

IN THE MAGISTRATE DIVISION  
OF THE OREGON TAX COURT

FILED  
MAGISTRATE DIVISION  
OREGON TAX COURT

00 FEB -8 PM 3:29

**ENTERED**

FEB 08 2000

MAGISTRATE DIV.

Property Tax

OCEAN FOODS OF ASTORIA, INC., )

Plaintiff, )

v. )

COOS COUNTY ASSESSOR, )

Defendant. )

No. 990469E

**DECISION**

Plaintiff appeals the 1998-99 real market value of property identified in the Coos County Assessor's records as Account No. 5540. Trial in the matter was held September 29, 1999. W. Scott Phinney, Attorney, appeared on behalf of plaintiff (Ocean Foods). Frank Lassen appeared on behalf of defendant (the county).

**STATEMENT OF FACTS**

The subject property is located in Charleston, Oregon. It consists of a 10-acre parcel of land, three of which are submerged, a seafood processing plant, restaurant, and mobile home site. Ocean Foods leases the building in which the restaurant is located to another for \$9,600 a year.

Ocean Foods established the plant to process dungeness crab, salmon, shrimp, and ground fish. Several years ago, the salmon industry collapsed removing that portion of the plant's operations. Ground fish quotas became severely restricted and the shrimp and crab industries began a downward spiral in 1996. All of this contributed to hard times for the plant. Mr. Krager, Division Manager for Ocean Beauty

Seafoods,<sup>1</sup> testified that the fishing industry is a low-margin, high-volume business. When the volume of product at the plant decreased, the margin did not increase to offset it, so their losses increased.

Four years ago, Tony Ross, Controller for Ocean Beauty Seafoods, was specially assigned to the company's coastal facilities. He was responsible for overseeing the various operations and evaluating the losses the plants had been experiencing. Mr. Ross testified that, at the subject plant, he evaluated each product and its contribution margin, *i.e.*, how the product contributed to the fixed costs of the facility. He discovered the ground fish were not contributing at all. As a result, Ocean Foods discontinued its ground fish processing business because, for every pound it processed, it lost money.

In late 1997, Ocean Foods decided to make one last attempt at saving the operation by running dungeness crab another season. It had already discontinued its other operations. Unfortunately, it only processed 200,000 pounds of crab when it needed to process one million pounds. It turned out to be one of the worst crab seasons ever. Although Ocean Foods made money off of the crab, it could not maintain the plant all year for a three-month crab season. As a result, the decision was made to close the plant to minimize its losses. In February, Ocean Foods sold its shrimp peelers for \$20,000 and drained the ammonia out of the refrigeration system for a "hard" close down.

///

---

<sup>1</sup> Ocean Beauty Seafoods was the parent company of Ocean Foods during the tax year. Since then, the companies have merged and Ocean Foods no longer exists as a separate entity.

The plant was primarily closed to minimize the company's losses.

Although Ocean Foods was open to selling the property, it did not actively market the property. Mr. Ross testified that, based on his experience, the fishing community is a close-knit group and people knew Ocean Foods had closed the plant. He believed that, through word of mouth, potential buyers would come forward without the company actively marketing the property. The company had two or three inquiries about the property but no official offers to purchase. In 1999, Triad Energy Resources, Inc. (Triad) approached Ocean Foods about the property. Ocean Foods was willing to sell the property for \$500,000. After negotiating the price, they agreed on a sale price of \$440,000. Triad wanted to use the property immediately but needed time to obtain financing. As a result, they structured the agreement so that Triad would make a \$10,000 option payment within the first 60 days and begin leasing the property. At the close of five months, Triad could exercise an option to purchase the property for \$430,000. Triad intended to start a waste drying operation, which involves drying crab and shrimp shells for chicken feed. Triad put in several pieces of equipment but never started operations. Prior to the close of the five-month period, Triad informed Ocean Foods it was not going to exercise its option.

The restaurant is leased to the restaurant's owners for \$9,600 a year. The lessees have made improvements to the property and remodeled it. Mr. Ross testified he is uncertain whether \$9,600 is a reasonable lease amount. He noted that Charleston is not on Highway 101 and, therefore, it does not get a lot of traffic. Most of its traffic occurs in only two months out of the year.

///

///

DECISION

The property's plant manager has placed his own mobile home on the property's mobile home pad. Ocean Foods allows him to stay there rent free in exchange for him being the property's caretaker and security person.

For tax year 1998-99, the county valued the property at \$667,875. Ocean Foods argues the value should be no more than \$460,000, representing the \$440,000 lease-option purchase price and \$20,000 for the shrimp peelers.

### **COURT'S ANALYSIS**

As plaintiff in this case, Ocean Foods has the burden of proof.

ORS 305.427. Ocean Foods must satisfy its burden by a preponderance of the evidence. *Id.* In support of its value conclusion, Ocean Foods submitted its income statements for fiscal years ending March 1994 through March 1998. These statements demonstrate Ocean Foods has not generated a net income since 1994. Ocean Foods also relies on the lease-purchase option price of \$440,000 to set the upper limit of the property's value (again adding \$20,000 for the shrimp peelers for a total of \$460,000).

The county responds that it has already taken into account the downturn in the fishing industry by reducing the value from \$986,500 to \$667,875. Mr. Lassen testified the county does not believe the lease-purchase option is a valid indicator of value because the property has not been sufficiently exposed to the market. He believes the property could be converted to a higher and better use as, *e.g.*, an R.V. park or mobile home park. The county offered no independent valuation evidence.

As mentioned above, Ocean Foods has the burden of proof. Its witnesses testified knowledgeably about the property and the impact the downturn in the fishing industry has had upon it. Ocean Foods' valuation evidence consists of the negotiated lease-purchase option price of \$440,000. Although the option was admittedly never

exercised, the court finds it does provide some indication of the property's value. In response, the county provided the court with no valuation evidence of its own. It simply suggested the property could be converted to a higher use.

The valuation evidence presented by Ocean Foods was admittedly not the best. It was, however, some evidence of value and, without any contradictory valuation evidence, is sufficient to satisfy plaintiff's burden.

### CONCLUSION

The court concludes the 1998-99 real market value of the subject property was \$460,000. Now, therefore;

IT IS THE DECISION OF THIS COURT that the 1998-99 real market value of the property identified in the Coos County Assessor's records as Account No. 5540 was \$460,000.

Dated this 8<sup>th</sup> day of February, 2000.

  
COYREEN R. WEIDNER  
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 MAILING OF THE DECISION OR THIS DECISION BECOMES FINAL AND CANNOT BE CHANGED.**