

OHIO BOARD OF TAX APPEALS

Patricia and Michael Hickman,)
)
 Appellants,) CASE NO. 2004-T-674
)
 vs.) (REAL PROPERTY TAX CAUV)
)
 Licking County Board of Revision)
 and the Licking County Auditor,) DECISION AND ORDER
)
 Appellees.)

APPEARANCES:

For the Appellants - Patricia Hickman, pro se
Michael Hickman, pro se
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For the Appellees - Robert L. Becker
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Entered June 24, 2005

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

The Board of Tax Appeals considers this matter pursuant to a notice of appeal filed by Patricia and Michael Hickman. The Hickmans’ appeal from a decision of the Licking County Board of Revision, in which the BOR denied the subject property “Current Agricultural Use Valuation” (“CAUV”) status for tax year 2003. The Board of Tax Appeals now considers this matter upon the notice of appeal, the statutory transcript certified by the Licking County Auditor, and the record of this board’s evidentiary hearing.

The subject property is identified in the auditor's records as permanent parcel number 31-100764-00-001 and is located in Hope Township/Licking Valley Local Schools taxing district. The subject is approximately 41.29 acres in size. Approximately twenty acres are wooded, with the remainder being open field. The subject is also improved with a residential structure erected in 1994.

Beginning in 1987, the entire parcel qualified for CAUV status. Approximately twenty acres had been routinely farmed for hay production. As to the wooded acreage, the record is unclear. It either qualified under the CAUV program as land contiguous to land used for agricultural purposes or as land used for the commercial production of timber. For tax year 2003, the auditor removed the subject parcel from the CAUV list. The Hickmans filed a complaint with the BOR, seeking reinstatement into the CAUV program. However, after inspecting the property and considering the evidence before it, the BOR denied the Hickmans' reinstatement request. The BOR's minutes express the reasons for its denial as follows:

"The Licking County Board of Revision ['BOR'] conducted a hearing in this matter on May 6, 2004, at which time the Hickmans stated their belief that the land should be reinstated to CAUV for the 2003 tax year since hay is made from approximately 20 acres of this ground and the rest of it is woodland.

"The BOR indicated to the Hickmans that the members would go take a look at the property. On May 12, 2004, the BOR members *** did view the property and made the determination that old growth was present on the field, and no hay had been made from the hay acreage at least during 2003. [County Commissioner] Ashbrook is a lifetime farmer and his experience left him no doubt as to this point. Regardless of what might have been the usage of the hay ground prior to 2003, the BOR determined that the hay acreage does not

qualify for reinstatement to CAUV for the 2003 tax year. The BOR notes that according to the Auditor's records this makes about the fifth inspection in approximately three years, and there has never been any evidence during these inspections that hay is being made or has been made.

“As the Hickmans did not indicate any commercial management of the wooded acreage, it is the belief of the BOR that the wooded acreage fails to qualify independently for CAUV ***.” S.T.

Section 36, Article 2 of the Ohio Constitution, provides 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.” This is an exception to the requirement that all property in Ohio be taxed “according to value.” Section 2, Article 2 of the Ohio Constitution. R.C. 5713.30 provides the requirements a property must satisfy to qualify as land devoted exclusively to agricultural use:

“As used in sections 5713.31 to 5713.37 and 5715.01 of the Revised Code:

“(A) ‘Land devoted exclusively to agricultural use’ means:

“(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.”

To be qualified for CAUV status under R.C. 5713.30(A)(1), a parcel of property must be devoted exclusively to agricultural use for the three years preceding the year for which the status is sought. Land can be converted from its exclusive agricultural use, however. R.C. 5713.30 provides, inter alia, that conversion occurs where there is a “failure of such land or a portion thereof to qualify as land devoted exclusively to agricultural use for the current calendar year as requested by an application ***.” R.C. 5713.30(B)(3).

Upon review, we must concur that the BOR’s denial of CAUV status to the field portion of the subject is both reasonable and lawful. The BOR indicated in its minutes that no hay had been cultivated and harvested from this acreage during 2003 and that previous inspections had disclosed no agricultural production on this acreage. The evidence presented by the Hickmans corroborates this determination. Mrs. Hickman testified that a neighboring farmer had used the field area for the growing and harvesting of hay. However, no hay has been harvested in the last five to six years.

Nevertheless, the Hickmans argue that the nearly twenty acres of woodland qualify for CAUV status as land devoted to the commercial production of timber. The area contains trees of various varieties, including ash, cherry, fur, oak, sycamore, and walnut. The BOR denied CAUV status because the Hickmans failed to disclose any commercial management of the wooded acreage. However, before this board, the Hickmans testified that they (1) routinely mow through the area to keep briars under control, (2) clear out vines that may grow and choke trees, (3) apply solutions to prevent

the regrowth of vines and other undesirable vegetation, and (4) clear and burn any small trees, brush, and twigs that may hinder growth of the commercial timber. In addition, Mr. Hickman testified that he has been actively seeking advice from the state forester to put in place a formal management plan for the woodland.

The Hickmans admit that they have not sold any timber since owning the property. However, Mrs. Hickman testified that this is because a sufficient number of trees has not yet matured. She noted that logging is currently being done on an adjacent property and that the logger, at her request, had looked over her property but had not found anything ready for harvesting. Mrs. Hickman also indicated that, approximately two years ago, an Amish woodworker had inquired into harvesting some of the trees, but, upon inspection, the woodworker stated that the trees had not yet grown to a sufficient diameter.

The question of whether woodland qualifies for CAUV status has been traditionally problematic. The difficulty in determining whether the land in question is being used for the commercial production of timber stems from the fact that it may take decades for a timber crop to mature to a size and nature that can be commercially harvested. In *Chrisman v. Licking Cty. Bd. of Revision* (Sept. 19, 1986), BTA No. 1985-C-753, unreported, we observed:

“Timber is a long-term crop. Trees require up to 20 years or more of growth before they are harvestable as timber. *** A woodlot is a woodlot. Other than the landowner's representation that he intends to sell his trees as timber in the future, there is little objective evidence available upon which one could affirm or refute such representation. Conclusive proof as to the veracity of the landowner is available only when the timber is ready to be harvested for sale. If the

timber crop is not harvested and marketed within a reasonable time after it is harvestable, a rebuttable inference arises that the landowner misrepresented his intentions. However, valid business reasons may exist which could rebut such inference.” *Id.* at 27.

In *Chrisman*, we concluded that a two-part test should be employed to determine whether a commercial purpose exists with respect to woodland. We held that “the auditor should inquire into both the actual use of the property and the property owner’s intent to determine whether the land is used primarily for *** commercial production.” *Chrisman* did recognize that it is difficult to evaluate an owner’s intent with regard to a timber crop. However, we concluded that intent could be determined by evidence that the management techniques utilized by a property owner would facilitate commercial agricultural production. See, also, *Tamburo v. Franklin Cty. Bd. of Revision* (Mar. 26, 1999), BTA No. 1998-A-209, unreported, and *Chagrin River Hardwood Co. v. Geauga Cty. Bd. of Revision* (July 12, 1996), BTA No. 1995-R-1235, unreported. In the absence of evidence of commercial management, the property would not be entitled to CAUV status. *Chrisman*, *supra*; *Johnson v. Franklin Cty. Bd. of Revision* (Mar. 25, 1994), BTA No. 1992-B-993, unreported.

In subsequent decisions of this board, we continued to utilize the “actual use and intent” test in order to determine whether CAUV status was appropriate for woodland. See, e.g., *Elmore Co. v. Franklin Cty. Bd. of Revision* (Apr. 27, 2001), BTA No. 1999-T-611, unreported; *Augustine v. Geauga Cty. Bd. of Revision* (Feb. 8, 2001), BTA No. 1999-T-1761, unreported, at 10 (“*** the question of whether Mr. Augustine is utilizing his property in conformity with the requirements of R.C. 5713.30 is a matter of

use and intent.”); *Tamburo*, supra, at 10-11 (“Specifically, the Board held that ‘the auditor should inquire into both the actual use of the property and the property owner’s intent to determine whether the land is used primarily for the commercial production of timber.’”), quoting from *Chagrin River Hardwood Co.*, supra; *Jennings v. Noble Cty. Bd. of Revision* (June 10, 1994), BTA No. 1992-M-583, unreported, at 9 (“The Board then, by weighing both the landowners’ declarations of subjective intent as well as evidence of the objective manifestations of that intent, determined that the landowners therein had carried their burden of proving a right to a reduction in value.”); *Johnson*, supra, at 5 (“The Board determined the auditor should inquire into both the actual use of the property and the property owner’s intent to determine whether the land is used primarily for the commercial production of timber.”).

However, we have recently moved away from the “actual use and intent” standard first announced in *Chrisman*, supra. In *Stults v. Delaware Cty. Bd. of Revision* (Aug. 20, 2004), BTA No. 2003-P-287, unreported, we concluded that “[n]either the General Assembly nor any Ohio court of law has added an *intent* element as a precondition to receiving CAUV status. The sole factor mentioned is the *use* to which the property has been put. Indeed, the very name of this legislative program serves to center attention only upon ‘current use’ (i.e., *Current Agricultural Use Valuation*).” *Id.* at 10. (Emphasis in original.) We also noted that the length of time it takes for timber to mature into a harvestable crop makes it difficult to measure intent with any degree of accuracy, as we would need to be able to forecast intent decades into the future.

As a result, we concluded that our focus should be the actual use to which the property is being committed. *Id.* at 13. In terms of woodland, we also recognized that many activities foster the production of timber; nevertheless, activity that benefits growth does not necessarily mean that the land will qualify for CAUV status. Many may cultivate tree growth for personal reasons. Thus, it is also essential that one seeking CAUV status must establish that the subject property is “devoted exclusively to *** production for a commercial purpose,” as required by R.C. 5713.30(A)(1). *Stults*, *supra*, at 15.

In the instant matter, we find that the Hickmans have presented evidence to show that actual steps have been taken to grow timber for a commercial intent. They have removed dead wood and cleared undesirable vegetation; they have treated the area to prevent the regrowth of such vegetation; they are actively seeking to implement a formal management program under the direction of the state forester; and, they have inquired as to the readiness of the trees for harvesting, thus evidencing an ongoing desire to sell the crop.

We note, too, that the record contains no evidence from the county to rebut that presented by the Hickmans. No inspection report related to the woodland acreage has been presented, nor has the county presented any other evidence that would, at this time, suggest that the Hickmans have misrepresented their intentions to devote this portion of the property to the commercial production of timber. As such, we must conclude that the Hickmans have presented sufficient competent and probative evidence

to meet the test that their trees are maintained for “the production for a commercial purpose of timber.” R.C. 5713.30(A)(1).

Upon review of the foregoing, we find that the field portion of the subject property does not qualify under R.C. 5713.30(A)(1) as being “devoted exclusively to agricultural use.” We do, however, find that the woodland area does qualify for CAUV status for tax year 2003. Consequently, it is the decision and order of the Board of Tax Appeals that the decision of the Licking County Board of Revision must be, and the same hereby is, affirmed in part and reversed in part. It is ordered that this matter be remanded to the Licking County Board of Revision, with orders to reduce the fair market value of the woodland acreage of the subject property to its current agricultural use value for tax year 2003.

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