

IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT

Property Tax

KENNETH VAN DEVENDER,)
)
 Plaintiff,) No. 000541D
)
 v.)
)
 LANE COUNTY ASSESSOR,)
)
 Defendant.) **DECISION**

Plaintiff appeals the real market value of his land for tax year 1999-00. A telephone trial was held on Wednesday, July 5, 2000. Mr. David Carmichael, Attorney, appeared on behalf of plaintiff. Mr. Kenneth Van Devender testified on his own behalf. Defendant did not appear.

STATEMENT OF FACTS

Plaintiff, Mr. Ken Van Devender, is appealing the 1999-00 real market value of his land identified as the Lane County Assessor's Account No. 782365. Mr. Van Devender referred to this parcel of land as Tax Lot 1600. (Ptf's Ex 1.) Mr. Van Devender testified that he has owned this parcel of land, which is approximately 1.93 acres, for about 22 years. He developed the land and placed mini-storage units on the land.

Mr. Van Devender purchased the adjoining 1.93 acres of land on October 15, 1997, for \$176,570. This land parcel is referred to as Tax Lot 1500. Mr. Van Devender stated that Tax Lot 1500 had been listed for sale for approximately two years and he described the transaction as arm's length. He testified that both he and the seller, Mr. Johnson, are long time business owners in the city of Florence and each negotiated

the best price. The property was listed with the seller's son, who is a broker and has sold real estate in Florence for 10 years or more.

According to Mr. Van Devender and the information submitted to the court, Tax Lots 1500 and 1600 are identical in shape and size, and both are accessible from Highway 101. Mr. Van Devender testified that both lots were similarly developed with mini-storage units.

Mr. Van Devender submitted a copy of the county records which stated that Tax Lot 1500 had a real market value of \$177,960 in tax years 1995-96 and 1996-97 and \$179,740 for tax years 1997-98 and 1998-99. (Ptf's Ex 9.) He also testified that the assessor raised the real market value of the property to \$264,400 for tax year 1999-00. Mr. Van Devender successfully appealed the value to the Board of Property Tax Appeals (BOPTA) and the real market value of the property was reduced to \$210,000. He stated that the BOPTA determined the correct real market value of the property because even though he purchased it for \$176,750 he has made improvements to the land (excavation, grading, clearing and leveling) which increased the real market value to \$210,000.

Mr. Van Devender testified that because the two land parcels are almost identical in size and topography he believes the county has substantially overvalued the land parcel identified as Account No. 782365 (Tax Lot 1600). He submitted a copy of the county assessor's record of appraisal. (Ptf's Ex 2.) According to the county assessor's record, the land parcel appears to have been assessed at \$218,580 in October, 1991. Mr. Van Devender testified that property values have not increased in the Florence area in the last eight or nine years. Based on his recent purchase of the neighboring parcel of land, he concluded that the real market value of the land parcel should be no more than

\$210,000.

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:

“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. Plaintiff alleges that his arm's length purchase of the adjoining Tax Lot 1500 of similar size is the best evidence of Tax Lot 1600's real market value. The Oregon Supreme Court has ruled that a recent sale of a subject property is indicative of the property's value stating:

“(3) A recent sale of the property in question is important in determining its market value. If the sale is a recent, voluntary, arm's length transaction between a buyer and seller, both of whom are knowledgeable and willing, then the sales price, while certainly not conclusive, is very persuasive of the market value.” *Kem v. Dept. of Rev.*, 267 Or 111, 114, 514 P2d 1335 (1973).

Based on *Kem*, the fact the adjoining land parcel of comparable size and location sold for \$176,750 close to the assessment date of the 1998-99 tax year is “very persuasive” of its real market value that year. Further, plaintiff testified that he made similar improvements to

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

Tax Lot 1500 as he had Tax Lot 1600 and BOPTA determined the value of Tax Lot 1500 to be \$210,000 for tax year 1999-00. Defendant did not testify nor submit any evidence to refute plaintiff's testimony and exhibits. The comparability of the properties was not refuted. The court is persuaded by plaintiff's testimony and BOPTA's Order for Tax Lot 1500 dated March 22, 2000. The court concludes that the real market value as of the assessment date, January 1, 1999, should be \$210,000.

CONCLUSION

IT IS THE DECISION OF THIS COURT that the 1999-00 real market value of plaintiff's land identified as Lane County Assessor's Account No. 782365 for the tax year 1999-00 was \$210,000.

IT IS FURTHER DECIDED that the county correct the assessment and tax rolls to reflect the above values. Any refund due following this correction is to be promptly paid with statutory interest pursuant to ORS 311.806 and 311.812.

Dated this _____ day of July, 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 JULY 19, 2000. THE COURT FILED THIS DOCUMENT ON JULY 19, 2000.