

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

EDWIN B. GARDNER)	
and DIANE M. GARDNER,)	
)	
Plaintiffs,)	TC-MD 070201C
)	
v.)	
)	
LANE COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

Plaintiffs have timely appealed an order of the county board of property tax appeals (board) for the 2006-07 tax year, requesting a \$360 reduction in property taxes. A hearing on the matter was held June 12, 2007. Plaintiffs appeared on their own behalf. Defendant was represented by Thomas Frederiksen (Frederiksen) and Bryce Krehbiel, appraisers with the Lane County assessor's office.

After some discussion about the relative merits of their case, and an unsuccessful attempt by the court to get Plaintiffs to assert an error in the *value* of their property, Plaintiffs requested that the court decide their appeal based on the information before the court, which includes the pleadings and statements made at the hearing. Frederiksen agreed to let the court make a decision on the evidence before it.

I. STATEMENT OF FACTS

Plaintiffs have asked for a \$360 reduction in their taxes so that their taxes would be on par with that of their neighbors. The reduction would reduce their bill to approximately \$2,400. The taxes pertain to Plaintiffs' new home, which they began to build in 2004 and completed in March 2005. Plaintiffs bought the lot in October 2003 for \$99,000, and paid approximately \$300,000 to have the home constructed, for a total of roughly \$400,000.

Defendant determined that the home was 80 percent complete as of January 1, 2005, which was the assessment date for the 2005-06 tax year. Defendant determined that the real market value (RMV) of the home¹ was \$219,070, and that the land RMV was \$80,835, for a total RMV of \$299,905. The following year, which is the year under appeal, Defendant added the balance of the value of the home, increasing the improvement RMV to \$301,840. The RMV of the land was increased to \$123,074. The assessed value (AV) for the 2006-07 tax year is \$267,605. According to Plaintiffs, their property taxes were \$2,759.03.

Diane Gardner (Gardner) testified that the improvement value was “about right.” She suggested that the land might be a little high, but was unable to come up with her own estimate of the value for the lot, including the site developments. Plaintiffs were also unable to estimate the total value of the home, which is approximately \$25,000 above the amount Plaintiffs paid to buy the land in 2003 and build the home in 2004 and 2005. Frederiksen observed that the tax roll value is within six percent of the reported costs and that the difference was well within the acceptable range of value in the appraisal industry. When pressed by the court, Plaintiffs stated that the real issue was their taxes, which went up more than three percent over the prior year, and that their taxes should be equivalent to the taxes of their neighbors. Plaintiff stated that it was up to the court to decide the matter.

II. ANALYSIS

Strictly speaking, a property owner seeking a reduction in taxes does not directly appeal the taxes, but instead appeals the value of the property. Taxes are the product of a tax rate applied to value and, generally speaking, the tax rate cannot be appealed. Only value remains as

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¹ Identified on the order of the county board of property tax appeals as “Improvements.”

a disputable component of the equation. The fact that a property owner can appeal value, but not taxes, is evident from the statutes. ORS 309.026² authorizes value reduction appeals and penalty waiver requests, but not appeals of taxes. The board's order can then be appealed to the Magistrate Division of the Tax Court pursuant to ORS 309.110(7) and ORS 305.275(3). The court can also hear value reduction requests under ORS 305.288. However, there are no statutes authorizing an appeal of taxes on a separate assessment of property.

Plaintiffs have not appealed their value. The court cannot grant Plaintiffs' request for a reduction in taxes without ordering a reduction in value. That conclusion essentially resolves this appeal. The balance of the court's analysis is primarily educational.

Plaintiffs mention a three percent limit which they felt should have been, but was not, applied to their taxes. Plaintiffs misunderstand Oregon's property tax system. The three percent limit applies to maximum assessed value (MAV). Measure 50, an amendment to the state's constitution passed by the voters in May 1997, limits the annual increase in MAV to three percent. Or Const, Art XI, § 11(1)(b).³ That limitation is codified under ORS 308.146(1). MAV is a value limitation construct adopted as part of Measure 50.

Historically, RMV and AV were the same unless the property was specially assessed or partially exempt. With the passage of Measure 50, AV became the lesser of MAV or RMV. ORS 308.146(2). MAV, in turn, is an indexed value originally established in 1997 as 90 percent

² All references to the Oregon Revised Statutes (ORS) are to 2005.

ORS 308.146(1) defines MAV as the greater of "103 percent of the property's assessed value from the prior year or 100 percent of the property's maximum assessed value from the prior year[.]"

³ Article XI, section 11(1)(b) of the Oregon Constitution, provides:

"For tax years beginning after July 1, 1997, the property's maximum assessed value shall not increase by more than three percent from the previous tax year."

of the property's 1995 tax roll RMV. *See* Or Const, Art XI, § 11(1)(a).⁴ From 1998 forward, MAV generally rises three percent per year (the indexed value), as indicated above. Because the RMV of most owner-occupied homes exceeds the home's MAV, AV is typically based on MAV rather than RMV. As a result, MAV and AV generally increase three percent each year. Thus, the property's taxable value increases three percent each year. That limitation, in turn, often limits the annual increase in taxes to approximately three percent, unless the voters approve a local option tax or bonded indebtedness not subject to the various constitutional limitations imposed by Measures 5 and 50.⁵

In the present case, Plaintiffs' MAV increased by more than the three percent constitutional (and statutory) limitation because the home was only 80 percent complete in 2005 and the remaining 20 percent of the value was added in 2006. ORS 308.146(3) provides an exception to the three percent annual increase in MAV in instances where there is "new property or new improvements to property," defined in ORS 308.149(5)(a) as a change in value resulting from, among other things, new construction. The balance of the value of Plaintiffs' new home constitutes new construction. Because the balance of the home was added to the tax rolls for the 2006-07 tax year, Plaintiffs' MAV increased by more than three percent, causing a greater increase in taxes than experienced by Plaintiffs' neighbors. Henceforth, if Plaintiffs make no changes to their property, their MAV and AV will rise three percent each year.

⁴ Article XI, section 11(1)(a) of the Oregon Constitution, commonly referred to as Measure 50, provides:

"For the tax year beginning July 1, 1997, each unit of property in this state shall have a maximum assessed value for ad valorem property tax purposes that does not exceed the property's real market value for the tax year beginning July 1, 1995, reduced by 10 percent."

⁵ The tax rate will likely vary year to year without the addition of local option taxes and bonded indebtedness, but that variation is generally not too extreme. Accordingly, the limited three percent rise in AV will generally hold down the increase in taxes to somewhere in the range of three percent per year.

Although Plaintiffs have not specifically alleged in error in value, they have suggested that there may be a problem with the value, perhaps with respect to the land RMV. The court offers the following observations. Nothing in the record suggests that Defendant erred in valuing Plaintiffs' property. Plaintiffs bought their land in 2003 for \$99,000 and then paid approximately \$300,000 to have their home built over the next two years. The total cost was approximately \$400,000, and Defendant has valued the completed property (land and improvements) at \$424,914. As Frederiksen stated, the difference is roughly six percent, a variance well within the acceptable range of appraisal judgment.

Rising market conditions likely drove up the value of Plaintiffs' land over the two year period from when they bought the property in October 2003 to the January 1, 2006, assessment date for the 2006-07 tax year. Defendant valued the land at \$123,074 for the 2006-07 tax year, which is approximately \$24,000 more than Plaintiffs paid for the land. That value includes site developments such as water, sewer (or septic), electricity, grading, and other items necessary to support the structure in terms of services. A rising market and site developments could easily increase the value \$24,000. Defendant's value strikes the court as quite reasonable and, more importantly, there is no evidence demonstrating a lower value.

Defendant has valued Plaintiffs' home at essentially the same amount Plaintiffs paid to have the home built and Gardner stated that she felt the improvement value was correct. In short, the limited evidence before the court strongly supports Defendant's values for the 2006-07 tax year.

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III. CONCLUSION

Plaintiffs are not entitled to a reduction in property taxes. The proper method for obtaining a reduction in taxes is to allege and prove an error in the value of the property. Plaintiffs have not alleged an error in their value and the evidence suggests none. Finally, the three percent limitation on annual increases applies to MAV, not taxes, and the limitation is inapplicable where there is new construction adding value. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiffs' request for a reduction in their property taxes for the 2006-07 tax year is denied.

Dated this _____ day of July 2007.

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 on July 9, 2007. The Court filed and entered this document on July 9, 2007.