IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

DARREN W. CHILTON and KATHLEEN A. CHILTON,	)	
Plaintiffs,	)	TC-MD 060604C
v.	)	
MULTNOMAH COUNTY ASSESSOR,	)	
Defendant.	)	**DECISION**

This is a value appeal for the 2005-06 tax year involving Plaintiffs' personal residence in Northeast Portland. Plaintiffs did not appeal to the county board of property tax appeals (board) before appealing to the Tax Court. The property is identified in Defendant's records as Account R260257. The impetus for the appeal was a significant increase in the real market value (RMV) and the assessed value (AV) of Plaintiffs' property following a home remodel.

Trial was held February 20, 2007. Darren Chilton (Chilton) represented Plaintiffs and testified on their behalf. Defendant was represented by Michael Chamberlain (Chamberlain), an appraiser with Defendant's office.

I. STATEMENT OF FACTS

Plaintiffs remodeled their home in 2004. The remodel increased the size of their home approximately 50 percent. There is some dispute about the actual size of the home after the remodel. The disagreement stems from the fact that Plaintiffs' home has been measured twice by Defendant's appraisers; once by an appraiser named Cathy Addi (Addi) in October 2005, when Plaintiffs contacted the Defendant's office after receiving their tax statement, and again by Chamberlain in preparation for trial. The parties agree that the home was 2,030 square feet

before the remodel and approximately 3,100 square feet after the remodel,[1] excluding the new garage, which the parties agree is 330 square feet. Plaintiffs increased the size of the first-floor living area from 850 square feet to approximately 1,460 square feet.[2] The approximately 400 square foot finished attic was converted to a finished second-story. The parties disagree on the size of that floor, Plaintiffs relying on Addi's measurement of 842 square feet versus Chamberlain's measurement of 999 square feet. Finally, Chamberlain determined that the finished basement was only 651 square feet, whereas the original county records reflected 780 square feet. Plaintiffs believe that the error in square footage caused Defendant to overvalue their home following the remodel, and they are concerned that the corrections to size did not produce any change in Defendant's opinion of value.

As indicated above, Plaintiffs did not petition the board before appealing to this court. According to the uncontroverted evidence, Chilton spoke with two different employees of Defendant about errors in the county records regarding the physical description of Plaintiffs' home. He was told by both employees that he did not need to file an appeal with the board. Those conversations took place before the board appeal deadline. Plaintiffs did not learn that an appeal would be necessary until after the December 31, 2005, board filing deadline. The failure to petition the board was a deviation from the statutorily prescribed appeal process. That issue is addressed more fully below.

Turning to the facts pertaining to the value issue, Plaintiffs paid $81,000 to remodel their home and an additional $9,000 to have the old 198 square foot garage razed and replaced with a

[1] Plaintiffs rely on Addi's measurement of 3,083 square feet; Chamberlain arrived at 3,112 square feet.

[2] Plaintiffs rely on an earlier county remeasurement which concluded that the first floor was 1,461 square feet after the remodel; Chamberlain again remeasured the home for trial and determined that the first floor was 1,462 square feet after the remodel.

new 330 square foot garage. For the 2005-06 tax year, Defendant increased the RMV of Plaintiffs' home $181,070, from $245,340 to $426,410. Defendant attributes the majority of that increase, $158,850, to the remodel. That number is referred to by Defendant as "exception" RMV. The amount of exception RMV is important because a portion of that amount is added to the maximum assessed value (MAV), resulting in an increase above the statutory three percent annual rise, as explained below. The balance of Defendant's RMV increase is comprised of a $16,280 increase in the value of the land, which rose from $83,720 to $100,000, and a $5,940 trend adjustment to the existing improvement. The latter figure – $5,940 – represents Defendant's estimate of the amount by which Plaintiffs' improvement RMV would have increased without the remodel. The increase is 3.6753 percent. Defendant arrived at the $158,850 exception RMV attributed to the remodel by applying the 3.6753 percent trend to the 2004-05 improvement RMV of $161,620, and subtracting the product ($167,560) from its determination of the January 1, 2005, post-remodel improvement RMV of $326,410.

II. ANALYSIS

There are two main issues in this appeal. The first is whether the court has statutory authority to reduce Plaintiffs' value. The second issue, which will only be addressed if the first issue is decided in Plaintiffs' favor, is whether the evidence supports a change in the roll value.

A. *The Court's Authority to Reduce Value*

Ordinarily a taxpayer seeking a reduction in value must timely petition the board under ORS 309.026[3] and ORS 309.100, and, if dissatisfied with the board's determination, appeal the board's decision to the Magistrate Division of the Tax Court as authorized under ORS 309.110(7) and ORS 305.275(1) and (3). As indicated above, Plaintiffs did not petition the

[3] References to the Oregon Revised Statutes (ORS) are to 2005 for the ORS 305.288 analysis, and to 2003 for the value issue.

board before appealing to this court. Their authority to now challenge Defendant's value is limited to the provisions of ORS 305.288. Under that statute, Plaintiffs must either allege a statutorily-sufficient error in value, or satisfy the court that they failed to petition the board by reason of "good and sufficient cause."

1. *The 20-Percent Error Rule - ORS 305.288(1)*

Plaintiffs did not include a specific value request in their Complaint. The court pressed Chilton for a value at the initial proceeding in October 2006, and Chilton eventually estimated the improvement value, on January 1, 2005, was approximately $257,560. That assertion translated to a 21 percent alleged error in value. Under ORS 305.288(1)(b), the court can reduce the value of a separate assessment of property for the tax year immediately preceding the current tax year, where the property involved is a single-family dwelling, and

> "it is asserted in the request and determined by the tax court that the difference between the real market value of the property for the tax year and the real market value on the assessment and tax roll for the tax year is equal to or greater than 20 percent."

Plaintiffs' court-prompted allegation of error satisfied the 20-percent requirement. The case was, therefore, set for trial. However, Plaintiff's indicated in their pretrial exhibits, filed February 7, 2007, that they were requesting a reduction in the improvement RMV to $293,810. (Ptfs' Ex 8.) Chilton confirmed that number at the commencement of trial. Plaintiffs are not challenging the land RMV on the roll. Compared to an improvement RMV on the tax rolls of $326,410, the indicated error in value is only approximately 10 percent. That percentage is only half the necessary threshold. Accordingly, the appeal may not go forward unless Plaintiffs have good and sufficient cause for not appealing to the board.

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2. *Good and Sufficient Cause – ORS 305.288(3)*

Subsection (3) of ORS 305.288 authorizes the court to reduce the value of a property (residential or commercial) if the taxpayer has a statutorily sufficient reason for not petitioning the board before appealing to this court. The statute provides:

> "The tax court may order a change or correction applicable to a separate assessment of property to the assessment or tax roll for the current tax year and for either of the two tax years immediately preceding the current tax year if, for the year to which the change or correction is applicable the assessor or taxpayer has no statutory right of appeal remaining and the tax court determines that *good and sufficient cause* exists for the failure by the assessor or taxpayer to pursue the statutory right of appeal." (Emphasis added.)

ORS 305.288(3).

The statute defines "good and sufficient cause" as "* * * an extraordinary circumstance that is beyond the control of the taxpayer * * * and that causes the taxpayer * * * to fail to pursue the statutory right of appeal." ORS 305.288(5)(b)(A). Moreover, under ORS 305.288(5)(b)(B), good and sufficient cause "[d]oes not include inadvertence, oversight, lack of knowledge, hardship or reliance on misleading information provided by any person except an authorized tax official providing the relevant misleading information."

In their initial Complaint, Plaintiffs provided a fairly lengthy and detailed explanation for their failure to petition the board. Chilton testified to those facts under oath at trial. Defendant has never refuted Plaintiffs' assertions. The uncontroverted facts are that Chilton called Defendant's office on October 24, 2005, to talk about the significant increase in RMV reflected in his property tax statement. The call was placed at approximately 10:30 a.m. Chilton spoke with Bruce Barclay (Barclay), explaining that he had discovered two errors in the Defendant's records pertaining to the physical description of his home: the size appeared to be approximately 400 square feet larger than the actual size of the home; and Plaintiffs were being taxed for a

200 square foot enclosed patio that had been removed during the remodel. Barclay advised Chilton that an appraiser would need to come to his house and measure the home. Barclay said that if Chilton was correct, the changes would be inputted into the computer and he would receive an automatic refund, with interest paid at 12 percent. Chilton asked Barclay if he needed to file a petition with the board, and he was advised that a board appeal was unnecessary; the changes would be made automatically, with a refund forthcoming. That afternoon, at approximately 2:55 p.m., Chilton received a phone call from Addi to set up an appointment to measure Plaintiffs' home.

Chilton met with Addi at his home the following day, October 25, 2005, at 1:55 p.m. Addi measured the residence and confirmed that there was an error in the square footage. Addi told Chilton that she would update Defendant's tax records by inputting the new measurements into a CAD program and that Chilton would have to wait for the refund. Addi told Chilton that no board appeal would be necessary. Having twice been informed by staff at Defendant's office that he need not petition the board, Chilton was confident that no appeal was necessary. Chilton, therefore, did not petition the board.

Chilton called Addi during the first week of December, leaving a voice message asking for the status of his property. Addi returned Chilton's call the next day, advising Chilton that she had completed the revised drawings and submitted them to other employees to enter into the system, stating that "everything is being taken care of." Chilton assumed that this meant that the earlier assertions made by Barclay and Addi would come to fruition: that the adjustments to the square footage would be made, including removal of the enclosed porch; that the value would be reduced; and that a tax refund would be issued.

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After hearing nothing for another month, Chilton telephoned Addi on January 10, 2006, leaving a message asking her to return his call. Addi did not respond to that call. Chilton then visited the assessment and tax office on January 26, 2006, and, ultimately, learned that there was no indication of a refund in the system. Chilton received an e-mail from Addi the following day, January 27, 2006, after he had telephoned her again. In that e-mail, Addi advised Chilton that "[t]he changes have been made to correct the roll for 2006. In order to change the 'closed' roll value for 2005 you need to file an appeal with the Magistrate for 2005." (Ptfs' Compl at 6.) Chilton confirmed that news with Addi's supervisor, Dennis Wardwell (Wardwell), over the next few days, including a face to face meeting with Wardwell on January 30, 2006, at 10 a.m.

The court is only concerned with the communications that took place before the December 31, 2005, statutory deadline for petitioning the board. The court concludes Plaintiffs have established good and sufficient cause for not petitioning the board. There is no evidence before the court that Plaintiffs received written instructions about the board appeal process with their tax statement or otherwise. However, regardless of whether they were so informed, the verbal assurances that Chilton received in late October 2005 by two different employees in the Defendant's office, following Plaintiffs' receipt of the tax statement, reasonably persuaded Plaintiffs that no board petition was necessary. Chilton catalogued the names of the employees he spoke with, along with the date and time of each conversation. An employee from Defendant's office came out of his house to measure his home the day after he reported the errors in Defendant's records. Staff in Defendant's office appeared to be responding to Plaintiffs'

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concerns and advised Chilton he need not appeal. Addi assured Chilton in early December 2005 that everything was being taken care of. That statement was reasonable, given that Defendant had the statutory authority under ORS 308.242(2) to change the roll before December 31, 2005, at Plaintiffs' request.[4]

B. *Is There an Error in the RMV?*

There are two aspects to the value question: the overall RMV and the appropriate RMV attributable to the remodel ("exceptions" RMV).

Oregon law defines RMV as:

> "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). Simply put, the question is how much the property would sell for on the applicable assessment date, which in this case is January 1, 2005. *See generally* ORS 308.007. Plaintiffs have the burden of proof and must establish an error in the record assessment by a preponderance of the evidence. *See* ORS 305.427. Preponderance of the evidence is not a particularly high standard. It has been defined as "the greater weight of the evidence, the more convincing evidence." *Feves v. Dept. of Rev.*, 4 OTR 302, 312 (1971), *citing McPherson v. Cochran*, 243 Or 399, 404, 414 P2d 321 (1966). Neither party in this case submitted an actual appraisal of the property. Plaintiffs submitted cost data and other materials; both parties submitted unadjusted sales data.

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[4] ORS 308.242 (2) provides:

> "After the assessment roll has been certified and on or before December 31, the assessor may make changes in valuation judgment that result in a reduction in the value of the property, if so requested by the taxpayer or upon the assessor's own initiative."

1. *Overall RMV*

The disputed RMV on the tax rolls is $426,410. Plaintiffs seek a reduction to $393,810. Chilton arrived at that number by dividing Defendant's 2005-06 improvement RMV by the erroneous square footage appearing in Defendant's records at the time the 2005-06 tax roll was certified (before the correction to size) and multiplying the resulting value per square foot by the actual square footage of the subject property as determined by the remeasurements. (Ptfs' Ex 8.) Chilton believes that additional support for his value estimate can be found in a printout from Defendant's records labeled "Attachment B," which Chilton labeled "Revised Detailed List." (Ptfs' Compl at 12.) There is a field in that document entitled "Assessment Information," which reflects an improvement RMV of $293,800 and the total RMV of $393,800. (*Id*.) Plaintiffs provided the following additional information.

Plaintiffs' Exhibit 1 is a compilation of 11 sales within a few blocks of their home that occurred in 2004. The range of value is between $325,000 and $415,000. Plaintiffs' Exhibit 2 shows that their home is larger than many homes in the area. Plaintiffs' Exhibit 3 is a collection of 55 sales occurring in 2004, involving houses within roughly five blocks of the subject property. Of those sales, only one sold for more than $400,000, 35 of the 55 transactions sold at a price in the $200,000s, and six sold for less than $200,000. The remaining 13 properties sold for prices in the $300,000s. There is, however, insufficient data on the particular sales in that exhibit to allow for meaningful analysis by the court. That evidence shows that Plaintiffs' value is at the high end of the range and is, perhaps, an overimprovement for the neighborhood.

Defendant's evidence is intended to show that Plaintiffs' tax roll value is at or below market value. Defendant's Exhibit 5 is a compilation of four sales Chamberlain believes are representative of the subject property. The range of value is $429,000 to $500,000. Chamberlain

acknowledged that the buyer of sale number four, who paid $500,000, appears to have paid more than the property was actually worth. The next highest sale is sale number two, which sold on December 9, 2004, for $452,500. Chamberlain believes that sale is most comparable to the subject property. The sale price is approximately $26,000 higher than the tax roll value of Plaintiffs' property as of January 1, 2005.

Plaintiffs also submitted evidence that the insured value of their home for the period March 15, 2007, through March 15, 2008, is $327,237. (Ptfs' Ex 5.) Chamberlain responded that the insured value only covers the improvements on the property (*i.e.*, the structures) and noted that the insurance company's value is very close to the current 2005 improvement RMV of $326,410. Chilton replied that that estimate involves a period more than two years after the applicable assessment date for this appeal and that the value would have been less on January 1, 2005. That may be true, but there is no evidence before the court on market trends for that period. Also, there is no indication that the insurance company appraised the property before issuing the policy, which reduces the reliability of the insured value as an indicator of actual market value. The persuasiveness of that estimate is, therefore, limited.

Considering the evidence as a whole, the court is not persuaded that a preponderance of the evidence demonstrates an error in the overall RMV. The tax roll value may be high, or Plaintiffs may just have one of the better homes in the area. Chilton is not qualified to appraise property and his method of relying on data concerning value ranges and other factors is simply insufficient. Plaintiffs' "Attachment B," which Chilton has relied upon heavily throughout the appeal, is largely irrelevant. To begin with, the value of Plaintiffs' property is in dispute, and, as a result, value information in Defendant's records is not probative of market value. To prevail, a party must submit persuasive *market* evidence of an error in value. Moreover, Chamberlain

explained that the numbers Chilton was relying upon were working numbers periodically updated as the analysts update data for the upcoming year. Chamberlain further noted that the final assessor value determinations appear in the box above the "Assessment Information" box, a box titled "Value History." The numbers in that box reflect the disputed tax roll values.

2. *Exception RMV*

The next issue is whether Plaintiffs have shown an error in Defendant's exception RMV determination. That is the amount by which Plaintiffs' home increased in value because of the remodel. That number is significant under Oregon's somewhat unusual property tax system because AV is the lesser of RMV or MAV, the latter a creature of statute, which in 1997 was 90 percent of the property's 1995 RMV on the assessment and tax rolls. *See* ORS 308.146; Or Const, Art XI, § 11(1)(a). Whereas under ORS 308.146(1), MAV typically rises at an annual rate of three percent, significant changes to a property, including a remodel that increases a property's value by more than $10,000, require special treatment. *See* ORS 308.146(3); ORS 308.149(5) and (6); ORS 308.153(1). Specifically, the assessor must determine the value attributable to the remodel, adjust that amount by a statutorily prescribed ratio, and add the product of that exercise to the MAV otherwise determined under ORS 308.146 (typically 103 percent of the prior year's MAV).

Plaintiffs assert they paid $90,000 for the entire project. Defendant determined that the remodel increased the value of Plaintiffs' home by $158,850. Defendant determined the exception RMV by applying a trend to the 2004 improvement RMV and then subtracting the product from the 2005 improvement RMV. Plaintiffs object because they only paid $90,000 for the entire remodel, including $9,000 to remove the old garage and build a new one. Plaintiffs submitted an article from an online version of Realtor Magazine, titled "Remodeling's Payoff,"

which indicates that the highest average payoff on a remodel project in the western region of the United States is 112.3 percent for a minor kitchen remodel. (Ptfs' Ex 6.) The increase in this case is on the order of 175 percent. The article only speaks in terms of averages, and the averages may or may not be applicable to Plaintiffs' remodel. Nonetheless, the difference is striking.

The court, at first, was troubled by the apparent disparity between cost and value. However, in looking more closely at Plaintiffs' remodeling contract, the court observed that there were costs excluded from the contract price. For example, the remodel included an updated kitchen, and Plaintiffs were responsible for the purchase of the cabinets. (Ptfs' Compl at 4, Item 17.) Cabinets do not come cheaply. Plaintiffs were also responsible for the purchase of tile, carpet, bathroom and kitchen "accessories," and light fixtures. (*Id*. at 15.) Finally, Plaintiffs were responsible for all trim work and painting. (*Id*.) The resulting cost savings was likely significant, and militates against relying on Plaintiffs' purported costs.

The court, nonetheless, believes that a slight adjustment to the exception RMV is required. ORS 308.153(2)(a) requires that the RMV of the new property or new improvements be reduced by the RMV of "retirements from the property tax account." Retirements in this case would include the removal of the covered patio and the old garage. Defendant valued the covered patio at $7,860. (Ptfs' Compl at 11.) Defendant also did not remove the value of the old garage. The court concludes the reduction for those "retirements" is $9,500 (rounded). Subtracting that amount from the current exception RMV of $158,850 results in an exception RMV of $149,350. Defendant shall apply the applicable ratio of "average maximum assessed value over the average real market value for the assessment year" to that number, as required by ORS 308.153(1)(b), to arrive at the appropriate amount of exception MAV to be added to the

MAV determined under ORS 308.146 (*i.e.*, the trended 2004 improvement MAV). *See generally* ORS 308.153.

III. CONCLUSION

After careful review of the evidence, the court concludes that Plaintiffs have not established an error in the overall RMV of $426,410 on the tax rolls. That value is, therefore, sustained. However, the court has concluded that a reduction to the exception RMV is warranted and that the appropriate value is $149,350. Defendant shall adjust the assessment and tax rolls accordingly. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiffs' appeal is granted in part and that Defendant shall reduce the exception RMV for the 2005-06 tax year to $149,350.

Dated this _____ day of March 2007.

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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 <u>mailing</u> to: 1163 State Street, Salem, OR 97301-2563; or by <u>hand delivery</u> to: Fourth Floor, 1241 State Street, Salem, OR.

Your Complaint must be submitted within <u>60</u> days after the date of the Decision or this Decision becomes final and cannot be changed.

This document was signed by Magistrate Dan Robinson on March 13, 2007. The Court filed and entered this document on March 13, 2007.