

IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT
Small Claims
Property Tax

BRETT M. AND KAREN K. MOORE,)
)
 Plaintiff,) No. 010319E
)
 v.)
)
 UNION COUNTY ASSESSOR,)
)
 Defendant.) **DECISION AND JUDGMENT**

Plaintiffs appeal the 2000-01 real market value of the property identified in defendant's records as Account No. 17307. A telephone trial in the matter was held July 10, 2001. Brett M. Moore appeared on behalf of plaintiffs. John M. Kelley, Data Analyst/Appraiser, appeared on behalf of defendant. For ease of reference herein, the parties are referred to as "taxpayers" and "the county."

STATEMENT OF FACTS

The subject property is a five-bedroom, three-bath home located on a three-acre parcel of land in Cove, Oregon. The home has 3,007 square feet of living space with a 1,612 square foot unfinished basement. Taxpayers had the home built in 1999. Mr. Moore testified that he and his wife have six children and, as a result, wanted a larger home to accommodate their family. He explained the home was solidly built with no frills. For example, it has no fireplace, no great room, no vaulted ceilings, and the home has vinyl siding.

Prior to construction, Joel A. Bigelow, a local certified appraiser, prepared an appraisal for the construction loan based on the plans for the property. He determined the real market value to be \$205,000. After the home had been completed, taxpayers wanted to

eliminate the requirement of mortgage insurance. Unfortunately, the \$205,000 appraisal figure was too low to allow them to eliminate this requirement. Taxpayers asked Mr. Bigelow to reevaluate their property. According to Mr. Moore, Mr. Bigelow explained he could not justify increasing the value to the \$220,000 plus figure needed by taxpayers. The financing institution suggested taxpayers hire a different appraiser to appraise the property.

Taxpayers then hired Terry Fife, an Oregon licensed appraiser. Mr. Fife determined the real market value of the home was \$230,000.

For the 2000-01 tax year, the county assigned the property a real market value of \$344,290. Taxpayers appealed this value to the county board. After reconsidering its value conclusion, the county recommended the value be reduced to \$263,720. The board accepted the county's recommendation and ordered the value reduced accordingly.

Taxpayers appeal the board's order claiming the value should be further reduced to \$230,000.

In support of their claim, taxpayers submitted the construction loan appraisal prepared by Mr. Bigelow (Ptf's' Ex 2), the appraisal prepared by Mr. Fife (Ptf's' Ex 3), and the Mortgage Loan Settlement Statement (Ptf's' Ex 1), which shows the cost to construct the home to be about \$195,000. Mr. Moore testified that based on his discussions with local builders, a 10 to 15 percent profit margin is usually expected. Adding 15 percent to his cost, Mr. Moore arrives at a value of \$224,000. He argues this evidence demonstrates the home was worth no more than \$230,000 for the 2000-01 tax year

In response, the county submitted its own appraisal report of the property. In the report, Mr. Kelley used two of the same comparable sales used by Mr. Fife in his appraisal (comparables 1 and 2). His third comparable sale was a home located across the street from the subject property. After adjusting the sales, Mr. Kelley determined the property had

a real market value of \$270,000. He recommends the court sustain the board's value conclusion of \$263,720.

COURT'S ANALYSIS

The parties presented the court with three different appraisals and an itemization of the cost to construct the home. Upon reviewing the Bigelow appraisal, the court finds it must give this appraisal little weight as it was prepared prior to construction and may not reflect the current realities and market. Taxpayers' most persuasive evidence lies in the Fife appraisal and the costs incurred to build the home. As mentioned above, both the county and Mr. Fife used two of the same comparable sales in their reports. They differed significantly, however, in their adjustments to the sales.

Mr. Fife's appraisal uses three comparable sales. Comparable 1 sold for \$170,000. He adjusted the sale for site size, age, condition, square footage, and garage to arrive at net and total adjustments of \$63,350. This resulted in an indicated value for the subject property of \$233,350. Mr. Kelley similarly used Comparable 1 in his analysis. He adjusted it for site size, age, condition, square footage, garage, porches/patios, and other improvements for a net adjustment of \$104,540 and total adjustments of \$116,680. His adjustments resulted in an indicated value for the subject property of \$274,540.

Mr. Fife's Comparable 2 sold for \$200,000. He adjusted it for age, condition, square footage, wood stove, garage and porch/patio to arrive at a net adjustment of \$29,500 and total adjustments of \$58,100. His adjustments resulted in an indicated value for the subject property of \$229,500. Mr. Kelley also used Comparable 2 in his analysis. He adjusted it for age, condition, square footage, garage, and porch/patio for a net adjustment of \$65,310 and total adjustments of \$77,570. After applying the adjustments, he arrived at an indicated value for the subject property of \$265,310.

Mr. Fife's Comparable 3 sold for \$162,000. Applying the various adjustments, Mr. Fife arrived at a net adjustment of \$84,450 and total adjustments of \$87,450 for an indicated value for the subject property of \$246,450. Mr. Kelley's Comparable 3 sold for \$300,000. Applying the various adjustments, he arrived at a net adjustment of (\$10,260) and total adjustments of \$93,500 for an indicated value for the subject property of \$289,740.

When reviewing the appraisals, it is apparent the two appraisers differed in the amount of adjustments warranted for various items. For example, they differed largely in their condition adjustments. Both agreed the condition of the subject property was better than Comparables 1 and 2. However, Mr. Fife only increased the sale prices by \$6,750 and \$5,750 respectively. Mr. Kelley, on the other hand, increased the sale prices by \$20,000 each. This provides a difference in opinion of value of \$15,000 based on condition alone.

Mr. Fife was not available to testify as to his adjustments. Mr. Kelley testified in support of his appraisal but offered no specific testimony as to how he arrived at the condition adjustments. Whether an adjustment for condition should be \$20,000 or \$6,000 depends upon several factors. The court is left in a quandary as to which adjustment is appropriate. "If those factors are not articulated and evaluated in perspective, choosing one adjustment over the other by the court would be simply a guess rather than an exercise in judgment." *Goldberg v. Dept. of Rev.*, OTC-RD No. 3640, WL 60551 (February 8, 1995).

Of further concern to the court is the size of the adjustments made by both appraisers to the comparable sales. For Comparable 1, the county's total adjustment was 69 percent of the sale price and the taxpayers' total adjustment was 37 percent of the sale price. Total adjustments for Comparable 2 were 39 percent by the county and 29 percent by taxpayers. For their third comparable sales, the county applied total adjustments of 31 percent and taxpayers applied total adjustments of 54 percent. The larger the adjustments required, the

more the court questions whether the properties are truly comparable. The court recognizes the appraisers are dealing with a small, limited market and they did the best they could in locating the “most” comparable properties. However, when adjustments become as large as they have in this case, the reliability of the indicated value is reduced. *See Stadelman v. Dept. of Rev.*, OTC-RD Nos. 3890, 3911, WL 600806 (October 16, 1996) (finding that where the adjustments represent 65 percent of the sale price the “adjustments are so great in magnitude as to render the comparison unreliable.”)

Weighing the two appraisals, the court has no real basis for finding one is stronger than the other. As mentioned, the appraisers simply differed on the degree of adjustments required and no substantive evidence was provided to persuade the court one method was better than the other. The court has, however, Exhibit 1 to consider as well. The home was less than a year old as of the assessment date so the cost approach becomes more relevant than with older properties. As stated above, taxpayers submitted their settlement statement detailing the various costs involved. Adding 15 percent for profit, taxpayers arrive at a cost for the home of roughly \$224,000. The county provided no evidence to dispute this cost figure. Balancing taxpayers’ cost figure with the two appraisals, it becomes the court’s opinion that the county’s value conclusion is a little high.

Mr. Kelley observed that his value conclusion and Mr. Fife’s value conclusion differ by 15 percent. It is generally accepted in the appraisal field that competent appraisers may differ by up to 10 percent. In *Price v. Dept. of Rev.*, 7 OTR 18, 25 (1977), the Tax Court observed:

“As has often been said, ‘true case value’ is a range of value, rather than an absolute. Although not a rule of law, it is generally accepted that appraisers will be deemed equally competent and their testimony useful if, acting independently, they come within 10 percent of each other in the ordinary case.”

As noted, balancing taxpayers' cost to build the home with the two appraisals, it is the court's opinion the county's value is somewhat high. Given the acceptable ten percent range of value, the court believes Mr. Fife's value represents the low end of this range. After balancing all the evidence, it is the court's conclusion the 2000-01 real market value of the subject property was no more than \$240,000.

CONCLUSION

After weighing all the valuation evidence presented to the court, it is the court's opinion the 2000-01 real market value of the subject property was \$240,000. Now, therefore;

IT IS HEREBY ADJUDGED AND DECREED that the 2000-01 real market value of the property identified as Account No. 17307 was \$240,000; and

IT IS FURTHER ADJUDGED AND DECREED that the county shall correct the assessment and tax rolls to reflect the above value. Any refund due following this correction shall be promptly paid with statutory interest pursuant to ORS 311.806 and 311.812.

Dated this _____ day of July, 2001.

COYREEN R. WEIDNER
MAGISTRATE

THIS DOCUMENT WAS SIGNED BY MAGISTRATE COYREEN R. WEIDNER ON JULY 31, 2001. THE COURT FILED THIS DOCUMENT ON AUGUST 1, 2001.