

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

T.J. SCHAFFER,)	
)	
Plaintiff,)	TC-MD 030454B
)	
v.)	
)	
MARION COUNTY ASSESSOR,)	
and DEPARTMENT OF REVENUE,)	
STATE OF OREGON,)	
)	
Defendants.)	DECISION

Plaintiff appealed the assessment of property identified as Account R30768. Although the original and first and second amended complaints speak about various points as to appealing the value of improvements for the 1999-2000 through 2001-2002 tax years, at trial Plaintiff narrowed the controversy to the value of the land for the 1999-2000, 2000-2001, 2001-02, and 2002-03 tax years. Plaintiff appeared and presented his case. Scott Norris was counsel for Defendant Marion County Assessor (the county), and Jeff Proctor was its witness.

I. STATEMENT OF FACTS

The land at issue is a 7.67 acre-improved homesite a mile east of Turner at 7762 Dewdock Lane SE. It is distinguished by possessing some trees and a gradual slope from north to south. Its on-site developments include a well, septic system, and gravel access road. For the 2002-03 tax year, the board of property tax appeals found its real market value to be \$142,300. (The county's Ex A.)

The county appraised the property by comparing it to three other properties, located four miles or less from the subject, which sold in August and November of 2001. Each had comparable zoning. Unadjusted prices ranged from \$120,000 to \$185,000. The smallest parcel was 4.84 acres, the largest was 8.64 acres. After adjusting for area and, in the case of two of the sales, manufactured structures, the county arrived at a range of indicated values for Plaintiff's

property between \$161,000 and \$163,860. (*Id.*)

Plaintiff argued that those sales are not comparable to the subject property and, that as to one of the sales at 11842 Marion Road, SE, the values used in the county's analysis confused the aspects of the transaction devoted to the land and a mobile home.

Plaintiff did not present any analysis of his own as to sales that occurred at or about the assessment date of the years in question. To the extent Plaintiff presented transactional data, it was on the order of observing that he purchased the subject property decades ago at a price less than 20 percent of its current real market value on the roll.

II. ANALYSIS

Plaintiff invested a huge amount of work in presenting his appeal. The quantity of the effort demonstrates his depth of feeling, as does his assertion of trespass against the county upon its attempt to view a portion of the property. The court and, for that matter, the county respected Plaintiff's sincerity through the multiple case management conferences, interrogatories, and motions present in this appeal.

The essence of Plaintiff's argument is that the county manipulated the apportionment of value between land and improvements in a manner that places too great a value on land. Plaintiff stated that the county manipulated the tax roll between land and improvements to create a fictional tax roll that lacks transactional support. The Department of Revenue, Plaintiff avers, has been remiss in its supervision of the county when it permitted the county to make those idiosyncratic errors. To use his own terms, Plaintiff specifically states that the tax roll is corrupt, most particularly as to the assessment of land in its raw, wild state.

With the observation that the court would, if it chose, have more to say as to Plaintiff's case, the court concludes that there are two fatal errors to Plaintiff's claim.

A. *Plaintiff asserts that the ability to place a building on land, through the rights granted by a building permit, is an intangible factor that may not be taxed. The court disagrees.*

There are a host of factors that go into the character of a piece of land that effect its value. Some, such as its area, are very definitive. Others, such as the attractiveness of the view or the desirability of its location, are much less susceptible of precise measurement. The ability to lawfully construct a building on land is a definitive element that goes to the highest and best use of the property. As the market perceives those elements as more valuable, the value of the property rises in the marketplace. This court has routinely considered the ability to build on a property as a critical issue in setting its value for tax purposes, and nothing in Plaintiff's arguments causes it to depart from that conclusion.

B. *Plaintiff presented no independent evidence of transactions that demonstrated his asserted land values are correct.*

The second fatal flaw to Plaintiff's case is that he made no showing of transactions to the court that demonstrated contemporary market transactions that substantiated his conclusions. The record at trial only demonstrates Plaintiff's review of the transactions presented by the county and the reasoning and arguments as to why those sales are not comparable to his property and otherwise invalid to the issue framed by Plaintiff.

The particular problem is that, even if Plaintiff's criticisms of the county's sales are taken at their face value, that is not enough. All such a presentation does is prove the county's analysis is in error. The court cannot conclude that, because \$142,300 is an incorrect value for the real market value of the land, Plaintiff's number is the right choice. Without some proof from the market, the court will not arbitrarily substitute one number for another as the real market value of the property. The burden of proof in this proceeding is on Plaintiff. That burden requires more than Plaintiff demonstrating that the real market value on the tax roll is in error. Plaintiff must

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go on to demonstrate the appropriate correction, or at least give the court sufficient proof that the

court might infer a result at least more reliable than the number now carried on the tax roll.

III. CONCLUSION

At trial, Plaintiff narrowed the controversy to the value of the land. The court finds that Plaintiff has not demonstrated an error in the land's assessment. Plaintiff's appeal is denied as to the 2002-03 tax year. The conclusion that the tax roll shall remain unchanged also forecloses any correction as to previous tax years as to which correction was sought as well. It also follows that, as the county was not shown to be wrong in its assessment of the land, the Department of Revenue was not remiss in its supervision of the county. Now, therefore,

IT IS THE DECISION OF THIS COURT that this appeal is denied.

Dated this _____ day of May 2004.

SCOT A. SIDERAS
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 SCOT A. SIDERAS MAY 26, 2004. THE COURT FILED THIS DOCUMENT MAY 26, 2004.