

BEFORE THE IDAHO BOARD OF TAX APPEALS

LATAH COUNTY ASSESSOR,)	
)	
Appellant,)	APPEAL NO. 22-A-1032
)	
v.)	FINAL DECISION AND ORDER
)	
DENNIS AND JOAN WEST,)	
)	
Respondents.)	
)	
_____)	

RESIDENTIAL PROPERTY APPEAL

This appeal is taken from a decision of the Latah County Board of Equalization concerning an appeal of the valuation for taxing purposes on property described by Parcel No. RPM1120005002AA. The appeal concerns the 2022 tax year.

This matter came on for hearing September 23, 2022, in Moscow, Idaho, before Hearing Officer Travis VanLith. Latah County Deputy Prosecuting Attorney Bradley Rudley represented Appellant. Respondents Dennis and Joan West were self-represented.

Board Members Leland Heinrich, and Doug Wallis join in issuing this decision.

The issue on appeal concerns the market value of an improved residential property.

The decision of the Latah County Board of Equalization is modified.

FINDINGS OF FACT

The assessed land value is \$77,500, and the improvements' value is \$0, totaling \$77,500. Appellant agrees with the land value but contends the correct improvements' value is \$408,523, totaling \$486,023.

The subject property is a .37 acre parcel located in the University Heights subdivision in Moscow, Idaho. The property is improved with a 3,068 square foot five (5) bedroom, three (3) bathroom residence constructed in 1951. The property is further improved with a 576 square foot detached garage connected to the residence by a roof extension.

For the current 2022 assessment year, the subject property was initially assessed at a total value of \$486,023, with \$408,523 attributable to the improvements and the remainder to the land. Respondents appealed the valuation to the Latah County Board of Equalization (BOE), which ultimately resolved to reduce the value of the subject property's improvements to \$0, leaving the land value as assessed. The basis for the BOE's decision was due to the recent discovery of a roughly seventy (70) year old active public sewer line running under subject's improvements.

Respondents explained the City of Moscow had recently assumed control and maintenance responsibilities over the sewer system in the University Heights area. To better understand the old sewer system, the City of Moscow commissioned a technical analysis from Great West Engineering, who authored a report titled *Evaluation of Alternatives, City of Moscow, Idaho University Heights Wastewater System* (hereinafter the Great West Report), published in March 2021 and posted on the City's website among other online sites. The report spotlighted the subject property as the only one (1) out of roughly sixty (60) parcels in the subdivision as having the sewer line under the improvements. Due to the potential dangers associated with an active public sewer line running under the property, and the stigma attached to subject as a result of the widely-published engineering report, the BOE concluded there was no value attributable to the

improvements until the sewer line issue was remedied. Appellant disagreed with the BOE's decision to place a \$0 value on subject's improvements so timely appealed to this Board.

Appellant acknowledged there is an active sewer line running under the subject property but argued there was no market-based support to reduce the valuation. Appellant called a city engineer at hearing to testify about the pipe, including its location and current condition. It was reported a robotic camera device was run through the portion of the sewer line on the subject property in August 2022, at which time no cracking, leaking, or root protrusion was observed. There were some small pitting marks, but the cast iron pipe was considered in "fair" condition for the type and age of piping. The city engineer further shared the sewer system was installed in 1950, at which time it was common for structures to be erected above public sewer lines. Lastly, the city engineer stated the pipe is not pressurized and runs at only approximately 25% capacity. The engineer opined, based on the eight (8) inch diameter of the rugged cast iron pipe, the seven (7) foot burial depth of the pipe in dense clay soil, and the recent robotic camera inspection, the pipe currently poses little danger to any of subject's above-ground structures.

While the robotic camera inspection allowed the condition of the pipe to be ascertained, the city was not able to identify the precise location of the pipe on the subject property. Accurately tracking the pipe between manholes along the street was not a problem, but it was more difficult as the pipe strayed from the street, where the pipe is buried deeper into the soil. By the city engineer's best estimate, the pipe runs under the eastern edge of subject's detached garage and out the southern side of the structure.

Based on the positions of the nearby manholes, it was reported the pipe does not appear to run under the residence itself.

In addition to the condition and location information about the pipe, Appellant also shared the City of Moscow has plans to update the sewer system in the entire University Heights area beginning in 2025. Though project details have not yet been finalized, it is anticipated the current piping will either be re-lined or relocated. Based on the City's plans to update the sewer system in a couple years and the fact subject's residence is believed to be structurally sound and has not been condemned by the City as a life safety issue, Appellant argued it was inappropriate for the BOE to eliminate the assessed value of the subject residence based on a potential future casualty event.

In support of reinstating subject's original 2022 assessed valuation, Appellant offered information and analysis on eight (8) sales which occurred during 2020 and 2021. Four (4) of the sale properties were located in University Heights and the others were located in three (3) adjacent neighborhoods. The sale residences, constructed from 1954 to 1980, ranged in finished living area from 1,690 to 3,384 square feet. The sale residences generally approximated subject in terms of construction quality, condition, and bedroom and bathroom count, and all had either attached or basement garages. The exception was Sale No. 8, which was a three (3) bedroom, two (2) bathroom residence with 1,690 square feet of finished living area with lower condition and construction quality ratings two (2) tiers below the subject residence. Sale prices ranged from \$342,500 to \$581,000, to which Appellant applied an upward 2.035% per month time adjustment to reflect pricing levels on January 1, 2022. The result was adjusted prices from \$456,968 to \$675,566, or from roughly \$129 to \$202 per square foot. Based on the adjusted sale

prices, Appellant contended subject's original total valuation of \$486,023, or approximately \$114 per square foot, was reasonable and should be reinstated.

Respondents contended the BOE's decision to reduce subject's valuation was appropriate under the particular circumstances presented here. Respondents stressed the negative impact to subject's reputation by being singled-out in the Great West Report as the only property in the study area with residential improvements above an old, but active, sewer line. The report detailed some of the potential risks associated with sewer lines under structures, including the possibility of structural damage to the above-ground improvements in the event of collapse or other failure of the pipe. In Respondents' view, subject's reputation has been irreparably harmed, which has rendered the property unmarketable and effectively worthless.

In support of Respondents' reduced marketability conclusion, an opinion letter authored by a long-time local real estate broker was offered. The letter was in response to Respondents' request for an estimate of subject's current market value. The letter characterized the sewer line under subject's improvements as a latent defect that Respondents would be legally obligated to disclose to any potential purchaser of the property now that Respondents have been informed the condition exists. In ultimately declining to offer a formal value opinion, the letter stated, "[u]ntil this unusual and serious problem has been rectified I feel it could actually make the property unsaleable in its present state." Respondents experienced similar difficulty in obtaining a formal appraisal of subject so have been unable to secure an independent valuation of the property.

In discussing subject's assessment with the assessor's office, it was suggested Respondents obtain an estimate for the cost to cure the sewer line issue. Respondents

acknowledged the situation could likely be resolved but pointed out because the City of Moscow owns the pipeline, Respondents cannot legally alter or otherwise attempt corrective measures to remedy the situation. Indeed, Respondents cannot even order an inspection of the pipe to identify potential mitigative options. So, until the City of Moscow addresses the situation, it was argued Respondents “remain hostage to a seventy-two-year-old, still-active cast iron public sewer pipeline under [the] house,” and therefore the decision of the BOE should be upheld.

CONCLUSIONS OF LAW

This Board's goal in its hearings is the acquisition of sufficient, accurate evidence to support a determination of market value in fee simple interest or, as applicable, a property's exempt status. This Board, giving full opportunity for all arguments and having considered all the testimony and documentary evidence submitted by the parties, hereby enters the following.

Idaho Code § 63-205 requires taxable property be assessed at market value annually on January 1; January 1, 2022, in this case. Market value is always estimated as of a precise point in time. Idaho Code § 63-201 provides the following definition,

“Market value” means the amount of United States dollars or equivalent for which, in all probability, a property would exchange hands between a willing seller, under no compulsion to sell, and an informed, capable buyer, with a reasonable time allowed to consummate the sale, substantiated by a reasonable down or full cash payment.

Market value is estimated according to recognized appraisal methods and techniques. The sales comparison approach, the cost approach, and the income approach comprise the three (3) primary methods for determining market value. *Merris v. Ada Cnty.*, 100 Idaho 59, 63, 593 P.2d 394, 398 (1979). The sales comparison approach

is commonly used in the valuation of a residential property. In general terms, the approach examines recent sales of similar property, and considers the differences in property characteristics between subject and the sale properties.

The central issue in this case concerns the potential diminution of subject's market value stemming from the recent discovery of an old, active sewer pipeline running under the parcel. The Great West Report identified the subject property as the only parcel in the study area in which the sewer line was confirmed to run underneath the residential improvements. Due to the burial depth of the pipe, the city engineer was unable to identify the precise location of the pipe on the subject property, but opined the pipe is likely buried beneath the eastern edge of the garage. Respondents argued subject's marketability was effectively eliminated as a result of the stigma attached to the property being singled-out in The Great West Report. Appellant, by contrast, contended there was no market-based support to adjust subject's assessed value for a potential future casualty loss event, and therefore the BOE erred in its decision to reduce the value of subject's residence to \$0.

The Board understands Appellant's position with respect to basing appraisal adjustments on data extracted from the marketplace. However, the problem in this case is there are no recent sales involving an active sewer line running under residential improvements, including any of the ten (10) sales from the neighborhood shared by Appellant. In essence, the discovery of the sewer pipe has transformed the subject property into a truly singular parcel in the area for which there is nothing comparable. This unique condition certainly makes it more difficult to determine a proper adjustment, but that does not mean an adjustment should not be made. After all, appraisal is not an exact science that can be reduced to a simple mathematical formula, but instead involves a

notable degree of discretion and professional judgment on the part of the licensed appraiser.

By featuring it in the Great West Report, the subject property's reputation in the local real estate marketplace has been irreparably harmed. Now that Respondents have been made aware of the pipe, this latent defect must be disclosed to any potential purchaser. The uncertainty about the remaining life of the pipe and the unknown structural risks to the above-ground improvements if the pipe were to collapse or otherwise fail would undoubtedly factor in a knowledgeable buyer's purchase decision. It is highly unlikely, in the Board's view, that a prospective buyer would not insist on a discount for the inherent risk associated with an active seventy (70) year old public sewer pipe buried under subject's residential improvements.

Appellant argued the issue was temporary because the City of Moscow has plans to redesign the entire sewer system in the University Heights area in a couple years, which will eliminate any risk associated with the pipe. While the redesigned sewer system should remedy the situation, the project is not scheduled to start until 2025. The question in this appeal is not what subject's market value would be once the sewer line issue is resolved, but rather the market value of the property as of January 1, 2022, at which time the pipe was very much a concern.

Further, and importantly, an experienced local broker declined to develop an estimate of subject's value because of the uncertainties surrounding the pipe and the resulting stigma to the property. The broker additionally expressed, "[u]ntil this unusual and serious [sewer line] problem has been rectified I feel it could actually make the property unsaleable in its present state. In any event, make [the subject property] worth

way less than current fair market value until the work is completed by the City of Moscow.”

This statement brings into focus the difficult reality that Respondents are powerless to remedy the issue or otherwise explore corrective solutions because the pipe is owned by the City, which has no plans to address the situation until at least 2025. Any purchaser of the subject property in its current state would be faced with the same pipe ownership obstacle, which has the practical effect of restricting the use and utility of the property. It is reasonable to assume an informed and knowledgeable buyer would factor subject’s restricted utility in any decision to purchase the property.

Though it is clear to the Board subject’s market value has been diminished as a result of the recent discovery of the sewer line, it is difficult to accept the position the residence has lost its value entirely. There was nothing in the record to suggest any of the improvements have suffered any damage and, according to the city engineer, the pipe appears to be in fair condition for its type and age, with no leaks, cracks, or root protrusions observed during the recent robotic camera inspection. Also, the city engineer’s inspection, albeit not conclusive, estimated the location of the pipe as running under just a portion of the detached garage. So, the physical risk if the pipe were to fail appears to be limited primarily to the garage structure, not the residence. In any event, the improvements are being actively used by Respondents, who reported no damage to any of the structures. In short, it is clear the improvements contribute value, however in the Board’s view, such value contribution is less than that asserted by Appellant.

In appeals to this Board, the burden is with Appellant to establish subject’s valuation is erroneous by a preponderance of the evidence. Idaho Code § 63-511. Given the record in this matter, the Board found the burden of proof satisfied, but did not find

sufficient support for the value petitioned by Appellant. While it was apparent subject's improvements do carry value, the Board was not persuaded an adjustment should not be made simply because such adjustment could not be quantified by sales data. As noted earlier, appraisal naturally includes a degree of subjectivity tempered by professional expertise, and under the unique circumstances presented here, the Board finds it reasonable to conclude an adjustment is warranted and proper. Giving consideration to subject's restricted utility and reduced marketability caused by the uncertain location of the sewer pipe and the associated risks to the improvements, the Board concluded a value of \$302,500 for subject's improvements in this particular instance, with no change to the \$77,500 land value. The decision of the Latah County Board of Equalization is modified accordingly.

FINAL ORDER

In accordance with the foregoing Final Decision, IT IS ORDERED that the decision of the Latah County Board of Equalization concerning the subject parcel be, and the same hereby is, MODIFIED to reflect a increase in total value to \$380,000, with \$77,500 attributable to the land and \$302,500 to the improvements.

IT IS FURTHER ORDERED, pursuant to Idaho Code § 63-1305, any taxes which have been paid in excess of those determined to have been due be refunded or applied against other *ad valorem* taxes due from Respondents.

Idaho Code § 63-3813 provides that under certain circumstances the above-ordered value for the current tax year shall not be increased in the subsequent assessment year.

DATED this 23rd day of February, 2023.