

The matter was submitted to the Board of Tax Appeals upon the notice of appeal, the statutory transcript certified to this board by the Knox County Auditor, the record of the hearing before this board, and the briefs submitted by the appellant and counsel for the county appellees.

The subject real property is located in Hilliar Township/Centerburg School taxing district in Knox County, Ohio and consists of two parcels which total approximately 95 acres. Permanent parcel number 17-00943-000 consists of 30 acres and permanent parcel number 17-00531-000 consists of 65 acres. The parcels in question were previously part of the CAUV program. The appellant filed a renewal application in order to keep the parcels in the CAUV program for tax year 2005.¹ However, after county personnel found no evidence of agricultural activity on the subject parcels in tax year 2005, the subject was removed from the CAUV list.

The appellant received notice from the county auditor of her decision to remove the subject property from the CAUV list for tax year 2005.² In response to the auditor's decision, the appellant filed a complaint, pursuant to R.C. 5713.32, with the county board of revision. S.T. at Ex. 1. The county board of revision convened a hearing at which the appellant and Mr. George Vernon, the appellant's brother, provided testimony. S.T. at Ex. 10. The county board of revision decided to affirm the auditor's determination and remove the subject parcels from the CAUV program for tax year 2005. S.T. at Ex. 8. The appellant then filed the instant appeal with this

¹ A copy of the renewal application is not included in the record before this board.

² Likewise, a copy of the auditor's notice to the appellant pursuant to R.C. 5713.32 is not included in the record before this board.

board wherein she is appealing the decision of the county board of revision. Likewise, this board convened a hearing at which the appellant and Mr. David Vernon provided testimony and documentary evidence.

Before the board of revision and this board, the appellant argued that the auditor and the board of revision improperly removed the subject from the CAUV program. Before addressing the manner in which the subject property is used, we will address the appellant's argument that she did not receive timely notice from the auditor under R.C. 5713.32 of the auditor's determination to remove the property from the CAUV program. In her post-hearing brief, the appellant contends that the auditor failed to provide her with timely notice as required by R.C. 5713.32. Appellant's Brief at 1. Specifically, R.C. 5713.32 provides:

“Prior to the first Monday in August the county auditor shall notify, by certified mail, each person who filed an application or an amended application under section 5713.31 of the Revised Code and whose land the auditor determines is not land devoted exclusively to agricultural use, of the reason for such determination. A complaint against such determination may be made in the manner prescribed in section 5715.19 of the Revised Code.”
(Emphasis added.)

Since the appellant did not receive the auditor's notice until August 15, 2005, the appellant contends that the auditor failed to provide her with timely notice. Although R.C. 5713.32 states that the auditor “shall” provide the notice described in that statute “[p]rior to the first Monday in August,” the statute does not indicate any intent on the part of the General Assembly to restrict the ability of the county auditor to remove lands from CAUV status if the deadline is not met. See *Hardy v. Delaware*

Cty. Bd. of Revision (2005), 106 Ohio St.3d 359. Instead, the notice requirement in the statute is intended to give property owners sufficient time to challenge the auditor's conclusion. That fact is evident from the last sentence of R.C. 5713.32 itself, which says that any complaints against an auditor's decision denying CAUV status for real property "may be made in the manner prescribed in section 5715.19 of the Revised Code."

In the instant matter, the appellant property owner did in fact file a timely complaint in March 2006 for tax year 2005 with the county as permitted by R.C. 5715.19(A)(1)(b). S.T. at Ex. 1. No prejudice occurred from the notice given by the county auditor in this instance, albeit approximately two weeks late, as appellant received the notice in question and was given an opportunity to appear and present evidence before the board of revision. The auditor's late delivery of the notice did not adversely affect the property owner. See *Hardy*, supra; Cf. *Rocky Fork Hunt & Country Club v. Testa* (1995), 100 Ohio App.3d 570.

We will now consider the manner in which the subject property is utilized and whether it qualifies for the CAUV program for tax year 2005. Generally, use of land that satisfies the definition of "land devoted exclusively to agricultural use" qualifies for CAUV status. "Land devoted exclusively to agricultural use" is defined in R.C. 5713.30(A)(1) as follows:

"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.)

In order 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. Nevertheless, under specified circumstances, R.C. 5713.30(A)(4) permits an owner to allow the land to lay idle or fallow for a period of time without jeopardizing qualification of the property for the CAUV program. R.C. 5713.30(A)(4) provides that notwithstanding the following circumstances, the land will be considered “land devoted exclusively to agricultural use:”

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

As used in the above statute, “converts” is defined in R.C. 5713.30(B) as follows:

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

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

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

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

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

Thus, under R.C. 5713.30(A)(4), land will remain designated as “land devoted exclusively to agricultural use” where said land has been designated as such during the previous three consecutive calendar years, but has been lying idle or fallow for up to one year and no action has occurred to such land that is either inconsistent with the return of it to agricultural production or converts the land devoted exclusively to agricultural use. However, in the event such land is idle or fallow beyond one year, but less than three years, the property owner must prove good cause in order for the land to remain designated as “land devoted exclusively to agricultural use” and thus remain in the CAUV program.

In the instant matter, the record reveals that the subject property was farmed with soybeans during 2002. H.R. at 30-31. During 2003 and 2004, the subject

property was not farmed due to excessive rain, whereas during 2005, the subject property was not farmed due to a lack of rain. H.R. at 36-40. This is consistent with documentation completed by the farmer who farmed the subject property, Mr. Jim Hunter. S.T. at Ex. 7. Mr. Hunter completed a form entitled “Notice of Loss and Application for Payment Noninsured Crop Disaster Assistance Program” for 2003, 2004 and 2005. Id. The forms for 2003 and 2004 reflect “excessive rainfall” and “excess rain,” respectively, and the form for 2005 reflects “no rain.” Id.

Before both the board of revision and this board, there was significant testimony regarding the renewal application and the fact that said form includes the following language:

“D. Land that is idle for up to three years may continue to qualify. Any parcel that was idle should be marked with an ‘X’ on front of form. Attach sheet explaining why that parcel was idle.”

The appellant does not dispute that her property was idle for 2003, 2004 and 2005, but she argues that she has complied with section “D” of the renewal application. Since a copy of the renewal application is not included in the record before us, we are unable to determine whether the appellant complied with the above section of the renewal application.

We believe that the issue in the instant matter is the applicability of R.C. 5713.30(A)(4) to the subject property. The subject property had been in the CAUV program and designated as “land devoted exclusively to agricultural use” during the previous three consecutive calendar years. Here, the appellant sought CAUV status for 2005. The previous three consecutive calendar years were 2002, 2003 and 2004. The

subject property was farmed during 2002 but was not farmed during 2003 or 2004. Thus, the subject property was lying idle or fallow for more than one year but less than three years. The property owner, therefore, must prove good cause in order for the land to remain designated as “land devoted exclusively to agricultural use” and in the CAUV program.

We believe that the appellant demonstrated good cause as to why the subject property was idle or fallow for more than one year but less than three years. The appellant demonstrated that prevented planting occurred on the subject property for 2003 and 2004. S.T. at Ex. 7; Ex. 10 at 24-25. The appellant provided documentation supporting the prevented planting for 2003 and 2004 to the board of revision. S.T. at Ex. 7. Also, the appellant provided to this board a letter from the United States Department of Agriculture, Farm Service Agency confirming the prevented planting for 2003 and 2004. Appellant’s Ex. 2.

The county appellees argue that the good cause test found in R.C. 5713.30(A)(4) does not apply to the appellant since that provision applies to land that is idle for a period of time beyond one year, but less than three years. The county appellees argue that the subject property was idle for three years, 2003, 2004 and 2005, therefore not satisfying the “less than three years” requirement. We do not agree. When applying R.C. 5713.30(A)(4) to the instant case, the manner in which the land was used during 2005 should not be considered because 2005 is the year that is at issue herein. Rather, only the years 2003 and 2004 should be considered. Two years, 2003

and 2004, fall with the permitted range of “beyond one year, but less than three years” set forth in R.C. 5713.30(A)(4).

Further, we find that a conversion of the subject property did not occur. There is no evidence in the record to suggest that the appellant has acted on her land in a manner that is inconsistent with the return of the land to agricultural production after three years. In fact, the record reflects that the subject property was farmed with soybeans during 2006. S.T. at Ex. 10 at 12.

Thus, we find, based upon the evidence before us, that for 2005, the appellant has satisfied the statutory requirements of R.C. 5713.30(A)(4). Accordingly, based upon the foregoing, the decision of the Knox County Board of Revision not to restore the subject parcels to the CAUV list must be and hereby is reversed. It is the decision and order of the Board of Tax Appeals that the Knox County Auditor shall list and assess the subject property in conformity with this decision.

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