

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

JOHN ANDREWS,)	
)	
Plaintiff,)	TC-MD 050632E
)	
v.)	
)	
CLACKAMAS COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

Plaintiff appeals the 2004-05 real market value (RMV) of the property identified as Account 05003930. A telephone trial in the matter was held with Plaintiff appearing on his own behalf and Matt Healy (Healy) appearing on behalf of Defendant. The case is ready for ruling.

I. STATEMENT OF FACTS

The subject property is Plaintiff's personal residence. The house is located in a gated community on a hillside with a view over the City of Portland. The home has a main level and, because of the hillside, a daylight basement. The main level has 2,859 square feet with two bedrooms and two baths. (Def's Ex A at 8.) The basement also has 2,859 square feet and is unfinished with plumbing, electrical, sheet rock, floor coverings, and finish work required. The house sits on the hillside in a way that affords a view throughout the entire back of the house. Plaintiff testified that the front landscaping was complete but the side and back of the home was incomplete. Plaintiff further testified that a portion of the hillside is giving way and repair work is being done to fix the problem.

For the 2004-05 tax year, Defendant assigned the property an RMV of \$857,580. Plaintiff appeals that value claiming the 2004-05 RMV should be reduced to \$509,060. For trial,
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Defendant submitted an appraisal with a recommended value for the property of \$784,000. (Def's Ex A at 16.) During trial, Healy adjusted the appraisal, reducing the recommended value to \$772,883.

In support of his claim, Plaintiff submitted three comparable sales located near the subject property. Sale 1 has a main level with 1,924 square feet and a finished basement with 1,924 square feet. (Ptf's Ex B-2; Def's Ex A at 8.) The property sold for \$665,100. Based on the sale price, Plaintiff derived a price per square foot of \$172.80. (Ptf's Ex B-2.) Sale 2 also has two levels and, according to Plaintiff, the home has a total square footage of 3,985 square feet. Dividing the sale price of \$684,950 by the square footage, Plaintiff derived a price per square foot of \$171.80. (*Id.*) Sale 3 has 4,483 square feet and sold for \$625,000, with a price per square foot of \$139.40. (*Id.*) Plaintiff acknowledges the view from Sale 3 is inferior to the subject property. Considering the information, Plaintiff concluded a price per square foot of \$171.00 should apply to his property. Multiplying that price by his finished square footage, Plaintiff arrived at a value of \$489,060. He then attributed \$20,000 to the unfinished basement for a total recommended value of \$509,060. (*Id.*)

Defendant also submitted comparable sales in support of its value conclusion. Sales 1 and 2 were the same as Plaintiff's Sales 1 and 2. For Sale 1, Healy concluded the property had a view similar to the subject but that its quality was average plus, compared to good for the subject. (Def's Ex A at 8.) Therefore, he adjusted the price up \$50,000 to account for the quality. He also adjusted the price down \$28,000 for time. Sale 1 has four bedrooms and 3.5 baths, so Healy adjusted the price down \$3,000 to account for the additional bathroom.¹ The first floor of Sale 1 has 1,924 square feet. Using an adjustment of \$97 per square foot for the main living area, Healy

¹ Although not specifically discussed, based on the appraisal, it appears Defendant made no adjustment for the additional bedrooms.

increased the price by \$90,700. For basements, Defendant applied a price adjustment for finished space of \$55 per square foot and, for unfinished space, \$24 per square foot. Based on those figures, Healy decreased the sale price by \$37,200. Finally, he decreased the price by \$2,000 for a heat pump, compared with forced air, and increased the price by \$2,000 because the subject has two fireplaces and a wood stove, compared with the comparable's two fireplaces. After making the various adjustments, Healy derived an adjusted sale price of \$737,600 for Sale 1. (*Id.*)

For Sale 2, Healy adjusted for time, air conditioning, and bathrooms. (*Id.*) In addition, Healy increased the value by \$32,500, concluding Sale 2 had a good view, compared to the subject's excellent view. Healy also increased the value \$100,000 for quality. For the square footage adjustments, Healy determined the property had a total square footage of 5,047 square feet. That is in contrast to Plaintiff's Sale 2 square footage of 3,985, which is the same property. In support of his square footage, Plaintiff submitted a floor plan by Mascord Design Associates showing the plan used for Sale 2. (Ptf's Ex B-5.) It shows the main floor with 2,172 square feet and the lower level with 1,813 square feet for a total of 3,985 square feet. Plaintiff testified the home was built according to the design. Healy testified that the appraiser notes for Sale 2 indicate an appraiser visited the property during construction and measured the home. In doing so, the appraiser indicated total square footage of 5,047 square feet. Applying the square footage adjustments, Healy decreased the price by \$42,300. After applying all of the adjustments, Healy arrived at an adjusted sale price of \$792,050. (*Id.*)

Defendant's Sale 3 was not used by Plaintiff. It sold in September 2005, over one and one-half years after the assessment date. (*Id.*) Due to the length of time, Healy adjusted the price down by \$132,800. Healy also adjusted the sale for view, additional bath, and lack of

woodstove. Sale 3 has 2,708 square feet on the main floor and 2,171 square feet in the basement, with 1,881 square feet being finished space. Applying all the adjustments, Healy arrived at an adjusted sale price of \$789,000. (*Id.*)

Defendant's Sale 4 is located outside the subject's neighborhood. Healy adjusted it down for time, an additional bath, air conditioning, and one fireplace (compared to the subject's two fireplaces and one woodstove); and up for location and the two-car garage (compared to Plaintiff's three-car garage). Sale 4 has 1,640 square feet on the main level and 3,826 square feet of finished space on the lower level. Applying all the adjustments, Healy arrived at an adjusted sale price of \$765,400. (*Id.*)

Healy arrived at the following adjusted sale prices: Sale 1 - \$737,600, Sale 2 - \$792,050, Sale 3 - \$789,000, and Sale 4 - \$765,400. Giving the first three sales the most weight, Defendant arrived at a final recommended value of \$772,883.

II. ANALYSIS

ORS 305.427² provides that in proceedings before the Tax Court, “[t]he burden of proof shall fall upon the party seeking affirmative relief.” Because Plaintiff is seeking relief in this case, he has the burden of proof. That means Plaintiff must establish his claim “by a preponderance of the evidence, or the more convincing or greater weight of evidence.” *Schaefer v. Dept. of Rev.*, TC No 4530 (July 12, 2001) (citing *Feves v. Dept. of Revenue*, 4 OTR 302 (1971)).

The court's task is to determine the RMV of the subject property. Plaintiff's approach looks to comparable sales, derives a price per square foot, and applies that price to the subject property's finished square footage. The flaw is that Plaintiff fails to adjust those sales for

² All references to the Oregon Revised Statutes(ORS) are to 2005.

differences. Further, Healy pointed out to Plaintiff that applying a price per square foot of \$171 to the subject home, if finished, would result in a value of \$978,000. Plaintiff acknowledged that value would be too high. But, Plaintiff observed that, with the additional finished space, the square footage would double and price per square foot typically decreases as the square footage increases. The court generally agrees with Plaintiff's observation. The problem, however, is that Plaintiff did not apply that principle to his own analysis. He used the price per square foot of homes with substantially more finished space than the subject home. To apply his principle, Plaintiff should have applied a higher price per square foot to the subject property.

In addition, Plaintiff attributed only \$20,000 to the unfinished basement. When asked how he arrived at that value, Plaintiff testified that it was his feel for what the market would pay and that he had discussed the matter with a few realtors. In his opinion, the basement provides little attraction to a potential buyer, even though it doubles the size of the home. Reviewing the information, the court is not persuaded that only a \$20,000 adjustment is warranted. Plaintiff offered no evidence to support his opinion and, when finished, the basement substantially increases the finished space of the home.

Defendant's analysis is not without its problems as well. Reviewing the four sales, the court finds Sale 1 is most comparable to the subject. That sale had an adjusted sale price of \$737,600. The parties disagreed over the square footage for Sale 2. Plaintiff offered a floorplan from the designer of the property, and Defendant offered testimony of measurements. Balancing the two, Plaintiff's evidence carries greater weight. As a result, the court will not consider Defendant's adjustments to Sale 2. Sale 3 may be comparable, yet it occurred 20 months after the assessment date.

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Balancing all the evidence submitted, the court is more persuaded by Defendant's approach to value. However, given the problems with Sales 2 and 3, as discussed above, the court finds more weight needs to be placed on Sale 1. After consideration, the court finds a more reasonable value for the subject property is \$740,000.

III. CONCLUSION

After considering all the evidence submitted, the court finds the subject property's RMV is \$740,000. Now, therefore,

IT IS THE DECISION OF THIS COURT that the 2004-05 RMV of the property identified as Account 05003930 is \$740,000.

Dated this _____ day of November 2006.

COYREEN R. WEIDNER
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 Coyreen R. Weidner on November 30, 2006. The Court filed and entered this document on November 30, 2006.