

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Property Tax

THE THREE-SEVENS LLC 1/3,	)	
	)	
Plaintiff,	)	TC-MD 030899C
	)	
v.	)	
	)	
LANE COUNTY ASSESSOR,	)	
	)	
Defendant.	)	<b>DECISION</b>

Plaintiff appeals a clerical error assessment made by Defendant. This matter is before the court on Plaintiff's February 9, 2004 motion to void the clerical error notice. David Carmichael appeared on behalf of Plaintiff. Bill Weeks appeared for Defendant.

I. STATEMENT OF FACTS

The subject property was unimproved in 1995, and, in that year, had a \$29,000 real market value (RMV) on the tax rolls for the land. Plaintiff commenced construction of a building to be operated commercially as a shooting range. Defendant appraised the building in 1996 and determined the completed RMV would be \$258,000. (Def's Ex B.) Defendant estimated the building to be 70 percent complete as of July 1, 1996, and added \$180,600 to the roll as the property's improvement RMV for the 1996-97 tax year. (Def's Exs A; B.) The building was completed by July 1, 1997, and Defendant added the remaining value of \$77,400 (RMV) to the roll.<sup>1</sup> (Def's Exs A; C.) However, Defendant computed the property's maximum assessed value (MAV) in 1997 (as required by Measure 50) to be only \$83,888 instead of \$218,730. (Def's Ex D.) The changed property ration (CPR) used to calculate the MAV under Measure 50 was .746627. (Def's Ex E.)

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<sup>1</sup> 258,000 - 180,600 = 77,400.  
DECISION TC-MD 030899C

In a letter dated April 8, 2003, Defendant notified Plaintiff that it had discovered what it termed a "clerical error," and intended to increase the taxable value of the property because of the "new building." (Def's Apr 8, 2003, letter at 1.) That notice indicated the corrected assessed values (AV) for tax years 1997-98, 1998-99, 1999-2000, 2000-2001, and 2001-02. The additional AV was to be \$134,834 in 1997, and would increase each year thereafter to \$151,757 in 2001. On May 9, 2003, Defendant notified Plaintiff, by certified mail, that the corrected values set forth in the April 8, 2003, letter had been added to the assessment and tax roll. Although neither notice clearly states the reason for the correction, Defendant's December 3, 2003, letter to the court asserts that the reason was the omission of the value for the 1996 improvements (the \$180,600 RMV for the partially completed building) from the 1997 MAV calculations, a mistake carried forward into the subsequent years at issue. Defendant explains that the property's original MAV was calculated using only the unimproved land value and the value attributable to the improvements completed in 1997.<sup>2</sup>

Plaintiff timely filed this appeal in the Magistrate Division. Defendant later asserted in a telephonic proceeding with the court that there was a discrepancy of approximately \$7 between the values actually added to the rolls and the values that should have been added for each of the years in question. Defendant contends that \$134,840, and not \$134,834, should have been added to the property's AV in 1997, and that similar incremental adjustments are in order for the other years covered by the clerical error assessment.<sup>3</sup> Defendant does not plan to add the additional

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<sup>2</sup> Defendant explained that it added the product of 90 percent of the 1995 land RMV to the product of the final 30 percent improvement RMV multiplied by the CPR of .746627. That exercise can be expressed mathematically as follows:

$[29,000 \times .9] + [77,400 \times .746627] = 26,100 + 57,788.93 = 83,889$ ; Defendant apparently rounded down to \$57,788, yielding a total of \$83,888.

<sup>3</sup> The difference here is \$6, but would be \$7 if Defendant had not rounded down in originally calculating the 1997 MAV. *See* fn 2. Using the numbers asserted by Weeks at the hearing and in his written explanation, the mathematical calculation would be:  $\$218,729 - \$83,888 = \$134,841$ . That yields a difference of \$7.

amounts to MAV and AV by use of the clerical error provisions. Plaintiff disputes the cause of the discrepancy, arguing that it appears to be the result of a change in valuation judgment.

## II. ISSUE

The ultimate issue in this case is whether Defendant's correction constitutes a permissible clerical error correction within the meaning of ORS 311.205.<sup>4</sup>

## III. ANALYSIS

ORS 311.205(1)(a) and (b) authorizes the correction of "clerical errors," which include arithmetic and copying errors. A "clerical error" is an error on the roll that:

"[1] either arises from an error in the ad valorem tax records of the assessor \* \* \* or which is a failure to correctly reflect the ad valorem tax records of the assessor \* \* \* and [2] which, had it been discovered by the assessor \* \* \* prior to the certification of the assessment and tax roll of the year of assessment would have been corrected as a matter of course, and [3] the information necessary to make the correction is contained in such records."

ORS 311.205(1)(a). The omission of an improvement value is expressly included in the definition of "clerical error." *Id.* The term "records" includes, but is not limited to, "field notes, the assessment roll \* \* \* and appraisal cards and jackets." OAR 150-311.205(1)(a) and (3)(a).<sup>5</sup>

Unlike clerical errors, errors in valuation judgment may not be corrected except as provided by ORS 308.242(2) and (3) (allowing reductions for the current year where appropriate, provided certain criteria are satisfied). ORS 311.205(1)(b). Errors in valuation judgment are those errors "where the assessor would arrive at a different opinion of value."

ORS 311.205(1)(b). The regulations clarify that an omission may not be corrected "if the correction requires that the officer exercise judgment to determine the value, formulate an opinion as to value, or inquire into the state of mind of the appraiser." OAR 150-311.205(1)(b).

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<sup>4</sup> Unless otherwise noted, all references to the Oregon Revised Statutes (ORS) are to 2001.

<sup>5</sup> All references to the Oregon Administrative Rules (OAR) are to 2001, which became effective January 2002.

The court finds that there was an omission of value for the 1996 improvements from the MAV calculation and that the omission arose from “an error in the ad valorem tax records of the assessor.” ORS 311.205(1)(a).

Measure 50, which first took effect for the tax year beginning July 1, 1997, required the assessor to calculate the MAV as 90 percent of the property's 1995 RMV on the roll.

Or Const, Art XI, § 11(1)(a); *See also* Or Laws 1997, ch 541, § 2(2), *compiled as a note after* ORS 308.146 (1997). The law further provides that new property added after July 1, 1995, is added to the MAV as a percentage of its market value, based on the ratio of average MAV to average RMV for similar property in the area. Or Const, Art XI, § 11(1)(c) . Finally, AV is the lesser of RMV and MAV. *See generally* ORS 308.146; ORS 308.153.

The MAV (and AV) appearing on the rolls for the subject property in 1997 was \$83,888. That number was on the tax statement and is the sum of 90 percent of the RMV of the land in 1995 (\$29,000 x .9 = \$26,100) plus the product of the RMV for the final 30 percent of value for the work completed between 1996 and 1997 (\$77,400) multiplied by the CPR of .746627. The MAV in 1997 should have been 90 percent of the 1995 land RMV plus the product of the total improvement RMV (\$258,000) multiplied by the CPR, as follows:

$$[\$29,000 \times .9] + [\$258,000 \times .746627] = \$26,100 + \$192,630 \text{ (rounded)}^6 = \$218,730.^7$$

Thus, the original MAV of \$83,888 was off by \$134,842. Defendant’s correction added \$134,834, a difference of \$8. Defendant asserted both in the court hearings and in its December 3, 2003, written explanation, that the error in 1997 amounts to \$7. The difference (\$1) appears to be attributable to rounding. Defendant’s original MAV calculation for the \$77,400 improvement

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<sup>6</sup> The precise number is \$192,629.766.

<sup>7</sup> Weeks asserted that the value should be \$218,729. The Affidavit of Connie Chapman, Appraisal Manager, Lane County Department of Assessment and Taxation, states that the total MAV should be \$218,730, which comports with the court’s calculations. The court gets \$218,729.77, which, rounded up, comes to \$218,730.

DECISION TC-MD 030899C

RMV was \$57,788; whereas standard rounding procedures bring that number to \$57,789.<sup>8</sup>

Chapman's affidavit attributes the overall error (\$134,834 versus \$134,842) to rounding.

It is precisely those discrepancies that so trouble Plaintiff. Plaintiff's concern is understandable. It is troubling enough to be assessed back taxes, but when the value numbers in the original correction notice differ from the numbers presented during the course of an appeal, one's confidence in the integrity of the process is shaken. That is particularly so when the taxing authorities are unable to definitively explain the discrepancy over the course of several months. The court has gone to considerable effort to replicate the original calculations without success. Rounding cannot fully explain the problem. Nonetheless, the court is satisfied with the final calculations, which show that the increase in MAV and AV in 1997 should have been \$134,842. Defendant has no intention of adding the additional value for the years at issue and the court is not inclined to order the increase.<sup>9</sup>

The court further concludes that the omission would have been corrected as a matter of course had it been discovered prior to the certification of the tax roll, which is the second requirement under the statute for a valid clerical error correction. ORS 311.205(1)(a). Accordingly, the dispositive fact is the presence, or absence, of information in the tax records that would enable Defendant to correct the omission of the 1996 improvements in the MAV calculation "without the use of appraisal judgment or the necessity to view the property." OAR 150-311.205(1)(a)(1); *see also* ORS 311.205(1)(a) and (b) .

Defendant submitted exhibits that show the tax records contain the necessary information. Those records show the 1996 improvement RMV for the partially completed structure (at 70 percent), the 1997 completed improvement RMV, the 1997 MAV (which is broken down into

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<sup>8</sup> The precise number is \$57,788.929.

<sup>9</sup> The value would increase by \$8 for 1997 and by similar amounts for the subsequent years affected by the increased assessments.

its constituent parts of land and improvements) and the 1997 CPR. With that information, anyone familiar with the value methodology required by Measure 50 can calculate the correct 1997 MAV and, by comparing that number with the MAV originally appearing in the records (and carried over to the roll), can see that the original 1997 MAV calculation was considerably less than it should have been. Prior to the 2003 corrections, the 1997 RMV of the improvements was \$258,000 and the MAV of the improvements was only \$57,788. (Def's Ex D.) However, given the 0.746627 CPR for class 2 property in 1997, the improvements should have had a 1997 MAV of approximately \$192,630.<sup>10</sup> The Measure 50 calculations provided by Defendant, through Chapman, correctly demonstrate the methodology to be undertaken in calculating MAV.

The statute does not require that Defendant be able to explain how the original error was made. It may be that the individual “keying in” the information typed the wrong number somewhere in the process of updating the records to conform to the dictates of Measure 50. However, the statutory requirement is that there be some error in the assessor’s records, that the error would have been corrected as a matter of course had it been discovered at the time in question, and that the information necessary to make the correction is contained in the assessor’s records. ORS 311.205(1)(a). The court finds those requirements have been satisfied.

Plaintiff neither presented evidence challenging Defendant's final calculations, nor explained why it is impossible to make the correction using only the information noted above. Plaintiff instead argues that Defendant’s inability to explain how the incorrect numbers were entered on the county notices makes it unclear as to whether the county officer exercised valuation judgment. Plaintiff cites a provision in the administrative rules to support its argument. OAR 150-311.205(1)(b)(2)<sup>11</sup> provides that where “it is unclear whether an error or an omission

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<sup>10</sup>  $\$258,000 \times .746627 = \$192,629.766 = \$190,630$  (rounded).

<sup>11</sup> Plaintiff cited the administrative rule as paragraph (1) of subsection (1)(b) of OAR 311.205 in its dismissal motion filed with the court February 9, 2004.

on the roll is a clerical error or an error in valuation judgment, the error or omission on the roll shall be considered an error or omission in valuation judgment.” It is not unclear to the court whether the error is a clerical error or an error in valuation judgment. On the contrary, the court is persuaded that the correction did not require the officer to “exercise judgment to determine the value, formulate an opinion as to value, or inquire into the state of mind of the appraiser.” OAR 150-311.205(1)(b)(1). Accordingly, the administrative rule is inapplicable.

Defendant's correction did not change the subject property's RMV on the tax roll. This court previously found that an assessor did not exercise valuation judgment when it added the MAV of improvements omitted from the initial MAV calculation by computer error. *Bowers v. Deschutes County Assessor*, TC-MD 011079D (Oct 8, 2002). Similarly, the higher AV of the subject property resulting from Defendant's 2003 corrections was the consequence of a new MAV calculation that accounted for the MAV attributable to the **original** RMV of the 1996 improvements that had been omitted from the 1997 MAV calculation. The 1997 RMV of the improvements remains \$258,000, which was the original appraised value for the completed structure. The correction was merely a mathematical calculation; no judgment was required.

#### IV. CONCLUSION

The court has carefully considered Plaintiff's request to void Defendant's clerical error notice and concludes that the request must be denied. Defendant's original tax records contained errors that resulted in errors on the tax roll for the years at issue. The errors concern the MAV calculations and not the RMV determination. Defendant's MAV calculation in 1997 excluded the improvement RMV added to the rolls in 1996. The information necessary to make the correction is contained in the tax records and was capable of correction without resort to valuation judgment. Accordingly, the omission is correctable as a clerical error. The fact that Defendant's value correction notices, as well as Defendant's actual tax roll corrections, are off by

several dollars does not demonstrate that the action of placing the value on the roll involved an exercise of valuation judgment. Therefore, the administrative rule requiring unclear situations to be deemed an error in valuation judgment is inapplicable for the reasons stated above. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiff's motion to void the notice is denied.

Dated this \_\_\_\_\_ day of September 2004.

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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, 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 DAN ROBINSON SEPTEMBER 1, 2004. THE COURT FILED THIS DOCUMENT SEPTEMBER 1, 2004.**