

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

MICHAEL J. DONOVAN and MARIE B. DONOVAN,)	
)	
Plaintiffs,)	No. 020136D
)	
v.)	
)	
JACKSON COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

Plaintiffs appeal the real market value of the improvements (the house) to their property for tax year 2001-2002. A telephone trial was held on Monday, July 22, 2002. Mr. Michael Donovan and Mrs. Marie Donovan appeared on their own behalf. Mr. Steve Nelson, Residential Appraiser III, appeared on behalf of Defendant.

STATEMENT OF FACTS

Plaintiffs' house is located in Ashland, Oregon, in a small subdivision (Placer Run) consisting of 5 homes. In June 2000, Plaintiffs occupied their new home. Plaintiffs' home, with 3 bedrooms and 3 1/2 baths, was designed and built for them. Mrs. Donovan testified that their 3,572 square foot home plus 338 square feet of unfinished attic over the garage cost \$370,000.¹ She testified that the real market value of their home identified as Jackson County Assessor's Account No. 1-090992-0 is no more than \$460,000, excluding land. The board of property tax appeals (BOPTA) sustained the role value of \$625,760 for improvements and \$124,990 for land, resulting in a total real market value of Plaintiffs' home of \$750,750. (BOPTA Order dated February 20, 2002.)

¹ Mrs. Donovan testified that the total cost of the house and land was \$505,000. She testified that the land cost \$135,000. (See also Ptf's letters dated May 4, 2002, Facts, Item 3, and July 9, 2002.)

Plaintiffs' primary allegation is that Defendant incorrectly determined the quality rating of their home at a "Class 6" rather than a "Class 5." Plaintiffs stated their home does not have "marble bathrooms and kitchens, Jacuzzi tubs, tile roofing, custom rock fireplaces and wood windows." (Ptfs' Letter to Mr. Nelson dated May 22, 2002.) Ms. Kathleen Mackris, a licensed Oregon appraiser with approximately 20 years experience, submitted a statement to the court stating that in her opinion the "quality of materials used, and the craftsmanship of the [Plaintiffs'] house * * * do not exceed either the craftsmanship or quality of materials used in the construction of the house located at 121 Westwood Street" (Plaintiffs' neighbor). (Letter to the court from Ms. Kathleen Mackris dated July 9, 2002.) Mrs. Donovan testified that according to county records the house located at 121 Westwood Street is rated Class 5.

Mrs. Donovan, a realtor and broker with 15 years experience in the Ashland real estate market, testified that all of her neighbors in the Placer Run Subdivision have custom-built homes. Plaintiffs wrote that the "[i]nterior finish work in all these homes includes granite counter tops, hardwood floors, tile, slate, fireplaces, and rockwork. Moreover all have similar square footages, and 4 out of 5 homes were built within 24 months of each other. All homes have composition roofs, and all have multiple rooflines." (Ptfs' Letter dated May 4, 2002.) Mrs. Donovan testified that their home does not have wood windows, rock on the exterior or other amenities of a quality Class 6 house. Based on the similarity of their property to others in the subdivision, Plaintiffs question how the real market value of their property can be "\$200,000 to \$300,000 more" than their neighbors. (*Id.*)

Mrs. Donovan submitted property detail sheets for each of the other four houses in the Placer Run subdivision. For each of the four properties, the assessed value as of

the 2000 assessment year was listed.² (Ptf's letter dated May 4, 2002.) The farmhouse style house located (115 Westwood Street) directly across the street from Plaintiffs was built 6 months prior to Plaintiffs' house and is "three levels situated on a 1/2 acre lot with views." (*Id.*) For the 2000 assessment year, the assessed value of the house was listed as \$305,690. Total assessed value of land and house, \$392,470. (*Id.*) The Plaintiffs' neighboring property (120 Westwood Street), completed "within 2 months" of their home, was built on a 1/2 acre lot. (*Id.*) This house has a separate detached 3-car garage "with a fully occupied guesthouse above it." (*Id.*) For the 2000 assessment year, the assessed value of the house was listed as \$239,250. Total assessed value of land and house, \$321,900. (*Id.*) Another neighboring house (135 Westwood Street) was the first house in the subdivision and was built on a 1/2 acre lot. The 3 bedroom, 3 bathroom one-story log home with a composition roof (2,979 square feet of living space) was assessed at \$267,420. Total assessed value of land and house, \$350,580. (*Id.*) The last of the four houses in the subdivision (121 Westwood Street) was built one year "prior to" Plaintiffs' and is described by Mrs. Donovan as a 4 bedroom house with a "library, wood floors, fireplace an in-ground pool and fenced 1/2 acre lot." (*Id.*) For the 2000 assessment year, the assessed value of the house was listed as \$290,340. Total assessed value of land and house, \$378,670. (*Id.*)

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On three different dates (May 5, 2002, May 22, 2002, and July 9, 2002) Mrs.

² Plaintiffs are appealing the real market value of their property for tax year 2001-2002, not the assessed value for tax year 2000-2001. For comparative purposes, Plaintiffs' total assessed value for tax year 2001-2002 was \$609,430. (BOPTA Order dated February 20, 2002) For tax year 2000-2001, their total assessed value was \$164,460; the house was under construction. (Ptf's Real Property Tax Statement, July 1, 2001, to June 30, 2002.)

Donovan compiled a listing of recent sales in the Ashland area.³ None of the recent sales were adjusted for date of sale, location, size, quality or other characteristics different than the subject property.

In the May 5, 2002, listing, Mrs. Donovan stated that the property located at 712 Benjamin Court (Benjamin) was “[m]ost like our home as far as quality is concerned and the same designer designed” both houses. (Ptfs’ Market Summary, May 5, 2002.) She stated that the Benjamin house is located approximately one block from her house and is one of five houses in a subdivision. It was built in 1994 and has 3 bedrooms, 2.1 bathrooms for a total 3,116 square feet of living space. The sale price was \$644,000, including a separate approved building lot. (Price per square foot: \$206.) It sold on July 27, 2000. In the same summary, Mrs. Donovan commented that a house on 1658 Peachey (Peachey) has “a similar feel inside as ours.” (*Id.*) This house was built one year before Plaintiffs’ house and is located on a flat 1/2 acre lot. Having approximately 3,500 square feet of living space with 3 bedrooms and 2.1 bathrooms, it sold on May 31, 2001, for \$548,500. (Price per square foot: \$156.) Based on the 11 recent sales, Mrs. Donovan computed a range of unadjusted sale prices from a low of \$420,000 to a high of \$644,000.

In the “One Line List” dated May 22, 2002, Mrs. Donovan submitted 8 recent sales. She stated that these homes “were built between 1995 & 2000 that sold during the time frame our home was assessed for the property tax year 2001-2002.” (Ptfs’ Letter dated May 22, 2002.) The houses ranged in size from 1,002 square feet to 4,324 square feet and were located on lots ranging in size from .22 acres to 2.01 acres. Two of the recent sales were built in 2000, the year Plaintiffs’ house was completed. One of

³ Each listing included some of the same recent sales, but none of the lists were exactly the same.

the houses built in 2000, 652 Ashland Creek Drive, Lithia Creek Estates, was reported to have 3,000 square feet of living space, 4 bedrooms and 2.1 bathrooms. It sold for \$519,900 on January 11, 2001. (Price per square foot: \$173.) (*Id.*) The other house built in 2000, 612 Ashland Creek, is located “[a]bove Lithia Park.” With 2,600 square feet of living space, the 3 bedroom, 2.1 bathroom house sold in December 2000, for \$470,000. (Price per square foot: \$180.) (*Id.*)

The third listing of 11 recent sales was dated July 9, 2002. The unadjusted sale prices ranged from a low of \$445,000 to a high of \$700,000. (Ptfs’ Letter dated July 9, 2002.) Mrs. Donovan wrote that the \$700,000 sale price should be adjusted to \$560,755 because there were two properties “with the extra [b]ldg. lots.” (*Id.*) The unadjusted sale price per square foot ranged from \$126 to \$207.

Mr. Steve Nelson discussed his residential report. In concluding that the real market value of Plaintiffs’ property was \$760,000 as of January 1, 2001, Mr. Nelson testified that he has personally inspected the property during construction and made a post-construction visit on June 4, 2002, in preparation for this proceeding. He testified that the assessor’s office “feels the dwelling is a class six (6) quality rating.” (Def’s Residential Report at 4.) Using the sales of comparable properties in the Ashland area, Mr. Nelson picked three properties which were located 1/3 to 1 mile from the subject property. Each sale price was adjusted for date of sale, location, lot size, gross living area including other finished areas, and other improvements such as patios, decks, and garages. Mr. Nelson did not adjust for age. Plaintiffs’ property was completed in 2000 whereas the comparable sales were one to four years older than the subject property. In addition, Mr. Nelson included one category of adjustments labeled “miscellaneous.” For each of the comparable sales, the miscellaneous adjustment added \$10,000, \$15,000 and \$17,500 to each of the respective comparable sales No. 1, 2 and 3. The

overall total of all adjustments made to the sale prices of the comparables ranged from 2 percent to 7.6 percent of the unadjusted sale price.

Mr. Nelson testified that he gave the “most weight” to comparable sale No. 2, a property previously owned by Plaintiffs. Comparable sale No. 2, located on Logan Drive, was built in 1995. (Def’s Residential Report at 5 and 18.) The Logan Drive property has 3 bedrooms and 3 bathrooms, and a total living space of 2,626 plus a finished basement with 416 square feet. (*Id.*) It is situated on a .25 acre parcel of land with a Class 5 quality rating. (*Id.* at 17 and 18.) Mr. Nelson explained that he selected this property because it was sold in 1999 and again in 2001, showing that the real estate market in Ashland is extremely strong as evidenced by this property which increased in market value almost 32 percent in a little over two years. (*Id.* at 18.) Defendant’s adjusted sale price was \$770,000 or \$253 per square foot. (*Id.* at 5.) Plaintiffs objected to this property being used as a comparable because they previously owned it and took exception to Mr. Nelson’s testimony that it is reasonable to conclude that because the Donovans sold the property for \$550,000 they would want a bigger, more expensive house.

Mrs. Donovan challenged the comparability of Mr. Nelson’s sales. She testified that the three houses he selected have a view of Lithia Park or are close to downtown Ashland. Mrs. Donovan testified that location adds value. Mr. Nelson made one adjustment for location to comparable sale No. 3; the amount of the adjustment was \$50,000. (*Id.* at 5.) In addition, Mr. Nelson made an adjustment for view to comparable sales No. 1 and No. 2. (*Id.*) Comparable sale No. 1 was reduced \$15,000 and No. 2 was reduced \$25,000. (*Id.*)

COURT'S ANALYSIS

The issue before the court is the 2001-2002 real market value of Plaintiffs’
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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)⁴ 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, date of sale, quality and location to Plaintiffs’ property in order to determine the real market value. In this case, the parties have submitted numerous sales.

Plaintiffs bear the initial burden of proof and must establish an error in real market value by a preponderance of the evidence. ORS 305.427. “Preponderance of the evidence means the greater weight of evidence, the more convincing evidence.” *Feves v. Dept. of Rev.*, 4 OTR 302, 312 (1971). On three different dates, Plaintiffs submitted recent sales in Ashland. The sales were not adjusted for date of sale, location, size, quality or other characteristics which distinguish one property from another.

To illustrate the importance of adjusting a reported sale price to achieve comparability, one of the properties Plaintiffs identified as most similar to their own will be analyzed. Plaintiffs submitted one property, Benjamin, which is located close to their property and situated in a small 5 house subdivision. In calling upon her professional expertise as a real estate agent, Mrs. Donovan stressed the importance of selecting properties that are located in similar neighborhoods. The court agrees with her that location is important, especially in a community such as Ashland where it is undisputed

⁴ All references to Oregon Revised Statutes are to 1999.

that proximity to downtown and Lithia Park adds to the market value of a property. In picking a property similarly situated like Plaintiffs, there is no need to adjust the sale price for location.

In comparing the quality of the two properties, Benjamin was designed by the individual who designed Plaintiffs' house. Mrs. Donovan concluded it was similar in quality to their house. Based on Mrs. Donovan's expertise, a quality adjustment is not required.

However, a time of sale adjustment and size adjustment are required. Benjamin sold six months prior to the assessment date (January 1, 2001) and included a separate approved building lot. The property without the approved building lot was listed for \$569,000. According to Plaintiffs, the unadjusted sale price excluding the lot was \$544,000 or approximately \$175 per square foot. However, this price per square foot is as of the date of sale, July 27, 2000. Adjusting the sale price for date of sale, the price per square foot would be approximately \$185.⁵

With 3 bedrooms and 2.1 bathrooms, Benjamin was built in 1994 and has 3,116 square feet of living space. Plaintiffs' house was completed in 2000 and has 3 bedrooms and 3 1/2 bathrooms, with 3,572 square feet of living space. The Benjamin gross living space is approximately 456 square feet less than Plaintiffs' house, requiring that the sale price be increased approximately \$46,000. After adding the gross living space adjustment to the date of sale adjustment, the price per square foot would approximate \$200. Using \$200 per square foot and applying this to the number of square feet (3,572) in Plaintiffs' house, the indicated real market value of Plaintiffs

⁵ For purposes of illustrating the importance and significance of adjusting the sale price, the court used Defendant's average rate of 10 percent to adjust the sale price for the date of sale and \$100 per square foot for the living space adjustment.

property would be \$714,400.

With just these two adjustments for size and date of sale, the price per square foot is \$25 more than the unadjusted sale price. By failing to adjust these sales for differing factors that contribute to value, the persuasiveness of Plaintiffs' evidence is compromised and the comparisons are incomplete and inaccurate.

Defendant selected three recent sales and adjusted each sale. In making his date of sale adjustments, Mr. Nelson concluded that the sale price should be adjusted by 10 percent on an annual basis. In selecting 10 percent, Defendant ignored the fact that his own research confirmed that the real market value of comparable sale No. 2 increased 32 percent in a little more than two years. In the gross living area adjustment, Mr. Nelson used approximately \$100 per square foot for comparable sale 2 and 3, but \$122 per square foot for comparable sale 1. He did not provide an explanation for this difference. In addition, Mr. Nelson made "miscellaneous adjustments." He provided no written explanation of these adjustments and the court found his oral explanation vague and unsubstantiated. Unexplained adjustments compromise the validity of the market approach which is based on the "adjusted" sale price of comparable properties.

The court agrees with Defendant that comparable sale No. 2 is a strong comparable. With a composition roof similar to Plaintiffs', it is comparable in the amount of square feet of living space. It is rated a Class 5 property, and Plaintiffs believe their property should more properly be rated a Class 5. While it was built four years prior to Plaintiffs' property and is located on a smaller lot than Plaintiffs' house, the houses have numerous similar amenities. Even though Plaintiffs' house has more bathrooms, a wet bar and woodstove, it has a smaller deck, less exterior asphalt and is not a "view" property. After adjusting for the data provided by the resale of this

property, comparable sale No. 2 has an indicated real market value of \$733,000.

Plaintiffs have submitted assessed value information for tax year 2000 for all four of the other properties located in their subdivision. In pointing to this data, Plaintiffs challenge the “fairness” of their assessment in comparison to their neighbors. First, the information submitted appears to be for the year prior to the tax year at issue in this case. In addition, the issue before the court is real market value, which is not necessarily the same as assessed value because of the changes made to Oregon’s property tax system in 1997. Second, the court has previously concluded that the changes made to the property tax system in 1997 may “result in various degrees of nonuniformity in the property tax system.” *Ellis v. Lorati*, 14 OTR 525, 535 (1999). The court held that Article XI, section 11(18) of the Oregon Constitution contemplated this outcome and “excuses itself from complying with other constitutional provisions requiring uniformity, specifically Article IX, section 1, and Article I, section 32.” *Id.*

After carefully considering the testimony and data presented and looking at the properties each of the parties selected as most comparable, the court finds that the real market value of Plaintiffs’ property (land (\$124,990) and improvements (\$595,010)) for tax year 2001-2002 was \$720,000.

CONCLUSION

Now, therefore,

IT IS THE DECISION OF THIS COURT that the real market value of Plaintiffs’ property, including land and improvements, identified as Jackson County Assessor’s Account No. 1-090992-0 for tax year 2000-2001 was \$720,000.

IT IS FURTHER DECIDED that the county shall correct the assessment and tax rolls to reflect the real market value of Plaintiffs’ property as defined in ORS 308.162(2) with any refund due Plaintiffs to be promptly paid with statutory interest pursuant to

ORS 311.806 and ORS 311.812.

Dated this _____ day of September, 2002.

JILL A. TANNER
PRESIDING 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 SEPTEMBER 20, 2002. THE COURT FILED THIS DOCUMENT ON SEPTEMBER 20, 2002.