IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

RITA H. SCHAEFER and KURT E. FREITAG, husband and wife, dba, BIG FISH PARTNERS,	)	
Plaintiffs,	)	TC-MD 040809C
v.	)	
LINCOLN COUNTY ASSESSOR,	)	
Defendant.	)	**DECISION**

Plaintiffs have appealed the value of certain real property, identified in the assessor's records as Account R502286, for the 2003-04 tax year. The map and tax lot number are 10-11-32-AC-00300-00. Trial was held by telephone January 12, 2005. Kurt Freitag (Freitag) appeared for Plaintiffs. Dan Christianson (Christianson), an appraiser with the County assessor's office, appeared for Defendant.

I. STATEMENT OF FACTS

The subject property is a 4.75 acre parcel in Newport with six townhouses. The townhouses were only partially completed on the applicable assessment date of January 1, 2003. The property is located on the east side of Oceanview Drive, a street that skirts along the shoreline of the Pacific Ocean. The homes all face west and afford the owner a view of the ocean. The homes occupy approximately 1.26 acres of the total tax lot. Plaintiffs plan to develop additional homes on the remaining 3.49 acres. The development of the six townhouses here at issue constitutes Phase 1 of a four-phase development plan. Plaintiffs sold all six townhouses in 2004 for a total of $2,007,612. Three units sold in January, one in March, and two on June 5, 2004.

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Plaintiffs bought the land in April 1999 for $600,000. After the acquisition, Plaintiffs removed timber, which they sold for $61,604, and then constructed the townhouses. According to Freitag, Plaintiffs expended approximately $885,000 for construction costs prior to January 1, 2003.[1] Those costs include architectural and legal fees, as well as some landscaping. At least some utilities had been brought into the property as well. (*See* Def's Ex A-2.) Freitag testified that he spent an additional $1,785,443 after January 1, 2003, and prior to the sale of the six units in 2004. Thus, the total reported financial investment was $3,268,443, of which $1,483,000 was spent prior to the January 1 assessment date.[2]

The homes were at least 50 percent complete by January 1, 2003. The photographs submitted by Defendant and dated January 6, 2003, show that the two buildings (a four-plex and a duplex) had been framed, sided, and roofed, and that all or substantially all of the windows were installed. (Def's Ex A-1 through A-7). Some interior finish work had been done on each of the units as well. (*Id.*) Photographs of Unit F show a completed gas fireplace, finished in wood, tile and rock, painted walls, kitchen appliances and cabinets, hardwood flooring, and a ceiling fan. (Def's Exs A-5, A-6.) That unit appears to have been completely finished and ready for sale on the applicable assessment date.

The real market value (RMV) of the property on the tax rolls is $709,820, with $304,560 allocated to the land, and $405,260 allocated to the improvements. Plaintiffs contend that the proper valuation (RMV) is approximately $350,000. Defendant requests that the value on the tax rolls, which was sustained by the county board of property tax appeals (board), be sustained.

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[1] Freitag testified that he spent $823,205 plus the net gain of $61,604 from the sale of timber on construction prior to January 1, 2003, which comes to a total of $884,809.

[2] That cost includes all the land, much of which will be sold with future developed homes.

II. ANALYSIS

Plaintiffs did not submit any evidence, but relied instead on Freitag's testimony, tax roll value information, and several of Defendant's exhibits. Freitag argues that "market value" consists of the eventual sales price for the six units, less the amount spent finishing the homes after January 1, 2003. The rationale for that argument is that a hypothetical buyer on January 1, 2003, would not be interested in how much had been spent up to that point, but would instead be interested in the cost to complete the homes and the likely sales price after completion. Freitag argues that the buyer would pay some amount less than the difference between the two numbers in order to obtain a profit for his or her efforts.

In estimating the value, Freitag subtracts the proportionate value of the land sold from the total purchase price to arrive at the amount paid for the homes themselves, and adds to that the total value of the land because all the property comprised a single account on the assessment date. Following that process, Freitag subtracts one-third of the county's $316,600[3] land RMV (based on his estimate that approximately one-third of the land was sold with the six units) from the $2,007,612 total sales price to reach an improvement value of $1,902,079.[4] Freitag then subtracts the $1,785,443 additional construction costs incurred after January 1, 2003, to arrive at an improvements RMV of $116,636 as of January 1, 2003. Freitag adds to that amount the total land RMV of $316,600, to arrive at a value for the entire property of $433,236 as of January 1, 2003 (consisting of 4.75 acres and the six townhouses in their partially completed state). Recognizing the profit motive of the buyer, Freitag contends that a prospective buyer would pay only a portion of that amount, and Plaintiffs thus request a value of $350,000.

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[3] The RMV for the land on the county tax rolls is actually $304,560. Christianson testified that the $316,600 land RMV appearing in Exhibit F-1 is the appraiser's preliminary value estimate as of June 3, 2003. The number was apparently lowered to $304,560 during the process of finalizing the assessment and tax rolls

[4] $316,600 ÷ 3 = $105,533; $2,007,612 - $105,533 = $1,902,079.

Christianson submitted a number of exhibits but did not perform an appraisal of the property. Christianson noted that Plaintiffs purchased the land in 1999 for $600,000, and they are now asking the court to set the value at almost half that amount. Christianson finds it inconceivable that a portion of the land, improved with six townhouses more than 50 percent complete, could be worth less than the original cost of the raw land. Under the facts of this case, the court agrees.

RMV for purposes of property assessment and taxation "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." ORS 308.205(1).[5] RMV is to "be determined by methods and procedures in accordance with rules adopted by the Department of Revenue." ORS 308.205(2). One of the rules promulgated by the Department of Revenue provides that the sales comparison approach, the cost approach, and the income approach are all to be considered in valuing real property.
OAR 150-308.205-(A)(2)(a). Plaintiffs did not submit an appraisal or an evaluation using any of the three accepted value approaches. Freitag contends that the cost approach is inapplicable because the seller's costs are irrelevant to a prospective buyer – the buyer is only concerned with any additional costs that will be incurred, and the likely selling price. Althought there may be some theoretical merit to that methodology, the numbers in this case simply do not add up.

There is market data. All of the units sold within 18 months of the assessment date for a total price of $2,007,612. At least some (and likely all) of the on-site developments were completed by January 1, 2003, and the structures were more than 50 percent complete. That suggests a market value of at least $1 million. There is cost information. According to Freitag's

[5] References to Oregon Revised Statutes (ORS) and to Oregon Administrative Rules (OAR) are to 20001.

testimony, Plaintiffs spent a total of at least $2,820,252 prior to the sale of the six townhouses.[6] The reported costs as of January 1, 2003, are at least $1,034,809.[7] Those numbers suggest a value in the neighborhood of $1 million. The income approach is inapplicable because the townhouses were not built to produce an income stream. Plaintiffs estimate the RMV of the improvements (buildings) to be $116,636 as of January 1, 2003, yet Plaintiffs had spent $884,809 on the buildings alone by that date, and they were more than half done.

Plaintiffs argue that the legislature defined value for tax purposes as market value – that it did not define value as purchase price or cost – and that Defendant has not produced any sales to support its value. That argument overlooks two important points. First, Plaintiffs have the burden of proof and must persuade the court by a preponderance of the evidence that their value is correct, or at least that some reduction is warranted. *See* ORS 305.427. Second, although the legislature has decreed that market value is the goal, the rules promulgated by the Department of Revenue prescribe the procedure to be used in estimating market value. Those rules require consideration of the three standard approaches to value that Freitag so strenuously opposes.

According to the testimony, Plaintiffs lost something on the order of $1 million on the first phase of development. Freitag argues that real estate development is risky and that he is gambling on recouping that loss from subsequent phases of development. Frankly, the court has trouble accepting Freitag's costs. Using Plaintiffs' numbers, the cost of construction for the six

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[6] $884,809 (construction costs prior to 1/1/03) + $1,785,443 (construction costs after 1/1/03) = $2,670,252 (total construction costs excluding land). Plaintiffs paid $600,000 for the land and sold approximately 25 percent of the land, suggesting an absolute minimum bare land value of $150,000.

$2,670,252 + $150,000 = $2,820,252.

[7] $884,809 (construction costs prior to 1/1/03) + $150,000 (25 percent of land cost) = $1,034,809. The "cost" by January 1, 2003, is undoubtedly higher because the land likely appreciated in value in the four years since Plaintiffs' purchase, and the value of the developed portion of land is greater than its representative percentage of the total because it was separately approved for development (i.e., entrepreneurial profit).

townhouses is $395 per square foot.[8] That figure does not include the cost of the land. Such costs are practically unheard of. Moreover, Plaintiffs are asking the court to reduce the value to approximately one-third of the amount they reportedly spent prior to the applicable assessment date. On the evidence before it, the court will not grant Plaintiffs' request.

III. CONCLUSION

After carefully considering the evidence, the court concludes that Plaintiffs' request for a reduction in RMV for the 2003-04 tax year must be denied. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiffs' appeal is denied and the RMV on the tax rolls is sustained.

Dated this _____ day of February 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 FEBRUARY 24, 2005. THE COURT FILED AND ENTERED THIS DOCUMENT FEBRUARY 25, 2005.

[8] The court's per foot value is based on a total building cost of $2,670,252, and total area of 6,753 square feet.