

COMMONWEALTH OF KENTUCKY
KENTUCKY BOARD OF TAX APPEALS
FILE NO. K12-S-03

JAMIE CLAIRE CORUM

APPELLANT

v.

Statement of Prehearing Compliance

HARLAN COUNTY PROPERTY
VALUATION ADMINISTRATOR

APPELLEE

Comes the Appellant, Jamie Claire Corum, by counsel, and files this
Statement of Prehearing Compliance pursuant to this Board's 04.28.14 Amended
Prehearing Order.

STATEMENT OF STIPULATED FACTS

Stipulations attached as A.

LIST OF WITNESSES

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SUMMARY OF FACTS IN DISPUTE

The Appellant Jamie Corum (Ms. Corum) disputes that the Agricultural Use value of her tree farm is \$125 per acre. She also disputes that the amount of annual income from her tree farm is \$12.30 per acre.

SUMMARY OF ISSUES OF LAW

Overview of Relevant Facts

Ms. Corum owns a tree farm (the Corum Farm) consisting of approximately 992 acres in Harlan County, Kentucky. Approximately two (2) acres of the Corum Farm are relatively flat and suitable for row crop farming; the balance is steeply sloped and suited only for growing timber. The plant material is typical of Southern hardwoods--white and red oak, ash, poplar, walnut, and hickory; the amount of soft woods (pine and cedar) is nominal.

Ms. Corum's family has farmed this land for many years; in fact, she is the fourth generation of her family to farm this land. Within the last thirty (30) years, the Appellant has completed timber stand improvement (TSI) on some 500 acres. TSI involves eliminating non-marketable trees, diseased trees, trees struck by lightning

or burned so that only the good, marketable trees remain. Additionally, the Appellant has constructed fire lanes and installed ditches and water diversions in the fire lanes (commonly called hogbacks) to control erosion. Increasingly, Ms. Corum has spent time controlling invasive species such as bush honeysuckle and kudzu.

Overview of Ms. Corum's Disagreement

Ms. Corum seeks a ruling from this Board addressing two (2) issues:

- First, the KDOR's *current* valuation methodology for determining the agricultural use value of timberland based upon simple arithmetic percentages of pasture rents is arbitrary and capricious and cannot be used; and
- Second, the KDOR must re-apply its existing valuation methodology for timberland to be based on the potential income from timber (which Ms. Corum has articulated below).

The Appellee Felicia Wooten, the Harlan County PVA, has assessed the Corum Farm at a flat rate of \$125 per acre. The \$125 per acre rate was the same rate Ms. Wooten used on all mountain land in Harlan County. Ms. Wooten relied in part on the *2011-2014 Quadrennial Recommended Agricultural Assessment Guidelines* (Revised 06.28.10) as appended to *Kentucky Course 90 Farm Real Property Appraisal* (rev. 7/12) prepared by the Kentucky Department of Revenue and provided to all PVAs in Kentucky. (Copy attached as Exhibit C.) Ms. Wooten used arbitrarily set percentages of pasture rent; she did not consider the individual characteristics of the Corum Farm to determine its potential income from timber. Thus, Ms. Corum disagrees with Ms. Wooten's method for determining the agricultural use value of the Corum Farm.

Ms. Wooten's Calculation of Corum's Agricultural Use Value

Ms. Wooten has followed the method set forth by the Kentucky Department of Revenue (KDOR) in its publication for PVAs on the appraisal of farmland including timberland, *Kentucky Course 90 Farm Real Property Appraisal*. Course 90 is a KDOR publication promulgated frequently (at least every four (4) years) to guide PVAs in the assessment of farmland.

In sum, Course 90 sets forth the following method for determining the agricultural use value of farmland:

$$\frac{\text{Cash rents}}{\text{Capitalization Rate}} = \text{Agricultural Use Value}$$

where Cash Rents are “gross income from investment in land that can be used to determine the use value of that land. Rents are related to farm land values in that they reflect the economic return to the land which yield estimates of value when capitalized.” *Course 90 (Rev.7/12)* at 6-3. The Capitalization Rate (the Cap Rate) “is an expression of interest, usually in terms of an annual percentage” *Course 90 (Rev.7/12)* at 6-4. The KDOR blends two (2) interest rates and an effective tax rate for a single value which translates “an income stream into an indication of the present value of a property.” *Course 90 (Rev.7/12)* at 6-4. “Agricultural use value is best determined through capitalization of cash rent for the land and the cost approach for improvements.” *Course 90 (Rev.7/12)* at 5-1.

Moreover, this methodology is applied to all farmland, without regard to its specific use. “Cash rent paid for the use of farm land, whether as cropland, pastureland, or woodland, has been selected as the basis for the development of the agricultural [use] values for assessment purposes.” *Course 90 (Rev.7/12)* at 6-3.

The KDOR’s application of the cash rents method to timberland is flawed because in the absence of *actual* annual cash rents from timberland, the KDOR imputed an annual *timberland* rent based upon arbitrarily set percentage of cash rents from *pastureland*. But the two (2) types of land have no meaningful relationship with each other. Pastureland is used for food production (cattle feed) and produces an annual crop; timberland does not produce food and results only from 70-year crop cycle. They simply have *no* meaningful relationship to each other.

Ms. Corum asserts that with regard to timberland, the KDOR should follow the same methodology it uses to value *all other* farmland—capitalizing the annual cash rents. In the absence of actual annual cash rents from timberland (which admittedly do not exist), the KDOR should use an approximation of the income a landowner would receive from a year’s growth of timber, *not* from the renting of pasture. Course 90 itself contains numerous statements that the income (to be capitalized) must result from the land in question:

- “Agricultural use value must be determined by what *a farm* is capable of producing in the way of food, *fiber*, and livestock.” *Course 90 (Rev.7/12)* at 6-1 (emphasis added).
- “The income from cash rent approach considers the income which the *subject property* is capable of producing based on cash rent data from across the state on a regional basis.” *Course 90 (Rev.7/12)* at 5-7 (emphasis added).
- “Cash rents depict gross income from investment in land that can be used to determine the use value of *that land*.” *Course 90 (Rev.7/12)* at 6-3 (emphasis added).

Thus, Ms. Wooten assessed the Corum Farm in violation of:

- *Course 90*
- KRS 132.000 as interpreted by the Kentucky Supreme Court in Dolan v. Land, 667 S.W.2d 684 (Ky. 1984) and
- § 172A of the Kentucky Constitution.

The law in Kentucky requires that Ms. Wooten consider the individual characteristics of land in making her assessment; rather, she used arbitrarily set percentages based upon pastureland which is unrelated to Ms. Corum’s timberland.

Basic Method to Value Farmland Used for Crops/Pasture

Course 90 sets forth a commercially reasonable method to determining the agricultural use value of farm land: capitalize the income from that property. *Course 90* assumes that cash rents paid to the landowner by a farmer for the privilege of farming that land is a fair representative of the annual gross income generated by that land. “[R]ents reflect the income-earning capacity of land” *Course 90 (Rev.7/12)* at 6-4.

Course 90 then subjects the rents (or annual income) to a capitalization rate in order to quantify the present agricultural use value. *Course 90* sets forth five (5) steps:

- | | |
|---------|---|
| Step 1: | Classify land by soil type |
| Step 2: | Identify cash rents by USDA district |
| Step 3: | Apply per acre rents to each class |
| Step 4: | Adjust per acre figure for improvements |
| Step 5: | Capitalize cash rents |

See 2011-2014 *Quadrennial Recommended Agricultural Assessment Guidelines* (Revised 06.28.10) as appended to *Course 90* (rev. 7/12). The KDOR's Office of Local Valuation publishes this quadrennial survey which sets forth the *actual* cash rents for particular types of farmland, which *Course 90* utilizes as an input to determine the present agricultural use value.

This cash rents data is collected by the University of Kentucky, College of Agriculture and disseminated by it (including posting on its website). The particular individual who is currently responsible for collecting this data is Dr. S. Greg Halich. The KDOR then presents this data in Step 2 of the *Guidelines* (appended to *Course 90*) as follows:

ASD	Cropland	Pastureland
1-Purchase	\$ 79.12	\$ 33.71
2-Midwest	\$ 94.76	\$ 33.57
3-Central	\$ 61.87	\$ 28.22
4-Northern	\$ 61.42	\$ 24.26
5-Bluegrass	\$ 60.70	\$ 27.12
6-Eastern	\$ 56.16	\$ 28.56
Statewide	\$ 79.12	\$ 23.71

See Step 2 in 2011-2014 *Quadrennial Recommended Agricultural Assessment Guidelines* (Revised 06.28.10) as appended to *Course 90* (rev. 7/12) (ASD is the acronym for agricultural statistical district).

This basic methodology works well (and easily) for cropland and pastureland because their production cycle is annual, and current market data of the annual rental of these lands exists in sufficient quantity that this capitalization-of-income method produces reliable estimates of agricultural use value. Again, Ms. Corum does *not* object to the theoretical basis of this methodology—capitalizing the income. It is the KDOR's application that is flawed.

Problems with Application of Basic Valuation Method to Timberland

With regard to the valuation of timberland, however, two (2) problems exist. First, the crop cycle is *not* annual. Rather, that crop cycle is on average seventy (70) years. Second, *no one* rents timberland on an *annual* basis so there is no *actual* rental data for timberland (tree farms).

As previously noted, in the absence of *actual* rental data for timberlands, the KDOR addressed these two (2) problems in its *Course 90* by *imputing* rent to the three (3) classes of timberland—Classes VI, VII, and VIII—on the basis of rents paid for pastureland, the Class V land. Step 3 of Course 90 is quoted below:

Class VI	80% of Class V (permanent pasture) rents
Class VII	60% of Class V (permanent pasture) rents
Class VIII	40% of Class V (permanent pasture) rents

See Step 3 in *2011-2014 Quadrennial Recommended Agricultural Assessment Guidelines* (Revised 06.28.10) as appended to *Course 90* (rev. 7/12). But the 80-60-40 percentages are purely arbitrary. Pastureland has an annual crop cycle, and there is actual, verifiable data of these annual payments. (*See* Step 2 prior.) Timberland, by contrast, is *never* rented on an *annual* basis, and the *Guidelines* identify no authority for the source of these percentages. Thus, the complete dichotomy between the production cycle of pastureland and the production cycle of timberland means these imputed rent values—80-60-40—are purely arbitrary. “An agricultural use value, like fair cash value, should never be the product of an *arbitrary* method.” *Course 90* (Rev. 7/12) at 5-2 (emphasis added).

Professional Criticism of KDOR Methodology for Agricultural Use Value of Timberland

Not unexpectedly, the KDOR’s woodland-rent-imputed-from-pastureland has been repeatedly criticized by forestry professionals. Kentucky’s land grant college, the University of Kentucky through its College of Agriculture, Forestry Department, has initiated at least two (2) major study projects of the Kentucky property taxation issue. The first began in 2005 and culminated in a UK graduate student Scott T. Brodbeck completing a thesis titled *Property Taxation and Forest Land Assessments in Kentucky Watersheds* in 2007. (Copy attached as Exhibit J.)

A second UK Forestry Department project addressing the Kentucky property taxation issue began in 2008 and was completed in 2010 by Dr. G. Andrew Stainback who then published an executive summary of the study results in *Kentucky Woodlands Magazine*, Vol. 6, Issue 1 (April, 2011): “Kentucky Woodlands Tax Assessment Project.” (Copy attached as Exhibit M.)

The Commonwealth of Kentucky, Energy and Environment Cabinet through its Division of Forestry has noted the significance of the tax valuation problem. In fact, it funded part of the second (2008-2010) study, and its funding included monies from the US Forest Service and is documented via a *Memorandum of Understanding* dated 07.01.08 between the Energy and Environment Cabinet's Division of Forestry and UK. (Copy attached as Exhibit L.)

*Specific Problems with Harlan County PVA's Valuation of Corum
Timberland*

The Harlan County PVA has stipulated that she assessed the Corum farm at \$125 per acre using the assessment methodology outlined in *Course 90*. Using the mathematical formula, it is possible to calculate the cash rent the Harlan County PVA *imputed* to the Corum Farm.

If the *Course 90* formula is followed, then Cash Rents are divided by the Cap Rate of 9.83% to equal \$125/acre (the Assessed Value). By cross-multiplying the Assessed Value by 9.83%, we know therefore, that the Cash Rents must equal or \$12.30 per acre.

The information currently available indicates that the most Ms. Corum can expect to grow on her tree farm is some \$8 per acre. The illogic of paying rent at the rate of \$12.30 per year but only receiving seventy (70) years from now income of \$8 per year is readily apparent. The Harlan County PVA's assessment using the KDOR's *Course 90* methodology produces an absurd and thus illogical result.

Better Method to Value Farmland Used for Timber Production

Ms. Corum advocates following the KDOR's basic valuation methodology (capitalization of the income) but basing it upon the stumpage value of the timber grown on an acre of timberland in a year. When a contract logger harvests timber on a landowner's property, the logger agrees to split the gross amount paid by sawmill or log yard with the landowner. That split varies with terrain. In more level terrain, the percentage is typically 50%, but in steeper terrains, the percentage to the landowner decreases to 40% (as the logger's cost of harvesting increases). Because the stumpage price (or value) represents the amount that the landowner receives from her or his land, it is the timberland owner's equivalent of cash rent. "[R]ents reflect the income-earning capacity of land" *Course 90 (Rev. 7/12)* at 6-4.

The stumpage value of the timber grown on an acre of timberland in a year is the result of multiplying amount of timber grown per acre in a year by the delivered log price—the price a sawmill pays for logs delivered to its log yard. Both values are assembled and published by independent governmental and educational entities. The KDOR utilizes these same entities to assemble the cash rents data for cropland and pastureland that it publishes in the *2011-2014 Quadrennial Recommended Agricultural Assessment Guidelines* as appended to *Course 90 (rev. 7/12)*. Moreover, *Course 90* itself cites these independent governmental and educational entities as “suggested sources ...” of information. *Course 90 (Rev. 7/12)* at 5-6.

These independent entities, specifically the University of Kentucky, College of Agriculture, Forestry Department, have volunteered to compile the timberland data just as it compiles the crop and pasture rent data. See Abstract of Project Proposal¹ in FY 2008 S & PF Competitive Grant Proposal (2008) and Plan to Establish Guidance and Tools for Property Value Assessment of Certified Woodlands in Kentucky dated 01.20.12². (Copies attached as Exhibits K and N.) (The *Plan to Establish Guidance* makes reference to “certified woodlands” as a shorthand reference to woodlands upon which timberland best management practices are actively employed (just as Ms. Corum does).)

Thus, had the UK Forestry Department’s repeated offers been accepted, Step 2 in the *Guidelines* would have presented one (1) additional column of information—Timberland—as follows:

ASD	Cropland	Pastureland	Timberland
1-Purchase	\$ 79.12	\$ 33.71	\$ XX.X1
2-Midwest	\$ 94.76	\$ 33.57	\$ XX.X2
3-Central	\$ 61.87	\$ 28.22	\$ XX.X3
4-Northern	\$ 61.42	\$ 24.26	\$ XX.X4
5-Bluegrass	\$ 60.70	\$ 27.12	\$ XX.X5
6-Eastern	\$ 56.16	\$ 28.56	\$ XX.X6
Statewide	\$ 79.12	\$ 23.71	\$ XX.X(1-6)

¹ “This project would produce a series of tables based upon soil productivity to serve as a guide for future assessments ... Training [by UK Forestry Department and EEC Division of Forestry] would also be provided to the Property Valuation Administrators (PVAs) once the guidelines are produced to assist with future assessments and to help insure the guidelines are used.” Abstract of Project Proposal

² See bulleted points in Overview.

In the case of a landowner whose timber is standing (not being harvested), the amount of timber grown in a year can be determined by multiplying the landowner's number of acres by the average growth per acre. The average growth per acre is based upon the type and quality of trees, and this average information is available on state, regional, and county basis from information developed and maintained by the US Forest Service Forest Inventory and Analysis (FIA).

The gross amount paid by the sawmills is the current "delivered log price." Those prices are reported on a quarterly basis by the Commonwealth of Kentucky, Energy and Environment Cabinet, Department of Natural Resources, Kentucky Division of Forestry in a publication titled *Growing Gold*. Electronic versions are available at www.forestry.ky.gov. (Copies of quarterly reports (4Q2011 and 1Q-4Qs 2012) attached as Exhibits E-I.) These prices are reported on a regional basis for the four (4) regions in Kentucky.

With regard to the Corum Farm, the Annual Growth Method is prepared accordingly.

AVG timber growth per year	115	Board feet per acre	A
AVG delivered mill value	173.90	Dollars per 1,000 Board feet ³	B
Value of annual growth	20	Dollars per acre	(A x B)
Stumpage value to landowner (40% to landowner)	8	Dollars per acre	

The, subjecting the \$8 stumpage value to the *Course 90* capitalization rate (9.83%), the agricultural use value for the subject property is \$81 per acre. Thus, this method—using the income potential of the subject property (the Corum Farm)—would yield an agricultural use assessment in proportion to every other agricultural crop in Kentucky. (Copy of Computation attached as R.)

Ms. Corum has reproduced the *Course 90* method below and shown the corresponding steps in the Growth Model method. It is readily apparent they follow the very same steps. They are the same methodology modified only as required by the distinguishing physical characters of timberland just pastureland is distinguished from cropland.

³ Per industry convention, timber is priced in units of 1,000 board feet.

*Course 90 Method**

*Annual Growth Method
for Timberland*

Step 1: Classify land by soil type	Classify land by soil type
Step 2: Identify cash rents by USDA district	Identify growth rate (per acre), and compute stumpage (per acre)
Step 3: Apply per acre rents to each class	Apply stumpage per acre to Classes VI, VII, VIII [^]
Step 4: Adjust per acre figure for improvements	Adjust per acre figure for improvements
Step 5: Capitalize cash rents	Capitalize stumpage (per acre)

**See 2011-2014 Quadrennial Recommended Agricultural Assessment Guidelines (Revised 06.28.10) as appended to Course 90 (rev. 7/12).*

[^]Classes I through V do not contain timberland.

One (1) final adjustment is required. The *Course 90* method is based upon the receipt of *annual* payments that results from the annual growing cycle of row crops and pasture. But as previously noted, timber has a multi-year growing cycle with the average growing cycle being seventy (70) years.

This adjustment is accomplished by simple application of long established present value tables. To convert the annual growth value to a 70 year value, the annual value (\$81 in this case) is multiplied by the crop cycle of 70 years. That result (\$5,696) is then reduced to a current (present) value using present value tables. That result (\$8 per acre) is then the Agricultural Use value of an acre of the Corum Farm. (Present value tables are universally recognized and universally available. This calculation utilized the present value of an annuity calculator from the website MoneyChimp.com. (Copy of MoneyChimp calculation attached as Exhibit S.))

Conclusion

Ms. Corum has demonstrated that the *Course 90* methodology as currently applied to timberland ignores the income potential of timberland in favor of arbitrarily set percentages of pasture rent. She has then articulated an approach using average annual growth of an acre of timberland based upon current market prices. The average annual growth values and the market prices are developed and disseminated by the UK College of Agriculture, the same entity that provides the cash rents data for cropland and pastureland.

For these reasons, Ms. Corum requests two (2) ruling from this Board:

- First, the KDOR's *current* valuation methodology for determining the agricultural use value of timberland based upon simple arithmetic percentages of pasture rents is arbitrary and capricious and cannot be used; and
- Second, the KDOR must re-apply its existing valuation methodology for timberland to be based on the potential income from timber being produced on the Corum tree farm.

LIST OF EXHIBITS (attached as A through S)

Corum Farm documents generated by Harlan County PVA

KDOR *Kentucky Course 90 Farm Real Property Appraisal* (Rev. 7-09)

KDOR *Kentucky Course 90 Farm Real Property Appraisal* (Rev. 07/12)

KDOR *Kentucky Course 90 Farm Real Property Appraisal* (Rev. 04/13)

Ky Energy and Environment Cabinet (KEEC), Ky Div of Forestry, *Kentucky's Growing Gold*, Vol. LI, No. 4 Fall 2011

KEEC, Ky Div of Forestry, *Kentucky's Growing Gold*, Vol. LII, No. 1 Winter 2012

KEEC, Ky Div of Forestry, *Kentucky's Growing Gold*, Vol. LII, No. 2 Spring 2012

KEEC, Ky Div of Forestry, *Kentucky's Growing Gold*, Vol. LII, No. 3 Summer 2012

KEEC, Ky Div of Forestry, *Kentucky's Growing Gold*, Vol. LII, No. 4 Fall 2012

Property Taxation and Forest Land Assessment in Kentucky Watersheds, Scott T. Brodbeck, University of Kentucky, College of Agriculture, Graduate School (04.30.07)

FY 2008 S & PF Competitive Grant Proposal by UK Forestry Department with partners, Kentucky Division of Forestry and KDOR Office of Property Valuation

Memorandum of Agreement dated 07.01.08 between Kentucky Division of Forestry and UK Research Foundation

Kentucky Woodlands Magazine, Vol. 6, Issue 1 (APR, 2011) "Kentucky Woodlands Tax Assessment Project"

01.20.12 Memorandum from UK Department of Forestry, Stringer and Stainback

03.22.12 Memorandum from UK Department of Forestry, Stainback *Legal Considerations*

04.30.12 Memorandum from UK Department of Forestry, Stringer and Stainback

Woodland Tax Initiative Update July, 2012 from UK Department of Forestry, Stringer and Stainback

Computation of Agricultural Use Value (using Annual Growth method) of Corum Tree Farm

06.23.14 Present value of Annual Growth calculation from MoneyChimp.com

LAW IN QUESTION (attached as B1 through B5)

Kentucky Constitution § 172A

KRS 132.010

KRS132.450

KBTA v. Gess et al., 534 S.W.2d 247 (Ky. 1976)

Dolan v. Land, 667 S.W.2d 684 (Ky. 1984)

Respectfully submitted,
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Counsel for the Appellant JAMIE CLAIRE CORUM

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Statement of Prehearing Compliance was served on Michael E. Pace, PO Box 1440, Harlan, Kentucky 40831.1440, counsel for the Harlan County Property Valuation Administrator, on this the 23rd day of June, 2014 by first class mail.



Counsel for Appellant Jamie Claire Corum

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