

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

DAVID D. RANKIN and K. DIANNE RANKIN,)	
)	
Plaintiffs,)	No. 010811D
)	
v.)	
)	
LANE COUNTY ASSESSOR,)	DECISION GRANTING
)	PLAINTIFFS' MOTION FOR
Defendant.)	SUMMARY JUDGMENT

Plaintiffs appeal Defendant's removal of Plaintiffs' property from forest deferral. Plaintiffs' property is identified as Lane County Assessor's Account Nos. 0773125 and 0773083 (only the 7.90 acre portion). Plaintiffs have separated their appeal into two parts, a legal question and an issue of value. In this matter before the court, Plaintiffs challenge Defendant's removal of their property from forest deferral and request that the court order Defendant to reinstate their property to forest deferral and change the classification from Fc to Fx.¹ Oral argument was not requested. The court has carefully considered the written material submitted to the court.

STATEMENT OF FACTS

Plaintiffs own 114 acres of land located along the south inlet of South Slough on the Siuslaw River in western Lane County. Plaintiffs received a Corrected Notice from Defendant stating that “[u]nder the guidelines of ORS 321.359(1)(b)(C), all of Account 0773125 and a 7.90 acre portion of Account 0773083 of your property * * * has been declassified from Forest Deferral.” (Def’s Corrected Notice, dated May 8, 2001.) Defendant concluded that Plaintiffs’ property, approximately 22 acres, is no longer forestland and should be “valued as tidelands.” *Id.*

¹The “Fx” classification is reserved for tidelands.

Mr. David Evans, Farm/Forest Appraiser, Lane County, wrote that Plaintiffs' property no longer qualified for forest deferral because it "obviously lacked minimum stocking and, in my opinion, they did not meet the definition of 'isolated opening' as defined in ORS 321.257(3) to be 'necessary to hold the surrounding forestland in forest use.'" (Def's Letter to the court, dated May 9, 2002.) In explaining his conclusion, Mr. Evans wrote that based on his "knowledge and experience in administering the Western Oregon Forestland and Privilege Tax (WOFPT) program and the on-site inspection." Plaintiffs' property "is not an 'isolated opening'; it is separated on its eastern border from the rest of Plaintiffs' forestlands by a 100 foot railroad right-of-way thus, obviously, it is not necessary to hold the surrounding forestland in forest use." *Id.*

In challenging Mr. Evans' conclusion, Plaintiffs wrote to the court on June 12, 2002, as follows:

"On August 15, 1973, we purchased from Donna Timber Products Company the properties now identified as accounts 0773083 and 0773125.^[2] These properties were at that time in Reforestation and have continued to be in Forest Deferral even though there have been some changes in ownership and property lines. It seems reasonable to us to assume that the original decision to include the tidelands as part of the Reforestation and later Forest Deferral took into consideration the railroad right-of-way and the fact that the tidelands did not and never would support any timber.

"The portion of the railroad right-of-way that is not estuary is zoned forestland. The same Forest Practices govern how it is managed as govern our forestland. There are culverts and bridges that allow the salt and fresh waters to mingle and pass. The tidelands of account 0773125 and 0773083 are not separated from the forestland they abut, but are rather the climax of the surrounding forestland watershed.

"Whereas Mr. Evans' interpretation of ORS 321.257(3) does not allow for the tidelands in question to be considered as 'isolated openings,' when one considers the larger scale of the watershed of the South Slough of the

² In their Complaint, Plaintiffs wrote that on December 26, 1995, they purchased from International Paper "portions of then tax lots 1000 and 1001 west of the road. The resulting new tax lots became 1001" (Account 773125), which is currently under appeal. (Ptf's Complaint Section III, Item 5 under heading "Our history of owning the property in question follows.")

Siuslaw River and the forestlands included therein, the relationship to the forestland becomes very apparent.” (Ptf’s Letter dated June 12, 2002.)

In discussing the classification issue, Plaintiffs labeled the lands under appeal as tidelands. (Ptf’s Complaint Section III.) Plaintiffs stated that the tidelands of Lots 1001 (Account No. 773125) and 700 (Account No. 773083) are “submerged under tidal waters twice each twenty four-hour period. No trees grow in their soils. They are all zoned NE, Natural Estuary with combining overlay zones of SN, Significant Natural Shorelands and NRC, Natural Resources Conservation.” *Id.* Plaintiffs state that “[t]he significant wetlands in question, the Forestlands on the railroad right-of-way, and the western portion of our adjacent Forestlands, fall within the 300-foot riparian management area for an estuary.” (Ptf’s Letter (Amended Complaint) dated April 22, 2002, Addendum at IV.) Plaintiffs submitted copies of email messages (electronic mail) sent to them and Mr. Evans from Mr. Robert A. Johnson, Service Forester, Oregon Department of Forestry. In these emails, Mr. Johnson wrote that he had visited Plaintiffs’ property and concluded that based on the soil type the property should be classified as Fx, tidelands. (Ptf’s Letter (Amended Complaint) Emails from Mr. Johnson, dated December 4, 2000, and January 16, 2001.)

COURT’S ANALYSIS

The issue before the court is whether Defendant correctly concluded that Plaintiffs’ property located in western Oregon should no longer retain the forestland designation because Plaintiffs’ property was “no longer forestland.” See ORS 321.359(1)(a) and (b)(C).³ As used in ORS 321.257 to 321.390, “forestland” is defined as follows:

“land in western Oregon (a) which is being held or used for the predominant

³ All references to the Oregon Revised Statutes are to 1999.

purpose of growing and harvesting trees of a marketable species and has been designated as forestland or (b) the highest and best use of which is the growing and harvesting of such trees. * * * Forestland often contains isolated openings which because of rock outcrops, river wash, swamps, chemical conditions of the soil, brush and other like conditions prevent adequate stocking of such openings for the production of trees of a marketable species. If such openings in their natural state are necessary to hold the surrounding forestland in forest use through sound management practices, they are deemed forestland * * *.” ORS 321.257(3).

There are two kinds of forestland: (1) designated forestland, and (2) land, the highest and best use of which is growing and harvesting trees. ORS 321.257(3). The parties agree that Plaintiffs’ land is unable to grow trees because the land is covered with water at least twice a day. The highest and best use of Plaintiffs’ land therefore is not growing and harvesting trees. Consequently, Plaintiffs’ land must be designated forestland in order to qualify for forest deferral.

At the time Plaintiffs purchased the property, it was designated forestland in “Reforestation” and then in “Forest Deferral.” (Ptf’s Letters dated June 12, 2002, and July 10, 2002.) Because their property was previously designated as forestland, Plaintiffs concluded that their land must be an “isolated opening” as defined in ORS 321.257(3) because it was without trees for many years. Based on this conclusion, Plaintiffs argued that as an isolated opening their property is “necessary to hold the surrounding forestland in forest use through sound management practices” and, therefore, should be “deemed forestland.” ORS 321.257(3).

In support of their position, Plaintiffs directed the court to the Oregon Department of Forestry’s Administrative Rules (OAR), specifically the discussion of riparian management areas and protection measures for significant wetlands. See OAR 629-645-0000 (Riparian Management Areas and Protection Measures for Significant Wetlands); OAR 629-600-0100 (18) (defining “estuary”); OAR 629-680-0310 (Significant Wetland Types). Defendant argued that these rules “have little, if any,

applicability to the property qualifying under ORS 321.257.” (Def’s Letter dated May 9, 2002.) The court disagrees with Defendant’s assertion because it finds those rules instructive as to the relationship between designated forestland and significant wetlands. Those rules discuss the importance of maintaining the surrounding forestland in forest use through sound management practices to ensure the viability of significant wetlands. See OAR 629-645-0000(2)(a).

In enacting the provisions of the Western Oregon Forestland and Privilege Tax, the legislature stated that one of its purposes was to promote the “state’s policy of encouraging forestry and the restocking of forestlands to provide present and future benefits by enhancing the water supply, preventing erosion, providing habitat for wildlife, providing scenic and recreational opportunities and providing for needed products.” ORS 321.262(2)(c). Plaintiffs’ property, which is part of a natural estuary, abuts forestlands. An estuary, a type of significant wetlands, plays an important role in “enhancing the water supply.” *Id.* “Estuaries are unique systems because they form transitions between terrestrial, marine, and freshwater environments.” OAR 629-645-0000(1)(c). Estuaries provide a habitat for wildlife. *Id.* When the shoreline trees shed their leaves and branches, the estuary serves as a catch basin, using the tree debris as feed and housing for birds and small mammals. *Id.* In this way, Plaintiffs’ property contributes to the present and future benefits of forestlands.

Defendant’s disqualification of Plaintiffs’ property focused on the location of Plaintiffs’ property in relation to other land owned by Plaintiffs. The court concludes that Defendant’s focus was too narrow. Plaintiffs testified that their property, which previously was owned by another, has been in reforestation or farm deferral since 1973. The legislature determined that as a matter of public policy the state should encourage and protect forestlands. See ORS 321.259 through 321.262. In implementing this

public policy to protect and restock the forestlands, the artificial boundary lines of land ownership are less important than the management activities of the owners of abutting and adjoining forestlands. The fact that Plaintiffs' property is separated from other forestland they own is not the deciding factor in evaluating its qualification for farm deferral. Rather, it is the proximity of Plaintiffs' property to other forestlands and the relationship of Plaintiffs' property to those forestlands that is of most importance.

The court concludes that Plaintiffs' property, the estuary and its surrounding land, is an isolated opening because it is a part of forestlands but does not have trees. The estuary plays an important part in holding the surrounding forestland owned by Plaintiffs and others in forest use. Plaintiffs' property is deemed forestland and Defendant's disqualification was in error.

Plaintiffs requested the court order a change in their forest deferral classification from Fc to Fx. Based on the agreement of the parties that Plaintiffs' property is tidelands and Mr. Johnson's opinion that the classification of Plaintiffs' property should be changed, Plaintiffs' request is granted.

Because the court concludes that Plaintiffs' property is deemed forestland and the disqualification was in error, there is no need to discuss the issue of value.

CONCLUSION

Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiffs' Motion for Summary Judgment is granted and Plaintiffs' property qualifies for forest deferral.

IT IS FURTHER DECIDED that Plaintiffs' request to change the classification of their property from forest deferral Fc to forest deferral Fx is granted.

Dated this _____ day of August, 2002.

JILL A. TANNER
PRESIDING 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 JILL A. TANNER ON AUGUST 29, 2002. THE COURT FILED THIS DOCUMENT ON AUGUST 29, 2002.