

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

Petition: 07-004-02-1-5-00128
Petitioners: Paul & Jean Manson
Respondent: Washington Township Assessor (Brown County)
Parcel: 003-10190-03
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 Petitioners initiated an assessment appeal with the Brown County Property Tax Assessment Board of Appeals (the PTABOA) by filing Form 130 on May 10, 2005.
2. The PTABOA mailed notice of its decision on August 29, 2005.
3. The Petitioners appealed to the Board by filing a Form 131 with the county assessor on September 14, 2005. The Petitioners elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing to the parties dated January 9, 2007.
5. Administrative Law Judge Paul Stultz held the hearing in Nashville on February 27, 2007. He did not conduct an inspection of the property.
6. Persons present and sworn as witnesses at the hearing:
For Petitioners – Paul Manson, property owner,
For Respondent – Paul Hardin, Washington Township Assessor,
Sheila Blake, Nexus Group.

Facts

7. The property is 5.8 acres of unimproved vacant land located on Lucas Hollow Road, Nashville.
8. The assessed value for land determined by the PTABOA is \$20,300.
9. The Petitioners did not request a specific assessed value for the property.

Issue

10. Summary of Petitioners' contentions in support of alleged error in assessment:
 - a. The property should be classified as agricultural land rather than residential land. It was classified and valued as agricultural land prior to the 2002 reassessment. *Manson testimony.*
 - b. The property is located on a steep hillside with a creek running across the property. A bridge would need to be constructed over the creek to access the property. The creek and problems with flooding would make it difficult to get approval for a septic system. These conditions make the property unsuitable for building. *Manson testimony; Pet'r Ex. 3.*
 - c. The previous owner harvested timber from the property in the past. Since the Petitioners obtained ownership in 1997, there has been no timber harvest from this property. There are no plans to use the property for any income producing activities. *Manson testimony.*
 - d. The Medcalf property adjoins the subject property. Both properties are identical, but the Medcalf property is classified as agriculture land rather than residential land. *Manson testimony; Pet'r Ex. 1, 2.*

11. Summary of Respondent's contentions in support of the assessment:
 - a. In Brown County, hillside locations and the presence of a creek often add to the value of a property, rather than reduce it. In this county, there are several properties where one must "transverse" a creek for access. Several county roads require one to "transverse" a creek. Such circumstances do not seem to reduce value. *Blake testimony.*
 - b. When asked about the primary use of the property on cross-examination, Mr. Manson identified walking and picnicking as the primary uses. He also termed it "a place to get away." He admitted that the Petitioners derived no income from the property and had no plans for it. *Manson testimony.*
 - c. The vacant land sales for the area show that the average sale price per acre is \$6,721. The average price per acre times the acreage of subject property results in an indicated value of \$38,982 (\$6,721 times 5.8 acres). *Blake testimony; Resp't Ex. 1, 5.*
 - d. The property's assessed value is close to its indicated market value. *Blake testimony.*

Record

12. The official record for this matter is made up of the following:
 - a. The Petition,
 - b. A digital recording of the hearing,
 - c. Exhibits:
 - Petitioner Exhibit 1 – Manson's property record card,
 - Petitioner Exhibit 2 – Medcalf's property record card,
 - Petitioner Exhibit 3 – "Comparable Market Analysis" by Hills O'Brown Realty,
 - Respondent Exhibit 1 – Property record card,
 - Respondent Exhibit 2 – "Comparable Market Analysis" by Hills O'Brown Realty,
 - Respondent Exhibit 3 – Copy of Ind. Code § 6-1.1-4-13,
 - Respondent Exhibit 4 – Form 130 Petition,
 - Respondent Exhibit 5 – Brown County vacant land sales spreadsheet,
 - Respondent Exhibit 6 – Brown County 2003 improved parcel sales,
 - Respondent Exhibit 7 – Land order page for NBHD # 7035170,
 - Board Exhibit A – Form 131 Petition,
 - Board Exhibit B – Notice of Hearing,
 - Board Exhibit C – Hearing Sign In Sheet,
 - d. These Findings and Conclusions.

Analysis

13. 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. *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).
 - b. In making its case, a petitioner 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”).
14. The Petitioners did not provide sufficient evidence to support their contentions. The Board reaches this conclusion because:

- a. In Indiana, property is assessed on its "true tax value." Ind. Code § 6-1.1-1-3. Prior to 2002, true tax value was determined under Indiana's assessment regulations. The determination of a property's assessed value was inextricably linked to how the regulations were applied. In 2002, however, Indiana overhauled its property tax assessment system to incorporate an external, objectively verifiable benchmark by which to determine true tax value. That benchmark is market value-in-use.¹ As a result, the new system shifts the focus from examining the methodology of an assessment to examining whether a property's assessed value actually reflects market value-in-use. *See* 50 IAC 2.3-1-1(d). Therefore, determining the current use of the property is one of the most basic parts of assessment analysis.
- b. The fact that the property was assessed as agricultural for prior assessments is irrelevant. "Each tax year stands alone." *Quality Stores, Inc. v. State Bd. of Tax Comm'rs*, 740 N.E.2d 939, 942 (Ind. Tax Ct. 2000); *Barth, Inc. v. State Bd. of Tax Comm'rs*, 699 N.E.2d 800, 808 n.14 (Ind. Tax Ct. 1998).
- c. The Petitioners' evidence and arguments primarily focus on establishing that residential use for the subject property would be problematic. In doing so, they failed to conform to the concept of market value-in-use. The Indiana General Assembly directed the Department of Local Government Finance (DLGF) to establish rules for determining the true tax value of agricultural land. Ind. Code § 6-1.1-4-13. 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. The statute requires "land shall be assessed as agricultural land *only* when it is devoted to agricultural use." Ind. Code § 6-1.1-4-13(a) (emphasis added). The word "devote" means, "to give or apply (one's time, attention, or self) completely." WEBSTER'S II NEW RIVERSIDE DICTIONARY 192 (revised edition). The Petitioners, however, presented no probative evidence that they use the subject property for any significant agricultural purpose.
- d. The Petitioners proved that a contiguous property of exactly the same size (5.8 acres) is assessed as agricultural land. Mr. Manson testified that both parcels are identical and that his brother-in-law, Joseph Medcalf, owns the other one. The evidence is sufficient to conclude that these two properties are comparable in their physical characteristics. Nevertheless, the evidence is not sufficient to establish the assessment of the Medcalf property as agricultural land is proper because how that land is actually used remains unclear. Without specific evidence about the use of the Medcalf property, no meaningful comparison is possible. Consequently, the Medcalf assessment is not probative evidence. Mr. Manson's conclusory statements that his property should be assessed as agricultural because the Medcalf property is assessed on that basis do not qualify as probative

¹ "True tax value" is "[t]he 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." 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2).

evidence. *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

- e. Both parties presented the letter from Hills O'Brown Realty, Inc. without objection. This letter identifies the subject property as "a great location." It speculates that a bridge across the creek would improve access to the property and that it might require a more specialized type of septic system to become a homesite. According to the Petitioners, this letter supports their claim that the property should not be classified as residential land. The Respondent pointed out that the letter says, "the property would market somewhere between \$18,000 and \$20,000." Although this letter purports to be an analysis, it actually is nothing more than a series of unsupported conclusions. The author, Karen L. Smith, did not testify. Her statements are not under oath and there was no opportunity for cross-examination. Furthermore, the record fails to disclose what qualifications, if any, she might have to form an opinion of value for the subject property. The letter is not probative evidence. *Id.* It provides no substantial support for either the Petitioners or the Respondent.
 - f. The Petitioners failed to make a prima facie case that the subject property should be assessed as agricultural land.
 - g. With respect to land valuation, the Guidelines stress that the method for valuing land is of less importance than arriving at the correct value of the land as of the valuation date. GUIDELINES, ch. 2 at 16; *Westfield Golf Practice Center v. Washington Twp. Assessor*, 859 N.E.2d 396, 399 (Ind. Tax Ct. 2007). The Petitioners' argument focuses on the methodology used for the assessment. Even if the assessment of the subject property did not fully comply with the Guidelines, the Petitioners failed to show that the assessment was not a reasonable measure of true tax value. *See* Ind. Admin. Code tit. 50, r.2.3-1-1(d) ("failure to comply with the ... Guidelines ... does not in itself show that the assessment is not a reasonable measure of 'True Tax Value[.]'"). *See Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *Westfield Golf*, 859 N.E.2d at 399. The Petitioners were required to show through market-based evidence that the assessed value does not accurately reflect the property's market value-in-use. *Eckerling*, 841 N.E.2d at 678 (stating that a taxpayer who focused only on methodology and did not prove what the market value-in-use should be failed to make a prima facie case). They did not do so.
15. When a taxpayer fails to provide probative evidence supporting a claim that an assessment should be changed, the Respondent's duty to support the assessment with substantial evidence is not triggered. *See Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003); *Whitley Products*, 704 N.E.2d at 1119.

Conclusion

16. The Petitioners failed to make a prima facie case. The Board finds in favor of Respondent.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now determines that the assessment should not be changed.

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 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>>.