

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

DONALD S. GROSH and AILEEN V.)
GROSH,)
)
Plaintiffs,) TC-MD 030280B
)
v.)
)
DESCHUTES COUNTY ASSESSOR,)
)
Defendant.) **DECISION**

Plaintiffs seek review of the Maximum Assessed Value (MAV) assigned to account 181123AO 04400. A trial was held by telephone on September 16, 2003. Plaintiffs' case was presented by Donald Grosh. Defendant was represented by Theresa Maul.

I. STATEMENT OF FACTS

Plaintiffs own Tax Lot 4400, which originally consisted of 1.41 acres of land located in Deschutes County. On June 25, 2001, the Deschutes County Community Development Department finalized what they called a "lot line adjustment" in which it divided an adjoining property, Tax Lot 4600, almost in half. One of the halves of Tax Lot 4600 was added to Tax Lot 4400. The resulting tax lot equaled 1.73 acres and is the subject of this appeal. (Def Ex A at 2.)

Before the adjoining half of Tax Lot 4600 was added to Tax Lot 4400, the 2002-03 MAV of Tax Lot 4400 was \$368,703 and the MAV of Tax Lot 4600 was \$73,909. Defendant calculated the MAV of the now larger parcel by first dividing the original MAV of Tax Lot 4600 in half. Defendant then took that number, \$36,955, and added it to the MAV of Tax Lot 4400 to arrive at a MAV of \$405,658 for the now larger property. (Def Ex A at 2.)

II. ANALYSIS

In *Schandel v. Clackamas County Assessor*, OTC-MD No 010363E (Oct 31, 2001) this court examined a situation similar to Plaintiffs' case, where a tax lot was made larger by the addition of property. The court held that the parties in the case incorrectly calculated the now larger lot's MAV when they simply added the MAV of the original lot and the apportioned MAV of the newly added land. *Id.* Labeling the new addition of property as a "lot line adjustment," the court examined the Oregon Constitution and the Oregon Revised Statutes and determined that the MAV of property changed by a lot line adjustment must be calculated under ORS 308.156.¹

As was outlined in *Schandel*, Article XI, section 11 of the Oregon Constitution provides the general method of calculating the MAV of property. It states that a property's MAV for the tax year beginning July 1, 1997, shall not exceed the property's 1995 RMV minus 10 percent. Or Const, Art XI, § 11 (1)(a). In addition, the provision states that the property's 1997 MAV cannot increase by more than 3 percent each year. Or Const, Art XI, § 11 (1)(b). When a lot line adjustment occurs after the above method is applied and a property's MAV is established, Article XI, section 11 allows for an exception to the general method of valuation.

That constitutionally mandated exception method of calculation, codified in ORS 308.156, requires that property changed by a lot line adjustment must be valued at a ratio of average maximum assessed value to average real market value. That formula, known as the "change property ratio," is outlined in ORS 308.156:

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

"(a) The maximum assessed value determined under ORS 308.146

¹ All references to the Oregon Revised Statutes (ORS) are to 2001.
DECISION TC-MD 030280B

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, not greater than 1.00, of the average maximum assessed value over the average real market value for the assessment year in the same area and property class.”

Schandel stated that once the MAV is calculated under ORS 308.156, ORS 308.159 only allows the new MAV to take effect if it does not exceed the combined MAV of the properties had a lot line adjustment not occurred.

Although ORS 308.156 does not specifically include the “lot line adjustment” exception, *Schandel* held that because the Oregon Constitution requires a different calculation to be made when a property has undergone a “lot line adjustment,” and ORS 308.156 includes all of the other exceptions listed in Article XI, section 11, then ORS 308.156 applies to “lot line adjustments.” *Schandel*, OTC-MD No 010363E. Because ORS 308.156 applies to “lot line adjustments,” the court must see if the action in this case fits the definition of “lot line adjustment” found in ORS 308.149.

The term “lot line adjustment” is defined as “any addition to the square footage of the land for a real property tax account and a corresponding subtraction of square footage of the land from a contiguous real property tax account.” ORS 308.149(7). In this case, there was an addition to the square footage of Tax Lot 4400 and a subtraction from Tax Lot 4600. Therefore, the addition of half of one lot to another lot is a “lot line adjustment.”

Plaintiffs argue that the combination of the two tax lots is not a “lot line adjustment” but a “merger.” Plaintiffs reason that a “lot line adjustment” occurs when the line between two lots moves, with the end result being that there are still two lots remaining. Armed with that reasoning, Plaintiffs conclude that, because Defendant

///

divided Tax Lot 4600 in half and then added each half to the adjoining lots, the original tax lot disappears and a merger results.

First, Plaintiffs' argument fails because the definition of "lot line adjustment" does not require that two tax lots must remain after the lot line adjustment occurs. ORS 308.149 only requires that there must be an addition of real property due to a subtraction from contiguous property. Second, labeling the action as a "merger" is not helpful in determining the method of calculating the MAV because that term is only used in the Oregon Constitution when dealing with the merger of taxing districts.

See Or Const, Art XI, § 11 (3)(d). Third, Plaintiffs' argument and corresponding use of the term "merger" focuses on the tax lot that was divided, Tax Lot 4600, even though the applicable tax lot in this appeal, Tax Lot 4400, is the one that gained additional real property.

Plaintiffs argue that the law does not have to be interpreted in that manner. Moreover, Plaintiffs assert that the Deschutes County Board of Property Tax Appeals (BOPTA) made an uninformed decision based on an inappropriately short hearing. In reaching the above decision, the court did not rely on the BOPTA order. Instead, the court independently evaluated the facts presented as well as the Oregon Constitution, the Oregon Revised Statutes, and prior cases, including *Schandel*, to come to its decision.

Plaintiffs also commented that the property added to Tax Lot 4400 has been overassessed and overtaxed for years. In support of that claim, Plaintiffs state that the Real Market Value (RMV) of Tax Lot 4600 was reduced in another case in 2001 in a mediation between Plaintiffs and Defendant. (Mediation Memo, Oct 23, 2001.) Plaintiffs calculated the percent increase in the RMV of the property since 1995 and concluded that

the property's MAV was incorrect when calculated in 1997 under Article XI, section 11 (1)(a) of the Oregon Constitution. However, this court is prohibited from going back to 1997 and recalculating the property's MAV starting point. *Ellis v. Lorati*, 14 OTR 525, 534 (1999).

III. CONCLUSION

Granting Plaintiffs' request would be inconsistent with *Schandel's* analysis of the law. The court is not satisfied that Defendant's calculation of Tax Lot 4400's MAV follows the one explained in *Schandel*. However, it appears that applying the correct calculation would result in an increase in the MAV of Tax Lot 4400. Because Defendant has neither requested an increase in the MAV nor provided the court with any evidence to support an increase, the court will not recalculate the MAV.

Now, therefore, on the basis of the facts and reasons presented,

IT IS THE DECISION OF THIS COURT that Plaintiffs' appeal is denied.

Dated this _____ day of December, 2003.

SCOT A. SIDERAS
MAGISTRATE

IF YOU WANT TO APPEAL THIS DECISION, FILE A COMPLAINT IN THE REGULAR DIVISION OF THE OREGON TAX COURT, BY MAILING TO: 1163 STATE STREET, SALEM, OR 97301-2563; OR BY HAND DELIVERY TO: FOURTH FLOOR, 1241 STATE STREET, SALEM, OR. 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 SCOT A. SIDERAS ON DECEMBER 11, 2003. THE COURT FILED THIS DOCUMENT ON DECEMBER 11, 2003.