

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Property Tax

DOUGLAS G. FOSTER and DIANE B. FOSTER,	)	
	)	
Plaintiffs,	)	
	)	TC-MD 060081B
v.	)	
	)	
MULTNOMAH COUNTY ASSESSOR,	)	
	)	
Defendant.	)	<b>DECISION</b>
	)	

Plaintiffs appeal concerning certain real property assessments for the 2005-06 tax year.

A trial was convened on December 13, 2006. Douglas G. Foster appeared for Plaintiffs; Heather Adams (Adams), real estate broker, appeared as a witness. Alan Kind, appraiser, represented Defendant.

The total real market value (RMV) stands at \$501,270, with \$224,000 allocated to land and \$277,270 to improvements. Plaintiffs seek a total RMV of \$420,161, allocating \$142,891 to land and \$277,270 to improvements. Plaintiffs do not contest the RMV of those improvements. Instead, they contend the land is valued in excess of its RMV and seek a \$81,109 reduction in that component.

I. STATEMENT OF FACTS

The subject property<sup>1</sup> is improved with a single-family residence located at 3207 Northwest Luray Terrace in Portland, Oregon. The land size is .43 acres. The parties agree the highest and best use of the land is its current use, the site of a single home. Zoning would not allow the placement of a second living structure.

---

<sup>1</sup> Account R316741.

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

Regarding the claim of overvaluation, Plaintiffs focused on two items: topography problems and zoning concerns.

*Topography Problems* - Plaintiffs presented information purporting to show an average steepness of 59 percent. They claim that impacts the value of the property and renders the balance of the lot “unusable for any purpose.” (Ptf’s Compl at 2.)

*Zoning & Environmental Protection Overlays* - The Complaint contends “virtually all the parcel is zoned \* \* \* R7P (Environmental Protection Zone) or R7C (Environmental Conservation Zone), \* \* \* these two Environmental Zones vastly restrict the use of this parcel and limit it’s (sic) potential value.” (Ptf’s Compl at 4, 5.)

Plaintiffs offered the testimony of Adams, a local real estate broker. She stated she did not appraise the subject property and presented no strong opinion as to its RMV, either as of the assessment date or at the time of trial. She provided information concerning three 2005 sales of improved lots. They varied in size, ranging from 1,535 to 3,720 square feet. She made no adjustments for differences, but computed an average of \$193 per square foot for both land and structures. That is the price used by Plaintiffs in computing their requested relief.

Defendant offered no trial exhibits. The appraiser testified as to certain neighborhood properties that recently sold. However, he did not provide notice of the details to Plaintiffs prior to trial. Plaintiffs raised an objection at trial. The court finds that the spirit of Tax Court Rules - Magistrate Division Rule 10 was violated. As a result, the court will exclude that specific evidence and will not consider those details in evaluating this case.

The remainder of Defendant’s presentation was criticism of and observations about Plaintiffs’ claims and arguments. The witness contended that the property’s fine location was the

///

most important valuation factor, not merely topography. In his view, the environmental overlays did not substantially impact the current use of the subject property.

## II. ANALYSIS

Plaintiffs' testimony was presented in an orderly fashion. It focused on averages, trends, and mathematical computations. However, Plaintiffs' opinions were not adequately correlated to market sales evidence.

Here, the bulk of the land value lies in support of the residence, a single homesite. The remainder is allocated to the adjacent land and is not necessarily topographically dependent. Although there might be some slight impact on the land's use, there was no correlation to a value reduction based on market evidence. The key issue is how to quantify any such impact on value.

Plaintiffs' reliance on averages raises other significant problems. As to Adams' three sales, vastly different conclusions could be drawn. For instance, sale two might be omitted for key differences (square footage, number of bedrooms and the year built). If it were omitted, then the average of the two remaining transactions would be \$219 per square foot, with a computed land value of \$203,847. That is within nine percent of Defendant's RMV.

Finally, often serious difficulties arise when deriving averages that include both land and improvements lumped together. Better approaches may be available to establish a lower land value. Those might include examining bare land sales and adding onsite development costs. Another way may be to select comparable improved sales, make appropriate adjustments for differences, and deduct the proper sum for the improvements, leaving an indicated land residual value.

///

///

///

Plaintiffs have the burden of proof in this case and must establish their case by a “preponderance” of the evidence. See ORS 305.427.<sup>2</sup> 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, Plaintiffs’ evidence fails to meet that standard.

### III. CONCLUSION

Now, therefore,

IT IS THE DECISION OF THIS COURT that the appeal is denied.

Dated this \_\_\_\_\_ day of January 2007.

---

JEFFREY S. MATTSO  
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 January 31, 2007. The Court filed and entered this document on January 31, 2007.***

---

<sup>2</sup> All references to the Oregon Revised Statutes (ORS) are to 2003.