

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

VERN A. BATES and EDNA L. BATES,)	
)	
Plaintiffs,)	TC-MD 040280C
)	
v.)	
)	
LANE COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

Plaintiffs seek forestland special assessment for the tax years 1997-98 through 2003-04. Defendant has moved to dismiss Plaintiffs’ appeal as untimely. Plaintiffs appeared on their own behalf at the hearing. David W. Evans (Evans), a farm/forest appraiser with the Lane County Assessor’s Office, appeared on behalf of Defendant.

I. STATEMENT OF FACTS

Before 1997, 14 acres of Plaintiffs’ property was subject to special assessment based upon Defendant’s determination that the highest and best use (HBU) of the land was growing trees. In 1997, Plaintiffs began renovating an old structure on the property. A county appraiser visited the property and observed the change to that structure. Subsequently that same year, Defendant changed the classification of Plaintiffs’ property from “600,” which represents HBU forestland, to “401,” which indicates rural improved tract property. The change in property classification resulted in the removal of the special assessment and an increase in value for property tax purposes. According to a computerized printout submitted by Defendant, Plaintiffs’ taxes increased from \$114.06 in 1996 to \$365.83 in 1997.

According to its records, Defendant sent a letter to Plaintiffs notifying them of the change in property classification. An application for forestland designation was included with that letter.

Plaintiffs did not return the application for designated forestland and assert they did not receive the letter or blank application form. Although Defendant does not have the letter, it did submit a copy of a farm/forest “working list” for 1997 that shows the parcel was removed from HBU forestland and that an application for forestland designation was sent to Plaintiffs. (Def’s Ex B.)¹ Plaintiffs indicated that they learned of the change when they called the assessor’s office regarding an unrelated assessment notice that they received as the result of a clerical error in 2003.

Plaintiffs filed their Tax Court appeal on March 30, 2004. Defendant has asked the court to dismiss Plaintiffs’ appeal as untimely because the redetermination of HBU, which resulted in the removal of the special assessment, occurred in 1997.

II. ANALYSIS

Plaintiffs seek reinstatement of forestland special assessment back to 1997 because they claim they never received notification that the county had removed the property from forestland special assessment. Defendant moved for dismissal, contending that Plaintiffs “substantially missed the deadline” and, therefore, do not have standing to bring the appeal. (Def’s Mot to Dismiss.) The court must determine, therefore, whether Plaintiffs have standing to bring the appeal and, if so, whether Plaintiffs’ appeal was timely filed.

Two types of forestland exist in the western part of Oregon: (1) designated forestland, which requires an application by the property owner and approval by the assessor; and (2) land,

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¹ Column 4 of Defendant’s Exhibit B includes the abbreviation “APFST” that, according to Evans, indicates an application for forestland was sent to Plaintiffs with the notice advising Plaintiffs that the property was removed from special assessment. The word “off” appears in column 7 of that exhibit, which, again according to Evans, indicates that Plaintiffs did not respond. The property was taken “off” because Plaintiffs did not submit the application qualifying the property for designated forestland.

the HBU of which is the growing and harvesting of trees of marketable species (HBU forestland). *See* ORS 321.257(3)² (defining the two types of forestland) and ORS 321.358 (requiring an application by an owner “desiring that it[s land] be designated as forestland.”). HBU forestland does not require an application. Plaintiffs’ property was specially assessed as HBU forestland before 1997.

An assessor may remove HBU forestland from special assessment without the issuance of formal notice. The statutory notice requirements pertain to only certain types of forestland:

- (1) land designated as forestland because of assessor approval of an owner’s application;
- (2) reforestation lands as described in ORS 321.347(3); and (3), under ORS 321.347(4), Oregon small tract optional tax program land provided under ORS 321.705 to ORS 321.765.

ORS 321.359(1)(a). Here, Plaintiffs’ land did not qualify as any of those types of forestland. Therefore, Defendant was not required to provide the notice discussed in ORS 321.359(1)(c). As Defendant noted in its June 10, 2004, written submission to the court, “this account was not technically (sic) disqualified; the values were essentially changed to reflect a higher and better use.”

Plaintiffs were nonetheless on notice of Defendant’s removal of their HBU forestland special assessment when they received their property tax statement in the fall of 1997. At that point, Plaintiffs could have filed an application to have the property designated as forestland. *See* ORS 321.358(1). Alternatively, Plaintiffs could have appealed the increased assessment to the county board of equalization (board)³ pursuant to ORS 309.026 and ORS 309.100 by filing a
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² All references to the Oregon Revised Statutes (ORS) are to 1995.

³ The board of equalization is the former name of the current board of property tax appeals, which was created with the 1997 Oregon Revised Statutes.

petition with the board on or before December 31, 1997. Plaintiffs neither filed an application to have the property designated as forestland, nor appealed the increased assessment to the board within the requisite periods. Having failed to timely take either of those actions, Plaintiffs may not now appeal to this court.

Assuming *arguendo* that Defendant was required to provide notice pursuant to ORS 321.359(1)(c), the court is satisfied Defendant did in fact send such notice. Defendant's records indicate that its employees followed a standard process, which includes sending the appropriate notice upon a change in property classification. Furthermore, if the notice requirements of ORS 321.359(1) applied, Plaintiffs had a limited amount of time in which to appeal, regardless of whether they received the notice. ORS 321.359(2) provided for an "appeal to the Department of Revenue within the time and in the manner provided in ORS chapter 305."⁴ Under the applicable provision in chapter 305, Plaintiffs had no more than one year from the date of the act to appeal. *See* ORS 305.280(1) and ORS 305.275. Plaintiffs clearly missed that deadline because the assessor made its determination that Plaintiffs' land no longer qualified as HBU forestland in 1997 and Plaintiffs did not appeal until 2004.

III. CONCLUSION

The court concludes that Defendant's motion to dismiss must be granted because Plaintiffs did not have the right to appeal Defendant's determination that the highest and best use of the property was no longer forestland. Plaintiffs therefore lacked standing to appeal because there is no appealable act. Had Plaintiffs applied for forestland designation, the application may well have been approved, notwithstanding the renovation to the existing single-family dwelling,

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⁴ The law was changed in 1999 to provide for an appeal to the Tax Court. Or Laws 1999, ch 314, § 51.

and, if Defendant denied Plaintiffs' application, Plaintiffs would then have had a statutory right of appeal under ORS 305.275 and ORS 305.280. Now, therefore,

IT IS THE DECISION OF THIS COURT that Defendant's motion to dismiss is granted.

Dated this _____ day of March 2005.

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 MARCH 22, 2005. THE COURT FILED AND ENTERED THIS DOCUMENT MARCH 22, 2005.