

BEFORE THE SECRETARY
OF THE TAXATION AND REVENUE DEPARTMENT
OF THE STATE OF NEW MEXICO

IN THE MATTER OF THE PROTEST OF
CENTRAL VALLEY ELECTRIC COOPERATIVE, INC.,
CAB NO. 240002, PROTEST TO VALUATION OF
PROPERTY AS DETERMINED BY THE PROPERTY
TAX DIVISION.

No. 96-22

DECISION AND ORDER

This matter came on for hearing before Gerald B. Richardson, Hearing Officer, on June 26, 1996. Central Valley Electric Cooperative, Inc. (hereinafter "Taxpayer") was represented by George Graham, Esq. The Taxation and Revenue Department (hereinafter "Department") was represented by Bridget A. Jacober, Esq. At the end of the hearing the parties agreed to waive the requirements of Section 7-38-23 NMSA 1978 that the decision on this protest be rendered within 120 days of the Taxpayer's protest and within 30 days from the hearing date.

Based upon the evidence and arguments presented IT IS DECIDED AND ORDERED as follows:

FINDINGS OF FACT

1. The Taxpayer is an electric utility company located in Artesia, New Mexico.
2. The Taxpayer owns a tract of land in Eddy County, New Mexico located adjacent to the city limits of Artesia, New Mexico consisting of approximately 35 acres, hereinafter referred to as "the subject property". The Taxpayer's business offices and a service building are located on this tract.

3. On March 28, 1996, the Department mailed the Taxpayer a Notice of Valuation which proposed a value of \$396,400 for the subject property, which represents a value of \$11,325 per acre.

4. On April 3, 1996, the Taxpayer mailed the Department a letter protesting the value proposed by the Department for the subject property and proposing that the property be valued at \$1,000 per acre or \$35,000.

5. Although the subject property contains improvements, only the Department's determination of the value of the raw land is at issue herein.

6. The subject property is located at the corner of Richey Avenue and Thirteenth Street, both of which are arterials from which the property has access. The property borders upon the Artesia city limits. Because the property is outside of the city limits, it is not subject to zoning restrictions which would limit the uses to which the property can be put. The property has all utilities available to it. The property has a utility easement through which a large electric transmission line runs diagonally across the property. The uses of the surrounding properties vary from vacant land, a Junior High School, a federal law enforcement academy, a nursing home, medium density residential to light industrial uses. Most of the subject property remains vacant land.

7. The Taxpayer's expert appraiser, Mr. Kunkel, appraised the subject property at \$1,000 per acre based primarily upon two sales of large parcels of vacant land in the vicinity of Artesia. Sale 3, located at 76 East Cottonwood Road was a sale of a 20 acre parcel in February of 1992 for \$21,152. The property is located five miles north of the subject property and has good access from U.S. Highway 285 on to Cottonwood Road. Sale 5, located at 6

East Cottonwood Road, was a sale of a 30 acre vacant parcel of land in April of 1990 for \$30,000. The property is located five miles north of the subject property and has good access from U.S. Highway 285 on to Cottonwood Road. Both properties have utilities available and both had chili dehydration facilities constructed upon them after their sale. These properties are located about 5 miles outside of the Artesia city limits and are surrounded by land which is largely agricultural and/or vacant land.

8. Another property sale reviewed by Mr. Kunkel but not considered by him to be given much weight as a comparable sale was the sale of a property located at 2208 West Main Street in Artesia. The property was a vacant 3.14 acre parcel of land within the Artesia city limits which was zoned for commercial development. The sale price was \$25,000 representing a per acre value of \$7,962. Mr. Kunkel did not consider it to be comparable to the subject property because the property is located within the Artesia business section on the town's main arterial. He considers it as representative of the top dollar paid for commercial property within the business section of Artesia.

9. The Department's expert appraiser, Mr. Odenheim, was unable to locate any information on sales of vacant light-industrial use property in the Artesia area at the time he performed his appraisal. Because of this, he looked for information of such sales in the Carlsbad and Roswell areas. Mr. Odenheim found none in the Roswell area, but he found sales or sales listings in the Carlsbad area. Although these sales or sales listings were for improved properties, Mr. Odenheim abstracted from the sale value the value of the improvements to arrive at a value for the vacant land.

10. Mr. Odenheim's first comparable property was a sales listing of a 2.35 acre parcel located on the southern outskirts of Carlsbad at 3627 National Parks Highway. The listing price was \$150,000 and after abstracting the value of the improvements, the abstracted value of the land was \$24,730 or \$10,523 per acre.

11. Mr. Odenheim's second comparable property was a sale in July of 1992 of a 2.09 acre parcel located on the southern outskirts of Carlsbad at 4305 National Parks Highway. The sale price was \$175,000 and after abstracting the value of the improvements, the abstracted value of the land was \$22,500 or \$10,765 per acre. The property is presently used by El Paso Natural Gas Company for its service center.

12. Mr. Odenheim's third comparable property was a sale of a 2.1 acre parcel in July of 1993, located just outside of the Carlsbad city limits at 2903 Pecos Highway. The sale price was \$150,000 and after abstracting the value of the improvements, the abstracted value of the land was \$25,550 or \$12,023 per acre. The property is used by the Public Service Company of New Mexico for its service center.

13. In May of 1996, Mr. Odenheim obtained information of another sale of property which could be considered comparable with some possible adjustments for factors described below. Because he did not obtain this information until after his appraisal of the subject property was completed, it was not considered at the time he appraised the subject property. The property, hereinafter referred to as the "Schlumberger property" is located one and one-half miles east of the subject property. The property consists of 20.91 acres of vacant land with access from Richey Avenue which was purchased for industrial development. The sale occurred in October of 1995 and the sales price was \$122,272 representing a value of

approximately \$6,000 per acre. The property does not have city water available to it and it may not be entirely comparable because of the existence of contamination on the property.

14. The market value of the subject property as determined by comparable sales is \$6,000 per acre.

DISCUSSION

The sole issue to be determined herein in the market value of the raw land only of the subject property. Section 7-36-15 NMSA 1978 governs the methods for valuing property for property taxation purposes regardless of whether the county assessor or the Department is the valuing authority. Specifically, Subsection B. of Section 7-36-15 provides in pertinent part:

. . . the value of property for property taxation purposes shall be its market value as determined by application of the sales of comparable property, income or cost methods of valuation or any combination of these methods. In using any of the methods of valuation authorized by this subsection, the valuation authority shall apply general accepted appraisal techniques.

This provision has been interpreted to require that property be valued by the use of comparable sales, and the income or cost methods of valuation may not be used unless comparable sales data is unavailable or unreliable. *Bakel v. Bernalillo County Assessor*, 95 N.M. 723, 625 P.2d 1240 (Ct.App. 1980). The factors to be considered in determining the comparability of properties are size, shape, location, topography, accessibility to roads, availability of public utilities, use of the property, restrictions upon use and proximity of the date of sale. *In re Kinscherff*, 89 N.M. 669, 556 P.2d 355 (Ct.App.), *cert. denied*, 90 N.M. 8, 558 P.2d 620 (1976).

Section 7-38-6 NMSA 1978 provides that, "[V]alues of property for property taxation purposes determined by the division or the county assessor are presumed to be correct." In

this case, the presumption of correctness has been rebutted by the Taxpayer by its introduction into evidence of a letter from the Department admitting that it was now of the opinion that its valuation at \$11,000 per acre "is probably too high". Taxpayer Exhibit C. Thus, the value of the subject property remains an open question to be determined based upon the hearing record. There was a general consensus that the lack of closely comparable sales data made the appraisal of the subject property difficult. An examination of the two appraisals tendered by the parties reflects a widely divergent approach to which sales were considered to be comparables by the appraisers for the Taxpayer and the Department. This resulted in a \$10,000 per acre price differential between the two appraisals.

Mr. Kunkel, the Taxpayer's appraiser, placed heavy weight on two sales of large parcels of vacant agricultural land. In choosing these sales as comparables, Mr. Kunkel gave great weight to the fact that these parcels, at 20 acres and 30 acres respectively, reflect sales of parcels of land of similar size to the subject property and are similarly located outside of the city limits, thus allowing practically any use of the property desired by the owner. Mr. Kunkel also pointed out the large tracts of vacant or agricultural land in the vicinity of the subject property as another basis for comparability. While these factors are comparable, I do not find the property sales relied upon by Mr. Kunkel to be comparable in another more significant manner. Mr. Kunkel's comparables are located nearly five miles from Artesia's central business district, while the subject property is near or adjacent to the business district of Artesia. Although only the value of the raw land is at issue, the Taxpayer uses the subject property for its business offices, where customers can come to arrange for electric service, pay bills and conduct other business with the Taxpayer. Presumably, the location of the property

is not only convenient for the Taxpayer's customers, but it is also convenient for the Taxpayer itself in conducting its business affairs. The property's location near Artesia's central business district is a significant factor which was completely overlooked by Mr. Kunkel in his choice of comparable property sales, and is a factor of more significance than the size of the parcel itself, for it substantially increases the value of the property in terms of its usefulness for commercial purposes. This is confirmed by the value of another sale which was not given much weight by Mr. Kunkel, the property at 2208 West Main Street in Artesia, which sold for nearly \$8,000 per acre. This parcel was disregarded by Mr. Kunkel because it was in the Artesia central business district, was a parcel of smaller size and was located on Artesia's main business arterial. Undoubtedly, this is prime commercial real estate for Artesia. It is zoned for commercial use, which is a use to which the subject property can also be used and would be a much higher and better use than the vacant agricultural property sales from which Mr. Kunkel derived his values. The biggest differences between the Main Street property and the subject property are that the Main Street property is located in an even better business location, being on the main business arterial, rather than a secondary one, and the Main Street property is smaller, which, Mr. Odenheim testified, would justify some price enhancement, since smaller parcels trade at a premium when compared to larger parcels. Additionally, the existence of the utility easement on the subject property would be a detraction to the value of the subject property. All of these differences would justify a downward adjustment from \$8,000 per acre for the subject property, but the location of the subject property near the

central business district and the commercial uses to which the property may be put¹ make it far more similar to the Main Street property than the large tracts of agricultural land used by Mr. Kunkel as his primary comparables.

I also have some concerns with the three Carlsbad sales or sales listings used by Mr. Odenheim as comparables to justify a value of \$11,000 per acre for the subject property. These properties are all of much smaller size than the subject property, and Mr. Odenheim acknowledged that smaller size was a factor which would enhance the value of a property when compared to a larger parcel. The matter that concerns me the most, however, is their location in Carlsbad, rather than Artesia. While Mr. Odenheim testified that he used Carlsbad sales because he couldn't find sales of vacant industrial land in Artesia, and he did not find there to be significant differences in the economies of Carlsbad and Artesia to justify any price differentials, it was never explained why he did not consider the sale of vacant commercial land on Main Street in Artesia to be comparable. The fact that the Main Street property was considered to be prime commercial real estate in Artesia, and was considered by Mr. Kunkel to represent the top of the Artesia market for commercial real estate throws into question Mr. Odenheim's conclusion that the Carlsbad and Artesia commercial real estate markets are comparable. There appears to be a differential of \$3,000 to \$4,000 per acre between Carlsbad and Artesia for commercial real estate assuming that the Carlsbad properties are equally "prime" when compared to the Main Street property.

¹ While the properties primarily relied upon by Mr. Kunkel for comparable sales may also be used for commercial uses, since they are located in the county and are outside of the city's zoning restrictions, the commercial viability of the properties is substantially less than the subject property because of their distant location from Artesia's central business district when compared to the subject property.

Not being convinced of the value of the subject property based upon either appraisal offered by the opposing parties, this decision maker is left in the unenviable position of determining a value for the subject property even though he is even less familiar with the Artesia real estate market than either of the expert appraisers who testified. In making this determination, I am guided by the recently developed information on the Schlumberger property sale. This property is of comparable size to the subject property, is accessed off of the same arterial and the property may be used for industrial purposes like the subject property. There are also some differences between the properties. The Schlumberger property does not have city water and the property may be contaminated, although there was insufficient information on this to assess the extent of contamination to carefully assess the impact it would have on the value of the property. The subject property has a high voltage transmission line dissecting it and the utility easement for the line is between 35 and 70 feet wide.² Although I have insufficient information to quantify precisely how these differential factors affect the value of the properties, I will assume that the negatives represented by the utility easement and the potential contamination and lack of city water largely offset each other and that the \$6,000 value per acre for the Schlumberger property may be considered representative of the value of the subject property. In making this conclusion, I take some comfort that this value appears reasonable when compared to the Main Street property. A \$2,000 downward adjustment would compensate for the fact that the subject property is less "prime" than the Main Street property which was valued at almost \$8,000 per acre and would also take into account the smaller size of the Main Street tract. Given the lack of better information upon which to base my decision,

² The testimony as to the width of the easement was inconclusive.

I will render solomonic justice and determine that the market value of the subject property as determined by comparable sales to be \$6,000 per acre.

CONCLUSIONS OF LAW

1. The Taxpayer filed a timely, written protest to the Department's determination of value for the subject property, pursuant to Section 7-38-22 NMSA 1978 and jurisdiction lies over the parties and the subject matter of this protest.

2. Pursuant to Section 7-36-15 NMSA 1978 the proper method for determining the value of the subject property is the use of comparable sales to determine market value.

3. The Taxpayer's evidence rebutted the presumption of correctness of the Department's valuation of the subject property.

4. The market value of the subject property as determined by comparable sales is \$6,000 per acre.

IT IS THEREFORE ORDERED that the Department and the Eddy County Assessor change their valuation records to reflect a value of \$6,000 per acre for the land portion of the subject property.

DONE, this 29TH day of August, 1996.