

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Small Claims
Property Tax

MARK R. GEARHART,)	
)	
Plaintiff,)	TC-MD 050456A
)	
v.)	
)	
CLACKAMAS COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION and JUDGMENT

Plaintiff appealed the assessment of his home for the 2004-05 tax year. He appeared and made his arguments. Fred Dodd, of Defendant’s staff, presented its case.

I. STATEMENT OF FACTS

The property at issue is a residence identified as Account 01403733, located at 13198 Peters Road in Lake Oswego. The board of property tax appeals found its total real market value to be \$327,138, with \$109,008 on the land and \$218,130 on the improvements. It is assessed at \$247,610.

The essence of Plaintiff’s complaint is that, since 1989, the assessment and tax records for his dwelling have treated it as a four bedroom home. In fact, it has only three bedrooms. Plaintiff also compared his home to the homes of three of his neighbors, all of which, are located on Galen Street and built, like the subject property, by Don Morrisette. Although the real market value carried on the tax roll for those neighboring properties was within 10 percent of that assigned to the land for the subject property, the real market value attributed to the improvements was significantly less, ranging from \$157,020 to \$173,860, as against the subject property’s value of \$218,130. Plaintiff went on to discuss the condition and quality of his home and, in particular, the fact that it retained defective Louisiana-Pacific siding.

For its part, Defendant testified that, although its records had shown that the subject property had four bedrooms and a total finished area of 2820 square feet, in fact, the house has three bedrooms and a total area of 2630 square feet. After revising its records, Defendant subsequently compared the house to four others. All sales were within two blocks of the subject and sold between August 2003 and November 2004, at unadjusted prices from \$269,900 to \$350,000. All were built within two years of the subject. The subject was larger than each of them. After adjusting for time and other differences, including a negative \$15,000 adjustment for the Louisiana-Pacific siding, Defendant arrived at an indicated value for the subject property of \$312,000.

II. ANALYSIS

Two alternatives must be considered. The first is the correction of the maximum assessed value based on an error in the square footage of the property. That relief is available through ORS 311.234¹ and depends upon an application being filed on or before December 31 of “the current tax year.” ORS 311.234(5). In order to obtain relief for the 2004-05 tax year, Plaintiff would have had to file on or before December 31, 2004. That did not occur; in fact, the appeal to this court was not filed until April 8, 2005. The court cannot reduce Plaintiff’s maximum assessed value under ORS 311.234. *See Rabang v. Washington County Assessor*, TC-MD No 050412C (June 3, 2005).

The remaining point is whether Plaintiff is entitled to relief on the basis of a timely appeal from the order of the board of property tax appeals. Although Plaintiff genuinely believes the real market value of his home is on the order of \$256,626, his only proofs consisted of a reference to the real market values as carried on the tax roll for three of his neighbors. By way of

¹All references to the Oregon Revised Statutes (ORS) are to 2003.

contrast, Defendant, using the correct room count and area for the subject property, appraised it through a comparison to the sales of four houses, each of which are within two blocks of the subject property. Defendant's adjustments are reasonable and account for the distressed siding. Defendant's evidence, taken from the market, is persuasive of the point that the real market value of the property totals \$312,000. Even if Plaintiff's points are given their strongest possible weight, they cannot demonstrate that the real market value of the property is less than its assessed value of \$247,610, which would be necessary for relief under Measure 50, or the \$300,000 required to begin to show relief under Measure 5.

III. CONCLUSION

The conclusion of the court is that, despite the fact that Defendant's original valuation of the property was flawed by errors as to size and room count, only minor relief may be given. The reason for this is because size and room count bear most directly on the real market value of the property, and the comparison of real market and assessed values as to this dwelling show real market value plays only a minor part in determining Plaintiff's tax burden.

IT IS ADJUDGED that this appeal is granted only to the extent that the total real market value of this property for the 2004-05 tax year is found to be \$312,000.

Dated this _____ day of January 2006.

SCOT A. SIDERAS
MAGISTRATE

This document is final and may not be appealed. ORS 305.514.

***This document was signed by Magistrate Scot A. Sideras on January 18, 2006 .
The Court filed this document on January 18, 2006.***