IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

DIANA C. WRIGHT,	)	
	)	
Plaintiff,	)	TC-MD 031050C
	)	
v.	)	
	)	
DOUGLAS COUNTY ASSESSOR,	)	
	)	
Defendant.	)	**DECISION**

Plaintiff appeals Defendant's farm use special assessment disqualification and 10-year roll-back tax. The matter was submitted to the court on cross motions for summary judgment. The parties stipulated to the relevant facts.

I. STATEMENT OF FACTS

The parties agree to the following: "Plaintiff is the owner of a 22.2 acre parcel of farm land identified as assessment account R57019 [previously referred to as account number 66028.00]. * * * Plaintiff purchased the land in April of 1997. The land is zoned 'F-1' under the Douglas County Land Use and Development Ordinance ('LUDO'). The F-1 zone is one of LUDO's designated exclusive farm use ('EFU') zones." (Agreed Statement of Facts at 1.)

"The land has been in farm use special assessment for many years, both before and since Plaintiff purchased it. At all relevant times, including April of 1997, the assessment roll and tax records for R57019 carried the following notation: 'potential additional tax liability.'" (*Id.*)

"There is a 4.68 acre pond on the property. On two occasions – June 3, 1998 and May 22, 2000 – Plaintiff submitted farm income questionnaires to the Assessor. On both questionnaires, Plaintiff identified the pond as 'pond/dike [-] 5 [acres]' (or 'pond/dyke [-] 5 [acres]'). At some point the Assessor discovered that the pond was a

mined-out or depleted gravel pit or bar. On July 30, 2003, the Assessor sent Plaintiff a disqualification notice, stating that the 4.68 acre pond had been disqualified from farm use special assessment and that the additional 'recapture taxes' for the prior ten years – 1993 to 2002 – would be $1,311.12." (*Id*. at 1-2.)

The parties further agreed that the recapture tax calculation appearing on the notice was in error and the tax for the 10-year period should be $852.91 and not $1311.12. That correction is based on a revaluation of the land based on its use as a depleted gravel extraction site.[1]

II. ANALYSIS

Defendant's motion for summary judgment identifies three issues: (1) whether the 4.68 acre pond qualifies for farm use special assessment as "wasteland;" (2) whether the imposition of the 10 year rollback taxes is "fair;" and (3) whether Plaintiff is a bona fide purchaser (BFP). In her response, Plaintiff concedes that this court's prior decision in *Guido v. Dept. of Rev.*, 10 OTR 85 (1985), refutes her "wasteland" argument. In that case, the court held that "acreage designated by [a taxpayer] as 'mined out' does not qualify as 'wasteland' pursuant to ORS 215.203(2)(b)(E)." *Id*. at 87. That leaves two issues for the court to resolve.

A. *Fairness*

Plaintiff insists that "liability should revert to Defendant for failure to [properly execute its duties in a timely and accurate manner]." (Ptf's Resp at 3.) Plaintiff argues that Defendant had a number of opportunities to discover that the body of water was, in fact, an abandoned gravel pit and that a timely discovery of that fact would have resulted in an earlier reclassification of the property, ideally before Plaintiff purchased

[1] The underlying values for the 10 years, beginning with 1993, are $7,511, $7,221, $6,978, $6,950, $6,280, $6,468, $6,663, $6,866, $7,074, and $7,288 for 2002. (Def's Answer at 2.)

the property. Had that occurred, Plaintiff would not be responsible for taxes covering years in which she did not own the property (1992 through 1996).

In response to that argument, Defendant correctly asserts that this court routinely and summarily rejects arguments grounded in fairness and focuses instead on what the statutes require. (Def's Mot for Summ J at 6.) Moreover, as this court stated in *Seifert v. Dept. of Rev.*, 14 OTR 401, 404 (1998):

> "'This situation highlights the need for property owners to audit the government's property tax records. * * * the property tax system requires the *government* to keep the records and assess the tax, and the taxpayer audits for accuracy and correctness.'"

(Emphasis in original.)

The statutory scheme in Oregon is that all property is valued at 100 percent of its real market value unless it is exempt or subject to special assessment. ORS 308.232.[2] ORS 308A.062(1) creates a special farm use assessment for EFU zoned land that is used exclusively for farm use "unless [the land is] disqualified under other provisions of law." ORS 308A.113(1)(a) mandates that the land in an EFU zone "shall be disqualified * * * upon the discovery that the land is no longer being used as farmland." As indicated above, the parties agree that the land is not being farmed and that the wasteland exception is inapplicable.[3] Accordingly, it does not qualify for special assessment.

The disqualification makes the recapture tax mandatory. ORS 308A.113(4) provides that "upon disqualification, additional taxes shall be determined as provided in ORS 308A.700 to 308A.733." ORS 308A.703(2) provides the method for calculating the tax, which is "the difference between the taxes assessed against the land and the taxes that would otherwise have been assessed against the land, for each of the number of

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

[3] Under that exception, land "neither economically tillable nor grazeable, lying in or adjacent to and in common ownership with farm use land * * * that is not currently being used for any economic farm use" is deemed to meet the statutory definition of farming laid out in ORS 308A.056(1).

years determined under subsection (3) of this section." Subsection (3) provides that the number of years is the lesser of the number of consecutive years the property qualified for special assessment or 10 years in the case of EFU zoned farmland. The subject property was under farm use special assessment for more than 10 years.

Given that the parties agree the 4.68 acre pond does not qualify for farm use special assessment, the statutory framework set forth above requires that the tax be imposed for the applicable 10-year period.

B. *BFP Status*

The last issue is whether Plaintiff is entitled to protection under the BFP statute. ORS 311.235 provides in relevant part:

> "No ad valorem taxes imposed on real property * * * purchased by a bona fide purchaser shall be a lien on the real property * * * unless at the time of purchase the taxes were a matter of public record."

Defendant asserts that the recapture taxes were a matter of public record, which means that they were a lien on the property regardless of Plaintiff's BFP status.

In *Mark v. Dept. of Rev.*, 12 OTR 369 (1993), *rev'd on other grounds*, 14 OTR 467 (1998), this court addressed a similar claim concerning land zoned EFU and found that the notation warning of potential additional taxes put the taxpayer on notice. In that case the taxpayer asserted BFP protection because the previous owner had been granted a conditional use permit which, by law, required that the property be disqualified from farm use special assessment; disqualification, in turn, required imposition of the rollback taxes. The taxpayer assumed all those steps had taken place and that the taxes had been paid by the previous owner. That assumption proved to be incorrect because the land was not disqualified due to an oversight by the assessor's office. In rejecting the taxpayer's argument, the court noted that a simple inquiry would have revealed that the taxes were not paid.

In the present case, the assessment and tax records for the subject property carried the notation "potential additional tax liability," that is required by ORS 308A.083. The notation was intended to alert the public to the fact that the property was taxed at a special rate because of the farm use special assessment. Farm use special assessment requires that the property be farmed. *See* ORS 308A.056 (providing for special assessment for land within an EFU zone "used exclusively for farm use"); ORS 308A.056 (defining farm use).[4] Roughly 20 percent of the property Plaintiff purchased was covered by a mined-out gravel pit abandoned by the previous owner and at least partially filled with water. If at the time of purchase Plaintiff had contacted the assessor's office to ask about the large body of water, it is likely that the 4.68 acre abandoned gravel site would have been disqualified at that time. Had that been done, the rollback taxes would have been imposed upon the seller and the instant appeal would not have been necessary (although the property would have been taxed at a higher rate from the time Plaintiff purchased the property in 1997).

III. CONCLUSION

The court concludes that the assessor's decision to remove the 4.68 acres from farm use special assessment was appropriate and that the imposition of back taxes for the previous 10 years was required by the statute. Furthermore, Plaintiff is responsible for the taxes going back to 1992 even though Plaintiff did not acquire the property until 1997 because the taxes were a matter of public record at the time of the sale. Now, therefore,

IT IS THE DECISION OF THIS COURT that Defendant's motion for summary judgment is granted, and Plaintiff's request to be relieved of the tax liability for the tax

[4] That statute defines farm use as "the current employment of land for the primary purpose of obtaining a profit in money by [doing one or more of the enumerated farming activities]."

years prior to 2003-04 is denied.

Dated this _____ day of April 2004.

_____
DAN ROBINSON
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 DAN ROBINSON ON APRIL 12, 2004. THE COURT FILED THIS DOCUMENT ON APRIL 12, 2004.