

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

MATTHEW RICHARDS,)	
)	
Plaintiff,)	TC-MD 040336C
)	
v.)	
)	
MALHEUR COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

Plaintiff appeals the value of his home in Nyssa, Oregon, for the 2003-04 tax year. At trial, Plaintiff appeared on his own behalf. Also testifying for Plaintiff was Ron Frank (Frank), an Oregon certified appraiser. Richard Thurmond (Thurmond), Chief Appraiser for the Malheur County Assessor’s Office, appeared and testified on behalf of Defendant.

I. STATEMENT OF FACTS

The appeal involves a newly constructed home completed in December 2002 and that Plaintiff moved into in February 2003. Plaintiff moved to Oregon from Arizona. He and his family intend to remain in the Oregon home.

The subject property is a two story, four-bedroom, 3.5 bath, stick-built home situated on a 5.16 acre lot Plaintiff bought from his father-in-law. The property is identified in the assessor’s records as Account 19725, and is zoned for exclusive farm use (EFU). Consideration for the lot is not known, but Plaintiff paid approximately \$387,000 to construct the home.

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The parties disagree as to the size of the home. According to Plaintiff, the home is 4,731 square feet¹ excluding the basement, which Frank estimates to be 224 square feet. (Ptf's Ex 2-1.) Thurmond estimates the home to be 4,433 square feet, excluding the 260 square-foot basement.² (Def's Ex A2.) Thus, the parties differ as to the amount of above-ground living space by approximately 300 square feet. None of the witnesses testified to personally measuring the home. The court reconciles the difference in size by meeting the parties in the middle, finding that the home is 4,600 square feet, excluding the basement, which the court finds to be 242 square feet.

Defendant set the real market value (RMV) of the property at \$416,490, with \$52,830 allocated to land and \$363,660 allocated to the improvements. Plaintiff appealed the value to the county board of property tax appeals (board) and the board issued an order sustaining the assessor's value. Plaintiff timely appealed to the court, requesting a reduction to \$301,801. Plaintiff estimates the value of the land to be \$29,056 and the value of the improvement to be \$272,745. Those numbers represent a 45 percent reduction for the land and a 25 percent for the improvement.

Plaintiff's evidence is of two types. First, Plaintiff researched the assessor's records and extracted land and improvement value information for properties that he deemed similar. He then compared the RMV of those properties to the assessor's RMV for his property. That information shows that Plaintiff's land has a greater value per acre than each of the three

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¹ That is the number appearing in Frank's appraisal report and is broken down as follows: 3,713 square feet on the first floor and 1,018 square feet on the second story.

² According to Thurmond, the first floor contains 3,524 square feet and the second-floor 909 square feet.

comparables. The comparables have average values per acre of \$9,685 for a 4.76 acre parcel, \$4,699 for a 10.01 acre parcel, and \$2,359 for a 32.21 acre parcel, compared to \$10,238 per acre for Plaintiff's 5.16 acre lot. (Ptf's Ex 1-1 to 1-3.) Plaintiff's land value estimate comes to \$5,631 per acre.³ Plaintiff undertook a similar analysis of assessor improvement values and found per foot values for three class five homes ranging from a low of \$31.78 to a high of \$58.25, and average per foot values of \$56.84 for class four homes, \$46.67 for class five homes, and \$86.91 for class six homes. (Ptf's Ex 4-1 and 4-2.) By comparison, Plaintiff's home is valued at \$79 per foot using the court's 4,600 size estimate (\$82 per foot using Defendant's measurements).⁴ Defendant classifies Plaintiff's home as a class six structure. (Def's Ex A2.)

The second type of evidence submitted by Plaintiff is an appraisal done by Frank that estimates the total RMV under the cost approach at \$313,689, and \$303,000 under the sales comparison approach. (Ptf's Ex 2-2.) Frank reconciles those numbers with a final market value estimate of \$305,000. (*Id.*) The date of the appraisal is December 25, 2002, one week before the applicable assessment date of January 1, 2003. *See* ORS 308.007.⁵ Frank's sales comparison approach utilizes four comparable sales, three of which involve properties located in Fruitland, Idaho. Frank's comparable one is located in Ontario, Oregon, roughly 12 miles from Nyssa by road. The adjusted sales prices for the four properties are \$299,200 (comparable one),

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³ $\$29,056 \div 5.16 \text{ acre} = \$5,631$

⁴ $\$363,660 \div 4,600 \text{ square feet} = \$79.06 \text{ per square foot}$; $\$363,660 \div 4,433 \text{ square feet} = \$82.03 \text{ per square foot}$.

⁵ All references to the Oregon Revised Statutes (ORS) are to 2001.

\$305,600 (comparable two), \$303,950 (comparable three), and \$303,550 (comparable four). (Ptf's Ex 2-2, 2-3.) Those properties had corresponding net adjustments of \$44,200, \$73,100, \$76,450, and \$88,550. (*Id.*)

Defendant submitted two exhibits. Exhibit A is identified as an appraisal report and consists of computer-generated assessment information and several drawings of the home. The exhibit includes detailed information pertaining to the construction of the home and its interior and exterior features. The information includes a value for the home by type of space (main, attic, basement) on a per foot basis under the cost approach. (Def's Ex A2.) There is also a breakdown of the land value that shows a value of \$43,680 for the bare land and \$9,150 for the on-site developments. (Def's Ex A1.) Defendant's land value estimate equates to a per acre value of \$8,465, excluding on-site developments. Defendant's exhibit B is a compilation of six land sales of lots between 3.09 and 5.01 acres. Those sales range from a low of \$5,340 per acre to a high of \$14,706 per acre. When asked by the court, Thurmond testified that sale five (reference number 18621.00), a five-acre lot that sold for \$7,000 per acre, is the most comparable to the subject. Frank agreed that it was a "good land comp."

II. ANALYSIS

The court's task is to determine the RMV of the subject property. The tax year at issue is 2003-04, and the assessment date is January 1, 2003. *See* ORS 308.210(1) and ORS 308.007.

RMV 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 Oregon Department of Revenue, the state agency responsible for overseeing Oregon's property tax system, has promulgated an administrative rule to implement

the statute quoted above. OAR 150-308.205-(A)(2)⁶ provides that, when valuing real property, the three standard approaches to value should be considered. The three approaches are: sales comparison, cost, and income. *Id.* The rule further recognizes that all three approaches may not be applicable in valuing a particular property, but requires that each be investigated. *Id.* Additionally, “only actual market transactions of property comparable to the subject, or adjusted to be comparable, shall be used” when utilizing the sales comparison approach. OAR 150-308.205-(A)(2)(c).

The court rejects Plaintiff’s assertion that the most appropriate method for valuing property is to compare the tax roll value for the subject to county tax roll values for similar properties. The statute and administrative rule referenced above require market evidence and the assessor’s tax roll values are computed using mass appraisal techniques. Those methods are recognized as an accepted approach for valuing property county-wide on an annual basis, but they are not sufficient in the context of an appeal involving the value of a particular property.

A. *Land Value*

The county is required by administrative rule to add the value of on-site developments to the bare land value in establishing a “land” value. *See* ORS 307.010(3) (providing that, for property assessment purposes, “land” includes site developments, which consist of fill, grading, and utilities, etc.); OAR 150-307.010(2)(a)(A) (defining site developments as improvements to the land, and which include utility facilities such as sewer and water). Frank’s land value estimate is \$40,500 once his \$13,000 estimate for the on-site developments is added to his \$27,500 raw land value. Defendant presented six sales of unimproved parcels between three and five acres that ranged from a low of \$5,340 per acre to a high of \$14,571 per acre. The average

⁶ All references to the Oregon Administrative Rules (OAR) are to 2001.

from the six sales is \$9,569 (rounded). Multiplying that number by the subject's size generates a value of \$49,376. The value rises to approximately \$60,000 with the addition of on-site developments. Again, the tax roll value for the subject property (excluding on-site developments) is \$43,680, which comes to \$8,465 per acre. Using the \$7,000 per acre bare land sale (Def's Ex B-1, comparable five) that the two appraisers agree is a good comparable (and perhaps the best comparable sale), the indicated land value is \$36,120 without site developments. Adding Frank's \$13,000 value for on-site developments indicates a value of \$49,120. That number compares favorably to the county's tax roll value of \$52,830. Plaintiff has the burden of proof pursuant to ORS 305.427, and Plaintiff has not demonstrated by a preponderance of the evidence that the land value should be reduced.

B. *Improvement Value*

Plaintiff asks the court to reduce the value of the improvement from \$363,660 to \$272,745. According to the evidence, Plaintiff paid \$387,000 to build the home. That translates into a cost of approximately \$84 per square foot, excluding the basement.⁷ That number decreases to approximately \$76 per foot with the cost of the basement and garage factored in.⁸ The only class six comparable presented by Plaintiff was valued by the county at \$87 per foot. (Ptf's Ex 4-1.) Plaintiff questions why Defendant classifies his home as a six as opposed to a five, but acknowledges that he does not understand Defendant's classification system.

Plaintiff's appraiser Frank testified that values in Nyssa are lower than those in Ontario, Oregon, which is the "hub" for the area. Ontario is approximately 12 miles from the subject.

⁷ $\$387,000 \div 4,600 \text{ square feet} = \84.13 .

⁸ Subtracting \$7,000 for the 242 square-foot basement, and \$29,500 for the four-bay garage (both of which are the approximate mid-range of the appraisers' values) from the \$387,000 total construction cost, reduces the per-foot value to approximately \$76.20 (using 4,600 square feet as the size of the home).

Frank also testified that Plaintiff overbuilt for the area and that after September 11, 2001, quality homes like the subject ceased being built.⁹

While there may well be some truth to Frank's economic assessment, it is difficult to believe that Plaintiff's home is worth between \$122,000 and \$135,000 less than the cost to build the home and the value of the land, even assuming the land is worth only \$40,000.¹⁰ Frank estimates the market value of the home to be \$305,000, and Plaintiff paid \$387,000 to construct the home. Frank estimates the value of the land, including site improvements, to be \$40,500, and the court found the value to be approximately \$53,000.

Looking more closely at Plaintiff's appraisal, Frank estimates the depreciated value of the home under the cost approach at \$273,189, based on a value of \$56 per foot for the finished living space, \$19 per foot for the unfinished basement, and \$15 per foot for the finished, four-bay, drive-through garage. Based on the \$387,000 total cost reported by Plaintiff, the court estimates that it cost Plaintiff approximately \$76 per foot to construct the above-ground living space, \$29 per foot for the basement, and \$24 per foot for the attached, finished garage.¹¹ Frank's final value estimate appears to be based primarily on the comparable sales approach, which shows a range of value between \$299,200 and \$305,600.

The court has difficulty accepting Frank's appraisal. To begin with, Frank made large net adjustments to each of the four sales in his appraisal. Comparable one had a positive net adjustment of \$44,200, which represents a 17.33 percent increase in the actual sales price of

⁹ September 11, 2001, is the date that terrorists commandeered commercial aircraft and flew them into two high-rise buildings in New York City and the United States Pentagon. Another airliner overtaken by terrorists was downed in a field in Pennsylvania. The event was unprecedented and did have an impact on the economy.

¹⁰ $\$387,000 + \$40,000 = \$427,000$; $\$427,000 - \$305,000 = \$122,000$.
 $\$387,000 + \$52,830 = \$439,830$; $\$439,830 - \$305,000 = \$134,830$.

¹¹ Using the appraiser's mid-range values for the basement and garage.

\$255,000. Frank's comparables two, three, and four had positive net adjustments of \$73,100, \$76,450, and \$88,550, respectively, for properties that sold for \$232,500, \$227,500, and \$215,000. That translates into percentage increases of 31.44, 33.6, and 41.1. Such sizable adjustments lead the court to question the comparability of those properties. Moreover, Frank testified that he prepared the report for the lender and was "just trying to get it approved." He stated he adjusted for size at \$25 per foot because "the underwriter doesn't like large adjustments." Yet, he valued the subject at \$56 per foot for the main living area, and the home (excluding the land) cost Plaintiff roughly \$76 per foot to build. Frank's best comparable (comparable one) sold for \$76 per foot including the land, and approximately \$67 per foot excluding the land and on-site developments (well, septic, and other items).¹²

The court rejects Plaintiff's personal effort to value the property based on the tax roll values of lesser quality homes (class five versus class six). In fact, that approach must be rejected because it is not based on market data (i.e., sales). Furthermore, the RMV on the tax rolls for Plaintiff's only class six home suggests a value for Plaintiff's improvement more than \$30,000 higher than the current tax roll value (\$395,600 versus a roll value of \$363,660). The court also rejects Plaintiff's professional appraisal for the reasons set forth above. Finally, Plaintiff acknowledges paying approximately \$23,000 more for the construction of the home than the RMV for the improvement on the tax rolls (\$387,000 cost versus \$363,660 tax rolls). For those reasons, the court finds that Plaintiff has failed to meet his statutory burden of proof.

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¹² The court arrived at the \$67 per foot improvement value by subtracting \$30,000 from the \$255,000 sale price. The \$30,000 subtraction is extracted from Frank's appraisal information, by subtracting the \$10,700 land adjustment from Frank's total land value estimate for the subject under the cost approach (bare land and site improvements).

III. CONCLUSION

After carefully considering the evidence, the court concludes that Plaintiff's request for a reduction in the RMV of the subject property, identified in the county records for the 2003-04 tax year as Account 19725, must be denied because Plaintiff has failed to establish an error in the record assessment by a preponderance of the evidence. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiff's appeal is denied.

Dated this _____ day of April 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 April 12, 2005. The court filed this document April 12, 2005.