

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petitions: 45-037-02-1-5-00031 **Parcels:** 010-10-01-0025-0008
45-037-02-1-5-00032 010-10-01-0025-0005
45-037-02-1-5-00033 010-10-01-0025-0004

Petitioner: Leon Bailey Ltd.
Respondent: Department of Local Government Finance
Assessment Year: 2002

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

Procedural History

1. The informal hearing as described in Ind. Code § 6-1.1-4-33 was held. The Department of Local Government Finance (the DLGF) determined the tax assessments for the subject properties and notified the Petitioner on March 23, 2004.
2. The Petitioner filed a Form 139L for each parcel on March 23, 2004.
3. The Board issued a notice of hearing to the parties dated November 16, 2004.
4. Special Master Barbara Wiggins held the hearing in Crown Point on December 16, 2004.

Facts

5. The subject property is located at 21402 Chestnut Road in Lowell.
6. The subject properties are an 80-acre parcel, and two 40-acre parcels on a grain farm.
7. The Special Master did not conduct an on-site inspection of the property.
8. The assessed values as determined by the DLGF:

Parcel 010-10-01-0025-0008	\$79,300
Parcel 010-10-01-0025-0005	\$38,600
Parcel 010-10-01-0025-0004	\$40,900
9. The Petitioner did not request a specific assessed value.

10. Persons sworn as witnesses at the hearing were:
Michael McIntire, general partner,
Phillip Raskowski, assessor/auditor.

Issues

11. Petitioner contends the property is over-assessed because flooding occurs during heavy rains. Bailey Ditch runs through the property. *McIntire testimony*. Generally, there is such a flood during a growing season that causes some crop damage. *Id.* The local assessor recognized the flooding issue in assessments both before and after 2002, but Cole-Layer-Trumble did not recognize it for the 2002 assessment. *Id.*; *Petitioner Ex. 1, 2.*
12. Respondent acknowledged that the local assessor allowed a 30% adjustment to some of the land based on the flooding issue for 2003. *Raskowski testimony*; *Petitioner Ex. 1.* Nevertheless, Respondent contends the property is assessed in line with others and the record does not establish a basis for change.

Record

13. The official record for this matter is made up of the following:
- a) The Petitions,
 - b) The tape recording of the hearing labeled Lake County 658,
 - c) Petitioner Exhibit 1: Property Record Card (PRC) for parcel 010-10-01-0025-0008,
Petitioner Exhibit 2: PRC for parcel 010-10-01-0025-0005,
Petitioner Exhibit 3: Hand drawn diagram of the properties,
Petitioner Exhibit 4: PRC for parcel 010-10-01-0025-0004,
Respondent Exhibit 1: Form 139L Petition for each parcel,
Respondent Exhibit 2: PRCs for each parcel,
Respondent Exhibit 3: Plat map,
Respondent Exhibit 4: Aerial photograph of the property,
Board Exhibit A: Form 139L,
Board Exhibit B: Notice of Hearing,
Board Exhibit C: Sign in Sheet,
 - d) These Findings and Conclusions.

Analysis

14. The most applicable laws 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 Insurance 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 Petitioner provided sufficient evidence to make a prima facie case. The Respondent failed to rebut that case. This conclusion was arrived at because:
- a) Undisputed evidence establishes that the property floods during heavy rain. The Petitioner offered testimony that approximately 50 acres generally floods each year and that crop damage results.
 - b) The Petitioner testified the property record card included a negative 30% adjustment to the value in prior years to account for this and the township assessor has again put the factor back on the card for the 2003 tax year. The Respondent did not dispute that testimony and even pointed out two PRCs that show the adjustment. Parcel 010-10-01-0025-0008 got the adjustment for 40 acres. Parcel 010-10-01-0025-0005 got the adjustment for 4 acres. The record does not contain such evidence for the third parcel.
 - c) A 30% negative influence factor is specifically authorized for land that occasionally suffers damaging floods. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002—VERSION A, ch. 2 at 104 (incorporated by reference at 50 IAC 2.3-1-2).
 - d) The Respondent stated the Petitioner did not provide any proof whatsoever that the property floods and how that affects the value of the farmed land and resulting products. The Respondent stated that due to lack of evidence to support a lower value, the assessment should remain as is. Respondent is incorrect.
 - e) Although the Petitioner failed to provide the kind of documentation that Respondent expected, the testimony and the assessor's recognition of the flooding problem in both past and subsequent assessments supports the claim in this case. The burden shifted to the Respondent to rebut, but the Respondent offered no substantial rebuttal.

Conclusion

16. The Petitioner made a prima facie case to support a lower assessment of the property. The Board finds in favor of the Petitioner.

Final Determination

In accordance with the above findings and conclusions the Board now determines that two of the assessments should be changed. Parcel 010-10-01-0025-0008 will get the 30% negative adjustment for 40 acres. Parcel 010-10-01-0025-0005 will get the adjustment for 4 acres. There will be no change on the third parcel.

ISSUED: _____

Commissioner,
Indiana Board of Tax Review

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>>.