

so plaintiffs installed new ones. They also replaced the old Formica counter tops with tile counters, installed new vinyl flooring, replaced the old appliances (range and dishwasher) with newer ones, and put in a new sink. The old downdraft Jenn-Air range was replaced with a standard electric four-burner range. To complete the kitchen, plaintiffs installed a hood with fan over the stove. Mr. Sharps testified that the cabinets were installed in 1998 but that the new tile counter tops and the new kitchen sink were not put in until 1999. From the pictures submitted by defendant, taken in calendar year 2000 in connection with the appeal, the kitchen appears to be completely redone. In the bathroom plaintiffs replaced the vinyl floor, the vanity, the sink and toilet and painted the walls. David Sharps is a contractor and did much of the work himself. He began renting the home to a friend in November 1998 and she continued with the remodeling, including tiling the front entry way. At the time of trial Mr. Sharps testified that he was still not finished remodeling the home. In closing, Mr. Sharps testified that the total estimated cost of repairs in 1998 is \$3,604.18 plus the cost of the roof, which he estimates to be \$2,100. His estimate of the value added in 1998 is \$7,059. (Ptf's' Ex 4).

The assessor's office determined that plaintiffs extensively remodeled the home, increasing the value overall by \$60,000. Mr. Hillpot supports the \$60,000 figure by establishing the value of the home as remodeled (in 2000), which he estimates to be \$170,000, and then subtracting the purchase price of \$110,000. Mr. Hillpot estimates that half of the work was completed in calendar year 1998, and therefore contends that the exception value under ORS 308.153 is \$30,000, which must then be adjusted by the change property ratio of .82, as provided in ORS 308.153(1)(b), to arrive at the amount added to maximum assessed value.

Plaintiffs appealed the January 1, 1999, values to the board and the board reduced

the real market value of the improvement (the home) from \$115,260 to \$81,360, a reduction of \$33,900. The board reduced the overall real market value from \$173,900 to \$140,000. The board did not order a change to the maximum assessed value, which is set at \$164,346. Mr. Hillpot testified that the board erred in failing to adjust the maximum assessed value, which he asserts should be reduced to \$153,872. He arrives at that number by adjusting the 1998-99 maximum assessed value up three percent and then adding the product of \$30,000 of asserted exception value multiplied by the change property ratio of .82.¹ The board reduced the assessed value to \$140,000, as required by law, because the real market value as reduced fell below maximum assessed value.

COURT'S ANALYSIS

Among the changes brought about by the voter's approval of Measure 50 was the creation of a maximum assessed value, which in 1997 was 90 percent of the property's real market value on the tax rolls in 1995. Thereafter, absent changes to the property, the constitution limits increases in maximum assessed value to no more than three percent. Or Const, Art XI, § 11(1)(b); ORS 308.146(1). Property taxes in Oregon are calculated by applying the tax rate to assessed value. Assessed value is the lesser of real market or maximum assessed value. ORS 308.146(2). Maximum assessed value, in turn, is statutorily defined as the greater of "103 percent of the property's assessed value from the prior year or 100 percent of the property's maximum assessed value from the prior year." ORS 308.146(1).

When property is changed by new construction, remodeling, or renovation, etc., the maximum assessed value is adjusted to capture "the increase in RMV of the remodeled

¹ $[125,507 \times 1.03] + [30,000 \times .82] = 129,272 + 24,600 = 153,872$. Mr. Hillpot's proposed correction to the maximum assessed value would have no impact on assessed value because real market value is still less than maximum assessed value.

property as opposed to the value of the improvements themselves.” *Hoxie v. Dept. of Rev.*, __ OTR __ (slip op at 5) (April 12, 2001). The applicable statute is ORS 308.153, which provides in relevant part:

“(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 determined under subsection (2)(a) of this section multiplied by the ratio of the average maximum assessed value over the average real market value for the assessment year.

“(2)(a) The value of new property or new improvements shall equal the real market value of the new property or new improvements reduced (but not below zero) by the real market value of retirements from the property tax account.”

Assessed value continues to be the lesser of real market or maximum assessed value.

ORS 308.153(3).

Determining what constitutes “new property or new improvements to property,” as set forth in ORS 308.153 above, is aided by the definitions found in ORS 308.149 and the administrative rule promulgated thereunder. ORS 308.149(5) states, in part:

“(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[.]

“ * * * * *

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

“ * * * * *

“(b) ‘New property or new improvements’ does not include changes in

the value of the property as a result of:

"(A) General ongoing maintenance and repair; or

"(B) Minor construction."

The term "minor construction" is then defined as "additions of real property improvements, the real market value of which does not exceed \$10,000 in any assessment year or \$25,000 for cumulative additions made over five assessment years." ORS 308.149(6).

Plaintiffs insist that much of the work done constitutes "ongoing maintenance and repair" and that the increase in the value of the property from that work must be excluded. Plaintiffs would apparently include here the clean-up (especially the garbage/trash removal) and painting done inside and out. The court agrees that this activity, though it likely had the effect of increasing the overall value, cannot be included in calculating maximum assessed value additions. See OAR 150-308.149(1) (January 1998)²; *Hoxie*, ___ OTR at ___ (slip op at 7) (concluding that clean-up and painting are excluded).

However, much of the work done in 1998 was extensive and included a new roof, repairs to the sheet rock/drywall, a remodeled bathroom and a partially remodeled kitchen. Plaintiffs also tiled the entry and replaced at least some of the carpet. This work falls into the category of rehabilitation, remodeling and renovation, as those terms are defined in OAR 150-308.149-(A)(4), (5) and (6) (January 1999). See, e.g., *Strom v. Dept. of Rev.*, ___ OTR at ___ (slip op at 5-6). This conclusion is buttressed by the language in the administrative rule, which provides in part:

"(7) 'General ongoing maintenance and repair' means activity that:

" * * * * *

²The administrative rule includes in the definition of general ongoing maintenance and repair "[p]ainting the exterior of a building and making minor repairs to the siding."

“(c) Does not affect a sufficient portion of the improvements to qualify as new construction, reconstruction, major additions, remodeling, renovation or rehabilitation.” OAR 150-308.149-(A) (January 1999).

Plaintiffs further argue that the improvements to the property constitute minor construction because the dollar amount of the added value is less than \$10,000 once “retirements” are subtracted. See ORS 308.153(2)(a) and OAR 150-308.149(6)(1) (January 1999). This is a question of fact to be decided from the evidence. However, any equipment and materials removed and replaced (e.g., kitchen cabinets and range) are not deducted as “retirements” in this case because the items were at least 20 years old when removed and there is no evidence as to life expectancy or remaining value. Thus, the court concludes they had no value.

In determining the value added by the work done in 1998, there are weaknesses in the evidence on both sides. Plaintiffs rely on the cost of materials, which excludes the value added of the labor by the owners. There is no evidence as to the amount of time spent working on the home, but intuitively it appears considerable. Mr. Sharps is a building contractor and no doubt saved a considerable amount of money doing the work himself. Certain reported costs are also low. For example, plaintiffs report the cost (or value?) of the roof to be \$877 on their “Inventory Worksheet”, whereas Mr. Sharps testified at trial that the roof added more than \$2,000 to the value of the home. Thus, plaintiffs’ evidence is both conflicting and incomplete. Similar problems exist with other items. And, in the end, it is the cumulative value added by all the improvements that the statute seeks to capture.

Defendant’s evidence also presents problems. Mr. Hillpot’s approach fails to account for any increase in value resulting from market trends between the December 1997 purchase date and the appraised value in 2000. See *Hoxie*, __ OTR at __ (slip op

at 10) (concluding exception value does not include increases due to market trends). Moreover, Mr. Hillpot fails to exclude maintenance and repair and the court believes the value increased considerably by plaintiffs' clean-up and painting efforts.

Evidentiary problems notwithstanding, the court must establish the increase in value. The court finds the value of the property resulting from the new property improvements increased by \$25,500. After adjusting nominally for inflation and removing the value added by the clean-up and painting, the residual, taxable portion, which may be added to maximum assessed value, is \$15,000. The court reaches this conclusion from a careful review of all the evidence submitted and extrapolations therefrom. Significant factors were the December 1997 purchase price, the condition of the property at purchase, and the board's 1999-00 values. This amount must be adjusted by the change property ratio of .82, leaving a total increase in maximum assessed value of \$12,300 (rounded). ORS 308.153(1)(b). This amount, in turn, must be added onto the maximum assessed value determined under ORS 308.146. See ORS 308.153(1) & (1)(a).

Determining the maximum assessed value under ORS 308.146(1)(a) is not without its problems because of inconsistencies in the numbers. The values shown on plaintiffs' 1999-00 tax statement as to prior year values (1998-99) differ from the values the county asserts are correct. Mr. Hillpot attributes the problem to "the computer." These inconsistencies led plaintiffs to conclude that the assessor calculated assessed value in violation of the law.³ This is a reasonable conclusion given the definitions of maximum

³The 1999-00 tax statement shows the AV for the prior year as \$103,560 and the RMV at \$92,700. Because AV is the lesser of RMV or MAV, AV cannot possibly be \$103,560 (regardless of MAV) unless RMV was actually \$103,560. Mr. Hillpot contends that is the case (RMV in 1998 was actually \$103,560) and MAV was \$125,507. This explanation is supported, for the most part, by the board's worksheet, which shows 1998 MAV to be \$125,507.

assessed and assessed values and the fact that plaintiffs' tax statement shows an assessed value higher than real market value.⁴ After reviewing the evidence the court is persuaded by Mr. Hillpot's explanation that the tax statement is in error. The court's conclusion will no doubt offer little consolation to plaintiffs, who point out that the 1999 board worksheet is inconsistent with its Order in terms of maximum assessed value. (Ptf's Exs 14 & 16).⁵

Reviewing the evidence, the court concludes the maximum assessed value under ORS 308.146, to which the CPR-adjusted exception value is added, is \$125,507. This number represents 103 percent of the 1997 assessed value (which matches the MAV). Adding \$12,300 from above, which represents the \$15,000 recognized new property improvements adjusted by the CPR, brings the total maximum assessed value provided in ORS 308.153(1) to \$137,807. Because this number is less than the real market value, assessed value is based on maximum assessed value and is hereby set at \$137,807. ORS 308.146(2). Plaintiffs also requested a reduction in real market value but there is no evidence bearing on that issue.

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CONCLUSION

After carefully reviewing the evidence the court concludes that the total maximum assessed value for tax year 1999-00 was \$137,807. The real market value is sustained at \$140,000. Because assessed value is the lesser of real market or maximum assessed

⁴In any case, assessed value is the lesser of real market or maximum assessed value.

⁵The worksheet shows the total 1999-00 MAV to be \$153,872 whereas the board Order shows a total MAV of \$164,346. *Id.* Mr. Hillpot contends the \$153,872 value is correct.

value, the assessed value must be reduced to \$137,807.

IT IS THE DECISION OF THE COURT that plaintiffs' requested relief is granted in part and denied in part. Defendant's requested relief is denied. The values shall be adjusted as set forth immediately above.

Dated this _____ day of June, 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 JUNE 7, 2001. THE COURT FILED THIS DOCUMENT ON JUNE 7, 2001.