

IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT

Property Tax

B & G RESOURCES, INC.,)	
)	
Plaintiff, ,)	No. 980906
)	
v.)	
)	
UMATILLA COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

Plaintiff appeals the real market value of its property for tax year 1997-98. A trial was held in the Umatilla County Courthouse, Pendleton, Oregon on Thursday, May 18, 2000. The court toured the subject property and the properties submitted by defendant as comparable sales prior to trial. Messrs. Kenneth Gustafson and Robert Bauer appeared on behalf of plaintiff. Mr. Douglas Olsen, Umatilla County Counsel, appeared on behalf of defendant. Messrs. Wayne Simpson and Ed Boatright testified on behalf of defendant.

STATEMENT OF FACTS

Plaintiff purchased the subject property which is described as Umatilla County Assessor's Account Nos. 150321, 150325 and 150328 in August 1996. Plaintiff's total purchase price for the 455 acres of range and farm land located in an exclusive farm use zone (EFU) was \$20,000. Plaintiff is appealing the real market value of 400.5 acres which it alleges has a real market value no greater than the original purchase price. Mr. Gustafson cited case law to support his position that the purchase price is the best indicator of value, including *Kem v. Dept. of Rev.*, 267 Or 111, 514 P2d 1335 (1973);

Equity Land Res. v. Dept. of Rev., 268 Or 410, 521 P2d 324 (1974); and *Sabin v. Dept. of Rev.*, 270 Or 424 (1974). According to Mr. Gustafson, there have been no substantial improvements to the property since the purchase date. Plaintiff did not submit an appraisal to support its determination of real market value for tax year 1997-98.

Mr. Gustafson testified that the subject property was a “cash purchase” from Nomad Alfalfa. Mr. Gustafson testified that he was employed by one of the principals of Nomad Alfalfa, Mr. Lewis, from October 1982 until Mr. Lewis’ death in 1995 with a short break in their employment relationship. Mr. Gustafson testified that his employment relationship with Mr. Lewis included the full range of work performed by a certified public accountant plus assisting Mr. Lewis who was confined to a wheelchair due to the crippling effects of polio. He testified that during a 14 year period he visited the subject property over 100 times.

On cross examination, Mr. Olsen asked Mr. Gustafson and Mr. Bauer if they had ever received a loan from Mrs. Lewis, another principal in Nomad Alfalfa. After initially testifying that they had not received a loan from Mrs. Lewis, Mr. Olsen asked them to explain a trust deed in the amount of \$80,000 which was recorded on the same date as the purchase of the subject property and secured by property. Mr. Bauer testified that the loan from Mrs. Lewis was an investment by her with B & G Resources, Inc. B & G Resources, Inc. agreed to pay interest at a rate higher than Mrs. Lewis could receive from other investment opportunities. The loan had one balloon payment due nine years from the date of issue. Mr. Bauer stated that in addition to being secured by property there was a signature guarantee for the loan investment.

Defendant determined the real market value of the subject property to be

\$197,290 as of the assessment date, July 1, 1997. Mr. Boatright, Property Appraiser, testified that the subject property has water rights for 32 acres. He testified that the 32 acres is Class 1 soil with “deep soil depths” because of its proximity to a dam which was once located on the property. (Def’s Ex Summary at 3.) Plaintiff has leased its property to a local farmer who is growing alfalfa on the irrigated 32 acres. The five year lease agreement ties plaintiff’s rental income to the farmer’s income with an escalation clause netting plaintiff a larger percentage of the income as the contract term expires.

Mr. Boatright testified that approximately 144 acres of the subject property is Class 2 soil and another 16 acres is Class 3 and 5 soil, non-irrigated. Mr. Gustafson testified that plaintiff lost the water rights for the subject property except for 32 acres. He and Mr. Bauer testified that when the property was purchased plaintiff’s investment strategy was to transfer the water rights to a farmer downstream but recently the Oregon Court of Appeals ruled that because the subject property had not used its water rights for the last five years the water rights were lost. Mr. Boatright classified approximately 190 acres of Class 7 and 8 soil as non-irrigated range land. In addition, he estimated approximately 17 acres of plaintiff’s property is in the river and has no value. Plaintiff is currently not leasing his range land.

Mr. Simpson testified that his knowledge of the property goes back to 1966 when his family leased a portion of the neighboring property for a competitive rifle range. He testified that Mr. Lewis purchased the property from the Union Pacific Railroad in 1993 or 1994 for \$35,000. Mr. Simpson testified that he offered to purchase the property from Mr. Lewis for \$65,000 in November 1994 when Mr. Lewis considered filing a property tax appeal. Mr. Simpson stated that the appeal was never filed.

Mr. Simpson testified that the property should be valued with the “full bundle of rights.” He explained that agriculture is the highest and best use and the value of the subject property includes alternative uses such as recreation and a “legally buildable site” because plaintiff owns more than 160 contiguous acres. Mr. Simpson testified that all of the comparable sales have recreational value. Mr. Simpson refuted plaintiff’s claim that there is no legal access to the property when he testified that a county road abuts the property and plaintiff currently gains access to the subject property from the road. Mr. Simpson also refuted plaintiff’s contention that it cannot cross the railroad tracks to access another portion of its property. Plaintiff alleges that access across the railroad tracks is not “legal.”

Mr. Boatright testified that the county’s determination of value of the subject property is supported by the five comparable sales which the court viewed. While each of the five comparable sales is much smaller than the subject property, sales 1 and 2 have approximately the same number of irrigated acres as the subject property with an average per acre price of between \$1,955 and \$2,023 for Class 3 soil. Mr. Boatright testified that when he determined the per acre value of the irrigated portion of plaintiff’s property he estimated that it would be \$2,850 per acre even though he was unable to find comparable sales for Class 1 soil that would support his per acre value. Mr. Boatright concluded that the dry tillable land which previously had water rights had a value of \$582 per acre which was close to the price paid for Class 4 soil (sale 1). All comparable sales had similar dry range land. Mr. Boatright estimated that the per acre value of range land to be \$50. The comparable sales price for range land varied from \$20 to \$99 with the high end of the range found in sale 5. Mr. Simpson testified that comparable sale 2 consisting of 109.75 acres was sold in 1988 for \$55,000, again in 1997 for \$75,000 and recently in November

1998 for \$120,000. For the 1997 sale, the per acre price of the irrigated portion of the land was \$2,023 and the dry range land was \$20. He commented that comparable sale 4 was a “low sale” because the seller did not expose the property to the market.

Mr. Gustafson and Mr. Bauer criticized the comparable sales provided by defendant. Both claimed that the access to the property of the comparable sales is better than their property. Mr. Gustafson and Mr. Bauer expressed concern that the river continues to erode and expand its banks, and plaintiff’s irrigated property is falling into the river. In addition, the parties agreed that comparable sale 5 was purchased for its recreational value, possessed a drainage ditch which was not in use and the buyer paid \$5,000 more than the asking price. Plaintiff was concerned that defendant’s valuation included outbuildings and dwellings, but Mr. Boatright testified that he had adjusted his value per acre to reflect land only. After Mr. Simpson testified that the farm use values have been declining, Mr. Gustafson questioned how Mr. Simpson was able to conclude that the value of the subject property which Mr. Simpson valued at \$116,000 for tax year 1996-97 could now be valued at \$197,290 for the tax year 1997-98. Mr. Gustafson testified that defendant increased the value of irrigated land from approximately \$2,000 per acre to \$2,850 and dry tillable land from approximately \$250 to over \$500 per acre. Mr. Gustafson testified that he thinks the county’s reappraisal of

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his property is harassment and under the 1999 changes in the law the county could not

overturn the court's 1996-97 adjudicated value by ordering a reappraisal.¹

COURT'S ANALYSIS

The issue before the court is the 1997-98 real market value of plaintiff's property. Real market value is the standard used throughout the ad valorem statutes except for special assessments. *Gangle v. Dept. of Rev.*, 13 OTR 343, 345 (1995). The parties are in agreement that the subject property is entitled to farm use special assessment. (Order filed April 19, 2000.) The legislature has determined that farm properties such as plaintiff's shall be assessed at a farm use value. ORS 308.345(2)². Further, the statute requires that when comparable sales are used to determine assessed values of agricultural lands, "the county assessors * * * shall make sufficient investigation to ascertain that the sales so utilized in fact represent sales for bona fide farm use." *Id.* (Emphasis added.)

In reviewing the comparable sales provided by defendant under the guiding principles of ORS 308.345(2), the court must ignore comparable sale 5. The parties have agreed that this property was purchased by the buyer for recreational purposes and the court observed that it is not currently being farmed. Comparable sale 4 raises the issue of an arm's length transaction because the sale was not advertised

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and the purchase price while informative may or may not reflect a market price. The court

¹ The court's Order filed April 19, 2000, discussed the reappraisal issue and the 1999 legislative changes to ORS 309.115(2)(a). Those issues will not be discussed again in this decision.

² References are to the replacement parts for the 1997 Oregon Revised Statutes.

will place little weight on comparable sale 4.

Another important factor considered by the court is the fact that defendant did not offer an explanation for how the value it determined for plaintiff's property could increase 70 percent from tax year 1996-97 to 1997-98 when according to Mr. Simpson the farm use values have been declining. From the court's perspective, the credibility of the experts was challenged and the response was silence. The court must look to the comparable sales data to determine the value.

The sale price of non-irrigated range land found in comparable sales 1, 2 and 3 for property similar to plaintiff's is lower than the value determined by defendant. These sales do not support the \$50 per acre value defendant determined for Class 8 range land. The per acre reappraisal market value data submitted by defendant to the court on October 22, 1999, does not support defendant's per acre market value data. For example, the lowest per acre value listed for range land on the reappraisal data is \$75 whereas defendant's comparable sale information supports a market value of \$20. (Sales 1 and 2.) The court will accept the comparable sales data and use the \$20 per acre market value for dry range land.

Plaintiff's dry tillable land, which totaled over 160 acres, was determined by defendant to be Class 2, 3 and 5 soil. The per acre value (\$582) determined by defendant is in excess of the price per acre reported in comparable sale 3 for Class 5 soil but close to the per acre price reported for 3 acres of Class 4 soil (sale 1.) Defendant presented the court with a value determination in excess of the price per acre reported in comparable sales for Class 5³ and no market data to support the per acre value of class 2 and 3 soil

³ There was one exception. Defendant reported a per acre price for one acre of Class 5 soil in excess of the per acre value used in its determination of value. Because
DECISION

(dry). Defendant did not explain why its value was correct. Further, defendant did not explain how the value of plaintiff's dry tillable land could increase in value from \$250 per acre to \$582 in twelve months. The court does not agree with defendant that plaintiff's access is comparable to that of its neighbors. At any time, the railroad can deny access by locking the existing gates and plaintiff would own a land-locked parcel. The court concludes that defendant's 1996-97 valuation is more correct and the value per acre for the 1997-98 tax year was \$300 per acre.

The balance of plaintiff's property is irrigated Class 1 soil. Mr. Boatright testified that none of the comparable sales included Class 1 soil. He stated that the county relied on comparable sales 1 and 2 for Class 3 soil to determine the price per acre of Class 1 soil. He did not provide market evidence to substantiate the per acre value of \$2,850 for Class 1 soil. Further, defendant appears to have overlooked the important fact that market value is determined as of an assessment date which in this case is July 1, 1997. The condition of the property including the effects of flooding must be taken into account and not measured against an arbitrary standard or time period. The court concludes that \$2,000 per acre is the correct value for plaintiff's irrigated 32 acre parcel.

Plaintiff asks the court to base its determination of real market value on plaintiff's purchase price. In the court's previous Decision issued in plaintiff's prior year appeal, the court concluded that an arm's length transaction between a knowledgeable and willing buyer and seller is persuasive of a property's market value for that year.

defendant has determined that 144 acres of plaintiff's dry tillable land is class 2 soil, it must have concluded that the higher price per acre was appropriate. Defendant's failure to explain and support its price per acre for the various classes of soil prevents the court from accepting its determination of value.

Umatilla County v. B & G Resources, Inc., OTR-MD 981864D (Decision)(October 14, 1998). Based on the evidence presented at that trial, the court concluded that plaintiff's purchase price of \$20,000 was the 1996-97 real market value. A similar conclusion was reached by the Oregon Department of Revenue during the administrative appeal.

During the recent trial, Mr. Gustafson volunteered that the relationship between him and Mr. Lewis was not simply one of employee and employer. Mr. Gustafson stated that he provided many care services to Mr. Lewis such as lifting him in and out of his car. Such a long term relationship could suggest that the sale was not arm's length even though Mr. Bauer negotiated the transaction on behalf of plaintiff. In addition, the court was informed that on the same day plaintiff purchased the property from Mr. Lewis' widow, a principal in Nomad Alfalfa, a trust deed in the amount of \$80,000 was recorded between the parties. Defendant would have the court conclude that the loan investment of \$80,000 should be added to the cash purchase price of \$20,000 to result in a real market value for the property of \$100,000 which is close to defendant's determination of value as of July 1, 1996. In view of the information stated above, the court cannot conclude that plaintiff's cash purchase price is the real market value of the property as of July 1, 1997.

As previously stated, the court must determine its own market value based on the comparable sale data and site visit. Plaintiff's irrigated 32 acres is accessible and comparable to neighboring properties. The river continues to carve a wider channel and the prospect of some loss of irrigated land is real although its immediacy is unknown. The market value of plaintiff's tillable dry land of approximately 160 acres is negatively impacted by the railroad right of way which clouds the issue of legal access. The dry range

land in some places ascends and descends vertically from the road and its value is no more than that of comparable properties such as sales 1 and 2. The court concludes that the 1997-98 real market value of plaintiff's property is as follows:

32 acres of irrigated farm land (\$2,000 per acre)	\$ 64,000
157.95 acres of dry tillable land (\$300 per acre)	\$ 47,385
190.05 acres of range land (\$20 per acre)	\$ 3,801
20.03 acres in river	<u>- 0 -</u>
Total Real Market Value	\$115,186

CONCLUSION

IT IS THE DECISION OF THIS COURT that the 1997-98 real market value of plaintiff's property identified as Umatilla County Assessor's Account Nos. 150321, 150325 and 150328 was \$115,186.

FURTHER, IT IS THE DECISION OF THE COURT that the county correct the assessment and tax rolls to reflect the above real market and assessed values.

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Any refund due following this correction is to be promptly paid with statutory interest pursuant to ORS 311.806 and 311.812.

Dated this _____ day of June, 2000.

JILL A. TANNER
MAGISTRATE

IF YOU WANT TO APPEAL THIS DECISION, FILE A COMPLAINT IN THE REGULAR DIVISION OF THE OREGON TAX COURT, FOURTH FLOOR, 1241 STATE ST., SALEM, OR 97310. 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 JILL A. TANNER ON JUNE 14, 2000. THE COURT FILED THIS DOCUMENT ON JUNE 14, 2000.