

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Property Tax

|                              |   |                 |
|------------------------------|---|-----------------|
| TED ROGERS and SHELIA ROGERS | ) |                 |
|                              | ) |                 |
| Plaintiffs,                  | ) | TC-MD 041001A   |
|                              | ) |                 |
| v.                           | ) |                 |
|                              | ) |                 |
| COOS COUNTY ASSESSOR,        | ) |                 |
|                              | ) |                 |
| Defendant.                   | ) | <b>DECISION</b> |

Plaintiffs appealed Defendant’s decision to assess property, identified by Account 9519.91, that was previously omitted from the tax roll for tax years 1998-99 through 2003-04. Shelia Rogers made Plaintiffs’ presentation. Defendant was represented by David Koch, Coos County Counsel.

Plaintiffs’ disagreement with Defendant has its roots in previous litigation. TC-MD No 040660F. Although Plaintiffs initially had a series of questions about the assessment of their property, the issue that the court must resolve is the value of a building.

I. STATEMENT OF FACTS

The building at issue is 56 by 190 square feet along its longest two dimensions, with a 20 by 36 foot notch at a corner stopping its shape from being a perfect rectangle. (Def’s Ex G.) It is used as an aviary, with its interior divided into cages for Ms. Rogers’ collection of macaws, cockatoos, African grey parrots, and tropical flora. It is a pole and post structure of low cost construction, with fiberglass roofing, baked enamel siding, and a floor of gravel or concrete. It has both power and water, and is heated. It is not an attractive structure. It was on the order of 15 years old at the date of trial.

Defendant treated the building as 30 percent depreciated, with 70 percent of the quality typical of such construction. While agreeing that the property was specially adopted for use as an

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aviary, Defendant contended it has a ready alternate use as a general purpose building suitable for such uses as hay storage. Defendant contends that it should be added to the tax roll with a value of \$35,000, beginning with the 1998-99 tax year. Dave Bagman, of Defendant's staff, testified that neither his recollection, nor Defendant's records, show that the aviary had previously been taxed.

More testimony along those lines came from Bob Main, the Coos County Assessor. Mr. Main's testimony was especially important as he had been a dry rot and pest inspector for 12 years. According to Mr. Main, features that make this building more valuable than typical rural outbuildings include the concrete footings, plumbing, electrical system, ventilation, and heating. Mr. Main saw no signs of insect damage, and although water stains warn of problems to come, saw only limited dry rot.

Plaintiffs testified that the depreciation of the building was much more advanced, with considerable rot and deterioration. Plaintiffs submitted a letter from Ed Keller, a carpenter who had performed repairs on the building, which told of how the roof is in very bad condition, with rot and termite damage along the bottom part of the frame. An opinion along similar lines came from the testimony of Zachary Napier, who said that a good wind would blow it down, and of Charles Washbourne, who spoke of rot and the worn out roofing. Another letter, from Donna Crouch, a realtor, spoke as to how the building would not be an asset to the property. Testimony along those lines came from Ellen Martin, a retired realtor of a long-standing acquaintance with Ms. Rogers. Ms. Rogers, who is herself a retired realtor, does not see how the property would have a value of more than \$10,000.

## II. ANALYSIS

It is not easy for the court to determine the value of a 15 year old rural outbuilding. Neither party presented any sales of comparable structures, which is hardly surprising

considering the nature of the structure. This complicates the task before the court. Some evidence supports the parties' opinion as to the condition of the building.

Plaintiffs' points are well taken. The exterior of the building is not prepossessing. Plastic sheeting is neither an attractive, nor durable, building material. There is considerable water staining and some rot, and the fiberglass roofing has worn to the point of having holes. On the other hand, Defendant's observations are important. The building's supports and spans are of a size and spacing consistent with typical pole and post construction, and there is more concrete work than is usual. The building is provided with both electricity and water, and there are two furnaces.

Sifting through the evidence leaves the court with the conclusion that the value requested by Plaintiffs, at \$10,000, is just too low. The building has a functional system of heating, ventilating, and plumbing. Those are not the typical features of a rural outbuilding. It is also not lost on the court that this building is used as an aviary for a valuable and treasured collection of tropical birds. It must, despite its defects, retain a quality to safeguard those important animals.

Is the value at which Defendant seeks to add the property to the roll, at \$35,000, too high? That is hard to tell. Larger buildings tend to be more valuable, and this building is on the order of 10,000 square feet, and has electrical service. However, it also contains features that a typical user of rural outbuildings would not desire. It has two furnaces and filtered water. It is also old. The property was already about a decade old at the earliest year for which it is being added to the roll. Adjusting for depreciation can be a challenging task.

Those points being made, the conclusion of the court is as follows.

1. The property had been omitted from taxation. Plaintiffs did not attempt to conceal the property. In fact, Plaintiffs would not have known, without a careful study of their tax records, that the building had escaped taxation. However, the conclusion of the court is that Defendant

had inadvertently failed to add the property to the rolls, and that its action now is consistent with ORS 311.205 through ORS 311.235.<sup>1</sup>

2. The appropriate standard to be applied for valuing the property is not the terms at which a typical willing buyer and typical willing seller, each knowledgeable as to the market, and neither under a compelling duress or compulsion to buy or sell, would agree to be its value. This property is an aviary. While it may not be all that different from other rural outbuildings, it is rare for rural outbuildings to have banana trees growing through the roof. As an aviary, it is a special use property, and as a special use property, it is to be assessed at its value to its owner. *STC Submarine, Inc. v. Dept. of Rev.*, 13 OTR 14 (1994).

3. The value that is to serve as the basis for Defendant's computations as to the assessed value to be added to the roll is a real market value of \$25,000 for the 1998-99 through 2003-04 tax years.

### III. CONCLUSION

Following the court's study of the evidence and arguments presented in this matter, the court is of the opinion that Plaintiffs are entitled to a degree of relief. Now, therefore,

IT IS THE DECISION OF THIS COURT that this appeal is granted in part.

Dated this \_\_\_\_\_ day of August 2005.

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SCOT A. SIDERAS  
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.***

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<sup>1</sup> References to the Oregon Revised Statutes (ORS) are to 2003.

*This document was signed by Magistrate Scot A. Sideras on August 29, 2005 . The Court filed this document on August 29, 2005.*