

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

NORA JEAN ROSS,)	
)	
Plaintiff,)	TC-MD 060592B
)	
v.)	
)	
DEPARTMENT OF REVENUE,)	
State of Oregon,)	
)	
Defendant.)	DECISION

Plaintiff appeals Defendant’s determination that the agency would not examine her claim (on the merits) that her land was overvalued by the Jackson County Assessor. Her complaint to this court requests “[r]efund of overpayment of taxes on 1.1 acres plus interest for 36 years.” (Ptf’s Compl at 2.)

A case management conference was convened on November 20, 2006. Norma Jean Ross participated on her own behalf. Melisse S. Cunningham, Assistant Attorney General, represented Defendant. Subsequently, Rochelle Nedeau of that office was substituted as chief counsel. The parties agreed the appeal would be decided based on written submissions. The record closed April 16, 2007.

I. STATEMENT OF FACTS

Plaintiff appealed certain real property assessment matters to Defendant’s conference section. She contested tax years 1942-43 through 2005-06. After a telephone proceeding on March 23, 2006, Defendant issued Conference Decision No. 06-0021 on April 18, 2006. Therein, Defendant determined “it does not have jurisdiction to review the substantive issues of petitioner’s appeal.” (Ptf’s Compl at 6.) The claim was denied.

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A complete transcript of Defendant's conference proceeding was filed with the court on November 30, 2006. Based on a review of that record, it is clear that Defendant's Conference Decision was based on those pertinent findings. Plaintiff purchased the property in 1969; at that time the land was listed as five acres. The land was divided into two parcels in 1982. In 2005, Defendant conducted a comprehensive county-wide study of property sizes. After the study, the assessor corrected its records to show 3.9 acres instead of 5 acres. During the conference proceeding before Defendant, Plaintiff argued that during the interim she had paid taxes on five acres when, in reality, she had owned only 3.9 acres. She calculated tax refunds due for the "missing 1.1 acres of land" for those years. She did not offer any supportive valuation evidence such as market sales data. The assessor stated that the smaller subject parcel sold in 2005 for a sum (\$125,000) far in excess of the county's stated value (\$70,120) for that year.

After its review, Defendant dismissed all years prior to 2003-04 pursuant to ORS 306.115. As to tax years 2003-04, 2004-05, and 2005-06, Defendant denied the claims for relief.

For the latter three years, Defendant examined OAR 150.306.115(4)(b) which provides:

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

"(A) The parties to the petition agree to facts indicating likely error; or

"(B) There is an extraordinary circumstance indicating a likely error."

Defendant determined the substantive issues presented would not be further explored.

II. ANALYSIS

The review by this court is limited to an examination of the Defendant's March 23, 2006, conference proceeding and the accompanying documents submitted at that time. *See ADC Kentrox v. Dept. of Rev.*, 19 OTR 91 (2006) (determining the standard of review in abuse of discretion). The focus is whether Defendant abused its discretion in reaching its decision under

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ORS 306.115. *See Resolution Trust Corp. v. Dept. Of Rev.*, 13 OTR 276 (1995) (determining scope of review under ORS 306.115). This court may not substitute its judgment for that of Defendant. *Id.* at 279.

Several material facts were clearly disputed by the parties. Contrary to Plaintiff's assertions and conclusions, the parcels' size discrepancies do not automatically justify a value reduction. The county assessor's representative provided a detailed list of other factors that should be considered in an appraisal review. Differences as to size did not solve the valuation question according to one party to the dispute. It involved more than a mathematical computation without appraisal judgment. Other differences included the potential of undervaluations and the lack of market evidence. Defendant was entitled to find those as disputed facts.

Similarly, Defendant determined that the situation did not constitute an "extraordinary circumstance." There is nothing to show that was an impermissible finding.

Upon review, there is no evidence that Defendant's conference process was conducted in an arbitrary, capricious or wrongful matter; nor is the resolution "clearly wrong." *Martin Bros. v. Tax Commission*, 252 Or 331, 338, 449 P2d 430 (1969). Defendant determined the agreed upon facts did not show a likely error on the assessment roll. This court will not overturn that finding.

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III. CONCLUSION

Defendant's conference process and ultimate opinion were not an abuse of that agency's discretion. Now, therefore,

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

Dated this _____ day of June 2007.

JEFFREY S. MATTSON
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 Jeffrey S. Mattson on June 8, 2007.
The Court filed and entered this document on June 8, 2007.***