

REPRESENTATIVE FOR PETITIONER:

Bill J. Brewer, *pro se*

REPRESENTATIVE FOR RESPONDENT:

Sandra Whitaker, County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Bill J. Brewer,	)	Petition No.:	23-004-14-1-5-10096-15
)		
Petitioner,	)	Parcel No.:	23-14-35-308-001.000-004
)		
v.	)	County:	Fountain
)		
Fountain County Assessor,	)	Township:	Fulton
)		
Respondent.	)	Assessment Year:	2014

Appeal from the Final Determination of the
Fountain County Property Tax Assessment Board of Appeals

December 7, 2015

FINAL DETERMINATION

The Indiana Board of Tax Review (Board), having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

INTRODUCTION

1. Did the Petitioner prove that the subject property was incorrectly assessed as excess residential acreage for the 2014 assessment?

PROCEDURAL HISTORY

2. The Petitioner initiated his 2014 appeal with the Fountain County Assessor on September 8, 2014. On February 25, 2015, the Fountain County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the Petitioner any relief. On March 4, 2015, the Petitioner timely filed a Form 131 petition with the Board.
3. On August 11, 2015, the Board's administrative law judge (ALJ), Patti Kindler, held a hearing on the petition. Neither the Board nor the ALJ inspected the subject property.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. Petitioner Bill J. Brewer and County Assessor Sandra Whitaker were sworn and testified.
5. The Petitioner offered the following exhibits:
 - Petitioner Exhibit 1: 1939 Farm Services Administration (FSA) plat map of the subject property,
 - Petitioner Exhibit 2: 1990 FSA plat map of the subject property,
 - Petitioner Exhibit 3: 2015 aerial map of the subject property,
 - Petitioner Exhibit 3A: 2012 property record card for the property owned by Randy Hathaway,
 - Petitioner Exhibit 3B: 2014 subject property record card,
 - Petitioner Exhibit 4: February 12, 2008, memorandum from the Department of Local Government Finance (DLGF) addressing the classification and valuation of agricultural land.
6. The Respondent did not offer any exhibits.
7. The following additional items are recognized as part of the record:
 - Board Exhibit A: Form 131 petition with attachments,
 - Board Exhibit B: Hearing notice, dated July 2, 2015,
 - Board Exhibit C: Hearing sign-in sheet.
8. The subject property is a 5.49-acre unimproved lot located in Fountain County.
9. The PTABOA determined that the March 1, 2014, total assessment is \$25,500.

10. On his Form 131 petition, the Petitioner requested a total assessment of \$3,500.

JURISDICTIONAL FRAMEWORK

11. The Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property, (2) property tax deductions, (3) property tax exemptions, and (4) property tax credits 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. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. See Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

PETITIONER'S CONTENTIONS

12. The property's assessment is too high. The property was acquired through an adverse possession claim on April 18, 2013. Accordingly, there was no purchase price. The property was obtained as "wildlife area" and "not for building homes." Because the property is located in the Wabash River flood plain, it is often "underwater." Thus, the property is not suitable for residential purposes. *Brewer argument; Pet'r Ex. 3; Bd. Ex. A.*
13. The property is improperly classified as excess residential acreage. The property should be classified as agricultural land. As a result of the misclassification, the property is assessed at \$4,645 per acre. The property bordering the subject property is assessed at an agricultural rate of \$1,663 per acre. Further, a property located "just north" of the subject property is also classified and assessed as agricultural land. *Brewer argument; Pet'r Ex. 3, 3A.*
14. The property was previously "classified and used" as agricultural land. That use did not change when the Petitioner acquired it. According to a plat map from 1939, the property was used as "pastureland" with a "farm number of 7140." An aerial map from 1990 indicates the property was still being pastured although "it was starting to get swampy."

Even though the property's use did not change, a current aerial map illustrates that "much of it is now under water from flooding and a beaver dam." *Brewer testimony; Pet'r Ex. 1, 2, 3.*

15. According to a February 12, 2008, memorandum from the DLGF regarding the classification and valuation of agricultural land "the size of the parcel is not a factor in determining whether it is agricultural land." This same memorandum also states that properties utilized for wildlife and foraging are to be considered agricultural. This property produces a food supply that "feeds thousands of ducks, geese, swans, and beavers." Further, the only reason this property is not included in the Federal Wildlife program is because it is less than ten acres. *Brewer argument; Pet'r Ex. 4 at 1.*

RESPONDENT'S CONTENTIONS

16. The property is correctly assessed. Prior to the Petitioner acquiring the property there was "no assessment on it at all" because the Respondent "didn't have anyone owning it." *Whitaker argument.*
17. Once the Petitioner acquired the property, it was added to the assessment rolls and assessed as excess residential acreage. There is no evidence indicating that the property "has ever been farmed or is currently farmed." *Whitaker testimony.*
18. The neighboring properties are assessed as agricultural because they have farm numbers issued by the government. The Petitioner does not have a farm number. *Whitaker testimony.*
19. Finally, the Respondent recommended that the PTABOA lower the 2014 assessment by applying an 80% negative influence factor. However, this recommendation was denied. For the 2015 assessment, the Respondent applied a negative 80% influence factor to account for flooding. The property's classification, however, will not be changed from excess residential to agricultural "because it is not a farm." *Whitaker testimony.*

BURDEN OF PROOF

20. 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). The burden-shifting statute as recently amended by P.L. 97-2014 creates two exceptions to that rule.
21. First, Ind. Code § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).
22. Second, Ind. Code § 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15.” Under those circumstances, “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d). This change was effective March 25, 2014, and is applicable to all appeals pending before the Board.
23. Here, the subject property record card indicates the deed to the property was recorded on April 18, 2013. Because the subject property was not previously assessed, there is no assessment to which the present assessment can be compared for purposes of Ind. Code § 6-1.1-15-17.2(a). Furthermore, this parcel was not the subject of an appeal as described

in Ind. Code § 6-1.1-15-17.2(d). Accordingly, the Board is not persuaded the statute applies in this context and the Petitioner has the burden of proof in this appeal.

ANALYSIS

24. The statutory and regulatory scheme for assessing agricultural land requires the Board to treat challenges to those assessments differently than other assessment challenges. For example, the legislature directed the Department of Local Government Finance (DLGF) to use distinctive factors, such as soil productivity, that do not apply to other types of land. Ind. Code § 6-1.1-4-13. The DLGF determines a statewide base rate by taking a rolling average of capitalized net income from agricultural land. *See* 2011 GUIDELINES, CH. 2 at 77-78; *see also* Ind. Code § 6-1.1-4-4.5(e) (directing the DLGF to use a six-year, instead of a four-year, rolling average and to eliminate from the calculation the year for which the highest market value-in-use is determined). Assessors then adjust that base rate according to soil productivity factors. Depending on the type of agricultural land at issue, assessors may then apply influence factors in predetermined amounts. *Id.* at 77, 89, 98-99.
25. Indiana Code § 6-1.1-4-13(a) provides that “land shall be assessed as agricultural land only when it is devoted to agricultural use.” “Agricultural property” is defined as land “devoted to or best adaptable for the production of crops, fruits, timber, and the raising of livestock.” GUIDELINES, GLOSSARY at 1. The word “devote” means “to attach the attention or center the activities of (oneself) wholly or chiefly on a specified object, field, or objective.” WEBSTER’S THIRD NEW INTERNATIONAL UNABRIDGED DICTIONARY at 620.
26. Here, the burden was on the Petitioner to provide the Board with probative evidence supporting his notion that the subject property was incorrectly classified. The Petitioner provided evidence that the property should be classified as agricultural. The uncontroverted testimony also establishes that the Petitioner acquired and utilizes the property for wildlife purposes because it is often “underwater.” Further, the record indicates that the property was “once classified and used” as agricultural land and is

contiguous to other properties that are actively used for agricultural purposes. The Petitioner provided just enough probative evidence to prove the property was incorrectly assessed as excess residential.

27. Consequently, once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *See Am. United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). To rebut or impeach the Petitioner's case, the Respondent has the same burden to present probative evidence that the Petitioner faced to raise its prima facie case. *Fidelity Fed. Savings & Loan v. Jennings Co. Ass'r*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005).
28. In an effort to rebut the Petitioner's case, the Respondent argues that because the property is "not a farm" and does not have a "farm number" it should not be assessed as agricultural. Accordingly, she assessed the property as excess residential.
29. "Residential property" is defined as "vacant or improved land devoted to, or available for use primarily as, a place to live," and is "normally construed to mean a structure where less than three families reside in a single structure." GUIDELINES, GLOSSARY at 18.

Residential land is land that is utilized or zoned for residential purposes. The parcel's size does not determine the property classification or pricing method for the parcel. The property classification and pricing method are determined by the property's use or zoning.

Id. at 53. Furthermore, "residential acreage parcels of more than one acre and not used for agricultural purposes are valued using the residential homesite base rate and the excess acreage base rate established by the assessing official." *Id.* at 54.

30. The Tax Court has defined "residential excess" as land "dedicated to a nonagricultural use normally associated with the homesite." *Stout v. Orange Co. Ass'r*, 996 N.E.2d 871, 875 n.6. (Ind. Tax Ct. 2013). Similarly, "agricultural excess acreage" is defined as land "dedicated to a non-agricultural use normally associated with the homesite," and it is

intended to apply to “areas containing a large manicured yard over and above the accepted one acre homesite.” 2011 GUIDELINES, CH. 2 at 105-6. “The agricultural excess acre rate is the same rate that is established for the residential excess acre category.” *Id.*

31. In contrast, land purchased and used for agricultural purposes includes cropland or pasture land (i.e., tillable land) as well as woodlands. 2011 GUIDELINES, CH. 2 at 80. Additional categories of agricultural property include Type 4 “idle cropland” and Type 5 nontillable land which is “covered with brush or scattered trees with less than 50% canopy cover, or permanent pasture land with natural impediments that deter the use of the land for crop production.” *Id.* at 103, 104. Thus, by definition, agricultural property may include property that is not suitable for forestry or “farming.”
32. The Board cannot find any support for the proposition that an agricultural classification depends solely on whether the property is actively farmed. The classification depends on whether the property is put to agricultural or residential use. The record indicates there are no improvements, such as a dwelling, that might indicate a residential use. The Respondent does not even attempt to articulate what characteristics of the property or the taxpayer’s use of the property led her to the conclusion that the property should be classified as excess residential. The crux of the Respondent’s argument is that because the property “is not a farm” and lacks a “farm number” it should be assessed as excess residential acreage.
33. In her attempt to place significance on the fact that the Petitioner failed to provide any proof this property has been assigned a “farm number” she failed to provide any authority that the Petitioner was required to do so. Similarly, her argument about the property not being a “farm” is inadequate because, as previously pointed out, it is not necessarily required that the property under appeal be farmed. Agricultural property can be defined as property not suitable for “farming,” such as the case here because the property is “often underwater.” *See* 2011 GUIDELINES, CH. 2 at 103, 104. Furthermore, the classification of the property as excess residential is inaccurate because the record does

not indicate the property is associated with a homesite. *See Stout*, 996 N.E.2d 871, 875 n.6.

34. Because the Petitioner established that the property was incorrectly classified as excess residential the burden shifted to the Respondent to disprove that assertion. The Respondent failed to present any probative evidence to the contrary. In making its determination, the Board is not ruling that every parcel that is not associated with a homesite, or that is utilized for the purposes previously described, is entitled to be classified as agricultural land. The Board continues to recognize the long standing principle that each appeal must be examined on its own facts, as it was in this case. Accordingly, the Board orders the Respondent to correctly classify the Petitioner's land as agricultural.

SUMMARY OF FINAL DETERMINATION

35. The Petitioner made a prima facie case. The Respondent failed to impeach or rebut the Petitioner's evidence. The Board therefore finds for the Petitioner. Accordingly, the Board orders the Respondent to correctly classify the Petitioner's land as agricultural and reassess appropriately.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

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 of 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>>.