

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

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|-------------------------|---|------------------------------|
| DN PROPERTIES LLC, |) | |
| |) | |
| Plaintiff, |) | TC-MD 050485C |
| |) | |
| v. |) | |
| |) | |
| BENTON COUNTY ASSESSOR, |) | |
| |) | |
| Defendant. |) | DECISION OF DISMISSAL |

This matter is before the court on Defendant’s Motion to Dismiss, made orally to the court during the July 5, 2005, case management conference. Defendant contends that Plaintiff’s value reduction requests will not reduce taxes and that Plaintiff is therefore not aggrieved.

The appeal involves a request by Plaintiff to reduce the land values for the 2004-05 tax year on property identified by four separate assessor accounts: 284798, 066021, 066054, and 066039. Plaintiff timely appealed from the county board of property tax appeals (Board), which sustained the assessor’s values on each account. Plaintiff objects to the methodology used by Defendant in determining the land values and argues that there are no sales to support Defendant’s numbers. Plaintiff contends that the property is currently valued at approximately \$22 per square foot and that the actual market value is approximately \$12 per square foot. Plaintiff does not challenge Defendant’s assertion that if Plaintiff were to prevail, and the court reduced the land value on each of the four accounts to \$12 per square foot, the assessed value would still be lower than the real market value, and there would be no impact on property taxes. However, Plaintiff is concerned that the Oregon State Legislature may, in the future, change the laws and make the real market value the assessed value.

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Under current law, assessed value is the lesser of real market or maximum assessed value. ORS 308.146(2).¹ Maximum assessed value was established by constitutional amendment in 1997 and, for the tax year beginning July 1, 1997 (1997-98 tax year), was 90 percent of the property's 1995 real market value. Or Const, Art XI, § 11(1)(a); *see also* Or Laws 1997, ch 541, § 2. Thereafter, maximum assessed value may increase annually by no more than three percent. Or Const, Art XI, § 11(1)(b); *see also* ORS 308.146(1).

Plaintiff's requested reduction would reduce considerably the real market values, but the reduced values would nonetheless be greater than the current maximum assessed and assessed values. ORS 305.275 requires that a person appealing to the Magistrate Division of the Oregon Tax Court be "aggrieved" by the Board's order. This court has previously found that a taxpayer is not aggrieved under ORS 305.275 where the maximum assessed and assessed values are less than the requested real market value. *Kaady v. Dept. of Rev.*, 15 OTR 124, 125 (2000). The taxpayer in *Kaady* raised the same concern as Plaintiff in the instant appeal: a future change in the statutes could tie assessed value to real market value. The *Kaady* court rejected the taxpayer's assertion of a potential harm, finding that "the legislature intended that the taxpayer have an immediate claim of wrong." *Id.* In dismissing the appeal, the court went on to say that the legislature "did not intend that taxpayers could require the expenditure of public resources to litigate issues that might never arise." *Id.* In an earlier case, the court held that "so long as the property's maximum assessed value is less than its real market value, taxpayer is not aggrieved." *Parks Westsac L.L.C. v. Dept. of Rev.*, 15 OTR 50, 52. (1999).²

¹ All references to the Oregon Revised Statutes (ORS) are to 2003.

² As a caveat to the above-cited cases, there are instances in which a reduction in real market value will reduce property taxes even though the reduced value exceeds the maximum assessed value. In that situation, the taxpayer would be aggrieved for purposes of the statute.

In the instant appeal, Plaintiff's requested real market values are greater than its maximum assessed values and assessed values, and the reductions will not result in a tax savings. Plaintiff is, therefore, not aggrieved. Accordingly, Defendant's motion to dismiss must be granted. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiff's appeal is dismissed because Plaintiff is not aggrieved as required by ORS 305.275.

Dated this _____ day of August 2005.

DAN ROBINSON
MAGISTRATE

If you want to appeal this Decision, file a Complaint in the Regular Division of the Oregon Tax Court, by mailing to: 1163 State Street, Salem, OR 97301-2563; or by hand delivery to: Fourth Floor, 1241 State Street, Salem, OR.

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 August 11, 2005. The Court filed and entered this document August 11, 2005.