



The matter is submitted to the Board of Tax Appeals upon the notice of appeal, the statutory transcript (“S.T.”) certified to this board by the BOR, and the record of the hearing (“H.R.”) before this board.

The subject real property consists of one parcel of approximately 40 acres of land.<sup>1</sup> It is located in the Fox Township Carrollton taxing district, Carroll County, Ohio, and appears on the Carroll County Auditor’s (“auditor”) records as parcel number 12-000638.000.<sup>2</sup> Nothing in the record indicates the parcel in question was part of the CAUV program prior to the application for tax year 2006. The auditor denied the CAUV application, finding the land was not currently in agricultural use, had not been used exclusively for agricultural purposes during the three prior years, had only 8.84 acres of hay field rather than 10 acres of tillable ground or ground devoted exclusively to agricultural purposes, and that the woodland/timberland by itself did not qualify since it had not been in a forestry program or actively logged during the previous three years. S.T.

After a hearing on the complaint, the BOR denied the claim for CAUV status, stating that it “has not found reasonable verification that the property was dedicated exclusively for the purpose of agricultural use for the prior three years.”

S.T.

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<sup>1</sup> When the initial CAUV application was filed with the county auditor on or about February 26, 2006, the property was a 40-acre tract entirely owned by Safreed. Shortly thereafter on March 7, 2006, Safreed sold contiguous 18.5-acre tracts to his nephews, Fred and Cliff Randolph, while retaining the remaining 3 acres improved with his house and yard. See appellants’ Ex. 1 at 19. Fred Randolph signed and filed a BOR complaint listing himself and his brother, Cliff Randolph, as owners, challenging the auditor’s August 2006 determination denying CAUV status. S.T. Safreed and Fred Randolph are now named as appellants in this matter.

<sup>2</sup> The property record card references the March 2006 sale and splitting of the 40-acre parcel, but assigns only one parcel number that includes Safreed’s 3 acres and the Randolphs’ 18.5-acre tracts.

On appeal to this board, appellants again assert that the subject is used for agricultural and timber purposes. As such, they argue that CAUV status should be granted beginning in 2006. At the hearing before this board, an owner of the subject, Fred Randolph, testified and presented numerous exhibits. Through his testimony, Randolph confirmed that he purchased his 18.5-acre portion of the property in March 2006 from his uncle. H.R. at 42. In his description of how his property is used, Randolph estimated that approximately 14 wooded acres of his 18.5 acres have been “exclusively dedicated to the commercial production of timber.” H.R. at 14, 27-28, 53, 61; appellants’ Ex. 1 at 19, Ex. 16. Randolph testified that although 11.35 total tillable acres existed prior to the splitting of the parcel, his uncle had not been growing or selling hay during the past four years. Thus, Randolph said he was not seeking to qualify the tillable portion of the land since it did not total the required ten acres in agricultural production. Instead, he said he was simply trying to qualify the wooded portion of the property. H.R. at 14.

Randolph further testified as to the various steps that have been taken to maintain his 14 wooded acres for commercial timber harvesting. According to Randolph, examples of his uncle’s past activities included cutting and selling trees from 1976 to 1978 and 1985 to 1990. H.R. at 14-15; appellants’ Ex. 1 at 20. Also from 1982 to 1992, Safreed “sold several hundred locust trees for posts and firewood. \*\*\* Prior to 2006, [he] did not harvest hardwoods that were lumber quality such as maples, oaks, ash, cherry and hickory.” Id. Randolph presented a note from someone alleging to have purchased locust posts from Safreed in the 1970s. Appellants’ Ex. 1

at 21. Randolph also provided timber sales receipts for payments he received in 2006 and 2007. Appellants' Exs. 9, 14, 15, and 1 at 28. He presented various photographs that depict wooded areas and tree stumps, presumably on his property. Appellants' Ex. 1 at 22-27.

In August 2006, Randolph's brother Cliff, a licensed arborist, apparently developed a written forestry management plan for their properties. Appellants' Ex. 1 at 30-34. The plan was submitted to this board, but does not appear as part of the transcript that was before the BOR. S.T. The plan contains a description of the history of the subject's woodland. The document further describes a detailed management plan discussing trees to remove to encourage growth of commercially viable trees, and a plan to plant new stock seedlings.

The brothers also appear to have hired a licensed timber consultant to inspect their property in October 2006 and prepare written comments on the past and present forest management activities. Appellants' Exs. 10-11. As to Safreed's work to maintain the wooded area for commercial timber harvesting, the forester noted "crop tree release; sold firewood; sold locust posts; constructed a trail system; protection from fire; protection from livestock." Id. As to the Randolphs' current management activities, the forester noted "precommercial thinning of hardwoods, commercial thinning of softwoods, grapevine control, undesirable understory species control, and boundary line marking." Id. Consistent with the timber consultant's report, Randolph testified that starting in late 2005, he and his brother began doing some work on the

property, such as thinning of trees, killing undesirable undergrowth and weeds, harvesting softwood trees, and having the property surveyed. H.R. at 65-69.

Section 36, Article II 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 XII of the Ohio Constitution. Under R.C. 5713.31, “[i]f the auditor determines \*\*\* that the land is land devoted exclusively to agricultural use he shall appraise it for real property tax purposes in accordance with rules adopted by the commissioner for the valuation of land devoted exclusively to agricultural use and such appraised value shall be the value used by the auditor in determining the taxable value of such land for the current tax year \*\*\*.” This determination must be made annually upon application by the property owner. R.C. 5713.31. The requirements a property must satisfy to qualify as land devoted exclusively to agricultural use are found in R.C. 5713.30, which states:

“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.” (Emphasis added.)

However, land can be converted from its exclusive agricultural use. 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).

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.<sup>3</sup>

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<sup>3</sup> In subsequent decisions, 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.”).

We have since moved away from the “actual use and intent” standard 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, Randolph contends that the auditor and the BOR have improperly denied the 2006 application for CAUV status for the subject property. Randolph claims that this board’s decision in *Hickman v. Licking Cty. Bd. of Revision* (June 24, 2005), BTA No. 2004-T-674, unreported, provides support for his position,

arguing the subject property qualifies since it satisfies the definition of land devoted exclusively to agricultural use, pursuant to R.C. 5713.30(A)(1). We disagree.

As in the *Hickman* case, we acknowledge Randolph has presented some evidence “to show that actual steps have been taken to grow timber for a commercial intent.” *Id.* at 8. Subsequent to the purchase of the land in March 2006, for example, the Randolphs developed a written forestry management plan in August and had a licensed timber consultant inspect their properties in October. Randolph presented receipts from timber sales in 2006 and 2007. We also find that Randolph credibly testified as to the nature of the activities he and his brother conducted on the parcels starting in late 2005, which we consider to be an indication of commercial management of the wooded acreage. Finally, we also realize the long time span necessary before timber harvesting may occur. To that end, we find Randolph presented credible evidence that his uncle did some previous work to the subject from 1976 to 1992, such as cutting and selling trees for lumber, posts and firewood. From this evidence we can find that portions of the wooded area were committed to the commercial production of timber at some point during the 1970s to the early 1990s and during 2006 and 2007.<sup>4</sup> However, we find no evidence of any specific activity that occurred during the relevant three-year qualifying period of 2003, 2004 and most of 2005, as required by the statute. *Cf. Fife v. Greene Cty. Bd. of Revision* (Nov. 2, 2007), BTA No. 2006-V-783, (unreported), subsequently affirmed, 120 Ohio St.3d

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<sup>4</sup> These years are not before us, but we note the auditor indicated the property could potentially qualify for the three year period that starts from 2006. “So I need to [sic] look no further to accept [sic] it’s acceptable this year for 2006. Next year and the year after and then they can apply because that’s their third year plan.” S.T. at transcription of September 27, 2006 CAUV meeting.

442, 2008-Ohio-6786 (where this board found “there is ample, and unrebutted, evidence of activity taken to grow timber for commercial production for the three years prior to the 2005 application.”).

Randolph testified that he did not begin any activity on the property until late 2005, prior to purchasing the subject in March 2006. H.R. at 65. Safreed did not testify before the BOR or this board as to what timber management activity, if any, he did to the subject from 2003 to 2005, as opposed to earlier periods. Randolph testified that he was not involved with his uncle’s work on the subject during this relevant time. H.R. at 62. Finally, Randolph conceded that the forester’s report contains no specific dates as to when his uncle’s past timber management activities were performed. H.R. at 49.

R.C. 5713.30(A)(1) is specific in its requirement that to qualify as “land devoted exclusively to agricultural use” the applicant must demonstrate that the use occurred during the *three calendar years prior to the year in which the application is filed*. In this case, the application was filed in 2006. Thus, without more, we are unable to find that qualifying activity occurred on the subject from 2003 to 2005.

Upon review of the foregoing, we find that the subject property does not qualify under R.C. 5713.30(A)(1) as being “devoted exclusively to agricultural use” beginning in tax year 2006. Consequently, the Board of Tax Appeals hereby affirms the decision of the Carroll County Board of Revision denying CAUV status.

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