

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

LARRY ABLEMAN,)
)
 Plaintiff,) TC-MD 030746D
)
 v.)
)
 MULTNOMAH COUNTY ASSESSOR,)
)
 Defendant.) **DECISION**

Plaintiff appeals Defendant's real market value (exception value) for tax year 2002-03.¹

During the case management conference held on Monday, July 21, 2003, Defendant's representative, Katie Bailey, stated that Defendant had no additional information to submit and requested that the court make a decision. Plaintiff submitted additional information concerning permits and costs to build his garage and a third party bid for the garage to the court and Defendant on July 25, 2003.

I. STATEMENT OF FACTS

The parties agreed to the following facts. In 1995, Plaintiff's improvements were damaged by fire. In 1996, the fire damage was repaired and the basement was remodeled. Prior to the fire, Plaintiff testified that the assessed value of the improvements was \$38,990. In 1997, the assessed value of the improvements increased to \$72,900. Until 2001, Plaintiff did not add or make changes to his improvements.

¹ Plaintiff elected the small claims procedure when he filed his Complaint and paid the \$10 filing fee. Plaintiff's challenge of Defendant's decision to add improvements completed in 1997 to the 2002-03 tax roll as exception value does not qualify for the small claims procedure. See ORS 305.514 (2001). The case must therefore be converted to a "standard" appeal. The filing fee for a standard appeal is \$25. ORS 305.490(1)(b)(2001). The court will waive the additional \$15 filing fee.

In 2001, Plaintiff removed a carport and storage building located on his property. He built a new 20' x 24' garage. Plaintiff obtained a bid of \$9,900 from Tuff Shed. He built the garage himself for a total cost of \$8,532.95, including permits.

Defendant viewed the property and determined the real market value of Plaintiff's improvements to be \$140,180. Using sales data and other statistical information, Defendant determined the value of the new improvements, the garage, to be \$18,460. Because Defendant's records indicated that the basement and a second bathroom were not on the tax roll, Defendant added \$24,540 to the tax roll for these improvements. In evaluating the real market value, Defendant concluded that the condition of the property was no longer average and should be changed to good. The combined value (\$43,000) of the garage, basement and bathroom was recorded as "exception value" on the tax roll for 2002-03. Defendant stated that the value of the carport and storage building was not on the tax roll and, therefore, the removal of these structures did not adjust the real market value of Plaintiff's property.

II. ANALYSIS

Plaintiff's appeal has two related issues. First, Plaintiff appeals the real market value of the garage added to the 2002-03 tax roll. Second, Plaintiff challenges Defendant's decision to add the value of improvements made to the basement and bathroom that were completed in January 1997 to the tax roll in 2002-03.

Looking to the second issue first, Defendant is permitted to add property which it determines was previously omitted from the tax roll. ORS 311.216.² After Defendant makes the determination, Defendant is required to give notice to the property owner of "the assessor's intention to add the property to the assessment or tax roll under

² References to the Oregon Revised Statutes (ORS) are to 2001.
DECISION TC-MD 030746D

ORS 311.216 to 311.232” and an opportunity for Plaintiff to show cause why the property should not be added to the tax roll. ORS 311.219. In this case, the only notice given to Plaintiff was the statement of exception value on the annual property tax statement sent to Plaintiff in October 2002. Defendant’s notice failed to provide Plaintiff an opportunity to show cause. Defendant’s failure to comply with the statutory notice requirements makes the notice “invalid and of no effect.” *Perkins v. Dept. of Rev.*, 15 OTR 381, 387 (2001). The exception value for the basement and bathroom was incorrectly placed on the tax roll for tax year 2002-03 and must be removed.

Plaintiff’s second issue involves the changes to Oregon’s property tax system brought by Measure 50. 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 IX §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 IX §11(1)(b). Measure 50 provided that for each successive year the MAV increased no more than 3 percent a year. *Id.*; *See also* ORS 308.146(1). Exceptions to this general rule were created and Defendant alleges that the following exception set forth in ORS 308.146(3) applies to Plaintiff:

“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;”

With respect to the “exception” value of the garage, Defendant is permitted to add to the tax roll improvements “made to property as of January 1 of the assessment year.”

ORS 308.153(1). New improvements “does not include change in the value of the property

as a result of * * * minor construction.” ORS 308.149(5)(b). Minor construction is defined as “additions of real property improvements, the real market value of which does not exceed \$10,000 in any assessment year.” ORS 308.149(6).

The issue before the court is the real market value of Plaintiff’s garage. Real market value is defined as the “amount in cash that could reasonably be expected to be paid by an informed buyer to an informed seller, each acting without compulsion in an arm’s length transaction occurring as of the assessment date for the tax year.”

ORS 308.205. The assessment date was January 1, 2002.

Plaintiff has the burden of proof, by a preponderance of the evidence, that he is entitled to the relief requested. ORS 305.427. “Preponderance of the evidence means the greater weight of evidence, the more convincing evidence.” *Feves v. Dept. of Revenue*, 4 OTR 302, 312 (1971). The only evidence in this case is Plaintiff’s determination of the real market value of his garage based on a comparison of the bid from Tuff Shed that exceeded his actual cost to construct. According to Defendant’s representative, Defendant’s determination of the value of Plaintiff’s garage was derived from statistical data and cost factors including the neighborhood. Defendant did not submit any evidence to support its determination of value.

The court concludes that Plaintiff’s addition of a garage did not add real market value to his property in excess of \$10,000 for the 2002-03 assessment year. In reaching this conclusion, the court was persuaded by Plaintiff’s evidence showing that both his cost to construct and purchase the garage were less than \$10,000. This court has previously held that the “cost approach is considered highly useful in” determining “the market value of new or relatively new construction.” *Jeness v. Multnomah County Assessor*, OTC-MD 000509D, WL 33245433 (Sept 28, 2000).

In this case, Defendant relied on a computer generated value to determine the exception value. Defendant declined to submit any evidence for the court to consider. In addition, Defendant failed to support its statement that the carport and storage shed were not previously assessed. The significance of the removal of those two structures on the determination of the real market value of Plaintiff's property is unknown. Defendant's decision to deny the court an opportunity to review its evidence leaves Plaintiff's evidence unchallenged.

III. CONCLUSION

Now, therefore,

IT IS THE DECISION OF THIS COURT that Defendant incorrectly added exception value for Plaintiff's basement and bathroom to the 2002-03 tax roll and the value in the amount of \$24,540 must be removed from Account R260987.

IT IS FURTHER DECIDED that Defendant incorrectly determined an exception value for Plaintiff's garage and the exception value in the amount of \$18,460 for the 2002-03 tax year shall be removed from Account R260987.

IT IS FURTHER DECIDED that the county shall correct the assessment and tax rolls to reflect the above Decision with any refund due Plaintiff to be promptly paid with statutory interest.

Dated this _____ day of August, 2003.

JILL A. TANNER
PRESIDING MAGISTRATE

IF YOU WANT TO APPEAL THIS DECISION, FILE A COMPLAINT IN THE REGULAR DIVISION OF THE OREGON TAX COURT, BY MAILING TO: 1163 STATE STREET, SALEM, OR 97301-2563; OR BY HAND DELIVERY TO: FOURTH FLOOR, 1241 STATE STREET, SALEM, OR. 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 AUGUST 19, 2003. THE COURT FILED THIS DOCUMENT ON AUGUST 19, 2003.