

IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT

Property Tax

JUDITH CADIGAN,)
)
 Plaintiff,) No. 000195C
)
 v.)
)
 CLATSOP COUNTY ASSESSOR,)
)
 Defendant.) **DECISION**

Plaintiff has appealed the real market value (RMV) of her home (house and land) for the current and two prior tax years. A hearing was held by telephone on May 4, 2000. Plaintiff appeared on her own behalf. Defendant appeared through Ms. Connie McCleary. After considerable discussion the court explained it could not grant relief for any of the tax years under appeal. The reasons are set forth below.

STATEMENT OF FACTS

The property at issue is plaintiff's home, which is identified in the Clatsop County Assessor's records as Account No. 60479. Plaintiff's home is more than 90 years old. She had the property appraised in connection with a refinancing (to pay the property taxes) and the appraiser estimated the market value of the property to be \$120,000 as of June 29, 1998. The independent appraiser's value estimate is roughly \$18,000 below the RMV on the tax rolls for the current (1999-2000) tax year. The tax roll values are as follows:

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1999-00

1998-99

1997-98

RMV:	\$137,946	\$130,006	\$125,062
AV:	\$106,765	\$103,656	\$100,638

Plaintiff would like the RMV adjusted based on her June 1998 appraisal and to have corresponding adjustments made to the assessed value (AV). Plaintiff prepared a detailed and comprehensive analysis of the indicated adjustments along with a copy of her appraisal. It is apparent that considerable time and attention was given to the appeal.

Plaintiff appealed the current year to the county board of property tax appeals and the board sustained the assessor's roll values without any narrative explanation. This upset plaintiff because she had submitted a copy of the appraisal with her board petition and felt that some explanation should have been given as to why the board was not persuaded by her appraisal. Plaintiff paid money to have the appraisal analysis performed and if it is not accurate she would like an explanation of why that is so. Conversely, if the appraiser's value estimate is "correct", she would like to know why the board disregarded the appraisal and sustained the assessor's value. When asked why she did not petition the board in 1998 or 1997 plaintiff testified that she did not have the appraiser's report in 1997 and that the values were not too far apart in 1998. It was the large increase in 1999 that prompted the appeal.

COURT'S ANALYSIS

There are many aspects to this case, some statutory and some case law, all of which work against plaintiff's case. Plaintiff's appeal for the 1999-00 tax year was filed timely with the court from the order of the county board. ORS 305.280(4) (1999)¹.

¹ Reference to the Oregon Revised Statutes will be either 1997 or 1999 depending on the tax year being discussed. The Decision will indicate which year law is applied each time a statute is referenced.

However, the requested reduction in RMV from \$137,946 to \$120,000 would not reduce plaintiff's property tax liability and the court cannot therefor grant the request. *Gilbert-Bamrick v. Multnomah County Assessor*, OTC-MD No. 00042E, 2000 WL 290969 (March 15, 2000) (Decision); *Williams v. Jackson County Assessor*, OTC-MD No. 981150 (September 30, 1998) (Order and Judgment of Dismissal). By law, the AV is the lesser of RMV or maximum assessed value (MAV). ORS 308.146(2) (1999). In this case AV is based on the MAV (\$106,765). Were the court to reduce the RMV to \$120,000, the MAV would still be \$106,765 and the AV would continue to be \$106,765 (because it is less than \$137,946). The taxes would remain the same. Because a reduction in RMV would not reduce plaintiff's property tax liability the case is non-justiciable. *Id.*

As for the two prior tax years, the court's authority is somewhat limited because there was no board appeal in 1997 or 1998. Before moving to the underlying value issue, the court would have to find that plaintiff has either alleged an error in value of at least 20 percent or that good and sufficient cause exists to excuse plaintiff's failure to pursue her right of appeal in 1997 or 1998. ORS 305.288 (1997)²; *Seifert v. Dept. of*

² ORS 305.288 provides in relevant part:

“(1) The tax court shall order a change or correction applicable to a separate assessment of property * * * for either of the two tax years immediately preceding the current tax year, * * * if all of the following conditions exist:

“(a) For the tax year to which the change or correction is applicable, the property was or is used primarily as a dwelling (or is vacant) and was and is a single-family dwelling, * * *.

“(b) The change or correction 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 assessed value of the property for the tax year and the value on the assessment and tax roll for the tax year is equal to or greater than 20 percent.

“(2) The tax court may order a change or correction * * * for either of the two tax years immediately preceding the current tax year if, for the year to which the change or correction is applicable the * * * taxpayer has no statutory right of appeal remaining [too late to petition the

DECISION

Rev., OTC-RD No. 4305 (Opinion 11-3-98). Looking first at the 20 percent rule, as the court explained on the telephone during the May 4 hearing, plaintiff has not alleged value errors of that magnitude. The appraisal best reflects market value for either the 1998-99 or 1999-00 tax year (because the appraiser estimated value as of June 29, 1998, which is essentially midway between the assessment dates for those two tax years) and the indicated error is on the order of 10 percent each year.

As for the “good and sufficient cause” standard found in subsection (2) of the statute, the reason plaintiff did not appeal to the board in 1997 was that she was unaware that the value on the tax rolls may be in error because she did not have the benefit of her appraisal at that time. Lack of knowledge as to the possibility of an error in the tax rolls is not an extraordinary circumstance beyond plaintiff’s control, which is the statutory definition of good and sufficient cause. ORS 305.288(4)(b) (1997). Looking to the 1998-99 tax year, plaintiff again did not pursue a board appeal, this time because she felt that the appraised value was fairly close to the roll value. Again, this is not an extraordinary circumstance beyond plaintiff’s control but rather a judgment call which was later called into question.

Since plaintiff has not alleged an error in value of at least 20 percent for either the 1997-98 or 1998-99 tax years, the court cannot consider the appeal under ORS 305.288(1) (1997). Neither has plaintiff established that her failure to pursue her statutory right of appeal by petitioning the county board in 1997 or 1998 was due to circumstances that were both extraordinary and beyond her control. Accordingly, the good and sufficient

board] 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.” (Emphasis added).

cause standard found in ORS 305.288(2) (1997) is inapplicable and the court cannot consider the prior tax years.

CONCLUSION

Although plaintiff has evidence to suggest that the roll value may be high for at least some of the tax years at issue³, the court cannot reach that question because the appeal for tax year 1999-00 does not present a justiciable claim for relief (no resulting tax savings) and the provisions of ORS 305.288 (1997) are not satisfied for either the 1997-98 or 1998-99 tax years.

IT IS THE DECISION OF THE COURT that plaintiff's Complaint is dismissed for all three tax years.

Dated this _____ day of May, 2000.

DAN ROBINSON
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 97310. 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 MAY 10, 2000. THE COURT FILED THIS DOCUMENT ON MAY 10, 2000.

³ The court is not concluding that the roll value is above market, but merely that plaintiff's appraisal suggests that possibility.