IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

BARBARA SANOK,	)	
	)	
Plaintiff,	)	TC-MD 050854C
	)	
v.	)	
	)	
KLAMATH COUNTY ASSESSOR,	)	
	)	
Defendant.	)	**DECISION**

This appeal involves the disqualification of 29.6 acres of land from forestland special assessment for the 2005-06 tax year. Plaintiff objects to the disqualification and requests that the property be returned to special assessment. Defendant requests that the court uphold its disqualification.

Trial was held by telephone September 19, 2006. Plaintiff appeared on her own behalf. Plaintiff's son-in-law, Richard Isabell (Isabell) also testified for Plaintiff. Defendant was represented by Donald Ringgold, Chief Appraiser, Klamath County Assessor's Office, and Margaret Kenneally, Appraiser III, Klamath County Assessor's Office. Anne Maloney (Maloney), Stewardship Forester, Oregon Department of Forestry, also testified for Defendant at trial.

I. STATEMENT OF FACTS

The property at issue is identified as Accounts R-3811-00800-01000-000 Code 114 (5 acres), R-3811-00800-01000-000 Code 036 (5.6 acres), and R-3811-00800-00700-000 Code 036 (20 acres). Plaintiff purchased the subject property, a 30.60 acre parcel, in 1972. Plaintiff's residence is on the property. All but one acre (*i.e.* 29.6 acres) was specially assessed as Eastern Oregon forestland until Defendant issued a notice of disqualification on July 30, 2005.

The disqualification followed an inspection of the property triggered by Plaintiff's 2004 application for small tract forestland special assessment. The disqualification took effect for the 2005-06 tax year. According to the 2005-06 tax statements, Plaintiff's land values increased from $1,050 to $52,000 for the 20 acre parcel, from $290 to $19,880 for the 5.6 acre parcel, and from $5,810 to $30,750 for the 5 acre parcel. (Ptf's Exs 10, 11,12.) The increase in value triggered an increase in Plaintiff's assessed values and resulting property taxes.

The parties agree there are trees on portions of the subject property. The trees are a mixture of ponderosa pine and juniper. The parties' focus at trial was on the ponderosa pine trees, as juniper is not recognized as a marketable species. Some of the trees[1] have been there for a considerable number of years and, from the pictures, appear to be 30 or more feet tall. There are also smaller trees on the property planted within the last 10 years, as well as trees planted in the mid-1980s by the person who manages the seedling tree farm located across the street from Plaintiff's property. Finally, there are naturally sown seedlings throughout the property, ranging in size from between several inches to several feet tall. Many of the trees planted over the years, both naturally and by man have died.

The parties disagree as to the amount of tree stocking. According to Isabell's testimony, there is adequate stocking to qualify for forestland special assessment on all but perhaps four acres of the property. Defendant disagrees, arguing that there is only sufficient stocking on 6.15 acres. Defendant insists there is insufficient stocking on the remainder of the property and that the soil is not of a type that will support an adequate stocking of commercial trees on that land.

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[1] For the remainder of the court's Decision, reference to "trees" is to ponderosa pine trees.

II. ANALYSIS

The issue in this case is whether the subject property qualifies as "forestland" under ORS 321.805(4).[2] That statute provides:

> " 'Forestland' means land in eastern Oregon that is being held or used for the predominant purpose of growing and harvesting trees of a marketable species and that has been designated as forestland under ORS 321.805 to 321.855 or land in eastern Oregon, the highest and best use of which is the growing and harvesting of such trees."

ORS 321.805(4).

In order to qualify for special assessment under ORS 321.805 though ORS 321.855, "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." OAR 150-321.805(1).[3] Additionally, "the established trees must be of a marketable species acceptable to the State Forester as established in OAR 629-610-0050." *Id*. In other words, the landowner must have the required minimum number of trees, the trees must be "established," and they must be the right kind of trees (marketable species acceptable to the forester).

The stocking requirements in OAR 629-610-0020 vary depending on the soil classification. The classifications in the rule are referred to as Cubic Foot Site Class I through VI. Maloney testified that Plaintiff's property does not have forestland soil and that there is no soil site classification for her property. Isabell asserts that Plaintiff's property is soil class VI, which, according to the rule, has the least restrictive stocking requirements. Maloney disagrees with Isabell's soil class VI assertion, but responds that if Plaintiff's property were a Site Class VI, the majority of Plaintiff's property does not have a sufficient stocking of

[2] All references to the Oregon Revised Statutes are to 2003.

[3] All references to the Oregon Administrative Rules (OAR) are to 2003.

established marketable trees to satisfy the minimum stocking requirements.[4] Plaintiff, of course, disagrees.

The parties disagree about the number of trees on the property and whether the smaller seedlings will survive. Seedlings that will not survive are not "established," and are therefore not included in the count of marketable species. *See* OAR 150-321.805(1). According to Isabell, there are only two small areas, totaling perhaps three and one-half to four acres, that are devoid of any trees, and those areas are covered by rock outcrops preventing adequate stocking of marketable trees. Plaintiff asserts that rock-covered areas qualify as forestland under ORS 321.805(4), which provides that "isolated openings" due to "rock outcrops" that prevent adequate stocking of marketable species are "deemed forestland" if found to be "necessary to hold the surrounding forestland in forest use."

Plaintiff is correct about the law, but the question in this case is a factual one. Defendant insists only three areas comprising approximately 6.15 acres are stocked adequately enough to

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[4] According to OAR 629-610-0020:

"(6) For Cubic Foot Site Class VI forestlands * * * the minimum tree stocking standards are:
"(a) 100 or more free to grow seedlings per acre; or
"(b) 60 free to grow saplings and poles per acre; or
"(c) 40 square feet of basal area per acre free to grow trees 11-inches DBH and larger; or
"(d) An equivalent combination of seedlings, a saplings and poles, and larger trees as calculated in section (7) of this rule.

"(7) In both even-aged and uneven-aged stands, the stocking of residual seedlings, saplings and poles, and larger trees shall be weighted to determine stand stocking and potential reforestation requirements. For this purpose, seedlings, saplings and poles, and trees 11-inches DBH and larger are proportionately equivalent in the following ratios: 100 free to grow seedlings are equivalent to 60 free to grow saplings and poles, which are equivalent to 40 square feet of basal area of free to grow trees 11-inches DBH and larger."

allow for special assessment.[5] According to Maloney's testimony, there are only between 50 and 100 larger ponderosa pine trees qualifying as a marketable species on the rest of the roughly 24 acres. Isabell testified that another seven acres were planted with approximately 1,500 ponderosa pines two years ago and that there was an 80 percent success rate (*i.e.*, approximately 1,200 trees survived). According to Isabell, that seven-acre area also qualifies for forestland special assessment. Again, Maloney disagrees. According to Maloney's testimony, Plaintiff has planted many trees in the last 10 years, but most of those trees have not lived. Maloney further testified that most of the living trees were planted within the last two years or so, and, because of the poor soil condition on Plaintiff's property, most of those will not survive.

The court has carefully reviewed the testimony and documentary evidence submitted by the parties. Key among the exhibits are the photographs of the property submitted by Plaintiff. Some of the photographs appear to be duplicates. A more fundamental problem with the evidence is that it simply is not possible to tell from the collection of photographs submitted into evidence how much of Plaintiff's 29.6 acres of land is adequately stocked with established marketable trees. The aerial photograph does not aid the court's assessment. As indicated above, the testimony on that issue is conflicting. Maloney, the State Forester's representative, does not believe that there is adequate stocking on more than 6.15 acres. Plaintiff is required by statute to prove her case by a preponderance of the evidence. *See* ORS 305.427. Plaintiff has not done so.

Much of the debate concerns whether the smaller seedlings should be included in the stocking determination. This is where Defendant's testimony and documentary evidence on the poor quality of the soil becomes relevant, because the stocking requirements in the applicable

[5] The three areas are identified in Defendant's exhibits J-1 and J-2.

administrative rule refer to "free to grow" trees (whether seedlings, saplings, or poles, etc.) and that term means the trees have "a high probability of remaining or becoming vigorous, healthy, and dominant over undesired competing vegetation." OAR 629-600-0100(27).[6] The viability of the trees is dependent upon the condition of the soil, as well as temperature and precipitation. The fact that there appear to be few, if any, trees greater than one or two feet, but less than 25 or 30 feet tall, tends to support Defendant's assertion that most of the trees Plaintiff has planted have died because of the poor soil.

The court rejects Plaintiff's argument that soil type cannot be a reason for denying special assessment. In support of that argument, Plaintiff refers to an excerpt from a letter written by Brad Toman (Toman), an Oregon Department of Revenue Timber Unit employee.[7] (*See* Ptf's Ex 24; *see also* Def's Ex I.) Plaintiff misreads Toman's letter. In his letter, Toman states that "soil type *by itself* cannot be a criteria for denying an application or disqualifying a forestland special assessment program." (*Id.*) (Emphasis added.) That sentence merely means that soil type cannot be the sole reason for denying an application or disqualifying a property. Toman goes on to state that "the land must have growing on it at least the minimum stocking of acceptable marketable species in a free-to-grow state." (*Id.*) In addition, Toman states that "[t]he quality of the soil has a primary influence on the ability of the land to support the minimum

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[6] OAR 629-600-0100 provides:

> "(27) 'Free to grow' means the State Forester's determination that a tree or a stand of well distributed trees, of acceptable species and good form, has a high probability of remaining or becoming vigorous, healthy, and dominant over undesired competing vegetation. For the purpose of this definition, trees are considered well distributed if 80 percent or more of the portion of the operation area subject to the reforestation requirements of the rules contains at least the minimum per acre tree stocking required by the rules for the site and not more than ten percent contains less than one-half of the minimum per acre tree stocking required by the rules for the site."

[7] Toman's letter was written to Plaintiff on August 3, 2006, nearly one year after the appeal was filed and slightly more than one month before the trial. Plaintiff appears to have ignored or intentionally misinterpreted that letter.

stocking of trees. It is appropriate to discuss soil quality with you as the landowner to help you understand why the land is not supporting stocking requirements of the special assessment." (*Id*.)

III. CONCLUSION

After a careful review of the evidence and applicable law, the court concludes that Plaintiff has not met her burden of proof in attempting to establish that Defendant erred in disqualifying her property from forestland special assessment for the 2005-06 tax year. Now, therefore,

IT IS THE DECISION OF THIS COURT that Plaintiff's request that the court overturn Defendant's disqualification and return the property to forestland special assessment for the 2005-06 tax year is denied.

Dated this _____ day of October 2006.

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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 on October 23, 2006. The Court filed and entered this document on October 23, 2006.