

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

WILLIAM SCOTT MCALPINE and LORRIE)	
ANN MCALPINE,)	
)	
Plaintiffs,)	TC-MD 030009C (Control)
)	030010C
v.)	
)	
MULTNOMAH COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

Plaintiffs appeal the real market value of two unimproved lots for the 2002-03 tax year. The property is identified as assessor's Accounts R247135 and R247136. For administrative convenience, the court on its own motion is consolidating the two appeals. Lorrie Ann McAlpine appeared for Plaintiffs at the March 24, 2003, case management conference. Ken Collmer appeared for Defendant.

STATEMENT OF FACTS

The property at issue consists of two unimproved tax lots located next to Plaintiffs' home. Plaintiffs purchased the two lots for \$35,000 (\$17,500 each) in April 2002. The lots are each valued (real market value) for property tax purposes at \$40,120 (\$80,240 combined). The lots each have an assessed value of \$21,570.

Shortly after purchasing the property Lorrie Ann McAlpine telephoned the assessor's office to discuss the value because the seller had advised Plaintiffs that the value for tax purposes was much higher than the agreed-upon sale price. Ms. McAlpine was advised to pursue the matter after she received her property tax statement in the fall. Ms. McAlpine asked about appealing early because she is predictably busy during the months of November and December with school fundraising

activities, which is when the tax statements arrive.

Ms. McAlpine had expected an appeal form to be included with the tax statements that arrived in late October or early November, but that form was not provided. Ms. McAlpine promptly telephoned the assessor's office to request the appeal form. She reviewed the appeal form when it arrived and mistakenly read the appeal deadline as January 31 instead of December 31. Ms. McAlpine then put a note on the paperwork indicating a January 31 deadline and set the papers aside to attend to other matters. Ms. McAlpine is very involved in school fundraising activities for her four children and also works in the school library. December is a busy month for fundraising, which is why Ms. McAlpine tried to appeal back in April just after Plaintiffs purchased the property. When she went back to the appeal paperwork on January 6, 2003, Ms. McAlpine discovered that the deadline was December 31 and not January 31. She telephoned the assessor's office and was told that there was no point in appealing to the county board but that she should instead appeal to the Magistrate Division of the Oregon Tax Court. Plaintiffs' appeal was filed January 9, 2003.

COURT'S ANALYSIS

As Plaintiffs are aware, the appeal was to be filed with the county board of property tax appeals (board). See ORS 309.026 and ORS 309.100.¹ Plaintiffs missed the December 31, 2002, deadline provided in ORS 309.100(2). Because they failed to appeal to the board before the deadline Plaintiffs do not have a statutory right of appeal. This is the basis of Defendant's motion to dismiss, included in its Answer filed February 7, 2003.

The court reviews Defendant's motion under the provisions of ORS 305.288. The

¹ All references to the Oregon Revised Statutes (ORS) are to 2001.
DECISION TC-MD 030009C (Control)

20 percent error provision in subsection (1) of that statute is inapplicable because the property under appeal is not used primarily as a dwelling. Thus, in order for the court to consider Plaintiffs' substantive request for a reduction in value, Plaintiffs must establish that there is "good and sufficient cause" for their failure to timely petition the board. ORS 305.288(3). The statute defines "good and sufficient cause" and as "an extraordinary circumstance that is beyond the control of the taxpayer * * * and that causes the taxpayer * * * to fail to pursue the statutory right of appeal."

ORS 305.288(5)(b)(A).

Regardless of the overall circumstances involved, the reason Plaintiffs did not timely petition the board is that they misread the appeal deadline on the form. Inadvertence and oversight are statutorily excluded from the definition of good and sufficient cause. ORS 305.288(5)(b)(B).² Ms. McAlpine's attempt to petition the board in April 2002 was prudent given that she knew she would be busy with other matters in the fall. However, the statute provides that the petition to the board "shall be filed with the clerk of the board during the period following the date the tax statements are mailed for the current tax year and ending December 31." ORS 309.100(2). Defendant therefore did not err when it advised Ms. McAlpine in April that she had to wait until the tax statement was mailed in the fall.

² The relevant portion of the statute provides:

"(b) '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).

///

///

CONCLUSION

The court concludes that Plaintiffs' appeal must be dismissed because Plaintiffs failed to establish good and sufficient cause for the lack of a timely petition to the board and the 20 percent error provision found in ORS 305.288 is inapplicable to bare land.

Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiffs' Complaint is dismissed for failure to satisfy the requirements of ORS 305.288.

Dated this _____ day of April, 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 APRIL 8, 2003. THE COURT FILED THIS DOCUMENT ON APRIL 8, 2003.