

IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT

Property Tax

WYMORE TRANSFER CO.,)	
)	
Plaintiff,)	No. 981800D (Control)
)	990713D
v.)	
)	
CLACKAMAS COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

Plaintiff appeals the value of its property for tax years 1997-98 and 1998-99.

The property is identified as Clackamas County Account No. 484443 for tax year 1997-98 and Account Nos. 484443 and 484381 for tax year 1998-99. A telephone trial was held on January 14, 2000. W. Scott Phinney represented the plaintiff. Appearing as witnesses for the plaintiff were Jack Milner and Adam Monshi. John Taylor, Appraiser II, appeared for defendant.

STATEMENT OF FACTS

The property at issue is a 155,704 square foot transfer warehouse located in Clackamas, Oregon. It is concrete, tilt-up construction and was constructed during 1996 and 1997. The warehouse was built by the property owner for its own use. The warehouse sits on 9.1 acres of land. The land is zoned light industrial. There is no office space in the warehouse, although there is a lunch room. On the assessment date of July 1, 1997, the warehouse was not complete. On the assessment date of January 1, 1998, the warehouse was complete but unoccupied. The real market value on the tax roll for 1997-98 was

\$5,094,710,¹ including exception value of \$4,584,140. The real market value on the tax roll for 1998-99 was \$6,129,930. This value does not include any exception value.²

Excluding the real market value of the account not under appeal, plaintiff alleges a real market value of \$4,407,286 for tax year 1997-98. Plaintiff alleges a real market value of \$5,208,532 for tax year 1998-99. Plaintiff's evidence³ generally related to the costs of construction. In addition to contractor costs, plaintiff also included the costs for permits, financing and an allowance for developer's profit. Plaintiff included some cost figures from Marshall and Swift for storage warehouses for corroboration of its cost figures. Lastly, plaintiff included a sheet called "Capitalization of Income into Value" which also supported its assertion of value. Mr. Milner provided testimony that supported that information. Plaintiff argues that an owner would not pay more for property than it costs to build.

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Defendant's evidence supported a real market value of \$6,350,000 for the

¹ This value does not include the real market value of the land in Account No. 484381 since it was not under appeal in tax year 1997-98. The real market value on the roll, for this account, appears to be \$552,300. See Plaintiff's page labeled "Wymore Transfer, New Warehouse."

² Defendant originally set an exception value of \$309,330 and a total real market value of \$5,847,350 for Account No. 484443 for tax year 1998-99. The Board of Property Tax Appeals, in lowering the real market value to \$5,494,790, included \$0 as exception value. The total change in real market value was \$352,560. The Board of Property Tax Appeals lowered the maximum assessed value from \$4,539,230 to \$4,291,770, a reduction of \$247,460. It appears that the Board of Property Tax Appeals determined that no exception value was created for tax year 1998-99. The parties agree that there was exception value created for tax year 1998-99.

³ Magistrate Division Rules require that, "[t]he pages of each exhibit **shall** be numbered." MDR 10 (emphasis added). Plaintiff's evidence consisted of 178 unnumbered pages.

completed warehouse. Mr. Taylor calculated his estimate of value using the sales comparison approach and the income approach. In his sales comparison approach, Mr. Taylor used five comparable sales from the metropolitan area. His income approach included income information from three properties. Mr. Taylor agreed at trial that one of the properties was not a good comparison.

Mr. Taylor argued that plaintiff's cost information was flawed. For example, he argued that the cost should include entrepreneurial incentive or profit, in addition to the developer's fee. He also argued that the warehouse is not a storage warehouse but a transfer warehouse because of the large number of dock-high doors. Transfer warehouses, he testified, have a different Marshall and Swift valuation sheet.

COURT'S ANALYSIS

Between the parties, all three approaches to value were used. Plaintiff used the cost approach; defendant used the sales comparison approach and the income approach. Because it is new construction, the court finds the cost approach is the most reliable indicator of value. Although plaintiff included a significant amount of detail regarding the cost of improvements, the court has some concerns about the material presented.

Mr. Milner testified that the cost to build the warehouse worked out to \$25.60 per square foot. He compared the \$25.60 to the figure in the Marshall and Swift page for a class C, average quality storage warehouse. That figure is \$24.11. He argued that the \$25.60 figure was a reasonable one, within the range of the Marshall and Swift valuation. However, the warehouse is a transfer, not a storage warehouse. In making its cost comparison, plaintiff should have compared the property to the same type of property.

Mr. Taylor's un rebutted testimony was that Marshall and Swift valuation figures do not contain a number of cost items including: the cost of preparing the land, developer's profit, interest, development fees and marketing costs for the first occupant. In other words, Marshall and Swift valuation figures include just the cost of the building. Plaintiff's figure of \$25.60 includes such things as excavation costs, site utilities, landscaping and asphalt paving. These four items total \$824,530. See Plaintiff's page labeled "Wymore Transfer, Mega Job 794." These items are more appropriately allocated to the land.⁴

Also significant are the items plaintiff did not include in its cost. Plaintiff seemed to blend the concept of developer's fee and entrepreneurial profit. This is incorrect. According to *The Appraisal of Real Estate* (11th ed 1996), developer's fee "is distinct from entrepreneurial incentive." *Id.* at 348 n1. "The developer's fee represents compensation for the overall management of the project[.]" *Id.* Entrepreneurial profit, on the other hand, "reflects the projected return required to attract an entrepreneur to invest capital in a project, based on market expectations." *Id.* Further, "[e]ntrepreneurial profit can take the form of * * * use value to an entrepreneur." *Id.* at 348.

Nor did plaintiff include any costs for architects' fees. Typically, architects' fees are five to seven percent of the cost of the project. Plaintiff submitted no evidence relating to the architects' fees. Plaintiff's own evidence indicated that there was an architect involved in the building of the warehouse. See Plaintiff's page labeled "Application and Certificate for Payment."

⁴ Defendant appears to have allocated all of the exception value to the improvements.

CONCLUSION

Plaintiff submitted a myriad of materials. Two witnesses testified on plaintiff's behalf. However, in order to show a value using the cost approach, **all** the costs need to be accounted for and properly allocated. Plaintiff did not do this. In any proceeding before the magistrate division, the party seeking affirmative relief bears the burden of proof. ORS 305.427.

For the reasons stated above, the court was not persuaded by plaintiff's evidence. Plaintiff did not meet its burden of proof.

IT IS THE DECISION OF THE COURT that plaintiff's appeal is denied.

Dated this _____ day of May, 2000.

SALLY L. KIMSEY
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 SALLY L. KIMSEY ON MAY 10, 2000. THE COURT FILED THIS DOCUMENT ON MAY 10, 2000.