

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Property Tax

JOSE ERNESTO DURAN POLANCO and )  
MARIA LUISA BAHENA, )  
 )  
Plaintiffs, ) TC-MD 021033C  
 )  
v. )  
 )  
LANE COUNTY ASSESSOR, )  
 )  
Defendant. ) **DECISION**

Plaintiffs appealed Defendant's clerical error correction for tax years 1997-98 through 2001-02<sup>1</sup>. The December 10, 2002, case management conference was converted to trial. Jose Ernesto Duran Polanco (Polanco) appeared for Plaintiffs. Defendant appeared through Thomas Frederiksen, an appraiser with the Lane County Assessor's Office.

**STATEMENT OF FACTS**

The subject property is a newly constructed home completed in 1996. Plaintiffs purchased the property in May 1996 for \$79,000. Plaintiffs obtained a conventional loan and, under the terms of the agreement with the escrow company, property taxes are included in the mortgage payment.

Defendant had an appraiser inspect the property in June 1996. That appraiser, who has since retired, drew a diagram of the home and made notes as to its physical characteristics. For reasons unknown to Defendant or the court, the value of the structure was not added to the assessment and tax rolls. Only the land was valued and taxed. The

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<sup>1</sup> The Complaint indicates tax years 1997-2003 are under appeal, but the assessor's correction only affected tax years 1997-98 through 2001-02.

land was assigned a real market value (RMV) of \$11,170 for the 1997-98 tax year. The land's RMV was increased slightly each year thereafter and was \$13,390 for the 2001-02 tax year.

Plaintiffs eventually grew curious about their low property taxes and visited the assessor's office "around October" of 2001 to inquire. Polanco testified that during that visit he was told the house was not "registered," the error was his, and he would have to pay.

On April 24, 2002, Defendant added the value of the home and associated on-site developments to the assessment and tax rolls for tax years 1997-98 through 2001-02, inclusive. The changes were made pursuant to the clerical error provisions in chapter 311 of the Oregon Revised Statutes. For the 1997-98 tax year Defendant added \$61,750 in improvement RMV and \$6,080 in land RMV. The total RMV for that year was increased from \$11,170 to \$79,000. Similar amounts were added for the years following, through 2001-02. The additional taxes total \$5,221.66.

### **COURT'S ANALYSIS**

ORS 311.205<sup>2</sup> authorizes corrections to the assessment and tax roll for "clerical errors." The statute provides, in relevant part:

"(1) After the assessor certifies the assessment and tax roll to the tax collector, the officer in charge of the roll may correct errors or omissions in the roll to conform to the facts, as follows:

"(a) The officer may correct a clerical error. A clerical error is an error on the roll which either arises from an error in the ad valorem tax records of the assessor, or the records of the Department of Revenue for property assessed under ORS 306.126, or which is a failure to correctly reflect the ad valorem tax records of the assessor, or the records of the Department of Revenue for property assessed under ORS 306.126, and which, had it been discovered by the assessor or the department prior to the certification of the

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<sup>2</sup> All references to the Oregon Revised Statutes (ORS) are to 2001.

assessment and tax roll of the year of assessment would have been corrected as a matter of course, and the information necessary to make the correction is contained in such records. Such errors include, but are not limited to, arithmetic and copying errors, and the omission or misstatement of a land, improvement or other property value on the roll.”

ORS 311.205.

Under paragraph (a) above, there are essentially three requirements for a valid clerical error correction: 1) an error in the assessor’s records; 2) the error would have been corrected by the assessor “as a matter of course” prior to certification of the roll if it had been discovered; and 3) the records contain the information required to make the correction.

Additionally, the statute provides a limitation on the officer in charge of the roll precluding corrections of errors in “valuation judgment.” ORS 311.205(1)(b). The statute provides:

“(b) The officer may not correct an error in valuation judgment, except as provided in ORS 308.242 (2) and (3). Such errors are those where the assessor would arrive at a different opinion of value. The officer may correct any other error or omission of any kind. Corrections that are not corrections of valuation judgment errors include, but are not limited to, the elimination of an assessment to one taxpayer of property belonging to another on the assessment date, the correction of a tax limit calculation, the correction of a value changed on appeal, or the correction of an error in the assessed value of property resulting from an error in the identification of a unit of property, but not an error in a notice filed under ORS 310.060.

ORS 311.205(1)(b).

It is undisputed that there was “an error in the ad valorem tax records of the assessor.” ORS 311.205(1)(a). The error was an “\* \* \* omission or misstatement of a land, improvement or other property value on the roll.” *Id.* The appraisal card, which is part of the assessor’s records, shows a home, but the home was not assessed and taxed. Nor, apparently, were the on-site developments (site preparation, electrical service, water and

sewer service, etc.). As a result, only the value of the undeveloped lot was taxed.

Presumably the error would have been corrected as a matter of course if it had been discovered prior to certification of the roll.

The two issues presented are whether the information necessary to make the correction was in the assessor's records and whether the assessor violated the prohibition against correcting errors in valuation judgment. Because the evidence is unclear on the first issue, and the second issue resolves the appeal, the court will consider the latter issue first.

In considering whether the assessor corrected an error in valuation judgment, the court notes that the statute does not prohibit the exercise of valuation judgment but rather the correction of an error in such judgment. This distinction was illuminated in *Decker v. Dept. of Rev.*, 13 OTR 443 (1996), where the court ruled that the prohibition against correcting errors in value judgment did not preclude adding the value of a house and garage omitted for several years from the rolls because, during the years the property was omitted, no value judgment was exercised. *Id.* at 446-447. Under *Decker*, the determination of value in the present case did not result in a correction of an error in valuation judgment because, during the years in question, there was no valuation judgment exercised with respect to the home or the on-site developments.

However, valuation judgment was necessary to ascertain the actual value of the home and associated on-sites. And, while not specifically prohibited by the statute, the applicable administrative rule provides that “[c]lerical errors are those procedural or recording errors which do not require the use of judgment or subjective decision making for their correction.” OAR 150-311.205(1)(a)(1). The rule further provides:

“[a] clerical error is an arithmetic or copying error or an omission on the roll

or misstatement of property value that is apparent from assessor office records without speculation or conjecture, assumption or presumption, **and** that is **correctable without the use of appraisal judgment** or the necessity to view the property.”

*Id.* (Emphasis added.) Herein lies the problem. While there was an omission on the roll, it was not correctable without the use of appraisal judgment. Regardless of how much the assessor knew about the physical characteristics of the home, it had not assigned a value to the home and that requires the exercise of appraisal judgment. Accordingly, the correction cannot be made under the clerical error provisions.

### **CONCLUSION**

The court concludes that the error in question is not a clerical error because the administrative rule precludes corrections involving the use of appraisal judgment. Now, therefore,

IT IS THE DECISION OF THIS COURT that the clerical error correction is invalid and Plaintiff’s appeal is granted.

Dated this \_\_\_\_\_ day of April, 2003.

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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 APRIL 1, 2003. THE COURT FILED THIS DOCUMENT ON APRIL 1, 2003.**