

IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT
Property Tax

WILLIAM L. SEEBERT and NANCY R.)	
SEEBERT,)	
)	
Plaintiffs,)	No. 000049A
)	
v.)	
)	
MULTNOMAH COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

The Seeberts have appealed the disqualification of a portion of their property from special assessment as historic property under the provisions of ORS Ch 358 for the 1999-00 and subsequent tax years. The Seeberts appeared at all proceedings and made their arguments. Multnomah County's position was presented by its Assistant County Counsel, John Thomas.

This matter was once consolidated with the appeals of Nancy J. Trapp and Martin W. White (OTC-MD No. 991374A), Wallace R. Gibson and Judy A. Gibson (OTC-MD No. 000043A), and Steve W. Vinge and Richard T. Faucette (OTC-MD No. 000079C). It is now severed from those cases, as the Seeberts were the only party who pursued their appeal through to its merits.

A November 9, 2000, Order deciding pretrial motions is an important foundation to the resolution of this case.

STATEMENT OF FACTS

The Seeberts own a condominium unit in the Chown Pella Building. A former warehouse, that property had been converted into residential condominiums. In July of 1994 that property was granted historic status.

A portion of the Seeberts' condominium consists of new construction that represents an addition to the existing building. The State Historic Preservation Officer, in a letter of January 20, 1999, advised Multnomah County that the new construction did not qualify as historic. In calculating the Seeberts' property tax burden for the 1999-00 tax year Multnomah County assessed the component of the property representing the new construction without the benefit of special assessment.

The Seeberts testified that it is not right that they should receive this additional tax burden. They point out that when they purchased the property they were assured by a variety of sources, including their title insurance, that the property was subject to special assessment. It is not fair, the Seeberts reason, that they should now have to pay additional taxes.

COURT'S ANALYSIS

Is it fair that the Seeberts should have to pay higher property taxes than they anticipated when they bought the property? The error that was made was the special assessment of the entire property as historic, and the Seeberts had no part of that process. Should they be held harmless of the consequences?

These are important questions, however, they were considered when the legislature enacted ORS Ch 358's method of specially assessing historic property in 1975, and in the subsequent amendments to the statutes. ORS 358.509, 358.515(1)(c) and 358.543(2) do permit the special assessment to be lost. In making this policy choice, the legislature balanced the prejudice done to individuals such as the Seeberts against the effect perpetuating errors have on the burdens of all taxpayers. While the legislature might have chosen differently, the policy choice is against the Seeberts, and the court, lacking a

constitutional prohibition, must apply the law.

There is no alternative. There is no evidence of estoppel, as mentioned in the context of historic property in *Smith v. Dept. of Rev.*, 13 OTR 206 (1994). Instead, it is apparent that the State Historic Preservation Officer simply revised an initial conclusion. The authority presented by the Seeberts, *Skamania County v. Columbia River Gorge Com'n*, 144 Wash 2d 30, 26 P 3d 241 (2001) does stand for the proposition that at times a husband and wife (the Beas) prevails over the government (the Columbia River Gorge Commission). However, that case was resolved on the government's failure to timely appeal. In this instance government, in the form of Multnomah County, acted in a timely manner, consistent with the statutes. Its revisions to the assessment of the property are sustained.

IT IS THE DECISION OF THIS COURT that the appeal must be denied.

Dated this _____ day of January, 2002.

SCOT A. SIDERAS
PRESIDING MAGISTRATE

IF YOU WANT TO APPEAL THIS DECISION, FILE A COMPLAINT IN THE REGULAR DIVISION OF THE OREGON TAX COURT, FOURTH FLOOR, 1241 STATE ST., SALEM, OR 97301-2563. 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 SIDERAS ON JANUARY 18, 2002. THE COURT FILED THIS DOCUMENT ON THAT SAME DATE.