

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

BRIAN M. HEFELE,)	
)	
Plaintiff,)	TC-MD 040022F
)	
v.)	
)	
MULTNOMAH COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

Plaintiff disputes the real market value of a single-family residence for tax year 2003-2004. He alleges Defendant inappropriately added exception value to the subject property's real market and maximum assessed values in tax year 1997-98. The property is shown in Defendant's records as Account R171478.

Plaintiff asks the court to lower the property's current real market value, remove tax year 1997-98 exception value, and adjust the property's real market and maximum assessed values accordingly for tax years 1997-98 to 2003-04. A telephone trial was held May 25, 2004. Plaintiff appeared on his own behalf. Alan Kind appeared for Defendant.

I. STATEMENT OF FACTS

Plaintiff purchased the subject property, located in northwest Portland in 1997. Previously used as a hostel, the property needed remedial work, since performed by Plaintiff. For the 2003-04 tax year, Defendant valued the property at \$620,360 with a maximum assessed value of \$372,460. On December 29, 2003, Plaintiff filed a petition with the Multnomah County Board of Property Tax Appeals (the board) requesting a reduction to the property's real market value to \$450,000. On March 23, 2004, the board ordered a reduction in the property's real market value to \$550,000.

While his board petition was pending, Plaintiff filed an appeal with the Magistrate Division, also requesting that the property's real market value be reduced to \$450,000. Defendant requested the court dismiss the Complaint because Plaintiff had not properly appealed from a board order. A case management conference was held, during which the court allowed Plaintiff to amend his Complaint.

On April 23, 2004, Plaintiff filed an amended complaint. Plaintiff requested the court order a reduction of his property's real market value to \$450,000 for tax year 2003-04. Plaintiff also alleged that "without sufficient reason or documentation" Defendant added \$76,000 in exception value in the 1997-98 tax year. (Ptf's am. compl. at 1.) Plaintiff thus contends that good and sufficient cause exists to remove the exception value. Plaintiff requests the court remove the exception value, reduce his property's maximum assessed value in 1997-98, and recalculate his property's assessed value for all subsequent tax years.¹

Built in 1908, the subject property is located at 2400 NW Northrup Street on a 5,000 square foot corner lot. It has approximately 2,906 square feet of finished floor space on two levels, plus an unfinished attic and basement. The property has two fireplaces, 2 1/2 baths, but no garage. The property is zoned R1.² Through tax year 2001-02, the property was designated class 5. The property was designated class 5+ in tax years 2002-03 and 2003-04. The real market value of the property was \$523,550 in tax year 2001-2002; \$564,180 in tax year 2002-03; and, after the board order, \$550,000 in tax year 2003-04.

¹ From the 1997-98 tax year to the present, the subject property's maximum assessed value has been less than its real market value, thus the assessed value would always be equal to the maximum assessed value in any given tax year. *See* ORS 308.146(2). Only a reduction in the maximum assessed value would lower the amount of Plaintiff's property taxes in any of the tax years in question.

² A zone of R1 would allow up to five living units on the property. Of course, in order for that to occur, the improvements would have to be demolished to make way for new construction or alternatively, the improvements could be converted to a multifamily dwelling. There are numerous houses in northwest Portland that contain multiple living units.

Since his purchase, Plaintiff has replaced the furnace and water heater, repaired much of the plumbing and electrical infrastructure, replaced several appliances and plumbing fixtures, and made changes to the landscaping. He describes the work as “maintenance” rather than “improvements.” He contends the “maintenance” should not have triggered an increase in the assessed value or class designation³ of his property. Plaintiff asserts his property should be designated class 4 because of its deteriorated condition and further maintenance needs including a new roof, exterior siding, and several windows.

Both parties presented evidence relating to the real market value of the subject property, sales of comparable properties in the neighborhood, and differences in value based on the attributes of each property. Both parties agreed that northwest Portland is filled with unique homes and a specific location within the neighborhood may have a significant impact on property values, particularly up the hill west of 23rd Avenue.

Plaintiff presented 11 properties that sold for prices from \$360,000 to \$525,000 between March 2001 and December 2003. Properties are of similar size, vintage, location, and class⁴ as his property. Thus, he argued, his property’s real market value should fall within the range for those properties.

A property’s class designation may indicate comparability. Class designation usually does not change based on the condition of a property but may change if there is a major renovation. Finished floor space and unfinished space that could later be finished are other factors in valuing property. Kind presented four comparable class 5 properties that sold for between \$415,000 and \$680,000. The sales occurred between August 2001 and March 2003.

³ Appraisers use a quality classification system to classify properties based on attributes such as size, footprint, structure, design, and features. Each property is assigned a classification number ranging from 1 (low) to 8 (high). Less than full class differences are indicated with a "+" (plus) or "-" (minus).

⁴ The first two properties on Plaintiff's list are class 5. The other properties ranged from class 3 to 4+.

Kind contends comparable sale one on both parties' lists is the best indicator of the real market value; it is closest in size and overall condition. He further contends the sale prices of the other three properties support that conclusion.

Comparable sale one, a class 5⁵ located at 2391 NW Irving Street, sold for \$450,000 in October 2001. Built in 1896, it has 2,660 square feet of finished floor space on three levels with three fireplaces, two full baths, two half baths, but no garage. Zoned R1, the property sits on a corner lot of approximately 2,000 square feet.

Plaintiff's comparable sale three is located at 2475 NW Northrup Street. Built in 1909, this class 4+ sold for \$430,000 in March 2001. It has 4,900 square feet of finished floor space on four levels including two fireplaces, two full baths, but no garage. The lot size is less than 5,000 square feet.

Plaintiff's comparable sale eleven is located at 2386 NW Marshall Street. Built in 1905, this class 4 house sold for \$525,000 in December 2003. It has 3,034 square feet of finished floor space on three levels including three fireplaces, two full baths, but no garage. The lot size is 2,000 square feet.

II. ANALYSIS

Typically, a taxpayer who disagrees with the value of his or her property appeals to the Magistrate Division from a board order. ORS 305.275.⁶ Such an appeal must be filed within 30 days of the order. ORS 305.280(4). The court may hear untimely appeals relating to the value of residential property, if a taxpayer asserts and the court determines a valuation error of at least 20

⁵ At trial, Kind stated that although the designation of Plaintiff's property had been changed to class 5+, he felt that it could very well be considered class 5, so he used other class 5 properties on his list of comparable properties. Kind also stated that the typical difference in value between a class 5 and class 5+ property is 5 to 6 percent.

⁶ All references to the Oregon Revised Statutes (ORS) are to 2001. The property tax years involved in this case are 2001-02, 2002-03, and 2003-04. Tax year 2001-02 is governed by ORS 1999. Tax years 2002-03 and 2003-04 are governed by ORS 2001. There were no changes to the text of the relevant statutes from 1999 to 2001.

percent or establishes “good and sufficient cause” for failing to timely appeal. ORS 305.288.

The statute allows changes to the current tax year, as well as either of the two tax years immediately preceding the current tax year. *Id.*

A. Tax Year 2003-04

Plaintiff’s initial Complaint was filed while his board appeal was pending. Because he did not appeal from a board order, his Complaint was not properly filed. *See* ORS 305.275. Plaintiff filed his amended complaint within 30 days of the board’s order. Thus, Plaintiff’s appeal is timely as to tax year 2003-04.

Plaintiff contends the real market value of the subject property is \$450,000 for tax year 2003-04. Plaintiff has the burden to show by a preponderance of the evidence that his “approach to valuation best reflects the property’s ‘real market value.’” *STC Submarine, Inc. v. Dept. of Rev.*, 320 Or 589, 597, 890 P2d 1370, 1374 (1995) (citation omitted); *see also* ORS 305.427. Plaintiff suggests that his request is reasonable because his comparable sales sold for between \$360,000 and \$525,000. Plaintiff has not persuaded the court that his comparable sales “best reflect the property’s ‘real market value.’” *STC Submarine*, 320 Or at 597.

Informed buyers consider a number of factors relevant in an arm’s-length transaction including size, location, year of construction, and condition of the premises. *See* ORS 308.205. Valuing a property based on sales of comparable properties is “well accepted.” *Ward v. Dept. of Revenue.*, 293 Or 506, 511, 650 P2d 923, 926 (1982) (citations omitted). However, “[b]ecause sales are seldom comparable in every detail, adjustments must be considered which reflect differences.” *Id.*

Plaintiff introduced 11 comparable sales, all a lower class than the subject property. He asserts that his property’s real market value should fall within the range of his comparable sales.

Plaintiff further contends his property should be a class 4 because of its deteriorated condition. Plaintiff provided no evidence to support his contention.

Many of Plaintiff's comparable sales differ significantly from the subject property in location, house size, lot size, age, and/or features, such that the court does not consider them closely comparable to Plaintiff's property. Three of Plaintiff's comparable sales are worth closer analysis. Comparable sale one is similar in size and features to the subject property. Approximately five blocks away from the subject property, one would expect that its value would be a relatively close indicator of the value of the subject property. But the subject property is on a lot two and one half times larger, has slightly more finished space, and has both an unfinished attic and basement that could be finished. Those factors would indicate a higher real market value for the subject property. Comparable sale number one's sale price of \$450,000 before any adjustments, gives the court confidence that \$550,000 represents the real market value of the subject property for tax year 2003-04.

Plaintiff's comparable sales three and eleven bolster the court's confidence. Plaintiff's comparable sale three is less than one block away from the subject property. Built in the same era, this class 4+ house is over 1,000 square feet larger than the subject property. It also sold nearly two years prior to the assessment date of January 1, 2003, for a price comparable to Plaintiff's requested real market value for tax year 2003-04. Its value would likely have increased in the interim. Likewise, Plaintiff's comparable sale eleven, is also one block away from the subject property. This class 4 house's size, age, and features closely match those of Plaintiff's home except the subject property's lot is two and one half times larger. The property's recent sale for \$525,000 closely matches the \$550,000 real market value of the subject property. The values of those two properties located very close to the subject property further supports a real market value of \$550,000 for the subject property.

Plaintiff has not carried his burden of proof.

B. Tax Years 1997-98 to 2002-03

The court may hear Plaintiff's appeal relating to tax years 1997-98 through 2002-03 only if the Plaintiff meets either of the threshold qualifications of ORS 305.288. Plaintiff must either provide evidence of a valuation error of at least 20 percent or establish "good and sufficient cause" for failing to timely appeal. ORS 305.288. "Good and sufficient cause" is defined as "an extraordinary circumstance that is beyond the control of the taxpayer * * * ."

ORS 305.288(5)(b)(A). However, good and sufficient cause does not include inadvertence, oversight, or lack of knowledge. ORS 305.288(5)(b)(B).

Tax Year 2002-03

Plaintiff's asserted real market value of \$450,000 is exactly 20 percent less than the \$564,180 real market value on the roll for tax year 2002-03. The Tax Court may hear Plaintiff's appeal as to tax year 2002-03. Plaintiff still has the burden of proving an error for the tax year by a preponderance of the evidence. ORS 305.427. As noted above, Plaintiff has not carried the burden to show his property was overvalued and that its real market value should be reduced. Plaintiff's appeal is denied as to tax year 2002-03.

Tax Year 2001-02

Plaintiff does not allege a 20 percent error for tax year 2001-02; Plaintiff's asserted real market value of \$450,000 is only 14 percent less than the \$523,550 real market value on the roll for that tax year. Alternatively, Plaintiff contends he has "good and sufficient cause" for not timely appealing. Plaintiff contends the exception value added to his property's real market and maximum assessed values in the 1997-98 tax year was erroneous because sufficient documentation no longer exists to support the exception. He reasons "good and sufficient cause"

exists to remove the exception value and recalculate his property's real market and maximum assessed values in 1997-98, and all subsequent tax years, including tax year 2001-02.

Plaintiff misreads the statute, which provides the court must determine that “good and sufficient cause exists **for the failure by the * * * taxpayer to pursue the statutory right of appeal.**” ORS 305.288(3) (emphasis added). Plaintiff reasons that a possible mistake by Defendant is “good and sufficient cause” to change the property values. As noted in the emphasized language above, “good and sufficient cause” relates to the **taxpayer's** reasons for not timely appealing. The time to appeal Defendant's alleged error in adding the exception value would have been when that value was added to the tax roll, in tax year 1997-98. Indeed, while sufficient documentation relating to the exception value may not currently exist, it is more likely to have existed at the time an appeal would have been timely. As this court previously stated,

“the property tax system in some ways is the mirror image of the income tax system. That is, under the income tax system, the taxpayer keeps the records and assesses the tax. The government audits the records to verify they are correct and that the tax assessment is accurate. However, in the property tax system, it is the government that keeps the records and assesses the tax. The taxpayer is obligated to audit the records and verify that the assessment is correct.”

Gordon v. Dept. Rev., 12 OTR 288, 290 (1992) (citations omitted). Plaintiff did not timely appeal tax year 2001-02 tax year due to inadvertence or oversight. Plaintiff's appeal is dismissed as to tax year 2001-02.

Tax Years 1997-98, 1998-99, 1999-2000, and 2000-2001.

The court must also dismiss Plaintiff's appeal as to tax years 1997-98, 1998-99, 1999-2000, and 2000-2001. The court may only consider untimely appeals for the “current tax year” and the two immediately preceding tax years. ORS 305.288(1). In this case, the alleged error was appealed during tax year 2003-04, so this court may consider Plaintiff's appeal relating to

tax years 2003-04, 2002-03, and 2001-02. This court has no statutory authority to hear or make valuation changes for any other years.

III. CONCLUSION

For the reasons discussed above, the court must deny the Plaintiff's appeal as to tax years 2002-03 and 2003-04 and dismiss Plaintiff's appeal as to all other tax years. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiff's appeal is denied as to tax years 2002-03 and 2003-04 and dismissed as to tax years 1997-98 through 2001-02.

Dated this ____ day of September 2004.

SALLY L. KIMSEY
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 SALLY L. KIMSEY ON SEPTEMBER 8, 2004 . THE COURT FILED THIS DOCUMENT ON SEPTEMBER 8, 2004.