

Pine Grove Ltd.,)	CASE NO. 96-T-1058
)	
Appellant,)	
)	
vs.)	(REAL PROPERTY TAX)
)	(CAUV)
Franklin County Board)	
of Revision and the)	
Franklin County Auditor,)	
)	DECISION AND ORDER
Appellees.)	

APPEARANCES:

For the Appellant	- Daniel M. Slane, Gen. Partner The Slane Co. 261 West Johnstown Road Columbus, Ohio 43230
For the Appellees	- Ronald O'Brien Franklin County Prosecuting Attorney By: Matthew H. Chafin Assistant Prosecuting Attorney 373 South High Street 20th Floor Columbus, Ohio 43215

ENTERED: July 18, 1997

Mr. Johnson and Ms. Jackson concur. Mr. Manoranjan did not participate.

This matter is before the Board of Tax Appeals pursuant to a notice of appeal filed under date of August 20, 1996, by appellant, Pine Grove Ltd. Pine Grove appeals from a decision of the Franklin County Board of Revision, which was certified on August 13, 1996. Therein, the Board of Revision denied the subject

property "Current Agricultural Use Valuation" (CAUV) status for tax year 1995.

The Board of Tax Appeals now considers this matter upon the notice of appeal, the statutory transcript certified to the Board by the Franklin County Auditor, and the record of the evidentiary hearing. Mr. Daniel Slane, a representative of Pine Grove, Ltd., appeared at the hearing and offered his testimony in support of Pine Grove's contentions. The county appellees were represented by counsel, who moved us to affirm the Board of Revision upon the record.

The subject property is identified in the Franklin County Auditor's records as Permanent Parcel Number 220-000274 and is located in the Plain Township Taxing District of Franklin County. The parcel is comprised of approximately 85.05 acres of land. The subject property is improved with a two-story building that was erected in 1900. The three bedroom dwelling is approximately 1,932 square feet in size. The subject is further improved with a garage, pole barn and "flat" barn.

In his presentation before this Board, Mr. Slane testified that Pine Grove purchased the subject property in 1974. Pine Grove operated the subject as a sod farm for most of the ownership period. Eventually, however, Pine Grove became aware of some soil deterioration. Every time sod was removed from the farm, approximately one-eighth (1/8) of an inch of topsoil was removed. Ultimately, Pine Grove was advised that it should let the soil lie

fallow for a period of two years. Accordingly, Pine Grove left the subject property fallow during 1993.

In March of 1994, Pine Grove applied to the United States Department of Agriculture's (USDA) "Highly Erodable Land Conservation Program." Although it appears that the subject property was considered to be "highly erodable," the USDA did not accept the subject property into the program. Mr. Slane testified that Pine Grove believed it was part of the program. In 1995, however, the Franklin County Auditor asked Pine Grove to provide him with verification as to the subject's participation in the program. Upon inquiry, Pine Grove learned that the program had been oversubscribed. With the program out of money, the subject was not accepted therein. Mr. Slane testified that Pine Grove went back to farming the subject in 1995. Then, in 1996, Pine Grove leased the subject to a farmer, who has since been raising soy beans on the property.

R.C. 5713.30 provides the requirements a property must satisfy to qualify as land devoted exclusively to agricultural use:

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

"(A) 'Land devoted exclusively to agricultural use' means:

"(1) Tracts, lots, or parcels of land totaling not less than ten acres that, during the three calendar years prior to the year in which application is filed under section 5713.31 of the Revised Code, and through the last day of May of such year, were devoted exclusively to commercial animal or poultry husbandry, aquaculture, apiculture, the production for a commercial purpose of timber, field crops, tobacco, fruits,

vegetables, nursery stock , ornamental trees, sod, or flowers or the growth of timber for a noncommercial purpose, if the land on which the timber is grown is contiguous to or part of a parcel of land under common ownership that is otherwise devoted exclusively to agricultural use, or were devoted to and qualified for payments or other compensation under a land retirement or conservation program under an agreement with an agency of the federal government."

To be qualified for CAUV status under R.C. 5713.30(A)(1), a parcel of property must be devoted exclusively to agricultural use for the three years preceding the year for which the status is sought. Nevertheless, R.C. 5713.30 offers some exceptions to this general rule. R.C. 5713.30(A)(4) permits, with some exceptions, an owner to let the land lie fallow for one of the three years in question without jeopardizing the qualification of the property as being exclusively used in agriculture:

"(4) Tracts, lots, or parcels of land, or portions thereof which, 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."

It is evident from the record and the testimony that the subject property was not farmed in 1993 and 1994. Under R.C. 5715.30(A)(4), the subject still qualified for CAUV status after

the first year of idleness. However, the county argues that once the land lied fallow for the second year, R.C. 5715.30(A)(4) required Pine Grove to show good cause as to why the subject should remain on the CAUV list. According to the county, Pine Grove failed to make such a showing.

Initially, Pine Grove implies that the subject property may only be considered as lying fallow under R.C. 5715.30(A)(4) for one year. Pine Grove refers to its belief that it qualified under the USDA conservation program as reason to continue the agricultural status of the property. We assume that Pine Grove maintains that the subject qualified as being devoted exclusively to agricultural use because it was "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." R.C. 5713.30(A)(1).

Upon review, we find that Pine Grove may not rely upon this provision of R.C. 5715.30(A)(1). The record contains no evidence that the subject property ever qualified for any conservation program. The only evidence submitted by Pine Grove was its application to the program and a determination that the subject could be considered "highly erodable." (Appellant's Exhibit 1.) Simply because the subject may have been "highly erodable," however, is not proof that the subject property qualified under the program.

Indeed, the record clearly shows that the program had been oversubscribed. As a result, the subject was not permitted to

participate in the program. Although Pine Grove may have believed it qualified, we cannot overlook that Pine Grove has provided: (1) no determination that the subject qualified for the program; (2) no proof to show that Pine Grove ever received payments or other compensation from the USDA; and, (3) no "agreement" with the USDA to demonstrate that Pine Grove participated in the government program, as expressly required by R.C. 45715.30(A)(1). Consequently, the Board of Revision was correct in determining that the subject was lying fallow for the two years preceding the tax year in question.

Pine Grove was thus required to demonstrate "good cause" for the second year of idleness. In the absence of good cause, the Board of Revision had the authority to find that the subject was no longer used exclusively for agricultural use. In the instant matter, we are constrained to find that Pine Grove has failed to demonstrate good cause.

Pine Grove again relies upon its mistaken belief that it was under a USDA soil conservation program. As previously stated, however, Pine Grove has failed to demonstrate that it ever qualified for the program, let the subject lie fallow under an agreement with the government, or received any payment therefrom. Pine Grove should have questioned its participation in the program and taken steps to ensure its status with the USDA. Given the complete lack of documentation from the USDA, we are unable to conclude that Pine Grove was justified in believing itself to be under the program. Thus, we are unable to find that Pine Grove may

advance its "mistake" as good cause for letting the subject property lie fallow for the second year.

We do note that Pine Grove asserts that the two-year fallow period was determined upon a recommendation it received. Pine Grove had the burden of providing us with evidence of either this recommendation or the need to let the property lie fallow for such a time period. However, Pine Grove has provided neither this Board nor the Board of Revision with any evidence of such a recommendation. In addition, Pine Grove has failed to offer any evidence to demonstrate a need to let the property lie fallow for the two year period. Thus, we are unable to find that Pine Grove has shown "good cause" under R.C. 5715.30(A)(4).

Based upon all of the foregoing, we must find that the Board of Revision correctly determined that the subject property did not qualify under R.C. 5715.30(A)(1) as being devoted exclusively to an agricultural use. Consequently, it properly denied the "Current Agricultural Use Valuation" for tax year 1995. Therefore, it is the decision and order of the Board of Tax Appeals that the decision of the Franklin County Board of Revision must be, and the same hereby is, affirmed. ohiosearchkeybta