

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

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|----------------------------|---|-----------------|
| HAIXING GUO and SHAN MENG, |) | |
| |) | |
| Plaintiffs, |) | TC-MD 060080D |
| |) | |
| v. |) | |
| |) | |
| MULTNOMAH COUNTY ASSESSOR, |) | |
| |) | |
| Defendant. |) | DECISION |

Plaintiffs appeal a board of property tax appeals (BOPTA) Order sustaining the real market value of the subject property.¹ A telephone trial was held July 17, 2006. Haixing Guo (Guo) appeared for Plaintiffs. Keith Michel (Michel), an appraiser for Multnomah County, appeared for Defendant. Both parties submitted evidence to the court before the date of trial. Plaintiffs submitted a cost estimate to finish the house, from Double J Construction, dated April 17, 2006, and Defendant submitted a Construction Contractors Board Investigation Report and Recommendations, dated February 27, 2006. Neither party submitted an appraisal. The record closed July 17, 2006.

Preliminary Matters

Plaintiffs initially requested that the real market value of the subject property be reduced to \$500,000. (Ptf's' Ltr, Mar 23, 2006.) At trial, however, Guo requested that the real market value

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¹ Plaintiffs' property is identified in Defendant's records as Account R255446.

be lowered to “around \$600,000.”² Defendant asks the court to determine a real market value of \$661,800.

I. STATEMENT OF FACTS

Plaintiffs entered into an agreement to purchase the subject property in May 2005. The sale closed on July 14, 2005, for \$758,000. Guo submitted a copy of the Addendum to Real Estate Sale Agreement (Addendum), dated June 15, 2005. The Addendum lists numerous repair and installation obligations of the seller. When the seller did not complete his obligations to the satisfaction of Plaintiffs, they filed a claim with the Construction Contractors Board (CCB).

CCB inspected the property and prepared a detailed report, dated February 27, 2006.

(Def’s Ex 1.) Using the CCB report, Plaintiffs contacted Double J Construction for an estimate of the cost to complete each item listed in the report. Plaintiffs received an estimate from Double J Construction in April 2006, stating that it would cost \$133,180. (Ptf’s Ex A.)

Defendant inspected the subject property on April 20, 2006. Defendant acknowledges that repairs and installations need to be made, but stated at trial, that without an appraisal it is difficult to know the value of such items. Defendant was willing, however, to accept the Double J Construction estimate. Defendant disputes \$37,300 of these costs.³ The disputed costs are listed in the table below.

² During the telephone trial, Guo stated that the \$600,000 real market value is based on a settlement offer from the county made at the beginning of the appeal process.

Michel testified that the \$600,000 settlement offer was based on findings made during an exterior inspection of the property in November 2004, and the appraiser’s belief that the house was under construction as of the assessment date, January 1, 2005. Michel further testified that subsequently he concluded that the house was complete as of the assessment date and the county’s current estimate of value is based on the house being 100 percent complete.

³ Defendant’s proposed real market value (\$661,800) is found by taking the real market value (\$757,680) on the tax roll and subtracting the Double J Construction estimate (\$133,180) reduced for the above items (\$37,300).

| ITEM NUMBER⁴ | DESCRIPTION | AMOUNT |
|--------------------------------|--|-----------------|
| 2 | Repair Jacuzzi tub drainage in master bedroom | \$300 |
| 6 | Repair light under the microwave and in kitchen | \$2,500 |
| 9 | Install door at top of stairway leading to the basement and repair air conditioning to cool house between floors within 10 degrees of each other | \$6,000 |
| 13 | Turn on the gas on the deck | \$1,500 |
| 14 | Smooth the driveway connection to the main road | \$2,000 |
| 16 | Determine reason there is a gas smell and repair if possible. | \$3,000 |
| 21 | Repaint interior of house | \$7,000 |
| 26 | Increase gas flow to cook top in kitchen | \$2,000 |
| 27 | Professionally clean the house | \$1,200 |
| 49 | Install satellite cable connections and add A-B switches | \$4,000 |
| 50 | Finish crawl space | \$5,000 |
| 51 | Move light in crawl space to center | \$600 |
| 65 | Repair bent ceiling in the study room and loft | \$1,000 |
| 95 | Install door on lower deck | \$500 |
| 107 | Replace oven trim to match the toe kick | \$700 |
| | TOTAL | \$37,300 |

Defendant's dispute with each of the above items is based on the findings of the CCB.⁵

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⁴ The item number refers to the Double J Construction estimate dated April 17, 2006. Those numbers coincide with the item numbers on the CCB report dated February 7, 2006. (Def's Ex 1.)

⁵ The CCB Investigation Report gives a detailed summary of each of the items in question along with its recommended action. There is a common theme running through the items on Defendant's list: the work done by the original contractor meets building code or the CCB investigator determined that no further work or repairs were needed.

At trial, Guo took exception to Defendant's exclusion of item 21, repainting the interior of the house. Plaintiffs stated that it was dark when the investigator from CCB was conducting his investigation and that he was, therefore, unable to see certain areas of the interior of the house that needed to be repainted. According to Guo, the original contractor did repaint the kitchen. There is one additional item that Plaintiffs would like added to the costs: the installation of a central vacuum system, stated in the Sales Addendum dated June 15, 2005. The Double J Construction Estimate, lists the cost of the central vacuum system at \$1,000. (*See* Ptf's' Ex A at 7.) Defendant did not include the vacuum in the list of disputed items.

Plaintiffs also introduced a comparable sale in their Complaint. They state that the "comparable house price from the appraisal report is \$712,500." (Ptf's' Ltr at 2, Feb 27, 2006.) That single statement is the only reference to a comparable sale provided by either Plaintiffs or Defendant. The appraisal report referenced by Plaintiffs was not provided to the court.

In addition to disputing the value of the improvements, Plaintiffs also raised an issue relating to the value of their land. The tax roll value of Plaintiffs' 18,000 square foot lot is \$178,000. Guo testified that there is a 5,000 square foot portion of his lot that is unusable and has "no value" to taxpayers. Guo further stated he wished to return that piece of land to the city; however, as of the assessment date he owned the land. Guo computed the value of the 5,000 square foot portion by multiplying the tax roll value of \$178,000 by 5,000 square feet divided by 18,000 square feet (\$49,444). He asked the court to reduce the land value by \$49,444. Defendant offered no testimony on this issue.

At the conclusion of the trial, Guo again requested that the real market value be reduced to \$600,000, and Defendant reiterated that the real market value is \$661,800.

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II. ANALYSIS

Plaintiffs appeal the 2005-06 real market value of their property. “Real market value is the standard used throughout the ad valorem statutes except for special assessments.”

Richardson v. Clackamas County Assessor, TC-MD No 020869D, WL 21263620, at *2 (Mar 26, 2003) (citing *Gangle v. Dept. of Rev.*, 13 OTR 343, 345 (1995)). Real market value is defined in ORS 308.205(1),⁶ which reads:

“Real market value of all property, real and personal, 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.”

The court looks for “arm’s length sale transactions of property similar in size, quality, age and location” to a plaintiff’s property in order to determine the real market value.

Richardson, TC-MD No 020869D at *3. The Oregon Supreme Court has stated:

“If the sale is a recent, voluntary, arm’s length transaction between a buyer and seller, both of whom are knowledgeable and willing, then the sales price, while certainly not conclusive, is very persuasive of the market value.”

Kem v. Dept. of Rev., 267 OR 111, 114, 514 P2d 1335 (1973). In addition, this court has held that “the sale of the subject property deserves considerable weight.” *Summerset Village Joint Venture v. Marion County Assessor*, TC-MD No 010317D at 4 (Jan 29, 2003) (citations omitted.)

Plaintiffs paid \$758,000 for their property. Without evidence to the contrary, Plaintiffs’ negotiated arm’s length purchase would support a real market value of \$758,000. The tax roll for the subject property lists the real market values of land at \$178,000 and improvements at \$579,680, making the total real market value \$757,680.

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⁶ All references to the Oregon Revised Statutes (ORS) are to 2003.

Plaintiffs bear the burden of proof, by a preponderance of the evidence, that they are entitled to their requested relief. *See* ORS 305.427. This court has defined preponderance of the evidence to mean “the greater weight of evidence, the more convincing evidence.” *Bergevin v. Marion County Assessor*, TC-MD No 030451D, WL 23004998, at *2 (Dec 15, 2003) (citing *Feves v. Dept. of Rev.*, 4 OTR 302, 312 (1971)). Plaintiffs must do more than criticize the county’s position; they must provide “competent evidence” of the real market value of the property. *See id.* at *3 (holding that simply referencing a sale without offering other documentation to support its testimony does not satisfy plaintiff’s burden of proof).

Competent evidence is an appraisal report, comparable sales, or testimony from licensed professionals such as certified appraisers. In this case, Plaintiffs failed to submit an appraisal and referenced one comparable sale, but failed to provide supporting evidence.

Plaintiffs asked the court to determine a real market value of \$600,000, but offered no evidence to support their estimate of value, other than referencing a settlement offer made by Defendant. Defendant convincingly explained that its settlement offer was based on an incorrect conclusion that the house was incomplete as of the assessment date.

As previously stated, Plaintiffs paid \$758,000 for the property at issue. Because this court has held that the sale of the subject property deserves “considerable weight,” with no other evidence, the court could reasonably conclude that the purchase price is the real market value of the property. However, both parties agree that as of the assessment date, the real market value was not Plaintiffs’ purchase price.

Michel presented the court with the most reasonable estimate of real market value. He arrived at a real market value for the subject property by starting with the \$757,680 real market value of the property on the tax roll, which was sustained by BOPTA. Michel reviewed the

Double J Construction estimate and the CCB report. He found items that he concluded should not be deducted from the property's real market value. Michel's conclusion was based on the CCB investigator's report stating that the work done by the original contractor met building code, or that the requested repair had been completed, or was unnecessary. Michel then subtracted the total amount of the items he concluded should not be included in the real market value from the tax roll value, to arrive at a real market value of \$661,880.

The court agrees with Michel's determination of real market value with one exception. The Double J Construction estimate and CCB report include an estimated cost of \$400 to clean the windows of the subject property. The CCB report states that there is "no industry standard" for window cleaning, and the court concludes that this item should be removed from the allowable reduction to Michel's estimate of real market value.

The real market value of Plaintiffs' land on the tax roll is \$178,000. During trial, Plaintiffs requested that the court reduce the value of the land because Guo believes that the 5,000 square feet is "unusable." Guo testified that it has no value. However, the limited evidence offered as to the value of the 5,000 square feet does not persuade the court that this portion of Plaintiffs' lot has no value. It is landscaped with barkdust and provides access to another street. It obviously has some real market value. Without competent evidence as to how Plaintiffs' land value is reduced by this portion of the lot, if at all, the court accepts the \$178,000 real market value of the land determined by BOPTA.

III. CONCLUSION

Plaintiffs have failed to meet their burden of proof and their requested relief is denied. However, because the parties agree that the real market value of the subject property as of the assessment date was less than Plaintiffs' original purchase price, the court accepts Defendant's

determination of real market value with one additional adjustment for an item identified as window cleaning in the amount of \$400. Now, therefore,

IT IS THE DECISION OF THIS COURT that the real market value of Plaintiffs' property identified as Account R255446 for tax year 2005-06 is \$662,200.

Dated this _____ day of September 2006.

JILL A. TANNER
PRESIDING 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 Presiding Magistrate Jill A. Tanner on September 18, 2006. The Court filed and entered this document on September 18, 2006.