

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Property Tax

MARY E. SUTTON and GARY W. SUTTON,	)	
	)	
Plaintiffs,	)	TC-MD 070186C
	)	
v.	)	
	)	
JACKSON COUNTY ASSESSOR,	)	
	)	
Defendant.	)	<b>DECISION</b>

This matter is before the court on what essentially amounts to cross-motions for summary judgment. The relevant facts are not in dispute, and the issue for the court involves a purely legal question: whether the court has the authority to reduce the value of Plaintiffs' property for the 2006-07 tax year based on an error in value in 1998, when the property was first placed on the assessment and tax rolls.

The parties briefed the issue and the court heard oral argument on July 17, 2007. Plaintiffs appeared on their own behalf and Defendant was represented by Chris Parton, Lead Residential Appraiser.

**I. STATEMENT OF FACTS**

Plaintiffs seek a reduction in the maximum assessed value (MAV) of their home, identified in the assessor's records as Account 10868888. The previous owners bought the home in February 1998 for \$167,425. The home was new at that time. Defendant put the property on the rolls in 1998 (1998-99 tax year) with a real market value (RMV) of \$227,100, and a MAV under Measure 50 of \$194,140. Because MAV was less than RMV, Defendant set the property's assessed value (AV) at \$194,140. *See* ORS 308.146(2)<sup>1</sup> (providing that AV is the lesser of RMV

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<sup>1</sup> All references to the Oregon Revised Statutes (ORS) are to 2005.

or MAV).<sup>2</sup> The parties seem to agree that those values were high, based on the purchase price. By statute, those numbers were trended forward to the 2006-07 tax year, with the RMV increasing based on market trends and the MAV and AV increasing at the statutory rate of three percent per year. *See* ORS 308.205 (defining RMV) and ORS 308.146(1) (providing for an annual increase in MAV of three percent).

Defendant determined that the RMV for the 2006-07 tax year was \$451,250, based on a rise in market conditions between 1998 and 2006, and the statutorily trended MAV was \$245,910. Plaintiffs, who now own the property, appealed those values to the county board of property tax appeals (board) and the board reduced the RMV to \$355,000, but did not reduce the MAV. Plaintiffs have appealed the board's decision, asserting that the MAV should be reduced to rectify the error stemming from the assessor's incorrect 1998 value determinations. Plaintiffs are not disputing the board-reduced RMV of \$355,000, but are seeking a reduction in MAV.

## II. POSITIONS OF THE PARTIES

Plaintiffs assert that their MAV is excessive for the 2006-07 tax year because of an error in the value when the property was first put on the tax rolls in 1998. Plaintiffs propose several alternatives to arrive at a correct MAV. Defendant agrees that the value was probably high in 1998. However, Defendant asserts that the error in value can no longer be corrected.

Plaintiffs contend that the court has authority to make the correction under ORS 305.288. Plaintiffs assert that they satisfy the requirements of subsection (1) of that statute because the appeal involves a single-family dwelling and the difference between the actual RMV of their property as determined by the board (\$355,000) and the RMV on the tax roll (\$451,250) is more than 20 percent. Next, Plaintiffs argue that ORS 305.288(2) authorizes the court to change or

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<sup>2</sup> The law was the same in 1997 as under current law in terms of the definition of AV.

correct the MAV in addition to changing or correcting the RMV. The applicable statutory language provides that “[i]f the tax court finds that the conditions needed to order a change or correction under subsection (1) of this section exist, the court may order a change or correction in the maximum assessed value of the property in addition to the change or correction in the real market value of the property.” Plaintiffs then note that ORS 311.205(1)(d) authorizes the assessor to make a change ordered by the Tax Court under ORS 305.288. Finally, Plaintiffs argue that ORS 308.153<sup>3</sup> provides a method for determining MAV by application of a ratio to the property’s RMV. The ratio is average MAV to average RMV. Plaintiffs provide three alternative methodologies for recomputing their tax year 2006-07 MAV.

The first alternative involves multiplying the 2006 board-reduced RMV of \$355,000 by the subject property’s 2006 ratio of MAV to RMV (0.545, or 54.5 percent), generating a new tax year 2006-07 MAV of \$193,458. The second proposed method applies the property’s 1998 ratio of MAV to RMV (0.8549) to a recomputed 1998 RMV derived by back trending the 2006 RMV of \$355,000, to establish a new 1998 MAV (for purposes of calculating a 2006 MAV without changing the 1998 rolls), and then trending the recomputed 1998 MAV forward to 2006 at the statutory rate of three percent per year. That method generates a tax year 2006-07 MAV of \$193,510. The third approach applies the assessor’s 1998 ratio of average MAV to average RMV (approximately 85 percent) to the 1998 purchase price of \$167,425, to establish a new 1998 MAV (computational purposes only), which would then be trended forward at an annual rate of three percent to arrive at a recomputed 2006-07 MAV of \$181,307.

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<sup>3</sup> Plaintiffs in their initial memorandum (submitted in the form of a letter) of June 25, 2007, incorrectly cite to the statute as ORS 311.153, but correct that citation in their July 10, 2007, memorandum. A similar mistake was made with regard to ORS 308.149.

Defendant responds that Plaintiffs mistakenly believe that a reduction in RMV should result in a reduction in MAV. Defendant opines that Plaintiffs' appeal is based on a perceived unfairness in the law, an argument disposed of by the court in *Ellis v. Lorati*, 14 OTR 525 (1999) (*Lorati*), where the court observed that MAV is an artificial and arbitrary number that over time, will produce "various degrees of nonuniformity in the property tax system," which is why Measure 50 excuses itself from the uniformity requirements of the state's constitution. Defendant next argues that Plaintiffs are not aggrieved as required by ORS 305.275 because the board reduced Plaintiffs' RMV based on the purchase price, and the determination of MAV and AV is driven by statute. Because RMV is greater than MAV, even after the board's reduction, Defendant insists that legally there can be no reduction in AV. Plaintiffs, therefore, are not aggrieved, and the case should be dismissed for lack of jurisdiction.

### III. ANALYSIS

#### A. *Applicability of ORS 305.288*

The court agrees with Defendant's assertion that Plaintiffs' case is based on a misunderstanding of the applicable law. Plaintiffs seek a reduction in the tax year 2006-07 MAV. However, contrary to Plaintiffs' assertion, ORS 305.288 is inapplicable because Plaintiffs are no longer asserting an error in the RMV, as required by subsection (1)(b) of that statute. The board reduced Plaintiffs' RMV to \$355,000, and Plaintiffs do not contest that value. The statutory provision Plaintiffs rely upon requires that Plaintiffs assert a "difference between the real market value of the property for the tax year and the real market value *on the assessment and tax roll* for the tax year \* \* \* equal to or greater than 20 percent." ORS 305.288(1)(b) (emphasis added). Unless the court orders a further reduction in the RMV, then the RMV "on the assessment and tax roll for the tax year" is \$355,000. Plaintiffs are not appealing that value,

and therefore have not alleged a difference in the actual market value of the property and the value on the rolls. The 20 percent error Plaintiffs assert is based on the RMV on the rolls *prior* to the board's reduction. That value was \$451,250. Plaintiffs asserted that error, which amounted to 21.3 percent, to the board. Relief under ORS 305.288(1) requires that the taxpayer allege *to the Tax Court* an error in the RMV of the property of at least 20 percent.

Subsection (2) of that statute, which authorizes a change or correction to MAV, first requires that the court make a change or correction under subsection (1) which, as explained immediately above, the court in this case cannot do because there is not even an allegation of an error in the RMV as determined by the board.

The above discussion effectively resolves Plaintiffs' appeal because the additional statutory authority cited hinges upon the court's ability to reduce MAV under the provisions of ORS 305.288, which cannot be done. However, a brief discussion of the other provisions relied upon by Plaintiffs seems appropriate.

B. *Determination of MAV under ORS 308.153*

Plaintiffs assert that "ORS 308.153 provides that the MAV of a property be computed by multiplying the RMV for the property by the ratio of the 'average maximum assessed value' to the 'average real market value.'" (Ptf's Ltr. at 1, June 25, 2007.) Plaintiffs are mistaken.

The calculation of MAV provided for in ORS 308.153 pertains to "new property [that] is added to the assessment roll or improvements \* \* \* made to property as of January 1 of the assessment year." Plaintiffs' property is not "new property" added to the roll as of January 1 of the 2006 assessment year. According to Plaintiffs' information, the property was new property added to the roll in 1998. (Ptf's Compl at 4.) That, then, would be the year that the MAV methodology set forth in ORS 308.153 was to be employed. It appears Defendant did so at that

time. Henceforth, MAV “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). The practical effect of ORS 308.146(1) is that, once property is placed on the rolls, MAV generally rises at an annual rate of three percent. Under subsection (2) of that statute, AV is the lesser of the property’s RMV or MAV. RMV is tied to market forces. ORS 308.205. Those statutes make clear that, once property is placed on the tax rolls, RMV in subsequent years bears no relationship to MAV. Therefore, although the board reduced Plaintiffs’ RMV, it had no reason or authority to reduce MAV. Neither does the court.

C. *ORS 311.205*

Finally, although ORS 311.205(1)(d) does require the officer in charge of the roll to “make any change ordered by the tax court \* \* \* under ORS 305.288,” no change to the roll is in order in this case because the court is not ordering such a change under ORS 305.288 or any other provision of the law.

It is unfortunate that an apparent error in the property’s 1998 RMV generated a corresponding error in the property’s MAV, which has carried forward to the 2006-07 tax year, and that the error cannot be rectified by the court. As Defendant noted in its written argument to the court, this court has previously stated that:

“The court recognizes that in one sense MAV is somewhat artificial or arbitrary. That is inherent in the overall scheme of section 11 [of Measure 50]. 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 1, section 32.”

(Def’s Ltr, June 26, 2007 (quoting *Lorati*, 14 OTR at 535).)

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#### IV. CONCLUSION

The court concludes that it cannot reduce Plaintiffs' tax year 2006-07 MAV by virtue of ORS 305.288 and ORS 308.153. Nor, is there any other statutory authority by which the court can reduce Plaintiffs' 2006-07 MAV. Accordingly, the error in the 2006-07 MAV stemming from an incorrect determination of RMV in 1998, which, in turn, created an error in the 1998 MAV, will remain unchanged, and carry forward to future tax years under ORS 308.146. Although Measure 50 generally produced property tax savings for Oregon's homeowners, the relative burden borne by similarly situated taxpayers will often be disproportionate to the market value of the property being taxed, because the tax is generally no longer imposed on market value and there is a disconnect between RMV and MAV. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiffs' appeal must be dismissed because the court does not have the legal authority to reduce the MAV of the subject property.

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

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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 September 5, 2007. The Court filed and entered this document on September 5, 2007.***