IN THE SUPREME COURT OF THE STATE OF OREGON

WILLAMETTE ESTATES II, LLC,
Plaintiff-Appellant,

v.

DEPARTMENT OF REVENUE,
Defendant-Respondent,

and

MARION COUNTY ASSESSOR,
Defendant-Intervenor.

Tax Court
5146

S062027

APPELLANT'S REPLY BRIEF

Review of the Decision of the Oregon Tax Court, Regular Division
Honorable Henry C. Breithaupt

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SUMMARY OF ARGUMENT

Two cardinal errors mar Respondents' Brief. Contrary to Respondents, at no time did Taxpayer "unequivocally agree" that an error existed on the legal tax roll regarding the land RMV of its property. Contrary to Respondents, the Assessor requested a higher judicial authority to change his own determination and to circumvent this Court's decision barring value-shifting, and that petition to a higher determinative body constitutes an appeal.

ARGUMENT

I. APPELLANT DID NOT UNEQUIVOCALLY AGREE THAT AN ERROR EXISTED ON THE TAX ROLL.

Respondents [Department and Assessor] wrongly claim that Appellant [Willamette Estates or Taxpayer] "stipulated" that the overall (land and improvements) RMV should be $12,309,000 in an attempt to bootstrap jurisdiction where none exists. They repeat this fallacy (*e.g.*, Resp. Br. 1, 2, 5, 10) because Department jurisdiction **depends** upon this mistaken notion.

Department jurisdiction exists under ORS 306.115 only if the exercise of its supervisory authority is proper. ***ADC Kentrox v. Dept. of Rev.,*** 19 OTR 340 (2006). Here, Department authority is proper only if "* * * [t]he parties to the petition agree to facts indicating likely error." OAR 150-306.115(4). The parties need not agree that an error exists on the tax roll; they need only to agree on a fact indicating "* * * that it is likely that an error exists on the roll." *See* ***Thomas Creek Lumber v. Dept. of Rev.,*** 19 OTR 103, 106 (2006) [(*citing* ***Ohio State Life Ins. Co. v. Dept. of Rev.***, 12 OTR 423, 426 (1993)]; ***Direct Imports, Inc. v. Multnomah***

County Assessor, 16 OTR 242 (2000) [*citing* ***Eyler v. Dept. of Rev.,*** 14 OTR 160, 162 (1997)].

Contrary to Respondents, Willamette Estates **did not agree** on any fact which would indicate that any error likely exists on the tax roll, and it never argued, asserted, or agreed that the total RMV (land RMV and improvements RMV) should be $12,309,000 on the tax roll. To the contrary, Willamette Estates maintained that the legal total RMV of the property should be $7,717,840, that is, the Assessor's original land RMV ($1,002,840) added to the improvement RMV Taxpayer proposed ($6,715,000). Indeed, the First Magistrate Decision of January 21, 2009 established the correct legal total RMV which Taxpayer sought, $7,309,000 (080387D, OJIN 27). The Assessor did not appeal this decision which resulted in a final judgment under ORS 305.501(7). (080387D, OJIN 29). The Assessor, who did not appeal from that judgment within the statutory limited jurisdictional time, complied with that judgment and corrected the tax roll. (App. Br., ER 24)

The very most that Respondents permissibly may argue is that Willamette Estates, at one point early in the proceedings, proposed two total RMV values, $7,717,840 as the legal RMV and $12,309,000 for the purpose of establishing the improvement RMV. It simply is wrong to claim that Taxpayer agreed to that latter figure as legally correct.

During trial, the Assessor asserted that the total RMV was $12,309,000 (App. Br., ER 28); one presumes that he meant that this figure represents the total RMV tax roll figure. Taxpayer never argued, stipulated, or agreed with the Assessor that $12,309,000 should constitute the tax roll total RMV; instead it maintained that total tax roll RMV should be $7,717,840. (App. Br., ER 29). "Unequivocal" means "leaving no doubt * * * expressing only one meaning: leading to only one

conclusion: clear, unambiguous * * *." *Webster's Third New International Dictionary* 2494 (Unabridged – Merriam-Webster, Inc.: Springfield, Massachusetts 1993)[1]. Nothing in this record supports any single, clear, conclusive, unambiguous, unequivocal agreement supporting an agreed total RMV of $12,309,000.

Most charitably one could find that the Taxpayer and the Assessor used the $12,309,000 figure for totally different purposes. In no manner did the parties "unequivocally" agree; an unequivocal agreement would require the parties to agree on the identical value for the identical purpose. *N.B.* Had Taxpayer appealed this case based on an **agreed** total RMV of $12,309,000, it would have **lacked standing** to appeal because that amount exceeds the maximum assessed value for the subject property ($10,852,840).

Further, the parties remained in complete disagreement throughout the process both as to the improvements RMV and the land RMV, the components which ORS 308.215(1)(a)(i) requires in combination to form the total RMV. The parties presented conflicting evidence concerning those disputed values; they certainly did not agree. Indeed, at the first Magistrate level, the Assessor argued for a land RMV of $1,002,840; only later did he change his position and urge an land RMV of $5,000,000 – after the First Magistrate case had been reduced to final judgment and after the strict jurisdictional time for appeal had expired (App. Br. 2 *et seq*). In fact, at one point the Magistrate acknowledged the lack of any agreement, observing "* * *[t]here was, strictly speaking, no 'stipulation' to a total

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[1] This Court uses this dictionary in deciding linguistic or interpretative issues. *E.g.*, ***Fresk v. Kraemer***, 337 Or 513, 521, 99 P3d 282 (2004); ***Yogman v. Parrott,*** 325 Or 358, 362, 937 P2d 1019 (1997).

RMV." (App. Br., ER 30).

II. A REQUEST THAT A HIGHER JUDICIAL AUTHORITY RECONSIDER OR ALTER A DECISION OF A LOWER DECISION-MAKER CONSTITUTES AN APPEAL.

Defendants repetitiously claim that they did not appeal (*e.g.* Resp. Br. 7-8). This argument constitutes jabberwocky writ large. When a party requests – by petition for review, notice of appeal, or in any other manner – a higher judicial authority to reconsider the decision of a lower decision-maker, that party has appealed, whether in a "traditional" or "non-traditional" sense of the term (App. Br. 7-11). In this proceeding, despite Defendants' linguistic legerdemain, the Assessor has been permitted, wrongly, to appeal his own considered decision in the absence of any appeal concerning land RMV by Taxpayer, and the lower decision-making bodies have permitted this too-clever-by-half ploy to eviscerate this Court's controlling decision in ***Nepom v. Dept. of Rev.,*** 272 Or 249, 256, 536 P2d 496 (1975). *See also,* ***Bear Creek Plaza, Ore., Ltd. v. Dept. of Rev.,*** 12 OTR 272 (1992).

CONCLUSION

The Supreme Court should review and remand the Tax Court judgment with directions to enter judgment for Willamette Estates II LLC.

Respectfully submitted this 31st day of December, 2014.

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CERTIFICATE OF COMPLIANCE
WITH ORAP 5.05(2)(d)

I certify that this brief complies with the word-count limitation in ORAP 5.05(2)(b) and the word-count on this brief (as described in ORAP 5.05(2)(b)) is 992 words.

I certify that the size of the type in this brief is not smaller than 14 point for both the text of the brief and footnotes as required by ORAP 5.05(4)(f).

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CERTIFICATE OF FILING AND SERVICE

I certify that on December 31, 2014, I used the appellate court e-Filing system to file the foregoing **APPELLANT'S REPLY BRIEF** with the:

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I further certify that on December 31, 2014, I served the foregoing **APPELLANT'S REPLY BRIEF** via the court's eFiling system on:

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