

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2009-022579

08/30/2010

HONORABLE J. KENNETH MANGUM

CLERK OF THE COURT

D. Glab

Deputy

NATIONAL BANK OF ARIZONA N A

JASON P SHERMAN

v.

DESERT FOOTHILLS DEVELOPMENT L L C, WILLIAM J O'LEARY
et al.

MINUTE ENTRY

This matter was tried to the Court on July 20, 2010. Having considered the pleadings on file, the testimony of the witnesses and the exhibits admitted into evidence, the Court makes the following Findings of Fact and Conclusions of Law. If any Finding of Fact is more appropriately a Conclusion of Law or vice versa, it shall be so considered.

Findings of Fact

1. This hearing is to determine the fair market value ("FMV") of the Defendants' 1.01 acre vacant residential lot at 14224 E. Desert Vista Trail in Rio Verde, Arizona. This is an unincorporated part of Maricopa County, but uses a Scottsdale mailing address and zip code. The issue is whether the value of the property was less, more or equal to the \$48,000 which plaintiff paid for the lot at the foreclosure sale on April 7, 2009.
2. Generally speaking, testimony is summarized under each person's name and is generally in the first person.

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Timothy Alan Maze

3. Timothy Alan Maze is a residential real estate appraiser for Norris Property Consultants and has so worked for 13 years. I received a Bachelor's Degree from ASU in 1993. I became certified by Arizona as an appraiser in March 2008, but I am not a member of a trade organization.
4. Exhibit 1 is my appraisal. Page 10 defines market value as the value in an open market without undue influences, without duress, and with the buyer and seller acting prudently and knowledgeably. This is similar to the definition in ARS §33-814.
5. I inspected the lot—it has a paved road in front, it is rolling ground, has good mountain views, shares a well and electricity access was nearby.
6. April 2005 was the peak value for the property.
7. There were 269 listings and they ranged from \$35,000 to \$875,000 and up to 4.99 acres. Twenty-two lots sold in the prior 12 months. Therefore, there is a 12-13 year supply of land, not counting the acreage above five acres.
8. Page 5 of the report shows that between April and October 2008, the average price per acres was \$107,265. By April 2009, the average price per acre was \$74,841. I determined that the appropriate time adjustment was 5% per month.
9. I used the sales comparison approach because the cost approach and the income approach don't apply to vacant land. It costs \$5000 to bring in water and another \$5000 for electricity.
10. Some sales were in late 2008, so I adjusted for time.
11. Comparable #1 dates from the date of the contract because that's when the parties agree on the price.
12. Comparable #3 shows \$95,000 sales price, or \$85,000 per acre.
13. Comparable #4 is a pending sale. Comparables #5 and #6 show the listing prices were down by 5%

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14. I opine that the FMV on April 7, 2009 is \$60,000. It could be sold at this price for the next 90 days, but it would require the most aggressively priced and marketed lot. Normally, 6-9 months would be the marketing period. I signed my report on April 20, 2009.
15. On the date of the foreclosure sale, I'd say the FMV was \$57,000.
16. Debbie Rudd says that \$85,000 is the FMV, the same as John Bell's technical review (i.e., from his desk without an on-site review), but she doesn't explain how she got to her value. See exhibits #3 and #4.
17. I criticize Bell because the two sales are the best consideration and one was March 3, 2009, for \$90,000 and March 5, 2009, for \$95,000. They are close to the location but I didn't use them because the listing agent represented the buyers and he had a conflict of interest. Also, there was a seller carryback with interest only for three years and five years. A technical review would not bring up this background information. Also, his comp #2 was bought by a neighbor after the home was leveled, and the plans were included for \$10,000.

Nick Mowery

18. Nick Mowery is a real estate agent licensed since December 2005.
19. This is my first court testimony, but I evaluate properties daily.
20. A Broker's Price Opinion ("BPO") is requested by banks when properties are listed.
21. I determined that the FMV per my BPO is between \$110,800 to \$118,800, or \$110,900 to \$119,900.
22. The subject property had a building permit issued and a permit for a septic tank.
23. One property for \$75,000 had washes in it and was a lower elevation, so it would be worth less than the subject property. Also, the subject property's access to Rio Verde Road makes it more valuable because of better access.

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24. Five months was the average time to sell. This was a declining market. Between 2008-09, there was a 9% decline and between 2009-10, there was a 43% decline.
25. Lender owned property sells for less because buyers expect to pay less. Seller carrybacks occur when people can't get financing.
26. The subject property was good because it sat on higher ground.
27. All my properties were vacant land.
28. The 5% per month decline in the market is accurate. No one knows when the market will change.

Conclusions of Law

29. The relevant statute insofar as fair market value is as follows:

A.R.S. §33-814. Action to recover balance after sale or foreclosure on property under trust deed

A. . . . For the purposes of this subsection, "fair market value" means the most probable price, as of the date of the execution sale, in cash, or in terms equivalent to cash, or in other precisely revealed terms, after deduction of prior liens and encumbrances with interest to the date of sale, for which the real property or interest therein would sell after reasonable exposure in the market under conditions requisite to fair sale, with the buyer and seller each acting prudently, knowledgeably and for self-interest, and assuming that neither is under duress. . . .

30. Determining FMV is difficult in a declining market. Also, vacant land leaves only one method of evaluation, and therefore one can't double check with a second or even third methodology.
31. The Court concludes that Mr. Maze didn't include sufficient time for marketing and sale, and therefore underestimated the value of the property. At the same time, the Court concludes that Mr. Mowery was too optimistic about the comparables and averages.

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32. The Court determines that the figure reached by Mr. Bell and Ms. Rudd was appropriate even given the listing agent and financing problem. Moreover, the figure of \$85,000 is between the decidedly too low figure of Mr. Maze and the elevated figure of Mr. Mowery. Accordingly,
33. IT IS ORDERED determining the fair market value of the land on April 7, 2009, is \$85,000.00.