

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

WILLIAM L. MURDOCK, JR., and)
CYNTHIA G. MCCART,)
)
Plaintiffs,) TC-MD 020661C
)
v.)
)
MULTNOMAH COUNTY ASSESSOR,)
)
Defendant.) **DECISION**

This appeal involves the validity of an increase by Defendant in the maximum assessed value (MAV) of Plaintiffs' property for the 2001-02 tax year because of work done to Plaintiffs' floating home in calendar year 2000. Trial was held by telephone January 30, 2003. Cynthia McCart, co-owner of the subject property, appeared for Plaintiffs. Barron Hartwell, Residential Appraisal Supervisor, appeared for Defendant.

STATEMENT OF FACTS

The subject property is a floating home that Plaintiffs purchased in May 2000. It is identified in the assessor's records as Account P498149. Plaintiffs "replaced" 11 of the 14 stringers that support the home in July 2000 and replaced the deck roof over the back portion of the home in mid-November 2000. The stringers were not actually installed as replacements, but rather placed next to existing stringers that were deteriorated due to water damage. The roof deck was refinished because it leaked, damaging a wall separating the studio apartment from the boat well. The roof deck is accessible from the second story at the front of the home and extends out over a studio apartment and boat well located on the back (river) side of the home.

An understanding of the structure of the floating system and its connection to the

home is necessary in determining whether the addition of the stringers constitutes new property or general ongoing maintenance and repair. The home floats on logs running the length of the structure from front to back that sit on top of foam flotation devices. (Ptf's Exs 3 and 4.) The stringers are six inch by 10 inch pressure treated boards that run perpendicular to and on top of the logs (from side to side), providing a "bridge" between the floating logs and the floor joists. The stringers are anchored to the logs by pins or spikes and the joists in turn are anchored to the stringers in similar fashion. Plaintiffs hired independent contractors to add the stringers and replace the flat roof deck. The cost of adding the stringers was \$14,300. (Ptf's Exs 5, 6 and 7.) The cost of the roof was \$5,410. (Ptf's Ex 11.)

Defendant determined that the work done to the home constituted "exception RMV", defined in the statutes as "new property or new improvements" to property. Defendant determined that the market value of the "new property or new improvements" was \$18,730 and added the ratioed value of the new property to the maximum assessed value as provided in ORS 308.153.¹

COURT'S ANALYSIS

The primary issue in this case is whether the work done to Plaintiffs' home constitutes "new property or new improvements" to property, as Defendant believes, or whether Plaintiffs are correct in arguing that the work constitutes "general ongoing maintenance and repair," which is excluded by statute from the definition of new property

¹ All references to the Oregon Revised statutes (ORS) are to 1999.

Defendant multiplied the "exception RMV" of \$18,730 by the change property ratio of .7205 for a net maximum assessed exception value of \$13,490. Defendant added that amount to 103 percent of the prior year's maximum assessed value as provided in ORS 308.153.

or new improvements.² The question is important because if Defendant is correct, Plaintiffs' maximum assessed value can be increased proportionately, resulting in an increase in Plaintiffs' assessed value over the typical statutory 3 percent annual rise. If, on the other hand, Plaintiffs are correct, their assessed value in this case rises only 3 percent over the prior year.

The statute governing the calculation of maximum assessed value is ORS 308.146(3), and provides in relevant part:

“(3) 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 ORS 308.166 if:

“(a) The property is new property or new improvements to property;”

ORS 308.149 provides the following definition of “new property or new improvements”:

“(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;

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

“* * * * *

“(b) ‘New property or new improvements’ does not include changes in the value of the property as the result of:

² The statute provides:

“(3) 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 ORS 308.166 if:

“(a) The property is new property or new improvements to property.”

“(A) General ongoing maintenance and repair; or

“(B) Minor construction.”

The department has promulgated an administrative rule that defines the key terms in the statute set forth immediately above. Two definitions are relevant. First, the rule provides that “[r]ehabilitation’ means to restore to a former condition without changing the basic plan, form or style of the structure.” OAR 150-308.149-(A)(1)(f). That definition seems to encompass the work done to Plaintiffs’ home, in which case the work would qualify as “new property or new improvements” to property. However, ORS 308.149(5)(b)(A) excludes “[g]eneral ongoing maintenance and repair” from the definition of “[n]ew property or new improvements” and the rule further provides that:

“(2)(a) For purposes of ORS 308.149 ‘general ongoing maintenance and repair’ means activity that:

“(A) Preserves the condition of existing improvements without significantly changing design or materials and achieves an average useful life that is typical of the type and quality so the property continues to perform and function efficiently;

“(B) Does not create new structures, additions to existing real property improvements or replacement of real or personal property machinery and equipment;

“(C) Does not affect a sufficient portion of the improvements to qualify as new construction, reconstruction, major additions, remodeling, renovation or rehabilitation; and

“* * * *”

“(b) Regardless of cost, the value of general ongoing maintenance and repairs may not be included as additions for the calculation of maximum assessed value.”

OAR 150-308.149-(A).

Defendant acknowledged at trial that the work done to the roof deck “sounds like ongoing maintenance.” Defendant then offered to lower the exception real market value to the “minimum,” suggesting a value of \$10,100 as opposed to the original figure of \$18,730. McCart rejected that offer, arguing rather strenuously and convincingly that all of the work done falls squarely within the definition of ongoing maintenance and repair and

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that none of it should be included in the calculation of maximum assessed value. The court agrees.

The parties essentially agree that the roof does not constitute new property but rather ongoing maintenance. The court finds it significant that the stringers were not even replaced, but rather wedged in next to the existing rotted stringers. It strikes the court that older model floating homes are qualitatively different than stick built homes because floating homes in the past were often built with lesser quality materials (e.g., 2 x 4 versus 2 x 6 stud wall construction). In addition, these homes constantly move with the ebb and flow of the water and are continually exposed to water. As such they require more ongoing maintenance and repair. Plaintiffs submitted a document they received from Dennis Wardwell, the appraiser originally assigned to this appeal, which sets forth training examples for general ongoing maintenance and repair. (Ptf's' Ex 16.) That document was apparently created by the Oregon Department of Revenue (department), which oversees the state's property tax system. According to that document, examples of work which "**typically qualif[ies]** as general ongoing maintenance and repair" include the replacement of "a worn out composition roof cover on a house with a new one of like quality and material" and "[r]eplacing defective siding with a non-defective equivalent." (*Id.*) (Emphasis in original.) Conversely, if the deteriorated composition roof is replaced by a roof of superior materials, it does not qualify as general ongoing maintenance and repair. (*Id.*) Finally, the examples provide that the replacement of a few broken deck boards on a marine pier is general ongoing maintenance and repair whereas replacing all or most of the boards is not. (*Id.*)

The department's training materials do not have the force of law. They are nonetheless instructive. The distinction gleaned from the training examples and the

administrative rule seems to be that if the work done to a structure is significant enough to “affect a sufficient portion of the improvements,” such as replacing all or most of the decking boards on a pier versus replacing only a few boards, then the work constitutes new improvements to property and does enter into the calculation of maximum assessed value. See OAR 150-308.149-(A)(2)(a)(C). The work done in the present case is more akin to replacing an old roof with a new roof of similar quality and materials than it is to replacing all of the boards on a pier. As McCart argued at trial, if Plaintiffs had replaced the existing flotation system with a newer concrete model, the work would constitute new property or new improvements to property. However, what Plaintiffs had done merely “[p]reserves the condition of [the] existing improvement[] without significantly changing design or materials.” OAR 150-308.149-(A)(2)(a)(A).

CONCLUSION

After carefully reviewing the facts and applicable law, the court concludes that the work Plaintiffs had done to their floating home may not be considered in the calculation of maximum assessed value because it constitutes general ongoing maintenance and repair. Now, therefore,

IT IS THE DECISION OF THIS COURT that the Plaintiffs’ appeal is granted and their maximum assessed value for the 2001-02 tax year must be calculated as provided in ORS 308.146(1) without regard to the work done to their floating home in the calendar year 2000.

Dated this _____ day of March, 2003.

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 MARCH 11, 2003. THE COURT FILED THIS DOCUMENT ON MARCH 11, 2003.