

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

HAWKEYE MINING CO., INC.,)
)
 Plaintiff,) TC-MD 050620B
)
 v.)
)
 GRANT COUNTY ASSESSOR,)
)
 Defendant.) **DECISION**

A trial was convened on January 10, 2006. Thom Seal, Secretary-Treasurer, appeared for Plaintiff. Mike Kilpatrick, legal counsel, represented Defendant.

At trial, the presentation focused on two issues for the 2004-05 tax year: (A) the maximum assessed value (MAV) computation, and (B) the subject property's real market value (RMV) as of January 1, 2004.

Subsequent to trial, written information and arguments were submitted. The record closed April 3, 2006.

I. THE SUBJECT PROPERTY

The subject property¹ is a parcel of land located in a remote area of Grant County. It totals 54.82 acres and is considered a patented mining claim by Plaintiff.

The same property was the subject of a Decision of this court for the earlier 2000-2001 tax year. *See Copperopolis Mining Co. v. Grant County Assessor*, TC-MD No 010771F,

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¹ Account 39468.

2002 WL 975942 (Jan 31, 2002).² There, the court found the property's RMV was \$100 per acre, relying on a February 2000 acquisition price. The court noted that:

“It is not clear to the court whether Defendant’s mentioned sales were actually comparable. This is particularly so since [the assessor’s] familiarity with the property is through aerial photographs and topographical maps. Nor were any adjustments made for any differences. Without more, the court cannot determine whether the comparable sales support a higher value for the subject property.” (*Id.* at *3.)

The total property was later divided from its original 111 acres into two separate parcels. By way of a Quit Claim Deed dated March 10, 2003 and filed April 4, 2003, the subject property at 54.82 acres was created. Defendant terms this a partition by deed. (*See* Def’s ltr at 1, Jan 26, 2006.)

II. MAXIMUM ASSESSED VALUE

For the 2003-04 tax year, the MAV was set at \$5,800. That was raised to \$14,302 for the year under appeal. Plaintiff contends that is violative of the three percent limitation found at ORS 308.146(1).

Defendant relies on the key exception set forth at ORS 308.146(3)(b)³ pertaining to land “partitioned or subdivided.” The court agrees. This smaller subject parcel was clearly created from the larger, prior whole tract. As such, Defendant was correct in computing a new MAV pursuant to ORS 308.156 and its accompanying administrative rule, OAR 150-308.156.

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² TC-MD No 010771F was appealed to the Regular Division of this court, but later dismissed at the Assessor’s request.

³ All references to the Oregon Revised Statutes (ORS) are to 2003.

However, the recomputed MAV is dependent on an initial correct determination of RMV. That topic is more fully discussed below.

III. REAL MARKET VALUE

For the 2004-05 tax year, the Grant County Board of Property Tax Appeals (BOPTA) sustained the assessor's RMV, which increased from \$5,800 the prior year. At trial, the following positions were presented:

	<u>RMV</u>	<u>MAV</u>
BOPTA	\$21,770	\$14,302
Plaintiff	\$ 6,134 ⁴	\$ 5,800

As to the property's correct RMV for this year, Plaintiff still points to its acquisition in 2000. The assessment date under examination here is nearly four years later.

The parties disagree as to the land's highest and best use. Plaintiff argues for its past classification as a potential mining resource. Its representative cited the remote location, lack of access, and meager amenities. Defendant argues for a changed higher use, that of recreational tract land, although no supporting evidence of any likelihood of such utilization at the site was offered.

Defendant submitted an appraisal letter authored by a third party, Fred Ellis (Ellis). (*See* Def's Ex A at 2, 3.) It was offered as "a check only" on the BOPTA RMV. Ellis did not testify at trial and was not available for cross-examination. The document's conclusions are entitled to minimal, if any, weight.

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⁴ Plaintiff's exhibit packet, page 4, filed December 27, 2005.

Defendant's actual presentation at trial as to the valuation issue was meager. Lane Burton, Grant County Assessor, testified about four sales of land used for purposes other than mining resources. They ranged in value from \$937 to \$1291 per acre. No adjustments were made for differences, an appraisal choice noted in the earlier year's Decision. (*See id.* at 6 through 27.)

Plaintiff offered several competing, comparable sales. They were consistent with the land's current use and ranged from \$149 to \$312 per acre. They demonstrate an increase in the subject's value since acquisition and persuades the court that Plaintiff's request to return to that ancient valuation level is unreasonable. The evaluation of those sales indicate a level of at least \$200 per acre. (*See Ptf's Ex Packet.*)

Plaintiff has the burden of proof and must establish his case by a "preponderance" of the evidence. *See* ORS 305.427. A "[p]reponderance of the evidence means the greater weight of evidence, the more convincing evidence." *Feves v. Dept. of Revenue*, 4 OTR 302, 312 (1971). "[I]f the evidence is inconclusive or unpersuasive, the taxpayer will have failed to meet his burden of proof." *Reed v. Dept. of Rev.*, 310 Or 260, 265, 798 P2d 235 (1990).

Plaintiff has persuaded the court that the BOPTA RMV is fatally flawed in that it is based on an incorrect highest and best use. Similarly, Defendant has the better argument as to values generally increasing since 2002. Based on the totality of the evidence, the court finds that the value of this land as of January 1, 2004, was \$200 per acre, rounded to a total RMV of \$11,000.

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IV. CONCLUSION

Now, therefore,

IT IS THE DECISION OF THIS COURT that the property's RMV shall be set at \$11,000;

and

IT IS FURTHER DECIDED that the 2004-05 MAV shall be recalculated in accordance with the above-findings in all respects.

Dated this _____ day of October 2006.

JEFFREY S. MATTON
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 Jeffrey S. Mattson on October 12, 2006. The Court filed and entered this document on October 12, 2006.