IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

WAYNE SIMPSON,	)	
	)	
Plaintiff,	)	TC-MD 021232B
	)	
v.	)	
	)	
UMATILLA COUNTY ASSESSOR,	)	
	)	
Defendant.	)	**DECISION**

Plaintiff appealed the disqualification of his property, identified as Account 157906, from special assessment as land in farm use for the 2002-03 tax year.

A telephone trial was held May 21, 2003. Wayne Simpson argued the cause *pro se*. Ed Boatright (Boatright), Farm Appraiser of Umatilla County, represented Defendant. Paul Chalmers, Assessor, also participated.

I. STATEMENT OF FACTS

The subject property (lot 28) was first granted special assessment of farmland in an exclusive farm use zone (EFU) in the 1996-97 tax year as part of a larger parcel. Lot 28 carried that assessment until 2000 when the city annexed 43.3 acres, including the 26.28 acres comprising lot 28, at Plaintiff's request. The annexation changed the zoning from EFU to city R-1, low density residential. (Def's Ex cover ltr.)

On July 17, 2001, Plaintiff applied for and was granted special assessment of non-EFU farmland for the whole parcel in accordance with ORS 308A.724. (*Id*.) On April 24, 2002, Royal Ridge Subdivision, Phase I (which encompasses lot 28) was recorded in the Umatilla County records and the county disqualified the property from special assessment. (*Id*.) Plaintiff paid the additional tax due and then applied for special assessment of non-

EFU farmland for lot 28. The application was denied by Defendant after a field inspection indicated "no evidence of the property being farmed for some time." (*Id*.)

II. ANALYSIS

In the face of increasing growth and development, the Oregon legislature determined that preservation of viable farmland is an important goal worthy of support by beneficial tax treatment. ORS 308A.050.[1] Land being farmed can be specially assessed at a lower rate if certain requirements are met as provided in ORS 308A.068. That statute provides in part:

> "(1) Any land that is not within an exclusive farm use zone but that is being used, and has been used for the preceding two years, exclusively for farm use shall qualify for farm use special assessment:
>
> "(a) If the land meets the income requirements set forth in ORS 308A.071; and
>
> "(b) Upon compliance with the application requirements set forth in ORS 308A.077."

ORS 308A.068.

Plaintiff must first prove that the land is engaged in a farm use. The definition for the term farm use comes from ORS 308A.056. It provides that "'farm use' means the current employment of land for the primary purpose of obtaining a profit in money" by selling crops, feeding livestock or leaving land fallow for one year for good agricultural husbandry. ORS 308A.056. The issue here is whether Plaintiff's use of the land was sufficient to rise to the level of farm use, particularly in the period following the change from EFU to non-EFU and the concomitant development plans.

Plaintiff testified that from 1997 to 2001 he grazed between 10 and 27 head of

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

cattle on the property for two to five months each year as the conditions allowed. Most of those years he grazed the cattle two months. He also testified that he sprayed two to three times a year for weeds and repaired fences.

Defendant made several arguments as to why Plaintiff's use did not rise to the level of farm use. Appraiser Boatright contended that five, not two, months of grazing is a typical use, that the subject property was not fully fenced, that utilities had been put in for the subdivision and that there was no evidence of cattle on the property during the August 2002 field inspection. Plaintiff credibly countered each of these arguments.

First, according to Plaintiff, who has extensive experience in rangeland management in Eastern Oregon, five months would not be typical for this type of low range, marginal land. Second, Plaintiff explained that he has "broken jaw" cows on the land. Those are older cows that tend not to wander more than one-quarter mile from where they are placed which would explain the absence of more cow trails and lack of full fencing. Third, Plaintiff testified that no excavation was done until February 2002; he provided a copy of the land surveyor's January 21, 2002, invoice for data preparation and construction staking of streets and utilities for the subdivision to support that assertion. (Ptf's Ex 2 at 2.) Finally, Plaintiff testified that the cows may have been grazing in a low-lying ravine not visible from the contiguous highway, which explained why Defendant's appraiser had not seen the cows while traveling the highway.

Plaintiff also submitted evidence that a drought was declared in Umatilla County by Governor Kitzhaber on July 5, 2002. (Ptf's Ex 1 at 8-9.) Although this date is outside the pertinent dates (1997 to 2001) it is useful for two reasons. First, it bears upon the weight that should be given to the field inspection that took place on August 7, 2002, which indicated no cattle was on the land and second, it demonstrates a continuing and

worsening pattern of drought over the latter portion of the pertinent time frame. This is supported by a June 19, 2002, letter from the Umatilla County Board of County Commissioners to Governor Kitzhaber which states in pertinent part:

> "Adverse weather conditions affecting the 2002 crop in Umatilla County have been identified.
>
> "* * * * *
>
> "Drought [b]eginning in November of 2001 and continuing today * * *.
>
> "The Emergency Board predicts the following losses to the agricultural economy of Umatilla County:
>
> "Wheat * * * 45% loss * * *.
> "Forage (lower elev) * * * 50% [loss] * * *.
>
> "* * * * *
>
> "The Board is also concerned with the cattle industry. **The county has suffered four consecutive years of dry/drought conditions and many stands of perennial grasses have been weakened**. Colder weather conditions delayed growth on spring pasture. Members have received reports of producers feeding livestock when they would normally be grazing."

(Ptf's Ex 1 at 12-13) (emphasis added.)

Both parties agreed that the land in question is marginal and supports minimal vegetation. The evidence clearly shows that dry and eventually drought conditions existed during the years in question, limiting the amount of prudent grazing that could be allowed. Plaintiff provided photographs of cattle trails (Ptf's Ex 28A), dead weeds from spraying (Ptf's Ex 27) and manure (Ptf's Ex 29) on the subject property. Plaintiff also explained that he follows the "50 percent rule" which is a staple tenet of proper rangeland management where only half the remaining available grass is grazed.

Defendant cited several cases as support for his denial of Plaintiff's application. In *Ameral v. Dept. of Rev*., 14 OTR 56 (1996) the court held that pasturing four pleasure

horses for two to three months on 197.7 acres of EFU land was not a sufficient use of the property to qualify for special assessment. The court agrees with Plaintiff that this case is distinguishable from the present facts. The *Ameral* plaintiff provided no documentary support and did not prove that the property was used for the "primary purpose of obtaining a profit in money." ORS 308A.056. Although the *Ameral* court concluded that two to three months of grazing four horses was not sufficient use, the circumstances here are different. *Id.* Plaintiff had between 10 and 27 head of cattle on his pasture from two to five months, **as vegetative conditions allowed**. The court is convinced that proper range management compels less intensive grazing on marginal land, particularly during dry to drought conditions. Even so, grazing 10 head of cattle on 26.28 acres for two to three months is a much more intensive use than grazing four pleasure horses on 197.7 acres for two to three months, as was the case in *Ameral*. Defendant's other cited cases are not on point due to lack of similar facts. *Beddoe v. Dept. of Rev*., 8 OTR 186, 190 (1979) (two pleasure horses on 10.47 acres of dry, weedy, pastureland was not sufficient to receive the "great boon of tax relief"); *Taylor v. Dept. of Rev*., 6 OTR 496 (1976) (grazing six horses on two acres while the rest of the 33.23 acres had been allowed to revert to weeds including tansy ragwort (declared a public nuisance) was not a sufficient farm use.) The court is satisfied that pertinent case law supports a finding that Plaintiff's use of the land was more than adequate.

Plaintiff's testimony and evidence support his assertion that he grazed the property to the extent prudent agricultural husbandry allowed under the circumstances. Still, the question remains, is that enough? The special assessment does not apply to lands so marginal that they cannot support farming activity. The intent of the statutes is not to

provide tax benefits for undeveloped wasteland, but to ease the tax burden, and thereby inhibit the incentive to develop viable farmland. *Beddoe,* 8 OTR at 189-91. The court finds that lot 28 is capable of supporting sufficient grazing, even under dry conditions, to reach the level of "farm use."

III. CONCLUSION

Both parties in this case presented credible, sworn testimony. The county was not remiss in denying the original application as first presented. However additional information presented by Plaintiff at trial made his case stronger and the county lacked first hand evidence to negate Plaintiff's evidence.

After carefully reviewing all the evidence and testimony, the court holds that there was adequate farm use of the property and Plaintiff's appeal is granted. Now, therefore,

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

Dated this _____ day of August, 2003.

_____
JEFF MATTSON
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 JEFF MATTSON ON AUGUST 20, 2003. THE COURT FILED THIS DOCUMENT ON AUGUST 20, 2003.