

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-037-02-1-1-00082
Petitioner: Timothy E. Pratt
Respondent: Department of Local Government Finance
Parcel #: 010100100890031
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 in December 2003, in Lake County, Indiana. The Department of Local Government Finance (the DLGF) determined that the Petitioner's property tax assessment for the subject property was \$44,800. The DLGF's Notice of Final Assessment was sent to the Petitioner on March 3, 2004.
2. The Petitioner filed a Form 139L on April 19, 2004.
3. The Board issued a notice of hearing to the parties dated February 18, 2005.
4. A hearing was held on March 22, 2005 in Crown Point, Indiana before Special Master Joan Rennick.

Facts

5. The subject property is located at 14500 W. 185th Avenue, Lowell in West Creek Township.
6. The subject property is a vacant unimproved parcel consisting of 9.951 acres classified as residential excess acres.
7. The Special Master did not conduct an on-site visit of the property.
8. The DLGF determined that the assessed value of the subject property is \$44,800 for the land. There are no improvements on the property.

9. The Petitioner did not specify on his Form 139L what the assessed values for the subject property should be other than to indicate the “agricultural rate” for the land.
10. Jeanette A. Pratt and Timothy Pratt, the property owners, and Rick Niemeyer, West Creek Township Trustee Assessor and witness for the Petitioner, and Joseph Lukomski, Jr., representing the DLGF, appeared at the hearing and were sworn as witness.

Issue

11. Summary of Petitioner’s contentions in support of an alleged error in the assessment:
 - a) The 9.951 acre parcel is currently classified as residential excess acres (Land Type 91) at \$4,500 per acre. The Petitioner contends that the property cannot be used for residential purposes because it is mostly swamp and wasteland. In addition, the property has never been farmed, is in a flood plain and is not fenced for livestock. *T. Pratt testimony.*
 - b) In 1996 the subject parcel was classified as agricultural woodland and the zoning has always been agricultural (A-1). *Petitioner Exhibit 1.* The property is in a metes and bounds description and not a sub-division legal and cannot be sold for residential development. The surrounding area is assessed as agricultural. There are no improvements on the subject parcel. *R. Niemeyer testimony.*
11. Summary of Respondent’s contentions in support of the assessment:
 - a) The current property record card (PRC) shows the land valued as residential excess acreage with no adjustment for woodland. The current assessment increase is because the prior PRC valued the property as farm ground at \$495 per acre with an influence factor of 80% being applied. *Lukomski testimony, Petitioner Exhibit 1 & Respondent Exhibit 2.*
 - b) The Respondent testified that he did not go out and view the property and his decision is based on the information brought in by the Petitioner. The Respondent conceded that there is no reason not to believe what the subject property was used for or assessed for in prior years. *Lukomski testimony.*

Record

12. The official record for this matter is made up of the following:
 - a) The Petition.
 - b) The tape recording of the hearing labeled BTR #1300.
 - c) Exhibits:

Petitioner Exhibit 1: 1996 property record card (PRC)

Respondent Exhibit 1: Form 139L Petition

Respondent Exhibit 2: Subject PRC

Respondent Exhibit 3: Copy of the Guidelines, Chapter 2 pages 99 - 101

Board Exhibit A: Form 139 L Petition

Board Exhibit B: Notice of Hearing on Petition

Board Exhibit C: Sign in Sheet

d) These Findings and Conclusions.

Analysis

13. The most applicable laws are:

- a) A Petitioner seeking review of a determination of the DLGF 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 Board of Tax Commissioners*, 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 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.

14. The Petitioner provided sufficient evidence to support the Petitioner’s contentions. This conclusion was arrived at because:

- a) The Petitioner contends that the classification of the 9.951 acres should be changed from residential excess acres (land type 91) to agricultural woodland (land type 6). *T. Pratt and R. Niemeyer testimonies & Petitioner Exhibit 1*. The Petitioner argues that the property was formerly assessed as agricultural woodland. Additionally, the Petitioner testified that the property is zoned agricultural (A-1). According to Petitioner, it is mostly swamp, partially in a flood zone, cannot be farmed and cannot be sold for residential development. *T. Pratt and R. Niemeyer testimonies*. The witness for the Petitioner testified that the area surrounding the subject is agricultural and that the subject property has more than 50% canopy coverage. *Id*.

- b) Residential land is land that is utilized or zoned for residential purposes. REAL PROPERTY ASSESSMENT GUIDELINES- VERSION A (the GUIDELINES), ch.2 at 68. Residential acreage parcels of more than one acre and not used for agricultural purposes are valued using the residential homesite base rate (if applicable) and the excess acreage base rate established by the township assessor. The excess acreage base rate represents the 1999 acreage value of land when purchased for residential purpose. If there is no dwelling unit on the parcel, the amount of acreage in the entire parcel is multiplied by the appropriate excess acre rate. *Id.* at 68, 69.
- c) Agricultural property is land and improvements devoted to or best adaptable for the production of crops, fruits, timber, and the raising of livestock. GUIDELINES, glossary at 1. Agricultural land assessment involves the identification of agricultural tracts using data from detailed soil maps, aerial photography, and local plat maps. GUIDELINES, ch. 2 at 99. Woodland (land type 6) is a category of agricultural acreage land that is categorized according to its use type and soil identification. 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. An 80% influence factor deduction applies to woodland. *Id.*, at 104.
- d) Here, the Petitioner submitted a PRC from 1996 that shows the subject property classified as agricultural woodland (land type 6). *Petitioner Exhibit 1*. The courts have held that each assessment and each tax year stand alone, and that evidence of a prior assessment alone will not be considered probative evidence. *Glass Wholesalers, Inc. v. State Bd. of Tax Comm'rs*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991). However, Petitioner's witness testified that the property is woodland and that the subject property has more than 50% coverage. *R. Niemeyer testimony*. This testimony was not disputed. The Respondent conceded that there was no reason not to rely on the information from prior year assessment. *Lukomski testimony*. Thus, the Board finds that the Petitioner has raised a prima facie case that the land has been improperly categorized as residential excess acreage. The Respondent did not present sufficient evidence to rebut this. Therefore, the Board finds that the subject property should be categorized as woodland (land type 6).

Conclusion

15. Based on the Petitioners' evidence that the property was categorized incorrectly in its assessment, the Board finds that the subject property should be categorized as land type 6, agricultural woodland and the appropriate influence factor applied.

Final Determination

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

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 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/trialproc/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.