

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

MARTINE J. EDEN)	
and TONY EDEN,)	
)	
Plaintiffs,)	TC-MD 050324C
)	
v.)	
)	
MULTNOMAH COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

Plaintiffs appeal the real market value (RMV) of their home for the 2004-05 tax year, identified in Defendant's assessment and tax records as Account R489454. Trial was held by telephone September 6, 2005. Tony Eden appeared for Plaintiffs. Steven Blixt, an appraiser working for the assessor's office, appeared for Defendant.

I. STATEMENT OF FACTS

The appeal involves a newly constructed three bedroom, two and one-half bath home purchased by Plaintiffs on October 29, 2003, for \$300,000. Plaintiffs purchased the property from the builder, through a real estate agent. After purchasing the property, Plaintiffs discovered that final city inspections for structural, plumbing, and zoning had not been obtained, and that there was no final certificate of occupancy. Plaintiffs initially pursued the builder for the certificate of occupancy and, in July 2004, were sent a certificate, but it concerned a nearby property constructed by the same builder. Plaintiffs at some point began communicating with city building officials and, on March 28, 2005, obtained a certificate of occupancy and contingent approvals for structural, plumbing, and zoning. Plaintiffs determined that the property was not secure without the final inspections and occupancy certificate and, therefore, did not reside in the

///

home until they obtained the certificate of occupancy on March 28, 2005. In a letter to the court dated May 9, 2005, Plaintiffs state that they “could not take any risk in residing in this uncertified property.”

Plaintiffs have asked the court to prorate their property taxes, canceling all taxes for the portion of the tax year during which they did not reside in the home because of the absence of a certificate of occupancy. Accordingly, Plaintiffs request cancellation of taxes from July 1, 2004 (the beginning of the tax year) through March 27, 2005. Plaintiffs have also asserted that the home had no value before occupancy was granted.

Defendant set the RMV of the property at \$307,120, as of January 1, 2004, which was the assessment date for the 2004-05 tax year. *See* ORS 308.210(1) (requiring the assessor to assess the value of all taxable property as of January 1 of the assessment year); ORS 308.007 (providing that the assessment year is a calendar year; the assessment date is “the day of the assessment year on which property is to be assessed under ORS 308.210 * * *;” and “[t]he assessment year beginning January 1 corresponds to the tax year beginning July 1 of the same calendar year.”)¹ The \$307,120 total RMV is allocated between land and improvements at \$58,500 and \$248,620, respectively. Plaintiffs appealed to the Multnomah County Board of Property Tax Appeals (the Board), and the Board reduced the RMV to \$217,620. The reduction of \$89,500 was applied to the improvement, reducing the RMV of the home to \$159,120.

II. ANALYSIS

The court does not have the statutory authority to prorate property taxes in the manner suggested by Plaintiffs. The only instance the court is aware of in which the Legislature has

///

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

provided for proration of taxes is where property is “destroyed or damaged by fire or act of God.” ORS 308.425. That statute is obviously inapplicable in this case.

The court does have the authority to consider a request for a reduction in the value of the property, but Plaintiffs have not provided any evidence relevant to value. Plaintiffs assert in a letter to the Board dated January 2, 2005, which they submitted as evidence in their appeal to this court, that there is “no value to [the] property without a certificate of occupancy.” During the trial, Eden argued that the home had no value before the final inspections and certificate of occupancy were issued, because the value of a home lies in its marketability and Plaintiffs could not sell the home before those items were obtained. Eden analogized the situation to owning an automobile without the title: the car may run well but cannot be registered or driven without the title, and as a result, the car has no value. That theoretical argument has not been proven and is likely incorrect, absent a suspicion that the seller did not own the property or lacked clear title. Blixt pointed out that Plaintiffs did eventually obtain all of the approvals and certifications they were lacking for the home, and there is no evidence demonstrating that the approvals could not have been obtained earlier. Plaintiffs paid \$300,000 for the home two months before the January 1, 2004, assessment date, and the Board reduced the value to \$217,620. Plaintiffs may well have been able to find a buyer willing to assume the risks associated with purchasing a home lacking final inspections and a certificate of occupancy for an \$80,000 reduction in the purchase price.²

III. CONCLUSION

Although the court sympathizes with Plaintiffs’ situation, their appeal must nonetheless be denied. The court does not have the statutory authority to prorate taxes where the owners

² Assuming Plaintiffs’ \$300,000 purchase price reflects the market value of the home in October 2003, a sale at the Board-reduced RMV of \$217,620 amounts to a price reduction of \$83,380.

purchase a home lacking final inspections and a certificate of occupancy, and Plaintiffs have not substantiated their claim that the property had no value before those items were obtained. Now, therefore,

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

Dated this _____ day of October 2005.

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 October 7, 2005. The Court filed and entered this document October 7, 2005.