

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Small Claims
Property Tax

CLIFFORD J. MURINO and FYRNE I.)
MURINO,)
) No. 020380C
Plaintiffs,)
)
v.)
)
LINCOLN COUNTY ASSESSOR,)
)
Defendant.) **DECISION AND JUDGMENT**

Plaintiffs have appealed the real market value of their land for the 2001-02 tax year. The subject property is identified in the Lincoln County Assessor's records as Account No. R172755. Trial was held by telephone October 17, 2002. Clifford Murino appeared for Plaintiffs. H. E. "Abe" Abderhalden, an appraiser with the Lincoln County Assessor's Office, appeared for Defendant.

STATEMENT OF FACTS

At issue is the value of Plaintiffs' land, a parcel roughly one-quarter acre (.23 acre) in size located on the Alsea River in Tidewater, Oregon. The property is improved with a stick built home constructed in 1971. The value of the improvement is not at issue.

Plaintiffs object to the increase in land value that occurred in the 2000-2001 tax year, when Defendant increased the real market value of Plaintiffs' land 15.56 percent, from \$59,370 to \$68,610. Plaintiffs contend that Defendant's trend that year was in error and that the values actually declined. The real market value of \$68,610 was carried forward by Defendant to the 2001-02 tax year, which is the year under appeal. The increase in 2000-01 was applied to the entire subdivision and followed a decrease in 1999-2000 (from the prior year) of 3.24 percent. Plaintiffs' land value that year

(1999-2000) was lowered from \$61,360 to \$59,370.

Plaintiffs submitted a four-page narrative with eight exhibits in support of their value reduction request. Plaintiffs challenge Defendant's 2000 trend by demonstrating that nearby subdivisions continued to receive downward trends while theirs was increased and by showing that adjusted (residual) land values, which range from a low of \$50,528 to a high of \$59,440, support their value. Plaintiffs then present information on four recent bare land sales (July 2002) for \$55,000 and two lots (with some basic outbuildings) listed unsuccessfully for \$50,000 each before they were marketed and sold with an adjoining lot improved with a house, dock and ramp, a new deck and several outbuildings for \$167,000 in July 2002. The lots that sold for \$55,000 each are considerably larger than Plaintiffs' lot (five acres each versus Plaintiffs' .23 acre parcel) and, like the subject, are located just down the street on the Alsea River. The two lots that did not sell are not on the river, but rather on the canal that leads to the river. Plaintiffs argue these recent sales demonstrate a continued downward trend from 1999-2000 and also that the prices at least support their request for a reduction to \$59,370.

For its part, Defendant submitted a 3-page report that analyzes 5 sales of improved properties occurring in calendar years 1999 and 2001 with residual land values ranging from a low of \$65,840 to a high of \$104,430. Two of Defendant's five comparables were improved with stick built homes and the other three have manufactured homes. All had other improvements.

COURT'S ANALYSIS

Plaintiffs insist that their subdivision is no different than nearby subdivisions and that the entire subdivision should receive the same downward trend other subdivisions received for the 2000-2001 tax year. The question, however, is not whether the trend was correct but whether the real market value of Plaintiffs' land on the assessment and

tax rolls exceeds the actual market value. This is so for at least two reasons. First, the trend occurred in the 2000-2001 tax year and the tax year under appeal is 2001-02. Second, and more importantly, the issue is value and trending is simply a mechanism to arrive at a value in the years when there is no physical appraisal of the property by the assessor's office. On appeal, market evidence of value is relevant. The trend could be wrong and the value nonetheless correct.

The issue, then, is the real market value of Plaintiffs' land for the 2001-02 tax year. 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 The assessment date for the tax year at issue is January 1, 2001. ORS 308.007.

Plaintiffs bear the burden of proof. The statute provides:

"In all proceedings before the judge or a magistrate of the tax court and upon appeal therefrom, a preponderance of the evidence shall suffice to sustain the burden of proof. The burden of proof shall fall upon the party seeking affirmative relief and the burden of going forward with the evidence shall shift as in other civil litigation."

ORS 305.427.

This court has previously stated that: "[p]reponderance of the evidence means the greater weight of evidence, the more convincing evidence." *Feves v. Dept. Of Revenue*, 4 OTR 302, 312 (1971).

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The court is not persuaded that Plaintiffs have presented convincing evidence that the real market value on the roll, and sustained by the county board of property tax

¹ All references to the Oregon Revised Statutes (ORS) are to 1999.

appeals, is in error. The value on the roll is set at \$68,610.

Plaintiffs presented evidence of sales occurring roughly two years before the assessment date and sales occurring roughly one-and-one-half years after that date. Defendant objects to Plaintiffs' post-assessment date sales as too far removed from the assessment date to be relevant. However, for the reasons set forth below, the court need not resolve that issue.

Turning to Plaintiffs' preassessment date sales, Mr. Murino, who is not an appraiser, adjusted the sale prices to remove all additions to the land, and in so doing arrived at a range in value of between \$50,000 and \$60,000. However, the "land" value on the assessment and tax rolls includes on-site developments, and it is therefore inappropriate for Plaintiffs to remove the value of those features from the three comparables. ORS 307.010(3) provides in part: "[f]or purposes of assessment of property subject to assessment at assessed value under ORS 308.146, land includes any site development made to the land. 'Site development' includes fill, grading, leveling, underground utilities, underground utility connections and any other elements identified by rule of the Department of Revenue." By rule, the Department of Revenue (department) has provided a more detailed definition of site, site developments, and onsite developments which reads in part:

"(2)(a) * * * A 'site' exists when land has been improved by site developments to the point that it is, or is ready to be, used for the purpose intended.

"(A) Site developments are improvements *to the land* that become so intertwined with the land as to become inseparable. Examples are: fill, grading and leveling, utility facilities (sewer, water, etc.) * * * Site developments consist of both 'offsite developments' and 'onsite developments.

"* * * * *

"(ii) Onsite developments (OSD) are land improvements within the

site which support the buildings or other property uses. These include but are not limited to items such as grading, fill, drainage, wells, water supply systems, septic systems, utility connections, extension of utilities to any structure(s), retaining walls, landscaping, graveled driveway area.”

OAR 150-307.010.

Plaintiffs’ Lot 500 comparable (Lubbers) sold in September 1998 for \$77,500 and Plaintiffs adjust that sale price by \$26,812 to arrive at a land residual value of \$50,528. (Ptf’s Mem at 2.) However, Plaintiffs subtract \$8,000 as the value of the septic system, \$4,972 for the seawall, \$300 for the water supply, and \$500 for electricity, all of which are considered site developments which should not be removed in estimating land value, particularly when the subject property has all these features. Adding back those values increases the land residual value to \$64,300.²

Plaintiffs’ adjustments to their two other preassessment date comparables also include deductions for site developments. Plaintiffs reduce the \$67,500 sale price of Tax Lot 400 (Olson), which sold in February 1999, by \$12,972 to remove the septic system and seawall. Both adjustments are inappropriate, and the indicated value from that sale is therefor at least \$67,500³. Plaintiffs’ final preassessment date sale, which occurred in March 1998, nearly three years before the assessment date, involves Tax Lot 800 (Holmsomback), which sold for \$90,000. Plaintiffs incorrectly deduct site developments in the amount of \$15,115.⁴ Plaintiffs also make a slight error in tallying

² Plaintiffs deducted another \$8,240 as their estimate of the value of the dock and the ramp on Tax Lot 500. It is not clear to the court whether to accept that adjustment or not because the evidence is silent on the question of whether these items, which the subject also enjoys, are added to the land as on-site developments or are considered to be improvements (like other outbuildings).

³ The indicated value could be higher if the property lacked water and other improvements the subject enjoys and which are part of the land value.

⁴ Septic system (\$8,000); seawall (\$6,115); and a chain link fence and other landscaping (\$1,000) = \$15,115.

their total adjustments.⁵ Allowing Plaintiffs' adjustments for other than the septic system, the seawall and the landscaping (i.e., deducting the home and deck, etc.) results in a residual land value of \$75,420, which is roughly \$5,000 above the roll value.⁶

As corrected by the court, the range in value from Plaintiffs' preassessment date comparables is \$64,300 to \$75,420. The current roll value for Plaintiffs' land is \$68,610 and falls comfortably within that range. However, arranging the preassessment date sales in the order of occurrence (earliest first), shows an indecipherable pattern: \$75,420 (3/98), \$64,300 (9/98), \$67,500 (2/99).

Plaintiffs have four postassessment date sales for \$55,000, but those properties did not have on-site developments such as well and the septic, and they had wetlands issues. According to Plaintiffs, those lots were listed for more than \$100,000 and finally sold to a single purchaser for \$55,000 each. Adding a reasonable amount for site improvements suggests a value of roughly \$70,000. The subject property is valued at \$68,610. Plaintiffs' sales on both sides of the assessment date tend to support the roll value.

The court finds insufficient evidence to support the claim that their property is overassessed and instead finds that the January 1, 2001, roll value of \$68,610 fairly represents the value of Plaintiffs' property. That number falls midway between the preassessment date sales Plaintiffs submitted, after removing the portion of Plaintiffs' adjustments for on-site developments, which are considered part of the land value for tax purposes. The postassessment date sales do not support a lower value, whether

⁵ In addition to the adjustments set out in footnote 3 above, Plaintiffs subtract \$7,200 (manufactured home), \$2,880 (deck), \$2,000 (dock), \$1,000 (stiff arms), \$1,500 (ramp) = \$14,580.

⁶ \$90,000 - \$14,580 = \$75,420.

those sales are considered merely as a check on value, as this court ruled in *Truitt Brothers, Inc. v. Dept. of Rev.*, 10 OTR 111, 115 (1985), or as direct evidence of value, provided the sales occur “within a reasonable time *after* the assessment date[,]” as the Oregon Supreme Court has ruled in *Ernst Brothers Corp. v. Dept. of Rev.*, 320 Or 294, 305, 882 P2d 591 (1994), and subject to evidence by the opposing party of a change in market conditions. *Sabin v. Dept. of Rev.*, 270 Or 422, 427, 528 P2d 69 (1974).

CONCLUSION

The court has considered Plaintiffs’ evidence in detail and, applying the relevant provisions of the statutes and administrative rules, concludes Plaintiffs have failed to establish by a preponderance of the evidence that the real market value of their land on the rolls and identified for the 2001-02 tax year as assessor’s Account No. R172755, is in error. To the contrary, the evidence tends to support the roll value. Now, therefore,

IT IS HEREBY ADJUDGED AND DECREED that Plaintiffs’ request for a reduction in the real market value of their land as of January 1, 2001, is denied.

Dated this _____ day of November, 2002.

DAN ROBINSON
MAGISTRATE

THIS DOCUMENT WAS SIGNED BY MAGISTRATE DAN ROBINSON ON NOVEMBER 22, 2002. THE COURT FILED THIS DOCUMENT ON NOVEMBER 22, 2002.