

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

MINUTE ORDER

No Appearances

STATEMENT OF DECISION

FACTS

1. The improved real property commonly known as 1741 Harbor Way, Seal Beach, California, ("Subject Property") underwent a change of ownership within the meaning of California Constitution, Article XIII A, section 2, subdivision (a), on or about November 9, 1995, when the Real Parties in Interest, Renee M. Bezaire and Robert A. Pool ("Real Parties"), purchased the Subject Property in an arms length market transaction for the sum of \$330,000 ("Acquisition Value").
2. The Subject Property is known to the Orange County Assessor ("Assessor") as Assessor Parcel Number 043-253-07.
3. The Assessor accepted the Acquisition Value of the Subject Property as the 1996-97 full cash value base, under California Constitution, Article XIII A, section 2, subdivisions (a) and (b), and under Revenue and Taxation Code, section 110.1.
4. For the property tax lien date, January 1, 1997, the Assessor on his own motion determined that, as defined in Revenue and Taxation Code, section 110, the "full cash value" or "fair market value" of the Subject Property declined below the full cash value base adjust for the inflation.
5. For the 1998-1999 tax year, the County enrolled a taxable value of \$343,332, which represented the 1996 base year adjusted for an annual 2% interest rate ( $\$330,000 + 2\% = \$336,600$ ;  $\$336,600 + 2\% = \$343,332$ ). The County believed the market value of the property exceeded this amount and, therefore, the adjusted base year value was enrolled. The enrollment of the adjusted base year value of \$343,332 as the 1998-1999 assessment was an increase of approximately 4% from the 1997-1998 taxable value of \$330,000.
6. The Assessor therefore assessed the Subject Property for the 1998- 1999 tax year in the total of \$343,332.
7. The Subject Property was not purchased by Real Parties on or after January 1, 1997.
8. The Subject Property was not newly constructed by Real Parties on or after January 1, 1997.

9. The Subject Property did not undergo a change in ownership by Real Parties on or after January 1, 1997.
10. Real Parties timely applied for assessment reduction to the Orange County Assessment Appeals Board ("AAB") for the 1998-99 assessment of the Subject Property.
11. The AAB identified Real Parties' 1998-99 assessment reduction application as Application No. 98-006383.
12. The AAB conducted an equalization hearing on Application No. 98-006383 on or about August 10, 1999.
13. Real Parties timely requested and paid for findings of fact by the AAB on Application No. 98-006383 at the time of hearing.
14. The AAB conducted a second hearing session on Application No. 98-006383 on or about September 15, 1999.
15. On or about November 9, 1999, the AAB published its findings of fact on Application No. 98-006383, wherein the AAB restricted "the increase of assessment to a maximum of two percent over the previous year. . ." found that the Assessor increased the full cash value base of the Subject Property by 4 percent over the 1997-98 assessed value, and ordered that the 1998-99 assessment of the Subject Property be reduced to a maximum increase of 2 percent over the 1997-98 assessed value, or a total assessed value of \$333,366. The AAB incorporated into its decision an opinion from its counsel. The opinion from counsel stated, "[h]owever, if the 1996 base year value remains unchanged in 1997 and was not trended 2%, that percentage cannot be recaptured in 1998 by increasing the inflationary percentage by 4%. This would appear to violate Section 51(a)(1)(D) of the Revenue and Taxation Code and Article XIII A Section 2(b) of the California Constitution."
16. The County of Orange thereafter brought a petition for writ of mandamus ("County Petition"), under Code of Civil Procedure, section 1094.5, against the AAB as respondent, and the Real Parties herein.
17. Real Parties timely answered the County Petition, and concurrently brought a cross-complaint for declaratory relief joined with a cross-petition for peremptory writ of mandate, prohibition, or other appropriate extraordinary relief, under Code of Civil Procedure, sections 1085 and 1102 ("Cross-Complaint/Cross-Petition") against the County of Orange, the Orange County Board of Supervisors, the Orange County Assessor, the Orange County Tax Collector-Treasurer, and Does 1 through 20, as cross-defendants/cross-respondents. The AAB was named as real party in interest in the Cross-Complaint/Cross-Petition.
18. The Cross-Complaint/Cross-Petition was filed as a class action, under Code of Civil Procedure, section 382.

19. Thereafter, Real Parties dismissed the Orange County Tax Collector-Treasurer as a cross-defendant/cross-respondent, and filed a First Amended Cross-Complaint/Cross-Petition against the County of Orange, the Orange County Board of Supervisors, the Orange County Assessor, and Does 1 through 20, as cross-defendants/cross-respondents ("Cross-Defendants/Cross-Respondents"). The AAB remained as real party in interest in the First Amended Cross-Complaint/Cross-Petition.

20. The First Amended Cross-Complaint/Cross-Petition was also filed as a class action, under Code of Civil Procedure, section 382.

21. By prior stipulation of the parties to this action, made in open court, the prosecution of the First Amended Cross-Complaint/Cross-Petition as a class action was deferred to permit the court to first address the underlying legal dispute between the parties concerning the propriety of the action of the AAB with respect to the County Petition, and to concurrently address the underlying legal dispute between the parties concerning the propriety of the action of the Cross-Defendants/Cross-Respondents as alleged in the First Amended Cross-Complaint/Cross-Petition.

22. The AAB has not appeared in either the proceedings on the County Petition, or on the First Amended Cross-Complaint/Cross-Petition.

23. Cross-Defendants/Cross-Respondents filed an answer to the First Amended Cross-Complaint/Cross-Petition.

24. All parties have completed discovery related to matters other than the class action nature of the First Amended Cross-Complaint/Cross-Petition.

25. The parties have agreed to stay further discovery related to the certification as a class action of the First Amended Cross-Complaint/Cross-Petition until such time as the court makes its rulings on the underlying legal issues of the County Petition and the First Amended Cross-Complaint/Cross-Petition.

26. All parties agree that at such time as if the court denies the County Petition, and enters judgment granting the First Amended Cross-Complaint/Cross-Petition, the next trial court phase will be discovery pertaining to issues of class certification of the First Amended Cross-Complaint/Cross-Petition, unless otherwise ordered by the court.

27. Since the enactment of Revenue and Taxation Code section 51, virtually every California county assessor treats the restoration of a factored base year value after a decline in value in the manner practiced by the Orange County Assessor. That is, without the limitation of the maximum 2 percent increase from year to year at a minimum, Contra Costa, El Dorado, Los Angeles, Riverside, Sacramento, San Diego, Santa Cruz, and Sonoma Counties agree with and implement the County's interpretation of Revenue and Taxation Code section 51 and Article XIII A, section 2, subsection (b) of the California

Constitution. County and Real Parties are not aware of a county in California that does not follow or agree with the County's interpretation of those provisions.

28. Since the revision of Property Tax Rule 461(d) on or about August 16, 1979, the State Board of Equalization has publicly advised that a decline in value made by a local county assessor pursuant to Proposition 8 is temporary, and not subject to the limitation of the maximum 2 percent increase from year to year upon restoration of the property's value.

29. The BOE maintains an official presence on the internet, which contains the following language of disclaimer: "The information found in the State Board of Equalization (BOE) web site is general and current as of the date the information was placed on the BOE web site. The applicable laws are complex and subject to change. If there is a conflict between the law and the information found in the BOE web site, any decisions will be based on the law and not the information found in the BOE web site."

The Court finds the "recapturing" method to be unconstitutional and violative of the Revenue and Taxation Code (RT hereafter) Section 51(a)(1)(D), and Article XIII A Section 2(b) of the California Constitution.

RT Section 51 (a)(1)(D) provides:

Taxable value of real property; inflation factor; damage, destruction, etc.; computation; annual reappraisal

(a) For purposes of subdivision (b) of Section 2 of Article XIII A of the California Constitution, for each lien date after the lien date in which the base year value is determined pursuant to Section 110.1, the taxable value of real property shall, except as otherwise provided in subdivision (b) or (c), be the lesser of:

(1) Its base year value, compounded annually since the base year by an inflation factor, which shall be determined as follows:

(A) For any assessment year commencing prior to January 1, 1985, the inflation factor shall be the percentage change in the cost of living, as defined in Section 2212.

(D) In no event shall the percentage increase for any assessment year determined pursuant to subparagraph (A), (B), or (C) exceed 2 percent of the prior year's value.

Article XIII A of the California Constitution Section 2(b) provides:

(b) The full cash value base may reflect from year to year the inflationary rate not to exceed 2 percent for any given year or reduction as shown in the consumer price index or comparable data for the area under taxing jurisdiction, or may be reduced to reflect substantial damage, destruction or other factors causing a decline in value.

This provision reveals an intent that while many events can alter the taxable value of real property in California and some of these can alter the tax due, in no event would the tax increase exceed 2% per year except in situations described in the law but not presented by the facts in this case.

The promise of Propositions 13 and 8 is not just a "long-term limit" i.e., that over a number of years the adjusted tax base value will not exceed the original base value by more than 2% times the number of years in question, it is this and more and includes a "short-term limit" i.e., that the adjusted tax base value will also not exceed 2% more than the year before.

The former rule would permit huge increases from one year to the next in some circumstances as long as the 2% per year maximum times the number years limit isn't exceeded.

The latter rule controls increases in the taxpayer's immediate future as well and in the long run.

The stipulated issues for trial are:

1. Do Article XIII A, section 2, subdivision (b) of the California Constitution and Revenue and Taxation Code, section 51 limit the 1998-1999 taxable value of the Property to 2% above the 1997-1998 enrolled taxable value?

Answer: Yes, they do.

2. Under the facts of this case, does Article XIII A, section 2, subdivision (b) of the California Constitution, authorize a "temporary" decline of the full cash value base of real property that is not thereafter limited annually to a maximum increase of 2 percent?

Answer: No, it does not.

And finally, the Court finds the affirmative answer to question No. 1 above must also be found in the overall reading of the California Constitution as amended by Propositions 13 and 8 and the voters' intent in approving these initiatives.

Honorable John M. Watson