

State of Oregon
DEPARTMENT OF REVENUE

BOOK 161 PAGE 0078

In the Matter of the Appeal of

Appeal # 97-4091

GREATER OREGON PROPERTIES

JUN 1 1998

STIPULATION

Petitioner(s) has/have appealed to the Department of Revenue concerning the assessment of certain property identified in the Lane County records by the accounts listed on the attachment(s).

The parties agree to the correction of the real market value on the roll(s) as indicated on the attachment to this order.

The basis of this agreement is:

- Sale of the subject property
- Physical appraisal of the subject property
- Clerical error
- Change in property (fire, flood, landslide, etc.)
- Other (explain): **Market review**

If the difference in value is more than 30 percent of the roll value or \$500,000 you must attach a detailed explanation of the basis for the agreement or a copy of the information used as a basis for the agreement.

David E. Carmichael
Representative

Joe Rose
County Officer

Attorney for Petitioner

Property Appraiser



Signature of Petitioner

Date: 6-4-98

x 

Signature of Officer

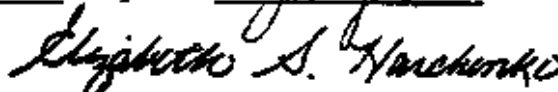
Date: 6/3/98

OPINION AND ORDER

The parties have entered into a Stipulation in this matter. The Stipulation properly reflects real market value. Jurisdiction is provided by ORS 306.115/116. IT IS ORDERED, that the appropriate county officers correct the tax roll(s) in conformity with the Stipulation in this matter. Any excess taxes paid shall be refunded with interest pursuant to ORS 311.806 and ORS 311.812.

Dated and mailed at Salem, Oregon this 6th day of July 1998.

CERTIFIED TO BE A TRUE COPY



Department of Revenue

APPEALS SECTION
DEPARTMENT OF REVENUE

Elizabeth Harchenko
Director

		FROM	TO
ACCOUNT NO. 1465507	Land	\$ 3,660	\$ 800
	Improvements	\$ 0	\$ 0
TAX YEAR 1994-95	Total	\$ 3,660	\$ 800
		=====	=====
ACCOUNT NO. 1054376	Land	\$ 115,220	\$ 60,000
	Improvements	\$ 0	\$ 0
TAX YEAR 1994-95	Total	\$ 115,220	\$ 60,000
		=====	=====
ACCOUNT NO. 887453	Land	\$1,728,990	\$1,021,280
	Improvements	\$ 18,810	\$ 8,720
TAX YEAR 1994-95	Total	\$1,747,800	\$1,030,000
		=====	=====
ACCOUNT NO. 1019528	Land	\$ 27,090	\$ 15,000
	Improvements	\$ 0	\$ 0
TAX YEAR 1994-95	Total	\$ 27,090	\$ 15,000
		=====	=====
ACCOUNT NO. 1475183	Land	\$ 406,640	\$ 196,270
	Improvements	\$ 372,430	\$ 103,730
TAX YEAR 1994-95	Total	\$ 779,070	\$ 300,000
		=====	=====

FROM

TO

ACCOUNT NO.

1465507

Land \$ 3,730
Improvements \$ 0

\$ 800
\$ 0

TAX YEAR

1995-96

Total \$ 3,730
=====

\$ 800
=====

ACCOUNT NO.

1054376

Land \$ 117,520
Improvements \$ 0

\$ 60,000
\$ 0

TAX YEAR

1995-96

Total \$ 117,520
=====

\$ 60,000
=====

ACCOUNT NO.

887453

Land \$1,763,570
Improvements \$ 19,940

\$1,021,280
\$ 8,720

TAX YEAR

1995-96

Total \$1,783,510
=====

\$1,030,000
=====

ACCOUNT NO.

1019528

Land \$ 27,630
Improvements \$ 0

\$ 15,000
\$ 0

TAX YEAR

1995-96

Total \$ 27,630
=====

\$ 15,000
=====

ACCOUNT NO.

1475183

Land \$ 414,770
Improvements \$ 393,960

\$ 196,270
\$ 103,730

TAX YEAR

1995-96

Total \$ 808,730
=====

\$ 300,000
=====

STATE OF OREGON
DEPARTMENT OF REVENUEIn The Matter of the Appeal of
WASHINGTON MUTUAL
Concerning Certain Property Tax
Matters for the 1994-95 through 1996-97 Tax Years
OPINION AND ORDER Nos. 97-2061 and 97-4189

A telephone hearing was held at 11:00 a.m., April 21, 1998. Ben Blanco, Hearings Officer for the Department of Revenue (department), presided. Scott Phinney and Jack Milner, Property Research, LTD, representing the petitioner, appeared and presented their arguments. The Lane County Department of Assessment and Taxation chose not to participate in the instant hearing for budgetary reasons.

Petitioner has appealed to the department for a reduction in real market value of real property identified in the Lane County Assessor's records as Account No. 0313229.

The department's jurisdiction to consider the 1994-95 and 1995-96 tax years appeal lies in ORS 306.115, petitioner having failed to properly pursue an appeal to the department, the Lane County Board of Equalization or Board of Ratio Review in a timely fashion.

ORS 306.115 is an extraordinary remedy in that the statute will allow the department to consider an appeal when it otherwise would not have the authority to do so. However, at least one of several rather stringent requirements must be satisfied before the department can conduct a hearing to consider the underlying valuation issue.

The department can hold a hearing to consider the underlying valuation issue if there is a good reason ("good and sufficient cause") why the petitioner did not appeal on time. "Good and sufficient cause" has a very specific legal definition in the context of an appeal under ORS 306.115. It must be shown that an extraordinary circumstance beyond the control of the petitioner, or the petitioner's agent or representative, caused the appeal to be untimely. ORS 306.115 (3) (a), OAR 150-306.115-(B) and OAR 150-307.475. Extraordinary circumstances include a sudden and prolonged illness or an unavoidable absence during the appeal period and similar situations. Lack of knowledge, financial hardship and inadvertence, among others will not do.

Furthermore, the department will consider the substantive issue in an appeal under ORS 306.115(3)(b) when:

- (i) There is an extraordinary circumstance concerning the assessment and taxation of the subject property. Extraordinary circumstances under this provision are:

- (I) The taxation of nonexistent property, property that is exempt as a matter of law without an application, or property outside the jurisdiction;
 - (II) Taxpayers' computational or clerical errors in reporting the value of personal property pursuant to ORS 308.290;
 - (III) Instances in which a bona fide purchaser had no notice of a real property assessment within the appeal period set forth in ORS 305.280; and
 - (IV) Instances in which a question of fact exists which is of interest to the department, does not fall within any other provision of ORS 306.115 or this rule and does not involve an error in valuation judgement.
- (ii) The parties to the appeal agree to facts, which indicate it is likely that an error exists on the roll.

The petitioner's representatives urge the department to consider the subject property's alleged functional obsolescence due to its over-improvement and the fee appraisal conducted on May 21, 1995, concluding that the property's As-Is value is \$760,000, to be substantial agreement to facts indicating that the 1994-95 and 1995-96 tax years value is in error.

After giving due consideration to both positions and applying the appropriate weight of the evidence, the department finds that the evidence submitted on the behalf of the petitioner is not sufficient to grant the requested relief. In summary, petitioner has failed to show good and sufficient cause for not properly appealing the 1994-95 and 1995-96 values in a timely manner under ORS 306.115(3)(a). Furthermore, the Lane County Assessor's Office declined to agree to the facts as represented by the petitioner. Moreover, in the view of the agency, this appeal does not represent an instance in which a question of fact exists which is of interest to the department. Consequently, the petitioner has not met any of the standards expressed in the supervisory statute.

Accordingly, the 1994-95 and 1995-96 appeal is denied.

In regards to the 1996-97 tax year, petitioner appealed timely to the department from an order of the Lane County Board of Equalization (BOE) regarding the real market value ascribed to the subject property on the 1996-97 tax roll.

The issue is the real market value (RMV) of the subject property. The department's jurisdiction to hear the appeal lies in ORS 305.275 and 305.280.

The commercial property under appeal is located at 604 North A St., in Springfield. The site is improved with a 29,156 square foot two-story building constructed in 1973 as a main branch for

Pacific First Federal Savings and Loan. Washington Mutual Bank acquired the subject property when it merged with Pacific First Federal. The firm of Thorp, Purdy, Jewett Urness & Wilkinson P.C., currently lease 13,110 square feet in the east portion of the building on a triple net expense basis. Washington Mutual Bank operations are conducted on the west portion. The center of the subject building is open to the second floor. The second floor area is primarily used for a lunchroom. Additionally, the subject building includes a 1,712 square foot basement.

The subject property's real market value on the 1996-97 Lane County tax roll is currently shown as \$1,613,480; apportioned \$98,590 to the land and \$1,514,890 to the improvements. Petitioner seeks reduction to \$760,000; apportioned \$95,000 to the land and \$665,000 to the improvements.

SUMMARY OF EVIDENCE

Petitioner's representatives assert the county's July 1, 1996, assessment does not adequately consider various factors peculiar to the subject improvements in that it suffers from functional obsolescence due to its design with a large center area open to the timber framed roof trusses and cedar ceiling that is in excess of 50 feet above the ground floor. Because of the wasted space, the subject can command only low lease rates.

Furthermore, regarding the subject's functional obsolescence, Messrs. Phinney and Milner argue that the subject property's highest and best use is to convert the structure to multi-tenant office use.

In support of the requested reduction, petitioner's representatives offered a fee appraisal report prepared in May 1995 by Duncan & Brown. In the report, the appraisers considered the market and income approaches to value in their analysis. They gave the most weight to the income approach.

In the market approach, petitioner's appraisers focused mostly on former financial institution buildings that have been converted to alternative uses. The search was extended to Eugene due to the limited number of comparable properties in Springfield. The 6 sale properties reviewed indicated a range of sale prices per square foot of \$41.27 to \$71.70. Based on their analysis, petitioner's appraisers employed a value per square foot of \$42.00 to reach an indicated value of \$1,030,000.

In the income approach, the appraisers employed total potential gross annual income of \$236,256 based on a market lease rate determined at \$.80 per square foot. They derived a net operating income of \$128,130 by subtracting 10 % for vacancy/credit loss and 35.8 % for expenses. Using an overall capitalization rate of 13.5 %, petitioner's appraisers determined an indicated stabilized value of \$950,000, rounded to \$1,000,000. Based on the above analysis, the As-Is value of the subject property was estimated to be:

Stabilized Value:	\$1,000,000
Less: HVAC	75,000

Renovation	88,000
Rent Loss	<u>81,000</u>
As-Is Value	\$ 756,000 (Rounded to \$760,000)

No representative from the Lane County Assessor's Office was present to explain the current roll value, electing instead to stand on the record of its last mass physical appraisal. It is assumed the county is recommending that the roll value at issue be sustained.

DECISION OF THE DEPARTMENT

An administrative rule, OAR 150-305.115(B)(9), explains that in a valuation controversy the burden of proof is on the appealing party. In order to prevail, that person must do more than state that error exists in the assessment. He or she must also prove their claim by a preponderance of the evidence.

In this case the evidence submitted by the petitioner is sufficient to convince the department that there may be an error in the record assessment. Without any evidence or testimony to discredit the evidence and testimony presented by the petitioner's representatives, their evidence stands as the best information available to the department, and constitutes the preponderance of the evidence.

Consequently, the appeal is granted.

Therefore, the appropriate county official shall cancel any taxes not due as a result of the lower value now ordered by the department. The assessor may allocate between the land and improvements as deemed appropriate. If, after making such correction, it is discovered that any excess taxes have been paid, they shall be refunded with interest pursuant to ORS 311.806 and 311.812.

IT IS SO ORDERED.

Dated and mailed at Salem, Oregon, this 10th day of June, 1998.

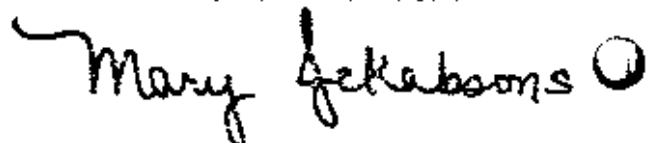
DEPARTMENT OF REVENUE


ALVIN BROWN
County Director

Notice: If you want to appeal this decision, file a complaint in the Oregon Tax Court, 1241 State St., Salem, Oregon 97310. YOUR COMPLAINT MUST BE FILED WITHIN 90 DAYS AFTER THE MAILING DATE SHOWN ABOVE, OR THIS DECISION WILL BECOME FINAL AND CANNOT BE CHANGED.

Page 4 Opinion and Order Nos. 97-2061 and 97-4189
Washington Mutual

CERTIFIED TO BE A TRUE COPY



APPEALS SECTION
DEPARTMENT OF REVENUE

**STATE OF OREGON
DEPARTMENT OF REVENUE****In the Matter of the Appeal of
SERVISTAR COAST TO COAST
Concerning Certain Property Tax
Matters for the 1996-97 Tax Year
OPINION AND ORDER NO. 97-4379**

A telephone hearing was held on June 11, 1998, at 10:40 a.m., before Kim Satterlee, Hearings Officer for the Department of Revenue. Petitioner, Servistar Coast to Coast, was represented by David Carmichael, Attorney. Lane County elected not to participate in the hearing.

The subject is identified in the Lane County Assessor's records as Account No. 1098605. The department's jurisdiction to hear this appeal lies in ORS 305.280 and ORS 305.285. The subject's real market value had been appealed for the 1995-96 tax year.

SUMMARY OF EVIDENCE

The subject property is a 523,748 square-foot structure of which 200,000 square feet was constructed during the 1995-96 and the 1996-97 tax years. According to Mr. Carmichael, the county originally assessed the structure \$1,100,000 in excess of the actual cost of the new addition. The county's 1995-96 value was appealed to the department. During the hearing process for tax year 1995-96, the county and the petitioner reached a stipulated agreement concerning the subject's real market value. The subject's real market value was lowered from \$11,780,170 to \$10,601,410.

The 1995-96 stipulated value was determined by taking the actual cost of the new construction plus a 5% entrepreneurial profit. Mr. Carmichael requested the subject's 1996-97 real market value be reduced from \$12,739,730 to \$10,601,410. Mr. Carmichael stated that the county appraiser who did the subject's appraisal for the 1996-97 tax year was a different county appraiser than the one who worked on the stipulation. According to Mr. Carmichael, the appraiser who did the appraisal did not have the cost information that was available during the preparation of the stipulation.

Since the subject was under construction for both tax years in question, the hearings officer requested that Mr. Carmichael provide information concerning the construction work that was done on the structure after the July 1, 1995 assessment date. The hearing record was kept open so Mr. Carmichael could examine the petitioner's records and determine what these costs were.

Mr. Carmichael provided additional information concerning the cost of construction. As a result of this new information, Mr. Carmichael amended his petition to request a value reduction to \$11,305,640 for the 1996-97 tax year.

CONCLUSION OF THE DEPARTMENT

To establish the value for the subject property for the tax year under appeal, Mr. Carmichael submitted a stipulation of value agreed to by both the county and the petitioner for the prior year. The stipulated agreement called for a cost approach to determine real market value. Prior to the hearing record being closed, Mr. Carmichael submitted additional information concerning the subject's construction costs. As a result, the petition was amended changing the estimate of value from \$10,601,410 to \$11,305,640. ORS 308.285 and ORS 308.205.

Mr. Carmichael has presented a prima facie case. The county was not present to dispute the information presented by Mr. Carmichael. Therefore, the real market value of the subject property for the 1996-97 tax year shall be reduced from \$12,739,730 to \$11,305,640. Any reduction in value shall be ascribed to the improvement value of the subject.

Therefore, the appropriate county official shall cancel any taxes not due as a result of the lower value now ordered by the department. If, after such correction, it is discovered that any excess taxes have been paid, they shall be refunded with interest pursuant to ORS 311.806 and ORS 311.812.

IT IS SO ORDERED.

Dated and mailed at Salem, Oregon, this *23rd* day of *June*, 1998.

DEPARTMENT OF REVENUE

Elizabeth Harchenko
Elizabeth Harchenko
Director

Notice: If you want to appeal this decision, file a complaint in the Oregon Tax Court, 1241 State Street, Salem, Oregon 97310. YOUR COMPLAINT MUST BE FILED WITHIN 90 DAYS AFTER THE MAILING DATE SHOWN ABOVE OR THIS DECISION WILL BECOME FINAL AND CANNOT BE CHANGED.

CERTIFIED TO BE A TRUE COPY

Page 2 Opinion and Order No. 97-4379
 Servistar Coast to Coast

APPEALS SECTION
DEPARTMENT OF REVENUE

DEPARTMENT OF REVENUE

BOOK **161** PAGE **0387**

1996-97 TAX YEAR

Account #313229	\$	12,906.57		
Washington Mutual		2,839.45 Int. Ref.	\$	15,746.02
and				
Scott Phinney & Jack Milner				
Petitioner's Representatives				
Account #1098605	\$	13,445.68		
Servistar Coast to Coast	\$	2,958.05 Int. Ref.	\$	16,403.73
and				
David E. Carmichael, Attorney				
TOTAL REFUND:			\$	46,170.79

DATED this 9th day of September, 1998



Steve Cornacchia, Chair
Lane County Board of Commissioners

09/15/98

BCC #1 (Page 2)

**IN THE MATTER OF REFUNDS TO GREATER OREGON PROPERTIES &
DAVID E. CARMICHAEL, ATTORNEY; WASHINGTON MUTUAL &
SCOTT PHINNEY & JACK MILNER, PETITIONER'S REPRESENTATIVES; AND
SEVISTAR COAST TO COAST & DAVID E. CARMICHAEL, ATTORNEY**