

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Property Tax

DAVID DITEMAN and LINDA DITEMAN,	)	
	)	
Plaintiffs,	)	TC-MD 060051C
	)	
v.	)	
	)	
MULTNOMAH COUNTY ASSESSOR,	)	
	)	
Defendant.	)	<b>DECISION OF DISMISSAL</b>

This matter is before the court on Defendant’s Motion to Dismiss, filed March 7, 2006, asserting Plaintiffs have failed to plead facts “showing that the claim was first filed with the Board of Property Tax Appeals before the complaint was filed in this court.” The motion was heard during the April 18, 2006, telephonic proceeding. Linda Diteman (Diteman) appeared for Plaintiffs. Dennis Wardwell appeared for Defendant.

I. STATEMENT OF FACTS

In their Complaint, filed February 9, 2006, Plaintiffs have requested a “reduction of property tax increase.” The tax year at issue is 2005-06. Diteman acknowledged at the hearing that Plaintiffs did not file a petition with the county board of property tax appeals (Board) before coming to the Tax Court. Diteman explained that, although Plaintiffs did receive the 2005-06 property tax statement in October 2005, the impact of the significant increase in property taxes (from \$2,354.74 to \$3,777.02) did not become apparent to Plaintiffs until they received their updated mortgage statement in January 2006. That statement reflected a considerable increase in the mortgage payment, which includes property taxes.

The increase in property taxes stems from an increase in the maximum assessed value (MAV) of Plaintiffs’ property because of a remodel by the previous owner in 2004. Plaintiffs purchased the property in October 2004 for \$347,000. The real market value (RMV) on the

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assessment and tax rolls as of January 1, 2005 (2005-06 tax year) is \$346,760, and includes \$132,350 of “exception RMV.” The exception RMV is Defendant’s estimate of the market value of the improvements to the property stemming from the remodel. That remodel included a new kitchen, new furnace, new flooring, and the conversion of a mud room to a half bath.

## II. ANALYSIS

Although Plaintiffs requested a reduction in taxes, any relief from the court must be based on a demonstrated error in the value of the property. The Oregon Legislature established an appeal process that begins with a petition to the local county board in accordance with ORS 309.026 and ORS 309.100.<sup>1</sup> The deadline for such petitions is December 31. *See* ORS 309.100(2). The Board’s order may be appealed to the Magistrate Division of the Oregon Tax Court pursuant to ORS 309.110(7) and ORS 305.275(1) and (3). Plaintiffs missed the December 31, 2005, Board petition deadline.

A taxpayer can come directly to the Tax Court, without first petitioning the Board, in certain limited situations. The two most common situations are found in ORS 305.288 (2005). Subsection (1) of that statute authorizes the court to order a value reduction if the property is used as a dwelling of no more than four units (including manufactured homes and floating homes) and the taxpayer demonstrates to the court’s satisfaction 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.” ORS 305.288(1)(b) (2005). In other words, the taxpayer must allege an error in the RMV of at least 20 percent and the court must ultimately agree with that assertion, based on the evidence presented or the agreement of the parties.

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<sup>1</sup> Unless noted, references to the Oregon Revised Statutes (ORS) are to 2003.

Plaintiffs paid \$347,000 for their home and the RMV on the assessment and tax rolls for the year at issue is \$346,760. Diteman acknowledged that there was no error in the RMV, although she did opine that she Plaintiffs paid a little more than the property was worth because they desired the location. Absent an allegation of an error in RMV, relief under ORS 305.288(1) is not available.

The other situation in which the court can reduce the value of a property is where 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) (2005). The statute defines “good and sufficient cause” 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) (2005).

Diteman testified that Plaintiffs simply did not realize the impact of the changes reflected on their tax statement until they received a mortgage statement in January 2006. The tax increase raised their monthly mortgage payments enough to cause Plaintiffs some concern. Diteman investigated and discovered that the tax increase was caused by the value increase and that it was too late to petition the Board for relief. A representative from the assessor’s office explained that Plaintiffs might be able to obtain relief from the Tax Court. Diteman contacted the Tax Court and was assured that she could, in fact, file an appeal. Plaintiffs obtained the Tax Court appeal form and filed their Complaint.

ORS 305.288(5)(b)(B) (2005) specifically excludes “inadvertence, oversight, [and] lack of knowledge” from the definition of good and sufficient cause. Plaintiffs’ explanation, although understandable, does not amount to an extraordinary circumstance beyond their control, but

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rather, inadvertence, oversight, or lack of knowledge. Accordingly, Plaintiffs do not have good and sufficient cause for failing to properly pursue their statutory right of appeal.

### III. CONCLUSION

Based on the foregoing, the court concludes that Plaintiffs' appeal must be dismissed because Plaintiffs failed to petition the Board before appealing to the Tax Court. They have neither alleged an error in value (RMV) of at least 20 percent nor established good and sufficient cause for their failure to petition the Board. Now, therefore,

IT IS THE DECISION OF THIS COURT that this matter be dismissed.

Dated this \_\_\_\_\_ day of April 2006.

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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 April 27, 2006. The Court filed and entered this document on April 27, 2006.***