidence suggests an error in the classification to Plaintiffs' disadvantage, an error that might suggest a reclassification to a higher class with lower values is in order. However, the income information paints the opposite picture. According to Defendant's tables, indicated net income for Class III k land is $26.65 per acre. (Ptfs' Ex 8 at 9.) Yet, Oren testified on direct examination that the net income for the meadows (the Class III k land) from cutting hay and grazing was $41 per acre, and Dill,

[15] For example, the rule provides that an owner grazing livestock on land capable of growing wheat is valued based on wheat land capability, which would produce more income and a higher value; if the owner adds site improvements to wheat land and plants an orchard, the highest and best use (*i.e.*, value) is as an orchard – a higher and better use, with a higher value. OAR 150-308A.092(2). In the first instance, the owner is under-utilizing the land and is valued at the higher use; in the second instance, the owner is arguably overutilizing the land, and pays taxes based on the higher use (and higher value). Those examples demonstrate that the productivity of a particular property is irrelevant because the farmer under-utilizing the land is valued at a higher use, with a corresponding higher value, regardless of the fact that the owner is likely generating less income leasing the land to graze livestock than growing and harvesting wheat for sale commercially.

Plaintiffs' appraiser, testified on cross examination that net income was $35 per acre. The same disparity in the evidence surfaced with respect to Plaintiffs' requested reclassification from Classes V and VI, to Class VII; testimony on productivity supported lower values, but income testimony supported higher values.[16] Not only does the conflicting nature of Plaintiffs' evidence create problems for Plaintiffs with regard to the statutory burden of proof, as explained above, but, of the two types of evidence Plaintiffs produced, the income data is more significant than the production data because the statute requires that values be based on an income approach. *See* ORS 308A.092. Accordingly, if a reclassification could be based on a particular property's performance (*i.e.* income), the evidence before the court in the instant appeal would not, and does not, warrant the requested reclassification.

As a final matter, Plaintiffs urge the court to accord less weight to "the County's description of its classification and assessment of the taxpayer's EFU property [because Defendant] has totally *failed* to comply with ORS 308A.095." (Ptfs' Closing Statement at 5. Emphasis in original.) That statute provides in relevant part that the "[i]ncome-approach factors being utilized by a county assessor in arriving at the values for farm use of farmland under ORS 308A.092 shall be submitted by the county assessor to a county board of review." ORS 308A.095(1). Plaintiffs contend that the court should rely on the subject property's income and production as the proper measure of how Defendant's farm use values should be applied. *Id.*

Plaintiffs' argument strikes the court as somewhat illogical because Plaintiffs use Defendant's production and income information in the tables as the benchmark for measuring the appropriate classification for the subject property. Moreover, Plaintiffs misunderstand the

[16] According to the testimony, Plaintiffs' rangeland is only capable of 20 to 40 AUs, which is considerably less productive than the assessor's indicated production capabilities of 5 to 9 AUs for Class VII rangeland. However, Dill testified to an annual net income of $2 per acre, which is nearly twice as high as Defendant's net income of $1.14 per acre for the best Class VII land.

board's function. Application of Defendant's farm use values to the subject property is not part of the board's role. The board reviews the assessor's income and expense data to evaluate the assessor's per acre SAVs. ORS 308A.095(1) provides that "[t]he board of review shall advise the *county assessor* as to whether the factors being utilized are proper under ORS 3088.092." (Emphasis added.) Once approved, those values are applied by the assessor to all property within a given classification. If an individual property owner disagrees with the SAVs for his or her property, review is available through appeal to the county board of property tax appeals as provided in OAR 150-308A.092(3). The county board of property tax appeals is not the same as the county board of review.

According to the testimony, there was no board review because there were no qualified community members willing to serve on the board. That is a problem because annual board review is mandated by the statute. *See* ORS 308A.095. Nonetheless, the court has already concluded that Plaintiffs' evidence demonstrates that the values for the subject property attributable to the current classifications are appropriate or perhaps a little low. Moreover, Plaintiffs' proposed relief for the lack of a board review is both unworkable and unwarranted.

III. CONCLUSION

After an exhaustive review of the evidence, the court concludes that Plaintiffs' request for a reduction in the RMV of the various improvements on the subject property is unwarranted because Plaintiffs have failed to establish an error in the record of assessments by a preponderance of the evidence. Similarly, Plaintiffs have failed to demonstrate that Defendant has overvalued (RMV) the personal property. Finally, Plaintiffs do not prevail on their request for reductions in the SAV of certain portions of the land on the ranch because of a failure to meet the requisite burden of proof. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiffs' appeal is denied as explained more fully above.

Dated this _____ day of March 2007.

_____
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 on March 16, 2007. The Court filed and entered this document on March 16, 2007.