ABANDONING THE PRINCIPLES OF THE GREAT SEAL OF ARIZONA: HOW ARIZONA'S AGRICULTURAL PROPERTY TAX LAWS THREATEN THE EXISTENCE OF ITS AGRICULTURAL COMMUNITY

Paul Liberatore*

"The seal of the State shall be of the following design: In the background shall be a range of mountains, with the sun rising behind the peaks thereof, and at the right side of the range or mountains shall be a storage reservoir and a dam, below which ***in the middle distance are irrigated fields and orchards reaching into the foreground, at the right of which are cattle grazing****. To the left in the middle distance on a mountain side is a quartz mill in front of which and in the foreground is a miner standing with pick and shovel above this device shall be the motto: "Ditat Deus."*[1] *In a circular band surrounding the whole device shall be inscribed: "Great Seal of The State of Arizona, with the year of admission of the State into the Union."*
- Article 22, Section 20 of the Arizona Constitution, adopted 1911[2]

I. INTRODUCTION

On February 14, 2012, Arizona celebrated its centennial birthday; however, the state's current agricultural property tax laws are endangering the agricultural community that helped create Arizona. When Arizona became a state in 1912, it symbolized the potential of the

* Juris Doctor candidate, Phoenix School of Law, Spring of 2013. B.S. in Aeronautical Technology, Purdue University. Managing Board Member, *Phoenix Law Review* Vol. VI. A special thanks to my father, Anthony Liberatore, whose wisdom and encouragement has allowed me to become the person I am today. I would also like to thank Paul Mooney of Mooney, Wright & Moore, PLLC; Pat Derdenger of Steptoe and Johnson; and Bas Aja of the Arizona Cattle Growers' Association for their support in writing this Article.

[1] KEN BENNETT, HISTORY OF THE ARIZONA STATE SEAL, AZSOS.GOV 4, http://www.azsos.gov/info/state_seal/State_Seal_History.pdf (last visited Jan. 21, 2013) (the state motto "Ditat Deus," in Latin means God enriches).

[2] ARIZ. CONST. art. XXII, § 20.

American West.[3] With an abundant wealth of natural resources, Arizona prided itself as the home of the *Five C's*: Cattle, Cotton, Citrus, Copper[4], and Climate.[5] These resources were so significant to Arizona's identity that the state founders embodied them in the state seal, along with the words "Ditat Deus," (God enriches).[6] During the past one hundred years, the *Five C's* have been the lifeblood of Arizona's economy.[7] The *Five C's* provided opportunities to early settlers and allowed Arizona's communities to grow.[8] Indeed, it was Cattle, Cotton, Citrus, Copper, and Climate that have allowed Arizona to become the state it is today.

Arizona's agricultural community encompasses three of Arizona's *Five C's*: Cattle, Cotton, and Citrus. The agricultural community is comprised of small family operations that have been passed down through generations. Currently, ninety-four percent of all farm and ranching operations in Arizona are family-owned and operated.[9] Arizona's agricultural community plays a vital role in the state's economy: it provides a $10.3 billion industry for the state.[10]

Currently, Arizona's cattle ranching community maintains over 930,000 head of cattle.[11] These cattle are used to produce milk and beef. Arizona produces approximately 386 million pounds of beef each year, feeding around 4.6 million Americans annually.[12] Arizona's sheep ranching community currently maintains over 150,000 head of sheep.[13] These sheep are used to

---

[3] *AZ Experience*, AZ100YEARS, http://www.az100years.org/az-experience (last visited Jan. 21, 2013).
[4] ARIZ. FARM BUREAU, ARIZONA'S AG MAG – ARIZONA FIVE CS (2012). Arizona is the United States' top producer of copper and has been since 1910. Currently, "Arizona's copper industry is a $9.3 billion dollar industry."
[5] *AZ Experience*, *supra* note 3.
[6] BENNETT, *supra* note 1.
[7] *Five "C's" Supported the Arizona Economy*, ARIZONA100 BLOG (Feb. 15, 2010), http://arizona100.wordpress.com/2010/02/15/59/ (last visited Sep. 9, 2012).
[8] *Id.*
[9] ARIZ. FARM BUREAU, *supra* note 4.
[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] *Five "C's" Supported the Arizona Economy*, *supra* note 7.

produce wool and lamb. In 2007, Arizona ranked eleventh in the United States for sheep and lamb production.[14]

Arizona's farming community is comprised of both field crops and citrus fruit. Currently Arizona is ranked second in the United States for acres of lettuce, and third for acres of durum wheat, melons, and potatoes.[15] In 2008, Arizona cotton farmers grew over 2.24 million tons of cotton fiber on 260,000 acres.[16] Arizona is the leading state for cotton yields per acre, at 8.6 tons.[17] Arizona's citrus farming community maintains over 20,000 acres of citrus fruit trees.[18] Arizona is the second largest producer of lemons in the nation, and in combination with California, produces ninety-five percent of the U.S. lemon crop.[19] In 2007, Arizona was ranked fourth in the nation in the production of both oranges and grapefruits.[20] Clearly, Arizona's agricultural community plays a vital role in the state's economy; moreover, the agricultural community's success is due to the hard work and perseverance of its farmers and ranchers.

Because Arizona's agricultural community is so important to the state, the Arizona Legislature has always protected it. One such protection took the form of a property tax incentive for agricultural property.[21] This property tax incentive has allowed an owner whose property is used for agricultural purposes to pay a reduced property tax than would be required if the property were used for a different purpose.[22] The Legislature's reasoning for providing such a tax incentive was that properties used for agriculture have a much lower profit margin than do

---

[14] *Id.*
[15] *Id.*
[16] *Id.*
[17] *Id.*
[18] ARIZ. FARM BUREAU, *supra* note 4.
[19] *Id.*
[20] *Five "C's" Supported the Arizona Economy*, *supra* note 7.
[21] *See* Stewart Title & Trust of Tucson v. Pima Cnty., 751 P.2d 552, 554 (Ariz. Ct. App. 1987); *Property Tax Analysis*, SW. AG SERVICES, http://www.swaservices.com/taxes.pdf (last visited Feb. 5, 2013).
[22] *See* sources cited *supra* note 21.

other types of land.[23] Therefore, without a property tax incentive, agricultural landowners could not afford to pay property taxes, and this failure to pay may have resulted in farmers and ranchers losing their property. During the past forty-five years, this property tax incentive system developed into Arizona's agricultural property tax law.[24] Arizona's agricultural property tax law provides the statutory framework for determining what properties are awarded agricultural classification.[25] A property with an agricultural classification receives the property tax incentive.[26]

Arizona's agricultural property tax law is very contentious because county assessors applying the law must balance the agricultural community's interests against the county's revenue needs.[27] Historically, the system was fair: legitimate farming and ranching operations obtained agricultural classifications and sham operations did not.[28] However, things drastically changed after the 2008 collapse of the real estate market.[29] County assessors have made it increasingly difficult for legitimate farmers and ranchers to obtain an agricultural classification and the accompanying property tax incentive.[30] Additionally, a recent judicial interpretation in *Audrey A. Hanks v. Pinal County*[31] of the agricultural property tax law further strained the already contentious situation. Consequently, the agriculture property tax laws enacted by the Arizona Legislature that were intended to protect the agricultural community are now, in fact, endangering the community's very existence.

---

[23] *Economic Overview*, Envtl. Protection Agency, http://www.epa.gov/agriculture/ag101/printeconomics.html (last visited Feb. 5, 2013).
[24] *See generally* ARIZ. DEP'T OF REVENUE, AGRICULTURAL PROPERTY MANUAL (2004).
[25] *See Stewart Title & Trust of Tucson*, 751 P.2d at 554.
[26] *Id.*
[27] *See* discussion *infra* Part II.
[28] *See* discussion *infra* Part II.
[29] *See* discussion *infra* Part III.
[30] *See* discussion *infra* Part II.D.-III.
[31] Hanks v. Pinal County, No. 2008-000578, 2010 Ariz. Tax LEXIS 10 (Ariz. Ct. App. filed May 21, 2010).

This Article discusses Arizona's agricultural property tax law and recommends legislative changes needed to protect the agricultural community. Part II describes the evolution of Arizona's agricultural property tax laws. Part III explains the current agricultural property tax laws that provide the criteria for agricultural classification. Part IV discusses *Audrey A. Hanks v. Pinal County*'s interpretation of the current agricultural property tax statutes, and the negative repercussions the case has had on the agricultural community. Part V provides recommendations for changing Arizona's agricultural property tax law. Part VI sums up this Article's propositions. Lastly, Part VII discusses the Legislature's response to the issues raised in this Article.[32]

II. THE EVOLUTION OF ARIZONA'S AGRICULTURAL PROPERTY TAX LAW

Arizona's property tax law has evolved during the last century. Throughout this evolution, the Legislature has continuously sought to protect the agricultural community. From this goal emerged Arizona's current agricultural property tax statutes and the requirement that a property be used for agricultural purposes to receive agricultural classification.

A. *The Beginning of Arizona Property Tax Law:* Southern Pacific v. Cochise County *and Unconstitutional Taxation that Threatened the Solvency of Arizona*

The landmark 1963 case *Southern Pacific v. Cochise County* threatened Arizona's established property tax structure when the Arizona Supreme Court declared that the state's existing property tax structure was unconstitutional.[33] Prior to *Southern Pacific*, Arizona's property tax law required that property be valued and assessed at its full cash value.[34] At the time, the statutory definition of full cash value was, "the price at which property would sell if voluntarily offered for sale by the owner upon such terms as property is usually sold, and not the

[32] Prior to publication of this Article, Arizona's legislature amended Arizona's agricultural property tax law. *See* discussion *infra* Part VII.
[33] *See generally* S. Pac. Co. v. Cochise Cnty., 377 P.2d 770 (Ariz. 1963).
[34] Berge Ford, Inc. v. Maricopa Cnty, 838 P.2d 822, 826 (Ariz. Tax. Ct. 1992).

price which might be realized if the property were sold at forced sale."[35] Many county assessors ignored Arizona's property tax law and instead assessed property tax valuations based on personal arbitrary and discriminatory methods.[36] As a result, property owners paid more in property taxes than the law required.

The Arizona Supreme Court in *Southern Pacific* held that Arizona's existing method for property tax valuation and assessment was unconstitutional.[37] In *Southern Pacific*, the Southern Pacific Railroad Company appealed to the State Tax Commission,[38] and the Railroad claimed that their property was assessed at eighty-nine percent of its full cash value, while county assessors assessed non-railroad property at only twenty percent of the property's full cash value.[39] The Railroad requested an equalization[40] of their assessment, "by either lowering it to the average of other properties or by raising other assessments to its full cash value."[41] The Railroad argued that, due to the inequality of the assessments (namely, eighty-nine percent of full cash value as compared to twenty percent of full cash value), it bore "an unfair and discriminatory share of the tax burden."[42] When the State Board of Equalization denied the

[35] Burns v. Herberger, 498 P.2d 536, 539 (Ariz. Ct. App. 1972), *overruled in part by* Golder v. Dep't of Revenue, 599 P.2d 216, 221 (Ariz. 1979).
[36] *Id.*at 540.
[37] *See generally S. Pac. Co*., 377 P.2d 770.
[38] *Id.*at 772-73 ("The State Tax Commission in its capacity as the State Board of Equalization is invested with the duty to equalize the valuation and assessment of property throughout the state. Its power of equalization is practically unlimited. To that end, it may equalize the assessment of all property between persons of the same assessment district, between cities and towns in the same county, and between different counties of the state. . . .").
[39] *Id.*at 772.
[40] *Id.*at 773 ("The equalization of taxes is as essential to a valid assessment as the listing and valuing of the same by the assessor. Beginning with the laws of 1877, Chapter 33, Complied laws of that year, down to the present time the taxpayer has been given the right to appear before equalizing boards and protest his assessment as made and returned by the assessing officer. Since statehood, or 1912, that right . . . is a constitutional right, for when the organic law provides that the manner, method and mode of assessing, *equalizing* and levying taxes shall be such as the law prescribes, it is tantamount to saying that there must be a procedure or method for equalizing valuations of property before exacting the tax.").
[41] *Id*. at 772.
[42] *Id*. at 773.

request, the Railroad filed suit and sought to recover paid taxes, and an injunction to prevent future discriminatory property tax assessments.[43]

The Arizona Supreme Court stated that under Article 9, Section 1 of the Arizona Constitution, "All taxes shall be uniform upon the same class of property within the territorial limits of the authority levying the tax."[44] The Court further stated that the State Tax Commission, "in failing to asses [the Railroad's] property at full cash value and thereafter to equalize the assessment with other property has not acted within the authority conferred upon it by law."[45] The court reasoned that:

> [U]nless or until the legislature exercises its authority and establishes classifications of property which permit an assessment of a different percentage of full cash value, courts would have no alternative other than to prohibit officials from assessing [the Railroad's] properties at a different percentage of full cash value from other properties.[46]

The court further stated that an injunction was "not to prevent the execution of the [state's taxing] statute but to prohibit wrongful action on the part of the [county officials] under the guise of its enforcement or execution."[47] The Arizona Supreme Court further held, "that the practice of systematically assessing the railroad at a different proportion of full cash value than other property was unlawful . . . [and] such a practice [has] resulted in an unconstitutional discrimination against the railroad."[48] Furthermore, the court stressed that it could not grant the Railroad's request for reimbursement for years of over-taxation because it, coupled with similar claims, would threaten Arizona's financial solvency.[49]

B. The Legislative Response to Southern Pacific and How "Highest And Best Use" Would Have Destroyed the Agricultural Community

---

[43] *Id*. at 772.
[44] *Id*. at 774.
[45] *Id*. at 775.
[46] *Id*. at 776.
[47] *Id*.
[48] Berge Ford, Inc. v. Maricopa Cnty., 838 P.2d 822, 827-28 (Ariz. Tax Ct. 1992).
[49] *S. Pac. Co.*, 377 P.2d at 777-78.

The decision in *Southern Pacific* was the dawn of Arizona's current property tax system. After the decision, the Legislature immediately took steps to pass legislation that would both revalue all property in Arizona and define mandatory assessment procedures.[50] The Legislature's goal was to completely revalue all property in Arizona by February 1, 1966, by using the prior definition[51] of full cash value and the property's highest and best use.[52]

Before this Article continues, the terms "full cash value" and "highest and best use" must be discussed. Full cash value is synonymous with the term "fair market value."[53] Fair market value is defined as, "the highest price . . . which the property would bring if exposed for sale in the open market."[54] There are essentially two ways to determine a property's fair market value. The first is to determine the property's sale price after the transaction closed.[55] The second is through an appraisal of the property.[56]

An appraiser is qualified to give an opinion of value if he is both educated and experienced in the appraisal techniques used in valuing property.[57] In reaching an opinion, an appraiser utilizes one of three standard methods and techniques, known as the "appraisal trinity."[58]

The appraisal trinity consists of the replacement method, the income method, and the market data method.[59] The replacement method determines property value by assessing the

---

[50] *Berge Ford, Inc.*, 838 P.2d at 827.
[51] Burns v. Herberger, 498 P.2d 536, 539-40 (Ariz. Ct. App. 1972), *overruled in part by* Golder v. Dep't of Revenue, 599 P.2d 216, 221 (Ariz. 1979) ("'Full cash value' was defined by former A.R.S. § 42-201, subsec.1 (since repealed) as 'the price at which property would sell if voluntarily offered for sale by the owner upon such terms as property is usually sold, and not the price which might be realized if the property were sold at forced sale.'").
[52] *Id*. at 540.
[53] *Id*.
[54] State v. McDonald, 352 P.2d 343, 345 (Ariz. 1960).
[55] *See Burns*, 498 P.2d at 540.
[56] *See id.*
[57] *Id*.
[58] *Id*.
[59] *Id*.

current cost to replace a property if the property were destroyed, minus any costs of appreciation or depreciation.[60] The income approach method values a property by determining the property's net earning power.[61] This method is based on the capitalization of net income produced by the property.[62] The market data method, also referred to as a market approach, determines a property's value by analyzing recent sales of all comparable properties within the property's market area.[63] Appraisers used the appraisal trinity to revalue all property in Arizona.

During Arizona's property reevaluation, appraisers were also required to base their appraisal on the property's highest and best use.[64] The term highest and best use is defined as "the reasonably probable and legal use of vacant land or an improved property, which is physically possible, appropriately supported, and financially feasible, and results in the highest value."[65] To illustrate a property's highest and best use, imagine a residential property located in a neighborhood transitioning into a more commercial area. Further, imagine that next door to the residential property is a commercial property. Under the highest and best use, because the commercial property can produce revenue for the property owner, the commercial property is valued higher than the residential property. Further, if the residential property is appraised at its highest and best use, the property will be valued as commercial and not residential because the commercial is the use that will result in the highest value of the residential property. Thus, when a property is valued at its highest and best use, the property's fair market value is higher and this will result in a much higher property tax.

---

[60] *Id.*
[61] *Id.*
[62] *Id.*
[63] *Id.*
[64] *Id.*
[65] AM. INST. OF REAL ESTATE APPRAISERS, THE APPRAISAL OF REAL ESTATE 41-43 (9th ed. 1987).

In the fall of 1966, Arizona's new property valuations became public; in response, there was a huge outcry from the agricultural community.[66] The community's reason for unrest was apparent: under the new property tax valuation system, farmers and ranchers would be incapable of paying property taxes because agriculture operations traditionally received less income than did other commercial operations.[67] While commercial businesses generally obtained a return of ten percent on their investment, agriculture always brought in a return of less than two percent.[68] Therefore, if an agricultural property were to be valued at its highest and best use, a confiscatory[69] tax would result.[70]

In response to this valuation problem, the Arizona Legislature called a special session in the fall of 1967.[71] The Legislature amended the property tax statute and declared "all property subject to Ad valorem taxation was to be appraised at is fair market value, considering not its 'highest and best use', but the current usage to which it was being placed."[72] The Legislature further defined the term "current usage" as "the use to which property is put at the time of valuation by the assessor."[73] This legislation helped protect the agricultural community because it provided that agricultural operators would only be taxed for the current use of their agricultural property, and not for its highest and best use.

---

[66] *Burns*, 498 P.2d at 540.
[67] *Id.*
[68] *Id.*
[69] BLACK'S LAW DICTIONARY 340-41 (9th ed. 2009) (Confiscation used as an adjective; Confiscatory, is the "[s]eizure of property by actual or supposed authority." A confiscatory property tax is therefore a tax imposed by the government that cannot be paid and can be used to take a person's property.).
[70] *Burns*, 498 P.2d at 540-41.
[71] *Id.* at 541.
[72] *Id.* at 541 ("A.R.S. § 42-123, subsec. A(5) states that the Director of Property Valuation shall: 'Adopt standard appraisal methods and techniques for use by the department and county assessors in determining the valuation of property, and prepare and maintain manuals and other necessary guidelines reflecting such methods and techniques in order to perpetuate a current inventory of all property subject to taxation and the valuation thereof. In the standard appraisal methods and techniques adopted *Current usage shall be included in the formula for reaching a determination of full cash value and when the methods and techniques adopted prescribe the use of market data as an indication of market value, the price paid for future anticipated property value increments shall be excluded.*'" (The italicized portion of the statute was added by the Legislature)).
[73] *Id.*

C. The 1980 Legislative Amendment to the Property Tax Statutes: Further Protection of the Agricultural Community

In 1980, the Arizona Legislature amended the property tax statutes and provided further protections for the agriculture community.[74] This amendment was significant because it mandated that all agricultural property be valued using the property's income-producing capacity; thus, the amendment assured that agricultural property would not be affected by any outside market influences.[75] Prior to the amendment, agricultural property located near major metropolitan areas was valued differently due to the property's location. After this amendment, an agricultural property next to a commercial property was valued similarly to income-producing agricultural property in a more rural area (such as Eloy, Buckeye, or Casa Grande).[76]

This income approach to property assessment had tremendous influence on the tax values of agricultural properties located near metropolitan areas.[77] For example, using the income approach, an agricultural property located in a metropolitan area such as Phoenix or Tucson was valued between $900-$1300 per acre, the same price as property located in a more rural part of Arizona.[78] However, because an adjacent vacant non-agriculture property of the same shape and size could be valued at $20,000 to $100,000 per acre, without the income approach the

[74] Stewart Title & Trust of Tucson v. Pima Cnty., 751 P.2d 552, 554 (Ariz. Ct. App. 1987).
[75] *Id*. ("Land used for agricultural purposes shall be valued using solely the income approach to value without any allowance for urban or market influence. The income of the property shall be determined using the capitalized average annual net cash rental for such property. For the purpose of this paragraph, the average annual net cash rental for such property means the average of the annual net cash rental, excluding real estate and sales taxes, determined through an analysis of typical arm's length rental agreements collected for a five year period prior to the year for which the valuation is being determined, for comparable agricultural land used for agricultural purposes and located in the vicinity, if practicable, of the property being valued. For the purpose of this paragraph, the average annual net cash rental shall be capitalized at a rate one and one-half percentage points higher than the average long-term annual effective interest rate for all new federal land bank loans for the five year period prior to the year for which the valuation is being determined."). This statute is now codified under A.R.S. § 42-13101.
[76] K. Layne Morrill, *Politics, Purpose, and Principle in Taxation of Agricultural Property*, ARIZ. ATT'Y, Feb. 1994, at 14-15.
[77] *Id*.
[78] *Id*.

agricultural property risked being compared to the neighboring higher values.[79] Therefore, the amendment protected the agricultural community by using the same method to value all agricultural property, regardless of the property's location or any outside market influences.

D. "Used for Agricultural Purposes:" Stewart Title and Trust v. Pima County *and the Last Straw for County Assessors and the Arizona Department of Revenue*

During the early 1970s and throughout the mid 1980s, the full cash value of property located near major metropolitan areas in Arizona increased rapidly, and as a result, so did property taxes.[80] By mid 1986, due to the disparity in the taxable value between agricultural and non-agricultural property, an inevitable conflict between county assessors and the agricultural community arose.[81] This conflict transpired in *Stewart Title & Trust of Tucson v. Pima County*, where a 636-acre property used for grazing had its agricultural classification removed because a real estate investor purchased the property.[82]

In *Stewart Title*, the 636-acre property, in conjunction with other leased and fee-owned property, was part of a large ranching operation that had been in existence since the early 19th century.[83] The property's sale prompted the Pima County Assessor to review the property's agricultural classification.[84] During this time, no statutory definition for the term "used for agricultural purposes" existed, so county assessors relied upon the guidelines in the Arizona Department of Revenue Agricultural Manual ("Agricultural Manual") when determining whether

---

[79] *Id.* at 15-16.
[80] *Id.*
[81] *See id.*
[82] Stewart Title & Trust of Tucson v. Pima Cnty., 751 P.2d 552, 556-57 (Ariz. Ct. App. 1987) (The subject property was originally owned by the Pima Service Corporation. They leased the property to the Franco Ranch to be used for grazing. However, prior to 1983 none of the land was classified as agricultural. The Pima Service Corporation appealed the assessor's classification, and a settlement was reached. This settlement provided that portions of the ranch would retain their non-agricultural status, while other portions, including a section that was sold to Nationwide Resource Corporation, would be classified as agricultural. In August 1984, Nationwide Resource Corporation purchased the subject property from the Pima Service Corporation for approximately $4,500,000. The vice president of Nationwide Resource Corporation testified that the property was being purchased for an investment and was to be sold within three years to a developer.).
[83] *Id.*
[84] *Id.*

to grant an agriculture classification.[85] After using the Agricultural Manual, the Pima County Assessor determined that because a real estate investor was holding the property for future development, the property did not qualify for agriculture classification.[86] The landowners brought suit against Pima County, and the trial court granted the property agricultural status; consequently, classifying the property as agricultural resulted in a reduction from $2,227,260 to $3455 in the property's full cash value.[87]

On appeal, Pima County argued that the guidelines in the Agricultural Manual required an analysis of the following three areas to determine whether a property was used for agricultural purposes: "(1) the intent of the owner in purchasing the property; (2) the economic feasibility of using the property for agricultural purposes; and (3) the historical use of the land."[88] Pima County argued that because the property failed in every aspect of the criteria set forth in the Agricultural Manual, the property should not be classified as agricultural.[89] The Arizona Court of Appeals stated that while a property's historical use is a significant factor when determining its agricultural classification, a property must only be valued by its current use.[90] The court reasoned that, "[s]o long as the owner can establish that the use of his property otherwise meets the definition of agricultural property,[91] the fact that the property was previously given a

---

[85] *Id*. at 554-56. It was not until 1989, three years later, that the term "used for agricultural purposes" was statutorily defined. Hibbs ex rel. Ariz. Dept. of Revenue v. Chandler Ginning Co., 790 P.2d 297, 300 (Ariz. Ct. App. 1990).
[86] *Stewart Title & Trust of Tucson*, 751 P.2d at 553, 556 (Robert Barry, the supervisor of the land appraisal section of the Pima County Assessor's Office testified that even though the nature and use of the property was essentially the same, he determined that because the property was being held for development or speculation purposes, he removed the agricultural classification).
[87] *Id*. at 553.
[88] *Id*. at 556.
[89] *See id.*
[90] *Id*. At the time of valuation, the property was leased to the Franco Ranch for land grazing. *Id.* at 555.
[91] *Id*. at 556. "'Agricultural property is that real and personal property used for the purpose of agronomy, horticulture or animal husbandry:

1. In which the primary function is to produce an agricultural crops or commodity.
2. In which the improvements are primarily oriented to agricultural functions . . .
3. In which the total operation consists of at least the minimum number of acres or animal unit specified in pages

different classification or surrounding property is put to other uses is of little significance."[92] The court also stated that the purpose of the Agricultural Manual's guidelines was to assist county assessors with determining whether the property would be used for agriculture.[93] The court reasoned that a denial based on the economic feasibility of the parcel used for agriculture could not validly preclude an agricultural classification if it met all other criteria set forth in the manual[94] and if the property was leased to a viable agricultural operator.[95]

---

205 through 208 . . .
4. Which is used with a reasonable expectation of profit solely from its agricultural use. Manual at 101.

. . . [N]on-qualifying rural property:

'Applying the preceding criteria for defining agricultural property, certain properties which have an appearance of agricultural use are considered non-qualifying farms or ranches for ad valorem property tax purposes. Two common non-qualifying types of property are:

1. Property used primarily for residential, pleasure, development speculative or recreational purposes. This type of property is classified and valued according to its primary use.
2. Property changing from agricultural use to non-agricultural use. Signs of such change include the appearance of survey stakes in conjunction with non-agricultural development, recording of a plat or plats, earthwork in connection with urban development, appearance of roads, installation of utilities, failure to plant crops despite the availability of adequate water, etc.' Manual at 102-103."

Id. at 554-55 (quoting DIV. OF PROP. & SPECIAL TAXES, ARIZ. DEP'T OF REVENUE, AGRICULTURAL MANUAL NO. 1532 (1983)).

[92] *Id*. at 556.

[93] *Id*. at 557.

[94] *Id*. at 556-57.

"In order for property to qualify within this classification as ranch property, the guidelines provide that 'its primary use must be livestock, grazing on large uncultivated acreages utilizing natural forage crops.' Manual at 203. Further, where privately owned undeveloped land is leased to a livestock rancher, the lease 'must be critically analyzed to determine the valid qualifications of the land for classification as grazing . . . land.' The Manual requires that the analysis consider the following questions:

'1. Does the leased acreage add significant value to the farming or grazing capability of the farm or ranch?
2. Is there an operating well or water tank on the leased land?
3. Does the leased land create access between two parcels necessary for the operation of the farm or ranch?
4. Does the lessee's operation qualify as a farming or ranching operation?
5. Has the leased land consistently been leased for farming or grazing purposes?
6. Is the lease typical of other private farming or grazing leases in the state?
6a. Is there sufficient evidence to prove that the lease is valid?
b. Are the terms and conditions of the lease reasonable?
c. Is the rental return in line with typical leases in the farming or ranching field?
7. If the leased acreage has been purchased recently, does the rental rate indicate a reasonable return on invested capital to the owner?' (citations omitted). Manual at 203 -204."

Id. at 555 (quoting DIV. OF PROP. & SPECIAL TAXES, ARIZ. DEP'T OF REVENUE, AGRICULTURAL MANUAL NO. 1532 (1983)).

The Arizona Court of Appeals held that the 1980 amendment to the property tax statute was clearly intended to provide further protection for the agricultural community, and that the amendment reinforced the concept of current usage when determining valuation.[96] The court further held that under this interpretation, regardless of whether the owner intends to sell or develop the property, leased land that meets the Arizona Department of Revenue guidelines for agricultural property must receive an agricultural classification and must be valued solely on the income approach set forth in the statute.[97]

As a result of the *Stewart Title* decision, two types of property would be classified as agricultural: any property owned by a farmer or rancher in which the property's current usage was agriculture, and any property leased to a farmer or rancher who currently uses the property for an agricultural operation. Either type of property received agricultural classification regardless of the owner's intent to sell or develop the property. This decision in *Stewart Title* caused great concern for county assessors and the Arizona Department of Revenue. They feared that land developers would misuse the agricultural property tax system and obtain agricultural classification for property not actually used for agricultural purposes, and it was not long before they publicized these concerns.

E. The Backlash from Stewart Title: The Creation of the "Statutory Use" Requirement for

---

[95] *Id*. at 557.

[96] *Id*. at 558-59 ("The amendment's prohibition against consideration of urban or market influences is recognition of the evidence presented in this case: that as metropolitan areas expand into rural areas, land becomes increasingly and substantially more valuable for commercial, industrial and residential development uses than for agriculture. Although the appellants concede that the purpose of the amendment was 'to provide some protection to long time farmers and ranchers from an increasing tax burden resulting from increasing values of property as the result of the urbanization of an area,' their interpretation would produce the opposite result. Fee-owned farm and ranch lands adjacent to urban areas would retain their agricultural status, but land leased for such purposes would be reclassified and subjected to substantially higher taxes. The owners of such lands would either pass the taxes on to the farmer or rancher, or proceed with the development of the land for other, more profitable purposes. Thus, appellants' constructions would deprive farmers and ranchers of the very protection they concede was intended by the legislature in adopting the . . . concept of 'highest or best use' rather than 'current usage' as the basis for determining the value of such property, which is clearly contrary to the . . . intent of the legislature . . . .").

[97] *Id*. at 559.

Agricultural Classification

In the fall of 1987 and just a few weeks after the *Stewart Title* decision, officials from the Maricopa County Assessors Office and the Arizona Department of Revenue went on the offensive and publicly proclaimed that land developers were stealing from Arizona taxpayers.[98] By the summer of 1988, many newspapers had published articles about developers taking advantage of Arizona's agriculture property tax laws.[99] In the fall of 1988, the Arizona Department of Revenue ordered a review of over 700 agricultural properties; many properties lost their agricultural classification as a result of this review.[100]

One property that lost its agricultural classification was DC Ranch.[101] The DC Ranch "[consisted] of [8320 acres] in the City of Scottsdale between Pima Road and Fountain Hills, and between the extension of Bell Road and Deer Valley Drive."[102] Kemper Marley,[103] who ranched the property since the early 1920's, owned DC Ranch.[104] At the time, Mr. Marley claimed that due to urban development encroaching on his property, the ranch was no longer economically

---

[98] Morrill, *supra* note 76, at 14, 16, 31 n.7 ("Jeff South, 'Phony Farmland? Land Speculators Plant Small, Save Big,' *The Phoenix Gazette*, Sept. 24, 1987, at E1. Even though the developers were 'not breaking any laws,' the officials claimed that these persons were 'ripping off the taxpayers.' The officials wanted stricter statutes to correct the situation. *Id.*").

[99] *See id.* at 14, 31 n.8 ("*See, e.g.,* Art Thomason, "Rented Cows Help Landowners Keep Taxes Down," *The Arizona Republic*, Aug, 14, 1988, at A14; Art Thomason, "Assessors Will Examine Land-Baron Tax Breaks," *The Arizona Republic*, Sept. 2, 1988, at B1; Art Thomason, "Tax Official Orders Novkov to Review Agricultural Land," *The Arizona Republic*, Oct. 18, 1988, at A1; "Milt Novkov' s Woes all Hat, No Ranch," *The Arizona Republic,* Oct. 19, 1988, at A16; E.J. Montini, "County's Poor Lose Out in land Barons' Tax-Loophole Game," *The Arizona Republic*, Oct. 24 1988, at B1; Art Thomason, "Keating Lacks Water to Farm Contested Land-Rights to Irrigate Were Given Up-Tax Break at Issue," *The Arizona Republic*, Nov. 17, 1988, at B1; Art Thomason, "Developer's Tax Bill to go up to $770,000," *The Arizona Republic*, Dec. 21 1988, at B3.").

[100] Morrill, *supra* note 76, at 16.

[101] *Id*.

[102] Title USA v. Maricopa Cnty., 810 P.2d 633, 635 (Ariz. Tax Ct. 1991), *vacated in part*, 855 P.2d 430 (Ariz. Ct. App. 1993).

[103] Morrill, *supra* note 76, at 16 n.10 ("Mr. Marley had been anathema to the local newspapers since the press had linked him to the 1976 slaying of investigative reporter Don Bolles. . . . Notwithstanding more than 17 years of investigations, prosecutions, and retrials, Mr. Marley was never formally accused of any complicity in that murder.").

[104] *Title USA*, 810 P.2d at 639.

viable for cattle grazing, so instead he used goats to graze the ranch.[105] Maricopa County believed DC Ranch was a sham operation and removed the ranch's agricultural classification.[106] Maricopa County then reclassified DC Ranch as vacant land; this classification resulted in the property's full cash value increasing to $94,000,000, or an increased property tax bill equaling $750,000.[107] Mr. Marley sued Maricopa County and sought to have the ranch's agricultural classification reinstated. The Tax Court of Arizona found for Mr. Marley and held "those parcels which a reasonably prudent goat rancher would find to be necessary to make goat ranching an economic success, and which are actually utilized to that end, need be classified as agricultural property."[108] DC Ranch is just one of many agricultural properties that lost its agricultural classification, and this prompted the Legislature to remedy the issue.

In early 1989, the Arizona Department of Revenue, together with the help of various county assessors, drafted and submitted a proposal to the Legislature for new agricultural property tax statutes.[109] The Arizona Department of Revenue's proposal stated that in order for a property to be considered used for agricultural purposes, the following was required: "(a) that 25% of a landowner's gross income stem from farming; (b) a signed contract to maintain agricultural status for five years; and (c) a rollback provision retroactively charging non-agricultural taxes, plus interest, if the five-year provision were violated."[110] By the fall of 1989, the Legislature used some of the elements from this proposal and enacted A.R.S. § 42-167,[111] which defined the criteria required for defining the term "used for agricultural purposes".[112] Under A.R.S. § 42-167(A), property is not used for agricultural purposes, and it is thus not

[105] *Id.* at 639-40.
[106] *Id.* at 634-35, 639.
[107] *Id.* at 638.
[108] *Id.* at 642.
[109] Morrill, *supra* note 76, at 16.
[110] *Id.* at 31 n.12.
[111] Now Codified as ARIZ. REV. STAT. ANN. § 42-12152 (2012).
[112] Hibbs *ex rel*. Ariz. Dep't of Revenue v. Chandler Ginning Co., 790 P.2d 297, 302 (Ariz. Ct. App. 1990).

eligible for agricultural classification unless it meets the following criteria: (1) the primary use of the property is agricultural and the property has been in active production in conformance with generally accepted agricultural practices for at least seven of the ten prior years; (2) there is a reasonable expectation of profit, exclusive of the land cost, from the agricultural use of the property; (3) if the property consists of noncontiguous parcels, the noncontiguous parcels shall be managed and operated on a unitary basis and each parcel shall make a functional contribution to the agricultural use of the property.[113]

Because of this new agricultural statute, the Arizona Department of Revenue created a new Agricultural Manual to provide assessors with guidelines[114] for determining whether an agricultural property can produce a reasonable expectation of profit.[115] After the agricultural property tax statutes were signed into law, politicians and the press declared victory over developers' misuse of agricultural classifications.[116] Because of the intensity of the campaign to pass the agricultural statutes, the true principle of agricultural classification fell to the wayside.[117] Consequently, legitimate farmers and ranchers—who the Legislature had sought to protect—were now vulnerable.[118] County assessors viewed agricultural operators with suspicion, and as a result, farmers and ranchers spent much time dealing with governmental red tape rather than operating their ranches. Furthermore, if a county assessor decided that a legitimate farmer or

---

[113] *Id.*
[114] Title USA v. Maricopa County, 851 P.2d 159, 162 (Ariz. Tax Ct. 1993) ("Department of Revenue's guidelines use an eight-factor test to determine whether there is a 'reasonable expectation of profit.' These factors include: the manner in which the taxpayer carries on the agricultural activity; the expertise of the taxpayer or his advisors; the time and effort expended by the taxpayer in carrying on the agricultural activity; the success of the taxpayer in carrying on other similar or dissimilar agricultural activities; the taxpayer's history of income or losses with respect to the agricultural activity; the amount of occasional operating profits, if any, which are earned; the financial status of the taxpayer; and whether there are elements of personal pleasure or recreation in carrying on the agricultural activity. *Dep't of Revenue Agric. Manual* ch. 3, 22-27 (Jan. 1, 1991).").
[115] Morrill, *supra* note 76, at 16 n.17.
[116] *Id.* 16 n.16 ("The Editors praised, 'COMPROMISE . . . the great principle of American politics,' and announced that the new legislation 'could mean the end of rent-a-cow operations and dry-gulch farming.' Land-Tax Bill-Rented Cows at Rope's End,' *The Arizona Republic,* April. 15, 1989, at A.24.").
[117] *Id.* at 16.
[118] *Id.*

rancher was not in compliance with the agricultural classification requirements, the rancher's only recourse was to go to court. If the rancher chose not to pursue judicial intervention, he risked losing the property to a confiscatory tax.

III. ARIZONA PROPERTY TAX LAW: THE CRITERIA FOR AGRICULTURAL CLASSIFICATION

This Part addresses Arizona's current agricultural property tax law. There are three main components to Arizona's agricultural property tax law: (1) the qualifying use; (2) the statutory use; and (3) the ability of the assessor to approve a nonconforming property.

A. The "Qualifying Use:" Defining Agricultural Real Property

The "qualifying use" component essentially defines what Arizona law regards as agricultural real property. In Arizona, not all land used for agricultural purposes qualifies for an agricultural classification; therefore, the primary use of a property must be a qualifying use. A qualified agricultural use is one that meets the criteria described in A.R.S. § 42-12151,[119] which defines agricultural real property as one or more of the following:

1. Cropland[120] in the aggregate of at least 20 gross acres.
2. An aggregate ten or more gross acres of permanent crops.

---

[119] ARIZ. REV. STAT. ANN. § 42-12151 (2011); ARIZ. DEP'T OF REVENUE, *supra* note 24, at 2.2.

[120] Cropland is defined as:

> A. Permanent Crops: These are plants, vines, or trees which produce a seasonal or annual crop and that are perennial by nature (rather than row or field crops, which are planted and harvested on a scheduled rotation). Permanent crops must have an aggregate of ten or more gross acres. They usually require several years to reach maturity before the plant or trees begin producing a marketable harvest. Examples of permanent crops include fruit trees (such as apples or peaches), citrus trees (such as oranges or grapefruit), nut trees (such as pecans), grapevines, date trees, olives, jojoba shrubs and Christmas trees. Permanent crops are considered to be improvements on the land.
>
> B. Seasonal Crops: This category includes the majority of farm parcels in most agricultural operations. Cropland, to qualify for statutory valuation as agricultural land, must consist of at least twenty gross acres. The land is cultivated to produce mainly row or field crops, which are planted and harvested on a scheduled rotation. Crops include those that are harvested once a year (such as cotton), those with a short growing time (such as green onions), or crops where the product is harvested, but the root system remains intact to produce another harvest (such as hay or alfalfa).

ARIZ. DEP'T OF REVENUE, *supra* note 24, at 2.3.

3. Grazing land[121] with a minimum carrying capacity of forty animal units[122] and containing an economically feasible number of animal units.[123]

4. Land and improvements devoted to commercial breeding, raising, boarding or training equine, as defined in § 3-1201[124] or equine rescue facilities registered with the department of agriculture pursuant to § 3-1350.[125]

5. Land and improvements devoted to high density use for producing commodities.[126]

---

[121] Grazing Land is defined as:

A. Irrigated Pasture: Land used for irrigated pasture that is of sufficient quantity and nourishment to support livestock without supplemental feeding. Irrigated pasture is valued in the same manner as other cropland in the same district or productivity zone. If the pasture cannot support the livestock, and substantial supplemental feeding is required for maintenance, the land should be valued as high-density.

B. Natural Grazing: For property tax valuation and assessment purposes, grazing land means ranch land that is used primarily for grazing livestock, where large, uncultivated acreage and natural precipitation provide natural forage to livestock. The land must have a minimum carrying capacity of forty animal units and contain an economically feasible number of animal units.
Id. at 2.4.

[122] ARIZ. REV. STAT. ANN. § 37-285(I)(1) (2010) (defining animal unit as "one weaned beef animal over six months of age, or one horse, or five goats, or five sheep, or the equivalent").

[123] "The carrying capacity of rangeland cannot be expressed as a fixed number. A quote from the report 'Assessment of U.S. Forest Service Methods for Determining Livestock Grazing Capacity on National Forests in Arizona' (2001), states, 'Grazing capacity for livestock (or proper stocking rate) is not an intrinsic biological characteristic of an ecosystem that can be directly measured.[sic] 'Grazing capacity is a function of the kind and amount of vegetation produced on the range, topographic characteristics of the landscape, and availability of water resources. The amount of money and time spent on regulating and managing livestock use (e.g., fences, water developments, trails, herding) has major effects on the grazing capacity.'" ARIZ. DEP'T OF REVENUE, *supra* note 24, at 2.4-2.5.

[124] ARIZ. REV. STAT. ANN. § 3-1201 (2006) (defining equine as "horses, mules, burros and asses").

[125] ARIZ. REV. STAT. ANN. § 3-1350 (2011) (providing the statutory requirements for equine rescue facilities).

[126] High-Density use is defined as:

A. General high-density use: High-density agricultural use is defined as the intensive use of a relatively small area of land for the production of a high-yield crop or commodity, wherein comparatively large amounts of labor and capital are required per unit of land. There is no minimum acreage requirement for this classification. Structural improvements and personal property frequently make up a substantial part of the overall value. That is, the value of structural improvements, such as cotton gins, greenhouses or packing facilities and the personal property in, or used with them, is often greater than the value of the land on which the improvements are situated.

Examples of high-density agricultural crop land uses include growing: flowers, ornamental plants, rose bushes, trees (other than standing timber), such as Christmas trees and landscape trees, intensively produced fruits and vegetables, such as tomatoes grown in hydroponic gardens.

Examples of activities that are engaged in for the purpose of raising and breeding animals, or for producing commodities from them, which require the intensive use of agricultural land include: beekeeping, breeding selective livestock (other than as a part of a ranching operation) such as registered horses and bovines, raising animals and poultry in a controlled environment for meat production, raising animals and poultry in a controlled environment for milk, milk products or eggs, raising aquatic animals as a product in a controlled environment, raising fur-bearing animals in a controlled environment for fur.

6. Land and improvements devoted to use in processing cotton necessary for marketing.[127]

7. Land and improvements devoted to use in processing wine grape for marketing.[128]

8. Land and improvements devoted to use in processing citrus[129] for marketing.[130]

Irrigated acreage or former cropland used for grazing may require high-density valuation if supplemental feeding of the animals is required.
ARIZ. DEP'T OF REVENUE, *supra* note 24, at 2.5-2.6.

[127] Land and improvements devoted to use in processing cotton necessary for marketing is defined as:

Land that is utilized for ginning cotton shall be valued as high-density agricultural land. Cotton ginning equipment and building will be considered to be agricultural property. The storage of cotton on the gin site for a period of twenty-one days or less (a normal industry standard) is considered to be an agricultural use, occurring in conjunction with the gin.

Warehousing of the ginned cotton (which is storage for more than twenty-one days, or long-term storage off the gin site) is not an act of processing cotton necessary for marketing. Therefore, land and buildings that are used to warehouse cotton are considered to be commercial property and are classified as Legal Class One. Land and buildings that are used for the further processing of the cotton (or of any by-product, such as seeds) following ginning should also be considered commercial property. This difference in legal classification will result in mixed-use assessment ratio for the total property.
Id. at 2.7.

[128] Land and improvements devoted to use in processing wine grapes for marketing is defined as:

For only those grapes that are grown specifically for wine making, processing includes washing, grading, sorting, packing, and the initial extraction of the juice through the bulk formation process. Land and improvements that are used for all applicable procedures are to be classified as having a high-density agricultural use. Land and improvements that are used for these purposes are classified as Legal Class Two, Subclass One(R)(b). However, any property that is used for bottling, wine tasting, retail sales, storage, or warehousing of the finished products shall be considered to be commercial property and is classified as Legal Class One. The difference in legal classification will result in a mixed-use assessment ratio for the total property.
ARIZ. DEP'T OF REVENUE, *supra* note 24, at 2.7.

[129] ARIZ. REV. STAT. ANN. § 3-441(3) (2012) (defines citrus as the "fruit of any orange, lemon, lime, grapefruit, tangerine, cumquat or other citrus tree which produces edible citrus fruit suitable for human consumption").

[130] Land and improvements devoted to use in the processing of citrus for marketing is defined as:

Processing citrus is considered to be the initial series of operations performed in the treatment of the citrus to enable it to be marketed after harvest. For citrus that is being used solely for juice, the process would include the procedure of converting the solid citrus fruit into bulk juice. Processing, however, does not include any further treatment after the first sale, such as bottling or any other commercial treatment that may be performed at a distribution center, or for retail leases.

For citrus that is to be used for table fruit, the process would include washing, sorting, grading and packing, but **not** juicing. Land, buildings and equipment that are used for any purpose other than the direct processing of citrus for marketing are considered to be commercial property and are classified as Legal Class One. This includes warehouses, cooling and refrigeration facilities, and loading docks. These differences in legal classification will result in a mixed-use assessment ratio for the total property.
ARIZ. DEP'T OF REVENUE, *supra* note 24, at 2.8.

9. Land and improvements devoted to use as fruit or vegetable commodity packing plants that do not cut or otherwise physically alter the produce.[131]
10. Land and improvements owned by dairy cooperative devoted to high density use in producing, transporting, receiving, processing, storing, marketing, and selling manufactured milk products without the presence of any animal units on the land.[132]

Therefore, if a property's primary use is to produce crops, livestock, high-density commodities, or is a processing facility for various commodities, the property is considered a qualifying agricultural property.[133] After the county assessor establishes that a property's primary use is agricultural, the property must satisfy the "statutory use" component. A property is not eligible for agricultural classification unless it satisfies all the criteria set forth under the statutory use component.

B. The "Statutory Use:" The Statutory Requirements for Classification of Property Used for Agricultural Purposes

To be eligible for agricultural classification, a property must satisfy all the criteria set forth in the "statutory use" component. In 1989, following the great political upheaval after the *Stewart Title v. Pima County* decision, the Arizona Legislature created the "statutory use" component. With this legislation, Arizona—for the first time—had a statutory definition for the term "used for agricultural purposes".

---

[131] Land and improvements devoted to use as fruit or vegetable commodity packing plants is defined as:

> A fruit or vegetable commodity packing plant is considered to be the land, buildings, and equipment used in the process of taking fruit or vegetables from the tree or field and placing them in a box or container for sale and shipment to a reseller or an ultimate consumer. Qualifying examples of processing include washing, grading, sorting, wrapping, and packing vegetables and fruit, so long as no cutting or other physical alteration of the produce occurs. If there is any cutting or other physical alteration of the fruit or vegetables, the land and improvements used for those purposes may not be classified as agricultural property, but are considered to be Legal Class One property. Physical alteration includes peeling, chopping, waxing, applying a coating, or any other process that changes the fruit or vegetable from its natural condition as harvested. This difference in legal classification will result in a mixed-use assessment ratio for the total property.

Id. at 2.8.

[132] ARIZ. REV. STAT. ANN. § 42-12151 (2011); *id.* at 2.8-2.9. The agricultural manual notes that land and improvements that are owned by a dairy cooperative exclude an actual dairy farm operation. *Id.*

[133] ARIZ. DEP'T OF REVENUE, *supra* note 24, at 2.2.

For a property to be eligible for agricultural classification, it must satisfy all the statutory criteria set forth under A.R.S. § 42-12152 .[134] The statute, named "[The] Criteria for classification of property used for agricultural purposes," provides:

> A. Property is not eligible for classification as property used for agricultural purposes unless it meets the following criteria:
> 1. The primary use of the property is as agricultural land and the property has been in active production for at least seven of the last ten-years. Property that has been in active production may be:
> a. Inactive for a period of not more than twelve months as a result of acts of God.
> b. Inactive as a result of participation in:
> (i) A federal farm program that allows voluntary land conserving use acreage or acreage conservation, or both.
> (ii) A scheduled crop rotation program.
> c. Inactive or partially inactive due to a temporary reduction in or transfer of the available water supply or irrigation district water allotments for agriculture use in the farm unit.
> d. Grazing land that is inactive or partially inactive due to reduced carrying capacity or generally accepted range management practices.
> 2. There is a reasonable expectation of operating profit, exclusive of land cost, from the agricultural use of the property.
> 3. If the property consists of noncontiguous parcels, the noncontiguous parcels must be managed and operated on a unitary basis and each parcel must make a functional contribution to the agricultural use of the property
> B. If feedlot or dairy operations that are in active production are moved to another property at which the operations are in active production, the requirement that the property be in active production for at least seven of the last ten-years does not apply to the property to which the operations are moved for the first seven years after the operations are moved. [135]

Pursuant to A.R.S. § 42-12152, there are four requirements that must be satisfied for a property to be classified as being used for agricultural purposes. These four requirements are: (1) the primary use; (2) active production for at least seven of the last ten-years; (3) a reasonable expectation of operating profit; and (4) the management of noncontiguous parcels.[136]

1. The "Primary Use" Requirement

---

[134] *Id.*
[135] ARIZ. REV. STAT. ANN. § 42-12152 (2011).
[136] *Id.*

The primary use requirement provides that a property is eligible for agricultural classification if the property's current use is a qualified agricultural use. In other words, the primary use of the property must satisfy the qualifying use component. The reason for this requirement is that not all agriculture uses of property qualify for agricultural classification. Only agricultural uses described in A.R.S. § 42-12151 will satisfy the primary use requirement.

2. Active Production for Seven Out of the Last Ten Years Requirement

The active production for seven out of the last ten years requirement provides that a property must have been in active production for at least seven of the last ten years or it is not eligible for agricultural classification.[137] This requirement is very rigid and has become quite contentious over the past few years. The reason for such is that if an agricultural operation is using land that has not been in active production for seven of the last ten years, by law the land will not qualify for agricultural classification, even if its primary use is agricultural. The land may only qualify for agricultural classification after having seven years of active production, and if it meets all other statutory requirements.[138] After *Audrey A. Hanks v. Pinal County* interpreted this requirement, farmers and ranchers were denied agricultural classification because land that they had purchased or leased for agricultural operation did not meet the seven out of ten year requirement.[139]

There are three exceptions to the active production for seven of the last ten year requirement. The first exception is inactive land.[140] A property can still qualify for an agricultural classification if it is inactive because of acts of God, participation in a federal farm conservation or crop rotation program, temporary reduction of available water supply, or a

[137] *Id.*
[138] ARIZ. DEP'T OF REVENUE, *supra* note 24, at 2.2.
[139] *See* discussion *infra* Part IV.
[140] ARIZ. REV. STAT. ANN. § 42-12152(A) (2011).

reduction in the grazing land's carrying capacity.[141] The second exception to the active production for seven of the last ten year requirement is a county assessor's power to approve an agricultural classification for nonconforming property.[142] This power, pursuant to A.R.S. § 42-12154, is the third main component to Arizona agricultural property tax law.[143] The third exception to the active production for the seven of the last ten year requirement is relocated feedlots and dairy operations.[144] This exception allows for active feedlots and dairies that are relocated to another property and are still in active production to have the active production for seven of the last ten-year requirement waived.[145]

3. Reasonable Expectation of Operating Profit

The reasonable expectation of operating profit requirement states that a property is eligible for agricultural classification if the property can produce a reasonable expectation of operating profit—exclusive of land cost—from the agricultural use of the land.[146] This requirement is also called the, "economic feasibility" requirement.[147] The Arizona Department of Revenue Agricultural Property Manual (the "Revised Agricultural Manual") provides considerations for a county assessor to employ when determine if the economic feasibility of a property is valid. These considerations include:

1. Is the agricultural activity conducted in a businesslike manner?
2. How much time and effort is being expended in carrying on the agricultural activity?
3. How much time and effort is being expended in carrying on the agricultural activity?
4. Do those involved have prior success in other similar agricultural activities?

---

[141] *Id.*
[142] *Id.* § 42-12154.
[143] *See* discussion *infra* Part III.C.
[144] ARIZ. REV. STAT. ANN. § 42-12152(B) (2011).
[145] *Id.*
[146] *Id.* § 42-12152(A)(2).
[147] ARIZ. DEP'T OF REVENUE, *supra* note 24, at 2.2.

5. What is the history of operating profits or losses for this agricultural activity?
6. What is the amount of operating profit, if any, has been earned?
7. Are the agricultural activities engaged in for personal pleasure or recreation (i.e., is it a hobby farm)?[148]

The Revised Agricultural Manual stresses that, "[q]uestions like these emphasize that the County Assessor must look at all aspects of any agricultural operation for economic feasibility, especially when making the initial determination of whether or not to approve an agricultural classification application."[149]

4. The Management of Noncontiguous Parcels

The management of noncontiguous parcels requirement provides that if a property consists of parcels that are not contiguous, then all parcels must be managed and operated on a unitary basis with the overall agricultural operation.[150] In other words, if an agricultural property is made up of several parcels that are not connected, then the parcels together must functionally contribute to the entire agricultural operation.

In conclusion, a property is eligible for agricultural classification only if it satisfies both the qualifying use and the statutory use components. However, if a property fails to satisfy either component, the property can still obtain agricultural status through the third component of Arizona agricultural property tax law: a county assessor's power to approve an agricultural classification for a nonconforming property.

C. The Assessors Discretion: Approval of Nonconforming Property for Agricultural Classification

[148] *Id.* at 2.2-2.3.
[149] *Id.* at 2.3.
[150] ARIZ. REV. STAT. ANN. § 42-12152(A)(3) (2011).

The third main component of Arizona agricultural property tax law is a county assessor's power to approve an agricultural classification for a nonconforming property.[151] In other words, a county assessor has the sole discretion to grant agricultural classification to any property that does not meet certain required elements of either the qualifying use or the statutory use. This authority is given to the county assessor by A.R.S. § 42-12154, which provides:

> A. The county assessor may:
> 1. Approve the agricultural classification of property if the property has either:
> a. Fewer than the minimum number of acres or animal units as prescribed in § 42-12151.[152]
> b. Been in commercial agricultural production for less than the period prescribed in § 42-12152, subsection A, paragraph 1[153]
> 2. Continue the agricultural classification of owner occupied property if a change in classification of the property would cause extreme hardship to the property owner.
> B. The county assessor may continue the agricultural classification of owner occupied property that has fewer than the minimum number of animal units as prescribed in § 42-12151, paragraph 3 if the number of animal units equals, as nearly as practicable, the property's carrying capacity. [154]

Essentially, a county assessor has authority to approve an agricultural classification for a nonconforming property in two situations. The first situation occurs when a property has fewer than the minimum number of acres or animal units than is required by A.R.S. § 42-12151 (the qualifying use requirement).[155] When this situation occurs, an assessor can waive the qualifying use condition and grant agricultural classification to the property.[156] The second situation occurs

[151] *Id.* § 42-12154.
[152] *Id.* § 42-12151(3) (Grazing land with a minimum of forty animal units and containing and economically feasible number of animal units).
[153] *Id.* § 42-12152(A)(1) (Defining agricultural real property as "[t]he primary use of the property is as agricultural land and the property has been in active production according to generally accepted agricultural practices for at least seven of the last ten years.").
[154] *Id.* § 42-12154.
[155] *Id.* § 42-12154(A)(1)(a).
[156] *Id.*

when a property fails to meet the statutory use requirement of being in active production for seven of the last ten years.[157]

When a property does not meet this statutory use condition, a county assessor can waive the requirement and grant agricultural classification to the property.[158] However, the statute does not provide any specific criteria that a county assessor must comply with when making this determination.[159] Rather, the statute allows the county assessor to use discretion in determining whether there are any specific or unusual circumstances that justify granting an agricultural classification to a nonconforming property.[160] Therefore, because an assessor can grant or deny agricultural classification based on discretion, and because there are no criteria for determining an abuse of this discretion, the agricultural community is vulnerable to unwarranted denials of agricultural classifications. This problem has become evident since the recent decision in *Audrey A. Hanks v. Pinal County*.

IV. JUDICIAL INTERPRETATIONS IN ARIZONA'S AGRICULTURAL PROPERTY TAX LAW AND THE EFFECTS ON THE AGRICULTURAL COMMUNITY

A. Audrey A. Hanks v. Pinal County: Justification for the Assessor and Signaling of a Problem with Arizona's Agricultural Property Tax Law

On May 19, 2010, *Audrey A. Hanks v. Pinal County* interpreted Arizona's agricultural property tax law.[161] Without other case law establishing precedent for Arizona's current property tax law, *Hanks* is the most persuasive authority on the issue.

There were two key holdings in *Hanks*. The first regarded A.R.S. § 42-12152 and the statutory use component. The court in *Hanks* held that "to qualify as agricultural property under A.R.S. § 42-12152, the parcel must satisfy all the statutory criteria . . . [and a] property [that]

---

[157] *Id.* § 42-12154(A)(1)(b).
[158] *Id.*
[159] ARIZ. DEP'T OF REVENUE, *supra* note 24, at 2.10-2.11.
[160] *Id.*
[161] Hanks v. Pinal County, TX 2008-000578, 2010 Ariz. Tax LEXIS 10 (Ariz. Ct. App. filed May 21, 2010).

does not satisfy all the criteria . . . is therefore not eligible for classification as a matter of law as property used for agricultural purposes."[162]

This finding was significant because the court essentially stated that a property must meet all requirements of A.R.S. § 42-12152, including the active production for seven of the last ten years requirement, to qualify for agricultural classification. *Hanks*'s second key holding regarded A.R.S. § 42-12154 and the power of a county assessor to approve nonconforming property.[163] The court held:

> The statute does not prescribe some quantum of attributes that must result in agricultural classification, permitting the Court to review whether the quantum is present. Nor does it indicate that current use for agricultural purposes, even if those uses would be sufficient to qualify it had they extended over the preceding seven years, obligates the assessor to grant agricultural status. The legislature conferred discretion upon the assessor; the Court may intervene only if that discretion has been abused.[164]

This holding was significant because the court stated the Arizona Legislature gave county assessors the power to use their sole discretion in granting agriculture classification to a property that does not meet the statutory requirements. Furthermore, the only way a court can intervene is if the county assessor abuses this discretion; however, because the Legislature did not provide a "quantum of attributes"[165] for the court to follow when determining if an abuse of discretion occurred, the court lacks the tools to determine such abuse. *Hanks*'s holdings have since presented many difficulties for the agricultural community. County assessors can now legally decline a legitimate farmer or rancher agricultural classification if it cannot be prove that the property has been in active production for seven of the last ten years, regardless if the property is currently being farmed or ranched.

---

[162] *Id.*
[163] *Id.*
[164] *Id.* (emphasis added).
[165] *Id.*

To illustrate the effects of *Hanks*'s holdings on the agricultural community, imagine a farm called Greenacre owned by Farmer. Farmer has farmed cotton on Greenacre for the past three years, but he inadvertently never applied for agricultural classification. After *Hanks*, when Farmer applies for an agricultural classification, the assessor can automatically deny his application because Greenacre does not meet the active production for seven of the last ten years requirementFarmer may believe that the assessor's decision is unfair because Greenacre is currently a cotton farm and has been operated as a cotton farm for the last three years. Nonetheless, pursuant to *Hanks*, these facts are irrelevant because Greenacre does not meet ALL of the statutory use requirements.

After Farmer is denied agricultural classification, his only recourse is A.R.S. § 42-12154 and a county assessor's power to grant approval for a nonconforming property. The *Hanks* court made it clear that a county assessor is not obligated to grant agricultural classification to a nonconforming property, but that rather the county assessor has the power to use discretion when granting or denying an application. Now imagine that the county assessor uses his discretion and denies Farmer's application, but instead basing his decision on legitimate grounds, the county assessor denied Farmer's application because of the poor economy and the county's need for more property tax revenue. The assessor's reasons are irrelevant because Farmer cannot prove the county assessor abused his discretion, given that there is no "quantum of attributes"[166] for the court to follow when determining whether abuse occurred.

Let us further imagine that Farmer decides to sue the county in Tax Court to compel a grant of agricultural classification. Here, Farmer would most likely lose again because: (1) Farmer does not satisfy the active production for seven of the last ten year requirement; (2) Farmer cannot prove the assessor abused his discretion; and (3) there is only one Tax Court

[166] *Id.*

judge who is likely to follow his own previous ruling from *Hanks.* Therefore, Farmer's only option is to wait four more years and to reapply for agricultural classification. However, waiting four years will prove difficult if Farmer cannot afford his property tax bill and is unable to maintain ownership of Greenacre in the meantime.

While this illustration may seem far-fetched, such situations have occurred since the *Hanks* decision. During the past several years, county assessors have become increasingly hostile towards the agricultural community and there is simply no relief for the community.

B. The Aftermath of Hanks

The *Hanks* decision has seriously affected Arizona's cattle ranching community. Arizona is currently experiencing a drought,[167] and consequently, there is limited amount of grass for cattle grazing. Therefore, cattle ranchers are in need of additional grazing land for their operations. To acquire more grazing land, cattle ranchers must enter into private grazing leases with landowners.[168] Grazing leases benefit both parties: the rancher is able to use the land at a low cost for grazing, while the landowner receives the agricultural property tax incentive—and thus a reduced property tax bill.

This rancher/landowner relationship changed after the *Hanks* decision. County assessors now require that if a rancher enters into a new lease or obtains additional property, the rancher must provide evidence that the property has been used for agriculture for at least seven of the preceding ten years.[169] If the property is new to grazing, or if the rancher cannot provide this evidence, the property will not qualify for agricultural classification. As a result, ranchers have

---

[167] *Drought Preparedness in Arizona*, Ariz. Dep't Water Resources, http://www.azwater.gov/azdwr/statewideplanning/drought/default.htm (last visited Feb. 11, 2013).
[168] *See* Linda Mayro & Micaela K. McGibbon, *Ranching in Pima County, Arizona*, PIMA.GOV, http://www.pima.gov/cmo/sdcp/Archives/reports/Ranch.html (last visited Feb. 12, 2013).
[169] Letter from Navajo County Assessor to a Rancher in Navajo County (January 28, 2011).

been unable to acquire additional grazing land because landowners are reluctant to enter into a grazing lease if they cannot receive the agricultural property tax incentive.

Furthermore, after the *Hanks* decision county assessors began demanding very intrusive information from ranchers regarding their operations. The county assessors claimed that this information was needed for determining whether a ranching operation was legitimate or a sham.[170] However, these requests were not made to new ranching operations; rather they were made to all ranchers that operated within the county—including ranchers who had maintained agricultural status for decades.[171] The Arizona Cattle Growers Association ("ACGA") indicated that they "have become alarmed to the fact that County Assessors are now requesting more than registered brand information, lease information (state, federal, private) and livestock numbers from longtime agricultural producers," because prior to *Hanks* many assessors previously only required this information.[172] In directing its members the ACGA stated:

> The flexibility that County Assessors have under A.R.S. § 42-12152(A)(1), that allows them to approve properties which have not been used for 7 of the last 10 years should not be construed to force longtime and legitimate operations to go through strenuous requirements and reporting for existing operations. This provision was designed to allow County Assessors a tool for reviewing "new applications" for agricultural property classifications.[173]

Assessors for Maricopa County have requested this intrusive information. The Maricopa County Assessor requires that a rancher seeking to classify property as agricultural must provide to the county upon application:

- Copies of all active grazing leases from the owner or lessee demonstrating that the Agricultural Land Use Application satisfied the land area requirements of A.R.S. § 42-12152(3).
- Copy of brand certificate of the ranching operation.

---

[170] *Capitol Corral–Arizona Cattlemen's Association Agricultural Property Tax Classification Issues*, ARIZONA CATTLELOG, September 2011, at 14-15.
[171] *Id.*
[172] *Id.* at 15.
[173] *Id*. at 14-15.

- Documents evidencing the last sale of livestock made by the ranching operation. Documents submitted must identify the number of livestock sold, the sales price, and the location of the sale.
- Copy of the current ranching operation's grazing cell management plan.
- [A] narrative of grazing history for the previous seven (7) years.
- Copies of the grazing cell management plans utilized on the property for the previous seven (7) years.
- Copies of all grazing leases from the owner, (and if applicable, previous owner) or lessee (and, if applicable previous lessee) demonstrating that the property stratified the land area requirement of A.R.S. § 42-12152(3) for the previous seven (7) years.
- Schedule F filed by the ranching operation with the Internal Revenue Service for the previous seven (7) years.[174]

While this may be Maricopa County's policy for determining agricultural classification, it must be noted that these are not statutory requirements approved by the Arizona Legislature. Unfortunately, the ranching community must comply with the county's intrusive requests or else ranchers risk losing their agricultural classifications. The ACGA and other agricultural organization would prefer to work with county assessors in streamlining the process and removing the intrusive nature of requests.[175] However, county assessors' continued abuse has made it necessary for the agricultural community to seek both legislative relief and changes to Arizona's agricultural property tax laws.[176]

V. RECOMMENDATIONS FOR CHANGING ARIZONA'S AGRICULTURAL PROPERTY TAX LAWS

Currently Arizona's agricultural property tax laws are endangering the existence of the agricultural community; therefore, legislative changes are needed to protect the community's rights.

A. Recommendations for a Legislative Change to A.R.S. § 42-12152: Active Production for Seven of the Last Ten Years Requirement

[174] AGRICULTURAL CLASSIFICATION INTERNAL POLICY AND PROCEDURES, MARICOPA CNTY. ASSESSOR'S OFFICE (2010), http://mcassessor.maricopa.gov/assessor//PDF/PolicyProcedures/AGClassPolicy.pdf [hereinafter Maricopa County].
[175] *See Capitol Corral–Arizona Cattlemen's Association Agricultural Property Tax Classification Issues*, *supra* note 171.
[176] *Id.*

The most contentious issue with A.R.S. § 42-12152 is the active production for seven of the last ten years requirement. It has been contended that there should not be an active production requirement, but that rather the property's current use should determine the agricultural classification. However, an active production requirement is needed to protect counties from sham operations who abuse the agricultural property tax incentive system. Therefore, any legislative change to the active production requirement must balance the rights of the agricultural community with the county assessor's duty to protect the against sham operations. There are many ways in which Arizona can determine a legislative change to A.R.S. § 42-12152. One way is through examining other state's agricultural property tax statutes.

Arizona may model its active production requirement based on Maine's. In Maine, an agricultural property must have been in active production for one of the last two years, or three of the last five years preceding the date of application.[177] The landowner must also provide documentation proving that during this time of active production, the property produced an annual income of at least $2000 from the sale of agricultural products.[178] If Arizona modeled its active production requirement after Maine's, Arizona would reduce the active production time a property requires prior to application. However, such a change will add the requirement that the property produce a minimum yearly income prior to application.

Because Arizona is in a drought and consequently certain types of agricultural properties are unable to produce a minimum amount of revenue per year, this approach does not provide the required balance needed between the agricultural community and the county assessor. This unbalance notably occurs when some ranchers are unable to use their land because of a lack of grass. If a rancher acquires property for his ranching operation, but due to drought, the property

[177] ME. REV. STAT. tit. 36, § 1102 (2011).
[178] *Id.*

does not have enough grass for cattle to feed on, the property may not be useable during a given year. As a result, the property will not qualify for agricultural classification because it does not produce the required minimum income through the sale of agricultural products.

Arizona may also model its active production requirement after Texas's. In Texas, for a property to be considered for agricultural classification, the property must have been in agricultural production for three years prior to the date of application.[179] However, agriculture must be the primary occupation and source of income of the landowner applying for agricultural classification.[180] If Arizona modeled its active production requirement after Texas's, Arizona would reduce the amount of active production time required of a property prior to application. Nevertheless, such a change would also severely limit the type of property eligible for agricultural classification—the only eligible property is that owned by an agricultural operator, and thus any leased agricultural property would not qualify. This approach does not provide the required balance between the agricultural community and the county assessor. This unbalance is due to the ownership limitation: the agricultural community will be unable to lease additional property should the tax incentive not pass to a landowner because agriculture is not the landowner's primary source of income.

Another state that Arizona may model its active production requirement after is Georgia. In Georgia, there is no active production requirement; rather the state requires that the owner of the property sign a covenant with the county to maintain the property in bona fide agricultural purposes for a period of ten years.[181] If the property is sold during the time of the covenant, the new owner must meet the qualification requirements for the property to maintain agricultural

[179] TEX. TAX CODE ANN. § 23.42 (West 2008).
[180] *Id*.
[181] GA. CODE ANN. § 48-5-7.1 (2011).

classification.[182] If the covenant is breached at any time, a penalty is imposed.[183] This penalty is computed by multiplying the amount that the preferential assessment has reduced the taxes that would be otherwise due for the year in which the breach occurred, with a special factor,[184] and this special factor can range between two and five, depending on what point during the life of the covenant the breach occurred.[185]

If Arizona modeled their active production requirement after Georgia's, Arizona would reduce the active production time from seven of the last ten years to zero. However, the owner of a property that is granted agricultural classification would have to sign a contract with the county stating that the property would remain agricultural for a period of ten years, and if the owner breaches the contract, the owner will be penalized accordingly. This approach could provide the required balance that is needed between the agricultural community and the county assessor. The agricultural community has all intentions to keep a property as agricultural, while the county assessor knows that should a landowner breach the covenant, a penalty fee will be assessed. The only problem with this approach regards leased agricultural property. Landowners near metropolitan areas will likely be unwilling to lease property to an agricultural operator knowing that they may be penalized if they develop the land during the time of the covenant.

Arizona may also model its active production requirement after Nevada's. In Nevada, an agricultural property must have been in active production for three years prior to application.[186] Nevada law also requires leased agricultural property to be contiguous with land that is owned by the agricultural operator.[187] This approach provides the required balance between the

[182] *Id*.
[183] *Id.* § 48-5-7.1(g).
[184] *Id*.
[185] *Id*.
[186] NEV. REV. STAT. § 361A.020 (2010).
[187] *Id*.

agricultural community and the county assessor. The agricultural community would be able to qualify for agricultural classification in less time, while the assessor could curtail sham operations because a leased property must be contiguous to the agricultural operator's property.

Rather than following another state's model for its active production requirement, Arizona could amend A.R.S. § 42-12152(B) and the exceptions list for the active production for seven of the last ten year requirement. The Legislature can amend the statute by adding the following sentence: "Agricultural operators approved by the Arizona Department of Revenue, and are currently on the Department's approved agricultural operators list, are hereby exempt from the active production for seven of the last ten year requirement." Such an amendment would solve many of the issues between the agricultural community and the county assessors. To be placed on the approved agricultural operators list, a farmer or rancher would need to supply to the Department of Revenue information[188] similar as to what Maricopa County already requires for agricultural classification. While this information may be intrusive in nature, an agricultural operator would only have to supply this information one time, rather than multiple times to each individual county assessor.

Once approved by the Department of Revenue, a farmer or rancher would be exempt from the seven of the last ten year requirement, and the approved agricultural operator would stay on this approved list for a prescribed amount of time. Such a system is balanced because the county assessor will know that if a farmer or rancher is on the Department of Revenue's approved list, then the agricultural operator is currently using a property for agricultural purposes. If an agricultural operator is not on the Department of Revenue's list, a county assessor can apply the active production for seven of the last ten year requirement and can deny

[188] *Capitol Corral–Arizona Cattlemen's Association Agricultural Property Tax Classification Issues*, *supra* note 171.

the application if the property fails to comply. However, the assessor could ask the agricultural operator for additional information to aid in the assessor's discretionary decision to grant agricultural classification to a nonconforming property.

B. Recommendations for a Legislative Change to A.R.S. § 42-12154: An Assessor's Power to Approve a Nonconforming Property

The *Hanks* court made clear that the Legislature gave a county assessor the power to use sole discretion when granting agriculture classification to a property that does not meet the statutory requirements. The *Hanks* court also stressed that a court can only intervene with an assessor's decision if the assessor abuses discretion—but since the Legislature did not provide a "quantum of attributes"[189] for courts to follow, courts are unable to determine whether abuse occurred.

To provide the tools necessary for a court to determine a county assessor's abuse of discretion, the Legislature should amend A.R.S. § 42-12154. This can be accomplished by adding a new section to statute A.R.S. § 42-12154 (C). The statute's new language would state: "Assessors discretion shall be based on the standard set forth in the Arizona Department of Revenue Agricultural Manual." Further, the Arizona Department of Revenue Agricultural Manual should be amended to state the following, "An assessor must consider the following questions when using their discretion for agricultural classification of a nonconforming property:"

- If the land is leased acreage, does it add significant value to the farming or grazing capability of the farm or ranch?
- Is there an operating well or water tank on the leased land?
- Does the land create access between two parcels necessary for the operation of the farm or ranch?

[189] Hanks v. Pinal County, No. 2008-000578, 2010, Ariz. Tax LEXIS 10 (Ariz. Ct. App. filed May 21, 2010).

- Does the owner or the lessee's operation qualify as farming or ranching operation?
- Is the owner or lessee presently on the Arizona Department of Revenue's Approved Agricultural Operators List?
- Has the leased land consistently been leased for farming or grazing purposes, if not has it been leased at any time during the proceeding ten years?
- Is the lease typical of other private farming or grazing leases?
- Is there sufficient evidence to prove that the lease is valid?
- Are the terms and conditions of the lease reasonable?
- Is the rental return in line with typical leases in the farming or ranching field?
- If the leased acreage has been purchased recently, does the rental rate indicate a reasonable return on investment?[190]

These questions will allow county assessors to use discretion accordingly, and the questions will also provide guideposts for courts when determining whether an assessor has abused his or her discretion.

VI. CONCLUSION

During the past century, agriculture has played an essential role in Arizona's development. Through the hard work and perseverance of the agricultural community, agriculture continues to be an important industry for the state's economy. Recognizing the importance of agriculture to the state, the Legislature enacted property tax incentives for agricultural property. This system has evolved into Arizona's agricultural property tax law. Historically this system was fair, but in recent years, county assessors have increasingly made it difficult for legitimate farmers and ranchers to acquire agricultural classification. The situation

[190] *See* Stewart Title & Trust of Tucson v. Pima County, 751 P.2d 552, 554 (Ariz. Ct. App. 1987). (Some of these questions are the same as was provided in the Arizona Department of Revenue, Agricultural Manual No. 1532 (September 1983) for determining the validity of grazing leases. While this manual has been superseded, these questions are appropriate for determining the legitimacy of an agricultural application.).

intensified after the court decided *Audrey A. Hanks v. Pinal County*. Now, in order to qualify for agricultural classification, county assessors require the agricultural community to submit intrusive information regarding their ranching operations. Indeed, the very agricultural property tax laws that were enacted by the Legislature with the intent of protecting the agricultural community are now endangering the community's very existence. Therefore, a legislative change is needed to protect the agricultural community that embodies the Great Seal of Arizona.

VII. ARIZONA'S LEGISLATURE HAS AGAIN PROTECTED IT'S AGRICULTURAL COMMUNITY BY AMENDING THE PROPERTY TAX LAW

Prior to publication of this Article, Arizona's Legislature amended Arizona's agricultural property tax law. On January 30, 2012, Senate Bill 1416 was introduced to amend A.R.S. § 42-12152, the "statutory use" requirement of Arizona's property tax law.[191] This bill was created to remedy the issues discussed in this Article regarding the seven out of the last ten year requirement and the negative effects it was having on the agricultural community. With very little opposition, the Bill quickly made its way through the Legislature. On April 4, 2012, Governor Jan Brewer signed amended A.R.S. § 42-12152 into law.[192] The statute, named criteria for classification of property used for agricultural purposes, now provides:

> A. Property is not eligible for classification as property used for agricultural purposes unless it meets the following criteria:
> 1. The primary use of the property is as agricultural land and the property has been in active production for at least **three** of the last **five** years. Property that has been in active production may be:
> a. Inactive for a period of not more than twelve months as a result of acts of God.
> b. Inactive as a result of participation in:
> (i) A federal farm program that allows voluntary land conserving use acreage or acreage conservation, or both.
> (ii) A scheduled crop rotation program.

[191] S.B. 1416, 50th Leg., 2d Reg. Sess. (Ariz. 2012).
[192] *Id.*

> c. Inactive or partially inactive due to a temporary reduction in or transfer of the available water supply or irrigation district water allotments for agriculture use in the farm unit.
>
> d. Grazing land that is inactive or partially inactive due to reduced carrying capacity or generally accepted range management practices.
>
> 2. There is a reasonable expectation of operating profit, exclusive of land cost, from the agricultural use of the property.
>
> 3. If the property consists of noncontiguous parcels, the noncontiguous parcels must be managed and operated on a unitary basis and each parcel must make a functional contribution to the agricultural use of the property.
>
> B. If feedlot or dairy operations that are in active production are moved to another property at which the operations are in active production, the requirement that the property be in active production for at least **three** of the last **five** years does not apply to the property to which the operations are moved for the first seven years after the operations are moved.
>
> **C. The requirement contained in subsection A, paragraph 2 of this section shall be satisfied if the owner files with the assessor an affidavit of agricultural use, signed by the owner attesting that all information in the affidavit is true and the property is actively producing with an expectation of profit.**[193]

As emphasized above, this amendment provided two changes to A.R.S. § 42-12152. The first change is that a property is no longer required to be in active production for seven of the last ten years, but rather only three of the last five years. This is very similar to Nevada's law, where an agricultural property must be in active production for three years prior to application.[194] The second change is the addition of Section C, which states that an owner can now file an affidavit of agricultural use stating that the property is actively producing with an expectation of profit, rather than having to prove profit with physical evidence. While the rest of the statute remains the same, these changes should help to remedy the issues discussed in this Article. The Legislature has again protected the agricultural community because of the great importance the community has to Arizona's identity.

[193] ARIZ. REV. STAT. ANN. § 42-12152 (2012).
[194] NEV. REV. STAT. § 361A.020 (2010).