

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

GLEN COLBERT and ANGELA PARKER,)
)
 Plaintiffs,) TC-MD 021126D
)
 v.)
)
 MULTNOMAH COUNTY ASSESSOR,)
)
 Defendant.) **DECISION**

Plaintiffs appeal Defendant's disqualification of their property from farm use special assessment. A trial was held in the United States District Court, Portland, Oregon, on August 28, 2003. Glen Colbert (Colbert) represented himself. Michael S. Evans, Attorney at Law, appeared on behalf of Plaintiff, Angela Parker (Parker). Bob Alcantara, Appraiser, appeared and testified on behalf of Defendant. Mary Holliman, Appraiser, testified on behalf of Defendant. Margaret Close (Close) testified on behalf of Plaintiffs via telephone.

STATEMENT OF FACTS

From 1985 until the present, Plaintiffs have owned the subject property identified as Multnomah County Assessor Account R342474, a 19.83 acre parcel of land. With the exception of one acre for a homesite, the balance of the subject property qualified for farm use special assessment until Defendant disqualified the subject property on June 17, 2002. Parker testified that she devoted all of the subject property to raising, stabling, grooming and training horses, and growing hay.

In 1991 and 1992, an outside arena and other structural improvements were added to the subject property. Parker testified that the large arena permitted her to hold horse shows and train "high dollar horses." After the construction was completed, Plaintiffs had

37 stalls located in two barns. During the mid-1990s, Parker testified that she had over 30 horses at the subject property.

However, by 1997, many of Parker's clients removed their horses from her care and training because chemical spray from neighboring properties caused illness in the horses and, in some cases, death. Parker testified that her neighbors grow ornamental trees for commercial production. The heavy use of chemical sprays and the exposure both she and her animals experienced resulted in physical and neurological damage. In addition, Parker testified that she had been to the hospital emergency room more than 20 times. She testified that she has lost her strength and is "sick all the time." Her civil suit against her neighbors for her injuries and the injuries sustained by the animals in her control and custody resulted in a monetary judgment to her. As a result of the adverse environmental conditions of the subject property, the number of horses in her care decreased to an average of three for tax years 1997, 1998, and 1999. However, the number increased to five in 2000 and ten in 2001.

On June 17, 2003, Defendant disqualified Plaintiffs' property for two reasons. First, on April 10, 2002, Parker wrote a letter to Mary Holliman (Holliman), stating that for tax years 1997, 1998, 1999, 2000, and 2001 "there is no income" even though the "farm" was "being operated with the same intention as it has always been."

(Def's Ex A.) Second, Holliman visited the subject property and concluded that the subject property was not being used as a farm. She testified that her access to the subject property was limited because the owner was not home. She did not make another site visit. Holliman's file notes stated that "[p]er KSC, cancel farm deferral for not meeting income requirements." (Def's Ex D at 1.)

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Plaintiffs filed their appeal on September 13, 2002. Almost a year later, on August 19, 2003, Parker submitted copies of her federal income tax returns for tax years 1997, 1998, 1999, 2000, and 2001. During trial, Parker testified that she had not filed her income tax returns for any of the five tax years until August 12, 2003, because she was ill and did not have the money to pay a tax preparer. In addition, she testified that she was overwhelmed with paperwork. The Schedule F for each tax year was as follows:

<u>Tax Year</u>	<u>Gross Income</u>
1997	\$7,200
1998	\$6,600
1999	\$5,700
2000	\$7,150
2001	\$9,075

(Ptf's' Ex 1 at 3; Ex 2 at 3; Ex 3 at 3; Ex 4 at 3; Ex 5 at 3.)

In support of the income reported on Schedule F, Margaret Close testified that she paid Parker to stable and train horses. During her testimony, Close referenced a letter dated October 6, 2002, that listed the number of horses and the amount paid per horse for years 1997 through 2001. (Ptf's' Ex 7.) Parker testified that most of her clients paid her in cash with the exception of one, Tami Roberts (Roberts), who paid her in cash and trade. Parker explained that Roberts' father and grandfather mowed the pasture, fixed fences, and did other jobs for her in exchange (trade) for Parker stabling and training Roberts' horse. Parker testified that she reported the amount of the trade as income.

During trial, Parker was asked why she signed the form entitled Gross Income Questionnaire for Multnomah County, Oregon without completing Section 2, Owner's Income Information. (Def's Ex E.) Parker testified that she did not understand the form.

Further, Parker was asked why during Holliman’s visit to the subject property she did not see any horses. Parker testified that because of the migration of the chemical sprays to her property she was forced to rotate the horses to different pastures, house the horses in the barns, and at times she used her own yard to graze the horses.

ANALYSIS

Plaintiffs’ property is located in a nonexclusive farm use zone. Under ORS 308A.116,¹ property located in a nonexclusive farm use zone must meet the income requirements of ORS 308A.071 to receive a special assessment.

Plaintiffs are seeking special assessment for approximately 18.83 acres. The income requirements of ORS 308A.071 states that:

“[I]n three out of the five full calendar years immediately preceding the assessment date, the farmland or farm parcel was operated as a part of a farm unit that has produced a gross income from farm uses in the following amount for a calendar year:

“* * * * *

“(B) If the farm unit consists of more than six acres but less than 30 acres, the gross income from farm use shall be at least equal to the product of \$100 times the number of acres and any fraction of an acre of land included.”

Defendant alleges that, because Plaintiffs failed to submit, “[u]pon request, a copy of the returns or the schedules of the returns showing the gross income” required by statute, Plaintiffs’ late filed returns cannot now be submitted in this proceeding to meet the statutory income requirement. ORS 308A.071(4). Defendant suggests that the consequences of Plaintiffs’ failure to comply with its request bars Plaintiffs from ever submitting tax returns as

¹ All references to the Oregon Revised Statutes (ORS) are to 2001.

evidence in their appeal.

After the county disqualified Plaintiffs' property because Plaintiffs failed to meet the income requirement, Defendant's letter of disqualification correctly informed Plaintiffs that they had a right of appeal. ORS 305.275(1)(a)(C); OAR 150-308A.071(4)(f). Having filed an appeal, the burden of proof falls upon Plaintiffs. ORS 305.427. "Preponderance of the evidence means the greater weight of evidence, the more convincing evidence." *Feves v. Dept. of Rev.*, 4 OTR 302, 312 (1971). Plaintiffs are not limited by statute or rule from presenting any and all evidence to persuade the court that their property qualifies for special assessment as farmland. See TCR-MD 9, stating that "[a]ll matters before the Magistrate Division are tried anew. Any evidence the parties want considered must be given to the magistrate as an exhibit even though it was already presented in a prior administrative hearing."

Plaintiffs' failure to provide Defendant with copies of their personal income tax returns when requested resulted in Defendants disqualifying their property. In order to overturn Defendant's disqualification, Plaintiffs' only option was to appeal to this court, requiring Plaintiffs to incur additional costs (tax preparation and legal fees) because they were unable to timely provide Defendant with the requested information.

Having provided the court with copies of Parker's filed personal income tax returns, including Schedule F, for the subject property for five tax years, the court accepts Plaintiffs' evidence as persuasive and concludes Plaintiffs have met the statutory income requirement for their property located in a nonexclusive farm use zone.

Defendant also alleges that Plaintiffs' use of the subject property does not meet the

statutory requirement of farm use defined in ORS 308A.056(1):

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“‘farm use’ means the current employment of land for the primary purpose of obtaining a profit in money by:

“* * * * *

“(d) Stabling or training equines, including but not limited to providing riding lessons, training clinics and schooling shows.”

Defendant’s allegation was based on its conclusion that Plaintiffs were not using the land for farm use and the amount of land available was in excess of the amount needed to properly care for and train the number of horses in Plaintiffs’ custody.

The court has previously held that “[i]n determining whether property qualifies for special assessment, the statutes focus on the use of the property.” *Ameral v. Dept. of Rev.*, 14 OTR 56, 60 (1996). Based on Parker’s testimony, she has continually used the subject property for stabling and training horses. Parker’s response to Defendant in April 2002 and her testimony during trial are consistent: “The farm is being operated with the same intention as it has always been. I am the one operating the farm.” (Def’s Ex A.) In early 1990, Parker substantially increased the training facilities to serve and accommodate “high end” customers. While there was a decline in the number of horses in Parker’s care during the late 1990s, her “day-to-day activities on the subject land” were “directed to achieving a profit in money through the farm use of the land” despite the adverse environmental conditions. *Beddoe v. Dept. of Rev.*, 8 OTR 186, 191 (1979). Parker was forced to move the horses to various training and stabling facilities located on the subject

property to protect them from the chemical sprays. Parker testified that in the last few years the number of horses in her care has increased. She testified that she is slowly regaining her health and is able to protect the health of the horses in her

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custody. The court concludes that Plaintiffs use of the property meets the statutory definition of farm use. ORS 308A.056(1)(d).

Having concluded that Plaintiffs meet the statutory income requirement for property located in a nonexclusive farm use zone and that Plaintiffs' use of the property meets the statutory definition of farm use, Plaintiffs' appeal must be granted.

CONCLUSION

Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiffs' property identified as Multnomah County Assessor's Account R342474 is qualified for special assessment as farmland.

Dated this _____ day of September, 2003.

JILL A. TANNER
PRESIDING 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 JILL A. TANNER ON
SEPTEMBER 30, 2003. THE COURT FILED THIS DOCUMENT ON SEPTEMBER 30,
2003.**