IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT
Property Tax

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| JAMES E. WAMPLER, Trustee, | ) | |
| | ) | |
| Plaintiff, | ) | No. 010406C |
| | ) | |
| v. | ) | |
| | ) | |
| LINCOLN COUNTY ASSESSOR, | ) | |
| | ) | |
| Defendant. | ) | **DECISION** |

Plaintiff has asked for a recalculation in the assessed value of his property for the 2000-01 tax year. Hearings were held on May 17 and May 21, 2001. Plaintiff appeared on his own behalf. Defendant appeared through Mr. Charles Gross, an appraiser with the County Assessor's Office.

**STATEMENT OF FACTS**

The subject property is the site of an old motel in Rockaway Beach which plaintiff purchased in 1996. Plaintiff immediately removed the building because of its poor condition. The real market value for the tax year at issue is $111,520, the maximum assessed value is $141,140 and the assessed value is $111,520. The assessed value for the prior tax year (1999-00) was $97,590. Plaintiff understood Measure 50 to impose a limit on annual increases in assessed value to three percent and has asked the court to adjust his assessed value to $100,518 ($97,590 x 1.03).

**COURT'S ANALYSIS**

The three percent cap on the annual increase in "value" is found in Oregon's constitution, which provides that:

> "(1)(a) For the tax year beginning July 1, 1997, each unit of property in this state shall have a maximum assessed value for ad valorem property tax

> purposes that does not exceed the property's real market value for the tax year beginning July 1, 1995, reduced by 10 percent.
>
> "(b) For tax years beginning after July 1, 1997, the property's <u>maximum assessed value shall not increase by more than three percent</u> from the previous tax year." Or Const, Art XI, § 11(1)(a) (emphasis added).

As can be seen from paragraph (b) above, the limit is imposed on maximum assessed value, not assessed value. The relevant portion of Measure 50 was codified as ORS 308.146.[1] It provides that:

> "(1) The maximum assessed value of property shall equal 103 percent of the property's assessed value from the prior year or 100 percent of the property's maximum assessed value from the prior year, whichever is greater." ORS 308.146(1).

Finally, assessed value is the lesser of real market or maximum assessed value. ORS 308.146(2).

For many, if not most, properties, assessed value is based on maximum assessed value because 90 percent of the 1995 market value is generally less than 100 percent of the property's 1997 market value. In the present case, assessed value is based on real market value because the 1995 real market value included the motel building subsequently torn down in 1996. Thus, although the building is no longer figured in real market value, it is and will continue to be reflected in maximum assessed value because of the constitutional provision tying 1997 values (maximum assessed value) to 1995. *See Taylor v. Clackamas County Assessor* (I), 14 OTR 504 (1999). The court acknowledges that Measure 50 produces an inequitable situation in the present case. The court has previously acknowledged that some nonuniformity may result and that this was apparently recognized

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[1] All references to the Oregon Revised Statutes (ORS) are to 1999.

by the Legislature in drafting Measure 50. *Taylor*, 14 OTR at 511.[2] One of the common inequities under current law is seen when buildings are destroyed or otherwise removed after July 1, 1995 and before July 1, 1997. This is the situation both in the present case and in *Taylor*. In these cases, maximum assessed value includes a structure(s) removed before the first year Measure 50 took effect and taxpayers will often end up paying taxes on real market value whereas much of Oregon's property is taxed on a lesser maximum assessed value. Moreover, plaintiff's tax value will rise in excess of three percent each year (or any recession) until real market value catches up to maximum assessed value, thereby removing the predictability most property owners have come to rely on.[3]

The court advised plaintiff during the hearing that there is a House Joint Resolution currently pending before the Legislature (HJR 0018) that is designed to remove some of the inequities produced by the present constitutional and statutory scheme. It is not clear whether that resolution will address plaintiff's situation, involving a building removed in

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[2]The Taylor court observed:

> "It is important to point out that maximum assessed value is an arbitrary limit. It is possible that section 11 will, over time, result in nonuniform property taxation. The drafters of Measure 50 recognized that because they expressly provided that Article I, section 32, and Article IX, section 1, of the Oregon Constitution, both of which address the issue of uniformity in taxation, do not apply to section 11. Or Const, Art XI, § 11(18)." 14 OTR at 511.

[3]This is because assessed value is the lesser of real market value or maximum assessed value and maximum assessed value is the greater of 103 percent of the prior year's assessed value or 100 percent of the prior year's maximum assessed value. Under the facts of this case, maximum assessed value is essentially locked in at $141,140 and real market value, historically speaking anyway, has generally risen at a rate greater than three percent. The numbers are as follows:

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| 2000-01 MAV = greater of: | $97,590 ('99 AV) x 1.03 = $100,518, or $141,140 ('99 MAV) = $141,140. |
| 2000-01 AV = lesser of: | $111,520 (2000 RMV), or $141,140 = $111,540. |

1996. However, under current law the Assessor's office correctly calculated plaintiff's values and, on the evidence presented, the court has no authority to reduce plaintiff's assessed value.

## CONCLUSION

After reviewing the facts, the court finds it cannot reduce plaintiff's assessed value by limiting the increase in assessed value over the prior (1999-00) tax year to only three percent. Plaintiff's real market value rose 14.3 percent between 1999 and 2000 and, because real market value is less than maximum assessed value, the assessed value rose 14.3 percent. This is in accord with ORS 308.146(2).

IT IS THE DECISION OF THE COURT that the relief requested by plaintiff must be and is hereby denied.

Dated this _____ day of May, 2001.

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 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 DAN ROBINSON ON MAY 24, 2001. THE COURT FILED THIS DOCUMENT ON MAY 24, 2001.**