OHIO BOARD OF TAX APPEALS

Daniel W. & Debra A. Dircksen,	)	
	)	CASE NO. 2004-A-452
Appellants,	)	
	)	(REAL PROPERTY TAX CAUV)
vs.	)	
	)	
Greene County Board of Revision and Greene County Auditor,	)	DECISION AND ORDER
	)	Affirmed on Appeal June 28, 2006
Appellees.	)	Ohio Supreme Court

APPEARANCES: 109 Ohio St.3d 470, 2006-Ohio-2990

For the Appellants - Coolidge Wall Womsley & Lombard
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For the County Appellees - Rich, Crites & Dittmer LLC
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Entered March 11, 2005

Ms. Jackson, Ms. Margulies, and Mr. Eberhart concur.

This cause and matter came on to be considered by the Board of Tax Appeals upon a notice of appeal filed herein by the above-named appellants from a decision of the Greene County Board of Revision. Therein, said board determined that the subject property did not qualify for inclusion in the CAUV program for tax year 2003, pursuant to the provisions of R.C. 5713.30(A)(1) or (2).

The matter was submitted to the Board of Tax Appeals upon the notice of appeal, the statutory transcript certified to this board by the county board of

revision, the record of the hearing before this board, and the briefs submitted by counsel to the appellants and the county appellees.

The subject real property consists of three contiguous parcels of approximately 33 acres of land. It is located in the Sugarcreek Township taxing district, Greene County, Ohio, and appears on the auditor's records as parcel numbers L32-0002-0018-0-0032-00, L32-0002-0018-0-0015-00, and L32-0002-0018-0-0016-00. The parcels in question were previously part of the CAUV program. However, after the county found "that farming is not the prominent purpose for these parcels," the subject parcels were removed from the CAUV list. Specifically, with regard to all of the parcels, the board indicated that it believed that "only four to six acres is all that is being farmed on the acreage on all the above parcels." With regard to parcel L32-2-18-15, the board indicated that it "is a dwelling spot only, which would not qualify because it is a lot and not priced as acreage." S.T. at Ex. B.

In our consideration of the instant matter, we are mindful that current agricultural use valuation status is a method by which the legislature attempted to protect agricultural land from encroaching commercialization. 1984 Ohio Atty. Gen. Ops. No. 17. Section II, Article 2 of the Ohio Constitution requires that all property be taxed "according to value," except Section 36, Article II provides:

> "Laws may be passed to encourage forestry and agriculture ***. Notwithstanding the provisions of section 2 of article II, laws may be passed to provide that land devoted exclusively to agricultural use be valued for real property tax purposes at the current value such land has for such agricultural use."

Land used for commercial purposes generally has a greater sale value than land used for agricultural purposes. Manifestly, the legislature intended R.C. 5713.30, et. seq., to provide a tax savings to property owners using land for agricultural purposes. R.C. 5713.30(C).

Appellants contend that the auditor and the board of revision have improperly denied their application for the renewal of the subject in the CAUV program. They argue that the subject property is entitled to participate in the CAUV program since it satisfies the definition of land devoted exclusively to agricultural use, pursuant to R.C. 5713.30(A)(1), which provides, as follows:

> "(1) Tracts, lots, or parcels of land totaling not less than ten acres that, during the three calendar years prior to the year in which application is filed under section 5713.31 of the Revised Code, and through the last day of May of such year, were devoted exclusively to commercial animal or poultry husbandry, aquaculture, apiculture, the production for a commercial purpose of timber, field crops, tobacco, fruits, vegetables, nursery stock, ornamental trees, sod, or flowers, or the growth of timber for a noncommercial purpose, if the land on which the timber is grown is contiguous to or part of a parcel of land under common ownership that is otherwise devoted exclusively to agricultural use, or were devoted to and qualified for payments or other compensation under a land retirement or conservation program under an agreement with an agency of the federal government[.]"

Previously, this board discussed its interpretation of the phrase "land devoted exclusively to agricultural use" in *Chrisman v. Licking Cty. Bd. of Revision* (Sept. 19, 1986), BTA No. 1985-C-753, unreported. Therein, the board held "the word 'exclusively' to mean 'primarily.' Hence, where land is 'devoted primarily to agricultural use' and such use is consist [sic] with one or more of the enumerated

purposes set forth in R.C. 5713.30(A) it is clearly entitled to the CAUV classification." Id. at 13. Thus, the question before this board is whether the appellants' stated uses of the parcels in question constitute exclusive agricultural use pursuant to R.C. 5713.30 and *Chrisman*, supra.

At the hearing before this board, the owner of the subject, Daniel Dircksen, testified. Mr. Dircksen indicated that he had lived on the subject property since 1948, when his parents rented/owned it. He purchased the subject in the late 1970s and testified that the use to which the subject has been put has not changed since his parents owned it. He explained to the board that he and his family live in homes located on the two smaller parcels, which measure 3.31 acres (L32-0002-0018-0-0016-00) and 3.48 acres (L32-0002-0018-0-0015-00). He testified that the two smaller parcels are not being farmed nor is the timber thereon being harvested for anything other than personal use. He described that a 5-acre portion of the largest parcel, which measures 26.25 acres in total (L32-0002-0018-0-0032-00), was being farmed by a neighbor, who paid Mr. Dircksen about $300 per year for the right to do so. The remainder of the largest parcel consists of noncommercial timber.

Appellants contend that the subject property satisfies the portion of R.C. 5713.30(A)(1) which provides that "the growth of timber for a noncommercial purpose" can constitute "land devoted exclusively to agricultural use," "if the land on which the timber is grown is contiguous to or part of a parcel of land under common ownership that is otherwise devoted exclusively to agricultural use[.]" They argue that "a large portion of the Exhibit A parcel [L32-0002-0018-0-0032-00] is used for the

growth of timber[1] for a noncommercial purpose. The remaining portion is used exclusively to grow field-crops for a commercial purpose." Appellants' Brief at 7.

Based upon the foregoing statutory provision, we disagree with appellants' position. In order for noncommercial timber to qualify for CAUV status, it must be contiguous to or part of a piece of land that otherwise qualifies for CAUV on its own merit, by being "devoted exclusively to agricultural use." In the instant matter, only 5 acres of the total 26.25-acre parcel, or less than one-fourth of the acreage, is devoted to agricultural use, hardly an "exclusive" or "primary" use of the parcel. Arguably, the commercial farming that is done on the parcel is incidental to the overall use of the parcel as a buffer for or enhancement to the use and enjoyment of the adjacent parcels on which the family homes are located. See *Stults v. Delaware Cty. Bd. of Revision* (Aug. 20, 2004), BTA No. 2003-P-287, unreported. If this board were to adopt appellants' position, any dedication of a portion of a tract, lot, or parcel to commercial agricultural production, no matter how minimal, would satisfy the statutory requirements, if noncommercial timber is also located thereon.

We must also consider that all statutes associated with exemption or exception from taxation are to be strictly construed. *National Tube Co. v. Glander* (1952), 157 Ohio St. 407, paragraph two of the syllabus; *White Cross Hospital Assn. v. Bd. of Tax Appeals* (1974), 38 Ohio St.2d 199, 201. "Exemption is the exception to the rule and statutes granting exemptions are strictly construed." *Seven Hills Schools v.*

[1] The county appellees' contend that the trees located on appellants' property do not constitute "timber," as anticipated by the provisions of R.C. 5713.30(A)(1). We find that there is insufficient evidence in the record before us to make such a determination, and, based upon this board's ultimate conclusions herein, we need not make such a determination.

Kinney (1986), 28 Ohio St.3d 186. Therefore, we interpret the statutory language to permit a CAUV classification for a tract, lot, or parcel that is devoted exclusively to the commercial production of agricultural products, even when an incidental portion of that tract, lot, or parcel consists of noncommercial timber, e.g., a stand of trees utilized as a windbreak next to a farm field. Thus, the majority or primary portion of a parcel for which CAUV status is sought must be devoted to agricultural production. Herein, we find that the commercial production of agricultural products utilizes only a small portion of the subject parcel and is clearly incidental to the primary activity occurring on the parcel, i.e., growth of the noncommercial timber.

This board concludes that the evidence offered by appellants fails to establish that the use of the parcels in 2003 met the standards necessary to obtain CAUV status. Clearly, the two smaller parcels have not been used for commercial production of any crop or timber during the year in question.[2] While commercial farming has occurred on the larger parcel, it has only involved 5 acres out of the total 26.25 acres. The devotion of such minimal acreage to the commercial farming, which only generated approximately $300 per year[3] for the owners, does not demonstrate an "exclusive agricultural use" of the parcel.

Based upon appellants' failure to effectively demonstrate their use of the subject property primarily for the commercial production of agricultural products, this

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[2] Because there are residences situated on the two smaller parcels, arguably, it may have been the auditor's intent to employ standard appraisal practice to derive a separate value for a lesser-acreage homesite, apart from any value to be assessed on the remaining vacant land. See *Ferrone v. Medina Cty. Bd. of Revision* (Feb. 6, 2004), BTA Nos. 2002-A-2810, 2003-A-1070, unreported.

[3] Even if this board were to "split-list" the 5-acre portion of the parcel and consider it pursuant to the provisions of R.C. 5713.30(A)(2), which deals with tracts, lots or parcels of land totaling less than ten

board finds that the subject property does not meet the requirement of R.C. 5713.30[4] as being "devoted exclusively to agricultural use." Accordingly, the decision of the Greene County Board of Revision to remove the subject parcels from the CAUV list must be and hereby is affirmed.

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acres, appellants' 5 acres would not qualify for CAUV status because the income generated from such property does not meet the minimum annual income production requirement of $2,500.

[4] This board's determination in this matter, made pursuant to the provisions of R.C. Chapter 5713, should not be construed as a pronouncement regarding appellants' possible qualification for other state and federal forestry programs.