

IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT

Property Tax

ERICH BAUER, MICHAEL BAUER and)	
KIMBERLY SHICK,)	
)	No. 000506C
Plaintiffs,)	
)	
v.)	
)	
TILLAMOOK COUNTY ASSESSOR,)	
)	DECISION
Defendant.)	

Plaintiffs have appealed the real market value of certain real property identified in the Tillamook County Assessor's records as Account No. 248878, for the 1999-00 tax year. Plaintiffs' appeal is timely from an order of the county board of property tax appeals (board). A case management conference was held June 19, 2000. Robert Bauer appeared for plaintiffs. Defendant appeared through Mr. Scott MacLean, an appraiser with the county assessor's office.

Plaintiffs request that the real market value be reduced from \$103,756 to \$77,800 based on the 1996 purchase price of \$72,000. Plaintiffs cite several Oregon Supreme Court decisions which stand for the proposition that a recent purchase of the subject property is persuasive evidence of the property's value. *Kem v. Dept. of Rev.*, 267 Or 111, 514 P2d 1335(1973); *Equity Land Resources, Inc. v. Dept. of Rev.*, 268 Or 410, 521 P2d 324 (1974); *Ernst Bros. Corp. v. Dept. of Rev.*, 12 OTR 527 (1973).

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DECISION

COURT'S ANALYSIS

Plaintiffs are not aggrieved, as required by statute. ORS 305.275(1)(a).¹ If a taxpayer is not aggrieved, the taxpayer does not have standing and the court may not exercise its jurisdiction over the claim.

Measure 50, adopted by the Oregon voters in May 1997, amended the state constitution by creating a "maximum assessed value", which for the 1997-98 tax year, was 90 percent of the property's real market value for the tax year beginning July 1, 1995 (1995-96).² Each year the maximum assessed value cannot be increased by more than three percent. Or Const, Art XI, § 11(1)(b). Assessed value is the lesser of the

¹ ORS 305.275 provides in relevant part:

"(1) Any person may appeal under this subsection to the magistrate division of the Oregon Tax Court as provided in ORS 305.280 and 305.560, if all of the following criteria are met:

"(a) The person must be aggrieved by and affected by an act, omission, order or determination of:

"* * * * *

"(B) A county board of property tax appeals other than an order of the board;

"* * * * *

"(3) Subject to ORS 305.403, if a taxpayer may appeal to the board of property tax appeals under ORS 309.100, then no appeal shall be allowed under this section. The appeal under this section is from an order of the board as a result of the appeal filed under ORS 309.100 or from an order of the board that certain corrections, additions to or changes in the roll be made." (Emphasis added).

Reference to the Oregon Revised Statutes (ORS) is to the 1999 version of the laws.

² The pertinent portion of the constitutional amendment provides:

"(1)(a) For the tax year beginning July 1, 1997, each unit of property in this state shall have a maximum assessed value for ad valorem property tax purposes that does not exceed the property's real market value for the tax year beginning July 1, 1995, reduced by 10 percent." Or Const, Art XI, § 11.

property's real market value or maximum assessed value. ORS 308.146(2). Real market value continues to be based on “the amount in cash that could reasonably be expected to be paid by an informed buyer to an informed seller, each acting without compulsion in an arm's length transaction occurring as of the assessment date for the tax year.” ORS 308.205(1).

The court has repeatedly held that a request for a reduction in real market value, which, if granted, would not reduce the underlying tax liability, is not justiciable. See *Parks Westsac LLC v. Dept. of Rev.*, ___ OTR ___ (1999), *Gilbert-Barrick*, 2000 WL 290969 (OTC-MD No. 000042E, March 15, 2000), *Gethner v. Multnomah County Assessor*, 2000 WL 246456 (OTC-MD No. 991471D, Feb. 14, 2000). This is because the result would have no practical effect on the rights of the parties because real market value has no significance for tax purposes and property taxes will not be effected by granting the requested relief. Thus any action by the court is essentially pro forma. The principle of aggrievement and justiciability set out in those cases applies with equal force to the matter now before the court.

Plaintiffs believe this case is distinguishable from other appeals seeking a reduction based on an appraisal because here the relief requested is based on the purchase price.³ The case law cited by plaintiffs does set out the significance of a sale of the subject property. For example, in *Kem*, the court stated:

“3. A recent sale of the property in question is important in determining its market value. If the sale is a recent, voluntary, arm's length transaction between a buyer and seller, both of

³ Mr. Bauer filed another appeal that was heard by the court in conjunction with this appeal and used that appeal, plus relevant published case law, to argue the distinction he perceives between the two situations.

whom are knowledgeable and willing, then the sales price, while certainly not conclusive, is very persuasive of the market value.” 267 Or at 114 (citations omitted).

This court certainly agrees with the court’s language in *Kem*. A recent sale is persuasive evidence of value. In fact, generally speaking, a recent sale wins the case in a value appeal. However, that proposition does not in any way affect the principles of aggrievement or justiciability. Regardless of the quality of the evidence presented the question is whether the requested relief will lower the taxes. In this case it will not.

CONCLUSION

Plaintiffs’ are not aggrieved. The Complaint does not set out a justiciable claim for relief because the requested reduction in real market value will not lower assessed value and, therefore, no tax savings will be forthcoming.

IT IS THE DECISION OF THE COURT that the above-entitled matter must be dismissed.

Dated this _____ day of June, 2000.

DAN ROBINSON
MAGISTRATE

IF YOU WANT TO APPEAL THIS DECISION, FILE A COMPLAINT IN THE REGULAR DIVISION OF THE OREGON TAX COURT, FOURTH FLOOR, 1241 STATE ST., SALEM, OR 97310. 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 JUNE 26, 2000. THE COURT FILED THIS DOCUMENT ON JUNE 26, 2000.