

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition: 07-003-02-1-5-00174
Petitioner: Bryan K. Piles
Respondent: Van Buren Township Assessor (Brown County)
Parcel: 002084330001200
Assessment Year: 2002

The Indiana Board of Tax Review (Board) issues this determination in the above matter. The Board finds and concludes as follows:

Procedural History

1. The Petitioner initiated an assessment appeal with the Brown County Property Tax Assessment Board of Appeals (PTABOA) by written document.
2. The PTABOA issued notice of its decision on June 26, 2006, and set the 2002 assessment at \$88,100.
3. The Petitioner appealed to the Board by filing a Form 131 with the county assessor on July 5, 2006. The Petitioner elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing to the parties dated October 12, 2006.
5. The Board held an administrative hearing on December 19, 2006, before the duly appointed Administrative Law Judge, Paul Stultz.
6. The following persons were sworn as witnesses at the hearing:

For the Petitioner - Bryan K. Piles,
Floyd Piles,

For the Respondent - Nettie Walls, Van Buren Township Trustee Assessor,
Sheila Blake, Nexus Group,
Linda Bauer, PTABOA member.

Facts

7. The property is classified as residential excess acreage located on Garrity Road in Freetown, Indiana. The property was initially assessed in 2002 as three individual parcels. During the local appeal process, the parties agreed to administratively combine the three parcels into a single parcel.
8. The Administrative Law Judge did not conduct an on-site inspection of the property.
9. The current assessed value is \$88,100.¹
10. Petitioner requested an assessment of \$18,600.

Issues

11. Summary of the Petitioner's contentions in support of alleged error in the assessment:
 - a. The land currently is classified as residential excess acreage with a base rate of \$1,050 per acre. *Pet'r Ex. 15*. The land should be classified as agriculture woodland. *F. Piles testimony*. The value for the parcel should be determined by applying the agricultural acreage base rate of \$1,050 to approximately 88.5 acres. It also should get a negative influence factor of 80% (due to the classification of the land type as woodland) in accordance with the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, ch. 2 at 104 (incorporated by reference at 50 IAC 2.3-1-2). *F. Piles testimony; Pet'r Ex. 5*. This calculation results in a total value of \$18,600.
 - b. The property record card incorrectly identifies the total area of the parcel as 94.601 acres. *Pet'r Ex. 15*. The parcel consists of approximately 88.5 acres. *F. Piles testimony; Pet'r Exs. 2, 10*.
 - c. An appraisal prepared in July 1999 establishes the land was being used at that time for agricultural purposes and was valued at \$132,500. *F. Piles testimony; Pet'r Ex. 10*. The Petitioner purchased the property in August 1999 for this amount. *F. Piles testimony*. The subject parcel is one hundred percent covered with trees. *Id.; Pet'r Exs. 9, 11*. Before the Petitioner's purchase, the land was used for logging and it had been cut recently. *F. Piles testimony; Pet'r Ex. 10*. The Petitioner intended to continue using the land for timber production and

¹ The Petitioner testified that the assessment for 2002 currently is \$240,000, which was the total assessment of the three parcels before the administrative combination. *F. Piles testimony*. The Respondent contended the 2002 assessment currently is \$93,000. *Blake testimony*. The property record card shows that the 2002 assessment was \$93,000 after combining the parcels and that it was reduced to \$88,100 for 2004. *Pet'r Ex. 15*. The PTABOA Notification of Final Assessment Determination (Form 115), however, clearly shows a value of \$88,100 for 2002. *Pet'r Ex. 12*. The Board concludes the PTABOA's determination as stated on the Form 115 notice establishes what the current 2002 assessment is. Nevertheless, this determination is a moot point because the assessment will change as a result of the Board's determination in this appeal.

periodically invited logging companies to inspect the parcel. Each inspection concluded the timber needed additional growing time before harvest. *F. Piles testimony; Pet'r Exs. 2, 3*. In 2005 the Indiana Department of Natural Resources prepared a forest stewardship management plan for the property. *Pet'r Ex. 7*. The land was enrolled in the Indiana classified forest program in 2006. *Pet'r Ex. 6*.

- d. The parties agreed to combine the original three parcels into a single parcel. They also agreed the property had been used for agricultural purposes because it had been logged recently. *F. Piles testimony; Pet'r Ex. 1*.

12. Summary of the Respondent's contentions in support of the assessment:

- a. The size of this combined parcel should only be 88.55 acres. The property record card shows that someone added some additional "woodland" to the parcel, but the source and the reason for that addition is unknown. *Blake testimony; Walls testimony; Board Ex. A*.
- b. The Petitioner told local officials he purchased the property for recreational use and possible development. The Petitioner's forest stewardship management plan concluded the land was used for recreational purposes such as hunting deer, turkey, and morels. *Blake testimony; Pet'r Ex. 7*. Land cannot be classified as agricultural when its use is recreational. *Blake testimony*.
- c. At the time of purchase, the land had been logged to the extent of being clear-cut. *Walls testimony; Pet'r Ex. 4*. Subsequently, the land was developed into tracts and the Petitioner purchased three of them. *Bauer testimony*. An inspection of the property in 2002 revealed that there was little valuable timber remaining on the parcel. *Blake testimony*.
- d. It has been approximately ten years since timber was harvested on the property and the Petitioner's evidence establishes it will be another ten years before trees can again be harvested. *Walls testimony; Pet'r Ex. 3*. The proposed stipulation agreement between the parties was not approved by the Van Buren Township Trustee Assessor because the land was not being used for timber production in 2002. *Walls testimony; Pet'r Ex. 1*.
- e. The record assessment of \$93,000 is correct. This assessed value is well below the market value-in-use of the subject property, as indicated by the 1999 purchase price of \$132,500. *Blake testimony*.

Record

13. The official record for this matter is made up of the following:

- a. The Petition,

- b. A digital recording of the hearing,
- c. Petitioner Exhibit A - List of the Petitioner's exhibits and summary of testimony,
 - Petitioner Exhibit 1 - Stipulation agreement dated May 5, 2005,
 - Petitioner Exhibit 2 - Letter from Jeff Patrick,
 - Petitioner Exhibit 3 - Letter dated November 22, 2006, from Ralph Knauss,
 - Petitioner Exhibit 4 - Letter dated May 25, 2005, from Nettie Walls, Van Buren Township Trustee Assessor,
 - Petitioner Exhibit 5 - Letter dated November 27, 2006, from Barry Wood, Assessment Division Director of the Department of Local Government Finance, with attached Guidelines, ch. 2 at 99 – 106,
 - Petitioner Exhibit 6 - Letter dated March 1, 2006, notifying the Petitioner that his land was enrolled into the classified forest program with application for classification and supporting documents,
 - Petitioner Exhibit 7 - Forest Stewardship Management Plan,
 - Petitioner Exhibit 8 - Indiana Forest & Wildlands Classification Act (I.C. 6-1.1-6) and Timber Management Rules (312 IAC 15),
 - Petitioner Exhibit 9 - Aerial photograph of the subject property,
 - Petitioner Exhibit 10 - Uniform Agricultural Appraisal Report dated July 19, 1999,
 - Petitioner Exhibit 11 - Aerial photograph from WTH Engineering,
 - Petitioner Exhibit 12 - Notification of Final Assessment Determination, Form 115, dated June 26, 2006,
 - Petitioner Exhibit 13 - Petition to the Property Tax Assessment Board of Appeals,
 - Petitioner Exhibit 14 - Real Estate Tax Statements for 1999, 2000, 2001, 2002, 2003, and 2004 and three printouts showing real property tax information on parcels #002-16900-04, 002-16900-00, and 002-16900-03,
 - Petitioner Exhibit 15 - Property record card,
 - Petitioner Exhibit 16 - The Status of Indiana's Ag Economy: Where are the Ag Jobs Today?,
 - Petitioner Exhibit 17 – December 11, 2006, letter from Floyd and Bryan Piles,
- Respondent Exhibit 1 - Board Final Determination for Danny J. and Vicki L. Gwinn v. Washington Twp. Assessor (Brown County),
- Respondent Exhibit 2 - Power of Attorney,
- Board Exhibit A - Form 131 Petition for Review of Assessment,
- Board Exhibit B - Notice of Hearing,
- Board Exhibit C - Hearing sign in sheet.
- d. These Findings and Conclusions.

Analysis

14. The most applicable governing cases are:
 - a. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
 - b. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer’s duty to walk the Indiana Board . . . through every element of the analysis”).
 - c. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner’s evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
15. The evidence supports the Petitioner's contention that the total acreage shown on the property record card should be corrected. This conclusion was arrived at because:
 - a. The undisputed evidence established that this parcel is supposed to cover the assessment as of March 1, 2002, for what previously were three separate parcels. The property record card (*Pet'r Ex. 15; Board Ex. A*) is ambiguous about how much land is included. At one point, it lists 88.55 "legal acres." Under the "measured acreage" column, however, it lists those 88.55 acres as well as three other parts: 0.1380 acres, 2.2800 acres, and 3.6330 acres.
 - b. The Petitioner offered undisputed testimony and an appraisal that the subject property contains approximately 88.5 acres. The Respondent also offered testimony that the subject property contains only 88.55 acres and someone added additional "woodland" to the parcel for an unknown reason.
 - c. The PTABOA determination also indicates that the total acreage should be 88.55.
 - d. While it is not clear that the additional acreage noted on the property record card (total of 6.051 acres) was included in the assessed value established by the PTABOA (\$88,100), the data on the property record card should be corrected to make it clear that the property only contains 88.55 acres.

16. The weight of the evidence does not support the Petitioner's contention that the subject property should be characterized as "agricultural woodland." This conclusion was arrived at because:
- a. The Indiana General Assembly directed the Department of Local Government Finance (DLGF) to establish rules for determining the true tax value of agricultural land. Ind. Code § 6-1.1-4-13. The DLGF established a base rate of \$1050 to be used in assessing agricultural land across the State of Indiana. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002—VERSION A, ch. 2 at 98-99 (incorporated by reference at 50 IAC 2.3-1-2). These Guidelines direct assessors to adjust the base rate using soil productivity factors developed from soil maps published by the United States Department of Agriculture. *Id.* at 105-06. The Guidelines further require assessors to classify agricultural land-use types, some of which call for the application of negative influence factors in pre-determined amounts. *Id.* at 102-05. One such classification is "woodland (land type 6)," which the Guidelines describe as "land supporting trees capable of producing timber or other wood products" that has "50% or more canopy cover or is a permanently planted reforested area." *Id.* at 104. The Guidelines direct assessors to apply an 80% influence factor deduction to woodland. *Id.*
 - b. Only land actually devoted to agricultural use may be assessed under the rules for agricultural land. Ind. Code § 6-1.1-4-13(a). In order to rely on the base rate and negative influence factors for agricultural woodland set forth in the Guidelines, the Petitioner must demonstrate that he devoted the subject property to agricultural purposes as of the assessment date, March 1, 2002.
 - c. The Petitioner testified that the subject property was used for logging before he bought it in 1999. The Petitioner testified that he intended to continue using the property for timber production, but he had been advised that the remaining trees needed additional growing time before there could be another harvest. The letters from Jeff Patrick Logging and Ralph Knauss at Coldwater Veneer, Inc. both provide some support for the Petitioner's intent to harvest more trees in the future. The "Forest Stewardship Management Plan" from the Division of Forestry also provides support for that testimony. This management plan (*Pet'r Ex. 7 at 4*) provides the best description of the land and the trees growing on it:

Most of the trees on this property would be small to medium sized sawlogs. There is a good stocking level of marketable species on most of the uplands, with a lower, but sufficient stocking level on the lowlands, due to recent logging activities. Oak and hickory regeneration is very good on this property, especially in the areas that were logged 6-7 years ago. *** Overall, the property has very healthy looking stock.

The aerial photographs of the property appear to support the description contained in the management plan. Although the Respondent offered testimony that the property was subjected to clear-cut logging shortly before the Petitioner bought it and that little, if any, marketable timber remained as of the assessment date, substantial evidence indicates that regeneration of trees was good, especially in the areas that had been logged. The management plan also recommended that if there was to be any harvest of trees it should only be very light and selective to allow more space for better quality trees to grow. Obviously, growing marketable timber takes several years. The fact that the Petitioner did not have trees that were ready for market in 2002 does not preclude the woodland classification.

- d. The Petitioner also offered evidence that the subject property is now "classified forest," but that he did not apply to have the land so classified until 2006. *See F. Piles testimony; Pet'r Ex. 6.* The Petitioner apparently was referring to the "native forest" or the "forest plantations" classifications described in Ind. Code § 6-1.1-6-2 and -3. Land in those classifications is assessed at the rate of \$1 per acre. Ind. Code § 6-1.1-6-14. In order for land to receive such favorable treatment, however, the owner must apply to the state forester for the land to be classified and the owner must abide by limitations on its use and management. *See Ind. Code § 6-1.1-6-3.5; Ind. Code § 6-1.1-6-11; Ind. Code § 6-1.1-6-16.* Therefore, this favorable treatment is not retroactive. The Petitioner failed to establish how the fact that he got the classified forest designation in 2006 is relevant to the 2002 assessment.
- e. Similarly, the purported agreement to assess the property as agricultural land (*Pet'r Ex. 1*) does not support the Petitioner's claim. As the Respondent correctly noted, the document lacks the required township trustee's signature and is not binding without it. Nevertheless, the Petitioner's evidence makes a prima facie case that in 2002 he intended to use the property to raise trees that would eventually mature into marketable timber, which would qualify as an agricultural use.
- f. The Respondent offered evidence of a different intent. Sheila Blake testified that the Petitioner told her on several occasions that the purpose of the property is for recreation. The Respondent also pointed out that the management plan states:

The owner of this property is an avid outdoorsman and hunter. This property is used by the owner and his family for hunting deer, turkey and morels. Due to an extensive trail system from previous logging operations all parts of the property are very easily accessible by foot or off-road vehicles. The property is accessible from Garrity Road on the east side. The property is surrounded by a new housing edition [sic].

In addition, the Petitioner presented an appraisal that identified the current use as a "rural recreational site." *Pet'r Ex. 10 at 4*. The appraisal states "[t]he subject is considered to be very similar to other tracts sold in Brown County for use as rural recreation or homesite type tracts." *Pet'r Ex. 10 at 2*. In explaining its valuation method, the appraisal used "several sales of wooded acreage with little or no timber value ... to develop a range of value for typical tracts that are suitable for rural recreation and/or rural homesites." *Pet'r Ex. 10 at 4*. This statement in the appraisal indicating "little or no timber value" is credible and highly persuasive evidence of the most appropriate characterization of the subject property.

- g. Thus, the evidence contains substantial support for the Respondent's position that the Petitioner bought the property for recreational use.
 - h. These two views about the use of the property are not mutually exclusive or incompatible. After reviewing all of the evidence, the Board is convinced that there is some element of truth on both sides. The subject property is used both for growing timber and for recreational purposes. The relative significance of growing trees, however, is diminished for at least two reasons. First, the Petitioner presented little, if any, evidence of active involvement in planting or caring for the trees. Rather, his methodology appears to be primarily to let nature take its course. Second, the Petitioner presented no evidence about projected income from selling trees and no other kind of financial data or analysis to support the importance of the agricultural use.
 - i. Merely proving *some* agricultural use is not sufficient for a parcel to be assessed as agricultural land because the statute requires "land shall be assessed as agricultural land only when it is devoted to agricultural use." Ind. Code § 6-1.1-4-13(a). The word "devote" means "to give or apply (one's time, attention, or self) completely." WEBSTER'S II NEW RIVERSIDE DICTIONARY 192 (revised edition). This statutory language does not appear to preclude other incidental uses, but the weight of the evidence in this case does not establish that the subject property is *devoted* to agricultural use. Therefore, it cannot be assessed as agricultural woodland.
17. The weight of the evidence does not support the current assessment. This conclusion was arrived at because:
- a. Real property is assessed on the basis of its "true tax value," which does not mean fair market value. Rather, true tax value is determined by measuring "the market value-in-use of a property" that is "reflected by the utility received by the owner ... from the property." Ind. Code § 6-1.1-31-6(c); 2002 REAL PROPERTY ASSESSMENT MANUAL (hereafter MANUAL) at 2 (incorporated by reference at 50 IAC 2.3-1-2). There are three generally accepted techniques to calculate market value-in-use: the cost approach, the sales comparison approach, and the income approach. The primary method for assessing officials to determine market value-in-use is the cost approach. *Id.* at 3. To that end, Indiana promulgated a series of

guidelines that explain the application of the cost approach. The value established by use of the Guidelines, while presumed to be accurate, is merely a starting point. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut that presumption. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.

- b. The goal under Indiana's new assessment system is to ascertain the property's market-value-in-use. The Petitioner identified alleged deficiencies in the assessment, including the classification of the land and the lack of a negative influence factor. Petitioner's claims of purported errors focus solely on the methodology used to determine the assessment. Even if the Respondent's assessment of the subject property did not fully comply with the Guidelines, the Petitioner failed to show that the assessment he sought would be a reasonable measure of true tax value. *See* Ind. Admin. Code tit. 50, r.2.3-1-1(d) ("failure to comply with the ... Guidelines ... does not in itself show that the assessment is not a reasonable measure of 'True Tax Value'").
- c. For the 2002 reassessment, an assessment is to reflect the value of the property as of January 1, 1999. MANUAL at 4. The Petitioner introduced an appraisal establishing the July 1999 value of the land was \$132,500 and admitted he purchased the property for this amount in August 1999. Neither party presented probative evidence to show that this figure is not a reasonable measure of the market value-in-use and the true tax value.
- d. The Petitioner's undisputed purchase price supported by the appraisal for that same value is compelling evidence of the property's market value-in-use.

Conclusion

17. The Board finds that the market value-in-use of this property is \$132,500.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessed value should be changed to \$132,500.

ISSUED: March 22, 2007

Commissioner,
Indiana Board of Tax Review

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IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Trial Rules are available on the Internet at http://www.in.gov/judiciary/rules/trial_proc/index.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.