

IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT
Property Tax

ION AND IOANA MIU,)
)
 Plaintiffs,) No. 010797E
)
 v.)
)
 MULTNOMAH COUNTY ASSESSOR,)
)
 Defendant.) **DECISION OF DISMISSAL**

This matter is before the court on its own motion to dismiss the above-entitled appeal finding it lacks jurisdiction to provide plaintiffs with the relief they have requested. The court discussed its motion with the parties during the case management conference held July 6, 2001.

STATEMENT OF FACTS

Plaintiffs appeal tax years 1996-97 through 2000-01 claiming entitlement to a limited assessment under the provisions of ORS 308.450 to ORS 308.481. Plaintiffs claim their property is within an area designated by the City of Portland as a distressed area. This designation allows certain rehabilitated properties to receive a limited assessment for ten consecutive years. ORS 308.459(1). In May 1996, plaintiffs, unaware of the limited assessment program, built a new structure adjacent to their existing house. Eleven months later, they discovered they could have applied to receive a limited assessment for the newly constructed property. As a result, in October 1997, plaintiffs submitted an application along with their \$300 application fee to the Portland Development Commission (PDC). According to plaintiffs, the PDC denied their application for the reason plaintiffs filed it after they had completed the construction. Plaintiffs appealed the decision to an administrative authority, which denied their appeal.

Frustrated with the denials they had received, plaintiffs submitted letters to the governor and their local state legislator. The governor's office responded with a letter apparently advising plaintiffs to resubmit their request. For reasons not clear to the court, plaintiffs ended up filing an appeal with this court requesting that the court grant them the limited assessment.

COURT'S ANALYSIS

ORS 308.450 to ORS 308.481 provides a program that allows a limited assessment to property owners who rehabilitate substandard residential properties. It allows a governing body to designate certain areas as "distressed areas." Homes rehabilitated within this area receive the limited assessment. To receive the benefit of the program, however, a property owner must file an application with the appropriate governing body. ORS 308.462 states:

"To qualify for the limited assessment provided by ORS 308.450 to 308.481, the owner shall:

"(1) Prior to commencement of rehabilitation improvements, secure from the governing body or its duly authorized agent, verification of noncompliance with code as defined in ORS 308.450 (4)(b);

"(2) File an agreement with the governing body, where required by the governing body, between the owner and the governing body to negotiate rental rates to be charged for the rehabilitated rental units during the period of the limited assessment; and

"(3) File an application for limited assessment with the governing body which contains any information the governing body deems necessary to determine whether or not the property qualifies for limited assessment." (Emphasis added.)

In this case, the appropriate governing body to which plaintiffs had filed their application was the PDC. The PDC, however, denied their application.

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ORS 308.466(4) provides appeal rights to property owners whose applications are denied. It states:

“(4) Upon denial by a duly authorized agent, an applicant may appeal the denial to the governing body within 30 days after receipt of the denial. Upon denial of the appeal by the governing body, or denial of the application, the applicant may appeal to the circuit court, and from the decision of the circuit court to the Court of Appeals, as provided by law.”

The statutory scheme requires that a person seeking the benefit of the limited assessment file an application with the appropriate governing body. If the governing body denies their application, the applicant may then appeal the decision first to the governing body and then to the circuit court and the court of appeals. Nowhere in the statutory scheme does it refer to an applicant seeking relief in the Oregon Tax Court. Instead, it specifically provides that applicants seeking judicial relief must go to the circuit court. As a result, the court finds it is without jurisdiction to grant plaintiffs entitlement to the program.

Plaintiffs are clearly frustrated with the denial of their application. They claim they were not advised of the program because, if they had been, they would have filed their application prior to construction. They believe the PDC was negligent in its responsibility to adequately inform the citizens of the program. They further believe they have been discriminated against by the PDC. The court understands plaintiffs' frustrations and is clearly aware they are desperate for someone to listen to them and give them relief. Unfortunately, the Oregon Tax Court is simply without jurisdiction to grant a property entitlement to the limited assessment program. This authority lies with the appropriate governing body and appeals from the denial of applications must go to the circuit court.

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CONCLUSION

It is the conclusion of the court that the Oregon Tax Court lacks jurisdiction to grant taxpayers entitlement to the limited assessment program provided in ORS 308.450 to ORS 308.481. Property owners must file their applications with the appropriate governing body. If an application is denied, a property owner may then appeal to the circuit court. Now, therefore;

IT IS THE DECISION OF THIS COURT that the above-entitled matter be dismissed.

Dated this _____ day of July, 2001.

COYREEN R. WEIDNER
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 97301-2563. YOUR COMPLAINT MUST BE SUBMITTED WITHIN 60 DAYS AFTER THE DATE OF THIS DECISION OR THIS DECISION BECOMES FINAL AND CANNOT BE CHANGED.

THIS DOCUMENT WAS SIGNED BY MAGISTRATE COYREEN R. WEIDNER ON JULY 13, 2001. THE COURT FILED THIS DOCUMENT ON JULY 13, 2001.