

IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT
Property Tax

HELEN C. JOHNSON (Trustee),)
)
 Plaintiff,) No. 010884F
)
 v.)
)
 MULTNOMAH COUNTY ASSESSOR,)
)
 Defendant.) **DECISION OF DISMISSAL**

This matter is before the court on its own motion to dismiss because the Complaint was not timely filed. The court held case management conferences on September 18, 2001, and November 14, 2001. Helen Johnson appeared for the Plaintiff.¹ Linda U'Ren appeared for the Defendant. This appeal concerns Ms. Johnson's residence and its real market value for ten tax years: 1991-92 through 2000-01.

The property is identified in the Multnomah County tax records as Account No. R991290270.² No petitions were earlier submitted to the county board of equalization or board of property tax appeals. The first, and only, complaint was filed with the Magistrate Division on June 28, 2001. The Complaint did not allege a value.

The subject property includes 2.44 acres. It is improved with Ms. Johnson's residence. Ms. Johnson had hoped to sell the excess land to a developer to be

¹Ms. Johnson filed the Complaint as an individual. However, the attached property tax statement indicates that Ms. Johnson is actually a trustee. Because the court is dismissing the Complaint on other grounds, it need not rule on whether a trustee may represent a trust in a standard designation case. See ORS 305.230.

²This is the old account number. The new account number is R330733.

subdivided. The property is zoned R7c. Theoretically, the property could be subdivided into a maximum of 15 residential building lots.³ However, the "c" in the zoning designation means that the property is subject to an environmental conservation overlay zone.⁴ Ms. Johnson stated that because of the zoning, she would be able to partition the property into only one additional residential building lot.

At the initial case management conference, the court discussed the lack of an alleged value. The court sent Ms. Johnson a letter asking her to provide an estimate of the subject property's value. In response, Ms. Johnson provided letters from two developers stating that they would not be willing to buy and develop the property because of expenses and restrictions associated with the environmental overlay zoning. None of the materials Ms. Johnson submitted alleged a specific value.

COURT'S ANALYSIS

To contest assessed values, taxpayers typically must appeal to their county board of property tax appeals by December 31 of each tax year. ORS 309.100.⁵ The Plaintiff admits she did not timely appeal in any of the years at issue.

The legislature has given the court limited authority to consider appeals going back two tax years. ORS 305.288(1) states:

“The tax court shall order a change or correction * * * to the assessment and tax roll **for the current tax year or for either of the two**

³Among other things, the maximum number of lots could be affected by the placement of the existing residence.

⁴The environmental conservation zone "allows development after review so long as impacts on resources are controlled and mitigated." (pg 152 as submitted with the Complaint.) By contrast, the environmental protection zone is much more restrictive. (*Id.* at 153.)

⁵All references to the Oregon Revised Statutes are to the 1999 Replacement Part.

tax years immediately preceding the current tax year * * * if all of the following conditions exist:

“(a) For the tax year to which the change or correction is applicable, the property was or is used primarily as a dwelling * * * .

“(b) The change or correction requested is a change in value for the property for the tax year and it is **asserted in the request and determined by the tax court that the difference** between the real market value of the property for the tax year and the real market value on the assessment and tax roll for the tax year **is equal to or greater than 20 percent**. (Emphasis added.)

Here, the Plaintiff is challenging years beyond the reach of the two-year supervisory power of the court. The court finds tax years 1991-92 through 1997-98 are dismissed because they are beyond the reach of the court’s power.

Additionally, the Plaintiff’s appeal as to tax years 1998-99 through 2000-01 cannot be heard under the provisions of ORS 305.288(1). Without an allegation of a specific value, the court cannot determine if the Plaintiff is alleging a gross error.

The Plaintiff has a second opportunity for the court to be able to hear the appeal as to tax years 1998-99 through 2000-01. ORS 305.288(3) states:

“The tax court may order a change or correction * * * to the assessment or tax roll for the current tax year * * * if, * * * the assessor or taxpayer has no statutory right of appeal remaining and the tax court determines that good and sufficient cause exists for the failure by the assessor or taxpayer to pursue the statutory right of appeal.”

Good and sufficient cause is “an extraordinary circumstance that is beyond the control of the taxpayer.” ORS 305.288(5)(b)(A). Further, good and sufficient cause “[d]oes not include inadvertence, oversight, lack of knowledge, hardship or reliance on misleading information provided by any person except an authorized tax official providing the relevant misleading information.” ORS 305.288(5)(b)(B).

Ms. Johnson offered no real reason for the Plaintiff's failure to timely appeal the real market values of tax years 1998-99 through 2000-01. Consequently, the court cannot reach the 1998-99 through 2000-01 tax years under the good and sufficient cause provision.

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

Dated this _____ day of November, 2001.

SALLY L. KIMSEY
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 THE DECISION OR THIS DECISION BECOMES FINAL AND CANNOT BE CHANGED.

THIS DOCUMENT WAS SIGNED BY MAGISTRATE SALLY L. KIMSEY ON NOVEMBER 28, 2001. THE COURT FILED THIS DOCUMENT ON NOVEMBER 28, 2001.