

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

VALRIE J. PRATT and LAWRENCE A.)
PRATT,)
)
Plaintiffs,) TC-MD 021204F
)
v.)
)
POLK COUNTY ASSESSOR,)
)
Defendant.) **DECISION**

Plaintiffs appeal Defendant’s disqualification of a portion of their land from farm use special assessment for the 2002-03 tax year. The property is identified as Polk County Assessor’s Account 228354.¹ A trial was held on March 11, 2003, in Salem. Valrie Pratt and Lawrence Pratt appeared for themselves. W. A. Shawn Beaton appeared for Defendant.

STATEMENT OF FACTS

The subject property is a 91.38 acre parcel that is located in an exclusive farm use (EFU) zone. The property includes approximately 51 acres of pasture, 40 acres of woodlands, and a one acre home site. With the exception of the home site, the entire property is specially assessed as farm land. As part of a physical reappraisal of the area, one of Defendant’s appraisers noticed large amounts of Scotch broom growing on the property. A closer inspection followed by W. A. Shawn Beaton. That inspection revealed 26 acres covered in Scotch broom in the eastern portion of the property and 11 acres in the western portion of the property that was fenced and not being used for any farm activity.

¹ This account may also be referenced by its map number of 7423-200.

Defendant sent Plaintiffs a letter notifying them that 37 acres was at risk of being disqualified from farm use special assessment.

A third visit to the property showed that the 11 acres was being used for farm activity. However, the 26 acres was still covered in Scotch broom. Defendant then disqualified the 26 acres from farm use special assessment. At trial, Beaton asked to amend the disqualification from 26 acres to 20.7 acres.

Plaintiffs have owned and operated their farm for 30 years. Lawrence Pratt testified that they had "tried almost everything on the land" but it "is not suitable for farming." They added sheep manure and straw to the very poor red clay soil. They also hauled in onions to enrich the soil. However, their neighbors complained about the smell when the onions were fermenting so Plaintiffs discontinued the practice. They raised hay on the property. Plaintiffs currently graze cattle on their property, including the area with the Scotch broom. Both Plaintiffs testified that their income from cattle grazing increased after they allowed the Scotch broom to proliferate. The area covered by Scotch broom increased significantly between 1994 and 2000. (*Cf.* Def's Ex D and Ex E.)

Lawrence Pratt testified that in the summer the open field dries up because the soil is so shallow while the area under the Scotch broom stays green. He further testified that during the summer the cattle spent most of their time under the Scotch broom. Plaintiffs believe that, as a member of the legume family, Scotch broom fixes nitrogen in the soil, thus the green grass under the Scotch broom throughout the year. Plaintiffs introduced a video made in November of the area covered by Scotch broom. (*See* Ptf's Ex 1.) The video showed Valrie Pratt walking through the Scotch broom pointing out evidence of cattle activity in the Scotch broom.

While Defendant does not disagree that Scotch broom may fix nitrogen in the soil, Beaton testified that only occurs after the plant dies. (See *a/so* Def's Evid for Disqual at 2.) He testified that the Scotch broom would be denser during the growing season than shown in the video and that some of the Scotch broom areas are difficult to negotiate. His information indicated that the Scotch broom reduced the carrying capacity of the land. Defendant argues that permitting the Scotch broom to proliferate is neither good stewardship of the land nor an accepted farming practice as required by statute and administrative rule.

ANALYSIS

The parties agree that Plaintiffs farmed the property. They disagree, however, on the effect of allowing the Scotch broom to proliferate.

Farm use is defined by ORS 308A.056.² Further, the Department of Revenue (department) is required to provide by administrative rule a more detailed definition of farm use "consistent with the general definition in ORS 308A.056 * * * ." ORS 308A.059(1). In accordance with that responsibility, the department has determined that "[t]he assessor must consider all the requirements of ORS 308A.056 and must be convinced that not only such requirements are met but, in addition, the land must be used in a manner that is reasonably designed and intended to give rise to a profit in money by **accepted farming practices.**" OAR 150-308A.059(2)(b) (emphasis added).

The Oregon Department of Agriculture has declared that Scotch broom is a "B" designated noxious weed. OAR 603-052-1200(3)(b). That means that "[a] quarantine is established against the noxious weeds [such as Scotch broom] listed herein. Noxious

² Unless otherwise noted, all references to the Oregon Revised Statutes (ORS) are to 2001.

weeds have become so thoroughly established and are spreading so rapidly that they have been declared a menace to the public welfare." OAR 603-052-1200(1).

The legislative intent of farm use special assessment is to allow agricultural lands to continue in production and even prosper. ORS 308A.050. The legislature has determined that such a policy "[i]s in the interest of all citizens of this state, who benefit directly or indirectly from agricultural production and stewardship of farmlands and ranchlands." *Id.* Allowing a noxious weed that has been declared a menace to the public welfare to grow on one's property is inconsistent with "accepted farming practices" as required by OAR 150-308A.059(2)(b). Nor is it good stewardship of the land.

CONCLUSION

Notwithstanding the cattle grazing on the property, the court finds that allowing Scotch broom to proliferate on the property is not an accepted farming practice. Consequently, the 20.7 acres covered by the Scotch broom is not in farm use; Defendant appropriately disqualified it from farm use special assessment. Now, therefore,

IT IS THE DECISION OF THIS COURT that 20.7 acres of the property identified as Polk County Assessor's Account 228354 is disqualified from farm use special assessment for tax year 2002-03.

Dated this _____ day of June, 2003.

SALLY L. KIMSEY
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 SALLY L. KIMSEY ON JUNE 12, 2003. THE COURT FILED THIS DOCUMENT ON JUNE 12, 2003.