

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

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|-----------------------------|---|-----------------|
| JASON R. KENNEDY |) | |
| and KIMBERLY M. KENNEDY, |) | |
| |) | |
| Plaintiffs, |) | TC-MD 070115D |
| |) | |
| v. |) | |
| |) | |
| WASHINGTON COUNTY ASSESSOR, |) | |
| |) | |
| Defendant. |) | DECISION |

Plaintiffs appeal the real market value and real market exception value of their property, identified as Account R595593, for tax year 2006-07. A telephone trial was held on Tuesday, October 16, 2007. Jason Kennedy (Kennedy) appeared on behalf of Plaintiffs. Adrienne Wilkes (Wilkes), Appraiser, appeared on behalf of Defendant. Jack Graff (Graff), Residential Appraisal Supervisor; Don McNicholl, Appraiser; and Mark Hertel, Senior Appraiser, were present.

I. STATEMENT OF FACTS

Kennedy testified that in May 2004, Plaintiffs purchased a .79 acre parcel of land from Washington County. The land is located in Bonny Slope, “a small neighborhood of approximately 400 homes located in the northwestern section of Washington County.”

(Def’s Ex A at 4.) The parties agree that the Bonny Slope area is in transition, changing from older, smaller sized homes on large lots to newer, custom designed homes. Kennedy testified that homes on his street are “considerably lower quality” than his property, and Wilkes agreed.

Kennedy acknowledged that there is some new construction. Wilkes testified that because the lot sizes are larger than those currently offered in new developments, many of the houses are being “torn down” and new “better quality homes” are being constructed. Wilkes stated that

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documented sale prices of properties in this area around the assessment date of January 1, 2006, ranged from \$265,000 to \$975,000. (Def's Ex A at 4.)

Kennedy described the purchase of the land as a competitive auction because he was bidding against developers who wanted the land. In contrast, Wilkes characterized the sale "as part of a foreclosure auction" and the land was not "actively marketed." (Def's Ex A at 29.) Kennedy paid \$190,000 for "an upsloping irregularly-shaped lot located at the end of a dead-end road." (Def's Ex A at 4.) He stated that his land is located "within a WaCo [Washington County]-designated significant natural resource area" and "the bulk of the land must remain in its native state to preserve natural resources." (Ptfs' Statement submitted Oct 9, 2007.)

Kennedy testified that the tax roll value of the land in 2004 was \$181,000, and testified that the tax roll value of the land in 2005 was \$211,000. Wilkes, however, testified that the land value for 2005 was corrected to \$233,730. Kennedy challenges Defendant's land value of \$293,640 for tax year 2006. He suggested that a more reasonable 2006 real market value is between \$239,000 and \$266,000, including site development costs of approximately \$46,000. Kennedy explained that value in the context of the total real market value of the property, land and improvements.

Wilkes testified that Plaintiffs' land was the "hardest part" to appraise because of the site characteristics. She concluded that approximately .33 acres is usable and the excess land provides Plaintiffs with "elbow room" from their neighbors, to which she gives "zero value." Wilkes testified that the market appreciation rate for improved properties throughout Washington County from May 2004 to January 1, 2006, was approximately 26 percent. (Def's Ex A at 25.) She stated that, even though the market appreciation rate (37 percent) for "raw land" was substantially more, she felt that the 26 percent rate is more "conservative" and appropriate because that rate is based on a "larger pool of sales." Taking the purchase price of \$190,000 and

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increasing it for market appreciation in the amount of 26 percent, Wilkes computed a real market value of \$239,400. To that amount, she added on site development costs of \$46,000 to compute a total land value as of the assessment date of \$285,400. Wilkes testified that her adjusted cost approach substantiates the current tax roll value of \$293,640.

In October 2004, Plaintiffs obtained an appraisal using the house plans and layout to secure funds to finance the construction of their house. Kennedy testified that the appraised value was \$730,000. Wilkes testified that applying a market appreciation rate of 26¹ percent to the appraisal value of \$730,000, the estimated real market value would be \$912,500, which compares favorably with her estimate of real market value of \$915,000.

Beginning in November 2004, Plaintiffs constructed their house, which was completed in August or September 2005. Kennedy, who served as his own general contractor, built a three level 4,933 square foot house on the land parcel. Wilkes described Plaintiffs' property "to be good overall quality of construction" with four bedrooms and three and one-half bathrooms, and a triple car garage. (Def's Ex A at 4; photographs at 7-15.) Kennedy estimated the total construction costs including land and on site development to be \$649,201. (Ptf's Itemized Categories - ETD:3, Summary.) He stated that to the total costs a "builder's profit" percentage of 10 to 15 percent should be added to his out-of-pocket costs. Kennedy testified that "the top end" of the real market value for improvements would be \$486,000. Kennedy testified that his estimated real market value for land and improvements is approximately \$800,000.

Like Kennedy, Wilkes concluded that the income approach is not an applicable method to determine the value of Plaintiffs' residential property. Her cost approach was based on the

¹ The date of the appraisal was represented to be October 2004. Wilkes incorrectly computed the market appreciation percentage for the period May 2004 to January 1, 2006, rather than October 2004 to January 1, 2006. Using her data, the correct percentage should be 20 or 21 percent, resulting in an estimated fair market value of \$876,000 or \$883,300. (Def's Ex A at 25.)

historical file prepared by the county. (Def's Ex A at 27.) Wilkes testified that the total construction costs should be increased by a "builder's profit," and the costs need to be "inflated" to reflect the "hot" real estate market. Further, she stated that "financing costs, holding costs and a realtor fee" should be added. When all of those costs are added together, Wilkes concluded that her estimate of value (\$915,000) is in the "neighborhood."

Kennedy testified that his cost estimate of value compared favorably with the Appraisal of Real Property report prepared by James Harris (Harris) as of January 1, 2006. (Ptf's Ex 3/26-26/26.) Harris concluded that the indicated real market value using the sales comparison approach was \$840,000. In his report, Harris wrote that the "subject is a very good quality, two story, single family residence with a partial basement" on an "oversized lot for the area." (Ptf's Ex 12/26.) Harris did not testify. Wilkes asked Kennedy why Harris concluded that 12, 13, and 14-year old homes were comparable to Plaintiffs' house and if Kennedy thought his home was similar to a "lived-in" 14-year-old house. Kennedy responded that "if you're looking at the market, you need to look at the quality and components." Wilkes challenged Harris's conclusion that the effective age of Plaintiffs' new house was two years; in her opinion, "at most" the effective age of Plaintiffs' house was four months. Wilkes questioned why Harris adjusted land size at a "flat rate of \$5 per foot" given the fact that Plaintiffs' land "is not 100 percent usable." Kennedy did not provide an explanation. Wilkes asked Kennedy if he considered his home to be comparable to Harris's comparable property number 3, which is located in the "Ironwood subdivision." Kennedy testified that Ironwood is a "higher value neighborhood."

When asked if he had talked to either the buyer or seller of any the comparable properties selected by Harris, Kennedy said he had not. Wilkes testified that she contacted the listing agent for Harris's comparable property number 1 because she wondered why the property sold for \$100,000 less than its listing price. According to Wilkes, the sellers "were about to lose their

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home” because they were “hours away from foreclosure.” In Wilkes’s opinion, that transaction was a distressed sale. Harris wrote in his report that in estimating real market value he gave “40% weight” to comparable properties 1 and 3. (Ptf’s Ex 14/26.) Wilkes testified that she considered using Harris’s comparable property number 2 as one of her comparables. However, she concluded that because it was “surrounded on three sides by Class 4 homes” (Plaintiffs’ property is a Class 6) it was “definitely inferior” to Plaintiffs’ property. Wilkes and Graff stated that the inability to cross examine Kennedy’s “expert witness” (Harris) about his opinion of value should result in the report being “thrown out” by the court. Kennedy stated that he strongly objects because Harris has “more experience than Ms. Wilkes with over a decade of experience for the South Road area.” Wilkes stated that she was unable to “locate Mr. Harris’s resume.” (Harris’s qualifications were found at Plaintiffs’ Exhibit 26/26.) Wilkes and Graff stated that Harris’s failure to make any “time or age adjustments” to the 12 to 14-year-old properties he selected as comparable should be “noted” by the court. Wilkes also stated that she “strongly disagrees with” Harris’s “appraisal report” because it is “inappropriate” not to make adjustments for the age of the comparable properties.

Wilkes explained her comparable sales approach, briefly reviewing each of her selected comparable properties. (Def’s Ex A at 17-24.) Her indicated value as of the assessment date was \$950,000. (Def’s Ex A at 17.) Wilkes computed a price per square foot of \$192.58. (*Id.*) Using sale price data, which the county collected from July 1, 2005, to June 30, 2006, for properties selling from \$600,000 to \$700,000, Wilkes computed a price per square foot of \$132.69 for improvements. (Def’s Ex A at 26.) In addition, for houses ranging in size from approximately 4,200 to 5,300 square feet, she computed an improvement price per square foot of \$138.12. (*Id.*) Using the larger (\$138.12) of the two computed price per square feet, Wilkes computed an estimated real market value for the subject property of \$976,346. (*Id.*) Wilkes

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compared her computed price per square foot to “petitioner’s request,” stating incorrectly Plaintiffs’ total requested real market value to be \$641,000. (*Id.*)

Kennedy challenged Wilkes’s description of comparable property number 4 as being “located on a busy road” and the \$85,000 adjustment to the sale price. (Def’s Ex A at 17.) Wilkes testified that her adjustment is supported by county traffic studies. Kennedy testified that there is no “unusual traffic” on Saltzman Road. Wilkes countered that, in contrast to Kennedy’s property, which is located at the end of a “dead end street,” comparable property number 4 is on a “busy road close to a curve,” which makes access in and out of the driveway challenging. Wilkes made a similar adjustment (\$55,000) to comparable property number 2 which Kennedy challenged because that property has a circular driveway which should aid access. Kennedy asked why Wilkes made an adjustment (\$10,000) for view on comparable property number 4 when his property has similar views as that property. Wilkes responded that Kennedy’s property has “sunset views” whereas comparable sale number 4 has a “tree view” and no “sunset views.” Kennedy testified that comparable property number 4 “looks down” on his property and that the owners use their deck and hot tub often “for entertaining.” In his opinion, those activities “detract” from the value of his property. Wilkes directed the court’s attention to a picture (Def’s Ex A at 9) to support her conclusion that comparable property number 4 is “quite a distance” from Kennedy’s property.

Kennedy concluded his testimony by stating that, given his “liberal interpretation of costs,” which result in a real market value of approximately \$800,000 and his independent appraiser’s determination of value of \$840,000, he thinks an average of \$822,000 would be a reasonable real market value for his property as of January 1, 2006. He characterized Wilkes’s “adjustments” to the comparable sales as “aggressive.” Wilkes closed her testimony by stating that her appraisal report supported both a “market and cost” value of \$915,000. In contrast, she

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commented that Harris’s report did not include a cost analysis and there were many “deficiencies.”

II. ANALYSIS

The issue before the court is the real market value of Plaintiffs’ property. Real market value is the standard used throughout the ad valorem statutes except for special assessments. *See 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.”

Approaches of Valuation – Real Market Value

There are three approaches of valuation (cost, income, and comparable sales) that must be considered in determining the real market value of a property even if one of the approaches is found to not be applicable. *See* ORS 308.205(2); OAR 150-308.205-(A)(2). Because the subject property is the primary residence of Plaintiffs, the income approach is not applicable.

A. *Comparable Sales Approach*

In a case such as this one before the court, the comparable sales approach “may be used to value improved properties, vacant land, or land being considered as though vacant.”

Chambers Management Corp v. Lane County Assessor, TC-MD No 060354D (Apr 3, 2007) (citing *The Appraisal of Real Estate* 335 (12th Ed 2001)). Plaintiffs submitted an appraisal report. Plaintiffs’ appraiser concludes that the real market value of the subject property, which

² Unless otherwise noted, all references to the Oregon Revised Statutes (ORS) are to 2005.
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is located in an area of increasing property values, is \$840,000. (Ptf's Exs 5/26, 6/26.) The total amount of his adjustments in relation to the sale price ranged from 6.8 percent to 22.0 percent. (Ptf's Exs 6/26, 11/26.) Plaintiffs' appraiser was not available to address significant issues concerning the age of the comparable properties he used to determine the real market value or any other questions about his adjustments, including his conclusion that the effective age of Plaintiffs' property was two years even though it was completed in the summer of 2005. In addition, Plaintiffs' appraiser stated that the utilities and off-site improvements are not typical for the market area, but he did not explain. (*Id.* at 5/26) There was limited narrative in his report.

In contrast, Wilkes prepared and presented her appraisal report. With the exception of one property, her comparable sale properties were built in 2006. Wilkes adjusted each sale price for date of sale in relation to the assessment date. The total amounts of her adjustments in relation to the sale price ranged from less than 1 percent to 14 percent. Wilkes provided less written narrative than Plaintiffs' appraiser and no written explanation of her adjustments in her report. She did not incorporate detailed explanations of her adjustments into her testimony. Instead, Wilkes's testimony focused on the characteristics of the comparable properties. When questioned by Kennedy, Wilkes's responses were logical and evidenced her knowledge of the properties.

Both appraisers made adjustments for land size. Wilkes testified that appraising the land was the "hardest part" of the appraisal assignment. Wilkes's "land details/size/shape" adjustments to the comparable sales were unexplained in her report and Plaintiffs' appraiser's "site size adjustments" were "made at the rate of \$5 per square foot difference." (Def's Ex A at 17; Ptf's Ex 12/26.) Wilkes criticized a "flat \$5.00 per square foot" because Plaintiffs' property is not "100 percent usable land."

Given the lack of explanations for the adjustments made by the appraisers and the difficulty in adjusting comparable sales for the unique characteristics of Plaintiffs' land, the court finds that the comparable sales method presented in the two appraisal reports is informative but not overly persuasive. The court acknowledges that a reconciliation of the three approaches is the most helpful in determining real market value and that no one approach is often deemed determinative. Because Plaintiffs' appraiser was unavailable to answer significant questions about his report, the court will give less weight to Plaintiffs' appraiser's estimate of real market value than Defendant's appraiser's determination.

B. *Cost Approach*

The parties agree that the cost approach is particularly useful in estimating the real market value of new construction because cost and market value can be more closely related when properties are new. The cost approach separates land and improvement values.

1. *Cost Approach - Land*

Plaintiffs purchased their land at a competitive auction, paying \$190,000, which was more than the real market value on the tax roll. Given the undisputed usable size of the parcel and the receipt of bids from others, including developers, the court finds that purchase price represents an arm's-length transaction. Kennedy testified that the 2006-07 real market value of the land should be \$239,000 or \$266,000.

“In all proceedings before the judge or a magistrate of the tax court and upon appeal therefrom, a preponderance of the evidence shall suffice to sustain the burden of proof. *The burden of proof shall fall upon the party seeking affirmative relief.*” ORS 305.427 (2005) (emphasis added.) Plaintiffs must establish their claim “by a preponderance of the evidence, or the more convincing or greater weight of evidence.” *Schaefer v. Dept. of Rev.*, TC No 4530 at 4 (July 12, 2001) (citing *Feves v. Dept. of Rev.*, 4 OTR 302 (1971)). This court has stated that
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“it is not enough for a taxpayer to criticize a county’s position. Taxpayers must provide competent evidence of the RMV of their property.” *Poddar v. Dept. of Rev.*, 18 OTR 324,332 (2005) (quoting *Woods v. Dept. of Rev.*, 16 OTR 56, 59 (2002) (citation omitted)).

Kennedy offered no evidence to support his determination of the land value other than his own testimony. Even though Kennedy is familiar with his property, he did not qualify himself as an expert on valuation. “When a plaintiff fails to establish any independent expertise and relies only on his own costs and his unsupported, personal opinions, a court weighs plaintiff’s words in the light of his self-interest.” *Erickson v. Commission*, 1 OTR 626, 629 (1964).

Based on Wilkes’s review of market sales (land and improvements) for the period May 2004 to January 2006, Wilkes concluded that property values in Washington County appreciated 26 percent. Wilkes’s estimate of \$285,000 for Plaintiffs’ land value as of the assessment date is based on market appreciation and Plaintiffs’ reported cost of the on-site improvements. An average appreciation rate for an entire county may be too low or too high for Plaintiffs’ neighborhood. However, Wilkes did not use the higher market appreciation rate of 37 percent for “raw land” but, rather, the lower overall rate, giving, as she said, a “more conservative” estimate of the land value. Based on the evidence, the court concludes that the real market value of Plaintiffs’ land as of the assessment date was \$285,000.

2. *Cost Approach - Improvements*

Kennedy testified that “the top end” of the real market value for improvements would be \$486,000. Plaintiffs’ reported out-of-pocket costs for their new home, exclusive of the cost of the land and on-site improvements, was \$413,201. Kennedy suggests adding a 10 to 15 percent builder’s profit, which is commonly referred to in real estate terms as entrepreneurial profit and entrepreneurial incentive. No evidence was offered to substantiate the builder’s

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profit percentage selected by Kennedy. Because Plaintiffs' property is termed a "high end custom property," it is likely that the builder's profit would be more than that of a "low end tract property." However, no evidence was presented to show that Kennedy's proposed rate was correct. In addition to direct costs and entrepreneurial profit, a cost estimate for a structure must include indirect costs such as architectural and engineering fees, appraisal, consulting, accounting and legal fees, and other carrying costs including insurance, property taxes, and interest on construction loans. In the cost detail provided by Plaintiffs, the only indirect cost is found in a category labeled "plans" in the amount of approximately \$6,000. The court has no evidence of the amount of the indirect costs that should be added to Plaintiffs' out-of-pocket costs. Plaintiffs presented no evidence to support an improvement value of \$486,000. Further, Plaintiffs' appraiser (Harris) did not include the cost approach in his appraisal report.

Wilkes's cost approach determined a value of \$621,780 for the subject property's improvements. (Def's Ex A at 27.) She adjusted Plaintiffs' cost data based on cost factors. (*Id.*) Wilkes did not specify the source of the cost factors nor the basis for the local cost multiplier (LCM). The LCM of "126" was applied to the costs. (*Id.*) If Wilkes developed the LCM based on her market appreciation rate of 26 percent, the costs incurred later in the construction cycle would be overstated. However, the court has no evidence to explain how the factor was developed or applied. The court notes that Wilkes testified that Plaintiffs' property is a Class 6 property; however, her cost approach analysis states that Plaintiffs' property is a Class 6+ property. (*Id.*) The court is left without an explanation of how, if at all, the class category impacts Wilkes's determination of value. Based on her expertise, the court accepts her determination of value of the improvements with adjustments for the unresolved class category and local modifier issues.

III. CONCLUSION

After careful consideration of the testimony and evidence, the court concludes that the cost method results in the best estimate of the real market value of Plaintiffs' property as of the assessment date, January 1, 2006. The court finds that the real market value of Plaintiffs' property for tax year 2006-07 is \$890,000. The cost approach and other accompanying data presented by Defendant support the court's determination. Having determined the real market value, the parties are requested to compute the real market exception value because the court was not provided with any evidence related to that value. Now, therefore,

IT IS THE DECISION OF THIS COURT that the real market value of Plaintiffs' property identified as Tax Account R595573 is \$890,000 for tax year 2006-07.

Dated this _____ day of December 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 Presiding Magistrate Jill A. Tanner on December 14, 2007. The Court filed and entered this document on December 14, 2007.