

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

Petition #: 59-009-02-1-1-00003
Petitioner: Roger Crandall
Respondent: Orleans Township Assessor (Orange County)
Parcel #: 009003025000
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 Petitioner initiated an assessment appeal with the Orange County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated December 22, 2003.
2. Notice of the PTABOA's decision was mailed to the Petitioner on July 26, 2004.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the county assessor on August 20, 2004. The Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated June 29, 2005.
5. The Board held an administrative hearing on August 30, 2005, before the duly appointed Administrative Law Judge (the ALJ) Jennifer Bippus.
6. Persons present and sworn in at hearing:
 - a) For Petitioner: Roger Crandall, Taxpayer
Jo Donna Crandall, Taxpayer
 - b) For Respondent: Linda J. Reynolds, Orange County Assessor

Facts

7. The property identified as Parcel # 009003025000 is general farm land located at 3319 E 500 N, Orleans, Indiana.
8. The ALJ did not conduct an inspection of the property.

9. The Orange County PTABOA determined the assessed value of the subject property to be \$123,500 for the land and \$55,600 for the improvements for a total assessed value of \$179,100.
10. The Petitioner requested an assessed value of \$95,213 for the land.

Issues

11. Summary of Petitioner's contentions in support of alleged error in assessment:
 - a) The Petitioner contends that the land value is overstated. According to the Petitioner, the land floods and had been given a reduction in the past for flooding. *R. Crandall testimony*. Further, the Petitioner alleges, the flooding problem has gotten worse instead of better, but that is not reflected on the property record card. *Id.*
 - b) The Petitioner testified that non-tillable acres changed from 22.6 acres to about 8 acres, but nothing was done to the land to cause this change. According to the Petitioner, for the 1989 and 1995 reassessments, the Petitioner's land had 22.6 acres that received a negative 60% influence factor and 20 acres that received a negative 30% influence factor. *R. Crandall testimony; Pet'r Ex. 10.*
 - c) The Petitioner contends that approximately 40 acres flood. The Petitioner presented photos of the flooding. The Petitioner also presented a letter from Riverview Farms, who farm the subject property, stating that over 40 acres of crops flooded out in 1996, 13 acres in 1997, 51 acres in 2001, and 47 acres in 2004. The Petitioner stated that if one averages the four years of flooding it would be around 40 acres. According to the Petitioner, the pastureland also had areas that flooded in 1996 and 2004. *R. Crandall testimony; Pet'r Ex. 5.* In support of his allegations, the Petitioner presented a soil map of the subject property. The Petitioner highlighted the areas that flood. *Pet'r Ex. 3.*
 - d) The Petitioner also stated there are sink holes in the subject property which fill up with water. *R. Crandall testimony*. The Petitioner presented a field map and stated the sink holes are located in the area identified as T1265. The sink holes fill up with water. *Pet'r Ex. 9.*
 - e) The farm next door has 157 acres and is totally tillable with no flooding problems. The subject property is 158 acres with flooding problems. There is only a \$9,000 difference in the assessments. According to the Petitioner, the difference in assessments does not reflect the flooding problems. *R. Crandall testimony; Pet'r Ex. 7.*
 - f) Further, the Petitioner argues, there is a portion of the land that is used as pasture only and yet it is classified as tillable on the property record card. The land is rough and

cannot be cropped; a tractor cannot be driven over some parts of it. This land should not be classified as tillable. *R. Crandall testimony.*

- g) According to the Petitioner, the assessment of tillable and non-tillable land changed, yet the land itself has not changed. The Petitioner presented a worksheet showing his classification of the land. The Petitioner stated that all of the pasture land was included which may cause the non-tillable too high. At the hearing, Mr. Crandall testified that the non-tillable should be 29 acres. *R. Crandall testimony; Pet'r Ex. 6.*

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

- a) The Respondent testified that the Farm Service Agency report was used to determine cropland to insure uniformity throughout the county. *Reynolds testimony.* The Farm Service Agency report for the Petitioner shows 176.5 acres of cropland. According to the Respondent, the Petitioner's whole farm consists of the subject property of 158 acres plus 12 acres plus another 40 acres. The 40 acre parcel was not appealed. *Reynolds testimony; Resp't Exs. 5, 10.*
- b) An aerial photo was used to show the non-tillable part of the subject property. The area highlighted in pink on Respondent Exhibit 3 is the non-tillable area. *Reynolds testimony; Resp't Ex 3.* The flood area was determined using the aerial photo. The area where water was standing and the area that looked like it had been washed through is what the PTABOA used to determine the flood area. The flood area is highlighted in yellow on Respondent Exhibit 3. Further, the Respondent testified, areas holding water were assessed as ponds. *Reynolds testimony; Resp't Ex 3.*
- c) The Respondent noted that the GUIDELINES call for flooding two to four times in a ten year period. According to the Respondent, the relevant ten year period here runs from 1991 to 2001. *Reynolds testimony; Resp't Ex. 7.* The Respondent argued that the PTABOA did not have the number of times flooding occurred, how many acres flooded, and whether the land was productive even with the flooding. The PTABOA cannot give an influence factor for flooding without knowing the area that floods. Further, the Respondent alleged, the information provided by the Petitioner regarding the flooding is vague. The Petitioner did not provide enough evidence to make a change. *Reynolds testimony.*

Record

13. The official record for this matter is made up of the following:

- a) The Petition,
- b) The recording of the hearing,
- c) Exhibits:

Petitioner Exhibit 1: 2002 assessment – Property Record Card (PRC),
Petitioner Exhibit 2: 2004 assessment - PRC,
Petitioner Exhibit 3: Soil Map showing flooding problem,
Petitioner Exhibit 4: Dept. of AG acreage and production form,
Petitioner Exhibit 5: Letter from renter on flooding,
Petitioner Exhibit 6: Spreadsheet breakdown by soil type,
Petitioner Exhibit 7: Assessment of farm next to subject property,
Petitioner Exhibit 8: Form 131, page 2,
Petitioner Exhibit 9: Classification of fields,
Petitioner Exhibit 10: Assessments from 1989 and 1995,
Petitioner Exhibit 11: Pictures.

Respondent Exhibit 1: Original 2002 PRC,
Respondent Exhibit 2: Corrected 2002 PRC,
Respondent Exhibit 3: Copy of measured acreage and photo from GIS system,
Respondent Exhibit 4: Form 115,
Respondent Exhibit 5: Farm Service Agency Farm Record and aerial photo,
Respondent Exhibit 6: 2003 aerial photo and soil map,
Respondent Exhibit 7: Version A – Real Property Assessment Guidelines, Chapter 2, pages 99, 100, 102, 103, 104,
Respondent Exhibit 8: Letter to Aaron Johnson and his response,
Respondent Exhibit 9: Flood plain map,
Respondent Exhibit 10: Copy of letter to Janelle Springer and response.

Board Exhibit A: Form 131 petition,
Board Exhibit B: Notice of Hearing,
Board Exhibit C: Notice of County Assessor Representation,
Board Exhibit D: 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 Township 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*

Township 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 Petitioner did provide sufficient evidence to support his contentions. This conclusion was arrived at because:
- a) The Petitioner contends the land value is overstated because the land floods and the breakdown of land is incorrect.
 - b) The Petitioner contends that approximately 40 acres of the subject property floods. In support of this argument, the Petitioner presented a map identifying the areas of flooding. *Pet'r Ex. 3*. The Petitioner also submitted a letter from Riverview Farms, Inc., the entity that plants and harvests crops on the farm, which described the flooding events since 1996. *Pet'r Ex. 5*. The Petitioner also presented pictures evidencing flooding on his farm. *Pet'r Ex. 11*.
 - c) According to Riverview, in 1996 the farm had over 40 acres of crops flooded out. In 1997, 13 acres were flooded out and in 2001, 51 acres of crops were flooded. In addition, in 2004, 47 acres of crops were flooded out after planting. *Pet'r Ex. 5*. Further, Riverview stated that in 1996, for example, the crops flooded four different times. *Id*. Finally, according to Riverview, the acreage identified as flooded did not include pastureland that also had flooding problems in 1996 and 2004. *Id*.
 - d) The Petitioner also alleged that additional acreage had previously been given a discount for flooding than is presently assessed. In support of this, the Petitioner submitted his present and former property record cards. On Exhibit 6, the Petitioner shows 50.415 acres as “Tillable flooded occasionally.” The current property record card for the subject property shows 7.5621 acres as “Tillable Flooded Occasionally.” *R. Crandall testimony; Pet'r Ex. 6*.
 - e) The Petitioner has the burden to prove the current assessment is incorrect and specifically what the correct assessment should be. *Meridian Towers*, 805 N.E.2d at 478.
 - f) Pursuant to the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A:

The agricultural land assessment formula involves the identification of agricultural tracts using data from detailed soil maps, aerial photography, and local plat maps. Each variable in the land assessment formula is measured using appropriate devices to determine its size and effect on

the parcel's assessment. Uniformity is maintained in the assessment of agricultural land through the property use of soil maps, interpreted data, and unit sales.

GUIDELINES, ch. 2, at 99.

- g) According to the GUIDELINES, if tillable land experiences flooding causing substantial damage or loss of crops between April and November, it is classified as a subtype of tillable land. GUIDELINES, ch. 2 at 103. The Tillable Land Subtypes are described in Table 2-21. Depending on how often damaging floods occur, an influence factor is applied to the land. Land type 41 has damaging floods occurring two to four times in a ten year period. A negative 30% influence factor is applied to land type 41. Land type 42 has damaging floods occurring five or more times in a ten year period. A negative 50% influence factor is applied to land type 42. GUIDELINES, ch. 2 at 104. *Resp't Ex. 7.*
- h) The Petitioner here showed how often flooding occurred, where the flooding occurs, how many acres flooded, and that there was substantial damage or loss of crops from the flooding. The Petitioner testified that, on average, 40 acres of tillable land floods causing crop damage. Thus Petitioner has raised a prima facie case that the subject property should be classified as tillable land that experiences flooding and a negative influence factor should be applied.
- i) 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). Here, the PTABOA agreed that flooding occurs, but did not agree with the number of acres that are flooded. According to the Respondent, the number of acres receiving a negative influence factor for flooding was determined by reviewing an aerial photo. The PTABOA defined the flooded area as areas where water was standing and areas that looked like it had been washed through. However, the Respondent submitted no evidence that disputed or impeached Petitioner's evidence of the actual flooding events on the subject property. Therefore, the Board finds that the Respondent failed to rebut the Petitioner's evidence that, on average, 40 acres of tillable land should receive a negative 30% influence factor for flooding.
- j) The Petitioner also contends that the classification of land is incorrect and that he has less tillable land than is reflected on the property record card. The Petitioner presented a spreadsheet showing the breakdown by soil type and classification. The Petitioner did not explain how the breakdown was computed. At the hearing, the Petitioner stated his spreadsheet shows too much as non-tillable and the non-tillable should be 29 acres. No further evidence was provided to support his contention that the land classification is incorrect. The Petitioner's contentions with regard to the land classification amount to little more than conclusory statements. Such statements, unsupported by factual evidence, are not sufficient to establish an error in assessment.

Whitley Products, Inc. v. State Bd. of Tax Comm'rs, 704 N.E.2d 1113, 1120 (Ind. Tax Ct. 1998).

- k) Finally, the Petitioner referred to prior assessments and presented property record cards from 1989 and 1995 and argued that the assessment should be done the way it was in prior assessments. However, an assessment for a prior year has no evidentiary value because "each assessment and each tax year stands alone." *Glass Wholesalers, Inc. v. State Bd. of Tax Comm'rs*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991). The Board finds that this evidence lacks probative value.

Conclusion

16. The Petitioner made a prima facie case that 40 acres should be classified as land type 41. The Respondent failed to rebut this testimony. The Board finds in favor of the Petitioner.

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/index.html>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>.