

IN THE MAGISTRATE DIVISION  
OF THE OREGON TAX COURT

Property Tax

HAROLD M. CRASS,	)	
	)	
Plaintiff,	)	No. 000484F
	)	
v.	)	
	)	
WASHINGTON COUNTY ASSESSOR,	)	
	)	
Defendant.	)	<b>DECISION</b>

Plaintiff appealed the real market value (RMV) of his residential property for tax years 1998-99 and 1999-00. The property is listed as Account Number R1248153 by the Washington County Assessor. A telephone trial was held August 1, 2000. Harold Crass appeared for himself. Tony Rosatti and Robert Ruiz appeared for defendant.

No petition was earlier submitted to the County Board of Property Tax Appeals for tax year 1998-99. The Complaint was filed with the Magistrate Division on March 31, 2000.

**STATEMENT OF FACTS**

Plaintiff purchased the property in November 1996 for \$21,501. Upon his purchase, plaintiff appealed the value of the property to the Washington County Board of Property Tax Appeals (BOPTA). He received a reduction from \$28,000 to \$21,500 for tax year 1996-97. For tax year 1995-96, defendant valued the property at \$90,320, including \$66,920 for structures on the property. When plaintiff purchased the property it consisted of a residential lot, a 1,617 square foot home and shop building.

The property is in a development that sits on “a large, ancient landslide that

appears to have been essentially stable for many years.” (Letter from Robert J. Deacon, C.E.G. and Eugene L. McCoy, P.E., *Wright/Deacon & Assoc., Inc.*, to Bruce Vanderzanden, *former owner of property 2* (December 27, 1995).) However in the fall of 1995, “sewer trench excavation<sup>1</sup> \* \* \* initiated new movement in a small segment of the old slide. The movement appears to be growing in area and has put the [subject property’s] house and shop in jeopardy, as well as the houses downslope from the [subject] property.” (*Id.*) There are several cracks and ridges on the property as a result. After receiving this information, defendant lowered the RMV of the property for tax year 1996-97 including reducing the value of the improvements to zero.<sup>2</sup>

When he purchased the property, plaintiff tore down the shop building and built a 24 feet by 24 feet pole barn. The house, while currently lived in by plaintiff, cannot be repaired. It would be too expensive to place a new foundation under it. The house is built on a 16 inch thick concrete slab of a former chicken slaughter house.

Plaintiff argues that defendant overvalued the pole barn. Based on an estimate to replace the building, he alleges it is worth no more than \$4,558. Defendant valued it at \$5,400 in tax year 1998-99 and \$5,760 in tax year 1999-00. Plaintiff also argues that defendant’s RMV of \$29,450 assigned to the land for tax year 1999-00 is too

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<sup>1</sup> Also contributing were heavy rains that occurred after the excavation. (Letter from Robert J. Deacon, C.E.G. and Eugene L. McCoy, P.E., *Wright/Deacon & Assoc., Inc.*, to Bruce Vanderzanden, *former owner of property 2* (December 27, 1995).)

<sup>2</sup> It appears that the prior owner did not appeal the reduction of the value of the subject property to the Washington County Board of Ratio Review for tax year 1995-96. A successful appeal would have reduced the 1995-96 real market value as of the assessment date of July 1, 1995. See *Shatzer v. Dept of Rev.*, 325 Or 211, 934 P2d 1119 (1997).

high. He agreed at trial that he could accept defendant's RMV of \$24,610 assigned to the land for tax year 1998-99.

Plaintiff's argument that his land is overvalued is based on two main points. The first is that two lots very near to him sold at auction in January 1998 for amounts significantly less than the RMV of his property. Both properties are less than 50 feet from the subject property. One sold for \$7,000. The second sold for \$8,200. However, the purchasers of both properties had to pay existing sewer assessments of approximately \$6,000, effectively raising the purchase price of the properties to \$13,000 and \$14,200.

While the streets in the subdivision have been platted, many of them have not actually been developed. Plaintiff accesses the property via a 150 foot long gravel driveway over neighboring properties and Carol Drive. Carol Drive borders the property. He has a recorded easement for the driveway. The driveway's entrance is on Church Street. There would be no need for plaintiff to access his property from Church Street using his long driveway if the street bordering the property was developed. Plaintiff's two comparables also border Carol Drive. Plaintiff's easement runs through the middle of one of them. While it may have access because of the gravel driveway, it is not clear how the other comparable would access a developed street.

Plaintiff argues that defendant increased the RMV of his property for the two years at issue more than the three percent allowed by the Oregon Constitution. Defendant agrees that it increased the RMV of plaintiff's property more than three percent but argues that the increase was not contrary to the Oregon Constitution. Defendant argues that the three percent limitation applies only to maximum assessed value (MAV), not to RMV. Because the RMV of plaintiff's property is significantly less than the MAV, an increase in

RMV results in an increase in property taxes owed.

Defendant presented three comparable sales. Two of the sales were also plaintiff's sales. The third sale is a few hundred feet from the subject property. It sold in September 1996 for \$25,000. It sold again in May 1997 for \$29,000, an increase of 16% in less than a year. It is not known if it has access to a developed street.

### **COURT'S ANALYSIS**

#### Tax Year 1998-99

To contest assessed values, taxpayers typically must appeal to their County Board of Property Tax Appeals by December 31 of each tax year. ORS 309.100. Plaintiff admits he did not timely appeal tax year 1998-99.

The legislature has given the court limited authority to consider appeals when the party did not first appeal to the board of property tax appeals. ORS 305.288(1) states:

“The tax court shall order a change or correction \* \* \* to the assessment and tax roll **for the current tax year or for either of the two tax years immediately preceding the current tax year** \* \* \* if all of the following conditions exist:

“(a) For the tax year to which the change or correction is applicable, the property was or is used primarily as a dwelling \* \* \* .

“(b) The change or correction requested is a change in value for the property for the tax year and it is asserted in the request and determined by the tax court that **the difference between the real market value of the property for the tax year and the real market value on the assessment and tax roll for the tax year is equal to or greater than 20 percent.**”

(Emphasis added.)

Plaintiff contends the value should be reduced from its \$30,010 RMV to \$29,168. This would be a reduction of only 2.8%.<sup>3</sup> Plaintiff does not meet the gross error standard.

Plaintiff has a second opportunity for the court to be able to hear his tax year 1998-99 appeal. ORS 305.288(3) states:

“The tax court may order a change or correction \* \* \* to the assessment or tax roll for the current tax year and for either of the two tax years immediately preceding the current tax year if, \* \* \* the assessor or taxpayer has no statutory right of appeal remaining and the tax court determines that good and sufficient cause exists for the failure by the assessor or taxpayer to pursue the statutory right of appeal.”

Good and sufficient cause is “an extraordinary circumstance that is beyond the control of the taxpayer[.]” ORS 305.288(5)(b)(A). Further, good and sufficient cause “[d]oes not include inadvertence, oversight, lack of knowledge, hardship or reliance on misleading information provided by any person except an authorized tax official providing the relevant misleading information.” ORS 305.288(5)(b)(B). Plaintiff offered no real reason for his failure to appeal tax year 1998-99. The court cannot reach tax year 1998-99 under the good and sufficient cause provision.

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#### Tax Year 1999-00

As noted above, plaintiff argues that defendant increased the RMV of his property for the two years at issue more than the three percent allowed by the Oregon

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<sup>3</sup> To meet the gross error standard, plaintiff would have to argue and prove that the property was worth less than \$24,008. Plaintiff’s purchase price of \$21,501 added to the cost to replace the pole barn of \$4,558 is \$26,059.

Constitution. Plaintiff is incorrect in his interpretation of the Oregon Constitution. Article XI, Section 11 (1)(b) of the Oregon Constitution provides that “[f]or tax years beginning after July 1, 1997, the property’s **maximum assessed value** shall not increase by more than three percent from the previous tax year.” (Emphasis added.) As pointed out by Mr. Rosatti and Mr. Ruiz, there is no similar limitation regarding real market value. Plaintiff’s property is one of those few properties where the maximum assessed value is significantly greater than its real market value. Until the real market value is greater than the maximum assessed value, the three percent limitation simply has no effect on the subject property.

The court has some concerns with the comparable sales that sold for \$13,000 and \$14,200. The property that sold for \$14,200 has a recorded easement that runs through the middle of the property. The easement could severely limit the development of the property. At a minimum, it would limit the placement of any structures on the property. It was not clear from the evidence before the court that the property that sold for \$13,000 has any access to a developed street. Additionally, the court is not convinced that a sale at an auction is a market transaction. Typically, properties that sell at auction are distressed in some way. For the above reasons, the court finds that the best comparable sale is the property that sold for \$29,000. This is very close to RMV of \$29,450 of the land.

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Plaintiff argues that the value of the improvements of his property should be \$4,558. The court has examined the evidence before it and finds that the improvements should be valued at \$5,760, the value set by defendant.

## **CONCLUSION**

Plaintiff did not timely appeal tax year 1998-99. Nor does he meet the gross error or good and sufficient cause standards of ORS 305.288. As to tax year 1999-00, for the reasons mentioned above, the court finds that the property is appropriately valued at \$35,210.

IT IS THE DECISION OF THE COURT that plaintiff's appeal as to tax year 1998-99 is dismissed.

IT IS THE FURTHER DECISION OF THE COURT that plaintiff's appeal as to tax year 1999-00 is denied.

Dated this \_\_\_\_\_ day of August, 2000.

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SALLY L. KIMSEY  
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 SALLY L. KIMSEY ON AUGUST 10, 2000. THE COURT FILED THIS DOCUMENT ON AUGUST 10, 2000.**