

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

KATHLEEN DEWOINA, TRUSTEE,)	
KATHLEEN DEWOINA TRUST,)	
)	
Plaintiff,)	TC-MD 050474C
)	
v.)	
)	
POLK COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

Plaintiff appealed Defendant’s determination of the value of a garage built in 2003, claiming that the market value of the improvement is less than \$10,000, which by definition constitutes “minor construction,” and does not impact maximum assessed value (MAV) and assessed value (AV). Trial was held November 4, 2005, in the Tax Court in Salem. Kathleen Dewoina (Dewoina), an Oregon licensed real estate broker, represented Plaintiff, and testified at trial. Defendant was represented by Shawn Beaton (Beaton), Chief Appraiser, Polk County Assessor’s Office.

I. STATEMENT OF FACTS

The subject property is a three bedroom, one bathroom, 1,103 square foot home built in 1930, situated on a 5,000 square foot lot in West Salem. The home is operated as a rental property. There was a free-standing garage next to the home that was seriously deteriorated, due in part to the storage of garbage in that structure for several years by the previous tenant. In the summer months of 2003, Dewoina replaced the old garage with a new one. Dewoina hired someone to do most of the construction and reports that the garage cost \$12,349 to build, excluding installation of the exterior siding and painting, tasks which she performed.

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Defendant determined that the value of the new garage was \$13,380 as of January 1, 2004 (2004-05 tax year), and, pursuant to ORS 308.153(1)(b),¹ added to the MAV determined under ORS 308.146, \$10,740 as the MAV of the garage.² AV was increased accordingly.

Defendant initially increased the total real market value (RMV) of the property from \$99,040 in the 2003-04 tax year to \$123,330 in the 2004-05 tax year, with an increase to the improvement (the home and garage) of \$22,390.³ On appeal to the county board of property tax appeals (board), total RMV was reduced to \$111,710, for an overall increase over the prior year of \$12,670. Both Dewoina and Beaton accept \$111,710 as a fair estimate of the overall value of the property (RMV), including the new garage, as of January 1, 2004. Dewoina asserts that the RMV of the garage did not exceed \$10,000 and that, by law, her MAV cannot be increased to reflect the new property (the garage).

II. ANALYSIS

The parties agree that the addition of the new garage added to the value of the property. The dispute is over whether the value of the garage exceeded \$10,000. If it did, that value can be used to increase the MAV of the property; if not, MAV may not reflect the change. The court will begin with an overview of the relevant statutory provisions governing the valuation of property for tax purposes in Oregon.

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¹ Unless noted otherwise, all references to the Oregon Revised Statutes (ORS) are to 2003.

² Under ORS 308.153(1), the overall MAV of a property that has experienced new construction is determined by calculating the MAV of existing property under the provisions of ORS 308.146 and adding to that number the product of the RMV of the new construction multiplied by the ratio of MAV over RMV for the assessment year.

³ The improvement RMV was increased from \$59,560 to \$81,950.

AV in Oregon is the lesser of the property's MAV or RMV. ORS 308.146(2). MAV was established in 1997 (1997-98 tax year) as 90 percent of the property's RMV in 1995 (1995-96 tax year). Or Const, Art XI, § 11(1)(a); *see also* Or Laws 1997, ch 541, § 2, *compiled as a note after* ORS 308.146 (1997). For tax years after 1997-98, MAV generally equals the greater of "103 percent of the property's assessed value from the prior year or 100 percent of the property's maximum assessed value from the prior year[.]" ORS 308.146(1).

However, in the case of "new property or new improvements to property," MAV is determined under ORS 308.149 to 308.166. Those provisions, and especially ORS 308.153, provide for a portion of the RMV of the new property to be added to the MAV calculated pursuant to ORS 308.146(1), as explained above. (*See also* fn. 2.) Moreover, although "new property or new improvements" includes "[n]ew construction, reconstruction, major additions, [and] remodeling, [etc.]," it excludes "[g]eneral ongoing maintenance and repair" and "*minor construction.*" ORS 308.149(5) (emphasis added). It is the phrase "minor construction" that ultimately forms the basis of this appeal. If the new garage meets the definition of "minor construction," then a percentage of that value need not, in fact, cannot, be added to the MAV of the existing property.

By statute, minor construction includes new property (or improvements to existing property) with a value in any one assessment year of no more than \$10,000. ORS 308.149(6).⁴ Plaintiff insists that the value of the garage is less than \$10,000, and Defendant insists that value exceeds \$10,000.

Plaintiff estimated the value of the property under two approaches: the residual value approach and return on investment, referred to as "cost versus value" in an article Plaintiff

⁴ ORS 308.149(6) defines minor construction as "additions of real property improvements, the real market value of which does not exceed \$10,000 in any assessment year or \$25,000 for cumulative additions made over five assessment years."

submitted. Under the first approach, Dewoina presented data from the Multiple Listing Service showing increases in the average sale price of homes in Salem between 2003 and 2004 of between 2.39 and 22.96 percent, the lower number representing all homes sold and the larger number derived from a sale Plaintiff judges to be most comparable to the subject. Excluding the two extremes, Dewoina found a narrower range between 3.45 and 12.1 percent. Using the smallest indicator of a rise in the market (3.45 percent), Dewoina argued that the home would have increased in value from \$99,040 in 2003 (2003-04 tax year roll value) to \$102,456 in 2004, without the addition of the new garage. Given that the parties agree that the overall value of the property, with the new garage, is \$111,710, Dewoina extrapolates a residual value for the garage of no more than \$9,253. That value is approximately \$750 below the \$10,000 ceiling for minor construction.

Alternatively, Plaintiff estimated the value of the garage under the “cost versus value approach,” based on information from an article in the December 2004 edition of Realtor Magazine titled *Home Investments*. (Ptf’s Ex 11.) The article “looks at the cost-to-construct for common remodeling projects against the added value those projects bring at resale[,]” and reports return on investment as a percentage of cost. (*Id.* at 1.) The project value estimates are made by various real estate professionals around the country. Overall, on resale, owners in the Portland market (which is the nearest reported market to Salem) recover, on average, 74 percent of the cost of an improvement project. Applied against a cost of \$12,350, Dewoina estimates the value of the garage to be \$9,139. Dewoina contends the proximity of the two value estimates is persuasive support for her assertion that the RMV of the garage was less than \$10,000.

Defendant asserts that the court should uphold its garage RMV estimate of \$13,380 based on cost and market data. Beaton notes that Dewoina reports paying \$12,349 for the construction of the garage and that she installed the siding and painted the building when it was complete.

The obvious implication was that actual cost would have been higher than reported. Beaton then notes that the difference between the amount Defendant added to the tax rolls for the garage (\$13,380) and Plaintiff's reported cost is only \$1,030.⁵ Beaton opines that the difference likely represents the value of Plaintiff's labor. Beaton believes that cost is the best gauge of RMV in this case. Beaton also points out that the reported returns on investment in Plaintiff's article range from a low of 72.1 percent to a high of 90.1 percent and that "[f]or some projects, resale value is projected to be more than 100 percent of the original investment, in some cases quite a bit more." (Def's Evidence for Posting of Additional MAV, at 1-2, *quoting* Ptf's Ex 11 at 1.)⁶ Increasing the return just one percentage point to 75 percent yields an RMV of slightly more than \$10,000 when applied to an adjusted cost estimate of \$13,350.⁷

For its market approach, Defendant compared sales of homes with and without garages in the Edgewater District. Overall, homes with garages sold for \$23.12 more per square foot than homes without garages. Refining its data to include only homes of similar size, effective age, and condition, the difference was \$18.61 per square foot. The two approaches yielded value estimates, for the contributory value of the garage, of \$25,500 and \$20,500, respectively. Beaton asserts that alternative approach supports Defendant's RMV of \$13,380.

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⁵ The difference is actually \$1,031, but Beaton rounded Plaintiff's reported cost up one dollar, to \$12,350, which yields a difference of \$1,030.

⁶ Those averages are national. The range for Portland was 60.9 to 92.1 percent, with 6 of 10 projects reporting returns in excess of 75%.

⁷ \$12,349 (reported cost) + \$1,000 (value of installation of siding and painting) = \$13,350 (rounded).
\$13,350 x 0.75 = \$10,012.50.

Plaintiff has the burden of proof and must prove its case by a preponderance of the evidence. ORS 305.427. “Preponderance of the evidence means the greater weight of evidence, the more convincing evidence.” *Feves v. Dept. of Revenue*, 4 OTR 302, 312 (1971), citing *McPherson v. Cochran*, 243 Or 399, 404, 414 P2d 321 (1966). In the context of the instant appeal, Plaintiff must demonstrate that it is more likely than not that the RMV of the garage is \$10,000 or less.

Plaintiff’s residual market approach is not persuasive for two reasons. First, it is based on averages. The value of Plaintiff’s home may or may not have increased by an amount equal to the average rise in prices in 2003. Second, and more importantly, Plaintiff’s method is built on a false, or at least unsubstantiated, premise. Plaintiff assumes that the county’s tax year 2003-04 tax roll value (RMV) is correct. However, there is no market evidence to support that value. Plaintiff uses the total 2003-04 RMV as the starting point, increasing that figure by the average increase in the sale price of homes between 2003 and 2004, as explained above. If Defendant’s value was higher than the actual RMV by as little as \$1,000,⁸ the indicated residual value of the garage would exceed \$10,000 with inflation factored in. During trial, Beaton testified that he would accept a slightly lower value for the prior tax year (2003-04). Because the beginning point of Plaintiff’s methodology (the 2003-04 value) is unsubstantiated, the court can place little or no weight on Plaintiff’s extrapolated value for the garage.

Plaintiff’s return on investment approach is flawed because Dewoina did not add any value for the work she performed in completing the garage construction. Dewoina installed the siding and painted the garage. Had she contracted those services, as she did for the rest of the

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⁸ \$98,040 x 1.0345 (inflation) = \$101,422; \$111,710 - \$101,422 = \$10,288.

garage, the total cost would have been higher, increasing the resulting return on investment. There is no evidence as to the value of Plaintiff's labor.⁹ The other problem with Plaintiff's return on investment approach is that it deals with averages derived from estimates obtained from a national survey. Moreover, there are no figures for the Salem market, the nearest reported market being Portland. Plaintiff's estimate is very close to the \$10,000 ceiling, and a slight upward adjustment to the average rate of return raises the estimated RMV of the garage above \$10,000, especially after "cost" is adjusted to include Plaintiff's labor. The average return for the Portland area is estimated to be 74 percent, but some projects are estimated to bring a return in excess of 75 percent.¹⁰ Adding \$1,000 for Plaintiff's labor and increasing the return on investment one percentage point increases the estimated value of the garage to slightly more than \$10,000.¹¹ Those minor adjustments illustrate the problems inherent in relying on percentages. The problem is amplified here because the value estimates are so close to the benchmark for determining whether any value is taxed.

III. CONCLUSION

Plaintiff has not persuaded the court by a preponderance of the evidence that the RMV of the garage is \$10,000 or less. Accordingly, under ORS 308.149(5), the garage constitutes "new property or new improvements to property" rather than "minor construction." Because Plaintiff

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⁹ It is also difficult to tell whether Plaintiff's list of costs and materials includes paint and siding because the document, which Plaintiff apparently prepared herself, is summary in fashion and generalized. There are no receipts. Obviously cost would need an additional upward adjustment if those materials are not included in Plaintiff's exhibit.

¹⁰ For example, a room addition in Portland is estimated to bring a return of 75.3 percent and a deck 83.4 percent.

¹¹ See footnote 6.

has failed to meet the burden of proof, the court will not adjust the value of the subject property for the 2004-05 tax year. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiff's appeal is denied.

Dated this _____ day of January 2006.

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 January 18, 2006. The Court filed and entered this document January 18, 2006.