IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

WILLIAM A. MEYER, Plaintiff,	)	TC-MD 050572E
v.	)	
LANE COUNTY ASSESSOR, Defendant.	)	**DECISION**

Plaintiff appeals Defendant's denial of his application for forestland special assessment for tax year 2005-06.[1] A trial in the matter was held in the courtroom of the Oregon Tax Court, Salem, Oregon. William A. Meyer (Meyer) appeared and testified on his own behalf. Mitchell Parrish, Certified Law Student, appeared on behalf of Defendant.

I. STATEMENT OF FACTS

Plaintiff owns four tax lots in the City of Dunes along Whoahink Lake. The parties agreed on the following sizes for each lot:

Tax Lot	Acres
Tax Lot 1900	.83
Tax Lot 2100	.27
Tax Lot 4100	1.00
Tax Lot 4101[2]	1.00

(Mediation Memo at 1.) Tax Lot 1900 has a residence on it, which Plaintiff uses as his home. Plaintiff purchased Tax Lot 1900, together with Tax Lot 2100, in July 1998 for $150,000. In

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[1] Plaintiff's Complaint states that Plaintiff is appealing tax year "2004/2005." (Ptf's Compl at 1.) However, Plaintiff filed the application January 10, 2005, for the 2005-06 tax year, and Defendant's denial, which Plaintiff appeals, relates to the 2005-06 tax year. (Def's Addendum to Answer at 1; Ptf's Compl at 4.) The proper year before the court is the 2005-06 tax year.

[2] The parties agreed that Tax Lot 4101 had .86 acre and Tax Lot 4102 had .14 acre. (Mediation Memo at 1.) At trial, the parties advised the court that the two lots had been combined into a single tax lot.

October 2001, Plaintiff purchased Tax Lot 4101 for $75,000, and in July 2004, Plaintiff purchased Tax Lot 4100 for $165,000. (Def's Ex D.)

Plaintiff filed an application seeking forestland special assessment on all four tax lots. At trial, however, Plaintiff removed Tax Lot 1900 from the court's consideration, acknowledging it was not contiguous to the other parcels and, therefore, failed to satisfy the minimum acreage requirements. As a result, at issue are Tax Lots 4100, 4101 and 2100. Combined, the lots total 2.27 acres.

The subject lots are zoned RA - Suburban Residential District, with a minimum lot size requirement of 6,000 square feet. Tax Lot 2100 is located in Whoahink Acres subdivision. The conditions, covenants, and restrictions for that subdivision require that all lots in the subdivision "be used exclusively for residential purposes, and no trade, business or profession of any kind shall be conducted thereon." (Def's Ex C at 1.) An aerial photograph of the subject area shows that, although trees are plentiful, houses are found on most lots in the area.

Plaintiff determined that the subject lots should qualify for special assessment as forestland. As a result, he filed a forestland application for tax year 2005-06 with Defendant. Defendant denied the application, finding the lots located in the subdivision (Tax Lots 1900 and 2100) did not qualify for forest deferral based on the subdivision restrictions. Defendant further concluded that the remaining lots (Tax Lots 4100 and 4101) totaled 1.99 acres and, therefore, failed to satisfy the two-acre minimum. (Ptf's Compl at 4.) Prior to trial, Plaintiff submitted a survey to Defendant that showed Tax Lots 4100 and 4101 totaled 2.0 acres. Defendant agrees with Plaintiff's conclusion. (*See* Mediation Memo at 1.)

In its Answer, Defendant claimed the property failed to qualify for forestland designation because the property does not have a "predominate purpose for the growing and harvesting of trees." (Def's Answer, Addendum at 1.) Defendant reached that conclusion because the lots are

zoned for heavy residential use and are located within the City of Dunes. (*Id.*) Defendant also questioned whether the lots satisfied the minimum stocking requirements for forest parcels.

At trial, Defendant claimed the parcels did *not* meet the minimum stocking requirements. In response, Plaintiff submitted a breakdown of trees found on the property. (Ptf's Ex 8.) He further submitted a management plan he created in response to Defendant's concerns. (Ptf's Ex 4.) Plaintiff has not harvested any timber on the properties to date. Plaintiff contends that, although the property is located in a residential area, his intent is to hold the property for forest use. Based on his stated intentions, Plaintiff claims the property is entitled to special assessment.

II. ANALYSIS

The Oregon Legislature has determined that, as a matter of public policy, the state should encourage the growing and harvesting of trees.[3] Forestland entitled to special assessment is defined in ORS 321.257(2) as follows:

> "(2) 'Forestland' means land in western Oregon that *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 land in western Oregon, the highest and best use of which is the growing and harvesting of such trees."

(Emphasis added.)

Under the statute, land may be classified as forestland in one of two ways. The first is when the highest and best use of the property is as forestland. Plaintiff acknowledges the highest

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[3] ORS 321.262 states, in pertinent part:

> "The purposes of [the special assessment statutes] are:
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> "* * * * *
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> "(2) To establish a special assessment program as a means of:
>
> "(a) Recognizing the long-term nature of the forest crop and fostering the public policy of Oregon to encourage the growing and harvesting of timber."

All references to the Oregon Revised Statutes (ORS) are to 2003.

and best uses of the subject parcels are as residential lots and not as forestland. (*See* Mediation Memo at 1.) The second method for classifying property as forestland is when the property is designated as forestland upon application to the county assessor.

Plaintiff claims the landowner is responsible for "designating" property as forestland and that, once the owner advises the assessor he is designating the property for use as forestland, special assessment must be awarded. Plaintiff misreads the statute. The responsibility of designating property as forestland lies with the assessor, not the taxpayer. The taxpayer initiates the process by filing an application, but the assessor designates the property as forestland only after determining the parcel "is being held or used for the predominant purpose of growing and harvesting trees." ORS 321.257(2). As noted by the Tax Court in *Department of Revenue v. Rankin*, 17 OTR 124, 127 (2003): "Forestland designation will not be granted by the assessor unless the property is held or used for the predominant purpose of growing and harvesting trees * * *."

Defendant claims the property should not be designated as forestland because it fails to satisfy the minimum stocking requirements. Defendant further claims that, after weighing a variety factors, it is clear Plaintiff is not holding or using the property for the predominant purpose of growing and harvesting trees. The court will separately consider each of Defendant's reasons for denial.

A. *Stocking Requirements*

Defendant claims the lots do not qualify for special assessment because they fail to satisfy the minimum stocking requirements found in OAR 150-321.358(2) (2004). The rule states, in pertinent part:

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> "(1) To qualify, the land must have growing upon it at least the number of established trees per acre according to OAR 629-610-0020 established by the State Forester. Also, for the land to qualify, the established trees must be of a marketable species acceptable to the State Forester as established in OAR 629-610-0050."

Id.

The rule requires that a certain number of trees be growing on the land and that those trees be of a marketable species. OAR 629-610-0020 (2005) sets forth the stocking standards. The rule differentiates between "Cubic Foot Site Class I, II, and III forestlands;" "Cubic Foot Site Class IV and V forestlands"; and Cubic Foot Site Class VI forestlands". *Id*. The stocking requirements are different within the three categories. For example, in the Cubic Foot Site Class I, II, and III forestlands, the minimum stocking standards are:

> "(a) 200 free to grow seedlings per acre; or
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> "(b) 120 free to grow saplings and poles per acre; or
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> "(c) 80 square feet of basal area per acre of free to grow trees 11-inches DBH and larger; or
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> "(d) An equivalent combination of seedlings, saplings and poles, and larger trees as calculated in section (7) of this rule."

Id. at (4). Whereas, in Cubic Foot Site Class IV and V forestlands, the minimum stocking standards are:

> "(a) 125 free to grow seedlings per acre; or
>
> "(b) 75 free to grow saplings and poles per acre; or
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> "(c) 50 square feet of basal area per acre of free to grow trees 11-inches DBH and larger; or
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> "(d) An equivalent combination of seedlings, saplings and poles, and larger trees as calculated in section (7) of this rule."

Id. at (5). Class VI forestlands have lesser requirements. *See id* at (6).

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No testimony was provided to the court as to which class the lands fall within. Instead, Plaintiff submitted an exhibit setting forth the stocking levels for the subject lots. (*See* Ptf's Ex 8.) Plaintiff shows a basal area per acre of 88.003426 for trees greater than 13 inches in diameter. (*Id.*) That appears to satisfy the most stringent stocking standards in the rule. Defendant offered no evidence or testimony to contradict Plaintiff's evidence; therefore, the court is unable to conclude that Plaintiff's proffered inventory is lacking. With no contrary information before the court, the court must find that the land is sufficiently stocked.

B. *Predominant Purpose of Growing and Harvesting Trees*

Defendant further claims that the land does not qualify for special assessment as forestland because Plaintiff is not holding the property for "the predominant purpose of growing and harvesting trees." ORS 321.257(2). The court observes that special assessment provides a partial tax exemption to the property. As a result, the statute granting special assessment is "subject to a 'strict but reasonable construction.' " *Kalishman v. Dept. of Rev.*, 8 OTR 440, 448 (1980) (citation omitted). In *Prahar v. Department of Revenue*, 13 OTR 232, 234 (1995), the Tax Court held that "[t]he wording of ORS 321.259[2], defining forestland, suggests that the predominant purpose is a long-term purpose." The court noted that "land with trees on it, but which is being held for residential purposes or development, is not necessarily forestland." *Id.* at 234-35.

In the subject appeal, Defendant claims that, balancing the facts, it is evident Plaintiff does not intend to hold the property for the long-term purpose of growing and harvesting trees. Factors considered by Defendant include: (1) the property is zoned for heavy residential development, (2) neighboring lots are developed, (3) the properties are located within the city limits of the City of Dunes, (4) Plaintiff paid market value for the parcels and simply holding the properties for forest use does not make economic sense, (5) restrictions on harvesting in riparian

areas limits any harvesting that may occur, and 6) the conditions, covenants, and restrictions on Tax Lot 2100 do not permit any use other than residential.

Plaintiff responds that, notwithstanding the above factors, his statement of intent, alone, is sufficient to qualify the property for special assessment. OAR 150-321.358(2)(2) (2004), however, states: "The unsupported statement of an owner that land is being held ' * * * for the predominant purpose of growing and harvesting trees of a marketable species * * *' is not sufficient basis for determining that such land is forestland." The rule requires more than a taxpayer's statement of intent. At trial, Plaintiff submitted a Forest Management Plan that indicated future planting will occur on the property. That plan, however, was created in the fall of 2005 in response to Defendant's concerns about adequate stocking. It is not reflective of an ongoing forest management plan that was in place on January 1, 2005.

Defendant referred the court to *Prahar*, where the Tax Court found that the taxpayer was holding the property for residential purposes rather than forest use. Plaintiff claims that case is different than his situation because, in *Prahar*, the taxpayer's "patterned behavior" showed he was not holding the property for long-term forest use. Included in that behavior was the taxpayer's application to have the property rezoned from forestland to rural residential with a five-acre minimum. *Prahar*, 13 OTR at 233. The taxpayer also partitioned 20 of the acres into four five-acre parcels for residential use. *Id*. at 235. Plaintiff claims that, unlike the taxpayer in *Prahar*, he has taken no action that is contrary to a forest use. The court observes, however, that in this appeal, Plaintiff purchased the property already divided into smaller lots and zoned for residential use. Unlike the property in *Prahar*, the subject property is ready for development.

After evaluating all the evidence, the court finds that Plaintiff has failed to demonstrate that he is holding the property for the long-term purpose of growing and harvesting trees. The property comprises 2.27 acres divided into three lots that are all zoned for residential

development and located within the City of Dunes. A review of an aerial photograph shows that almost all the neighboring lots are developed and the character of the neighborhood is certainly residential. Further, Plaintiff paid market value for the parcels. Plaintiff acknowledges that paying a value that reflects residential use, while holding the parcels for forest use, does not make economic sense. Yet, he claims that his purposes go beyond the monetary. That may be true, but it is a factor that weighs into the court's analysis of whether Plaintiff is truly holding the property for the long-term purpose of forestland. The court further observes that the riparian setback limits harvesting on nearly half of the acreage. (*See* Def's Ex A.)

The court recognizes that Plaintiff has not taken active steps toward treating the parcels as residential land. As already discussed, however, those steps were taken by prior owners. More importantly, Plaintiff has failed to demonstrate to the court that as of January 1, 2005, he had taken steps to actively treat the parcels as forestland. Perhaps if Plaintiff begins an active stocking and management plan for the parcels, the land *may* qualify in the future. Until then, the court finds the property does not qualify for special assessment as forestland.

III. CONCLUSION

The court finds that Plaintiff is not holding the subject property for the predominant purpose of growing and harvesting trees. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiff's appeal is denied.

Dated this _____ day of April 2006.

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COYREEN R. WEIDNER
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 Coyreen R. Weidner on April 21, 2006. The Court filed and entered this document on April 21, 2006.