

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

Petitions: **07-004-02-1-5-00183**
 07-004-02-1-5-00184
Petitioners: **Brian and Triana King**
Respondent: **Washington Township Assessor (Brown County)**
Parcels: **003094330000801**
 003094330000800
Assessment Year: **2002**

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

Procedural History

1. The Petitioners initiated two assessment appeals with the Brown County Property Tax Assessment Board of Appeals (PTABOA) by written documents dated May 25, 2005.
2. The PTABOA issued notices of its decisions on February 16, 2006.
3. The Petitioners appealed to the Board by filing Forms 131 with the county assessor on March 3, 2006. The Petitioners elected to have these cases heard according to small claims procedures.
4. The Board issued notices of hearing to the parties dated January 9, 2007.
5. The Board held a consolidated administrative hearing before Paul Stultz, the duly appointed Administrative Law Judge, on February 27, 2007. The Administrative Law Judge did not conduct an inspection of the properties.
6. The following persons were present and sworn as witnesses at the hearing:
 For the Petitioners - Brian King, property owner,
 For the Respondent - Paul Hardin, Washington Township Assessor,
 Sheila Blake, Nexus Group.

Facts

7. In prior years, this property had been assessed as a single, contiguous, 40-acre parcel with one house, a detached garage, and three sheds. The Petitioners split the property in 2001. Starting with the 2002 reassessment, parcel 003094330000800 (parcel 800) contains the

original improvements and 26.97 acres. It is identified as 1134 Harrison Ridge Road, Nashville. Parcel 003094330000801 (parcel 801) contains 13.03 acres, which is the balance of the original acreage, plus as a newly constructed dwelling and related new improvements. Parcel 801 is 1138 Harrison Ridge Road.

8. The PTABOA determined the assessed value for parcel 800 is:
land \$91,500 improvements \$47,000 total \$138,500.
9. The PTABOA determined the assessed value for parcel 801 is:
land \$30,300 improvements \$80,600 total \$110,900.
10. The Petitioners did not request a specific total assessed value for either parcel.

Issue

11. Summary of the Petitioners' contentions in support of alleged error in the assessments:
 - a. Each of these parcels has a one-acre homesite with a dwelling. The Petitioners do not dispute that part of the assessments. There is a pond on one of the parcels. The Petitioners dispute only the assessments of the wooded areas that currently are classified as residential excess acreage. These areas should be assessed as agricultural land, which is how they were classified prior to the 2002 reassessment. *King testimony; Pet'rs Ex. 3.*
 - b. Land that has at least 50% canopy cover qualifies as woodland for purposes of assessment. The amount of canopy cover usually is measured from aerial photographs. *King testimony; Pet'rs Exs. 6, 7.* An aerial photograph establishes the Petitioners' two parcels each have more than 50% tree cover. *King testimony; Pet'rs Ex. 8.* Additionally, the Petitioners have consulted with professional foresters since 1999. Timber was sold and harvested from the two parcels during 2001 and 2002. *King testimony; Pet'rs Exs. 9, 10, 15.* The woodland areas were placed in a classified forest program (CFP) in 2006. *King testimony.*
 - c. Comparable properties in the immediate area are classified as agricultural and their wooded areas are assessed as woodland. *King testimony; Pet'rs Exs. 11, 11(A), 12, 12(A), 12(B), 13, 13(B), 14.*
12. Summary of the Respondent's contentions in support of the assessments:
 - a. There were no obvious signs of agricultural use during the reassessment. Therefore, local officials classified the wooded areas as residential excess acreage. *Blake testimony.*
 - b. On cross-examination, when asked about the primary use of the property, Mr. King identified one of the properties as his primary residence. He also identified growing timber and recreation in response to this question. He admitted that

timber sales were not a primary source of income for his household. Mr. King testified that the second house (1134 Harrison Ridge Road) is a rental property. The rent on it is \$600 per month. *King testimony.*

- c. The goals of using land for timber harvest and placing the land in a CFP are in conflict. The CFP allows cutting only trees that are detrimental to the life of the forest. *Blake testimony.*
- d. Because the property at 1134 Harrison Ridge Road (parcel 800) is a rental property producing rental income, the income approach is a better way to determine its value. *Blake testimony.*
- e. The properties identified by the Petitioners as comparable are not relevant. Different circumstances and conditions apply to each of them. *Blake testimony.*
- f. Vacant lots in the same neighborhood sold for an average of \$6,721 per acre and improved lots averaged \$22,415 per acre. *Blake testimony; Resp't Exs. 4, 5.*

Record

13. The official record for this matter is made up of the following:
 - a. The Petitions,
 - b. A digital recording of the hearing,
 - c. Petitioners Exhibit 1 - Form 131 for parcel 800,
Petitioners Exhibit 2 - Form 131 for parcel 801,
Petitioners Exhibit 3 - Property record card (PRC) for the 1995 reassessment,
Petitioners Exhibit 4 - PRC for the 2002 reassessment for parcel 801,
Petitioners Exhibit 5 - PRC for the 2002 reassessment for parcel 800,
Petitioners Exhibit 6 - Communication from Barry Woods (unsigned),
Petitioners Exhibit 7 - Definition of woodland,
Petitioners Exhibit 8 - Aerial photograph of subject parcels,
Petitioners Exhibit 9 - Proposal to purchase timber from the Petitioners,
Petitioners Exhibit 10 - Letter from Charles Ratts, District Forester, to the
Petitioners dated November 10, 2005,
Petitioners Exhibit 11 - PRC for parcel 003094280003700 (parcel 3700),
Petitioners Exhibit 11(A) - Aerial photograph for parcel 3700,
Petitioners Exhibit 12 - PRC for parcel 003094280004400 (parcel 4400),
Petitioners Exhibit 12(A) - PRC for parcel 003094280004300 (parcel 4300),
Petitioners Exhibit 12(B) - Aerial photograph of parcels 4400 and 4300,
Petitioners Exhibit 13 - PRC for parcel 003094280000904 (parcel 904),
Petitioners Exhibit 13(B) - Aerial photograph for parcel 904,
Petitioners Exhibit 14 - PRC for parcel 003094330004201,

Petitioners Exhibit 15 - Timber sale contract,¹
Respondent Exhibit 1 - PRC for parcel 800,
Respondent Exhibit 2 - PRC for parcel 801,
Respondent Exhibit 3 - Copy of Ind. Code § 6-1.1-4-13,
Respondent Exhibit 4 - Brown County vacant residential land sales spreadsheet,
Respondent Exhibit 5 - Brown County 2003 improved parcel sales spreadsheet,
Respondent Exhibit 6 - Land order page for NBHD 7035170,
Board Exhibit A - Forms 131,
Board Exhibit B - Notices of Hearing,
Board Exhibit C - Hearing Sign In Sheet,
Board Exhibit D - Request for Additional Evidence,
Board Exhibit E - Post-hearing Submission Waiver,

d. These Findings and Conclusions.

Analysis

14. 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.

15. The weight of the evidence does not support the Petitioners' contention that their assessed values should be changed. This conclusion was arrived at 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

¹ At the request of the Administrative Law Judge, this document was submitted after the hearing and received by the Board on March 7, 2007.

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.² 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). Determining the current use of the property is one of the most basic parts of any analysis.

- b. The fact that the property was considered to be 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. Previously, this property was assessed as one parcel with one home. In 2001, the Petitioners split that parcel and built a second home. The evidence clearly shows that as of 2002 each parcel contains a one-acre homesite. One of the homes is the Petitioners' primary residence (parcel 801). They rent the other one (parcel 800) for \$600 per month. By stating that they are not challenging the assessed valuation for either of the homesites, the Petitioners attempt to remove the homesites (and associated residential use) from any analysis related to the balance of their properties, but they provided no authority for that position. After considering all of the evidence regarding these two parcels, it would be artificial and inappropriate not to consider the use of each parcel in its entirety when deciding whether they are residential or agricultural parcels.
- d. 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. The DLGF established a base rate of \$1050 for assessing agricultural land throughout the state. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002—VERSION A, ch. 2 at 98-99 (incorporated by reference at 50 IAC 2.3-1-2). These Guidelines direct assessors to adjust the base rate using soil productivity factors developed from soil maps published by the United States Department of Agriculture. *Id.* at 105-06. The Guidelines also authorize some negative influence factors. *Id.* at 102-05.
- e. 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. In order to get an agricultural land assessment, the Petitioners would have to demonstrate that they devoted the subject property to agricultural purposes as of the assessment date, March 1, 2002. Merely proving *some* agricultural use is not sufficient for a parcel to be assessed as agricultural land because the statute requires "land shall be assessed as agricultural land only

² "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).

when it is devoted to agricultural use." Ind. Code § 6-1.1-4-13(a). The word "devote" means "to give or apply (one's time, attention, or self) completely." WEBSTER'S II NEW RIVERSIDE DICTIONARY 192 (revised edition). This statutory language does not appear to preclude other incidental uses, but the weight of the evidence in this case does not establish that the subject property is *devoted* to agricultural use.

- f. The Petitioners presented an aerial photograph of the subject property showing that it is heavily wooded with more than 50% canopy cover. Undisputed evidence shows that on March 28, 2001, the Petitioners sold 104 trees from the subject property for \$12,521. Further undisputed evidence shows that this timber harvest caused little damage to the remaining trees and left a good mix of trees for future harvests. The fact that the Petitioners sold some timber, however, does not necessarily establish devotion to agricultural use as required by statute and the Guidelines. In addition to the sale, District Forester Ratts' letter described the Timber Stand Improvement (TSI) plan that should follow the harvest:

TSI can be compared to weeding a flower bed or garden. In TSI, undesirable trees are deadened or cut down to favor the growth of more desirable trees. After a harvest, the TSI will mainly be concerned with locating openings where trees were removed and completing and enlarging the openings to get the maximum amount of sunlight to the forest floor. This will create the ideal conditions to regenerate the woods with sun loving species of trees such as tulip tree, ash, oak and cherry.

Pet'rs Ex. 10. Mr. King testified that he was following the TSI plan in order to have continuing future harvests. These facts constitute substantial, probative evidence in support of the purported agricultural use of both parcels.

- g. The Petitioners also presented aerial photographs and property record cards for several neighboring properties. While this evidence perhaps shows similar tree cover and that the land on those other parcels is assessed as agricultural land, the evidence fails to establish the use to which those properties might be devoted. The record is not sufficient to establish any probative value regarding any of the neighbor's assessments.
- h. In this case, there is also substantial, probative evidence of other uses that are not agricultural. As previously noted, cross-examination identified three primary uses: primary residence, growing timber, and recreation. In addition, the undisputed evidence established that the Petitioners receive \$600 per month renting the second house.
- i. These various uses are not mutually exclusive or incompatible. After reviewing all of the evidence, the Board is convinced that the usage really is a mixture of all these elements. The relative significance of the timber production is diminished

by the Petitioners' admission that selling timber is not a primary source of income for their household. In addition, the Petitioners presented no evidence about projected income from additional sales and no other kind of financial data or analysis to support the importance of the agricultural use.

- j. After weighing all of the evidence, the Board is not convinced that the current assessment is incorrect because it considered these two parcels as residential, rather than agricultural, properties.
 - k. Although the Petitioners only focused on seeking a change to agricultural woodland classification and avoided discussing the negative influence factor associated with the woodland classification, it appears that a negative 80% influence factor³ is part of their goal.⁴
 - l. An influence factor is "[a] multiplier that is applied to the value of land to account for characteristics of a particular parcel of land that are peculiar to that parcel. The factor may be positive or negative and is expressed as a percentage." GUIDELINES, glossary at 10. The criteria for an influence factor include "evaluating whether a particular condition actually influences the value of the parcel." GUIDELINES, ch. 2 at 11.
 - m. In a typical farming situation, the existence of a woodland area on part of the farm would be a limitation on the use of that land for growing other kinds of crops such as corn, beans, and wheat. Consequently, that kind of limitation would probably make the woodland less valuable for most farming uses and a negative influence factor as described in the Guidelines for agricultural woodlands would be appropriate. Where the only type of agricultural use for a property is producing timber, however, the Board perceives no reason that the tree canopy or forestation should be recognized as having a negative impact on the value-in-use of such a property. In this particular case, the Petitioners offered no evidence or explanation to support any conclusion that the acres of trees around their two houses have any negative effect on the value of either parcel. Furthermore, the Petitioners presented substantial evidence regarding their efforts to preserve and maintain those trees. In this case there is no substantial evidence that the trees surrounding the Petitioners' two houses have any negative impact on their use of the property.
16. 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*,

³ "An 80% influence factor deduction applies to woodland." GUIDELINES, ch. 2 at 104.

⁴ The property record card for parcel 801 shows 12.03 acres of residential excess acreage assessed with a base rate of \$1050 per acre. This amount is the same as the agricultural land base rate. In pursuing the appeals, the Petitioners failed to specify the exact value they seek, but it seems logical to conclude they want something less than the current assessment. That goal apparently is the agricultural land base rate with an 80% negative influence factor, which would be \$210 per acre.

859 N.E.2d 396, 399 (Ind. Tax Ct. 2007). The Petitioner's 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 Petitioner 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 Petitioner was 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). The Petitioner did not do so.

Conclusion

17. The evidence does not support the Petitioners' claim that their land assessments should be changed to agricultural woodland.

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: May 22, 2007

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>.