

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

DOULGAS F. STEVENS, DIANNE M.)	
STEVENS, JAMES D. RODLI, and)	
MARILYN R. RODLI)	
)	
Plaintiffs,)	TC-MD 031169C
)	
v.)	
)	
LINCOLN COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

This matter is before the court for a "good and sufficient cause" determination pertaining to Plaintiffs' failure to properly pursue their statutory right of appeal for the years at issue. The court received sworn testimony from Douglas Stevens (Stevens) during the March 2, 2004, hearing. Charles Gross (Gross) appeared for Defendant.

I. STATEMENT OF FACTS

Plaintiffs filed an appeal with this court on December 30, 2003, requesting a reduction in the value of 12 lots for tax years 2000-2001, 2001-02, and 2002-03. Plaintiffs are not contesting the values for the current tax year (2003-04).

Plaintiffs began marketing the subject tax lots in 1999. The first lot sold in December 2002. The sale price was well below the county assessor's roll value. Other lots sold in calendar year 2003, all at prices well below the roll value. Significant among those sales was a lot that sold in January 2003 for \$55,000, which Stevens testified was the best lot in the subdivision and it was hoped that lot would sell for considerably more. The low sales price suggested a real problem with market expectations. Stevens testified further that "everything else" sold at \$45,000 or less. Plaintiffs finally realized that the assessor's roll values were "just too high." Stevens then telephoned the assessor's office and learned that the 2003-04 values had been greatly reduced.

Stevens felt that the low sale prices, coupled with the assessor's value reductions for the current tax year, gave him a strong case. This appeal followed.

II. ANALYSIS

Plaintiffs seek relief for prior tax years. The applicable statute under which this court may consider a request for retrospective relief is ORS 305.288.¹ Because the property at issue is not "used primarily as a dwelling" the 20-percent error rule found in subsection (1) of ORS 305.288 is inapplicable. Accordingly, Plaintiffs' value reduction request cannot go forward on the merits unless this court determines that Plaintiffs have a statutorily valid reason for not petitioning the board for each of the years at issue and, if unsatisfied, timely appealing to this court. The relevant statutory provision provides:

"The tax court may order a change or correction applicable to a separate assessment of property 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."

ORS 305.288(3).

A. *The Three-Year Window*

The number of years the court may consider under the statute is three; "the current tax year and * * * the two tax years immediately preceding the current tax year."

Id. By virtue of subsection (5)(a) of the statute (ORS 305.288), the term "current tax year" takes its meaning from ORS 306.115(5), which defines the current tax year as "the tax year in which the need for the change or correction is brought to the [court's] attention." A tax year is a 12-month period beginning July 1. ORS 308.007(1)(c).

Because this appeal was filed in December 2003, the "current tax year" is 2003-04.

Plaintiffs are not appealing that year. However, the two prior tax years under the statute

¹ All references to the Oregon Revised Statutes (ORS) are to 2001.
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are 2002-03 and 2001-02. Accordingly, the 2000-2001 tax year is beyond the court's three-year window and must be dismissed.

B. *Good and Sufficient Cause*

The next question is whether Plaintiffs have established "good and sufficient cause" for their failure to pursue the statutory right of appeal. Good and sufficient cause is defined in ORS 305.288 as follows:

"(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."

According to the sworn testimony, Stevens withheld the appeal until it became apparent that the assessor's roll values were universally in excess of actual market value. That determination came gradually and, according to Stevens, began with the first sale in December 2002. The sale of the best lot in January 2003 at a price well below the roll value heightened Stevens' concerns. Subsequent sales, all at prices well below the roll value, added further weight to the growing conclusion that the assessor's values were too high. Stevens then telephoned the assessor's office and discovered that the current year values had been reduced considerably. To Stevens, that act solidified his opinion and cemented his resolve to appeal. Because he was seeking relief for prior years, he was directed to the Tax Court. Those circumstances, although understandable, do not meet the definition of good and sufficient cause.

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Plaintiffs began marketing their lots in 1999 and did not sell any single lot for

nearly three years. During that period Plaintiffs reduced their asking prices three or four times. The lack of marketability should have suggested a problem and, as Gross pointed out during the hearing, a telephone call years earlier may have resolved the problem. However, Stevens specifically testified that he concluded he had no basis for an appeal until he had market evidence to support his shifting value opinion. Stevens believed that an appeal before any lots were sold would have been "pointless." That may be true if it became necessary to prove the case at trial. It nonetheless reveals that a conscious decision was made not to pursue an appeal before the first sale occurred and that decision was not beyond Stevens' control. The situation is unfortunate as it appears that the assessor's values were indeed well above market value. According to Gross, the original values in 2000 were based on a percentage of the then current asking price.

III. CONCLUSION

For the reasons set forth above, the court concludes that Plaintiffs have not established good and sufficient cause for their failure to pursue their statutory right of appeal in 2001 and 2002. Additionally, Plaintiffs' appeal for tax year 2000-2001 is beyond the reach of the court under the applicable statute. Now, therefore,

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IT IS THE DECISION OF THIS COURT that Plaintiffs' appeal for tax years

2000-2001, 2001-02, and 2002-03 is dismissed.

Dated this _____ day of March, 2004.

DAN ROBINSON
MAGISTRATE

IF YOU WANT TO APPEAL THIS DECISION, FILE A COMPLAINT IN THE REGULAR DIVISION OF THE OREGON TAX COURT, BY MAILING TO: 1163 STATE STREET, SALEM, OR 97301-2563; OR BY HAND DELIVERY TO: FOURTH FLOOR, 1241 STATE STREET, SALEM, OR. 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 MARCH 8, 2004. THE COURT FILED THIS DOCUMENT ON MARCH 8, 2004.