

environmentally sensitive residential development to the market. The evidence clearly establishes that the market did not respond positively to the effort. In fact, since the completion of the development of lots in 2012 only a few have sold, with no lot sales occurring between 2009 and the assessment date in 2012. (Trans at 29, 50.)

The lack of positive response from buyers in the market appears from the record to be the result of three particular factors. First, the general size of the lots is quite small. (*See* Ptf's Ex 2 at 3-4.) While lot sizes offered to the market are consistent with the philosophy of the development and the zoning restrictions, the evidence shows that the buyers in the market desire fee ownership of larger lots. (*Id.*) The existence of significant common areas and community facilities appears to have done little, if anything, to address concerns and desires of the buyers in the market with respect to lot size.

A second factor contributing to the negative response of the market is the requirement that houses on the lots in question be constructed in accordance with environmentally sensitive standards. (*Id.* at 2.) The evidence from the trial shows that construction costs are higher, often much higher, to achieve residence sizes with such features. (Trans at 67-73.) This reality constrains the demand by contractors who would buy the lots with a goal of completing a residence house on the lot and offering the improved lot to the public. (*Id.*) Nor have ultimate purchasers appeared with the willingness to buy a lot and incur the costs of construction of a house meeting the required standards.

Finally, the timing of this development was such that the lots came to the market at the very same time as the city, state and nation experienced a major set of economic shocks. (Ptf's Ex 2 at 2.) The local as well as general effects of these shocks served to only magnify the downward pressure on values of the factors already discussed. (*Id.*)

One group of lots has an additional factor providing a downward force on value. This factor is the existence of archeological restrictions affecting the lots. (*Id.*) Those restrictions will involve the expenditure of some amount of money to assess what legal requirements exist with respect to further development. (Trans at 51-53.)

III. ISSUE

The issue in this case is the impact of the market forces on the lots at issue and the fair market value of each such lot as of the assessment date.

IV. ANALYSIS

The problem faced by the appraisal experts who testified in this matter was to determine the effect of the negative factors discussed above on the real market value of the lots as of the assessment date.

Neither appraiser concluded that the highest and best use of the property in question was other than its current use--that is, further development through construction of houses on the finished lots. (*See* Ptf's Am Reply Arg at 7.) It appears that the development decisions already made and reflected in the lot configurations, streets and other features, together with existing zoning restrictions, would make abandonment of the experiment in environmentally sensitive development unfeasible.

Each appraiser employed the comparable sales approach to valuation. (Ptf's Ex 1 at 68-88; Def's Ex I at 5.) The appraiser for Plaintiff (taxpayer) made adjustment to sales of properties that were considered comparable except for lot size, a feature that appraiser established was important in the market. (*See* Ptf's Ex 2 at 4.) The appraiser for Defendant-Intervenor (the county) made no such adjustment. The basis for that position was that lot sizes

///

were comparable when the significant common areas in the development were allocated to the residential lots. (Trans at 163.)

The appraiser for the county provided no evidence from the market that potential purchasers of the lots would consider relatively small lots to in fact be comparable to much larger lots in other subdivisions by reason of the existence of significant common area. Nor does the conclusion of the appraiser for the county seem reasonable in the absence of such proof. This weakness in the appraisal presented by the county is of such significance that the court finds the appraisal to not be a reliable basis on which to conclude value for the lots.

As to other areas of disagreement, especially with respect to the market impact of increased building costs and the downward effect of archeological problems, the appraisal presented by taxpayer is also more credible than that presented by the county.

V. CONCLUSION

Accordingly, the court finds that more probably than not, the values of the lots at issue are as concluded in the appraisal presented by taxpayer. Counsel for taxpayer is directed to prepare and submit a form of judgment. Now, therefore,

IT IS THE DECISION OF THIS COURT that the real market value of each of the lots at issue are as concluded in the appraisal presented by taxpayer as of the assessment date.

Dated this ___ day of March, 2015.

Henry C. Breithaupt
Judge

THIS DOCUMENT WAS SIGNED BY JUDGE HENRY C. BREITHAUPT ON MARCH 11, 2015, AND FILED THE SAME DAY. THIS IS A PUBLISHED DOCUMENT.