

OHIO BOARD OF TAX APPEALS

S. Lavery,)	CASE NO. 2004-K-578
)	
Appellant,)	(REAL PROPERTY TAX CAUV)
)	
vs.)	DECISION AND ORDER
)	
Summit County Board of Revision and)	
Summit County Auditor,)	
)	
Appellees.)	

APPEARANCES:

For the Appellant	- Susan Lavery, pro se 575 North Portage Path Akron, Ohio 44303
For the County Appellees	- Sherri L. Bevan Walsh Summit County Prosecuting Attorney Milton C. Rankin Assistant Prosecuting Attorney 53 University Avenue, 6 th Floor Akron, OH 44308-1680

Entered September 30, 2005

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

On July 12, 2004, appellant, S. Lavery, filed an appeal with this board challenging a decision of the Summit County Board of Revision (“BOR”). Through this appeal, appellant claims that the BOR erred in failing to reinstate “current agricultural use valuation” (“CAUV”) status to the subject property for tax year 2003.

Following the filing of the present appeal, the board accorded the parties an opportunity to present additional evidence in support of their respective positions. Although appellant, along with her husband, appeared at hearing, the latter providing testimony in support of appellant’s appeal, the county appellees elected to waive hearing. Accordingly, we now consider this matter based upon appellant’s notice of appeal, the transcript of the BOR’s

proceedings certified by the Summit County Auditor (“auditor”) pursuant to R.C. 5717.01, and the record of this board’s hearing.

The property in issue is identified in the auditor’s records as parcel number 15-02053. According to the property record card, the property is comprised of approximately thirty-two acres of land and is partially improved with a house and a frame utility shed.¹ For the tax year in issue, the total true and taxable values of the property for tax year 2003 as determined by both the auditor and BOR are \$307,780 and \$107,730, respectively.

As previously indicated, appellant does not challenge the values assigned the subject property. Instead, she seeks reversal of the BOR’s decision apparently declining to find that the property was entitled to CAUV status.² The authority for granting preferred taxable status to property used for agricultural purposes can be traced to the Ohio Constitution, with Section 36, Article 2, expressly providing that “*** 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.”

It appears, based upon materials³ included within the statutory transcript and Mr. Lavery’s testimony, that the subject property had been accorded CAUV status for several years

¹ The property record card segregates the land portion of the subject property as a house lot, comprised of one acre, and the balance of land, comprised of 30.7402 acres.

² In its decision letter, the BOR failed to address appellant’s claim regarding the property’s CAUV status, but, instead, simply indicated that the auditor’s market values would not be changed. Following its hearing, the members of the BOR indicated that insufficient evidence had been offered which would support a change in the property’s value and that CAUV status was not warranted “based upon Ohio Revised Code 5713.30, line 4.” S.T., Ex. 10, BOR hearing tape.

³ Included with the statutory transcript are several “CAUV Field Worksheets” for the periods of 1999 through 2003, all of which identify the property by parcel number and reference, where it was included, an acreage of 41.46. The tax year 1999 worksheet, which reflects a review date of May 18, 1999, appears to indicate that CAUV had been approved. It also included the notations “plowed only 6-10-99 soybeans” and “vac. land across from 4718 – approach on oil & gas road.” A 2000 tax year worksheet, indicating the property had been viewed on May 3, 2000, includes the following commentary: “wheat or oats” and “vac. land across from 4718 –

prior to the tax year in issue. Although such notice is not included within the transcript, appellant was apparently advised that the subject property had been denied CAUV status for tax year 2003. She was apparently also advised that she could file an appeal of that decision with the BOR. In her subsequently filed complaint, appellant indicated that “CAUV has been on the property for several years re primarily corn & soybeans – total property = 42 Ac. Last year (‘03’) 10.5 Ac[.] was sold off and due to weather problems (max. year for rain) no crop was planted and other previously treed areas were cleared and dirt moved.” S.T., Ex. 1.

During his testimony before the BOR, as well as before this board, Mr. Lavery reaffirmed that the property had been farmed and accorded CAUV status for several years prior to 2003. He also indicated that the property had originally been comprised of more than forty acres of land, approximately twenty-four of which were used for farming corn, soybeans, and wheat. According to Mr. Lavery, in 2003,⁴ approximately ten acres of the property, eight of which that had previously been farmed, were sold to an adjacent property owner who intended to develop that property for residential purposes and required a portion of appellant’s property to accomplish its developmental plans. Mr. Lavery testified before this board that as a condition of the sale, the purchaser agreed to clear additional acreage of trees on the portion of the subject which appellant retained in order to permit continued farming of a similar

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approach on oil & gas road.” It also appears to indicate that CAUV designation had been approved. A 2001 worksheet indicates the property was reviewed on three separate occasions, i.e., May 3, June 6, and July 16, 2001. Three “no activity” comments appear, along with the following: “Came in 7-27-01 *Bruce Hall – Farmer* will be planting winter wheat in September.” Although an approval line appears on the sheet, it is unmarked. The 2002 worksheet indicates the parcel was reviewed on July 1, 2002 and that CAUV was approved. In the comment section, the word “corn” appears. Finally, a 2003 worksheet, referencing a review of July 24, 2003, indicates “no activity,” and further provides: “Building houses. 10-10-03 No activity. 12-12-03 Dirt road north from Ridgewood Rd. 4 fire hydrants, stakes in ground for lots (Farrington) Rd.” S.T., Ex. 3.

⁴ The property record card indicates that the subject property is comprised of approximately 32 acres. In the sales information and notes section, reference is made to a sale by appellant in March 2003, and a split-off of 9.72 acres.

amount of land. This clearing process, as well as record rainfall during the summer of 2003, served as an impediment to Mr. Lavery's ability to plant crops during 2003.

Sometime after the conclusion of its hearing, a member of the BOR, with the agreement of the other members, indicated that insufficient evidence had been offered which would support a change in the property's value and that CAUV status was not warranted "based upon Ohio Revised Code 5713.30, line 4." S.T., Ex. 10, BOR hearing tape. Also included within the statutory transcript is a page of undated, unsigned, handwritten "executives notes," referenced in DTE Form 3 as a "[c]opy of board member's notation with ORC Code," which read as follows:

"ORC 5713.30 A 4 states 'and no action has occurred to such land that is either inconsistent with the return of it to agricultural production ...[']

"Action has occurred to it that is inconsistent with its' [sic] return to agricultural production. Info & pictures supplied by Jay Curry @ Summit County Appraisal Office indicate that sometime in 2003 fire hydrants were installed along with stakes in the ground indicating that the land is going to have buildings built on it." S.T., Ex. 5. (Emphasis sic.)

Included within the transcript are also several pictures and diagrams.

Ultimately, in its decision letter, the BOR failed to address appellant's claim regarding the property's CAUV status. Instead, it simply indicated that the auditor's market values would not be changed.

Since it appears the property had been accorded CAUV status for several prior years, and as suggested by the above-quoted notes, the elements of R.C. 5713.30(A)(4) seem to be implicated. In order to be entitled to continued CAUV status, land must be devoted exclusively to an agricultural use as provided for in R.C. 5713.30(A)(4):

“Tracts, lots, or parcels of land, or portions thereof that, during the previous three consecutive calendar years have been designated as land devoted exclusively to agricultural use, but such land has been lying idle or fallow for up to one year and no action has occurred to such land that is either inconsistent with the return of it to agricultural production or converts the land devoted exclusively to agricultural use as defined in this section. Such land shall remain designated as land devoted exclusively to agricultural use provided that beyond one year, but less than three years, the landowner proves good cause as determined by the board of revision.”

By virtue of the preceding statute, an owner is allowed to have agricultural land lay fallow for one year without jeopardizing its CAUV status provided “no action has occurred to such land that is either inconsistent with the return of it to agricultural production or converts the land devoted exclusively to agricultural use ***.”⁵ Although the BOR in this instance apparently found appellant had failed to meet his evidentiary burden, we find reasons to question such ruling.

Mr. Lavery testified that there was indeed development taking place on an adjacent piece of property, as well as on the portion which appellant had transferred earlier in

⁵ R.C. 5713.30 speaks to what constitutes “conversion”:

“‘Conversion of land devoted exclusively to agricultural use’ means any of the following:

“(1) The failure of the owner of land devoted exclusively to agricultural use during the next preceding calendar year to file a renewal application under section 5713.31 of the Revised Code without good cause as determined by the board of revision;

“(2) The failure of the new owner of such land to file an initial application under that section without good cause as determined by the board of revision;

“(3) The failure of such land or portion thereof to qualify as land devoted exclusively to agricultural use for the current calendar year as requested by an application filed under such section;

“(4) The failure of the owner of the land described in division (A)(4) of this section to act on such land in a manner that is consistent with the return of the land to agricultural production after three years.”

In this instance, the record is silent not only regarding the nature of the notice apparently provided to appellant advising her of the removal of the subject property from the CAUV program, but also what steps she took to

the tax year. He also testified that several areas of the subject property were in the process of being cleared by the purchaser of the ten-acre tract in order to provide appellant with additional tillable acreage. This clearing of trees and leveling process resulted in mounds of earth being displaced and appellant having limited access for a period of time to the remaining areas on which farming had previously taken place. When Mr. Lavery was able to gain access to the areas to be farmed, extremely poor weather conditions prevented him from planting crops during 2003. Nevertheless, Mr. Lavery testified that his plan was to farm the property the next year.

This board is vested with wide discretion in determining both the weight to be given evidence and the credibility of witnesses who appear before it. *Cardinal Federal S. & L. Assn. v. Bd. of Revision* (1975), 44 Ohio St.2d 13. See, also, *Witt Co. v. Hamilton Cty. Bd. of Revision* (1991), 61 Ohio St.3d 155; *Wynwood Apartments, Inc. v. Bd. of Revision* (1979), 59 Ohio St.2d 34; *Elsag-Bailey, Inc. v. Lake Cty. Bd. of Revision* (1996), 74 Ohio St.3d 647. In this instance, we find Mr. Lavery's testimony, which was uncontroverted, to be credible, reliable, and probative. While it appears the subject property did, in fact, lay fallow for 2003, it does not appear, based upon the record before us, that the subject property was put to a use inconsistent with it being farmed the subsequent year. While the photographs contained within the record do indeed show evidence of residential development, no one identified when or where these pictures were taken, or what areas were being depicted. As previously noted, the county appellees were accorded an opportunity to appear before this board and refute the evidence offered by appellant, yet they chose not to do so.

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ensure its continued treatment as such. As neither the county appellees nor appellant has raised such an issue, we decline to address it here other than in the context discussed within the body of our decision.

Accordingly, it is the decision of this board that the portion of the subject property, i.e., parcel number 15-02053, previously accorded CAUV status should be designated as such for tax year 2003. It is therefore the order of this board that the Summit County Auditor list and assess the subject property in accordance with our decision as announced herein.

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