

REPRESENTATIVE FOR PETITIONER:

Gary Emberton, Pro Se

REPRESENTATIVE FOR RESPONDENT:

Sheila Blake

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Emberton Enterprises, Inc.	)	Petition No.:	07-006-02-1-5-00066A
	)		07-006-02-1-5-00066B
	)		07-006-02-1-5-00066C
	)	Parcel:	0040987001
	)		0040002002
Petitioner,	)		0040987000
)		
v.)		
	)	Brown County	
Hamblen Township Assessor,	)	Hamblen Township	
	)	2002 Assessment	
Respondent.)		

Appeal from the Final Determination of the
Brown County Property Tax Assessment Board of Appeals

December 17, 2007

FINAL DETERMINATION

The Indiana Board of Tax Review (“Board”) has reviewed the evidence and arguments presented in this case. The Board now enters its findings of fact and conclusions of law on the following issue:

Should the land classification be changed to agricultural woodland rather than excess residential acreage?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

HEARING FACTS AND OTHER MATTERS OF RECORD

1. Gary Emberton/Emberton Enterprises filed a Form 130 Petition for Parcel 0040002002 (Parcel 2002) on or about May 5, 2005. A copy of this Form 130 is attached to the Form 131 Petition. The record indicates that someone filed appeals for Parcel 0040987000 (Parcel 7000) and for Parcel 0040987001 (Parcel 7001), but it is not clear whether they were filed on a Form 130 or an equivalent document. Whatever the documents were, copies are not included in the record. Furthermore, the record does not establish when the documents were filed or what specific allegations were made in them. Nevertheless, on November 7, 2005, the Brown County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determinations on these three appeals. The Form 115 notices indicate that the PTABOA determined to leave the land with a residential classification, not agricultural.¹
2. On December 10, 2005, Emberton Enterprises, Inc. (“Petitioner”) filed a Form 131 Petition for Review of Assessment for each of these parcels, requesting the Board to conduct an administrative review.
3. Kay Schwade, the duly designated Administrative Law Judge (“ALJ”) authorized by the Board, held a hearing on the Form 131 Petitions at Nashville on August 21, 2007.
4. The following persons were sworn as witnesses at the hearing:
For the Petitioner – Gary Emberton,
For the Respondent – Sheila Blake.

¹ At some point there were separate Form 133 Petitions for Correction of Error for each of these properties. The copies of the Form 133’s in the record are not dated or file-marked. The Form 133 for Parcel 7001 does not specify what land value it sought. *Pet’r. Ex. 1.* The Form 133 for Parcel 7000 claims the land value should be changed to \$20,400. *Pet’r. Ex. 2.* The Form 133 for Parcel 2002 claims the land value should be changed to \$18,700. *Pet’r. Ex. 8.* On May 5, 2006, County Assessor Donna Lutes and Township Assessor Joan Collins approved the Form 133 changes for Parcel 7000 and Parcel 2002. On May 15, 2006, they approved the Form 133 change for Parcel 7001. For all three parcels, the assessors changed the land back to agricultural classification. There is no indication that anybody appealed their action on the Form 133’s, which apparently “corrected” the PTABOA’s decision about the land.

5. The Petitioner presented a single group of exhibits that collectively apply to a total of seven parcels and appeals. The subject parcels were identified as “Parcel 2002,” “Parcel 7000,” and “Parcel 7001” in exhibit references and in the testimony. The Petitioner presented the following exhibits:

Petitioner’s Exhibit 1 – 2002 Form 133 Petition for Correction of Error for Parcel 7001,
Petitioner’s Exhibit 2 – 2003 Form 133 Petition for Correction of Error for Parcel 7000,
Petitioner’s Exhibit 3 – Aerial map of Parcel 7000/7001,
Petitioner’s Exhibit 4 – Sales receipts for timber sales from Parcel 7000/7001,
Petitioner’s Exhibit 5 – 2002 Form 133 Petition for Correction of Error for Parcel 5000,
Petitioner’s Exhibit 6 – 2003 Form 133 Petition for Correction of Error for Parcel 5000,
Petitioner’s Exhibit 7 – Aerial map of Parcel 5000,
Petitioner’s Exhibit 8 – 2002 Form 133 Petition for Correction of Error for Parcel 2002,
Petitioner’s Exhibit 9 – 2003 Form 133 Petition for Correction of Error for Parcel 2002,
Petitioner’s Exhibit 10 – Aerial map of Parcel 2002,
Petitioner’s Exhibit 11 – Sales receipts for timber sales from Parcel 2002,
Petitioner’s Exhibit 12 – Aerial map of Parcel 3008,
Petitioner’s Exhibit 13 – Property record card for Parcel 3008,
Petitioner’s Exhibit 14 – Sales receipts for timber sales from Parcel 3008,
Petitioner’s Exhibit 15 – Property record card for Joan Collins property,
Petitioner’s Exhibit 16 – Aerial map for Parcel 8000,
Petitioner’s Exhibit 17 – Property record card for Parcel 8000,
Petitioner’s Exhibit 18 – Sales receipts for timber sales from Parcel 8000,
Petitioner’s Exhibit 19 – Property record card for Parcel 7000,
Petitioner’s Exhibit 20 – Property record card for Parcel 3000,
Petitioner’s Exhibit 21 – Letter from Paula Waterman,
Petitioner’s Exhibit 22 – Aerial map for Parcel 3000,
Petitioner’s Exhibit 23 – Sales receipts for timber sales from Parcel 3000,
Petitioner’s Exhibit 24 – Pages 99 through 106 from the 2002 Real Property Assessment Guidelines – Version A.

6. The Respondent also presented a collective group of exhibits for seven parcels and appeals. The Respondent presented the following exhibits:

Respondent’s Exhibit 1 – Property record card for Parcel 8000,
Respondent’s Exhibit 2 – Ind. Code § 6-1.1-4-13,
Respondent’s Exhibit 3 – Bryan K. Piles, Findings and Conclusions, page 8 of 10 pages,

- Respondent's Exhibit 4 – Diane Ritterskamp, Findings and Conclusions, pages 3 and 4 of 6 pages,
- Respondent's Exhibit 5 – 2004 Sales Disclosure Form for property located on Nelson Ridge Road,
- Respondent's Exhibit 6 – Aerial map showing location of the Emberton, Burns, Bay and Butler properties,
- Respondent's Exhibit 7 – 2007 Sales Disclosure for the Butler property,
- Respondent's Exhibit 8 – Property record card for the Butler property reflecting the 3/1/2005 assessed value,
- Respondent's Exhibit 9 – Property record card for the Burns property,
- Respondent's Exhibit 10 – Property record card for the Butler property reflecting the 3/1/2006 assessed value,
- Respondent's Exhibit 11 – Property record card for the Emberton property reflecting the 3/1/2005 assessed value.

7. The following additional items for each appeal are recognized as part of the record:

- Board Exhibit A – 131 Petition with Form 115 attached,
- Board Exhibit B – Notice of Hearing,
- Board Exhibit C – Hearing Sign In Sheet.

8. Parcel 2002 is 32.89 acres of unimproved, vacant land located on Bean Blossom Road.
 Parcel 7000 is 24.32 acres of land with a pole barn located at 9580 Sweetwater Trail.
 Parcel 7001 is 2.37 acres of unimproved, vacant land located on Sweetwater Trail.

9. The ALJ did not conduct an on-site inspection of the subject property.

10. The assessed values determined by the PTABOA on Form 115 were:

Parcel 2002			
Land	\$136,800	Improvements -0-	Total \$136,800,
Parcel 7000			
Land	\$ 86,100	Improvements \$57,600	Total \$143,700,
Parcel 7001			
Land	\$2,500	Improvements -0-	Total \$2,500.

Subsequently, the land classification on each parcel was changed back to agricultural. Neither party presented evidence that establishes what the total assessments are as a result of that change.

11. The Petitioner did not request a specific value for the subject properties.

CONTENTIONS

12. According to the Petitioner, these properties are strictly used for timbering. No hunting, hiking, four-wheeling, or similar recreational use takes place there. The timber takes 40 to 100 years to grow to a marketable crop. The land classification for Parcel 2002, Parcel 7000, and Parcel 7001 was changed from residential excess acreage to agricultural woodland effective for the March 1, 2002 and March 1, 2003, assessments. The change in land classification was the result of a Form 133 petition approved by the township assessor and county assessor. These assessments are satisfactory because they were changed back to agricultural land classification. *Emberton testimony; Pet'r Ex. 1, 2, 8, 9.*
13. Nevertheless, the Respondent contends the subject properties are not devoted to agricultural use. There is no evidence of replanting or reseeded for future timber harvest. The Petitioner purchases timbered land, removes the timber, and then either sells the land or develops the land for residential use. *Blake testimony.*
14. The analysis used by the Board in findings for similar properties applies to the Emberton properties. The Board has repeatedly found that it is not enough to “allow nature to take its course” to prove that land is devoted to the production of timber. *Blake testimony; Resp't Ex. 3, 4.*
15. The Form 133 petitions were approved by the former county and township assessors, but the current Hamblen Township Assessor does not agree with the Form 133 action changing the land classification to agricultural woodland. The Respondent contends the Board should revalue the subject properties using the residential excess acreage land classification for the March 1, 2002 and March 1, 2003 assessment years. *Blake testimony.*

ANALYSIS

16. The most relevant statute is Ind. Code § 6-1.1-15-12:

(a) Subject to the limitations contained in subsections (c) and (d), a county auditor shall correct errors which are discovered in the tax duplicate for any one (1) or more of the following reasons:

(6) The taxes, as a matter of law, were illegal.

(7) There was a mathematical error in computing the assessment.

(8) Through an error or omission by any state or county officer, the taxpayer was not given credit for an exemption or deduction permitted by law.

(d) If the tax is not based on an assessment made or determined by the department of local government finance, the county auditor shall correct an error described under subsections (a)(6), (a)(7), or (a)(8) only if the correction is first approved by at least two (2) of the following officials:

(1) The township assessor.

(2) The county auditor.

(3) The county assessor.

If two (2) of these officials do not approve such a correction, the county auditor shall refer the matter to the county board for determination. The county board shall provide a copy of the determination to the taxpayer and the county auditor.

17. The Form 133's for these three parcels were approved by the township assessor and the county assessor on May 5 and 15, 2006. Because they took this action after the PTABOA determination, they effectively overruled the PTABOA determinations, which might be a problematic concept within the context of the entire statutory assessment and review process. Nevertheless, there is no indication that anybody appealed Lutes' and Collins' decision to change the land back to an agricultural classification or that anybody (including the Respondent) challenged their authority to do so. Consequently, that order stands.²

18. The Petitioner indicated satisfaction with the current land values, which were changed back to agricultural land classification, apparently after these petitions were filed. It is

² In making this determination, the Board is not making a determination regarding the propriety or merit of the Form 133 action.

clear that the Petitioner seeks to maintain the status quo, rather than change the current 2002 assessments. The record is unclear as to what the land values are, but the Board will make no determination on this question because the Petitioner's issue is moot.

19. The Respondent asked the Board to reclassify the subject properties as residential excess acreage. In effect, the Respondent is asking the Board to reverse the approved Form 133 action. The Board will not do so for two reasons. First, the Respondent is attempting a collateral attack on the Form 133 determinations without providing any authority or explanation that might justify it. Second, in seeking to change the current assessments, the Respondent had the burden to make a prima facie case, but that burden was not met. The Respondent failed to present probative evidence that any of these parcels were not devoted to agricultural use. *See Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221 (Ind. Tax Ct. 2003); *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998) (stating that conclusory statements do not qualify as probative evidence).

SUMMARY OF FINAL DETERMINATION

20. The assessments will not be changed.

This Final Determination of the above captioned matter is issued on the date first written above.

Commissioner, Indiana Board of Tax Review

- Appeal Rights -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <<http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <<http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>>