

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

Petition #: 07-004-02-1-5-00174
Petitioner: Danny J. and Vicki L. Gwinn
Respondent: Washington Township Assessor (Brown County)
Parcel #: 003094330001300
Assessment Year: 2002

The Indiana Board of Tax Review (Board) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. The Petitioners initiated an assessment appeal with the Brown County Property Tax Assessment Board of Appeals (PTABOA) by written document dated May 23, 2005.
2. The PTABOA issued notice of its decision on August 25, 2005.
3. The Petitioners initiated an appeal to the Board by filing a Form 131 petition with the Brown County Assessor on September 20, 2005. The Petitioners elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated April 21, 2006.
5. The Board held an administrative hearing on June 1, 2006, before the duly appointed Administrative Law Judge, Alyson Kunack.
6. Persons present and sworn in at hearing:
 - a) For Petitioners: Milo Smith, Taxpayer Representative
Donna Kelp Lutes, Brown County Assessor

b) For Respondent: Frank Kelly, Nexus Group¹

Facts

7. The property located at 8058 Rinnie Seitz Road, Nashville, is classified as residential, as is shown on the property record card for parcel #003094330001300. The property consists of two dwellings and several general purpose structures on 52.5 acres.
8. The Administrative Law Judge (ALJ) did not conduct an inspection of the property.
9. Assessed Value of subject property as determined by the PTABOA:
Land \$132,500 Improvements \$555,700 Total \$688,200.
10. Assessed Value requested by Petitioners on Form 131 petition:
Land \$67,500 Improvements \$400,000 Total \$467,500.
11. Assessed Value requested by Petitioners' Representative at the hearing (*see Pet'rs Ex. 6*):
Land \$76,800 Improvements \$555,700 Total \$632,500.

Issue

12. Summary of the Petitioners' contentions in support of alleged error in assessment:
 - a) The subject land should be classified and assessed as agricultural land. *Smith argument*. In support of the Petitioners' claim in that regard, Mr. Smith testified that "owner" of the subject property told the PTABOA that the Petitioners operated a horse and cattle farm on the subject property. *Smith testimony*.
 - b) The Petitioners also submitted a letter from Danny J. Gwinn to Troy Hobson at the Monroe County Farm Service Agency requesting that Mr. Hobson provide the Petitioners' representative, Milo Smith, with information concerning the use of the subject property. *Pet'rs Ex. 2*. The bottom of that letter contains a handwritten note stating, "Mr. Gwinn does not participate in any of our programs, therefore the only information I have is our records show 36.7 acres of cropland." *Id*.

¹ Mr. Kelly did not properly appear on behalf of the Respondent. A party may appear by authorized representative pursuant to the Board's procedural rules. Ind. Admin. Code tit. 52, r. 2-3-2; Ind. Admin. Code tit. 52, r. 3-1-4. The party's representative, however, must file with the Board written notice of his or her authorization to represent the party. *Id*. Moreover, because Mr. Kelly is not an elected or appointed official or employee of any local unit of government, he could only represent the Respondent in his capacity as a certified tax representative. *See* 52 IAC 1-1-6 (stating that the term "tax representative means a person who represents another person at a proceeding before the board under IC 6-1.1-15," but does not include "representatives of local units of government appearing on behalf of the unit as the authorized representative of another unit."). Mr. Kelly, however, did not file a power of attorney with the Board as required for tax representatives. 52 IAC 2-3-2; 52-3-1-4. In fact, Mr. Kelly did not file any written notice of appearance whatsoever. Nevertheless, because the Petitioners did not object to Mr. Kelly's appearance in this matter, the Board will consider Mr. Kelly's testimony and arguments on behalf of the Respondent.

- c) The Petitioners therefore contend that 36.7 acres of the subject property should be valued as cropland. *Smith argument*. The Petitioners further contend that the remaining 13.8 acres should be priced as woodland with a negative 80% influence factor. *Smith testimony*. The Petitioners submitted an aerial photograph of the subject property from *Google.com*, which they contend shows that much of the subject property is wooded. *Id.*; *Pet'rs Ex. 8*.
- d) The Petitioners contend that the subject property is not assessed in a uniform and equal manner in comparison to similar properties. *Smith argument*. The Petitioners submitted information regarding eight (8) properties that they contend are similar to the subject property. *Id.*; *Pet'rs Ex. 7*. None of the eight properties is valued as residential excess acreage. *Id.* Each of the comparable properties contains at least some land classified as woodland, which receives a negative influence factor of 80%. *Id.*
- e) To be assessed in a uniform and equal manner, 13.8 acres of the subject property should be priced as woodlands at \$1,050 per acre with a negative influence factor of 80%, and 36.7 acres should be priced as cropland at \$1,050 per acre. *Smith testimony*.
- f) On their Form 131 petition, the Petitioners raised several issues concerning the assessment of the subject improvements. *Board Ex. A*. At the hearing, Mr. Smith filed written notification that the Petitioners were withdrawing those issues. *Board Ex. D*.

13. Summary of the Respondent's contentions in support of the assessment:

- a) The Petitioners did not present any evidence that they use the subject property for an agricultural purpose. *Kelly argument*. The Petitioners did not appear at the hearing to testify about their use of the property. *Id.* The statement presented to the PTABOA was not notarized or in the form of an affidavit. *Id.* The statement that the Petitioners attribute to Troy Hobson at the Monroe County Farm Service Agency is handwritten and unsigned. *Kelly testimony*; *Pet'rs Ex. 2*.
- b) The Respondent relies upon several types of evidence to document agricultural use, including observed farming, evidence of logging operations, sales and purchases of farm animals or farm equipment, and the filing of a Form 102 [Farmer's Tangible Personal Property Assessment Return]. *Kelly testimony*. None of that evidence exists in this case. *Id.* The Petitioners claim to operate a horse and cattle farm; however, they did not present any evidence regarding the sale or purchase of horses, cattle, or other agricultural items. *Id.* The Petitioners did not file a Form 102. *Id.*
- c) The Petitioners keep two (2) or three (3) horses and cows and want to receive favorable tax treatment afforded to agricultural land. *Kelly testimony*. The Respondent's position is that the Petitioners use the subject property for recreational purposes, rather than for agricultural purposes. *Kelly testimony*

- c) In order to qualify for an 80% negative influence factor for woodlands, the land must be classified as agricultural. *Kelly testimony*. The subject property does not qualify for an 80% negative influence factor because it is not devoted to agricultural use. *Id.*

Record

14. The official record for this matter is made up of the following:

- a) The Form 131 petition.
- b) The digital recording of the hearing.
- c) Exhibits:

Petitioners Exhibit 1: Summary of Issues

Petitioners Exhibit 2: Fax from the U.S. Department of Agriculture

Petitioners Exhibit 3: Table 2-24, Agricultural Land Use Types, REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 - VERSION A, ch. 2 at 113

Petitioners Exhibit 4: Table 2-25, Influence Factors for Agricultural Acreage, REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 - VERSION A, ch. 2 at 115

Petitioners Exhibit 5: Subject Property Record Card (“PRC”) as currently assessed

Petitioners Exhibit 6: Subject PRC detailing the assessed value requested

Petitioners Exhibit 7: Summary of Brown County residential properties with acreage including PRCs

Petitioners Exhibit 8: Aerial photograph of the subject property

Respondent: No Exhibits presented

Board Exhibit A: Form 131 petition

Board Exhibit B: Notice of Hearing

Board Exhibit C: Hearing Sign-In Sheet

Board Exhibit D: Withdrawal of Issues

- d) These Findings and Conclusions.

Analysis

15. 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, 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.

16. The Petitioners did not provide sufficient evidence to support their contentions. The Board reaches this conclusion for the following reasons:

- a) The Petitioners contend that 36.7 acres of the subject property should be classified as cropland and valued at \$1,050 per acre, and that 13.8 acres should be classified as woodland and valued at \$1,050 per acre with a negative influence factor of 80%. *Smith testimony*.
- b) As an initial matter, the Board notes that the Petitioners did not present any market-based evidence to demonstrate that the Respondent assessed the subject property in excess of its market value-in-use. Instead, the Petitioners rely solely upon administrative regulations governing the assessment of land devoted to agricultural use and upon their claim that comparable properties are assessed as agricultural land with a negative 80% influence factor.
- c) The Indiana General Assembly has 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(b). The DLGF, in turn, established a base rate of \$1050 to be used in assessing farmland across the State of Indiana. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, ch. 2 at 98-99(incorporated by reference at 50 IAC 2.3-1-2). The Real Property Assessment Guidelines for 2002 – Version A (Guidelines) direct assessors to adjust the agricultural base rate based on soil productivity factors developed from soil maps published by the United States Department of Agriculture. *Id.* at 105-06. The Guidelines further require assessors to classify agricultural land-use types, some of which call for the application of negative influence factors in pre-determined amounts. *Id.* at 102-05. One such classification is “woodland (land type 6),” which the Guidelines describe as “land supporting trees capable of producing timber or other wood products” that has “50% or more canopy cover or is a permanently planted reforested area.” *Id.* at 104. The Guidelines direct assessors to apply an 80% influence factor deduction to land classified as woodland. *Id.*

- d) Only land actually devoted to agricultural use, however, may be assessed under the DLGF's rules for assessment of agricultural land. Ind. Code § 6-1.1-4-13(a). The Petitioners presented little evidence concerning the use of the subject property. Much of the evidence that the Petitioners did introduce is hearsay. While the Board's procedural rules provide that it may admit hearsay evidence, it is not required to assign probative weight to such evidence if it lacks sufficient indicia of reliability. *See* Ind. Admin. Code tit. 52, r. 3-1-5(b) ("Hearsay evidence *may* be considered if not objected to")(emphasis added).
- e) Mr. Smith testified that the "owner" of the subject property told the PTABOA that the Petitioners used all 52.5 acres of the subject property as a horse and cattle ranch. *Smith testimony*. Mr. Smith's testimony in that regard clearly is hearsay. *See* Ind. Evidence Rule 801(c)(defining hearsay as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted"). Moreover, the hearsay statement to which Mr. Smith testified lacks any indicia of reliability. Mr. Smith did not identify which of the two Petitioners made the statement, and it is unclear whether the statement was made under oath. The Petitioner that made the statement in question did not appear before the Board and subject him or herself to cross-examination. The Board therefore assigns little or no weight to Mr. Smith's hearsay testimony regarding the Petitioners' use of the subject property.
- f) The Petitioners also submitted the following handwritten notation on the bottom of a letter from Mr. Gwinn to Troy Hobson at the Monroe County Farm Service Agency: "Mr. Gwinn does not participate in any of our programs therefore the only information I have is our records show 36.7 acres of cropland." *Pet'rs Ex. 2*. Once again, the handwritten notation clearly is hearsay and lacks any indicia of reliability. The statement is not verified. In fact, it does not even bear a signature or any other direct evidence identifying its author. The statement therefore lacks any probative value.
- g) The only other evidence offered by the Petitioners to support their claim that they devoted the subject property to agricultural use is an aerial photograph of the subject property obtained from *Google.com*. *Smith testimony; Pet'rs Ex. 8*. The image, however, is of low resolution and the area marked as the subject property is very small. While the image does tend to support the notion that a portion of the subject property is wooded, it does nothing to show that the property is devoted to agricultural use.
- h) Based on the foregoing, the Petitioners failed to make a prima facie case that the Respondent erred in by not assessing the subject land using the agricultural base rate of \$1,050 per acre and to applying a negative influence factor of 80% to a 13.8-acre portion of the property.
- i) As noted above, the Petitioners also contend that the Respondent failed to assess the subject property in a uniform and equal manner in comparison to similar properties.

To establish a prima facie case that a property has not been assessed in a uniform and equal manner, a taxpayer must present probative evidence demonstrating that comparable properties are assessed and taxed differently than is the subject property. *See Home Federal Savings Bank v. Madison Twp. Assessor*, 817 N.E.2d 332 (Ind. Tax Ct. 2004). When a taxpayer introduces evidence of allegedly comparable properties, the taxpayer must explain how those properties are comparable to the subject property, including factors such as “size, shape, topography accessibility and use.” *Id.*

- j) The Petitioners submitted property record cards for eight (8) properties together with a summary of the agricultural classifications under which the land portion of each property is assessed. *Pet’rs Ex. 7*. The Petitioners, however, did not explain how relevant features of the purportedly comparable properties such as location, topography and accessibility compare to those of the subject property. Instead, the Petitioners appear to base their comparison on grounds that all of the properties are devoted to agricultural use and contain wooded areas. As explained above, the Petitioners did not submit probative evidence to demonstrate that they devoted the subject property to agricultural use. In addition, Mr. Smith testified that he did not know to what uses the purportedly comparable properties were devoted, other than that they were assessed as agricultural. *See Smith testimony*.

- k) Based on the foregoing, the Petitioners failed to establish a prima facie case of a lack of uniformity and equality in assessment.

Conclusion

- 17. 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>>.