

REPRESENTATIVES FOR PETITIONERS:

Rob & Karen Herth, *pro se*

REPRESENTATIVE FOR RESPONDENT:

Andrew Baudendistel, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Rob & Karen Herth,	)	Petition No.:	15-010-11-1-5-00123
)		
Petitioners,	)	Parcel No.:	15-02-15-700-056.000-010
)		
v.	)	County:	Dearborn
)		
Dearborn County Assessor,	)	Township:	Kelso
)		
Respondent.	)	Assessment Year:	2011

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

June 30, 2014

FINAL DETERMINATION

The Indiana Board of Tax Review (Board), having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

INTRODUCTION

1. The Petitioners had the burden to prove that the subject property's March 1, 2011, assessment was in error. Did the Petitioners prove the 2011 assessment was in error?

PROCEDURAL HISTORY

2. The Petitioners initiated their 2011 appeal with the Dearborn County Assessor on September 28, 2011. On February 10, 2012, the Dearborn County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the Petitioners any relief. On March 19, 2012, the Petitioners timely filed a Form 131 petition with the Board.
3. On April 9, 2014, the Board's administrative law judge, Jennifer Bippus (ALJ), held a hearing on the petition. Neither the Board nor the ALJ inspected the subject property.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. Rob and Karen Herth appeared *pro se*. County Attorney Andrew Baudendistel represented the Respondent. Rob Herth, Karen Herth, and County Assessor Gary Hensley were sworn.
5. The Petitioners submitted the following exhibit:

Petitioner Exhibit 1: Plat map, with subject property marked as 27331.
6. The Respondent did not submit any exhibits.
7. The following additional items are recognized as part of the record:

Board Exhibit A: Form 131 petition with attachments,
Board Exhibit B: Notice of hearing, dated September 16, 2013,
Board Exhibit C: Petitioners' continuance request, dated October 10, 2013,
Board Exhibit D: Continuance granted by the Board, dated October 11, 2013,
Board Exhibit E: Notice of hearing, dated February 28, 2014,
Board Exhibit F: Hearing sign-in sheet.
8. The subject property is a residence located at 27331 Leona Drive, in Brookville.
9. The PTABOA determined that the March 1, 2011, assessment is \$33,700 for land and \$123,800 for improvements, for a total value of \$157,500.
10. The Petitioners did not request a specific value for the subject property.

JURISDICTIONAL FRAMEWORK

11. The Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property, (2) property tax deductions, (3) property tax exemptions, and (4) property tax credits that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

PETITIONERS' CONTENTIONS

12. The Petitioners agree that their one acre home site is assessed correctly. However, they argue that a .36 acre portion of the property is incorrectly designated as excess residential acreage. They contend this portion of the property should be assessed as agricultural rather than excess residential. *R. Herth argument; Pet'r Ex. 1.*
13. The Petitioners use the .36 acre portion of the land to walk and exercise swine and goats, which they raise for their children's 4-H fair projects. These animals live on an adjacent lot owned by the Petitioners. Further, the subject property is zoned agricultural. *R. Herth testimony.*

RESPONDENT'S CONTENTIONS

14. The subject property is assessed correctly. The Respondent assesses property based on its use, and not necessarily its zoning. This property, including the excess acreage, is situated in a subdivision and used for residential purposes. Normally, an agricultural property would have fencing, plowing, and crops growing. These items are non-extant on the subject property. *Hensley argument.*

BURDEN OF PROOF

15. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp.*

Ass'r, 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). Nevertheless, the Indiana General Assembly enacted a statute that in some cases shifts the burden of proof. *See* Ind. Code § 6-1.1-15-17.2.

16. First, Ind. Code § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).
17. Second, Ind. Code § 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under I.C. 6-1.1-15.” Under those circumstances, “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d).
18. Those provisions may not apply if there was a change in improvements, zoning, or use, or if the assessment was based on an income capitalization approach. Ind. Code § 6-1.1-15-17.2(c) and (d).
19. Here, the parties agreed that there was no change to the assessment from 2010 to 2011. Therefore the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 do not apply, and the burden remains with the Petitioners.

ANALYSIS

20. Indiana assesses real property on the basis of its true tax value, which the Department of Local Government Finance (DLGF) has defined as the property's market value-in-use. Ind. Code § 6-1.1-31-6(c); MANUAL at 2. To show market value-in-use, a party may offer evidence that is consistent with the DLGF's definition of true tax value. A market-value-in-use appraisal prepared according to USPAP often will be probative. *Kooshtard Property VI v. White River Twp. Ass'r*, 836 N.E.2d 501, 506 n.6. (Ind. Tax Ct. 2005). A party may also offer actual construction costs for the property under appeal, sales information for that property or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.
21. Regardless of the valuation method used, a party must explain how its evidence relates to market value-in-use as of the relevant valuation date. *See O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for a 2011 assessment was March 1, 2011. Ind. Code § 6-1.1-4-4.5(f). Any evidence of value relating to a different date must also have an explanation about how it demonstrates, or is relevant to, that required valuation date. *Long*, 821 N.E.2d at 471.
22. In this case, the Petitioners contend that a small portion of the subject property's land should be classified as agricultural rather than residential. The statutory and regulatory scheme for assessing agricultural land requires the Board to treat challenges to those assessments differently than other assessment challenges. Indeed, the Indiana General Assembly directed the DLGF to establish rules for determining the true tax value of agricultural land. Ind. Code § 6-1.1-4-13(b). The DLGF, in turn, established a base rate to be used in assessing agricultural land across the State of Indiana.
23. Indiana Code § 6-1.1-4-13 states, however, that "[i]n assessing or reassessing land, the land shall be assessed as agricultural *only* when it is devoted to agricultural use." Ind. Code § 6-1.1-4-13(a) (emphasis added). The word "devote" means "to attach the attention or center of activities of (oneself) wholly or chiefly on a specified object, field,

or objective.” WEBSTER’S THIRD NEW INTERNATIONAL UNABRIDGED DICTIONARY AT 620.

24. Here, the Petitioners’ walking and exercising of animals raised for 4-H fair projects clearly fall short of a devotion to agricultural use. They failed to offer any evidence that their livelihood was in any way dependent on farming or the agricultural use of the subject property. The Petitioners also failed to offer any evidence as to how much time was devoted to walking and exercising the animals on the land. Further, they failed to offer evidence that their activities were “wholly or chiefly” attached to that field. The Petitioners even acknowledged that the livestock was not raised on this property; this property was only used to walk and exercise a few animals. The Board therefore finds that the Petitioners failed to raise a prima facie case that the property’s classification as residential excess acreage is in error.
25. Where the Petitioners have not supported their claim with probative evidence, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

SUMMARY OF FINAL DETERMINATION

26. The Petitioners did not make a prima facie case for changing the classification for the subject property’s March 1, 2011, assessment. The Board therefore finds for the Respondent.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

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 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days of the date of this notice.

The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.