

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

RITA H. SCHAEFER and KURT E. FREITAG,)	
husband and wife, and SANDY BOTTOMS)	
PARTNERS,)	
)	
Plaintiffs,)	TC-MD 040808C
)	
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 R509391. 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 an 1,861 square-foot oceanfront home in Newport on a half-acre lot. The home was built by Plaintiffs in 1997 or 1998 on land they purchased for \$300,000¹ and subsequently partitioned into two lots. Plaintiffs built a house on each lot. This appeal involves one of those two houses.² According to the testimony, Plaintiffs spent \$152,000 to build the home. That figure is said to include permits, architectural fees and landscaping. The home has three bedrooms and 2 ½ baths. It has city water and an on-site septic system. The RMV on the rolls is \$349,230, with \$199,570 allocated to the land, and \$149,660 to the improvements. The assessed value (AV) is \$349,140. Plaintiffs appealed the value of the property to the county

¹ Stated consideration in the deed is \$300,000, although Freitag contends the purchase price was actually \$290,000.

² The value of the other property was also appealed to this court and the trial was held the same day as the trial in the instant appeal. See OTC-MD 040109C.

board of property tax appeals (board) and the board sustained the assessor's values. Plaintiffs assert in their complaint that "[t]he proper valuation is approximately \$330,000.00." Defendant requests that the roll value be sustained.

Plaintiffs rent the property to overnight guests. They report total annual income for 2002 of \$36,640, and expenses that year of \$21,351, for a net income of \$15,289. Plaintiffs add \$8,750 to net income for appreciation based on a 50-year historical trend of 3 percent per year. Freitag capitalizes the "annualized return" of \$24,039 at 8 percent, for a value estimate of \$300,500 (rounded). Plaintiffs also value the property under the cost approach and arrive at a value in the range of \$300,000 to \$310,000. The basis for Plaintiffs' cost approach is a land value estimate of \$140,000 to \$150,000, and an improvement value of between \$150,000 and \$170,000. Plaintiffs' land value estimate is based on half the cost of the land ($\$300,000 \div 2 = \$150,000$). As for the improvement, Freitag testified that the cost of construction on the coast is between \$80 and \$90 per square foot, for a value range of between \$144,000 and \$162,000 for an 1800 square-foot home.³ Freitag noted that the actual cost of construction fits comfortably in the middle at \$152,000.

II. ANALYSIS

As Freitag noted at the close of Plaintiffs' case-in-chief, the determination of value is ultimately based on "how much it would sell for." See ORS 308.205(1)⁴ (defining 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.") The target date for determining the property's value is the

³ As noted earlier in the court's Decision, the home is actually 1861 square feet.

⁴ All references to the Oregon Revised Statutes (ORS) are to 2001, the effective law on the assessment date.

January 1, 2003, assessment date for the 2003-04 tax year. *See* ORS 308.210(1) and ORS 308.007.

Neither side valued the property under the sales comparison approach, which is one of the three accepted approaches to valuing property, and the method preferred by the courts, provided adequate data is available. *See* OAR 150-308.205-(A)⁵; *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 intentionally rejected the sales comparison approach under the belief that it was inappropriate for valuing their custom-built home, which they perceive as unique and different from any other oceanfront home. Freitag argues that, unlike valuing a 1996 Plymouth Voyager, a fungible product readily traded on the open market, the subject property is unique, like a van Gogh painting. Freitag believes that the comparable sales approach can only be used where there are many identical or very similar properties, such as tract homes in a subdivision of similar design and lot size and built by the same builder. Defendant chose not to appraise the property at all because it believed that Plaintiffs failed to meet their statutory burden of proof.

Plaintiffs are the parties seeking affirmative relief and they therefore have the burden of proof. ORS 305.427. The 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

///

⁵ References to the Oregon Administrative Rules (OAR) are to 2001.

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).

The court rejects Plaintiffs’ income approach because the financial information reported is not substantiated. Plaintiffs’ submitted an exhibit with income and expense information for three properties for the 2002 calendar year. (Ptf’s Ex B-2.) Freitag testified that Exhibit A-1 is a breakdown of information from Exhibit B-2 pertaining to the subject property. Absent substantiation, the court has no way of knowing whether Plaintiffs’ income information is accurate and reliable. There are no receipts or audited financial statements, nor is there any information on the rental rate or annual occupancy for the subject. Such information would help the court verify Plaintiffs’ income evidence. Without such information, the court has no way of knowing whether reported actual income equals potential gross, which is the starting point for determining the income to be capitalized. In his presentation, Freitag represented the size of the home as 1800 square feet, whereas Christianson testified that county records indicate the home is 1861 square feet, a claim not disputed by Freitag. There may be similar mistakes in Plaintiffs’ income and expense information. Moreover, Plaintiffs include property taxes as an expense and, in a valuation appeal, taxes are reflected in the capitalization rate and not taken as an expense because taxes will ultimately depend upon the court’s determination of the value of the property. Plaintiffs also erroneously deduct mortgage payments as an expense. For these reasons, the court cannot accept Plaintiffs’ value estimate under the income approach.

Plaintiffs’ cost approach also lacks substantiation and appears to be fundamentally flawed because it does not account for appreciation. If the cost of constructing the home was truly \$152,000 in 1997 or 1998, an allegation the court cannot verify, a conservative estimate of the appreciated value of the home is \$171,000 using Freitag’s annual 3 percent real estate

inflation rate. More importantly, simply dividing the original purchase price of the land by two based on the number of parcels created by the partition underestimates the value of the subject lot after the partition because it overlooks entrepreneurial profit. Plaintiffs purchased one buildable lot and ended up with two buildable lots. The sum of the parts is greater than the cost of the whole prior to the partition. Additionally, land value for tax purposes includes onsite developments, which include the value added by site preparation, driveway, septic, water and electric service to the home, and landscaping. *See* ORS 307.010 (providing that land includes site developments including “fill, grading, leveling, underground utilities, underground utility connections and any other elements identified by rule of the Department of Revenue”); OAR 150-307.010(1)(2)(a) (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”). Adding site developments and appreciation to Plaintiffs’ \$150,000 purchase price (which again excludes entrepreneurial profit) indicates a land value of \$197,000.⁶ Entrepreneurial profit would likely add thousands of dollars to that number. The indicated value after the court’s adjustments to land and improvements is conservatively \$368,000 (rounded), nearly \$20,000 above Defendant’s roll value of \$349,230. Defendant has not asked for an increase.

///

///

III. CONCLUSION

⁶ Adding \$20,000 in onsite developments plus five years of appreciation at three percent brings the land to \$197,077. Of course, these numbers are just estimates, but are helpful in analyzing Plaintiffs’ claim because they are tied to sound valuation principles Plaintiffs ignored.

After reviewing the evidence, the court concludes that the value of the property under appeal cannot be reduced because Plaintiffs have failed to meet their burden of proof under ORS 305.427. In fact, the evidence suggests that the tax roll value may be low, but Defendant only asked that the court sustain the tax roll value. 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 December 2004.

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 DECEMBER 30, 2004. THE COURT FILED AND ENTERED THIS DOCUMENT DECEMBER 30, 2004.