

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

FLAVIYA ZAKHARYUK,)	
)	
Plaintiff,)	TC-MD 070123D
)	
v.)	
)	
MULTNOMAH COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION OF DISMISSAL

This matter is before the court on Defendant’s Motion to Dismiss, filed April 11, 2007, requesting that the above-entitled matter be dismissed.

A case management conference was held on Wednesday, May 16, 2007. Plaintiff appeared on her own behalf. Steve Blixt and Richard Sanderman appeared on behalf of Defendant.

The parties discussed Defendant’s Motion to Dismiss. In its Motion to Dismiss, Defendant wrote “that plaintiff is [not] ‘aggrieved’ within the meaning of ORS 305.275 because plaintiff has requested a reduction in maximum assessed value that is contrary to ORS 308.146.” In general, ORS 308.146¹ provides that maximum assessed value will increase no more than three percent a year. To understand Defendant’s Motion to Dismiss, it is helpful to review the current values of the subject property and Oregon’s property tax system.

Plaintiff appealed the value of the subject property to the board of property tax appeals (BOPTA). BOPTA reduced the real market value of the subject property. However, the maximum assessed and assessed value did not change. Plaintiff states that homes in her neighborhood “are selling for \$20,000 to \$40,000” less than the current real market value

¹ Unless otherwise noted, all references to the Oregon Revised Statute are to year 2005.

determined by BOPTA. However, Plaintiff's requested assessed value of \$260,000 is not supported by current sales.

Oregon's property tax system changed in 1997 when Measure 50 was passed.² Prior to the changes, there was a relationship or link between real market value and assessed value. ORS 308.232 (1995). Under that system, when the real market value of a property increased, the assessed value would also increase. With the enactment of Measure 50, the link between real market value and assessed value was broken because assessed value is now based on the lesser of real market value or of the maximum assessed value. Maximum assessed value is a statutory value based on 90 percent of the real market value of the property as of 1995 or the real market value at the time the property is added to the tax roll. For the property at issue, which was 100 percent complete in 2005, the maximum assessed value was calculated by multiplying the real market value of the property by a ratio of "the average maximum assessed value over the average real market value for the assessment year" of properties of the same class.

ORS 308.153(1)(b); *see also* ORS 308.149(3)(a). That ratio is commonly referred to as the "CPR." The real market value placed on the tax roll was \$613,140 and the maximum assessed value and assessed value was \$384,760.

The law provides that for each successive year, the maximum assessed value in most cases will increase no more than three percent a year. Or Const, Art XI, § 11(1)(b); *see also* ORS 308.146(1). The assessed value of a property is the lesser of its real market value or its maximum assessed value. In this case, the assessed value of the subject property for tax year 2006-07 was its maximum assessed value because the maximum assessed value was less than the real market value. Even though BOPTA reduced the real market value of the subject property,

² Measure 50 was codified at Article XI, section 11, of the Oregon Constitution.

there was no change in the maximum assessed value and assessed value because there is no longer a direct link between real market value and assessed value. The court explained that even if it agreed with Plaintiff's request that the real market value should be reduced by \$40,000 (the high end of the difference between her real market value and the current sales reported by Plaintiff) there would be no change in the maximum assessed value and assessed value of her property. The court has similarly dismissed taxpayers' claims that a maximum assessed value reduction should occur following a real market value reduction. The court stated:

“Taxpayers are fundamentally mistaken about the law. Under Measure 50 and the statutes implementing it, there is no linkage between the RMV [real market value] and MAV [maximum assessed value]. Instead, each value is determined and one of the two, the lesser, becomes, in any given year, the assessed value (AV) for the property.”

Gall v. Dept. of Rev., 17 OTR 268, 270 (2003).

Plaintiff would like to appeal her maximum assessed value. However, the Oregon Constitution makes no provision for reducing the maximum assessed value. The court held that the silence of section 11 with respect to downward adjustments to maximum assessed value was a “conscious decision” showing an intent for “any value decreases [to] be reflected in the alternative to maximum assessed value: real market value.” *Taylor v. Clackamas County Assessor (I)*, 14 OTR 504, 510 (1999). The court commented that it was improbable that the drafters of section 11 gave detailed attention to events that increase value, but, through oversight, failed to provide for decrease in value. *Id.* Further, the court held that taxpayers cannot appeal the maximum assessed value of their property. *Ellis v. Lorati*, 14 OTR 525 (1999).

Plaintiff complains that her tax burden is greater than her neighbors. The court has previously concluded that the current property tax system will result in some degree of

///

///

nonuniformity. In *Ellis v. Lorati*, the court stated:

“The court recognizes that in one sense MAV is somewhat artificial or arbitrary. That is inherent in the overall scheme of section 11 [of the Oregon Constitution]. 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, 14 OTR at 535.

At the conclusion of the case management conference, the court explained that it would grant Defendant’s Motion to Dismiss because for the current year, 2006-07, Plaintiff cannot appeal the maximum assessed value of her property, and she has failed to show that a change in real market value will result in a change in assessed value – in the terms of ORS 305.275, Plaintiff is not aggrieved. Now, therefore,

IT IS THE DECISION OF THIS COURT that this matter be dismissed.

Dated this _____ day of May 2007.

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 May 29, 2007. The Court filed and entered this document on May 29, 2007.