

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

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|---------------------------------------|---|-----------------|
| RITA H. SCHAEFER and KURT E. FREITAG, |) | |
| husband and wife, and SANDY BOTTOMS |) | |
| PARTNERS, |) | |
| |) | |
| Plaintiffs, |) | TC-MD 040109C |
| |) | |
| v. |) | |
| |) | |
| LINCOLN COUNTY ASSESSOR, |) | |
| |) | |
| Defendant. |) | DECISION |

Plaintiffs seek a reduction in the real market value (RMV) of real property identified in the assessor’s records for the 2003-04 tax year as Account R224664. Trial was held December 8, 2004. Kurt Freitag (Freitag) appeared for Plaintiffs. Dan Christianson appeared for Defendant.

I. STATEMENT OF FACTS

The subject property is a 2000 square-foot oceanfront home in Newport built in 1997 or 1998. The home has three bedrooms and 2½ baths, and is located on a lot approximately one-half acre in size. It has city water and a septic system. Plaintiffs do not reside in the home but rent the property to overnight guests. Plaintiffs own other similar vacation rental properties. Plaintiffs report gross annual rental income for the subject property of \$40,150, and a net income of \$15,435, after subtracting housekeeping and supplies, utilities, and taxes and miscellaneous expenses.

The RMV on the tax rolls is \$373,230, with \$185,230 allocated to the land, and \$188,000 to the improvements. By their Amended Complaint, Plaintiffs assert that the true RMV is approximately \$350,000. Defendant requests that the roll value be sustained. Plaintiffs appealed the value of the property to the county board of property tax appeals (board) and the board sustained the assessor’s values.

II. ANALYSIS

The court must determine the RMV for the subject property, which is simply the amount of money the property would sell for on the open market. Oregon law defines RMV as “the amount in cash that could reasonably be expected to be paid by an informed a 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).¹ The appeal involves the 2003-04 tax year. The applicable assessment date is January 1, 2003. *See* ORS 308.210(1) and ORS 308.007. Plaintiffs are the parties seeking affirmative relief, and therefore have the burden of proof. ORS 305.427. That statute provides that “a preponderance of the evidence shall suffice to sustain the burden of proof.” *Id.* “Preponderance of the evidence means the greater weight of evidence, the more convincing evidence.” *Feves v. Dept. of Revenue*, 4 OTR 302, 312 (1971) (citation omitted). “[I]f the evidence is inconclusive or unpersuasive, the taxpayer will have failed to meet his burden of proof.” *Reed v. Dept. of Rev.*, 310 Or 260, 265, 798 P2d 235 (1990).

Plaintiffs have valued the property under the income approach and a modified cost approach. Plaintiffs contend that the comparable sales approach cannot be used because, unlike tract homes in a subdivision of similar design and lot size built by the same contractor, the subject property is unique and, as a result, there are no truly comparable properties. Plaintiffs rely primarily on the income approach because it is the approach that would be used by a potential buyer. Defendant argues that the market approach is the preferred approach and that Plaintiffs failed to meet their burden of proof at trial. Although Defendant did not present an appraisal or any other documentary evidence, Christianson noted that this court adjudicated the value of the subject property for the 1999-2000 tax year at \$336,760, and that a modest annual

¹ All references to the Oregon Revised Statutes (ORS) are to 2001.
DECISION TC-MD 040109C

trend of 3 percent suggests a value for the subject of \$379,026, which is roughly \$6,000 above the current roll value. See *Kurt E. Freitag and Rita H. Schaefer v. Lincoln County Assessor*, OTC-MD 000154A (Control) (Nov 2000).

A. Income Approach

Plaintiffs' exhibit B-2 is a document they prepared that purports to reflect "income and spending" for the period January 1, 2002 through December 31, 2002. Freitag testified that the information in the exhibit is a consolidation of income, costs, and expenses for three properties and that exhibit A-1 is a breakdown of information from exhibit B-2 pertaining to the subject property. Exhibit A-1 shows annual rental income of \$40,150 and a net income of \$15,435, after subtracting housekeeping and supplies, utilities, and taxes and miscellaneous expenses.

Plaintiffs increase net income by \$9,250 for appreciation of 3 percent, based on average nationwide appreciation for a 50-year period. Plaintiffs then capitalize the sum of those two numbers (which comes to \$24,685) at 8 percent to arrive at an estimate of value of \$308,562.50. Defendant argues against the applicability of the income approach for this property, because it is a single family residence that would not necessarily be bought for its income generating potential.

The court rejects Plaintiffs' income approach, primarily due to a lack of substantiation. Plaintiffs' rely on two documents that are simply numbers on a piece of paper. There is no way to know whether there are mistakes or misrepresentations. Moreover, the detailed information on income and expenses in exhibit B-1 is a compilation of data for three properties. The court is asked to trust that the information in exhibit A-1 is an accurate and honest extrapolation of income and expenses from exhibit B-1 for the subject property. Additionally, the court notes that Plaintiffs' expenses include mortgage payments and property taxes, which are not allowable expenses under the income approach, and travel, which would at least have to be shown to be a

DECISION TC-MD 040109C

valid expense related to the subject property and one that would be experienced by any owner, not just Plaintiffs, who live in Arizona. (Ptf's' Ex B-1.) Valuing property under the income approach is not the same as the accounting approach used to prepare an income tax return. Every expense that can be arguably associated with the property is not a valid deduction in arriving at net operating income for property valuation purposes. Additionally, without reliable information on average room and occupancy rates for the subject property, the court has no way of knowing whether the reported income is the same as potential gross income. Finally, the court questions the efficiency of the income approach for a single family residence that could be used as an owner-occupied home. Unlike a multi-unit housing complex or a hotel, the subject property has a dual use, only one of which generates income.

B. Cost Approach

Alternatively, Plaintiffs valued the property using a cost approach based on what they purport to be the market value of the land and the replacement cost of the home. Plaintiffs contend that the value of the lot is no more than \$150,000, based on an asking price of \$120,000 per acre for the 10 acres adjoining the subject, which had purportedly been on the market for three years without a sale. Plaintiffs then estimate the value of the home to be \$180,000 based on a construction cost of \$80 to \$90 per square foot. Adding those two numbers together suggests a total value for the subject of \$330,000. That number, according to Freitag, tends to support his value estimate under the "economic approach." Moreover, Freitag notes that both of his value estimates are well below the county RMV of approximately \$373,000.

The court is again troubled by the lack of substantiation. Freitag testified that construction costs on the coast run from \$80 to \$90 per square foot, but offered no evidence to support those numbers. Moreover, the \$188,000 tax roll RMV translates into a value of \$94 per square foot, just slightly above Freitag's high end range. Christianson notes that the subject is a

DECISION TC-MD 040109C

very nice oceanfront property and would command a premium on the market from an individual or family looking for a primary residence overlooking the water. There was testimony from both sides concerning the geological concerns impacting the subject property and the court assumes that such factors would drive up the cost of construction. As for Freitag's land value estimate, it is based on an uncorroborated listing, not a completed transaction. Moreover, one "sale" does not provide sufficient data from which to establish the value of another piece of property. This court has previously stated: "It is an old adage that one sale does not make a market. The sales comparison approach assumes sufficient data or information to provide a pattern or range of indicated value. It is intended and assumed to reflect 'the market' and not simply one or two buyers." *Truitt Bros. Inc. v. Department of Revenue*, 10 OTR 111, 117 (1985). Additionally, Plaintiffs built the subject property and the value of their entrepreneurial efforts must be added to the cost of the land and the improvements. Plaintiffs purchased a piece of land that they partitioned before building the home. Finally, Defendant's land RMV includes onsite developments such as the public water hookup, the septic system, electricity and telephone service, the driveway, and landscaping. The value of these items must be added to the value of the raw land. *See* OAR 150-307.010(1)(2)(a)² (providing that land includes site developments); and OAR 150-307.010(1)(2)(a)(A)(ii) (providing that onsite developments include "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").

Having rejected Plaintiffs' evidence, the court need not address in detail Defendant's contention that the market approach is the preferred approach for valuing property. The court will simply note that Defendant's contention is supported by existing case law, with the caveat

² References to Oregon Administrative Rules (OAR) are to 2001.
DECISION TC-MD 040109C

that there be adequate data of comparable sales (i.e., there must be a market for the property). See *Kem v. Dept. of Rev.*, 267 Or 111, 114, 514 P2d 1335 (1973) (“[i]f a market exists, the property should be valued by using the market data approach.” (citation omitted); *Swenson v. Dept. of Revenue*, 276 Or 1, 4, 553 P2d 351 (1976) (“[i]f there is adequate data of comparable sales, that method is used because it more directly and accurately reflects what a willing buyer would pay a willing seller for the property”). Plaintiffs have neither used that approach nor demonstrated its inapplicability. The court rejects Freitag’s contention that oceanfront property in Newport is so unique that there are simply no comparable properties from which sales could be used to value any particular oceanfront property. Freitag’s effort to establish that fact through cross-examination of Christianson was unpersuasive.

III. CONCLUSION

After reviewing the evidence, the court concludes that Plaintiffs have not shown an error in the record assessment of the subject property. Plaintiffs have failed to meet their burden of proof under ORS 305.427. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiffs’ appeal is denied and the tax roll value is sustained.

Dated this _____ day of January 2005.

DAN ROBINSON
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 DAN ROBINSON JANUARY 13, 2005. THE COURT FILED AND ENTERED THIS DOCUMENT JANUARY 13, 2005.