

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Property Tax

RAYMOND LEE ANDERSON,	)	
	)	
Plaintiff,	)	TC-MD 050035C
	)	
v.	)	
	)	
MULTNOMAH COUNTY ASSESSOR,	)	
	)	
Defendant.	)	<b>DECISION</b>

Plaintiff appeals the real market value (RMV) of his personal residence for the 2004-05 tax year. The reduction in RMV requested by Plaintiff would reduce his property taxes. Trial was held July 19, 2005. Plaintiff appeared on his own behalf. Defendant was represented by Osei Banahene, an appraiser with the county assessor's office.

I. STATEMENT OF FACTS

The subject property consists of a 1,333 square-foot condominium built in 2000 or 2001, and two parking spaces (one covered, one uncovered), located on the east side of the Willamette River in Portland. The property is on the assessment and tax rolls by three separate account numbers (R500055, R500142, and R500118) with a combined RMV of \$172,670.<sup>1</sup> The combined assessed value (AV) is \$164,070. The majority of the RMV, \$165,080, is attributable to the home itself (Account R500055). Plaintiff bought the property in October 2001 for \$207,500, but believes the value was considerably lower in January 2004 because of ongoing construction to correct defects.

In the early spring of 2002, various condominium owners in the complex began complaining of problems related to mold. Within several months, an attorney was hired, and,

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<sup>1</sup> There are three tax account numbers because each parking space has a separate account.

after approximately 10 months of negotiations, the contractor agreed to make extensive repairs to the complex, encompassing the common elements (building exterior and HVAC,<sup>2</sup> etc.) and at least some individual units, including the subject property. The source of the mold was determined to be water intrusion due to faulty construction.

Repairs began in August 2003, with activity on Plaintiff's building commencing in October or November. Repairs were completed in August 2004 at a cost in excess of \$3 million. Repairs included removal and replacement of the exterior stucco, the roof, the windows (including sliding glass doors), and the decks. Problems with the framing and HVAC were also addressed. The ceilings in the hallways were removed to provide access to the ducting. Additionally, flashings were replaced and gutters installed. The project also included interior soundproofing.

During the months of November and December 2003, scaffolding was put up around the exterior of the four-story building. The building was then draped in plastic in late December 2003 and early January 2004, while the stucco was removed. Additionally, the windows were covered with plastic to control dust and damage. The windows were uncovered in March 2004 when the stucco work was completed, but the building was shrouded in plastic until July or August 2004. The plastic blocked the light and completely eliminated any view from late December 2003 until August 2004. The construction project also eliminated the owners' parking because contractors blocked the exterior spaces and the interior spaces under the building were filled with make-shift storage units.

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<sup>2</sup> HVAC is an acronym for heating, ventilation, and air conditioning.

The owners were required to move out of their units during portions of the construction, while contractors worked on the individual units. Plaintiff evacuated his unit for six weeks in February and March 2004. During that time, his unit had soundproofing installed in the ceilings and walls, new flooring, painting, and a toilet replaced. The windows and sliding glass door were also replaced.

## II. ANALYSIS

The issue in this case is the total RMV for the 2004-05 tax year. The current RMV is \$172,670. Plaintiff requests a reduction to \$138,019.<sup>3</sup> Plaintiff's estimate is based on the tax year 2003-04 RMV on the rolls, plus an additional amount for the work done before January 1, 2004.

RMV is defined by statute as follows:

“Real market value of all property, real and personal, means 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(1).<sup>4</sup> The assessment date for the tax year at issue is January 1, 2004. *See* ORS 308.007.

Plaintiff did not present any evidence of the likely selling price of his home (including the two parking spaces) as of January 1, 2004. Plaintiff's case is based on a mathematical approach tied to the percentage of construction work completed on the entire complex as of the assessment date. Plaintiff contends that his “property did not attain its full value until September [2004] when construction was finished.” (Ptf's Ltr filed July 12, 2005 at 2.) Plaintiff reasons that

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<sup>3</sup> Plaintiff's Complaint requests \$109,800, which is the RMV of only the living unit for tax year 2003-04. At trial, Plaintiff revised his request to \$138,019 in order to include the added value of the completed work.

<sup>4</sup> All references to the Oregon Revised Statutes (ORS) are to 2003.

because only 25 percent of the work was completed as of January 1, 2004, then only 25 percent of the value of the work should be added to the previous year's RMV. At least, that is how the court understood Plaintiff's argument at trial. However, it appears that Plaintiff actually arrived at his value estimate of \$138,019 by increasing the *previous year's RMV* for the condominium only (\$109,800) by 25.7 percent (the amount of the total project completed as of January 1, 2004).<sup>5</sup>

Although there is a difference between the two methods, as a practical matter the distinction is irrelevant, because the first approach is incomplete and the second approach is irrational. Assuming 25 percent is an accurate estimate of the percentage of work completed by January 1, 2004, that is only one of three numbers needed to arrive at a value estimate under the cost-to-cure approach. The two additional numbers needed are the cost to cure Plaintiff's condominium, and the market value of the condominium after all the work is completed. Neither of those two numbers is known. Moreover, cost-to-cure is less relevant in this case (if relevant at all), because Plaintiff was not financially responsible for the repairs. As for the method that Plaintiff actually used (increasing the previous year's RMV by approximately 25 percent), that approach is irrational because the percentage of completion is unrelated to the prior year's value.<sup>6</sup>

For its part, Defendant submitted information on three condominium sales in Plaintiff's complex that suggest that Plaintiff's RMV for the 2004-05 tax year is low. (Def's Ltr June 30,

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<sup>5</sup> At trial, Plaintiff was unable to explain how he arrived at the dollar amount of his estimated value increase of \$28,219. Plaintiff testified that his estimate of the amount of work completed on the applicable assessment date is based on the percentage of work completed on the overall project as of January 1, 2004. A letter from the construction company states that the contractor had submitted pay requests for 25.7 percent of the total project cost ("value") as of January 1, 2004. (Ptf's Ex 10.) Multiplying the previous year's RMV of \$109,800 for the condominium unit only (Account R500055) by the 25.7 percent billed project cost, equals \$28,219. The sum of the two numbers is \$138,019.

<sup>6</sup> Under that approach, a \$300,000 home (prior to renovation) undergoing a \$50,000 renovation that is 50 percent complete, would have a value of \$450,000.

2005.) Two of those sales are particularly persuasive. Defendant's comparable 2, which is one floor below the subject at the other end of the hall, sold on September 26, 2003, for \$195,000. That unit is essentially identical to the subject in size, and Defendant asserts it is comparable in condition, class, and zoning. Plaintiff did not contest that assertion. Defendant's comparable 3, which is directly below the subject (same corner of the building, but one floor below), and which has the same floor plan, sold for \$207,500 on December 3, 2003. In both instances, the buyer was aware of the lawsuit with the builder, and that the builder was responsible for making certain specified repairs. Both sales are very close to the January 1, 2004, assessment date and suggest that the subject had an RMV of approximately \$200,000, compared with the RMV on the tax roll of \$172,670.

The Oregon legislature has placed the burden of proof on the party seeking affirmative relief, which, in this case, is Plaintiff. *See* ORS 305.427. Plaintiff must demonstrate an error in the record of assessment by a preponderance of the evidence. *Id.* And, because the appeal is considered under ORS 305.288, Plaintiff must show that the difference in value is at least 20 percent. Plaintiff simply has failed to meet his burden of proof.

### III. CONCLUSION

This case highlights the need for, and value of, market-derived data on comparable sales. Plaintiff had no such information, relying instead on imprecise and erroneous mathematical calculations and emotional appeal. By contrast, Defendant submitted evidence of nearby sales.

After reviewing the evidence, the court concludes that Plaintiff has failed to show an error in value of at least 20 percent, which is the applicable statutory threshold under ORS 305.288(1)(b). In fact, the evidence suggests that the RMV on the roll for the 2004-05 tax year may be low by at least \$25,000. Now, therefore,

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IT IS THE DECISION OF THIS COURT that Plaintiff's request for a reduction in the RMV of the subject property as of January 1, 2004, is denied.

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

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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 November 21, 2005. The Court filed and entered this document November 21, 2005.***