

\$45,167 to the improvements and the balance to the land.

Vehicular access to plaintiff's home is currently by gravel road over property owned by Superior Lumber, Mountain Grove Center for New Education (Mountain Grove) and the Bureau of Land Management (BLM). Plaintiff apparently does not have an established legal right to use the existing road, but has done so undisturbed for 26 years (he and his mother combined). Plaintiff does have a legal right of way easement to the property over land owned largely by Mountain Grove, but that easement is currently undeveloped (i.e., there is no road over the easement) except for a small portion that coincides with the existing road.

According to the sworn testimony, there are problems with the home, including a leaky roof, inexpensive ("cheap") wood siding and an infestation of carpenter ants that surface each year in the spring. The home is served by a well which, according to the testimony, only produces about two gallons of water per minute. The water is said to have a high iron content. Plaintiff also testified that when the septic tank was pumped several years ago he was told that there was either no overflow drain field or that the field was inadequate. This reported deficiency has not created a problem to date because plaintiff's water usage, and that of his mother before him, has historically been low. The plumbing leaked in 1990 and created a lake under the home. Neither the plumbing nor the electrical systems meets current code requirements.

Plaintiff was interested in logging the property in 1994. Plaintiff had a Mr. Bill Lee, with New Creation Logging, develop a logging plan. The neighbor, Mountain Grove, objected to the extent of logging planned. Plaintiff testified that there was written correspondence between he and members of Mountain Grove regarding their concerns and that Mountain Grove threatened to block the road to prevent plaintiff from logging. The

blockade would have totally shut down access to the property as well as cut off any logging. Plaintiff further testified that Mr. Lee was contacted by Mountain Grove as well and that, as a result, Mr. Lee decided not to log the property. Plaintiff testified that he did pursue another logging plan in 1995 with a logger recommended by Mountain Grove but ultimately decided to forego that plan because of the limitations “imposed” by Mountain Grove and because the logger recommended was, in plaintiff’s words, a real “Bozo.”

Plaintiff had two Realtors view his property several years ago to estimate the value. It is unclear whether either prepared a written value estimate, although one appears to have done so (Mr. Veldink) and the other (Mr. Meyer) apparently suggested a list price of \$59,000. No written estimates or other materials were submitted into evidence by plaintiff. Mr. Veldink, one of the two Realtors, did testify, but was unable to recall any value conclusion he may have reached and could not render a professional opinion about the impact on value of either the access issue or the existence of a grave on the property. Regarding the value of the timber, plaintiff testified that Eco Forestry Institute cruised the property in 1994 and estimated that there was 125,000 board feet of timber which plaintiff estimates to have a value of approximately \$50,000.

Mr. Vedder valued the property for defendant under the sales comparison approach, looking at three properties he deemed comparable. (Def’s Ex A). All three of Mr. Vedder’s comparables are within several miles of the subject. Sale No. 1 involved a property nearly identical to the subject in terms of land size (5.07 acres), with a manufactured home, that sold in August 1999 for \$71,500. From this sale Mr. Vedder extracted a land value of \$57,500, after subtracting \$14,000 for the manufactured home. (Defendant’s Ex A, at 1 and 5). Sale No. 2 occurred in January 1999 and involved improvements nearly identical to plaintiff’s but located on a smaller (.54 acre) parcel. Mr.

Vedder subtracted a land value of \$27,000 from the \$54,577 sale price to arrive at an indicated value for the improvements of approximately \$27,500. (*Id.*, at 1 & 6). Finally, Sale No. 3 is deemed by Mr. Vedder to be the most comparable. It sold in February 2000 for \$84,500. The home is considerably larger, but older, and the lot smaller, at 3.18 acres. Mr. Vedder adds the extracted land and improvement values from Sales 1 and 2 and arrives at an indicated value for the subject of \$85,000, which, he states in his report, is supported by the unadjusted sale price for comparable # 3. Mr. Vedder testified that he is not aware of any market data regarding the impact of a grave site on value.

COURT'S ANALYSIS

Plaintiff's case involves essentially three points: the problems with the condition of the home; the access issue (in terms of right of way and length of the driveway) and the existence of the grave site; and a legal argument that, since the value of the timber cannot by law be included in the value of the property for tax purposes, an adjustment for the value of the timber is required.

It is obvious that plaintiff spent a great deal of time thinking about his case. Plaintiff adequately demonstrated that there are problems with the property that a perspective buyer would take into consideration in deciding whether to buy and how much to pay. Plaintiff would like to harvest some of the trees on the property but is hindered in such efforts by his neighbor, who owns a portion of the road over which the logs must be transported. Plaintiff apparently has a problem with both the water and septic systems. The roof leaks and there have been problems with the plumbing. Finally, there is the issue of the grave site on the property.

By statute plaintiff has the burden of proof and must demonstrate by a

preponderance of the evidence that the current roll value is in error. ORS 305.427.¹ This plaintiff has failed to do. The issue is market value as of the January 1, 1999, assessment date. ORS 308.007. Real market value is defined by statute as “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.” ORS 308.205(1).

Plaintiff would have the court subtract as much as \$50,000 for the value of the timber and another \$20,000 for the access and grave site problems. This would result in a real market and assessed value of roughly \$9,000 for a home on five acres. Plaintiff did not adequately demonstrate by resort to market data how he arrived at either number. Moreover, plaintiff has not shown what the value of the property would be without the timber and the problems he testified to regarding access, etc. Thus, were the court to accept plaintiff's suggested adjustments, the court lacks a starting point from which to begin deducting.

Plaintiff takes exception with defendant's evidence but has not sufficiently demonstrated that the value on the tax rolls, which the board reduced by roughly \$20,000, is incorrect. The court is not at liberty to extract numbers from the air or accept numbers unsupported by market data. For its part, defendant has shown through comparable sales that the value of plaintiff's property is comfortably within the market range for small rural homes on acreage. This is not to say defendant's evidence is without problems. The method is somewhat simplistic but unless plaintiff overcomes the initial burden of proof, defendant's evidence avoids judicial scrutiny.

CONCLUSION

¹ Reference to the Oregon Revised Statutes (ORS) is to the 1999 laws.
DECISION AND JUDGMENT

After carefully reviewing the evidence, the court concludes that plaintiff has failed to demonstrate by a preponderance of the evidence that there is an error in the record assessment of his property.

IT IS HEREBY ADJUDGED AND DECREED that the real market value of the subject property, identified in the Douglas County Assessor's records as Acct. Nos. 15502.02 and 15502.03, is sustained. Plaintiff's requested relief is denied. The value set by the board shall not be disturbed.

Dated this _____ day of August, 2000.

DAN ROBINSON
MAGISTRATE

THIS DOCUMENT WAS SIGNED BY MAGISTRATE DAN ROBINSON ON AUGUST 24, 2000. THE COURT FILED THIS DOCUMENT ON AUGUST 24, 2000.