

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

BRUCE SLAYDEN and NORA SLAYDEN,)	
)	
Plaintiffs,)	TC-MD 050500A
)	
v.)	
)	
BENTON COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

Plaintiffs appealed the assessment, for the 2004-05 tax year, of property identified as Account 395588. Plaintiffs were represented by their counsel, Charles Markley. Defendant appeared through Richard Newkirk. The land is unimproved and is carried on the roll at a real market value of \$222,858, and a maximum assessed and assessed value of \$188,580. Plaintiffs are of the opinion that its real market value is nominal.

I. STATEMENT OF FACTS

The property at issue is a long, narrow rectangle some 100 feet wide and approximately 1,414 feet deep, paralleling a branch line of the Southern Pacific Railway that runs along the west edge of the Corvallis Industrial Park in southeast Corvallis, approximately two miles south of the central business district on the west side of Highway 99W. Described as Tract "A" on the recorded plat, its total area is about 3.25 acres. Much of the property is about four feet below grade at its deepest point along its longest dimension. Its entire area is encumbered by easements for public and private storm drainage held by the City of Corvallis and the Corvallis Industrial Park Property Owners Association. A third easement, covering 25 feet along the western 25 feet of the property, is held by the City of Corvallis for a public sanitary sewer. Those easements were required by the City of Corvallis and the Division of State Lands as an element in the

development of the industrial park. A portion of the parcel's total area, .72 acres with a 25 foot minimum development buffer, is committed as an enhanced wetland and drainage area for the historic drainage that runs along the railroad tracks. The property is now without street access and is not currently served by utilities, although full public utility services are nearby.

Plaintiffs presented the testimony of John Totten, MAI (Totten.) Totten appraised the property by comparing it to four sales described as containing both usable and unusable land. Those transactions occurred as to properties located in Corvallis, Keizer, McMinnville, and Salem, at dates between January and September 2005, at prices from \$97,500 to \$1,135,287. From those transactions, Totten took gross prices per square foot from \$1.88 to \$5.96, which, after reducing the gross area of each parcel to show a net usable area, resulted in indicated values from \$3.90 to \$10.00. As a check, Totten presented the listing of Lot 9 in the Corvallis Industrial Park, which is served by the subject property's easements. On the assessment date at issue, the 153,668 square foot lot, whose entire area is usable, was listed for \$3.25 per square foot.

Totten went on to discuss how each of the sales is burdened by a creek, with either additional wetlands or poor topography. In verifying the sales, Totten spoke of conversations with brokers who attributed no value to the portions of the property affected by the creeks, wetlands, or poor topography. From that analysis, Totten concluded that buyers and sellers place no value on land that, like the subject property, is a designated wetland, and assigned the parcel a nominal value of \$500. Totten went on to reference five parcels of land in Benton County which, for the tax year at issue, have real market and assessed values of \$-0- assigned to them. Those properties were common areas, buffers and easement areas, and wetlands. They were presented to make the point that, although those parcels may contribute significant value to the overall

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development they are serving, that contributory value is included in the assessment of the land and improvements within the adjacent properties rather than the lots themselves.

Additional testimony for Plaintiffs came from Charles Kingsley (Kingsley), the broker who represented Plaintiffs in their purchase and who participated in the subsequent requests for approval to develop the property. Kingsley's testimony was that the City of Corvallis would not, for liability reasons, accept ownership of the property when its purposes could be met by the taking of an easement. Again, according to Kingsley, Plaintiffs' plan is to deed over ownership of the subject property when enough lots have been sold.

For its part, Defendant made the point that the total area of the subject property is 3.25 acres and, of that area, only .72 acres are wetlands. Defendant's perspective was that some 2.5 acres of the subject property are capable of development, with flat topography, rail service, and a location next to industrial development. To support its conclusion, Defendant presented two sales of parcels, a significant portion of which, consisted of wetlands. The first, at SW Philomath Boulevard and SW 53rd Avenue in Corvallis, contained 8.91 acres, of which only 4.26 acres were capable of development. It sold in January 2005 for \$1,135,286, or \$2.93 per square foot of total area and \$6.12 per square foot of developable area. Similar information came from Defendant's second sale. The former Clemens Lumber Mill just east of Philomath, with a total area of 57.3 acres, contained only 14.21 acres that were developable. Selling for \$1,012,000 in December 2002, that price resulted in \$0.41 per square foot of total area, or \$1.63 per square foot of developable land. Defendant's opinion was that the real market value of the property, as an impaired lot, was \$104,000.

Defendant made the point that, although Plaintiffs described the property as part of the common area of Corvallis Industrial Park, it is not, in fact, held by the park. Plaintiffs explained

that covenants, clauses, and restrictions were used to guide the park's overall development, and that it is planned that a property owners' association will be formed to maintain the common area landscaping and storm water detention area. That was to occur after the sale of the lots was complete because, until then, the developer preferred to maintain full control of the common areas to make sure they were maintained in a manner that made the unsold lots readily marketable. At the time of trial, 5 lots remain unsold out of the original 12, and the property owners association has not yet been established.

II. ANALYSIS

Defendant's reasoning is easy to follow. The property is right next to an industrial park. Although it has many negative characteristics, not all of it is a wetland. If it does have a nominal value, that will be most clearly demonstrated when its ownership is transferred to the industrial park's property owners association.

However, while the transfer to the property owners association will mark the point in which the subject property most clearly has a nominal value, and its utility is captured in the neighboring lots, the court is satisfied that sufficient evidence has been presented to conclude that this event has already occurred. Though only a portion of the property is a designated wetland, its entire area is burdened by easements for public and private storm drainage. Although Plaintiff did not definitively demonstrate that a building permit would not be granted for the property, the testimony of Totten and Kingsley established that the market would perceive securing a building permit so unlikely as to attribute little value to this property.

Defendant's evidence is not inconsistent with that conclusion. Defendant's evidence, like Plaintiffs', shows that parcels with developable and undevelopable portions sell, with higher values on the developable portions, and little or no value on the undevelopable sections.

However, none of the comparables described as capable of development had all the disadvantages of the subject property; in particular, the fact that all of its area is burdened by public and private easements for storm drainage. The appeal is granted.

III. CONCLUSION

Now, therefore,

IT IS THE DECISION OF THIS COURT that the real market value of this property is \$500 for the 2004-05 tax year.

Dated this _____ day of March 2006.

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 March 9, 2006 .
The Court filed this document on March 9, 2006.***