

IN THE MAGISTRATE DIVISION  
OF THE OREGON TAX COURT  
Property Tax

|   |   |                 |
|---|---|-----------------|
| BARBARA J. DUNCAN, aka Barbara J. Adcock, | ) |                 |
|   | ) |                 |
| Plaintiff,                                | ) | No. 001125C     |
|   | ) |                 |
| v.  | ) |                 |
|   | ) |                 |
| DESCHUTES COUNTY ASSESSOR,                | ) |                 |
|   | ) |                 |
| Defendant.                                | ) | <b>DECISION</b> |

Plaintiff appealed the value of an unimproved lot near LaPine, Oregon, seeking relief as far back as the law allows, but at least for several years<sup>1</sup>. The property is identified in the county assessor's records as Account No. 201130D002000.

At the December 28, 2000, hearing case management conference the parties were placed under oath in order for the court to explore its authority to move forward with the case under ORS 305.288 in light of the decision by the Regular Division in *Seifert v. Dept. of Rev.*, 14 OTR 401 (1998).

Plaintiff filed the appeal after being informed by a local Realtor that the lot is probably unbuildable due to a high water table precluding septic approval. The property is roughly three acres in size. The appeal was filed directly with the tax court. Plaintiff did not submit a petition for reduction to the Deschutes County Board of Property Tax Appeals (board).

The information plaintiff received regarding the condition of the property is contained in a letter from a Realtor dated March 2000.<sup>2</sup> That letter apparently indicates

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<sup>1</sup> This point was clarified by plaintiff at the December 28, 2000, hearing.

<sup>2</sup> The letter was not submitted to the court. However, plaintiff did read the contents of the letter to the court at the December 28 hearing.

that the problem was first discovered in 1981 and that the issue was revisited in 1997 with the same conclusion being reached.

When asked the reason for the lack of a petition to the local board plaintiff testified that she thought she had appealed to the county. Plaintiff testified that she sent a letter “to Bend”, which is the seat of local government for Deschutes County, and was notified that she should file an appeal with the tax court. Plaintiff did not keep copies of the letter she sent to the county or the response she received.

The court explained at the hearing that the appeal process begins with a petition to the board and that a taxpayer unhappy with the result of that process can appeal the board’s Order to the Oregon Tax Court, Magistrate Division. See ORS 309.026, 309.100 and 305.275<sup>3</sup>. When, as in this case, a taxpayer misses the first step in the process and appeals directly to the tax court, the court must determine whether the provisions of ORS 305.288 are satisfied before proceeding to the merits of the case. *Seifert*, 14 OTR at 404 (the court accepts the department’s argument that under ORS 305.288 it may not grant relief unless there is good and sufficient cause or an allegation of a 20 percent error in value)<sup>4</sup>.

In the case of unimproved property (bare land) the court may not order a change to the assessment or tax roll unless the “taxpayer has no statutory right of appeal remaining and the tax court determines that good and sufficient cause exists for the failure by the \* \* \* taxpayer to pursue the statutory right of appeal.” ORS 305.288(3). The “statutory right of appeal” referred to in ORS 305.288(3) is the petition to the board and a timely appeal

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<sup>3</sup>Reference to the Oregon Revised Statutes (ORS) is to 1999.

<sup>4</sup>The 20 percent error provision found in subsection (1) of ORS 305.288 is limited in paragraph (a) to property used as a dwelling. Bare land does not fit that requirement.

therefrom. Plaintiff meets the first requirement of the statute in that she has no statutory right of appeal remaining for the 1999-00 tax year (or any year prior to that year). The problem lies in the requirement that there be good and sufficient cause for the failure to follow the statutorily mandated procedures for appealing, as discussed above.

The term “good and sufficient cause” is defined in the statute as “an extraordinary circumstance that is beyond the control of the taxpayer, \* \* \* and that causes the taxpayer, \* \* \* to fail to pursue the statutory right of appeal[.]” ORS 305.288(5)(b)(A). Good and sufficient cause “[d]oes not include inadvertence, oversight, lack of knowledge, hardship \* \* \*.” ORS 305.288(5)(b)(B). In this case it appears that plaintiff was unfamiliar with the appeal process and failed to initiate any action until after the December 31, 1999, board deadline set out in ORS 309.100(2). This would explain why the county advised plaintiff to appeal to the court. This explanation falls into the category of exclusions found in ORS 305.288(5)(b)(B). Since plaintiff has not demonstrated that she failed to pursue the statutory right of appeal by reason of good and sufficient cause the court lacks authority to consider the underlying valuation issue.

### **CONCLUSION**

Plaintiff’s direct appeal to this court was analyzed under ORS 305.288 as required by *Seifert v. Dept. of Rev.* Applying that statute to the facts of this case, involving unimproved land, limits the court’s inquiry and analysis to a question of the existence of good and sufficient cause. Plaintiff’s failure to follow the statutory right of appeal was not due to circumstances both extraordinary and beyond her control and the court therefore concludes there is no good and sufficient cause.

IT IS THE DECISION OF THE COURT that plaintiff’s appeal must be dismissed.

Dated this \_\_\_\_\_ day of January, 2001.

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DAN ROBINSON  
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 DAN ROBINSON ON JANUARY 3, 2001. THE COURT FILED THIS DOCUMENT ON JANUARY 3, 2001.**