

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Small Claims
Property Tax

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| JOHN A. HAMMOND |) | |
| and ROBIN E. HAMMOND, |) | |
| |) | |
| Plaintiffs, |) | TC-MD 040666D |
| |) | |
| v. |) | |
| |) | |
| MULTNOMAH COUNTY ASSESSOR, |) | |
| |) | |
| Defendant. |) | DECISION and JUDGMENT |

Plaintiffs appeal the real market value of their property identified by the Multnomah County Assessor as Account P532094 for tax year 2003-04. A telephone trial was held on Thursday, November 4, 2004. John A. Hammond (Hammond) appeared on behalf of Plaintiffs. Dennis Wardwell (Wardwell), Appraiser, appeared on behalf of Defendant.

I. STATEMENT OF FACTS

On December 14, 2002, Hammond purchased a floating boat house (boat house) measuring 31 feet by 60 feet (1,860 square feet). (Ptf's' Ex O, Copy of Bill of Sale.) According to Hammond, the boat house was listed for sale by the original owner beginning in March 2002. At that time, the original owner offered both the boat house and water rights for a combined listing price of \$92,500. (Ptf's' Exs 1 and 2.) In September, 2002, the listing price was modified, offering a "free boat house" with the purchase of water rights for \$75,750. (Ptf's' Ex 3 and 4.) Hammond testified that, at some point prior to December 2002, the original owner sold the water rights; however, the buyer of the water rights did not want the boat house. Hammond testified that as a "condition of sale" the boat house had to be removed. It was offered to Hammond and he purchased it in December 2002, paying \$1,000. Hammond stated that it was his obligation to

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move the boat house. He described the transaction as “arms-length” and testified that the original owner was not “under duress.”

According to the parties, the boat house was constructed in 1965 and is described by Hammond as a “log and lumber (stringer) float, platform, and 2 x 4 walls. The water entrance contains a manually actuated bi-sliding door which is 17' high [Exhibit 11]. The ‘well’ size is approximately 16'W x 45'L.” (Ptf’s Contents of Complaint at 1.) (Emphasis in original.) At the time of the purchase, Hammond described the condition of the boat house as follows: “All stringers, other than the outer most two, are in various stages of rot where exposed on the outside [Exhibits 5, 6]. Two stringers had separated from the inside log of the float [Exhibit 9] creating a 4" min[imum] gap between the log and stringer. Failure due to log condition on the exterior. Exhibit 10 shows typical condition of stringer.” (*Id.* at 2-3.) In Hammond’s opinion, “The condition of the property is not sound as the materials used for construction were of the **non-treated** variety.” (*Id.* at 1.) (Emphasis in original.) Both Hammond and Wardwell agree that rot is a common problem for boat houses and is present in Hammond’s property. They agree that while some of the stringers have been replaced, others need to be replaced.

Plaintiffs appealed the 2003-04 tax roll value of the boat house to the board of property tax appeals (BOPTA). BOPTA reduced the real market value of the boat house from \$23,180 to \$14,850. (BOPTA Order dated Mar 18, 2004.) Plaintiffs appealed the BOPTA Order, asking the court to conclude that the real market value of their boat house is their purchase price, \$1,000.

In support of the real market value determined by BOPTA, Wardwell submitted seven sales of boat houses, ranging in sale price from \$950 for a 720 square foot structure (Sale 7) to \$40,000 for a 1,378 square foot structure (Sale 1). (Def’s Exs 1-7.) He testified that Sale 7 is a “run down, lower quality building with a 14-foot boat well and completely rotten float.”

(Def's Ex 7.) Wardwell testified that Sale 6 is a 648 square foot building with a float in "poor condition." (Def's Ex 6.) He stated that the building is lower quality, "with combination of wood, plastic and metal sliding", "lower" building height and "smaller boat well" with "no door." That boat house sold for \$5,000. He testified that the other sales he submitted show that boat houses of a "lower quality or class than the subject" with a "lower height" sold for considerably more than the value of the subject property set by BOPTA. Wardwell stated that the value for the subject property reflects any adjustment required for the "bad" stringers and rot noted "above the water line." Wardwell asked the court to sustain the BOPTA value for the boat house, noting that it is valued without "attention to moorage."

II. ANALYSIS

The issue before the court is the real market value of Plaintiffs' boat house as of the assessment date, January 1, 2003. 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 ORS 308.205¹ which reads:

"(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."

Keeping the statutory definition in mind, Plaintiffs conclude that the real market value of their boat house is \$1,000 because their purchase of the boat house was arm's-length and "[t]here

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

was no duress.” (Ptf’s Ex Contents of Complaint at 2.) Plaintiffs support their conclusion through Hammond’s testimony stating that the original owner of the boat house set the price.

A review of the transaction leads the court to reach a different conclusion. After having first offered both the boat house and water rights for sale, the original owner then reduced the price \$16,750, offering the boat house for “free” if someone would purchase his water rights. There was no evidence submitted as to the final sale price the original owner received for the water rights. Hammond testified that the buyer of the water rights made the removal of the boat house a condition of sale. According to Hammond, the original owner sought out Hammond and offered him the boat house at a price that, in the court’s opinion, closely matched the advertised price: a “free boat house.” (Ptf’s Exs 3 and 4.)

In the court’s opinion, the original owner was highly motivated to dispose of his property after having listed it for several months. With no buyers in sight, the original owner offered the boat house for free if someone would buy his water rights. The three-party sale with the contingency that the boat house be removed placed undue pressure on the original owner to find a buyer for the boat house or, in the alternative, pay someone to remove the boat house and sell it at a salvage value. The court concludes that Plaintiffs’ purchase price is not the real market value of the boat house because the original owner was compelled to remove the boat house in order to sell the water rights.

Defendant’s evidence of comparable sales of boat houses supports the real market value set by BOPTA. Sales of boat houses of at least 1,000 square feet ranged in sale price from \$13,275 to \$40,000. (Def’s Ex 1, 2 and 4.) Plaintiffs did not submit any evidence of comparable sales. BOPTA determined a real market value for Plaintiffs’ property of \$14,850. The two sales (Sales 2 and 4) closest to the value set by BOPTA were for lesser quality, smaller buildings that were lower in height, and with smaller boat wells than the subject property. (Def’s Exs 2 and 4.)

This evidence suggests that BOPTA may have set the value too low. However, Defendant is not asking the court to determine a value greater than that set by BOPTA. The court agrees with Defendant that the evidence supports a real market value of \$14,850.

III. CONCLUSION

Based on the evidence presented, the court concludes that the real market value of Plaintiffs' boat house for tax year 2003-04 is \$14,850, the value set by BOPTA. Now, therefore,

IT IS ADJUDGED that the real market value of Plaintiffs' property identified by Multnomah County as Account P532094 for tax year 2003-04 is \$14,850.

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 PRESIDING MAGISTRATE JILL A. TANNER ON DECEMBER 23, 2004 . THE COURT FILED THIS DOCUMENT ON DECEMBER 23, 2004.