

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Small Claims  
Property Tax

JAMES F. KING and SHERRIN L. KING,	)	
	)	
Plaintiffs,	)	No. 020613F
	)	
v.	)	
	)	
CLACKAMAS COUNTY ASSESSOR,	)	
	)	
Defendant.	)	<b>DECISION AND JUDGMENT</b>

Plaintiffs appeal the real market value of their property for tax years 1998-99 through 2001-02. A case management conference was held on July 1, 2002. James and Sherrin King appeared for themselves. Fred Dodd appeared for Defendant.

The property is identified in the Clackamas County tax records as Account Nos. 00977456, 1427218, and 977465 for tax years 1998-99 and 1999-2000 and as Account No. 00977456 for tax years 2000-2001 and 2001-02. No petitions were previously submitted to the county board of property tax appeals (BOPTA) for tax years 1998-99 through 2000-2001. Plaintiffs successfully appealed to BOPTA for tax year 2001-02. Plaintiffs filed their appeal with the Magistrate Division on April 17, 2002.

**STATEMENT OF FACTS**

In October 1999, Plaintiffs purchased the subject property for \$245,000. At the time of their purchase, the property consisted of three tax lots: tax lots 1600, 1601, and 1607. Tax lot 1600, Account No. 00977456, included a three bedroom house. Plaintiffs intended to sell lots 1601 and 1607, believing them to be buildable lots. Plaintiffs subsequently learned from the planning department that at least two of the lots were not legal lots. On the advice of the planning department, Plaintiffs approached assessment and taxation and the three lots were combined into one tax lot. Plaintiffs

then intended to partition the property so they could obtain at least one buildable lot. Their appeal for the partition was ultimately denied by a county hearings officer. They were left with one lot and the house.

Starting in July 2000, Plaintiffs listed the property for sale. The initial listing price for the entire property was \$243,900. By the time Plaintiffs removed the property from the market at the end of September 2001, the asking price was \$199,000. During the 15 months the property was listed for sale, Plaintiffs received no offers. Plaintiffs ultimately rented the property for \$850 per month.

Plaintiffs appealed the real market value to BOPTA for tax year 2001-02. BOPTA lowered the value to \$199,000, the last listing price for the property. Plaintiffs ask for a real market value of \$187,000. They support this requested value with two comparable sales and two comparable listings. All four of the properties are in the same development. The comparable sales sold for \$167,500 and \$180,000. The listings were listed at \$185,900 and \$195,000. Three of the four are approximately the same size as the subject property. The fourth, while significantly smaller, has three bedrooms, the same as the other three properties. The four properties are on the golf course; the subject property has a "peek-a-view" of the golf course. (Ptf's Ex 1 at 6.)

### **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.<sup>1</sup> Plaintiffs admit that, except for tax year 2001-02, they did not timely appeal any of the years at issue.

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<sup>1</sup>All references to the Oregon Revised Statutes (ORS) are to 2001.

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 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.”

Here, Plaintiffs are challenging a year beyond the reach of the two-year supervisory power of the court. Therefore, tax year 1998-99 is dismissed because it is beyond the reach of the court’s power. Plaintiffs’ appeal as to tax year 1999-2000 must also be dismissed. As of the January 1, 1999, assessment date the expectation was that Account Nos. 1427218, and 977465 represented buildable lots. As such, they were not "used primarily as a dwelling" as required by ORS 305.288(1)(a). Plaintiffs did not allege a separate real market value for Account No. 00977456. Without an allegation of a specific value, the court cannot determine if Plaintiffs are alleging a gross error. Finally, for tax year 2000-2001, Plaintiffs are alleging a real market value of \$187,000. This requested value represents a reduction of less than 20 percent. Thus, Plaintiffs’ appeal as to that tax year must also be dismissed.

However, Plaintiffs have a second opportunity for the court to hear their appeal.

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 and for either of the two tax years immediately preceding 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).

Plaintiffs did not inquire of the planning department as to whether the two additional lots were buildable until after they purchased the property. When they did inquire, Plaintiffs were given misleading information by someone in the planning department that at least implied that Plaintiffs could partition at least one buildable lot. After several months, Plaintiffs received a decision that they could not partition their property. However, Plaintiffs controlled when they made the inquiry. Had they inquired before they purchased the property, they would at least have been put on notice that they were not buying what they thought they were buying. The amount of time for Plaintiffs to receive an answer as to the buildability of the two additional lots is an unfortunate byproduct of the complexity of the land use laws. It does not rise to the level of "good and sufficient cause" within the meaning of ORS 305.288(5)(b)(B).

The only year left for consideration is tax year 2001-02. The court finds that Plaintiffs' evidence sufficiently demonstrates that the real market value of Account No. 00977456 was \$187,000 for tax year 2001-02.

### **CONCLUSION**

Plaintiffs' situation is unfortunate. However, it is not "good and sufficient cause" as set forth in ORS 305.288(3). Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiffs' appeal as to tax years 1998-99 through 2000-01 is dismissed.

IT IS FURTHER DECIDED that the real market value of Account No. 00977456 was \$187,000 for tax year 2001-2002, with a value of \$72,358 for the land and \$114,642 for the improvements.

Dated this \_\_\_\_\_ day of November, 2002.

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SALLY L. KIMSEY  
MAGISTRATE

**THIS DOCUMENT WAS SIGNED BY MAGISTRATE SALLY L. KIMSEY ON NOVEMBER 13, 2002. THE COURT FILED THIS DOCUMENT ON NOVEMBER 13, 2002.**