

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

HOWARD E. SCHWANKE,)	
)	
Plaintiff,)	No. 010519E
)	
v.)	
)	
BENTON COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION AND JUDGMENT OF DISMISSAL

This matter is before the court on defendant's Motion to Dismiss, filed on April 27, 2001. The court discussed the motion with the parties during the case management conference held May 31, 2001. Howard Schwanke appeared on his own behalf. Jennifer Carper appeared on behalf of defendant (the county).

STATEMENT OF FACTS

Mr. Schwanke appeals the 2000-01 real market values (RMV) assigned to his property in Benton County. The property is identified in the county's records as Account Nos. R09-16 10511-00-00100 (Tax Lot 100) and R09-16 10512-00-00600 (Tax Lot 600). Tax Lot 100 contains 27.92 acres of land and Tax Lot 600 contains 12.08 acres of land. The property is all under farmland special assessment. For tax year 2000-01, the county assigned Tax Lot 100 a RMV of \$151,829 and Tax Lot 600 a RMV of \$108,503.¹ Mr. Schwanke appealed these values to the county Board of Property Tax Appeals (BOPTA). The BOPTA ordered the RMV for Tax Lot 100 reduced to \$83,760, and it ordered the

¹ These figures were obtained from the Board of Property Tax Appeals' Order dated February 26, 2001. (Ptf's Complaint at 9, 10.) It appears the numbers were typed into each order with the title "Land RRMV" by them. Ms. Carper could not confirm whether these were the values originally placed on the roll by the county.

RMV for Tax Lot 600 reduced to \$36,240. The assessed values of the lots, which were based on the specially assessed values, remained the same at \$6,097 for Tax Lot 100 and \$6,177 for Tax Lot 600.

Taxpayer appeals the RMV determinations of the BOPTA claiming the values should be further reduced. During the case management conference, the court asked Mr. Schwanke several times what he believed the values should be for the two lots. After some time, he eventually advised the court he believed the RMV for Tax Lot 100 should be reduced to \$41,880 and the RMV for Tax Lot 600 should be reduced to \$13,500.

On April 27, 2001, the county filed a Motion to Dismiss requesting that the case be dismissed. The county claims Mr. Schwanke is not aggrieved by the RMV determinations because Mr. Schwanke is paying taxes on the specially assessed values, and reducing the RMVs as requested would provide him with no tax relief. As a consequence, the county claims the court should dismiss the case.

COURT'S ANALYSIS

In support of its motion, the county referred the court to the case of *Hansen v. Clackamas County*, OTC-MD No. 000646E (August 8, 2000). In the *Hansen* case, the court dismissed the taxpayers' appeal finding they were not aggrieved by the county's RMV determinations because their property was under special assessment. As in the *Hansen* case, the court finds Mr. Schwanke is not aggrieved by the RMV determinations placed on the roll and, as a result, this case should be dismissed.

One of the statutory requirements that must be met before a person can bring suit in the Magistrate Division is that the person must be "aggrieved by and affected by an act, omission, order or determination of" the county board or assessor. ORS 305.275(1)(a)(B), (C). Mr. Schwanke acknowledges he is not paying taxes on the RMVs but, instead, is

paying taxes on the lesser specially assessed values. Reducing the RMVs as requested by Mr. Schwanke would not reduce his tax liability. Therefore, Mr. Schwanke is not “aggrieved” by the determinations of the county.

Mr. Schwanke explained that he is concerned about the “false” values being used in the future to determine the value of the property upon his death. He is concerned about the impact the increased values may have upon his two sons. As Mr. Schwanke explained, “the dog bites when you die.” Earlier Tax Court cases, however, have ruled that the property tax system and estate tax system are two independent tax systems. See, e.g., *Hansen*. In *Kaady v. Dept. of Rev.*, 15 OTR 124, 125 (2000), the Regular Division of the Tax Court noted:

“Taxpayer claims that although the assessed value is less than the real market value, an excessive real market value has potential for harm. Taxpayer argues that federal * * * estate and gift taxes would be increased. **However, real market value is established for property tax purposes only. It is not used or established for the purpose of federal estate and gift taxes, or other taxes.**” (Emphasis added.)

CONCLUSION

The court finds ORS 305.275(1)(a) requires that Mr. Schwanke must be “aggrieved” by an act of the county before he can file an appeal with this court. At this point, Mr. Schwanke is not aggrieved by the RMV determinations because he is paying taxes on the lower specially assessed values. Reducing the RMVs as requested would not impact his tax liability. Further, the court cannot concern itself with whether the values may or may not be used to determine the value of the property upon his death because the two systems are distinct and the RMV on the tax roll is generated for property tax purposes only. Now, therefore;

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IT IS HEREBY ADJUDGED AND DECREED that this matter be dismissed.

Dated this ____ day of June, 2001.

COYREEN R. WEIDNER
MAGISTRATE

**THIS DOCUMENT WAS SIGNED BY MAGISTRATE COYREEN R. WEIDNER ON
JUNE 22, 2001. THE COURT FILED THIS DOCUMENT ON JUNE 22, 2001.**