

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

TOPNOTCH ORCHARD,)	
)	
Plaintiff,)	No. 011010D
)	
v.)	
)	
JACKSON COUNTY ASSESSOR,)	DECISION DENYING
)	PLAINTIFF'S MOTION FOR
Defendant.)	SUMMARY JUDGMENT

Plaintiff appeals Defendant's Notice of Disqualification, dated May 17, 2001, disqualifying 12 acres of Plaintiff's property from Farm Use Special Assessment. There is no dispute of fact concerning the use of the property, and the matter has been submitted to the court on Plaintiff's Motion for Summary Judgment.¹

STATEMENT OF FACTS

The parties agree that Plaintiff's property identified as Jackson County Assessor's Account No. 1-044507-4 is located in an exclusive farm use zone. For approximately a 35 year period of time, Plaintiff's 12 acres were used to grow pears. Due to the age of the pear trees, most over 35 years of age, Plaintiff decided to remove the trees, "fallow the land to allow it to regenerate in fertility and to level and fill in the root holes and decide upon and plan a replacement crop and a new irrigation method." (Ptf's Aff in Supp of Summ J, Mr. Charles McNair.)

In the spring of 2000, the pear trees were removed from the ground and stacked awaiting removal from the property. According to Mr. McNair's Affidavit, "[t]he

¹On January 31, 2002, Defendant requested that the court schedule a "telephone hearing so the Magistrate may be fully presented the merits of the case for the farm disqualification." Plaintiff did not join Defendant in its request. After carefully reviewing the written material submitted for the court's consideration and the timing of the request which occurred more than a week after the parties filed their briefs, the court declined to schedule the telephone hearing.

agricultural plan for this 12 acres includes tree removal in the summer of 2002, retilling and leveling, and layout of a new method or irrigation before it is recropped with as yet a undetermined crop mix.” (*Id.*)

Defendant concluded that the “last possible harvest would have occurred in the fall of 1999.” (Def’s Resp to Ptf’s Mot for Summ J). For this reason, on the January 1 assessment date for the year 2001, Plaintiff’s property was not being farmed. ORS 308A.062(2)². Defendant issued its letter of disqualification. ORS 308A.113(a).

Plaintiff disagrees with Defendant, alleging that because the property is located in an EFU zone, its decision to “fallow the land for 3-4 years” can be for no other use than agriculture. (Ptf’s Letter to the Court, dated August 15, 2001.)

COURT’S ANALYSIS

Land located within an exclusive farm use (EFU) zone (farmland) qualifies for special assessment under ORS 308A.062. ORS 308A.062 reads:

“(1) Any land that is within an exclusive farm use zone and that is **used exclusively for farm use** shall qualify for farm use special assessment under ORS 308A.050 to 308A.128, unless disqualified under other provisions of law.

“(2) Whether farmland qualifies for special assessment under this section shall be determined as of January 1 of the assessment year. However, if land so qualified becomes disqualified prior to July 1 of the same assessment year, the land shall be valued under ORS 308.232, at its real market value as defined by law without regard to this section, * * * under ORS 308.146 or as otherwise provided by law.” (Emphasis added.)

For special assessment, the two requirements of ORS 308A.062 must be met: (1) the land must be located within an EFU zone; and (2) the land must be used exclusively for

² All references to the Oregon Revised Statutes are to 1999.

farm use. Plaintiff's land meets the first requirement; it is located within an EFU zone.

In analyzing the second requirement that the land be used exclusively for farm use, Plaintiff suggests the following interpretation:

“* * * the entire statutory scheme related to farm use assessment and lands which exclude other uses by zone, viz. Exclusive Farm Use Zones as are here at issue, have to be read in context of the stated legislative intent which is that lands zoned EFU which are not actually used for purposes other than agriculture, ‘(B)ona fide farm properties...’,ORS 308A.050, are to be specially assessed.” (Ptf’s Mot for Summ J at 3.)

The court agrees that the statutes must be read in the context of the legislative intent expressed in the statute. The legislature implemented its policy of preserving farmland “by providing for special assessment of land that is ‘used exclusively for farm use.’” *Everhart v. Dept. of Rev.*, 15 OTR 76, 78 (1999). To determine what constitutes “exclusively for farm use,” the court looks to the definition of farm use found in ORS 308A.056. It requires the current employment of land for the primary purpose of obtaining a profit in money by engaging in various activities. “Current employment” means “the present use of the land and suggests that the past or future use is largely irrelevant. The word ‘employment’ suggests an active, purposeful, directed use of the land.” *Everhart*, 15 OTR at 79. In this case, Plaintiff’s property was not engaged in any activity to obtain a profit in money because the pear trees had been removed and the land was not used for any other farm activity. In Plaintiff’s own words, the land was lying fallow.

In certain circumstances, land lying fallow can be currently employed in farm use. ORS 308A.056(3)(b) provides that “[f]or purposes of this section, land is currently employed for farm use if the land is:

“ * * * * *

“(b) Land lying fallow for one year as a normal and regular requirement of good agricultural husbandry.”

Plaintiff alleges that even though its land has been lying fallow for more than one year it is “consistent with good agricultural practices to fallow this 12 acre parcel after removal of its long term crop” and “its present fallow state is part of a natural agricultural progression of crop and use change.” (Ptf’s Aff in Supp of Summ J, Mr. Charles Swingle)

While Plaintiff may be correct, the court’s task is not to make a judgment concerning Plaintiff’s agricultural practices. The court’s role is to interpret the legislative intent in enacting ORS 308A.056(3)(b). Plaintiff offers the following interpretation:

“This statute, ORS 308A.056, does not state that its list of examples of ‘farm use’ are or are intended to be exclusive. Sub section (b)(3) does not state that fallow is for a minimum or a maximum, viz. to otherwise construe this statute is not logical as it could then just as well be read to say that if land is fallow for 11 months it is not a farm use.” (Ptf’s Mot for Summ J at 3.)

In making its analysis, the court’s first step is to analyze the text and context of ORS 308A.056(3)(b). *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610-611 (1993). The statute clearly states that land which is lying fallow for one year as part of a normal and regular agricultural management plan is currently employed for farm use. The court disagrees with Plaintiff’s interpretation because it requires the court to include other examples of farm use which the court cannot do. It is the role of the court to “ascertain and declare what is, in terms or in substance, contained” in the statute. ORS 174.010. The court cannot add “what has been omitted” or “omit what has been inserted.” (*Id.*)

In the terms of the statute, the land can lie fallow for one year. No provision in ORS 308A.053 defines “fallow.” The court is directed to give words of common usage their plain, natural, and ordinary meaning. *PGE*, 317 Or at 611. The plain, natural, and ordinary meaning of the word “fallow” is “cultivated land that is allowed to lie idle during the growing season.” *Webster’s Collegiate Dictionary*, 10th edition, 419 (1996). During the 2000 growing season, Plaintiff’s property was lying fallow. When the 2001 growing season came, Plaintiff’s property was still lying fallow. The statute does not set forth any period of time longer than one year. Any period of time other than one year, such as the 11 months suggested by Plaintiff, is of no consequence in this case.

On May 17, 2001, Defendant issued its letter disqualifying the property from special assessment. At this point in time, Plaintiff had exceeded the statutory one year provision by allowing its land to remain fallow. Plaintiff’s property no longer qualified for special assessment. Since the disqualification occurred before July 1, Plaintiff’s

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property must be valued at its real market value as defined by law. See ORS 308A.062(2).

CONCLUSION

Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiff's Motion for Summary Judgment is denied.

Dated this _____ day of March, 2002.

JILL A. TANNER
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 MARCH 20, 2002. THE COURT FILED THIS DOCUMENT ON MARCH 20, 2002.