

Jean & H. R. Swaggert,
Petitioner,

**FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER FOR JUDGMENT**

vs.

File No. C8-02-619

County of Hubbard,
Respondent.

Dated: December 16, 2003

The Honorable Sheryl A. Ramstad, Judge of the Minnesota Tax Court, heard this matter, on August 29, 2003, at the Hubbard County Courthouse, 301 Court Avenue, Park Rapids, Minnesota.

Jay D. Carlson, Attorney at Law, of the firm Ohnstad Twichell, P.C., represented the Petitioner.

John E. Valen, Special Assistant Hubbard County Attorney, represented the Respondent.

Both parties submitted post-trial briefs. The matter was submitted to the Court for decision on October 1, 2003.

The Court, having heard and considered the evidence adduced at the hearing, and upon all of the files, records and proceedings herein, now makes the following:

FINDINGS OF FACT

1. Petitioners have sufficient interest in the property to maintain this

petition; all statutory and jurisdictional requirements have been complied with, and the Court has jurisdiction over the subject property and the parties.

2. The subject property consists of a 49.15 acre island (“Goat Island”), located at 19478 Edgewater Drive, Nevis, Minnesota (“Subject Property”). The Subject Property is known as Campers’ Paradise Resort and has 80 camping spaces approximately 100 feet apart, 17 of which are improved by electrical power, the remainder primitive campsites.

3. The Subject Property is undeveloped except for four small and one large log cabins, in addition to communal bathrooms and washing facilities for the campsites. Other buildings on the Subject Property include a 240 square foot log office building, two 240 square foot log cabins, a 640 square foot log lodge, a 10 foot by 14 foot wood storage building, a 336 square foot pole framed storage building, and an 864 square foot concrete block shower building.

4. The Subject Property is connected to the main shore by a private causeway from the township road to the lakeshore. The causeway is 10-12 feet wide by 1,300 feet long and is only wide enough for a single lane of traffic. It is privately maintained and graded and unsuitable for year-round travel. The depth of the water beneath the causeway is approximately 20 feet and would be difficult to fill, if it could be filled at all. The difficulty and expense of widening the causeway to permit two lanes of traffic would be prohibitive.

5. The Subject Property is encumbered by a Gate Agreement entered into by Petitioner Jean Swaggert’s mother and the neighbors, requiring the gate across the causeway be locked from Labor Day to Memorial Day each year. The

only people who have keys to the gate are Petitioners, the neighbors, and Petitioners' son, who occasionally hunts on Goat Island in the fall.

6. The highest and best use of the Subject Property, either vacant or improved, is as a seasonal resort and campground.

7. The Hubbard County Assessor, Robert Hansen, SAMA, placed an estimated market value on the Subject Property of \$865,800 as of January 2, 2002. At trial, he testified that the Subject Property had a fair market value as of January 2, 2002, of \$1,300,000.

8. Petitioners' expert, Joel Poulson, a licensed appraiser, testified at trial that the Subject Property had a fair market value of \$514,000 as of January 2, 2002.

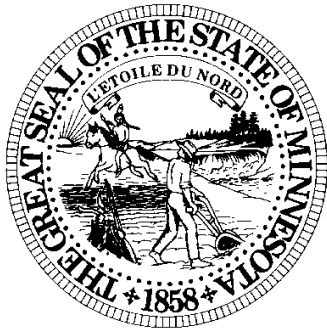
9. We find the fair market value of the Subject Property to be \$694,000.

CONCLUSIONS OF LAW

1. The assessor's estimated market value for the Subject Property shall be reduced on the books and records of Hubbard County as of January 2, 2002, from \$865,800 to \$694,000.

2. Real estate taxes due and payable in 2003 shall be recomputed accordingly and refunds, if any, paid to Petitioners as required by such computations, together with interest from the original date of payment.

LET JUDGMENT BE ENTERED ACCORDINGLY. THIS IS A FINAL ORDER
A STAY OF FIFTEEN DAYS IS HEREBY ORDERED.



BY THE COURT,

Sheryl A. Ramstad, Judge
MINNESOTA TAX COURT

DATED: December 16, 2003

Memorandum

Background

Harold W. and Jean Swaggert ("Petitioners") challenge Hubbard County's ("Respondent") valuation of the Subject Property as of the January 2, 2002 assessment date. The issue in this case is the fair market value of the Subject Property. For the reasons set forth below, we find the estimated fair market value of the Subject Property as of January 2, 2002, is \$694,000.

Subject Property

Petitioners purchased the Subject Property, located on Belle Taine Lake, Hubbard County, Minnesota, in 1959. Petitioners established Camper's Paradise Resort ("Camper's Paradise") on the Subject Property, and have operated it as a seasonal resort between Memorial Day and Labor Day ("Camping Season") for the past 44 years. At times other than during the Camping Season, Camper's Paradise remains vacant except when the owners permit limited hunting. Although Camper's Paradise remains idle 265 days year

because snowdrifts prevent wintertime access, Petitioners plan to continue operating it as they have for the past 44 years. Petitioners have never asked Hubbard County to allow any use of the Subject Property other than as a seasonal campground; further, they do not intend to develop it.

Camper's Paradise has 80 camping spaces, 17 of which are improved with access to electrical power provided by a 100-foot cord that allows campers to plug in lights and a refrigerator. The rest are primitive campsites comprised of clearings among the trees and share a communal shower and restroom. Guests also share a washing machine and dryer located in a log cabin at Camper's Paradise. Other buildings on the property include a 240 square foot log office building, two 240 square foot log cabins, a 640 square foot log lodge, a 10 foot by 14 foot wood storage building, a 336 square foot pole framed storage building, and an 864 square foot concrete block shower building. Approximately 500 permanent customers return annually for particular weeks during the camping season, while other campers stay at Camper's Paradise on a daily and weekly basis.

The Subject Property is located on a 49.15 acre irregularly shaped island connected to the north shore of Lake Belle Taine. Lake Belle Taine, a 1,453 acre lake known for its clear waters and excellent fishing, is eight miles northeast of Park Rapids, one of the most popular resort and tourist destinations in Minnesota.

The Subject Property is connected to the mainland by a private, single-lane causeway ("the Causeway") approximately 10-12 feet wide and 1,300 feet in

length, providing the only access to Camper's Paradise. The Causeway is connected to a gravel surfaced township road by a private 20-foot easement and is graded and maintained by Petitioners. The water beneath the Causeway is approximately 20 feet deep. Abundant amounts of fill and prior approval from the Department of Natural Resources would be required to make the Causeway wide enough for cars to safely pass each other on it. Since 1960, the Causeway has been elevated approximately six feet to combat the rising water on Belle Taine Lake and was entirely submerged in 2000 and 2001. In 2001, Camper's Paradise lost roughly 3,000 trees, its entire athletic field was under water, and the Causeway was closed for half the season due to flooding.

Pursuant to a Gate Agreement, access to Goat Island is banned from Labor Day to Memorial Day each year to keep people away from Goat Island in the off season. Petitioners, the neighbors and Petitioners' son have keys for the gate, and use Goat Island occasionally in the fall to hunt.

Valuation

Burden of Proof

The assessor's estimated market value ("EMV") is *prima facie* valid. Minn. Stat. §271.06, subd. 6. Petitioners have the burden of proving that the subject property's actual market value differs from the assessor's and that the EMV is excessive. Schleiff v. County of Freeborn, 231 Minn. 389, 395-96, 43 N.W. 2d 265, 269 (1950); Minnesota Entm't Ctr., Inc. v. State, 306 Minn. 184, 186, 235 N.W. 2d 390, 392 (1975). Petitioners may overcome this presumption by introducing credible evidence as to the subject property's market value. After

considering all the evidence, the Court makes a determination based upon the preponderance of the evidence. Gregorich v. County of Anoka, File No. C6-02-4557 (Minn. Tax Ct. Oct. 8, 2003).

Highest and Best Use

Highest and best use is defined as “the reasonably probable and legal use of vacant land or an improved property that is physically possible, legally permissible, appropriately supported, financially feasible, and that results in the highest value.” The Appraisal of Real Estate, 305 (12th ed. 2001). The physical possibility, legal permissibility, and financial feasibility must first be determined before maximum productivity is considered. Id. at 314.

The parties disagree as to the highest and best use of the commercially zoned Subject Property. Petitioners contend that continuing the present use is the highest and best use of the Subject Property, while Respondent claims it should be converted to residential development. “Analysis of the highest and best use . . . is essential in the valuation process.” The Appraisal of Real Estate, 60 (12th ed. 2001). Thus, we first consider the Subject Property’s highest and best use before addressing its valuation.

Hubbard County Assessor Robert Hansen (“Hansen”) testified for Respondent that the Subject Property should be converted from seasonal resort/campground to residential. Based upon the 15% decrease in resorts and campgrounds in Hubbard County over the past decade, Hansen opined that the Subject Property’s highest and best use would be residential development. According to Hansen, the primitive campsites at Camper’s Paradise are

undesirable to today's tourist preferring to stay at luxury resorts with modern facilities and amenities. Despite Hansen's view that Camper's Paradise is an undesirable vacation spot, the record shows that Petitioners have built a loyal following of campers committed to returning to the campground each year, with 500 permanent resort reservations and countless other guests patronizing the resort. Moreover, "[t]he highest and best use of a specific parcel of land is not determined through subjective analysis by the property owner, the developer, or the appraiser; . . ." The Appraisal of Real Estate, 305 (12th ed. 2001).

"In all instances the appraiser must [investigate]...[p]rivate restrictions, zoning...and environmental regulations...because they may preclude many potential uses." The Appraisal of Real Estate, 311 (12th ed. 2001). Where the assessor ignored access and assumed rezoning without providing evidence that rezoning would be approved, the Court rejected the county's approach in O'Brien Family Limited Partnership v. County of Crow Wing, Nos. C3-96-226, C0-97-1268 (Minn. Tax Ct. Apr. 8, 1998), noting:

The entire access road is unsuitable for year-round travel, is sometimes under water and is not wide enough to allow two-way traffic or service by garbage trucks or emergency vehicles. A hypothetical buyer would still need to obtain rezoning and comply with shoreland ordinances, bluff ordinances and wetland regulations.

Id.

When analyzing the highest and best use of the Subject Property, we consider the following: whether the land should be developed; if the land should be developed, what kind of improvements should be built; and should the existing improvements be maintained in their current state or altered to make them more

valuable. The Appraisal of Real Estate, 306 (12th ed. 2001). In this case, there is insufficient evidence that the Subject Property is capable of conversion to find its highest and best use to be residential. The private easement, Gate Agreement, present commercial zoning, lack of platting or subdivision planning, wetlands consideration, questionable feasibility of constructing a bridge to provide adequate year-round access and uncertain costs raise serious doubts that conversion is either practical or possible. In addition, Maynard Cumber testified based upon his experience as a road contractor in Hubbard County for approximately 50 years, he did not believe appropriate permits could be obtained from the permitting authority to widen the current road because of the significant depth and fill that would be required.

We also reject the theoretical conversion of the Subject Property to residential use based upon its history of frequent flooding. “[A]ccessibility of land and the risk of natural disasters such as floods...affect the uses to which land can be put.” The Appraisal of Real Estate, 313 (12th ed. 2001). Here, the Causeway has been raised six feet over the years and yet still was completely submerged in 2000 and 2001. Flooding has resulted in the loss of over 3,000 trees, the erosion of considerable shoreline, and making the Subject Property inaccessible for half the season. Although Respondent contends that the Subject Property is outside the flood plains areas, the Federal Emergency Administration (FEMA) maps of Hubbard County offered by Respondent do not necessary support its position inasmuch as the lack of flood plain delineation may simply reflect FEMA’s failure to identify flood prone areas.

Joel Poulson (“Poulson”), a licensed appraiser in North Dakota and Minnesota, testified on behalf of Petitioners that the Subject Property’s existing use as a seasonal, primitive campground is its highest and best use. Its present use is consistent with one of Hubbard County’s major industries, tourism. The Subject Property has been continuously used as seasonal resort/campgrounds since 1960, when Petitioners purchased it, and was used as a part-time resort between the years 1946 and 1952. Without at least a preliminary platting and county approval, residential development is speculative due to the very marginal access to the Subject Property. Based upon the foregoing, we find the Subject Property’s highest and best use to be seasonal/recreational.

Methodology

This Court considers the three traditional approaches (cost, income, and sales) to determine market value as outlined in Equitable Life Assurance Soc’y v. Ramsey County, 530 N.W. 2d 544, 552 (Minn. 1995). Whenever possible, two approaches to market value should be considered because they can serve as useful checks on each other. Id., 530 N.W.2d at 553. Here, Poulson used the cost and income methods of valuing the Subject Property, while Hansen relied upon the sales comparison approach after considering but putting no weight upon the cost approach. At trial, both experts agreed they found no comparable sales of existing resorts or campgrounds intended for continued use.

Respondent’s Arguments

Hansen testified at trial he was unable to provide an opinion of market value based upon the income approach because Petitioners’ records lacked

information on operating expenses and vacancy rates. If Petitioners' records lacked sufficient information, Hansen should have requested that Petitioners supplement it rather than categorically rejecting the income approach.

In relying upon the sales comparison approach, Hansen considered as comparables six lakeshore properties which were made into residential developments after acquisition between April 2000 and August 2002 and adjusted them for time and location. However, use of these properties was being changed from commercial to residential, whereas the Subject Property's highest and best use is seasonal rather than residential development. As the Court stated in Hedberg v. County of Hennepin, 305 Minn. 80, 232 N.W.2d 743 (1975), "evidence showing a reasonable probability" of permissible use under applicable zoning laws is required to rely upon future changes of zoning in valuing a property. Hubbard County Zoning Administrator Gary Johanson testified that preliminary platting of the Subject Property would require research into a multitude of issues such as analyzing elevation, locating the septic system, determining road placement and lots, and access issues. He also testified that Hubbard County had never been approached about changing the Subject Property's use and that none of the resorts that had been converted to residential use had access problems like the Subject Property. Since the record fails to show a reasonable probability that the Subject Property will be rezoned, we will not engage in speculation by valuing it as residential property and do not consider resorts that were being changed from commercial properties to residential use to be valid comparables.

Further, Hansen's comparables had no access issues similar to the Subject Property. Hansen testified that access to the Subject Property has no positive or negative bearing on its valuation. We disagree. The Subject Property's only access to land is a single-lane, gravel, privately-maintained causeway unsuitable for year-round travel and difficult, if not impossible, to widen. From Labor Day to Memorial Day each year, the gate across the Causeway is locked pursuant to a private Gate Agreement further limiting access to the Subject Property. The Causeway frequently floods, creating additional access impediments. In short, we are unconvinced by Hansen's unsupported testimony suggesting the unique problems of getting to and around the Subject Property have no bearing on its value. Moreover, all but one of the comparables Hansen selected were on lakes inferior to Belle Taine, which is one of the largest, deepest, and clearest bodies of water in Hubbard County. For the foregoing reasons, we reject Hansen's opinion, using the sales comparison approach, that the Subject Property's fair market value is \$1,300,000. In addition to our concerns regarding the methodology employed by Hansen, we note that his conduct in offering to buy the property he was assessing weakens his credibility.

Petitioners' Arguments

Poulson utilized the cost and income approaches in valuing the Subject Property. Because of the lack of campground comparables within the past five years and the uniqueness of the Subject Property, he did not consider the sales approach. Although recognizing the limitations of comparables, Poulson

considered three much smaller lots across the lake from the Subject Property that sold for \$82,000 (1.2 acres), \$105,000 (.45 acre), and \$115,000 (.42 acre) in 2001 and 2002, in employing the cost approach. Because the only recent sales on Belle Taine Lake have been much smaller than the Subject Property, his adjustment for size was -50%. The adjustment due to the Subject Property's poor access was -25%. He also divided the Subject Property's lakeshore into usable and excess lakeshore, determining about half of the 3,500 feet of total lakeshore usable before the high water problems, and another approximately 10% rendered useless with the current high water problems. Applying these adjustments to the average price per front foot for the three comparables resulted in an estimated land value of \$507,000. Poulson then used the Marshall Swift tables to determine the value of the improvements to be \$160,894, resulting in the Subject Property's fair market value of \$667,894.

Under the income approach, Poulson relied upon Petitioners' federal income tax returns, which had been consistent for several years except during the high waters of 2000-01 when fewer campsites were available and expenses dramatically increased due to flooding. Poulson used the gross income from Petitioners' 2002 tax return because it was the highest during the past three years and a .0994 capitalization rate to determine the fair market value of the Subject Property to be \$360,000.

In arriving at his opinion as to the Subject Property's value, Poulson blended the cost and income approaches, testifying that the fair market value was the average or \$514,000

Conclusion

Although neither of the parties utilized all three approaches, we considered each of them in valuing the Subject Property. We accept Poulson's methodology in blending the cost and income approaches to reach a final determination of value, but we do not agree that the Subject Property is valued at \$514,000. First, we note that Poulson relied upon an old assessment record in determining the amount of lakeshore to be 3,500 feet instead of utilizing the Hubbard County Geographic Information Systems ("GIS") map showing the Subject Property's usable lakefront to be in excess of 4,200 feet. Thus, we adjust the valuation to reflect the additional 700 feet of GIS lakeshore by adding the amount of \$118,300. In addition, we disagree with Poulson's view that Kennedy Point, a 6.35 acre ridge with trees and animals that provides privacy for the Subject Property, adds no value to the Subject Property. Although we recognize that Kennedy Point may be uninhabitable and lack access, the aesthetic value and privacy it provides support Hansen's value of \$62,100 for Kennedy Point.

Considering the cost and income approaches, and as a result of the GIS lakeshore and Kennedy Point adjustments, we find the Subject Property's fair market value to be \$694,000 as of January 2, 2002. Real estate taxes due and payable in 2003 shall be recomputed accordingly.

S.A.R.