

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

LAWRENCE S. PHILLIPS,)
)
 Plaintiff,) TC-MD 050120B
)
 v.)
)
 LINCOLN COUNTY ASSESSOR,)
)
 Defendant.) **DECISION**

Plaintiff appeals concerning the valuation of certain real property, identified as Account R340314, for the 2004-05 tax year.

A trial was held on October 6, 2005. Lawrence Phillips (Phillips) testified on his own behalf. Peter A. Boris, appraiser, represented Defendant. The total real market value (RMV) of the property stands at \$180,180 for the 2004-05 tax year. At trial, Defendant recommended a reduction of the RMV to \$120,000. Plaintiff contends the RMV did not exceed \$95,000 as of January 1, 2004.

I. STATEMENT OF FACTS

The subject property is a single-family residence and land located at 552 NW 56th Street in Newport, Oregon. After having been vacant for many years, it was purchased by Plaintiff on August 31, 2004, for \$95,000. The purchase of the property, listed with a local realtor, was an arms-length transaction. At the time of acquisition, the structure was in a dilapidated condition, unsafe to live in, and located within a documented geologically hazardous area.

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The parties agree there are no recent sales of property comparable to the subject.

Plaintiff introduced documents pertaining to the sale, including an engineering study and geologic permit. Phillips testified in detail at trial regarding the property's poor condition¹ and his subsequent renovation efforts. The geologic investigation concluded "that the existing home is at imminent risk in its current location on the lot. There is also the potential for the property to be impacted by eastward recession of the ocean bluff lying west of the site due to landslide activity."² Insurance coverage was not available.

Defendant offered no trial exhibits. Instead, the focus was on Plaintiff's sale of a back lot in February 2005 (after the assessment date in issue) for \$67,500. The witness spoke of the "unrealized potential" of two homesites and estimated demolition costs of \$25,000. The unsubstantiated demolition costs of \$25,000 added to the acquisition price of \$95,000 yields Defendant's recommended value at trial. No supporting evidence was presented.

II. ANALYSIS

Plaintiff's testimony was complete, coherent, and convincing. Upon reflection, given the grave problems with this property, he believes he paid a fair and negotiated value. The court concurs.

Defendant's opinions were not substantiated through exhibits; none were offered. The supposition as to potential homesites and probable demolition costs do not overcome Plaintiff's marketplace evidence and expert geologic studies.

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¹ Testimony focused on electrical, plumbing, and roof problems.

² Report by H. G. Schlicker and Associates, dated July 21, 2004, page 5, and submitted by Plaintiff with his Complaint.

Plaintiff has the burden of proof in this case and must establish his case by a “preponderance” of the evidence. See ORS 305.427.³ A “[p]reponderance of the evidence means the greater weight of evidence, the more convincing evidence.” *Feves v. Dept. of Revenue*, 4 OTR 302, 312 (1971). “[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). Here, Plaintiff’s evidence is clearly entitled to the greater weight.

III. CONCLUSION

Plaintiff’s appeal is hereby granted. Now, therefore,

IT IS THE DECISION OF THIS COURT that the 2004-05 RMV of the subject property shall be set at \$95,000. Any refund due shall be paid with statutory interest.

Dated this _____ day of April 2006.

JEFFREY S. MATTSON
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 Jeffrey S. Mattson on April 26, 2006. The Court filed and entered this document on April 26, 2006.

³ All references to the Oregon Revised Statutes (ORS) are to 2003.