

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Small Claims
Property Tax

WAYNE SIMPSON and NANCY SIMPSON,)	
)	
Plaintiffs,)	
)	TC-MD 040385D
v.)	
)	
UMATILLA COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION and JUDGMENT

Plaintiffs appeal the real market value of their property identified by the Umatilla County Assessor as Account 157900 (Tax Lot 16) for tax year 2003-04. A trial was held in the Umatilla County Courthouse, Pendleton, Oregon on Friday, October 15, 2004. Wayne Simpson (Simpson) appeared on behalf of Plaintiffs. Douglas R. Olsen, County Counsel, appeared on behalf of Defendant.

I. STATEMENT OF FACTS

Plaintiffs purchased a parcel of land in Pendleton, Oregon. Subsequently, the parcel of land was subdivided into 27 residential lots and the subdivision was named Royal Ridge. Plaintiffs allege that the real market value (\$41,580) of Tax Lot 16, a .36 acre parcel, as of the assessment date (January 1, 2003) was incorrect. (*See* Ptf's' Ltr, July 13, 2004; Def Ex E.) Plaintiffs challenge Defendant's method of determining real market value, alleging that Defendant based its determination of real market value on the listing price of the parcel.

In support of Plaintiffs' argument that listing price is not equivalent to real market value for their property, Plaintiffs called their first witness, Mike Jackson (Jackson), Associate Broker and co-owner of the listing agent for Plaintiffs' property. Jackson testified that in the Pendleton area the sales of buildable bare land have slowed. He stated that a listing price has "no credence to a real estate agent." Jackson testified that only the "premo" vacant lots sell at listing prices.

He discussed various subdivisions in the Pendleton area with similar characteristics as Plaintiffs' property to support his statement that listing prices and sales prices are usually not the same. He stated that he relies on a market study to determine value. On cross-examination, Jackson testified that Simpson set the listing prices for the subdivision and Jackson concluded that the property was "fairly priced."

To support their allegation that Defendant relied on the listing price to determine the real market value of the subject property, Plaintiffs called a number of Umatilla County Assessment and Taxation employees as witnesses. Bettina Engright (Engright), a property appraisal specialist for five years, testified that Angie Gallino, Chief Appraiser, gave her the "sales trends" and Engright did the clerical work of applying the trends to the listing prices.

Angie Gallino (Gallino) testified that after the tentative value was set on Plaintiffs' property in September, she reviewed the asking and selling prices of the lots in the subdivision. She inspected the property prior to determining the real market value of the property. Gallino stated that there were a sufficient number of sales in the subdivision, with "over 30 percent of the lots sold," to use as comparable sales for her determination of the real market value. She explained that the Department of Revenue's standard of valuing vacant land is 100 percent of market value less any applicable adjustments. She described how, in the mid-1990s, the county developed land curves that it used to set the value of vacant land. Gallino testified that a land curve was initially used to set the value of Plaintiffs' property, but she concluded that it did "not fit for the subdivision." She explained that, due to the lack of staff, the county has not updated its land curves. Gallino stated that she used the "best method available at the time" to determine the real market value of Plaintiffs' property. She testified that time and county resources did not permit her to perform a complete appraisal.

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adjustments to the reported sale prices of the lots sold in the subdivision. Simpson asked Butler if he knew that 150 yards of fill was included in the price paid for Lot 13, and that topsoil and fill were included in the selling price of Lots 22 and 4. Butler said he had no knowledge of fill or topsoil being placed on those lots, and he concluded that even if he had known he would not have adjusted the sales prices.

Butler testified that comparable sales are usually used in a sales ratio study and listing prices are “additional data, back-up information.” Simpson asked Butler to review the adjustments that he proposed be made to the listing prices; for example, topography, access, utilities, view, and other special adjustments such as a sump pump. (Ptf’s Ex 2.) Butler stated that Simpson’s analysis could meet the Department of Revenue standards if the adjustments could be supported.

Paul Chalmers (Chalmers), Director of the Umatilla County Department of Assessment and Taxation since his appointment in 1995, testified that it is typical to ask the staff to obtain listings for property offered for sale. He testified that he did not instruct the staff to exclusively use listing prices to set the value of Plaintiffs’ property. Chalmers testified that it is customary to ask the staff to verify and confirm sale prices. He stated that questionnaires are sent to buyers of property as part of the confirmation process. After the sales are confirmed and verified, Chalmers testified that Butler has the primary responsibility for the ratio study, which produces the trending rates used by the county. Chalmers testified that appraisal “is not an exact science.” He stated that, based on the best available information including the trending rates, the county annually determines the value of property as of the assessment date, January 1. Chalmers explained that Defendant did not make any adjustments to the listing prices because many of Plaintiffs’ properties had sold at their listing prices.

Chalmers testified that Royal Ridge is a “unique” subdivision and does not fit with the county’s previously developed land curve. He testified that the land curve was developed in

DECISION and JUDGMENT TC-MD 040385D

1995-96 and has not been updated due to the significant reduction in staff.

Simpson began his personal testimony by asking the court's permission to amend the requested relief to conform to Plaintiffs' Exhibit 2. Defendant had no objections. Plaintiffs' request was granted.

Simpson testified that in developing the subdivision he encountered various unexpected topographical obstacles, requiring changes to the original plans. He testified that, once the roads were underway, the contour changed including the cul-de-sac. In an effort to recover those additional expenses, Simpson testified that he set the asking prices high enough to "leave him some room to negotiate down." In his opinion, Simpson stated that the listing prices are the "upper end" of the range of real market value for his property. Simpson emphasized that he has not received any other offers or sales in over two years. He directed the court's attention to newspaper clippings describing the economic environment of Oregon, Portland, and Pendleton. (Ptf's' Ex 7.) He testified that of the 11 properties under appeal to this court, he received one offer for Tax Lot 27 in February 2004, and sold Tax Lot 12 in August 2004. Neither the offer nor the selling price was the original listing price. (Ptf's' Ex 4; Def's Ex D.) Simpson stated that lots in neighboring subdivisions have listing prices less than the real market value on the tax roll. (Ptf's' Ex 6; Ptf's' Ex 10 at 50.) In response to Defendant's question about the sale of various lots in the subdivision, Simpson testified that some of the lots were sold to friends, or friends of friends, before the roads were constructed. He stated that the early sales were for flat lots with unobstructed views.

The court asked Simpson how he determined the amount of each of the various adjustments he made to reach his conclusion that the average sales price for the lots sold to date was \$49,000. In response, Simpson explained that the utilities adjustment was based on \$30 a foot, the cost of the sump pump was a price he received from a vendor, and the road adjustment was based on \$20 a linear foot obtained from actual bids. (Ptf's' Ex 2.) Further, Simpson

testified that the adjustment for topography was based on the costs for gravel and stabilization of the land for contouring and building. He explained that those adjustments are reasonable. Defendant disagreed, stating through its representative, that the method proposed by Simpson is not “actual market” but based on costs.

Simpson testified that there are only two recent transactions to compare to Plaintiffs’ requested values. (Ptf’s Ex 2.) When tax Lot 12 sold in August 2004, the listing price was \$50,000 and the lot sold for \$46,000. Simpson determined that the real market value should be \$44,000. (Ptf’s Ex 2.) The tax roll value of Tax Lot 12 is \$49,500. Simpson received an offer for Tax Lot 27 in February 2004. (Ptf’s Ex 4.) Even though the listing price was \$60,000, the offer was \$46,500. Simpson testified that he made a counteroffer of \$51,000 that was rejected. His requested real market value for Tax Lot 27 is \$45,000. (Ptf’s Ex 2.) The tax roll value of Tax Lot 27 is \$59,400.

Simpson concluded his case by reminding the court that Defendant did not perform an appraisal of his land, and Defendant’s reliance on the listing prices was not in compliance with the Oregon Revised Statutes. Further, Simpson emphasized that he was able to show that the values used in the ratio study were not accurate. He voiced his concern that “neither equity nor uniformity has been achieved.”

Defendant closed by asking the court to sustain the tax roll values. Defendant stated that actual sales support the tax roll values and Defendant determined the value of Plaintiffs’ property in conformity with the Department of Revenue guidelines.

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II. ANALYSIS

The issue before the court is the 2003-04 real market value of Plaintiffs’ property. Real market value is the standard used throughout the ad valorem statutes except for special assessments. *Gangle v. Dept. of Rev.*, 13 OTR 343, 345 (1995). Real market value is defined in
DECISION and JUDGMENT TC-MD 040385D

ORS 308.205¹, which states, in relevant part:

“(1) Real market value of all property, real and personal, means 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.

“(2) Real market value in all cases shall be determined by methods and procedures in accordance with rules adopted by the Department of Revenue and in accordance with the following:

“(a) The amount a typical seller would accept or the amount a typical buyer would offer that could reasonably be expected by a seller of property.”

In valuing Plaintiffs’ property, Defendant’s determination was based on a belief that the listing price was “the amount a typical buyer would offer that could reasonably be expected by a seller” for the subject property. *Id.* This court has previously held that listing prices “establish the upper limit on the market value of the listed property.” *Martin v. Dept. of Rev.*, 8 OTR 141, 147 (1979). A listing price is nothing more than an owner’s estimate of a price that is not too high to detract buyers, but high enough to allow the parties to negotiate a final selling price that is acceptable to both the seller and buyer. Listing prices may, or may not, reflect the actual sale price of the listed property. In contrast, a prospective buyer’s offer price establishes the lower limit on the market value for the listed property. The court places little weight on offer prices “whenever more substantial evidence of value is available.” *Id.*

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In a recent Preliminary Ruling by the Regular Division of the Oregon Tax Court, the court stated that fair market value is “determined by reference to basic appraisal theory and practice - the goal of which is to estimate or approximate what an actual sale of a property would yield if such a sale occurred in a fair market.” *Norpac Foods, Inc. v. Dept. of Rev.*, ___ OTR ___ (Sept 28, 2004)(slip op at 6). While it is an acceptable appraisal practice to use the sale of lots in

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

the same subdivision as comparables to estimate the actual selling price of other lots, the lots in this subdivision are diverse in size, slope, and location within the subdivision. The parties agree that the subject property is located in a unique subdivision. The actual sales of land within the subdivision have been for parcels with unobstructed or slightly obstructed views located at, or near, the crest of the subdivision. Simpson testified that the first lots sold in the subdivision were “presales” to friends, or friends of friends. He testified that the next group of lots sold at the listing prices; however, to secure the listing prices, he incurred additional expenses when the buyers requested he add topsoil and fill to the lots as a condition of sale. Those sale prices are not the best evidence of market value because there is a question whether the sales were arm’s-length transactions and the additional costs incurred by Simpson to sell some of the lots were not documented for the court. Simpson submitted evidence suggesting that an average sale price based on the prior sales of lots in the subdivision could be adjusted for topography, access, utilities, and size. However, the court did not find convincing or documented support for how the market would adjust the real market value of the lots for each of the deficiencies or obstacles perceived by Simpson.

There is one recent market transaction to compare to the other sales. The sale of Tax Lot 12 located at the crest of the main road leading into the subdivision sold for 92 percent of the listing price. There is no reliable evidence to support Defendant’s determination that the real market value of the subject property is 99 percent of the listing price. A sale price less than the listing price supports Plaintiffs’ argument that the declining economic conditions in the Pendleton area have reduced market prices for vacant lots and those lots that are left in the subdivision are less desirable than the lots that sold before the streets were in.

Comparable in size to most of the other lots in the subdivision, Tax Lot 16 is located on the curve of the cul-de-sac. Tax Lot 24, similar in size to Tax Lot 16 but located at the crest of the subdivision with a minimal slope, sold in June 2002 for \$48,000. That sales price is \$6,000

more than the current listing price for Tax Lot 16. According to Simpson, the substantial downward slope of the lot suggests the need for a major retaining wall. There is no market evidence to suggest that Tax Lot 16 would sell for substantially less than 92 percent of the listing price other than the court's observation that Simpson is correct that there is a substantial slope to the lot. Unfortunately, there is no evidence to help the court quantify how the market would adjust the listing price or if the listing price has been already been adjusted for the slope of the lot. Using the best available evidence, the court determines that the real market value of the subject property as of the assessment date is \$37,000.

III. CONCLUSION

Based on the limited market evidence, the court concludes that the real market value of the subject property is \$37,000. Now, therefore,

IT IS ADJUDGED that the real market value of Plaintiffs' property identified by the Umatilla County Assessor as Account 157900 (Tax Lot 16) for the tax year 2003-04 is \$37,000.

Dated this _____ day of December 2004.

JILL A. TANNER
PRESIDING MAGISTRATE

THIS DOCUMENT IS FINAL AND MAY NOT BE APPEALED. ORS 305.514.

**THIS DOCUMENT WAS SIGNED BY MAGISTRATE JILL A TANNER
DECEMBER 13, 2004. THE COURT FILED THIS DOCUMENT DECEMBER 13, 2004.**