IN THE SUPREME COURT OF OHIO

Kenneth Adams, et al.,	)	
	)	
Appellants,	)	Case No. 2023-0733
	)	
v.	)	On Direct Appeal from the Ohio Board of
	)	Tax Appeals, Case Nos. 2015-1090,
Patricia Harris,	)	2016-1061, 2017-1867, 2018-1143,
Tax Commissioner of Ohio,	)	2019-1632, 2020-1347
	)	
Appellee.	)	

BRIEF OF AMICUS CURIAE OHIO FARM BUREAU FEDERATION IN SUPPORT OF APPELLANTS KENNETH ADAMS, TRUSTEE, ET AL.

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I. STATEMENT OF CASE AND FACTS

Amicus curiae the Ohio Farm Bureau Federation accepts and fully incorporates herein the statement of case and facts as stated by Appellants.

II. INTEREST OF THE AMICUS CURIAE

The Ohio Farm Bureau Federation ("OFBF" or "Farm Bureau") is Ohio's largest general farm organization, with a mission of working together with Ohio's farmers to advance agriculture and strengthen communities. Ohio Farm Bureau is a federation of 86 county farm bureau organizations, representing all 88 counties in Ohio.

Ohio Farm Bureau members own and rent land throughout the state and use it to produce virtually every kind of agricultural commodity found in this area of the country. Since 1919, Ohio Farm Bureau members have led the way in public policy information and issue education. Today is no different, as Farm Bureau members frequently engage in conversations covering the gamut of subjects such as governmental efficiency, taxation, environmental issues, and energy.

One issue of consistent high priority is the Current Agricultural Use Valuation program, or CAUV. It was the Ohio Farm Bureau Federation in the 1970's, which lobbied for and promoted the idea of differential assessment of agricultural property. After *State ex rel. Park Investment Co. v. Board of Tax Appeals*, 32 Ohio St. 2d 28, 289 N.E. 2d 579 (1972), found unconstitutional the valuation of land according to its use rather than a market value assessment, OFBF undertook a campaign to ensure farmland would be valued fairly at its agricultural use value. Turner, *Ohio Farm Bureau Story 1919-1979* (1982) 285-286. The General Assembly approved a constitutional amendment which, in 1973, was submitted to the voters of Ohio for approval as Issue 1. Am.H.J.R. No. 13, 135 Ohio Laws, Part 1, 2043, *see also* Turner, *Ohio Farm Bureau Story 1919-1979,* at 285-286. The CAUV program was placed into the Ohio Constitution as Article II, Section 36 by

an overwhelming majority of support, a vote of one and three-quarter million voters in favor and only a half-million against. Turner, *Ohio Farm Bureau Story 1919-1979,* at 285-286, *see also* Ohio Constitution, Article II, Section 36. As a result of Issue 1, farmers were saved from the devastating effects of development and inflating land values that would undoubtedly wipe out the historical and present backbone of Ohio's economy.

Since that time, Ohio Farm Bureau has remained one of the lead organizations that promotes the program and educates Farm Bureau members, government officials, and the public in general about the CAUV program. This includes numerous meetings sponsored by the county farm bureaus which explain the program's eligibility requirements and the calculation which determines land values under the CAUV program to Farm Bureau members. Staff also provide educational assistance to the members of the Ohio General Assembly and their aides, and are frequent speakers at various events with local government officials. Ohio Farm Bureau members are largely the participants in the CAUV program, either as landowners themselves or through tenant-farmer relationships with non-operating landowners.

Programs like Ohio's CAUV are present in nearly every state of this country. Farmland Information Center, *Differential Assessment and Circuit Breaker Tax Programs*, (Aug. 1, 2006) http://www.farmlandinfo.org/differential-assessment-and-circuit-breaker-tax-programs (last accessed Aug. 28, 2023). The importance of the CAUV program to Ohio landowners cannot be overstated. These differential assessment programs are seen as a leading tool for farmland preservation in nearly every state, attempting to contain urban sprawl and maintain agricultural economies. Agricultural land is a disappearing commodity. Ohio alone has lost nearly seven million acres of farmland to sprawling development between 1950 and 2002, which constitutes more than 30% of the state's agricultural land or the equivalent size of nearly 23 counties. Nikolic,

Preserving Ohio's Farmland: A Report of Recommendations to the Ohio House Subcommittee on Growth and Land Use, 2 (July 2004) available at https://farmlandinfo.org/publications/preserving-ohios-farmland-a-report-of-recommendations-to-the-ohio-house-subcommittee-on-growth-and-land-use/ (last accessed August 28, 2023). Current trends suggest that Ohio stands to lose another 500,000 to nearly 700,000 acres under current policies or enhanced sprawl between 2016 and 2040, according to the American Farmland Trust. American Farmland Trust, *Farms Under Threat 2040 Future Scenarios Ohio*, https://storage.googleapis.com/csp-fut2040.appspot.com/state-reports/FUT2040_OH.pdf (last accessed August 28, 2023). The CAUV program is Ohio's best defense to protect and promote the farmland that supports Ohio's number one industry of agriculture and food production. It is because of the CAUV program that Ohio farmers are able to stay on their land and continue their operations to provide domestically-produced and wholesome food, fiber and fuel to our citizens.

Because of this strong interest in CAUV, the Ohio Farm Bureau Federation is filing this brief as an amicus curiae to inform the Court of the history of CAUV and the importance of the program to Ohio landowners. Furthermore, the Board of Tax Appeals has erred in its decision-making in this case, particularly in its review and characterization of the facts surrounding the Agricultural Advisory Committee's actions and the process followed to determine valuation of Ohio woodland. As this error stands to harm many of Ohio Farm Bureau's members who own commercial and noncommercial woodlands, Ohio Farm Bureau encourages this Court to reverse the Board's decision and ensure landowners have accurate woodland CAUV values. This error also creates a concerning precedent that would further curtail due process from CAUV landowners who seek to challenge the decisions of the Tax Department in setting their property values.

III. ARGUMENT

A. The Court should review the BTA's findings, including the weight given to evidence, in order to ensure the BTA acted reasonably.

Generally, the Court does not "sit as 'a super BTA or a trier of fact de novo.'" *Westerville City Schools Bd of Edn. v. Franklin Cty. Bd. of Revision,*146 Ohio St.3d 412, 2016-Ohio-1506, 57 N.E.3d 1126, ¶26. While the BTA's findings are entitled to deference as long as they are supported by reliable and probative evidence, when decisions are not so supported, the Court should review those findings. *Id.* In this case, the Board misconstrued factual evidence to find the Commissioner acted reasonably.

Contrary to the Board's findings, the facts in the record clearly show the Commissioner, and her staff, acted arbitrarily and unreasonably in setting the woodland deduction used to calculate the CAUV values. The Commissioner's staff stated: "For the deduction...put them on a dart board!" Record, Book One, Appt. Exh. 4, p. 1. And that is in essence what they did.

Contrary to the Board's assertion that the basis for deeming the Commissioner's action reasonable was the "approval" of the Advisory Committee, the Commissioner's staff testified at the Board's hearing that no member of the Agricultural Advisory Committee expressly supported a $1,000 clearing deduction. *See* ICN 66, Appellant's Post Hearing Brief at 15-16, Gardener, Tr: 234:2 to 235:32; Wilson, Tr: 393:13-23.

For these reasons, the Board's order should be reversed.

B. The CAUV program operates differently than any other property assessment process under Ohio law and the Tax Commissioner alone determines the values for assessment.

The CAUV program values land based upon its potential to raise income from agricultural production only. While an income-approach is sometimes used for other types of businesses to determine an assessment value by the auditor, the CAUV program differs in that the Ohio

Department of Taxation is the only government entity which can set, question or settle CAUV values.

1. Values are wholly determined by the Tax Commissioner and the Department.

The process begins with a net-income capitalization calculation. Each of Ohio's more than 5,300 soil types has an individualized calculation performed to determine the unique soil value. *See* Ohio Department of Taxation, Administrative Journal Entry 15-06-0132, Current Agricultural Use Value of Land Tables, (Record, Book Two, at p.574); Ohio Department of Taxation, *CAUV Land Table,* available at http://www.tax.ohio.gov/real_property/cauv.aspx (last accessed August 28, 2023). The calculation begins with the soil's recorded yields for corn, soybeans and wheat, which is multiplied by a 7-year Olympic average of commodity prices to determine a gross income. That gross income is then reduced by the costs of producing said crops to determine a net income. That net income number is then divided by a capitalization rate based upon current interest and equity rates. *See* Ohio Department of Taxation, *2015 Current Agricultural Use Value of Land Tables: Explanation of the Calculation of Values for Various Soil Mapping Units for Tax Year 2015 (FINAL VALUES-2015)*, (May 28, 2015), Record, Book Two at p. 665, also available at http://www.tax.ohio.gov/real_property/cauv.aspx (last accessed August 28, 2023) (note that additional years explanations can be accessed at the same website). These values are referred to as cropland values. These values apply to any land that is enrolled in the CAUV program that is not presently qualified as "woodland" or does not have more than a 25% slope. *See* Ohio Adm. Code 5703-25-33(M)(4) (requiring the Department to deduct costs of conversion if land is used for other purposes such as forestry or pasture).

The only other values calculated are those for land presently used as woodland. Woodland values are determined by taking a soil's cropland value and deducting what are often referred to

as "costs of conversion." This is required by Ohio Adm. Code 5703-25-33(M)(4) for any land that is not presently used for crop uses, though woodland is the only present land use for which the Department has provided costs of conversions and values. Currently, the Department deducts an amount set by the Tax Commissioner representing the cost of clearing land for each woodland soil value. Additionally, if a soil has the characteristics as somewhat poorly drained, poorly drained, or very poorly drained, then an additional deduction, as set by the Commissioner, is made for tile drainage. Certain soils characterized as organic or frequently flooded will also have a deduction, again set by the Commissioner, for surface drainage. The woodland value is the product of the cropland value minus these various deductions. Historically, the source of these costs of conversion was not provided. The cost of clearing has been determined by the Commissioner and her staff at the Department of Taxation and is the subject of this litigation. The cost of tile drainage has been set by the Commissioner, and at least since 2016, has been based on data from Ohio State University Extension. *See* Ohio Department of Taxation, *2023 Current Agricultural Use Value of Land Tables: Explanation of the Calculation of Values for Tax Year 2023 (FINAL VALUES-2023)*, (July 6, 2023) available at http://www.tax.ohio.gov/real_property/cauv.aspx (last accessed August 28, 2023). Surface drainage deductions, similarly, are set by the Commissioner.

All of the data points utilized are determined by the Ohio Department of Taxation, in accordance with the statutes in R.C. 5713.30 et seq. and Ohio Adm. Code 5703-25-30 through 5703-25-36. The Commissioner and department staff may consider comments of the Agricultural Advisory Committee, and comments of the public when determining the mechanics of the CAUV calculation and ultimate values, though the Commissioner can, and has, declined this outside

consultation in the past.[1] The regulations direct the Tax Department to gather this data from various places: the cooperative extension service, the federal land bank, the U.S. Department of Agriculture, Natural Resources Conservation Service, and "other reliable sources." Ohio Adm. Code 5703-25-33(D) It is, therefore, the Department's duty to find reliable information as needed to develop the CAUV calculation and ensure its accuracy.

2. Once preliminarily calculated, the values are presented to an Agricultural Advisory Committee

Once the Tax Department has preliminarily determined the data points, a meeting of the Agricultural Advisory Committee is held by the Department. This committee, authorized by Ohio Adm. Code 5703-25-32, is a group of stakeholders as chosen by the Tax Department to "annually advise" the Tax Department on "economic, technological and other current developments that might be considered in the determination of agricultural land values." Ohio Adm. Code. 5703-25-32(A). Currently, the Department invites groups such as the Ohio Farm Bureau, the Ohio Farmers Union, the County Auditor's Association of Ohio, the Ohio Farm Managers and Appraisers, the Ohio County Treasurer's Association and other stakeholder groups. *See* Ag Advisory Committee 2015, Record, Book Two, at p. 664. This committee is by definition, advisory only. In fact, the regulations specify that, "the commissioner is **not bound** by such recommendations and may, at the commissioner's option, either accept the recommendations in full or part, or reject them in total." Ohio Adm. Code 5703-25-32(C) (emphasis added). In recent years, this meeting has run similarly to an administrative hearing, with the Tax Department staff presenting information

[1] Note that some of these data points, particularly components of the capitalization rate, were updated via statute in 2017, despite clear indication that formula components are within the power of the Commissioner and the Department of Taxation to determine. Various members of the Agricultural Advisory committee individually recommended the Commissioner take such steps, including Ohio Farm Bureau. After the Commissioner failed to consider these recommendations, the legislature chose to instead make the changes via statute despite the Commissioner's ability to make such changes.

regarding the year's proposed CAUV calculation with comments from the committee members directly after. In some instances, members of the general public have also been invited to make comments, though this has not been a consistent practice. Unlike an administrative hearing, the Department typically does not provide any formal explanation, answer or response to committee members' comments.[2] From this point, the Tax Department finalizes the CAUV calculation, and presents the calculation at a public hearing regarding the CAUV values. Ohio Adm. Code. 5703-25-31(D). Again, the Department presents information related to the calculation and soil values, and takes comments. These comments could include those from Agricultural Advisory committee members and the general public. Soon after this hearing is concluded, the Department certifies the values by soil type and transmits them to the County Auditors and the members of the Agricultural Advisory Committee. Values and information are also posted to the Department's website. The values are then used by county auditors to assess taxes for that tax year and the next two tax years in the revaluation cycle.

3. The Agricultural Advisory Committee does not vote on or approve actions of the Tax Commissioner

Despite the findings of the Board of Tax Appeals, in the more than 10 years that current Farm Bureau staff have served on the Agricultural Advisory Committee, there have been no votes taken by committee members to formally approve or disapprove any actions of the Tax Commissioner or their staff in regards to the CAUV program. There have been no attempts to take

[2] Amicus notes that after OFBF formalized recommendations to improve the CAUV calculation into letter form and sent them directly to the Tax Commissioner, limited changes were made to the CAUV calculation for the 2015 tax year in response to those individual comments of Ohio Farm Bureau. *See* Ohio Department of Taxation, 2015 values: Informational Presentation, Record, Book Two, at p. 633, also available at http://www.tax.ohio.gov/real_property/cauv.aspx (last accessed Aug. 28, 2023). This included OFBF's general recommendation to increase woodland deductions. Additional recommendations made by Farm Bureau and others remained wholly unaddressed. Instead, the legislature took action upon some of these recommendations in 2017.

consensus of the committee in any way, formally or informally. Instead, committee members are essentially provided an open forum where they may (or may not) express their independent thoughts or ideas regarding the CAUV calculation and program. Occasionally, the staff of the Tax Department has arranged for a presentation by one of the committee members or outside resources on a specific topic, for example, the collection of non-land production costs, to also occur at these meetings for the benefit of committee members.

The Board of Tax Appeals stated in its decision, "After reviewing all the information, the Advisory Committee **recommended** increasing the clearing cost deduction from $500 to $1000." *Adams v. Harris,* BTA No. 2015-1090, 2016-1061, 2017-1867, 2018-1143, 2019-1632, 2020-1347 (May 9, 2023) at 5 (emphasis added.). The Board relies upon this assertion throughout its opinion as evidence that the Commissioner acted reasonably. However, the "Advisory Committee" did not make any such recommendation, particularly not as to the specific amounts stated by the Board. This is further demonstrated by the own admission of the Tax Department employees who testified in the underlying case at the Board of Tax Appeals. *See* ICN 66, Appellant's Post Hearing Brief at 15-16, Gardener, Tr: 234:2 to 235:32; Wilson, Tr: 393:13-23. The committee was presented this change by the Tax Commissioner's staff upon arrival at the committee meeting. Ohio Farm Bureau is acutely aware of this fact, as one of the organizations that officially by previous express written comment and as an individual member of the Advisory Committee recommended and advocated for the Department to increase woodland conversion deductions to be more consistent with the actual costs of clearing and drainage, as required by rule. *See* Record, Book Two, p. 465. It was also OFBF's recommendation that such numbers be gathered through the assistance of the Ohio Forestry Association and others with the unique knowledge and ability to provide such accurate market based information to the Department. *Id.* This was one of a number of

recommendations OFBF advanced between the years 2014 and 2017. While other organizations, including the Ohio Forestry Association and the Ohio Farmers' Union, also *individually* supported an increase in woodland conversion deductions, the committee itself did not make any consensus recommendation. In fact, the Ohio Forestry Association at that time and still today continues to advocate for higher conversion deductions that are more consistent with actual market costs of clearing woodland for land conversion.

While individual members of the Advisory Committee advocated for and supported an increase in the woodland deductions that were consistent with market information, there was no action of the Advisory Committee itself to recommend the Commissioner's actions to make the clearing deduction $1,000. The Tax Commissioner's own employees admitted as such in the lower proceedings, testimony apparently ignored by the Board and its decision. *See* ICN 66, Appellant's Post Hearing Brief at 15-16; Gardner, Tr. 234:2-235:32; Wilson, Tr. 393:13-23. The Board acted unreasonably in relying upon this determination in finding that Tax Commissioner's actions were reasonable, and for that reason this Court should reverse their decision.

4. Even if the Advisory Committee had recommended such actions, it is not relevant to the Tax Commissioner's actions, as the Commissioner ultimately acts alone and is not bound by any recommendation of the Advisory committee.

Though the evidence does not show that the Advisory Committee acted in anyway as a body to "recommend" or "approve" the Commissioner's actions, any evidence that would support such a conclusion is not conclusive to the question at hand. The appeal centers around the actions of the Tax Commissioner in setting appropriate deductions for the cost of conversion from a present use to crop use – in this case the cost of clearing and drainage to facilitate a conversion from woodland to crop use, as required by Ohio Adm. Code 5703-25-33(M)(4). The regulations do not contend that the Tax Commissioner shall act in accordance with the recommendation or

approval of the Agricultural Advisory Committee. Rather, Ohio Adm. Code 5703-25-32 is quite clear that the Agricultural Advisory Committee's job is to "advise" the Tax Commissioner and to make "recommendations." In fact, the rule is directive that the "commissioner is **not bound** by such recommendations and may, at the commissioner's option, either accept the recommendations in full or part, or reject them in total…" Ohio Adm. Code. 5703-25-32(C) (emphasis added).

If, in fact, the Tax Commissioner did rely on a recommendation of an advisory committee, it is still the Tax Commissioner's job to act reasonably in following the law and the regulations. Even if the committee had recommended the specific $1,000 deduction for clearing--which it did not-- per the regulations, the Tax Commissioner is the one charged with the duty to ensure that recommendation is reasonable and reliable and supported by data. *See* Ohio Adm. Code 5703-25-33(D). The evidence provided to the Tax Commissioner at the time of the original change, over the years concerning these cases, and the evidence provided in this case, all clearly show that the $1,000 deduction was not reasonable nor supported by reliable data.

Per the governing regulations, it is the Tax Commissioner's job alone to reasonably and accurately set the costs of conversion from a present use like forestry or pasture to a crop use, and deduct such costs from the calculated cropland values to establish the appropriate use value. As the evidence in this case clearly shows, the Commissioner and their staff failed to act reasonably in setting such conversion costs. For this reason, the Board's decision should be reversed and the case returned with orders to accurately determine the costs of conversion.

C. The BTA did not give appropriate weight to the testimony of those most able to provide information on the costs of woodland clearing, including those in the forestry industry and the landowner-appellants.

1. A taxpayer's knowledge of their property value is accepted as appropriate opinion of value in any other property tax valuation dispute.

It is well settled in any other property valuation dispute that the owner is entitled to give an opinion of their property value, and that opinion should carry appropriate weight. *See Worthington City Sch. Bd. Of Edn. v. Franklin Cty. Bd. of Revision,* 140 Ohio St. 3d 248, 2014-Ohio-3620, 17 N.E.3d 537, ¶19. This has also been extended to business owners and corporate officers where a challenge is made of the value of commercial or industrial property and such owners or officers can provide an opinion of value. *Tokles & Son v. Midwestern Indem. Co.*, 65 Ohio St.3d 621, 627, 605 N.E.2d 936 (1992) ("Similarly, the benefit of the owner-opinion rule should not be denied to a closely held corporation which cannot speak itself but which can convey its owner-opinion by a qualified officer, and we so hold."). The benefit of the owner-opinion rule has also been extended to apply to opinions rendered by corporate employees *Worthington City Sch. Bd.* at ¶31. Instead of recognizing the similarity of the factual dispute at issue in this case to a run-of-the-mill property valuation dispute and affording appropriate weight to the opinions of those best situated to opine on the costs of clearing woodland, the Board disregarded this information entirely because of a purported interest and benefit that is present in every dispute – tax or otherwise – that comes before every court. The Board should have given appropriate weight to the testimony and evidence presented by the landowners and witnesses, who presented with demonstrated experience in the area of woodland and forestry management, and because it did not, its order should be reversed.

2. Commercial foresters and forestry landowners are uniquely qualified to provide information and evidence as to the appropriate costs of clearing wooded parcels of property.

The Board discounted the opinions and evidence regarding the cost of clearing wooded parcels from the Executive Director of the Forestry Association, a former executive director who has also served as a certified forester, a landowner who also has extensive experience as a forester and as a forest land owner, and other landowners who have owned and tended forest land for many years in consultation with forestry experts.

Despite his participation on the advisory committee, the testimony of Mr. Perkins was seemingly snubbed because he "admitted" he was a "lobbyist" for the association by which he was previously employed. *Adams v. Harris,* BTA Case No. 2015-1090 No. 2015-1090, 2016-1061, 2017-1867, 2018-1143, 2019-1632, 2020-1347 (May 9, 2023), at 12. The landowners' testimony also appeared to be discredited based on the possible "benefit" that could arise from their testimony and the information they submitted. *Id.* While a potential benefit may be true, it is also important to note that this was actual information and data provided that evidenced what a clearing cost for woodland truly was from actual market participants who clear woodland. Arguably, more work was done by these individuals to find reliable and probative evidence of a clearing cost than the Tax Commissioner and her staff, the very agency charged by rule with finding this reliable information.

While this is not a valuation dispute *per se*, in any tax dispute of any type, it is likely that those who are involved with the case stand to benefit from the arguments they are making. Despite this, it is long standing principle that a landowner or business owner has unique knowledge of their own property that should be afforded appropriate weight in a valuation dispute. *Worthington School Bd. of Edn.,* 140 Ohio St. 3d 248, 2014-Ohio-3620, 17 N.E.3d 537 at ¶19 Similarly, those who have worked directly for decades in the forestry industry and own forestland should have their

testimony afforded considerable weight, as they have unique knowledge of the very topic that is at hand.

As previously presented by amicus to this Court in *Adams v. Testa,* Case No. 2016-0256, "Brief of Amicus Curiae Ohio Farm Bureau Federation In Support of Appellants Kenneth Adams, et al." *available at* https://www.supremecourt.ohio.gov/pdf_viewer/pdf_viewer.aspx?pdf=799648.pdf&subdirectory=2016-0256\DocketItems&source=DL_Clerk (Last accessed Aug. 28, 2023), unlike any other property owner, CAUV landowners are not afforded any meaningful ability to challenge their property values except through actions such as these that challenge the Commissioner's methodology and actions in setting the CAUV land tables. If farmers and forest owners will have their evidence and testimony immediately discredited simply because they stand to benefit, then there is truly no legal recourse for these landowners to ensure their property valuations are correct. The Tax Commissioner and her staff are likely experts at tax calculations, but they are not experts at farming, forestry or agriculture.

The Board unreasonably disregarded the substantial evidence provided by those involved in this dispute with actual knowledge of woodland clearing costs. That evidence clearly shows the Commissioner and her staff acted unreasonably and arbitrarily in setting the woodland deductions, particularly for clearing. For this reason, this Court should reverse the Board's decision.

D. The Commissioner has acted unreasonably by failing to find reliable sources that support the current deduction and failing to update the deduction supported by reliable data since 2015.

Even if, in the original case filed in 2015, it could be said the Department acted reasonably in moving to update a conversion cost that was long overdue and woefully inadequate, that does not absolve their actions in the subsequent cases after that fact that are also the subject of this appeal. Evidence provided by the landowners and their witnesses clearly demonstrated the $1,000

clearing cost deduction was inadequate when compared to the costs provided by actual market participants in the forestry industry. The Tax Commissioner, under the statues and rules of this program, is charged with developing a calculation that is accurate and based on data, not stagnant and status quo without reliable data to back it up. *Adams v. Harris,* BTA Case No. 2015-1090 No. 2015-1090, 2016-1061, 2017-1867, 2018-1143, 2019-1632, 2020-1347 (May 9, 2023). at 7.

By the Commissioner's own admission, information was received from various parties – including actual receipts for the cost of clearing as well as quotes. The Commissioner states that feedback from other agencies was limited, and apparently, it was decided that the information from "interested parties" was not reliable despite some of that information being actual charged costs for the very service the Commissioner was seeking the cost of. *Id.* at 12. Furthermore, the Commissioner's witness acknowledged that the Department was "results-aware" and that "policy considerations" were a part of their calculus. All this evidence suggests concern for the 2015 tax year alone. However, the Board made no finding, and the Commissioner makes no indication as to how she has tried, since 2015, to rectify this problem of a lack of data or reliable evidence on which to center this deduction. They have subsequently continued to repeat this failure every year since the inception of this case in the subsequent cases, from the outside seeming to make no effort to rectify this gaping hole of a data vacuum in a calculation that is supposed to be based on objective and reliable data. Instead, the department has been happy to sit on a $1,000 clearing conversion cost that was better than the previous $500 but not necessarily supported by data.

As the Commissioner's actions subsequent to 2015 have not been reasonable, and as the Board made no review or decision in those cases relative to these lack of actions in the subsequent filed cases, the Board's order should be reversed.

IV. CONCLUSION

CAUV landowners are the only landowners who have no practical or effective local appeal regarding their property values. These landowners, for decades, have trusted the department to provide a calculation that uses sound, objective data to value their property at its agricultural producing value in order to fairly value their land for property tax purposes. Any question of this calculation, its data sources, or its methods, has largely been rebuffed by the Department, and appeals such as these are the only method by which CAUV landowners have any recourse by which to ensure the accuracy of their land values. Allowing the Board's decision to stand will only further remove the CAUV landowner from their rightful due process to challenge and question the actions of the Commissioner and the department, and ensuring that the CAUV program is held to the appropriate objective and data-backed standard that has been promised to these landowners. For all the reasons above, we respectfully ask this Court to preserve the rights of CAUV landowners and reverse the Board's order.

Respectfully Submitted,

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I certify that, on August 28, 2022, a copy of this Brief was served by electronic mail upon the following counsel of record:

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