

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

KAMELIA MASSIH)
and MICHAEL ORLANDO,)
)
Plaintiffs,) TC-MD 041018B
)
v.)
)
MULTNOMAH COUNTY ASSESSOR,)
)
Defendant.) **DECISION**

A trial was held on May 17, 2005. Kamelia Massih and Michael Orlando, Plaintiffs, provided testimony and arguments. Marie Wardwell (Wardwell) represented Defendant.

At issue is whether any value reduction is warranted for the subject property as of January 1, 2002. The official tax records show a real market value (RMV) of \$545,540; Plaintiffs seek a reduction to \$285,540. The court's jurisdiction is pursuant to ORS 305.288(1)(b).¹

I. STATEMENT OF FACTS

The subject property is a single-family residence located at 1831 SW Dickinson Lane in Portland. It was constructed in 1993. Plaintiffs first occupied the property in November 1996. Sometime in 2001, cracks were noticed in the home's foundation. In September 2002, the owners discovered for the first time that there was extensive damage to the structure from cracks, mold, and the like. It was eventually linked to poorly installed synthetic (Dryvit) stucco. A full study and report by Horizon Restoration was examined as evidence. The report is dated

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¹ All references to the Oregon Revised Statutes are to 2003.

November 20, 2002, several months past the first assessment date at issue. The cost-to-cure is estimated at \$260,000. Defendant accepts that cost estimate as accurate.

For the tax years subsequent to the discovery date, Defendant has recommended reductions in the RMV to reflect the damage present; the suggested subtraction is the \$260,000 cost-to-cure from the study.

Although the latest tax year, 2004-05, was included in the Complaint filed with this court, a simultaneous appeal to the Multnomah County Board of Property Tax Appeals (BOPTA) resulted in a reduction of \$260,000 RMV. No further action is necessary by this court for that year.

For 2003-04, a revised total RMV – subtracting the \$260,000 cost-to-cure – is similarly acceptable to both parties.² After a full review, the court concurs as to tax year 2003-04.

The sole remaining trial issue is the extent and measurement of damages as of January 1, 2002, the assessment date for the 2002-03 tax year.

For the 2002-03 tax year, Defendant believes no change is warranted. Wardwell testified that, had there been a damage report dated prior to the assessment date of January 1, 2002, the county would have reviewed and offered an appropriate value opinion. In the absence of such information, she believes the assessment record should stand.

Plaintiffs argue that such extensive damage would have occurred during a substantial period of time and, therefore, there was some value diminution present on the assessment date. They request an identical reduction of \$260,000 RMV, consistent with the stipulations for the two later years.

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² Defendant's original 2003-04 tax year RMV of \$572,810 less \$260,000 cost-to-cure equals \$312,810 revised RMV.

II. ANALYSIS

ORS 308.210(1) commands that all such real property shall be valued for assessment purposes as of January 1 of each tax year. Here, the key question is what a prospective purchaser would know or suspect about the subject property on that date. It is doubtful that, without an in-depth inspection or further study, the market would be aware of any defects. Importantly, even Plaintiffs occupying the structure were unaware of the magnitude of the damage until some nine months later. Had they known earlier, they may have been able to present appropriate valuation evidence to BOPTA during that tax year's time frame.

Even assuming that the damage was then known, it is nearly impossible to measure the precise effect on the property's RMV. To assume that the damage was somehow the same for all of that period is an assumption this court is unable to make in the absence of additional, substantial proof.

In these appeals, a preponderance of the evidence is required to sustain the burden of proof. That burden of proof shall fall upon the party seeking affirmative relief. ORS 305.427. Plaintiffs have not met that statutory requirement with this record as to tax year 2002-03.

III. CONCLUSION

IT IS THE DECISION OF THE COURT that for tax year 2003-04, the total RMV shall be set at \$312,810³;

IT IS FURTHER THE DECISION OF THE COURT that for the 2002-03 tax year, the appeal is denied; and

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³ Defendant shall allocate between land and improvements as it deems appropriate.

IT IS FURTHER THE DECISION OF THE COURT that the appeal is dismissed as moot as to tax year 2004-05.

Dated this _____ day of _____ 2005.

JEFF MATTSON
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 Jeff Mattson September 28, 2005. The Court filed and entered this document September 28, 2005.