

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

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| GERHARD H. HASENKOPF, |) | |
| |) | |
| Plaintiff, |) | TC-MD 060108C |
| |) | |
| v. |) | |
| |) | |
| MULTNOMAH COUNTY ASSESSOR, |) | |
| |) | |
| Defendant. |) | DECISION |

Plaintiff seeks a reduction in assessed value (AV) for tax years 2004-05 and 2005-06. Defendant moved to dismiss the appeal for tax year 2004-05 and requested that the court sustain the value for the 2005-06 tax year. The appeal involves a legal issue that was addressed by the court during the May 16, 2006, case management conference. Plaintiff appeared in-person on his own behalf; Defendant was represented by Beth Fast (Fast), an appraiser with the county assessor's office.

I. STATEMENT OF FACTS

Plaintiff appealed his value to the county board of property tax appeals (board) in 2004 (2004-05 tax year) and the board reduced the real market value (RMV) from \$147,890 to \$129,000, a reduction of \$18,890, or 7.8 percent. The board sustained the maximum assessed value (MAV) and AV at \$118,630. Plaintiff was unhappy with the board's decision because he felt that there should be some reduction to AV based on the RMV reduction. Plaintiff stated that he has appealed in the past (perhaps 15 years ago) and both the RMV and AV had been reduced.

Plaintiff filed another board appeal in 2005 (2005-06 tax year). Plaintiff states that he was not present at the board hearing because he did not receive the notice, which Defendant

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insists was mailed before the hearing and not returned as undeliverable. The board sustained the RMV at \$143,750 and the AV at \$122,180. On appeal to this court, Plaintiff requests that the tax year 2005-06 AV be reduced to \$103,000, arguing that the average difference between RMV and AV for properties in his neighborhood is \$42,958, and that he should have an AV proportionate to his RMV, commensurate with area values. In other words, the difference between his RMV and AV should be similar to that of other homes in the area.

Defendant responded that the law does not allow the type of value reduction Plaintiff seeks. Also, Fast noted, as an aside, that if the board had not reduced Plaintiff's RMV for tax year 2004-05, his RMV for the 2005-06 tax year would have been approximately \$160,000,¹ and the difference between RMV and AV would be close to the average for the area, using Plaintiff's data (*i.e.*, approximately \$38,000² versus Plaintiff's reported average of approximately \$43,000).

II. ANALYSIS

Plaintiff seeks a reduction to the 2004-05 AV because of the board's approximately \$19,000 RMV reduction, and a reduction in the 2005-06 AV to bring the spread between his RMV and AV in line with the average for the area. The court is legally precluded from granting the requested relief, as explained below.

Oregon has a somewhat unusual property tax system following the 1997 adoption of Measure 50. Prior to the adoption of Measure 50, RMV was the same as AV unless the property benefitted from some special assessment or exemption program. Thus, most

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¹ Based on area trending Defendant applied to Plaintiff's property for the 2005-06 tax year.

² \$160,000 - \$122,180 = \$37,820.

homeowners were taxed on the market value of their property. However, under Measure 50, AV is the lesser of RMV and MAV. *See* ORS 308.146(2).³ RMV is synonymous with market value, but MAV, a key concept created under Measure 50, was originally established for the 1997-98 tax year as 90 percent of the property’s 1995 tax roll RMV (*i.e.*, back two years less 10 percent). Or Const, Art XI, § 11(1)(a).⁴ For tax years subsequent to 1997-98, MAV typically rises three percent per year. *See* Or Const, Art XI, § 11(1)(b), and ORS 308.146(1).⁵ Thus, whereas RMV fluctuates with the market, MAV is derived by a simple mathematical calculation which typically produces a three percent annual increase. The increase occurs regardless of market conditions, and there is no linkage between MAV and RMV. *See Gall v. Dept. of Rev.*, 17 OTR 268, 270 (2003) (rejecting the taxpayer’s claim that there must be a reduction in MAV – and by implication AV – when there is a reduction in RMV, stating that “there is no linkage between the RMV and MAV.”)

Turning to the facts of this case, Plaintiff’s MAV in 2003 (2003-04 tax year) was \$115,180. Because that number was less than the \$143,940 RMV, Plaintiff’s AV that year was \$115,180 (the lesser of RMV and MAV, per ORS 308.146(2)). Defendant increased Plaintiff’s RMV in 2004 (2004-05 tax year) to \$147,890 because of changes in the market. Plaintiff’s MAV was increased three percent that year, from \$115,180 to \$118,630, pursuant to

³ All references to the Oregon Revised Statutes (ORS) are to 2003.

⁴ Article XI, section 11, of the Oregon Constitution provides:

“(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.

⁵ There are instances in which MAV does not rise at the three percent annual level. For example, certain changes to the property, such as the addition of new property, generate MAV increases in excess of three percent. Also, where RMV falls below MAV, AV is equal to RMV under ORS 308.146(2), and the AV for the subsequent year depends on market conditions affecting RMV and the interplay between RMV and MAV.

ORS 308.146(1). Plaintiff appealed those values to the board, and the board reduced his RMV from \$147,890 to \$129,000. However, the board did not reduce Plaintiff's MAV and AV because those values – both set at \$118,630 – were still below the reduced RMV of \$129,000 and, as explained above, MAV is not tied to RMV. The statute requires that MAV each year be the greater of “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[.]” ORS 308.146(1). The law does not allow for a reduction in MAV based on a reduction in RMV; nor does an RMV reduction reduce AV unless RMV falls below MAV, in which case AV is reduced to match RMV. Thus, Plaintiff's request for a reduction in his 2004-05 AV because of the board's RMV reduction is contrary to law.

The same holds true for Plaintiff's request for a reduction in his AV for the 2005-06 tax year, despite Plaintiff's differing theory for that year. That is because AV in Plaintiff's case is based on MAV (because it is lower than RMV) and MAV is a mathematical calculation under ORS 308.146 unrelated to RMV. Again, MAV each year is the greater of “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[.]” ORS 308.146(1). Once RMV and MAV are established, AV is simply the lesser of the two. The fact that the difference between RMV and AV of other properties in Plaintiff's neighborhood is twice what it is for his property is legally of no consequence. And, as Defendant noted during the May 16, 2006, proceeding, the difference between Plaintiff's RMV and MAV (and AV) would be much closer to that of his neighbor's if Plaintiff had not succeeded in obtaining a reduction in RMV in 2004. The good news is that, under Measure 50, Plaintiff's taxes are calculated on a value below the market value of his home (the \$122,180 MAV/AV instead of Plaintiff's \$143,750 RMV).

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III. CONCLUSION

The court cannot reduce Plaintiff's assessed value for either tax year 2004-05 or tax year 2005-06 because it lacks the legal authority to do so. Now, therefore,

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

Dated this _____ day of May 2006.

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 May 26, 2006. The Court filed and entered this document on May 26, 2006.