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

Petition #: **07-002-02-1-5-00270**
Petitioner: **Susan May Allen**
Respondent: **Brown County Assessor**
Parcel #: **0050057000; 0050057001**[1]
Assessment Year: **2002**[2]

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

PROCEDURAL HISTORY

1. On June 2, 2005, Susan May Allen, filed a Form 130 petition contesting her property's assessment. On December 6, 2005, the Brown County Property Tax Assessment Board of Appeals ("PTABOA") voted to deny Ms. Allen's petition. The PTABOA, however, did not issue its Form 115 Notification of Final Assessment Determination until October 27, 2007.

2. Ms. Allen filed a Form 131 petition with the Brown County Assessor on June 11, 2007, several months before the PTABOA issued its Form 115 determination. Nonetheless, the Assessor forwarded Ms. Allen's Form 131 petition on November 1, 2007. Ms. Allen therefore timely filed her Form 131 petition. *See* Ind. Code § 6-1.1-15-3 (requiring a party to file its petition for review with the Board not later than 45 days after the party is given notice of the PTABOA's decision).

3. Ms. Allen elected to proceed under our rules for small claims.

4. On February 27, 2007, Alyson Kunack, a duly appointed administrative law judge, conducted a hearing on Ms. Allen's appeal for the Indiana Board of Tax Review.

5. Persons present and sworn in at hearing:

    a) For Ms. Allen: Susan May Allen, Petitioner

[1] Ms. Allen's Form 131 petition refers to two parcel numbers. It appears, however, that the Brown County Property Tax Assessment Board of Appeals ("PTABOA") combined both parcels under parcel number 0050057000. *See Pet'r Ex. 2 (PTABOA determination).*

[2] Ms. Allen's Form 131 petition lists "March 1, 2005" as the assessment under appeal. But the PTABOA's Form 115 determination refers to the March 1, 2002 assessment date. *Board Ex. A; Pet'r Ex. 2*. At the hearing, Ms. Allen agreed that she was appealing the March 1, 2002, assessment.

Kelly Wesley, witness

b) For the Assessor: Sheila M. Blake, representative for the Brown County Assessor.

FACTS

6. On the March 1, 2002, assessment date, the subject property consisted of 17.697 acres of vacant land located at 2831 Cottonwood Road, Morgantown, Indiana.

7. The ALJ did not inspect the property.

8. The PTABOA valued the property at $61,900.

9. Ms. Allen wants her property to be assessed as agricultural land. She did not quantify her requested assessment either in her Form 131 petition or at the administrative hearing.

CONTENTIONS

10. Summary of Ms. Allen's contentions:

a) Ms. Allen contends that her land should be assessed as agricultural because she uses it to grow timber. She has been a tree farmer since the 1970s and has done tree-stand improvement for years. She has a stewardship plan approved by the Department of Natural Resources ("DNR") and has won awards for woodlands management. While she does not file a "farm form" with the county assessor, she does deduct her expenses from her income tax return. *Allen testimony; Pet'r Ex. 4-5.*

b) Ms. Allen paid $70,000 for the property in 1995. She bought it to add to her existing tree farm. The property originally contained two "housing units." One unit was modular, and she gave it away. She spent about $10,000 repairing the second unit, and she sold it (presumably with a portion of the original tract) for $81,000. *Allen testimony*.

c) Ms. Allen has not harvested any timber because the seller logged the property shortly before Ms. Allen bought it. But she points to a February 12, 2008, memorandum from the Department of Local Government Finance ("DLGF") for the proposition that an owner needn't actually harvest timber for her land to be considered agricultural. *Allen testimony*.

d) Ms. Allen also testified about her efforts to better adapt her property to agricultural use. For example, she cleared brush from an approximately 1.5-acre field that she thought she could use to graze cattle. She fertilized the field and sewed winter wheat to improve the soil's nitrogen content. *Allen testimony*.

e) Ms. Allen also identified two nearby properties that she believes are similar to her property but that are valued at lower rate. One is an 18-acre tract located on Lick Creek Road, within two miles of her property. Although that property contains a house, the land is assessed for only $21,100. *Allen testimony; Pet'r Ex. 11*. Her son owns the other property, which adjoins Ms. Allen's property. He bought that property for $3,850 per acre. It also has a house. *Allen testimony.*

11. Summary of the Assessor's contentions:

a) The Assessor agrees that Ms. Allen farms trees. *Blake testimony*. But assessing the subject property as agricultural woodland under the Real Property Assessment Guidelines for 2002 – Version A would yield an unreasonably low value because the property would receive a negative 80% influence factor. *Blake argument*.

b) The Assessor's representative, Sheila Blake, estimated the subject property's market value by looking to the sales of several purportedly comparable properties. That sales-comparison analysis yielded a value of $4,665 per acre. *Blake testimony; Resp't Exs. 7-8.*

c) Ms. Blake also used the income approach to estimate the property's value. In doing so, she relied on several estimates, including estimates about the number of viable trees per acre and average number of board feet per tree. Ms. Blake ultimately estimated a net income of $520 per acre, which she capitalized at 10% to yield a total value of $5,200 per acre or $88,400 for the entire parcel. *Blake testimony; Resp't Ex. 6-7.*

d) The Assessor also points to our decisions in three cases where taxpayers sought to have their land assessed as agricultural woodland. In each case, we found that the taxpayer had failed to make a prima facie case. *Blake testimony; Resp't Ex. 2-4.*

RECORD

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

a) The Form 131 petition, and all subsequent pre-hearing, and post-hearing submissions by either party.

b) The digital recording of the hearing.

c) Exhibits:

Petitioner Exhibit 1: Form 130
Petitioner Exhibit 2: Form 115 and attached letter
Petitioner Exhibit 3: Notes from PTABOA hearing
Petitioner Exhibit 4: Woodland stewardship plan
Petitioner Exhibit 5: Copy of Farm Forestry Award
Petitioner Exhibit 6: Photographs of property

Petitioner Exhibit 7: Property Record Card ("PRC") for subject from 1996
Petitioner Exhibit 8: Susan Allen's request for Respondent's evidence
Petitioner Exhibit 9: Susan Allen's notes from PTABOA hearing on December 6, 2005
Petitioner Exhibit 10: Department of Local Government Finance's memorandum on classification and valuation of agricultural land
Petitioner Exhibit 11: PRC for 18-acre parcel on Lick Creek Road

Respondent Exhibit 1: PRC for subject property
Respondent Exhibit 2: IBTR determination in *Brian and Triana King* v. *Washington Twp. Assessor*, Petition nos. 07-004-02-1-5-00183 & 07-004-02-1-5-00184
Respondent Exhibit 3: Part of IBTR determination in *Bryan K. Piles v. Van Buren Twp. Assessor*, Petition no. 07-003-02-1-5-00174
Respondent Exhibit 4: IBTR determination in *Diane Ritterskamp v. Jackson Twp. Assessor*, Petition nos. 07-002-02-1-5-00040 & 07-002-02-1-5-00041
Respondent Exhibit 5: Income-approach analysis
Respondent Exhibit 6: Standing Timber Board Feet chart
Respondent Exhibit 7: Sales-approach chart
Respondent Exhibit 8: Sales-disclosure forms and PRCs for properties in Exhibit 7

Board Exhibit A: Form 131 Petition
Board Exhibit B: Notice of Hearing
Board Exhibit C: Hearing Sign-In sheet
Board Exhibit D: Notice of Appearance of Consultant on Behalf of Assessor

d) These Findings and Conclusions.

OBJECTION

13. Ms. Allen objected to several of the Assessor's exhibits. According to Ms. Allen, she requested copies of the Assessor's exhibits on February 22, 2008—five days before the hearing. Ms. Blake responded that Ms. Allen's request was untimely under the small-claims procedural rules, which required Ms. Allen to request those documents at least five *business* days before the hearing.

14. Because we find that Ms. Allen did not timely request the Assessor's exhibits, we overrule her objection. Indiana Administrative Code tit. 52, r. 3-1-5(d) governs the parties' duty to exchange evidence in a small-claims case. If requested, a party must provide copies of its documentary evidence "at least five (5) *business* days before the small claims hearing." 52 IAC 3-1-5(d)(emphasis added). Thus, while the rule addresses

the time within which a party must respond to a request for its exhibits, it does not expressly address the time within which that request must be made. Logically, though, one cannot respond to a request as of a date preceding that request. And Ms. Allen made her request only three business days before the hearing—two days past 52 IAC 3-1-5(d)'s response deadline.

15. Ms. Allen, however, pointed out that our hearing instructions described the exchange deadline in terms of "days" rather than "business days." That may be true. But to the extent those instructions conflict with our administrative rules, we must follow our rules.

16. Even if we were to compute the exchange deadline using calendar days rather than business days, Ms. Allen first requested the Assessor's documents on the fifth calendar day before the hearing—the very day the Assessor's response would have been due. But we read our exchange rule as allowing at least a reasonable time for a party to respond to a request for documents. And the Assessor acted reasonably by providing Ms. Allen with at least some of its exhibits three days before the hearing.

ANALYSIS

Burden of Proof

17. A petitioner seeking review of an assessing official's determination must establish a prima facie case proving both that the current assessment is incorrect, and specifically what the correct assessment should 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).

18. In making its case, the petitioner must explain how each piece of evidence relates to its 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").

19. Once the petitioner establishes a prima facie case, the burden shifts to the respondent to impeach or rebut the petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.

Ms. Allen's Case

20. Ms. Allen failed to make a prima facie case for a change in assessment. We reach this conclusion for the following reasons:

A. Misclassification of land

a) We have addressed several appeals where taxpayers have claimed that their properties should be assessed as agricultural woodlands. In most cases, the taxpayers lost, in part, because they didn't prove that they devoted their properties

to agriculture. In several cases, we also pointed to the taxpayer's failure to offer probative evidence to quantify the appealed property's actual market value-in-use.

b) Unlike the taxpayers in those earlier cases, Ms. Allen proved that she devoted her property to agriculture. She bought the property to expand her existing tree farm, and she intends to harvest timber when the trees are mature enough. She also cleared and planted the only portion of her property that lent itself to cultivation. And she didn't use the property for any non-agricultural purposes. *Allen testimony*. Indeed, although Ms. Allen's property was classified as "excess residential" instead of "agricultural," the Assessor now agrees that Ms. Allen used the property to farm trees.[3] *Blake testimony*.

c) Thus, we are faced squarely with deciding whether a taxpayer can prevail simply by showing that an assessor misclassified her agricultural land, or whether she must instead offer probative market-based evidence to show that the resulting assessment doesn't reflect her property's actual market value-in-use. We find that the existing case law and administrative regulations require the taxpayer to offer probative market-based evidence.

1. Change to market value-in-use system

d) Those regulations and the cases interpreting them are a product of a landmark shift in Indiana's property-assessment. Indiana assesses property based on its "true tax value." IND. CODE § 6-1.1-1-3. Before 2002, however, true tax value was determined solely by reference to the State Board of Tax Commissioners' regulations and bore no relation to any objectively verifiable standard of measure. *Westfield Golf Practice Center, LLC v. Washington Twp. Assessor*, 859 N.E.2d 396, 399 (Ind. Tax. Ct. 2007). Thus, a taxpayer could prove her property's true tax value only by reference to the applicable assessment regulations. *Id.*

e) Beginning in 1996, the Indiana Tax Court and Indiana Supreme Court issued a series of decisions addressing whether that system violated our state constitution's requirement for a uniform and equal rate of property assessment.[4] *See State Bd. of Tax Comm'rs v. Town of St. John*, 702 N.E.2d 1034, 1035-36 (Ind. 1998) ("St. John V").[5] The Supreme Court ultimately affirmed the Tax Court's finding that the State Board's cost schedules, which formed the heart of its regulations, did not sufficiently relate to objectively verifiable data to ensure uniform and equal assessments based on property wealth. *St. John V,* 702 N.E.2d at 1043.

---

[3] In 2005 and 2006, Ms. Allen apparently began constructing a house and barn on the property. *Blake testimony*; *Resp't Ex 1*. We take no position about whether she currently devotes the property to agricultural use.

[4] IND. CONST. ART. X § 1.

[5] (Citing to four earlier reported decisions involving that case: *Town of St. John v. State Bd. of Tax Comm'rs*, 665 N.E.2d 965 (Ind. Tax Ct. 1996)("St. John I"); *Boehm v. Town of St. John*, 675 N.E.2d 318 (Ind. 1996) ("St. John II"); *Town of St. John v. State Bd. of Tax Comm'rs*, 690 N.E.2d 370 (Ind. Tax Ct. 1997) ("St. John III"); and *Town of St. John v. State Bd. of Tax Comm'rs* , 691 N.E.2d 1387 (Ind. Tax Ct. 1998)("St. John IV")).

f) Beginning with the 2002 general reassessment, the State Board of Tax Commissioners provided that missing link to objectively verifiable data by tying a property's assessment to its "market value-in-use." Thus, the 2002 Real Property Assessment Manual now defines "true tax value" 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." 2002 REAL PROPERTY ASSESSMENT MANUAL 2 (incorporated by reference at 50 IAC 2.3-1-2)[6].

g) As before, assessors typically use a mass-appraisal version of the cost approach in assessing individual properties. The Real Property Assessment Guidelines for 2002 – Version A describe that approach in detail. But we no longer measure assessors' success by whether they followed the state's guidelines; we instead look to whether their assessments accurately reflect the assessed properties' market values-in-use. *See* MANUAL at 20 (discussing the use of ratio studies to measure a mass-appraisal's accuracy and uniformity)

2. Taxpayers no longer can rely solely on attacking methodology

h) And that systemic shift from focusing on methodology to focusing on measurable results applies equally to how we must judge appeals from individual assessments. Thus, while the Manual directs us to presume that a property's assessment under the Guidelines accurately reflects its true tax value, a taxpayer can rebut that presumption with evidence showing the property's actual market value-in-use. *See* MANUAL at 5; *Eckerling v. Wayne Twp. Assessor,* 841 N.E. 2d 674, 678 (Ind. Tax. Ct. 2006). A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice often will suffice. *Id.* A taxpayer may also offer sales information for the subject or comparable properties and other information compiled according to generally accepted appraisal principles. *Id.*

i) But a taxpayer no longer can rebut an assessment simply by showing an assessor's technical failure in applying the Guidelines. *Eckerling* 841 N.E.2d at 676; *see also* Ind. Admin. Code tit.50, r. 2.3-1-1(d). Instead, the taxpayer should offer the types of market-based evidence described in the Manual. *See Eckerling* 841 N.E.2d at 478 (finding that taxpayers failed to make a prima facie case by focusing strictly on the assessor's methodology rather than offering market value-in-use evidence).

j) That is true regardless of the use to which a taxpayer devotes her property. When it comes to a taxpayer's burden on appeal, the relevant administrative regulations do not distinguish between property devoted to agriculture and property devoted to other uses. MANUAL at 5; 50 IAC 2.3-1-1(d).

[6] The Indiana General Assembly abolished the State Board as of December 31, 2001. 2001 Ind. Acts 198 § 119(b)(2). Effective January 1, 2002, the General Assembly created the Department of Local Government Finance. *See* Ind. Code § 6-1.1-30-1.1 (West Supp. 2005-06)(eff. 1-1-02); 2001 Ind. Acts 198 § 66. The DLGF incorporated the Manual into its administrative regulations by reference. Ind. Admin. Code tit. 50 r. 2.3-1-2.

k) And neither does the Tax Court. Although the methodology-based claims that the Court has rejected have largely dealt with attacks on how assessors applied the Guidelines in assessing improvements, the Court has not purported to limit its holdings to those types of cases. *See, e.g., Eckerling, supra*; *O'Donnell v. Dep't of Local Gov't Fin.* 854 N.E.2d 90, 94-95 (Ind. Tax Ct. 2006); *P/A Builders & Developers, LLC v. Jennings County Assessor*, 842 N.E.2d 899, 900-01 (Ind. Tax Ct. 2006). Thus, while the Guidelines value agricultural land using a mass-appraisal version of the income approach rather than the mass-appraisal cost approach used to value improvements, that distinction should not lead to a different result. In either case, a taxpayer cannot win by simply attacking an assessor's methodology in valuing her property; she must instead offer probative market-based evidence to show that the error led to an inaccurate assessment.

l) For that reason, the mere fact that the Assessor misclassified Ms. Allen's land as excess residential rather than agricultural does not entitle her to relief.

3. Ms. Allen failed also to make a methodology-based case

m) Indeed, the result would be the same even if we could give weight to Ms. Allen's methodology-based argument. While Ms. Allen showed that her land was misclassified, she didn't show what her property should be assessed for if the Guidelines had been correctly applied. The Guidelines direct assessors to adjust the uniform agricultural-land base rate using soil-productivity factors derived from maps published by the U.S. Department of Agriculture. GUIDELINES, ch. 2 at 106-08, 113-14. Ms. Allen, however, didn't show what those productivity factors were for her land. At most, she offered the DNR's Woodland Stewardship Plan for the subject property. That plan addresses both the subject property and another tract as a single property, and says that the property's soil primarily consists of Berks-Trevlac-Wellston complex and Wellston-Gilpin silt loams. *Pet'r Ex. 4c at 3*. But the plan doesn't show the productivity factors for those soil types, nor does it say which of those soil types applies to the subject property. *See id*.

B. Ms. Allen's market-based evidence is not probative

n) Ms. Allen did attempt to offer some market-based evidence. She pointed to the price she paid for the subject property. She also pointed to the sale price for one nearby property and the assessed value for another. But none of that evidence shows her property's market value-in-use.

1. The property's sale price

o) Ms. Allen's reliance on her purchase of the subject property fails for two reasons. First, she did not show how the property's sale price related to the property as it existed on the March 1, 2002, assessment date. When she bought the property, it

contained two housing units and possibly some additional land. But she had sold both housing units by the March 1, 2002, assessment date. And she offered no evidence to apportion the sale price between land and improvements.

p) Second, Ms. Allen bought the property in 1995—at least three years before the relevant valuation date of January 1, 1999. *See* MANUAL at 2 (providing that for the 2002 general reassessment a property's assessment must reflect its value as of January 1, 1999). Thus, she needed to explain how that purchase price related to the property's value as of January 1, 1999. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). And she did not do so.

2. Sale and assessment information for nearby properties

q) Ms. Allen's sale and assessment information for the two nearby properties also lacks probative value. In a broad sense, Ms. Allen correctly recognizes that one can estimate a given property's market value by comparing it to similar properties that have sold in the marketplace. *See* MANUAL at 13. Indeed, that is precisely the theory behind the sales-comparison approach to value. *Id.* But to apply that approach, a party to an assessment appeal must establish that the purportedly comparable properties sufficiently resemble the appealed property. Conclusory statements that a property is "similar" or "comparable" to another property do not suffice. *Long*, 821 N.E.2d at 470. Instead, the party must explain how the properties' relevant characteristics compare to each other. *See Id*. at 470-71. Equally importantly, he or she must explain how any relevant differences between the properties affect their relative market values-in-use. *Id.*

r) Ms. Allen fails to show how either nearby property compared to her own. She offered little information about the actual properties, instead making conclusory statements that they were comparable to hers. And she completely failed to adjust either property's sale price or assessment value to account for any relevant differences between those properties and her property.

CONCLUSION

21. Because Ms. Allen didn't offer probative market-based evidence to show her property's market value-in-use, she failed to make a prima facie case for a change in assessment. This may seem like a harsh result, given that the Assessor essentially admitted that the land was misclassified and did not offer any better market-based evidence of its own. But Ms. Allen bore the burden on appeal, and under existing administrative regulations and case law interpreting those regulations, she failed to meet that burden. We therefore find for the Brown County Assessor.

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: **May 27, 2008**

_____

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>