

IN THE SUPREME COURT OF OHIO

08-1104

ANDRE BUCKLES,

Appellant,

v.

THE BOARD OF REVISION OF  
FRANKLIN COUNTY, et al.,

Appellees.

On Appeal from the Franklin County  
Court of Appeals, Tenth Appellate  
Judicial District.

Court of Appeals  
Case No. 07AP-932

MEMORANDUM OF APPELLANT ANDRE BUCKLES  
IN SUPPORT OF JURISDICTION

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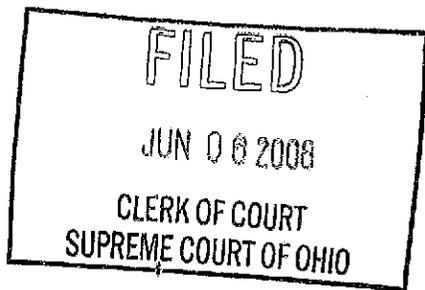
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## STATEMENT IN SUPPORT OF JURISDICTION

This case arises from the Franklin County Auditor's decision in 2005 to exclude Appellant's 122 acre parcel of farmland from the State of Ohio's Current Agricultural Use Valuation ("CAUV") program. CAUV is a constitutionally mandated program designed to protect farmland from the pressures created by development of surrounding land. It provides tax relief to farmers by ensuring that farmland is taxed at its value for agricultural use, rather than under the "highest and best use rule." See Section 36, Article II, Ohio Constitution; R.C. 5713.31; see also Amicus Curiae Ohio Farm Bureau Federation's Memorandum In Support Of Jurisdiction (describing CAUV program).

This case involves a substantial constitutional question, and is of great public and general interest, because the Court of Appeals has effectively gutted the CAUV program by imposing requirements that are not found anywhere in Article II Section 36 of the Ohio Constitution or its implementing statutes. In order to qualify for CAUV status, the subject land must be "devoted exclusively to agricultural use." See Section 36, Article II, Ohio Constitution; R.C. 5713.31. This is an objective standard, and courts have typically looked solely to the actual use of the land for agricultural purposes. Here, however, the Court of Appeals went well beyond this objective standard:

- It held that farmers such as Appellant must make an "effort improve the recognized deficiencies" of their agricultural land in order to qualify for the CAUV program. 2008-Ohio-1728, ¶¶ 16, 20. No such legal requirement exists in the Ohio Constitution or the CAUV's implementing statutes;
- It affirmed the trial court's conclusion that failure to make such improvements demonstrates an intent to farm property "as a pretense to qualify for the CAUV

program to avoid paying more in taxes.” Id. Again, there is no “intent” requirement in the Ohio Constitution or the CAUV’s implementing statutes; and

- It relied on the county auditor’s subjective and lay opinions regarding proper farming techniques. Id. at ¶¶21-23. The CAUV program, however, does not provide any authority for county auditor’s to deny CAUV status based on their purported opinions regarding proper farming techniques. Rather, the sole relevant criteria is the actual use of the land for agricultural purposes.

As a result of the Court of Appeals’ decision, county auditors – who are responsible for operating the CAUV program in each of Ohio’s 88 counties – have now been transformed into magistrates of acceptable farming practices, in contravention not only of the Constitution but also the General Assembly’s implementation of that constitutional mandate. Now, county auditors may impose on Ohio farmers their personal lay opinions regarding how the property should be farmed. Indeed, county auditors are now empowered to decree that the farmer must make improvements to his land or follow a certain agricultural practice in order to maintain CAUV status. County auditors, however, are revenue-raisers, not farmers. As such, they face pressure to push land out of the CAUV program. The Court of Appeals’ decision in this case empowers county auditors to do so on grounds not found anywhere in the Ohio Constitution or the CAUV statutory scheme, thereby seriously undermining the CAUV program.

The facts of this case dramatically highlight these concerns. Appellant and his family have owned and farmed the subject property for more than 45 years, and have received CAUV status for the property every year from 1977 through 2004. In 2005, Appellant planted a crop of soybeans. Through no fault of his own, that crop died when it was sprayed with a herbicide inadvertently tainted with another chemical. In an effort to minimize this loss, Appellant then

planted another crop of winter wheat, but that crop also failed due to poor weather conditions. Rather than recognize these events that were beyond Appellant's control, the Franklin County Auditor claimed that Appellant had improperly used a "no-till" farming and denied CAUV status for tax year 2005. Id. at ¶¶21-23. If CAUV status can be denied under these facts, county auditors effectively have a free hand to push property out of the CAUV program anytime they disagree with a farmer's methods.

There also should be no doubt that there is currently tremendous pressure for county auditors and other local governmental entities to increase their tax revenues by pushing property out of the CAUV program. See Amicus Curiae Ohio Farm Bureau Federation's Memorandum In Support Of Jurisdiction. And, as this case again demonstrates, farmland such as Appellant's property, is under intense pressure from encroaching development and soaring land values. For a number of years now it has been a target of many local government entities for commercial development. Interested parties have included state and local government units, who have requested donations of the property to use for public purposes and, in one case, sought to obtain the property through an eminent domain proceeding. As recently as May 31, 2008, the Columbus Dispatch reported on the extensive plans the City of Gahanna has made for development of Appellant's property. See Jim Woods, *Plan in works to link office park, airport*, Columbus Dispatch, May 31, 2008, at C12. The encroaching commercial development also has made it more difficult to farm the property because it is harder and more time-consuming to access, forcing appellant to make cost-benefit decisions such as, for example, the election to use no-till farming practices on the property. Simply put, the property is a paradigm of the problem farmers face in light of commercial development, and illustrates the necessity and importance of the CAUV program.

In summary, the Court of Appeals' decision, if left undisturbed, will seriously undermine the CAUV program. Moreover, if this Court does not review and reverse the Court of Appeals decision, an unworkable system is created in which 88 auditors would be applying 88 differing standards as to what constitutes acceptable farming practices. This will inevitably lead to the inequitable administration of the tax laws across the state and confusion in the courts. Accordingly, this case presents a substantial constitutional question regarding the legal standards applicable to the CAUV program, and raises issues of great public and general interest. This Court should therefore accept review of the case.

#### **STATEMENT OF THE CASE AND FACTS**

The Property consists of 122 acres within the City of Gahanna. Appellant is a farmer by profession, and he owns 2,700 acres of farmland in Madison County, Ohio in addition to the Property. (BOR Hearing Transcript, p. 17.) Appellant and his family have owned the Property for more than 45 years. Originally, it was part of a larger tract of property consisting of approximately 475 acres. (Id. at p. 10, 12.) Portions of that property were sold or transferred to third parties, including a donation of land to the Gahanna school district for use as a location for certain of its school facilities. (Id. at p. 14-15.) Coinciding with the construction of I-270 during the 1970s, the Property became a separate parcel. (Id. at p. 15-16.)

Appellant and his family have used the Property for agricultural purposes for the entire 45-year period of time they have owned it. (Id. at p. 12.) The Property first obtained CAUV status in 1977, and such status has been renewed for all ensuing years through 2004. Appellant has engaged in generally accepted farming practices on the Property, including crop rotation and use of fallow years. (Id. at p. 26.) Appellant has also relied on "no-till" farming, which is an accepted agricultural practice in Franklin County, whereby crop seeds are cut or pushed into the soil without plowing and there is little disturbance of the soil. With the use of no-till farming

methods, weeds are commonly controlled using herbicides. See, e.g., Appellee Auditor's BOR Hearing Exhibit 1, pp. 2-3.<sup>1</sup>

Consistent with this longtime use of the Property for agricultural purposes, Appellant again timely applied for CAUV status for the Property in 2005. And, in late spring of 2005, Appellant ordered soybeans from Blanton Farms Partnership, which were delivered to Appellant's Madison County farm in June 2005. (Appellant's BOR Hearing Exhibit A, Affidavit of Greg Blanton; Appellant's BOR Hearing Exhibit C.) Appellant rented a seed drill from Anderson Equipment to plant the soybeans on the Property. (Appellant's BOR Hearing Exhibit A, Affidavit of Doug Anderson.) Appellant's farm manager, Carl Hamman ("Hamman"), supervised the transportation, via a rented trailer, of the soybeans from Madison County to the Property where they were planted using the seed drill. (Appellant's BOR Hearing Exhibit A, Affidavit of Carl Hamman; Appellant's BOR Hearing Exhibit B.) The expected yield was 30-35 bushels of soybeans per acre. (BOR Hearing Transcript, p. 31.)

The soybeans were Roundup-ready beans, engineered to allow farmers to use Roundup for weed control without destroying the crop. (Id. at p. 18.) After planting, the Property was sprayed with Roundup by Bill Potts ("Potts") in July 2005, whose sprayers inadvertently contained the chemical 2,4-D, in addition to the Roundup, which completely destroyed the soybean crop. (Appellant's BOR Hearing Exhibit A, Affidavit of Bill Potts.)

Following destruction of the soybean crop, Hamman mowed the Property in July 2005 so he could later plant winter wheat on the Property during 2005. Appellant asked Potts to plant the winter wheat as compensation for ruining the soybean crop. (BOR Hearing Transcript, p. 35.) Potts agreed and planted the winter wheat without charge in November 2005. (Appellant's BOR

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<sup>1</sup> A portion of the Property is wooded. Although not used for agriculture, it also qualifies for CAUV status to the extent the remaining contiguous portion of the Property is devoted exclusively to agricultural use. 2008-Ohio-1728, ¶26.

Hearing Exhibit A, Affidavit of Bill Potts.) The expected yield was 40 to 50 bushels of winter wheat per acre. (BOR Hearing Transcript, p.40-41.) The resulting wheat crop in 2006, however, did not mature sufficiently into a commercially viable crop, apparently due to a multitude of factors, including the late planting and poor climate conditions. (Id. at p. 20, 37.) Accordingly, the crop was not harvested and Hamman mowed the Property again in anticipation of conducting further agricultural activities during 2006.

Notwithstanding the substantial activities on the Property during 2005, the Auditor denied Appellant's 2005 CAUV renewal application by letter dated November 30, 2005. The letter, prepared by deputy county auditor Mark Calhoun, mentioned only two visits to the Property, and among other things, stated that the "property had not been tilled, mowed or managed with herbicides and a thick grassy weed cover was accumulating on the property."

In response, Appellant filed a complaint with appellee Franklin County Board of Revision (the "BOR"). At the hearing on the merits before the BOR, Calhoun (the Auditor's sole witness) admitted that, contrary to the impression left in the November 30, 2005 denial letter, he had in fact visited the property on several occasions in June, July, August and October of 2005. He admitted that his visits to the Property did not always include a full inspection of all cultivated portions of the Property, and he routinely made observations while sitting in his truck instead of physically inspecting the Property. (Id. at p. 71-73.) Nonetheless, he conceded that during visits in July 2005 he had seen evidence of the soybean crop having been planted, and even witnessed the application of herbicide to the Property. (Id. at p. 76-78.)

When Calhoun inspected the Property in August 2005, he observed the "soybeans dying" and in October 2005 observed that "no soybean crop survives to harvest." (Id. at p. 79, 82-83.) Apparently without returning to the property, Calhoun then prepared and sent his letter dated

November 30, 2005 denying CAUV status. Calhoun, however, never bothered to ask Appellant any questions regarding the soybean crop failure. As a result, he was unaware of two facts. First, the soybean crop he saw dying in the field in August was sprayed with contaminated Roundup. Second, the Property had in fact been planted with a second crop of winter wheat in 2005.

Finally, Calhoun's November 30, 2005 denial letter does not mention that "no-till" is an accepted agricultural practice in Franklin County. (*Id.* at p. 71-73.) Confronted with this inconvenient fact, Calhoun continued to insist that the real reason for the soybean crop failure was the existence of heavy weed and grass cover, rather than the tainted herbicide. He admitted that his testimony was not based on any farming or herbicide expertise, but rather his own lay opinion. (*Id.* at p. 80-82.)

The BOR accepted this position and upheld the denial. Appellant then appealed to the Franklin County Court of Common Pleas pursuant to O.R.C. 5717.05, which effectively requires a de novo review of the case. The trial court affirmed the BOR's decision without conducting an evidentiary hearing, choosing instead to rely on the paper record. (Decision and Entry, October 2, 2007, at 8.) On appeal, the Tenth District Court of Appeals affirmed the trial court's decision. In doing so, the Court of Appeals made several legal errors, which seriously undermine the CAUV program, as discussed below.

## ARGUMENT

### Proposition of Law No. 1:

**A county auditor may not revoke CAUV status because a property owner does not improve the land to possibly increase the chances of a successful harvest.**

In order to qualify for CAUV status, the subject land must be “devoted exclusively to agricultural use.” See Ohio Constitution, Article II Section 36. Here, it is undisputed that Appellant and his family have farmed the Property continuously for more than 45 years, and that the Property had qualified for CAUV status every year since 1977. It is also undisputed that Appellant in fact planted two crops on the Property in 2005. Both those crops, however, failed as a result of events beyond Appellant’s control -- the soybean crop failed as a result of a tainted herbicide and the winter wheat failed due to poor weather conditions.

The lower courts disregarded these facts. Instead, the trial court seized on testimony from Appellant and his farm manager that *portions* of the Property are difficult to farm because of soil and drainage issues. 2008-Ohio-1728, ¶15. Based on this testimony, the trial court held that the Property was “nearly incapable of yielding a field crop,” 2008-Ohio-1728, ¶19-20, a conclusion wholly at odds with the land being farmed for nearly fifty years.

Making matters worse, the Court of Appeals affirmed the trial court’s conclusion based on Appellant’s purported failure to make improvements to the Property:

We find this analysis [of the trial court] logical, as the absence of any effort to improve the recognized deficiencies on the property reasonably belies an assertion that the purpose of farming activities on the property was to produce a crop worthy of commercial sale.

2008-Ohio-1728, ¶20. This analysis is legally erroneous, however, because there is no requirement whatsoever -- either in Article II Section 36 of the Ohio Constitution or in its

implementing statute, O.R.C. § 5713.31 – for an owner of agricultural land to make “improvements” to his land in order to qualify for CAUV status.

Indeed, the Court of Appeals’ decision on this point is in direct conflict with other decisions from appellate courts and the Board of Tax Appeals, which have looked solely to see whether the subject land was in fact used for agricultural purposes. See *Zaremba v. Summit Cty. Bd. of Revision* (Mar. 25, 1994), Ohio BTA Case No. 92-A-911, unreported (property granted CAUV status notwithstanding decision not to plant crops due to widespread drought conditions, given that property was used for agricultural purposes in prior years and that winter wheat was planted on the property later in the year); *Rocky Fork Hunt & Country Club v. Testa*, 100 Ohio App.3d 570, 654 N.E.2d 429 (10<sup>th</sup> Dist. 1995) (property granted CAUV status notwithstanding the lack of ideal farming conditions and the failure to produce a harvestable crop).

And., as other courts have held, evidence of a mere “modicum of professionalism” in the maintenance or cultivation of a parcel, entitles the property to CAUV treatment. See, e.g., *Augustine v. Geauga Cty. Bd. of Revision* (July 16, 2004), Ohio BTA Case No. 203-A-1354; *Vernon v. Knox Cty. Bd. of Revision* (Aug. 18, 2006), Ohio BTA Case No. 2005-M-778 and *Stults v. Delaware Cty. Bd. of Revision* (Aug. 2, 2004), Ohio BTA Case No. 2003-P-287.

In summary, the Court of Appeals erred when it held that Appellant had failed to improve or correct the purported deficiencies of the Property. Ohio law simply does not limit CAUV qualification based on the nature of the property at issue. If the Court of Appeals’ decision is not corrected, county auditors will have a free hand to deny CAUV status based on subjective and undefined criteria regarding purported deficiencies in the land. This will only serve to embolden county auditors – eager to increase their tax revenues – to deny CAUV status to ever more land,

thereby seriously undermining the constitutionally mandated CAUV program. Accordingly, this Court should accept review and reverse the Court of Appeal on this point of law.

**Proposition of Law No. 2:**

**A county auditor may not revoke CAUV status because he believes the farming practices conducted are incorrect given the failure to produce a harvestable crop.**

In addition to the purported failure to make improvements to the Property, the Court of Appeals also accepted without question the deputy county auditor's testimony that the crop failure resulted from Appellant's use of a "no-till" method of farming when he planted the soybean crop. 2008-Ohio-1728, ¶21-23. No-till is an accepted method of farming that relies on application of herbicides, rather than tilling, to eliminate weeds. *Id.* The deputy county auditor believed, however, that Appellant's use of no-till farming was unacceptable because the weed cover was purportedly too dense to permit the soybeans to grow. *Id.*

The Court of Appeal's acceptance of this testimony is wrong both legally and factually. As a legal matter, Ohio courts and the Board of Tax Appeals ("BTA") have considered and rejected attempts by county auditors to consider whether certain farming activities satisfy the auditor's subjective views as to what is commercially reasonable. In *Rocky Fork*, *supra*, heavy rains prevented the timely planting of corn on the parcel as originally intended. As in the present case, the farmer planted winter wheat late in the year trying to avoid losing an entire year of potential income from the property. Although winter wheat typically is planted in October, the farmer in that case -- like Appellant -- was not able to plant the winter wheat until November. *Rocky Fork*, *supra* at 575.

The Court held that the property was used exclusively for agricultural purposes, notwithstanding the lack of ideal farming conditions and failure to produce a harvestable crop:

Mr. Morrison testified specifically that he had prepared the field for planting of a spring corn crop but that he was unable to plant that crop due to rains. In *Barbee v. Testa*, 10<sup>th</sup> Dist. No. 93AP08-1193 (Mar. 31, 1994), the appellants asserted that it was their *intention* to farm the west parcel after the gravel was removed. There is no evidence that any agricultural crop planted for a commercial purpose was ever planted on that west parcel. To the contrary, the record in the present case indicates that this section had been planted but that, due to circumstances outside the control of appellant or the farmer to whom appellant leased the property, the farmer was unable to have a crop planted in the spring of 1992 when the field review was conducted.

Id. at 576 (emphasis in original).

This decision in *Rocky Fork* harmonizes with prior BTA decisions examining challenges to CAUV status. For example, in *Kirk & Ackley Enterprises #2 v. Franklin Cty. Bd. of Revision* (June 4, 2004), Ohio BTA Case No. 2002-R-2557, the auditor did not renew CAUV status for property that had been operated as a farm for over 90 years. As in the present case, the property at issue had less-than-perfect soil conditions, and the owner planted crops on the property using no-till farming practices. In denying CAUV status, the auditor asserted that such efforts were not commercially reasonable. The BTA rejected the Auditor's assertion, stating:

Based upon the testimony and evidence received, this board concludes that the subject property is devoted exclusively to agricultural use, pursuant to R.C. 5713.30, and thus meets the standards for the property to retain CAUV status.

Despite the fact that at the time of the inspections by the county auditor's office there was no evidence of growing crops, K&A produced competent, probative evidence that winter wheat and hay were being grown on the subject property in the year in question and all relevant years. The planting of winter wheat can suffice to establish a right to CAUV status.

Id. at \*3. No relevant distinction exists between the instant facts and those in *Kirk & Ackley*.

Furthermore, the Court of Appeal's decision was also factually erroneous. The undisputed facts show that Appellant engaged in significant, commercially reasonable efforts to produce soybeans on the Property during 2005. No-till is an accepted method of farming, and the use of Roundup-ready beans allows groundcover to be eliminated with application of an

herbicide simultaneously with the germination and canopy growth of the beans. This is an attribute of herbicide application in conjunction with no-till farming techniques that apparently escaped the deputy county auditor. And, when the soybean crop failed through no fault of his own, Appellant attempted to salvage the year by planting winter wheat on the Property. Noticeably, the Court of Appeals failed to discuss the winter wheat planting as evidence of Appellant's use of the Property for agricultural purposes.

The only additional evidence consists of the observations the deputy auditor made during his few inspections the Property during 2005. Pursuant to his own admissions, however, the visits did not always include a full inspection of all cultivated portions of the Property, and he routinely made observations while sitting in his truck instead of physically inspecting the Property. (BOR Hearing Transcript, pp. 71-73.). Again, the Court of Appeals failed to discuss these facts in its Opinion. There simply is no evidence in this case that the procedures and schedules Appellant followed *could not* have produced a commercial crop. The only permissible inference is that the soybean crop would have succeeded but for the tainted herbicide application. The premise that the crop would have "failed anyway" is false. Similarly, there is no evidence to prove the winter wheat would not have been a successful crop if the weather had been less cold.

In any event, these factual issues highlight the difficulties presented by permitting a county auditor to make determinations regarding proper farming methods. County auditors are revenue-raisers, not farmers. If county auditors can second guess the decisions of farmers as to how to best manage and operate their farms whenever there is a less-than-optimal harvest, the CAUV program will become an administrative nightmare based upon the subjective considerations of 88 county auditors. Henceforth, farmers will be forced to follow auditor-mandated "approved" procedures and planting schedules unique to each county or risk loss of the

statutory valuation. This is not what the voters of Ohio intended when they amended the Ohio Constitution. Such a framework is wholly inconsistent with both the policy of non-discriminatory administration of tax laws and the Ohio constitutional provisions aimed at the preservation and promotion of the agricultural industry in Ohio. The Court of Appeals' blind acceptance of the Auditor's determination of proper farming matters constitutes legal error, and is simply unworkable as a matter of policy. This Court should accept review and reverse the Court of Appeal on this issue as well.

**Proposition of Law No. 3:**

**A county auditor has no authority to infer the subjective intent of the landowner in determining whether to revoke CAUV status as to property which was planted with crops and cultivated according to commercially acceptable agricultural practices.**

Finally, the legal errors discussed above are attributable in large part to the Auditor's and the lower courts' efforts to determine whether it was really Appellant's intent to use the property for agricultural purposes. The trial court, for example, determined that Appellant's activities were a "pretense to qualify for the CAUV program to avoid paying more in taxes." (Decision and Entry, October 2, 2007, at 5.). The Court of Appeals held that the trial court's analysis was "logical" and similarly reviewed the evidence with an eye towards the "purpose" of Appellant's farming activities. 2008-Ohio-1728, at ¶20. The Court of Appeals, for example, stated that if "farming activities are performed with virtually no expectation that a harvestable field crop will result, it would be reasonable to conclude that the purpose of the performance of those farming activities was not a 'commercial purpose.'" Id. at ¶18. In other words, the Court of Appeals' decision authorizes county auditors to look beyond the actual farming activities conducted on the land to glean whether the property owner really "intended" to produce a commercial crop.

This analysis is wrong both legally and as a matter of policy. First, as a legal matter, there is no “intent” requirement in either Article II Section 36 of the Ohio Constitution, or its implementing statute. Rather, to qualify for CAUV status, the subject land must be “devoted exclusively to agricultural use.” See Section 36, Article II, Ohio Constitution; O.R.C. § 5713.31. This is an objective standard. Not surprisingly, previous courts have looked not to the “intent” of the owner, but rather to objective evidence regarding use of the subject land for agriculture. See, e.g., *Barbee v. Testa* (Mar. 31, 1994), Franklin App. No. 93APE08-1193, unreported; *Zaremba*, supra ; *Rocky Fork*, supra.

Indeed, this Court itself has previously rejected any attempt to infer intent as part of the CAUV analysis. *Mentor Exempted Village School Dist. Bd. of Edn. v. Lake Cty. Bd. of Revision* (1979), 57 Ohio St.2d 62, 386 N.E.2d 1113. In *Mentor*, this Court rejected an argument by the county board of revision that two considerations -- a property’s proximity to a major commercial center and the fact that the property owners were actively engaged in major commercial real estate development and sales -- were relevant considerations in determining whether the property qualified for CAUV status:

It is true that the intent of the constitutional amendment was to give relief to farmers whose land was slowly being engulfed by commercial land through the growth of towns and cities and who were being driven out of business by the soaring real property taxes attendant upon revaluation of their property under the ‘highest and best use’ rule. Admittedly, the landowners herein do not fit cleanly into this category, however, the approach of the appellant would require a determination of the subjective motive of every person applying for the benefits of R.C. Chapter 5713. The results would not comport with the concepts of due process and equal protection of the laws.

*Id.* at fn. 4. See also *Stults*, supra, (noting that “no reference is made to *intent* in the statutory provisions” and, instead, “they focus upon *use*”) (emphasis added). Here, the lower courts’

opinions conflict with these prior cases, as well as with the objective standard set forth in the Ohio Constitution.

The lower courts' analysis of Appellant's purported intent also is entirely wrong as a matter of policy inasmuch as it undermines the very purpose of the constitutionally mandated CAUV program. Citizens of Ohio have no obligation to maximize their tax obligations. The voters of Ohio amended Article II of the Ohio Constitution with the express purpose of encouraging agricultural activities through tax relief for owners of agricultural land such as Appellant. Courts cannot fault landowners for having an "intent" to take advantage of the tax relief provided by the CAUV program. Yet, if the Court of Appeals decision goes uncorrected, county auditors (and reviewing courts) will be free to make subjective determinations regarding the "intent" of landowners seeking CAUV status. Given the animosity of local taxing authorities to the CAUV program, it is certain that more and more Ohio land will be denied CAUV status based on subjective and arbitrary decisions regarding a landowner's purported "intent."<sup>2</sup> This presents a substantial constitutional question, and raises issues of great general and public interest. Accordingly, this Court should accept review and reverse the Court of Appeal on this point of law as well.

### CONCLUSION

For these reasons, Appellant Andre Buckles respectfully requests that this Court assume jurisdiction of this case and reverse the judgment of the Tenth District Court of Appeals.

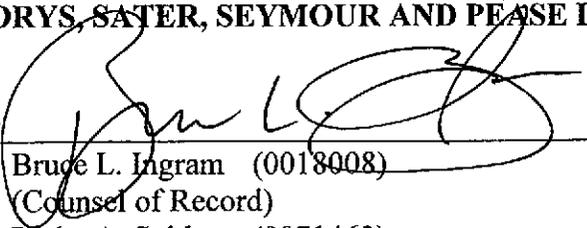
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<sup>2</sup> Even if intent were somehow relevant, there is no evidence in the record to suggest that Appellant did not expect a harvestable field crop from the Property in 2005. On the contrary, there is substantial and uncontradicted evidence that Appellant expended significant time, energy, and money on commercially accepted farming practices to plant soybeans and winter wheat on the Property with the expectation, at the time of planting, that each crop would grow and become a harvestable commercial commodity.

Respectfully submitted,

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Andre Buckles

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing was sent by first-class U.S. mail, postage prepaid to Paul M. Stickel, Assistant Prosecuting Attorney, Franklin County Prosecutor's Office, 373 South High Street, 17th Floor, Columbus, Ohio 43215, counsel for appellees, The Board of Revision of Franklin County and the Franklin County Auditor, and Martin J. Hughes, Martin Hughes & Associates, 150 E. Wilson Bridge Rd., Ste. 300, Worthington, Ohio 43085, counsel for appellee, The Board of Education of the Gahanna-Jefferson School District, this 6 th day of June, 2008.



Blake A. Snider

COUNSEL FOR APPELLANT, ANDRE  
BUCKLES

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COURT OF APPEALS  
FRANKLIN COUNTY  
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CLERK OF COURTS

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

Andre Buckles, :  
 :  
 Appellant-Appellant, :  
 :  
 v. :  
 :  
 The Board of Revision of Franklin :  
 County et al., :  
 :  
 Appellees-Appellees. :

No. 07AP-932,  
(C.P.C. No. 07CVF05-6241)  
(REGULAR CALENDAR)

JUDGMENT ENTRY

For the reasons stated in the opinion of this court rendered herein on April 10, 2008, appellant's assignment of error is overruled, and it is the judgment and order of this court that the judgment of the Franklin County Court of Common Pleas is affirmed. Costs assessed against appellant.

T. BRYANT, J., BRYANT & FRENCH, JJ.

By   
Judge Thomas F. Bryant, retired, of the Third Appellate District, assigned to active duty under authority of Section 6(C), Article IV, Ohio Constitution.

*And*

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

Andre Buckles,	:	
	:	
Appellant-Appellant,	:	
	:	No. 07AP-932
v.	:	(C.P.C. No. 07CVF05-6241)
	:	
The Board of Revision of Franklin	:	(REGULAR CALENDAR)
County et al.,	:	
	:	
Appellees-Appellees.	:	

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O P I N I O N

Rendered on April 10, 2008

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*Vorys, Sater, Seymour and Pease LLP, Bruce L. Ingram and Blake A. Snider*, for appellant.

*Ron O'Brien*, Prosecuting Attorney, *Paul M. Stickel* and *William J. Stehle*, for appellees Franklin County Auditor and Franklin County Board of Revision.

*Martin Hughes & Associates, Martin J. Hughes, III, and Jackie Lynn Hager*, for appellee Board of Education of the Gahanna-Jefferson Local School District.

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APPEAL from the Franklin County Court of Common Pleas

T. BRYANT, J.

{¶1} Appellant, Andre Buckles, appeals from a judgment of the Franklin County Court of Common Pleas affirming a decision of the Franklin County Board of Revision ("the Board") excluding a property, parcel No. 025-003905 ("the property"), owned by

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appellant from the Current Agricultural Use Valuation ("CAUV") program for the tax year 2005. For the reasons that follow, we affirm the judgment of the trial court.

{¶2} Appellant filed a CAUV renewal application with appellee, the Franklin County Auditor, for the property for tax year 2005. By letter dated November 30, 2005, the Franklin County Deputy Auditor, Mark Calhoun, informed appellant that the property was being removed from the CAUV program for tax year 2005. The letter indicates that the property was inspected in June and October 2005, and it conveys some of the observations that were made from those inspections. The letter states in part that the property "was not utilized for commercial agricultural purpose this year and does not qualify as 'land devoted exclusively to agricultural use.' This is not consistent with the requirements of the CAUV Program and constitutes a conversion of agricultural land."

{¶3} Appellant challenged the determination of the auditor by filing a "Complaint Against the Valuation of Real Estate" in March 2006. After a hearing on the merits of the complaint, the Board upheld the auditor's decision and denied the property CAUV status for tax year 2005. Appellant appealed the Board's decision to the Franklin County Court of Common Pleas.

{¶4} On October 2, 2007, the trial court filed a decision affirming the Board's decision to deny CAUV status for the property for tax year 2005. The trial court resolved that the property was not devoted exclusively for agricultural use, and therefore, the Franklin County Auditor properly denied appellant's CAUV program renewal application. The court concluded that appellant had failed to establish by probative and competent evidence that the Board's decision was in error. On October 19, 2007, the trial court filed a judgment entry reflecting its October 2, 2007 decision.

{¶5} Appellant appeals from the trial court's judgment and sets forth the following single assignment of error for our review:

The Court of Common Pleas erred in requiring the appellant taxpayer to establish, in order to renew CAUV status under R.C. 5713.30(A)(1), that there was a "commercial agricultural commodity produced on the parcel" in the tax year 2005, when the undisputed evidence showed the taxpayer planted two separate crops in 2005, soybeans and wheat, but neither crop matured to harvest.

{¶6} By his assignment of error, appellant contends that the trial court erred in affirming the Board's decision that appellant's property did not qualify for CAUV taxation status for the tax year 2005. Appellant argues that the trial court erred in finding that the property was not "land devoted exclusively to agricultural use" in 2005, as that term is statutorily defined.

{¶7} As an alternative to an appeal to the Board of Tax Appeals pursuant to R.C. 5717.01, an appeal from a decision of a county board of revision may be taken directly to the appropriate court of common pleas. See R.C. 5717.05. While R.C. 5717.05 requires more than a mere review of the decision of the board of revision by the trial court, that review may be properly limited to a comprehensive consideration of existing evidence and, in the court's discretion, to an examination of additional evidence. *Black v. Bd. of Revision* (1985), 16 Ohio St.3d 11, 14. The court should consider all such evidence and determine the taxable value through its independent judgment. *Id.* In effect, R.C. 5717.05 contemplates a decision de novo, but does not provide for an original action or trial de novo. *Id.*, citing *Selig v. Bd. of Revision* (1967), 12 Ohio App.2d 157, 165. The judgment of the trial court shall not be disturbed absent an abuse of discretion. *Id.* at syllabus. Therefore, an appellate court should not question the trial court's

judgment, unless such determination is unreasonable, arbitrary, or unconscionable. Id. at 14.

{¶8} Effective January 1, 1974, Section 36, Article II of the Ohio Constitution was amended to create an exception to the constitutional requirement that all land and improvements thereon be taxed by uniform rule according to value. The amendment provided as follows: "Notwithstanding the provisions of Section 2 of Article XII, 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." Am.H.J.R. No. 13, 135 Ohio Laws, Part I, 2043. In 1979, the Supreme Court of Ohio, in *Bd. of Edn. v. Bd. of Revision* (1979), 57 Ohio St.2d 62, recognized that this provision was intended "to give relief to farmers whose land was slowly being engulfed by commercial land through the growth of towns and cities and who were being driven out of business by the soaring real property taxes attendant upon revaluation of their property under the 'highest and best use' rule." Id. at 66, fn. 4. Moreover, in view of this amendment, the General Assembly enacted R.C. 5713.30 through 5713.37 in 1974. See Am.Sub.S.B. No. 423, 135 Ohio Laws, Part II, 341, 344.

{¶9} R.C. 5713.31 authorizes the auditor to value "land devoted exclusively to agricultural use" for property tax purposes at the current value the land has for agricultural use in accordance with adopted rules. For a property totaling ten acres or larger, "land devoted exclusively to agricultural use" is currently defined to include property "devoted exclusively to \* \* \* the production for a commercial purpose of timber, field crops, \* \* \* 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[.]” R.C. 5713.30(A)(1). In addition, R.C. 5713.30(B) provides in part: “[c]onversion of land devoted exclusively to agricultural use” is defined to include “(3) [t]he 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[.]”

{¶10} The property at issue in this appeal consists of approximately 122 acres of land and is located adjacent to Morrison Road in the city of Gahanna, near Interstate 270. The property had been part of a larger tract of land, which consisted of approximately 475 acres, owned by appellant or his family. The Buckles family had raised cattle and hogs on the land, in addition to harvesting field crops. Over time, parts of the land were either sold to developers or donated to the Gahanna-Jefferson School District, ultimately leaving approximately 122 acres of land. The property is in a developing area, and government officials asked appellant to donate at least part of the land for additional parkland and for a bridge to span I-270. Of the property’s 122 acres, approximately 66 acres are in a wooded area. This appeal focuses on the activities on the remaining 56 acres of land.

{¶11} Appellant, a farmer, who also owns a 2,700-acre farm, “Lower Glen Farm,” in Madison County, testified that he hired Carl Hamman as his farm manager. Mr. Hamman has been a farmer since he graduated from The Ohio State University in 1977 with a degree in agriculture. Both appellant and Mr. Hamman testified that “Roundup ready” soybean seeds<sup>1</sup> were planted on the property in June 2005. The record demonstrates that the land was not tilled and the soybeans were planted through the use of a seed drill. Mr. Hamman testified that they expected a 30 to 35 bushel per acre yield

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<sup>1</sup> According to testimony at the hearing, “Roundup ready” soybean seeds are genetically engineered to withstand Roundup.

with the soybean crop, but the soybean crop was destroyed when Bill Potts, who was hired to apply Roundup for weed control, applied Roundup that was contaminated with an additional chemical. Mr. Hamman testified that Mr. Potts planted "winter wheat" in November 2005 as compensation for the destruction of the soybean crop, and that the winter wheat did not take root due to freezing and thawing conditions.

{¶12} Franklin County Deputy Auditor, Mark Calhoun, physically inspected the property at various times beginning in 2002, and he made multiple visits to the property during 2005. Mr. Calhoun's February 20, 2007 report indicates that he found a dense mixture of grass and weeds growing on the property every year, and that no agricultural product was harvested from the property during the years of his inspections, 2002-2005. When Mr. Calhoun inspected the property on June 21, 2005, he determined that no planting had been done and no action had been taken to reduce or eliminate the flourishing grass cover. Similarly, at his July 6, 2005 inspection, Mr. Calhoun saw no changes to the property which would be consistent with commercial agricultural practices. At his July 12, 2005 inspection, Mr. Calhoun observed "a change to the property" because "it look[ed] like they had planted since the last time I had been there." (Tr. 76.) Mr. Calhoun returned to the property on July 18, 2005 and noticed someone applying a herbicide. Mr. Calhoun returned to the property on August 2, 2005 and observed the "soybeans dying." (Tr. 79.)

{¶13} When asked at the hearing whether his observation on August 2, 2005 was consistent with the application of a herbicide that was too strong, Mr. Calhoun would not opine as to whether the herbicide killed the soybeans. Mr. Calhoun explained: "What I'm saying about this parcel in particular is that there is such a heavy weed and grass

competition on this parcel that you could plant anything into that, you could spray it with anything you want, and it is not going to out compete that cover crop, simply because that cover crop is so well established and has been so for so many years \* \* \* that it has a dense canopy, and a - - and a very wide root system that out competes everything you stick in there. That grass is alive, it's growing, and those soybeans never had a chance." (Tr. 80-81.) Based on his visits to the property, Mr. Calhoun determined that the property "is not being used for the commercial production of field crops" and recommended that the property be removed from the CAUV program for tax year 2005. (Feb. 20, 2007 Report.)

{¶14} In its decision, the trial court recognized that appellant presented evidence that soybeans were planted on the property in June 2005 and wheat was planted in November 2005, and that it was undisputed that both crops failed. The trial court further recognized that the parties disputed whether the land was devoted exclusively to agricultural use for the tax year 2005. In resolving this dispute, the trial court analyzed the testimony of appellant, Mr. Hamman, and Mr. Calhoun.

{¶15} Concerning the testimony of appellant and Mr. Hamman, the trial court found two particular statements that were made at the hearing before the Board to be significant. In describing the property, appellant testified that "it is unforgiving farmland, it's poor soils, it has poor drainage, that's - - it's a difficulty producing a crop, but we put it in there every year." (Tr. 13.) Mr. Hamman described the property as follows: "The subject property is wet, it has floodplain, floodway, and is difficult to farm. It is a very, very bad soil type compared to the codemo [sic] soils at the Lower Glen Farm. \* \* \* But it's still a farm, and we still try to farm it." (Tr. 25-26.)

{¶16} The trial court viewed these statements as indicating that the property was "nearly incapable of yielding any type of crop, let alone a field crop that is to be sold for commercial purposes." (Oct. 2, 2007 Decision, at 5.) In connection with this observation, the trial court noted that there is no evidence in the record demonstrating that appellant took steps to improve the quality of the property by addressing such matters as the soil or drainage problems. The trial court resolved that it defies logic that an experienced farmer would continue to invest time, labor, and money to attempt to farm a property that was nearly incapable of yielding a crop to be sold commercially. The court concluded that "the only reason that Appellant made a feeble attempt to 'farm' the property was as a pretense to qualify for the CAUV program to avoid paying more in taxes." (Oct. 2, 2007 Decision, at 5.)

{¶17} Appellant argues that the trial court improperly assumed that he was required to present evidence demonstrating that he had taken steps to improve the quality of the property by addressing the parcel's deficiencies in such matters as soil quality and drainage. Appellant additionally argues that the General Assembly addressed concerns regarding the possible improper use of the CAUV program for tax avoidance purposes by including a minimum gross income requirement for parcels totaling less than ten acres, as well as authorizing recoupment of tax savings. According to appellant, the General Assembly has not placed any further restrictions concerning such matters as farming practices or property conditions. In addition, appellant argues that the failure of the crops in this case was for reasons beyond his control. In essence, appellant argues that the efforts placed into the property were such that the property must be considered

devoted exclusively to agricultural use, despite the end result as to the relative success of the crop.

{¶18} Appellant is correct to the extent that he argues that the success of field crops on a property is not the dispositive issue as to whether a property qualifies for the CAUV program. In *Barbee v. Testa* (Mar. 31, 1994), Franklin App. No. 93APE08-1193, the owners of two parcels of land sought CAUV status for the parcels on the basis that, even though the parcels were not farmed due to flooding and drainage problems, it was their intent to farm the parcels during the years at issue. See *id.* This court determined that the property was not devoted to an agricultural use despite the stated intent of the owners. See *id.* Subsequently, this court decided *Rocky Fork Hunt & Country Club v. Testa* (1995), 100 Ohio App.3d 570 ("*Rocky Fork*"), another case involving a dispute over whether a property qualified for the CAUV program. In *Rocky Fork*, the property at issue had been plowed in anticipation of the planting of corn, but, due to heavy rains, no planting occurred. This court distinguished the *Barbee* case by noting that, while the property owners in *Barbee* asserted that it was their intention to farm the parcels, there was an absence of any activity to demonstrate that intention. See *Rocky Fork*. This court in *Rocky Fork* resolved that the property qualified for the CAUV program. See *id.* In view of *Rocky Fork*, it is clear that the fact that particular field crops may fail to yield a harvest capable of commercial sale does not necessarily show that the land was not devoted exclusively to the commercial production of a field crop. See *id.*

{¶19} Even so, the trial court in this case did not resolve that the property did not qualify for the CAUV program simply because the crops failed. Furthermore, contrary to appellant's suggestion, the trial court did not find that a party must always demonstrate an

effort to improve the quality of the land in order for his or her property to qualify for CAUV status. As outlined above, the trial court viewed the statements of appellant and Mr. Hamman as showing that the property was nearly incapable of yielding a field crop capable of being sold commercially. The trial court reasoned that, despite the property's recognized deficiencies, appellant did not take steps to improve the likelihood of the property yielding a crop capable of being sold commercially. Thus, the trial court determined that appellant's argument, regarding circumstances affecting crop success that were beyond his control, might have some validity if he had taken steps to remedy the conditions that existed on the subject property.

{¶20} We find this analysis logical, as the absence of any effort to improve the recognized deficiencies on the property reasonably belies an assertion that the purpose of farming activities on the property was to produce a crop worthy of commercial sale. Obviously, evidence of farming activities performed on a property would support a determination that the property qualifies as land devoted exclusively to agricultural use. However, if those farming activities are performed with virtually no expectation that a harvestable field crop will result, it would be reasonable to conclude that the purpose of the performance of those farming activities was not a "commercial purpose."

{¶21} Appellant also seems to argue that the trial court erroneously found fault in the farming methods used on the property. Appellant contends that, if there is a requirement that the farming must meet a standard of commercial farming reasonableness, the property was farmed using the "no-till" process, which, according to Mr. Calhoun, is an accepted method of farming in Franklin County. Mr. Calhoun's February 20, 2007 report states that there are two types of "tillage" procedures practiced

in Franklin County, i.e., "conventional tillage" and "no-till." The report explains that conventional tillage is the most commonly practiced planting system in Franklin County and involves the turning and working of the soil, which is more labor intensive but prepares the seedbed for planting, incorporates old plant residue into the soil, and eliminates early season weed competition. The report further explains that no-till, which is an accepted practice, occurs when seeds are "cut" or "pushed" into the soil without any plowing. The report states that "every no-till planting system is accompanied by another form of weed control, usually chemical. Weeds are most commonly controlled using herbicides both before and after planting."

{¶22} Indeed, evidence indicated that "no-till" planting is an acceptable method of planting, and that a seed drill was used to plant the soybean seeds. Evidence also indicated that there was an application of a herbicide after the planting. However, the evidence further demonstrated that the planting occurred despite an existing dense growth of weeds and grass that would compete with any developing field crop. Mr. Calhoun's testimony, which the trial court found credible, emphasized the significance of the established weed and grass growth on the property, and how that growth would hinder any field crop development. In Mr. Calhoun's view, the soybean crop "never had a chance" because the established weed and grass system had not been eliminated before the soybeans were planted.

{¶23} Appellant dismisses Mr. Calhoun's statements concerning the dense growth of weeds and grass as simply "lay opinion," apparently implying that his statements should not have been considered because a sufficient foundation was not laid that would establish him as an expert. However, as a general rule, administrative agencies are not

bound by the strict rules of evidence applied in courts. *Haley v. Ohio State Dental Bd.* (1982), 7 Ohio App.3d 1, 6. Furthermore, no evidence directly contradicted Mr. Calhoun's reasonable statements concerning the impact of the dense growth of weeds and grass on any attempt to farm the property.

{¶24} Additionally, appellant challenges the trial court's reference to Mr. Calhoun's statements regarding observations as to the property that date back to 1996. Appellant argues that CAUV program eligibility is determined solely upon the use of the property during the pertinent year, and therefore, that any use on the property other than in 2005 is irrelevant to the analysis. According to appellant, referencing activities in prior years, during which the parcel qualified for CAUV program status, as support for denying CAUV status in 2005 is arbitrary, unreasonable, and unlawful. We disagree.

{¶25} We find that it was not an abuse of discretion or unlawful for the trial court to cite Mr. Calhoun's references to visits to the property in previous years, as these observations provide a context for the situation that existed in 2005. Mr. Calhoun's report indicates that there had been concerns regarding the property since approximately 1996 due to repeated and complete crop failures and a lack of sufficient crop rotation. Mr. Calhoun's report details how he had observed a dense grass and weed cover every year since his inspection in 2002, and how that vegetation cover was thriving. It is clear from a review of Mr. Calhoun's report that he had significant concerns regarding the appropriateness of the property's CAUV status through 2004, but, as appellant notes, the property remained in the CAUV program. Even though the auditor allowed the property to remain in the CAUV program through 2004, despite these concerns, that fact did not

somehow preclude a determination in 2005 that the property was no longer eligible for CAUV status.

{¶26} Lastly, we note that appellant alleged at oral argument before this court that the trial court erred in finding that the wooded portion of the property did not qualify for CAUV status because it incorrectly determined that it was his burden to prove that the timber in the wooded area was being raised for a commercial purpose. Notwithstanding the fact that appellant did not directly challenge in his appellate brief the trial court's determination as to the wooded area, this argument is unpersuasive. Under the current version of R.C. 5713.30(A)(1), it is not necessary for timber to be produced for a commercial purpose to qualify land for CAUV status, *if* the noncommercial timber land is contiguous to or part of a parcel of land under common ownership that is otherwise devoted exclusively to agricultural use. See *Dircksen v. Greene Cty. Bd. of Rev.*, 109 Ohio St.3d 470, 2006-Ohio-2990. Here, the trial court found that the non-wooded area was not devoted exclusively to agricultural use. Consequently, it was not error for the trial court to find that the wooded area did not qualify for CAUV status.

{¶27} Based on the foregoing, we conclude that the trial court did not abuse its discretion in affirming the Board's decision that the property was not entitled to CAUV status for tax year 2005. Accordingly, we overrule appellant's single assignment of error and affirm the judgment of the Franklin County Court of Common Pleas.

*Judgment affirmed.*

BRYANT and FRENCH, JJ., concur.

T. BRYANT, J., retired, of the Third Appellate District,  
assigned to active duty under authority of Section 6(C), Article  
IV, Ohio Constitution.

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IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO  
GENERAL DIVISION

ANDRE BUCKLES, :  
Appellant, : CASE NO. 07CVF-05-6241  
vs. : JUDGE SHEERAN  
THE BOARD OF REVISION OF :  
FRANKLIN COUNTY et al., :  
Appellees. :

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**DECISION AND ENTRY AFFIRMING THE FRANKLIN COUNTY  
BOARD OF REVISION'S APRIL 11, 2007 DECISION**

Rendered this 27<sup>th</sup> day of September 2007

**SHEERAN, J.**

This matter is before this Court pursuant to R.C. 5717.05. Appellant is appealing the April 11, 2007 Decision of the Franklin County Board of Revision ("BOR") that excludes property, Parcel No. 025-003905 ("the property"), owned by Appellant from the Current Agricultural Use Valuation program ("CAUV") for the tax year 2005. The CAUV program was implemented to permit the valuing of farmland on the property's ability to produce income rather than on its market value. The program can provide a significant tax savings to agricultural producers who meet the program qualifications. See R.C.5713.30 et seq.

**Factual and Procedural History**

Appellant timely filed a CAUV renewal application for the property for the 2005 tax year. The record demonstrates that the property had been granted CAUV status in prior tax years. Tr. 12, 13. In a letter dated November 30, 2005, the Franklin County Auditor notified the Appellant that the property was being denied CAUV status for the

2005 tax year. See Plaintiff's Exhibit E. Appellant appealed and a hearing was held on March 19, 2007. The testimony and the evidence before the BOR at the hearing was as follows:

The property consists of 122 acres located on Morrison Road in Gahanna near Interstate 270. Tr. 14. This property was part of a larger tract, consisting of approximately 475 acres, that the Buckles family owned. Over the years, the family sold off tracts to developers and donated land to the Gahanna school district. Tr. 12. Mark Calhoun, Deputy Auditor, testified that he physically inspected the property on June 21, 2005, July 6, 2005, July 12, 2005, July 18, 2005, August 2, 2005, August 24, 2005 and October 19, 2005. Tr. 68, 70, 73, 75, 77, 79, 83; see also Appellees' Exhibits (Photographs dated August 12, 2002, June 24, 2004, August 17, 2004, October 28, 2004, July 6, 2005, July 12, 2005, July 18, 2005, August 2, 2005, August 24, 2005, October 19, 2005, June 26, 2006, August 29 and 30, 2006). Based on his inspections, Mr. Calhoun recommended that the property be removed from CAUV status since it was his conclusion that there was "absolutely no commercial agricultural commodity produced on this parcel in 2005." See Exhibit 1, February 20, 2007 Report, p. 4.

Appellant testified that he hired Carl Hamman to assist him with the farming activities on the property. Tr. 17. Both testified that they planted soybeans in June 2005. Tr. 25, 29; see also Affidavits of Greg Blanton, Robbie Hamman, Zach Hamman and Doug Anderson. They testified that the soybean crop was destroyed when Bill Potts, who was hired to spray for weeds, wiped out the soybean crop when he sprayed it with a contaminated sprayer. Tr. 19, 35; see also Exhibit A, Affidavit of Bill Potts. Mr. Hamman testified that as compensation to make up for damaging the soybean crop, Mr. Potts planted a winter wheat crop in November of 2005. Tr. 35-36. However, he

testified that the winter wheat crop did not take root and also failed. Tr. 37. Additionally, there are 65 wooded acres on the property. Appellant testified that he intends to sell the lumber when the trees are matured. Tr. 50.

### Standard of Review

The trial court's standard of review on appeal pursuant to R.C. 5717.05 was set forth by the Ohio Supreme Court in the case of *Black v. Board of Revision* (1985), 16 Ohio St.3d 11. The *Black* court stated:

While RC 5717.05 requires more than a mere review of the decision of the board of revision, that review may be properly limited to a comprehensive consideration of existing evidence, and, in the courts discretion, to an examination of additional evidence. The court should consider all such evidence and determine the taxable value through its independent judgment. In fact, RC 5717.05 contemplates a decision *de novo*. It does not, however, provide for an original action or trial *de novo*. *Selig v. Bd. of Revision* (1967), 12 Ohio App. 2d 157, 165. *Id.* at 14.

When a court reviews a decision by the BOR, that decision is not entitled to a presumption of validity. The role of the court is that of a fact finder, which must independently weigh and evaluate all evidence properly before it. The court is then required to make an independent determination concerning the valuation of the property at issue. Additionally, the trial court's analysis of the evidence should be thorough and comprehensive. The trial court's review ensures that a final determination is based on an independent investigation and a complete re-evaluation of the Board of Revisions' value determination or assessment, and not merely a rubber stamping of the Board's determination. *Id.* See also *Salamon v. Ryland* (Dec. 21, 1999), Ashland App. No. 99-COA-01290. See, also, *Park Ridge Co. v. Franklin Cty. Bd. Of Revision* (1987) 29 Ohio St. 3d 12; *In re Complaint Against the Valuation of Real Property of Houston*, Madison App. No. CA2004-01-003, 2004-Ohio 5091 at ¶6.

Nevertheless, the property owner must establish by probative and competent evidence that the Board of Revision's decision is in error. See *Cincinnati v. Hamilton Cty. Bd. of Revision* (1994), 69 Ohio St. 3d 301, 303.

### **Law and Argument**

Appellant asserts the following two assignments of error:

1. The BOR erroneously and unlawfully failed to consider all relevant, credible evidence in upholding the Auditor's decision to deny CAUV Status for the property for tax year 2005.
2. Competent, credible evidence indicates that the BOR erroneously and unlawfully determined that there was a conversion of the Property under R.C. 5713.30(B) during tax year 2005 such that the Property no longer qualified for CAUV status.

Since these two assignments of error are interrelated, this Court will address them together. Appellant's position is that the property that is the subject of this appeal was devoted exclusively to agricultural use for the tax year 2005 and therefore qualifies it for CAUV status. Appellant presented testimony that he planted soybeans on the property in June 2005 and winter wheat on November of 2005. The testimony is undisputed that both of these crops failed.

Appellee's position is based on the on-site inspections of the Deputy Auditor, Mark Calhoun. He testified that based on his observations, the property did not meet the criteria for CAUV status pursuant to R.C. 5713.30(B) since he concluded that there was "absolutely no commercial agricultural commodity produced on this parcel in 2005." See Exhibit 1, February 20, 2007 Report, p. 4.

Upon review, this Court is persuaded by two statements. When describing the property, Appellant described it in the following manner:

...Now, it is unforgiving farmland, it's poor soils, it has poor drainage, that's – it's a difficulty producing a crop, but we put it in there every year. Tr. 13.

Likewise, Carl Hamman, Appellant's farm manager and the person who does the actual labor on the property, described the property in his testimony as follows:

...The subject property is wet, it has floodplain, floodway, and is difficult to farm. It is a very, very bad soil type compared to the codemo soils at the Lower Glen Farm. Tr. 25.

As experienced farmers, and ostensibly businessmen planting crops to be sold commercially, it defies logic as to why Appellant would chose to invest time, labor and money to farm a piece of land that both he and his farm manager describe as nearly incapable of yielding any type of crop, let alone a field crop that is to be sold for commercial purposes. The record is devoid of any evidence demonstrating that Appellant made any effort to improve the quality of the property by addressing the soil or drainage issues etc. Thus, this Court finds that the testimony of Appellant and Mr. Hamman is not credible. Based on that testimony, this Court concludes that the only reason that Appellant made a feeble attempt to "farm" the property was as a pretense to qualify for the CAUV program to avoid paying more in taxes. Clearly, Appellant's purpose in "farming" the property was not to sell the crop (or lumber) commercially.<sup>1</sup>

It is Appellant's position that crop failures are common in the farm industry and that he should not be penalized for circumstances that were beyond his control. However, based on the testimony of Mr. Calhoun, this Court is persuaded by the fact that Appellant made no effort to lessen the chances for crop failure, but continued to use non-conforming and inconsistent farming methods that virtually insured that there would be no crop. Had Appellant taken steps to remedy the conditions that existed, and *then* had a

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<sup>1</sup> There was testimony that 65 acres of the property is wooded. However, the evidence was clear that there was no commercial activity as to that acreage since Appellant testified that no new trees were planted nor were any trees harvested or lumber sold. See Tr. 50, 51. Likewise, there was no evidence of a system in place to manage the trees for eventual use as lumber to be sold commercially. Accordingly, this Court concludes that Appellant did not demonstrate the requisite intent to use the wooded area for commercial purposes. See *Rocky Fork Hunt & Country Club v. Testa* (1995), 100 Ohio App. 3d 570.

crop failure, he might have an argument with some validity. However, this is not the case.

In addition, this Court finds the testimony of Deputy Auditor Mark Calhoun to be credible since his observations, for the most part, were undisputed. In his report, Mr. Calhoun details, based on his observations, that as early as 2002 this property did not resemble an area that had truly been devoted to commercial wheat production since it contained a dense mixture of green and living perennial grasses, grass stalks and weeds that were approximately 3 feet high. See February 20, 2007 Report, see also Exhibits (Photographs dated August 12, 2002, June 24, 2004, August 17, 2004, October 28, 2004; July 6, 2005, July 12, 2005, July 18, 2005, August 2, 2005, August 24, 2005, October 19, 2005, June 26, 2006, August 29 and 30, 2006).

Mr. Calhoun noted that since 1996, the level of failed crops and poor outcomes attributed to this property is unprecedented and has become the defining characteristic of the activity on this property. See February 20, 2007 Report. Additionally, Mr. Calhoun noted that Appellant has deliberately disregarded established agricultural principles of crop rotation and other methods by planting wheat on this property every single season since 1997.<sup>2</sup> See February 20, 2007 Report. Also, Mr. Calhoun observed that soybean seeds had been planted into a field where weeds were mature and had well-established root systems, without any apparent chemical intervention to be rid of them. Thus, it was Mr. Calhoun's observation that an expectation of abject failure is the only way to describe the results of planting soybeans into established weeds and grass without first eliminating the intense grass cover. See February 20, 2007 Report.

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<sup>2</sup> Appellant requested that this property be given a fallow status for 2002. Tr. 60.

Moreover, based on Mr. Calhoun's physical inspections and observations of the property and his testimony at the hearing, it is clear to this Court that there had been no action taken whatsoever that was consistent with, and conformed with, commercial agricultural practices. When Mr. Calhoun inspected the property on June 21, 2005, when most farmers in this geographical area had already planted and had their crops in the ground, he observed that nothing had been planted on the property. He also observed that there was no evidence of any mechanical or chemical mowing since the dense grass cover was still present from the previous year, and there was no evidence of any type of farm management. See February 20, 2007 Report. When he inspected the property on July 6, 2005 there was still no evidence that any action consistent with commercial agricultural practices had taken place since the grass cover was still present. See February 20, 2007 Report. On July 12, 2005 Mr. Calhoun observed that soybeans had been drilled into the dense grass cover.

Mr. Calhoun returned to inspect the property on July 18, 2005 and found an operator making a chemical herbicide application. Since the grass cover was still green and growing, the herbicide treatment did not benefit the crop. Mr. Calhoun reports that when he returned on August 2, 2005 the stunted soybeans plants were struggling to develop in the thick and concentrated net of grass stalks and leaves. See February 20, 2007 Report. He reports that when he inspected the property on August 24, 2005 it was difficult to find a soybean plant still growing among the grass weeds. Mr. Calhoun returned on October 19, 2005, at the time when most soybean fields in Franklin County were on the verge of being harvested, and did not observe any soybean plant on the property. He did observe that the grass cover had remained unscathed. See February 20, 2007 Report. Accordingly, based on those observations, Mr. Calhoun concluded that

there was absolutely no commercial agricultural commodity produced on this property in 2005.

The statute requires that land be “devoted exclusively to commercial animal or poultry husbandry,...the production for a commercial purpose of timber, field crops...” See R.C. 5713.30 (A). Because the property was not devoted exclusively for agricultural use, the Auditor properly denied Appellant’s CAUV program renewal application. The Appellant property owner failed to establish by probative and competent evidence that the Board of Revision’s April 11, 2007 Decision is in error. See *Cincinnati v. Hamilton Cty. Bd. Of Revision* (1994), 69 Ohio St. 3d 301, 303.

**DECISION**

Upon review of the record and the applicable law, this Court hereby **AFFIRMS** the April 11, 2007 Decision of the Franklin County Board of Revision. Counsel for Appellee shall prepare and submit a Judgment Entry pursuant to Local Rule 25.01.

It is so **ORDERED**.

  
9/27/07  
**JUDGE PATRICK E. SHEERAN**

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