

IN THE MAGISTRATE DIVISION  
OF THE OREGON TAX COURT

Property Tax

|                       |   |                       |
|-----------------------|---|-----------------------|
| SCHAFFIELD GROVE LLC, | ) |                       |
|                       | ) |                       |
| Plaintiff,            | ) | No. 991187D (Control) |
|                       | ) | 000463D               |
| v.                    | ) |                       |
|                       | ) |                       |
| LANE COUNTY ASSESSOR, | ) |                       |
|                       | ) |                       |
| Defendant.            | ) | <b>DECISION</b>       |

Plaintiff appeals the disqualification of its property from farm use special assessment beginning tax year 1999-2000. A telephone trial was held on Thursday, June 22, 2000. Mr. David Carmichael, Attorney, appeared on behalf of plaintiff. Messrs. D. Michael Ryan and Jerry Knight testified on behalf of plaintiff. Defendant did not appear.

STATEMENT OF FACTS

Plaintiff's property identified by the Lane County Assessor's office as Account Nos. 1193141 and 0187938 is 36.13 acres of land located in a non-exclusive farm use (EFU) zone. The property is shaped in the form of an L. Ingress and egress to the property is permitted along a narrow easement. The easement agreement states that the roadway must be used for the limited purpose of permitting access to plaintiff's property for "customers, or potential customers for the agricultural products produced from the U-pick farm or otherwise as guests or invitees" of the property owner. (Ptf's Ex at 12.)

Since 1994 when plaintiff purchased the property, plaintiff has leased its property for various agricultural uses. The property has been used to raise commercial products, such as pumpkins, daffodils, nursery trees and other agricultural products. The

property was leased in a 10-acre parcel and a 20-acre parcel to two different lessees.

Plaintiff reported the following lease income by year:

| <u>Tax Year</u> | <u>Income</u> |
|-----------------|---------------|
| 1995            | \$3,426       |
| 1996            | \$3,435       |
| 1997            | \$3,930       |
| 1998            | \$3,950       |

A woodlot occupies approximately four acres of the property. There is a one-acre homesite. The McKenzie River crosses the southeastern corner of the property. There is an estimated 2.13 acres of land in the river.

Mr. Ryan testified that he and Mr. Knight are developers. They purchased the property with the intent to “develop the property within three (3) to five (5) years.” (Ptf’s Ex at 1.) In 1998, Mr. Ryan testified that the lease on the 20-acre parcel was terminated because he believed he could develop that portion of the property. Unfortunately, the city of Springfield was notified that the Oregon Department of Transportation would undertake a refinement plan process for the I-5/Beltline interchange which delayed the infrastructure improvements planned by the city. As of this date, Mr. Ryan testified it is unlikely they will be able to profitably develop the property. One estimate from a professional engineer states that it would cost plaintiff “approximately \$1,979,000 to make this property ready for development to medium density residential standards.” (Ptf’s Ex at 4.)

Mr. Ryan testified that the highest and best use of plaintiff’s property is farm use. He testified that the property has always been in farm use and the sole ingress and egress to the property is controlled by the limited terms of the easement which restricts use to farm/nursery related use only.

Mr. Ryan submitted comparable sales data for four properties ranging in

size from 30.13 acres to 80.0 acres. (Ptf's Ex at 44 - 47.) The sale price per acre varied from a low of \$2,177 for the 62 acre parcel to \$5,333 per acre for the 30.13 acre parcel. Mr. Ryan testified that at the high end of the comparable sale price per acre the real market value would be substantially less than defendant's estimate of real market value. He testified that he believes defendant has failed to consider the fact that the property cannot now be commercially developed. In support of his position, Mr. Ryan submitted a letter from Ms. Scarlet Lee, CCIM, Barnhart Associates, who listed a 1.81 acre parcel for sale which abuts plaintiff's property. (Ptf's Ex at 5.) Ms. Lee concluded that "given the impossibility of developing the property," the "property [is] useless" and "I have recommended to the owners that the property be removed from the market." *Id.*

Mr. Ryan stated that the Board of Property Tax Appeals (BOPTA) substantially reduced the assessor's determination of real market value. BOPTA determined the 1999-00 real market value of the land in Account No. 0187938 to be \$523,750 and Account No. 1193141 to be \$379,500. The price per acre computes to \$25,000 for each account. Mr. Ryan testified that based on the comparable sales data he submitted BOPTA's per acre value is incorrect. He testified that BOPTA overlooked the \$2.0 million of infrastructure costs required to develop the property and the access issue. Mr. Ryan concluded that the market value of the land should be no more than \$200,000.

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#### COURT'S ANALYSIS

Plaintiff alleges that its property should be exempt from property taxation because it is in farm use. Provisions for the qualification of land for farm use value are

found in ORS 215.203, 308.370<sup>1</sup> through 308.372. ORS 308.370(2) provides that any land “which is not within a farm use zone but which is being used, and has been used for the preceding two years, exclusively for farm use” shall be valued at true cash value for farm use. Further, ORS 308.372(1) & (a) provides that a “farm parcel that is not within an area zoned for exclusive farm use” must “in three out of the five full calendar years immediately preceding the assessment date \* \* \* produce[d] a gross income from farm uses in the amount provided in ORS 308.407(2).” Farm parcel is defined in ORS 308.407(2)(a) as “contiguous land under the same ownership whether assessed as one or more than one tax lot.”

The first question is whether plaintiff has met the “use” requirement. The land must be “used”, and have “been used for the preceding two years, exclusively for farm use.” ORS 308.370(2). “ORS 308.370 explicitly incorporates by reference the definition of ‘farm use’ provided in ORS 215.203(2)(a): “[F]arm use means the current employment of land for the primary purpose of obtaining a profit\* \* \*.” *Stilwell v. Dept of Rev*, 11 OTR 403, 404 (1990) (emphasis omitted). Plaintiff contends that its property has historically been in farm use and qualifies for farm use value. Plaintiff submitted copies of a lease agreement to support its testimony that the property has been in farm use for more than the preceding two years. (Ptf’s Ex 35 - 42.) Defendant did not offer any written testimony in its Answer to refute plaintiff’s assertion. Based on the evidence, plaintiff’s property has been used for the preceding two years exclusively for farm use in compliance with ORS 308.370(2).

Land which meets the statutory definition of current employment for farm use

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<sup>1</sup> References to the Oregon Revised Statutes are to the 1995 replacement part.  
DECISION

is not required to be included in the number of acres subject to the income requirement.

See ORS 308.407(2)(d); OAR 150-308.372(6)(d). In the instant case, plaintiff testified that the following acres can be excluded for purposes of determining the income requirement: four acres in a woodlot, one acre homesite, six acres in perennials and 2.13 acres in the river. After the exclusion of the acres devoted to the uses set forth above, plaintiff's property must produce a gross income of at least \$100 per acre to satisfy the gross income test. Plaintiff's property or farm parcel as defined above reported income in excess of \$3,000 per year or more than \$188 per acre in tax years 1995 and 1996 and \$219 in tax years 1997 and 1998. Defendant did not submit any information to refute plaintiff's income information. Plaintiff has met the income requirements for farmland in a non-exclusive farm use zone. ORS 308.407(4)(b).

Plaintiff has met both the farm use and income requirement. Plaintiff's property qualifies for farm use special assessment.

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#### CONCLUSION

IT IS THE DECISION OF THE COURT that these cases are hereby consolidated. The title of the case shall be as set forth above.

IT IS FURTHER DECIDED that plaintiff's property described in the Lane County Assessor's Records as Account Nos. 0187938 and 1193141 is non-EFU zoned land qualified for farm use special assessment.

Dated this \_\_\_\_\_ day of July, 2000.

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JILL A. TANNER  
MAGISTRATE

**IF YOU WANT TO APPEAL THIS DECISION, FILE A COMPLAINT IN THE REGULAR DIVISION OF THE OREGON TAX COURT, FOURTH FLOOR, 1241 STATE ST., SALEM, OR 97310. 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 JILL A. TANNER ON JULY 12, 2000. THE COURT FILED THIS DOCUMENT ON JULY 12, 2000.**