

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

Petition #: 07-004-02-1-5-00184A
Petitioners: Jack L. & Shirley A. Barkhimer
Respondent: Washington Township Assessor (Brown County)
Parcel #: 0030076001
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 December 1, 2005.
2. The PTABOA mailed notice of its determination on June 1, 2006.
3. The Petitioners filed a Form 131 Petition to the Indiana Board of Tax Review for Review of Assessment on June 5, 2006. The Petitioners elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated March 20, 2007.
5. The Board held an administrative hearing on May 9, 2007, before its duly appointed Administrative Law Judge, Jennifer Bippus (“ALJ”).
6. Persons present and sworn in at hearing:
 - a) For Petitioners: Shirley A. Barkhimer, Owner
Jack L. Barkhimer, Owner
 - b) For Respondent: Sheila Blake, Nexus Group

Facts

7. The subject property includes a total of 79.25 acres, consisting of a one-acre homesite and 78.25 acres classified as residential excess acreage. The property is located at 7130 Rinnie Seitz Road in Nashville.

8. The ALJ did not inspect the subject property.
9. The PTABOA assessed the subject property as follows:
Land \$146,400 Improvements \$112,600 Total \$259,000.
10. The Petitioners wrote “agricultural rates” in the space designated for their requested land value on their Form 131 petition. The Petitioners left the space designated for them to request an improvement value blank. The Petitioners did not dispute their improvements’ value at the Board’s administrative hearing.

Parties’ Contentions

11. Summary of the Petitioners’ contentions:
 - a) The Respondent changed the subject property’s land classification for the 2002 general reassessment. Before that reassessment, the subject land had been classified as agricultural woodland. It is now classified as residential excess acreage. *S. Barkhimer testimony.*
 - b) The Petitioners submitted a copy of an e-mail from Barry Wood, Assessment Division Director for the Department of Local Government Finance, to a neighboring property owner who was protesting his taxes. *Pet’rs Ex. 5.* Mr. Wood’s e-mail includes excerpts from the Real Property Assessment Guidelines for 2002 – Version A (“Guidelines”). Those excerpts describe “Type 6 – Woodland” as land supporting trees capable of producing timber or other wood products and that has 50% or more canopy cover. *Id.; S. Barkhimer testimony.* The Petitioners also attended a meeting at which Katrina Hall, Director of Government Relations for Indiana Farm Bureau, spoke. *S. Barkhimer testimony; Pet’rs Ex. 6.* Ms. Hall said that land with over 50% canopy coverage should be classified as woodland, not residential. *Id.*
 - c) The Petitioners contend that their land fits the Guidelines’ description of agricultural woodland. *Id.* Almost 55 years ago, Mr. Barkhimer’s family planted 4,000 pine and walnut trees throughout the property’s lower elevations. *J. Barkhimer testimony.* The Petitioners submitted photographs taken by the United States Department of Agriculture (“USDA”) showing a wooded canopy over their property. *S. Barkhimer testimony; Pet’rs Ex. 3.*
 - d) On June 27, 2006, the Petitioners applied to have the subject land classified as forest under Ind. Code § 6-1.1-6. *S. Barkhimer testimony; Pet’rs Ex. 7.* Their application was accepted, and beginning in 2007, a 76.75-acre portion of the property will be taxed at \$1 per acre. *S. Barkhimer testimony.*
 - e) Mr. Charles Ratts, District Forester, prepared a Woodland Stewardship Plan (“Stewardship Plan”) for the Petitioners. *J. Barkhimer testimony; Pet’rs Ex. 8.* The Stewardship Plan says that the Petitioners’ goals for the subject property “are to use

the area for personal recreation by family and provide wildlife habitat. Harvesting of forest products may also take place as needed to utilize the resource and enhance the primary objectives.” *Pet’rs Ex. 8 at 1*. While there was enough mature timber to justify a selective harvest, the Stewardship Plan also indicates that, because harvesting trees is a “low priority,” the Petitioners should consider the trees as a “savings account.” *Id. at 1-2, 4*.

- f) The Petitioners decided to have some of the forest harvested. Thus, on December 20, 2006, they entered into a Timber Sale Contract with Hope Hardwoods. *Pet’rs Ex. 9*. The trees that were part of that contract had been marked and Hope Hardwoods had timbering equipment on the subject property at the time of the Board’s hearing. *S. & J. Barkhimer testimony*. The Petitioners, however, did not attempt to sell any trees until after the subject land was accepted into the Classified Forest Program. *S. Barkhimer testimony*.
- g) The Petitioners’ cabin is located on one side of Rinnie Seitz Road, and the remaining property is on the other side of the road. *S. Barkhimer testimony; Pet’rs Ex. 4*. The Petitioners contend that it is almost impossible to access to the property’s back-40 acres, although they conceded that timbering equipment and possibly four-wheeled vehicles may be able to do so. *S. & J. Barkhimer testimony*.

12. Summary of the Respondent’s contentions:

- a) The Respondent assessed one-acre of the subject land as a homesite at \$17,700. *Blake testimony; Resp’t Ex. 1*. The Respondent assessed the next 19 acres as residential excess acreage at \$3,500 per acre, and the remaining 59.25 acres as residential excess acreage at \$1,050 per acre. *Id.* The homesite value accounts for the driveway, septic system, and landscaping. *Blake testimony*. The \$3,500-per-acre excess-acreage rate was derived from a ratio study of land that sold between 1999 and 2002. *Id.* The \$1,050 excess-acreage rate is the same as the agricultural base rate for the 2002 general reassessment. *Id.*
- b) Under Indiana Code § 6-1.1-4-13(a), land may only be assessed as agricultural when it is devoted to agricultural use. *Blake testimony; Resp’t Ex. 2*. The Respondent points to portions of two determinations in which the Board interpreted “devote” to mean “to give or apply (one’s time, attention, or self) completely.” *Id.*
- c) The Respondent admits the Petitioners are excellent stewards of the land but contends that they do not apply the land exclusively to agricultural uses. *Id.* In fact, the Respondent notes that the Stewardship Plan lists family recreation and maintaining a wildlife habitat as the Petitioners’ primary goals for their land. *Blake argument; Pet’rs Ex. 8*. Harvesting timber is merely a secondary goal designed to enhance those primary goals. *Id.* The Respondent further notes the Petitioners did not sign the Timber Sale Contract until December 2006. *Blake testimony*.

- d) The Petitioners have taken Mr. Wood's e-mail describing the "Type 6-Woodland" classification out of context. *Blake argument*. That applies only to classifying the specific type of agricultural land being assessed, not to whether the land is devoted to agricultural use in the first place. *Id.*

Record

13. 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: Subject property record card ("PRC") and tax statement,
Petitioners Exhibit 2: Petition to the Indiana Board of Tax Review (Form 131 Petition),
Petitioners Exhibit 3: USDA Farm Service Agency photograph of the subject property,
Petitioners Exhibit 4: Topography map of the subject property,
Petitioners Exhibit 5: E-mail to the Petitioners' neighbor from Barry Wood, Department of Local Government Finance (DLGF),
Petitioners Exhibit 6: Program from Brown County Farm Bureau Meeting listing Katrina Hall as speaker,
Petitioners Exhibit 7: Application for the Classification of Land as Forest Land,
Petitioners Exhibit 8: Woodland Stewardship Plan prepared by Charles Ratts, District Forester,
Petitioners Exhibit 9: Timber Sale Contract,

Respondent Exhibit 1: Subject PRC,
Respondent Exhibit 2: Copy of Indiana Code § 6-1.1-4-13,
Respondent Exhibit 3: Page 8 of Final Determination for Pet. No. #07-003-02-1-5-00174,
Respondent Exhibit 4: Pages 3 – 4 of Final Determination for Pet. No. #07-002-02-1-5-00040,
Respondent Exhibit 5: Land Order Page for NBHD #7035170,
Respondent Exhibit 6: Power of Attorney authorizing Sheila Blake to Represent Washington Township Assessor,

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

14. The most applicable governing cases are:
 - a) A petitioner seeking review of an assessing official's determination 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 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); *see also Meridian Towers*, 805 N.E.2d at 479.

15. The Petitioners did not provide sufficient evidence to support their contentions. The Board reaches this conclusion for the following reasons:
 - a) The Petitioners initially attack the subject property's assessment on grounds that the Respondent had classified the subject property as agricultural woodland in prior assessments. Each assessment and each tax year, however, stands alone. *Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001). Thus, evidence of a property's assessment in one tax year is not necessarily probative of its true tax value in a different year. *See id.* (“[E]vidence as to the Main Building's assessment in 1992 is not probative as to its assessed value three years later.”). That is particularly true where, as here, the change in assessment stems from a property being revalued under the 2002 general reassessment. Before that reassessment, true tax value was determined solely by applying the State Board of Tax Commissioners' regulations. *Dep't of Local Gov't Fin. v. Commonwealth Edison Co.*, 820 N.E.2d 1222, 1224 (Ind. 2005). For the 2002 general reassessment, however, true tax value is defined as “the 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.” MANUAL at 2; *see also, Commonwealth Edison*, 820 N.E.2d at 1224.
 - b) The Petitioners also rely on provisions in the Guidelines for assessing agricultural woodland. 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 agricultural land across 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). The Guidelines direct assessors to adjust the agricultural base rate using productivity factors developed from soil maps

- published by the USDA. *Id.* at 105-06. The Guidelines also require assessors to further classify agricultural land into various types, some of which call for applying negative-influence factors in pre-determined amounts. *Id.* at 102-05. One such type 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 to agricultural woodland. *Id.*
- c) But only land actually “devoted to agricultural use,” may be assessed as agricultural land. 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). Thus, a taxpayer seeking to have its land assessed as agricultural cannot prevail merely by showing that agriculture is one of several activities for which it uses the land. That being said, truly incidental non-agricultural uses do not disqualify land from being assessed as agricultural.
- d) The only agricultural activity in which the Petitioners even arguably engaged was harvesting trees. And the Petitioners engaged in that activity only incidentally, at best. Indeed, Mr. Barkhimer admitted that the Petitioners used the subject land primarily for family recreation and to preserve a wildlife habitat. *J. Barkhimer testimony*. The fact that the Petitioners entered into a contract to sell trees in December 2006 does not change the equation. The Petitioners contracted to sell those trees only after their land was accepted in the Classified Forest Program. And the Stewardship Plan, which apparently was prepared in conjunction with the Petitioners’ enrollment in that program, states that tree harvesting is a “very low priority” for the Petitioners. *Pet’rs Ex. 8 at 4*. The Stewardship Plan also indicates that harvesting may “take place as needed to utilize the resource and enhance the *primary objective*” of using the land for family recreation and as a wildlife habitat. *Id.* at 1. Thus, the Petitioners failed to prove that the subject land should be assessed as agricultural woodland.
- e) Mr. Wood’s e-mail setting forth the Guidelines’ division of agricultural land into different types does nothing to change the Board’s finding. The e-mail largely addresses how the Guidelines classify land that is devoted to agricultural use into more specific land types, not to whether a given parcel is actually devoted to agricultural use in the first place. Indeed, Mr. Wood’s only reference to the latter question is his vague and qualified statement that “land used to support tree production *would probably* fall under one of the above agricultural land use types. . . .” *Pet’rs Ex. 5 at 5*. And, while the Board gives weight to the DLGF’s interpretation of its own administrative rules, Mr. Wood’s e-mail does not purport to be an official interpretation of the DLGF. There are specific vehicles for the DLGF to issue such interpretations. *See* 50 IAC 4.2-1-5 (stating that the DLGF may issue instructional bulletins to instruct taxing officials of their duties and provide administrative forms to be used by taxpayers). An e-mail to an individual taxpayer is not one of them.

- f) The Petitioners also contend that the subject land has varying elevations and that the back-40 acres are very difficult to access. Those facts might affect the land's market value-in-use. But the Petitioners did not submit any market-based evidence to quantify the extent to which they do so. Indeed, the Petitioners did not present any market-based evidence whatsoever.
- g) Based on the foregoing, the Petitioners failed to make a prima facie case for a change in assessment. The Petitioners failed to show that they devoted the subject land to an agricultural use. They similarly failed to show that the land's current assessment does not reflect its market value-in-use.

Conclusion

- 16. The Petitioners failed to make a prima facie case. The Board finds in the Respondent's favor.

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 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>