

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

Petition No.: 03-001-17-1-5-01515-17
Petitioner: Susan Mudge-Trustee/Trust
Respondent: Bartholomew County Assessor
Parcel No.: 03-97-18-000-000.103-001
Assessment Yr.: 2017

The Indiana Board of Tax Review (“Board”) having reviewed the facts and evidence, and having considered the issues, now find and concludes the following.

Procedural History

1. The Susan Mudge Trust claims that the Bartholomew County Assessor incorrectly re-classified and assessed its vacant land located at 200 N & 625 E in Columbus as residential when he should have classified it as agricultural.
2. The Trust filed an appeal with the Assessor challenging its 2017 assessment. On August 18, 2017, the Bartholomew County Property Tax Assessment Board of Appeal (“PTABOA”) issued its determination upholding the assessment and valuing the property at \$100,100.
3. The Trust responded by timely filing a Form 131 petition with us. On October 3, 2018, our designated administrative law judge, Jeremy Owens (“ALJ”), held a hearing on the petition. Neither he nor the Board inspected the property. The following people were sworn-in and testified at the hearing: Bartholomew County Assessor Gordon Wilson, Virginia Whipple, and Milo Smith.

Record

4. The parties offered the following exhibits:

Petitioner’s Exhibit 1:	2016 subject property record card (“PRC”)
Petitioner’s Exhibit 2:	2017 subject PRC
Petitioner’s Exhibit R1:	George Hege affidavit
Petitioner’s Exhibit R3:	GIS aerial map of subject property
Petitioner’s Exhibit A1:	E-mails between Milo Smith and Dean Layman with responses to Respondent Interrogatories and Farm Rental Income and Expense schedules from Susan Mudge’s 2015 and 2016 tax returns (Confidential)
Respondent’s Exhibit A:	Wilson/Whipple resumes
Respondent’s Exhibit B:	Statement of professionalism

Respondent's Exhibit C:	2016 subject PRC
Respondent's Exhibit D:	2017 subject PRC
Respondent's Exhibit E:	GIS aerial map for subject property
Respondent's Exhibit F:	Hardwood Timber Management Plan
Respondent's Exhibit G:	Form letter from Assessor to taxpayers
Respondent's Exhibit H:	Spreadsheet with Assessor's value request
Respondent's Exhibit I:	PRC for Miller property, aerial map and sales disclosure
Respondent's Exhibit J:	PRC for Motamedi property, aerial map, and sales disclosure
Respondent's Exhibit K:	PRC for Banister property, aerial map, and sales disclosure
Respondent's Exhibit L:	Portion of mailing list
Respondent's Exhibit M:	GIS aerial map and PRCs for five properties owned by the Trust
Respondent's Exhibit N:	September 18, 2018 e-mail from Dean Layman to Milo Smith and Jane Chrisman

5. The record also includes the following: (1) all pleadings, motions, briefs, and documents filed in these appeals, (2) all orders and notices issued by the Board or our ALJ, and (3) an audio recording of the hearing.

Objection

6. The Assessor objected to Petitioner's Exhibit R1—an affidavit from George Hege affirming that he rented the subject property to pasture cattle—on grounds that the Trust did not give him a copy of that exhibit before the hearing. The ALJ took the objection under advisement.
7. We overrule the objection. There is no pre-hearing discovery under our small claims rules aside from the parties' obligation to provide opposing parties with copies of their documentary evidence and the names and addresses of their witnesses at least five business days before the hearing. But that obligation arises only if the opposing party timely requests those disclosures. 52 IAC 3-1-5(c)-(d).
8. The Assessor's witness, Virginia Whipple, vaguely referred to having requested the Trust's exhibits. It appears she was referring to a document titled "Respondent's Interrogatories," which the Assessor e-mailed to the Trust's certified tax representative, Milo Smith, on September 18, 2018. Those interrogatories did not ask for copies of the Trust's documentary evidence or the names and addresses of its intended witnesses. Instead, the Assessor sought (1) answers to questions about whether the subject property was being used to produce farming income, and (2) specified documents, such as schedules to tax returns and contracts. The interrogatories directed the Trust to respond by September 28, 2018. Smith responded on September 29, 2018.

9. The interrogatories are an attempt to engage in the type of mandatory pre-hearing discovery barred by our small claims rules. While the Trust was free to respond voluntarily to the request, it was not obligated to do so. But the interrogatories do not substitute for a timely request for pre-hearing disclosures under our small claims rules.¹

Parties' Contentions

Assessor's Contentions

10. The Assessor changed the land type from type 6, agricultural woodland, to type 92, residential property. According to Whipple, assessors were given little guidance in how to determine whether property is being devoted to some agricultural uses, such as harvesting hardwood timber. The Assessor therefore developed forms to send taxpayers asking whether they had a plan for harvesting hardwood timber. Also, where the Assessor anticipated increasing assessments for various reasons, including changing a classification from agricultural to residential or commercial, he sent a form letter enclosing the taxpayer's property record card. The letter also indicated there would be a public meeting where representatives from the Assessor's office would explain the process and answer questions. *Whipple testimony; Resp't Exs. C-D, F-G.*
11. Despite those efforts, the Trust did not respond with any evidence of agricultural activity at the subject property. According to Whipple, the PTABOA even tabled its hearing on the Trust's appeal so the Trust could provide evidence of farming activity. But the Trust never provided such evidence. *Whipple testimony.*
12. Although the Trust has now offered Hege's affidavit indicating that he leased the property to pasture cattle, the Assessor argues that the available evidence does not support Hege's claim. According to Whipple, Hege might have grazed cattle on some of the Trust's other parcels. But none of those parcels is contiguous to the subject property, so there was no way for him to get the cattle from those parcels to the subject property. And there are no fences, shelters, or troughs to suggest grazing activity at the subject property. Although Smith claims that black dots on aerial photographs may show cattle at the property, those dots are scrub trees. Similarly, while Susan Mudge reported farm-rental income on her tax returns, those returns do not attribute the income to any specific parcel. *See Whipple testimony; Resp't Exs. E, M;*
13. To show the property's value as residential land, the Assessor pointed to sales of four vacant tracts with between 10 and 28.63 acres. Those tracts sold for prices ranging from \$3,493/acre to \$9,990/acre, with a median sale price of \$4,482/acre. The Assessor

¹ Even if our small claims rules allowed the parties to engage in discovery, the Assessor's interrogatories did not comply with the Indiana Rules of Trial Procedure. For example, Trial Rule 33 gives a party 30 days to answer written interrogatories unless a court allows a shorter time. *See* Ind. Trial Rule 33(C). The Assessor gave the Trust only 10 days to respond to his interrogatories without seeking an order from us shortening the presumptive response period.

believes that the median price should be applied to the subject property, which would result in a value of \$89,700. *Whipple testimony; Resp't Exs. H-K.*

The Trust's Contentions

14. The Trust argues it had no duty to show that the property was being farmed, either in response to any letter sent by the Assessor during the assessment process, or at hearing. Instead, the Assessor had the burden to show that she correctly re-classified and re-assessed the land as residential. *Smith argument.*
15. In any case, Smith indicated at the PTABOA hearing that Hege leased the land to graze cattle. And the evidence offered at our hearing, including Hege's affidavit, supports that claim. According to Smith, black dots on the aerial photographs offered by both parties appear to be Hege's cows. And Susan Mudge reported farm-rental income and expenses on her federal tax returns for 2015 and 2016. *Smith testimony; Pet'r Exs. A1, R1, R3; Resp't Ex. E.*

Conclusions of Law

Burden of Proof

16. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Two statutes create an exception to that rule under circumstances implicated by this appeal. First, Indiana Code § 6-1.1-15-17.2 assigns the burden of proof to an assessor where, among other things, the assessment under appeal represents an increase of more than 5% over the previous year's assessment. Ind. Code § 6-1.1-15-17.2(b). Second, where an assessor changes a property's land classification, the assessor has the burden of proving the change was correct in any appeal. I.C. § 6-1.1-15-17.1(b).
17. In 2016, the Assessor classified the property as agricultural land and valued it at \$8,000. He re-classified the land as residential the next year, and its assessment jumped to \$100,100. The Assessor therefore has the burden of proving he correctly re-classified and assessed the property.

Discussion

18. With those burdens in mind, we now turn to the evidence. The Assessor offered nothing to support re-classifying the property. Even if Hege did not pasture cattle on the land, the Assessor failed to show that it was used for residential purposes. He did not offer any evidence that the Trust or any previous owner had taken steps to develop the land for residential use.
19. Indeed, the little evidence the parties actually offered persuades us the property was used for agriculture. Hege affirmed that he leased the property to pasture cattle. The fact that neither Hege's property nor the Trust's other parcels border the subject property does little to impeach Hege's sworn statements. Herding cows from an adjacent property is not the only way to transport them to the subject property. The lack of fencing, shelters,

or troughs similarly does little to impeach Hege. Indeed, none of Mudge’s other properties is assessed as having any fencing or shelters, and Whipple did not dispute that Hege pastured cattle on Mudge’s land. Even if the dots shown by the aerial photographs depict scrub trees or bushes rather than cows—and the photographs’ resolution is not clear enough for us to decide that question either way—the absence of cows at the specific times when the photographs were taken means little. Hege did not say he pastured cattle at the property all day every day.

20. The Assessor faulted the Trust for not providing evidence of agricultural activity during the assessment process or at the PTABOA hearing. Our hearings are de novo, however. The Trust was free to offer Hege’s affidavit or any other evidence of agricultural activity at our hearing regardless of whether it offered that evidence below. More importantly, the Assessor had the burden of proof of proving he correctly re-classified the property regardless of whether the Trust chose to offer any evidence at all. Because the Assessor failed to meet his burden, he must change the property’s classification back to agricultural and assess it accordingly.

Final Determination

21. The Assessor failed to meet his burden of showing that he correctly re-classified the subject property from agricultural to residential for the 2017 assessment date. We therefore find for the Susan Mudge Trust and order the Assessor to change the property’s classification back to agricultural and to assess it accordingly.

Date: March 11, 2019

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 after 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>>.