

IN THE OREGON TAX COURT  
MAGISTRATE DIVISION  
Property Tax

GARY H. SAFLEY and JUDITH A. SAFLEY,	)	
	)	
Plaintiffs,	)	TC-MD 050910B (Control)
	)	060669B
v.	)	
	)	
JACKSON COUNTY ASSESSOR,	)	
	)	
Defendant.	)	

**DECISION**

Plaintiffs appeal concerning certain farm use assessment matters for the 2005-06 and 2006-07 tax years for Account 1-001482-8.

A trial was convened in this matter on August 8, 2006. Charles M. McNair, Attorney, represented Plaintiffs. Gary H. Safley (Gary) and Judith A. Safley (Judith) testified as witnesses.<sup>1</sup> John Cacka and David Arrasmith appeared for Defendant. Subsequently, written materials were filed. The record closed January 5, 2007.

I. INTRODUCTION

The subject property is a very small part of a bigger parcel of rural land located in Jackson County. That larger lot totals 321 acres and, in prior years,<sup>2</sup> has benefitted from the special assessment for lands lying within an exclusive farm use (EFU) zone as provided by ORS 308A.062.<sup>3</sup>

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<sup>1</sup> When referring to a party in a written Decision, it is customary for the court to use the last name. However, in this case, the court's Decision references testimony from two individuals with the same last name, Safley. To avoid confusion, the court will use the first name of the Safley being referenced.

<sup>2</sup> The parties agree that the special assessment was granted prior to 1975. (Def's Exchange Evidence and Pretrial Memo at 1.)

<sup>3</sup> All references to the Oregon Revised Statutes (ORS) are to 2003.

After an investigation and earlier ineffective attempts,<sup>4</sup> Defendant disqualified 1.34 acres of land from the special assessment for the 2005-06 tax year. Upon disqualification, the 1.34 acres were revalued and a revised assessment was calculated based on the appropriate change property ratio. Values were assigned to this small portion as follows:

<u>Real Market Value (RMV)</u>	<u>Assessed Value (AV)</u>
\$820,000	\$473,649

For the prior 2004-05 tax year, the AV for the parcel was \$35,215. Notice of the disqualification was provided on July 22, 2005. The assessment roll was changed on June 30, 2005. This appeal followed.

## II. ISSUES PRESENTED

The parties agree that three key issues are presented in this appeal:

- (A). Is the disqualification from farm use assessment appropriate;
- (B). If the disqualification is proper, is any increase in assessed value limited to not more than 3 percent of the prior year's MAV; and
- (C). If there is no limitation on value increases, what is the correct RMV for the disqualified acreage?

The trial was limited to the first two issues. Only the first issue needs to be resolved in this Decision. It was agreed that further proceedings would be scheduled, if necessary, to determine the land's correct RMV as of January 1, 2005.<sup>5</sup>

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<sup>4</sup> See TC-MD No 040185E (Control) (Aug 16, 2004) and TC-MD No 030555E (Jan 28, 2004).

<sup>5</sup> See Orders filed February 28, 2006, and May 19, 2006.

### III. STATEMENT OF FACTS

The basic facts are largely undisputed and are fairly summarized in Plaintiffs' Pretrial Memorandum.<sup>6</sup> The remaining critical elements were established through sworn testimony at trial.

The entire parcel is located on the east valley rim of the Rogue River Valley, in an EFU zone. The apex of this parcel is locally known as Mt. Baldy and is about four acres in size. That peak is owned by private utility companies. Plaintiffs have owned the subject parcel since 1980 and have historically used it as dry pasture land. It usually supports pairs of cows and calves three months each year.

Plaintiffs have, since the early 1980s, maintained five small transmitter towers on top of and in conjunction with this rangeland. Those antennas are rented to third parties as bases for their transmitting equipment. Gary referred to that use as a broadcast tower site and stated that no cellular towers have ever been there.

Surrounding the perimeter of the peak are three very small buildings owned by Plaintiffs. Only one has been added since 1983, a cement block building. Defendant's appraisal cards show the buildings' dimensions as 8 x 8 feet, 8 x 12 feet, and 14 x 48 feet. The smaller structures have been abandoned and are not used for commercial purposes. The structures house communication translators and transmitters.

The buildings are connected to the nearby single-mast transmitting towers. The land surrounding one of those towers was encased in fencing on the assessment date. Judith testified the fencing was very small and there on only a temporary basis. The other tower bases were open without fencing. Grazing occurs in the immediate areas surrounding the towers.

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<sup>6</sup> Filed July 11, 2006.

Judith described the towers as “smallish metal poles.” They are much smaller than cellular phone towers. She stated they caused no interference with the cattle grazing at their bases. The most recent tower was added in 1990, occupying a small footprint. It was leased to Motorola in July of that year.

Several other companies have leased transmitter space from Plaintiffs. The earliest lease was in 1988; the latest cited at trial was with Sainte Partner II in February of 2005. The access road to Mt. Baldy is steep and crosses Plaintiffs’ property. While it is unprotected from the animals, minimal nutrition is proved through the gravel surface, and the cattle use it as a path while grazing.

#### IV. ANALYSIS

There has been no change in use or character of the subject property for nearly 20 years. On the whole, the larger parcel’s 321 acres is clearly devoted to accepted farming practices. The land disqualified by Defendant comprises only four-tenths of one percent of that total. The weight of the trial testimony reveals a much smaller area is actually involved. Upon review, the court finds that this de minimus use should not subject the land to disqualification from the special assessment.

The evidence shows that, at most, the land under the structures cannot be grazed by the animals. That is 832 square feet, or .019 acre. Even if the space of the single temporary wire fencing were included in the total, that falls short of the land over-estimated by Defendant as unavailable for farming uses.

While the roadway’s primary purpose may be to access the tower area, there is still some real incidental farm use to that portion. The animals use the roadway, as do the livestock owners in the managing and transportation of those animals.

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Land that is zoned EFU is required to meet fewer requirements than land zoned for other purposes. *Everhart v. Dept. of Rev.*, 15 OTR 76, 79-80 (1999). According to that case, in analyzing EFU property there are three basic elements:

- (1) the “land must be currently employed[;]”
- (2) the primary purpose of the employment must be the obtainment of a “profit in money;” and
- (3) the employment must be the type of activity that qualifies as “farming.”

An administrative rule promulgated by the Oregon Department of Revenue guides county assessors in examining “lands in farm use.” OAR 150-308A.059(2)(b),<sup>7</sup> in part, states “[t]he assessor should consider all pertinent facts in reaching a conclusion as to whether the use of a particular parcel of land qualifies as farm use land.” That rule continues to specifically include as critical factors “[p]resent and past use of the land” and “[r]atio of farm or agricultural use as against other uses of the land.”

The broadcast tower siting causes negligible interference with Plaintiffs’ unified, overall farming operations. While the small area may derive funds from other sources, it is still used as grazing areas for livestock. And that remains an accepted farming practice.

## V. CONCLUSION

The subject property is devoted to farming practices. As such, it is entitled to the continued special assessment as has been the case for the past many years. There is no need to address issues two and three since the subject property will be reinstated to special farm use assessment. Now, therefore,

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<sup>7</sup> Reference to the Oregon Administrative Rules (OAR) are to the January 2004 edition.

THE COURT FINDS that Defendant's disqualification action was not justified for the 2005-06 tax year and that the land shall be returned to the special assessment for farm land within an EFU zone.

Dated this \_\_\_\_\_ day of May 2007.

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JEFFREY S. 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 Jeffrey S. Mattson on May 10, 2007. The Court filed and entered this document on May 10, 2007.***