

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

DEBRA M. THORPE,)	
)	
Plaintiff,)	TC-MD 060468D
)	
v.)	
)	
BENTON COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

Plaintiff appeals the real market value of her land for tax year 2005-06. A trial was held on Monday, November 13, 2006, in the Oregon Tax courtroom, Salem, Oregon. Debra M. Thorpe appeared on her own behalf. Andrew Van Laere (Van Laere) testified on behalf of Plaintiff. Richard D. Newkirk (Newkirk), Commercial/Industrial Appraiser, Benton County, appeared on behalf of Defendant. Douglas G. Hillpot (Hillpot), Benton County Assessor, testified on behalf of Defendant.

I. STATEMENT OF FACTS

Plaintiff owns a 15,682¹ square foot parcel of land identified by the Benton County Assessor as Accounts 405982 and 405979. Two unoccupied structures are on the parcel. The property, land and structures, is physically located in downtown Philomath on Main Street and 18th Street.

Plaintiff purchased the property for \$205,000 on September 16, 2005. (Ptf's Ex 7.) The listing, which ran 177 days until Plaintiff bought the property, was placed by Christiana Bank & Trust Company (Bank), the entity that assumed title to the property when the owner defaulted on its mortgage. (Ptf's Ex 6; Def's Ex F1a.) The Trustee's Deed recorded March 8, 2005, by the

¹ Defendant alleges that the size of the parcel is 15,680 square feet; the difference (2 square feet) is immaterial.

Bank stated that the “true and actual consideration for this conveyance is \$259,820.52.”

(Def’s Ex F1b.) The subject property was listed for sale on March 23, 2005, with an asking price of \$225,000. (Ptf’s Ex 7.) Defendant testified that the transaction between Plaintiff and the Bank was not an arm’s length transaction but more like a “distressed sale.”

Plaintiff determined that the real market value of the land parcel as of January 1, 2005, was \$141,922. Plaintiff’s determination was based on data taken from the “county appraiser’s land extraction analysis” with adjustments, “properties listed on Realtor’s MLS system,” and “unimproved land comparables from ODOT appraiser.” (Ptf’s Ex 34.) She further refined her analysis by eliminating “the three high values and the six low values” to arrive at “an average land value of \$9.05” per square foot. (Ptf’s Ex 35.)

Van Laere, a licensed real estate broker with five years commercial experience in Philomath, testified that as of the assessment date the commercial real estate market was in a “decline” with vacancies along Main Street, where Plaintiff’s property is located. However, he commented that in the last six months the commercial market has been “better.” Van Laere testified that visibility from a main road or highway is an important factor in determining the overall value of a commercial property. Plaintiff testified that a portion of her land is not visible from the main road. In addition, she stated that road construction has changed access to her property and a concrete barrier is now in the center of the highway which prevents drivers from making a “left turn” onto her property.

Newkirk, an Oregon registered commercial and industrial appraiser since December 2002, and an economics and business graduate of Oregon State University, testified that in determining the real market value of the property he concluded that the impact of the road construction on the commercial real estate market for property located along Main Street was “wait and see.” He characterized the overall effect on the market as “stagnation.”

Selecting six sales of property located along Main Street and one sale located on 13th Street, Newkirk computed a total real market value of Plaintiff's property (improvements and land) to be \$330,000. (Def's Ex C1, C2.) All properties selected by Newkirk were active, revenue producing commercial businesses (retail, winetasting room, and tavern/grill) or office buildings in contrast to Plaintiff's property which is unoccupied. Newkirk adjusted each sale for size, location, condition, construction quality, age and time from date of sale to assessment date. (*Id.*) When asked how he determined the time adjustment, Newkirk testified that ODOT (Oregon Department of Transportation) "suggested six to 10 percent," but he did not have enough "paired sales" to support that "high an adjustment" so he selected "3.5 percent per annum."

Newkirk testified that he reviewed "bare land" sales located in close proximity to Plaintiff's land parcel. (Def's Ex G, H, I, J.) First, Newkirk reviewed ODOT's "Determination of Just Compensation." (Def's Ex G.) Newkirk pointed out that ODOT concluded a just compensation rate in May 2005, was \$13 per square foot. (*Id.*) Second, Newkirk presented three sales of land and one listing for sale. (Def's Ex H1-H4.) Sale 1, which sold on May 16, 2000, for \$12.24 per square foot, was located on Main Street. The size of Sale 1 was less than one-half the size of Plaintiff's parcel. (Def's Ex H1.) Sale 2, which sold on October 31, 2001, for \$7.28 per square foot, was located on Main Street and Applegate. (Def's Ex H2.) The size of Sale 2 was almost three times larger than Plaintiff's parcel and that sale included structures. (*Id.*) Newkirk wrote that Sale 2 was subdivided into four parcels and two parcels are currently listed for \$12.40 per square foot and \$11.00 per square foot. (*Id.*) Sale 3, which sold in August 7, 2002, for \$11.48 per square foot, was located on the northeast corner of 8th Street and Applegate. (Def's Ex H3.) The size of Sale 3 was approximately 11,000 square feet. (*Id.*) Newkirk reported that the property listed for sale at \$11.48 per square foot is 12,195 square feet in size. (Def's Ex H4.)

He wrote that “[t]he owner states that potential buyers are holding off until the Couplet is finalized.” (*Id.*)

After reviewing the comparable sales of commercial businesses and land only sales, Newkirk concluded that the real market value of Plaintiff’s land was \$219,520 or \$14 per square foot.

Plaintiff questioned how the county determined the maximum assessed value of her property when in 2000 the county created two tax accounts. Hillpot testified, “when the property was partitioned in 2000, the real market value was split into two tax accounts.” A “change property tax ratio” was applied to the real market value of each account to compute the maximum assessed value.

II. ANALYSIS

The issue before the court is the real market value of Plaintiff’s land. 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)², 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 taxpayer’s property in order to determine the real market value. *Richardson* at

*3. This court has previously held that “the sale of the subject property deserves considerable

² All references to the Oregon Revised Statutes (ORS) are to 2003.

weight.” *Lincoln County Assessor v. YCP Salishan LP*, 15 OTR 354, 359 (2001). The Oregon Supreme Court concluded that “[i]f 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).

Plaintiff purchased the subject property on September 16, 2005, from the Bank which held the mortgage on the property at the time the borrower defaulted. (Ptf’s Ex 7.) The subject property was listed for \$225,000, an amount less than the reported Bank’s consideration (\$259,820.52) for the property. (Def’s Ex F1b.) Plaintiff paid \$205,000 for the subject property which was listed for 177 days. (Ptf’s Exs 6 and 7.) Defendant characterizes the transaction between Plaintiff and the Bank as a distressed sale. The court agrees with Defendant. A 23 percent drop in value in approximately six months was not supported by the testimony of Plaintiff’s expert witness or the comparable sales data provided by the parties.

Plaintiff’s property with its two unoccupied structures is decidedly less like the sales of commercial businesses presented by Newkirk. Newkirk testified that he adjusted the sales for the quality, condition, building size, age of the structures, and land-to-building ratio. However, there was no testimony as to whether those adjustments fully factor in how the market values a non-income producing property which is impaired by unoccupied structures in need of remedial repair and maintenance. Specifically, Newkirk’s evidence from the Oregon Department of Transportation stated that “the front building is an older wood framed structure that has been added onto several times, and is not thought to add any value to the property.” (Def’s Ex G.)

In this case, Plaintiff is only appealing the real market value of her land. She relied on “properties on county appraiser’s land extraction analysis” and “unimproved land comparables from ODOT appraiser.” (Ptf’s Ex 36.) Her evidence reported a range in value of \$6.44 to

DECISION TC-MD 060468D

\$11.76 per square foot, for land size varying from 3,485 to 42,253 square feet. (*Id.*).

For properties similar in size to Plaintiff's and located on Main Street, the unadjusted price per square foot ranged from approximately \$7.00 to \$11.00 per square foot. Without regard to the location of the property and absent analysis of how each sale compared to Plaintiff's property, Plaintiff arrived at a price per square foot of \$9.05.

Newkirk presented three land sales and one listing. (Def's Ex H1-H4.) He determined a price per square foot of \$14.00 based on the board of property tax appeals' order stating the land value at \$219,520. (Ptf's Exs 17 and 18.) Newkirk's price per square foot is outside the range of values (\$7.28 to \$12.24) of his evidence. None of the sales was adjusted for the difference between the date of sale and assessment date. Newkirk testified that he selected a time adjustment of 3.5 percent for the commercial sales, but he had no factual basis for that rate other than the Oregon Department of Transportation rate of six percent which he used as a benchmark

The real market value of property is determined as of the date of assessment, which in this case is January 1, 2005. Both parties have testified that the real market value of Plaintiff's land is impacted by the Oregon Department of Transportation road construction project.

Newkirk used the terms "stagnation" and "wait-and-see" to describe the attitude of the real estate market. He reported that with respect to current property listed for sale "buyers are holding off until the Couplet is finalized." (Def's Ex H4.) With respect to Plaintiff's property, after the construction is completed, access to her property will only be from traffic moving west. In addition, ongoing construction will further limit access to her property because traffic will be diverted from Main Street. However, that is a future event and its impact as of the date of assessment may or may not have been known.

One reliable indicator of the effect of the ongoing road construction on real market value is arm's length sales occurring close to the date of assessment. Plaintiff reported one sale

DECISION TC-MD 060468D

occurring on January 21, 2005. That unimproved land located on Applegate (one block south of Main Street) was similar in size to Plaintiff's land and the "Indic SF Value" (indicated square foot value) was \$9.29. (Ptf's Ex 36.) Given the fact that Plaintiff's property is a corner parcel located on Main Street, it is not unreasonable to conclude that Plaintiff's property should have a higher value per square foot. Newkirk reported a listing for an unimproved land parcel 3,500 square feet smaller in size than Plaintiff's and located on the northwest corner of 8th and Applegate. The listed selling price is currently \$11.48 per square foot. After considering the location and the fact that a smaller parcel often results in a higher price per square foot, as well as the current timing of the listing, it is reasonable to conclude that, in comparison, the real market value of Plaintiff's property would be less. The court also notes that the evidence shows sale prices of unimproved land are generally higher than the sale prices of improved property, which could reasonably be attributed to the extraction method used to separate improvements and land values.

Based on the evidence, the range of value for Plaintiff's land is narrowed but the exact price per square foot must be estimated. The court concludes that a reasonable estimate of the real market value of Plaintiff's property is \$10.50 per square foot,³ given its non-income status, location, and the parties' agreed conclusion that because of the road construction the real estate market as of the assessment date was "wait-and-see."

III. CONCLUSION

After carefully considering the testimony and evidence, the court concludes that the real market value of Plaintiff's land for tax year 2005-06 is \$164,661. Now, therefore,

///

³ The overall value of the property (land value added to the improvements value) is within the range of values for sales of commercial properties reported by Defendant. (Def's Ex C C2.)

IT IS THE DECISION OF THIS COURT that the real market value of Plaintiff's property identified as Accounts 405982 and 405979, is \$164,661 for tax year 2005-06.

Dated this _____ day of January 2007.

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 Magistrate Jill A. Tanner on January 3, 2007.
The Court filed and entered this document on January 3, 2007.***