

IN THE MAGISTRATE DIVISION  
OF THE OREGON TAX COURT  
Property Tax

KURT E. FREITAG AND RITA H. )  
SCHAEFER, )  
 )  
Plaintiffs, ) No. 000154A (Control)  
 )  
v. )  
 )  
LINCOLN COUNTY ASSESSOR, )  
 )  
Defendant. )  
 )  
----- )  
KURT E. FREITAG AND RITA H. )  
SCHAEFER, fbo Sandy Bottoms Partners, )  
 )  
Plaintiffs, ) No. 000175E  
 )  
v. )  
 )  
LINCOLN COUNTY ASSESSOR, )  
 )  
Defendant. )  
 )  
----- )  
KURT E. FREITAG AND RITA H. )  
SCHAEFER, )  
 )  
Plaintiffs, ) No. 000176E  
 )  
v. )  
 )  
LINCOLN COUNTY ASSESSOR, )  
 )  
Defendant. )  
 )  
----- )  
KURT E. FREITAG AND RITA H. )  
SCHAEFER, fbo Sandy Bottoms Partners, )  
 )  
Plaintiffs, ) No. 000177E  
 )  
v. )  
 )  
LINCOLN COUNTY ASSESSOR, )  
 )  
Defendant. )

**DECISION**

This decision concerns three houses, located at 8615 and 8625 N. Coast Highway and 6855 Gladys, and their various personal property, used as rentals along the Oregon coast. The cases were consolidated for trial. The tax year at issue is the 1999-00. Kurt Freitag appeared for plaintiffs. Rob Bovett, Assistant County Counsel, represented defendant. The resolution of these appeals is as follows:

Kurt E. Freitag and Rita H. Schaefer v. Lincoln County OTC-MD No. 000154A: This appeal is as to personal property, identified by Account No. P507414, which is in the three rental houses also at issue in this appeal. Defendant has stipulated that it is willing to lower the assessed value of this account from \$50,000 to \$20,200.

Plaintiffs seek a further reduction, reasoning that ORS 308.250 calls for a cancellation of tax in instances where the total assessed value of all of a taxpayer's taxable personal property is less than \$10,000, and asserting that in this appeal there are at least two "taxpayers," the first being individuals and the second a partnership. Arguing from defendant's concessions that the total property held by the partnership totals \$16,000, plaintiff would have the property held by the individuals, at \$4,200, removed from assessment.

It may well be that, at some subsequent case, plaintiffs will decide that removing \$4,200 in value from ad valorem taxation is a game that is worth the candle. In this instance the court cannot find that sufficient proof has been presented for it to distinguish where the interests of Mr. Freitag and Ms. Schaefer, as individual taxpayers, stop, and the interests of Sandy Bottoms Joint Venture Partnership, with Mr. Freitag and Ms. Schaefer as nominees and agents, commence. The partnership agreement does not specify the vacation properties it holds. The relevant deeds do not show a partnership as having an

interest in the property. The only basis the court has for saying that Sandy Bottoms Joint Venture Partnership is a "taxpayer," within the meaning of ORS 308.250, as to all, some, or none of the property at issue is the statement of Mr. Freitag. With all due respect, the court will ask, when the issue is whether Mr. Freitag or another is the taxpayer, for something more.

Kurt E. Freitag and Rita H. Schaefer, fbo Sandy Bottoms Partners v. Lincoln County OTC-MD Nos. 000175E and 000177E: Plaintiffs purchased this property as unimproved land in 1997 and proceeded to construct two homes at 8615 and 8625 N. Coast Hwy. The first single family residence, Account No. R224664, was initially assigned an assessed value of \$367,490. During the course of this appeal defendant stipulated that it was willing to reduce this value to \$336,760. The second single family residence, Account No. R509391, has an assessed value of \$340,780. As to this house defendant, as with the other, stipulated that it was willing to reduce its assessed value to \$314,680.

Plaintiffs presented appraisals for each improved property, done in June of 1997, reporting values for each house higher than defendant's recommended corrections. Plaintiffs also spoke of geologic concerns as to the property, which necessitated a "hold harmless" clause in connection with the issuing of the building permits for the improvements. While plaintiffs' logic that property carrying such a mark is less valuable than similar property without such an encumbrance, plaintiffs did not demonstrate, through a matched pair analysis or similar presentation of sales, the market's recognition of this factor. In the absence of such a showing, and in light of defendant's testimony that geologic concerns were recognized in its assessments, no relief can be extended beyond that recommended by defendant.

Kurt E. Freitag and Rita H. Schaefer v. Lincoln County OTC-MD No. 000176E: This single family home, identified by Account No. R245597, carries an assessed value of \$209,800. Plaintiffs asserted during trial that the real market value of the property is more on the order of \$205,000.

Only a 2% difference separates plaintiff's allegation from the assessed value. Such a margin is too narrow, under the summary presentations in this case, for a reasoned choice. As this court has been instructed on a previous occasion:

"Although not a rule of law, it is generally accepted that appraisers will be deemed equally competent and their testimony useful if, acting independently, they come within 10 percent of each other in the ordinary case. See *Pacific Building v. Commission*, 2 OTR 52 (1965); *Lundeen v. Commission*, 2 OTR 13 (1964). Note is taken that, in the present instance, the plaintiff set himself an almost impossible task by seeking in this court a reduction in value of a personal residence which was within eight percent of the assessed value as established by the county board of equalization and the defendant! A person experienced in property valuation, having convinced himself that a 10 percent differential or less was involved, would ordinarily seek to dissuade a client from an appeal."

*Price v. Dept. of Rev.*, 7 OTR 24 (1977).

A remaining matter is plaintiffs' request for costs and fees. Plaintiffs have requested that, as they filed separate appeals which were consolidated for trial and decision, they should be refunded a portion of their filing fees. This request is denied. The consolidation of cases is done to conserve resources, including that of plaintiffs, and without regard to filing fees. Plaintiffs, speaking of the long and cumbersome nature of the litigation, have also requested costs, fees, and sanctions from defendant. In its review the court sees that this case consists of three brief case management conferences and a short trial, marked by significant concessions by defendant. No sanctions, costs, or fees are awarded.

## CONCLUSION

IT IS THE DECISION OF THIS COURT that relief shall be given as recommended by defendant, lowering the assessed values for the 1999-2000 tax years as set out below:

<u>Account Number</u>	<u>Former Assessed Value</u>	<u>Revised Assessed Value</u>
P507414	\$50,000	\$20,200
R224664	\$367,490	\$336,760
R509391	\$340,780	\$314,680

IT IS THE FURTHER DECISION OF THIS COURT that the appeal for Case No. 000176E identified by Account No. R245597 is hereby denied.

Dated this \_\_\_\_\_ day of October, 2000.

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SCOT A. SIDERAS  
PRESIDING 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 97310. 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 SCOT A. SIDERAS ON NOVEMBER 6, 2000. THE COURT FILED THIS DOCUMENT ON NOVEMBER 6, 2000.**