

# INDIANA BOARD OF TAX REVIEW

## Final Determination Findings and Conclusions Lake County

**Petition:** 45-016-02-1-1-00106  
**Petitioners:** Norman and Lorraine TR Berndt  
**Respondent:** Department of Local Government Finance  
**Parcel:** 006-27-17-0036-0026  
**Assessment Year:** 2002

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 informal hearing as described in Ind. Code § 6-1.1-4-33 was held on March 24, 2005, in Lake County, Indiana. The Department of Local Government Finance (the DLGF), through a Notice of Department Assessed Value Determination, determined that Petitioners' property tax assessment for the subject property is \$43,200 and notified Petitioners on March 31, 2004.
2. Petitioners filed a Form 139L on April 26, 2004.
3. The Board issued a notice of hearing to the parties dated February 21, 2005.
4. Special Master Rick Barter held a hearing on March 24, 2005, in Crown Point, Indiana.

### Facts

5. The subject property is located at 95 N. Liverpool Road, Hobart, in Hobart Township.
6. The subject property is assessed as residential excess acreage.
7. The Special Master did not conduct an on-site inspection of the property.
8. The assessed value of the subject property as determined by the DLGF is \$43,200 for the land.
9. The assessed value requested by Petitioners is \$28,200 for the land.

10. Norman and Lorraine Berndt, the owners of the subject property, and Tommy Bennington, representing the DLGF, appeared at the hearing and were sworn as witnesses.

### **Issue**

11. Summary of Petitioners' contentions in support of an alleged error in the assessment:
  - a) The land is currently assessed as residential excess acreage. The land should be assessed as agricultural. *L. Berndt testimony.*
  - b) The entire parcel has been farmed for three generations. *L. Berndt testimony.* Petitioners presented a letter from the United States Department of Agriculture indicating the property was used for agricultural purposes during the period 2001 through 2004. *Petitioners Exhibits 7 and 8.* Petitioners also presented a Report of Acreage, dated July 10, 2001, signed by the contract farmer who farms the land. This Report of Acreage certifies the parcel was used for agricultural purposes. *Petitioners Exhibits 9 and 10.* Photographs indicate crop residue in the fields. *Petitioners Exhibit 6.*
12. Summary of Respondent's contentions in support of the assessment:
  - a) Respondent offered no evidence to support the current classification of the land as residential excess acreage.
  - b) Respondent did not dispute Petitioners' evidence regarding the agricultural use of the parcel.

### **Record**

13. The official record for this matter is made up of the following:
  - a) The Petition,
  - b) The tape recording of the hearing labeled Lake Co. 1269,
  - c) Petitioners Exhibit 1 - Notice of Hearing,  
Petitioners Exhibit 2 - Form 139L,  
Petitioners Exhibit 3 - Notice of Department Assessed Value Determination dated March 31, 2004, raising the assessed value from \$28,800 to \$43,200,  
Petitioners Exhibit 4 - Form 11/Lake County, dated November 4, 2003, indicating an assessed value of \$28,800,  
Petitioners Exhibit 5 - Hearing instructions,

Petitioners Exhibit 6 - Six photographs of the subject,  
Petitioners Exhibit 7 - United States Department of Agriculture letter dated February 25, 2005, confirming use of the subject as farmland for 2001 through 2004,  
Petitioners Exhibit 8 - United States Department of Agriculture map identifying farmland and crops,  
Petitioners Exhibit 9 - Printout dated July 3, 2001, of land farmed by Andrew Wirtz, including the subject,  
Petitioners Exhibit 10 - Report of Acreage Farm Summary for Andrew Wirtz, dated July 3, 2001,

Respondent Exhibit 1 - Form 139L,  
Respondent Exhibit 2 - Subject property record card,

Board Exhibit A - Form 139L,  
Board Exhibit B - Notice of Hearing,  
Board Exhibit C - Sign-in sheet,

d) These findings and conclusions.

### Analysis

14. The most applicable laws 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. Petitioners provided sufficient evidence to support their contentions. This conclusion was arrived at because:
- a) 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.”

REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, Glossary at 1 (incorporated by reference at 50 IAC 2.3-1-2).

- b) Petitioners testified the entire parcel has been farmed for three generations. Further, Petitioners provided a report from the United States Department of Agriculture, a map identifying the subject as farmland, photographs of the subject land, and a Report of Acreage from the contract farmer who farms the land. All of this documentation confirmed the parcel was used for agricultural purposes.
- c) Petitioners' evidence is sufficient to establish a prima facie case the land should be classified as agricultural.
- d) Respondent did not contest Petitioners' evidence or present any evidence to support the current classification of the land as residential excess acreage. Respondent has failed to rebut Petitioners' prima facie case that the land should be classified as agricultural.

**Conclusion**

- 16. Petitioners made a prima facie case that the property at issue is agricultural. Respondent failed to rebut Petitioners' evidence. The Board finds in favor of Petitioners.

**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: \_\_\_\_\_

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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](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>>.**