

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Property Tax

JENSEN FAMILY JOINT REVOCABLE TRUST,)	
)	
Plaintiff,)	TC-MD 050902E
)	
v.)	
)	
MARION COUNTY ASSESSOR,)	
)	
Defendant.)	DECISION

Plaintiff appeals Defendant’s disqualification of property from farm use special assessment for tax year 2005-06. A telephone trial was held in the matter. Terrence Kuenzi (Kuenzi), Certified Public Accountant, and Paul Jensen (Jensen), trustee, appeared and testified on behalf of Plaintiff. Glen White, appraiser, appeared and testified on behalf of Defendant.

I. STATEMENT OF FACTS

JB Instant Lawn, Inc. (JB) leases the subject 7.3 acres from Plaintiff.¹ The 7.3 acres is part of a larger 80-acre parcel that is farmed by JB. JB farms over 2,500 acres in the mid-Willamette Valley with the 80-acre parcel functioning as the main farm operation and center for sales of nursery stock in Oregon, Idaho, Nevada, and Utah. JB supplies landscapers, builders, and retail stores with ryegrass sod, hydroseeding services, and nursery stock. The large amount of nursery stock on the property prompted JB to build a reclamation pond for irrigation purposes, and the company surrounded the pond with a 50-foot buffer zone. After completion of the pond, JB determined that the area around the pond would be an ideal area to showcase its nursery stock and grass. As a result, JB landscaped the buffer zone and established a three-hole golf course

¹ The property is identified in Defendant’s records as Account R21920.

using a variety of JB's seeds. JB uses the golf course as a marketing tool, calling it a "showroom" and bringing current and potential customers to visit it. The golf course also elicited some interest by parties desiring a similar golf course, and JB hopes to introduce the three-hole course as a product line at some point in the future.

The golf course is also used by JB to test various chemicals for the control of annual bluegrass, an unwanted grass that invades JB's fields. Currently, workers must remove the grass by hand at a high cost. The purpose of the tests conducted by JB is to find a less costly way to eliminate annual bluegrass while still delivering a high-quality product.

The golf course is used occasionally for employee picnics and employee breaks. In addition, JB hosts an annual picnic for the Oregon Association of Nurserymen and has hosted tour buses of individuals from the Department of Agriculture and other government agencies.

Defendant determined that the landscaped "showroom" does not qualify for farm use special assessment and disqualified 8.0 acres accordingly. At trial, Kuenzi testified that the pond is .8 acres and only 7.3 acres is landscaped. Defendant agrees the pond qualifies for special assessment and accepts that only 7.3 acres should be disqualified.

II. ANALYSIS

Recognizing that "agriculture and related land uses contribute significantly to Oregon's character and economy[,]" the legislature has declared: "[i]t is the declared intent * * * that bona fide farm properties be assessed for ad valorem property tax purposes at a value that is exclusive of values attributable to urban influences or speculative purposes." ORS 308A.050.² In support of that policy, "[a]ny land that is within an exclusive farm use zone and that is used exclusively

² All references to the Oregon Revised Statutes (ORS) are to 2005.

for farm use shall qualify for farm use special assessment under ORS 308A.050 to 308A.128

* * *.” ORS 308A.062(1).

Farm use is defined in ORS 308A.056 as “the current employment of land for the primary purpose of obtaining a profit in money” by using the property for one of several qualifying farm uses.³ The parties agree that the current employment of the property has a profit motive. The parties disagree, however, as to whether that current employment is a qualifying farm use under ORS 308A.056. It is “clear that the legislature viewed bona fide farms as those farms that produced products or crops sold in the open market.” *Everhart v. Dept. of Rev.*, 15 OTR 76, 80 (1999). The court must look to the “primary purpose” of the property’s use. *Id.* at 81. The court understands there may be “other subordinate uses” of the property. *Id.* However, the court must determine what the property is used for on a day-to-day basis and decide whether that use is one of the uses set out in ORS 308A.056(1).

Jensen testified that the property essentially has three uses, one of which is golfing and recreation on an occasional basis. That occasional use is neither a qualifying use nor a daily one.

³ Qualifying farm uses are:

“(a) Raising, harvesting and selling crops;

“(b) Feeding, breeding, managing or selling livestock, poultry, fur-bearing animals or honeybees or the produce thereof;

“(c) Dairying and selling dairy products;

“(d) Stabling or training equines, including but not limited to providing riding lessons, training clinics and schooling shows;

“(e) Propagating, cultivating, maintaining or harvesting aquatic species and bird and animal species to the extent allowed by the rules adopted by the State Fish and Wildlife Commission;

“(f) On-site constructing and maintaining equipment and facilities used for the activities described in this subsection;

“(g) Preparing, storing or disposing of, by marketing or otherwise, the products or by-products raised for human or animal use on land described in this section; or

“(h) Using land described in this section for any other agricultural or horticultural use or animal husbandry or any combination thereof.”

ORS 308A.056(1).

The property is also used for testing various chemicals for the control of annual bluegrass. The court finds that the testing, though likely a qualifying use under ORS 308A.056, is not part of the day-to-day activities taking place on the property. The testing is not well-documented and does not appear to be part of an overall, comprehensive testing plan. (*See* Ptf's Ex E at 2.) Even more convincing is the fact that the property need not be a landscaped golf course to conduct chemical testing on a day-to-day basis. The testing is, at best, a subordinate use.

The final way in which the property is used is to showcase JB's products for customers. At trial, Jensen testified that the reason the property was turned into a golf course was to showcase and market JB's products. Jensen testified that JB has to make its own market and find its own customers and that the golf course is a marketing tool. Based on the exhibits and testimony provided by Plaintiff, the court concludes that the primary use of the property is as a showroom for nursery stock and grass seed. The court will now examine whether that use is a qualifying use under ORS 308A.056(1).

Plaintiff initially argued that using the property as a showroom was a qualifying use under subsection (g) of ORS 308A.056. That subsection states "[p]reparing, storing or disposing of, by marketing or otherwise, the products or by-products raised for human or animal use on land described in this section" is a qualifying use for property. ORS 308A.056(1)(g). Plaintiff argues that, because the property is used for marketing, it qualifies under the statute. It is clear from reading the statute, however, that marketing qualifies for a farm use, but only if tied to the disposal of products raised on the property. Using the property to showcase and market products, without disposing of the products themselves, is not a qualifying farm use.

Plaintiff also argues that the property qualifies for special assessment under subsection (h) of ORS 308A.056(1). That provision allows special assessment when "land

described in this section [is used] for any other agricultural or horticultural use or animal husbandry or any combination thereof.” ORS 308A.056(1)(h). That provision is a basic catchall to allow farm uses, not specifically described, to qualify for farm use. The court is of the opinion that the subject use does not fit within that provision. The primary purpose of the parcel is to showcase Plaintiff’s stock. It is a marketing tool and relates more to the commercial end of the business, rather than the farming end of the business. The court finds, therefore, that the parcel does not qualify for farm use special assessment.

III. CONCLUSION

The day-to-day use of property must be a qualifying farm use for property to be eligible for special farm use assessment. The property at issue is used primarily to showcase Plaintiff’s products. The court finds Plaintiff’s use is not a qualifying farm use. Now, therefore,

IT IS THE DECISION OF THIS COURT that Defendant’s disqualification of the subject property from special farm use assessment is upheld; and

IT IS FURTHER DECIDED that Defendant shall reduce the acres disqualified from 8.0 acres to 7.3 acres.

Dated this _____ day of January 2007.

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 January 4, 2007. The Court filed and entered this document on January 4, 2007.