

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

BRIAN B. OOMS,)	
)	
Plaintiff,)	TC-MD 050568E
)	
v.)	
)	
CURRY COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

Plaintiff appeals the 2004-05 assessed value of his property identified in Account 26949. A telephone trial in the matter was held September 8, 2005. Brian B. Ooms appeared on his own behalf. Marie Collins, Deputy Assessor, appeared and testified on behalf of Defendant.

I. STATEMENT OF FACTS

Plaintiff owns a lot in Curry County that he has been slowly developing over the years. In August 2000, Plaintiff installed a septic system, to which Defendant assigned a value of \$4,500. (Def’s Memo at 5; Def’s Ex J.) In 2002, Plaintiff added a well and installed electricity to the property. Defendant estimated a value of \$6,000 for the well and electricity. (Def’s Memo at 5.) Defendant did not increase the assessed value each year to recognize the land improvements because Defendant considered the land improvements to be “minor construction.”

In 2003, Plaintiff began constructing the home, and by the end of 2003, the home was 31 percent complete. Defendant concluded that the value of the home at 31 percent complete was \$16,510. For the 2004-05 tax year, Defendant determined that Plaintiff had increased the property’s value by more than \$25,000 over a five-year period. Therefore, pursuant to ORS 308.153,¹ Defendant increased the assessed value of the property by adding the real market

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

value (RMV) of all the improvements and multiplying that value by the changed property ratio. Originally, Defendant determined the improvements to the land were valued at \$35,330. However, at the Curry County Board of Property Tax Appeals (BOPTA), Defendant recommended that the value of the improvements to the land be reduced to \$10,500. The BOPTA accepted Defendant's recommendation and ordered the land improvements reduced to \$10,500.

Plaintiff appeals the BOPTA's Order claiming the real market value of the land improvements (or "on-site developments") were only worth \$7,311. Plaintiff does not dispute the real market value of the structure at \$16,510. Adding those two figures together, Plaintiff concludes that the real market value of the improvements over the past four years was only \$23,821 and not the \$27,010 determined by Defendant. Because Plaintiff's estimated value is less than \$25,000, he argues the value cannot be used to increase the 2004-05 assessed value of the property.

II. ANALYSIS

In May 1997, Oregon voters passed by referendum Measure 50 (M50), which substantially modified the property tax system in the State of Oregon. Prior to M50, a property was taxed at its RMV. Due to increasing values, Oregon voters chose to limit the growth of assessed values. In doing so, M50 created the concept of "maximum assessed value" (MAV). For the 1997-98 tax year, which was the implementation year for M50, the MAV was calculated by taking the property's 1995-96 RMV and subtracting 10 percent. *See* Or Const, Art XI, § 11(1)(a). M50 provides that, for each successive year, the MAV will generally increase no more than three percent a year. Or Const, Art XI, § 11(1)(b); *see also* ORS 308.146(1).

Exceptions to the MAV's three percent increase limit exist. ORS 308.146(3) provides that, when new improvements are made to property, the MAV may increase by more than the allowable three percent. In that instance, the MAV is calculated by adding together: 1) the MAV of the property prior to the improvements and 2) the RMV of the new improvements "multiplied by the ratio * * * of the average maximum assessed value over the average real market value for the assessment year."² ORS 308.153(1). New improvements to property do "not include changes in the value of the property as the result of: * * * (B) Minor construction." ORS 308.149(5)(b). Minor construction is defined as follows:

“(6) ‘Minor construction’ means 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.”

ORS 308.149(6).

Defendant did not adjust the MAV of the property after Plaintiff added the septic system in 2000 because it was treated as minor construction with a value less than \$10,000. Further, in 2002, Defendant did not adjust the MAV after Plaintiff added the well and electricity because, once again, they had a value less than \$10,000. It was only after Plaintiff began to build the residence by adding \$16,510 in value that Defendant adjusted the MAV to account for all the improvements. Defendant concluded the improvements no longer qualified as "minor construction" because their cumulative value over five years exceeded \$25,000. As a result, Defendant adjusted the MAV for the 2004-05 tax year.

Plaintiff claims the cumulative value is less than \$25,000. As already noted, Plaintiff does not contest the value of the structures at \$16,510. Instead, he argues that the value of the on-site developments is only \$7,311, which is \$3,189 less than Defendant's estimate of \$10,500.

² That ratio is commonly referred to as the "changed property ratio" or CPR.

Although the dollar difference is minimal, the result is significant because it drops the cumulative total below the \$25,000 threshold required for the MAV adjustment.³

ORS 305.427 provides that, in proceedings before the Tax Court, “[t]he burden of proof shall fall upon the party seeking affirmative relief.” Because Plaintiff is seeking relief in this case, he has the burden of proof. That means Plaintiff must establish his claim “by a preponderance of the evidence, or the more convincing or greater weight of evidence.” *Schaefer v. Dept. of Rev.*, TC No 4530 (July 12, 2001) (citing *Feves v. Dept. of Revenue*, 4 OTR 302 (1971)).

Improvements to land, known as “site developments” include “fill, grading, leveling, underground utilities, underground utility connections, and any other elements identified by rule of the Department of Revenue.” ORS 307.010(1)(a). The site developments at issue include the septic system, well, and electricity. Defendant assigned an overall value of \$10,500 to those site developments, based on a sales analysis of improved properties. (*See* Def’s Exs K and L.) In contrast, Plaintiff focuses on each component and his cost to install them. Plaintiff notes that he does not contest the value of the septic system assigned by Defendant, which Plaintiff claims is \$5,100. (Ptf’s Ex 1 at 1.) The court observes, however, that Defendant did not submit any evidence to support a value of \$5,100 but, instead, relied primarily on the sales approach to on-site developments as a whole. (Def’s Ex L.) To respond to Plaintiff’s cost concerns, Defendant did prepare Exhibit J, which presents cost information for the three components, *i.e.*, well, septic, and electric. In that exhibit, Defendant proposes a cost of \$4,500 for the septic. Therefore, although uncontested, it is not clear where Plaintiff arrived at his conclusion of a \$5,100 cost for the septic system.

³ The court observes, however, that the MAV may still be adjusted to account for the home as partially complete because it is not minor construction since it was valued at more than \$10,000 in one year.

Regarding the well, Plaintiff testified that his cost to install the well was \$685. Because he put the well in himself, that cost does not include the value of his labor. Plaintiff did not present any receipts or other documentation to support his claimed expenses. Plaintiff did testify about the quality of the well and that it is inadequate in several respects. First, he observed that the well does not have a concrete slab around the outer casing to facilitate drainage away from the well. Second, he testified that the well casing underground does not have grout around it. Finally, Plaintiff testified that the casing should extend 18 feet below the surface to meet minimum standards and that his well only extends 15 feet below the surface. Plaintiff explained he did not go further because he created a jetted well, which streams water into the ground causing sand to float away. That works well until rock is encountered, which happened to Plaintiff at approximately 16 feet. Plaintiff testified that a drilled well would be needed to go the extra three feet. Plaintiff claims that those inadequacies cause the well to be highly susceptible to contamination. When questioned by Defendant, Plaintiff acknowledged the well is used for irrigation, sanitary purposes, and drinking water. Furthermore, Plaintiff testified that he contacted Barrington Well Drilling and was advised that it would cost \$3,600 for a well. Plaintiff observes that the estimate was in 2005 and that the well was dug in 2002.

In response to Plaintiff's cost information, Defendant contacted Bandon Well Drilling and was informed that the typical cost to create a well would be \$4,850. Plaintiff claims such value is inflated given the inadequacies of his well. He further observes that Defendant's cost includes value for labor, which is not an expense he incurred.

For the electrical, Plaintiff claims it cost him \$1,525 to install, which includes the price for the electric permit, electric service, and electric service material. (Ptf's Ex 1 at 3.) Plaintiff apparently rented a trencher and laid the pipe himself. Plaintiff did not allow a cost for that

work. Defendant estimated the typical cost for electrical to be \$2,930, with a cost of \$1,000 for the labor to trench and lay the pipe. (Def's Ex J.)

Plaintiff's main argument regarding value is that, because the home is not complete, traditional value methods are inadequate and the real market value assigned to the property should be that which would justly compensate him for his loss. As a result, he focuses only on his actual expenses. The court observes, however, that even under a "just compensation" model, the value of one's labor must be included. An owner must be compensated not only for his actual receipts, but also for his time and labor. Plaintiff provided the court with no estimate for the value of his labor. Further, he provided no receipts or other information to support his actual expenses. In *Strom v. Department of Revenue*, 15 OTR 309 (2001), the plaintiff claimed he made less than \$25,000 in improvements to his property. He completed much of the work himself and submitted receipts for some of his expenses. The court concluded that the plaintiff failed to adequately prove his case by failing to submit evidence of his expenses and failing to account for his labor. *Id.* at 314. The court stated:

"Taxpayer submitted receipts for materials and labor that he contracted out totaling \$10,167 for 1997 and \$6,053 for 1998. However, the court is unable to find receipts for many costs such as for roofing materials, siding, and other items. In addition, taxpayer testified that he has a degree in construction and is also experienced. Taxpayer worked on the property for approximately two to three days per week for eight to nine months. He spent additional time acting as general contractor, *e.g.*, ordering and picking[] up materials and arranging for and supervising subcontractors. Taxpayer provided no estimate for the value of his labor. However, intuitively, it must have been significant."

Id.

Plaintiff claims the value of the on-site developments should be \$7,311. Adding that value to the value of the structures (\$16,510) leads to a value of \$23,821. That is only \$1,179 less than required to satisfy the minimum \$25,000 threshold. Plaintiff's value, however, does not

include the value of his labor. The court believes the labor value places his value over the \$25,000 limit. Further, in *Strom*, the court observed that receipts were lacking for some of the expenses. In the subject case, Plaintiff provided *no* receipts to support his claimed expenses. From that standpoint, Plaintiff's appeal must be denied for lack of proof.

Plaintiff argued strongly against Defendant's use of the sales comparison approach and claimed that cost is the only method for valuing the improvements. However, a common principle in appraisal theory is that cost does not necessarily equal value. In *Strom*, the court observed "that the test is not the cost of the work but whether the work increases the RMV * * * \$25,000 for cumulative additions made over five assessment years." 15 OTR at 313-14.⁴ That observation is particularly relevant in the area of on-site developments because the combination of water, septic, and electrical transforms raw land into a developable lot. That transformation, in turn, reduces the time involved in further developing the site with a structure (*e.g.*, home) and removes much of the risk involved in obtaining the services provided by the site developments.

Finally, Plaintiff complains that it was error for Defendant to gather sales to support its value when that was not the evidence used to initially set his value. Plaintiff's arguments are not new and have been rejected in prior court cases. In *Clark v. Department of Revenue*, the court noted:

"Assessed values are typically based on mass appraisal techniques. As a property tax appeal proceeds, the property is given more individual attention and, consequently, the determination of value becomes more refined. Because the goal of contested proceedings is to determine the real market value of property, an assessor must be allowed to present evidence of that value."

14 OTR 221, 226 (1997).

⁴ The Oregon Administrative Rules (OAR) provide that "[t]he value of site development may be higher or lower than the total cost of its components and is determined by the contribution of the site developments to the market value of the site." OAR 150-307.010(1)(2)(C) (2004).

III. CONCLUSION

The court concludes that Plaintiff's appeal must be denied because he failed to include the value of his labor in his analysis, and he failed to provide evidence to support his claimed expenses. Now, therefore,

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

Dated this _____ day of February 2006.

COYREEN R. WEIDNER
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 Coyreen R. Weidner February 17, 2006. The Court filed and entered this document February 17, 2006.