

IN THE MAGISTRATE DIVISION  
OF THE OREGON TAX COURT

Property Tax

JOHN R. JENNESS,	)	
	)	
Plaintiff,	)	No. 000509D
	)	
v.	)	
	)	
MULTNOMAH COUNTY ASSESSOR,	)	
	)	
Defendant.	)	<b>DECISION</b>

Plaintiff appeals the "exception" value of his property for the tax year 1999-2000. A telephone trial was held on Tuesday, August 29, 2000. Mr. John Jenness represented himself. Mr. Todd Liebow, Appraiser, testified on behalf of plaintiff. Ms. Katie Bailey appeared on behalf of defendant.

Ms. Bailey made an oral Motion to Suppress Plaintiff's Evidence (Motion) because she stated that she did not receive plaintiff's exhibits 10 days prior to trial. The parties discussed defendant's Motion and Ms. Bailey modified her Motion to request that the court only exclude a letter from Mr. David Knickman, Knickman and Associates, dated June 19, 2000. Mr. Jenness had no objections. The court granted defendant's oral Motion to exclude the letter from Mr. Knickman.

**STATEMENT OF FACTS**

Plaintiff, Mr. Jenness, testified that defendant increased the value of his real property for the tax year 1999-2000 when it added \$31,500 for the sheetrock and carpet installed in his attic. Mr. Jenness testified that his house was built in 1907 and because of its "hipped roof" the attic has always existed. Mr. Jenness and Mr. Liebow testified that

according to the county's "card" which details the characteristics of a taxpayer's property it was known to the county for a number of years including tax year 1995-96 that Mr. Jenness' property had an unfinished attic. Ms. Bailey testified that she had not seen the county card and had no knowledge as to how the attic was treated in the past. After the county concluded that the finished attic had not previously been inventoried, Ms. Bailey testified that based on the number of square feet in the attic the county's computer program generated an exception value of \$31,500. Ms. Bailey testified that she personally believes that the computer generated value may be "somewhat high" and she estimated the value of the finished attic to be \$20,000. Ms. Bailey did not submit any evidence to support the computer generated value of \$31,500 or her estimate of \$20,000, and she was unable to explain how the computer generated the value. She testified that because Mr. Jenness' purchase price was close to the total real market value of his property as determined by defendant it is reasonable to assume that defendant's exception value of \$31,500 was correct.

Mr. Jenness testified that the estimated cost of the installed sheetrock and carpet was \$3,468. He referenced bids from licensed contractors. In his opinion, the cost approach of the three standard appraisal approaches is the most reasonable method to estimate value. He testified that he looked for comparable sales but was unable to find any way to isolate the "added" value sheetrock and carpet in an attic contributed to the overall value of his house. Mr. Liebow testified that it is inappropriate for the market to pay more than cost. Mr. Liebow testified that according to the appraisal principle of substitution the market place will pay no more for a product or component than it would cost to recreate it. Mr. Liebow questioned how defendant could place a value of more than

9 times the cost of the sheetrock and carpet on the tax roll. Mr. Jenness testified that the cost per square foot of the finished attic based on defendant's value is more than the cost per square foot of the main living space. In response, Ms. Bailey stated that attic space is usually valued at less than the main floor living space. Mr. Liebow concluded that because the cost estimate of the sheetrock and carpet is \$3,468 defendant has not met the threshold amount of \$10,000 and therefore cannot add exception value to plaintiff's property.

Mr. Jenness testified that because defendant used a computer generated program defendant failed to consider the "inutility" of the finished attic. In his opinion, Mr. Jenness testified that the attic is not a finished area because it cannot be used year round. He testified that three factors, comfort, safety and accessibility, must be considered in assessing the functional living value of the attic. Mr. Jenness explained that there is no heating or cooling source in his attic. Access to the attic is through a 22 inch door. The decorative dormer windows are a safety hazard to children. There are no closets. Mr. Jenness testified that portions of the room have a ceiling height of less than 5 feet and therefore should not be included in the total living square footage of the house. In his estimate, the total square footage of the attic which could be included in living space is no more than 260 square feet.

In response to the testimony of Mr. Jenness and Mr. Liebow, Ms. Bailey commented that market value can exceed cost and attics do add value. She stated that Mr. Jenness did not sustain his burden of proof because he failed to submit "matched pairs" or comparable sales. Ms. Bailey testified that her supervisor looked at recent sales and defendant's determination of the total market value of plaintiff's property was

supported by these sales. Ms. Bailey did not submit any evidence in support of the referenced sales or her opinion of value.

### **COURT'S ANALYSIS**

Oregon's new property system commonly referred to as Measure 50 is the basis for the issue before the court. For the 1997-98 tax year, which was the implementation year for Measure 50, the assessed value of property was the lesser of the maximum assessed value (MAV) or real market value. Or Const, Art XI §11(1)(f). In setting the MAV for the 1997-98 tax year, the assessor was instructed to take the "real market value of the tax year beginning July 1, 1995, as reflected on the applicable assessment and tax roll \* \* \*." Or Const, Art XI §11(1)(b). Measure 50 provided that for each successive year the MAV increased no more than three percent a year. *Id.*; see also ORS 308.146(1)<sup>1</sup>. Exceptions to this general rule were created and defendant alleges that the following exception set forth in ORS 308.146(3) applies to plaintiffs:

"Notwithstanding subsections (1) and (2) of this section, the maximum assessed value and assessed value of property shall be determined as provided in ORS 308.149 to 308.166 if:

"(a) The property is new property or new improvements to property;"

ORS 308.146(3) specifically refers to "new property or new improvements to property." Mr. Jenness testified that the attic was part of the house since it was built in 1907. Mr. Jenness and Mr. Liebow testified that according to the county's characteristic card an "unfinished attic" was noted on the card. In addition, Mr. Jenness testified that the

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<sup>1</sup> All references to the Oregon Revised Statutes are to 1997.

“new improvements to the property” were the addition of sheetrock and carpet at a cost of approximately \$3,500. Further, he testified that the entire square footage of the attic, because of height restrictions, safety, comfort and accessibility, should not be valued as total living space. In his opinion, the new improvements were “minor construction” as defined in ORS 308.149(6) which reads: “additions of real property improvements, the real market value of which does not exceed \$10,000 in any assessment year \* \* \*.” Defendant alleges that the addition of the sheetrock and carpet changed the unfinished attic to living area and added \$31,500 based on an average dollar amount per square foot or \$20,000 based on Ms. Bailey’s personal determination to the value of plaintiff’s property.

The court concludes that plaintiff’s addition of sheetrock and carpet did not add real market value to his property in excess of \$10,000 for the 1999-00 assessment year. In reaching this conclusion, the court was persuaded by plaintiff’s testimony which was supported by evidence. Ms. Bailey did not submit any written evidence for the court’s consideration. The Tax Court has previously held that “[w]hen a particular property is appraised on an individual basis, \* \* \*because a property owner is contesting its assessed value, the skilled appraiser will not rely on a mass appraisal and he will make a complete physical reappraisal of the property.” *Price v. Dept. of Rev.*, 7 OTR 18, 25 (1977); see also; *Astoria Plywood Corp v. Dept. of Rev.*, 6 OTR 57 (1975). In this case, defendant relied on a computer generated value to compute the exception value. After plaintiff appealed, Ms. Bailey concluded that the value of the attic was \$20,000. However, she failed to submit any evidence in support of her determination to the court.

Ms. Bailey concluded that she did not need to submit any evidence because plaintiff did not meet the burden of proof. Her conclusion rested on the fact that plaintiff

failed to submit “matched pairs.” The premise that the only valid evidence to support a determination of value for property assessed as “exception” was matched pairs is incorrect. “Although paired data analysis is a theoretically sound method, it is sometimes impractical because only a narrow sampling of sufficiently similar properties may be available and it is difficult to quantify the adjustments attributable to all the variables.” *The Appraisal of Real Estate*, 11<sup>th</sup> Ed., at 416. Mr. Jenness testified that he was unable to find any meaningful comparable sales. He explained that it is very difficult to rely on comparable sales data when there is more than one difference between properties. The amount of value to attribute to each of the differences reduces the amount of reliability to be placed on the analysis. Appraisers are warned to take “[s]pecial caution \* \* \* when analyzing pairs of adjusted values since the difference measured may not represent the actual difference attributable to the distinguishing characteristic.” *Id.* at 415. While Ms. Bailey testified that her supervisor “looked at recent sales” and matched pairs exist to support her determination of value, she offered no evidence to the court for its consideration.

Mr. Jenness relied on the cost approach and other principles of appraisal to show that the exception value of the improvements to his attic was less than \$10,000. The cost approach is considered highly useful in determining the market value of new or relatively new construction. *Id.* at 338. Mr. Jenness testified that the direct costs including installation of the sheetrock and carpet placed in the attic were less than \$3,500. Defendant asked the court to conclude that the improvements to the attic add either \$20,000 or \$31,500 of market value to plaintiff’s property. There is no evidence submitted to support defendant’s conclusion. Further, defendant testified that the county had not

previously included the attic in its calculations of the real market value of plaintiff's property. However, plaintiff and his expert witness testified that the county's characteristic card for plaintiff's property indicated that the attic was measured and its existence noted by a county appraiser. Plaintiff testified that he had received a copy of the characteristic card from the county. Defendant did not introduce any evidence to rebut plaintiff's allegations.

Ms. Bailey offered support for the accuracy of the exception value based on the total real market value of the property. She stated that the tax roll real market value after the addition for the computer generated exception value of \$31,500 for the attic was \$227,700. Ms. Bailey testified that Mr. Jenness purchased the home in February 1999 for \$238,000. Ms. Bailey explained that subtracting the trended 1998-99 real market value from the total real market value of \$227,700 resulted in the \$31,500 exception value. Unfortunately, this information does not prove the accuracy of the exception value because it requires that the 1998-99 real market value be deemed to be valid and there is no evidence to support such an assumption.

### **CONCLUSION**

IT IS THE DECISION OF THIS COURT that defendant incorrectly determined an exception value for plaintiff's property identified as Multnomah County Assessor's No. R210146 and the exception value in the amount of \$31,500 for the 1999-00 tax year shall be removed.

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IT IS FURTHER DECIDED that the county shall correct the assessment and tax rolls to reflect the above value with any refund due plaintiff to be promptly paid with

statutory interest.

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

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JILL A. TANNER  
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 JILL A. TANNER ON SEPTEMBER 28, 2000. THE COURT FILED THIS DOCUMENT ON SEPTEMBER 28, 2000.**