

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

PB CAPITAL LLC,)	
)	
Plaintiff,)	TC-MD 070230E
)	
v.)	
)	
BENTON COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

Plaintiff appeals the 2006-07 real market value (RMV), maximum assessed value (MAV), and assessed value (AV) of the subject property. The court held a telephone trial in the matter September 10, 2007. Jeffrey M. Hortsch (Hortsch), Appraiser, appeared on behalf of Plaintiff. Richard Newkirk (Newkirk) appeared on behalf of Defendant.

I. STATEMENT OF FACTS

The subject property consists of a 7.24 acre irregular shaped parcel of land and 10 buildings used to store recreational vehicles (RVs) and boats.¹ There are 205 stalls available for lease among the 10 buildings. The property is zoned for industrial use and is located off Highway 99 north of Corvallis. (Ptf's Ex 1 at 1-3) Most of the buildings are newer with seven built in 2004, two built in 2002, and one built in 1980. (*Id.* at 1-22)

For tax year 2006-07, Defendant assigned the property an RMV of \$2,121,650, an MAV of \$4,697,214, and an AV of \$2,121,650. Plaintiff appeals requesting the RMV, MAV, and AV be reduced to \$1,855,000. In support of its claim, Plaintiff submitted an appraisal report prepared by Hortsch concluding the property had an RMV of \$1,855,000 as of January 1, 2006.

///

¹ The subject property is identified in Defendant's records as Account 042527.

Defendant claims the court should sustain its values. Defendant offered no appraisal evidence in support of its claim.²

II. ANALYSIS

ORS 305.427³ provides that in proceedings before the Tax Court, “[t]he burden of proof shall fall upon the party seeking affirmative relief.” Because Plaintiff is seeking relief in this case, it has the burden of proof. That means Plaintiff must establish its claim “by a preponderance of the evidence, or the more convincing or greater weight of evidence.” *Schaefer v. Dept. of Rev.*, TC No 4530 at 4 (July 12, 2001) (citing *Feves v. Dept. of Revenue*, 4 OTR 302 (1971)).

Plaintiff submitted an appraisal report that used both the cost and income approaches to value. Hortsch did not use the sales comparison approach in his analysis because he could not find, what he believed, were truly comparable properties. Newkirk questioned Hortsch extensively about the appraisal. Among the items questioned was the capitalization rate used by Hortsch, which he derived using the band of investment method, rather than the more typical direct capitalization method. Questions also related to adjustments and expenses. Although Newkirk raised questions as to the accuracy of Hortsch’s opinion of value, the court finds Plaintiff satisfied its initial burden by demonstrating the RMV of the property was \$1,855,000. The burden then shifted to Defendant to demonstrate a higher value. As explained above, Defendant

² The court notes that this case was originally set for trial July 25, 2007. On June 22, 2007, Defendant filed a Motion for Discovery, which the court granted July 6, 2007. On July 9, 2007, Defendant filed a Motion for Delay in Trial because it had not received certain documents from Plaintiff. Also on July 9, 2007, Plaintiff filed its appraisal report in anticipation of the trial. The court granted Defendant’s Motion for Delay in Trial and scheduled a telephone conference July 16, 2007, to discuss setting a new trial date. During that conference, the parties agreed to a new trial date of September 10, 2007. On August 2, 2007, Plaintiff notified the court that it had provided Defendant with the materials requested in discovery. On September 5, 2007, Plaintiff filed a letter with the court noting Defendant had not filed its exhibits by the exhibit exchange deadline and requesting that the court exclude any exhibits thereafter submitted by Defendant. On September 6, 2007, Defendant again filed a request for delay of trial, citing workload and sickness. After consideration, the court denied Defendant’s request and the case proceeded to trial.

³ All references to the Oregon Revised Statutes (ORS) are to 2005.

offered no value evidence of its own. As a result, the court finds that Plaintiff's appraisal is sufficient for the court to find the RMV of the property should be reduced to \$1,855,000.

Plaintiff also claims the MAV should be reduced. In its Complaint, Plaintiff alleged that the "real market and assessed values" should be reduced. (Ptf's Compl at 1.) Plaintiff did not specifically request that the MAV also be reduced. In the cover letter to its appraisal, however, Hortsch requested the MAV be reduced to \$1,855,000. The court questioned Plaintiff's legal basis for concluding the MAV should be reduced, and Hortsch responded that the MAV and RMV/AV were so far apart it was unfair and unlikely the MAV would ever become the property's AV. In effect, Hortsch attempts to provide a direct relationship between the property's RMV and its MAV. Previous court cases have pointed out the error in such an analysis. In *Gall v. Dept. of Rev.*, 17 OTR 268, 270-71 (2003), the Regular Division of the Tax Court held:

"Taxpayers are fundamentally mistaken about the law. Under Measure 50 and the statutes implementing it, there is no linkage between the RMV and MAV. Instead, each value is determined and one of the two, the lesser, becomes, in any given year, the assessed value (AV) for the property. If, as taxpayers maintain, MAV must be equal to RMV in all years, it would have been nonsensical for Measure 50 and its implementing legislation to specify that AV must be the lesser of RMV or MAV because the terms would always have the same value. The court will not construe Measure 50 as nonsensical."

(Footnote omitted.)

Plaintiff offered no evidence or argument to show Defendant calculated the MAV incorrectly. Therefore, the AV simply becomes the lesser of the RMV and MAV which, in this case, is the RMV. No MAV adjustment is required.

///

///

III. CONCLUSION

The court finds Plaintiff satisfied its burden of proof by providing evidence showing the RMV of the property is \$1,855,000. With no contradictory evidence, the court finds the 2006-07 RMV of the property is \$1,855,000. No adjustment to MAV is required. Now, therefore,

IT IS THE DECISION OF THIS COURT that the 2006-07 RMV of the property identified as Account 042527 is \$1,855,000.

Dated this _____ day of September 2007.

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 24, 2007. The Court filed and entered this document on September 24, 2007.