

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Property Tax

JODY GREENBERG,	)	
	)	
Plaintiff,	)	TC-MD 200254G
	)	
v.	)	
	)	
MULTNOMAH COUNTY ASSESSOR,	)	
	)	
Defendant.	)	<b>DECISION</b>

Plaintiff challenges the exception value attributed to the subject on the 2019–20 tax roll. Defendant is in default after failing to file an Answer or otherwise appear in this case. The court held an evidentiary hearing at which testimony was received from Plaintiff and the subject’s property manager, Reed Shumaker. Plaintiff’s Exhibits 1 to 12 were admitted.

I. FACTS AND PROCEDURAL HISTORY

The subject is the same fourplex whose 2018–19 exception value was appealed in *Greenberg v. Multnomah County Assessor*, TC-MD 190105N, 2020 WL 3120381 (Or Tax M Div June 12, 2020) (*Greenberg I*). The subject’s four rental units are labeled A to D. *Greenberg I* concerned work performed on Unit D in 2017. This case concerns work performed in 2018 on Unit A and on windows throughout the building.

Plaintiff regularly maintains his rental properties when vacancies arise and saves money for intermittent large repair items like windows and roofs. According to Plaintiff, the work performed on Unit A was exactly the same as that performed on Unit D, except that Unit A’s doors had been in better condition and required less work. Plaintiff painted, worked on the doors and trim, and replaced worn-out flooring, appliances, cabinets, heaters, lights, faucets, sinks, blinds, smoke detectors, and other small items. (Ex 2 at 3.) Plaintiff also added new can lights

to the living room, ceiling fans to the bedrooms, and granite counters to the kitchen. (*Id.*) Total material and labor costs for the work done exclusively on Unit A were \$19,469, with \$2,900 of that figure attributable to the can lights, ceiling fans, and countertops. (*Id.*) In addition to the work on Unit A, Plaintiff replaced all of the subject's original aluminum frame windows with vinyl windows of a quality typical for rental properties at a cost of \$14,874.07. (Ex 2 at 15.)

The total cost of the work done was \$34,343, which is about 8 percent of the subject's \$435,060 improvements real market value on the 2019–20 tax roll. (*See* Ex 1 at 1.) Plaintiff testified he had performed no work on the subject during the previous five years other than the work on Unit D that was the subject of *Greenberg I*.

The subject's property manager testified in support of valuing the subject's new improvements at \$3,750 according to an income approach. That testimony was not substantiated with market data.

Defendant found the subject incurred \$30,000 of exception value in 2019–20 and raised its maximum assessed value accordingly. Plaintiff asks the court to find the subject incurred no exception value for 2019–20. Plaintiff alleges the majority of the work done was general ongoing maintenance and repair, with the remainder qualifying as minor construction.

## II. ANALYSIS

The only issue in this case is whether the work done on the subject generated exception value leading to an increase in maximum assessed value. Plaintiff must bear the burden of proving it did not. *See* ORS 305.427.<sup>1</sup>

The applicable law has been thoroughly discussed in *Greenberg I* and need not be fully restated here. In a nutshell, maximum assessed value is redetermined where “property is new

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<sup>1</sup> The court's references to the Oregon Revised Statutes (ORS) are to 2017.

property or new improvements to property[.]” ORS 308.146(3)(a). New property or new improvements include value change resulting from “[n]ew construction, reconstruction, major additions, remodeling, renovation or rehabilitation of property[.]” but do not include value change resulting from “[g]eneral ongoing maintenance and repair” or “[m]inor construction.” ORS 308.149(6).

General ongoing maintenance and repair of existing improvements occurs where condition, design, and materials are not significantly changed, where the affected portion is not “sufficient” to qualify the work as new property or new improvements, and, for income-producing properties, where the work is part of a regularly scheduled maintenance program. OAR 150-308-0130(2)(a). Examples from the Department of Revenue’s Maximum Assessed Value Manual include replacing worn-out floor coverings, appliances, and countertops, as well as replacing “old aluminum frame windows with new vinyl windows that would be used in the same class of building today.” (Ex 6 at 1.) Work affecting “25 percent of the building based on number of units or 6 percent of the building value based on the cost of work compared with the \* \* \* improvements value” does not exceed the requirements for general ongoing maintenance and repair. *Greenberg I*, WL 3120381 at \*6.

Minor construction occurs where real property improvements add no more than \$10,000 to real market in value in one year or \$25,000 cumulatively over five years. ORS 308.149(5).

Here, the scale of work done in 2018 slightly exceeds that done in 2017, encompassing windows as well as one unit and accounting for about 8 percent of the subject’s tax roll improvements value, rather than 6 percent. *See Greenberg I*, WL 3120381. The difference in scale of work was entirely attributable to a single large-ticket project—replacement of aluminum-frame windows with vinyl windows of a similar class—that exactly corresponds to a

Department of Revenue example of ongoing maintenance and repair. Considering those facts, the 2018 work “[d]oes not affect a sufficient portion of the improvements to qualify as new construction, reconstruction, major additions, remodeling, renovation or rehabilitation[.]” *See* OAR 150-308-0130(2)(a).

Plaintiff concedes the new can lights, ceiling fans, and granite counters are upgrades to the previously existing improvements. While the best evidence of the value added by those upgrades is their cost, \$2,900, the property manager’s testimony suggests they may add as much \$3,750 under an income approach. Either way, the real property improvements added do not exceed \$10,000 for the 2018–19 tax year or \$25,000 over a five-year period. The court therefore finds the 2018–19 improvements were minor construction under ORS 308.149(5).

On the evidence presented, the remainder of the work done was general ongoing maintenance and repair. The work done to Unit A—replacing worn-out flooring, cabinets, appliances, heaters, and lesser items—was similar to that done to Unit D and warrants similar treatment. *See Greenberg I*, WL 3120381. The window replacements match the Department of Revenue’s example and should also be classified as general ongoing maintenance and repair. None of the value of that work is part of the subject’s new improvements. *See* ORS 308.149(6).

### III. CONCLUSION

With Defendant in default, Plaintiff’s evidence shows the work done on the subject in 2019–20 is entirely attributable to general ongoing maintenance and repair and minor construction. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiff’s appeal be and hereby is granted. The subject incurred no exception value for the 2019–20 tax year.

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IT IS FURTHER DECIDED that Plaintiff's request for costs and disbursements in the amount of \$281 be and hereby is granted.

Dated this \_\_\_ day of October 2020.

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POUL F. LUNDGREN  
MAGISTRATE

***If you want to appeal this Decision, file a complaint in the Regular Division of the Oregon Tax Court, by mailing to: 1163 State Street, Salem, OR 97301-2563; or by hand delivery to: Fourth Floor, 1241 State Street, Salem, OR.***

***Your complaint must be submitted within 60 days after the date of this Decision or this Decision cannot be changed. TCR-MD 19 B.***

***Some appeal deadlines were extended in response to the Covid-19 emergency. Additional information is available at <https://www.courts.oregon.gov/courts/tax>***

***This document was signed by Magistrate Poul F. Lundgren and entered on October 23, 2020.***