

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

M&H BEAVERLAKE PHASE I, LLC,)
)
Plaintiff,) TC-MD 021297E (Control);
) 021298E; 021299E; 021300E;
v.) 021301E; 021302E; 021303E;
) 021304E; 021305E
CLACKAMAS COUNTY ASSESSOR,)
)
Defendant.) **DECISION OF DISMISSAL**

This matter is before the court on its own motion to determine whether it has authority to consider Plaintiff's appeal under the provisions of ORS 305.288.¹ A hearing on the matter was held April 29, 2003. Dennis Rugg, Chief Financial Officer, appeared on behalf of Plaintiff. Joe Honl, Appraisal Manager, appeared on behalf of Defendant.

STATEMENT OF FACTS

The subject properties are vacant parcels located in Clackamas County. The appeals involve eight lots, varying two to three acres each, and a tract of land 12.39 acres in size. In 1996, due to landslides, Clackamas County postponed issuing building permits for the properties until Plaintiff obtained a geotechnical report concluding the properties were geologically sound. During the next several years, Plaintiff obtained the requisite reports in an effort to obtain building permits for the properties. Plaintiff has now obtained permission to build on some of the properties.

On December 24, 2002, Plaintiff filed the subject appeals claiming property tax relief back to the 1996-97 tax year when the landslides occurred. Plaintiff claims Defendant overvalued the properties during the past several years. Defendant claims it was aware of the problems with the properties and discounted the values 68 percent to

¹ All references to the Oregon Revised Statutes (ORS) are to 2001.

account for the fact they were not readily buildable.

During the case management conference held March 5, 2003, the court observed that Plaintiff had not timely filed appeals for the contested tax years. As a result, the court questioned whether it had authority to accept jurisdiction of the appeals. A hearing on the matter was held April 29, 2003. At that hearing, Rugg acknowledged that, during the past several years, Plaintiff's attention has been focused more on obtaining the geotechnical reports than on filing property tax appeals. Plaintiff was in constant contact with the Oregon Department of Transportation and believed the parcels would soon be released for construction. Further, Plaintiff experienced staff changeovers, which may have resulted in its failure to adequately monitor the property tax statements. Defendant claims that Plaintiff's oversight does not constitute "good and sufficient cause" for failing to timely appeal, as required by ORS 305.288(3).

ANALYSIS

The Oregon Legislature developed an appeals system for taxpayers to follow when challenging the assessed and real market values assigned to their properties. The first step in the appeal process is to a county board of property tax appeals. Taxpayers are required to file appeals with the appropriate county board by December 31 of the current tax year. ORS 309.100(2).

The legislature recognized that situations may exist which prevent a taxpayer from timely appealing to the county board. As a result, the legislature granted the court authority to review untimely appeals when the taxpayer establishes "good and sufficient cause" for not timely pursuing an appeal with the county board. ORS 305.288(3).² ORS 305.288(3)

² ORS 305.288(1) grants the court authority to review untimely appeals of properties used primarily as dwellings when the taxpayer claims a valuation error of at least 20 percent. That provision is not applicable to the subject properties.

states:

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“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, for the year to which the change or correction is applicable 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.**”

(Emphasis added.)

The legislature defined good and sufficient cause as follows:

“Good and sufficient cause’:

“(A) Means 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; and

“(B) Does 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) (emphasis added).

Plaintiff failed to timely appeal the property values each year because its attention was focused on obtaining building permits for the properties. Plaintiff acknowledges that failing to appeal was an oversight on its part. While it is understandable that Plaintiff’s attention would be directed more towards developing the properties, its failure to file appeals was not due to an “extraordinary circumstance” that was beyond Plaintiff’s control. Oversight of the appeals process is specifically listed in the statute as not constituting good and sufficient cause. As a result, the court must conclude that it has no authority to consider Plaintiff’s appeals because the appeals are not timely and they do not meet the requirements of ORS 305.288(3).

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CONCLUSION

It is the court's conclusion that Plaintiff did not have "good and sufficient cause" for failing to timely file appeals for the subject years. As a result, the court finds the appeals should be dismissed. Now, therefore,

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

Dated this _____ day of June, 2003.

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 JUNE 30, 2003. THE COURT FILED THIS DOCUMENT ON JUNE 30, 2003.