

## OHIO BOARD OF TAX APPEALS

Cemex, Incorporated,	)	CASE NOS. 2007-H-317-365
	)	2007-H-367-383
Appellant,	)	
	)	(REAL PROPERTY TAX)
vs.	)	
	)	DECISION AND ORDER
Greene County Board of Revision and the Greene County Auditor,	)	
	)	
Appellees.	)	

APPEARANCES:

For the Appellant	-	Sleggs, Danzinger & Gill Co., L.P.A. Todd W. Sleggs 820 W. Superior Avenue, Suite 400 Cleveland, Ohio 44113
For the County Appellees	-	Rich & Gillis Law Group, LLC James R. Gorry 300 East Broad Street, Suite 300 Columbus, Ohio 43215

Entered May 12, 2009

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

These matters are before the Board of Tax Appeals pursuant to notices of appeal filed by Cemex, Incorporated (“property owner”) from determinations of the Greene County Board of Revision (“BOR”). The BOR affirmed the Greene County Auditor’s (“auditor”) decision to remove the subject property from inclusion in the current agricultural use valuation (“CAUV”) program for failure to file the required renewal application in tax year 2006. On appeal, we now affirm the BOR’s determinations.

The board considers these matters upon the notices of appeal, the statutory transcripts (“S.T.”) certified to this board by the BOR, and briefs filed by

counsel. Although accorded the opportunity to present additional evidence before this board, the parties waived the scheduled hearing. Accordingly, this board will conduct a de novo review of the record from the BOR and make an independent determination consistent with the Supreme Court's decision in *Black v. Cuyahoga Cty. Bd. of Revision* (1985), 16 Ohio St.3d 11. See, also, *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1996), 76 Ohio St.3d 13, 15.

The subject is comprised of 33 parcels of real property totaling approximately 1,750 acres of farmland that surrounds the property owner's clay quarry operation.<sup>1</sup> The parties agree that the farmland is being leased to five farmers and has previously qualified for CAUV status each year since 1996.<sup>2</sup> S.T. at Exs. A; Briefs. For tax year 2006, however, the auditor did not receive an application from the property owner requesting renewal of the CAUV status. As a result, the auditor subsequently valued the subject at its true value and placed on the tax list a recoupment charge, as provided for by R.C. 5713.34 and R.C. 5713.35. S.T. at Exs. A. In 2007, the property owner filed 33 complaints with the BOR, pursuant to R.C.

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<sup>1</sup> The subject's 33 parcels included in these appeals are identified by the following numbers: A01-1-2-91, A01-2-22-5, A01-2-22-6, M36-1-6-23, M36-1-6-24, M38-1-1-6, M36-1-3-2, M36-1-3-7, M36-1-3-14, M36-1-2-8, M36-1-2-47, M36-1-3-1, M36-1-1-1, M36-1-1-2, M36-1-2-2, B03-2-40-8, B04-2-48-2, B04-2-48-19, B03-2-40-5, B03-2-40-6, B03-2-40-7, B03-2-40-1, B03-2-40-2, B03-2-40-3, A01-2-25-38, A01-2-26-16, A01-2-33-2, A01-2-24-31, A01-2-25-2, A01-2-25-17, A01-2-22-7, A01-2-24-22, A01-2-24-24. S.T. While the property owner attempted to update the auditor's records and remove several parcels totaling approximately 160 acres from CAUV consideration at the hearing before the BOR, the record indicates these additional acres were included in the BOR's determination. S.T. at aerial map; Ex. D at 13-14.

<sup>2</sup> We note the property owner filed separate appeals for each parcel as to tax years 2005 and 2006 seeking reinstatement of the CAUV values for both years. Despite the auditor's and BOR's determinations that reference the 2005 tax year, the county appellees now argue that the property owner's appeals as to 2005 are moot since the auditor did grant CAUV status to the contested parcels for 2005. County's brief at 2; S.T. at Exs. B, E. We will, therefore, construe the appellees' position as a stipulation; we find the subject qualified for CAUV status for the 2005 tax year and should be valued accordingly. The remainder of this decision and order will focus on the 2006 tax year.

5713.351 and 5715.19, asking that the recoupment charge be rescinded and the subject be restored to CAUV status for tax year 2006 since good cause existed for the failure to file the renewal.

At the hearing before the BOR, the property owner presented Donna M. Jones, who testified that she has worked as an information administrator at Cemex's local quarry facility since 2002. She explained that due to internal routing failures between the local plant and corporate headquarters, the renewal application for 2006 was not filed. "Cemex started a centralization process for many of the back office functions such as accounting, tax, down to the corporate office in Houston, Texas. \*\*\* So we were instructed at the plant level in 2003 that anything that we received at the plant should be forwarded on to the tax department in Houston, Texas and they would process it from there." S.T., Ex. D at 6-7. Specifically, as to the 2006 CAUV renewal form, Jones testified "we were told they did not receive the packet from the mail room. We have record that the mail room received it, but the tax department said they did not receive it and, therefore, it was not filed timely again." Id. at 7.

While conducting the BOR hearing, the auditor pointed out that CAUV information and tax bills were sent to the same address, stating "[s]o I don't understand why the tax bills were received yet this piece of information was not." Jones responded that "it's very possible that they have different people processing real estate tax payments versus looking at agricultural use. They have several people working for the director of tax in that department. So that is the assumption that I, from all of the information and the people that I've spoken with, it was just that it was

not routed correctly because, as you said, they paid the tax bills themselves.” Id. at 7-8. When the auditor then referenced several certified notification letters that had been sent alerting the property owner that the CAUV renewal application had not been filed, Jones acknowledged that these letters had been forwarded to corporate headquarters but “unfortunately it’s very obvious that system does not work.” Id. at 8-9.

R.C. 5713.36 provides as follows:

“On or before the fifteenth of January of each year, the county auditor shall mail to each current owner of land that was valued as land devoted exclusively to agricultural use during the next preceding calendar year, an application for the valuation of such land as devoted exclusively to an agricultural use for the current calendar year.”

If a renewal application is not timely returned to the auditor, R.C.

5713.31 requires the following procedure:

“On or before the second Tuesday after the first Monday in March, the auditor shall determine whether the current owner of any lot, parcel, or tract of land or portion thereof contained in the preceding tax year’s agricultural land tax list failed to file an initial or renewal application, as appropriate, for the current tax year \*\*\*. He shall forthwith notify, by certified mail, each owner who failed to file an application that unless application is filed with the auditor prior to the first Monday of April of the current year, the land will be valued for real property purposes in the current year at its true value in money and that the recoupment required by sections 5713.34 and 5713.35 of the Revised Code will be placed on the current year’s tax list and duplicate for collection.”

Finally, R.C. 5713.351 provides that if a board of revision determines that there was “good cause” for an owner’s failure to file a renewal application, the

application “shall be considered \*\*\* an application that was properly filed under section 5713.31 of the Revised Code.”

The parties appear to agree that the subject would have qualified for CAUV status had a renewal application been properly filed in 2006. Moreover, the property owner does not dispute that the auditor met the statutory requirements by mailing the CAUV renewal application and then a notification letter to the property owner. In fact, based on the record, it would appear the auditor sent additional letters attempting to alert the property owner that the renewal application had not been filed. Instead, the property owner argues good cause exists for its failure to make the required filing for the 2006 tax year, which it claims was due to an inadvertent misrouting of the renewal application.

This board has previously found a lack of good cause when the property owner received and misplaced the CAUV renewal notice and then failed to claim the certified mail reminder sent by the auditor. See *Lang v. Washington Cty. Bd. of Revision* (June 30, 1999), BTA No. 1998-T-641, unreported, where we held:

“While we recognize that the failure was not due to willful neglect, the [property owners] have come forward with nothing to suggest that there were any circumstances present that may have hindered their ability to file the application.” *Id.*

We find our decision in *Lang* applies to these matters. The property owner’s Ohio agent, Jones, did not dispute that the property owner had received the renewal application and notification letters from the auditor. According to Jones, responsibility for filing the 2006 CAUV renewal application had shifted to Cemex’s corporate

headquarters in Houston. While Jones explained that a routing error allegedly occurred between Cemex's mail room and tax department as to the initial renewal application, the record lacks corroborating testimony from a witness with actual knowledge of what happened in Houston. Further, the property owner provided no explanation as to why the auditor's subsequent notification letters failed to generate the intended response. Presumably, these letters would have put the property owner on notice. Consequently, we find the property owner has "come forward with nothing to suggest that there were any circumstances present that may have hindered its ability to file the application." *Lang, supra*.

Based on the record before us, we are unable to find that the property owner has demonstrated good cause for its failure to file the 2006 renewal application. Therefore, it is the decision and order of the Board of Tax Appeals that the determinations of the Greene County Board of Revision as to tax year 2006 must be, and hereby are, affirmed.

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