

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

KERRIGAN C. GRAY and KYRIAN Y. GRAY)	
)	
Plaintiffs,)	TC-MD 040639C
)	
v.)	
)	
MULTNOMAH COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

This matter is before the court on Plaintiffs’ Motion for Summary Judgment, filed October 8, 2004. Defendant filed a written response on October 27, 2004, objecting to the motion on various grounds. The court has reviewed the motion and has, for the reasons set forth below, determined that Plaintiffs’ request should be granted as a matter of law.

I. STATEMENT OF FACTS

The following facts are not in dispute. Plaintiffs filed a petition with the Multnomah County Board of Property Tax Appeals (board) seeking a reduction in the value of their land for the 2002-03 tax year. (Ptf’s Ex 2.) On page two of their petition, Plaintiffs provided the following relevant information, set forth in boldface type:

	Real Market Value (RMV) from tax statement or assessor’s records	Real Market Value (RMV) requested by petitioner
27 Land	\$129,100	\$71,500
28 Buildings	\$176,000	\$176,000
29 Manufactured Structure	[empty]	[empty]
30 Total RMV	\$305,100	\$247,500
31 Total Assessed Value (AV) from tax statement or assessor’s records	\$250,530	

On line 33, Plaintiffs typed the following additional relevant information: “In our surrounding neighborhood, our land value was the ONLY one to increase.” (Ptf’s Ex 2 at 2.) Plaintiffs went on to indicate on line 36 that they had an October 22, 2002, appraisal valuing the property at \$255,000.

In response to Plaintiffs’ petition, the board issued an order reducing the RMV of Plaintiffs’ land from \$129,100 to \$71,500. (Ptf’s Ex. 3.) The board also increased the value of Plaintiffs’ structures (identified on the petition as “buildings, machinery, etc.”) from \$176,000 to \$223,500. (*Id.*) Overall, Plaintiffs’ RMV was reduced \$10,100, from \$305,100 to \$295,000.

Plaintiffs attached a letter to their Complaint dated April 16, 2004. (Ptf’s Compl at 2.)

Relevant portions of that letter explain:

“Our land value was the only one in the neighborhood to increase. The land increase was originally 261%. Upon appeal, the Board * * * did reduce the land value to maintain uniformity with the land values in our neighborhood.

“However, as a result of appealing our land value, they increased the value of the house (improvements) by 30%.

“ * * * * *

“We are appealing the Board * * * raising the house (improvements) value 30% over the value set in the original tax statement, which we feel they did to counter our successful appeal of the land value increase.

“ * * * * *

“Requested RMV land: \$71,500
“Requested RMV house: \$173,200
“Requested RMV total: \$244,700”

(*Id.*) (Emphasis in original.)

The court held an initial case management conference on August 4, 2004. At that proceeding, Plaintiffs complained about the significant increase in value and stated that the board lowered the land value but increased the improvement value. Plaintiffs then sent a letter to the

court dated August 11, 2004, that was filed on August 16, 2004. In that letter, Plaintiffs discussed the value of their property and Defendant's comparable sales. They also stated that the board acted illegally when it increased the value of their improvements because information on the county website states that "the board lacks jurisdiction to increase the value of [their] property." (Ptf's' Aug 11, 2004 Ltr, Para 7, *see also* Ptf's' Ex A at 11.) (Emphasis omitted.)

Plaintiffs included a letter with the submission of their Exhibit A. That letter is dated September 15, 2004, and provides in relevant part:

"We only appealed the Land value, see attachment A. The Board only had jurisdiction to change the Land value. However, the Board increased the Improvement value. The Board action that increased the improvement value should be overturned."

The court held a hearing on September 30, 2004, at which time Plaintiffs stressed that they were challenging the legality of the board's action in increasing their improvement value when they only appealed their land value. The court approved Plaintiffs' request to file a Motion for Summary Judgment.

By their motion, Plaintiffs have requested relief on five separate grounds, some of which are not appropriate for summary judgment because they involve material facts that are in dispute. However, Plaintiffs' initial argument is that the board violated an administrative rule when it increased the RMV of their improvements because Plaintiffs had only challenged the RMV of the land. Plaintiffs cite Oregon Administrative Rule (OAR) 150-309.026(2) (1996) and information in the Department of Revenue's (department) 2003 Appraisal Methods Manual in support of their argument. Plaintiffs request that the court overturn the board's improvement value increase and set the RMV of their improvements at \$176,000, sustain the board's order reducing the land value to \$71,500, for a total of \$247,500, and order Defendant to adjust the tax roll accordingly. In its response, Defendant contends that the issue is "whether there is a

genuine issue of fact that requires a trial.” (Def’s Resp To Ptf’s Mot For Summ J, at 1.) Defendant then argues that “[p]laintiffs have placed the value [of] the improvements at issue” and the parties should be allowed to present evidence on that issue. (*Id.*)

II. ANALYSIS

The board is governed by the provisions of ORS 309.020¹ to ORS 309.150. ORS 309.026(2) specifies the types of cases the board can hear. Among the petitions the board can hear are requests for reduction in RMV. ORS 309.026(2)(b). The department has promulgated an administrative rule to clarify the board’s authority under ORS 309.026. The rule provides in relevant part:

“(2) If a petition is filed requesting a reduced total value without specifying reductions for land and improvements, the board may increase the land or improvements as long as the net result is to sustain or reduce the total value on the roll.

“(3) If a petition is filed or amended under ORS 309.100 requesting a reduction in one portion of the value and no change in the other portion of the value, the board may only act on the portion for which the reduction has been requested.”

OAR 150-309.026(2)(3).²

It is clear from a conjunctive reading of paragraphs (2) and (3) of the rule that the word “portion” in the phrase “portion of the value” in paragraph (3) refers to land or improvements, which are discussed in paragraph (2). The court’s interpretation of the administrative rule is consistent with the department’s publication on appraisal methods which, among other things, covers property tax appeals. *See* Appraisal Methods Manual 2003, Chapter 15. The relevant information, cited by Plaintiffs in their September 15, 2004 letter, states “At any step in the

¹ All references to the Oregon Revised Statutes (ORS) and to the OAR are to 2003 because those laws were in effect when the board acted on Plaintiffs’ petition.

² This is the current version of the rule cited by Plaintiffs.

appeal process, if only one element of the total value is in dispute (land only or improvement only), the taxpayer has the right to appeal only that portion. * * * If the taxpayer appeals only one component of the property, the board may change [the value of] only that component.” *Id.* at 5 and 6. The department’s administrative rule is consistent with the Supreme Court’s decision in *Nepom v. Dept. of Revenue*, 272 Or 249, 256, 536 P2d 496 (1975), which held that the taxpayer “was entitled to challenge only the value of the improvements, and that the Tax Court was entitled to reduce the value of such improvements; however, as the value of the land was not an issue in the case, the Tax Court acted improperly in adding the reduction in the improvement values to the land.”

Plaintiffs’ petition only requested a reduction in the RMV of their land. Plaintiffs indicated that they wanted their land value reduced from \$129,100 to \$71,500. Plaintiffs indicated that the value of their improvements (designated as “buildings, machinery, etc.” on the petition) was \$176,000 on their tax statement and they requested that value be set at \$176,000.

It is clear to the court that Plaintiffs were not requesting a reduction in the value of their improvements. The board nonetheless increased the value of their improvements (designated as “structures, etc.” on the board’s order). By so doing, the board the violated the department’s administrative rule, set forth above, which prohibits the board from adjusting a component of value not appealed by the taxpayer.

III. CONCLUSION

The court concludes that the board acted improperly when it increased the value of Plaintiffs’ improvements because Plaintiffs only appealed their land value. The board’s action increasing Plaintiffs’ improvement value violated the department’s administrative rule, OAR 150-309.026(2), and established case law. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiffs’ Motion for Summary Judgment

is granted;

IT IS FURTHER DECIDED that the portion of the board's order increasing the value of Plaintiffs' improvements is set aside and the RMV of Plaintiffs' improvements is \$176,000, which was the value placed on the rolls by Defendant before the board's increase; and

IT IS FURTHER DECIDED that the portion of the board's order reducing the value of Plaintiffs' land to \$71,500 is sustained.

Dated this _____ day of December 2004.

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 DECEMBER 22, 2004. THE COURT FILED AND ENTERED THIS DOCUMENT DECEMBER 22, 2004.