

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Property Tax

|                                   |   |                 |
|-----------------------------------|---|-----------------|
| WESTERN RADIO SERVICES CO., INC., | ) |                 |
|                                   | ) |                 |
| Plaintiff,                        | ) | TC-MD 040702E   |
|                                   | ) |                 |
| v.                                | ) |                 |
|                                   | ) |                 |
| JEFFERSON COUNTY ASSESSOR,        | ) |                 |
|                                   | ) |                 |
| Defendant.                        | ) | <b>DECISION</b> |

Plaintiff appeals the real market value of land it leases in Jefferson County. A telephone trial in the matter was held March 29, 2005. Jim Petersen, Attorney, appeared on behalf of Plaintiff. Testifying for Plaintiff was Richard L. Oberdorfer (Oberdorfer). Don Cox, Appraiser, appeared and testified on behalf of Defendant.

I. STATEMENT OF FACTS

The subject property is an approximately 400-square foot parcel of land located on top of Gray Butte.<sup>1</sup> The land is owned by the United States Forest Service (the service). Plaintiff obtained a permit from the service to place a communications tower and supporting building on the parcel of land. Oberdorfer testified that the service required Plaintiff to maintain a tower large enough to accommodate at least one additional user. An unrelated cellular company has placed an antenna on Plaintiff's tower.

Plaintiff's lease payments to the service are set by a standard fee schedule for communication sites on federal lands. Plaintiff pays an annual base rent of \$723.12 for use of the land. (Ptf's Ex 3.) The rent increases if additional users are present on the site. Because

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<sup>1</sup> The property is identified in Defendant's records as Account 13256.  
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Plaintiff rents a portion of its tower to another company, its fee to the service is increased. The parties agree that Plaintiff pays an annual rent of \$3,193.

In determining the real market value of the parcel of land, Defendant used the income approach to value. In doing so, it applied a rate of 11.15 percent to the annual lease payment of \$3,193 to arrive at a real market value of \$28,636. Applying a changed property ratio of .691, Defendant arrived at a maximum assessed value of \$19,734. (Ptf's Ex 1.) Plaintiff agrees with the method and capitalization rate, but claims only the base annual rent of \$723 should be capitalized. Doing so leads to an indicated real market value for the property of \$6,484.

## II. ANALYSIS

When property owned by the federal government is leased to a taxable entity, the property becomes taxable to the lessee. ORS 307.060<sup>2</sup> states, in pertinent part:

“Real and personal property of the United States or any department or agency of the United States held by any person under a lease \* \* \* shall have a real market value determined under ORS 308.232, subject only to deduction for restricted use.”

ORS 308.232 provides that all property not subject to exemption “shall be valued at 100 percent of its real market value.” Real market value is defined in ORS 308.205 as follows:

“(1) Real 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.”

In *R.L.K. and Co. v. Tax Commission*, 249 Or 603, 438 P2d 985 (1968), the Oregon Supreme Court addressed the appropriate method for valuing leased federal lands. The court observed that “ORS 307.060 was to be interpreted as requiring the valuation of the fee interest less a deduction for restricted use.” *Id.*, 249 Or at 605. At the lower level, the Tax Court had

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<sup>2</sup> All references to the Oregon Revised Statutes (ORS) are to 2003.  
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determined that one of the restrictions on use was the length of the lease term. The Oregon Supreme Court disagreed, concluding that reducing the value of the property based on the length of the lease term was inappropriate because that method valued the plaintiff's interest as the lessee, not as the owner in fee. *Id.* at 606. When valuing the subject property, therefore, the court must value the fee interest, with an allowance for any restrictions on use.

As noted above, Defendant valued the property by capitalizing Plaintiff's lease payments to the service. In *Mt. Hood Meadows Oreg., Ltd. v. Dept. of Rev.*, 5 OTR 542 (1974), the Oregon Tax Court considered the valuation of leased federal lands. The court stated: "The only available approach for valuing the land leased from the Forest Service is to capitalize the annual fees paid by the lessee as income imputable to the land." *Id.* at 557. In the subject appeal, Defendant used the same approach. Plaintiff argues, however, that Defendant's approach fails to consider Plaintiff's restricted use of the property. The court in *Mt. Hood Meadows* addressed Plaintiff's argument, observing: "This method [of capitalizing annual fees paid by lessees], happily, automatically recognizes the effect of restricted use of the land which diminishes the value of the fee, as required by ORS 307.060." *Id.* In *Mt. Bachelor v. Dept. of Rev.*, the Oregon Supreme Court reached a similar conclusion, stating:

"The parties agree that the land is subject to taxation as though owned in fee, subject only to deduction for restrictions in its use. *The capitalization of income approach automatically takes such restrictions into account.*"

273 Or 86, 88-89, 539 P2d 653 (1975) (footnotes omitted) (emphasis added). The rulings in *Mt. Hood Meadows* and *Mt. Bachelor* recognize that a tenant pays rent only for the use allowed and nothing more. Therefore, any arguments by Plaintiff as to the restricted use of the property is resolved through Defendant's use of the income capitalization approach.

The question remaining for the court is what income should be capitalized. Plaintiff argues that only the base rent of \$723 should be capitalized, claiming that is the only income paid

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by Plaintiff for “the dirt.” Defendant argues that Plaintiff’s annual lease payment of \$3,193 should be capitalized.

Although perhaps obvious, it is important to note that the service, in fact, only owns “the dirt.” Therefore, the service is leasing nothing more than the land to Plaintiff. It automatically flows, therefore, that Plaintiff’s payments to the service represents the price paid by Plaintiff for use of the land. Plaintiff is bothered that its rent increased to \$3,193 when it obtained an additional user on the site. However, the court views the additional rent as being reflective of the property being put to a better and more productive use. In the end, Plaintiff is leasing only land from the service, and Plaintiff is willing to pay \$3,193 for that use. The court finds, therefore, that Defendant was correct in capitalizing the full lease payment paid by Plaintiff.

Plaintiff further argues that the rent paid is not market driven but, instead, based on a federal permit schedule. However, Plaintiff agrees that its rent is below market and, based on the comparable lease information submitted by Defendant, it is apparent that the subject lease payments are below the amounts paid by tower users of leased private lands. The court observes that Plaintiff’s reduced rents are likely the result of the restricted use of the property. In any event, a lower rent only results in a lower value. If the court imposed a market rent, the value would increase.

### III. CONCLUSION

The court concludes that, when valuing leased federal lands under ORS 307.060, it is appropriate to capitalize the annual fees paid by the lessee for use of the leased land. That method derives a value for only the land and it further accounts for any restrictions on use. Now, therefore,

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IT IS THE DECISION OF THIS COURT that Plaintiff's appeal is denied.

Dated this \_\_\_\_\_ day of September 2005.

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COYREEN R. WEIDNER  
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 Coyreen R. Weidner on September 23, 2005 . The Court filed this document on September 23, 2005.***