

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Property Tax

ASGHAR R. SADRI	)	
and RAMER B. HOLTAN, JR.,	)	
	)	
Plaintiffs,	)	TC-MD 050905D
	)	
v.	)	
	)	
WASHINGTON COUNTY ASSESSOR,	)	
	)	
Defendant.	)	<b>DECISION</b>

Plaintiffs, Asghar R. Sadri (Sadri) and Ramer B. Holtan (Holtan), appeal Defendant’s notice of disqualification, dated July 20, 2005, which disqualified 7.88 acres of Plaintiffs’ land<sup>1</sup> from farm use special assessment. The matter is before the court on cross-motions for summary judgment, and the parties have presented the court with stipulated facts. Oral argument was held by telephone on June 28, 2006. Holtan appeared on behalf of Plaintiffs. Mark C. Hertel, Appraiser, appeared on behalf of Defendant.

I. STATEMENT OF FACTS

Sadri acquired the land in August 1994, and Holtan purchased a 50 percent interest in May 1999. (Stipulation and Order Re Stipulated Facts and Schedule for Cross-Motions for Summary Judgment at 1 [Stip Facts].) Plaintiffs’ land is zoned for exclusive farm use (EFU). (Def’s Br at 2.) From August 1994 to summer 2001, Plaintiffs’ land was “being mowed, and presumably hayed, in exchange for good and valuable consideration.” (Stip Facts at 1.)

In 2002, Plaintiffs and Washington Natural Gas (WNG) negotiated “permanent and temporary easements over the property in connection with the South Mist Pipeline Extension

---

<sup>1</sup> Plaintiffs’ land is identified in Defendant’s records as Account R398616.

Project.” (Stip Facts at 2.) “Farming at the property was precluded during the summers of 2002 and 2003 due to WNG activities at or concerning the property.” (Stip Facts at 2.) “WNG construction activities continued into Spring 2004, and farming was again precluded.” (Stip Facts at 2.)

In August 2004, Washington County was given permission to conduct testing on Plaintiffs’ land to assess its suitability for the Phillip Harris Bridge project. (Stip Facts at 2.) Subsequently, Washington County “negotiated for and acquired a temporary work easement over the property for which it issued payment on April 14, 2005.” (Stip Facts at 2.) As a result of “easement and attendant work on the bridge project,” farming of Plaintiffs’ land was precluded for the summer of 2005. (Stip Facts at 2.) Plaintiffs state that a farmer, referred to only as “Fred” in the Stipulated Facts, intends to begin farming Plaintiffs’ land when the bridge work is complete. (Stip Facts at 2.)

On July 20, 2005, Defendant disqualified Plaintiffs’ land from EFU special assessment after discovering that it was not being used for a qualifying farm use. (Ptf’s Mot for Summ J at 1.) This appeal ensued. Plaintiffs request that the court reinstate the specially assessed status of their land. (Ptf’s Mot for Summ J at 1.) Defendant requests that the court uphold Defendant’s disqualification and sustain the tax roll values. (Def’s Br at 2.)

## II. ANALYSIS

### A. *Qualification for farm use special assessment*

The stated legislative intent for special assessment of bona fide farm properties is to encourage owners of such properties, which “contribute significantly to Oregon’s character and economy,” to engage in qualifying farming activities. ORS 308A.050.<sup>2</sup> The legislature found

---

<sup>2</sup> All references to the Oregon Revised Statutes (ORS) are to 2003.

“that providing the means for agriculture to continue and prosper is in the interest of all citizens of this state, who benefit directly or indirectly from agricultural production and stewardship of farmlands and ranchlands.” *Id.*

Under ORS 308A.062, “[a]ny land that is within an exclusive farm use zone and that is used exclusively for farm use shall qualify for farm use special assessment under ORS 308A.050 to 308A.128, unless disqualified under other provisions of law.” The first element of ORS 308A.062 is satisfied because there is no dispute that Plaintiffs’ land is zoned for EFU. (Def’s Br at 2.) The only remaining question, therefore, is if Plaintiffs satisfied the second element, whether the land was used exclusively for farm use.

The definition of “farm use” is “the current employment of land for the primary purpose of obtaining a profit in money” by engaging in farming activities of the kinds listed in ORS 308A.056(1)(a) to (h).<sup>3</sup> *See also Everhart v. Dept. of Rev.*, 15 OTR 76, 79-80 (1999) (discussing the definition of farm use). “The use of the word ‘current’ refers to the present use of the land and suggests that the past or future use is largely irrelevant. The word ‘employment’ suggests an active, purposeful, directed use of the land.” *Everhart*, 15 OTR at 79.

---

<sup>3</sup> ORS 308A.056(1), provides, in pertinent part:

“(1) As used in ORS 308A.050 to 308A.128, ‘farm use’ means the current employment of land for the primary purpose of obtaining a profit in money by:

“(a) Raising, harvesting and selling crops;

“\* \* \* \* \*

“(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.”

From August 1994 through summer 2001, Plaintiffs' land was "being mowed, and presumably hayed, in exchange for good and valuable consideration." (Stip Facts at 1.) Plaintiffs also contend that a farmer intends to begin farming their land when Washington County completes the bridge work. (See Stip Facts at 2.) Past and future usage of Plaintiffs' land, however, is "largely irrelevant" to the farm use analysis. *Everhart*, 15 OTR at 79.

The statute focuses on the current use of the land. See ORS 308A.056(1). In addition, the land must be used for qualifying farming activities. See ORS 308A.056(1)(a)-(h). That Plaintiffs were not currently engaged in farming for the tax year in question is not disputed. (See Stip Facts at 2.) Granting an easement for constructing a bridge is not one of the qualifying farm use activities found in ORS 308A.056(1)(a) to (h). Plaintiffs' land, therefore, was not used exclusively for farm use.

When land within an exclusive farm use zone is not used for a qualifying farm use activity, it "shall be disqualified from special assessment under ORS 308A.062 by: (a) [r]emoval of the special assessment by the assessor \* \* \*." ORS 308A.113(1)(a). Defendant, therefore, properly disqualified Plaintiffs' land from farm use special assessment under ORS 308A.062 because Plaintiffs did not currently employ their land for a qualifying farm activity.

B. *Plaintiffs' Allegation of Impossibility*

Plaintiffs allege that Washington County's "easement and attendant work on the bridge project" precluded their ability to meet the statutory requirements for farm use special assessment and that Defendant is attempting to unfairly collect taxes "based upon the ensuing noncompliance." (Ptf's Mot for Summ J at 2.) Plaintiffs request that the court conclude that

///

///

///

their land qualifies for special assessment because their performance was made “impossible by work being performed by Washington County.”<sup>4</sup> (Ptf’s Mot for Summ J at 1.)

In addressing Plaintiffs’ request, the court must look to the applicable statute, ORS 308A.056. When analyzing a statute, the court’s first step is to analyze its text and context. *See generally PGE v. Bureau of Labor and Industries*, 317 Or 606, 610-11, 859 P2d 1143 (1993). It is the role of the court to “ascertain and declare what is, in terms of substance, contained” in the statute. ORS 174.010. The court cannot add “what has been omitted” or “omit what has been inserted.” *Id.* ORS 308A.056 specifically lists qualifying farm use activities and exceptions. *See* ORS 308A.056(1), (3). There are no applicable exceptions.<sup>5</sup> Nowhere in the text of the statute does it state that land may qualify for farm use special assessment when the land owners choose to not employ their land for farm use activities so that they can fulfill the

///

---

<sup>4</sup> The court notes that another forum might be more appropriate for Plaintiffs’ request.

<sup>5</sup> ORS 308A.056(3), provides, in pertinent part:

“(3) For purposes of this section, land is currently employed for farm use if the land is:

“\* \* \* \* \*

“(b) Land lying fallow for one year as a normal and regular requirement of good agricultural husbandry;

“\* \* \* \* \*

“(e) Wasteland, in an exclusive farm use zone, dry or covered with water, neither economically tillable nor grazeable, lying in or adjacent to and in common ownership with farm use land and that is not currently being used for any economic farm use;

“\* \* \* \* \*

“(i) Land lying idle for no more than one year when the absence of farming activity is the result of the illness of the farmer or a member of the farmer’s immediate family, including injury or infirmity, regardless of whether the illness results in death;

“\* \* \* \* \*.”

terms of a negotiated agreement. To allow a non-farm use to qualify would be to include an exception to the statute that is not present in the text.

The court is unaware of any statute, decision, or any other authority allowing it to grant Plaintiffs' request. The legislature has already prescribed that, when the usage of a property does not meet the standard set forth in ORS 308A.062, it shall be removed from farm use special assessment. *See* ORS 308A.113(1)(a). Therefore, the court cannot grant Plaintiffs' request.

### III. CONCLUSION

The court concludes that Defendant properly disqualified Plaintiffs' land from farm use special assessment because the requirements of ORS 308A.062 have not been met. In addition, the court cannot grant the Plaintiffs' request for a statutory exception based on an allegation of impossibility. Now, therefore,

IT IS THE DECISION OF THIS COURT that the Defendant's cross-motion for summary judgment is granted; and

IT IS FURTHER DECIDED that Plaintiffs' Motion for Summary Judgment and Memorandum in Support is denied.

Dated this \_\_\_\_ day of August 2006.

---

JILL A. TANNER  
PRESIDING 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 Presiding Magistrate Jill A. Tanner on August 2, 2006 . The Court filed and entered this document on August 2, 2006.***