

not be developed. When he purchased the property he was told that the drain field for the septic system is located on Lot 525. Therefore, he claims, Lane County would not issue a building permit for a new structure on Lot 525.

In addition to his argument that Lot 525 has limited or no value because it may not be developed, plaintiff presented two other arguments that he argued supported a lower real market value for the property. Plaintiff presented four comparable sales, including two where the land value was extracted. Sale two sold twice and was presented to show a trend. Sale one sold in 1990 and was adjusted by 10 percent, the amount of the increase in sale two. The size of the properties ranged from .99 acres to 1.57 acres. The sales price per square foot of land ranged from \$1.57 to \$3.15.

Plaintiff also presented a uniformity argument, arguing that the real market values assigned by defendant to the neighboring properties are significantly lower than the real market value assigned to his property. He presented assessment information from three nearby properties. The size of the properties ranged from .71 acres to 2.35 acres. The real market value ranged from \$1.70 to \$2.09 per square foot.

Based on the information presented, plaintiff claims the value of his Lot 1200 and Lot 525 as of January 1, 1999, totaled no more than \$100,000.

COURT'S ANALYSIS

The court will discuss each of plaintiff's arguments in turn.

Whether Lot 525 is Buildable

Mr. John testified that he was told when he purchased the property that the drain field for the cabin's septic system was on Lot 525. If true, then it is highly unlikely that Lane County would issue a building permit for the property. However, plaintiff has no

actual knowledge of the location of the drain field. He simply believes the drain field is located on Lot 525 based on what he was told. A belief does not make a fact. No evidence was submitted as to the location of the drain field such as a copy of a permit for installation of the septic system. Without more, the court is not persuaded that Lot 525 is unbuildable.

Comparable Sales

One of plaintiff's comparable sales is from 1990. Plaintiff relies on a sale from 1990 to support a value nine years later. Although it is close in physical proximity, it is distant in time. The court considers the time span from 1990 to 1999 too great to rely with any degree of confidence on the 1990 sale as a comparable sale. It sold for \$90,500. However, the court notes that viewing the 1990 sale as a building lot, defendant's assigned real market values of \$88,420 for Lot 1200 and \$113,300 for Lot 525 are not inconsistent. The only other sale of bare land sold for \$137,000 in 1997. The two remaining comparable sales had extracted land values of \$73,600 and \$110,760. Even though all of the lots were significantly larger than the lots at issue, each lot should be valued as a building lot. Any increase in value relating to the larger lot sizes will be relatively minor. After considering the comparable sales, the court is not persuaded that the value of the two lots should be reduced to a total of \$100,000.

Uniformity

Plaintiff claims that the neighboring properties are assessed at much lower rates than his property. Article I, section 32 of the Oregon Constitution requires uniformity of taxation within the same class of property. The Oregon Supreme Court held in *Meadowland Ranches v. Dept. of Rev.*, 277 Or 769, 562 P2d 183 (1977), that "[i]n order

to constitute an unconstitutional discrimination in such a case we have held that 'arbitrary and systematic discrimination' is required; that it must be shown that 'wide-spread relative nonuniformity exists,' and that 'relative, not absolute, uniformity' of assessment is sufficient to satisfy the requirement of the Oregon Constitution.” *Id.* at 776 (citations omitted).

Plaintiff has not shown “arbitrary and systemic discrimination” or “wide-spread relative nonuniformity” within the meaning of Article I, section 32 of the Oregon Constitution.

CONCLUSION

The court has seriously weighed and considered the testimony of Mr. John and the exhibits. After considering the evidence, plaintiff has not demonstrated that the value of the two lots should be reduced to a total of \$100,000. As this court stated in *Ekstrom v. Dept. of Rev.*, No. 3595, 1995 WL 60549 at *1 (Or. Tax Feb. 3, 1995), “[a] trier of fact may find evidence is not persuasive even though it is uncontroverted.” *See also City of Portland v. Bureau of Labor and Ind.*, 298 Or 104, 116, 690 P2d 475 (1984).

IT IS HEREBY ADJUDGED AND DECREED that plaintiff’s appeal is denied.

Dated this _____ day of July, 2000.

SALLY L. KIMSEY
MAGISTRATE

THIS DOCUMENT WAS SIGNED BY MAGISTRATE SALLY L. KIMSEY ON JULY 6, 2000. THE COURT FILED THIS DOCUMENT ON JULY 6, 2000.