IN THE MAGISTRATE DIVISION

OF THE OREGON TAX COURT

Small Claims

Property Tax

GORDON D. BANKS and JENNY A. BANKS, Plaintiffs, v. MULTNOMAH COUNTY ASSESSOR, Defendant.	)	No. 000349E **DECISION AND JUDGMENT**

Plaintiffs appeal the 1999-2000 assessed value of the property identified in Account Nos. R311851 and R311850. Trial in the matter was held June 6, 2000.[1] Gordon D. Banks appeared on behalf of plaintiffs. Mike Trojan, Appraiser, appeared on behalf of defendant. For ease of reference herein, the parties are referred to as "taxpayers" and "the county."

STATEMENT OF FACTS

Taxpayers purchased the subject property three and one-half years ago. At that time, the property was all in one account and consisted of a house, garage, and a 100' x 100' lot. The lot was originally platted in 1891 as two separate lots. Some time ago, a former owner caused the two lots to become one taxable account. It is not known to the court the manner in which this occurred or the reasons behind the owner choosing to treat the property as one parcel.

[1] The court converted the proceeding from a case management conference into a trial at the request of the parties.

During 1998, taxpayers decided to separate the property into two accounts once again. They wanted to refinance their home and, in doing so, only wanted to encumber the home and the lot under it. Further, they plan to develop the second parcel of land. In order to develop the vacant land, taxpayers had to petition the City of Portland's Bureau of Planning to reestablish the property line. On July 9, 1998, the Planning Bureau approved their request to "reestablish the property line as previously platted." (Ptfs' Complaint at 8). Mr. Banks testified that, to gain the approval, he had to tear down a garage that straddled the two lots.

Because the Planning Bureau approved taxpayers' request to reestablish the lot line, the county separated the land into two tax accounts. In doing so, the county treated the division as a subdivision or partition and assessed the property as exception value under ORS 308.156. Taxpayers appeal claiming they did not subdivide their property and further claiming that, if they did, the assessed value to the lot with the home should not be increased by more than the allowed three percent.

COURT'S ANALYSIS

Oregon voters passed by referendum Measure 50 in May 1997. This measure substantially modified the property tax system in Oregon. Prior to Measure 50, a property was taxed at its real market value (RMV). Due to increasing values, Oregon voters chose to limit the growth of assessed values. In doing so, Measure 50 created the concept of "maximum assessed value" (MAV). For the 1997-98 tax year, which was the implementation year for Measure 50, the MAV was calculated by taking the property's 1995-96 RMV and subtracting ten percent. Or Const, Art XI, § 11(1)(a).[2] The

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[2] *See also* Or Laws 1997, ch 541, § 2(2), *compiled as a note after* ORS 308.146.

measure requires that a property be taxed at the lesser of its MAV or its RMV. Or Const, Art XI, § 11(1)(f).[3]

Measure 50 provides that, for each successive year, the assessed value will increase no more than three percent a year. Or Const, Art XI, § 11(1)(b); *see also* ORS 308.146(1). There are however, exceptions to this rule. The exception at issue in this case is when a property has been subdivided or partitioned. ORS 308.156 states:

> "(1) If property is subdivided or partitioned after January 1 of the preceding assessment year and on or before January 1 of the current assessment year, then the property's maximum assessed value shall be established as provided under this section.
>
> "* * * * *
>
> "(5) The property's maximum assessed value shall be the sum of:
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> "(a) The maximum assessed value determined under ORS 308.146 that is allocable to that portion of the property not affected by an event described in subsection[ ] (1)* * *of this section; and
>
> "(b) The product of the value of that portion of the property that is affected by an event described in subsection[ ] (1) * * * of this section multiplied by the ratio of the average maximum assessed value over the average real market value for the assessment year in the same area and property class." *See also* Or Const Art XI § 11(1)(c)(B).

OAR 150-308.156(5)(A)(1) provides that "[w]hen a property is subdivided or partitioned * * * the entire property is affected and a new MAV is calculated for all property tax accounts." As a result, if the court determines the subject property was subdivided or partitioned, the property's MAV would be calculated under subsection

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[3] *See also* ORS 308.146(2) and Or Laws 1997, ch 541, § 2(3), *compiled as a note after* ORS 308.146.

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5(b) of ORS 308.156. The MAV would be the real market value of the property multiplied by the change property ratio (CPR).[4]

The main issue in this case is whether taxpayers "subdivided or partitioned" their property when they applied to have the lot line reestablished. When construing a constitutional provision enacted by initiative measure, the objective of the court is to determine the intent of the voters. *See Comeaux v. Water Wonderland Improvement Dist.*, 315 Or 562, 568-69, 847 P2d 841 (1993). The best evidence of the intent of the voters is the law's text. *Northwest Natural Gas Co. v. Frank*, 293 Or 374, 381, 648 P2d 1284 (1992).

To determine when a property is "subdivided or partitioned," the court must look to the plain, natural, and ordinary meaning of the words. The word "partition" is defined in the dictionary as "the action of parting: the state of being parted * * * to divide into parts or shares." *Webster's Collegiate Dictionary* 847 (10th ed 1997). The word "subdivide" is defined as "1: to divide the parts of into more parts 2: to divide into several parts, *esp* : to divide (a tract of land) into building lots * * *." *Id*. at 1171.[5]

Taxpayers argue they did not subdivide or partition their property because the two lots already legally existed. They simply had to apply to have the lot line reestablished. After much consideration, the court finds it must disagree with taxpayers' position. Although

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[4] Change property ratio has become a term of art and represents the ratio of average maximum assessed value to average real market value of property in the same area and of the same class as the subject property.

[5] The court would note that the two terms are also defined in ORS 92.010(6) and (16). These definitions are provided as part of the statutory land planning provisions. The court places little reliance on these definitions because the definitions were specifically provided to apply to the statutory provisions from ORS 92.010 to ORS 92.190.

two lots were platted in 1891, the two lots effectively became one at some point in time; otherwise, there would have been no need to reestablish the line or tear down the garage The fact there were two lots originally platted made the process simpler to divide the parcel because taxpayers only needed to reestablish the line rather than go through the more formal subdivision process. The fact remains, however, that prior to the reestablishment of the line, taxpayers owned one parcel of land in one account. They could not sell or develop the excess land without first dividing the property into two, and they had to take legal steps to separate the parcel. They certainly "divide[d] the [land] into more parts." *Id*.

The court recognizes taxpayers did not engage in the formal subdivision process set forth in the land use laws. The court is of the opinion that such a formal process is not intended in ORS 308.156. ORS 308.156 simply requires that a property be "subdivided or partitioned." For tax purposes, taxpayers divided the property into two. They are now capable of developing the second parcel which adds value to the land. The result of a formal subdivision process and having a lot line reestablished are the same: two lots now currently exist and are capable of being developed. Where the results are the same, the tax consequences should likewise be the same. The court finds this is the type of action intended to be included as an exception under ORS 308.156.

Taxpayers also claim that, even if they did subdivide or partition their property for tax purposes, the MAV of the property in the account containing their home should not have increased to such a large degree. As already explained, however, when a property is subdivided or partitioned, the whole parcel is considered affected by the division. OAR 150-308.156(5)(A)(1). As a result, the MAV is based on the real market value of the property multiplied by the CPR. ORS 308.156(5)(b). The county determined the real market value of the account with the home was $103,300. Multiplying this value by the CPR of 72.31 percent

leads to a MAV of $74,700. Taxpayers have not contested the overall market value. As a result, the court concludes the county correctly determined the property's MAV.

CONCLUSION

The court concludes that, based on the facts in this case, when taxpayers applied to have the lot line reestablished, they "subdivided or partitioned" their property for tax purposes. The court further finds that, when a property is subdivided or partitioned, the MAV of the property is determined by multiplying its market value by the CPR. Now, therefore;

IT IS HEREBY ADJUDGED AND DECREED that the 1999-2000 value on the tax roll for the property identified as Account Nos. R311851 and R311850 is affirmed.

Dated this _____ day of July, 2000.

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COYREEN R. WEIDNER
MAGISTRATE

THIS DOCUMENT WAS SIGNED BY MAGISTRATE COYREEN R. WEIDNER ON JULY 31, 2000. THE COURT FILED THIS DOCUMENT ON JULY 31, 2000.