

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Property Tax

JOHN J. ZUPAN and SANDRA J. ZUPAN,	)	
	)	
Plaintiffs,	)	TC-MD 020948D
	)	
v.	)	
	)	
MULTNOMAH COUNTY ASSESSOR,	)	
	)	
Defendant.	)	<b>DECISION</b>

Plaintiffs appeal the real market value of their property for tax year 2001-2002. A trial was held on Wednesday, June 11, 2003, in a conference room at the Multnomah County Assessment and Taxation Building, 501 S.E. Hawthorne Boulevard, Room 530, Portland, Oregon. W. Scott Phinney, Attorney at Law, appeared on behalf of Plaintiffs. David J. Carlson, Oregon State Certified Appraiser, and John Zupan testified. John Thomas, Multnomah County Counsel, appeared on behalf of Defendant. Bob Alcantara, Residential Supervisor, Multnomah County Assessment and Taxation, and Chris Crean, Attorney in the office of Multnomah County Counsel, were present.

During the trial, Plaintiffs submitted Exhibit 7 in support of their request that the court not accept Defendant's exhibit because it was not mailed within 14 days of the trial nor received by the court and Plaintiffs 10 days prior to the date of the trial. After listening to the arguments of the parties, the court commented that the court's rules concerning the exchange of exhibits had been reviewed with the parties. In addition, the trial was set over twice. Because the parties had ample time to submit their exhibits and Defendant received Plaintiffs' exhibits almost a year in advance of the date of the trial, the court granted Plaintiffs' motion to exclude Defendant's exhibit.

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## I. STATEMENT OF FACTS

Plaintiffs' property, identified as Multnomah County Assessor's Accounts R198229 and R198231, was purchased in 1993. At the time of the purchase, the property was listed as a historic property. For tax year 2001-2002, the property no longer qualified as a historic property. In adding the value (exception) to the tax roll, Defendant determined that the real market value was \$3,960,640 and the assessed value was \$2,938,930. Plaintiffs allege that the real market value is no more than \$3,000,000.

Plaintiffs' property, built in 1929, is a replica of the first owner's home located in Monte Carlo. (Ptf's' Ex 1 at 9.) With an unobstructed view of four mountains (Hood, Adams, St. Helens and Rainier), Plaintiffs' Mediterranean-style house is located approximately one mile west of the Portland city center. (*Id.*) The house is concrete with a tile roof. (*Id.*) The over 7,800 square feet of living space is located on two floors, with access between the floors provided by oak staircases and an elevator. (*Id.*) In addition, there is approximately 2,500 square feet in an unfinished basement. (*Id.* at 3.) The house has five bedrooms, three and one-half bathrooms and five fireplaces. (*Id.*) There is extensive use of tile and hardwood flooring throughout the house. (Ptf's' Ex 1 at 9.) Site improvements include a rear brick patio with an in-ground pool and built-in hot tub. (*Id.*) Plaintiffs' appraiser, David Carlson (Carlson), concluded that the "home is very well maintained." (*Id.* at 10.)

After being engaged by Timberline Mortgage, Carlson testified that he pulled 20 to 30 sales from MetroScan and RMLS and selected four sales as comparables. Carlson briefly discussed the characteristics of the four comparable sales. Because none of the unadjusted sale prices of the four comparable sales bracketed the indicated value of

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Plaintiffs' property, Carlson concluded that his estimate of value was at the "high end" of a range of value. He concluded that all of the properties rated an "excellent" rating in quality, even though he used the word "good" in his report.

In his comparable sales analysis, Carlson did not make an adjustment for time of the sale. Further, he did not adjust his indicated value for the date of assessment, January 1, 2001. Carlson testified that during the time of the sales and between January 1, 2001 and the date of his appraisal, December 20, 2001, "things were stable" with no significant rise or fall in the prices of property in this particular price range. He noted that he adjusted each of the comparable sales for differences in square footage, and number of bedrooms, bathrooms, garages and fireplaces. He made an additional adjustment for Plaintiffs' in-ground pool, heating and cooling systems and other structural differences. In response to Defendant's question, Carlson testified that the price per square foot of \$55 was used in making an adjustment for size because it was approximately one-third of the cost to construct which he estimated to be \$160.

In discussing his site or land adjustment, Carlson stipulated that he relied on the county roll for the real market value of Plaintiffs' land for the tax year 2001 and the roll value for each of the comparables for the tax year 2000. In noting his error, Carlson testified that if he had used the same tax years for the subject property and the comparables his adjustment would have been smaller, resulting in a lower indicated value for the subject property. Defendant disputed Carlson's conclusion because land or site was Carlson's largest adjustment and if that adjustment was incorrect the reliability of the appraisal report was an issue. In response to Defendant's statement that the county's appraisal of the land of the comparable sales occurred in 1993 for comparable sale 3 and 2001 for comparable sale 2, Carlson testified that he used the county values because he has found the county

assessor's values to be "generally reliable." Defendant asked Carlson why he did not use his appraisal judgment in determining the land values of his comparables. Carlson replied that because of the lack of land sales the use of the county information resulted in a consistent adjustment for the site or land.

In discussing Carlson's adjustments, Defendant asked why the gross adjustment in relation to the sales price was consistently close to but less than 25 percent. Defendant asked if, because the report followed the Fannie Mae guidelines, did Carlson stay below 25 percent so he would not need to write a statement explaining the adjustment. While acknowledging that he did follow the Fannie Mae guidelines, Carlson stated that it is important that the adjustments are consistent and his adjustments support the comparability between the subject property and the properties he selected as comparables. Defendant also reviewed with Carlson how comparable the properties selected were when compared to the subject property, specifically, Defendant noted that comparable property 4 with 3,510 square feet of living space is almost one-half the size of the subject property.

When questioned, Carlson acknowledged that his appraisal report was requested by Timberline Mortgage because Plaintiffs were seeking a loan with the subject property as collateral. He further testified that his appraisal report would accompany any sale of the loan to another party and if his appraisal report did not support the loan value he could have a potential liability. Implying that Carlson's indicated value was low rather than a real market value, Defendant asked him to explain the following statement: "No time adjustment is applied so these sales are conservative indicators of value." (Ptf's' Ex 1 at 4.) Carlson testified that he was communicating to the lender (Timberline Mortgage) that he was not making excessive adjustments and because the market conditions were

stable, there was no need to make a time adjustment.

Carlson testified that he used the cost approach as a secondary indication of his estimate of value. Using the highest cost (\$116) found in the Marshall & Swift data plus 42 percent, Carlson concluded that the cost would be \$2,250,400. Defendant clarified with Carlson that in his appraisal report the computed cost was not reproduction cost and he deducted 17 percent for depreciation based on the age of the property. Plaintiff John Zupan (Zupan) testified that he purchased the property in 1993 for \$1,575,000 and there have been no physical changes to the property since he purchased it. Zupan testified that after Timberline Mortgage received Carlson's appraisal he secured a second mortgage on the subject property in the amount of \$1,500,000. He testified that his first mortgage was approximately \$600,000.

## II. ANALYSIS

The issue before the court is the real market value of Plaintiffs' personal residence. Real market value is defined 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.<sup>1</sup> The assessment date was January 1, 2001.

Plaintiffs have the burden of proof, by a preponderance of the evidence, that they are entitled to the relief requested. ORS 305.427. "Preponderance of the evidence means the greater weight of evidence, the more convincing evidence."

*Feves v. Dept. of Revenue*, 4 OTR 302, 312 (1971). The only evidence in this case is the appraisal report and sworn testimony presented by Plaintiffs. Plaintiffs' appraiser relies

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<sup>1</sup> All references to the Oregon Revised Statutes (ORS) are to 1999.

most heavily on the market approach, which is generally the preferred method of valuing property. *Portland Canning Co. v. Tax Com.*, 241 Or 109, 404 P2d 236 (1965); *Price v. Dept. of Rev.*, 7 OTR 18 (1977). Plaintiffs' appraiser found four sales, varying in distance from one-half mile to 10 miles from Plaintiffs' property. Unadjusted sales prices ranged from \$2,100,000 to \$2,850,000. The adjusted sales prices ranged from \$2,575,800 to \$3,521,500, resulting in an indicated value of \$3,000,000. Although Defendant challenged the appraisal because it was requested by a lender, there was no indication that comparable sales were not arm's length or did not reflect the market. In addition, Defendant challenged Carlson's land values, suggesting that Carlson improperly allocated the total value between land and improvements or understated the total value of the property. However, the court has no evidence to support either allegation.

The appraisal report was dated December 20, 2001. The assessment date was January 1, 2001. According to Carlson, time adjustments were not required to the sales which closed February 2001 to October 2001 because there were "stable market conditions." With no information to the contrary, the court accepts Plaintiffs' indicated value for the assessment date of January 1, 2001.

### III. CONCLUSION

Now, therefore,

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IT IS THE DECISION OF THIS COURT that the real market value of Plaintiffs' property, identified as Multnomah County Assessor's Accounts R198229 and R198231, for tax year 2001-2002 was \$3,000,000.

Dated this \_\_\_\_\_ day of July, 2003.

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JILL A. TANNER  
PRESIDING MAGISTRATE

**IF YOU WANT TO APPEAL THIS DECISION, FILE A COMPLAINT IN THE REGULAR DIVISION OF THE OREGON TAX COURT, BY MAILING TO: 1163 STATE STREET, SALEM, OR 97301-2563; OR BY HAND DELIVERY TO: FOURTH FLOOR, 1241 STATE STREET, SALEM, OR. 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 JULY 31, 2003. THE COURT FILED THIS DOCUMENT ON JULY 31, 2003.**