

IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT

Property Tax

JEREMIAH W. BALSER,)
)
 Plaintiff,) No. 000295D
)
 v.)
)
 TILLAMOOK COUNTY ASSESSOR,)
)
 Defendant.) **DECISION**

Plaintiff appeals the real market value of his property for tax year 1999-00. A trial was held in the Oregon Tax Court courtroom, Salem, Oregon on Wednesday, July 19, 2000. Mr. Jeremiah Balsler represented himself. Mr. Scott MacLean, Appraiser, appeared on behalf of defendant.

STATEMENT OF FACTS

Plaintiff's property which is identified as Tillamook County Assessor's Account No. 11686 is located in Rockaway, Oregon. Mr. Balsler testified that he purchased the land in 1989 for \$10,000. He testified that the land was offered for sale at a listing price of \$35,000 and he made an original offer of \$25,000. In order to build on the land, Mr. Balsler stated that a variance was required. When he was unable to get a variance, he reduced his offering price to \$10,000 and the seller accepted his offer. Mr. MacLean testified that plaintiff's purchase price failed to reflect the true market value after the variance was obtained and the lot was buildable.

Plaintiff's property is separated by a gravel public street from the Southern Pacific Railroad and Highway 101. (Ptf's Ex Photo A.) Mr. Balsler submitted colored photographs showing that the gravel road is full of potholes. (Ptf's Ex Photo B.) The

access to the house is through an easement between two other residential tax lots.

Mr. Balsler testified that he is appealing the Board of Property Tax Appeals' Order of February 29, 2000. BOPTA reduced the real market value of plaintiff's land from \$190,456 to \$150,000. He believes that the value of his land should be no more than \$100,000. Mr. Balsler testified that based on the county's assessment records three neighboring lots, each larger than plaintiff's, with similar ocean views and proximity to the railroad and highway are valued between \$116,000 and \$118,149. (Ptf's Exs 4 -9, Lots 8900; 7994; 9100; 7995; 7900 and 7991.) Mr. Balsler testified that these lots do not have the same building restrictions as his property and therefore it is reasonable that the land value should be slightly higher than plaintiff's.

Mr. MacLean testified that the county has not done a reappraisal of this neighborhood since 1992. According to Mr. MacLean there is substantial equity in the assessments but these properties are not at market. Mr. Balsler challenged Mr. MacLean's characterization of substantial equity. In addition, Mr. Balsler stated that in 1992 he appealed the value of his property and it was reduced to \$125,000. In the following year, 1993, the real market value of his property was raised by the county to \$196,000. Mr. Balsler questioned how the county could have raised the value of his property without an appraisal and the fact that Mr. MacLean believes that the county has not done a reappraisal of his area since 1992.

In 1990, Mr. Balsler was successful in obtaining a variance from the City of Rockaway to build his single story house. The house has a 1,200 square foot footprint on the lot with a 5 foot rear setback. (Ptf's Photo C.) The house is built approximately 4 to 6 feet above the ground because it is located in a 100 year flood plain. A carport is located below the house. With 970 square feet of living space, the house has two decks and an

ocean view. There are 3 bedrooms and 2 bathrooms.

Mr. Balsler is appealing BOPTA's Order which found the real market value of the improvements to be \$100,000 or approximately \$100 per square foot. He believes that a more reasonable price per square foot would be \$75 and concludes that the value of his improvements should be \$75,000.

Mr. MacLean reviewed his appraisal and opinion of estimated market value of \$255,000 with the court. (Def's Ex Appraisal.) The three comparable sales which range in adjusted sales prices from \$240,300 to \$265,300 were located at a distance north and south from the subject property. Mr. Balsler objected to these properties as not being comparable because of their "buffered" location from the railroad and highway and the paved street access to the properties. Mr. MacLean testified that plaintiff's house is buffered from the railroad and highway by the two story house located directly in front of plaintiff's house. Mr. Balsler countered that these properties do not have building restrictions.

Mr. MacLean testified that Comparable Sale No. 1 is the most similar to plaintiff's property. He described the property as slightly newer than plaintiff's property. It is a two story beach front property with comparable square footage. Mr. MacLean testified that access to the property is through a narrow gravel roadway which is in below average condition but not quite as "potholed" as plaintiff's access road. Further, it has minimal side setbacks and access to the garage is limited because of the placement of the garage in proximity to the roadway. Mr. MacLean determined an adjusted sales price of \$265,300 for this comparable and "gave it the most consideration." *Id.* Comparable Sale No. 2 was an older home with "superior" lot and access. *Id.* According to Mr. MacLean the condition of the property was inferior to plaintiff's property. After adjustments for these differences,

Mr. MacLean determined an adjusted sales price of \$240,300. The third comparable was given the least weight because it was least similar to plaintiff's property. Mr. MacLean described it as an older modest home. It is located on a superior site with much better access to the property than plaintiff's. It is substantially smaller in size and its condition and quality were "considerably less than that of the subject requiring large adjustments."

Id. In addition, a time adjustment was made because the original sale occurred in October 1996 with a subsequent sale in December 1999. The adjusted sales price of Comparable No. 3 was \$249,400.

Mr. Balser asked Mr. MacLean if he considered the zoning requirements for his property as well as for the comparable properties. He stated that he did not. Mr. Balser testified that his property is zoned for bed and breakfasts, duplexes and other similar residential rentals. The comparable properties were zoned "residential only." Mr. MacLean disputed that such zoning had an impact on the market value of the property.

Mr. MacLean's analysis included the cost approach. The indicated value by the cost approach was \$250,213. Mr. MacLean stated in his appraisal report that he did not give it much consideration because "it is felt to be a less reliable indicator of value." *Id.*

COURT'S ANALYSIS

The issue before the court is the 1999-00 real market value of plaintiff's property. Real market value is the standard used throughout the ad valorem statutes except for special assessments. *Gangle v. Dept. of Rev.*, 13 OTR 343, 345 (1995). Real market value is defined in ORS 308.205(1)¹ which reads:

¹ All references to the Oregon Revised Statutes are to the 1997 Replacement Part.

“Real market value of all property, real and personal, means the amount in cash that could reasonably be expected to be paid by an informed buyer to an informed seller, each acting without compulsion in an arm’s length transaction occurring as of the assessment date for the tax year.”

The court looks for arm’s length sales transactions of property similar in size, age, and location to plaintiff’s property in order to determine the real market value.

Defendant has selected three properties as comparable. These comparable sales adjusted for location, size and quality provide an indication of the market value of plaintiff’s property.

Plaintiff’s testimony as to the value of his property was split between improvements and land. Plaintiff submitted limited evidence of the real market value of his improvements. Plaintiff’s cost estimates are given little weight by the court because they were not documented. Plaintiff failed to persuade the court that the BOPTA Order is in error. The court concludes that the improvement value of plaintiff’s property is correctly stated at a market value of \$100,000 for tax year 1999-00.

The court does not agree that BOPTA’s Order concerning plaintiff’s land value is correct. None of defendant’s comparable sales are in the same neighborhood as plaintiff’s property. Since the comparable properties are varying distances from the railroad and highway and subject to different zoning restrictions than plaintiff’s property, defendant should have quantified the impact, if any, of these differences.

The court is puzzled by the county’s singular treatment of plaintiff’s property. After the value of plaintiff’s property was reduced in 1992, the county substantially increased the value of plaintiff’s property in 1993. Yet, Mr. MacLean testified that the area has not been appraised since 1992.

According to plaintiff’s evidence, the county increased the land values of

plaintiff's neighbors approximately 20 percent between 1998-99 and 1999-00. (Ptf's Exs 4 - 9.) The land values of the various lots surrounding plaintiff's property are all essentially the same. However, even though plaintiff's lot size is smaller and access is through an easement, plaintiff's land value is 27 percent more than the value of his neighbors. Mr. MacLean testified that the properties neighboring Mr. Balsler's property are not at market. Mr. MacLean failed to explain why the county would substantially increase the land values of the neighboring properties in tax year 1999-2000 to values less than market. The court concludes that the market value of plaintiff's land was comparable to the value of his neighbors. The market value of plaintiff's land was \$118,000 for tax year 1999-00.

CONCLUSION

IT IS THE DECISION OF THIS COURT that the real market value of plaintiff's property identified as Tillamook County Assessor's Account No. 11686 was \$218,000 for tax year 1999-00.

IT IS FURTHER DECIDED that the county shall correct the assessment

///

///

///

///

///

///

and tax rolls to reflect the above value with any refund due plaintiff to be promptly paid with statutory interest.

Dated this _____ day of August, 2000.

JILL A. TANNER
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 JILL A. TANNER ON AUGUST 10, 2000. THE COURT FILED THIS DOCUMENT ON AUGUST 10, 2000.