IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Small Claims
Property Tax

RICHARD SCORZA and JUDITH SCORZA,	)	
	)	
Plaintiffs,	)	TC-MD 050246C (Control)
	)	050247C
v.	)	
	)	
DESCHUTES COUNTY ASSESSOR,	)	
	)	
Defendant.	)	**DECISION and JUDGMENT**

Plaintiffs have timely appealed the real market value (RMV) of two undeveloped parcels of land for the 2004-05 tax year. Trial was held August 16, 2005. Richard Scorza (Scorza) appeared and testified for Plaintiffs. John Wurst (Wurst), an appraiser with the Deschutes County assessor's office, testified for Defendant.

I. STATEMENT OF FACTS

In 2001, Plaintiffs purchased 9.69 acres of undeveloped land in Redmond, Oregon, for $200,000. Plaintiffs divided the property into three parcels pursuant to a partition completed in 2003. Parcel one is the largest of the three, at 5 acres, and is not under appeal. Parcel two is a 2 acre lot identified in the assessor's records as Account 235556. Parcel three is a 2.59 acre lot identified as Account 235557. Both parcels are valued by the county at $50,000 per acre; the RMV on the tax rolls for parcel two is $100,000, and the RMV for parcel three is $129,500.

II. ANALYSIS

RMV is defined by statute as " * * * 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."

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ORS 308.205 (1).[1] The assessment date for the 2004-05 tax year was January 1, 2004. *See generally* ORS 308.007. Although there are three accepted approaches to valuing property, only the sales comparison approach is applicable to valuing unimproved land that is not income-producing. In this case, each party relied upon the sales comparison approach.

Plaintiffs submitted evidence regarding three sales of unimproved land that they believe are comparable to the subject property. Wurst did not challenge Plaintiffs' assertion as to the comparability of two of Plaintiffs' three sales, but demonstrated through cross examination that Plaintiffs' third comparable, a 5 acre parcel that sold in October 2003, was zoned differently, and thereby implied it was not comparable.[2] Plaintiffs' comparable three is also located just outside the urban growth boundary (UGB). The court rejects that sale because of the difference in zoning and the property's location outside the UGB.

Plaintiffs' comparable sales one and two are located across the street from the subject property and carry the same zoning as the subject. Both properties are similar in size to the subject property – all of which are approximately two acres. Sale number one (Parcel 3) is a 1.87 acre lot that sold on August 15, 2002, for $69,400, or $37,112 per acre. Sale number two (Parcel 1) is a 1.54 acre lot that sold on February 10, 2002, for $69,900, or $45,390 per acre.

Defendant introduced 11 sales occurring between December 12, 2000, and April 29, 2005. (Def's Answer.) Defendant uses the average (mean) and median sale prices of the 11 comparable properties to support the roll value. Both average and median sale prices are slightly above $60,000 per acre, compared to $50,000 per acre for the subject property. Defendant's sales do not present a clear picture. The properties range in size from .99 acres to 40.06 acres,

[1] All references to the Oregon Revised Statutes (ORS) are to 2003.

[2] Plaintiffs' lots are zoned R-2 (residential, two-acre minimum) and Plaintiffs' comparable sale three, which is a 5 acre parcel, is zoned multiple use agricultural, with a 10 acre minimum required to build.

and have adjusted sale prices ranging from a low of $30,257 per acre to a high of $93,081 per acre. Those sales span a period of more than four years. Moreover, Defendant did not use any of Plaintiffs' sales, including the two across the street from the subject property (Plaintiffs' sales one and two), because Wurst testified there was a considerable change in the market between the time that those sales occurred in mid-2002 and the January 1, 2004, assessment date. Yet, Wurst used three similarly remote transactions in his collection of sales, including one that occurred in December 2000 and another in June 2001. When pressed by Scorza on cross examination, Wurst indicated a willingness to include the two nearby sales with his 11, provided a 14 percent trend was applied to adjust those sales to the applicable assessment date.

Trending is often referred to as a "time" adjustment, and is intended to account for changes in market conditions. The only indication of a change in market conditions between the date of Plaintiffs' comparable sales one and two, and the January 1, 2004, assessment date, is Wurst's testimony. That testimony is not supported by any clear market-derived evidence. In fact, Wurst testified that the trend used by the assessor's office was wrong, and in the cover letter to Defendant's exhibits, Wurst states that "[t]he sales data demonstrate that trending from year to year is difficult to follow." Thus, there is no support for a 14 percent trend, or any trend, for that matter.

After reviewing the evidence, the court is persuaded that Plaintiffs' comparable sales one and two are the best indicators of value because of their proximity to the subject property. Those sales are accepted over Defendant's sales because of the variation in the size and price of Wurst's comparables. Plaintiffs' comparable sales one and two show per acre values of $37,112 and

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$45,390.[3] Of course, those sales occurred 16 months and 22 months, respectively, before the assessment date. The court could surmise that there was a rise in the market between the date of those sales and the January 1, 2004, assessment date, because it is generally true that property values rise with time. However, in this case there is no reliable evidence demonstrating such a change, let alone the amount of such an adjustment. And, Plaintiffs' comparable sale number two sold for more per acre than sale one, but occurred roughly six and one-half months prior to the sale of Plaintiffs' comparable one. The two properties are very similar in size to each other and the subject lots, and are only separated by one other property.

III. CONCLUSION

Although the data does not present an entirely clear picture, the court concludes that the RMV of the subject property was $42,000 per acre on the applicable assessment date. Accordingly, as of January 1, 2004, parcel two (Account 235556) had a RMV of $84,000, and parcel three (account 235557) had a RMV of $108,750 (rounded). Now, therefore,

IT IS ADJUDGED that Defendant shall adjust the assessment and tax rolls in accordance with the values set forth above and refund any taxes due to Plaintiffs, with applicable statutory interest.

Dated this _____ day of September 2005.

DAN ROBINSON
MAGISTRATE

This document is final and may not be appealed. ORS 305.514.

This document was signed by Magistrate Dan Robinson September 16, 2005. The Court filed this document September 16, 2005.

[3] The court is not entirely persuaded that the most appropriate method of valuing the lots under appeal is on a per-acre basis as opposed to a per-lot basis. The zoning limits the use of each lot to one home, and typically the parcels would sell for their development potential. However, both parties used size, as opposed to development potential, as the unit of comparison.