

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Property Tax

KENNETH G. MARSHALL	)	
and KAREN L. MARSHALL,	)	
	)	
Plaintiffs,	)	TC-MD 051006B
	)	
v.	)	
	)	
BENTON COUNTY ASSESSOR,	)	
	)	
Defendant.	)	<b>DECISION</b>

Plaintiffs appeal Defendant’s Notice of Clerical Error Correction dated October 14, 2005, for tax year 2005-06. Defendant filed a Motion for Summary Judgment on May 1, 2006. Plaintiff filed a response to Defendant’s motion on May 24, 2006. The record is now closed, and the matter is ready for decision.

I. STATEMENT OF FACTS

The basic, relevant facts of this case are undisputed.

On September 21, 2005, Plaintiffs purchased the subject property.<sup>1</sup> (Ptf’s Compl at 15.) At the time, the square footage of the dwelling was listed in Defendant’s records as 2,733 square feet. (Ptf’s Compl at 4.) Prior to that time, Defendant’s records indicated that the maximum assessed value (MAV) of the property was \$290,593 for the 2005-06 tax year. (Ptf’s Compl at 6.)<sup>2</sup>

On October 5, 2005, Plaintiffs filed an Application for Correction of Maximum Assessed Value Due to Error in Square Footage. (Ptf’s Compl at 4.) Based on Plaintiffs’ application,

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<sup>1</sup> The subject property is identified in Defendant’s records as Account 408909.

<sup>2</sup> Defendant labeled this value as “taxable value.”

Defendant remeasured the square footage of the dwelling and adjusted its records from 2,733 square feet to 2,432 square feet. (Ptf's' Compl at 5.) Plaintiffs concur with that finding. In a Notice of Clerical Error Correction dated October 14, 2005, Defendant adjusted the MAV of the subject property to reflect the correct square footage, which reduced it from \$290,593 to \$280,132 for the 2005-06 tax year. (Ptf's' Compl at 6.)

Plaintiffs disagreed with the adjusted MAV amount of \$280,132 and sent Defendant a letter, dated October 20, 2005, alleging that the adjusted MAV amount was "inaccurate." (Ptf's' Compl at 7.) In that letter, Plaintiffs also requested a written explanation of what the property taxes would be for the subject property if its square footage was correctly assessed in the 2003-04 tax year and then carried forward to the 2005-06 tax year. (*Id.*) Defendant replied to Plaintiffs' letter on October 25, 2005. (Ptf's' Compl at 8-9.) This appeal ensued. On December 30, 2005, Defendant adjusted the 2005-06 real market value (RMV) of the subject property to reflect the correct square footage, which reduced it from \$348,300 (unadjusted RMV) to \$333,120 (adjusted RMV). (Ptf's' Ex A at 1.)

## II. ISSUES

Plaintiffs do not dispute the corrected square footage of the dwelling, nor do they assert that Defendant's arithmetic computations are incorrect. Rather, Plaintiffs seek "a reduction in the 2005/06 MAV to reflect proportionality to comparable properties" and request the use of alternative methods of adjusting the subject property's MAV.<sup>3</sup> (Ptf's' Compl at 1.) In the alternative, Plaintiffs argue that Defendant should use the adjusted RMV or some other, lower RMV to calculate the adjusted MAV. (Ptf's' Resp to Def's Mot for Summ J at 1.) Plaintiffs'

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<sup>3</sup> The court notes that Plaintiffs occasionally reference arguments relating to RMV. Plaintiffs request only a reduction in the 2005-06 MAV of the subject property in their complaint. Accordingly, the issue of RMV is not before the court in this specific appeal. A later appeal, TC-MD No 060466B, was filed on April 19, 2006. It was taken from an Order of the Benton County Board of Property Tax Appeals. In a Decision filed the same date as this document, the court denied Plaintiffs' appeal after finding they were not aggrieved.

adjusted MAV is currently \$280,132, and they seek a further reduction to an amount within the range of \$219,918 to \$245,708. (Ptf's' Compl at 16.)

### III. ANALYSIS

Plaintiffs raise many arguments; the most important are the challenge of Defendant's use of the unadjusted RMV to calculate the adjusted MAV and the arguments for the use of alternative methods of adjusting the MAV.

#### A. *Adjustment of MAV*

Measure 50, passed in 1997, changed the definition of assessed value. *See Chen v. Multnomah County Assessor*, TC-MD No 000445C, WL 1060544, at \*1 (June 26, 2000). Property in Oregon is now taxed at an assessed value equal to the lesser of its MAV or its RMV. *See* ORS 308.146(2).<sup>4</sup> The MAV may not increase more than 3 percent per year. *See* Or Const, Art XI, § 11(1)(b); *see also* ORS 308.146(1). "Typically maximum assessed value becomes the assessed value because it is less than the actual market value." *Chen*, TC-MD No 000445C at \*1. The assessed value of a property, therefore, is typically limited to a 3 percent increase per year and bears little relation to its RMV.

A county assessor may change a property's MAV "if there is a demonstrated difference between the actual square footage of the property as of the assessment date for the current tax year and the square footage of the property as shown in the records of the assessor for the tax year." ORS 311.234(2). The formula for recalculating MAV for square footage errors requires

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<sup>4</sup> All references to the Oregon Revised Statutes (ORS) and Oregon Administrative Rules (OAR) are to 2003.

that the corrected MAV be “in proportion to the error in square footage.” OAR 150-311.234(3). OAR 150-311.234(4)(b) (the formula) sets forth the procedure.<sup>5</sup> The court can find neither statute nor rule providing for any other method of recalculating MAV to account for square footage errors.

Plaintiffs petitioned Defendant under ORS 311.234<sup>6</sup> for a correction in the MAV of the subject property for the tax year of 2005-06. (Ptf’s Compl at 4.) In response to Plaintiffs’ petition, Defendant remeasured the square footage of the dwelling and recalculated the MAV for the property using the formula. (Ptf’s Compl at 5; Def’s Ex A at 2.)

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<sup>5</sup> OAR 150-311.234(4)(b), provides, in pertinent part:

“For properties described by multiple components \* \* \*, use the following procedure to adjust MAV.

“Step 1: Determine which component has the square footage error.

“Step 2: Determine the portion of the property’s total RMV that is contributed by the component with the square footage error.

“Step 3: Calculate the ratio of the RMV of the component with the error to the RMV of the entire property.

“Step 4: Multiply the property’s total MAV by the ratio obtained from Step 3 to determine the MAV attributable to the component with the error in square footage.

“Step 5: Subtract the MAV attributable to the component with the error in square footage (Step 4) from the property’s total MAV to determine the base MAV.

“Step 6: Divide the correct square footage of the component by the square footage of the component as currently shown in the assessment records to determine the proportional square footage error ratio.

“Step 7: Multiply the proportional square footage error ratio (Step 6) by the MAV attributable to the component with the square footage error (Step 4) to determine the corrected MAV attributable to the component.

“Step 8: Add the corrected MAV attributable to the component (Step 7) to the base MAV (Step 5) to determine the corrected MAV for the entire property.”

<sup>6</sup> ORS 311.234(1), provides, in pertinent part:

“(1) Notwithstanding ORS 311.205(1)(b), the current owner of property or other person obligated to pay taxes imposed on property may petition the county assessor for a correction in the maximum assessed value of the property for the current tax year.”

Plaintiffs argue that Defendant’s use of the unadjusted RMV in the formula is incorrect. Plaintiffs assert that the adjusted RMV or some other, lower RMV figure that has been adjusted to reflect the square footage error should be used instead. (See Ptf’s Resp to Def’s Mot for Summ J at 1.) “In construing an administrative rule, we apply the same analytical framework applicable to the construction of statutes, beginning with the rule’s text and context.” *Thomas Creek Lumber v. Board of Forestry*, 188 Or App 10, 22, 69 P3d 1238 (2003) (citing *PGE v. Bureau of Labor and Industries*, 317 Or 606, 612 n.4, 859 P2d 1143 (1993)). The formula calls for the use of the “[c]urrent RMV.” See OAR 150-311.234. “Current RMV” is defined in OAR 150-311.234(1), which states that “ ‘[c]urrent RMV’, as used in [the formula], is \* \* \* the RMV for the tax year of petition.” The plain language of the administrative rule indicates that the RMV to be used in the statute is the one that appeared on the tax roll for the tax year of petition. At the time of Plaintiffs’ petition, the RMV on the tax roll was the unadjusted RMV. (Ptf’s Compl at 6.) OAR 150-311.234, therefore, requires the use of the unadjusted RMV figure of \$348,300 in the formula. Accordingly, Defendant properly used the unadjusted RMV to calculate the adjusted MAV under the formula.<sup>7</sup>

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<sup>7</sup> Furthermore, the context of OAR 150-311.234(4)(b) supports the use of the unadjusted RMV in the formula. The point of the formula is to adjust the property’s MAV to account for an error in square footage. See OAR 150-311.234(1). In doing so, the assessor first finds the unadjusted MAV for the component part of the property affected by the error through calculations that involve the property’s RMV as listed on the tax roll. *Id.*; see OAR 150-311.234(4)(b). The formula then requires the assessor to find the product of the unadjusted MAV attributable to the component part of the property affected by the error and the proportional square footage error ratio. See OAR 150-311.234(4)(b). It is this multiplication by the proportional square footage error ratio that corrects the square footage error. *Id.* To use an RMV in the formula that has already been adjusted to correct the square footage error would, therefore, result in the square footage error being considered in the formula more than once. That would compound the error.

## B. *Plaintiffs' Arguments for Alternative Calculations*

Plaintiffs argue that instead of using the formula, the MAV should be either:

- 1) retroactively adjusted from the time of the error and carried forward to the current tax year, or
- 2) reduced based on the MAV of comparable properties.

### 1. *Retroactive Adjustment of MAV*

A property owner may “petition the county assessor for a correction in the maximum assessed value of the property for the *current tax year*.” ORS 311.234(1) (emphasis added).

In addition, a county assessor may “correct the maximum assessed value of the property for the *current tax year* \* \* \*.” ORS 311.234(2) (emphasis added). When analyzing a statute, the court’s first step is to analyze its text and context. *See PGE*, 317 Or at 610-11. It is the role of the court to ascertain and declare what is, in terms of substance, contained in the statute. *See id.* at 611. The court cannot add “what has been omitted” or “omit what has been inserted.” *Id.* (Citations omitted.) The language in the statute is clear. Following the mandate of *PGE*, the court declines to “insert what has been omitted” and concludes that the subject property’s MAV may not be retroactively adjusted. *Id.*

In addition, Plaintiffs failed to timely appeal for tax years prior to 2005-06. “[T]he property tax system requires the *government* to keep the records and assess the tax, and the taxpayer audits for accuracy and correctness. \* \* \* A failure to audit and challenge the assessment within the time limit will result in a loss by the party responsible for the audit.” *Seifert v. Dept. of Rev.*, 14 OTR 401, 404-05 (1998) (citing *Taft Church v. Dept. of Rev.*, 14 OTR 119,122 (1997). (Emphasis in original.)). “For property added to the tax roll, any challenge to maximum assessed value must occur in the year the value is placed on the tax roll. For subsequent tax years, the maximum assessed value is derived from a constitutional formula.” *Sutton v. Jackson County Assessor*, TC-MD No 050208D, WL 1090137, at \*1 (May 2, 2005).  
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Plaintiffs contend that the MAV should be reduced to reflect what it would be if the proper square footage had been corrected in the 2003-04 tax year and then carried forward to the 2005-06 tax year. (Ptf's Compl at 14.) As stated above, ORS 311.234 provides only for adjustment of a property's MAV for the current tax year. There is no provision addressing retroactive adjustments. Plaintiffs also failed to appeal within the appeal period for the 2003-04 tax year. Accordingly, the court cannot adjust the MAV retroactively.

*2. Use of Comparable Properties to Adjust MAV*

Plaintiffs assert the MAV should be reevaluated in light of the assessed values for various comparable properties. That argument is based on the perception that property taxes among similar properties should be consistent when those properties have similar values on the open market. *See Ellis v. Lorati*, 14 OTR 525 (1999) (noting same). Changes in the Oregon property tax system resulting from Measure 50 caused "various degrees of nonuniformity" that are constitutionally acceptable. *Id.* at 535. As a result, the court places no weight on evidence of the assessed values of neighbors' properties. This argument also fails.

IV. CONCLUSION

The court finds that after correcting the square footage of the dwelling, Defendant properly recalculated the subject property's MAV for 2005-06 using the formula set out in OAR 150-311.234 and authorized by ORS 311.234(2). Plaintiffs are entitled to no relief. Now, therefore,

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IT IS THE DECISION OF THIS COURT that the Defendant's Motion for Summary Judgment is granted. The appeal is dismissed.

Dated this \_\_\_\_\_ day of July 2006.

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JEFFREY S. MATTSON  
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 Jeffrey S. Mattson on July 28, 2006. The Court filed and entered this document on July 28, 2006.***