

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

DIANE UNCK, GERALD WRIGHT, and BARBARA WRIGHT)	
)	
Plaintiffs,)	TC-MD 070110B
)	
v.)	
)	
MULTNOMAH COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

Plaintiffs appeal certain real property taxes on property identified as Account R313659 for tax year 2006-07. Plaintiffs Gerald Wright and Barbara Wright authorized Diane Unck (Unck) as their representative.

A telephonic case management conference was held on April 23, 2007. Unck appeared for Plaintiffs. Barron Hartwell appeared for Defendant. At the proceeding, Defendant verbally withdrew its Motion to Make More Definite and Certain, filed April 3, 2007, and moved to dismiss the case. This matter is now before the court on that motion to dismiss.

I. STATEMENT OF FACTS

The subject property is a duplex located at 1786 NE Hood Place in Gresham. (Ptf’s Compl at 2.) Plaintiffs are “petitioning for property tax relief.” (*Id.* at 4.) At the conference, Unck stated that she was not appealing the real market value (RMV) of the property.¹ Instead, she focused on the amount of taxes computed for the property.

For the 2006-07 tax year, Defendant set the RMV of the property at \$210,620. (Ptf’s Compl at 2.) The maximum assessed value (MAV) was \$153,190 and the assessed value (AV)

¹ Unck submitted both documents and arguments on behalf of all three Plaintiffs in which she refers to herself individually. The court will treat such documents and arguments as pertaining to all Plaintiffs.

on the tax roll was \$153,190. (*Id.*) Plaintiffs timely appealed a decision by the Multnomah County Board of Property Tax Appeals (BOPTA) for the 2006-07 tax year. Upon review, BOPTA sustained the assessments. (*Id.*)

With drug use, vandalism, and unleashed dogs prevalent in the neighborhood where the property is located, Unck stated that she feels unsafe living in the duplex. (Ptf's Response to Conference Call on 4/23/07 with Magistrate Mattson (Ptf's Response) at 2, 3.) Furthermore, Plaintiffs allege that eyesores, in the form of decrepit cars abandoned throughout the neighborhood and garbage heaps languishing on front yards, are the cause of significant embarrassment. (Ptf's Compl at 6, 7.) Plaintiffs argue that they are paying high taxes yet receive few of the basic community services the taxes fund. (*Id.*) Unck stated that she is working with local officials to improve conditions in the neighborhood. (*Id.*)

Due to the unsavory conditions in the neighborhood, Plaintiffs claim that the court should reduce their property taxes for the year. (*Id.*) Plaintiffs also contend that the court should take that action because unfair comparisons affected the property's MAV. (Ptf's Response at 3.) During the conference, Unck stated that a realtor recently thought the property to have an RMV somewhere in the low \$200,000s. Finally, Plaintiffs argue for a reduction in property tax because a tax abatement might help clean up the neighborhood and Unck's efforts deserve some form of compensation. (*Id.*)

In recognition of conditions in the neighborhood, Defendant agreed to reduce the RMV of Plaintiffs' property by 10 percent. (Def's Ltr, Jun 13, 2007.)

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II. ANALYSIS

A. *Property Valuation and Taxation*

Generally, all real and personal property within the State of Oregon is subject to taxation.

ORS 307.030.² Real property tax is the product of a calculation of the tax rate and AV.

ORS 310.100 provides in part:

“Each ad valorem property tax of a taxing district shall apply to all the taxable property of the district * * * as shown by the assessment roll last compiled by the assessor.”

The tax rate is determined by local governments and can include, but is not limited to, levies for county expenses. ORS 310.020. The county assessor computes the tax rate. ORS 310.090.

Property values on the roll are the product of several complicated calculations. Prior to the passage of Measure 50 in 1997, property was generally assessed at its full RMV.

ORS 308.232 (1995). The current law, which reflects an incorporation of Measure 50, sets AV as the lesser of the MAV or RMV. ORS 308.146(2). MAV is an artificial value, the calculation of which is dictated by the Oregon Constitution. Or Const, Art XI, § 11(1); *see also* ORS 308.146(1). For the 1997-98 tax year, the benchmark for MAV was the property’s RMV in the 1995-96 tax year minus 10 percent. Or Const, Art XI, § 11(1). MAV is defined as 103 percent of the property’s AV from the prior year or 100 percent of the property’s MAV from the prior year, whichever is greater. ORS 308.146(1). Absent an exception from ORS 308.146(3)(a), the statutory limit on increases of MAV is three percent per year starting from the 1997-98 tax year. Or Const, Art XI, § 11(1).

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² Unless otherwise noted, all references to the Oregon Revised Statutes (ORS) are to 2005.

B. *Jurisdiction*

The Tax Court has jurisdiction over all questions arising *under the tax laws* of the state of Oregon. ORS 305.410. Though ORS 305.410 gives the court broad authority to hear tax-related cases, the statute also limits the court to questions that arise out of the laws of the state. Regarding real property, Oregon statutes provide that the court can decide questions of property value through appeals of BOPTA decisions or in certain other limited circumstances. However, no Oregon statute gives the court authority to directly reduce the amount of tax in property tax appeals. This court has previously observed that it “does not have the authority to independently adjust property taxes.” *Rothschild v. Multnomah County Assessor*, TC-MD No 040646C, WL 1421138 at *2 (June 10, 2005) (*Rothschild*). The taxpayer in *Rothschild*, concerned with the amount of his taxes and their impact on the declining profitability of his rental property, appealed the RMV and offered evidence of allegedly comparable properties with lower taxes. *Id.* at *1-2. The court recognized the taxpayer’s frustration, but denied his appeal because he had “not demonstrated an error in the record assessments for the tax years at issue.” *Id.* at *3. Regarding the irrelevance of the taxpayer’s argument about the amount of taxes, the court stated, “[a]lthough Plaintiff is concerned with the amount of taxes, the issue is whether the value is correct.” *Id.* at *2. As the *Rothschild* decision illustrates, laws exist that give the court authority to review the value of property, but no law exists that gives the court authority to review or change the actual property taxes.

C. *Plaintiffs’ Arguments*

1. *Property Value*

One of Plaintiffs’ arguments for the reduction of property tax suggests an error in value due to the subject's comparison to more valuable properties. (Ptf’s Response at 3.)

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A taxpayer must have standing to bring a property value tax appeal to the court. ORS 305.275. To have standing, the taxpayer must be “aggrieved.” ORS 305.275(1)(a). Aggrievement in this context requires an “immediate claim of wrong” which, if corrected by the court, will result in a reduction in taxes. *Kuznetsov v. Marion County Assessor*, TC-MD No 030385C (June 25, 2003). For the taxpayer to be “aggrieved,” the alleged RMV must be lower than the MAV. *Parks Westsac L.L.C. v. Dept. of Rev.*, 15 OTR 50, 52 (1999). If the RMV is not lower than the MAV, no reduction in taxes will occur because the AV upon which the taxes are based will not change. AV will not change because, under the Measure 50 rule, AV is always the lesser of RMV or MAV. ORS 308.146.

Even when viewed in the light most favorable to Plaintiffs, the alleged facts do not support Plaintiffs’ claim. Unck alleged during the conference that, based on the independent opinion of a realtor, the RMV of the property is in “the low \$200,000’s.” That is consistent with the RMV on the tax roll of \$210,620. Even if the court took Unck’s statement as alleging an RMV of \$200,000, it does not show that Plaintiffs are “aggrieved” because that sum is higher than the MAV of \$153,190. Under ORS 308.146, the AV would remain unchanged.

Similarly, after Defendant’s suggested RMV reduction of 10 percent is applied, the recalculated RMV of \$189,558 would still be higher than the MAV, and therefore, the AV would not change.

2. *Property Tax Abatement*

The court cannot grant a tax abatement in the manner Plaintiffs request. Plaintiffs state that “[i]t is not unreasonable to entertain the idea of a tax abatement in this area.” (Ptf’s Response at 3.) The court cannot abate or reduce Plaintiffs’ property taxes on that ground. There is no authority for that action.

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3. *RMV Reduction*

As stated above, Defendant agreed to reduce the RMV by 10 percent. The court expects that Defendant will reflect the change in its official records, consistent with its recommendation.

III. CONCLUSION

Based on the foregoing reasons, the court concludes that Plaintiffs have not shown any entitlement to relief. Now, therefore,

IT IS THE DECISION OF THIS COURT that Defendant's motion to dismiss is granted.

Dated this ____ day of July 2007.

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 30, 2007. The Court filed and entered this document on July 30, 2007.