

IN THE SUPREME COURT OF THE STATE OF OREGON

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VILLAGE AT MAIN STREET  
PHASE II, LLC,

Plaintiff-Respondent,

v.

DEPARTMENT OF REVENUE,

Defendant-Appellant,

and

CLACKAMAS COUNTY  
ASSESSOR,

Intervenor-Appellant.

Tax Court No. 5054

SC S063163 (Control)

VILLAGE AT MAIN STREET  
PHASE II, LLC,

Plaintiff-Respondent,

v.

DEPARTMENT OF REVENUE,

Defendant-Appellant,

and

CLACKAMAS COUNTY  
ASSESSOR,

Intervenor-Appellant.

Tax Court No. 5055

SC S063164

VILLAGE RESIDENTIAL, LLC,

Plaintiff-Respondent,

v.

DEPARTMENT OF REVENUE,

Defendant-Appellant,

and

CLACKAMAS COUNTY  
ASSESSOR,

Intervenor-Appellant.

Tax Court No. 5056

SC S063165

...Continued

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VILLAGE RESIDENTIAL, LLC,  
Plaintiff-Respondent,  
v.  
DEPARTMENT OF REVENUE,  
Defendant-Appellant,  
and  
CLACKAMAS COUNTY  
ASSESSOR,  
Intervenor-Appellant.

Tax Court No. 5057

SC S063174

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APPELLANT DEPARTMENT OF REVENUE'S OPENING BRIEF

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Appeal from the Judgment of the Oregon Tax Court  
Honorable Henry C. Breithaupt, Judge

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# APPELLANT DEPARTMENT OF REVENUE'S OPENING BRIEF

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## STATEMENT OF THE CASE

### Nature of the Proceeding

This is a direct appeal of four consolidated tax cases and is before this court for the third time. Plaintiffs Village at Main Street Phase II, LLC, Village at Main Street Phase III, LLC, and Village Residential LLC (taxpayers), filed complaints in the regular division of the tax court challenging the real market value of their property. They challenged only the value of their improvements, not their land. In the Clackamas County Assessor's answers to each of taxpayers' complaints, he sought real market value for those improvements that was higher than the taxpayer's requested value and that increased values reflected on the tax assessment roll.

Later, the assessor moved to amend his answers in each case to add counterclaims challenging the assessed value of taxpayers' land. The tax court denied those motions concluding that the assessor could not assert counterclaims regarding the value of taxpayers' land because the complaints only addressed the value of their improvements. On appeal, this court reversed and remanded holding that the assessor could assert counterclaims regarding the value of taxpayers' land. *Village at Main Street Phase II, LLC v. Department of Revenue*, 356 Or 164, 185, 339 P3d 428 (2014) (*Village at Main II*).

On the day this court issued its opinion in *Village at Main II*—and prior to the issuance of the appellate judgment—taxpayers filed notices of voluntary dismissal for each of their complaints in the tax court relying on Tax Court Rule (TCR) 54 A(1). The assessor timely filed objections to the notices of voluntary dismissal. After the appellate judgment issued, the tax court dismissed taxpayers’ complaints. The assessor and Department of Revenue moved to vacate the dismissals. The tax court denied those motions. The judgments of dismissal are at issue on appeal.

### **Nature of the Judgement to be Reviewed**

The department and the assessor appeal from the judgments of dismissal, which were based on TCR 54 A(1).

### **Statutory Basis for Jurisdiction**

This court has jurisdiction over this appeal pursuant to ORS 305.445.

### **Timeliness of Appeal**

The judgment of dismissal for all four cases was entered on March 19, 2015. (ER 84). The department timely filed its notices of appeal on April 20, 2015.

### **Questions Presented on Appeal**

(1) Did the assessor plead counterclaims, thereby precluding taxpayers from voluntarily dismissing their complaints pursuant to TCR 54 A(1), by requesting, in his answers, higher assessed values for taxpayers’ improvements?

(2) Did the assessor's motions to amend his answers to add counterclaims regarding the value of taxpayers' land also preclude taxpayers from voluntarily dismissing their complaints pursuant to TCR 54 A(1)?

### **Summary of Argument**

The tax court erred in dismissing taxpayers' complaints based on taxpayers' notices of dismissal because TCR 54 A(1) permits voluntary dismissal only if no counterclaims have been pleaded and here the assessor had pleaded counterclaims. Taxpayers' property value is assessed in two parts—land and improvements. The assessor pleaded counterclaims regarding the value of taxpayers' improvements by requesting, in each answer, that the tax court value the improvements at amounts higher than taxpayer requested and that changed the value on the tax assessment roll. Those affirmative requests for relief were counterclaims that precluded taxpayer from dismissing the appeals pursuant to TCR 54 A(1).

Voluntary dismissal was also precluded because the assessor had filed motions to amend his answers to assert counterclaims regarding the value of taxpayers' land in addition to the value of taxpayers' improvements. The assessor attached copies of his amended answers to his motions, as required by the tax court rules. So taxpayers had notice of the counterclaims and should be precluded from dismissing their complaints and avoiding the counterclaims.



## **Factual and Procedural Background**

The background and procedural facts are undisputed. In 2004, taxpayers began developing adjacent parcels of real property in Clackamas County into a multi-building apartment complex. *Clackamas County Assessor v. Village at Main St.*, 352 Or 144, 146, 282 P3d 814 (2012) (*Village at Main I*). As required by ORS 308.215(1)(a)(E) and (1)(a)(F), the assessor separately listed on the assessment roll the real market value of the land and the real market value of the improvements for the property at issue in each of the tax accounts. *Id.* at 146 n 1.

Taxpayers disagreed with the 2006, 2007, and 2008, real market values of two tax accounts and the 2007 and 2008 real market values of an additional tax account. *Village at Main II*, 356 Or at 170. Taxpayers appealed the assessor's assessments to the county Board of Property Tax Appeals, which affirmed the values on the roll. *Id.*

Taxpayers then appealed the assessments to the magistrate division of the tax court. *Id.* In each case, taxpayers challenged only the real market value of the improvements and not the value of the land. *Id.* at 170–71. Taxpayers then appealed from the magistrate's decisions by filing complaints in the regular division of the tax court. Again they challenged only the value of their improvements. (See ER 1–66); *Village at Main II*, 356 Or at 171.

The department was the initial defendant in the proceeding and the assessor intervened. *Village at Main II*, 356 Or at 171. The assessor filed answers to each of taxpayers' four complaints asserting that the value of the improvements at issue in each was greater than the value claimed by taxpayers and different than values on the assessment and tax roll for the county. (ER 67–71).<sup>1</sup>

The assessor also later sought leave from the tax court to amend his answers to add counterclaims regarding the value of taxpayers' land. The assessor argued that then newly-enacted ORS 305.287 permitted him to seek a determination of the value of all the components of a tax account even though the taxpayers had appealed only the value of the improvements. *Village at Main II*, 356 Or at 171–73. The assessor asked the tax court to review the entire assessed value of the property—the land *and* improvements. *Id.* at 171. The tax court determined that ORS 305.287 did not apply and denied the assessor's motions to amend his answers. *Id.* at 171–73. On appeal, this court

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<sup>1</sup> The improvement value the county requested was higher than all of the roll values in three of the four cases (TC 5055, 5056, and 5057). (*See* ER 68–71). For TC 5054, which involved multiple properties and multiple years, the amount the county requested was higher than the roll values for some of the properties for the designated year and lower than the roll values for other properties. (*See* ER 67).

reversed concluding that ORS 305.287 applied to cases in the regular division of the tax court. *Id.* at 173–85.

On the day this court issued its opinion (and prior to issuance of the appellate judgment), taxpayers filed notices with the tax court voluntarily dismissing their complaints pursuant to TCR 54 A(1). (ER 88). The assessor objected to the notices. (ER 88; CCER 1–4).<sup>2</sup> On the day the tax court received the appellate judgment, it dismissed the complaints. (ER 88–89). The department and the assessor filed motions to vacate the dismissals. (ER 89; CCER 17–33). The tax court denied those motions and entered judgments of dismissal. (ER 72–84). This appeal followed.

### **ASSIGNMENT OF ERROR**

The tax court erred in dismissing taxpayers’ complaints.

#### **Preservation of Error**

The assessor objected to the notice of dismissals prior to the tax court dismissing taxpayers’ complaints. (ER 88; CCER 1–4). Both the assessor and the department (collectively “defendants”) moved to vacate the judgments of dismissal asserting that taxpayers could not voluntarily dismiss the entire case under TCR 54 A(1) because the assessor had asserted counterclaims. (ER 88–89; CCER 5–33). Defendants had two separate arguments for how the assessor

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<sup>2</sup> Citations to “CCER” are to the county assessor’s excerpt of record.

had asserted counterclaims. First, defendants asserted that the assessor had pleaded, in his original answers, counterclaims as to the value of taxpayers' improvements. (CCER 6, 18, 29–30). Second, defendants asserted that the assessor had effectively pleaded, through their motion to amend and successful appeal, counterclaims as to the value of taxpayers' land. (CCER 3–4, 6–8, 12–15, 20, 23–27).

At the subsequent hearing, defendants reiterated their arguments. They argued that “a counterclaim in this case has been pleaded \* \* \* thus it precludes the voluntary dismissal under TCR 54 A(1).” (Tr 6, 11). Defendants argued that the assessor's original answers pleaded counterclaims by seeking real market values for taxpayers' improvements that were “higher than the roll value.” (Tr 18–19, 23). Defendants explained that although the assessor had not designated the requests as counterclaims, each was a counterclaim because it was “a request for affirmative relief.” (Tr 19). Defendants also argued that because the “motion[s] to amend w[ere] clearly filed prior to the filing of the plaintiff's notice[s] of voluntary dismissal,” and because defendants had successfully appealed the tax court's denial of the motions to amend, the assessor had also effectively pleaded counterclaims regarding the value of taxpayers' land. (Tr 6–7, 13–16).

The tax court rejected defendants' arguments in a written opinion. (ER 72–83). It concluded that a party to an appeal in the regular division could only

plead a counterclaim by filing his own complaint appealing from the magistrate's decision and not in an answer to the other party's complaint. (ER 74–78). It also concluded that the assessor's motion to amend his answers did not preclude taxpayers' from voluntarily dismissing their complaints. (ER 79–82).

### **Standard of Review**

This court reviews decisions of the tax court for “errors or questions of law or lack of substantial evidence in the record to support the tax court’s decision.” ORS 305.445. Here, whether the tax court erred in determining that no counterclaim had been pleaded for purposes of TCR 54 A(1), is a matter of law. *See State v. Arnold*, 320 Or 111, 119, 879 P2d 1272 (1994) (court interprets a procedural rule as it would a statute); *Ramirez v. Northwest Renal Clinic*, 262 Or App 317, 319, 324 P3d 581 (2014) (appellate court reviews application of ORCP 54 A(1) for legal error).

### **ARGUMENT**

Taxpayers could not voluntarily dismiss their complaints in the tax court because the assessor had pleaded counterclaims.

#### **A. TCR 54 A(1) permits a plaintiff voluntarily to dismiss the entire action *only* if a counterclaim has not been pleaded.**

The tax court dismissed taxpayers' complaints pursuant to TCR 54 A(1). That rule provides that a plaintiff may voluntarily dismiss an action as long as

no counterclaim has been pleaded:

Subject to the provisions of TCR 32 D and of any statute of this state, a plaintiff may dismiss an action in its entirety or as to one or more defendants without order of court: (a) by filing a notice of dismissal with the court and serving such notice on all other parties not in default not less than five days prior to the day of trial if no counterclaim has been pleaded \* \* \* . Upon notice of dismissal \* \* \* under this subsection, a party shall submit a form of judgment and the court shall enter a judgment of dismissal.

TCR 54 A(1).<sup>3</sup> Here, for the reasons explained below, the assessor had pleaded counterclaims prior to taxpayers' notices of dismissal. Those counterclaims precluded voluntary dismissal.

**B. The assessor pleaded counterclaims in his original answers, as to the value of taxpayers' improvements.**

**1. The assessor pleaded counterclaims by requesting higher values for the improvements.**

The assessor's initial answers in the regular division of the tax court contained counterclaims because the assessor requested a higher real market value for taxpayers' improvements. (*See* ER 67–71). A counterclaim for purposes of TCR 54 A(1) is any claim for relief by a defendant. The tax court rules do not directly define "counterclaim," but they describe a counterclaim in broad terms. The rules state: "A counterclaim may or may not diminish or defeat recovery sought by the opposing party. It may claim relief exceeding the amount or different in kind from that sought in the pleading of the opposing

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<sup>3</sup> TCR 54 A mirrors ORCP 54 A.

party.” TCR 22 A(2). That description is consistent with the general definition of a counterclaim as “[a] claim for relief asserted against an opposing party after an original claim has been made; esp., a defendant’s claim in opposition to or as a setoff against the plaintiff’s claim.” *Black’s Law Dictionary* 376 (8th ed 2004). So, a counterclaim is simply a claim for different relief made by an opposing party.

Nothing requires that the claim for relief be designated as a counterclaim to qualify under TCR 54 A(1). To the contrary, the rules recognize that a counterclaim may not be so labeled. TCR 13 B states “[t]here shall be a reply to a counterclaim denominated as such.” So, under that rule, if there is a counterclaim that is “denominated as such” a reply is mandatory which suggests there are also counterclaims that are *not* so denominated (in which case a reply is not mandatory). That a specific label is not required fits with the definition of counterclaim, which focuses on the existence of a request for relief.

Although a counterclaim need not be labeled as such, any counterclaim regarding the real market value of property, must include the specific claimed value. The tax court rules require that: “If the real market value is in issue, a party seeking to change the value shown on the assessment records shall plead the dollar amount of the real market value claimed by the party for each tax year at issue.” TCR 18 B.

Here, for purposes of TCR 54 A, the assessor pleaded counterclaims in

each of his answers by requesting a specific value for the improvements that was higher than that requested by taxpayers and higher than values in the assessment records. (*See* ER 67–71; CCER 20–21). In three of the assessor’s answers (TC 5055, TC 5056, and TC 5057), the assessor identified the specific dollar value for the improvements as follows:

- In TC 5055, the assessor alleged that “the value on the roll for this property for the tax year in question, 2008-09, does not reflect the completed value at 100% completion” and requested that “the court find that the real market value of the improvements is \$17,146,000 and the exception real market value for the property is \$6,858,400.” (ER 68).
- In TC 5056, the assessor requested that the tax court “find that the real market value of the improvements for the 2008-09 tax year are \$2,750,000.” (ER 70).
- In TC 5057, the assessor requested that the tax court “find that the real market value of the improvements for the 2008-09 tax year are \$1,050,000.” (ER 71).

In the fourth case, TC 5054, the assessor did not list a specific dollar value but requested that the regular division find the same real market value that the magistrate had—a value greater than what taxpayers sought. Specifically,



the assessor requested that the regular division “sustain the values as ordered by the Magistrate for these properties[.]” (ER 67). The amount ordered by the magistrate division—which involved numerous improvements—was easily identifiable because the decision was attached to the taxpayers’ complaint and was clearly more than what taxpayer was requesting. (*See* ER 3–32).

So in each case the assessor affirmatively requested relief, in the words of the tax court rule, “exceeding the amount or different in kind from that sought in the pleading of the opposing party.” And each of those amounts was a change in the roll value for the improvements.<sup>4</sup> (CCER 20). Accordingly, those requests constituted counterclaims regarding the value of the improvements and precluded taxpayers from voluntarily dismissing their complaints.

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<sup>4</sup> The tax court stated that the fact that the assessor sought values different from the roll values was not pertinent. (ER 75). But it is pertinent because once taxpayer appealed, the magistrate division’s decision is essentially jettisoned. *See* ORS 305.501(5)–(7) (if a decision of the magistrate division of the tax court is appealed to the regular division, then it is not final; but, if there is no appeal, then the magistrate division decision is final and the tax court enters a judgment adopting the decision); ORS 305.425 (review in the tax court is *de novo*). If allowed to dismiss their appeals, taxpayers could avoid the magistrate decision and return to the original value on the rolls. As noted above, TCR 18 B requires a party “seeking to change the value on the assessment records” to plead the value claimed by the party. So, by requesting values different from the roll values, the assessor was seeking affirmative relief from the regular division of the tax court.

**2. The assessor did not have to file his own complaints in the tax court to assert his counterclaims; the assessor was entitled to plead the counterclaims in his answers.**

The tax court erroneously concluded that a defendant in the tax court may not plead a counterclaim in its answer but instead must file its *own* complaint to challenge the magistrate's decision. (*See* ER 75–77). It is correct that a party aggrieved by a magistrate decision may challenge that decision by appealing to the regular division of the tax court. ORS 305.501(5)(d) (an “appeal” to “the tax court is the sole and exclusive remedy for review of a written decision of a magistrate”); ORS 305.570(1)(a) (any person “aggrieved by and affected by a written decision of a tax court magistrate \* \* \* may appeal to the regular division”). However, nothing in the statutes or rules indicates that *only* the party who initiates an appeal may claim a different real market value for the property than that determined by the magistrate. Rather, the applicable statutes and rules, and this court's decision in *Village at Main II*, allow a defendant to assert a counterclaim in its answer.

Under the tax court rules, once an appeal is filed, any party may assert a claim for relief against another party. The rules specifically contemplate four separate types of claims for relief: “an original claim, counterclaim, cross-claim, [and] third-party claim.” TCR 18 A. The proceeding or “appeal” to the regular division of the tax court is initiated by filing a complaint.

ORS 305.560(1)(a). Defendants must file a “responsive pleading” to the

complaint. ORS 305.560(2). And the rules specifically provide for counterclaims in any answer. TCR 13 B (“[a]n answer may include a counterclaim”); TCR 22 A(1) (“Each defendant may set forth as many counterclaims, both legal and equitable, as each defendant may have, against a plaintiff.”). Thus, the rules and statutes permit counterclaims in a party’s answer.

Moreover, this court held in *Village at Main II*, that pursuant to ORS 305.287, once an appeal to the tax court regular division is initiated by a complaint, the responding party may assert a counterclaim. ORS 305.287 provides that in a property tax case, when “a party appeals the real market value,” then “any other party to the appeal may seek a determination from the body or tribunal of the total real market value of the property tax account, the real market value for any or all of the other components of the account, or both.”<sup>5</sup> This court held that ORS 305.287 applies to proceedings in the regular division of the tax court. *Village at Main II*, 356 Or 164. And, as crucial here, this court explained that the statute “neither requires nor authorizes other parties to file a separate notice of appeal to obtain that determination”; but, rather the determination regarding the value of the account or a component of the account,

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<sup>5</sup> The statute was amended, but not in any way that influences the analysis in this case. See 2015 Or Laws ch 37 § 1.

is made in the original proceeding before the regular division. *Id.* at 180–81.

So once an appeal to the tax court is initiated by a complaint, the other party may assert a counterclaim.<sup>6</sup>

That is what happened here. Taxpayers appealed to the regular division by filing their complaints regarding the value of the improvements and the assessor asserted counterclaims, as it was permitted to do, by asking for higher values for those improvements. Because the assessor asserted counterclaims regarding the value of taxpayers’ improvements in his answers, taxpayers could

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<sup>6</sup> The tax court appears to have concluded that, pursuant to ORS 305.570, the assessor had “no standing” to appeal from the magistrate division’s decision in TC 5054 because the assessor agreed with the magistrate division’s decision, and accordingly that he could not possibly assert a counterclaim. (ER 75). However, if the assessor can generally assert a counterclaim in his answer, then whether he could initiate his *own* appeal is irrelevant.

And, a party’s inability to appeal demonstrates a practical problem created by the tax court’s approach. There could be a situation, for example, where the county assessor agrees with the total value for the property determined by the magistrate division, and so has no basis to file a complaint in the regular division of the tax court. However, if the taxpayer appeals to the regular division, and challenges only the improvement value, then the assessor may want to request a higher value for the taxpayer’s land to keep the total assessed value the same. That type of situation was the impetus behind ORS 305.287. *See Village at Main II*, 356 Or at 169–70 (explaining how a taxpayer’s ability to challenge only one component of property value on appeal, combined with limitations on a county assessor’s ability to increase the assessed property value, “curbed the ability to adjust any error in valuation of any assessment components that a taxpayer elected not to challenge” and that the legislature adopted ORS 305.287 to address that effect). The tax court’s approach thwarts the purpose of the statute.

not voluntarily dismiss their complaints pursuant to TCR 54 A(1).

**C. In addition, the assessor's motions to amend to add counterclaims as to the value of taxpayers' land precluded voluntary dismissal.**

A pending motion to amend an answer to add a counterclaim in the tax court should also preclude voluntary dismissal of a complaint. *See* 24 Am Jur 2d Dismissal § 84 (“[W]here the defendant’s motion to add a counterclaim is pending when plaintiff moves to voluntarily dismiss the action, the pendency of the motion for a counterclaim should defeat dismissal.”). Here, the tax court initially denied the motion to amend and, when the Supreme Court reversed that decision, the motion was back at issue. That pending motion precluded voluntary dismissal.

**1. A motion to amend to add a counterclaim precludes voluntary dismissal.**

As described above TCR 54 A(1) permits a plaintiff to voluntarily dismiss its own complaint and dispose of an entire action only “if no counterclaim has been pleaded.” Although TCR 54 A(1) does not expressly refer to motions to amend, the context of the tax court rules demonstrate that a motion to amend should suffice to plead a counterclaim for purposes of TCR 54 A(1) because the motion must include the amended pleading. A defendant must get permission from the tax court to amend an answer after a certain time. *See* TCR 23 A (“A pleading may be amended by a party once as a matter of course any time before a responsive pleading is served \* \* \*. Otherwise a party may

amend the pleading only by leave of court or by written consent of the adverse party[.]”). The amended pleading “shall be done by filing a new pleading, to be called the amended pleading, or by interlineation, deletion, or otherwise.” TCR 23 D(1). A party who seeks leave to amend a pleading must “include, as an attached exhibit to the affidavit, the entire text of the proposed amended pleading” and highlight the amendments. TCR 23 D(2).<sup>7</sup> So, a defendant seeking to amend an answer must first file it and serve it on the plaintiff as part of the motion to amend.

Filing and serving the amended answer as part of the motion to amend, provides the plaintiff with notice that defendant is asserting the counterclaim. It would defeat the purpose of the rules to allow a plaintiff to receive notice of the counterclaim and then to dismiss the complaint—thereby precluding defendant from pursuing the counterclaim—by filing a notice of dismissal before the tax court ruled on the motion to amend.

Other courts, in jurisdictions with similar rules to TCR 54 A(1), have held that when a defendant files a motion to assert a counterclaim before plaintiff files a notice of voluntary dismissal of the complaint, the court cannot dismiss the complaint. *See Our Gang v. Commvest Securities*, 608 So2d 542, 544 (Fla App 4th Dist 1992) (defendant’s motion for leave to file a

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<sup>7</sup> ORCP 23 does not contain the same attachment requirement.

counterclaim, which attached proposed counterclaim, precluded plaintiff from voluntarily dismissing the action); *Worthen v. Jones*, 240 SE2d 842, 843–44 (Ga 1977) (pending motion to intervene as a defendant accompanied by counterclaim precluded plaintiff from voluntarily dismissing action); *Salsman v. Texcor Industries*, 2002 WL 1838135 (Tenn App 2002) (proposed counterclaim attached to defendant’s motion to amend is a “pleaded” counterclaim that precludes plaintiff from voluntarily dismissing). This court should adopt the same approach because the motion, with the amended answer attached, informs the plaintiff of the counterclaim.

**2. The assessor’s motions to amend were pending when taxpayers filed their notices of dismissal.**

Here, the assessor’s motion to amend was pending because this court had reversed the tax court’s denial of the motion to amend. As previously described, the assessor complied with the tax court rules and attached the amended answers—with counterclaims regarding the value of taxpayers’ land to his motions to amend. The tax court denied the assessor’s motions to amend and entered limited judgments to that effect. *Village at Main II*, 356 Or at 171–73.

This court reversed. *Id.* at 185. After this court released its decision reversing the tax court’s denial of the assessor’s motion for leave to amend, but before the appellate judgment issued, taxpayers’ filed notices dismissing their

complaints. (ER 88). But once this court ruled that the tax court's denial of the assessor's motions to amend was reversed, those motions were effectively pending. As explained above, a pending motion to amend to add a counterclaim should preclude voluntary dismissal. If that is not the rule, then defendants can, as taxpayers did here, effectively preclude appellate review of the right to assert a counterclaim. *See Johnson v. Allen, Knudesen, DeBoest, Edward & Rhodes, P.A.*, 621 So2d 507, 509 (Fla App 2d Dist 1993) (plaintiff cannot voluntarily dismiss appeal and thereby extinguish defendant's right to appeal counterclaim issue).

### CONCLUSION

This court should reverse the tax court's judgments dismissing taxpayers' complaints because the assessor pleaded counterclaims, which precluded voluntary dismissal. This court should also direct the tax court to grant assessor's motion to amend his answers to include his counterclaims regarding the value of taxpayers' land.

Respectfully submitted,

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## **NOTICE OF FILING AND PROOF OF SERVICE**

I certify that on September 30, 2015, I directed the original Appellant's Opening Brief to be electronically filed with the Appellate Court Administrator, Appellate Records Section, and electronically served upon Donald H. Grim, attorney for respondent, and Kathleen J. Rastetter, attorney for appellant Clackamas County Assessor, by using the court's electronic filing system.

### **CERTIFICATE OF COMPLIANCE WITH ORAP 5.05(2)(d)**

I certify that (1) this brief complies with the word-count limitation in ORAP 5.05(2)(b) and (2) the word-count of this brief (as described in ORAP 5.05(2)(a)) is 4,512 words. I further certify that the size of the type in this brief is not smaller than 14 point for both the text of the brief and footnotes as required by ORAP 5.05(2)(b).

/s/ Jona J. Maukonen

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