

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

WARREN WEATHERS)	
and MAUREEN WEATHERS)	
)	
Plaintiffs,)	TC-MD 050625B
)	
v.)	
)	
LANE COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

A case management conference was convened August 1, 2005. At the request of the parties, that proceeding was converted to a trial. Sworn testimony was accepted and arguments were advanced. Warren Weathers participated for Plaintiffs. David W. Evans (Evans), appraiser, represented Defendant.

I. STATEMENT OF FACTS

There are no essential facts in dispute.

The subject property¹ is rural and located within Lane County. For the prior 2004-05 tax year, the land qualified as Small Tract Forestland pursuant to ORS ORS 321.709.² That was done in response to an application by the then-owner, Virginia M. Warren, filed March 23, 2004. (Def's Answer, Ex A.)

Plaintiffs later purchased the land from Ms. Warren. That deed was recorded August 27, 2004. They did not submit an application to Defendant seeking continued qualification for that earlier assessment status. Mr. Weathers candidly admits he was unaware of any filing requirement. A notice sent on December 15, 2004, to their address of record was not received.

¹ Account 0877744.

² All references to the Oregon Revised Statutes (ORS) are to 2003.

Defendant properly addressed the notice to the precise address stated on the warranty deed. No one advised Plaintiffs of the need to reapply before the deadline.

By way of a letter dated May 6, 2005, Defendant notified Plaintiffs the property had been disqualified for the 2005-06 tax year. The reason for the action was stated as: “due to an ownership change.” (Ptf’s Compl at 2.)

Plaintiffs’ appeal to this court was filed May 12, 2005.

II. ISSUE PRESENTED

Are Plaintiffs entitled to continued qualification of the land under the Small Tract Forestland Option due to any error or omission by Defendant?

III. ANALYSIS

ORS 321.716(1) mandates that after a sale the land “*shall* be disqualif[ied] as small tract forestland.” (Emphasis added.) An exception is found in ORS 321.719 that states:

“(1) Notwithstanding ORS 321.716(1)(a), * * *, the sold * * * forestland may remain small tract forestland, if:

(a) Within 30 days of the recorded date of the sale or transfer, the purchaser * * * has applied for continued qualification * * * [.]”

Plaintiffs contend they should be allowed to submit a late application to preserve that earlier assessment status. Although that might lead to an equitable result, the court must have the legal authority to order such action. None has been located.

The laws surrounding this forestland program do not provide for any filing extensions, even in situations where well-intentioned new owners were not informed of either the refiling need or of the very short window of time in which to act. The court also notes the mandatory character of the statutory words “shall” that allows Defendant no discretion in this situation.

Lack of knowledge cannot excuse the failure to timely file. *Mosely v. Lane County Assessor*,

TC-MD No 050047A (June 10, 2005).

DECISION TC-MD 050625B

Plaintiffs have not met the strict statutory requirement by refiling within 30 days. No exceptions apply to the facts of this case. This finding is consistent with other decisions of this court. *See Bonady v. Lane County Assessor*, TC-MD No 050096B (Oct 18, 2005).

The court notes that another avenue of relief may be available through the actions of the 2005 Oregon Legislature with House Bill 2868. Amendments were made to this forestland program that includes some retroactive provisions. A new provision was added to ORS 321.719 that would allow certain property to qualify for reinstatement for the 2005-06 tax year. Those affected property owners must pay an additional filing fee and file a new application with Defendant *on or before December 15, 2005*. Plaintiffs are encouraged to contact Evans of Defendant's offices to determine if the subject property would qualify for those refiling provisions. Now, therefore,

IT IS THE DECISION OF THE COURT that, based on the evidence adduced at trial, there is no error or omission on the part of Defendant; and

IT IS FURTHER DECIDED that the appeal is denied.

Dated this _____ day of November 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 November 21, 2005. The Court filed and entered this document November 21, 2005.