

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

Petition Nos.: 91-015-08-1-5-00005
91-015-09-1-5-00021
91-015-10-1-5-00003
Petitioner: Peggy J. Urbanski
Respondent: White County Assessor
Parcel No.: 91-53-32-000-000.702-015
Assessment Years: 2008, 2009, and 2010

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

Procedural History

1. The Petitioner appealed the assessments of her property for the 2008, 2009 and 2010 assessment years with the White County Property Tax Assessment Board of Appeals (the PTABOA) by filing her Form 130 “Petition for Review of Assessment by Local Assessing Official – Property Tax Assessment Board of Appeal” forms on April 7, 2010, for 2008, on September 16, 2010, for 2009, and on June 6, 2011, for 2010.
2. The PTABOA issued notices of its decisions on January 21, 2011, for the 2008 and 2009 assessment years, and on December 2, 2011, for the 2010 assessment year.
3. The Petitioner filed Form 131 petitions with the Board on February 17, 2011, for 2008 and 2009, and on January 17, 2012, for 2010. The Petitioner elected to have her appeals heard according to the Board’s small claims procedures.
4. The Board issued notices of hearing to the parties dated February 1, 2012.
5. The Board held an administrative hearing on May 10, 2012, before the duly appointed Administrative Law Judge (the ALJ) Dalene McMillen.
6. The following persons were present and sworn in at hearing:
 - a. For Petitioner: Peggy J. Urbanski, property owner
Steven F. Spencer, witness
 - b. For Respondent: Scott Potts, White County representative

Facts

7. The property under appeal is three acres of vacant land located Off Springboro Road, Battle Ground, Indiana, in White County.¹
8. The ALJ did not conduct an on-site inspection of the property under appeal.
9. For 2008, 2009, and 2010 the PTABOA determined the assessed value of the land to be \$47,800.
10. The Petitioner requested an assessed value of \$12,500 for each assessment year.

Issue

11. Summary of the Petitioner's contentions in support of an alleged error in her property's assessments:
 - a. The Petitioner contends that the assessed value of the property was incorrect in 2008, 2009, and 2010 because the assessor classified the parcel as residential land rather than agricultural land. *Spencer argument*. According to the Petitioner approximately two acres of her property is being farmed and one acre is planted in trees. *Urbanski testimony*. The Petitioner's witness testified that the trees are being grown for future timber production. *Spencer testimony*. In support of this contention, Mr. Spencer submitted photographs of the lot, the Petitioner's master plan for developing property as a forestland, a timeline of work that the Petitioner has completed on the property, email correspondence with the Indiana Division of Forestry and receipts for the purchase of various trees and wildflowers. *Petitioner Exhibits 6 through 10*. Mr. Spencer testified that there is no other use of the property. *Spencer testimony*. Thus, he argues, the Petitioner's three acres should be classified as agricultural land. *Id.*
 - b. Alternatively, the Petitioner's witness contends that the Petitioner's property was over-valued based on its purchase price. *Spencer testimony*. In support of this contention, Mr. Spencer offered a purchase agreement from Joan Abbott Real Estate. *Spencer testimony; Petitioner Exhibit 3*. According to Mr. Spencer, the Petitioner purchased her land for \$23,000 on May 3, 2006. *Id.* Mr. Spencer admitted that he and the Petitioner purchased lot 18 and 19 as a combined unit. *Spencer testimony*. Further, Mr. Spencer admitted that he purchased lot 18 for \$60,000. *Id.; Petitioner Exhibits 1 and 2*. However, he argues, the difference in purchase prices between his property and the subject property was because his lot was classified as a river lot, while the Petitioner's lot was classified as a lot with no trees. *Id.*

¹ Mr. Spencer testified that he and Ms. Urbanski own adjoining properties in Tippecanoe, Carroll and White counties, for a total of sixteen acres. *Spencer testimony*.

- c. Finally, the Petitioner's witness contends that the Petitioner's property's assessed value is overstated based on the sale prices of two other lots in the neighborhood. *Spencer testimony*. In support of its position, the Petitioner's witness submitted a surveyor's map and a purchase agreement for both neighboring properties. *Petitioner Exhibits 4 and 5*. According to Mr. Spencer, Tippecanoe Timbers lot 5 is a 3.317 acre lot with no trees that sold for \$35,000 on April 8, 2010. *Spencer testimony; Petitioner Exhibit 4*. Similarly, Tippecanoe Timbers lot 32 is a 2.865 acre lot with no trees that sold for \$32,000 on February 10, 2011. *Id.; Petitioner Exhibit 5*. While the Petitioner's property is similar to the comparable properties, Mr. Spencer argues, it is being assessed for \$47,800 in 2008, 2009, and 2010. *Id.* Thus, he concludes, the Petitioner's property is valued higher than comparable lots in the neighborhood.² *Id.*

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

- a. The Respondent's representative contends that the Petitioner's property's value increased between 2007 and 2008 because of state mandated trending, which requires assessing officials to annually adjust property values.³ *Potts testimony*. According to Mr. Potts, for the 2007 assessment year, while the county was to use 2005 and 2006 sales data to establish the median sale price for each neighborhood in the county, only the 2006 sales data was available in the subject property's neighborhood. *Id.* For the 2008 assessment year, however, the county used 2006 and 2007 sales data to establish a median sale price. *Id.; Petitioner Exhibit 1*. Thus, Mr. Potts argues, the increase in the assessed values between 2007 and 2008 in the Petitioner's neighborhood was a result of the amount of sales data used to establish the 2008 median sale price. *Id.*
- b. Further, the Respondent's representative contends that the Petitioner's property was correctly assessed at \$47,800 for 2008, 2009 and 2010 based on the sale prices of other properties in the neighborhood. *Potts testimony*. According to Mr. Potts, the median sales price for non-riverfront properties was \$49,500 in 2007 and 2008, which is the relevant period of time for the March 1, 2008, assessment. *Id.; Respondent Exhibit 1*. Because the Petitioner's property's assessed value is below the median sale price for the neighborhood, Mr. Potts concludes, the Petitioner's property was accurately assessed for the March 1, 2008, March 1, 2009, and March 1, 2010, assessment dates. *Id.*

² Mr. Spencer also submitted a "Vacant Land Summary Statistics" report prepared by Joan Abbott Real Estate showing the listing and sale prices for eleven vacant lots in the Tippecanoe Timbers subdivision. *Petitioner Exhibit 1*. According to Mr. Spencer, the summary report shows that lots sold for less than their listing price. *Spencer testimony; Petitioner Exhibit 1*. Mr. Spencer further testified that while some lots sold for \$60,000, those lots are riverfront lots and therefore superior to the property under appeal. *Spencer testimony*.

³ Mr. Potts appears to be referring to Indiana Code § 6-1.1-4-4.5, which states "The department of local government finance shall adopt rules establishing a system for annually adjusting the assessed value of real property to account for changes in value in those years since a general reassessment of property last took place." Ind. Code § 6-1.1-4-4.5.

- c. Finally, while the Respondent’s representative admitted that at least two-thirds of the Petitioner’s land was being farmed during the relevant period of time, Mr. Potts argues that the land should not qualify for the agricultural land rate because the Petitioner is not farming the property herself.⁴ *Id.*

Record

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

- a. The Form 131 petitions and related attachments.
- b. The digital recording of the hearing.
- c. Exhibits:

- Petitioner Exhibit 1 – Sales brochure with a plat map, a list of 2006 land sales and a vacant land summary statistics report from Tippecanoe Timbers Subdivision,
- Petitioner Exhibit 2 – Surveyor’s map and purchase agreement for Tippecanoe Timbers lot 18,
- Petitioner Exhibit 3 – Surveyor’s map and purchase agreement for Tippecanoe Timbers lot 19,
- Petitioner Exhibit 4 – Surveyor’s map and purchase agreement for Tippecanoe Timbers lot 5,
- Petitioner Exhibit 5 – Surveyor’s map and purchase agreement for Tippecanoe Timbers lot 32,
- Petitioner Exhibit 6 – Petitioner’s “Master Plan – White County Properties” and map of Tippecanoe Timbers lot 18 and lot 19,
- Petitioner Exhibit 7 – Petitioner’s “White County Properties – Time Line of Work Completed”
- Petitioner Exhibit 8 – Ten photographs of the subject property,
- Petitioner Exhibit 9 – Email correspondence between Steve Spencer and Eric Summerfield, District Forester, IDNR Division of Forestry,
- Petitioner Exhibit 10 – Sales receipts from Alpha Nurseries and AgVenture D & M, Inc.,
- Petitioner Exhibit 11 – Petitioner’s “Concluding Statements,”

⁴ Mr. Potts also testified that the Petitioner’s property would not qualify for the “developer’s discount” because the Petitioner is not the original land developer or a successor land developer holding the land in inventory for future development. *Potts testimony*. See Ind. Code § 6-1.1-4-12(h). However, the Petitioner made no claim that her property should be valued according to the developer’s discount.

Respondent Exhibit 1 – Summary of non-riverfront land sales in
Tippecanoe Timbers Subdivision,

Respondent Exhibit 2 – Petitioner’s property record card,

Board Exhibit A – Form 131 petitions with attachments,

Board Exhibit B – Notices of Hearing,

Board Exhibit C – Hearing sign-in sheet,

d. These Findings and Conclusions.

Analysis

14. The Petitioner presented sufficient evidence to raise a prima facie case that her property was agricultural land for the 2008, 2009 and 2010 assessment years. The Respondent failed to rebut or impeach the Petitioner’s case.⁵ The Board reached this decision for the following reasons:
- a. Here, the Petitioner’s witness contends that the Petitioner’s property should be assessed as agricultural land rather than residential land. According to Mr. Spencer, approximately two acres of the Petitioner’s property is being farmed and approximately one acre is planted in trees.
 - b. Indiana Code § 6-1.1-4-13 states 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). The word “devote” means “to give or apply (one’s time, attention, or self) completely.” WEBSTER’S II NEW RIVERSIDE DICTIONARY 192 (revised edition). Agricultural use is the “production of crops, fruits, timber, and the raising of livestock.” REAL PROPERTY ASSESSMENT GUIDELINES, Glossary, p.1.
 - c. There is no dispute that approximately two acres of the Petitioner’s property is being farmed with traditional row crops. *See Petitioner Exhibit 8*. The Respondent’s representative only argues that the property should not be assessed as agricultural because the Petitioner herself does not do any of the farming. However, there is no requirement that a property be farmed by the owner of the land and the Board will not read such a requirement into the Indiana Code. Moreover, while the Respondent’s representative did not address the remaining acre planted with trees, the Board notes that planting and harvesting trees is a recognized agricultural activity. *See GUIDELINES, Glossary, p.1* (defining agricultural use as the “production of ...

⁵ The property’s assessment increased more than 5% between 2007 and 2008, and therefore under Indiana Code § 6-1.1-15-17.2, the assessor would have the burden of proof in the Petitioner’s 2008 appeal. However, because this matter turns on whether the property is used for agricultural purposes rather than the market value-in-use of the property, the result is the same whether the Board finds that the Petitioner proved its property was agricultural for all three assessment years or whether the Respondent failed to prove the property was not agricultural for 2008 and the Petitioner proved the property was agricultural for 2009 and 2010.

- timber”). The Petitioner’s evidence shows that the Petitioner purchased and planted hundreds of trees on the property starting in 2006. *See Petitioner Exhibits 8 and 10.* The Petitioner’s pictures show trees planted in rows, like a nursery, and the Petitioner’s “Master Plan” specifically calls for starting a nursery, planting Christmas trees and harvesting mature trees as recommended by foresters. *Petitioner Exhibit 6.* Thus, the Board finds that the Petitioner raised a prima facie case that her property should be assessed as agricultural land for the 2008, 2009 and 2010 assessment years.
- d. Once the Petitioner establishes a prima facie case, the burden shifts to the Respondent to rebut the Petitioner’s evidence. *See American United Life Insurance Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). Here, the Respondent’s representative argues that the property was correctly assessed based on its market value or sales price. However, because of the special rules related to the assessment of agricultural land, the Board finds that such argument – even if supported by probative evidence – does not rebut a finding that the property is agricultural land.
 - e. Agricultural land is valued based on the productive capacity of the land, regardless of the land’s potential highest and best use. GUIDELINES, ch. 2 at 99. The Indiana General Assembly directed the Department of Local Government Finance (DLGF) to establish rules for determining the true tax value of agricultural land. Indiana 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. GUIDELINES, ch. 2 at 98-99. The 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 105-106. 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.
 - f. The Guidelines value agricultural land utilizing a mass-appraisal income approach, rather than the mass-appraisal cost approach or the mass-appraisal sales comparison approach used to value other land types. MANUAL, pg. 13-14. *See also* GUIDELINES, ch. 2 at 99. For 2002, the statewide market value-in-use, or base rate, for agricultural land was established at \$1,050 per acre.⁶ For the assessment year of March 1, 2006, the DLGF’s unpublished base rate had similarly been calculated at \$1,050 based on data from 2000, 2001, 2002, and 2003. Senate Enrolled Act (SEA) 327, however, froze the agricultural land base rate at \$880. P.L. 228, Sec. 34; 2005 Ind. Acts 3764. The Act further instructed the DLGF to adjust the method used in determining the annual adjustment to a six-year rolling average rather than the four-year rolling average the DLGF had previously used. P.L. 228, Sec. 4; 2005 Ind. Acts 3724. Thus,

⁶ The base rate is calculated using the formula “Market Value in Use = Net Income/Capitalization Rate,” where net income is represented by a four-year rolling average of owner-occupied production income and cash rental income, and the capitalization rate is based on the annual average interest rate on agricultural real estate and operating loans in Indiana for the same four-year rolling period. GUIDELINES, ch. 2 at 99-100. The 2002 base rate of \$1,050 was based on the four year period of 1995 – 1998. *Id.*

in instructing the DLGF to modify the Guidelines' calculation of the base value of agricultural land, the Legislature again demonstrated its intent to treat the assessment of agricultural land differently from that of land purchased for industrial, commercial or residential use.

- g. The statewide agricultural land base rate value was \$1,200 per acre in 2008; \$1,250 per acre in 2009; and \$1,290 per acre in 2010, based on a six-year rolling average of market value-in-use as calculated by the DLGF pursuant to 50 IAC 21-6-1(a). The sale price of the property or the market value-in-use of the property based on comparable sales does not change this value. Therefore the Board finds that the Respondent failed to rebut or impeach the Petitioner's case.

Conclusion

15. The Petitioner raised a prima facie case that her property was used for agricultural purposes for the 2008, 2009 and 2010, assessment dates. The Respondent failed to rebut or impeach the Petitioner's prima facie case. Thus, the Board finds that for March 1, 2008, March 1, 2009, and March 1, 2010, the property at issue in this appeal is agricultural land and should be valued according to the statewide agricultural base rates of \$1,200 per acre for 2008, \$1,250 per acre for 2009, and \$1,290 per acre for 2010.

Final Determination

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review now determines that the assessed value of the Petitioner's property should be lowered to reflect its agricultural use in 2008, 2009 and 2010.

ISSUED: August 3, 2012

Chairman,
Indiana Board of Tax Review

Commissioner,
Indiana Board of Tax Review

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 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 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/bills/2007/SE0287.1.html>.