

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

MICHAEL RUDOLPH,)	
)	
Plaintiff,)	TC-MD 070484B
)	
v.)	
)	
UMATILLA COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

This appeal concerns the 2006-07 real market value (RMV) of certain residential property, more fully described below.

A trial was held October 3, 2007. Michael Rudolph participated on his own behalf. Testifying as a witness was Jay D. Scherger (Scherger), independent appraiser. Participating for Defendant was Paul Chalmers (Chalmers), Assessor.

I. STATEMENT OF FACTS

There are six accounts¹ of real property involved in this case. The subject property includes a single-family residence located at 600 East Sherman in Athena, Oregon. The chief residence totals 5,099 square feet with four bedrooms and three baths. Also at the site is a small guest house and a shop. Both houses have attached garages. For the 2006-07 tax year, Defendant valued the property at \$319,740 RMV.² Upon review, that value was sustained by the Umatilla County Board of Property Tax Appeals (BOPTA). Plaintiff has now appealed to this court and seeks a reduction to \$250,000.

¹ Accounts 115387, 119665, 115384,148984, 146394, and 146393.

² This total amount was reached by adding the total amounts from the BOPTA Orders of the various accounts. For Account 115384, the court noted a typographical error for the RMV of the land. The court used the amount stated in the total RMV, \$13,320. That difference does not change the outcome of the court's Decision.

Plaintiff testified in detail at trial. He had been looking for Athena area property to buy for several years. He was contacted by a realtor about the subject property over 12 months before its purchase. He viewed it and offered \$200,000 in July of 2005. That offer was rejected. Several months later, the asking price was lowered to \$295,000; Plaintiff offered \$225,000. Then, the price dropped to \$259,000; Plaintiff offered \$245,000. Plaintiff finally raised his tender amount to \$250,000, which was accepted in the spring of 2006.

The subject property was first listed for sale in December of 2004. Due to its peculiarities, it did not meet immediate success. It was on the market over 500 days before the transaction closed. Supporting statements were provided at trial from listing agents, appraisers, bank officers, and members of the seller's family.

Plaintiff strongly relies upon his acquisition price of the home in May of 2006. His chief supporting evidence consisted of an appraisal report completed by Scherger for loan purposes. That appraiser testified in detail at trial and answered questions. Scherger's report was offered as an exhibit. (Def's Ex D.) He included details as to six sales of comparable properties. Those sales occurred in 2005 at prices ranging from \$235,000 to \$300,000. After adjustments for property differences, the indicated range was from \$232,625 to \$276,390. From that data, Scherger concluded \$250,000 RMV for the subject as of January 1, 2007.

After Plaintiff moved to the subject property, certain problems and deficiencies became more evident. For instance, Plaintiff testified about cracked concrete, roof problems, and deferred maintenance. There were substandard conditions affecting the siding and garage floor. The property had been vacant for over two years, which caused significant deterioration.

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A Umatilla County appraiser was earlier on the subject property, viewed the exteriors of the buildings, and took photographs. Chalmers offered certain critiques and criticisms of the subject property's acquisition price and Scherger's appraisal. He particularly took issue with some of the adjustments made to the comparable sales. He testified he disagreed with the acquisition price because "it was too low." However, no competing appraisal with market data, adjusted for differences, was offered by Chalmers. There was no precise support offered for the BOPTA level of nearly \$320,000. He did introduce a collection of raw data including bare lot sales, improved sales, and certain planning documents for the City of Athena.

Finally, there were certain discrepancies in Plaintiff's appraisal analysis regarding the size of the subject lots and the adjustments to the comparables. In effect, that served to slightly underestimate the appraisal for loan purposes, but not impact the overall price paid.

II. ANALYSIS

Plaintiff appeals the 2006-07 real market value of the subject 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),³ 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."

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³ All references to the Oregon Revised Statutes (ORS) are to 2005.

The critical focus is to “arm’s length sale transactions of property similar in size, quality, age and location” to a subject property in order to determine the underlying RMV. *Richardson*, WL21263620 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). It is clear 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.)

Several undisputed points stand out in this appeal. First, the RMV of the subject property (by BOPTA) for the year at issue is substantially more than the purchase price occurring near the assessment date. Second, Plaintiff’s appraiser was available to explain the details of the loan appraisal conclusions. Third, there had been minimal market interest at price levels near the BOPTA level. Finally, there is no competing appraisal to adequately discredit Plaintiff’s acquisition price.

This property may have been purchased through a financial institution, but the sale was not a duress transaction. After being listed, with downward price adjustments, for over a year and a half, the property was clearly overpriced earlier on. The market met at the appropriate tipping point of \$250,000 when the counter-offer was accepted. There was no duress or distress evident.

In these appeals, a preponderance of the evidence is required to sustain the burden of proof. “That burden of proof shall fall upon the party seeking affirmative relief * * *.”

ORS 305.427. Plaintiff has clearly met that requirement.

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III. CONCLUSION

Now, therefore,

IT IS THE DECISION OF THIS COURT that the 2006-07 RMV shall be reduced to a total of \$250,000. Defendant shall allocate that RMV between land and improvements and among the accounts as it deems appropriate.

Dated this _____ day of December 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 December 17, 2007. The Court filed and entered this document on December 17, 2007