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SAMPLE
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IN THE SUPREME COURT OF THE STATE OF OREGON FEB 16 2001

FLAVORLAND FOODS, now doing business as New Season Foods, Inc.,	)	
Plaintiff-Respondent,	)	Tax Court No. 4393
v.	)	
WASHINGTON COUNTY, a political subdivision of the State of Oregon,	)	Supreme Court No. S47940
Defendant-Appellant,	)	
and	)	
DEPARTMENT OF REVENUE, State of Oregon,	)	
Defendant-Appellant.	)	

OPENING BRIEF OF DEFENDANT-APPELLANT WASHINGTON COUNTY

Direct Appeal from a Judgment
of the Tax Court of the State of Oregon, by the Honorable Carl N. Byers, Judge
Judgment Filed: September 19, 2000

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the property because it was less that the Maximum Assessed Value (MAV). However, Washington County calculated the MAV applicable to the subject property for the 1998-99 tax year based upon the total value (land and improvements) of the subject property. The MAV of the land portion of the subject property, if calculated separately from the improvements, would be $421,785 for the 1998-99 tax year, which would be less than the real market value of the land portion of the subject property for the 1998-99 tax year.

ARGUMENT

A. The Tax Court's Decision

The Court erred in finding that ORS 308.142 is unconstitutional, and in finding that as a matter of law, Article XI, section 11(1)(a) of the Oregon Constitution requires a separate calculation of Maximum Assessed Value (MAV) for land and improvements. The Tax Court's decision is a question of law and the appropriate standard of review is *de novo*. King Estate Winery, Inc. v. Department of Revenue, 329 Or 414, 988 P2d 369 (1999).

Implicit in the Tax Court's decision[1] is the conclusion that ORS 308.142 is unconstitutional because it provides for MAV to be calculated as a total number for all property under one property tax account, including land and

[1] This conclusion was made explicit in Chart Development v. Washington County, 2000 WL 1612701 (Or Tax Regular Div.) a Tax Court case handed down one month after this case which specifically discusses the instant case.

improvements. In the present case, the County used one MAV amount which represented both land and improvements identified by property tax account number R 749863. This MAV was compared with the total real market value of plaintiff's property (again one number representing land plus improvements). The property's aggregate RMV was lower that the property's aggregate MAV, and the aggregate RMV became the 1998-1999 assessed value.

Plaintiff points out that RMV is and has been separately calculated for land and improvements for many years and that prior to amendment by the legislature in 1999, ORS 308.215 provided for separate listings of MAV on the assessment role for land and improvements.[2] Plaintiff then argues that the comparison between MAV and RMV to determine assessed value should be made not using total or aggregate numbers, but separate numbers for land and improvements.

If the county were to use separate MAV calculations for land and improvements, and then take the lower of MAV or RMV for each, it would lower plaintiff's overall assessed value. This is so because the MAV for plaintiff's land if figured separately would be less than the RMV of plaintiff's land.

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[2] Because of the uniform statewide implementation of BM 50 at the direction of the Department of Revenue, county assessors did not separate MAV into land and improvements, notwithstanding the language of ORS 308.215 (1) (e) and (f). The language of 308.215 (1) (e) and (f) was subsequently amended by the legislature to delete the requirement for separate listings on the assessment roll.

Article XI, section 11 prohibits the MAV of a "unit of property" from increasing more than three percent per year. The Tax Court's decision in effect says that "unit of property" does not mean the aggregate of property under one tax account as defined by the legislature, but means that each subcomponent of property which has a separate assessment for purposes of determining real market value cannot have an MAV increase of more than three percent a year.

As discussed below, the court's decision misapplies the applicable rules for interpreting provisions of the Oregon Constitution passed by initiative, makes unsupported assumptions regarding the intent of the voters, and fails to provide ORS 308.142 with the presumption of constitutionality it is entitled to.

B. Statutes Are Entitled To A Presumption of Constitutionality

The court's ruling does not provide ORS 308.142 with the presumption of constitutionality to which it is entitled. Statutes are presumed to be constitutional unless no constitutional construction is possible. State v. Kitzman, 323 Or 589, 920 P2d 134 (1996). Statutes should be interpreted and administered to be consistent with constitutional standards before attributing a policy of doubtful constitutionality to the political policy makers, unless their expressed intentions leave no room for doubt. See, Planned Parenthood Assn. v. Dept. of Human Resources, 297 Or 562, 687 P2d 785 (1984).

Senate Bill 1215 (SB 1215) was enacted by the Oregon Legislature contemporaneously with the drafting of Ballot Measure 50 (BM 50), which

CERTIFICATE OF SERVICE

I certify that I served two true and correct copies of the OPENING BRIEF OF THE PLAINTIFF-APPELLANT Paul E. Nau Jr., by first-class mail plainly addressed as below and deposited, postage fully prepaid, On March 31, 2004 with the U.S. Postal Service for delivery to:

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Paul E. Nau Jr.
Plaintiff-Appellant

CERTIFICATE OF FILING

I certify that I filed the original along with 15 copies of the OPENING BRIEF OF PLAINTIFF-APPELLANT PAUL E. NAU JR. with the State Court Administrator, Records Section, Supreme Court Building, 1163 State Street, Salem, Oregon 97310 on March 31, 2004, by first-class mail plainly addressed and deposited, postage fully pprepaid, with the U.S. Postal Service for delivery.

I further certify that the attached copies of the document listed above are full, true, and correct copies of the original.

Plaintiff-Appellant