

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

LANE COUNTY ASSESSOR,)	
)	
Plaintiff,)	TC-MD 060086C (Control)
)	
v.)	
)	
PATRICK M. FLYNN JR.,)	
)	
Defendant.)	
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)	
PATRICK M. FLYNN JR.,)	
)	
Plaintiff,)	TC-MD 060109C
)	
v.)	
)	
LANE COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

In this consolidated appeal, each party has asked the court to overturn certain actions of the county board of property tax appeals (board) involving three property tax accounts for the 2005-06 tax year. Trial was held October 17, 2006. Patrick Flynn appeared on his own behalf and Tom Frederiksen appeared for the Lane County Assessor. For ease of reference, the parties are referred to as taxpayer and the assessor.

I. STATEMENT OF FACTS

The appeal involves a 5.04 acre property that was originally divided into three tax lots: tax lot 1500 (the original homesite) at .29 acres; tax lot 1600 at 1.81 acres; and tax lot 1700 at 2.94 acres.

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In 1997, tax lot 1500 was merged into tax lot 1600. The merger eliminated tax lot 1500 and increased tax lot 1600 to 2.1 acres.¹ Tax Lot 1700 was unaffected by the merger and remained at 2.94 acres. As a result of the 1997 merger, the 5.04 acres was divided into only two tax lots.

Taxpayer bought the property in April 1999, although he was involved in late 1998 working to get approval for a manufactured home on the property. Taxpayer moved onto the property and into the manufactured home in April 1999. That development required certain permits and approvals. Taxpayer testified that county planning department officials, who apparently were not aware of the merger in 1997 which eliminated tax lot 1500, made him prepare a covenant between tax lots 1600 and 1500 to allow for placement of the house and the well on tax lot 1500 and the sand filter system and drain field on tax lot 1600. The covenant allowed the drain field and sand filter system on tax lot 1600 to service the new home on tax lot 1500.

In 2003, the property was partitioned. The partition created a third lot – tax lot 1602. That lot was created by taking a portion of land (0.18 acres) from tax lot 1700 and adding it to the old tax lot 1600 as it existed after the 1997 merger, and then carving out a new tax lot 1602 from the upper half of tax lot 1600. After the partition, tax lot 1700 was 2.76 acres, tax lot 1600 was 1.21 acres (including a minor cartography correction), and tax lot 1602 was 1.08 acres. Taxpayer's home is situated on the new tax lot 1600 (the 1.2 acre parcel).

The assessor became aware of the partition in 2005. The assessor determined that the partition affected both tax lots 1600 and 1700, as well as tax lot 1602 (the new lot). Accordingly, for the 2005-06 tax year, the assessor determined new values for each of the three “new” tax lots.

¹ .29 acres (tax lot 1500) + 1.81 acres (tax lot 1600) = 2.1 acres.

Included in the new values were “exception” real market values (RMV) for each lot and a new maximum assessed value (MAV) unrelated to the 2004-05 MAVs. The assessor’s new value determinations increased taxpayer’s combined assessed value (AV) from \$140,321 in tax year 2004-05, to \$209,160 in tax year 2005-06.

Taxpayer appealed to the board, and the board reduced to \$-0- the exception RMV, the MAV, and the AV on the two unimproved lots – tax lots 1602 and 1700. However, the board sustained the real market value (RMV) on both accounts. As a result of the board’s reductions, those two lots (1602 and 1700) are not taxed. The board sustained all of the values on tax lot 1600 (the lot with the home).

Both taxpayer and the assessor have appealed the board’s orders. Taxpayer requests that the court sustain the RMV determinations, completely eliminate the exception RMV on all three accounts (*i.e.*, sustain the board’s determination for tax lots 1602 and 1700, and overturn the board on its exception RMV determination for tax lot 1600), and order a reasonable increase in the AV of all three accounts relative to the statutory three percent increase generally applicable to MAV in Oregon under ORS 308.146(1).² The assessor requests that the court overturn the board’s actions relative to tax lots 1602 and 1700. Specifically, the assessor requests that the court restore the MAV and AV on tax lots 1602 and 1700 to \$40,782 and \$55,246, respectively, and that the court restore the exception RMV on the two lots to \$61,716 (tax lot 1602) and \$83,604 (tax Lot 1700).

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² Unless noted otherwise, all references to the Oregon Revised Statutes (ORS) are to 2003.

II. ANALYSIS

Prior to the adoption of Measure 50, a property's RMV and AV were generally the same.³ *See* ORS 308.232 (1995). If that were still law, this appeal would likely not have been brought because the parties do not dispute the RMV on the three accounts. The law, however, has changed.

Measure 50, adopted by the voters in a special election in May 1997, amended Oregon's constitution by establishing a new method for calculating AV, and generally capping the annual increase in AV to three percent. *See* Or Const, Art XI, § 11(1)(a) and (b) and *Ellis v. Lorati*, 14 OTR 532 (1999) (noting the history of the adoption of Measure 50). The primary mechanism for achieving that change was the concept of MAV, which, for the 1997-98 tax year, was 90 percent of the property's RMV on the assessment and tax rolls for the 1995-96 tax year (back two years, less 10 percent). *See* Or Const, Art XI, § 11(1)(a). Thereafter, MAV cannot increase by more than three percent. *See* Or Const, Art XI, § 11(1)(b); ORS 308.146(1). Under Measure 50, AV is the lesser of the property's RMV or MAV. *See* Or Const, Art XI, § 11(1)(f); ORS 308.146(2).

This appeal ensued because the assessor in 2005 redetermined all of the values for the then-existing accounts (tax lots 1600 and 1700) and established values for the new tax lot 1602, based on the 2003 partition. Those changes significantly increased taxpayer's property values and the resulting property taxes. Taxpayer appealed and the board reduced to \$-0- the AV on two of the accounts (tax lots 1602 and 1700), leaving only tax lot 1600 with an AV. As a result of the board's actions, only tax lot 1600 has a property tax liability.

³ As a result, property was taxed based on market value. Common exceptions to the general rule included properties that were exempt from taxation (*e.g.*, non-profit charitable organizations) and properties under special assessment (*e.g.*, farm and forestland). Those and other programs still exist and lower or eliminate a property's AV.

The issue in this case is whether the partition in 2003 entitled the assessor to deviate from the limited annual statutory increase in MAV provided in ORS 308.146(1), including the establishment of values for the new account for tax lot 1602. If that question is answered in the affirmative, the board clearly erred in completely eliminating the exception RMV, the MAV, and the AV on tax lots 1602 and 1700, because all property with an RMV must have an MAV and an AV, and the value for property with statutorily significant changes (including new property, property subdivided, partitioned, or rezoned, etc.) must include an exception RMV component. *See e.g.*, ORS 308.215(1)(i) (delineating contents of assessment roll to include MAV, AV and RMV of real property); ORS 308.146(1) (setting forth determination of MAV and AV generally); ORS 308.156 (establishing MAV and AV for partitioned property to include a portion of the market value of the affected property multiplied by a ratio).

As stated above, ORS 308.146(1) contains the general three percent annual increase limitation on MAV. The statute provides in relevant part:

“(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.

However, subsection (3) of that statute provides for an exception:

“(3) Notwithstanding subsections (1) and (2)⁴ of this section, the maximum assessed value and assessed value of property shall be determined as provided in ORS 308.149 to ORS 308.166 if:

“* * * * *

“(b) The property is partitioned or subdivided [.]”

ORS 308.146.

⁴ Subsection (2) of ORS 308.146 provides the general rule for determining AV as the lesser of the property’s MAV or RMV.

Taxpayer partitioned his property in 2003. Under ORS 308.146(3)(b), the assessor was required to determine taxpayer's MAV "as provided in ORS 308.149 to ORS 308.166." The statute applicable to the establishment of MAV in the case of a partition is ORS 308.156, which provides in relevant part as follows:

“(1) If property is subdivided or partitioned after January 1 of the preceding assessment year and on or before January 1 of the current assessment year, then the property's maximum assessed value shall be established as provided under this section.”

The statute goes on to provide a method of establishing MAV by adding the MAV of any unaffected property⁵ to the MAV of the affected property, the latter determined by multiplying the RMV of the affected property by a statutorily prescribed ratio. *See* ORS 308.156(5).

Although taxpayer's property was partitioned, the partition did not occur "after January 1 of the preceding assessment year," as provided in ORS 308.156(1), set forth above. The partition occurred in the 2003 assessment year,⁶ and the assessor added the value in the 2005 assessment year. The methodology for determining MAV set forth in subsection (5) ORS 308.156 was, therefore, inappropriate based on the assessor's actions in this case. The assessor may have been able to add the value for 2004 and 2005 under the omitted property or clerical error provisions of ORS chapter 311, and determine the MAV in accordance with subsection (3) of ORS 308.156, but that was not the route taken in this case. Accordingly, the values for 2005 must be determined as provided in ORS 308.205 (which governs the determination of RMV) and

⁵ There is an administrative rule promulgated by the Oregon Department of Revenue that defines "affected property" to include property that is "partitioned or subdivided; added to the account as omitted property; rezoned and used consistent with the rezoning; disqualified from a special assessment, exemption or partial exemption." OAR 150-308.156(5). Obviously unaffected property is property that has not experienced one of the enumerated events and affected property is property which has experienced such an event.

⁶ ORS 308.007(1)(b) defines the term "assessment year" as a "calendar year," paragraph (c) of that subsection provides that a "tax year" is a 12 month period beginning on July 1, and ORS 308.007(2)(a) provides that "[t]he assessment year beginning January 1 corresponds to the tax year beginning July 1 of the same calendar year[.]"

ORS 308.146 (which applies to MAV and AV determinations based on prior year values), and only for tax lots 1600 and 1700 based, where relevant, on prior year values, without regard to the partition.

The court is aware that its decision results in the taxation of taxpayer's property at odds with reality, in that taxpayer actually had three tax lots and only two will be taxed under the court's decision herein, but that result ensues from the strict application of the relevant statutes.⁷ Moreover, taxpayer was taxed in 2004 on only two tax lots even though the partition occurred in 2003 and taxpayer had the three lots on January 1, 2004. From that perspective, this decision merely perpetuates an existing problem. The situation must be rectified, if at all, in accordance with Oregon law.

The court's decision is not an endorsement of the board's action of removing the MAV and AV on two of the accounts. In fact, much of the board's actions are overturned; some because they were tied to actions of the assessor herein determined to be contrary to law, and others because the actions of the board themselves were contrary to law.

III. CONCLUSION

After carefully reviewing the matter, the court concludes that the assessor was not legally permitted in 2005 to determine MAVs as provided in ORS 308.156(5) for the three tax lots created by the 2003 partition, because the partition did not occur within the time provided in ORS 308.156(1). The values for the 2005-06 tax year, for tax lots 1600 and 1700, must be set in accordance with ORS 308.205 and ORS 308.146, without regard to the 2003 partition. As a result, there will be no exception RMVs, and no values for tax lot 1602. Furthermore, the RMV

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⁷ At least all of the physical property will be taxed.

for tax lots 1600 and 1700 must be based on the trend applied to the tax year 2004-05 RMVs, and the MAVs and AVs based on tax year 2004-05 MAVs and AVs. Now, therefore,

IT IS THE DECISION OF THIS COURT that the assessor shall cancel the values for tax lot 1602 and redetermine the values for tax lots 1600 and 1700 in accordance with ORS 308.205 and ORS 308.146, without regard to the 2003 partition that created tax lot 1602.

Dated this _____ day of February 2007.

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 February 14, 2007. The Court filed and entered this document on February 14, 2007.