

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Property Tax

LAURENCE F. HEARNE, )  
PATRICIA A. HEARNE, TRUSTEES of )  
THE 1999 HEARNE FAMILY TRUST, )  
 )  
Plaintiffs, ) TC-MD 060285D  
 )  
v. )  
 )  
KLAMATH COUNTY ASSESSOR, )  
 )  
Defendant. ) **DECISION**

Plaintiffs appeal the 2005-06 maximum assessed value and assessed value of their property identified by Defendant as Account R424892. A trial was held in the Oregon Tax Courtroom, Salem, Oregon, on Thursday, December 7, 2006. Laurence F. Hearne (Hearne) appeared on behalf of Plaintiffs. Reg LeQuieu (LeQuieu), Tax Assessor, appeared on behalf of Defendant.

Early in the proceedings the parties agreed that, if the court concludes that it has the statutory authority to order a change in maximum assessed value, the 2005-06 maximum assessed value of the subject property should be \$412,370. Plaintiffs' Exhibits 1 - 6 were submitted and received without objection.

I. STATEMENT OF FACTS

Plaintiffs own the subject property, a 4,011 square foot house with a 1,119 square foot basement that is located in the Lynnewood subdivision within the city of Klamath Falls. They purchased the property in April 2002, paying \$293,000. (Ptf's' Ex 4-9.) At the time of the purchase, the real market value and assessed value of the subject property on the tax roll for tax year 2001-02 was \$350,330. (Ptf's' Ex 2-3.) Hearne contacted the county assessor to discuss the

values on the tax roll, and after discussions between the parties, the real market value and assessed value of the subject property for tax year 2002-03 were reduced to \$317,050. (*Id.*) For the next two years, the assessed value of the subject property was the real market value. (*Id.*; Ptf's' Ex 2-2.) However, in 2005-06, the real market value increased more than 47 percent to \$517,160. (Ptf's' Ex 2-2.) For the first time since Plaintiffs purchased the subject property, the assessed value was not the real market value. The assessed value was the maximum assessed value. (Ptf's' Ex 4-5.)

The maximum assessed value of the subject property was determined when Oregon changed its property tax system in 1997. LeQuieu testified that the maximum assessed value in 1997 was correctly determined to be 90 percent of the 1995-96 real market value. For tax years 1998-99 through 2001-02, the maximum assessed value, which was the assessed value, increased three percent as allowed by law. However, in tax year 2002-03, the maximum assessed value did not increase because the real market value of the subject property was less than the maximum assessed value. For that year, the real market value was the assessed value. The maximum assessed value, \$464,110, remained unchanged until tax year 2006-07.

Hearne testified that the maximum assessed value of his property is too high when compared with neighboring properties. He researched the real estate market in his residential area and presented data in graph form showing that the real market value of his property over a period of years was incorrectly determined. Hearne noted errors in total square feet of living area, quality, type of roof, and number of fireplaces. (Ptf's' Ex 4-58, 4-60 – 4-81.) He concluded that “Real Market Values (RMV) were greatly overestimated in years from 1997 through 2002 due to a combination of factors. \* \* \* Therefore the MAV would not have increased above its initial 1997 value in any year from 1998 through 2005 if more realistic market values had been determined.” (Ptf's' Ex 4-85.)

Hearne testified that he understands the law (“Measure 50 Prohibition”) will not allow the 1997-98 maximum assessed value to be changed. (Ptf’s Ex 4-34.) However, he requests that the court not allow the statutory increase of three percent per year, but rather “freeze” the maximum assessed value at the 1997-98 amount until tax year 2006-07. Hearne computed a 12.5 percent increase in the maximum assessed value of the subject property from 1997 to 2005.

(Ptf’s Ex 4-85.)<sup>1</sup> He requests that the court order “a 12.5% reduction in the 2005 MAV from its present value of \$464,110.” (*Id.*)

Hearne testified that the law allows the court to order the requested relief. He stated that ORS 305.275 allows Plaintiffs to appeal the assessor’s determination of value, and under ORS 305.280 his appeal was filed timely for tax year 2005-06. Hearne concluded that ORS 305.288 allows the tax court to change the current tax roll when taxpayers show that “good and sufficient cause exists” and Plaintiffs’ circumstances meet the definition of “good and sufficient cause.” He stated that Plaintiffs’ purchase of the subject property in 2002 created a circumstance beyond their control that prevented them from appealing the 1995 real market value, which was used to set the 1997-98 maximum assessed value. Hearne testified that even though he “exercised due diligence prior to purchasing” the subject property he “had no means of knowing of unrealistic MAVs” and he believes “[m]isleading information was provided by tax officials and other presumed authorities.” (Ptf’s Ex 4-37.)

Hearne further alleges that because Plaintiffs’ property taxes are so much higher than his neighbors it “feels like discrimination.” Hearne believes he is in an “inequitable situation” because he did not own the property in 1995, and he cannot appeal the values set in 1995 and in subsequent years, which are now used to compute his property. He testified that the First

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<sup>1</sup> The maximum assessed value increased three percent per year from 1997-98 through 2000-2001.

Amendment to the United States Constitution provides that he has a “right to go to the government and ask for redress.” Further, Hearne testified that his current rate of taxation appears to him to have a “confiscatory effect on his property.” He believes that the current rate of property taxation will “inhibit sale” of his property and “cause it to drop in value.”

LeQuieu testified that the county is not unsympathetic to Plaintiffs’ situation. He stated that “Measure 50 was correctly applied” and that the maximum assessed values in each year were correctly calculated in accordance with the “letter of the law.” LeQuieu testified that Plaintiffs’ assessed value “may be out of balance with most of the other properties in the neighborhood.” However, he testified that the county is unaware of any “statutory authority” allowing it to make “the adjustment.”

## II. ANALYSIS

The parties agree that the question before the court is whether there is any statutory authority allowing a reduction of Plaintiffs’ 2005-06 maximum assessed value. In 1998 and all years subsequent to the present, the law remained unchanged, stating that:

“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(1).<sup>2</sup> Defendant testified, and the court verified, that the maximum assessed value of the subject property has been correctly calculated in accordance with ORS 308.146(1) for all tax years beginning in 1998-99 and moving forward to the current tax year under appeal.

Plaintiffs request that, even though the maximum assessed value has been properly calculated, the court should reduce it approximately 12.5 percent. Plaintiffs conclude that ORS 305.288 grants them the right to appeal and allows the court to make the requested

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<sup>2</sup> All references to the Oregon Revised Statutes (ORS) are to 2003.

reduction. ORS 305.288 allows a taxpayer to seek a reduction in the real market value of property even though the taxpayer failed to pursue the statutory right of appeal to the board of property tax appeals. In this case, ORS 305.288 is not applicable to Plaintiffs. Plaintiffs had no statutory right of appeal to the board of property tax appeals in 1997 because they did not own the property at the time the maximum assessed value was set. In addition, Plaintiffs agree that the court does not have the authority to redetermine maximum assessed value. *See Ellis v. Lorati*, 14 OTR 525, 534 (1999) (holding that “taxpayers appealing their July 1, 1997, MAV may not challenge the real market value shown on the tax roll for July 1, 1995.”). Further, with respect to Plaintiffs’ appeal of the current tax year, ORS 305.288 is not applicable because Plaintiffs first appealed to the board of property tax appeals. ORS 305.288 allows taxpayers to appeal directly to the Tax Court when they fail to follow the preferred path of appeal, which is to their county board of property tax appeals. Plaintiffs do not need to meet the statutory requirements of ORS 305.288 to appeal to this court. The “good and sufficient cause” requirement set forth in ORS 305.288 does not open the door for the court to order the relief Plaintiffs are seeking.

Plaintiffs offer the court other reasons why the reduction should be ordered, including arguments based on the amendments to the United States Constitution. The First Amendment guarantees a citizen the right “to petition the Government for a redress of grievances.” US Const, Amend I. It does not guarantee that each petition will be granted. In this case, Plaintiffs filed a complaint and were allowed an opportunity to seek “redress of grievances.” Unfortunately for them, the court has no statutory authority to grant the relief they are seeking.

Plaintiffs also argue that they are being discriminated against because they pay higher taxes than others who have lower maximum assessed values. The court in *Ellis* discussed maximum assessed value and its impact on the property tax system:

“The court recognizes that in one sense MAV [maximum assessed value] is somewhat artificial or arbitrary. That is inherent in the overall scheme of section 11. The concept may, over time, result in various degrees of nonuniformity in the property tax system. Section 11(18) contemplates this and excuses itself from complying with other constitutional provisions requiring uniformity, specifically Article IX, section 1 and Article I, section 32.”

*Ellis v. Lorati*, 14 OTR 525, 535 (1999). The current property tax system enacted by the citizens of Oregon permits varying “degrees of nonuniformity.” Plaintiffs’ situation illustrates the court’s statement. Plaintiffs purchased the property at a point in time when the real market value (\$350,330) was less than the maximum assessed value (\$464,110). Hearne testified that, despite “due diligence” prior to purchasing the property, he was unaware of the maximum assessed value. Property tax statements currently print real market value and assessed value of a property. In many cases, maximum assessed value is assessed value, but that was not Plaintiffs’ situation.

Maximum assessed value is “frozen” when the real market value is assessed value. For purposes of computing maximum assessed value, assessed value can increase no more than three percent each year. Each year assessed value is increased three percent and compared to the previous year’s maximum assessed value. The higher of the two amounts becomes the current year’s maximum assessed value. In the case before the court, for tax years 2002-03, 2003-04, and 2004-05, the maximum assessed value of tax year 2001-02 was higher than the three percent increase to assessed value.

When the real market value of the subject property increased approximately 47 percent from 2004-05 to 2005-06, Plaintiffs’ assessed value increased more than 32 percent because the maximum assessed value, which had been frozen since 2002-03, became the assessed value. Plaintiffs testified that comparable homes in their neighborhood have substantially lower maximum assessed values and assessed values. Unfortunately, in Plaintiffs’ words, such an

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“inequitable situation” can arise under the current property tax system. There is no statutory provision to prevent or correct such “degrees of nonuniformity.” *Ellis*, 14 OTR at 535.

Plaintiffs believe that the current measure of property taxes, specifically maximum assessed value, has a “confiscatory effect” on their property because it *may* “inhibit the sale.” The judicial system does not address speculative or prospective outcomes. *See Kaady v. Dept. of Rev.*, 15 OTR 124, 125 (2000) (holding that “[i]n requiring that taxpayers be ‘aggrieved’ under ORS 305.275, the legislature intended that the taxpayer have an immediate claim of wrong. It did not intend that taxpayers could require the expenditure of public resources to litigate issues that might never arise.”).

### III. CONCLUSION

After careful review of the applicable law and testimony, the court finds that it cannot grant a reduction in the maximum assessed value of the subject property. Now, therefore,

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

Dated this \_\_\_\_\_ day of February 2007.

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JILL A. TANNER  
PRESIDING 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 Presiding Magistrate Jill A. Tanner on February 1, 2007. The Court filed and entered this document on February 1, 2007.***