

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

Petition: 47-001-02-1-5-00001
Petitioner: John Mac Holsapple
Respondent: Bono Township Assessor (Lawrence County)
Parcel: 01-000197-00
Assessment Year: 2002

The Indiana Board of Tax Review (the 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 Lawrence County Property Tax Assessment Board of Appeals (the PTABOA) by filing Form 130 dated July 23, 2004.
2. The PTABOA mailed notice of its decision to the Petitioner on January 10, 2005.
3. The Petitioner filed a Form 131, Petition to the Indiana Board of Tax Review for Review of Assessment, on February 8, 2005. The Petitioner elected to have this case heard according to the small claims procedures outlined in 52 IAC 3.
4. The Board issued a notice of hearing to the parties dated December 08, 2005.
5. The Board held an administrative hearing on January 11, 2006, before Paul Stultz, the duly appointed Administrative Law Judge (ALJ).
6. The following persons were present and sworn as witnesses at the hearing:
John Holsapple, owner,
Elden Holsapple, owner's brother,
April Stapp Collins, County Assessor,
Sharon Ball, Bono Township Assessor.

Facts

7. The property is a vacant one-acre parcel of land.
8. The ALJ did not conduct an on-site inspection of the property.
9. The assessed value as determined by the PTABOA is \$1,400.
10. The Petitioner requested an assessed value of \$100 or less for this parcel.

Issue

11. Summary of Petitioner's contentions supporting a change in assessment:

- a. The subject property is used as agricultural woodlands. *E. Holsapple testimony*. There has been no change in the use of the subject property for the past 65 years. *Id.* An aerial photo shows the property is completely covered by tree canopy. *Pet'r. Ex. 2.*
- b. The Petitioner presented 8 photographs of the property to show the property is wooded and rocky. *Pet'r Ex. 10.* The Petitioner presented a letter from the Indiana Department of Natural Resources in which District Forester Janet Eger stated the property and surrounding area is wooded. *Pet'r Ex. 3.*
- c. Property surrounding the subject is assessed as woodlands. *Pet'r Ex. 9, at 22-24, 26-31.* The property should be assessed in a similar manner as the neighboring properties. *E. Holsapple testimony.* The subject property and neighboring properties consist of Caneyville-Gilpin-Rock outcrop (CfF). *Id.; Pet'r Exs. 2c, 5.* Property surrounding the subject is assessed as woodlands with soil type CfF. *E. Holsapple testimony; Pet'r Ex. 9, at 22-24, 26-31.*

Most areas of these soils are in woodland. These soils are generally unsuited to corn, soybeans, and small grain because of the very severe hazard of erosion and steepness of slope. They are also generally unsuited to grasses and legumes for hay and pasture; however, some of the less sloping areas are suitable for limited grazing.

These soils are poorly suited to trees. Although woodland is the most suitable use of these soils, they are not a good site for the production of high quality woods.

These soils are generally unsuited to building sites because of slope or depth to rock and slope. They are severely limited for local roads and streets, dominantly because of slope and low strength. *** These soils are generally unsuited to septic tank absorption fields because of steep slope, depth to bedrock, and restricted permeability.

Pet'r. Ex. 5.

- d. The property is land locked and is not accessible. *E. Holsapple testimony.* The property is in a rural area and has not been zoned. *Id.*

12. Summary of Respondent's contentions supporting the current assessment:
- a. The property is assessed as excess residential acreage as were other similar properties in Lawrence County and surrounding counties. *Collins testimony; Resp't Exs. 6, 7-12, 15-18, 19-79.* Nothing in the "assessing code" has the five-acre limit, but it is applied in the county to be equitable with all residents. *Id.*
 - b. Absent any evidence of agricultural activity, all lots in Lawrence County with less than 5 acres are assessed as excess residential acreage. *Collins testimony.*
 - c. The Petitioner does not actively farm the subject property. The Petitioner does not own any other property adjacent to it. *Ball testimony; J. Holsapple testimony.* Petitioner does not file a Form 102 Farm Personal Property Return in Lawrence County. *Collins testimony; J. Holsapple testimony.*
 - d. The subject property has a 15% negative influence factor because it is landlocked. *Collins testimony; Resp't Ex. 6.*

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 1 – copy of statement of opinions,
Petitioner Exhibit 2 – Maps — aerial map, plat map, and soil productivity map,
Petitioner Exhibit 3 – Letter from Indiana Dept. of Natural Resources to Ms. Collins dated October 4, 2004,
Petitioner Exhibit 4 – Statement titled "readily available to the assessor,"
Petitioner Exhibit 5 – Copy of one page from an unidentified publication,
Petitioner Exhibit 6 – Soil productivity factors,
Petitioner Exhibit 7 – Graph comparing subject's assessed value to comparable assessed values,
Petitioner Exhibit 8 – Subject property record card (PRC) for the 1995 reassessment,
Petitioner Exhibit 9 – PRCs of the subject and ten comparable properties used to develop Petitioner's exhibit 7,
Petitioner Exhibit 10 – Eight photos of subject property,
Respondent Exhibit 1 – Warranty Deed conveying described property to Aaron Holsapple,
Respondent Exhibit 2 – quit-claim deed to John Holsapple,
Respondent Exhibit 3 – Warranty Deed conveying described property to John Holsapple,
Respondent Exhibit 4 – plat map of Sec. 7 T3N R2E,

Respondent Exhibit 5 – plat map of Sec. 18 T3N R2E,
Respondent Exhibit 6 – PRC for the subject property,
Respondent Exhibit 7 – PRC for parcel 01 000193 00,
Respondent Exhibit 8 – PRC for parcel 01 000191 00,
Respondent Exhibit 9 – PRC for parcel 01 000192 00,
Respondent Exhibit 10 – PRC for parcel 01 000198 00,
Respondent Exhibit 11 – PRC for parcel 01 000201 00,
Respondent Exhibit 12 – PRC for parcel 01 000197 00 for the 1995 reassessment,
Respondent Exhibit 13 – Form 115,
Respondent Exhibit 14 – Form 130,
Respondent Exhibit 15 – letter from Washington County Assessor,
Respondent Exhibit 16 – letter from Orange County Assessor,
Respondent Exhibit 17 – letter from Martin County Assessor,
Respondent Exhibit 18 – letter from Greene County Assessor,
Respondent Exhibit 19 – PRC 010-07620-00 from Monroe County,
Respondent Exhibit 20 – PRC 004-04980-00 from Monroe County,
Respondent Exhibit 21 – PRC from Bono Township,
Respondent Exhibit 22 – PRC from Bono Township,
Respondent Exhibit 23 – PRC from Bono Township,
Respondent Exhibit 24 – PRC from Bono Township,
Respondent Exhibit 25 – PRC from Bono Township,
Respondent Exhibit 26 – PRC from Bono Township,
Respondent Exhibit 27 – PRC from Bono Township,
Respondent Exhibit 28 – PRC from Bono Township,
Respondent Exhibit 29 – PRC from Guthrie Township,
Respondent Exhibit 30 – PRC from Guthrie Township,
Respondent Exhibit 31 – PRC from Guthrie Township,
Respondent Exhibit 32 – PRC from Guthrie Township,
Respondent Exhibit 33 – PRC from Guthrie Township,
Respondent Exhibit 34 – PRC from Indian Creek Township,
Respondent Exhibit 35 – PRC from Indian Creek Township,
Respondent Exhibit 36 – PRC from Indian Creek Township,
Respondent Exhibit 37 – PRC from Indian Creek Township,
Respondent Exhibit 38 – PRC from Indian Creek Township,
Respondent Exhibit 39 – PRC from Marion Township,
Respondent Exhibit 40 – PRC from Marion Township,
Respondent Exhibit 41 – PRC from Marion Township,
Respondent Exhibit 42 – PRC from Marion Township,
Respondent Exhibit 43 – PRC from Marion Township,
Respondent Exhibit 44 – PRC from Marshall Township,
Respondent Exhibit 45 – PRC from Marshall Township,
Respondent Exhibit 46 – PRC from Marshall Township,
Respondent Exhibit 47 – PRC from Marshall Township,
Respondent Exhibit 48 – PRC from Marshall Township,
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Respondent Exhibit 51 – PRC from Marshall Township,
Respondent Exhibit 52 – PRC from Marshall Township,
Respondent Exhibit 53 – PRC from Marshall Township,
Respondent Exhibit 54 – PRC from Marshall Township,
Respondent Exhibit 55 – PRC from Perry Township,
Respondent Exhibit 56 – PRC from Perry Township,
Respondent Exhibit 57 – PRC from Perry Township,
Respondent Exhibit 58 – PRC from Perry Township,
Respondent Exhibit 59 – PRC from Perry Township,
Respondent Exhibit 60 – PRC from Pleasant Run Township,
Respondent Exhibit 61 – PRC from Pleasant Run Township,
Respondent Exhibit 62 – PRC from Pleasant Run Township,
Respondent Exhibit 63 – PRC from Pleasant Run Township,
Respondent Exhibit 64 – PRC from Pleasant Run Township,
Respondent Exhibit 65 – PRC from Shawswick Township,
Respondent Exhibit 66 – PRC from Shawswick Township,
Respondent Exhibit 67 – PRC from Shawswick Township,
Respondent Exhibit 68 – PRC from Shawswick Township,
Respondent Exhibit 69 – PRC from Shawswick Township,
Respondent Exhibit 70 – PRC from Shawswick Township,
Respondent Exhibit 71 – PRC from Shawswick Township,
Respondent Exhibit 72 – PRC from Shawswick Township,
Respondent Exhibit 73 – PRC from Spice Valley North Township,
Respondent Exhibit 74 – PRC from Spice Valley North Township,
Respondent Exhibit 75 – PRC from Spice Valley South Township,
Respondent Exhibit 76 – PRC from Spice Valley South Township,
Respondent Exhibit 77 – PRC from Spice Valley South Township,
Respondent Exhibit 78 – PRC from City of Bedford,
Respondent Exhibit 79 – PRC from City of Bedford,
Respondent Exhibit 80 – Discovery request from J. Holsapple,
Respondent Exhibit 81 – List of witnesses and evidence for Respondent,
Respondent Exhibit 82 – List of witnesses and evidence for Respondent,
Respondent Exhibit 83 – Discovery request from county assessor,
Respondent Exhibit 84 – Evidence list from Petitioner
Board Exhibit A – Form 131,
Board Exhibit B – Notice of Hearing.

- d. These Findings and Conclusions,
- e. The parties requested the Board to take judicial notice of the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (incorporated by reference in 50 IAC 2.3-1-2) (GUIDELINES), and the 2002 REAL PROPERTY ASSESSMENT MANUAL (incorporated by reference in 50 IAC 2.3-1-2) (MANUAL).

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. *Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *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. *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. *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 Petitioner provided sufficient evidence to support his contentions. This conclusion was arrived at because:
 - a. Real property is assessed on its "true tax value," which does not mean fair market value. It means "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property." Ind. Code § 6-1.1-31-6(c); MANUAL at 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 those 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. MANUAL at 5.
 - b. The Petitioner claims his property should be classified as agricultural woodlands because all the contiguous land is indistinguishable and has that classification. Agricultural property is “[t]he land and improvements devoted to or best adaptable for the production of crops, fruits, timber, and the raising of livestock.” GUIDELINES, Glossary at 1. Woodland property is described as:

Type 6 – Woodland

Woodland is land supporting trees capable of producing timber or other wood products. This land has 50% or more canopy cover or is a permanently planted reforested area. This land use type includes land accepted and certified by the Indiana Department of Natural Resources as forest plantation under guidelines established to minimize soil erosion. An 80% influence factor deduction applies to woodland.

GUIDELINES, ch. 2 at 104.

- c. In this case, the evidence establishes that the best (and perhaps the only realistic) use of this property is for the production of timber. On that basis, the subject property may very well meet the definition of agricultural property, regardless of testimony that it is not being farmed.
- d. The Petitioner presented a prima facie case that the subject property should be assessed as agricultural woodlands. First, the Petitioner presented an aerial photograph showing the property has more than 50% canopy cover. The Petitioner presented a letter from the Department of Natural Resources District Forester stating the property is wooded. The Petitioner also presented photographs of the subject property that show the property is wooded. In addition, the Petitioner presented PRCs of neighboring properties that are classified as woodlands. The Petitioner presented substantial evidence that establishes comparability between his property and those neighboring properties. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470-471 (Ind. Tax Ct. 2005). Those PRCs also establish that all of the immediately surrounding properties have an assessed value of approximately \$100 per acre, but the Petitioner's property has an assessed value of \$1,400 per acre.
- e. The evidence establishes two distinctions between the subject property and the contiguous properties that might have some significance on market value. First, the subject property is only one acre. The others are larger. Second, the subject property is landlocked. These distinctions, however, would not make the subject property more valuable per acre than the contiguous and neighboring properties. The Petitioner made a prima facie case for change because several comparable properties all are assessed at approximately \$100 per acre. The burden shifted to the Respondent to rebut the Petitioner's evidence.
- f. The Respondent contends the assessment is correct and the property is assessed the same as similar property in the county. The Respondent presented multiple PRC's for properties in Lawrence County that are assessed as excess residential acreage. *Resp't Ex. 12-14, 19-79*. The Respondent established that absent any evidence of agriculture activity, all areas in Lawrence County of five acres or less

are assessed as excess residential acreage.¹ The five-acre limit purportedly has "always" been applied to be "equitable" in the county. *Collins testimony*. Other than the fact that the subject and the other properties Respondent presented are all less than 5 acres, there is no probative evidence or explanation about how the properties compare. The Respondent failed to establish how any of those 59 other assessments might be relevant to determining the market value-in-use of the subject property. Without a detailed factual basis for comparison, the assessments of other properties have no probative value. The Respondent did not rebut the Petitioner's evidence.

- g. The assessment of the Petitioner's land cannot be determined properly without considering it in relation to the immediate neighbors. The Respondent offered no probative evidence to support a value for the Petitioner's land that is far in excess of the immediate neighbors' assessments. This case is not one that can be determined by "correct" application of the guidelines regarding classification as agricultural land or excess residential acreage. Again, the guidelines are only a starting point. Significantly, the Respondent did not dispute any of the facts that the Petitioner presented regarding his own property or his comparables. The crux of this case and the Board's decision is that a land assessment cannot be sustained where the undisputed evidence proves it is approximately 14 times more than the assessments on comparable neighboring and contiguous parcels of land.

Conclusion

- 16. The Petitioner made a prima facie case that the Respondent did not rebut. The Board finds in favor of Petitioner. The assessment must be changed to \$100 per acre.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed.

ISSUED: _____

Commissioner,
Indiana Board of Tax Review

¹ The Respondent also offered letters from the assessors in several other counties to establish that they use a similar rule based on size (amounts used range from 1 acre to 10 acres). The Respondent failed to establish the probative value of those letters.

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>.