COURT OF APPEALS
TUSCARAWAS COUNTY, OHIO
FIFTH APPELLATE DISTRICT

DALTON G. BIXLER 2016 TRUST Plaintiff-Appellant -vs- TUSCARAWAS COUNTY BOARD OF REVISION, ET AL., Defendants-Appellees	JUDGES: Hon. William B. Hoffman, P.J. Hon. John W. Wise, J. Hon. Patricia A. Delaney, J. Case No. 2023 AP 01 0005 O P I N I O N
CHARACTER OF PROCEEDINGS:	Appeal from the Board of Tax Appeals, Case Nos. 2020-1612, 2019-1553, and 2020-1613
JUDGMENT:	Reversed and Remanded
DATE OF JUDGMENT ENTRY:	July 18, 2023

APPEARANCES:

For Plaintiff-Appellant	For Defendants-Appellees
MATTHEW W. ONEST Krugliak, Wilkins, Griffiths & Dougherty Company, L.P.A. 6715 Tippecanoe Road, Suite #2C Canfield, Ohio 44406	JACKIE LYNN HAGER HOOVER Jackie Lynn Hager Company 6316 Nicholas Drive, #340707 Columbus, Ohio 43234

Hoffman, P.J.

{¶1} Appellant Dalton G. Bixler 2016 Trust appeals the judgment entered by the Board of Tax Appeals (hereinafter "BTA") affirming the decision of the Tuscarawas Board of Revision (hereinafter "BOR") finding two parcels of land owned by Appellant did not qualify for the Current Agricultural Use Value (hereinafter "CAUV") property tax program for 2018 and 2019, and finding the value of one of the parcels for 2018 and 2019 to be $620,550. Appellees are the Tuscarawas County Auditor and the Tuscarawas County Board of Revision.

STATEMENT OF THE FACTS AND CASE

{¶2} Appellant owns a stretch of land in Tuscarawas County comprising 67.76 acres. The majority of the property comprises 63 acres, and is included in Tuscarawas County Parcel No. 10-01194-000. This parcel is made up entirely of vineyards. In 2018, the Tuscarawas County Auditor split 4.76 acres from the 76.76 acre parcel and created two new parcels: parcel 10-1994-005, consisting of 3.76 acres, known as the Toolshed parcel, and parcel 10-1994-004, known as the Warehouse parcel. Appellant leases all three parcels to Breitenbach Wine Cellars, which operates the vineyards. After splitting the property, the Tuscarawas County Auditor changed the classification of the Toolshed and Warehouse parcels from agricultural to commercial, thus ending Appellant's CAUV tax status for those two parcels. The 63 acres on which the vineyards are located remained eligible for CAUV status, and are not a part of this appeal. The Auditor also assessed the value of the Toolshed parcel at $620,550.

{¶3} The Toolshed parcel includes a 6,000 square foot building, which acts as an event venue for wedding receptions and charitable events, and also stores and ages 40-60 barrels of wine. A wine press is also stored in the Toolshed, and wine processing

sometimes takes place in the building. The building was constructed to allow a truck to pull into the middle of the building. The Warehouse parcel includes a building used to store empty wine bottles, and also stores filled wine bottles awaiting delivery.

{¶4} For the tax year 2018, Appellant appealed the auditor's valuation of the Toolshed parcel, as well as the determination neither the Toolshed nor Warehouse parcels were eligible for CAUV status to the BOR. Following a hearing, the BOR found the value of the Toolshed parcel to be $528,600, and changed the tax codes on the Toolshed and Warehouse parcels from commercial to industrial. The Auditor subsequently classified the Toolshed with Land Use Code of 310, identified as "food and drink processing plant and storage," and classified the Warehouse with Land Use Code 499, identified as "other commercial structure."

{¶5} For the tax year 2019, Appellant appealed the CAUV status of the Toolshed and Warehouse parcels to the BOR. In a separate appeal to the BOR, Appellant sought a valuation of the Toolshed parcel of $450,000, based on appraisal by a realtor submitted to the BOR. The BOR determined no change would be made in the CAUV status of the parcels, and did not change the valuation of the Toolshed parcel.

{¶6} Appellant filed an appeal of all three cases to the BTA, where the cases were consolidated. The BTA found no error in the BOR's classification of the properties as industrial rather than agricultural, and found Appellant was not entitled to CAUV status because the use of the parcels did not fall within the definition of agriculture. The BTA found the value of the Toolshed parcel to be $620,500, in accordance with the auditor's original determination. It is from the January 4, 2023 judgment of the Board of Tax Appeals Appellant prosecutes its appeal, assigning as error:

I. THE BOARD OF TAX APPEALS ERRED WHEN IT FAILED TO REINSTATE THE CAUV STATUS OF APPELLANT'S PARCELS BECAUSE THE BOARD OF TAX APPEALS (1) IGNORED R.C. 1.61 AND UNCONSTITUTIONALLY CHANGED THE GENERAL ASSEMBLY'S ENACTMENTS, (2) IGNORED THE TEXT OF R.C. 5713.30, AND (3) FAILED TO FOLLOW PRECEDENT.

II. THE BOARD OF TAX APPEALS ERRED WHEN IT INCORRECTLY AFFIRMED THE BOARD OF REVISION'S VALUATION EVEN THOUGH THE BOARD OF REVISION HAD NO EVIDENCE TO SUPPORT ITS VALUATION AND APPELLANT SUBMITTED AN APPRAISAL (WITHOUT OBJECTION).

I.

{¶7} In its first assignment of error, Appellant argues the BTA erred in failing to find the Toolshed and Warehouse parcels were used for agricultural purposes and therefore qualified for CAUV status.

{¶8} The Ohio Supreme Court has set forth the standard of review on appeal from the Board of Tax Appeals as follows:

> We review BTA decisions to "determine whether they are reasonable and lawful." *Grace Cathedral, Inc. v. Testa*, 143 Ohio St.3d 212, 2015-Ohio-2067, 36 N.E.3d 136, ¶ 16, citing R.C. 5717.04. "The standard for conducting that review ranges from abuse of discretion, which applies when

> we are asked to reverse the BTA's determination regarding the credibility of witnesses, to de novo review of legal issues." *Id*.

{¶9} *O'Keeffe v. McClain,* 166 Ohio St.3d 25, 2021-Ohio-2186, 182 N.E.3d 1108, ¶12.

{¶10} Because Appellant's argument involves legal issues concerning the definition of "agriculture" used to determine qualification for the CAUV tax program, our standard of review of Appellant's first assignment of error is de novo.

{¶11} By a 1973 amendment to the state Constitution, Ohio voters authorized the General Assembly to depart from uniformity in valuing real property by permitting farms to be valued in accordance with their current agricultural use rather than their market value. Section 36, Article II, Ohio Constitution; 1973 House Joint Resolution 13, 135 Ohio Laws, Part I, 2043*; see Fife v. Greene Cty. Bd. of Revision*, 120 Ohio St.3d 442, 2008-Ohio-6786, 900 N.E.2d 177, ¶ 3. In order to qualify for the CAUV program, land owners must apply yearly.

{¶12} To qualify for CAUV tax status pursuant to R.C. 5713.30(A), the land must be "devoted exclusively for agriculture use." In its ruling in the instant case, the Board of Tax Appeals recognized it has historically interpreted the phrase "exclusively" in the statute to mean "primarily," as follows:

> We find that by using the word 'exclusively' in R.C. § 5713.30(A), the Ohio General Assembly did not intend to exclude land which is slightly or incidentally used for a purpose not enumerated in R.C. § 5713.30(A). On

the contrary, we construe the word ‘exclusively’ to mean ‘primarily’. Hence, where land is ‘devoted primarily to agricultural use’ and such use is consist [sic] with one or more of the enumerated purposes set forth in R.C. § 5713.30(A) it is clearly entitled to the CAUV classification.

We arrive at the foregoing conclusion in reliance on the Supreme Court's interpretation of the word ‘exclusively’ as used in R.C. § 5709.07. This section reads, in pertinent part, as follows:

“Public schoolhouses and houses used exclusively for public worship, the books and furniture therein, and the grounds attached to such buildings necessary for the proper occupancy, use, and enjoyment thereof, and not leased or otherwise used with a view to profit, . . . shall be exempt from taxation.”

(Emphasis added by the Board)

In examining this statute, the Court in Bishop v. Kinney (1982), 2 Ohio St. 3d 53, held that the phrase ‘used exclusively for public worship’ should be interpreted to permit exemption even where the property is slightly or incidentally used for a non-exempt purpose. Basically, the Court interpreted the phrase ‘used exclusively for public worship’ to mean ‘used primarily for public worship’. In consideration of the Courts reasoning in Bishop, we find no reason not to apply same in this instance. Hence, again, we construe the phrase ‘land devoted exclusively to agricultural use’ to mean ‘land devoted primarily to agricultural use’.

{¶13} *C. Wayne Chrisman and Marjorie Chrisman, Appellants, v. Licking Cnty. Board of Revision, Appellee.,* 1986 WL 28593, at *6.

{¶14} In determining whether the use of the two parcels at issue in the instant case was primarily agricultural in nature, the BTA applied the definition of "agricultural land and improvements" set forth in OAC 5703-25-10:

> (B) Each separate parcel of real property with improvements shall be classified according to its principal and current use, and each vacant parcel of land shall be classified in accordance with its location and its highest and best probable legal use. In the case where a single parcel has multiple uses the principal use shall be the use to which the greatest percentage of the value of the parcel is devoted. The following definitions shall be used by the county auditor to determine the proper classification of each such parcel of real property:
>
> (1) "Agricultural land and improvements" - The land and improvements to land used for agricultural purposes, including, but not limited to, general crop farming, dairying, animal and poultry husbandry, market and vegetable gardening, floriculture, nurseries, fruit and nut orchards, vineyards and forestry.

{¶15} The BTA determined once the grapes have been pressed into wine, they have become a different substance than fruit, and the storage of wine is too far removed from "fruit and nut orchards" to be classified as agricultural. Because the Toolshed and

Warehouse parcels involved the storage of wine, the BTA determined the property use was not agricultural in any manner, and the BTA did not reach the issue of whether the use of the parcels was "primarily" agricultural.

{¶16} However, R.C. 1.61 defines agriculture as follows:

> As used in any statute except section 303.01 or 519.01 of the Revised Code, "agriculture" includes farming; ranching; aquaculture; algaculture meaning the farming of algae; apiculture and related apicultural activities, production of honey, beeswax, honeycomb, and other related products; horticulture**; viticulture, winemaking, and related activities**; animal husbandry, including, but not limited to, the care and raising of livestock, equine, and fur-bearing animals; poultry husbandry and the production of poultry and poultry products; dairy production; the production of field crops, tobacco, fruits, vegetables, nursery stock, ornamental shrubs, ornamental trees, flowers, sod, or mushrooms; timber; pasturage; any combination of the foregoing; **the processing, drying, storage, and marketing of agricultural products when those activities are conducted in conjunction with, but are secondary to, such husbandry or production**; and any additions or modifications to the foregoing made by the director of agriculture by rule adopted in accordance with Chapter 119. of the Revised Code. (Emphasis added).

{¶17} The BTA found this definition inapplicable in the instant case because it was not a Revised Code section concerning the CAUV. However, R.C. 1.61 clearly states this definition of agriculture is to be used in any statute except R.C. 303.01 or 519.01. Therefore, this definition of agriculture applies by its express terms of to the use of the term "agricultural" in R.C. 5713.30.

{¶18} We recognize the Department of Taxation has promulgated a rule defining agriculture for purposes of property taxation. But while an administrative agency is able to promulgate rules governing its activities and procedure, it may do so only if the promulgated rules do not conflict with any applicable statutes. *Clayton v. Ohio Bd. of Nursing*, 147 Ohio St.3d 114, 2016-Ohio-643, 62 N.E.3d 132, ¶ 31. In the instant case, to the extent the definition of agriculture set forth in OAC 5703-25-10 does not include winemaking, its related activities, and the processing, storage and marketing of wine when conducted in conjunction with but secondary to its production, we find the rule conflicts with the statutory definition of agriculture established by the Ohio General Assembly in R.C. 1.61. We find the BTA erred in concluding the use of the parcels for processing and storage of wine was not "agriculture" as defined by the Revised Code. Therefore, we find Appellant qualified for CAUV status if the use of the two parcels in question is "primarily" agricultural in nature.

{¶19} It is undisputed the Warehouse parcel was used primarily for the storage of filled wine bottles and empty wine bottles waiting to be filled. We find the record demonstrates the Warehouse parcel was used primarily for agricultural purposes, and the BTA therefore erred in finding Appellant was not entitled to CAUV status for the Warehouse parcel for tax years 2018 and 2019.

{¶20} As to the use of the Toolshed, there was evidence before the BOR and the BTA concerning the use of the building on the parcel for wedding receptions, charitable events, and educational events. Two letters concerning the classification of the Toolshed parcel were admitted into evidence before the BTA and are a part of the record certified by the BTA to this Court on appeal. Larry Lindberg, Tuscarawas County Auditor, wrote to Matthew Sandor, an attorney for the Ohio Department of Taxation, seeking guidance on the classification of the Toolshed parcel while Appellant's BOR appeal was pending. The letter stated the auditor's office had changed the classification of the Toolshed parcel from agriculture to commercial based on "highest and best use" due to the numerous events held at the venue, including wedding receptions. The letter noted during the hearing before the BOR, it was indicated the Toolshed stores approximately 40 barrels of wine, with a value of $200,000 per barrel, and also stores wine-making equipment. The letter also indicated evidence before the BOR established the revenue from events held at the Toolshed generated around $80,000 per year. Attorney Sandor responded the most appropriate classification of the Toolshed parcel was industrial, with a land use code of 310, food and drink processing plant and storage.

{¶21} The BOR changed the classification of the Toolshed parcel from commercial to industrial. We find implicit in the BOR's reclassification of the property from commercial to industrial is a finding the space was used primarily for the industrial storage and/or processing of wine, and was not used primarily as a commercial event venue. In accordance with the decision of the BOR and the advice of the Department of Taxation, the auditor changed the classification of the Toolshed parcel from commercial to industrial, with a code of 310, food and drink processing plant and storage. Appellees

did not appeal the BOR's reclassification of the Toolshed from commercial to industrial to the BTA. Having failed to challenge the reclassification of the Toolshed from a commercial event venue to an industrial food and drink processing and storage facility, and further having failed to file a conditional cross-appeal of the BTA's finding the BOR's classification of the parcels was not in error, Appellees cannot now argue before this Court the primary use of the Toolshed is as a commercial event space and not for the storage and/or processing of wine. Because the storage and processing of wine is defined as agriculture by R.C. 1.61, we find the BTA erred in finding Appellant was not entitled to CAUV status for the Toolshed parcel for tax years 2018 and 2019.

{¶22} The first assignment of error is sustained.

II.

{¶23} In its second assignment of error, Appellant argues the BTA erred in finding the market value of the Toolshed parcel to be $620,550, with a taxable value of $217,190.

{¶24} The valuation of $620,550 was made by the auditor while the property was classified without affording it eligibility for CAUV status for tax years 2018 and 2019. We have already determined such was error, *infra*. The county auditor in each of Ohio's counties must value CAUV property in accordance with the CAUV Land Tables prepared by the tax commissioner. *Vance v. State*, 10th Dist. No. 18AP-484, 2019-Ohio-1322, 134 N.E.3d 683, ¶ 17. Because the property must be valued in accordance with the CAUV Land Tables, the valuation assigned when the property was classified as commercial and/or industrial no longer applies. The auditor must reevaluate the Toolshed parcel's value utilizing the CAUV tables. Appellant's second assignment of error is sustained.

{¶25} The judgment of the Board of Tax Appeals is reversed, and this case is remanded for further proceedings according to law and consistent with this opinion.

By: Hoffman, P.J.
Wise, J. and
Delaney, J. concur