

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

VILLAGE WIESTORIA HOMEOWNERS ASSOCIATION,)	
)	
)	
Plaintiff,)	No. 020947C
)	
v.)	
)	
DESCHUTES COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

Plaintiff has appealed the real market value (RMV) of a clubhouse and the underlying land for the 2001-02 tax year. A good and sufficient cause hearing was held by telephone January 6, 2003, pursuant to ORS 305.288(4).¹ Plaintiff was represented by Helen Halligan, a real estate broker. Thomas Winckler, an association member, testified on behalf of Plaintiff. Defendant was represented by Theresa Maul, an appraiser with the Deschutes County Assessor's Office.

STATEMENT OF FACTS

This appeal was filed directly with the Tax Court. There was no prior appeal to the county board of property tax appeals (board). Plaintiff purchased the subject property from the developer on April 4, 2002. The developer did not pay the property taxes when due in November 2001, and Plaintiff ultimately paid the taxes as part of the purchase in order to facilitate the sale. Proceeds for the purchase, including the property tax payments, came from homeowner association fees paid by the members.

Pursuant to a prior agreement, Plaintiff paid \$195,000 for the property, which included the clubhouse and the land on which it is situated (a tax lot). Because of

¹ All references to the Oregon Revised Statutes (ORS) are to 2001.
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additional work done to the facility, the final purchase price was approximately \$206,000. The RMV on the assessment and tax rolls as of January 1, 2001 (2001-02 tax year), is \$357,460, with \$313,685 allocated to the improvement and \$43,775 to the land. After the appeal was filed, Defendant recalculated the RMV of the improvement (the clubhouse) using the cost approach and determined that the value was \$265,355 (improvement value only), a difference of \$48,330. Defendant indicated at the hearing that it would not contest a reduction in the improvement value to \$265,355. Defendant, however, did note that the subject property was not used for residential purposes and that the 20 percent error provision in “the statute” (ORS 305.288) was not applicable.

The subject property will become a common area available to all property owners in the development. There are forty-one lots in the development, most of which are improved with single-family homes. All property owners will have access to the subject property.

The homeowners association was not in existence during the time in which an appeal to the board was to be filed. A three-member interim board represented the interests of the homeowners prior to December 31, 2001, but the requisite number of lots for the establishment of the association had not been purchased. The developer still owned the majority of the lots at that time.

The appeal to this court was ultimately filed in June 2002 following a meeting of the homeowners association members at which there was a discussion of the property taxes paid during closing and the underlying value on which those taxes were calculated. Because the association paid considerably less than the roll value, an appeal was deemed appropriate.

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COURT'S ANALYSIS

An appeal filed directly with the Tax Court, without a prior appeal to the county board, must be reviewed by the court under the provisions of ORS 305.288. Because the subject property is not and was not used as a dwelling (of four units or less), the court cannot order the reduction agreed to by the parties absent a showing of good and sufficient cause, as provided in ORS 305.288(3).² Good and sufficient cause is defined as “an extraordinary circumstance that is beyond the control of the taxpayer, or the taxpayer’s agent or representative, and that causes the taxpayer, agent or representative to fail to pursue the statutory right of appeal.” ORS 305.288(5)(b)(A). The statute further provides that 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).

Plaintiff does not know why an appeal was not filed with the board prior to the December 31, 2001, deadline provided in ORS 309.100(2). The developer owned the property at that time and the association had not yet been established. Accordingly, Plaintiff was not then in a position to pursue an appeal with the board. The developer could have appealed, and there is no information in evidence as to why that individual did not do so. Plaintiff stands in the shoes of the previous owner and acquires the property with all the rights the seller was able to convey, and subject to the same limitations. See *PGE v. Dept. of Rev.*, 11 OTR 78, 87 (1988) (stating that ownership of property is a

² Subsection (1) of ORS 305.288 provides for a court ordered reduction in value in the case of a demonstrated error in the RMV of at least 20 percent. However, for the 20 percent error provision to apply the statute requires that the property “was and is a single-family dwelling, a multifamily dwelling of not more than four units, a condominium unit, a manufactured structure or a floating home.” ORS 305.288(1)(a). The subject property in the instant appeal is a private clubhouse and is not used as a dwelling. Furthermore, the proposed reduction, when measured against the improvement value (as opposed to total value), is only 15 percent ($[(313,685 - 265,355) \div 313,685 = 48,330 \div 313,685 = .15407 = 15\%]$). The percentage is less when calculated on total value before and after the recommended reduction.

collection or bundle of rights). At the time of the sale the deadline for petitioning the board had lapsed, and Plaintiff took the property subject to that limitation (expired appeal right).

CONCLUSION

Plaintiff's request for a reduction in RMV for tax year 2001-02 on a clubhouse and the underlying land is denied because there was no petition to the board before the appeal was filed with this court, the 20 percent error rule in ORS 305.288(1) neither applies nor is satisfied, and Plaintiff has not shown that there was good and sufficient cause for the lack of a board appeal, as provided in ORS 305.288(3). Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiff's appeal is denied.

Dated this _____ day of January, 2003.

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 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 DAN ROBINSON ON JANUARY 31, 2003. THE COURT FILED THIS DOCUMENT ON JANUARY 31, 2003.