IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

KENNETH A. THOMAS,	)	
	)	
Plaintiff,	)	TC-MD 060314A
	)	
v.	)	
	)	
WASCO COUNTY ASSESSOR,	)	
	)	
Defendant.	)	**DECISION**

Plaintiff appeals concerning certain real property assessments (land only) for the 2005-06 tax year. The Wasco County Board of Property Tax Appeals set the real market value (RMV) at $25,160; Plaintiff seeks a reduction.

A trial was convened on November 28, 2006. Kenneth A. Thomas appeared on his own behalf. Darlene K. Lufkin (Lufkin), certified appraiser, represented Defendant.

I. STATEMENT OF FACTS

The subject property[1] is 10.01 acres of land located in rural Wasco County. The zoning is F2-80, which signifies 80 acres is the ususal minimum parcel size. Other lots in the area are typically in excess of 40 acres each. Because of the subject property's size, residential utilization is not an outright permitted use. There is no physical access to the site via existing roads.

Plaintiff acquired the land on January 5, 2005, via a Wasco County auction of surplus land. (Ptf's Compl at 18-20.) Prior to that transaction, county presale publicity listed the lot as having an estimated $7,120 RMV. Plaintiff paid $8,000. Defendant maintains that purchase price cannot be used as a true indicator of value because it was a distressed sale not at arm's length.

[1] Account 382.

Defendant examined sales that occurred within Wasco County. The witness testified there were no transactions of truly comparable properties. In the cover summary to Defendant's exhibits, Lufkin stated key factors critical to the subject included location, restrictive zoning and difficult physical access. (Def's cover summary at 2, Nov 6, 2006.)

If a given parcel is shown to be unbuildable, the Wasco County Assessor typically applies a 50 percent reduction to the RMV indicated for a single-family homesite. That has not yet been done for the subject property as Plaintiff has not made a formal application nor appealed any adverse rulings as to land use to a higher level.

In this instance, Plaintiff has taken substantial steps to show the property cannot be improved with a residence. In an email message sent to the County Planning office on September 18, 2006,[2] Plaintiff asked: "In short, at this time zoning does not allow a residential dwelling on a stand-alone 10 acre parcel as this one. Correct?" Later that same date, Dawn Baird from Planning replied:

> "I can't say absolutely not until someone goes through the process and gets denied. It's fair to say that because it does not appear to meet standards for a dwelling in the Forest zone, staff would have to *deny a request* for a dwelling at this time. Appeals to Planning Commission and County Court would *unlikely change this outcome*."

(Def's email, Sept 18, 2006.) (Emphasis added.)

Defendant rejects this, and similar advice, as not indicative of any likely planning actions.

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[2] The parties agreed the situation was similar on the assessment date of January 1, 2005.

II. ANALYSIS

ORS 308.205[3] defines RMV for assessment purposes. Included in that section is reference to an "arm's length" transaction. In this limited situation, the court is not persuaded that Plaintiff's acquisition is unworthy of any weight. Due to the location and size of the parcel, the price indicates (at least) the lower end of the value range. It is not conclusive evidence of the exact value derived from the market.

At the same time, Defendant's examination revealed no true comparables. Based on the evidence presented, the strongest inference that may be drawn is that the parcel could not be used as a residential site as of the assessment date. All that is lacking is a formal denial, multiple appeals, and Plaintiff's expenditure of substantial sums in fees and appeal costs. The court finds that the subject lot should be accorded the same 50 percent discount offered other lands of similar nature. Using Defendant's original RMV as the base value, the indicated reduced RMV is $12,580.

Plaintiff has the burden of proof and must establish his case by a "preponderance" of the evidence. *See* ORS 305.427. 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). Plaintiff has cast substantial doubt as to the record assessment but is not clearly entitled to the $8,000 RMV as requested in the original Complaint.

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

III. CONCLUSION

Plaintiff has proven his entitlement to some relief. Now, therefore,

IT IS THE DECISION OF THIS COURT that the 2005-06 RMV shall be set at $12,580. If taxes have been overpaid, they shall be refunded with statutory interest thereon.

Dated this _____ day of February 2007.

_____
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 February 2, 2007. The Court filed and entered this document on February 2, 2007.