

IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT
Property Tax

FILED
MAGISTRATE DIVISION
OREGON TAX COURT

01 OCT 31 PM 3: 22

TERRY K. SCHANDEL and SUSAN M.
SCHANDEL,

Plaintiffs,

v.

CLACKAMAS COUNTY ASSESSOR,

Defendant.

No. 010363E

DECISION

ENTERED

OCT 31 2001

MAGISTRATE DIV.

EUT25
KSH

Plaintiffs appeal the 2000-01 maximum assessed value assigned to their property.¹ The court discussed the case with the parties during the case management conference held June 6, 2001. At the conclusion of the conference, the parties requested that the court issue a ruling advising them on the proper method for calculating the property's maximum assessed value. While working on the case, the court determined it needed additional facts before it could issue its ruling. As a result, it reconvened the proceeding on October 10, 2001, and accepted sworn testimony from the parties at that time. The matter is now before the court for decision. For ease of reference herein, the parties are referred to as "taxpayers" and "the county."

STATEMENT OF FACTS

The subject property is Tax Lot 2200, which originally consisted of a rectangular parcel of land 2.14 acres in size and a home. On September 22, 1999, Waverly Country Club (Waverly) purchased the property for \$775,000. At the time of purchase, Waverly owned Tax Lot 2300, which is contiguous to Tax Lot 2200. Tax Lot 2300 is a private road called Waverly Drive. Subsequent to its purchase of Tax Lot 2200,

¹ The subject property is identified in Defendant's records as Account No. 00017494.

Waverly executed a deed recording a lot line adjustment in which .16 acres of Tax Lot 2200 was moved into and made part of Tax Lot 2300. On September 28, 2001, taxpayers purchased Tax Lot 2200, which then included 1.98 acres and the home, from Waverly for \$725,000.

For the 2000-01 tax year, the county assigned the subject property a real market value (RMV) of \$913,950 and a maximum assessed value (MAV) of \$634,399. Taxpayers appealed the MAV to the county board; they did not contest the property's RMV. Based on the county's recommendation, the board ordered the MAV reduced to \$616,904. Taxpayers appeal claiming the MAV of their property should be no greater than \$588,882. Taxpayers arrive at this value by taking the prior year's MAV of the property, prior to the lot line adjustment, of \$611,160 and increasing it by the allowable three percent to arrive at a value of \$629,495. They then multiplied this figure by .94, which is the percent of the total MAV they claim is allocable to their portion of the property following the lot line adjustment. Taxpayers arrived at this percent by dividing their purchase price of \$725,000 by Waverly's purchase price of \$775,000 for the total property. The calculation performed is as follows:

$$\$611,160 \times 1.03 \times [\$725,000 + \$775,000^2] = \$588,882$$

The county followed a similar method in arriving at its proposed MAV of \$616,904. It determined, however, that 98 percent of the total MAV, prior to the lot line adjustment, should be allocable to the subject property, rather than 94 percent as determined by taxpayers. The county arrived at its percentage by taking the RMV of

///

² Rounded figures have been used above; without rounding $\$725,000 + \$775,000 = .935484$. This is the percent used to reach the MAV of \$588,882.

the subject property that appeared on the tax roll for tax year 2000-01 of \$913,950 and dividing it by the total RMV of \$929,400 that would have appeared on the roll for Tax Lot 2200 had there not been a lot line adjustment. The county's calculation is performed as follows:

$$\$611,160 \times 1.03 \times [\$913,950 + \$929,400] = \$616,904$$

Both parties recognize the mandate in ORS 308.159³ that requires the MAVs of properties affected by a lot line adjustment not exceed the MAVs of the properties had there been no lot line adjustment. The statute provides:

"If a lot line adjustment is made with respect to property, the maximum assessed value of the property may be adjusted to reflect the lot line adjustment, but the total maximum assessed value of all property affected by the lot line adjustment may not exceed the total maximum assessed value of the affected property determined under ORS 308.146 * * *." ORS 308.159 (emphasis added).

As a result, both parties' approach focuses on ensuring the MAVs of the two identified properties (Tax Lot 2200 and the portion added to Tax Lot 2300) do not exceed the MAV of Tax Lot 2200 had there been no lot line adjustment, *i.e.*, \$629,495. The question is which, if either, approach is the appropriate method.

COURT'S ANALYSIS

Oregon voters passed by referendum Measure 50 at a special election held in May 1997. Measure 50 was a constitutional measure that amended the Oregon Constitution and substantially modified the property tax system in the state of Oregon. The provisions of Measure 50 are found in Article XI, section 11 of the Oregon Constitution. Subsequent to the passage of Measure 50, the Oregon Legislature

///

³ All references to the Oregon Revised Statutes are to 1999.

adopted significant statutory law to implement the constitutional provisions. The Department of Revenue, through its rule-making authority, has promulgated administrative rules to further clarify the provisions of Measure 50.

The question presented by the parties is the correct method to use when calculating a property's MAV after a lot line adjustment has occurred. The first place the court must go to answer this question is the actual text of the constitutional provision passed by the Oregon voters. As noted in *Ellis v. Lorati*, 14 OTR 525, 529 (1999):

"This court's responsibility is to construe section 11 consistent with the intent of the voters who adopted the measure.

"In interpreting a constitutional provision adopted through the initiative process, our task is to discern the intent of the voters. The best evidence of the voters' intent is the text of the provision itself." *Roseburg School Dist. v. City of Roseburg*, 316 Or 374, 378, 851 P2d 595 (1993)." (Footnote omitted.)

The text of Article XI, section 11 provides generally that a property's MAV for the tax year beginning July 1, 1997, shall not exceed the property's 1995 RMV reduced by ten percent. Or Const, Art XI, § 11(1)(a). It further provides that a property's MAV cannot increase by more than three percent from the previous year. Or Const, Art XI, § 11(1)(b). The section then provides exceptions to the general rule. Exceptions are provided for when a property has been, for example, subdivided or, as in this case, adjusted by a lot line adjustment. It provides:

"(c) Notwithstanding paragraph (a) or (b) of this subsection [the general rule], property shall be valued at the ratio of average maximum assessed value to average real market value of property located in the area in which the property is located that is within the same property class, if on or after July 1, 1995:

"(A) The property is new property or new improvements to property;

"(B) The property is partitioned or subdivided;

"(C) The property is rezoned and used consistently with the rezoning;

"(D) The property is first taken into account as omitted property;

"(E) The property becomes disqualified from exemption, partial exemption or special assessment; or

"(F) A lot line adjustment is made with respect to the property, except that the total assessed value of all property affected by a lot line adjustment shall not exceed the total maximum assessed value of the affected property under paragraph (a) or (b) of this subsection." Or Const Art XI, § 11(1) (emphasis added).

Pursuant to the constitutional provisions, when a lot line adjustment has occurred, the property's MAV is calculated differently than the general method. It provides specifically that a property should be valued "at the ratio of average maximum assessed value to average real market value of property located in the area in which the property is located that is within the same property class." Or Const, Art XI, § 11(1)(c). In creating the implementing statutes, the legislature adopted ORS 308.156, which sets forth in more detail how to calculate a property's MAV when the property has undergone one of several circumstances outlined in Article XI, section 11(1)(c). In particular, ORS 308.156 provides how to calculate a property's MAV when the property has been subdivided or partitioned, rezoned, first taken into account as omitted property, or disqualified from exemption or special assessment. It provides that the MAV shall be calculated as follows:

"(5) The property's maximum assessed value shall be the sum of:

"(a) The maximum assessed value determined under ORS 308.146 [the general method] that is allocable to that portion of the property not affected by an event described in subsections (1), (2), (3) or (4)(a) of this section; and

"(b) The product of the value of that portion of the property that is affected by an event described in subsections (1), (2), (3) or (4)(a) 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.**" ORS 308.156 (emphasis added).

ORS 308.156, therefore, incorporates the constitutional mandate in Article XI, section 11 that property undergoing specified events be valued at a ratio of average maximum assessed value to average real market value. This ratio has become known as the "changed property ratio," or "CPR."

As noted above, the constitution also included "new property or new improvements to property" (section 11(1)(c)(A)) and "lot line adjustments" (section 11(1)(c)(F)) within its dictate that they also be valued using the ratio mentioned.

ORS 308.153 specifically addresses new property and new improvements to property. It provides, in pertinent part:

"(1) If new property is added to the assessment roll or improvements are made to property as of January 1 of the assessment year, the maximum assessed value of the property shall be the sum of:

"(a) The maximum assessed value determined under ORS 308.146 [the general method]; and

"(b) The product of the value of the new property or new improvements * * * multiplied by the **ratio of the average maximum assessed value over the average real market value** for the assessment year." ORS 308.153 (emphasis added).

ORS 308.153, therefore, similarly follows the dictates of Article XI, section 11 by providing that the MAV of new property or new improvements to property be calculated using the specified ratio.

Upon reviewing the statutes, however, the court can find no statute providing similar treatment to property that has undergone a lot line adjustment even though lot line adjustments are specifically listed in Article XI, section 11(1)(c). ORS 308.146(3)(f) provides that, notwithstanding the general method for calculating a property's MAV, the MAV for a property undergoing a lot line adjustment is to be calculated "as provided in ORS 308.149 to 308.166."⁴ The only statute specifically addressing lot line adjustments is ORS 308.159 which, as already quoted above, addresses the constitutional

⁴ ORS 308.146(3) provides:

"Notwithstanding subsections (1) and (2) of this section [the general MAV calculation], the maximum assessed value and assessed value of property shall be determined as provided in ORS 308.149 to 308.166 if:

"(a) The property is new property or new improvements to property;

"(b) The property is partitioned or subdivided;

"(c) The property is rezoned and used consistently with the rezoning;

"(d) The property is first taken into account as omitted property;

"(e) The property becomes disqualified from exemption, partial exemption or special assessment; or

"(f) A lot line adjustment is made with respect to the property, except that the total assessed value of all property affected by a lot line adjustment shall not exceed the total maximum assessed value of the affected property under paragraph (a) or (b) of this subsection." (Emphasis added.)

The language set forth in ORS 308.146(3) is essentially taken from the provisions of Article XI, section 11(1)(c) of the constitution. The court would note that (3)(f) of the statute, when referring to lot line adjustments, provides that the MAV "shall not exceed the total maximum assessed value of the affected property under paragraphs (a) or (b)." Paragraphs (a) and (b) under the statute refer to new property or new improvements to property and properties that are partitioned or subdivided. Upon reviewing the statutory scheme, it is the court's opinion the legislature intended to refer to paragraphs "(1) or (2)," which provide how to generally calculate the MAV, rather than "(a) or (b)." This interpretation would bring the statute into conformity with the constitutional provision. When the legislature was transferring the constitutional language into the statutes, it appears it simply copied the constitutional language. When making it statutory, however, paragraphs (a) and (b), which are referred to in Article XI, section 11(1)(c)(F), were changed to paragraphs (1) and (2). It is the court's opinion the legislature overlooked similarly changing the references within ORS 308.146(3)(f) to "(1) or (2)" and maintained the constitutional references to "(a) or (b)." If, on the other hand, the legislature did in fact intend to refer to (a) or (b) of ORS 308.146(3), then the limit is contrary to the constitutional provisions and cannot be accepted by this court.

requirement that the MAV of the affected property after adjustment not exceed the total MAV of the affected property had there been no lot line adjustment. It is unknown to the court why the legislature did not provide specific direction for calculating a property's MAV after it has undergone a lot line adjustment as it did for the other various categories listed in Article XI, section 11(1)(c). The fact the legislature did not specifically make provision for the ratio calculation, however, does not change the fact the constitution itself requires such a calculation be made. Article XI, section 11 is the provision passed by the Oregon voters and its provisions must be implemented. The court finds, therefore, that as a first step, the MAV of property affected by a lot line adjustment must be calculated using the "changed property ratio" as is similarly done with property that has experienced the other changes outlined in Article XI, section 11.

According to the information submitted by the parties, the CPR for the subject tax year was .763. This figure must be multiplied by the RMV of the affected property to derive a new MAV. As an initial matter, the court must determine which property was "affected" by the lot line adjustment. Both parties focused purely on the property within Tax Lot 2200. However, two tax lots were impacted by the lot line adjustment: Tax Lots 2200 and 2300. Tax Lot 2200 lost .16 acres and Tax Lot 2300 gained .16 acres. Therefore, it is the court's opinion that *both* Tax Lots 2200 and 2300 were impacted and "affected" by the lot line adjustment and the MAVs of both must be calculated using the CPR.

Another question presented is what RMV should the court use in its calculation. Taxpayers used their purchase price of \$725,000 as the subject property's RMV in their analysis. The county has the property on the roll for \$913,950. As mentioned earlier, taxpayers have not challenged the RMV on the roll for the 2000-01 tax year. The court

finds it must use the RMV appearing on the roll for its calculation. Taxpayers, having not challenged this value, are in no position to claim a different value should be used.

To restate, when calculating the MAV of a property that has undergone a lot line adjustment, the first step must be to multiply the RMV of the affected properties by the CPR. In this case, the RMV of the subject property is \$913,950 and the CPR is .763. The resulting MAV, therefore, is \$697,344. For Tax Lot 2300, which is not under appeal, the RMV is \$73,470. Multiplying this figure by the CPR results in a MAV of \$56,058. Both properties were impacted by the lot line adjustment. As a consequence, this is the proper method for calculating the properties' MAV under the constitutional provisions.

A second step, however, is also required by the constitution. It provides a limit to the MAV by stating:

"[T]he total assessed value of all property affected by a lot line adjustment shall not exceed the total maximum assessed value of the affected property under paragraph (a) or (b) [the general method] of this subsection." Or Const, Art XI, § 11(1)(c)(F).

This is the provision the legislature provided for by statute in ORS 308.159. In doing so, it eliminated the first step, as already explained. The MAV of the properties, had there been no lot line adjustment, would have been \$629,495 for Tax Lot 2200 and \$53,325⁵ for Tax Lot 2300. Adding these together results in a total MAV of \$682,820. Pursuant to the constitution and ORS 308.159, the MAVs of Tax Lots 2200 and 2300, after accounting for the lot line adjustment, cannot exceed \$682,820. As calculated

⁵ In the county's exhibit submitted October 10, 2001, it notes that the MAV of Tax Lot 2300, prior to adding the .16 acres, was \$53,325. The county's witness, Ms. Warman, testified that the 1999-2000 MAV of Tax Lot 2300 was \$47,700. Increasing this figure by three percent results in a 2000-01 MAV of \$49,131. It is unclear to the court which figure is appropriate. The court will use \$53,325 in its analysis because that is the specific figure provided for tax year 2000-01.

above under the first step, the MAV of Tax Lot 2200 should be \$697,344 and the MAV of Tax Lot 2300 should be \$56,058, for a combined MAV of \$753,402. This total value clearly exceeds the cap provided for under the law.⁶ The court must, therefore, reduce both values so that they do not exceed the cap. In determining how to reduce the values, the court unfortunately finds no guidance in the constitution, statutes, or administrative rules. It is the court's opinion, however, that the appropriate and most equitable manner of reducing the values is to reduce them proportionately.

For Tax Lot 2200, its MAV of \$697,344, as determined under step one, represents 92.56 percent of the total MAV for both parcels. This is determined by dividing \$697,344 by the combined MAVs of \$753,402.⁷ For Tax Lot 2300, its MAV under step one of \$56,058 must be divided by \$753,402, which demonstrates its value represents 7.44 percent of the total MAV.⁸ Therefore, multiplying the MAV cap of \$682,820 by .9256 results in a MAV for the subject property of \$632,018.⁹

The method used to calculate the subject property's MAV is not one previously used by the county. As mentioned, the county simply allocates on a proportional basis the MAV prior to the lot line adjustment. To calculate the MAV in this manner, however, ignores the constitutional language requiring the property be valued at the ratio of

⁶ The court would note that, if taxpayers had contested the RMV of the subject property at the board and, subsequently, in this court, and they demonstrated the RMV was in fact only \$725,000, then the MAV of their property would only have been \$553,175 ($\$725,000 \times .763$). This value, when added to Tax Lot 2300's MAV of \$56,058, would not have exceeded the cap and, therefore, the analysis would have ended there.

⁷ $\$697,344 \div \$753,402 = .9256$

⁸ $\$56,058 \div \$753,402 = .0744$

⁹ For Tax Lot 2300, multiplying its MAV under step one by 7.44 percent results in a capped MAV of \$50,802. As mentioned, this parcel is not under appeal and the court will not order its value changed. It had to be included within the analysis because it also was affected by the lot line adjustment and, therefore, needed to be evaluated for purposes of determining the appropriate MAV limit.

average MAV to average RMV. This is a mandatory first step and cannot be overlooked. To do otherwise would write the language out of the constitution and eliminate specific language adopted by the voters. The court cannot do this. The constitutional provision recognized by the legislature is the second part of the analysis that provides for the cap on the MAVs. This cap, however, does not eliminate the first step - it simply acts as a second step in the analysis.

CONCLUSION

To summarize, the court finds that when calculating the MAV of property affected by a lot line adjustment, Article XI, section 11(1)(c)(F) requires the property be valued at the ratio of average MAV to average RMV, thus using the changed property ratio. Once the values of the affected parcels are determined, a check must occur to ensure the total MAVs do not exceed the total MAVs of the properties had there been no lot line adjustment using the general three percent rule. If the MAVs do exceed the cap, then the values must be reduced on a proportionate basis. In applying the above analysis to the subject parcel, it is the court's conclusion the 2000-01 MAV for the subject property was \$632,018.¹⁰ Now, therefore,

¹⁰ The following is an outline of the calculations described in this Decision.

1. Step One: Calculate the 2000-01 MAV using the CPR

<u>Affected Property</u>	<u>2000-01 RMV after lot line adjustment</u>	<u>x .763 (CPR) =</u>	<u>2000-01 MAV</u>
Tax Lot 2200	\$913,950	x .763	= \$697,344
Tax Lot 2300	\$73,470	x .763	= \$ 56,058
			\$753,402 (Total MAVs)

2. Step Two: Calculate the MAV Cap


<u>Affected Property</u>	<u>1999-2000 AV</u>	<u>x 1.03 =</u>	<u>2000-01 MAV before lot line adjustment</u>
Tax Lot 2200	\$611,160	x 1.03 =	\$629,495
Tax Lot 2300	see fn 3		\$ 53,325 (provided per exhibit)
			\$682,820 MAV cap for 2000-01

3. Step Three: Compare the total MAVs of the affected property under Step One with the MAV Cap. If the total MAVs are greater, a reduction is required. (continued)

DECISION

IT IS THE DECISION OF THIS COURT that the 2000-01 maximum assessed value of the property identified as Account No. 00017494 was \$632,018.

Dated this 31 day of October, 2001.


 COYREEN R. WEIDNER
 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.

4. Step Four: If required, reduce MAVs to the MAV Cap

<u>Affected Property</u>	<u>2000-01 MAV per Step One + 2000-01 Total MAV</u>	=	<u>Percent</u>
Tax Lot 2200	\$697,344 + \$753,402	=	.9256
Tax Lot 2300	\$ 56,058 + \$753,402	=	.0744

<u>Affected Property</u>	<u>Percent</u>	x	<u>MAV Cap</u>	=	<u>2000-01 MAV under the Cap</u>
Tax Lot 2200	.9256		\$682,820	=	\$632,018
Tax Lot 2300	.0744		\$682,820	=	\$ 50,806

DECISION