IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

EPSON PORTLAND, INC.,	)	
	)	
Plaintiff,	)	TC-MD 040889E
	)	
v.	)	
	)	
WASHINGTON COUNTY ASSESSOR and DEPARTMENT OF REVENUE, State of Oregon,	)	**DECISION DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**
Defendants.	)	

This matter is before the court on Plaintiff's Motion for Summary Judgment. Oral argument on the motion was held May 16, 2007, in the courtroom of the Oregon Tax Court. Christopher K. Robinson, Attorney, appeared on behalf of Plaintiff. Joseph A. Laronge, Assistant Attorney General, appeared on behalf of Defendant Department of Revenue (the department).

I. STATEMENT OF FACTS

This appeal involves the valuation of both real and personal property. The real property is a distribution warehouse, known as the Phase III property, used in Plaintiff's electronics manufacturing facility.[1] (Ptf's Ex 1 at 4.) For tax year 2001-02, the year at issue, the department assigned the real property a total real market value of $13,721,210. (Ptfs' Compl at 2.) The personal property is used throughout the entire manufacturing facility (all three phases) and is identified as Account P1404484. (Ptf's Ex 1 at 4.) For tax year 2000-2001, the department assigned the personal property a real market value of $8,087,390 and, for tax year 2001-02, the

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department assigned the personal property a real market value of $10,710,850. (Ptf's Compl

[1] The real property is identified as Accounts R1369147 and R1341195.

at 2.) Plaintiff contests the value of the personal property for both the 2000-2001 and 2001-02 tax years.

Plaintiff had previously appealed the real property's 2002-03 real market value to the Washington County Board of Property Tax Appeals (BOPTA) where the Washington County Assessor agreed to reduce the real market value from a total of $14,456,300 to $6,609,600. (Ptf's Ex 2 at 1-4.) After receiving the reduced value, Plaintiff filed an appeal with the department under its supervisory authority seeking a reduced value for the 2001-02 tax year. Plaintiff also challenged the value of the personal property for tax years 2000-2001 and 2001-02.

For tax year 2001-02, the department introduced new depreciation factors for dies and molds. (Ptf's Ex 1 at 28.) The old classifications were: (1) in use - 50 percent good and (2) not in use - 10 percent good. (*Id*.) Under the new factors, the dies and molds are assigned either a short life of three years or a long life of ten years. (*Id*. at 29.) The department applied a short life of three years to the subject property for the 2001-02 tax year. (*Id*.) Claiming the new factors reduced most of the personal property value for 2001-02, Plaintiff argues a similar approach should be used for tax year 2000-2001.

Defendant also changed the classification of Plaintiff's other personal property between "EA" (Electronic Assembly), with a six-year life, and "GM" (General Manufacturing), with a fifteen-year life. (Ptf's Ex 1 at 23.) Plaintiff claims both the change in depreciation factors and asset classifications led to a reduced real market value for its personal property, suggesting an error on the roll for the prior years.

For the real property accounts, the parties agree the Phase III building ceased operations in 2001. In late 2002, Plaintiff entered into an agreement to sell the property for $6,500,000.

The buyer eventually stepped away from the purchase, and Plaintiff relisted the property at $9,000,000.

Plaintiff argues the failed sale and list price, along with the department's stipulated real market value for tax year 2002-03, are facts that suggest the real property was overvalued in tax year 2001-02. The department claims the conference officer did not err in finding Plaintiff failed to provide evidence showing the parties agreed to facts indicating a likely error appeared on the roll.

II. ANALYSIS

ORS 306.115[2] grants the department authority to correct errors appearing on the tax roll.[3] That authority is commonly referred to as the department's "supervisory power." Pursuant to its rulemaking authority, the department promulgated a rule establishing the process it must follow when utilizing its supervisory power under ORS 306.115. The rule states, in pertinent part:

> "(1) ORS 306.115 is an extraordinary remedy that gives the Department of Revenue authority to order a change or correction to a separate assessment of property. An assessor or taxpayer may request a change or correction by filing a petition with the department. A petition must meet the requirements of OAR 150-306.115-(A).

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[2] All references to the Oregon Revised Statutes (ORS) are to 2003.

[3] The statute states, in pertinent part:

> "(3) The department may order a change or correction applicable to a separate assessment of property to the assessment or tax roll for the current tax year and 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 department discovers reason to correct the roll which, in its discretion, it deems necessary to conform the roll to applicable law without regard to any failure to exercise a right of appeal.
>
> "(4) Before ordering a change or correction to the assessment or tax roll under subsection (3) of this section, the department may determine whether any of the conditions specified in subsection (3) of this section exist in a particular case. If the department determines that one of the conditions specified does exist, the department shall hold a conference to determine whether to order a change or correction in the roll."

ORS 306.115.

"* * * * *

"(3) Before the department will consider the substantive issue in a petition * * *, the petitioner has the burden of showing that the requirements for supervisory jurisdiction * * * have been met. The department will base its determination on the record before it.

"* * * * *

"(4) The department will consider the substantive issue in the petition only when:

"(a) The assessor or taxpayer has no remaining statutory right of appeal; and

"(b) The department determines that an error on the roll is likely as indicated by at least one of the following standards:

"(A) *The parties to the petition agree to facts indicating likely error*[.]"

OAR 150-306.115 (emphasis added).

The court reviews the department's decisions under ORS 306.115 for an abuse of discretion. Recently, the Regular Division of the Oregon Tax Court described the court's review of the department's denial of supervisory review. The court stated, in pertinent part:

"ORS 306.115 provides for limited relief outside the process of regular appeal and has been described as an extraordinary remedy. OAR 150-306.115(2); *see also Resolution Trust Corp. v. Dept. of Rev.*, 13 OTR 276, 278 (1995) ('If it were not, extraordinary actions would become ordinary and the limits on ordinary appeals would become meaningless.'). '[T]he court's review is limited to determining, based solely on the evidence presented to the department at the supervisory conference, whether the department abused its discretion in finding that the parties did not agree to facts indicating a likely error on the roll.' Accordingly, the court will only overturn the department's ruling if 'the department acted capriciously or arrived at conclusion which was clearly wrong.' "

ADC Kentrox v. Dept. of Rev., __ OTR __ (July 5, 2007) (slip op at 4) (certain citations omitted).

In this case, although the conference officer found the parties agreed to certain facts, the officer concluded those facts did not indicate a likely error existed on the roll for the contested

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years. As a result, the conference officer denied Plaintiff's request for a merits hearing. Plaintiff appeals the conference officer's determination, making several arguments.

A. *Change in depreciation factors and asset classifications*

Plaintiff claims that, because the department acknowledges the asset classifications and depreciation factors for personal property changed in tax year 2001-02, the parties agree to facts suggesting a likely value error for the personal property. The court disagrees. The department uses depreciation factors and asset codes on a mass appraisal basis. It applies the codes generally and changing those codes does not necessarily mean the personal property was previously valued incorrectly. One would need to look at the actual personal property involved to conclude whether the property was valued incorrectly. The department's witnesses Merri Seaton(Seaton) and Beth Daniel (Daniel) testified to the variance in valuing dies and molds as follows:

> "SEATON I think it's important to remember with molds, jigs and [dies] that we kind of look at this as the big lump of things. Nobody values an individual [die] on how long it[is] used, or how often it[is] used. Everything is thrown into one category th[e]n the other. You could have a very valuable mold in 2000 that went on at 50% and it could have been very valuable and used all the time and it would have gone out at 50%. You could have had the same one that you maybe used twice in that same year and it would have gone on at the same 50%. So, everything is just kind of thrown into one big category with no refinement, with no looking individually, just one big category.
>
> "ROBINSON Okay, well I guess * * *
>
> "SEATON * * * there's ups and downs all over the place if you were to look at everything individually.
>
> "DANIEL[] With molds in particular, it [is] an aggregate valuation."

(Ptf's Ex 1 at 32-33.)

The court concludes, therefore, that the conference officer did not abuse his discretion by finding the change in asset classifications and depreciation factors did not indicate a likely error on the roll.

B. *Stipulation for subsequent tax year*

For the real property, Plaintiff claims the department's agreement on two items suggests a likely value error for the 2001-02 tax year. First, Plaintiff points out that the department stipulated to a reduced real market value for the real property in tax year 2002-03. The act of stipulation, Plaintiff contends, suggests a likely error existed in tax year 2001-02. Plaintiff argues the Tax Court's decision in *Thomas Creek Lumber & Log Company v. Department of Revenue*, 19 OTR 103 (2006) (*Thomas Creek*) supports its conclusion.

In *Thomas Creek*, the department had offered to stipulate to a reduced real market value for the contested year. The department subsequently backed away from that agreement. At a supervisory hearing, the conference officer found the proposed stipulation was not a fact indicating likely error on the roll. On review, the Regular Division of the Tax Court disagreed, finding the conference officer had abused his discretion. The court held:

> "The department was 'clearly wrong' in concluding that the agreed upon fact of [Defendant's appraiser's] proposed stipulation did not indicate a likely error on the roll. Especially considering the size of the proposed reduction, the proposal did, indeed, indicate a likely error."

Id. at 108.

In contrast to *Thomas Creek*, the subject case involves an actual stipulation, versus a proposed stipulation. However, the stipulation is for a subsequent year, rather than the contested year. The same facts appeared before the Tax Court in *ADC Kentrox*. There, the department stipulated to a reduced real market value for the subsequent tax year. The Tax Court found the conference officer had not abused his discretion in finding that fact did not suggest a likely error on the prior year's roll. The court held: "Unlike *Thomas Creek*, * * * the department here agreed to lower the value for the *subsequent tax year*, not the tax year at issue in the case. The

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lower 2000-2001 roll value is not conclusive on the question of whether an error existed on the roll for 1999-2000." *ADC Kentrox*, ___ OTR at ___ (slip op at 8) (emphasis added).

Based on the decision in *ADC Kentrox*, the court finds the conference officer did not abuse his discretion in finding the department's stipulation for a later tax year did not indicate error for an earlier year.

C. *Proposed sale*

Defendant also argues that the proposed sale in late 2002 suggests the property was overvalued for the 2000-2001 tax year. The court observes that the proposed sale occurred nearly two years after the assessment date and that the sale was a proposed sale that never occurred. In *ADC Kentrox*, the Tax Court considered a similar situation. In that case, however, the property actually sold in the year following the tax year under consideration. The court concluded the simple fact of a sale does not indicate a likely error on the roll. The court found it appropriate for the department to consider facts beyond the sale itself. *Id*. at __ (slip op at 5.) For example, the court found it acceptable for the conference officer to consider the arm's-length nature of the transaction, physical changes in the property, changes in use of the property, changes in market conditions, and highest and best use concerns. The court concluded the officer had not abused his discretion in concluding other factors suggested the post-assessment sale did not indicate a likely error on the roll.

In the subject appeal, there was a proposed sale, not an actual sale. Its relevance is, therefore, diminished. In addition, the parties agreed that the property ceased operations in 2001. Considering those factors, the court concludes the conference officer did not abuse his discretion in finding the failed sale in a subsequent year did not suggest a likely error occurred on the roll.

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D. *Materiality standard*

Plaintiff's last argument is that the conference officer abused his discretion by concluding that, to proceed to a merits proceeding, Plaintiff must show that any error is material. In his ruling, the conference officer began by noting that Plaintiff must demonstrate not only an agreement to facts, but that those facts indicate a likely assessment error. The officer then stated:

> "Also, the facts must indicate that the likely error is significant. If the facts indicate the potential for only a minimal change in a property's valuation, this is not viewed as a likely error. For example, a potential value change that is within the normal range of appraisal judgment is not an indication of assessment error."

(Ptf's Compl, Conference Decision at 3-4.) Plaintiff claims this court has previously held that the administrative rule providing a merits hearing does not contain a materiality requirement, citing *Litton Systems, Incorporated v. Josephine County Assessor*, 17 OTR-MD 178 (2002).

The conference officer's discussion of the materiality standard appears at the beginning of his decision. The officer sets forth a brief summary of the law stating Plaintiff must demonstrate three things: (1) agreement to facts, (2) agreed facts indicating a likely error, and (3) an error that is significant. (Ptf's Compl, Conference Decision at 3.) In his decision, however, the officer concludes that the agreed facts do not indicate a likely error. Therefore, application of any materiality standard never occurred. Because the officer did not apply a materiality standard in his decision, Plaintiff's arguments that he abused his discretion by doing so must be denied.

III. CONCLUSION

Based on the above, the court concludes the conference officer did not abuse his discretion by denying Plaintiff's request for a merits hearing. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiff's Motion for Summary Judgment is denied; and

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IT IS FURTHER DECIDED that, there being no other issues before the court, Plaintiff's appeal is denied.

Dated this _____ day of November 2007.

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COYREEN R. WEIDNER
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 Coyreen R. Weidner on November 29, 2007. The Court filed and entered this document on November 29, 2007.