

REPRESENTATIVE FOR PETITIONER:

Gary Emberton, Pro Se

REPRESENTATIVE FOR RESPONDENT:

Sheila Blake

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Emberton Enterprises, Inc.)	Petition No.:	07-002-02-1-5-00186b
)		
)	Parcel:	0030593008
)		
Petitioner,)		
)		
v.)		
)	Brown County	
Washington Township Assessor,)	Washington Township	
)	2002 Assessment	
Respondent.)		

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

December 17, 2007

FINAL DETERMINATION

The Indiana Board of Tax Review (“Board”) has reviewed the evidence and arguments presented in this case. The Board now enters its findings of fact and conclusions of law on the following issue:

Should the land classification be changed to agricultural woodland rather than excess residential acreage?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

HEARING FACTS AND OTHER MATTERS OF RECORD

1. On November 7, 2005, the Brown County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination. On December 10, 2005, Emberton Enterprises, Inc. (“Petitioner”) filed a Form 131 Petition for Review of Assessment, requesting the Board to conduct an administrative review.
2. Kay Schwade, the duly designated Administrative Law Judge (“ALJ”) authorized by the Board, held a hearing in Nashville on August 21, 2007.
3. The following persons were sworn as witnesses at the hearing:
 - For the Petitioner – Gary Emberton,
 - For the Respondent – Sheila Blake.
4. The Petitioner presented a single group of exhibits that collectively apply to a total of seven parcels and appeals. The subject parcel was identified as “Parcel 3008” in exhibit references and in the testimony. The Petitioner presented the following exhibits:
 - Petitioner’s Exhibit 1 – 2002 Form 133 Petition for Correction of Error for Parcel 7001,
 - Petitioner’s Exhibit 2 – 2003 Form 133 Petition for Correction of Error for Parcel 7000,
 - Petitioner’s Exhibit 3 – Aerial map of Parcel 7000/7001,
 - Petitioner’s Exhibit 4 – Sales receipts for timber sales from Parcel 7000/7001,
 - Petitioner’s Exhibit 5 – 2002 Form 133 Petition for Correction of Error for Parcel 5000,
 - Petitioner’s Exhibit 6 – 2003 Form 133 Petition for Correction of Error for Parcel 5000,
 - Petitioner’s Exhibit 7 – Aerial map of Parcel 5000,
 - Petitioner’s Exhibit 8 – 2002 Form 133 Petition for Correction of Error for Parcel 2002,
 - Petitioner’s Exhibit 9 – 2003 Form 133 Petition for Correction of Error for Parcel 2002,
 - Petitioner’s Exhibit 10 – Aerial map of Parcel 2002,
 - Petitioner’s Exhibit 11 – Sales receipts for timber sales from Parcel 2002,
 - Petitioner’s Exhibit 12 – Aerial map of Parcel 3008,
 - Petitioner’s Exhibit 13 – Property record card for Parcel 3008,

Petitioner's Exhibit 14 – Sales receipts for timber sales from Parcel 3008,
Petitioner's Exhibit 15 – Property record card for Joan Collins property,
Petitioner's Exhibit 16 – Aerial map for Parcel 8000,
Petitioner's Exhibit 17 – Property record card for Parcel 8000,
Petitioner's Exhibit 18 – Sales receipts for timber sales from Parcel 8000,
Petitioner's Exhibit 19 – Property record card for Parcel 7000,
Petitioner's Exhibit 20 – Property record card for Parcel 3000,
Petitioner's Exhibit 21 – Letter from Paula Waterman,
Petitioner's Exhibit 22 – Aerial map for Parcel 3000,
Petitioner's Exhibit 23 – Sales receipts for timber sales from Parcel 3000,
Petitioner's Exhibit 24 – Pages 99 through 106 from the 2002 Real Property
Assessment Guidelines – Version A.

5. The Respondent also presented a collective group of exhibits for seven parcels and appeals. The Respondent presented the following exhibits:

Respondent's Exhibit 1 – Property record card for Parcel 8000,
Respondent's Exhibit 2 – Ind. Code § 6-1.1-4-13,
Respondent's Exhibit 3 – Bryan K. Piles, Findings and Conclusions, page 8 of 10
pages,
Respondent's Exhibit 4 – Diane Ritterskamp, Findings and Conclusions, pages 3
and 4 of 6 pages,
Respondent's Exhibit 5 – 2004 Sales Disclosure Form for property located on
Nelson Ridge Road,
Respondent's Exhibit 6 – Aerial map showing location of the Emberton, Burns,
Bay and Butler properties,
Respondent's Exhibit 7 – 2007 Sales Disclosure for the Butler property,
Respondent's Exhibit 8 – Property record card for the Butler property reflecting
the 3/1/2005 assessed value,
Respondent's Exhibit 9 – Property record card for the Burns property,
Respondent's Exhibit 10 – Property record card for the Butler property reflecting
the 3/1/2006 assessed value,
Respondent's Exhibit 11 – Property record card for the Emberton property
reflecting the 3/1/2005 assessed value.

6. The following additional items are recognized as part of the record:

Board Exhibit A – 131 Petition with Form 115 attached,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing Sign In Sheet.

7. The subject property is 21.09 of unimproved, vacant land. It is located at 1417 Borders Road, Nashville.

8. The ALJ did not conduct an on-site inspection of the subject property.
9. The 2002 assessed value determined by the PTABOA on Form 115 was \$71,100. The assessed value changed at some later point, but neither party established the actual amount.
10. The Petitioner did not request a specific value.

CONTENTIONS

11. In prior years, this land had been assessed as agricultural woodland, but for 2002 it originally was assessed as excess residential land. According to the Petitioner, the land classification for Parcel 3008 was changed from residential excess acreage back to agricultural woodland effective for the 2002 and 2003 assessments.¹ That change in land classification was the result of a Form 133 approved by the township assessor and county assessor. The Petitioner is satisfied with that result. *Emberton testimony.*
12. According to the Respondent, the analysis used by the Board in findings for similar properties applies to the Emberton properties. The Board has repeatedly found that it is not enough to “allow nature to take its course” to prove that land is devoted to the production of timber. *Blake testimony; Resp’t Ex. 3, 4.*
13. The Respondent contends the subject property is not devoted to agricultural use. There is no evidence of replanting or reseeded for future timber harvest. The Petitioner purchases timbered land, removes the timber, and then either sells the land or develops the land for residential use. *Blake testimony.*
14. The Form 133 petition was approved by the former township assessor and the former county assessor. The current Washington Township Assessor does not agree with the

¹ The record does not indicate when this change was made; however, it seems reasonable to conclude that it occurred after the Petitioner filed its Form 131 and before the Board’s hearing.

Form 133 action changing the land classification to agricultural woodland. The current township assessor requests the Board to revalue the subject property using the residential excess acreage land classification for the 2002 and 2003 assessments. *Blake testimony*.

ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

15. 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. *See Meridian Towers East & West v. Washington Twp. Assessor*, 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).
16. 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”).
17. 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.

ANALYSIS

18. Even though the record does not indicate a precise dollar figure, undisputed testimony from both the Petitioner and the Respondent indicates a Form 133 was approved by the township assessor and the county assessor for Parcel 3008. The result changed the 2002 assessment to one based on agricultural woodland classification. There is no indication that anybody appealed the decision to change the land back to an agricultural classification or that anybody (including the Respondent) challenged the authority to do so. Consequently, that order stands.

19. The Board will make no determination regarding the propriety or merit of the Form 133 action.
20. The Petitioner indicated satisfaction with the current 2002 land value because this property was changed back to agricultural land classification (even though this testimony does not agree with the property record card that the Petitioner introduced for this parcel). The Petitioner seeks to maintain the status quo, rather than change the assessment. The record is unclear as to what that value is and the Board will make no determination about its accuracy.
21. The Respondent asked the Board to reclassify the subject property as residential excess acreage. The Board will not do so for two reasons. First, the Respondent is attempting a collateral attack on the Form 133 determination without providing any authority or explanation that might justify it. Second, in seeking to change the current assessment, the Respondent had the burden to make a prima facie case, but that burden was not met. The Respondent failed to present probative evidence that this land is not devoted to agricultural use. *See Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221 (Ind. Tax Ct. 2003); *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998) (stating that conclusory statements do not qualify as probative evidence).

SUMMARY OF FINAL DETERMINATION

22. The assessment will not be changed.

This Final Determination of the above captioned matter is issued on the date first written above.

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, 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 Indiana 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/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <<http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>>