

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

MICHAEL L. HAFTORSON,)
)
 Plaintiff,) No. 010791D
)
 v.)
)
 CLACKAMAS COUNTY ASSESSOR,)
)
 Defendant.) **DECISION**

Plaintiff appeals the real market value of his property identified as Clackamas County Assessor's Account No. 00735672 for tax year 2000-2001. A telephone trial was held on Monday, February 4, 2002. Mr. Michael Haftorson appeared on his own behalf. Mr. Fred Dodd, Appraiser II, appeared on behalf of Defendant.

STATEMENT OF FACTS

Mr. Haftorson testified that he purchased his property in 1963 for \$625. According to Mr. Haftorson, in the flood of 1964, the A-frame improvement located on the property was "washed down the [Sandy] river." Shortly after the flood, the Army Corp of Engineers relocated the Sandy River, moving it to the north. As a result, Mr. Haftorson testified that his property was separated from the Sandy River by "newly created land" which is now owned by Clackamas County. The view of the Sandy River is blocked by trees and other natural vegetation but there is access to the river. The parties agree that Mr. Haftorson's unimproved property is approximately 16,375 square feet or .375 acre.

In December, 2000, Mr. Haftorson was informed that "the majority" of his property is "in the floodway and 100 year floodplain." (Ptf's Ex 8.) Because of the Clackamas County regulations, including setbacks, floodways and floodplains, it is unlikely Mr. Haftorson could replace the A-frame with a similar type of improvement.

(*Id.*) Using the information that his property was “unbuildable,” Mr. Haftorson appealed the real market value of the property to the board of property tax appeals (BOPTA). On April 11, 2001, BOPTA’s Order reduced the real market value of the subject property from \$36,070 to \$14,420. (Ptf’s Ex 9.)

Mr. Haftorson disagrees with the BOPTA value. He testified that because the county “lumps all unbuildable sites into one category ‘Recreational Properties’ the county overlooks the fact that there are several types of ‘unbuildable’ properties.” Some properties can be combined with adjacent property to meet the county building regulations. Others, according to Mr. Haftorson, are “truly unbuildable and unsaleable”, and have low real market values. Mr. Haftorson testified that his property is “truly unbuildable” because of its location in the floodplain and floodway.

Mr. Haftorson testified that he believes the real market value of his property is \$3,600. He determined this value based on the average sale price of comparable properties located within 10 miles of his property. (Ptf’s Ex 7-1.) Four of the comparable properties were each approximately 5,000 square feet and the sale prices ranged from \$1,000 to \$8,000. (*Id.*) One 20,000 square foot parcel sold for \$2,000. (*Id.*)

Mr. Dodd testified that he agreed with Mr. Haftorson that the subject property is unbuildable and is near, but not on, the Sandy River. He stated that it is difficult to determine the value of Mr. Haftorson’s property because “the lots were originally platted 50 to 75 years ago, without regard to modern rules governing setbacks, floodways/floodplains, septic fields, access, etc.” (Def’s Ex A.) Mr. Dodd testified that he developed the county’s land schedule for Mr. Haftorson’s property in 1990. Unbuildable lots like the subject property were valued by Defendant at “40% of the land schedule at that time.” (*Id.*) According to Mr. Dodd, the buildable value of the subject

property was \$36,070 and 40 percent of that value was \$14,420.

Mr. Dodd submitted eight sales of property located in the same area as Mr. Haftorson's property to support the county's determination of real market value, \$14,420. (*Id.*) The lot size of these eight sales were comparable to the size of the subject property. The sales which occurred over a two year span of time (March 1999 to April 2001) ranged in price from \$11,000 to \$16,000.

Three of Defendant's comparable sales, Lot 9100, Lot 7000 and Lot 9800, were located very close to the subject property. (*Id.* at A-5.) Each lot like the subject property was unbuildable and did not have a river view. Mr. Haftorson testified that these three properties were purchased by the owners of adjoining land. After each owner purchased the adjoining land, the owner was able to build a garage or modular home. Mr. Haftorson concluded that these three parcels were different from his property because they "were buildable when combined or modified with adjacent property." (Ptf's Letter dated October 12, 2001, at p 2.) He wrote that these properties are "different from mine in that mine is in the 'floodway', totally unbuildable no matter how large or how modified." (*Id.*)

COURT'S ANALYSIS

The issue before the court is the 2000-2001 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

¹ All references to the Oregon Revised Statutes are to 1999.

in an arm's length transaction occurring as of the assessment date for the tax year."

To assist the court in determining the real market value, the parties submitted numerous arm's length sale transactions. Most of Plaintiff's sales were for parcels substantially smaller (5,000 square feet) than Plaintiff's property (16,375 square feet). (Ptf's Ex 7-1.) These smaller parcels sold for between \$1,000 and \$8,000. When the court asked Mr. Haftorson if he believed the value of his 16,375 square foot parcel was the same as the sale price of the 5,000 square foot parcels, Mr. Haftorson stated that he included these sales to provide a "per acre value."

Mr. Haftorson took an average of the sale prices for the smaller parcels and one larger 20,000 parcel to compute an average sale price and real market value for his property of \$3,600. Mr. Haftorson did not submit a certified appraisal to the court. He has not listed his property for sale. Without any evidence to the contrary, the court concludes that the real market value of the subject property which is approximately three times larger than the 5,000 square foot comparable sales is not the same as the three smaller properties. The use of an average of smaller size properties to determine real market value of the subject property is unpersuasive.

Defendant's comparable sales ranged in value from \$11,000 to \$16,000. (Def's Ex A.) Two of the comparable sales were located on a river. Lot 2700 was located on the Salmon River and Lot 6100 was located on the Sandy River. Plaintiff's property is not located on the river. Three of the comparable sales (Lots 7000, 9100 and 9800) were purchased by the owner of an adjacent parcel. Apparently once the owner purchased the property, the county approved construction of some type of improvement. According to the parties, even if Mr. Haftorson purchased a parcel of land adjacent to his property, he would not be able to place any type of improvement on

his land. Because of the lack of comparability between Defendant's comparable sales and Plaintiff's property, the court concludes that the evidence supporting Defendant's value must be adjusted for these differences.

Two of Defendant's comparable sales, Lots 2800 and 2900, which sold for \$11,000 on January 1, 2000, appear to be the most similar to the subject. These two properties are close in size to Plaintiff's property and access to the river is through an intervening easement. (Def's Ex A at 3.) Mr. Haftorson wrote to the court that the information he found on Lot 2800 included a description of a residence located on the lot. Mr. Dodd's information stated that the lot was in a platted subdivision, did not have sewer and was "very likely in the floodway and, therefore, completely unbuildable." (Def's Ex A at 8.) Because of the disputed description of Lot 2800, the court finds that Lot 2900 is the most comparable to Plaintiff's property.

Mr. Haftorson provided the court with "active listings for sale" as of December 29, 2000. (Ptf's Ex 7-1.) While a listing price is not a sale price, it is of interest to the court that two of the properties (each 20,000 square feet) similar in size to Plaintiff's property were listed at \$14,000 and \$16,500. These listing prices were close to Defendant's determination of the subject property's real market value (\$14,420).

During the trial, the parties testified that the subject property with its current unbuildable classification makes it difficult to determine the real market value of the property. Mr. Dodd stated that the value of the subject property is attributed to its proximity and access to the river. He concluded that there is demand for sites along the river where individuals can pitch a tent or park a camper and fish from the banks of the river. Mr. Haftorson agreed with Mr. Dodd, but concluded that the value was substantially less than the tax roll value.

The court finds that most of the comparable sales submitted by the parties must

be adjusted for size, location and county regulations. Defendant's comparable sale, Lot 2900, which was sold on January 1, 2000, is the most similar to Plaintiff's property. Based on the evidence presented, the court concludes that the real market value of Plaintiff's property on the assessment date, January 1, 2000, was \$11,000.

CONCLUSION

Now, therefore,

IT IS THE DECISION OF THIS COURT that the real market value of Plaintiff's property identified as Clackamas County Assessor's Account No. 00735672 for tax year 2000-2001 was \$11,000.

IT IS FURTHER DECIDED that the county shall correct the assessment and tax rolls to reflect the above stated real market value of Plaintiff's property as defined in

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ORS 308.162(2) with any refund due Plaintiff to be promptly paid with statutory interest pursuant to ORS 311.806 and 311.812.

Dated this _____ day of March, 2002.

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 97301-2563. 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 MARCH 27, 2002. THE COURT FILED THIS DOCUMENT ON MARCH 27, 2002.