

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Property Tax

GRANPAC FOODS, INC, IBJTC LEASING	)	
CORP, CRYOVAC, INC, and SWAN FOODS	)	
OREGON, INC,	)	
	)	
Plaintiffs,	)	TC-MD 020064D
	)	
v.	)	
	)	
DEPARTMENT OF REVENUE,	)	<b>ORDER GRANTING</b>
STATE OF OREGON,	)	<b>DEFENDANT’S MOTION</b>
	)	<b>FOR PARTIAL SUMMARY</b>
Defendant.	)	<b>JUDGMENT</b>

Defendant seeks a determination from the court as to the scope of review of Plaintiffs’ appeal. There is no dispute of fact, and the matter has been submitted to the court on Defendant’s Motion for Partial Summary Judgment.

**STATEMENT OF FACTS AND ARGUMENTS**

The value of the subject property identified as Multnomah County Assessor’s Accounts R256375, R256376, R256378, R256379 and P426362 was appealed to Defendant for tax years 1997-1998 and 1998-1999. Because Plaintiffs’ appeal was not timely filed with the board of property tax appeals, Plaintiffs sought “relief \* \* \* from the department pursuant to its supervisory power provided in ORS 306.115.” (Ptf’s’ Ex 5 at 1.) Defendant concluded that it had jurisdiction to hear Plaintiffs’ appeal in its Preliminary Ruling No 00-0115(PR), dated June 14, 2001, because the “parties agree to facts indicating a likely assessment error” and “the department has jurisdiction under ORS 306.115 to review the value issues.” (Ptf’s’ Ex 4 at 6.) On November 15, 2001, Defendant issued its Conference Decision No 00-0115 (Decision) denying Plaintiffs’ appeal for tax year 1997-1998 and granting a reduction in the real market value for tax year 1998-1999.

On February 5, 2002, Plaintiffs appealed Defendant's Decision to the Oregon Tax Court. Plaintiffs requested that the value of the subject property be reduced to \$7,500,000 for each of the two tax years under appeal.

During a case management conference, Defendant questioned the court's scope of review. The parties agreed to submit motions to bring this issue before the court. In its Motion for Partial Summary Judgment, filed September 20, 2002, Defendant requested that the court limit its scope of review "to considering whether there was an abuse of discretion in the merits decision made by the department under its supervisory authority." (Def's Mot for Partial Summ J at 1.) Defendant concluded that "all corrections or changes made to the assessment roll of a separate assessment under ORS 306.115 are discretionary in nature." (*Id.*) In its Response to Defendant's Motion for Summary Judgment, Plaintiffs concluded that "no special standards should be applied to this case" and requested "that it be heard *de novo* as required by ORS 305.425." (Ptf's Resp to Def's Mot for Partial Summ J at 1.)

## **ANALYSIS**

The issue before the court is whether the court's scope of review of Defendant's Decision is limited to an abuse of discretion when Defendant exercises its supervisory power under ORS 306.115.

### **ORS 306.115**

In analyzing its scope of review, the court looks to the statutory authority given to Defendant to "exercise general supervision and control over the system of property taxation throughout the state." ORS 306.115(1).<sup>1</sup> Among its supervisory powers,

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<sup>1</sup> Unless otherwise noted, references to the Oregon Revised Statutes (ORS) are to 1999.

Defendant “may order the correction of clerical errors, errors in valuation or the correction of any other kind of error or omission in an assessment or tax roll as provided under subsections (2) to (4)” of ORS 306.115. All of the “corrections or changes” that Defendant makes under ORS 306.115 “are made by virtue of the authority” conferred by statute “and are discretionary in nature.” *Resolution Trust Corp. v. Dept. of Rev.*, 13 OTR 276, 278 (1995).

In legislatively granting this discretionary power to Defendant, it is clear that ORS 306.115 “is not a taxpayer remedy statute.” *Id.* The court has noted that “petitions under ORS 306.115 are not appeals in the traditional sense. A taxpayer’s petition is merely one means of helping the department ‘discover’ reasons to correct the roll.” *McGill v. Dept. of Rev.*, 14 OTR 40, 42 (1996) (citation omitted.) Under the statute, Defendant has the authority to accept or deny Plaintiffs’ reasons to correct the roll and it has the authority to make a change or correction.

Plaintiffs would limit the court’s standard of review to abuse of discretion when Defendant exercises its discretionary authority to accept or deny Plaintiffs’ reason to correct the roll, commonly referred to as a finding of jurisdiction. Plaintiffs would expand the court’s standard of review to a *de novo* review when Defendant’s decision relating to the amount of the change or correction falls below Plaintiffs’ requested amount. This second procedural step is commonly referred to as a merits conference. The fact that Defendant divides its discretionary review process into two steps does not change the authority granted to it by the legislature. The statute does not bifurcate Defendant’s authority. *See Ohio State Life Ins. Co. v. Dept. of Rev.*, 12 OTR 423, 426 (1993), stating that “[i]f the assessor agrees to the facts, then the taxpayer may present those facts to

from appeals primarily focused on Defendant's denial of a taxpayer's petition for review (finding of jurisdiction), none of the recent court decisions suggest that Defendant's merits conference can change the discretionary authority granted to Defendant by the legislature. Defendant was given the authority to supervise the property tax system and authorize changes or corrections at its discretion.

Because the power given to Defendant "to make extraordinary corrections" is solely discretionary, the court's review must be limited.<sup>2</sup> *Resolution Trust Corp.*, 13 OTR at 278. See also *Dept. of Rev. v. Guardian Management Corp.*, 16 OTR 17, 21 (2002) (concluding that after the department renders its decision the court can "perform its limited review function" of Defendant's "discretionary decision-making.") The court cannot substitute its judgment for that of Defendant and the court's review must be limited to a review of Defendant's record. *Resolution Trust Corp.*, 13 OTR at 279. Further, the court's standard of review is limited to whether Defendant "acted capriciously or arrived at a conclusion which was clearly wrong." *Martin Bros. v. Tax Commission*, 252 Or 331, 338, 449 P2d 430 (1969). There is no statutory basis for two different standards of review by this court of the discretionary authority granted to Defendant by ORS 306.115.

With respect to the court's *de novo* review of Defendant's determination in a merits conference, Plaintiffs state that they "are not aware of any case in the history of the Oregon Tax Court where a merits decision was subjected to a restricted standard of review." (Ptf's Resp to Def's Mot for Partial Summ J at 10.) However, Plaintiffs' Response referenced only one case, *Piedmont Plaza Investors v. Dept. of Rev.*, 14 OTR 440 (1998), that was heard by the judge of the Regular Division of the Tax Court.

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<sup>2</sup> " \* \* \* the department discovers reason to correct the roll which, in its discretion, it deems necessary to conform the roll to applicable law \* \* \* ." ORS 306.115(3).

In *Piedmont Plaza*, one (1994-1995) of the two years under appeal was timely appealed. The other year (1995-1996) was filed “pursuant to the supervisory power, ORS 306.115.” (*Id.* at 9.) With respect to tax year 1994-1995, because the appeal was timely filed, the Tax Court’s standard of review should have been and was *de novo*. For the subsequent year, 1995-1996, which was heard by Defendant under its supervisory power, the standard of review as determined by this court should have been abuse of discretion. Because the *Piedmont Plaza* opinion did not discuss its standard of review for either of the two tax years, this court will not speculate on its standard as it would contribute little to the findings of this court.

In *Balderee v. Commission*, 2 OTR 142, 145-46 (1965), Plaintiffs find strong support for their conclusion that the real market value of their property should be “determined by a *de novo* trial in the Tax Court.”<sup>3</sup> The holding in *Balderee* was based on two separate statutes, ORS 305.090 and 306.111. If there had been no subsequent changes to the statutes authorizing Defendant’s supervisory authority, the court might agree with Plaintiffs. However, when ORS 306.115 was adopted in 1983, it was intended, in part, to replace ORS 305.090 and ORS 306.111. Before the 1983 revision, Defendant had no discretion as to which appeals it could hear, as long as the appeals met some basic criteria. Testimony, Senate Committee on Revenue, SB 68 , March 7, 1983 (statement of Washington County Counsel’s Office.) The revised statute, ORS 306.115, eliminated the old procedures and gave Defendant broader discretion to

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<sup>3</sup> During oral argument, Plaintiff found further support for its position in *Sandahl v. Dept. of Rev.*, 9 OTR 251 (1982). Relying on prior Oregon cases involving equitable estoppel, the court in *Sandahl* held that based on the set of facts it was “required” to hear the case on its merits. (*Id.* at 253.) Equitable estoppel is not a factor in this case and the court finds no precedent in *Sandahl* to define its standard of review of Defendant’s discretionary decision-making power.

determine which petitions to consider. In the years since 1983, ORS 306.115 was further revised. Specifically, in 1983, ORS 306.115(3) provided two conditions under which Defendant was able to order a correction to the tax roll:

“(a) The assessor or taxpayer has no statutory right of appeal remaining and **the department determines that good and sufficient cause exists** for the failure by the assessor or taxpayer to pursue the statutory right of appeal; or  
(b) **The department discovers reason to correct the roll which, in its discretion, it deems necessary to conform the roll to applicable law** without regard to any failure to exercise a right of appeal.”

ORS 306.115(3)(a) and (b) (1983) (emphasis added.)

A 1987 amendment added a third condition, allowing for a change to the tax rolls in the case of a “gross error in value.” ORS 306.115(3)(a)(B) (1987). However, four years later, the legislature eliminated the “gross error in value” condition from the statute. See ORS 306.115(3) (1991). Most recently, the legislature removed the “good and sufficient cause” clause. See ORS 306.115(3) (1997). By 1999, Defendant’s discretionary powers under ORS 306.115(3) were broader than originally written:

“The department may order a change or correction \* \* \* if \* \* \* the department discovers reason to correct the roll which, in its discretion, it deems necessary to conform the roll to applicable law \* \* \*.”

ORS 306.115(3)(1999).

The result of these changes since *Balderee* is a statute that gives Defendant ample discretion in its procedural and substantive (merit) determinations and all prior case law must be analyzed in keeping with the language of the applicable statute. Consequently, the court’s standard of review is limited to deciding whether Defendant has abused its discretion.

### **ORS 305.425**

Plaintiffs request that their appeal “be heard *de novo* as required by

ORS 305.425.” (Ptf’s Resp to Def’s Mot for Partial Summ J at 1.) ORS 305.425(1) states that “[a]ll proceedings before the judge of the tax court shall be original, independent proceedings and shall be tried without a jury and de novo.” In interpreting the term *de novo*, the court concluded that a “legislative grant of authority may impinge on that otherwise unrestrained scope of review.” *Norpac Foods, Inc. v. Dept. of Rev.*, 15 OTR 331, 333 (2001). By way of explanation, the court quoted the following holding from the Oregon Supreme Court:

“Even though the proceeding before the tax court is *de novo*, where the legislature has given the tax commission discretion to decide whether something is reasonable, we believe the function of the court is to decide whether there has been any abuse of discretion and not to retry the original determination of the commission.” *Martin Bros.* 252 Or at 338.

Like *Martin*, Defendant was given discretionary authority. The court’s standard of review should therefore be abuse of discretion.

However, ORS 305.425 is not applicable to this proceeding in the Magistrate Division of the Oregon Tax Court. The term “judge” in ORS 305.425(1) was previously determined by the Regular Division of the Oregon Tax Court to specifically reference a legislative intent “that the judge [of the Regular Division] review the acts and decisions of the magistrates de novo.” *Norpac Foods, Inc.*, 15 OTR at 333. Based on *Norpac*, the statutory reference to “judge” does not include magistrates, making the statute inapplicable.

## **CONCLUSION**

The court concludes that when Defendant exercises its discretionary authority under ORS 305.116 the court’s standard of review is limited to an abuse of discretion. Now, therefore,

IT IS ORDERED that Defendant’s Motion for Partial Summary Judgment is granted.  
ORDER GRANTING DEFENDANT’S MOTION TC-MD 020064D

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IT IS FURTHER ORDERED that the court will set a case management conference to discuss subsequent proceedings.

Dated this \_\_\_\_\_ day of July, 2003.

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JILL A. TANNER  
PRESIDING MAGISTRATE

**THIS INTERIM ORDER MAY NOT BE APPEALED. ANY CLAIM OF ERROR IN REGARD TO THIS ORDER SHOULD BE RAISED IN AN APPEAL OF THE MAGISTRATE'S FINAL WRITTEN DECISION WHEN ALL ISSUES HAVE BEEN RESOLVED. ORS 305.501.**

**THIS DOCUMENT WAS SIGNED BY MAGISTRATE JILL A. TANNER ON JULY 10, 2003. THE COURT FILED THIS DOCUMENT ON JULY 10, 2003.**