

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Small Claims  
Property Tax

WAYNE BAUER, )  
 )  
 Plaintiff, ) TC-MD 030331A  
 )  
 v. )  
 )  
 MULTNOMAH COUNTY ASSESSOR, )  
 )  
 Defendant. ) **DECISION AND JUDGMENT**

Plaintiff has appealed the assessment of his home, identified by Account R180978, for the 2002-03 tax year. He appeared and made his arguments. Defendant was represented by Katie Bailey, of its staff.

The issue to be decided in this appeal is whether the work done to the subject property was an "exception," within the meaning of ORS 308.149,<sup>1</sup> which calls for an increase in its maximum assessed value.

**I. STATEMENT OF FACTS**

Plaintiff made a major addition to his home, adding some 750 square feet. Defendant's opinion was that this improvement resulted in an exception value of \$121,970. Plaintiff does not dispute that adding additional area created some exception value. However, Plaintiff is of the belief that some of the work done at this time, such as replacing windows, a roof, a furnace, and painting, is more correctly categorized as maintenance and repair. That conclusion led to Plaintiff proposing \$99,700 as a revised exception value.

**II. ANALYSIS**

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<sup>1</sup> All references to the Oregon Revised Statutes (ORS) are to 2001.

Article XI, section 11, of the Oregon Constitution declares that a property's maximum assessed value may only be increased under certain circumstances. One of these instances is as to "new property or new improvements to property," as set out in ORS 308.146(3)(a). ORS 308.149(5)(a) goes on to define "new property or new improvements" to mean changes in the value of the property as a result of:

"(A) New construction, reconstruction, major additions, remodeling, renovation or rehabilitation of property;

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"(b) 'New property or new improvements' does not include changes in the value of the property as the result of:

"(A) General ongoing maintenance and repair; or

"(B) Minor construction."

These definitions have in their turn been explained in the Department of Revenue's administrative rules. OAR 150-308.149-(A)(1) provides, in part that:

"(b) 'Reconstruction' means to rebuild or replace an existing structure with one of comparable utility.

"(c) 'Major addition' means an addition that has a real market value over \$10,000 and adds square footage to an existing structure.

"(d) 'Remodeling' means a type of renovation that changes the basic plan, form or style of the property.

"(e) 'Renovation' means the process by which older structures or historic buildings are modernized, remodeled or restored.

"(f) 'Rehabilitation' means to restore to a former condition without changing the basic plan, form or style of the structure.

"(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;

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

(Emphasis added.)

When the arguments of the parties are examined in the context of these definitions, the conclusion of the court is that too much was done to change the house for a portion of the change in value to be excluded as "general ongoing maintenance and repair."

According to the emphasized language in the administrative rule, the activity in question must not have affected a sufficient portion of the improvements. Here, some 750 square feet were added to the area of the dwelling. The roof was replaced in the context of covering the new addition. The furnace was replaced so as to heat the new living space. The home was painted as part of integrating the new addition to the old.

Other decisions of the court are consistent with this result. *Strom v. Dept. of Rev.*, 15 OTR 309, 313 (2001), is useful for both its general discussion of "general ongoing maintenance and repair" and its specific observation that replacing windows is a renovation. With this reasoning, and precedent, the appeal is denied.

### **III. CONCLUSION**

Plaintiff's position is reasonable. However, a focus upon the precise language of the applicable statutes and administrative rule finds that Defendant's position is more consistent with the dictates of the law. Now, therefore,

IT IS ADJUDGED AND DECREED that this appeal is denied.

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

SCOT A. SIDERAS  
MAGISTRATE

**THIS DOCUMENT WAS SIGNED BY MAGISTRATE SCOT A. SIDERAS ON  
NOVEMBER 7, 2003. THE COURT FILED THIS DOCUMENT ON NOVEMBER 7,  
2003.**