

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

Petition #: 34-002-04-1-4-00009
Petitioner: Richard C. Scoggins
Respondent: Harrison Township Assessor (Howard County)
Parcel #: 34-09-13-400-041.000-006
Assessment Year: 2005

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

Procedural History

1. The Petitioner initiated an assessment appeal with the Howard County Property Tax Assessment Board of Appeals (PTABOA) by filing a Form 130 petition dated April 22, 2005.
2. The Petitioner received notice of the final determination of the PTABOA on Form 115 on June 17, 2005.
3. The Petitioner initiated an appeal to the Board by filing a Form 131 petition with the Howard County Assessor on July 11, 2005. The Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated October 20, 2005.
5. The Board held an administrative hearing on November 30, 2005, before the duly appointed Administrative Law Judge Dalene McMillen.
6. Persons present and sworn in at hearing:
 - a. For Petitioner: Richard C. Scoggins, Owner

- b. For Respondent: Ann Harrigan, Howard County Assessor¹
Jay Morris, Howard County Consultant

Facts

7. The subject property consists of 19.58 acres of vacant land located at 317 West Alto Road, Kokomo, Indiana, as is shown on the property record card for parcel #34-09-13-400-041.000-006.
8. The Administrative Law Judge did not conduct an inspection of the property.
9. Assessed Value of subject property as determined by the Howard County PTABOA: Land \$265,600,² Improvements \$0.
10. Assessed Value requested by Petitioner: Land \$20,559, Improvements \$0.

Issue

11. Summary of Petitioner's contentions in support of alleged error in assessment:
 - a. The Petitioner contends that the subject property should be classified as agricultural property, rather than usable undeveloped, commercial property, because the subject property is farmed for alfalfa. *Pet'r Exs. 2, 4, 6-7.*

¹ Ind. Code § 6-1.1-15-3(a) (2005), which governs petitions for review to the Board, states, in pertinent part, "[a] township assessor, county assessor, member of a county property tax assessment board of appeals, or a county property tax assessment board of appeals that made the original determination under appeal under this section is a party to the review under this section to defend the determination" In this appeal, it is the township assessor's original official determination which is under review. *See Board Ex. A.* There are two ways that a county assessor, whose original official determination is not under review, may appear. The first way is to appear as a separate party. Ind. Code § 6-1.1-15-4(p) (2004); Ind. Admin. Code tit. 52, r. 2-6-6(a)(1) (2004). The second way to appear is as an authorized representative of the township assessor. Ind. Admin. Code tit. 52, r. 2-3-2(b) (2004); Ind. Code § 6-1.1-15-4(p). In either instance, the county assessor, or any other person wishing to appear, must file a notice of appearance. Ind. Admin. Code tit. 52, r. 2-3-2(b); Ind. Admin. Code tit. 52, r. 2-6-6(b)(1). In this appeal, the county assessor failed to file a notice of appearance. However, because the county assessor is authorized to appear either as a separate party or as an authorized agent of the township assessor, and because there was no objection to the county assessor appearing as a party, the Board will evaluate the claims raised on behalf of the Respondent in this appeal.

²The Form 115, on which the PTABOA final determination is issued, indicates that the assessed value of the subject property is \$265,500; however, the taxpayer's property record card lists the assessed value as \$265,600. *See Board Exhibit A.* Pursuant to Ind. Code § 6-1.1-15-4(a)(2) (2004), the Board may correct any errors that have been made, which includes errors on a Form 115. Ms. Harrigan testified that there was a typographical error on the assessed value reported on the PTABOA's Form 115 and that the correct value is \$265,600. The Petitioner did not contest Ms. Harrigan's testimony on that point. Further, in filling out the Form 131 and Form 130 Petitions, the Petitioner indicated that the property is currently assessed at \$265,600. Therefore, the Board concludes Form 115 erroneously reported assessed value of the land at \$265,500.

- b. The Petitioner testified that he rents the subject property, along with other property, to Rudolf Schroeter through an agreement whereby Mr. Schroeter farms the Sugar Mill farm and maintains the subject property for the Petitioner. *Scoggins testimony*. The Petitioner also submitted his Miscellaneous Income Form 1099-MISC (“Form 1099”) for both 2002 and 2003, indicating that he received rental income from Rudolf Schroeter in those years. *Pet’r Exs. 3, 5*. The Petitioner testified that the rental income was for all the ground Mr. Schroeter used. *Scoggins testimony*. The Petitioner further testified that he does not have separate documentation indicating what portion of the rental income he received is attributable to the subject property. *Scoggins testimony*.
- c. In addition, the Petitioner testified that the subject property is in a farm program sponsored by the United States Department of Agriculture’s Farm Service Agency. *Scoggins testimony*. The Petitioner submitted farm acreage reports from the Farm Service Agency for 2002 - 2004. *Pet’r Exs. 2, 4, 6*. These reports indicate that the Farm Service Agency designated the subject property as farmland used to grow alfalfa and crop grass in those years. *Id.*
- d. Finally, the Petitioner submitted four photographs of the subject property taken in 2005. *Pet’r Ex. 7*. One of these photographs shows a person baling the subject property in July of 2005. *Id.* The other three photographs show bales of alfalfa on the subject property. *Id.* The Petitioner additionally testified that he and/or Mr. Schroeter sold approximately half of the alfalfa bales derived from the subject property. *Scoggins testimony*.
- e. The Petitioner contends that this appeal covers the tax years of 2002, 2003, and 2004. *Scoggins testimony*.

12. Summary of Respondent’s contentions in support of the assessment:

- a. The Respondent contends that the classification of the subject property as usable undeveloped, commercial land is correct because the Petitioner does not use the subject property to grow crops. *Morris testimony*.
- b. In support of this position, the Respondent submitted a photograph showing a mound of dirt on the subject property. *Resp’t Ex. E*. The Respondent submitted additional photographs showing some barren patches and some wild grasses growing on the subject property. *Resp’t Ex. K*. The Respondent also submitted a picture of the property north of the subject property, which shows alfalfa growing on the northern property. *Resp’t Ex. F*.

- c. The Respondent further contends that the Petitioner purchased the subject property for commercial or residential development. *Morris testimony*. To support this contention, Mr. Morris testified that the Petitioner petitioned to have the subject property rezoned as C1 commercial in March of 2000. *Morris testimony*. The Respondent further submitted a copy of Ordinance No. 2000-BCC-08 from Howard County, indicating that the subject property was rezoned as C1 commercial property in March of 2000. *Resp't Ex. H*.
- d. In addition, Mr. Morris testified that the Petitioner originally filed an appeal claiming a developer's discount for the subject property and that the discount was denied. *Morris testimony*. In a similar vein, Ms. Harrington testified regarding her notes on the testimony of Mr. Schroeter, the Petitioner's contract farmer, before the PTABOA. According to Ms. Harrington's notes, Mr. Schroeter testified that the Petitioner did not want crops grown on the subject property because the property was for sale. *Harrigan testimony*. Ms. Harrington's notes also indicate that Mr. Schroeter testified that the income listed on the Form 1099 was from the farm in Harrison Township. *Harrigan testimony*.
- e. The Respondent finally contends that the Petitioner never baled alfalfa on the subject property until the summer of 2005, immediately prior to these proceedings and after he was denied a developer's discount. *Morris testimony*. The Respondent submitted a photograph of the bales of alfalfa sitting on the subject property along a line of trees. The Respondent argued that the photograph showed the bales gaining moss so that they could not be sold for feed. *Morris testimony; Resp't Ex. G*. Mr. Morris testified that the photograph was taken on November 29, 2005. *Morris testimony*.

Record

- 13. The official record for this matter is made up of the following:
 - a. The Petition,
 - b. The digital recording of the hearing,
 - c. Exhibits:
 - Petitioner Exhibit 1 – Annual taxes for 2001 through 2004,
 - Petitioner Exhibit 2 – FSA report of acreage farm summary for 2002 and FSA report of acreage farm and tract detail listing for 2002 for Rudolf Schroeter,
 - Petitioner Exhibit 3 – 2003 Form 1099 Miscellaneous Income from Rudolf Schroeter to Richard Scoggins,

Petitioner Exhibit 4 – FSA report of acreage farm summary for 2003 and FSA report of acreage farm and tract detail listing for 2003 for Rudolf Schroeter,
Petitioner Exhibit 5 – 2004 Form 1099 Miscellaneous Income from Rudolf Schroeter to Richard Scoggins,
Petitioner Exhibit 6 – FSA report of commodities farm summary for 2004 and FSA report of commodities farm and tract detail listing for 2004 for Rudolf Schroeter,
Petitioner Exhibit 7 – Four photographs of the subject property,
Petitioner Exhibit 8 – Howard County Treasurer refund checks and account on tax refund form for parcels #34-09-13-400-007.000-006 and #34-09-13-400-037.000-006,
Petitioner Exhibit 9 – Aerial map of the subject area,

Respondent Exhibit A – Respondent’s exhibit list,
Respondent Exhibit B – Respondent’s brief,
Respondent Exhibit C – Subject property record card,
Respondent Exhibit D – Copy of IC §6-1.1-4-13 “Agricultural land; assessment”,
Respondent Exhibit E – Photograph of the subject property,
Respondent Exhibit F – Photograph of the adjacent property, parcel #34-09-13-400-047.000-006,
Respondent Exhibit G – Photograph of bales of hay,
Respondent Exhibit H – Rezoning ordinance #2000-BCC-08 for the subject property,
Respondent Exhibit I – C1 District Intent, Permitted Uses, and Special Exception Uses (zoning),
Respondent Exhibit J – LI District Intent, Permitted Uses, and Special Exception Uses (zoning),
Respondent Exhibit K – Six photographs of the subject area,
Respondent Exhibit L – Aerial map provided by the USDA Farm Service Agency,
Respondent Exhibit M – Notice of Appearance from Ann Harrigan, Howard County Assessor to Jay Morris, Ad Valorem Solutions,

Board Exhibit A – Form 131 Petition,
Board Exhibit B – Notice of Hearing on Petition,
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 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 evidenced that impeaches or rebuts the Petitioner’s evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

15. The Petitioner did provide sufficient evidence to support a change in assessment. This conclusion was arrived at because:

- a. The Petitioner first contends that this appeal covers the years of 2002, 2003, and 2004. Ind. Code § 6-1.1-15-1(2005) states, in relevant part:
 - (b) In order to appeal a current assessment and have a change in the assessment effective for the most recent assessment date, the taxpayer must request in writing a preliminary conference with the county or township official referred to in subsection (a): (1) not later than forty-five (45) days after notice of a change in the assessment is given to the taxpayer; or (2) on or before May 10 of that year, whichever is later. . . .

* * * * *

- (d) A taxpayer may appeal a current real property assessment in a year even if the taxpayer has not received a notice of assessment in the year. If an appeal is filed on or before May 10 of a year in which the taxpayer has not received notice of assessment, a change in the assessment resulting from the appeal is effective for the most recent assessment date. If the appeal is filed after May 10, the change becomes effective for the next assessment date.

Ind. Code § 6-1.1-15-1 (2005). Here, the Petitioner filed his Form 130 petition on April 22, 2005. The Petitioner did not submit any evidence to show that he received a notice of change of assessment for assessment years 2002 – 2004 within forty-five (45) days of filing that petition. Thus, the Petitioner’s Form 130 petition, and his subsequent Form 131 petition to the Board, do not affect the subject property’s assessment for those years. The Petitioner, however, did file his Form 130 petition prior to May 10, 2005. Thus, his appeal is effective for the most recent assessment date, which was March 1, 2005. *See* Ind. Code § 6-1.1-1-2 (“Assessment date means . . . March 1 for all tangible property, except mobile homes . . .”).³

- b. The Petitioner next contends that the subject property should be classified as agricultural property, rather than as commercial property, because the subject property is farmed with alfalfa.
- c. Assessors are required to classify real property based on its predominant current use. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, ch. 2 at 31 (incorporated by reference at 50 IAC 2.3-1-2). In addition, Ind. Code § 6-1.1-4-13 (2002), states, in pertinent part, “In assessing or reassessing land, the land shall be assessed as agricultural land only when it is devoted to agricultural use.” *Resp’t Ex. B*. The term “agricultural property” is defined as “[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.
- d. To support his contention, the Petitioner testified that he rents property, including the subject property, to Rudolf Schroeter to be farmed and maintained. *Scoggins testimony*. The Petitioner also submitted Form 1099s for 2002 and 2003, proving that he received income from Rudolf Schroeter in those years. *Pet’r Exs. 3, 5*. While these forms do not indicate how much, if any, of the rental income received from Mr. Schroeter was attributable to the subject property, the Petitioner testified that the rental income was compensation for all his ground that Mr. Schroeter used. *Id.*; *Scoggins testimony*.
- e. In addition, the Petitioner testified that the subject property is in a farm program sponsored by the United States Department of Agriculture’s Farm Service Agency. *Scoggins testimony*. The Petitioner submitted farm acreage reports from the Farm Service Agency for 2002 – 2004, indicating that the Farm Service Agency designated the subject property as farmland used to grow alfalfa and crop grass in those years. *Scoggins testimony*; *Pet’r Exs. 2, 4, 6*. Finally, the Petitioner submitted four photographs of

³ The Petitioner’s confusion may stem from the fact that a taxpayer may file a claim for a refund for taxes paid, if the claim is filed within three years of when the taxes first were due and is based upon one of three statutorily enumerated grounds. Ind. Code § 6-1.1-26-1.

the subject property taken in 2005, which show someone baling the subject property and bales of alfalfa sitting on the subject property. *Pet'r Ex. 7*. The Petitioner testified that he and/or Mr. Schroeter sold approximately half of the alfalfa bales derived from the subject property. *Scoggins testimony*.

- f. Based on the foregoing, the Petitioner established a prima facie case that the subject parcel is used for agricultural purposes and should be assessed as agricultural land, rather than as commercial land. Therefore, the burden shifted to the Respondent to impeach or rebut the Petitioner's evidence. *See American United Life*, 803 N.E.2d 276; *Meridian Towers*, 805 N.E.2d at 479.
- g. The Respondent contends that the subject property is zoned for commercial use and is assessed in accordance with the Real Property Guidelines for 2002 – Version A (“Guidelines”). The Respondent also directs the Board to subsection (d) of I.C. § 6-1.1-4-13, which states, in pertinent part, “[t]his section [addressing assessment of agricultural land] does not apply to land purchased for industrial, commercial, or residential uses.” *Resp't Ex. B*. The Respondent pointed to several
- h. The Respondent submitted photographs showing there were some barren patches and wild grasses growing on the subject property, along with a small mound of dirt. *Resp't Exs. E, K*. The Respondent's photographs may indicate that some portion of the subject property is not or cannot be used for agricultural purposes, but they do not indicate the size of such portion. *Resp't Exs. E, K*. In addition, the Petitioner testified that the mound of dirt pictured in one of Respondent's photographs has since been leveled and was only on the subject property while a road extension that butted up against the subject property was being constructed. *Scoggins testimony; Resp't Ex. E*. The Petitioner further characterized the Respondent's photograph of barren portions of the subject property as being a poor photograph of the subject property. *Scoggins testimony; Resp't Ex. K*.
- i. Next, Mr. Morris testified that the Petitioner is farming the property north of the subject property, and the Respondent submitted a photograph showing that crops were grown on the property north of the subject property. *Morris testimony; Resp't Ex. F*. While this picture indicates that the property north of the subject property is being farmed, neither it nor Mr. Morris' testimony addresses the Petitioner's use of the subject property.
- j. The Respondent also presented a copy of Ordinance No. 2000-BCC-08, showing the subject property was rezoned as C1 commercial in March 2000. *Resp't Ex. H*. In addition, Mr. Morris testified that it was the

Petitioner who petitioned for the change in zoning from agricultural to commercial in March of 2000. *Morris testimony*. Mr. Morris further testified that the Petitioner originally appealed the assessment of the subject property claiming a developer's discount, which he was later denied. *Morris testimony*. While the zoning classification of a parcel of property is important in determining what the parcel may be used for, it does not indicate how the parcel is actually used. In addition, the Respondent has provided no evidence, other than Mr. Morris' testimony, that it was the Petitioner who petitioned to have the subject property rezoned. Therefore, the fact that the subject property was classified as C1 commercial does not indicate how the Petitioner actually used the subject property. The fact that the Petitioner applied for a developer's discount, however, constitutes at least some evidence that the Petitioner held the subject property for commercial use.

- k. Ms. Harrington also testified regarding her notes from the PTABOA hearing. According to Ms. Harrington, her notes indicated Mr. Schroeter testified: (1) that he did not plant crops on the subject property because the Petitioner was trying to sell the property and did not want any crops on it; and (2) that the income listed on the Form 1099s was from the farm in Harrison Township. *Harrigan testimony*. The Petitioner questioned whether Ms. Harrington could testify as to Mr. Schroeter's testimony without Mr. Schroeter present to verify his own statements. *Scoggins testimony*. While not couched in those specific terms, the Board understands the Petitioner's statement to be an objection to the admissibility of Ms. Harrington's testimony on grounds of hearsay.
- l. Hearsay is defined 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." Ind. Evidence Rule 801(c). Ms. Harrington had no personal knowledge about the truth of the matters asserted by Mr. Schroeter. Her testimony therefore constitutes hearsay. Moreover, Ms. Harrington's testimony does not fall within any of the exceptions to the hearsay rule set forth in Ind. Evid. R. 803 and 804.
- m. Pursuant to Ind. Admin Code tit. 52, r. 2-7-3 (2004), the Board may admit hearsay evidence, but it is not required to do so. The Board's rules further provide that, if hearsay evidence is properly objected to and does not fall within a recognized exception to the Indiana Rules of Evidence (801), the Board's determination may not be based solely on such hearsay evidence. 52 IAC 2-7-3. Given the clear hearsay nature of Ms. Harrington's testimony and the inapplicability of any recognized exceptions to the hearsay rule, the Board sustains the Petitioner's objection. Even if the Board were to consider Mr. Harrington's testimony, it is not sufficiently reliable to carry significant weight.

- n. Finally, the Respondent contends that the Petitioner did not bale the subject property until the summer of 2005, which was after he was denied a developer's discount. *Morris testimony*. The Respondent further submitted a photograph, which Mr. Morris testified was taken November 29, 2005, depicting alfalfa bales along the edge of a line of trees. *Resp't Ex. G; Morris testimony*. The Respondent argued that the picture showed that the bales were not for sale, but merely gathering moss. *Id.* The Petitioner, however, testified that half of the bales from the subject property have already been sold. *Scoggins testimony*. The Petitioner further testified that the other half of the bales are still for sale, but that he likely would not find a buyer until all the green grass died for the winter. *Id.* The Petitioner did admit that the subject property was baled for the first time in 2005; however, the Petitioner testified that they had been mowing the subject property for the last couple of years to kill off the thistles so that the alfalfa could be baled. *Scoggins testimony*.
- o. In conclusion, the documents from the United States Department of Agriculture's Farm Service Agency tend to show that the Petitioner used the subject property to grow alfalfa. *Pet'r Exs. 2, 4, 6*. This, coupled with the Petitioner's testimony that he rented the subject property to a farmer who baled and sold the alfalfa from the subject property, the Form 1099 showing that the Petitioner's farmer, Mr. Schroeter, paid him rent for the subject property and another farm, and the photographs showing the subject property being baled, strongly indicate that the subject property was, in fact, agricultural land used for an agricultural purpose. *Pet'r Exs. 3, 5, 7; Scoggins testimony*. While the Respondent provided some evidence tending to indicate the Petitioner held the land for commercial use, the weight of the evidence demonstrates that, as of March 1, 2005, the Petitioner devoted the subject property to an agricultural use. *Morris testimony*.

Conclusion

16. Based on the foregoing, the preponderance of the evidence demonstrates that the subject property should be assessed as agricultural land rather than as usable undeveloped commercial land. This change in assessment will be effective for the March 1, 2005, assessment date.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should 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/inde.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.