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JAN 14 2011

STATE OF MINNESOTA

IN DISTRICT COURT

Court Adm. Hubbard Co.

COUNTY OF HUBBARD

NINTH JUDICIAL DISTRICT

Court File No. 29-CV-09-511

Duane E. Arndt,

Petitioner,

vs.

Hubbard County,

Respondent.

**FINDINGS OF FACT,
CONCLUSION OF LAW, AND
ORDER FOR JUDGMENT**

The above-entitled matter came before the undersigned Judge of District Court at the Hubbard County Courthouse, Park Rapids, Minnesota, on September 13, 2010, and October 28, 2010. The Petitioner, Duane E. Arndt, Attorney at Law, 400 S. 4th Street, Suite 510, Minneapolis, MN 55415, appeared personally and proceeded *pro se*. The Respondent, Hubbard County, was represented by Donovan Dearstyne, Hubbard County Attorney, 301 Court Avenue, Park Rapids, MN, 56470.

The matter came before the Court for a court trial on September 13, 2010 and October 28, 2010. Upon conclusion of the presentation of evidence, the Court invited the parties to file post-trial submissions. Both parties did file submissions and the Court took the matter under advisement on November 22, 2010.

Upon all the files, records and proceedings, the Court makes the following:

FINDINGS OF FACT

1. Petitioner filed a Petition on April 16, 2009, and objected to the real estate assessment of three separate tracts of property located in Hubbard County for 2009.
2. The Petitioner filed an Amended Petition on April 21, 2010. The Amended Petition expanded the Petitioner's objection to the real estate assessment of the same three tracts of property for the years 2008, 2009, and 2010. The County did not object to the filing of the Amended Petition.

3. Prior to trial, the Petitioner dismissed allegations in his Petition objecting to the real estate assessments for two of the three properties. As a result, the subject property described below is the only relevant tract of property for the trial proceedings.
4. The remaining property, the subject property, is located in Mantrap Township, Hubbard County, Minnesota. The subject property, as described in the Petition, is:

Property ID No: R20.28.00200

28-2 28 141 22 50.50

LOTS 2 & 3

5. Petitioner has sufficient interest in the subject property to maintain this action. All statutory and jurisdictional requirements have been complied with and the Court has jurisdiction over the subject matter of the action and the parties hereto.
6. The subject property consists of 50.5 acres with approximately 2,000 feet of shoreline on Crow Wing Lake and approximately 1,000 feet of shoreline on Spider Lake. The Petitioner purchased the subject property in 1976. At the time of purchase, the property had no improvements other than two access roads and a trail through the woods to a dead end.
7. The Petitioner hired building contractors and in 1978, the Petitioner completed construction of a log home currently situated on the subject property. The home is a handcrafted, full-scribe log construction home. The home includes 1,859 square feet of gross living area, three bedrooms, one "half bath", no traditional septic system, a grey water waste system.
8. The highest and best use of the subject property as improved is as a seasonal/recreational property. The Petitioner has used it for hunting and other outdoor recreation pursuits. The Petitioner does not maintain the property as his full-time residency and does not claim homestead status.
9. The Hubbard County Assessor estimated the value of the subject property on January 2, 2008, to be \$426,200.00.
10. The Hubbard County Assessor estimated the value of the subject property on January 2, 2009, to be \$400,100.00.

11. The Hubbard County Assessor estimated the value of the subject property on January 2, 2010, to be \$370,900.00.
12. The median sales ratios for the assessments at issue fall within the required 90% to 105% range for seasonal recreational properties in Mantrap Township and Hubbard County. The values are as follows:
 - 2008: 100.8% (calculated with 41 comparable sales). Exhibit 38.
 - 2009: 104.7% (calculated with 33 comparable sales). Exhibit 63.
 - 2010: 100.3% (calculated with 39 comparable sales). Exhibit 64.
13. Petitioner presented an appraisal of the subject property that was completed by Carsten Burros, a Minnesota Certified Real Property Appraiser. Mr. Burros' report indicates a market value of the subject property of \$300,000.00 as of February 5, 2010. This date is not directly correlated to the effective date of January 2, 2008 or years thereafter. The appraisal was not conducted in a retrospective manner and was based on a single comparable property. The Court finds the appraisal highly subjective.
14. The County's expert, Rachel Creager, a Minnesota Certified Real Property Appraiser, testified that the subject property had a January 2, 2008, value of \$428,000.00, a January 2, 2009, value of \$416,000; and a January 2, 2010, value of \$408,000.00.
15. Ms. Creager's testimony articulated the most precise market value of the subject property for the relevant tax years. Her appraisal was conducted in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP) guidelines. Her report was very detailed and well thought out. Her testimony was clear and comprehensive.
16. The Court finds the testimony of Ms. Creager to be highly credible and the Court has placed greater weight on her testimony and expert opinion.
17. The Court received no evidence to demonstrate the County has conducted its valuation of the subject property in an arbitrary fashion.
18. The Court received no evidence to indicate the County has conducted its valuation of the real estate parcels in a manner to systematically overvalue any property.

BASED ON THE FOREGOING, the Court makes the following:

CONCLUSIONS OF LAW

1. The taxpayer has the burden of showing that the valuation reached by the assessor is excessive. Hansen v. Hennepin County, 527 N.W.2d 89, 93 (Minn. 1995).
2. To determine whether a property has been unequally assessed, its actual market value and real estate tax assessment must be compared with the market value and real estate tax assessments of other properties. Anacker v. Cottonwood County, 302 N.W.2d 342 (Minn. 1981).
3. The determination of whether the taxpayer has met this burden of establishing the true market value of property rests with the trial court's resolution of the evidence and the weight and credibility of the testimony, including the opinions of expert witnesses. In re Objection to Real Property Taxes, 353 N.W.2d 525, 534 (Minn.1984).
4. Evidence, including the Court's finding that the methodology of an expert with respect to the estimated market value of the subject property, was more precise than the methodology employed by the county assessor, is sufficient to support the Court's determination that the market value of the property has increased. See, In re Objection to Real Property Taxes, 353 N.W.2d 525 (Minn. 1984)

BASED ON THE FOREGOING, the Court makes the following:

ORDER

1. The Hubbard County Assessor's estimated market value for the subject property as of January 2, 2008, shall be adjusted on the books and records of Hubbard County from \$426,200.00 to \$428,000.00.
2. The Hubbard County Assessor's estimated market value for the subject property as of January 2, 2009, shall be adjusted on the books and records of Hubbard County from \$400,100.00 to \$416,000.00.
3. The Hubbard County Assessor's estimated market value for the subject property as of January 2, 2010, shall be adjusted on the books and records of Hubbard County from \$370,900.00 to \$408,000.00.
4. The attached Memorandum of the Court is incorporated by reference herein.

IT IS SO ORDERED.

BY THE COURT:

Dated: January 14, 2011

Robert D. Tiffany
Robert D. Tiffany
Judge of District Court

LET JUDGMENT BE ENTERED IN ACCORDANCE WITH THE FOREGOING.

I hereby certify that the above constitutes the judgment and decree of this court.

Decree entered and judgment filed this 14th day of January, 2011.

Darlene Gerbracht
Court Administrator

Pat Kreig
Deputy Court Administrator

MEMORANDUM OF LAW

A property owner may challenge a county's assessment of the property if the owner believes that the property has been assessed at a value greater than its actual value. Minn. Stat. § 278.01, subd. 1(a); Irongate Enters., Inc. v. County of St. Louis, 736 N.W.2d 326, 329 (Minn. 2007). The petition for review of the assessment may be filed with the tax court or the district court of the county where the tax is levied. Minn. Stat. § 278.01, subd. 1(a). Upon receiving a tax review petition, the district court "shall without delay summarily hear and determine the claims, objections or defenses made by the petition and shall direct judgment to sustain, reduce or increase the amount of taxes due." Id.

At issue in this tax review petition is the market value of a property located in Mantrap Township, Hubbard County, Minnesota. Petitioner challenges the assessment values for January 2, 2008; January 2, 2009; and January 2, 2010. The Petitioner alleges the subject property has been assessed at a value greater than its actual value. The Hubbard County Assessor placed a January 2, 2008, estimated market value on the subject property of \$426,300.00; a January 2, 2009, estimated market value on the subject property of \$400,100.00; and a January 2, 2010, estimated market value on the subject property of \$370,900.00.

On April 16, 2009, the Petitioner filed the property tax petition contesting the Hubbard County Assessor's valuation of the subject property, as well as two separate tracts of property. On April 21, 2010, the Petitioner broadened the scope of his objection to include the effective assessment dates of 2008, 2009 and 2010. Prior to the beginning of trial, the Petitioner dismissed his objections to two of the three tracts of property leaving the subject property listed in paragraph (4) of the findings as the only contested parcel.

For the reasons discussed below, the Court determines the Petitioner has failed to meet his burden of proof to obtain the relief he requested. Based on the testimony of Ms. Creager, the real estate appraisal expert retained by the County, the estimated market value of the subject property for 2008, 2009, and 2010 is increased pursuant to Minn. Stat. § 278.01, subd. 1(a).

Burden of Proof

If the assessor's median sales ratio falls between 90 percent and 105 percent, the assessor's estimated value is considered *prima facie* valid. Southern Minn. Beet Sugar Coop. v. County of Renville, 737 N.W.2d 545, 558-60 (Minn. 2007). Thereafter, the Petitioner has the burden of proving the market value of the subject property is excessive. The Petitioner may overcome this presumption by introducing credible evidence as to the subject property's market value. If the Petitioner fails to meet this burden, the court may rely on the county's assessment or may increase the valuation of the property based on evidence presented by the county. Minn. Stat. § 278.05, subd. 1. After considering all the evidence, the Court makes a determination based on the preponderance of the evidence.

Background

The subject property is situated on 2,000 feet of shoreline on Crow Wing Lake and 1,000 feet of shoreline on Spider Lake. Construction of the log cabin began in 1977 and was completed in 1978. The cabin contains 3 bedrooms, ½ bathroom, a stone fireplace, no septic system, grey water waste, and a basement with low ceilings and a sand bottom well.

The log cabin is "T-shaped" and contains approximately 1,859 square feet of living area. The shoreline on Crow Wing Lake is primarily marsh with some better frontage on the north end. Similarly, the shoreline on Spider Lake is entirely marsh.

Highest and Best Use (property class)

Highest and best use is defined as “the reasonable probable and legal use of vacant land or an improved property that is physically possible, legally permissible, appropriately supported, financially feasible, and that results in the highest value.” Schramel v. County of Stearns, 2010 WL 249501 Minn. Tax Regular Div., (Jan. 15, 2010). The County’s expert, as well as the County Assessor, opined that the highest and best use for the subject property is seasonal recreational property. The Petitioner did not dispute the classification of the subject property. The Court agrees, and, therefore, finds the subject property fits within the property class “seasonal recreational.”

Median Sales Ratio

To determine whether a property has been unequally assessed, the property’s actual market value and real estate tax assessment must be compared with the market value and real estate tax assessments of other properties. Anacker v. County of Cottonwood, 302 N.W.2d 342, 345 (Minn. 1981). Thus, a tax court faced with an unequal assessment claim must make two essential findings of fact: (1) the actual market value of the property at the time of the assessment; and (2) the percentage applied by the assessor to the market value on the property involved as compared as compared with the percentage applied to other property in the assessment district, of the same class, in arriving at the full and true value for tax purposes.” According to regulations administered by the Department of Revenue, an assessor’s sales ratio study must indicate the median sales ratio for the subject property is between 90 percent and 105 percent.

In the case at hand, the median sales ratio for the subject property was as follows:

2008: 100.8% (calculated with 41 comparable sales). Exhibit 38.

2009: 104.7% (calculated with 33 comparable sales). Exhibit 63.

2010: 100.3% (calculated with 39 comparable sales). Exhibit 64.

Experts

When determining the value of a property for tax assessment purposes, the Court considers three traditional approaches to determine the estimated market value of the subject property. See, Equitable Life Assurance Soc’y v. Ramsey County, 530 N.W.2d 544, 552 (Minn. 1995). However, not every property’s market value can be determined by all three approaches. Rather, there will usually be a method that is best suited for any particular piece of property. In the case at hand, the age of the subject property as well as its use as a seasonal residence led the court, the experts employed by each party, and the Hubbard County Assessor to rely solely on the sales approach.

The sales approach, often times referred to as the “market data approach,” is a sophisticated analysis of the competitive market and is the primary method for determining the value of a single-family or recreational/seasonal property. When conducting a sales approach appraisal, the subject property is compared to recently sold “comparable properties.” However, because no two properties are exactly alike, the sales price of the comparable properties must be adjusted up or down for each of the differences between the subject and the comparable properties.

When calculating adjustments between the subject property and a comparable sale, an appraiser will consider such things as the amount and quality of shoreline, the gross living area (GLA), the quality of the construction and/or design, the functional utility of the property, etc.

The following is an analysis of the assessment and appraisals conducted by Robert Hansen, Hubbard County Assessor, Carsten Burros on behalf Duane Arndt, and Rachel Creager on behalf of Hubbard County.

a. Mr. Hansen – Hubbard County Assessor

Robert Hansen, the Hubbard County Assessor, is charged with the duty of determining the estimated market value and classification of every piece of real property situated in Hubbard County. In completing each assessment, Mr. Hansen conducts several months of analysis before and after the effective assessment date. The analysis process includes field inspections, research of market data, and a compilation of the sales ratio study. Once the final value and classification for each property is complete, the assessment value is used in determining the property's taxes for the following year. For example, the value and classification for the 2010 assessment, once finalized, will be used to determine the taxes paid in 2011.

In his final assessment of the subject property, Mr. Hansen employed the sales approach—meaning comparable sales of similar properties in the area were adjusted up or down to reflect the value of the subject property. For the 2008 assessment, 9 comparable sales were used in his analysis. For 2009 and 2010, 11 comparable sales were used in his analysis. The field notes for each assessment year were received by the Court as Exhibits 50-52 and these documents demonstrate that adjustments were calculated appropriately to better allocate the assessment value of the subject property to the value of the relevant comparable sales.

Mr. Hansen's assessment value of the subject property was \$426,000.00 in 2008, \$400,000.00 in 2009, and \$370,900.00 in 2010. According to the assessment guidelines determined by the Minnesota Department of Revenue as outlined in Exhibit 59, the County has

established that Mr. Hansen's assessment was conducted appropriately and within said guidelines.

The Court recognizes the immense responsibility placed on the county assessor each year. In general, it is unrealistic to expect a county assessor to conduct the assessment of each parcel in the county with the same depth and precision as a certified appraiser conducting a stand-alone appraisal as completed by the parties' experts.

b. Mr. Burros – Petitioner's Expert

The Petitioner retained Carsten Burros, a Certified MN Real Property Appraiser, to conduct an appraisal of the subject property. Mr. Burros completed his appraisal on February 5, 2010, and found an estimated market value of the subject property to be \$300,000.00. Mr. Burros' appraisal report was offered and received by the Petitioner as Exhibit 1.

According to his testimony at trial, Mr. Burros conducted his appraisal and found a value of \$300,000.00 as of February 5, 2010. Instead of conducting a retrospective appraisal report, Mr. Burros took the 2010 figure and used a percentage of roughly "five percent" to adjust the value of the property for 2009 and 2008. Mr. Burros provided no factual basis regarding the percentage adjustment used in determining the estimated market value for the three tax years prior to the date of his appraisal. Such a departure from the standard real property appraisal practice leads to an extremely subjective figure and lacks credibility for purposes of this proceeding.

Moreover, Mr. Burros' appraisal used only one comparable sale in its analysis. The comparable sale, located on Sloan Lake in Park Rapids, MN, was a foreclosure sale that had been listed at well over \$300,000.00, then reduced to \$200,000.00 and finally sold for

\$179,600.00. Generally, the common practice among real estate appraisers is to use at least three comparable sales when determining the estimated market value for a given year. Without at least three sales, it is difficult to arrive at an accurate estimated value.

Finally, the use of a foreclosure sale as a comparable property is generally avoided by real estate appraisers. When sold by a bank upon foreclosure, many properties may not sell at market value, but rather at a price necessary to cover the existing lien on the property. In addition, it is not uncommon for a property to have more than one mortgage meaning the sale price could be lower as the purchaser is buying the property subject to a remaining lien. For this reason, using a foreclosure sale as a comparable property in the sales approach will often lead to a skewed appraisal figure.

Due to the subjective nature of Mr. Burros' appraisal and his deviation from the standard appraisal practice, the Court finds Mr. Burros' appraisal and testimony to be lacking in credibility. The Court gives his testimony much less weight in considering the issues challenged by the Petitioner.

c. Ms. Creager – Hubbard County's Expert

Rachel Creager is a Certified General Real Property Appraiser and has been conducting residential and commercial real estate appraisals in Minnesota since 1997. Ms. Creager was retained by Hubbard County to perform an appraisal of the subject property for the relevant tax years to this proceeding. The effective dates for these appraisals were January 2, 2008; January 2, 2009; and January 2, 2010. Her appraisal reports have been received by the Court as Exhibits 53, 54 and 55. The Court finds Ms. Creager's appraisal figures to be detailed, precise and

calculated in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP).

Ms. Creager performed her appraisal retrospectively, meaning the estimated market value of the subject property was determined based on comparable sales that took place within the year preceding the effective date of the appraisal. In order to conduct a retrospective appraisal, Ms. Creager researched the relevant sales data for the specific periods of time and found comparable sales that took place throughout the relevant time periods. According to her testimony at trial, Ms. Creager chose the comparable sales that, in her professional opinion, best categorized the subject property—meaning they were singled out due to their similar location, size, site value, improvements, etc.

With three comparable sales as the recommended minimum for real estate appraisers, Ms. Creager chose to use four comparable sales and one active listing for tax year 2007, payable in 2008; three comparable sales in tax year 2008, payable in 2009; and five comparable sales for tax year 2009, payable in 2010. Within each tax year, Ms. Creager's appraisal included at least one comparable sale viewed as "superior," one viewed as "inferior," and one viewed as "similar" to the subject property.

Petitioner takes great exception to Creager's analysis in regards to her 2008 valuation. In that appraisal, Creager used a "listed property." Creager testified that she felt the listed property was the most comparable in estimating the value for purposes of 2008. The Court agrees that a "listing" is not a "sale" and that most comparables in real estate appraisals are based upon sales. The Court further agrees the evidence suggested that the "listed" property had not yet sold even

at the time of trial. Nonetheless, the Court does find greater weight and more persuasive evidence in the testimony and appraisal of Ms. Creager.

As a result of Ms. Creager's investigation and analysis, she found the subject property held a value of \$428,000.00 on January 2, 2008; \$416,000.00 on January 2, 2009; and \$408,000.00 on January 2, 2010.

Petitioner's Claims and Testimony

In his post-trial written arguments, the Petitioner acknowledges that an assessor's valuation is *prima facie* valid and that he, as the taxpayer challenging the valuation, carries the burden of demonstrating that the assessment is excessive. The Petitioner testified on his own behalf and urged the Court to deem the property of such a unique nature that it is unrealistic to derive a value from a traditional real estate appraisal. If the Court were to accept that reasoning, the Court would be left to determine a value without benefit of recognized and persuasive evidence. The Petitioner urges the Court to decrease the value for all three years in controversy. The Petitioner argues that there have been no road improvements on the property nor any efforts to undertake development of the property. He further contends that all parties agree that there have been no structural changes, modifications, or improvements to the basic buildings since they were constructed in the 1970's. The use of the property as a hunting property is not determinative in the Court's analysis nor is it controlling for the County Assessor in reaching a valuation. While all lakes and woods property may be claimed to be unique, the fact remains, the County Assessor must determine a value upon which real estate taxes are then based.

The Petitioner requests the Court to reject a valuation based on the sales ratio and requests the Court to value the property based on a “per acre” basis. The Court does not find that argument persuasive.

Conclusion

This may be a difficult property to value because of the cabin’s unique characteristics, the large amount of unusable lakeshore within the property, and small amount of usable comparable sales. Yet, Ms. Creager’s testimony demonstrated, by a preponderance of the evidence, the most accurate market value of the subject property for the relevant tax years. Her appraisal was conducted in accordance to the USPAP guidelines, her report was very detailed and well thought out, and her testimony was clear and comprehensive. As a result, the Court adopts Ms. Creager’s estimated value of the subject property for the times in question.

When an objection to real property taxes is filed before the District Court in Minnesota, the Court shall direct judgment to sustain, reduce or increase the amount of taxes due. Minn. Stat. § 278.05, subd. 1. Evidence, including the Court’s finding that the methodology of an expert with respect to the estimated market value of the subject property, was more precise than the methodology employed by the county assessor, is sufficient to support the Court’s determination that the market value of the property has increased. See, In re Objection to Real Property Taxes, 353 N.W.2d 525 (Minn. 1984). Therefore, consistent with Ms. Creager’s professional opinion, the real estate taxes for the subject property payable in 2010, 2009, and 2008 shall be raised pursuant to Minn. Stat. § 278.05, subd. 1.

RDT
01/14/2011