

REPRESENTATIVE FOR PETITIONER:
Gary Emberton, Pro Se

REPRESENTATIVE FOR RESPONDENT:
Sheila Blake

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Gary Emberton)	Petition No.: 07-006-02-1-5-00066
)	
)	Parcel: 0041025000
)	
Petitioner,)	
)	
v.)	
)	Brown County
Hamblen Township Assessor,)	Hamblen 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. The record indicates that someone filed an appeal for this property, but it is not clear whether it was filed on a Form 130 or an equivalent document. Whatever the document was, a copy is not included in the record. Furthermore, the record does not establish when that document was filed or what specific allegations were made in it. Nevertheless, on November 7, 2005, the Brown County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination on that appeal. The Form 115 notice indicates that the PTABOA determined to leave the land with a residential classification, not agricultural.¹
2. On December 10, 2005, Gary Emberton (“Petitioner”) filed a Form 131 Petition for Review of Assessment, requesting the Board to conduct an administrative review.
3. Kay Schwade, the duly designated Administrative Law Judge (“ALJ”) authorized by the Board, held a hearing on the Form 131 Petition at Nashville on August 21, 2007.
4. The following persons were sworn as witnesses at the hearing:
 - For the Petitioner – Gary Emberton,
 - For the Respondent – Sheila Blake.
5. 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 5000” 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,

¹ At some point there was a separate Form 133 Petition for Correction of Error for this property. The copy of the Form 133 in the record is not dated or file-marked. The Form 133 claims the land value should be changed to \$26,400 for the 2002 assessment. On May 12, 2006, County Assessor Donna Lutes and Township Assessor Joan Collins approved it and changed this land back to agricultural classification. *Pet’r. Ex. 5*. There is no indication that anybody appealed their action on the Form 133, which apparently “corrected” the PTABOA’s decision about the land.

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.

6. 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.

7. 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.
8. The subject property is 42.995 acres of land with improvements located at 3062 Smith Road.
9. The ALJ did not conduct an on-site inspection of the subject property.
10. The 2002 assessed value determined by the PTABOA on Form 115 was \$105,700 for land and \$118,200 for improvements (total assessment of \$223,900). Subsequently, the land classification was changed back to agricultural. Neither party presented evidence that establishes what the current total assessment for 2002 is as a result of that change.
11. The Petitioner did not request a specific value for the subject properties.

CONTENTIONS

12. This parcel is wooded, but there is a field, too. Timber was harvested from this parcel in approximately 2000 or 2001. The land classification for Parcel 0041025000 (Parcel 5000) was changed from residential excess acreage to agricultural woodland effective for the March 1, 2002, and March 1, 2003, assessments. The change in land classification was the result of a Form 133 approved by the township assessor and county assessor. The assessment is satisfactory since it was changed back to agricultural land classification. *Emberton testimony; Pet'r. Ex. 5, 6.*

13. Nevertheless, 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 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.*
15. The Form 133 petition was approved by the former county and township assessors, but the current Hamblen Township Assessor does not agree with the Form 133 action changing the land classification to agricultural woodland. The Respondent contends the Board should revalue the subject property using the residential excess acreage land classification for the 2002 and 2003 assessments. *Blake testimony.*

ANALYSIS

16. The most relevant statute in this case is Ind. Code § 6-1.1-15-12:
 - (a) Subject to the limitations contained in subsections (c) and (d), a county auditor shall correct errors which are discovered in the tax duplicate for any one (1) or more of the following reasons:
 - ***
 - (6) The taxes, as a matter of law, were illegal.
 - (7) There was a mathematical error in computing the assessment.
 - (8) Through an error or omission by any state or county officer, the taxpayer was not given credit for an exemption or deduction permitted by law.
 - ***
 - (d) If the tax is not based on an assessment made or determined by the department of local government finance, the county auditor shall correct an error described under subsections (a)(6), (a)(7), or (a)(8) only if the correction is first approved by at least two (2) of the following officials:
 - (1) The township assessor.
 - (2) The county auditor.

(3) The county assessor.

If two (2) of these officials do not approve such a correction, the county auditor shall refer the matter to the county board for determination. The county board shall provide a copy of the determination to the taxpayer and the county auditor.

17. In this case, the Form 133 was approved by the township assessor and the county assessor on May 12, 2006. Because they took this action after the PTABOA determination, they effectively overruled the PTABOA determination, which might be a problematic concept within the context of the entire statutory assessment and review process. Nevertheless, there is no indication that anybody appealed Lutes' and Collins' decision to change the land back to an agricultural classification or that anybody (including the Respondent) challenged their authority to do so. Consequently, that order stands.²
18. The Petitioner indicated satisfaction with the current 2002 land value, which was changed back to agricultural land classification, apparently after this petition was filed. In this case it is clear that the Petitioner seeks to maintain the status quo, rather than change the current 2002 assessment. The record is unclear as to what that land value is, but the Board will make no determination on this question because the Petitioner's issue is moot.
19. The Respondent asked the Board to reclassify the subject property as residential excess acreage. In effect, the Respondent is asking the Board to reverse the approved Form 133 action. 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

² In making this determination, the Board is not making a determination regarding the propriety or merit of the Form 133 action.

N.E.2d 1113, 1119 (Ind. Tax Ct. 1998) (stating that conclusory statements do not qualify as probative evidence).

SUMMARY OF FINAL DETERMINATION

20. 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>>