IN THE MAGISTRATE DIVISION

OF THE OREGON TAX COURT

Property Tax

8TH & OLIVE, LLC,	)	
	)	
Plaintiff,	)	No. 000469E
	)	
v.	)	
	)	
LANE COUNTY ASSESSOR,	)	
	)	
Defendant.	)	**DECISION**

Plaintiff appeals the 1999-2000 real market value of the property identified as Account No. 260479. Plaintiff also appeals the addition of exception value to the roll for the 1999-2000 tax year. Trial in the matter was held June 13, 2000. David E. Carmichael, Attorney, appeared on behalf of plaintiff. Kris Woodard testified on plaintiff's behalf. Defendant Lane County Assessor (the county) waived participation in the proceeding. (Def's Answer.)

STATEMENT OF FACTS

Plaintiff purchased the subject property in December 1993. The property consists of three buildings connected to one another. The first building was built in the 1920s, the second was built in the 1940s, and the third was built in the 1960s. They are connected by a common wall but have differing elevations. The property had been used as a Rubenstein's Furniture Store until it went into foreclosure. At the same time the property was in foreclosure, the city of Eugene was considering opening Olive Street, which runs alongside the building. Plaintiff speculated this would enhance the value of the property and, as a result, proceeded to purchase the property in December 1993.

After purchasing the property, plaintiff renovated it to convert the property into a multi-tenant office building. Most of the major work occurred in 1993 and 1994. After the major work had been completed, plaintiff began leasing office space. Most recently, plaintiff built out a corner office, which was completed in late 1996 or early 1997. No other remodeling or renovations have occurred since that time.

On November 6, 1999, the county sent plaintiff a Notice of Value Increase for the 1999-2000 tax year. (Ptf's Ex 2 at 1.) The notice advised that $312,780 of real market value was being added to the tax roll for a total real market value of $1,965,220. (*Id*.) The notice states that the "value is for new construction as of January 1, 1999." (*Id*.) Plaintiff appealed this value increase to the county board. The board's order shows that only $117,290 of real market value was added to the roll for a total real market value of $1,965,220. (Ptf's Complaint at 2.) It is unclear to the court the reason for the discrepancy in exception value between that noted in the value increase notice and that noted by the board. After consideration, the board lowered the overall market value to $1,580,340 but sustained the exception value of $117,290. Plaintiff appeals the board's determination.

COURT'S ANALYSIS

Exception Value

In May 1997, Oregon voters passed by referendum Measure 50, which substantially modified the property tax system in the state of Oregon. Prior to Measure 50, a property was taxed at its real market value (RMV). Due to increasing property values, Oregon voters chose to limit the growth of assessed values. In doing so, Measure 50 created the concept of "maximum assessed value" (MAV). The assessed

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value of a property is generally the lesser of its MAV or RMV. Or Const, Art XI, § 11(1)(f).[1]

For the 1997-98 tax year, which was the implementation year for Measure 50, a property's MAV was calculated by taking the property's 1995-96 RMV and subtracting ten percent. Or Const, Art XI, § 11(1)(a).[2] Measure 50 provides that, for each successive year, the MAV can increase no more than three percent a year. Or Const, Art XI, § 11(1)(b).[3] There are, however, exceptions to this cap on the growth of the MAV. The exception the county apparently is relying upon in this appeal is the "new property or new improvements" exception.[4] ORS 308.153 states:

> "(1) If new property is added to the assessment roll or improvements are made to property as of January 1 of the assessment year, the maximum assessed value of the property shall be the sum of:
>
> "(a) The maximum assessed value determined under ORS 308.146; and
>
> "(b) The product of the value of the new property or new improvements * * * multiplied by the ratio of the average maximum assessed value over the average real market value for the assessment year."[5]

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[1] *See also* ORS 308.146(2). All statutory references are to the 1997 provisions.

[2] *See also* Or Laws 1997, ch 541, § 2(2), *compiled as a note after* ORS 308.146.

[3] *See also* ORS 308.146(1).

[4] The court assumes this is the exception provision relied upon by the county because the notice sent to plaintiff advised the value was being added for reason of "new construction." The county did not appear at trial and, as a consequence, was not available to confirm the court's interpretation.

[5] ORS 308.149(5) defines "new property or new improvements" as follows:

> "(5)(a) 'New property or new improvements' means changes in the value of property as the result of:
>
> "(A) New construction, reconstruction, major additions, remodeling, renovation or rehabilitation of property;

Plaintiff maintains that, in order to increase the MAV under the "new property or new improvements" exception, the improvements must have occurred between January 1 of the prior assessment year and January 1 of the current assessment year. Although the statute does not specifically confirm this interpretation, the court has ruled in the past that changes to property must occur during the prior assessment year to trigger the "new property or new improvements" exception provision.[6] *See Anig Inc. v. Clackamas County Assessor*, OTC-MD No. 990583B (Decision, July 21, 2000).

In this case, the testimony was clear that the improvements to the property were concluded well before January 1, 1998. As a result, the county cannot add exception value for new property or new improvements to the 1999-2000 tax roll.

Real Market Value

The board reduced the 1999-2000 real market value for the subject property to $1,580,340. Plaintiff claims the value should be further reduced to $1,384,850. In support of its claim, plaintiff submitted an income approach to value analysis. (*See* Ptf's Ex 1 for the income analysis). Plaintiff began the analysis using its actual monthly rental income of $48,707. It provided a copy of its rent schedule to support this income figure. It increased this income figure by $3,290 to reflect potential income from the property's vacant, unfinished space. This addition increased the monthly potential gross income to $51,997, which results in an annual potential gross income of $623,964. Plaintiff applied a

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"(B) The siting, installation or rehabilitation of manufactured structures or floating homes; or

"(C) The addition of machinery, fixtures, furnishings, equipment or other taxable real or personal property to the property tax account."

[6] An exception to this rule would be where minor construction over five years cumulatively adds up to $25,000 or more. ORS 308.149(6).

ten percent vacancy and collection loss rate, which is the rate used by the county, to arrive at an effective gross income of $561,568. Plaintiff then applied the county's operating expense ratio of 35 percent to derive a net operating income of $365,019. Mr. Woodard testified the actual operating expense ratio for the subject property was very near 35 percent.

Plaintiff then applied an overall capitalization rate of 11.66 percent to derive a value of $3,130,520.[7] Plaintiff subtracted $115,150 to account for buildout costs for the unfinished space on the property. This subtraction was based on $35 per square foot and resulted in an overall value of $3,105,370 for the property. The total property is divided into two accounts. The account not appealed (No. 260495) has a real market value on the roll of $1,630,520. Subtracting this value from the overall value leaves a RMV for the subject account of $1,384,850.

The evidence presented by plaintiff went uncontroverted by the county due to its failure to appear for the proceeding. After weighing and considering the evidence, the court finds that plaintiff has demonstrated by a preponderance of the evidence that the RMV for the subject property was $1,384,850 for the 1999-2000 tax year.

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CONCLUSION

The court concludes that the county cannot add exception value for new property or new improvements to the 1999-2000 tax roll because no improvements were made to the property between January 1, 1998, and January 1, 1999. The court further

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[7] The rate reflects a 10 percent property rate and a 1.66 percent tax rate.

concludes the real market property of the subject property was no more than $1,384,850 for the 1999-2000 tax year. Now, therefore;

IT IS THE DECISION OF THIS COURT that defendant shall remove the exception value for new property or new improvements from the 1999-2000 tax roll and recalculate the maximum assessed value accordingly; and

IT IS FURTHER DECIDED that the 1999-2000 real market value of the property identified as Account No. 260479 was $1,384,850.

Dated this _____ day of October, 2000.

COYREEN R. WEIDNER
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 COYREEN R. WEIDNER ON OCTOBER 24, 2000. THE COURT FILED THIS DOCUMENT ON OCTOBER 24, 2000.