

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

**Petition No.:** 71-003-16-3-5-00407-19  
**Petitioner:** Jim Basney  
**Respondent:** St. Joseph County Assessor  
**Parcel:** 71-04-09-452-015.000-003  
**Assessment Year:** 2016

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

**Procedural History**

1. The Petitioner initiated his appeal via a Petition for Correction of an Error (Form 133) on March 29, 2017.<sup>1</sup>
2. On March 26, 2019, the St. Joseph County Property Tax Assessment Board of Appeals (PTABOA) issued a Notification of Final Assessment Determination (Form 115) denying the Petitioner any relief.
3. The Petitioner timely filed a Petition for Review of Assessment (Form 131) with the Board, electing the Board's small claims procedures.
4. On October 30, 2019, Dalene McMillen, the Board's Administrative Law Judge (ALJ) held a hearing. Neither the Board nor the ALJ inspected the property.
5. Certified tax representative Brian Thomas appeared for the Petitioner and was sworn. Attorney Frank Agostino appeared for the Respondent. Assessor Rosemary Mandrici and deputy assessor Patricia St. Clair were sworn as witnesses for the Respondent.

**Facts**

6. The property under appeal is 9.375 acres of vacant land located on Adams Road in Granger.
7. The PTABOA determined a total land assessment of \$34,700.
8. The Petitioner requested a total land assessment of \$9,300.

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<sup>1</sup> The Form 133 provided by the Petitioner was not file stamped by the auditor. Respondent's Exhibit 3 indicates the Form 133 was filed in the St. Joseph County Auditor's office on March 29, 2017.

## **Record**

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

a) A digital recording of the hearing.

b) Exhibits:

Petitioner Exhibit 1: 2016 Notice of Assessment of Land and Structures/Improvements (Form 11).

Respondent Exhibit 1: Form 131,

Respondent Exhibit 2: Form 115,

Respondent Exhibit 3: Form 133,

Respondent Exhibit 4: Power of Attorney for Jim Basney,

Respondent Exhibit 5: Subject property record cards,

Respondent Exhibit 6: Assessor's "memo list" regarding the subject property,

Respondent Exhibit 7: Valuation history for the subject property,

Respondent Exhibit 8: Three photographs of the subject property,

Respondent Exhibit 9: Indiana Code § 6-1.1-15-17.1,

Respondent Exhibit 10: Sales disclosure forms for vacant land on Ironwood Road and vacant land on Hollyhock Road; two aerial maps of the subject property; and a property record card for 16633 Baywood Lane.

c) The record also includes the following: (1) all pleadings and documents filed in this appeal; (2) all orders and notices issued by the Board or ALJ; and (3) these findings and conclusions.

## **Objections**

10. While not expressly objecting, Mr. Thomas stated he did not receive Respondent's Exhibit 10, sales disclosure forms, aerial maps, and a property record card, prior to the hearing. In response, Mr. Agostino stated that because the Petitioner elected the Board's small claims procedures, and did not request the exhibits prior to the hearing, the Respondent was under no obligation to provide the exhibits prior to the hearing. The ALJ took the objection under advisement.
11. The Board's small claims procedural rules provide that, if requested, "the parties shall provide to all other parties copies of any documentary evidence and the names and addresses of all witnesses intended to be presented at the hearing at least five (5) business days before the small claims hearing." 52 IAC 3-1-5(d). The rules further provide that failure to comply with that requirement "*may* serve as grounds to exclude evidence or testimony that has not been timely provided." 52 IAC 3-1-5(f) (emphasis added). Here, there is no indication the Petitioner requested an exchange of the evidence. Consequently, the objection is overruled and Respondent's Exhibit 10 is admitted.

## Contentions

### 12. Summary of the Petitioner's case:

- a) Mr. Thomas argued the reason for filing the Form 133 and Form 131 “stand on their own merit.” As stated on the Form 133 and Form 131, the basis for filing the appeal reads as follows:

[T]he Corporate Attorney for Integrity Tax originally instructed us to file a Form 133 for this property informing us that the previous year's value needs to be reinstated as the assessment notice is improper. Further instructions were to list the following as the contention: Per IC 6-1.1-15-17.1 (1) the county assessor or township assessor must, on the notice required by IC 6-1.1-4-22 (Form 11), specify any changes in land classification and the reasons for the change. By direction of said Attorney, we continue to respectfully request that the assessed value be reinstated to the previous year's valuation.

*Thomas argument (referencing Resp't Ex. 1, 3).*

- b) In response to questioning, Mr. Thomas conceded the Form 11 clearly states the subject property record card is available on the Assessor's website and the property record card notes the change in land classification. Mr. Thomas also confirmed the subject property was used as soccer fields in 2016. *Thomas testimony; Pet'r Ex. 1; Resp't Ex. 5.*

### 13. Summary of the Respondent's case:

- a) The subject property is correctly assessed. The Petitioner purchased the property on December 31, 2012, for \$180,000. Granted the sale occurred four years prior to the January 1, 2016, valuation date, but the sale price was “more than five times the assessed value.” *Mandrici testimony; Resp't Ex. 5.*
- b) During a cyclical review, a deputy assessor discovered the subject property was no longer being used for agricultural purposes.<sup>2</sup> An aerial map confirmed the subject property was being used as soccer fields, so the land was reclassified from agricultural to residential excess acreage, the best classification for this land type. *Agostino argument; Mandrici testimony; St. Clair testimony; Resp't Ex. 5, 8, 10.*
- c) The 2016 assessment was based on the 2012 land order. According to the land order, the proper base rate for excess residential acreage is \$3,700 per acre. The Respondent

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<sup>2</sup> Ms. Mandrici testified that cyclical review of properties in St. Joseph County is also done via the county's “pictometry.”

applied this base rate to the subject property's 9.375 acres to arrive at a land value of \$34,700. *Mandrici testimony; Resp't Ex. 5.*

- d) In an effort to further support the current assessment, the Respondent analyzed two vacant land sales. The first comparable property sold on February 12, 2016, for \$20,000. The Respondent divided the sale price by the land size of 66,647 square feet to arrive at a per square foot price of \$0.30. The second comparable property sold on December 19, 2017, for \$35,000 or \$0.26 per square foot. Using this approach, the Respondent determined the value of the subject property would be "over \$100,000." *St. Clair testimony; Resp't Ex. 10.*
- e) It is the Respondent's understanding the Petitioner initiated this appeal because the 2016 Form 11 failed to explain the land classification had been changed. According to the Respondent, the Form 11 refers the taxpayer to the Assessor's website where the property record card can be found. The property record card clearly indicates the land classification change. *St. Clair testimony; Resp't Ex. 1, 3, 5.*

### **Burden of Proof**

- 14. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass'r*, 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). However, Ind. Code § 6-1.1-15-17.1 places the burden of proof on the assessor in a review of a change in land classification. Under Ind. Code § 6-1.1-15-17.1 (2) "the county assessor or township assessor making the change in the classification has the burden of proving that the change in the classification is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court."
- 15. Here, the Respondent offered the subject property record card indicating the land classification changed from agricultural in 2015 to residential excess acreage in 2016. The Respondent, who was represented by an attorney, accepted the burden of proof under Ind. Code § 6-1.1-15-17.1. Accordingly, the Respondent has the burden of proving the change in classification is correct.

### **Analysis**

- 16. The Respondent made a prima facie case the change in classification is correct.
  - a) Real property is assessed based on its market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach, but other evidence is permitted to prove an accurate valuation. Such evidence may include actual construction costs, sales information regarding the subject property or comparable properties, appraisals,

and any other information compiled in accordance with generally accepted appraisal principles.

- b) Regardless of the method used, a party must explain how the evidence relates to the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (In. Tax Ct. 2005). For the 2016 assessment, the valuation date was January 1, 2016. *See* Ind. Code § 6-1.1-2-1.5.
- c) First, the Board will address whether the Petitioner received proper notice of the change in land classification. More specifically, Ind. Code § 6-1.1-15-17.1 (1) states the county assessor must on the notice required by Ind. Code § 6-1.1-4-22 (Form 11) specify any changes in land classification and the reasons for the change.
- d) Here, the Respondent testified the 2016 Form 11 referred the taxpayer to the property record card via the Assessor's website. By accessing the website, the property record card clearly indicated the land classification was changed from agricultural to residential excess acreage because there was no agricultural activity. Mr. Thomas conceded the property record card included information on the change in land classification. By the Respondent referring the Petitioner to its website this minimally meets the notice requirements set forth by Ind. Code § 6-1.1-15-17.1 (1).
- e) The Respondent, who was represented by counsel, accepted the burden under Ind. Code § 6-1.1-15-17.1. Under this section of the burden shifting provision, the Respondent has the burden to prove that the change in land classification is correct. The Respondent's position, a position that is undisputed by the Petitioner, is that the subject property was incorrectly classified as agricultural because there was absolutely no agricultural activity taking place on the property. During a cyclical review, the Respondent noticed the subject property was being utilized as a soccer field and not for agricultural purposes, a fact confirmed by the Petitioner. Accordingly, the Respondent changed the land classification for the 2016 assessment year. Because there is no dispute the subject property is not being used for agricultural purposes, and instead being used as a soccer field, the Respondent made a prima facie case that the change in land classification was proper.<sup>3</sup>
- f) In an effort to rebut the Respondent's case, the Petitioner referred the Board to the Form 133 and Form 131, stating the previous year's value should be reinstated because the Respondent failed to comply with Ind. Code § 6-1.1-15-17.1 (1). As previously stated, the Respondent minimally complied with Ind. Code § 6-1.1-15-17.1 (1) and simply referring the Board to a statute cited on the filings does not rebut the Respondent's evidence the Petitioner received proper notice. The Petitioner failed to present any probative evidence to rebut the Respondent's re-classification of the

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<sup>3</sup> According to the Respondent, residential excess acreage is the "best classification" of the subject property because there is no evidence the Petitioner is receiving any fees in exchange for the use of the property. Furthermore, the Petitioner never argued residential excess acreage is the incorrect classification.

property nor did the Petitioner present any market-based evidence proving the market value-in-use of the subject property.

### **Conclusion**

17. The Board finds for the Respondent.

### **Final Determination**

In accordance with the above findings and conclusions, the Board orders no change to the 2016 assessment.

ISSUED: January 23, 2020

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

### **- APPEAL RIGHTS -**

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.