

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

KMT CORPORATION,)	
)	
Plaintiff,)	TC-MD 020852A
)	
v.)	
)	
WALLOWA COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

The properties at issue are six unimproved lots located on Lakeshore Drive in Wallowa County. Plaintiff, through a Complaint filed on May 7, 2002, has appealed their values for the 1998-99, 1999-2000, 2000-2001, and 2001-02 tax years.

There was no appeal to the board of property tax appeals for any tax year except 2001-02. The values of the lots were set by the board of property tax appeals for the 2001-02 tax year as follows:

<u>Account No.</u>	<u>Real Market Value Set By The Assessor</u>	<u>Real Market Value Found By The Board</u>	<u>Maximum Assessed Value Found By The Assessor And Board</u>
4087	\$23,380	\$17,330	\$16,260
4088	\$23,380	\$23,380	\$16,260
4089	\$23,380	\$17,330	\$16,260
4090	\$23,380	\$23,380	\$16,260
4091	\$23,380	\$17,330	\$16,260
4092	\$23,380	\$23,380	\$16,260

Plaintiff would have the value lowered to no more than \$500 per lot. Plaintiff presented its case through one of its principals, Jack Thompson. Defendant appeared and presented her case. Trial was held in the Tax Court.

STATEMENT OF FACTS

These properties are a strip of six adjacent 100 x 150 foot rural residential lots near Joseph. Although these lots front on Lakeshore Drive, access to the properties is hampered by each lots severe upward slope, ranging from 52 to 62 percent. The

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steepness of the property is such that the slope of the ground from Lakeshore Drive to the adjacent property lines is well over 100 percent. The basis for Plaintiff's request for relief is the difficulties in developing the property, most particularly the problems securing access to the lots and a reliable water supply.

Jack Thompson, a builder of residential properties in Grants Pass for over 22 years, testified as to the problems he encountered as he attempted to develop the properties. Deciding that the best way to market the lots would be with driveways and housepads in place, he began a dialogue with the Wallowa County Public Works and Planning Departments. After his investigation he concluded development of the lots is not economically feasible.

The particular problem is that the steepness of the lots in relation to Articles 18 and 32 of the zoning code. Testimony on this point came from Monty Gordon, P.E., a structural engineer who inspected the property and prepared a report. Mr. Gordon's professional opinion was that complying with Wallowa County Planning requirements and the City of Joseph's Rural Fire Contracts would, with property of this slope, require retaining walls on both sides of any access road from Lakeshore Drive as well as the driveways to each property.

These retaining walls would be 12 feet high on their uphill side, 9 feet high on their downhill side, and as high as 20 feet at the intersection with Lakeshore Drive. Mr. Gordon's conclusion was that construction of this access road and drives would, at \$150,000 to \$200,000, be prohibitively expensive, and provide an extremely objectionable view from the east side of Lake Wallowa.

Relief from the zoning requirements is conceivably available through applying for a

variance, but Plaintiff provided informed opinion to the effect that it is extremely unlikely that a variance would be granted for a road that creates an extremely objectionable view across Lake Wallowa. The source of this opinion was D. Rahn Hostetter, P.C., a Wallowa County attorney. Mr. Hostetter gave his written opinion that it would be very difficult to obtain a variance from the Wallowa County Planning Department or Planning Commission from the road access and driveway standards applicable to residential lots at Lake Wallowa. In support of his opinion, Mr. Hostetter observed that he could not recall an instance when a variance from any zoning requirement had been allowed in Wallowa County over the past few years. The location of these lots in relation to Lake Wallowa, Mr. Hostetter concluded, made it even less likely that any variance would be granted.

An alternative to building a road to the lots from Lakeshore Drive would be to provide alternative access, arriving at them from above. This possibility was discounted by Mr. Hostetter, who observed that access to the lots from any road which might be constructed above the property was also unlikely, as one of his clients controlled access to the property and would be unwilling to relinquish his rights, and the county would be reluctant to participate in the project. Mr. Thompson confirmed that his conversations with other landowners was to the effect that they would not be willing to grant the necessary easements.

Other important testimony came from Bill Pollard, who since 1993 has owned five lots to the north of the subject properties. Mr. Pollard testified that, despite reconfiguring these lots to secure areas more amenable to development and expending three years of effort and \$15,000 in legal fees, he has not been able to get permission to improve his properties. On the basis of his experience Mr. Pollard testified that he did not think Plaintiff would be any more successful. Defendant, in questioning

Mr. Pollard, did show that he possessed other lots, also of steep topography, that had been granted building permits. However, Mr. Pollard testified that permission to develop these properties had been granted under more permissive versions of the relevant ordinances.

The last possibility discussed by Plaintiff was that of building a house on the lots without providing vehicular access. This option was dismissed by Plaintiff after identifying the difficulties in building any garages off Lakeshore Drive, as the slope would place the structures approximately 40 feet below grade.

Defendant provided a video of the properties, maps, excerpts from the assessment roll, a land analysis study, photos of the subject properties and other properties, graphics showing elevations and locations, and sales reports. In particular Defendant showed a home had been successfully developed one property removed from the lands at issue here.

COURT'S ANALYSIS

Each party is to be commended for the quality of their presentation to the court. Plaintiff's use of expert testimony, in particular that of the structural engineer, was extremely useful. Defendant's extensive use of photographs and video was very helpful in demonstrating the nature of the appraisal problem. After weighing all the evidence of both sides, the conclusion of the court is that Plaintiff is correct in its premise. The lots, under current governmental restrictions, are indeed unbuildable.

The court understands how Defendant came to assign its roll values to these properties. The properties are, after all, located in a platted subdivision. The assessor is engaged in the mass appraisal of properties. Properties along Lakeshore Drive have greater or lesser value depending upon a number of factors, among which is the slope of

the land. Adjustments are made for the differences between the properties being appraised and the model used as a benchmark.

Problems arise when unique properties are valued in mass appraisal, and the court is of the conclusion that the lots at issue are uniquely steep. The court recognizes that properties have been built on land that slopes, and that some of these properties are near to the subjects. However, they do not show as great a slope as is apparent in the lots at issue. In this respect the court cannot help but be impressed by the report of Mr. Gordon, who gave as his professional opinion that constructing a road to give access to the lots from Lakeshore Drive would be prohibitively expensive. Other information establishing that there is no likelihood of a variance being granted buttresses this conclusion.

Defendant observed that the standards imposed by the City of Joseph Rural Fire Contracts are no longer important, as fire protection is now provided by a fire district. However, the zoning restrictions alone are enough of an impediment for the court to conclude the property has a severe impediment to its value. Defendant also raised the point that access to the property might come from a source other than Lakeshore Drive, and showed photographs of an old logging road at that location. However, informed testimony established that the concerned landowners would not be granting the necessary easements, and that the county had no plans to use the tools at its disposal to create a road.

Defendant made the observation that in fact Plaintiff had not made an application to develop the property. If the record in this appeal had included such denials, they would be the best possible evidence. However, Plaintiff is not required to make its case by the best possible evidence. All that is required for Plaintiff to win relief is proof by a preponderance of the evidence, that is, a demonstration that it is more likely than not that Plaintiff's point is

correct.

Defendant also commented that Plaintiff might be able to develop the land if it combined all the accounts into a single lot. That may, or may not, be the case. However, speculations as to the highest and best use of the property are discouraged in property tax valuations. The only element that changes if the properties are combined is that the objectionable access road becomes shorter. Given the 100 percent difference in grade between Lakeshore Drive and the adjacent property lines and the 50 to 60 percent slope of the land, the court's perspective is that on this state of the record it would be speculative for it to imagine that the property would have any greater value if combined than in its present form of six individual accounts.

Other important points remain to be discussed. Plaintiff has requested relief going back to the 1998-99 tax year. The court is unable to meet this request. While under some circumstances the court is able to correct the tax roll in instances when there is no timely appeal to the board of property tax appeals, this power is limited to either properties used as a dwelling, or instances where there is good and sufficient cause excusing the failure to first appeal to the board. ORS 305.288.¹ As the lands at issue are unimproved property, and no events excuse the failure to appeal the earlier years to the board of property tax appeals, the only year for which relief might issue is the 2001-02 tax year.

Another matter addressed by Defendant is the consequences of this decision as to other vacant lots on steep slopes off Lakeshore Drive. The perspective of the court is that a property's slope is one of a series of elements influencing its value. In this appeal as to the six lots at issue, Plaintiff presented the expert opinions of a builder, a structural engineer, a local attorney, and a developer, all of which show these specific lands are not

¹ All references to the Oregon Revised Statutes (ORS) are to 2001.

currently capable of being developed. These proofs are sufficient to demonstrate the values of these specific properties. The circumstances of lands outside this specific appeal is outside the review of this court.

CONCLUSION

IT IS THE DECISION OF THIS COURT that this appeal is granted to the extent that the value of each lot is found to be \$500 for the 2001-02 tax year. No more relief is granted than this.

Dated this _____ day of February, 2003.

SCOT A. SIDERAS
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 SCOT A. SIDERAS ON FEBRUARY 28, 2003. THE COURT FILED THIS DOCUMENT ON MARCH 3, 2003.