IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

GORDON R. HOVERSLAND and MYRNA HOVERSLAND,	)	
Plaintiffs,	)	TC-MD 031070B
v.	)	
WASHINGTON COUNTY ASSESSOR,	)	
Defendant.	)	**DECISION**

I. STATEMENT OF FACTS

Plaintiffs are the owners of 4.46 acres of property located in Washington County. On May 31, 2001, they filed an application with the Washington County Assessor (Defendant) to change the property assessment status from Unzoned Farmland to Designated Forestland.

When the application was filed, the property contained approximately 177 hazelnut trees, but did not contain the minimum number of trees per acre of marketable species set forth in OAR 629-610-8820 and OAR 629-610-0050.[1] At that time, Plaintiffs did not provide Defendant with a detailed written management plan. Plaintiffs have since planted no more than 12 Douglas Fir trees subsequent to filing the application and prior to August 2003.

After submitting the application in 2001, Plaintiffs received neither a written notice of approval nor a denial of the application. However, they did receive their 2001-2002 tax statement which included designation of that property as forestland. The 2002-2003 tax statement also contained the same notation.

Defendant later undertook a review of this property along with several others. In a letter dated August 14, 2003, Defendant stated that the property no longer qualified for Special

[1] All references to the Oregon Administrative Rules (OAR) are to 2001.

Assessment as Designated Forestland because "the land does not meet the stocking requirement of ORS 321.359."

Plaintiffs filed a timely appeal contesting that disqualification. During a tour undertaken May 7, 2004, representatives of the Washington County Assessor's Office and Plaintiffs' counsel counted 904 Douglas Fir tree seedlings, of which 225 were dead and 123 were not properly planted. Plaintiffs did not dispute these findings.

II. ISSUES PRESENTED

Two issues before the court are: (A) whether the notice sent to Plaintiffs that the property was being removed from forestland status was fatally defective; and (B) whether the subject land was used in a fashion that qualifies it to remain as forestland for the 2003-04 tax year.

III. ANALYSIS

Forestland is defined as "land in western Oregon (a) which is being held or used for the predominant purpose of growing and harvesting trees of a marketable species and has been designated as forestland or (b) the highest and best use of which is the growing and harvesting of such trees." ORS 321.257(4).[2] An owner must make written application to have land designated as forestland. ORS 321.358. Designated forestland is specially assessed at less than its real market value. *Kliewer v. Dept. of Revenue*, 15 OTR 139 (2000).

Designated forestland may be removed for several reasons. In this case, Defendant removed the forestland designation because "the land [did] not meet the stocking requirement of ORS 321.359."

Pursuant to ORS 321.358(5), Plaintiffs' property first received forestland designation for the 2001-02 tax year. An application "shall be deemed to have been approved unless, within

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

three months of the date such application was delivered to the assessor or prior to August 15, whichever is later, the assessor shall notify the applicant in writing of the extent to which the application is denied." ORS 321.358(5).

However, an assessor must remove the forestland designation upon later discovery that the land is no longer forestland. ORS 321.359(b)(C). Upon removing that forestland designation, the assessor has 30 days to give a taxpayer written notice of the disqualification as well as state the reason for disqualification. Following receipt of the notification, the taxpayer may appeal the assessor's determination to the Oregon Tax Court. ORS 308A718(3)(4).

When Defendant discovered information to conclude that the property no longer qualified as forestland, it was required to remove the forestland designation. Defendant sent written notice with a stated reason for the disqualification. However, in the letter, Defendant offered an incorrect citation. Plaintiffs contend the "required reason given must be stated correctly and that the notice (here) is defective." The reason stated by Defendant – "the land does not meet the stocking requirement" – is correctly stated, only wrongly cited. That slight error in the statutory citation does not render that notice fatally defective.

The statute that requires an assessor to give notice of disqualification also provides an appeal remedy to the property owner. ORS 308A.718. That appeals process is to validate the correctness of the reason. If the reason is invalid, the disqualification, not the notice, is invalid. The appeals process checks the correctness of an assessor's determination. The notice itself is valid as long as the assessor has stated the underlying reason for removing the property from a special designation. The subject notice itself is sufficient under the statute.

The second issue is whether Plaintiffs' land was used in a fashion that qualifies it for status as forestland. To qualify for that designation, the "land must have growing upon it at least

the number of established trees per acre according to OAR 629-610-0020."

OAR 150-321.358(2). The unsupported statement of an owner that land is being held for forestland use is "not sufficient basis for determining that such land is forestland."

OAR 150-321.358(2). Reforestation stocking standards set forth in OAR 629-610-0020(4)(a) establish a requirement of 200 seedlings per acre for the property. Based on the undisputed facts, the subject property did not meet this minimum requirement for stocking.

If the property does not meet the minimum requirements for stocking, the property can still qualify for forestland designation. However, the owner must meet certain requirements pursuant to OAR 150-321.358(2)(3)(a)-(d). One of these mandatory requirements includes presenting a written plan to the county assessor for establishing trees to meet the minimum requirements for stocking. Importantly, a written plan was never provided to the county assessor, rendering the property unqualified for forestland designation. Moreover, Plaintiffs failed to follow the timeline requirements of planting a minimum of 20 percent per year for each of the first two years as directed by OAR 150-321.358(2)(3)(d). Rather, Plaintiffs planted all the trees during the third year. Complying with the timeline provided by state law is also a mandatory requirement to qualify for forestland designation. Thus, the subject property necessarily fails to qualify for forestland designation.

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IV. CONCLUSION

Plaintiffs' property does not qualify for special assessment as forestland status. The disqualification notice sent by Defendant was not fatally defective. The subject property failed to meet the strict statutory stocking requirements for the special designation. Because of these findings, Plaintiffs' appeal is denied. Now, therefore,

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

Dated this _____ day of January 2005.

_____
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 JANUARY 27, 2005. THE COURT FILED AND ENTERED THIS DOCUMENT JANUARY 27, 2005.