

IN THE MAGISTRATE DIVISION
OF THE OREGON TAX COURT
Property Tax

JEFFRY V. CAMPBELL,)
)
 Plaintiff,) No. 010974A
)
 v.)
)
 COLUMBIA COUNTY ASSESSOR,)
)
 Defendant.) **DECISION**

Jeffry V. Campbell has appealed the disqualification of land, identified by Account No. 0108 4218-030-001021 GB 2001-44A, from special assessment as forestlands for the 2001-02 tax year. Mr. Campbell appeared and made his arguments.

The Columbia County Assessor responded. Judy Gettman, of the assessor's staff, appeared for Defendant.

The record of this case consists of the evidence and testimony presented during trial, and the parties' supplements to the record invited by the court's post-trial Journal Entry.

STATEMENT OF FACTS

The property at issue is a narrow strip of land, specially assessed as Western Oregon Forestlands under ORS 321.257 to 321.390¹. When Mr. Campbell acquired the property in 1989 it had no trees. He subsequently planted sixty arborvitae, a giant sequoia, and thirteen black walnut.

Columbia County inspected this land as part of its reappraisal cycle. Discussions followed between Mr. Campbell, Ms. Gettman, and the Department of Forestry, with the State Forester opining that, in Mr. Campbell's instance, black walnut was a marketable

¹All References to the Oregon Revised Statutes are to 1999
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species. Columbia County subsequently chose to modify its plan to disqualify the property, lowering the amount removed from special assessment from half an acre to .17 of an acre.

This .17 of an acre is a long, narrow strip immediately adjacent to the black walnut. It was described differently by the parties. Ms. Gettman testified it was a mown strip used by Mr. Campbell to access a portion of his property. Mr. Campbell testified that the trees adjacent to the strip will eventually grow to cover it, pointing out that the largest of the trees has already closed the distance by a third, and that thinning will be required in ten to fifteen years.

COURT'S ANALYSIS

ORS 321.359(1)(a)(b)(C) requires the assessor to remove land from its special assessment as forestland under ORS 321.257 to 321.390 upon the assessor's discovery that the property is no longer forestland. "Forestland," within the meaning of ORS 321.257(3)(a), is land "which is being held or used for the predominant purpose of growing and harvesting trees of a marketable species."

Is this .17 of an acre being used for the predominant purpose of growing walnut trees? From the court's perspective, Columbia County's position would be more supportable if, instead of only disqualifying this narrow rectangle, it had disqualified the entire half an acre, under the reasoning that trees planted in such a limited area, even of marketable species, are not being grown for the predominant purpose of growing and harvesting.

However, Columbia County did permit the special assessment to continue as to land under the trees. If the land under the trees is entitled to special assessment, so also is the property at issue. This land is immediately adjacent to the trees. While Ms. Gettman has a point when she observes that the land is now bare, Mr. Campbell's testimony that the

trees will grow and cover this disputed area is important. While Mr. Campbell may be presently using this strip for access, that use will not be inconsistent with a forest use until, if after the trees become bigger, Mr. Campbell were to sacrifice the trees in favor of access. On these facts the special assessment may continue.

CONCLUSION

IT IS THE DECISION OF THIS COURT that the appeal is granted.

Dated this _____ day of January, 2002.

SCOT A. SIDERAS
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 SCOT A. SIDERAS ON JANUARY 17, 2002. THE COURT FILED THIS DOCUMENT ON JANUARY 17, 2002.