

OD316 T58

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

BRUCE A. VANCE, et al.,	Case No.)	16cvH04-3295
)	
	Plaintiffs,)	
)	
	vs. Judge Jennifer A. French)	
)	
THE STATE OF OHIO,)	
)	
	Defendant.)	

SECOND AMENDED CLASS ACTION
COMPLAINT (Jury Demand Endorsed
Hereon)

INTRODUCTORY STATEMENT

1. The Ohio Constitution obligates the State to value all land at its "true value" for property tax purposes. The "true value" of agricultural land depends exclusively upon its agricultural productivity, pursuant to a constitutional amendment adopted by an overwhelming majority of Ohio voters in 1974. Article II, 36 of the Constitution provides that

laws may be passed to provide that land devoted exclusively to agricultural use be valued for real property tax purposes at the current value such land has for such agricultural use, (emphasis added)

2. The General Assembly has exercised its authority under Article II, 36 to create a system of Current Agricultural Use Valuation ("CAUV") for property-tax purposes.

The Ohio Department of Taxation ("ODT") has, in turn, adopted clearly articulated regulations for the calculation and application of CAL-IV.

3. Agriculture is Ohio's largest and most important industry. Both the State and its farmers have a vital economic interest in the fair and proper implementation of CAUV. Both Ohio law and Ohio public policy require as much.

4. For close to a decade, however, the ODT has flouted the legislative and statutory mandates that govern the computation of CAUV. As a result, Ohio farmers have paid billions in property taxes that they did not legitimately owe. Just under the administration of the current Governor, CAUV taxes have doubled, tripled and quadrupled, threatening the future viability of agriculture in this State.

5. The Plaintiffs bring this class action on behalf of themselves and more than 100,000 other owners of property subject to taxation under CAUV. Included are crop farmers, greenhouse owners, and producers of hay, fruits, vegetables, eggs, pork, poultry, fish, livestock, timber, and all other agricultural products. The Plaintiffs are suing for a declaratory judgment regarding the unlawfulness of the Defendant's conduct in perverting the computation of CAUV in the face of straightforward, unassailable legal mandates. The Plaintiffs also seek equitable restitution of the property taxes that the Defendant have unlawfully collected from them.

THE PLAINTIFFS

6. Plaintiff Bruce Vance owns over 148 acres of CAUV property in Ashtabula County, devoted to crop production, vegetable production and timber.

7. Plaintiff G. Frederick ("Fred") Pierce-Ruhland owns 171 acres of CAUV timber lands in Ashtabula County.

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8. Plaintiff Joseph K. ("Joe") Blystone serves as Trustee of the Joseph K. Blystone

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Trust, which owns two tracts of farmland totaling 75.6 acres in Franklin County, Ohio. On this property, Blystone grows crops, and raises and slaughters livestock and poultry.

Blystone recently opened a retail shop on his land, selling these and other farm products.

9. Plaintiff Bruce Achor owns 337 acres in Clinton County, Ohio, and 139 more in Highland County, Ohio, on which he raises sheep and grows corn soybeans, wheat and hay.

10. Plaintiff Shane Boysel lives at 4022 Township Road 147, Zanesfield, Ohio 43360. He owns between 500 and 600 acres in Logan County, where he raises cattle.

11. Plaintiff Thomas J. Harris lives at 11116 Cross Road, Newark, Ohio 43056. He owns 257 acres in Licking County, where he grows crops and raises cattle.

12. Plaintiff Dan Hutchins lives at 22232 State Route 347, Raymond, Ohio 43067.

Hutchins owns 108 acres in Union County subject to CAUV taxation.

13. Plaintiff John P. Neuhart lives at 14839 East Pike Road, Lot 19, Cambridge, Ohio 43725. Neuhart owns 420 acres in Guernsey County, where he grows hay and raises horse and cattle

14. Plaintiff David Reier lives at 28828 Murphy Road, Coolville, Ohio 45723. Reier owns 52 acres in Athens County, where he grows Christmas trees.

15. Plaintiff Richard Stover lives at 22752 Raymond Road, Raymond, Ohio 43067. Stover owns 183 acres in Union County subject to CAUV taxation.

16. Each of the Plaintiffs has seen their property taxes under CAUV skyrocket over the past several years. For instance,

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- A) Vance's CAUV taxes have increased 42% since last year, and 194% since 2011.
- B) Pierce-Ruhland's CAUV taxes have increased 83.7% since last year, and 533% since 2009.
- C) Anchor's CAUV taxes have increase by 50 percent over the last six months.
- D) The CAUV taxes assessed against the Blystone Trust have increased 240% since last year.

THE DEFENDANT

17. The State of Ohio is the Defendant in this lawsuit, based upon the conduct of the ODT. The ODT's current Commissioner is Joseph W. Testa.

JURISDICTION AND VENUE

18. The Court has jurisdiction to adjudicate claims for declaratory and equitable relief against the State of Ohio. *San Allen, Inc. v. Buehrer*, 2014-Ohio-2071, 11 N.E.3d 739, 1153-1154 (8th Dist.) and R.C. 2743.03(A)(2). All of the counts in this Amended Complaint fall within these categories, including the claim for equitable restitution of the specific funds collected and retained by the Defendants.

19. Pursuant to Civ. R. 3, venue properly lies in this County, where at least part of the Plaintiffs' claims arose and where at least some of the property at issue in the case is situated. In fact, certain Plaintiffs and thousands of prospective class members live in Ashtabula County.

FACTUAL BACKGROUND

I. General Background

20. CAUV determines property values for "land devoted exclusively to agricultural use." This definition includes real estate

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exclusively devoted to commercial animal or poultry husbandry, aquaculture, algaculture meaning the farming of algae, 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.

R.C. 5713.30(A)(1)(a). "[L]and devoted exclusively to agriculture" also includes adjacent property devoted to various methods of bioenergy production [CITE]

21. In keeping with its statutory obligations, ODR annually calculates CAUV land values, and then distributes its CAUV Land Tables to all 88 County Auditors.

22. An owner of CAUV land must file an annual **application** with the local County Auditor to be included in the CAUV program. R.C. 5713.31. The Auditor must then view the property to see if it is still in CAUV use, and if so, must apply the annual CAUV Land Tables supplied by the ODT:

If the auditor determines, which determination shall be made as of the first Monday of June, annually, that the land is land devoted exclusively to agricultural use he shall appraise it for real property tax purposes in accordance with rules adopted by the commissioner for the valuation of land devoted exclusively to agricultural use and such appraised value shall be the value used by the auditor in determining the taxable value of such land for the current tax year under section 5713.03 of the Revised Code and as shown on the general tax list compiled under section 319.28 of the Revised Code.

Id. (emphasis added).

23. As a matter of law, all County Auditors must use the ODT-supplied CAUV Land Tables when assessing property taxes. R.C. 5713.01(B). They have no discretion to

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use any other method or standard in valuing "land devoted exclusively to agricultural use." Property owners, in turn, cannot contest the values set forth in the CAUV Land Tables in determining the taxes owed on real estate of this sort, either before the Local Board of Revisions or in any other administrative forum.

II. The Mandatory Method of Calculating CAUV Values

24. Ohio Administrative Code Section 5703-25-33 contains the mandates the ODT must comply with each year in order to properly calculate CAUV land values. Section 5703-25-33 was last revised in 2003. The ODT has blatantly violated the requirements of this regulation. As a result, the Plaintiffs and members of the putative class have paid billions in property taxes, above and beyond what the law legitimately obligated them to pay.

25. In simplest terms, CAUV property values are determined by dividing "net income" per acre by the "capitalization rate":

$$\frac{\text{NET AGRICULTURAL INCOME PER ACRE}}{\text{CAPITALIZATION RATE OF AGRICULTURE}} = \text{PROPERTY VALUE PER ACRE}$$

26. Here is a highly simplified example:

A farm produces 150 bushels of corn per acre, sells it for \$4.50 per bushel, and has \$3.15 per bushel in costs. Net Income is \$201.75 per acre, rounded to \$202. \$202 will be the numerator in the equation. With a capitalization rate of 6%, the denominator will be 6%, or 0.06. \$202 income divided by 0.06 \$3,366.00. This calculation produces a per acre value of \$3,366.00.

27. Under the mandated Ohio CAUV formula, property taxes will rise if either **NET INCOME INCREASES** or the **CAPITALIZATION RATE DECREASES**.

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28. An artificially low Capitalization Rate, and downward changes in the rate, can cause enormous increases in CAUV property taxes. Similarly, overinflated or artificially high Net Income figures will increase property taxes. For instance, using the example above, if the Capitalization Rate DECREASES one percentage point, from 6% to 5% (0.05), the value per acre INCREASES to \$4,040, an increase of 20% [$\$202$ divided by $0.05 = \$4,040$].

29. Conversely, it logically follows that, under the CAUV formula, property taxes will drop if either NET INCOME DECREASES or the CAPITALIZATION RATE INCREASES.

30. Again, using the same example, if there is a one percentage point increase in the Capitalization Rate, the per acre value drops from \$3,866 to \$2,885.71 ($\$202/.07$), a 14.3% drop. A two percentage point increase in the Capitalization Rate will drop the per acre value even further, to \$2,525 ($\$202/0.08$). Using a 10% Capitalization Rate, the rate mandated in Texas, yields a per acre price of \$2,020.00, 40% lower than with a 6% rate.

31. The ODT used 10 percent as the Capitalization Rate for CAUV purposes in 2002. In recent years it has reduced this input to around six percent. The resulting annual increase in CAUV taxes ranges into ten figures.

32. The ODT annually publishes its explanation of the inputs, assumptions, data, methods and calculations it employed in determining the CAUV value for that tax year. Reviewing these explanations reveals that ODT has been violating Ohio law for years, with the net effect that CAUV landowners have overpaid property taxes by billions of dollars, The ODT's own publications state that the average CAUV tax collections from Tax Year 2005 to Tax Year 2013 have increased 374%, from \$1,817,459,950/year to \$6,803,976,520/year.

II.The ODT Miscalculation of CAUV Values

33. The preamble to O.A.C. 5703-25-33 states as follows:

[CAUV land value] shall be calculated and prepared by the capitalization of the typical net income before real property and income taxes from agricultural products assuming typical management, cropping and land use patterns and yields for a given type of soil, as provided in this rule.

(Emphasis added).

A. All Income Figures Are Derived from Cropland Only

34. The ODT's first of many violations of the law applicable to calculating CAUV values is its failure to determine net income and capitalization rates from "cropping and land use patterns." To determine net income, and capitalization rates, it has only used cropping patterns from corn, soybeans and wheat, and none of the many other agricultural products or land uses: not pasture, hay, livestock grazing fish farming, beekeeping, poultry or pork, orchards, vegetable production, timber, etc. Corn and soybeans rose dramatically in many years between 2004 to 2012, then dropped 40%. Soybeans also rose, then dropped. But fertilizer, fuel and other expenses also increased* More importantly, when grain prices rise, CAUV property owners who feed their livestock with grain see their expenses rise and their income diminish. CAUV collections for 2014-2017 are staged to increase significantly over 2013.

35. Contrary to legislative mandate, all CAUV prices in Ohio are driven by the economic conditions of farming corn, beans and wheat. All other means and methods of

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agricultural production, all other "land uses" are ignored in violation of the CAUV law and regulations.

36. O.A.C. 5703-25-33(B) states:

The use of the income approach to develop annual "Current Agricultural Use Value of Land Table Or Tables" that are accurate, reliable and practical requires that careful attention be given to the many principles and techniques involved. It is essential that the typical or potential net income be based on the land capability under normal or typical management practices, yields, cropping or land use patterns prices, costs and conditions in the area (emphasis added).

37. As detailed above, and below, ODT has violated this mandate by, inter alias failing to:

- a. develop annual CAUV Land Tables that are accurate, reliable, and practical;
- b. pay careful attention to the many principles and techniques involved;
- c. account for conditions in local areas in calculating CAUV values; and
- d. base net income on land capability under normal or typical management practices.

38. ODT has ignored productivity levels of all types of agriculture other than corn, beans and wheat, by assuming the productivity of all land is to be assessed as it compares to land with the very best soil, devoted to growing corn, soybeans and wheat. Livestock, pasture land and timberland are but a few of the many very important, but overlooked, "local conditions" and "land use patterns" ODT has ignored. Hay has been excluded as a land use pattern since 2010.

Illegal Taxation of Land Capability: Classes V through VINI

39. In fact, all Ohio CAUV land is divided into 8 "land capability classes," four of which are only considered suitable for pasture or woodlands and NOT for crops. O.A.C.

5703-25-33(F) provides as follows:

Land capability classes: Consideration shall be given to the land capability class of a soil as determined by the soil conservation service based on the soil's suitability to grow various crops and potential hazards considering slope, drainage, erosion and other factors (emphasis added).

40. The major land capability classes are as follows:

(1) Land adapted for crops:

Class 1

No special hazards, very good land from every standpoint

Class I/

Some hazards which require good conservation practices

Class

Several intensive hazards which require intensive conservation practices.

Class IV

Very severe hazards, needs very careful handling and management.

(2) Land for permanent vegetation only:

Class V

Very frequent flooding or permanently wet.

Class VI

Moderate hazards to be overcome for pasture use.

Class VU

Severe limitations for grazing or forestry, very steep.

Class VUI

Not suited for cultivation, pasture or forests.

Wildlife and recreation is the best use.

A higher percentage of row crops will be grown on the better soils with land capability class ratings such as I or II. Land in land capability class V through VIII shall be considered as devoted entirely to either pasture or woodland.

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41. The ODT does not attempt to calculate the net income, costs, or capitalization rate of the four Land Capability Classes which are not suitable to grow crops. This language from (K)(4) and (5) of O.A.C. 5705-25-33 demonstrates that the net return per acre from crop production on Land Capability Classes V, VI, V II and VIII, which are by definition unsuitable for crop production, should be zero, and the taxes zero:

The typical land capability class is estimated for each soil management group based on information from the soil conservation service and the cropping pattern assigned from paragraph (G) of this rule. This multiplied by the net return per acre gives the contribution from the crop to the rotation acre.

(5) The total of the net return from each crop in the rotation is the total net return to be capitalized into land value (emphasis added).

42.No crop production capability means no taxability. All taxes collected on Land Capability Classes V-VIII were illegally collected.

43. The requirement that income be based on 8 Land Capability Classes has been ignored by ODT in favor of a highly complicated 3,500+ soil class system, not authorized in O.A.C. 5703-25-33. The refusal to use "land capability classes" as required arguably means that every formulation of crop income since the abandonment of the eight Land Capability Classes has been illegal.

c. ODT Miscalculation of Net Income and Other Inputs

44. Subpart (B) of O.A.C. 5703-25-33 also includes the following mandates:

To avoid erratic fluctuations of value due to spot economic, market or climatic conditions, five year moving averages of

price costs, cropping patterns and other factors SHALL be used where practical (emphasis added).

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45. ODT has violated this mandate. For crop prices and production costs (fertilizer, insurance, fuel, etc.), ODT illegally uses a 7 year period and tosses out the high and low numbers. This improper methodology completely ignored the massive spikes in production cost inputs in 2012 and 2013. ODT also uses this 7 year method when determining bank interest rates as part of its capitalization rate calculations.

46. ODT also does not use a 5 year moving average for crop yields. It uses a 10 year moving average, then compares this 10 year average to 1984 yields, which is both inaccurate and impractical. Section 5703-25-33 mandates 5 year moving averages and practical methods. 5703-25-30(12) defines "moving average" to mean that an item is "recalculated each year after dropping the oldest year and adding the latest year."

47. ODT does not consider the 5 year moving average of a number of "other factors" that obviously are required, including land clearing, tiling and drainage costs necessary to convert land from timber production to croplands.

D. Failure to Investigate Crop Net Income

48. By using 7 years of data, ODT ignores the following express mandate under O.A.C. 5705-25-33(H) for crop prices:

Five year moving weighted average crop prices for the major field crops are to be calculated by totaling the production and value of each crop, as reported by the statistical reporting service or other reliable source, for the five years preceding the year in which the table is issued and calculating the average price per unit after consideration of price differentials in various parts of the state (emphasis added).

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49. In its determination of crop income, the ODT must adhere to the following mandate under O.A.C. 5705-25-33(1) regarding management costs:

A percentage to be determined annually shall be deducted from the five year moving weighted average crop prices to provide for typical management costs incurred by the land owner (emphasis added).

50. ODT makes no attempt to make a yearly determination of an appropriate management deduction, as required. Every year, ODT simply deducts 5% without investigation, calculation or explanation. Failing to determine real world management costs causes net income, and thus property taxes, to increase.

51. Since 2009, ODT has also taken Risk out of the CAUV calculation, without authority, thereby grossly reducing the Capitalization Rate they use. Risk up to 5.5% was formerly recognized by ODT. Omitting risk alone has increased CAUV taxes by millions, if not billions of dollars. The Risk of agricultural operations is calculated by objective, actuarial standards for farm insurance. That actual risk would add as much as 11% to the Capitalization Rate, and lower CAUV taxes by billions of dollars. By contrast, the State of Ohio recognizes a risk rate in the oil and gas industry; the Oil and Gas industry embedded a 13% "Risk" factor in their formula per 5713.051(A)(17).

E. CAUV Violations concerning Woodlands and Timberlands

52. Any CAUV land that is devoted to timber production (aka woodland) is taxed at the value that land would have as cropland, minus the cost of clearing (cutting down, removing and stumping out trees to convert the land to cropland). Since the mid-1970's, the ODT has only allowed \$500 per acre clearing costs. A wooded CAUV parcel located on rich, flat soil would be taxed at a high value (Land Capability Class I), e.g., \$4,000 per acre, year after year, with only a \$500 yearly credit for clearing, which reduces the taxable value

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slightly to \$3,500. ODT increased the clearing credit to \$1,000 per acre from tax year 2015 forward.

53. ODT's failure to increase the clearing credit for nearly 40 years violates the mandates that it calculate CAUV based on accurate, reliable, and practical information, that it use 5 year moving averages, and that "the effect of changes in agricultural technology and economic relationships must constantly be reevaluated."

54. The ODT's failure to increase the land clearing credit for woodland and timberland in CAUV has been knowing and intentional. ODT was put on notice years ago that surveys conducted by members of the Ohio Forestry Association and other owners of Ohio timberland demonstrate that clearing costs have risen to, on average, well over \$3,000 per acre. This is a clear violation of the requirement that ODT consider input and data from "reliable sources" in Ohio and elsewhere:

Information shall be obtained from such agencies as Cooperative Extension Service, College Of Agriculture, The Ohio State University; Ohio Agricultural Research And Development Center; National Resources Conservation Services, U.S.D.A.; Forest Service, U.S.D.A. National Agricultural Statistical Service, U.S.D.A.; Department Of Agriculture Of Ohio; Department Of Natural Resources Of Ohio, Federal Land Bank and other reliable sources.

O.A.C. 5705-25-330) (emphasis added).

55. A tiling and drainage credit is also applicable to lands in the timber designation, if the soil type requires these costs to convert the land to crop farming. Like the land clearing credit, ODT has refused to increase these credits even as prices for each have risen over the decades.

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56. By failing to increase the clearing, tiling and drainage credits for woodland/timberland owners, the ODT has caused the illegal collection of tens of millions of dollars in property taxes. And the ODT has now raised the land values for many woods to several thousands of dollars an acre, even though woodland only produce a timber harvest once in a generation.

57. Within the CAUV laws, there is no provision for any minimum land value for purposes of taxation. (The 1974 Amendment to Article II, 5 36 of the Ohio Constitution even allowed woodlands to be completely exempt from taxation). All land is to be valued based on its net income from agricultural production. And all land is divided into 8 Land Capability Classes, Class VIII of which is by definition unsuitable as cropland, pastureland or even timber production.

58. The third and final Chart appended to 5703-25-33 is a table to convert land values between and amongst the 8 Land Capability Classes. The land value for a Class VIKI property is to be 3% of the value for a Class I cropland. If the Class I cropland has a CAUV value of \$4,770 an acre (the highest value for 2015), the Class V III pastureland would only have a value of \$143.10/acre, far below the \$350/acre minimum set by ODT (and below the \$230 minimum for woodland). In fact, since Class VIII land by definition is unsuitable for agricultural production, even pasture or woodland, it has no agricultural value and cannot be taxed under the CAUV system. No productivity = no taxability.

59. Regardless of the express mandates of the CAUV law, which bases all tax on agricultural lands on their agricultural productivity, the ODT has arbitrarily imposed minimums per acre for both croplands and woodlands. For woodlands, the minimum value

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was raised from \$50 in the 1970's, to \$100 and now to \$230. For croplands, no matter how poor or unproductive, there was a \$50 per acre minimum in the 1970's: there is now a \$350 minimum.

60. ODT's imposition of these minimums is without basis in enacted law, violates the law, and has caused the illegal over-collection of hundreds of millions of dollars in property taxes from CAUV landowners.

F. Deliberate Use of a Low Capitalization Rate

61. ODT has failed to follow the mandates required to calculate an "accurate, reliable and practical" Capitalization Rate for agricultural use, and thereby has caused the overpayment of billions of dollars in property taxes by CAUV landowners. An annual investigation of the five-year moving averages of four critical factors is required. Pursuant to O.A.C. 5705-25-33(M)(1), the determination begins with a mandated investigation of loans taken out by CAUV landowners over a five-5 year period:

For the purpose of estimating the capitalization rate to be used in determining the base value of agricultural land the use of the mortgage-equity method is prescribed. In making the rate determination the five year running average of each of the following items will be used:

(a) Typical term of years, per cent of mortgage and return on farm mortgages as reported by federal land bank and other sources" (emphasis added)

62. ODT makes no attempt to conduct any investigation into the five-year running average of

• the typical terms of years • the typical percent of mortgage (LTV) and • the return on farm mortgages (interest rate)

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63. ODT also does not investigate "other sources," i.e., any lending source other than Farm Credit Services ("FCS" fka the Federal Land Bank), e.g. small rural banks, major lenders, private mortgages, credit unions, and the like.

64. Until the 2015 tax year, they simply used the standard 15-year FCS mortgage for cropland, with a 60% LTV. Because FCS is backed by the Federal Government non-FCS lenders are typically at higher rates. And FCS will charge a higher rate for land devoted to timber as compared to cropland, even up to commercial/investor rates.

65. By using a lower percentage borrowed, a federally subsidized interest rate, and a shorter term of years, this component of the Capitalization Rate has illegally been kept lower, causing the illegal overpayment of property taxes from CAUV landowners.

66. Under the required "Mortgage Equity Method" of determining capitalization rates, the second factor ODT must investigate is the "required yield" or "return on investors equity," i.e., the yield that a prudent and reasonable investor would expect when investing in a farming operation, with all the risks of drought* flooding, wind and hail damage, pest and predator damage, disease, crop price fluctuations, and other disastrous consequences. O.A.C. 5703-25-33(b) explicitly states that return on investors equity "shall be extracted from market data" (emphasis added)

67. ODT makes no effort to investigate, extract, or "constantly reevaluate" any market data, or any "accurate, reliable and practical" measure of investors' equity in agricultural production ("agricultural production" includes not just cropland, but dairy,

68. Prime-Rate-plus-two-percent is the yield from extremely safe investments, e.g. what the market pays investors in blue chip corporate bonds, or the market pays banks lending money for home equity loans where the borrowers have high credit scores, there is collateral (the roof over the borrower's head), Federal backing, and insurance.

Prime-plus-two, however, violates O.A.C. 5703-25-33(b), which expressly states that the final capitalization rate

should represent the rate of return a prudent investor would expect on an average or typical Ohio farm considering only agricultural factors (emphasis added).

69. The next component of the capitalization rate is the fluctuation in farmland prices, without speculation (for housing developments, oil and gas drilling rights, etc.):

Depreciation or appreciation expected in property (agricultural land) over the next five years. The moving average of the preceding five years of percentage increases or decreases in U.S.D.A. farm real estate index for Ohio for March of each year over the previous year shall be considered as the estimate of this term. In the consideration of the weight to be given to this item the effect of speculation should be removed so that the appreciation that accrues in land values over a five-year period from improvement in agricultural technology and practices only is reflected.

O.A.C. 5703-25-33(c) (emphasis added).

70. ODT completely ignores this mandated investigation as well. Every year they simply state: "A 5% appreciation over a period of 5 years is added to address the increase in farmland values due to the demand for additional land in an increasingly efficient

operation." In defending the doubling tripling, and quadrupling of CUAV taxes, the ODT repeatedly states high farmland sale prices are a cause. Yet the ODT only includes, on average, a one-percent increase per year in farm prices when calculating the capitalization rate for the CAUV tax. This is yet another illegal deviation from the formula which artificially deflates the capitalization rate and increases CAUV taxes.

71. ODT does not consult the USDA farm real estate index for Ohio in March. It does not attempt to remove appreciation due to "speculation" by development pressure, oil and gas mania, or other similar factors.

72. After determining the capitalization rate under the Mortgage Equity Method,

O.A.C. 5703-25-33(M)(2) then obligates the ODT to add the average statewide average of all real property taxes on all types of real property in the State:

To the capitalization rate adjusted for land only shall be added the effective real property tax rate. This is to be determined by multiplying the five year average state tax rate as shown in department of taxation records by thirty-five per cent and expressed as a percentage. This rate shall be further reduced to reflect the average effect of the reductions required by section 319.301 of the Revised Code. The total of the two rates is the agricultural land capitalization rate. This should represent the rate of return a prudent investor would expect on an average or typical Ohio farm considering only agricultural factors. (emphasis added)

73. In direct violation of the law, the ODT only averages the state tax rate for agricultural land. All the higher property tax districts are excluded: large cities, wealthy enclaves, upper class and middle class suburbs, etc. As a result, the tax rate added to the capitalization rate for land, which becomes the final, critical number - the denominator- in

the CAUV formula, is deliberately lower. Like ODT's other violations, described elsewhere, this violation directly causes CAUV taxes to be higher all over the State.

74. Every small reduction in this final cap rate causes taxes to increase dramatically, almost exponentially. Like ODT's other violations of the CAUV tax laws, this misconduct has caused CAUV taxpayers to overpay hundreds of millions if not billions of dollars in property taxes.

G. Failing To Calculate Capitalization Rates For Each Land Capability Class

75. ODT also ignores the last set of mandates of O.A.C. 5703-25-33(M):

- (3) Since capitalization rates will vary with the land capability class due to the difference of risk and operating costs market studies shall be designed to determine such differential in rates (emphasis added).
- (4) The per acre value of each soil category will be determined by dividing the net return per acre by the appropriate rate. Values in classes I through IV shall be the values for cropland. If land in these classes is used for other purposes such as forestry or pasture the cost of converting from present use to crop use shall be deducted. Values in classes V through VII shall be the value for pasture and woodland. (emphasis added).

76. The Ohio Legislature recognized that each Land Capability Class will have a different capitalization rate, and ordered the ODT to conduct market studies to determine the various rates, so that the CAUV value of each soil category (aka Land Capability Class) can be determined by the "appropriate" capitalization rate for that class. A Class I crop farm and a Class VII pasture operation, or timber lands, etc. will have widely varying capitalization rates. The riskier the investment, the higher the yield expected by an investor

to make it worth the investment. Crop farms in Class I will have a lower capitalization rate than Class V II woodlands. A higher capitalization rate results in lower taxes.

77. The ODT has not conducted market studies to determine capitalization rates for all Land Capability Classes. As a result, owners of lands in Land Capability Classes other than high value croplands have overpaid property taxes.

78. As a direct and proximate result of the ODT's violations, misconduct, acts and omissions, CAUV landowners throughout Ohio have overpaid billions of dollars in property taxes. CAUV taxes have quadrupled statewide. In many Ohio Counties, CAUV landowners are paying taxes at rates well in excess of 70% of fair market value. In all Ohio Counties, CAUV values have risen so dramatically as to undermine the public policy of support for agricultural production, and to imperil the future of agriculture production.

79. Inflated and illegal CAUV values remain the appraisal value for 3 years, the length of county appraisal cycles. Farmers are taking out personal loans just to pay the new taxes; others are shutting down livestock or other operations; others are being forced to sell to developers and other non-agricultural uses; others are under pressure to cut down forests to pay taxes and go into crop farming. The ODT's conduct is negatively affecting the economic and environmental landscape of Ohio.

IV.Lack of Discretion to Deviate from O.A.C. 5703-25-33

80. O.A.C. 5703-25-33 has the force and effect of law. Under well-established Supreme Court precedent, the ODT lacked discretion to deviate from it unless and until it was either rescinded or a court specifically declared it to be invalid. See, e.g., Lyden Co. v.

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Tracy, 76 Ohio St. 3d 66, 69, 1996-Ohio-112, 666 N.E.2d 556. Neither of those contingencies has ever happened.

IV. The State's Incentive to Over-tax CAUV Property

81. The State of Ohio has a clear incentive to overtax "land devoted exclusively to agricultural use" by illegally overstating CAUV taxation rates.

82. Most "land devoted exclusively to agricultural use" is situated in the rural and semi-rural areas of Ohio. For example, while Cuyahoga County only has approximately 177 CAUV parcels, Wood County has 9,642 or more. The more tax dollars rural and semi-rural counties take in from unlawfully inflated CAUV valuations, the less funding they need from the state to support their schools, parks, municipal functions, and the like.

83. The Governor's office recently announced that due to increases in CAUV taxes, his Administration was committing 74 percent of available state revenues to suburban and major urban school districts. Rural districts got practically nothing under the Governor's allocation.

V. Absence of Administrative Remedy

84. CAUV landowners have no Administrative remedy available through which they can dispute the CAUV Land Table values and minimums formulated by the ODT. Unlike the usual and ordinary Board of Revision disputes over "fair market value," or perhaps a religious, charitable, educational, or other exemption from property tax, a CAUV landowner cannot dispute the Table of Values prepared and distributed by ODT. The Local Boards of Revisions will not hear such a dispute. Landowners can only dispute the Auditor's

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determination that the land is no longer in agricultural use, or the number of acres valued according to CAUV, or the type of soil ascribed to their property.

85. Landowners likewise cannot contest the use of CAUV before the Board of Tax

Appeals, since the ODT's annual issuance of the CAUV Land Tables is not an appealable "Final Determination" by the Tax Commissioner with respect to any particular parcel.

VI. Efforts to Avoid Litigation

86. Plaintiffs and hundreds of other Ohio farmers have spent months and years of efforts to remedy the illegal over-taxation resulting from the ODT's miscalculation of CAUV.

87. In Ashtabula County, after over 700 farmers gathered to protest the hike in CAUV taxes, a CAUV Task Force was created. The Task Force joined forces with like-minded groups across the State to lobby for relief from the ODT, the Governor, and the Ohio Farm Bureau. Thousands of hours of time have been spent at meetings, writing letters, and pursuing other avenues to persuade the State and ODT to comply with the law in computing CAUV.

88. These efforts were largely ignored. As a result, the Plaintiffs had no alternative to filing this class action.

CLASS ALLEGATIONS

89. Pursuant to Civ. R. 23, the Plaintiffs seek to prosecute their claims on behalf of themselves and a class consisting of

all individuals or entities who own or have owned property in Ohio subject to CAUV taxation from 2005 through the present

who have paid taxes based on property values set forth in the Ohio Tax Commissioner's annual CAUV Land Tables.

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I.Civ. R. 23(A)

90. The Plaintiffs can satisfy all of the prerequisites under Civ. R. 23 (A) for class certification.

91. The Plaintiffs each are MEMBERS of the proposed class.

92. The class is "IDENTIFIABLE" for purposes of R. 23(A). Pursuant to R.C. 5713.33, all counties must maintain an "Agricultural Land Tax List" that reflects the owner and parcel information for all property within this category. This documentation provides the Court with a reasonable basis to ascertain who qualifies as a potential claimant in the case.

93. The class is sufficiently NUMEROUS to warrant certification. For tax year 2013, the State of Ohio had more than 406000 parcels subject to CAUV taxation. Based on information and belief, the Plaintiffs allege that this property is owned by at least
100,000
different individuals and entities. Each of these parties would belong to the proposed class. Joinder of all of them in a single action would be wholly impracticable.

94. The Plaintiffs' claims and those of other class members share COMMON QUESTIONS of law and fact. These include (but are not limited to) the following:

A. Since 2005, has the Defendant violated O.A.C. 5703-25-33 in formulating CAUV Land Tables?

B. Has the Defendant's computation of the CAUV Land Tables during that period comported with Ohio public policy?

- c. Did the Defendant exceed its express authority and powers under the Ohio Revised Code in implementing its system of computing the CAUV Land Tables?

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- D. Can class members invoke the theory of unjust enrichment to obtain restitution of the taxes they purportedly overpaid?

- E.If class members have a right to restitution, what is the limitations period that applies to their claims?

Common evidence will uniformly answer these questions on behalf of all class members.

95. The Plaintiffs' claims **TYPIFY** those of other would-be class members. No unique defenses threaten the Plaintiffs' right to recovery. Nor do they face any distinctive impediments in going forward with the case.

96. The Plaintiffs will **ADEQUATELY REPRESENT** members of the class and have engaged counsel with the background, experience, and commitment to do likewise.

II.Civ. R.23(B)

97. The Plaintiffs are seeking certification of their class under Civ. R. 23 (B) (2) with respect to Count I of this Amended Complaint, which seeks declaratory relief. Civ. R. 23(B)(2) permits class actions where the defendant has "acted ... on **FOUNDATIONS GENERALLY APPLICABLE TO THE CLASS**, thereby making appropriate final injunctive or corresponding declaratory relief with respect to the class as a whole."

98. **III. Civ. R.23(B)**

99. With respect to Count II of this Second Amended Complaint, the plaintiffs are seeking class certification pursuant to Civ. R. **23(B)(3)**. This provision permits class actions

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where COMMON ISSUES PREDOMINATE over individual ones, and where a class action represents the SUPERIOR METHOD of resolving the parties' dispute.

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A. Predominance of Common Issues

100. COMMON ISSUES PREDOMINATE over individual ones with respect to the

Count 11. Generalized proof applicable to the entire class will determine whether the Defendant acted lawfully in setting CAUV taxation rates. A single adjudication, meanwhile, will dictate whether Ohio law entitles any eligible claimant to recovery based upon the alleged facts. These points establish commonality under Civ. R. 23(B)(3), regardless of

any potential differences between the claims of various individual class members.

B. Superiority of Class Action

101. A class action is the SUPERIOR METHOD of resolving eligible class members' claims arising from the unlawful anomalies in setting CAUV taxation rates. To the Plaintiffs' knowledge, they are first in asserting the claims included in their Complaint. This fact undercuts any suggestion that class members would prefer to pursue recovery on their own.

102. In fact, if the Court denies class certification, individual lawsuits would become the only alternative means of recourse available to potential claimants. As a practical matter, certain class members lack the wherewithal to proceed unilaterally and therefore would have no remedy at all.

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103. If multiple class members did file on their own, their individual suits could produce inconsistent and contradictory results, creating irreconcilable confusion over how CAUV rates should be computed in the future. The ODT cannot comply with CAUV laws one way in one County, another way in 23 more, and a third way in the remaining 64.

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104. The Court faces no extraordinary difficulties in managing the prospective class in this case. These facts confirm this class action as the superior method of adjudicating class members' claims.

IV.Civ. R.23(c)

105. As an alternative to class certification under Civ. R. 23(B), the Plaintiffs seek certification under Civ. R. 23(C)(4)(a). Pursuant to this provision, "an action may be brought or maintained as a class action with respect to particular issues." Civ. R. 23(C)(4)(a) would permit certification with respect to the Plaintiffs' claim that the Defendants violated Ohio constitutional, statutory, and regulatory law in computing the CAI-JV Land Tables since 2005. The Court could adjudicate this "issue" on behalf of the entire class.

COUNT ONE
[Declaratory Judgment]

106. The Plaintiffs incorporate by reference all preceding allegations contained in this Second Amended Complaint.

107. R.C. 2721.02(A) authorizes the Court to issue declaratory judgments

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regarding "rights, status, and other legal relations, whether or not further relief is or could be claimed."

108. Pursuant to this statute, the Plaintiffs and members of the proposed class ask

the Court to enter a declaratory judgment that

- since 2005, the ODT has unlawfully overstated CAUV valuations of "land devoted exclusively to agricultural use," in the manner described above; and
- as a result, Plaintiffs and members of the proposed class have substantially overpaid the taxes legitimately owed on their property, in an amount the Plaintiffs will prove at trial.

COUNT TWO
[Equitable Restitution]

109. The Plaintiffs incorporate by reference all preceding allegations contained in this Second Amended Complaint.

110. Since 2005, the Plaintiffs and other members of the proposed class have paid billions in property taxes that they did not lawfully owe. The overpayment is the result of the ODT's failure to adhere to the explicit legal rules and standards for calculating CAUV, which has resulted in the extreme overvaluation of the property owned by the Plaintiffs and prospective class members.

111. The State of Ohio has unjustly enriched itself by assessing and retaining the illegitimate property taxes paid as a result of the ODT's misapplication of CAUV. Equity entitles the Plaintiffs and members of the proposed class to restitution of the difference between what they paid in property taxes since 2005 and what they would have paid had the ODT properly and lawfully calculated CAUV.

WHEREFORE, the Plaintiffs respectfully request the following relief:

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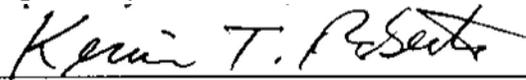
1. Certification of the proposed class, as defined above, and appointment of Plaintiffs' counsel as counsel for the class.
2. On Count One, entry of the declaratory judgment describe above.
3. On Count Two, an award against the State of Ohio for equitable restitution to the Plaintiffs and members of the proposed class, entitling them to the difference between what they paid in property taxes since 2005

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and what they would have paid had the ODT properly and lawfully calculated CAUV.

4. An award of the costs incurred in prosecuting this lawsuit* including reasonable attorneys fees.
5. Any other relief the Court deems just and equitable.

Respectfully submitted,



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IUBY DEMAND

The Plaintiffs respectfully demand trial by jury on all eligible claims, defenses and

issues.



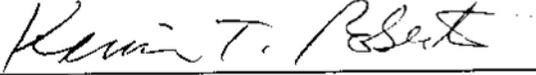
KEVIN T. ROBERTS

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of this Second Amended Complaint by
United States mail this(Nday of November, 2016 upon the following counsel for the
Defendant:

Daniel W. Fausey, Esq.
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