

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

Petition Nos.: 02-072-11-1-1-00001
02-072-11-1-1-00002
Petitioner: Arneo, Inc.
Respondent: Allen County Assessor
Parcel Nos.: 02-08-08-200-001.000-072
02-08-08-200-002.000-072
Assessment Year: 2011

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

Procedural History

1. Arneo, Inc. appealed the subject parcels’ March 1, 2011, assessments. The Allen County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determinations on June 5, 2012. The PTABOA reduced the assessments, but Arneo still disagreed.
2. Arneo then timely filed two Form 131 petitions with the Board. Arneo elected to have its appeals heard under the Board’s small claims procedures.
3. On March 5, 2013, the Board held a consolidated hearing through its designated administrative law judge, Jennifer Bippus (“ALJ”).
4. The following people were sworn in and testified:
 - a) Daniel Kramer, secretary/treasurer, Arneo, Inc.
 - b) Timothy Nagel, senior assessment team leader, Allen County Assessor’s Office

Facts

5. The subject property consists of two parcels located at 9218 and 9356 N. Clinton Street in Fort Wayne. Parcel 02-08-08-200-001.000-072 contains 109.76 acres of vacant agricultural land. Parcel 02-08-08-200-002.000-072 contains 103.62 acres assessed largely as agricultural land with a one-acre homesite. The parcel also includes a single-family dwelling and other buildings.
6. Neither the Board nor the ALJ inspected the subject property.

7. The PTABOA determined the following values:

Petition #	Land	Improvements	Total
02-072-11-1-1-00001	\$113,200	\$0	\$113,200
02-072-11-1-1-00002	\$135,800	\$99,000	<u>\$234,800</u>
			\$348,000

8. Arneo requested the following values:

Petition #	Land	Improvements	Total
02-072-11-1-1-00001	\$77,395	\$0	\$77,395
02-072-11-1-1-00002	\$92,836	\$67,688	<u>\$160,524</u>
			\$237,919

Summary of the Parties' Contentions

9. Arneo offered the following evidence and arguments:

- a) The subject property has been in Daniel Kramer's family for 100 years. It was originally a beef cattle farm. When I-469 was built, it bisected the subject property. The home and buildings are now on one side of I-469 and rest of the land is on the other side. It therefore became impractical to continue operating the farm. The home has not been improved or remodeled; it is currently being used for storage. The outbuildings are simple farm storage. One of the garages and the pole barn have dirt floors. *Kramer testimony; Pet'r Exs. 1, 8.*
- b) A portion of the farm is located in a flood plain. A surveyor estimated that roughly 40 acres are located in "Flood Hazard Area" and "Floodway in Zone AE." *Kramer testimony; Pet'r Ex. 2.* Also, there is a power substation located across the street from the subject parcels and there are five power lines that come in and off the parcels. Plus, there is an interceptor sewer at the back of the farm. *Kramer testimony.*
- c) With all of the issues facing the farm, Arneo determined that the best alternative was to put the farm in the Conservation Reserve Program ("CRP"). A total of 143.6 acres qualified for the CRP. Arneo therefore entered into a contract with the United States Department of Agriculture for 10 years beginning in October 2007. The contract has a rental rate of \$82.84 per acre for a total of \$11,896 per year. One of the CRP's goals is water quality protection, so Arneo planted trees on 38 acres to avoid erosion and runoff along the St. Joseph River. *Kramer testimony; Pet'r Ex. 3.*
- d) According to the Certification of Agricultural Land Base Rate Value for Assessment Year 2011 ("Certification") from the Department of Local Government Finance ("DLGF"), the statewide agricultural base rate for 2011 was \$1,500 per acre. The DLGF determined that value using the income capitalization approach, which in turn was based on "the residual or net income that will accrue to the land from agricultural production." *Pet'r Ex. 4.* Arneo applied for the CRP in November 2006 and was

accepted into the program for 2007. Mr. Kramer estimated that rent around that time would have been roughly \$104 to \$110 per acre, while operating income would have been somewhere between \$59 and \$135 per acre. *Kramer testimony.*

- e) Mr. Kramer proposed dividing the farm's actual income of \$11,896 by what he characterized as a modest 5% return. That leads to a total value for the farm of \$237,900. That assessment would generate a tax liability of \$4,943, which would consume 41.5% of the farm's income. That is still greater than the highest marginal income-tax rate. Nonetheless, Mr. Kramer felt that such a tax rate would be acceptable given the concessions it represents. By comparison, even with the PTABOA's reductions, the subject parcels' assessments lead to taxes equaling 61% of the farm's income. *Kramer testimony; Pet'r Exs. 6-8.*
- f) An article written by a Purdue Extension economist points out that the base rate used to assess agricultural land increased from \$880 per acre in 2007 to its current rate. But Arneo's farm has been on a fixed income during that time. And the article indicates that base rates will continue to increase in the future, which is ominous for the farm. *Kramer testimony; Pet'r Ex. 5.*

10. The Assessor offered the following evidence and arguments:

- a) The subject property includes a one-acre homesite with a two-story house over an unfinished basement and outbuildings. There are 212 acres of agricultural land. The house was built in 1916 and has 2,274 square feet of finished area. *Nagel testimony; Resp't Exs. 3-7.*
- b) The Assessor's office field-checked the subject property on March 9, 2012, and verified its information with Mr. Kramer. Based on that visit, the Assessor made changes to the buildings' assessments. The Assessor also changed the land assessment based on a review of GIS and surveys provided by Arneo. Those changes included correcting soil types, accounting for a flood plain and floodway, and removing a road right of way. When he appeared at the PTABOA hearing, Mr. Kramer did not dispute the changes; instead, he disputed the amount of taxes that Arneo had to pay after the property was annexed to the City of Fort Wayne taxing district. *Nagel testimony; Resp't Exs. 3-5.*
- c) Although Mr. Kramer proposed using the income approach to value the subject property, the Assessor is bound by the DLGF's guidelines. And those guidelines require assessors to value agricultural land using the state mandated agricultural base rate as adjusted by factors based on appropriate soil types. The Assessor followed those guidelines in assessing the subject property. *Nagel testimony; Resp't Exs. 3, 8.*

Record

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

- a) The Form 131 petitions with attachments,
- b) A digital recording of the hearing,
- c) Exhibits:
 - Petitioner Exhibit 1: Photograph of home and aerial photographs of buildings and farm,
 - Petitioner Exhibit 2: March 8, 2012 Letter of Transmittal from surveyor to Dan Kramer,
 - Petitioner Exhibit 3: August 29, 2008 letter from Aleatha Meyer to Arneo with Conservation Reserve Program Contract,
 - Petitioner Exhibit 4: Certification of Agricultural Land Base Rate Value for Assessment Year 2011,
 - Petitioner Exhibit 5: Article purportedly reported in “The Hoosier Farmer” on February 18, 2013, from the Purdue Ag Communications Service,
 - Petitioner Exhibit 6: July 19, 2012 Special Message to Property Owner (Form TS-1A) for each parcel; Form 115 determination for each parcel,
 - Petitioner Exhibit 7: Baden Gage and Schrader Tax Guide¹ showing income tax rates,
 - Petitioner Exhibit 8: Summary of taxpayer proposal.

 - Respondent Exhibit 1: Hearing notice for parcel 02-08-08-200-001.000-072,
 - Respondent Exhibit 2: Hearing notice for parcel 02-08-08-200-002.000-072,
 - Respondent Exhibit 3: Respondent’s Position Statement,
 - Respondent Exhibit 4: Property record card for 02-08-08-200-001.000-072,
 - Respondent Exhibit 5: Property record card for 02-08-08-200-002.000-072,
 - Respondent Exhibit 6: Photo of 02-08-08-200-002.000-072,
 - Respondent Exhibit 7: GIS view of properties,
 - Respondent Exhibit 8: DLGF publication entitled “Agriculture Land Base Rates for the Assessment Dates: March 1, 2005 - 2013.”

- Board Exhibit A: Form 131 petitions
- Board Exhibit B: Hearing notices
- Board Exhibit C: Hearing sign-in sheet

- d) These Findings and Conclusions.

¹At the hearing, Mr. Kramer described this exhibit as a Baden Gage and Schrader tax guide. Arneo’s exhibit list describes the exhibit as CRP income taxed at various marginal tax rates.

Analysis

Burden of Proof

12. Generally, a taxpayer seeking review of an assessing official's determination must make a prima facie case proving both that the current assessment is incorrect and 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).
13. In making its case, the taxpayer 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”).
14. If the taxpayer makes a prima facie case, the burden shifts to the assessor to offer evidence to impeach or rebut the taxpayer'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.

Discussion

15. Arneo did not make a prima facie case for reducing the subject parcels' assessments. The Board reaches this conclusion for the following reasons:
 - a) Arneo made several arguments about its property taxes, including claims about the level of its taxes as a percentage of the subject parcels' fixed income. The Board, however, lacks jurisdiction to hear general claims that a petitioner's taxes are too high or that those taxes are higher than the taxes paid by other property owners. The Board is a creation of the legislature and has only the powers conferred by statute. *Whetzel v. Dep't of Local Gov't Fin.*, 761 N.E.2d 904, 908 (Ind. Tax Ct. 2002) (*citing Matonovich v. State Bd. of Tax Comm'rs*, 705 N.E.2d 1093, 1096 (Ind. Tax Ct. 1999)). Indiana Code § 6-1.5-4-1 gives the Board authority to determine appeals concerning assessed valuation, deductions, exemptions, and credits. The Board therefore has no authority to address general disputes over taxes or tax rates.²
 - b) Of course, Arneo's taxes are based on the subject parcels' assessments. And the Board does have jurisdiction to hear Arneo's challenge to those assessments. There appears to be no dispute about how the Assessor classified Arneo's land. Mr. Nagel testified that the Assessor made changes to the land after reviewing its geographic information system (“GIS”) and surveys, and that Mr. Kramer did not dispute those changes at the PTABOA hearing. The same is true for the Board's hearing—while Mr. Kramer referred to a letter from a surveyor estimating that roughly 40 acres of the

² The Board does have authority to address appeals brought on a Form 133 petition to correct error alleging that specific “taxes, as a matter of law, were illegal.” I.C. § 6-1.1-15-12(a)(6) and (e). Arneo did not make such a claim in these appeals.

farm was in a flood hazard area or flood zone, Mr. Kramer did not claim that the Assessor failed to accurately classify that portion of the subject parcels.³

c) Instead, Mr. Kramer focused on the fact that Arneo had enrolled a significant part of the farm in the CRP and received a fixed income under that program. Mr. Kramer therefore proposed using the income capitalization approach to value the parcels. Assuming without deciding that a taxpayer or assessor can prove the market value-in-use value of agricultural land other than through using the base rates adopted by the DLGF and applying the methodology laid out in the DLGF's guidelines, we find that Mr. Kramer's income capitalization analysis lacks probative weight.

d) Under the income capitalization approach,

[T]he income expected to be earned by the subject property is estimated, allowing for reasonable expenses, vacancy, and/or collection loss, to arrive at net operating income (NOI). The NOI is subsequently converted to a present value by dividing it by a capitalization rate. The capitalization rate generally reflects the annual rate of return necessary to attract investment capital and is influenced by such factors as "apparent risk, market attitudes toward future inflation, the prospective rates of return for alternative investments, the rates of return earned by comparable properties in the past, the supply of and demand for mortgage funds, and the availability of tax shelters."

Lacy Diversified Indust. v. Dep't of Local Gov't Fin., 799 N.E.2d 1215, 1224 (Ind. Tax Ct. 2003)(*quoting*, AM INST. OF REAL ESTATE APPRAISERS, THE APPRAISAL OF REAL ESTATE, 417 (10th ed. 1992)). Although Mr. Kramer followed the income capitalization approach's general formula of dividing income by a rate of return (capitalization rate), he did not consider any of the factors required by generally accepted appraisal principles in calculating net income or choosing a capitalization rate. To the contrary, Mr. Kramer's analysis is entirely conclusory and therefore lacks probative weight.

e) Mr. Kramer also identified the following additional issues: (1) a highway bisects the farm, (3) power lines run on and off the farm, (3) there is an interceptor sewer at the back of the farm, and (4) the house and other buildings are simple and have not been remodeled. But Mr. Kramer did not claim that the Assessor failed to properly address those issues in applying the DLGF's guidelines, nor did he offer any probative evidence to quantify how they affect the farm's market value-in-use.

³ The Assessor classified at least a portion of the farm as land-type 41 (land that floods occasionally) and land-type 42 (land that floods severely). Unfortunately, neither party offered complete property record cards, so the Board cannot tell how much of the farm was classified under those land types. *See Resp't Exs 4-5; see also* REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, ch. 2 at 113 and REAL PROPERTY ASSESSMENT GUIDELINES FOR 2011, ch. 2 at 98 (listing agricultural land use types).

Conclusion

16. Arneo failed to make a prima facie case for reducing the subject parcels' assessments. The Board therefore finds in the Assessor's favor.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now orders no change to the assessments.

ISSUED: May 29, 2013

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

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>.