

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

ALPENGLow CONSTRUCTION CO,)	
and HOME PORT, INC,)	
)	
Plaintiffs,)	TC-MD 070462B
)	
v.)	
)	
MULTNOMAH COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION OF DISMISSAL

Plaintiffs appealed certain real property assessments for tax years 1999-2000 through 2006-07. The property is identified as Account R503463. The subject property is not residential in character. Defendant filed its Motion to Dismiss on May 15, 2007.

A case management conference was held in this matter. Donald A. Buss, attorney at law, represented Plaintiffs; Bob McCurdy (McCurdy), company president, also participated. Doug Kelsay, Barron Hartwell, and Richard Sanderman appeared for Defendant. Plaintiffs amended their Complaint to withdraw tax years 1999-2000 through 2002-03 from the appeal at the case management conference held May 31, 2007. Subsequently, written submissions were filed by the parties.

At issue is whether Plaintiffs' appeal for those remaining four tax years may now be heard by this court. For all those tax years, Plaintiffs did not submit timely appeals with the local board of property tax appeals (BOPTA). The first and only appeal was filed with this court on April 16, 2007.

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The parties agree that the court’s jurisdiction, if any, to hear Plaintiffs’ appeal is found in ORS 305.288(3)¹ which 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 assessor or taxpayer has no statutory right of appeal remaining and the tax court determines that good and sufficient cause exists for the failure by the assessor or taxpayer to pursue the statutory right of appeal.”

For purposes of this appeal, the current tax year is 2006-07. The two prior years include 2004-05 and 2005-06. Tax year 2003-04 must be dismissed as outside the statutory maximum appeal window.

The parties agree that Plaintiffs have no statutory right of appeal remaining for the three remaining years. The parties disagree whether Plaintiffs had “good and sufficient cause” for failing “to pursue the statutory right of appeal.” *Id.*

Plaintiffs allege they have good and sufficient cause because the subject property is classified as wetlands, has marginal utility and received a substantial value reduction for 2006-07 upon BOPTA review. During the conference, McCurdy stated no earlier BOPTA appeals were filed from the annual tax statements because he was “busy with other matters.”

Plaintiffs also cited a conversation with Defendant’s appraiser in July of 2006. At that time, the appraiser advised that any appeals of earlier years should be directed to this court. That is correct advice; this forum is where such appeals are filed and evaluated. The appraiser’s advice has no bearing on the jurisdiction for those earlier years.

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¹ All references to the Oregon Revised Statutes (ORS) are to year 2005.

The term “good and sufficient cause” is defined in ORS 305.288(5)(b) 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)(B) is very clear. Plaintiffs’ lack of attention to this tax matter is akin to inadvertence and oversight. Further, Defendant’s appraiser did not, under the circumstances, provide misleading information as to the tax years at issue. His comments were made well after the time for BOPTA appeals had lapsed.

Under these specific facts, Plaintiffs’ prioritizing other business affairs does not constitute good and sufficient cause for failing to earlier perfect appeals. *See* ORS 305.288(5)(b)(B).

Now, therefore,

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

Dated this _____ day of October 2007.

JEFFREY S. MATTSON
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 Jeffrey S. Mattson on October 4, 2007. The Court filed and entered this document on October 4, 2007.