

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

DOROTHY JACKSON RIEKKOLA)	
TRUSTEE, DOROTHY J. RIEKKOLA)	
REVOCABLE TRUST, BEN J. RIEKKOLA,)	
ARCHIE D. RIEKKOLA, JONATHAN B.)	
RIEKKOLA, and JEFFRY R. RIEKKOLA,)	
)	
Plaintiffs,)	TC-MD 031080A
)	
v.)	
)	
CLATSOP COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

At issue is the disqualification, for the 2003-04 tax year, of lands specially assessed as farmland zoned exclusively for farm use. The property is identified by Accounts 27126, 27127, and 27129. Jonathan B. Riekkola argued the cause for Plaintiffs. L. Catherine Harper, Senior Appraiser, Clatsop County Assessor, argued the cause for Defendant.

I. STATEMENT OF FACTS

The property at issue has historically been part of the Riekkola family farm, a parcel approximately 100 acres in size, located in the Miles Crossing area near the intersection of Wireless Road and U.S. Highway 105. In 2001 Plaintiffs requested a conditional use permit and goal exception to allow the development of some twelve acres of that site as a golf driving range, with approximately six acres given over to the practice area and the balance consisting of tee-off areas, office, parking, and buffer. In May, 2002, the Clatsop County Board of Commissioners (Board) adopted an ordinance amending the Clatsop County Comprehensive Plan and Comprehensive/Zoning Map (Comprehensive Plan) to allow the driving range as an exception.

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Plaintiffs argue that this disqualification is improper, pointing out that steer calves are grazed on the property, and that the planning commission specifically found that the driving range would not interfere with the farm practices associated with grazing cattle. Photographs submitted by Plaintiffs show sheep grazing on a portion of the disqualified property. Plaintiffs further note that they were at no time informed that the development of their driving range would lead to the disqualification of the land from special assessment as lands in farm use.

II. ANALYSIS

Plaintiffs cannot receive the benefit of special assessment given to lands in a farm use for their driving range. The whole reason for assessing farm properties at less than the value they would otherwise have is to prevent the conversion of agricultural land to other uses. ORS 308A.050.¹ Here Plaintiffs have changed the use of the land to a driving range, which is not a permitted use in a farm use zone. ORS 215.283. The consequence is a disqualification.

Other statutes are consistent with this conclusion. ORS 308A.113 does not give any discretion to an assessor. ORS 308A.113(1)(b) requires an assessor to disqualify land when it is removed from an exclusive farm use zone. The whole point of the ordinance amending the Comprehensive Plan was to remove a particular piece of property from the restrictions that apply to lands zoned exclusively for farm use. Plaintiffs cannot simultaneously remove their land from the restrictions of farm use zoning and claim the benefit of the special assessment.

Plaintiffs make the point that their driving range might not be a success, or that other reasons might lead them to abandon the change of use and return the property to farmland. Under that thinking Plaintiffs claim the protection of ORS 308A.706, which

¹ All references to the Oregon Revised Statutes (ORS) are to 2001.
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under certain circumstances defers the additional tax that would otherwise be due. However, the protection afforded by that statute does not reach Plaintiffs' situation. ORS 308A.706(1)(a)(B) only protects land that is not being used for a commercial use "that is incompatible with a **purpose** to return the land to farm use" (emphasis added). The court emphasized "purpose" in that quote from the statute because, for Plaintiffs to qualify for the treatment they request, the word "potential" would have to be substituted in its place.

The driving range might, potentially, be removed and the property could be returned to farmland. However, Plaintiffs' purpose now is to not use the land exclusively for grazing, but instead to put it to a higher and better use as a commercial driving range. Plaintiffs' pursuit of this purpose took them so far as to cause the Board to repeal any inconsistent provision of the Comprehensive Plan. That change in the classification of the land is so purposeful as to remove the property from the protection of ORS 308A.706.

Plaintiffs make the point that farmland is adjacent to the property, and that farm animals graze on the subject property. That point is not decisive. Having farm animals on the land is presumably permissible under the ordinance revising the Comprehensive Plan that permitted the driving range to be built. However, the ordinance did pass, the Comprehensive Plan was amended, and the driving range was constructed. It is the presence of the driving range on the property, not the livestock, that is determinative.

The final matter is Plaintiffs' point that no one told them that the loss of special assessment as lands in farm use would be a consequence of building the driving range. That is regrettable. However, it does not go so far as to isolate the property from the consequences of removing it from classification as land which can be exclusively used for farm use. The conclusion of the court is that Plaintiffs simply cannot have both the

benefit of special assessment as farm use, and a driving range, on the same lands.

The appeal is denied.

III. CONCLUSION

Now, therefore,

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

Dated this _____ day of February, 2004.

SCOT A. SIDERAS
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 SCOT A. SIDERAS ON FEBRUARY 27, 2004. THE COURT FILED THIS DOCUMENT ON FEBRUARY 27, 2004.