ASSESSOR: Should assess land as acreage when plat nullified by foreclosure of prior Deed of Trust.

1-22

January 17, 1934.

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Mr. Martin L. Neaf
Assessor of St. Louis County
Clayton, Missouri

Dear Mr. Neaf:

I acknowledge receipt of your request for an opinion of this office reading as follows:

> "Kindly let us have opinion by your office as to how assessment should be made in the following case, whether property should be assessed as lots or acreage.
>
> On March 1, 1931 the Ladue Terrace Realty Company, a corporation, executed a Deed of Trust to Edward K. Love Realty Company in the sum of $30,000,00. On April 22, 1931, the Ladue Terrace Realty Company executed a plat of said property and caused same to be filed in the office of the Recorder of Deeds; said plat was approved by the City Clerk of Ladue Village although the streets were not released from the Deed of Trust. On June 24, 1931, the above Company executed an amended plat of said subdivision and caused same to be filed in the office of the Recorder of Deeds of St. Louis County; said plat was approved by the City Clerk of Ladue Village although the streets were not released from the Deed of Trust.
>
> In the execution and filing of said plats of said subdivision the holder of the Deed of Trust did not release the streets from the lien of said Deed of Trust nor did he join in any manner with said Subdivision.
>
> On October 20, 1932, the holder of notes foreclosed and caused the property to be sold under Deed of Trust. He now requests that the Assessor

assess the property as acreage without having the said plats of the Subdivision vacated by the County Court.

Trusting that you may be able to give us this information at a very early date and thanking you for many past favors, I am"

I.

FORECLOSURE OF DEED OF TRUST NULLIFIED PLAT.

From your letter it is apparent that at the time these plats were executed and filed, to-wit, in April and June of 1931, the entire tract of land which was sought to be subdivided was subject to deed of trust to the Edward K. Love Realty Company. By the overwhelming weight of authority in this case the foreclosure of this deed of trust cut out and rendered void the plat filed by the Ladue Terrace Realty Company.

The Springfield Court of Appeals in the case of Granite Bituminous Paving Company vs. Thomas Ward McManus et al. 144 Mo. A. 593, was confronted with the validity of a subdivision of a tract of ground in the City of St.Louis, plat of which had been filed subsequent to the filing of a deed of trust on the property. The deed of trust was subsequently foreclosed. The plaintiff sought to enforce a tax bill assessed against the tract of land as a whole and entirely disregarding the plat which had been filed. As stated by the Court, the gravamen of the defendant's case was that the property had been wrongfully assessed as one tract and should have been assessed according to the plat which had been filed. The Court stated at page 608 as follows:

"* * * *Prior to said pretended dedication, about the year 1874, the said Robert Baker and his wife had conveyed the legal title of said property to one Robert W. Powell, by a deed of trust duly recorded, thus reserving to themselves only the conditional defeasible right of redemption. Therefore at the time of said pretended dedication, the said Robert W. Powell was the owner of the legal and fee simple title, subject to the right of redemption of the said Baker, and nothing more. However regular said pretended plat may be with reference to the technical requirements of the statutes in force in this State at the time

> it was filed, said Baker was incompetent and held no title upon which he could base a valid dedication.* * * * *

And held at page 610:

> ** * * *As the property was sold out in 1878, under a deed of trust antedating the plat, all interest conveyed and the subdivisions attempted to be established by the plat were extinguished and the fee invested in the purchaser free therefrom, including the strip designated on the plat as 'West avenue.' And, as no act has been performed by the present owner (the purchaser under said deed of trust) which would amount to a dedication of the property either under the statute or at common law, it must follow that the officials of the city acted withintheir authority and duty in assessing it as acre property.* * * **

A case upon the same state of facts reached the Supreme Court and is reported at 244 Mo. 184. The Supreme Court in affirming the view of the Court of Appeals stated at page 190:

> ** * * *When Robert Baker filed the plat of his subdivision, the property was encumbered by a deed of trust, and the foreclosure under that deed of trust in 1878, by which Mrs. McManus became the owner of the land, nullified Baker's plat and destroyed it forever as a statutory dedication* * * **

The St.Louis Court of Appeals held similarly in the case of Boatmen's Bank vs. Realty Company, 202 Mo. A. 57. At page 70 the Court stated as follows:

> ** * * *Upon this state of facts we hold that the learned trial court properly held that as to defendant Clarke there had been no dedication of the land in question and as to him the property had to be assessed as one entire tract because the conditional dedication of the streets and alleys, as had been made by the filing of the plat of Semple Place by Hogan in 1892, had been wiped out by the foreclosure

> of the deed of trust which was existing and of record against the said property at the time such dedication was made.* * * *"

While these cases arose under the provisions of the St.Louis Charter, particularly Section 14, Article 6, which provides:

> "The word 'lot' as used in this section shall be held to mean the lots as shown by recorded plats of additions or subdivisions. But if there be no such reported plat or if the owners of property had disregarded the lines of lots as platted and has treated two or more lots or fractions thereof as one lot then the whole parcel of ground or lot so treated as one shall be regarded as a lot for the purposes hereof."

Yet this provision is not materially different from the provision of Section 9793 R. S. Mo. 1929, which provides in part as follows:

> "The assessor shall value and assess all the property on the assessor's books according to the true value in money at the time of the assessment; and all other property shall be valued at the cash price of such property at the time and place of listing the same for taxation. Each tract of land and town lot shall be assessed and valued separately; but all land in a section and lots in a square or block owned by one person, which are contiguous, or which can be consolidated into one tract, lot or call, shall be valued as one tract, lot or call, as contemplated in Section 9780."

II.

LAND SHOULD BE ASSESSED AS ONE TRACT.

It appearing conclusively from the foregoing that the attempted subdivisions of this property is a nullity and that there has been no valid and continuing dedication of the streets, we now proceed to the question as to how the property should be assessed.

In reviewing the above cited cases, we find that the assessment of the tax against the whole tract, disregarding the plat or subdivision was approved. As herein quoted from the 144th Mo. A. case supra:

> "it must follow that the city acted within their authority and duty in assessing it as acre property."

In Welty's "Law of Assessments" p. 213, we find the following statement:

> "Lands may have been surveyed according to a plan, and platted, and such plat recorded as a town plat, but as long as such land continues to be occupied and used as a single tract or parcel, and is so treated by the owner, the whole may be so treated and assessed."

Again referring to Section 9792 herein quoted, we emphasize the fact that this property must be assessed at its true value in money, whether that greatest value is as building sites or acreage. This was decided in the early case of Benoist vs. City of St.Louis, 15 Mo. 669. The facts in the case are stated by Scott, Judge, at page 671 as follows:

> "* * * *On the 8th of February, 1843, an act was passed to reduce into one, the several acts relative to the incorporation of the city of St.Louis, the 10th section of which (art.6) provides, that lands within the limits of the city, which have not been laid off into blocks and lots, shall not be assessed or taxed otherwise than by the acre as a agricultural lands, and shall continue to be so assessed and taxed till laid off into blocks and lots by the owners thereof respectively. The actual value of the land was estimated at $6,000 per acre, but, if used for agricultural purposes only, its estimated worth was two hundred dollars per acre. The assessment was made on its actual value of $6,000 per acre, at the rate of one-sixteenth of one per cent, according to the provisions of the act of 1841. The plaintiff appealed from the assessment to the city authorities, in pursuance of the

> the ordinance in relation to appeals, when the assessment was confirmed, and they then applied to the Circuit Court for an injunction, when the proceedings were perpetually enjoined; from which decree the city of St.Louis appealed." " " "

The whole issue in that case was whether or not the lots should be valued at their value for agricultural purposes or at their actual value. The lower Court held that they were to be valued as agricultural property. The Supreme Court reversed this holding and stated at page 672:

> "" " " "Shall these improvements, made in part at the expense of others, continue to enchance the value of the estates of the land-owners yearly, and yet, shall not their taxes be increased in proportion to the enhanced value of their property? By the mode of assessment contended for, while the yearly value of the land is increased, its value for agricultural purposes may be diminished. The compensation to land-holders for including their farms within the limits, is to be found in the great improvements required by the act of 1841, and not in the supposed mode of assessment, as is clearly shown by the guaranty given, that their taxes shall not exceed one-sixteenth of one per cent. until the improvements are made while property within the old limits might be taxed as high as one-half of one per cent. The other Judges concurring, the decree will be reversed, the injunction dissolved, and the complainant's bill dismissed."

CONCLUSION.

In view of the foregoing authorities, it is the opinion of this office that it would be proper for this assessment to be made as a single tract at its actual value in money, entirely disregarding the subdivision of the tract heretofore filed for the reason that such plat or subdivision has been rendered nugatory and void by the foreclosure of the prior deed of trust.

Respectfully submitted,

HARRY G. WALTNER, JR.
Assistant Attorney General.

APPROVED_____
Attorney General.

HGW;mm