

IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT
Small Claims
Property Tax

DARYL BOQUET,)
)
 Plaintiff,) No. 010437C
)
 v.)
)
 MULTNOMAH COUNTY ASSESSOR,)
)
 Defendant.) **DECISION AND JUDGMENT**

Plaintiff seeks a reduction in the real market value of his personal residence for two tax years (1999-00 and 2000-01). The appeal is timely from an order of the county board of property tax appeals (board) for the 2000-01 tax year. Plaintiff did not petition the board for the prior year (1999-00). That year has been appealed for the first time directly to this court.

A case management conference was held on November 7, 2001. Plaintiff appeared on his own behalf. Defendant appeared through Mr. Kurt Hamm, an appraiser with the Multnomah County Assessor's Office.

As explained more fully below, Plaintiff's Complaint is dismissed because he is not aggrieved.

STATEMENT OF FACTS

Plaintiff requests that the real market value (RMV) of his home be reduced to \$150,000. Plaintiff's RMV estimate is based on his unsuccessful efforts at selling the home for approximately one year. The property is identified in the Multnomah County Assessor's records as Account No. R283961. The RMV on the assessment and tax rolls is \$168,900 for the 1999-00 tax year and \$173,970 for the 2000-01 tax year. The

assessed value (AV) for those two tax years is \$106,640 and \$109,830, respectively. Mr. Hamm performed a compression analysis to determine whether the requested reduction in the RMV would reduce Plaintiff's property taxes under the Measure 5 constitutional limitations and determined that it would not.

COURT'S ANALYSIS

If Plaintiff is entirely successful in achieving the desired result of a reduction in the real market value to \$150,000 his property taxes for the two tax years at issue will not change. Most importantly, Plaintiff's taxes will not be reduced and so there will be no refund. In these situations, this court has routinely dismissed the appeal on the alternative grounds of lack of aggrievement and nonjusticiability. See *Kaady v. Dept. of Rev.*, 15 OTR 124 (2000); see also *Parks Westsac L.L.C. v. Dept. of Rev.*, 15 OTR 50 (1999); *Nguyen v. Washington County Assessor*, OTC-MD No. 000368C, WL 1060559 (June 27, 2000); *Gilbert-Barrick v. Multnomah County Assessor*, OTC-MD No. 000042E, WL 290969 (Mar 15, 2000); *Gethner v. Multnomah County Assessor*, OTC-MD No. 991471D, WL 246456 (Feb 14, 2000). The rationale for the former determination is that the appeal statute requires that the party seeking relief from the court must be "aggrieved by and affected by an act, omission, order or determination of [the county board of property tax appeals or the County Assessor]." ORS 305.275(1)(a)(B) or (C)¹. In the *Kaady* case the court explained:

"[i]n requiring that taxpayers be 'aggrieved' under ORS 305.275, the legislature intended that the taxpayer have an immediate claim of wrong."
15 OTR at 125.

¹ All references to the Oregon Revised Statutes are to 1999.

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A similar rationale was used by the court in *Nguyen*. There the court stated that the case is nonjusticiable “because the result would have no practical effect on the rights of the parties.” *Nguyen*, OTC-MD No. 000368C, WL 1060559 at *2.

The court is aware that its determinations in this area have not been warmly received in all circles. The court has attempted to address some of the concern by requiring the county to perform a compression analysis to determine whether a reduction in RMV as requested by the taxpayer would trigger the Measure 5 constitutional limitations on tax levies imposed on RMV.² Where the tax limits under Measure 5 would result in a lower tax bill were Plaintiff to win the appeal, the court has moved the case forward on the merits.

The request for relief in this case for the 1999-00 tax year faces the additional requirement that the provisions of ORS 305.288 be satisfied because Plaintiff did not first petition the board for relief and then timely appeal the board’s determination to this court.³ The court did not explore the relevant statutory provisions because of its determination as to justiciability discussed above. However, the court notes in passing that the magnitude of the alleged error in value is only slightly more than 11 percent, well below the 20 percent minimum threshold. ORS 305.288(1)(b).

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² Article XI, section 11b, of the Oregon Constitution, commonly known as Measure 5, provides limits on property taxes measured against real market value. The limits are \$5 per \$1,000 RMV for public school funding and \$10 per \$1,000 RMV for other government operations. Measure 50 (Art. XI, § 11) imposes limits of assessed value.

³ ORS 305.288 requires the appealing party to show either that he was prevented from pursuing the statutory right of appeal because of extraordinary circumstances beyond his control (i.e., good and sufficient cause) or that there is an error in value of at least 20 percent.

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CONCLUSION

After considering the matter, the court concludes that the Complaint must be dismissed because Plaintiff is not aggrieved in that the requested relief, if granted, will not result in any property tax savings. Now, therefore,

IT IS HEREBY ADJUDGED AND DECREED that Plaintiff's Complaint is dismissed.

Dated this _____ day of November, 2001.

DAN ROBINSON
MAGISTRATE

THIS DOCUMENT WAS SIGNED BY MAGISTRATE DAN ROBINSON ON NOVEMBER 28, 2001. THE COURT FILED THIS DOCUMENT ON NOVEMBER 28, 2001.