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

Petition Number: **31-015-08-1-5-00001**
Petitioner: **Wilbert T. Best**
Respondent: **Harrison County Assessor**
Parcel No.: **31-15-21-100-012.000-015**
Assessment Year: **2008**

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

PROCEDURAL HISTORY

1. Wilbert Best appealed the subject property's 2008 assessment. On March 12, 2010, the Harrison County Property Tax Assessment Board of Appeals issued notice of its decision denying Mr. Best the relief he had requested.

2. Mr. Best then timely filed a Form 131 petition with the Board. He elected to have his appeal heard according to the Board's small claims procedures.

3. On January 14, 2011, the Board held an administrative hearing, before its duly appointed administrative law judge, Rick Barter ("ALJ").

4. The following people were present and sworn in at the hearing:

   Wilbert T. Best[1]

   For the Assessor: Lorena A. Stepro, Harrison County Assessor,
   Ken Surface, Nexus Group,
   Joshua Harrell, Nexus Group

FACTS

5. The property at issue is an improved 33-acre parcel located at 8373 Morgans Lane in Elizabeth, Indiana.

6. The ALJ did not inspect the property.

7. The PTABOA determined the following assessment:

[1] Anne T. Walsh, attorney at law, represented the Petitioner at the hearing.

Land: $23,500 Improvements: $182,600 Total: $206,100.

8. The Petitioner requested the following assessment:
Land: $22,700 Improvements: $97,900 Total: $120,600.

ISSUES

9. Summary of Mr. Best's contentions:

a. In 2008, the assessor improperly reclassified a building that houses grape-processing and wine-tasting facilities from agricultural to commercial. *Walsh argument; Pet'r Ex. 1.* But the building is used for agricultural purposes. *Walsh argument; Best testimony*.

b. In 2002, Mr. Best bought the subject property as an investment. Although Mr. Best moved into a house on the property, he continued to rent the land to a tenant farmer, who farmed all but 17 wooded acres. The farmer soon became ill and could no longer farm the property. *Best testimony.* After researching alternative crops, Mr. Best and his two sisters formed Best Vineyards, LLC and planted a vineyard. *Best testimony.* At first, they sold grapes, but they soon began selling juice to wineries. Best and his sisters then decided to begin buying wine-processing equipment and to build a 2,400-square-foot, building. *Id.; Pet'r Ex. 4.* They use a 1,600-square-foot area of the building for grape processing, wine production, and loading, and a 640-square-foot area for wine tasting. *Id.*

c. After Best and his sisters completed the building and bought equipment, they applied for state and federal permits. *Id; Petitioner Exhibit 2.* They have a "farm winery" permit from the state, which differs from a simple winery permit. A farm winery is not a retailer or bar; it can only sell wine by the glass and bottle on the premises and customers must stand up while sampling wine. *Best testimony*. To sell to supermarkets and retail outlets, a farm winery must go through a distributor. But distributors will not do business with new, small farm wineries like Best Vineyards. Nonetheless, Best Vineyards does get 30 permits to sell wine at special events. *Id.*

d. Thus, because both the grape-processing and tasting building and the land that the building sits on are part of a farm winery, they are agricultural. In fact, the government refers to farm wineries as agricultural businesses. And nothing in the assessors' manual dictates assessing farm wineries as anything but agricultural. *Best testimony; Walsh argument.*

10. Summary of the Respondent's contentions:

a. Mr. Best does not even claim that the subject property was assessed for more than its market value-in-use; he merely argues that part of the property was misclassified. *Surface argument.* But he is mistaken. In 2008, one acre of the subject land was classified as a home site and the remaining 32 acres were classified as agricultural land. *Harrell testimony; Resp't Ex. A.* Currently, one acre of land that had previously been classified as agricultural is classified as primary commercial land. *Id; Resp't Ex. F*. The grape- and wine-processing building was assessed using the General Commercial Mercantile (GCM) cost schedules. *Resp't Ex. A*. For purposes of the state's "circuit breaker" caps, the building was classified as non-residential real property, as were Mr. Best's barn and utility shed. Mr. Best's house, by contrast, was classified as a homestead. *Harrell testimony; Resp't Ex. F*.

b. Those classifications are consistent with Ind. Code § 6-1.1-4-13, which addresses the assessment of agricultural land, and does not apply to "land purchased for industrial, commercial, or residential use." *Harrell testimony; Resp't Ex. D.* The subject property's classifications are also consistent with guidance from Barry Wood, Assessment Division Director of the Department of Local Government Finance, regarding how to classify property for purposes of the circuit breaker caps. *Harrell testimony; Stepro testimony; Resp't Ex. E, G-I.* Indeed, contrary to Mr. Best's claims, nothing in the Indiana Code or applicable assessing rules calls for buildings to be classified or assessed as agricultural. *Surface testimony*.

RECORD

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

a. The Form 131 petition.

b. A digital recording of the hearing.

c. Exhibits:

Petitioner Exhibit 1: Copy of Form 131 petition,
Petitioner Exhibit 2: I.C. § 7.1-3-12,
Petitioner Exhibit 3: Plot plan and copies of photographs of subject property,
Petitioner Exhibit 4: Sketch of the grape-processing building's floor plan with notations.

Respondent Exhibit A: 2008 PRC for the subject property,
Respondent Exhibit B: Aerial photograph of subject property,
Respondent Exhibit C: Copy of photograph of grape-processing building,
Respondent Exhibit D: I.C § 6-1.1-4-13,
Respondent Exhibit E: Copy of DLGF memorandum to assessing officials,

Respondent Exhibit F: Computer screen shot of subject property's2010 assessment,
Respondent Exhibit G: 2008 Harrison County tax rates,
Respondent Exhibit H: 2009 Harrison County tax rates,
Respondent Exhibit I: 2010 Harrison County tax rates.

Board Exhibit A: Form 131 petition,
Board Exhibit B: Hearing notice,
Board Exhibit C: Hearing sign-in sheet.

d. These Findings and Conclusions.

ANALYSIS

12. The most applicable governing cases are:

a. A petitioner seeking review of an assessing official's determination has the burden to make 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 petitioner 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 makes a prima facie case, the burden shifts to the assessing official 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.

13. Mr. Best failed to make a prima facie case for changing the subject property's assessment. The Board reached this decision for the following reasons:

a. The 2002 Real Property Assessment Manual 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 at 2 (incorporated by reference at 50 IAC 2.3-1-2). Appraisers have traditionally used three methods to determine a property's value: the cost approach, the sales comparison approach and the income approach to value. *Id.* at 3, 13-15. Indiana assessing officials generally assess real property using a mass-appraisal version of the cost approach, as set forth in the Real Property Assessment Guidelines for 2002 – Version A.

b. A property's assessment under the Guidelines is presumed to accurately reflect its true tax value. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005)*; P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax 2006). A taxpayer may rebut that presumption with evidence that is consistent with the Manual's definition of true tax value. MANUAL at 5. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice often will suffice. *Id*.; *Kooshtard Property VI*, 836 N.E.2d at 506 n.6. A taxpayer may also offer sales information for the subject property or comparable properties and other information compiled according to generally accepted appraisal principles. MANUAL at 5.

c. By contrast, a taxpayer generally cannot rebut an assessment's presumed accuracy simply by contesting the methodology that the assessor used to compute it. *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). Instead, the taxpayer must show that the assessor's methodology yielded an assessment that did not accurately reflect the property's market value-in-use. *Id*. Strictly applying the Guidelines does not suffice; rather, the taxpayer should offer the types of market-value-in-use evidence contemplated by the Manual. *Id*.

d. Mr. Best did not offer any market-based evidence to show that the subject property was assessed for more than its market value-in-use. Instead, Mr. Best claimed that the grape-processing building and the land under it were incorrectly classified as commercial rather than agricultural.

e. As to the land, Mr. Best was simply mistaken. In 2008, the one-acre homesite associated with Mr. Best's house was the only portion of the subject property that was not classified as agricultural.

f. Mr. Best's claim about the grape-processing building also misses the mark because Mr. Best ignores the Tax Court's decisions explaining that parties should offer market value-in-use evidence rather than focusing on an assessor's methodology. Granted, a taxpayer may not need to offer independent market value-in-use evidence in every case. Assessment statutes and regulations call for applying a unique methodology to assess agricultural land. *Compare* Ind. Code § 6-1.1-4-13 (setting out requirements for assessing agricultural land) with Ind. Code § 6-1.1-4-13.7 (setting out requirements for valuing residential, commercial, and industrial land.)[2] Thus, a taxpayer may be able to rebut a property's assessment by showing that his agricultural land was misclassified and what the land's assessment would have been had the rules for assessing agricultural land been properly applied. But the same does not hold true for buildings. The assessment statutes do not refer to agricultural improvements. And the Guidelines treat "agricultural yard structures" the same way

[2] For a detailed discussion of how the statues and administrative rules for assessing agricultural land differ from the statutes and rules for assessing other types of land, *see Freedom Associates, LLC v. Hamilton County Assessor*, Pet. nos.29-014-06-1-4-00019 29-014-07-1-4-00019 (Ind. Bd. of Tax Rev. June 23, 2009).

that they treat other improvements—those structures are valued using cost schedules that are based on the depreciated replacement cost new for structures having the same utility. *See* GUIDELINES, Intro at 2 (explaining that mass appraisal system outlined in the Guidelines uses the concept of "replacement cost new"); *see also* GUIDELINES, ch. 5 (procedures for assessing residential and agricultural yard structures) Thus, if Mr. Best wanted to contest the grape-processing building's assessment, he needed to offer the types of market value-in-use evidence contemplated by the Manual.

g. In any event, Mr. Best did not show that the assessor failed to properly apply the Guidelines in assessing the grape-processing building. As the Tax Court explained in a case that arose under Indiana's old assessment system where methodology-based claims were the norm, a building's use is simply the starting point for selecting the appropriate model on which to base its assessment. *Herb v. State Board of Tax Commissioners*, 656 N.E. 2d 890, 894 (Ind. Tax Ct. 1995). Ultimately, assessors should use the model that most closely resembles the building's physical features, regardless of the model's name. *Id.* Here, the assessor used the model for General Commercial Mercantile ("GCM") utility storage buildings to value the grape-processing building. *Resp't Ex. A*. Mr. Best did not show that the grape-processing building physically differed from the GCM utility storage model in ways that would have made using that model inappropriate, nor did he show that any other model more closely resembled the grape-processing building.

h. Finally, the Assessor spent much of her time at the hearing addressing whether the subject property's various components were properly classified for purposes of calculating what her witnesses referred to as the "circuit breaker" caps. It appears that the Assessor was referring to the credit against property taxes provided under Ind. Code § 6-1.1-20.6-7. That statute gives a taxpayer a credit equal to the amount by which his taxes exceed specified percentages of his property's assessed value. I.C. § 6-1.1-20.6-7. Those percentages differ depending on the type of property. *Id*. It is unclear whether or not Mr. Best is contesting the subject property's classification for purposes of that credit. It is also unclear whether the Board would have the authority to address such a claim on a Form 131 petition.[3] In any case, the grape-processing building was not misclassified for purposes of the "circuit breaker" credit. The statute does not provide a separate classification for agricultural improvements; instead, improvements are classified as homesteads, residential real property, long term care property, or nonresidential real property. I.C. § 6-1.1-20.6-7(a).

CONCLUSION

14. Mr. Best failed to make a prima facie case for changing the subject property's assessment. The Board therefore finds for the Assessor.

[3] Indiana Code § 6-1.1-4-1(a) requires the Board to review appeals concerning "(1) the assessed valuation of tangible property; (2) property tax deductions; or (3) property tax exemptions; that are made from a determination by an assessing official or a county property tax assessment board of appeals to the [Board] under any law." At one time, that statute also gave the Board jurisdiction over credits, but the legislature amended the statute to omit the reference to credits in 2003. 2003 Ind. Acts 256 §31.

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: _____

_____
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, 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.