

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

RANDY WEBB,)	
)	
Plaintiff,)	TC-MD 060069D
)	
v.)	
)	
LANE COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

Plaintiff appeals the real market value of his property for tax year 2005-06.¹ A trial was held on Thursday, September 20, 2007, in the Oregon Tax Courtroom, Salem, Oregon. Randy Webb appeared on his own behalf. Marc H. Kardell, Assistant County Counsel, Lane County, appeared on behalf of Defendant. Thomas Frederiksen (Frederiksen), Tax Appraiser, testified on behalf of Defendant.

At the conclusion of the trial, the parties agreed to submit post-trial briefs no later than October 8, 2007. Plaintiff's Post-Trial Brief and Defendant's Post Hearing Memorandum were filed October 8, 2007. This matter is now ready for decision.

I. STATEMENT OF FACTS

Plaintiff appeals the real market value and real market exception value of his property for tax year 2005-06. The Board of Property Tax Appeals determined in its Order dated February 10, 2006, that the real market value of the subject property was \$330,670. (Def's Ex M-1.) The real market value exception was \$32,510. (Def's Ex L-4.)

Plaintiff, who described himself as a homeowner and attorney, did not submit any evidence of real market value as of the assessment date, January 1, 2005. Defendant submitted a

¹ At the time of trial, Plaintiff acknowledged that he cannot appeal tax year 2004-05 that was originally stated on his Complaint.

comparative sales report, dated April 11, 2006. (Def's Ex L-2.) The indicated real market values ranged from \$303,100 to \$354,900. Defendant concluded that the comparative sales report "shows that two near in time and size sales support the \$140 s/f evaluation" and "[t]he other 3 comparables would support a higher amount." (Def's Ex L-1.)

Plaintiff's testimony focused on four items that attributed to the real market exception value added to the tax roll for tax year 2005-06. He testified that the (1) extension of the deck and patio, (2) conversion of the carport to a garage, (3) bathroom modification, and (4) other "unexplained additions" * * * "do not exceed \$10,000 in any given year and do not exceed \$25,000 in any 5 year period." (Ptf's Trial Memo at 13.)

Plaintiff testified he believes the value of each of the four items should not be added to the tax roll. First, he states that the second story deck was expanded and "long wooden columns which were set in engineered concrete piers" were added to meet code requirements. (*Id.* at 4.) Defendant estimated the cost of the new deck to be \$10,500 and Plaintiff did not refute it. Plaintiff concluded that the "totals for the repairs and for the second story substructure" were \$6,816. (*Id.*) After subtracting the cost of the substructure and repairs, Plaintiff concludes that the real market value of the deck "likely approaches zero." (*Id.*) He reasons that it is difficult to estimate if a buyer of his property would pay more for a home with a larger deck. Plaintiff concludes that the real market "[v]alue of the [p]atio [e]xtension is [n]egligible." (*Id.* at 5.) He explained that in 2004 the "contractor charged \$5,430 for all the work done." (Ptf's Trial Memo at 5; Declaration of Randy Webb at 5.) "All work" included removal of a "very large greenhouse," removal and replacement of "an old water line," addition of "a drain at the base of the driveway," installation of four support pillars that "were not legal because of their location,"

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and installation of new concrete to replace the gravel driveway. (Ptf's Trial Memo at 5-6.)

Plaintiff concluded that the contractor's cost had to be offset by the value of the greenhouse that was retired and the other work which was "maintenance and repairs," resulting in the value "added to the house by the patio extension [to be] nil." (*Id.* at 6-7.)

Second, the cost to convert the carport to a garage was \$3,500. (*Id.* at 7.) Plaintiff stated that the conversion began in 2001 and was completed in 2002. (*Id.*) He concludes that

"[t]he carport conversion is NOT a 'major addition' under OAR 150-308.149-(A)(c), because the value is less than \$10,000. Second, the addition must add square footage to the existing structure to be a major addition. OAR 150-308.149-(A)(1)(c). * * * Third, the carport was retired and its value must be deducted from the value of the house with garage. Fourth, a workshop at the rear of the carport was retired that measured 17 x 7 ft (119 sq. ft.). * * * Together these likely reduce the value of the carport conversion to nothing." (*Id.*) (Emphasis in original.)

Third, even though Plaintiff stated in his Trial Memorandum that "[t]he bathroom and kitchen work was completed in 2005 and the contractor charged \$35,034," Plaintiff testified that the bathroom modification was not "girlfriend friendly" in January 2005. (*Id.* at 10; Ptf's Declaration of Randy Webb at 4.) As he remarked in reference to the deck and patio extensions, Plaintiff alleges that "the Assessor has confused the cost of construction with the value." (Ptf's Trial Memo at 10.) (emphasis in original.) Plaintiff concludes that "[t]he only new addition was a larger bathtub" and it was not a " 'major addition' under OAR 150-308.149-(A)(c), because it did not add square footage to the structure." (*Id.* at 10-11.) He stated that "the kitchen was reduced in size and function, and therefore retired." (*Id.* at 11.) Plaintiff explains that prior to his ownership of the subject property it was "used as a two family dwelling." (*Id.*) However,

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now because the kitchen no longer has a stove, Plaintiff concludes that “the lower part of the house * * * cannot be used to generate income in the future, and cannot be sold as an income producing property.” (*Id.*)

Plaintiff objects to Defendant now stating that the bathroom modification can be added to the tax roll as exception value because Defendant’s response to a discovery request did not state that the bathroom modification was one of the “[n]ew items/improvements that added value to the subject property.” (Ptf’s Mot to Exclude Certain of Def’s Exhibits, Attachment.) At trial, Frederiksen testified that at the time he responded to the discovery request he had no knowledge of the amount Plaintiff paid to contractors to modify his bathroom.

Fourth, Plaintiff alleges that Defendant made “[u]nexplained [a]dditions to [v]aluation,” including incorrectly computing the square footage of the dwelling. (*See* Ptf’s Trial Memo at 8-9 and 11-12.) Plaintiff estimates that 156 square feet of the lower level is “completely unfinished with concrete slab, and studs and joists showing” and the utility room which measures 48 square feet “is directly on the slab and lacks any flooring.” (*Id.* at 12.) One other “area of the top floor” which measures 38 square feet “is completely closed off and unavailable for use.” (*Id.* at 11) He concludes that the value of his property should be reduced, but does not state a specific amount. Plaintiff states that Defendant added \$22,100 to the tax roll for siding and dormers, “basement finish,” “heating,” “plumbing,” and “Other Features.” (*Id.* at 8-9, citing Def’s Ex J-7.) Plaintiff concludes that none of the listed features is “special” and each item subtracts rather than adds value to the subject property.

II. ANALYSIS

The issue before the court is the real market value of Plaintiff’s property. Real market value is the standard used throughout the ad valorem statutes except for special assessments. *See* ///

Richardson v. Clackamas County Assessor, TC-MD No 020869D, WL 21263620, at *2 (Mar 26, 2003) (citing *Gangle v. Dept. of Rev.*, 13 OTR 343, 345 (1995)). Real market value is defined in ORS 308.205(1),² which reads:

“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.”

A. *Approaches of Valuation – Real Market Value*

There are three approaches of valuation (cost, income, and comparable sales) that must be considered in determining the real market value of a property even if one of the approaches is found to not be applicable. *See* ORS 308.205(2) and OAR 150-308.205-(A)(2). Because the subject property is the primary residence of Plaintiff, the income approach is not applicable.

In a case such as the one before the court, the comparable sales approach “may be used to value improved properties, vacant land, or land being considered as though vacant.”

Chambers Management Corp and McKenzie River Motors v. Lane County Assessor, TC-MD-No 060354D at 6 (Apr 3, 2007), citing Appraisal Institute, *The Appraisal of Real Estate* 335 (12th ed 2001). Plaintiff did not present a comparable sales approach to the court. In fact, Plaintiff presented no evidence of the real market value of his property.

B. *Burden of Proof*

“In all proceedings before the judge or a magistrate of the tax court and upon appeal therefrom, a preponderance of the evidence shall suffice to sustain the burden of proof. *The burden of proof shall fall upon the party seeking affirmative relief.*” ORS 305.427 (2005)

² Unless otherwise noted, all references to the Oregon Revised Statutes (ORS) are to 2003.

(emphasis added). 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 at 4 (July 12, 2001) (citing *Feves v. Dept. of Rev.*, 4 OTR 302 (1971)). This court has stated that “it is not enough for a taxpayer to criticize a county’s position. Taxpayers must provide competent evidence of the RMV of their property.” *Poddar v. Dept. of Rev.*, 18 OTR 324, 332 (2005) (quoting *Woods v. Dept. of Rev.*, 16 OTR 56, 59 (2002) (citation omitted.)

Plaintiff’s approach to determine real market value was not to value the entire subject property, but rather to criticize Defendant’s analysis and to identify concerns, without translating those concerns into a monetary impact on real market value. Even though Plaintiff is familiar with his property, he did not qualify himself as an expert on valuation. “When a plaintiff fails to establish any independent expertise and relies only on his own costs and his unsupported, personal opinions, a court weights plaintiff’s words in the light of his self-interest.” *Erickson v. Commission*, 1 OTR 626, 629 (1964). Plaintiff’s testimony was “vague and indefinite” and much of his testimony was an attack on Defendant’s appraisal method and determinations. *Id.* Unfortunately, “[s]uch negative testimony does not establish an affirmative case” as required by statute. *Id.* Plaintiff failed to offer proof as to the real market value of his property.

C. Real Market Exception Value

Plaintiff challenged the real market exception value added to the 2005-06 tax roll in the amount of \$32,510. Three identified improvements, specifically, the deck and patio extension, the carport to garage conversion, and the bathroom improvement, were made to Plaintiff’s property. The total cost of those improvements was approximately \$55,000.

Following his pattern of criticizing Defendant’s position, Plaintiff alleged that cost is not value. The court agrees with the premise that cost and value are not necessarily equal, DECISION TC-MD 060069D

especially when costs are incurred to remodel an existing structure. However, that general premise does not negate Plaintiff's burden to prove the value of those improvements made to his property.

Even though Plaintiff alleges that cost is not value, Plaintiff's entire offer of proof is cost based. Beginning with the cost of each of the improvements, he subtracts amounts for repairs and maintenance and removal of structures or loss of use. Plaintiff makes further adjustments to the cost for his estimate of the percentage of value added to the property.

Plaintiff concludes that the extensions of the deck and patio add no real market value to the subject property because: (1) some of the costs should be classified as repair and maintenance; (2) value added to the property is substantially less than 100 percent of the cost; and (3) the removal of the greenhouse should offset the new additions. Plaintiff computes a value for the greenhouse based on current year information he found on the internet. (Ptf's Ex 7.) He concludes that the value he determined should be subtracted from the total cost of the improvement. Plaintiff's determination fails to consider the value of the greenhouse on the tax roll, which should reflect the age of the greenhouse and its value in place. It is unknown whether the value he determined using data from the internet is the same as the tax roll value. Plaintiff concludes that a patio extension adds no more than "50% or more to a home." (Ptf's Post-Trial Br at 4.) Rather than submit documentation to support his assertions, Plaintiff decided to substitute his "sworn testimony in lieu of admission of the documents." (Ptf's Declaration of Randy Webb at 2.) Plaintiff did include a copy of his research for other home improvements, which stated that "a deck recouped 76.8% of its cost last year, down from 90.3% in 2005." (Ptf's Ex 1 attached to Declaration of Randy Webb.) Plaintiff incorrectly concludes that only 77 percent of the cost of the deck could add value to his home. The assessment date for the current appeal is January 1, 2005. According to his research, the

DECISION TC-MD 060069D

percentage of value added in 2005 should be 90.3 percent of cost. Given Plaintiff's error with respect to the correct percentage for the deck, the court has concerns about Plaintiff's unsubstantiated percentage for the patio.

Plaintiff directs the court to Oregon Administrative Rule 150-308.149-(A)(2)(a)(A) which defines repair and maintenance as work “ ‘designed to [p]reserve the condition of existing improvements without significantly changing design or materials’ in an effort to ‘achieve[] an average useful life that is typical of the type and quality so the property continues to perform and function efficiently.’ ” (Ptf's Post-Trial Br at 5-6.) All his determinations of value are based on current costs and “rough observations.” (Ptf's Declaration of Randy Webb at 3.) Plaintiff concludes that there is no value added to his property when old concrete is replaced with new concrete. Further, he concludes that replacing a 40 year old water line is routine maintenance. The court finds that Plaintiff, who is not a licensed contractor or certified appraiser, fails to persuade the court that the replacement of the posts and beams and “deck substructure” were not required to support the new deck extension and that the other work added no value to Plaintiff's property. (*Id.*) Plaintiff did not offer testimony (oral or written affidavit) from his contractor or a licensed professional to support his repair and maintenance categorization and cost determinations.

Plaintiff uses the same cost approach for the value added by the conversion of the carport to a garage, concluding that carport conversions “are certainly worth less than 50% of the cost a homeowner pays for them” and that, after deducting the value of the “retired” carport and workshop, “the value of the carport conversion” is “nothing.” (Ptf's Trial Memo at 7-8.) The conversion was “done in 2001 * * * and repaired in 2002.” (*Id.* at 7.) Plaintiff provides no evidence other than his own personal opinion to support his conclusion.

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Plaintiff relies on OAR 150-308.149-(A)(1)(c) for his conclusion that the conversion is not a major addition. The court looks to the Oregon Revised Statutes for the definition of new property or new improvements. ORS 308.149(6). New property or new improvements is defined as an addition to real property improvements in an amount in excess of “\$10,000 in any assessment year or \$25,000 for cumulative additions made over five assessment years.” Even though the cost of the carport conversion is less than \$10,000, the value of the carport conversion could exceed that amount. In addition, the carport conversion can be aggregated with the other improvements for “five assessment years.” *Id.* It is undisputed that the cost of the improvements exceeded \$55,000 for “five assessment years.” *Id.* The value added to Plaintiff’s property for those improvements is unknown because it has not been proven by Plaintiff.

Plaintiff concludes that the remodel of the bathroom, including “larger bathtub,” new toilet, expansion of floor space, upgrade of flooring and change in type of heating “may even have caused a net reduction in value;” “no square footage was added to the structure at all [b]ecause space was taken from the kitchen,” and the “full kitchen” now functions “as a partial kitchenette.” (Ptf’s Declaration of Randy Webb at 4.) Plaintiff acknowledges that “the contractor charged \$35,034,” but reiterates his position that “the cost of construction” should not be confused “with the value.” (Ptf’s Trial Memo at 10.) Once again, Plaintiff asks the court to accept his unsupported opinion that the bathroom remodel adds no value to his property.

The assessment date was January 1, 2005. The parties disagree as to when the bathroom improvement was completed. Defendant stated that all inspections were final by the end of 2004. Plaintiff testified that the bathroom could not be used until late January or early February 2005. The court has no information giving the percentage complete of the bathroom

DECISION TC-MD 060069D

improvement as of the assessment date. As previously stated, Plaintiff did not provide the court with information about the value of that improvement.

Plaintiff alleges that Defendant incorrectly computed the square footage of his dwelling. No evidence, such as architectural plans or drawings or similar documents, were submitted. Further, Plaintiff does not translate his claims into an estimate of value. Plaintiff offers no evidence other than his own testimony that Defendant added value to the tax roll for “other features” and he does not state that either the square footage or other features are part of the real market exception value he is challenging.

Plaintiff fails to adequately substantiate his determinations for the court. Because Plaintiff failed to meet the statutory burden of proof, the court need not review Defendant’s evidence. The burden cannot shift until Plaintiff meets its statutory obligation. ORS 305.427.

D. Omitted Property and Determination of Value

Plaintiff challenges Defendant’s right to include the value of the bathroom improvements on the tax roll. He alleges that because Defendant was unaware of that improvement at the time the tax roll was certified, Defendant cannot now suggest that it be added to the tax roll. Defendant has the authority to add omitted property to the tax roll. ORS 311.205 and 311.216. Without regard to Defendant’s authority, the determination of value is before the court and the court has the “jurisdiction to determine the real market value or correct valuation on the basis of the evidence before the court, without regard to the values pleaded by the parties.” ORS 305.412 (2005). Further, in proceedings before this court, “[n]either party is limited to arguments or claims previously asserted before the Department of Revenue” or each other. *Carmichael Columbia Oil, Inc. v. Dept. of Rev.*, 13 OTR 97, 100 (1994), citing *Mid Oil Co. v. Dept. of Rev.*, 297 Or 583, 686 P2d 1020 (1984).

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E. *Property Taxes*

Plaintiff alleges that because “only the use of an exception value from new construction or improvements to the property could have increased the MAV and the taxes due, this indicates that the Assessor had used some of these construction items to pierce the 3% cap in previous years, and has then repeated this procedure in this year.” (Ptf’s Post-Trial Br at 2.) In response to Plaintiff’s allegation, Defendant reviewed the real market value, maximum assessed value and assessed value for each of the following tax years: 2001-02, 2002-03, 2003-04, and 2004-05. (Def’s Post Hearing Memo.) Defendant concluded that in no year did the county assessor fail to follow the statutory requirement that assessed value is the lesser of real market value or maximum assessed value. (*Id.*) See ORS 308.153(3) (1999, 2001 and 2003.) Further, Defendant testified that in computing the maximum assessed value it did so as required by ORS 308.146(1):

“The maximum assessed value of property shall equal 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, whichever is greater.”

Plaintiff included copies of his property tax statements with his Post-Trial Brief. After reviewing the property tax statements, the court finds nothing to contradict Defendant’s conclusion. The value of improvements to Plaintiff’s property appears to have been added only in tax year 2005-06.

Plaintiff also asserts that “taxes” cannot increase more the “3%” per year. (Ptf’s Post-Trial Brief at 2.) Plaintiff’s statement is incorrect. The Oregon Constitution limits property taxes to “\$5 (public school system) and \$10 (other government)” * * * “per \$1,000 of real market value.” Oregon Constitution Art XI, § 11(b). Bonded indebtedness is not subject to limitation under section 11b of Article XI. In recent years, Oregon voters have passed bonds for schools and other civic improvements which are added to the statutory rate of \$15 per thousand of assessed value. In the first

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year a taxpayer is assessed for the bonded indebtedness, a taxpayer's property taxes could increase more than three percent from the amount assessed in the prior year.

III. CONCLUSION

After careful consideration of Plaintiff's testimony and evidence, the court finds that Plaintiff failed to carry the burden of proof. Now, therefore,

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

Dated this _____ day of November 2007.

JILL A. TANNER
PRESIDING 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 Presiding Magistrate Jill A. Tanner on November 29, 2007. The Court filed and entered this document on November 29, 2007.