IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT
Property Tax

CAROLYN J. TIMMERMANN REVOCABLE LIVING TRUST, Plaintiff, v. MULTNOMAH COUNTY ASSESSOR, Defendant.	)	No. 000025C (Control)
JUDITH M. MARSH, Plaintiff, v. MULTNOMAH COUNTY ASSESSOR, Defendant.	)	No. 000026C
EDNA M. SCHNEIDERMAN, Plaintiff, v. MULTNOMAH COUNTY ASSESSOR, Defendant.	)	No. 000027C
BYUNG TEA AND YOUNG OK JUN, Plaintiffs, v. MULTNOMAH COUNTY ASSESSOR, Defendant.	)	No. 000040C

DAVID L. AND BARBARA J. PALMER, Plaintiffs, v. MULTNOMAH COUNTY ASSESSOR, Defendant.	)	No. 000182C
JUDITH G. HALL, Plaintiff, v. MULTNOMAH COUNTY ASSESSOR, Defendant.	)	No. 000248C
JAMES N. AND SARAH J. NUSSBAUMER Plaintiffs, v. MULTNOMAH COUNTY ASSESSOR, Defendant.	)	No. 000345D
EDWIN J. AND MARY SHACKLETON, Plaintiffs, v. MULTNOMAH COUNTY ASSESSOR, Defendant.	)	No. 000525C

SHARON H. ORLOWSKI,	)	
	)	
Plaintiff,	)	No. 000734C
	)	
v.	)	
	)	
MULTNOMAH COUNTY ASSESSOR,	)	
	)	
Defendant.	)	**DECISION**

Plaintiffs have appealed the value of their eleven condominium units for the 1997-98 and 1998-99 tax years.[1] A trial was held December 11, 2000, in Salem. Plaintiffs appeared through Judith Marsh, Ed and Mary Shackleton, and Carolyn Timmerman. Defendant, hereinafter referred to as the county, appeared through Ms. Beth Fast, an appraiser with the assessor's office.

STATEMENT OF FACTS

The units under appeal are in a condominium complex that was built in 1994. They are located in the St. Johns area of North Portland. The buildings were framed with wood and have a concrete foundation and concrete slab floors in the basement. There are two three-story buildings on the site with nine units in each building. Each building has three ground floor units, three middle units, and three upper units. All of the units have a deck facing west that afford a view of the Willamette River. The lot has a substantial slope over the short horizontal distance from the asphalt parking lot to the first floor basement units, which are essentially one full story below the parking lot. The units are all accessed by external wooden stairs. The condominium complex is managed by the Bridgeview Homeowners Association (Association).

[1]The account numbers are: R-10270-0120, R-10270-0180, R-10270-0240 (owned by Timmerman), R-10270-0060 (Marsh), R-10270-0100 (Schneiderman), R-10270-0140 (Jun), R-10270-0220 (Palmer), R-10270-0360 (Hall), R-10270-0280 (Nussbaumer), R-10270-0320 (Shackleton), R-10270-0340 (Orlowski).

The evidence shows that there are many problems affecting the property because of unprofessional workmanship and the developer's failure to follow the engineering plans and building code requirements. The exact dates on which the various items were actually known to the condominium owners is not clear in all cases. However, at least one hundred repair requests were made of the contractor between the time of initial occupancy in 1994 and the commencement of a lawsuit in August 1997. It is generally conceded that the severe structural defects concerning the lack of shear walls and hold-downs, among other problems discussed below, were not known until late 1997. The contractor who performed the work was not registered with the Construction Contractor's Board, which resulted in a fine stemming from a claim filed by plaintiffs Mr. and Mrs. Palmer in 1995. (Ptfs' Ex 3.)[2] The problems affecting the property as a whole are substantial and fall generally into three main categories: 1) water problems; 2) latent structural defects; and 3) poor workmanship inside and out.

The water problems stem from inadequate drainage in the yard and around the buildings and decks and other finished surfaces that slope the wrong way. For example, a contractor found only one 5 ft by 4 ft dry well in the yard (to catch excess water) and stated that there should be one for each ground level unit. (Ptfs' Ex 32 at 2.) The building is on a sloped site, which exacerbates the water problems. As a result of these problems, water runs into all of the ground floor units. In addition, improperly installed siding and window flashings cause water intrusion into some of the units on the second and third floors. At one time the roof apparently leaked as well. Finally, there are problems with leaky gutters. Some effort to fix these problems was made by the developer in early 1996, but residents continued to report water intrusion problems later that year and on into 1997. (Ptfs' Exs

[2]He apparently used another contractor's license for obtaining permits, etc.

23, 26, 27, 30 & 38.) According to the uncontroverted testimony of Ms. Timmerman, no developer repairs were made after 1996.

Structurally the buildings lack shear walls and tie-downs, both of which were called for in the building design plans, making the buildings potentially unsafe in a high wind storm or earthquake. With regard to the shear walls, the court understands that the plans called for two layers of plywood on the exterior walls underneath the siding and additional plywood on several interior walls. According to the evidence, the developer used only one sheet of plywood on the outside walls. The tie-downs are special metal bolts or brackets attached to the stud walls. The plans called for two tie-downs per unit but the contractor installed only one. In addition, some of the roof truss joists have structural integrity problems, either because of the design or modifications made to run electrical wiring (Ptfs' Complaint at 10, Ltr from Truss Joist Macmillan, dated January 14, 1998.) Finally, all of the floor joists have large holes drilled after installation to accommodate A/C ducting and plumbing, in violation of manufacturer instructions. (Ptfs' Ex 37 at 2.) These problems were not discovered until late 1997, when additional investigations were made after sheet rock was removed to repair water damage and determine its cause.

The buildings suffer generally from poor workmanship, some of which creates safety problems. The external stairways are poorly constructed and have shifted over time to where they now slope to one side. There are inadequate and missing stair footings, and poorly designed and installed retaining walls around the parking lot and near the buildings. Some of the wooden retaining walls have collapsed. Another general problem affecting all the buildings is a lack of noise reduction material, allowing the residents to hear noise from other units such as talking and flushing toilets.

The collection of problems, some of which are set forth above, are cumulative. In early 1996 several owners hired an attorney to pursue these problems with the developer/contractor. (*See* Ptfs' Exs 18 & 20.) The Association eventually hired an attorney in July 1997 who filed a lawsuit against the developer on August 13, 1997. The suit was ultimately dismissed on procedural grounds, leaving the plaintiffs and their neighbors in the complex responsible for the developer's attorney fees of roughly $150,000. The Association owes its attorney a considerable sum of money, a bill that will have to be paid by the condominium owners. Additional monies are owed to experts hired by the Association's attorney. These fees come to at least $250,000. It appears that there was a settlement offer from the developer in March 1998 of $400,000, intended to cover some but not all of the defects, which the condominium owners rejected.

There have been a number of inspections performed by both public and private entities beginning in 1995, which noted less severe problems such as unstained trim and molding and more substantial problems, including improper water drainage and runoff control and structural problems discussed below. (*See, e.g.,* Ptfs' Ex 3; Ex 4 at 1; and Ex 12 at 2.) Inspections and letters of complaint known to the court detailing these problems include the following:

- In August 1995 plaintiffs Mr. and Mrs. Palmer filed a claim with the Construction Contractor's Board noting, among other things, problems with water leakage in the kitchen and bedroom closet. (Ptfs' Ex 3.)
- Plaintiff Mrs. Palmer prepared a list of problems as of September 6, 1995, including water leakage in the front closet, bedroom, and kitchen that ruined the kitchen linoleum, and inadequate soundproofing that allowed her to hear talking and toilets flushing in neighboring units. (Ptfs' Ex 4.)
- A letter dated December 8, 1995, from the Association was sent to the developer Mr. Dunning noting that the Association was having inspectors and contractors assess the workmanship and damage to the building. (Ptfs' Ex 10.)

- A letter dated December 20, 1995, from Katherin Bowen, Constructive Solutions, indicating that Ms. Bowen was referred by the City of Portland Bureau of Buildings to investigate code deficiencies. (Ptfs' Ex 11.) Ms. Bower's letter notes that the developer Mr. Dunning was not a registered contractor. (*Id*. at 2.)

- A letter dated January 5, 1996, written by Mr. Bob Gilmore, City of Portland, Bureau of Buildings, noting numerous problems with the stairways, the foundation, and the topography, both as to slope and improper backfill. (Ptfs' Ex 12 at 2.) The letter includes the following comments:

> "After reviewing your file and visiting the site on two occasions it would be difficult to denie (sic) that <u>there exists a severe problem</u>. Anytime (sic) water drains into a building at the rate that it appears to be in your structure not only is the comfort and lifestyles of the occupants [a]ffected but also the serviceability of the structure.
>
> "* * * * *
>
> "Without a doubt <u>there exists a problem</u> at these buildings that is <u>far greater than what appears on the surface</u>. <u>The amount of water that is seeping through the foundation walls make these units uninhabitable</u> and it may be only a matter of time before other units begin to experience similar problems.
>
> "* * * * *
>
> "<u>The corrections noted above should not be construed as being the only defiecinies (sic) in these buildings</u>. Our inspection is limited to what we could see on the surface and we cannot make any claims for items that we could not visually varify (sic). * * *" (Ptfs' Ex 12, at 1, 2 & 3) (emphasis added).

- A letter dated January 11, 1996, written by Mr. Bryan Y. Weight, P.E., of BW Inspection Engineers, Inc., that runs to 14 pages. (Ptfs' Ex 14.) In that letter Mr. Weight notes that the contractor has failed to comply with a building code requirement that there be adequate control and drainage of surface water around buildings. (*Id*. at 2.) Mr. Weight notes: "In addition, water ponds against the foundation on the east side of the buildings. This has caused water leakage into some of the basement units." (*Id*.) Mr. Weight goes on to

note that stairwell drains are not fully functional; there is a large sinkhole in the landscaping and under the concrete flat work; there are deficiencies in the fencing around the pool; the sliding door in the recreation room does not lock (presumably due to water problems); the carport roofs were constructed with valleys having little or no pitch to drain; there is a lack of flashings on exterior openings, warpage and buckling of the vinyl siding on the condominium buildings; a likely premature failing of the roof because of "amateurish" installation; the stairs do not comply with the building code in terms of "rise and run," excessive warpage to floorboards, guardrails and handrails; the absence of flashings between the back balcony decks and the buildings, causing water to run into the lower units, improper slope of some front and back decks causing surface drainage to be directed toward the units; and that the contractor failed to install a gutter and down spout collection system for the back balcony decks. (*Id*. at 3-7.) The list of deficiencies continues, but the above recitation adequately demonstrates known problems before July 1, 1997.

- A March 17, 1997, Proposal from Wendell Construction regarding work he proposed to correct certain drainage problems. (Ptfs' Ex 32.) The work proposed includes installing six dry wells, redoing the drainage on the parking lot and around all the units, digging ditches for drainage lines, and opening up the street to hook up drainage lines. The estimated cost for the work proposed is $40,000. However, the contractor cautions that it is hard to give a bid because of numerous unknown variables and includes with the following: "The way to do this job right is to do it at cost plus." (*Id.* at 2.)

- A March 9, 1998, letter from ZTec Engineers, Inc., which states:

  "I am not aware of a structure that is conventional framed with the same configuration that will not have shear walls unless it had steel frames built within the walls to resist the lateral forces. The Bridge View Condo's needs (sic) either steel frames or shear walls and holdowns to meet the Uniform Building Code. If it does not then it should be considered structurally inadequate and unsafe to occupy." (Ptfs' Ex 40.)

The cost to cure the above problems rose over time as various additional problems were discovered and estimates obtained. Known costs as of July 1, 1997, were roughly $250,000, according to Mr. Shackleton. According to a letter from the Association's attorney Scott Bellows, which was written to the county's appraiser Beth Fast to address questions she had in reviewing the case before trial:

"[a] 'compromise' repair * * * was agreed upon, but none of the contractors

> invited to bid provided a responsive bid, because they all were afraid of the huge, unknowable contingencies involved in doing this sort of work. One contractor did respond with an estimate (not [a] bid) to do this compromise scope of work in the amount of $1,475,388.00.* * *" (*See* Ptfs' Ex 2 at 2.)

Mr. Bellows reports the total cost of repair "will exceed $2,324,700." (*Id.* at 4). The higher number includes relocation costs during certain phases of repair, attorney fees and expert costs.

It appears that some of the problems were addressed by the contractor, but it is unclear from the evidence whether city approval by the Bureau of Buildings was obtained where required. (*See* Ptfs' Ex 23.) Moreover, owners continued to complain about the water intrusion problems, etc., after the contractor made the repairs in early 1996. (Ptfs' Exs 26, 27 & 30).

The evidence shows that one of the units sold on October 1, 1997, for $123,000. One unit rents for $570 per month and two other units rent for $850 per month.

The roll value of the units under appeal was roughly $106,000 for tax year 1997-98 and $115,000 for 1998-99. The County Board of Property Tax Appeals reduced the 1999-00 values (RMV) to $15,000. Mrs. Timmerman requests a reduction to $0 for both years at issue. The other plaintiffs request reductions to $15,000.

Ms. Fast prepared a valuation report for the assessor's office. The report is not an appraisal, but a review and discussion of information provided by plaintiffs. Ms. Fast recommends that the roll value be sustained for the 1997-98 tax year and that a reduction of between $16,666 and $38,888 be ordered for the 1998-99 tax year. Ms. Fast's recommendation for the earlier tax year uses the $123,000 sale price for unit 6714 as a starting point. She then subtracts $12,300 per unit as the cost to cure based on known costs of $40,000 for the drainage work proposed by Wendell Construction, $6,000 to

$8,000 per unit for deck repairs, and $73,300 to cure water damage to interior units. The recommended reduction for the 1998-99 tax year is arrived at by considering the contractor's $400,000 settlement offer and a $700,000 estimate presented by certain experts in connection with the lawsuit.

COURT'S ANALYSIS

The question in this case is real market value. ORS 308.205[3] provides:

> "(1) Real market value of all property, real and personal, means the amount in cash that could reasonably be expected to be paid by an informed buyer to an informed seller, each acting without compulsion in an arm's length transaction occurring as of the assessment date for the tax year.
>
> "(2) Real market value in all cases shall be determined by methods and procedures in accordance with rules adopted by the Department of Revenue and in accordance with the following:
>
> "(a) The amount a typical seller would accept or the amount a typical buyer would offer that could reasonably be expected by a seller of property.
>
> "* * * * *
>
> "(c) If the property has no immediate market value, its real market value is the amount of money that would justly compensate the owner for loss of the property."

In accordance with ORS 308.205(2), the department has promulgated an administrative rule governing valuation, which reads in part:

> "(2) Methods and Procedures for Determining Real Market Value:
>
> "(a) For the valuation of real property all three approaches: sales comparison approach; cost approach; and income approach, shall be considered. For a particular property, it may be that all three approaches can not be applied, however, each shall be investigated for its merit in each specific appraisal." OAR 150-308.205-(A)(2)(a).

"In all proceedings before the judge or a magistrate of the tax court and upon appeal therefrom, a preponderance of the evidence shall suffice to sustain the burden of

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[3]All references to the Oregon Revised Statutes (ORS) are to 1997.

proof. The burden of proof shall fall upon the party seeking affirmative relief and the burden of going forward with the evidence shall shift as in other civil litigation." ORS 305.427. "Preponderance of the evidence means the greater weight of evidence, the more convincing evidence." *Feves v. Dept. of Revenue*, 4 OTR 302, 312 (1971) (citations omitted).

Looking at the sales and rental data, one of the units in the complex sold for more than the roll value and several of the units are rented at rates that tend to support the existing values. However, a closer examination of the evidence tells a different story. According to the sworn testimony, the buyer who acquired Unit 6714 in October 1997 for $123,000 spoke and understood very little English and was not informed of the many problems affecting the property. The buyer did not testify, nor did either side present information from him as to how he felt about the deal after he purchased and discovered the problems the buildings have. As a practical matter, sellers are required by law to disclose known defects to potential buyers. *See* ORS 105.465(2)(b). They may sell without any representations or warranties as to condition, but delivering the property "'as is,' that is, with all defects, if any," as authorized by ORS 105.465(2)(a), generally alerts the buyer to investigate matters more fully. The seller's lack of disclosure and the buyer's linguistic/cultural limitations prompt the court in this case to disregard the $123,000 sale as an indicator of market value.

Turning to the rental information, one unit rents for $570 per month and two others for $850 per month. However, the two units rented at the higher rate experience unusually high vacancy rates of nearly 50 percent because of high turnover and months of vacancy between tenancies. This data suggests the units can be rented at the higher rate of $850 with high vacancy rates or at the lower $570 figure with stabilized occupancy. If the rents

actually achieved represent the market for this complex (because of the problems discussed above), then effective gross income would be between $425 (allowing for 50% vacancy & collection) and $540 (5% vacancy & collection) per month, and net operating income lower still. Even at the higher end of this range, the indicated value (based on a 12 percent cap rate) would be in the ballpark of $50,000.

The evidence overwhelmingly demonstrates that the complex as a whole suffers from serious defects that cause major flooding problems to the interior of the units and bring into question the safety of the buildings. Developer repairs in 1996 did not cure the deficiencies. The individual condominium owners are jointly liable for the costs required to fix the problems associated with the common elements, including the structural problems discovered in late 1997. According to the evidence, the cost to cure is between $1.5 million and $2.3 million. Dividing the repair costs of $1.5 million among the 18 units suggests a real market value of $30,000.[4] This of course assumes all costs are shared equally by the 18 owners. Moreover, these numbers were not actually known as of January 1, 1998, although the structural problems were known by then.

Defendant correctly points out that the court must determine real market value as of the applicable assessment dates, which are July 1, 1997, and January 1, 1998. ORS 308.007 and 308.210. It is only appropriate for the court to consider what was known or perhaps reasonably foreseen on those dates in determining real market value. This is so because the market would respond to what was known at the time a purchase was contemplated.

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[4] This number is arrived at by dividing the repair cost of 1.5 million by eighteen (number of units in the complex), which comes to $83,333. Subtracting $85,000 from $115,000 (1998-99 tax year roll value) leaves $30,000 as the indicated value.

After considering the evidence, the court finds plaintiffs have sufficiently demonstrated an error in the roll values. Determining the correct values is nonetheless problematic. Any attempt to establish value in this case is admittedly imprecise given the paucity of relevant market data and the extent of problems plaguing this property.

The court is not persuaded by either parties' values. The court has already rejected the $123,000 sale price that Ms. Fast uses as a starting point for the 1997-98 tax year. Moreover, the court believes that known or reasonably anticipated repair costs as of July 1, 1997, far exceeded $12,300. The court concludes that full disclosure of the information known as of July 1, 1997, would have been enough to cause any informed buyer to be concerned about the potential problems and the costs associated therewith. Sustaining the roll values at roughly $106,000 is therefore not appropriate. As for the slight value reduction recommended by Ms. Fast for the 1998-99 tax year, the evidence shows that the repair costs were more on the order of $1,500,000 as opposed to Ms. Fast's $700,000 figure, even if actual dollar amounts were not yet known. The increased repair costs are due to the structural problems discovered between July 1, 1997, and January 1, 1998. As indicated above, the indicated value based on repair costs of $1.5 million is $30,000. At the same time, plaintiffs' requests for $15,000 (or $0 in the case of plaintiff Timmerman) strike the court as unreasonably low in spite of the problems. The units, all of which are occupied, are fairly new, look very nice from the outside, afford a view of the river, and are close to downtown. Several rent for $600 to $800 per month (rounded). The court does not believe any of the owners would sell their unit for $15,000. In fact, most cannot afford to sell for $50,000.

Defendant argues that many of the repair items reported to the contractor and set forth above were completed prior to the July 1, 1997, assessment date for the earliest of

the two tax years. The evidence shows that repairs were made. However, the repairs, which were made in early 1996, did not address all of the problems the property experiences and the evidence shows that some owners continued to report the same problems after the repairs were made that the developer reportedly fixed. This tends to support plaintiffs' assertion that the repairs made were temporary, inadequate, and incomplete.

CONCLUSION

IT IS THE DECISION OF THE COURT that the real market value of the eleven condominium units[5] at issue was $50,000 for tax year 1997-98 and $30,000 for tax year 1998-99. The assessor's office shall adjust the rolls accordingly.

Dated this _____ day of April, 2001.

_____
DAN ROBINSON
MAGISTRATE

IF YOU WANT TO APPEAL THIS DECISION, FILE A COMPLAINT IN THE REGULAR DIVISION OF THE OREGON TAX COURT, FOURTH FLOOR, 1241 STATE ST., SALEM, OR 97301-2563. YOUR COMPLAINT MUST BE SUBMITTED WITHIN 60 DAYS AFTER THE DATE OF THE DECISION OR THIS DECISION BECOMES FINAL AND CANNOT BE CHANGED.
THIS DOCUMENT WAS SIGNED BY MAGISTRATE DAN ROBINSON ON APRIL 4, 2001. THE COURT FILED THIS DOCUMENT ON APRIL 4, 2001.

[5] See footnote 1 for the account numbers.