

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

JAN R. HAMER,)
)
 Plaintiff,) TC-MD 050514C
)
 v.)
)
 MULTNOMAH COUNTY ASSESSOR,)
)
 Defendant.) **DECISION**

Plaintiff appealed the real market value of a tract of land identified in Defendant's records as Account R326186. The appeal is from a decision of the county board of property tax appeals (Board) which sustained the real market value for the 2004-05 tax year at \$174,800.

Trial was held by telephone December 5, 2005. Plaintiff appeared on his own behalf. Keith Michel appeared for Defendant.

I. STATEMENT OF FACTS

The property at issue is a 40-acre tract of land on the Multnomah Channel, improved with a gravel road and a parking lot providing access and parking for a marina (taxed separately) owned by Plaintiff that moors 18 houseboats. A majority of the land is low-lying wetlands subject to seasonal flooding which, most winters, includes two lakes. Approximately half of the property is encumbered by a conservation easement Plaintiff deeded to the county. The property was formerly operated as a duck club. Plaintiff acquired the property, tore down the club's building on the east end of the property near Highway 30, and either added a gravel road or improved an existing road. Plaintiff obtained the fill for the road from the county over a three and one-half year period at no charge. Plaintiff purchased gravel as a finished surface for the road after sufficient fill dirt was in place to raise the road above the flood plain.

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Plaintiff previously appealed the value of the property for the 2002-03 tax year and the board reduced the real market value to \$120,000. Because that number was considerably lower than the maximum assessed value of \$199,880, the assessed value for that year was set at \$120,000 in accordance with ORS 308.146. The real market value and assessed value were reduced slightly the following year (2003-04) to \$118,800. For the year at issue, Defendant increased the real market value and assessed value to \$174,800, based on trending of approximately 47 percent. The maximum assessed value is \$199,880.

Plaintiff argues that the property has little value because it is in a flood plain and cannot be developed without mitigating the wetlands. Plaintiff submitted a number of documents identifying the property, the composition of the soil, and the seasonal lakes, and substantiating the existence of the conservation easement, which precludes development. Defendant did not submit any exhibits. At the beginning of the trial, Defendant moved to dismiss the appeal because the value of the property was established in accordance with ORS 309.115(2)(a),¹ based on the adjudicated values determined by the board for the 2002-03 tax year. The court denied that request after the motion was made, following a brief discussion of applicable law.

II. ANALYSIS

Looking first at Defendant's motion to dismiss, ORS 309.115 provides generally that the value of a particular property is frozen for a five-year period following a reduction by the county

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¹ All references to the Oregon Revised Statutes (ORS) are to 2003.

board.² There are exceptions to that limitation, including changes based on annual trending. See ORS 309.115(2)(a). It was the annual trending exception that allowed Defendant to increase Plaintiff's real market value in 2004 by 47 percent over the prior year. However, ORS 309.115 does not preclude a taxpayer from filing another appeal within the five-year period specified in that statute. Specifically, ORS 309.115(4) provides:

“If, during the five-year period described in subsection (1) of this section, *another order* correcting the real market value of the property subject to subsection (1) of this section *is entered*, subsection (1) of this section shall apply for the five years next following the year the later order is entered.”

(Emphasis added). The entrance of “another order” by the board or this court follows an appeal filed by the taxpayer (*i.e.*, the board or court issues an order resolving an appeal). Thus, the statute implicitly recognizes the taxpayer's right to file another value appeal within the five-year freeze period. Accordingly, Defendant's motion to dismiss was, and is hereby, denied.

Turning to the substantive aspect of the appeal, Plaintiff has asked the court to allow only a nominal increase of three percent over the prior year's real market value. The requested value is \$122,364. Plaintiff believes Defendant as valuing the property as if it were a buildable parcel. However, Plaintiff did not submit any market data to support his contention. In a written narrative attached to Plaintiff's exhibits, Plaintiff states that his “surrounding waterfront neighbors only received a 3% increase in taxable value in the 2004-2005 tax year.”

(Ptf's Ltr at 2, Aug 22, 2005.)

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² ORS 309.115(1) actually applies to a reduction ordered by the Department of Revenue, the board, the Tax Court or other court. ORS 309.115(1) provides:

“If the Department of Revenue, board of property tax appeals or the tax court or other court enters an order correcting the real market value of a separate assessment of property and there is no further appeal from that order, except as provided under subsection (2) or (3) of this section, the value so entered shall be the real market value entered on the assessment and tax rolls for the five assessment years next following the year for which the order is entered.”

Plaintiff's statement is likely accurate because much of the property in Oregon has a "taxable value" (*i.e.*, assessed value) that is derived from its maximum assessed value rather than its real market value. Under ORS 308.146(2), assessed value is a lesser of real market value or maximum assessed value, and maximum assessed value was established in 1997 as 90 percent of the property's 1995 real market value. In many (if not most) cases, real market value was greater than maximum assessed value in 1997. Maximum assessed value, thereafter, typically rises at three percent per year (ORS 308.146(1)), whereas real market value rises or falls with the market. Because Oregon has generally experienced an annual rise in market values, real market value has typically remained higher than maximum assessed value, resulting in an assessed value based on, and equal to, the property's maximum assessed value. However, Plaintiff's situation is different because he received a significant reduction in the real market value of his property in 2002, whereby the real market value became approximately \$80,000 below the maximum assessed value.³ Accordingly, Plaintiff's assessed value was equal to the property's real market value rather than maximum assessed value. In 2004, Plaintiff's real market value was increased 47 percent to \$174,800, and that entire increase carried through to the assessed value because real market value is still below Plaintiff's maximum assessed value, which exceeds \$200,000. Plaintiff, therefore, did experience a considerably greater percentage increase in "taxable value" (*i.e.*, assessed value) than his neighbor's properties. However, Plaintiff must do more than challenge Defendant's increase. The issue is the market value of the subject property, which is

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³ Real market value was reduced to \$120,000, and maximum assessed value was \$199,880. Accordingly, assessed value was reduced to \$120,000.

defined in ORS 308.205 as “the amount in cash that could reasonably be expected to be paid by an informed buyer to an informed seller, each acting without compulsion in an arm’s length transaction * * * .⁴”

Under ORS 305.427, Plaintiff has the burden of proof, and must establish his case by a “preponderance” of the evidence. A “[p]reponderance of the evidence means the greater weight of evidence, the more convincing evidence.” *Feves v. Dept. of Revenue*, 4 OTR 302, 312 (1971). Plaintiff did not present any market data on the value of his property. In fact, Plaintiff has produced no evidence to support his value estimate, and has therefore failed to meet the burden of proof. Plaintiff owns a 40-acre parcel improved with a lengthy, elevated gravel road leading to a gravel waterfront parking lot. The property is valued at approximately \$4,400 per acre. Plaintiff’s value request equates to a per acre value of approximately \$3,000. The court is unable to determine whether the property is worth \$3,000 per acre, \$4,400 per acre, or \$8,000 per acre. The onus is on Plaintiff to persuade the court of an error in the record assessment and he failed to do so. The values on the tax roll must, therefore, be sustained.

III. CONCLUSION

The court concludes that Plaintiff’s request for a reduction in the real market value of Plaintiff’s 40-acre property located between Highway 30 and the Multnomah Channel is denied because Plaintiff has failed to establish his case by a preponderance of the evidence as required by ORS 305.427. Now, therefore,

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⁴ A taxpayer generally cannot appeal assessed value, because assessed value is set by statute as the lesser of real market value or maximum assessed value, and there is typically no factual evidence by which to challenge assessed value. An appeal of real market value does involve a factual question of the market value of the property. Of course, if Plaintiff succeeds in lowering real market value, assessed value will be lowered accordingly.

IT IS THE DECISION OF THIS COURT that Plaintiff's appeal is denied, and the values on the tax rolls for the 2004-05 tax year, which were sustained by the board, shall remain undisturbed.

Dated this _____ day of December 2005.

DAN ROBINSON
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 Dan Robinson on December 20, 2005 .
The Court filed and entered this document on December 20, 2005.***