

BEFORE THE IDAHO BOARD OF TAX APPEALS

MATTHEW AND LORAIN MANDINO,	)	
	)	
Appellants,	)	APPEAL NO. 17-A-1041
	)	
v.	)	FINAL DECISION
	)	AND ORDER
BONNER COUNTY,	)	
	)	
Respondent.	)	
_____	)	

**VACANT LAND APPEAL**

This appeal is taken from a decision of the Bonner County Board of Equalization denying the protest of valuation for taxing purposes of property described by Parcel No. RP00192001012DA. The appeal concerns the 2017 tax year.

This matter came on for hearing September 14, 2017 in Sandpoint, Idaho before Hearing Officer Travis VanLith. Matthew Mandino appeared for Appellants. Assessor Jerry Clemons represented Respondent.

Board Members David Kinghorn, Leland Heinrich and Kenneth Nuhn join in issuing this decision.

**The issue on appeal concerns the market value of a vacant residential property.**

**The decision of the Bonner County Board of Equalization is affirmed.**

FINDINGS OF FACT

The assessed land value is \$381,150. Appellants contend the correct land value is \$45,000.

The subject property is an unimproved .355 acre parcel with 75 waterfront feet on the eastern shore of Lake Pend Oreille. The property is located in an area known locally as the Hope Peninsula.

Appellants contended subject's current assessed value does not reflect the actual market value of the parcel. Appellants explained subject is burdened by a restrictive covenant contained in the Warranty Deed recorded in Bonner County on February 16, 1993. The deed provides "[t]here shall be no construction of a dwelling house or commercial structure, except Grantees, or their assigns...shall be permitted to construct a 'guest cottage' as defined on this date by ordinances of Bonner County, Idaho." Appellants highlighted the covenant prohibits construction of a dwelling house on the lot and argued subject should therefore not be valued the same as other parcels not similarly restricted.

In developing an opinion of value for subject, Appellants looked to sales involving properties also encumbered by development restrictions. Appellants were unable to locate any recent sales of parcels with similar restrictive covenants, however, did offer information concerning the recent sale of a vacant lot located in subject's area. The .43 acre lot sold for \$32,000 in February 2016. Appellants reported the lot could not be developed because it did not have sewer access. In Appellants' view, this lot represented the most comparable recent sale. Respondent contended the referenced parcel was buildable, though would require an engineered septic system. Respondent, however, acknowledged the engineered septic requirement was a restriction which likely contributed to the lower sale price. Respondent further pointed out the sale lot was not waterfront property, and argued it should therefore not be compared to subject for purposes of determining market value.

Appellants' other sales data included information on four (4) more vacant lot sales

from subject's general area which sold during 2016. The sale lots varied in size from .26 to .92 acres with sale prices ranging from \$47,000 to \$350,000. Appellants calculated an average price-per-acre for these four (4) sales of \$228,732. Applying this average price rate to subject's acreage yielded an estimated value of \$81,200. Using this estimated value, and the value indicated from the above-referenced sale lot, Appellants concluded a market value of \$45,000 for subject.

Respondent challenged the comparability of the four (4) sales offered by Appellants. Respondent pointed out only one (1) of the sales involved a waterfront parcel. This waterfront sale and two (2) of the others provided were characterized by Respondent as non arm's-length transactions. In all, Respondent contended none of the sales referenced by Appellants were comparable to subject and therefore should not be considered.

Regarding the restrictive covenant contained in subject's deed, Respondent challenged the validity of the restriction. Respondent explained for a restrictive covenant to be enforceable, such covenant must run with the land. Respondent noted Idaho law recognizes the validity of covenants restricting the free use of private property, however, contended in order for a restrictive covenant to be valid there must be a nexus between the burden imposed on the servient estate and a benefit to the dominant estate. Applied here, Respondent argued the restrictive covenant was invalid because, while subject was admittedly burdened, there was no clear benefit to a dominant estate. In Respondent's view, the covenant was only valid between the grantor and the grantee and did not run to Appellants who were not the original parties to the agreement. In short, Respondent

argued in order for the restrictive covenant to be valid, the original grantor would have needed to retain ownership of a property in the subdivision. Because Respondent concluded the covenant was invalid, it was argued the subject parcel was not restricted and should thus be valued the same as any other residential parcel.

Turning to subject's current assessed value, Respondent offered information concerning two (2) improved residential waterfront sales situated within a couple miles of subject. Sale No. 1 was a parcel with 175 front feet on the lake. The property sold for \$725,000 in July 2016. Respondent adjusted the sale price by removing the assessed value of the associated improvements and also by making an adjustment for the difference in the amount of frontage compared to subject. The result was a land price indication of \$457,865, or \$6,105 per front foot. Sale No. 2, with 150 waterfront feet, sold in July 2016 for \$760,000. Adjusting for the same two (2) factors, Respondent concluded a land price of \$400,330, or \$5,338 per front foot. Subject was assessed for \$381,150, or \$5,082 per front foot.

In addition to the above sales, Respondent provided assessment information on two (2) nearby properties not improved with dwellings. Both parcels enjoyed 100 front feet on the lake and the assessed land value for both was \$435,600. One (1) of the lots was improved with a garage-type structure and the other with a small cabin. In Respondent's view, this information was evidence waterfront land carried full value regardless of the type of structure situated thereon.

## CONCLUSIONS OF LAW

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

Idaho Code § 63-205 requires taxable property be assessed at market value annually on January 1; January 1, 2017 in this case. Market value is defined in Idaho Code § 63-201, as,

“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 three (3) primary methods of determining market value include the sales comparison approach, the cost approach, and the income approach. *Merris v. Ada County*, 100 Idaho 59, 63, 593 P.2d 394, 398 (1979). The market value of residential property is typically estimated using the sales comparison approach, which in broad terms considers recent sales of similar property.

Before exploring the question of subject's market value, the Board must first address the issue concerning the restrictive covenant contained in the warranty deed. As noted earlier, the relevant deed language reads, “[t]here shall be no construction of a dwelling

house or commercial structure, except Grantees, or their assigns, shall be permitted to construct a 'guest cottage' as defined on this date by ordinances of Bonner County, Idaho.”

It is well settled in Idaho, “[r]estrictive covenants, which restrict the uses to which a party may put his or her property, are valid and enforceable.” *Brown v. Perkins*, 129 Idaho 189, 192, 923 P.2d 977, 438 (1996), *quoting Sun Valley Ct. V. Sun Valley Co.*, 107 Idaho 411, 413, 690 P.2d 346, 348 (1984). Such restrictions on the free use of land, however, must be clearly expressed because restrictive covenants are in derogation of the common law right of a person to use land for all lawful purposes. As such, “covenants are not to be construed to extend by implication any restriction not clearly expressed in the covenants . . . [and] all doubts and ambiguities are to be resolved in favor of the free use of land.” *Brown* 129 Idaho at 192, 923 P.2d at 438, *citing Post v. Murphy*, 125 Idaho 473, 475, 873 P.2d 118, 120 (1994); *Thomas v. Campbell*, 107 Idaho 398, 404, 690 P.2d 333, 339 (1984). “Thus, restrictions that are found to be clearly expressed in the Restrictive Covenants are to be applied against the free use of land, while restrictions that are not clearly expressed will be resolved in favor of the free use of land.” *Brown* at 192.

In interpreting a restrictive covenant, courts apply the same general rules of construction as applied to any contract covenant. “When the language of a contract is clear and unambiguous, its interpretation and legal effect are questions of law . . . An unambiguous contract will be given its plain meaning.” *Shawver v. Huckleberry Estates, LLC*, 140 Idaho 354, 361, 93 P.2d 685, 692 (2004), *citing State v. Barnett*, 133 Idaho 231, 234, 985 P.2d 111, 114 (1999). By contrast, where a contract’s terms are ambiguous,

interpretation of the contract becomes a question of fact. *Brown* at 192. “A restrictive covenant is ambiguous when it is capable of more than one reasonable interpretation on a given issue. It is only if an ambiguity is found that any ‘construction’ is necessary. Where there is no ambiguity, there is no room for construction; the plain meaning of the language governs.” *Brown* at 192, *citing Post*, 125 Idaho at 475, 873 P.2d at 120.

The restrictive covenant at issue in the present appeal is clear neither a dwelling house nor a commercial structure can be constructed on the subject lot. Ambiguity arises however concerning the type of structure which can be constructed, specifically “a ‘guest cottage’ as defined on this date by ordinances of Bonner County, Idaho”. The problem is Bonner County ordinances, at the time the deed was recorded in 1993, did not include a definition for “guest cottage”. The most approximate term contained in Bonner County ordinances at the time was “guesthouse”, defined by ordinance in 1987, as follows;

GUESTHOUSE. An accessory building, pursuant to standards specified in Section 12-628 of this Title, *located on the same lot as the main building* for the use by temporary guests or family members of the occupants of the main structure, not rented or otherwise used as a separate dwelling. (Ord. 182, 11-2-1987) (emphasis added).

As the above definition makes clear, a guesthouse, which we find analogous to the term “guest cottage”, is a secondary residential-type structure constructed on the same lot as a main dwelling house. Even if the term guest cottage was found to be different from guesthouse, the covenant would still be ambiguous because it specifically references a definition in Bonner County ordinances which does not exist. As such, the common use or understanding of the term guest cottage is the relevant definition, which in this case is

the same as guesthouse. The facts here do not fit with Bonner County's definition of guesthouse because subject is an unimproved lot and therefore does not have a "main building". Appellants own the adjacent property upon which a dwelling house has been constructed, however, subject is a legally separate parcel and the restrictive covenant applies to it alone. And because subject cannot, by definition, have a guesthouse without also having a main building, the Board finds the restrictive covenant ambiguous, and in the Board's view, unenforceable, as well as here irrelevant to the property's market value for assessment purposes. Property valuation for assessment purposes is articulated in some detail in IDAPA 35.01.03.217 (Property Tax Administrative Rules, Rule 217).

We turn now to the question of subject's current market value. Appellants' request for a reduced valuation was based on the assumption subject's development options were restricted by covenant to construction of only a guest cottage. Having found subject is not so restricted, the foundation for Appellants' value position has been lost. Further, at hearing Appellants conceded subject's assessed value would be accurate if the Board determined the lot was not restricted by the covenant. As such, we find no reasonable basis for reducing subject's assessed value, which valuation was supported by two (2) recent sales of nearby residential waterfront properties.

Pursuant to Idaho Code § 63-511, Appellants bear the burden of proving error in subject's valuation by a preponderance of the evidence. Given the facts in this case, the burden of proof was not satisfied.

Based on the above, the decision of the Bonner County Board of Equalization is

affirmed.

FINAL ORDER

In accordance with the foregoing Final Decision, IT IS ORDERED that the decision of the Bonner County Board of Equalization concerning the subject parcel be, and the same hereby is, AFFIRMED.

DATED this 16<sup>th</sup> day of November, 2017.