

IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT

Property Tax

MARK PERKINS, ET AL,)	
)	
Plaintiffs,)	No. 000078D
)	
v.)	
)	
MULTNOMAH COUNTY ASSESSOR,)	DECISION ON
)	CROSS MOTIONS FOR
Defendant.)	SUMMARY JUDGMENT

Plaintiffs appeal the disqualification of their property from exemption for the tax year 1999-2000. Oral argument was held via telephone on June 27, 2000, and October 3, 2000. Mr. Gary Shepherd, Attorney, appeared on behalf of plaintiffs. Defendant was represented by Mr. John Thomas, Assistant County Counsel, Multnomah County. The issue has been submitted to the court on cross motions for summary judgment. The court has considered the memoranda submitted and oral arguments.

STATEMENT OF FACTS

The parties agree to the following facts. Plaintiffs, referred to as Perkins, purchased the property which is described as Multnomah County Assessor's Account No. R337515 from the Gresham Elks Club. The statutory warranty deed for the subject property was signed and delivered into escrow on June 30, 1999. On that same date, monies were deposited and a trust deed was signed. On July 2, 1999, the warranty deed was recorded, monies distributed and the transaction was closed. (See Stip at 1 - 6.)

When the subject property was owned by the Gresham Elks Club, a fraternal organization, it was exempt from property taxation for a number of years including tax year

1998-99. The parties submitted an affidavit of testimony for Michael S. Sommers, a member of the Board of Trustees and legal counsel for the Elks. Mr. Sommers' statement recited that for at least the last ten years the subject property was used "by Gresham Youth Soccer Club ('the Soccer Club') for youth soccer activities", to store Elk hide barrels, and for annual events such as the family picnic, adult picnic and Easter egg hunt. Mr. Sommers' stated that at one time the Soccer Club had a written agreement which permitted it uninterrupted use of the subject property from September through November. Even though the written agreement expired, the parties continued to honor the use agreement until November 1998. At that time, the Soccer Club was told that they could not use the fields because the Elks were beginning construction on a new lodge. In March 1999, the Elks abandoned the construction project and listed the subject property for sale. Once the construction "holes" were filled in March 1999, Mr. Sommers stated that the subject property was again available for use by the Soccer Club. Mr. Sommers stated that he did not know if the Soccer Club used the field from March 1999 until the date of sale, July 1999. During the construction and even after Perkins purchased the property, soccer goals and poles which held up netting to keep balls from going into adjacent property were on the subject property.

When Perkins received its 1999-2000 property tax statement for tax year 1999-00, the subject property was shown as exempt with no tax due. On November 29, 1999, Perkins received a "corrected" tax statement which no longer provided that the property was exempt. After a written appeal of the assessment was denied by defendant, plaintiffs filed their Complaint with the court on January 25, 2000.

COURT'S ANALYSIS

The issue before the court is the tax exempt status of the subject property as of July 1, 1999. On that date, the subject property was owned by the Gresham Elks Club (Elks). During the 1998-99 tax year when the Elks owned the subject property, it was exempt from property taxation.¹ Perkins alleges that because as of July 1, 1999, the Elks continued to own and use the subject property, it should be exempt for tax year 1999-2000. Perkins relies on ORS 307.162(1)(a) which states that a taxpayer need not file an annual application once the property has qualified for exemption if “the ownership of all property included in the statement filed with the county assessor for a prior year remains unchanged.”

The parties agree that the change in ownership did not occur until after July 1, 1999. In this case, the actual closing date of the sale transaction recorded the change of ownership. In accordance with ORS 307.166, a new application was not required for the 1999-2000 tax year.

The parties disagree that the use of the subject property remained unchanged. A change in use from one qualifying activity to another does not automatically disqualify the property from exemption. The important factor is the type of use which includes a “broad range of activity” defined in ORS 307.136(1) as follows:

“All the real or personal property, or portion thereof, which is actually occupied or used in fraternal or lodge work or for entertainment and recreational purposes by one or more fraternal organizations* * *.” *Disabled American Veterans v. Dept. of Rev.*, 9 OTR 205,

¹ORS 307.136 provides that the qualifying property of a fraternal organization shall be exempt from taxation after filing the required statement to secure the exemption. See ORS 307.162.

206, 207 (1982).

In this case, the Elks did not change from one qualifying use to another. All qualifying activities ceased on June 30, 1999. On June 30, 1999, the Elks signed and delivered into escrow a statutory warranty deed. On that date, the Elks by its deposit of the signed statutory warranty deed publically acknowledged that it no longer planned to occupy or use the property for its fraternal or lodge work.

During the time the property was listed for sale, the Elks did not hold their annual Easter egg hunt. In addition, there was no evidence of any qualifying activity on the subject property during this time period. While the decision not to hold the annual Easter egg hunt and the lack of knowledge concerning the use of the property may be indicators of a change in use, these facts alone are not necessarily sufficient to conclude there was in fact a change in use. However, when the Elks placed the signed statutory warranty deed in escrow, the Elks' use of the subject property was officially terminated. The court concludes that the exempt use of the subject property changed on June 30, 1999, and a new application should have been filed by the buyer for the 1999-2000 tax year.

CONCLUSION

IT IS THE DECISION OF THIS COURT that plaintiffs' Motion for Summary Judgment is denied.

///

///

FURTHER IT IS THE DECISION OF THIS COURT that defendant's Motion for Summary Judgment is granted.

Dated this _____ day of October, 2000.

JILL A. TANNER
MAGISTRATE

IF YOU WANT TO APPEAL THIS DECISION, FILE A COMPLAINT IN THE REGULAR DIVISION OF THE OREGON TAX COURT, FOURTH FLOOR, 1241 STATE ST., SALEM, OR 97310. 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 JILL A. TANNER ON OCTOBER 20, 2000. THE COURT FILED THIS DOCUMENT ON OCTOBER 20, 2000.