

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

ROBERT A. KELLEY)	
and GAIL B. KELLEY,)	
)	
Plaintiffs,)	TC-MD 100293B
)	
v.)	
)	
WASHINGTON COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

Plaintiffs appeal the real market value of property identified as Account M2081684 (subject property) for tax years 2007-08, 2008-09, and 2009-10. A telephone trial was held by Magistrate Jeffrey S. Mattson on October 26, 2010. Plaintiffs appeared on their own behalf. Jack W. Graff, Residential Appraisal Supervisor, appeared on behalf of Defendant. Kathy Southwick (Southwick), Appraiser II, Washington County Department of Assessment and Taxation and Adrienne Wilkes (Wilkes), Appraisal Data Analyst, Washington County Department of Assessment and Taxation, testified on behalf of Defendant.

The court admitted all offered exhibits without objection.

I. STATEMENT OF FACTS

The subject property located in Smith Farm Estates (referred to by Plaintiffs as SFE) is described by Southwick as follows:

“[A] 1997 Fuqua, double-wide manufactured home, with exterior dimensions of 25' X 44'. The subject is a 3 bedroom, 2 bath home of approximately 1092 square feet, with forced air heat. The home is considered to be good overall quality of construction with features typical of homes in this value ranges. There is also an 8' X 8' shed.”

(Def’s Ex A at 4.) Plaintiffs are appealing the subject property’s real market value for three tax years as follows:

<u>Tax Year</u>	<u>2007-08</u>	<u>2008-09</u>	<u>2009-10</u>
Real Market Value – Tax Roll Value:	\$21,910	\$22,180	\$31,740
Real Market Value – Requested Value:	\$21,200	\$21,430	\$21,060

Defendant requested that the subject property’s 2009-10 real market value be increased to \$43,000 based on Southwick’s opinion of value. (Def’s Ex A.)

Plaintiffs requested

“that our submitted sales of 60 manufactured homes in Washington County, EXHIBITS 1.1 & 1.2 on pages 5 -7 of our supporting evidence, be used to show a more realistic RMV/AV trend that does not support the 43% increase in RMV/AV of our home. In fact according to the trend in the exhibit our RMV/AV should have been reduced by up to 21%.”

(Ptf’s Optional Comments at 1 (emphasis omitted).) Plaintiffs testified that they believe their property values were “unjustly increased,” especially when SFE is compared to “Carriage Park Estates (CFE *sic*) in Sherwood * * * [where] the average relationship between the RMV/AV values between SFE and CPE are close in 2007 and 2008 at 6% and -1%, but in 2009 they jump to 57%.” (*Id.* at 3.)

Plaintiffs testified that they object to being “taxed” on an improvement identified as a shed, stating:

“The title to our home does not include the shed or any other ‘Improvements’; it states ‘Manufactured Dwelling’. Therefore our shed is not personal property, according to the aforementioned property definitions, and should not be included as part of the RMV/AV of our house.”

(Ptf’s Optional Comments at 4.) Plaintiffs allege that the 2009-10 real market value of the shed

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on the tax roll is \$1,120 and Plaintiffs request a similar adjustment for tax years 2007-08 and 2008-09. (Ptf's' Compl at 3.) Defendant responded:

“1) All items purported to be double taxed appear only on the tax account of the manufactured home owners. The garages, decks, carports, storage sheds, etc. are not taxed on the real property accounts of the park owner. When units are marketed, contested items are advertised as being ‘included’ in the transaction together with the manufactured home. At closing, consideration passes from buyer to seller only. Nothing goes to park ownership.”

“2) Manufactured home owners are in total control and exclusive possession of their homes until they vacate the park. The contested items are in place and provide ‘utility’ to the homeowner only.”

(Def's Ltr at 1, Dec 6, 2010.) In addition, Southwick submitted “a copy of a page titled ‘Real Property vs. Personal Property,’ taken from the Beginning Personal Property Manual, a manual provided/published by Oregon Department of Revenue.” (Def's facsimile at 1, Oct 27, 2010.) That page discussed the “Assessment Process” for some real property items that may be assessed as personal property.

Southwick testified that she used the sales comparison approach to determine an indicated real market value of \$43,000 as of January 1, 2009. (Def's Ex A at 10.) Her comparable sales were manufactured homes located in SFE like the subject property. (*Id.*) Southwick adjusted each comparable sale for gross living space, condition, shed/carport, deck and heat pump. (*Id.*) Defendant made no adjustment for date of sale to assessment date. Plaintiffs presented an “Adjusted Comparables Grid” that was similar to Defendant's comparable sales approach. (Ptf's' Ex 3.2.) Plaintiffs made the same adjustments as Defendant except for condition and the amounts of Plaintiffs' adjustments were based on “Appraisal Records.” (*Id.*) Plaintiffs' indicated value at appraisal date was \$38,112. (*Id.*) Plaintiffs submitted the same three sales with fewer adjustments, stating average indicated value as of January 1, 2009, of \$45,000. (Ptf's' Ex 3.1.)

II. ANALYSIS

The issue before the court is the real market value of Plaintiffs' property for tax years 2007-08, 2008-09, and 2009-10. "Real market value is the standard used throughout the ad valorem statutes except for special assessments." *Richardson v. Clackamas County Assessor*, TC-MD No 020869D, WL 21263620 at *2 (Mar 26, 2003) (citing *Gangle v. Dept. of Rev.*, 13 OTR 343, 345 (1995)). Real market value is defined in ORS 308.205(1),¹ which reads:

"Real market value of all property, real and personal, means the amount in cash that could reasonably be expected to be paid by an informed buyer to an informed seller, each acting without compulsion in an arm's length transaction occurring as of the assessment date for the tax year."

A. *Approaches of Valuation--Real Market Value*

There are three approaches of valuation (cost, income, and comparable sales) that must be considered in determining the real market value of a property even if one of the approaches is found to not be applicable. *See* ORS 308.205(2) and OAR 150-308.205-(A)(2). The subject property is primarily a residential structure. Plaintiffs and Defendant relied on the comparable sales approach. Plaintiffs presented a "trend" approach. Neither party considered the cost approach or the income approach.

In a case such as the one before the court, the comparable sales approach "may be used to value improved properties, vacant land, or land being considered as though vacant." *Chambers Management Corp and McKenzie River Motors v. Lane County Assessor*, TC-MD No 060354D at 6 (Apr 3, 2007), citing Appraisal Institute, *The Appraisal of Real Estate* 335 (12th ed 2001).

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¹ References to the Oregon Revised Statutes (ORS) and to the Oregon Administrative Rules (OAR) are to year 2007. There was no applicable statutory change between 2005 and 2007.

ORS 308.205(2) provides in pertinent part that “[r]eal market value in all cases shall be determined by methods and procedures in accordance with rules adopted by the Department of Revenue.” The Department of Revenue adopted OAR 150-308.205-(A)(2)(c), stating that:

“In utilizing the sales comparison approach only actual market transactions of property comparable to the subject, or adjusted to be comparable, will be used. All transactions utilized in the sales comparison approach must be verified to ensure they reflect arms-length market transactions.”

Plaintiffs presented an “Adjusted Comparables Grid.” (Ptf’s Ex 3.2.) Plaintiffs’ approach was identical to Defendant’s comparable sale approach, making the same value adjustment for size. Plaintiffs, who presented no evidence that they are certified appraisers,² noted that “[t]he ‘Total Sq Ft’ adjustment value is a mystery to us.” (*Id.*) Plaintiffs and Defendant made adjustments for carport/shed, heat pump, and deck. The values of the Plaintiffs’ carport/shed, deck and heat pump adjustments were “from the respective Appraisal Records.” The value of Plaintiffs’ adjustments were more than Defendant’s, resulting in a lower indicated value, \$38,112, for the subject property. (*Id.*) Plaintiffs and Defendant made no adjustment for time, specifically date of sale to assessment date. It is unclear if either Plaintiffs or Defendant verified any of the market transactions to “ensure they reflect arms-length market transactions.” Plaintiffs’ indicated value exceeds the real market value and assessed value, \$31,740 determined by the Washington County Board of Property Tax Appeals and does not persuade the court that it should order Plaintiffs’ requested reduction in the subject property’s real market value.

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² Plaintiffs state in discussing their evidence that they “were not appraising the homes, we were only showing the general downward sales price trend with the information that the appraisers office and real estate agents provided to us.” (Ptf’s Optional Comments at 2.)

Plaintiffs gave most weight to a “trend” developed from sales of various manufactured homes located in Washington County. Many of the selected sales occurred in other manufactured home parks that may or may not be comparable to the subject property’s park. Some of those sales occurred in Plaintiffs’ neighborhood; others did not. Plaintiffs made no adjustment for location, even though they acknowledge that some parks create better neighborhoods than other parks. Trending is a mass appraisal approach and is statutorily allowed for valuing a property with a prior year adjudicated value. The subject property’s real market value for the 2008-09 tax year was not an adjudicated value. Trending is not one of the three acceptable approaches for valuing an individual property.

Plaintiffs allege that they should not be assessed property taxes on a shed, stating that they are not the owners and the shed is real property, not personal property. “Personal property may be assessed in the name of the owner or of any person having possession or control thereof.” ORS 308.105(2). If the shed is personal property, Plaintiffs could be taxed on its value because they have “possession or control thereof” and they admit that they “have the use” of the shed. (*Id.*; Ptf’s Optional comments at 4.)

Plaintiffs’ second allegation is that the shed is real property, rather than personal property. The general rule for classify property as real or personal was determined by this court to be a test of whether the item is “affixed to” or “erected upon” land or buildings or is “moveable.” *See Seven-Up Bottling Co. v. Dept. of Rev.*, 10 OTR 400 (1987). Plaintiffs presented no evidence showing whether the 8' X 8' shed is “affixed to” or “erected upon” land or buildings or whether the shed is “moveable.” Plaintiffs state that they were “obligated to install

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and maintain” the shed. (Ptf’s Optional Comments at 4.) Defendants representatives testified that Defendant concludes that, because the “contested items are advertised as being ‘included’ in the [sale] transaction * * * with the manufactured home * * * [and] consideration passes from buyer to seller only,” the property is classified as personal and taxed to the manufactured home owner. (Def’s Ltr, Dec 6, 2010.) Plaintiffs found numerous property tax records confirming that Defendant does assess property tax to the manufactured home owner for sheds and similar property items. Plaintiffs cited one manufactured home owner in another park that they believed was not taxed and request “the use of the precedent set by the CPE home shown on EXHIBIT 4.4 to have the shed removed from the RMV/AV of our home for 2009, 2008, and 2007.” (Ptf’s Optional Comments at 5.)

With respect to whether or not Plaintiffs should be taxed on the real market value of a shed, Defendant presented evidence showing that it consistently taxes the manufactured home owner using those kinds of property that it classifies as personal property. Defendant states that it coordinates classification “so that assessable property is not overlooked or double assessed.” (Def’s Facsimile at 2, Oct 27, 2010.) Plaintiffs failed to submit any evidence supporting their allegation that the manufactured home park owner is being taxed on that personal property item. There is adequate evidence that Plaintiffs are being taxed on their use of the shed. In their Adjusted Comparables Grid, Plaintiffs accepted Defendant’s real market value for the shed. There was no evidence supporting a request for a reduction, other than total removal of the disputed item, in the shed’s real market value.

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A review of the parties' evidence is governed by statute. "In all proceedings before the judge or a magistrate of the tax court and upon appeal therefrom, a preponderance of the evidence shall suffice to sustain the burden of proof. *The burden of proof shall fall upon the party seeking affirmative relief.*" ORS 305.427 (2009) (emphasis added). Plaintiffs must establish their claim "by a preponderance of the evidence, or the more convincing or greater weight of evidence." *Schaefer v. Dept. of Rev.*, TC No 4530 at 4 (July 12, 2001) (citing *Feves v. Dept. of Rev.*, 4 OTR 302 (1971)). This court has stated that "it is not enough for a taxpayer to criticize a county's position." *Poddar v. Dept. of Rev.*, 18 OTR 324, 332 (2005) (quoting *Woods v. Dept. of Rev.*, 16 OTR 56, 59 (2002) (citation omitted).) Plaintiffs have not established "by a preponderance of the evidence" their requested real market value as of the date of assessment.

Defendant requests that the court increase the subject property's tax roll real market value. Even though Plaintiffs failed to carry their burden of proof and the "burden of going forward with the evidence" has not shifted, the court has jurisdiction to determine the "real market value or correct valuation on the basis of the evidence pleaded by the parties". ORS 305.427; ORS 305.412. Plaintiffs' Adjusted Comparables Grid supports Defendant's determination that the 2009-10 tax roll value is understated. (Ptf's' Ex 3.2.) Further support for Defendant's requested real market value is found in Plaintiffs compilation of manufactured homes located in SFE that sold during 2008-09. (Ptf's' Ex 1.2A.) Those sales ranged from \$36,000 to \$83,200. (*Id.*) It is unfortunate for Plaintiffs that their evidence supports Defendant's conclusion that the subject property's 2009-10 real market value is understated on the tax roll.

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B. *Tax years 2007-08 and 2008-09.*

For tax years 2007-08 and 2008-09, the parties agree that Plaintiff failed to file a timely appeal with the board of property tax appeals (BOPTA). The Oregon legislature has enacted laws that guide a taxpayer challenging the real market value assigned to their properties. The first step in the appeal process is to file a petition with BOPTA. ORS 309.100(1). In limited circumstances, the Tax Court can consider an appeal to reduce real market value even though a taxpayer fails to follow the statutorily prescribed process. Under ORS 305.288, the court can reduce the value of the property if there is either (1) an allegation of an error in value of at least 20 percent, or (2) good and sufficient cause for the taxpayer's failure to follow the prescribed appeal process.

ORS 305.288(1) provides, in pertinent part, that:

“(1) The tax court shall order a change * * * applicable to a separate assessment of property to the assessment and tax roll for the current tax year * * * if all of the following conditions exist:

“(a) For the tax year to which the change * * * is applicable, the property was used* * * primarily as a dwelling * * *.

“(b) The change * * * requested is a change in value for the property for the tax year and it is asserted in the request and determined by the tax court that the difference between the real market value of the property for the tax year and the real market value on the assessment and tax roll for the tax year is equal to or greater than 20 percent.”

Plaintiffs submitted no evidence of real market value. The court is unable to determine if the 20 percent test has been met.

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ORS 305.288(3), which grants the court authority to review untimely appeals when the taxpayer establishes “good and sufficient cause” for not timely pursuing an appeal with BOPTA, provides that:

“The tax court may order a change * * * applicable to a separate assessment of property to the assessment or tax roll for the current tax year and for either of the two tax years immediately preceding the current tax year if, for the year to which the change * * * is applicable the assessor or taxpayer has no statutory right of appeal remaining and the tax court determines that good and sufficient cause exists for the failure by the assessor or taxpayer to pursue the statutory right of appeal.”

The parties agree that Plaintiff has no statutory right of appeal remaining.

The term “good and sufficient cause” is defined in ORS 305.288(5)(b) as follows:

“ ‘Good and sufficient cause’:

“(A) Means an extraordinary circumstance that is beyond the control of the taxpayer, or the taxpayer’s agent or representative, and that causes the taxpayer, agent or representative to fail to pursue the statutory right of appeal; and

“(B) Does not include inadvertence, oversight, lack of knowledge, hardship or reliance on misleading information provided by any person except an authorized tax official providing the relevant misleading information.”

Plaintiffs presented no evidence for the court to determine if they had good and sufficient cause for failing to file a timely appeal.

Because of the lack of evidence, Plaintiffs’ appeals of tax years 2007-08 and 2008-09 are dismissed.

III. CONCLUSION

After careful review of the testimony and evidence, the court concludes that Plaintiffs’ failed to carry their burden of proof. Plaintiffs’ evidence supports Defendant’s request that the subject property’s real market value as of the assessment date was understated. Now, therefore,

IT IS THE DECISION OF THIS COURT that the 2009-10 real market value for Plaintiffs’ property identified as Account M2081684 is \$43,000; and

IT IS FUTHER DECIDED that Plaintiffs' subject property's 2007-08 and 2008-09 real market values remain as stated on the tax rolls.

Dated this ____ day of March 2011.

JILL A. TANNER
PRESIDING 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 Presiding Magistrate Jill A. Tanner on March 30, 2011. The Court filed and entered this document on March 30, 2011.