

REPRESENTATIVE FOR THE PETITIONERS: Charles Calvert, *pro se*

REPRESENTATIVE FOR THE RESPONDENT: Neda Duff, Carroll County Assessor

---

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

CHARLES and SHARON CALVERT,	)	Petition No. 08-014-13-1-5-00001
	)	
Petitioners,	)	Parcel No. 08-11-17-000-020.000-014
	)	
v.	)	Carroll County
	)	
CARROLL COUNTY ASSESSOR,	)	Madison Township
	)	
Respondent.	)	2012 Assessment Year

---

**February 24, 2014**

**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:

**ISSUES**

1. Did the Petitioners, Charles and Sharon Calvert, timely file an appeal for the 2012 assessment year?
2. Did the Carroll County Assessor prove that subject property’s 2012 assessment is correct?

**HEARING FACTS AND OTHER MATTERS OF RECORD**

3. The subject property is a vacant, 10.142-acre wooded parcel located at S. 750 W. in Delphi.

4. The Calverts received a tax statement dated March 29, 2013, showing that the property's assessment increased from \$3,300 to \$49,000 between the 2011 and 2012 assessment years (with taxes payable in 2012 and 2013). Just three weeks later, on April 23, 2013, Charles Calvert went to the Assessor's office and tried to file a Form 130 petition challenging the property's 2012 assessment. The Assessor refused to accept the petition, claiming that the time to appeal 2012 assessments had lapsed. Instead, the Assessor advised Mr. Calvert to file an appeal in the fall after the Assessor sent out a Form 11 Notice of Assessment of Land and Improvements for the 2013 assessment year. *Calvert testimony; see also, Pet'rs Ex. 1.*
5. On May 6, 2013, the Calverts filed a Form 131 petition with the Board.<sup>1</sup> Although they listed 2013 as the assessment year under appeal, it is clear from the body of the petition that the Calverts sought to appeal the assessment year in which the property's assessment increased from \$3,300 to \$49,000. As explained above, that year was 2012.
6. On November 26, 2013, the Board's administrative law judge, Jaime S. Harris, held a hearing on the Calverts' petition. Neither she nor the Board inspected the property.
7. Charles Calvert, Carroll County Assessor Neda K. Duff, and the Assessor's witness, Jennifer Becker, testified under oath.
8. The Calverts submitted the following exhibits:
  - Petitioners Exhibit 1: Letter from the Assessor dated April 23, 2013,
  - Petitioners Exhibit 2: August 6, 2013 fax from Mr. Calvert to the Assessor with attachments,
  - Petitioners Exhibit 3: Copy of receipt from Carroll County Treasurer for payment of taxes,
  - Petitioners Exhibit 4: Copy of tax statement from Carroll County Treasurer dated March 29, 2013,

---

<sup>1</sup>Normally, a county PTABOA must issue a determination on the taxpayer's claim before the taxpayer may appeal to the Board. If the PTABOA fails to act within statutory timeframes, however, a taxpayer may elect to appeal to the Board rather than wait for the PTABOA to act. *See* I.C. § 6-1.1-15-1(o). Although the statutory deadlines had not yet elapsed, the Assessor's refusal to accept the Calverts' petition served as a repudiation that the PTABOA would act within those deadlines.

- Petitioners Exhibit 5: Copy of tax bill coupons dated April 2, 2013,
- Petitioners Exhibit 6: Form 131 Petition for Review of Assessment,
- Petitioners Exhibit 7: August 1, 2013 e-mails between Mr. Calvert and the Assessor's office,
- Petitioners Exhibit 8: Copy of portion of May 1, 1841 warranty deed,
- Petitioners Exhibit 9A: Letter from Mr. Calvert to Charles Shanks dated August 6, 2004,
- Petitioners Exhibit 9B: Letter from Indiana Woodland Restoration Program manager to Mr. Calvert dated April 2, 2007,
- Petitioners Exhibit 10: August 9, 2013 e-mail from Ben Reinhart to Mr. Calvert with attachment,
- Petitioners Exhibit 11: Stewardship Plan prepared by Eric Summerfield for Mr. Calvert on August 27, 2013,
- Petitioners Exhibit 12: Copy of Land Activity Journal,
- Petitioners Exhibit 13: Letter from Pike Lumber Company, Inc. to Mr. Calvert's father dated April 12, 2007, with attached copy of October 13, 2006 article from *The Farmer's Exchange*,
- Petitioners Exhibit 14: Letter from Mr. Calvert to Carroll County Sheriff's Department dated April 22, 2003,<sup>2</sup>
- Petitioners Exhibit 15: Mr. Calvert's handwritten history of the subject property,
- Petitioners Exhibit 16: Notes written by Mr. Calvert's mother in reference to logs sold to Pike Lumber Company, Inc.,
- Petitioners Exhibit 17: Surveyor's Report,
- Petitioners Exhibit 18: Aerial photo/maps of the subject property.

9. The Carroll County Assessor submitted the following exhibits:

- Respondent Exhibit 1: Respondent Exhibit Coversheet,
- Respondent Exhibit 2: Summary of Respondent's Exhibits and Testimony,
- Respondent Exhibit 3: Subject property 2013 Property Record Card ("PRC"),
- Respondent Exhibit 4: GIS Map of subject property,
- Respondent Exhibit 5: Spreadsheet showing sales of eleven vacant, wooded parcels,
- Respondent Exhibit 6: PRCs and GIS maps of sales used in Exhibit 5,
- Respondent Exhibit 7: PTABOA Land Value Rules.

10. The Board recognizes the following additional items as part of the record of proceedings:

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

---

<sup>2</sup> The Calverts actually offered identical copies of the letter marked as exhibits 14A and 14B. The Board refers to the copies collectively as Petitioners Exhibit 14.

## **OBJECTIONS**

11. The Assessor objected to the admission of the Calverts' exhibits (Petitioners' Exhibits 1-18) because they did not provide her with copies of those exhibits as least five days before the Board's hearing.
  
12. The Calverts affirmatively opted not to proceed under the Board's rules for small claims. *See Bd. Ex. A.* Under the procedural rules that govern non-small claims proceedings, parties are required to exchange copies of their documentary evidence at least five business days before a hearing. *See 52 IAC 2-7-1(b).* While the parties disagree about whether the Assessor's witness, Ms. Becker, spoke to Mr. Calvert about wanting copies of the Calvert's exhibits, that is beside the point; the Board's pre-hearing exchange rule required the Calverts to provide those copies regardless of whether the Assessor requested them. Indeed, the Board's hearing notice informed the Calvert's of the exchange requirements, although Mr. Calvert testified that he did not read that part of the notice.
  
13. The Board therefore sustains the Assessor's objection, but only as to Petitioners' Exhibits 8-18. Exhibits 1-7 were readily available to the Assessor well in advance of the hearing without the Calverts giving her copies. The Board therefore overrules the Assessor's objection as to those exhibits.

## **SUMMARY OF ASSESSOR'S CASE**

14. Mr. Calvert came to the Assessor's office on April 23, 2013, to file a Form 130 petition for the 2012 assessment. The Assessor's office, however, had mailed out Form 11 notices regarding that assessment in August 2012. The Assessor determined that the Calverts' notice had been sent to the same address as their tax statement and had not been returned. She therefore concluded that Mr. Calvert's attempt to file the Form 130 petition was untimely. *Duff testimony.*

15. Turning to the merits, the Assessor was required to re-value real property for the statutorily required general reassessment. To do so, her office inventoried and updated its computer records to reflect any changes to properties throughout the county. Land sales were then analyzed to adjust base rates that had been established for the 2002 general reassessment. *Becker testimony; Resp't Ex. 2.*
  
16. As the Assessor reviewed land sales, she noticed that wooded parcels where the taxpayer did not own adjacent parcels as farm ground had sale prices that were significantly above the agricultural land values for which they were assessed. Thus, for the 2012 assessment date, all wooded parcels not involved in farming were treated as follows: one acre was assessed as a homesite with an adjustment for not having well and septic, grading, etc.; the next four acres were assessed as residential excess acreage; and any remaining land was assessed as agricultural excess acreage. *Becker testimony; Resp't Ex. 2-3, 7.*
  
17. Based on those classifications, the subject property was assessed at \$3,796 per acre. To support that value, the Assessor's witness, Jennifer Becker, pointed to the sale prices for 11 wooded parcels from Carroll County. The parcels ranged from 2.51 acres to 43.05 acres and sold between 2004 and 2013. Ms. Becker justified using such a broad range of sale dates on grounds that wooded parcels have historically been selling for higher prices than their assessments. She also pointed to the fact that her comparable 11 sold for \$8,566/acre in 2004, while her comparable 1 sold for close to the same amount (\$8,025/acre) in 2013. Thus, in her view, no time-related adjustments were necessary. *Becker testimony; Resp't Ex. 5.*
  
18. The sale prices ranged from \$967/acre to \$8,566/acre, with a median of \$4,781/acre. Ms. Becker indicated that two of sales—comparable 7, which sold for \$967/acre, and comparable 11, which sold for \$8,566/acre—are “outliers.” *Becker testimony; Resp't Exs. 2-3, 5.* But even when those outliers are removed, the median does not change. *Becker testimony.*

19. The subject property's assessment should not be adjusted to a level outside of the rules and regulations that the Assessor must follow. To do so would create a lack of consistency. *Becker testimony; Resp't Exs. 2-3, 5-6.*

### **SUMMARY OF THE CALVERTS' CASE**

20. The Calverts did not receive a Form 11 notice for the 2012 assessment year. They therefore did not know about the substantial increase in the subject property's assessment until they received the tax statement dated March 29, 2013. *See Calvert testimony; Pet'rs Exs. 4-5.*
21. The property is a timber forest, and is therefore agricultural. The Calvert family has owned the property and used it for producing a timber crop for 170 years. The property consists of wetlands on which it is impossible to build, so the property should never have been classified as even partially residential. Similarly, nobody uses the property for hunting or any other kind of recreation. While the Assessor asked why, if the property is agricultural, the Calverts do not own any surrounding land, the rest of farm was sold when Mr. Calvert's mother died. *Calvert testimony.*
22. In the future, the Calverts plan to enroll the property in a classified forest program. It will then be valued at \$1/acre and the Assessor will get only \$10 in property taxes. *Calvert testimony.*
23. One of Ms. Becker's allegedly comparable properties has frontage along a state highway and is going to be developed into a homesite. It is located in an established subdivision of three or four houses and has all the accompanying amenities, such as drainage. Also, several of the properties have absentee owners who are unlikely to return to Indiana to contest the substantial increases in their properties' assessments. *Calvert testimony.*

## ANALYSIS

### Issue 1: Did the Calverts timely appeal the 2012 assessment?

24. Although a taxpayer has the right to challenge his property's assessment, he must comply with statutory requirements for doing so in a timely manner. *See Williams Industries v. State Board of Tax Commissioners*, 648 N.E.2d 713, 718 (Ind. Tax Ct. 1995)
25. Indiana Code § 6-1.1-15-1 establishes the deadline for filing an appeal at the local level:
- (a) A taxpayer may obtain a review by the county board of a county or township official's action with respect to ... the following:
    - (1) The assessment of the taxpayer's tangible property.
    - ...
  - (b) At the time that notice of an action referred to in subsection (a) is given to the taxpayer, the taxpayer shall also be informed in writing of:
    - (1) the opportunity for a review under this section...; and
    - (2) the procedures the taxpayer must follow in order to obtain a review under this section.
  - (c) *In order to obtain a review of an assessment ... effective for the assessment date to which the notice referred to in subsection (b) applies, the taxpayer must file a notice in writing with the county or township official referred to in subsection (a) not later than forty-five (45) days after the date of the notice referred to in subsection (b).*
  - (d) *A taxpayer may obtain a review by the county board of the assessment of the taxpayer's tangible property effective for an assessment date for which a notice of assessment is not given as described in subsection (b). To obtain the review, the taxpayer must file a notice in writing with the township assessor, or the county assessor if the township is not served by a township assessor. The right of a taxpayer to obtain a review under this subsection for an assessment date for which a notice of assessment is not given does not relieve an assessing official of the duty to provide the taxpayer with the notice of assessment as otherwise required by this article. The notice to obtain a review must be filed not later than the later of:*
    - (1) *May 10 of the year; or*
    - (2) *forty-five (45) days after the date of the tax statement mailed by the county treasurer, regardless of whether the assessing official changes the taxpayer's assessment.*

I.C. § 6-1.1-15-1; *see also*, I.C. § 6-1.1-15-13 (providing that if notice is not otherwise given, a taxpayer's receipt of the tax bill is his notice for purposes of determining his right to appeal).

26. Thus, the Calverts' Form 130 petition was timely only if Mr. Calvert attempted to file it no later than 45 days after the Calverts were first given notice of their property's 2012 assessment. On its face, the Carroll County Treasurer issued a tax statement for the 2012 assessment only 25 days before Mr. Calvert attempted to file the Form 130 petition. *See Tiberio Allergy Asthma Immunology of Rochester*, 664 F.3d 35, 37 (2<sup>nd</sup> Cir. 2011) ("There is a presumption that a notice provided by a government agency was mailed on the date shown on the notice."). If, as Mr. Calvert testified, the tax statement was the Calverts' first notice of the subject property's 2012 assessment, their appeal was timely.
27. The Assessor, however, argued that the Calverts were notified of the assessment in August 2012 when Form 11 notices were mailed. For support, she testified that the Calvert's Form 11 notice had been mailed to the same address contained on their tax statement and that the notice had not been returned. But the Assessor did not claim to have personally mailed any of the Form 11 notices, much less the Calverts' notice, nor did she offer any evidence to show that whoever was actually responsible for those duties followed routine business practices in mailing the Calverts' Form 11 notice. *See Indiana Sugars*, 683 N.E.2d 1383, 1386 (Ind. Tax Ct. 1997) (*quoting F&F Construction Co. v. Royal Globe Insurance Co.*, 423 N.E.2d 654 (Ind. App. Ct. 1981) ("Proof consisting of testimony from one with direct and actual knowledge of the particular message in question is required to establish proof of mailing."); *see also, U-Haul Co. of Indiana, Inc. v. Ind. Dep't of State Revenue*, 896 N.E.2d 1253, 1257 (Ind. Tax Ct. 2008) (finding that designated evidence showing the Department of Revenue had conformed to its routine business practices supported a reasonable inference that it had timely mailed an assessment). The Assessor did not even offer a copy of the Form 11 notice purportedly mailed to the Calverts.
28. Based on the evidence before it, the Board finds that the tax statement was the Calverts' first notice of the subject property's 2012 assessment. Their appeal was therefore timely.



29. Having found that the Calverts timely filed their appeal, the Board now turns to the merits.

**Issue 2: Did the Assessor prove that the subject property's assessment is correct?**

**A. Burden of Proof**

30. Generally, a taxpayer seeking review of an assessing official's determination must make a prima facie case proving both that his property's 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). In making his case, the taxpayer must explain how each piece of evidence relates to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1108, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer's duty to walk the Indiana Board...through every element of the analysis”). 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.
31. Matters are reversed, however, where the assessment under review represents an increase of more than 5% over the value that the assessor determined for the same property in the immediately preceding year. *See I.C. § 6-1.1-15-17.2*. In those cases, the assessor has the burden of proving that the assessment under review is correct. Here, the subject property's assessment went from \$3,300 in 2011 to \$41,600<sup>3</sup> in 2012, an increase of far more than 5%. The Assessor therefore has the burden of proof.

---

<sup>3</sup> At some point after the treasurer issued the tax statement for the 2012 assessment, the Assessor lowered the assessment from \$49,000 to \$41,600. *See Resp't Ex. 3; Becker testimony*.

## **B. The Assessor Failed to Meet Her Burden**

32. Real property is assessed for its “true tax value,” which does not mean fair market value, but rather “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.” I.C. § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL 2 (incorporated by reference at 50 IAC 2.4-1-2). Three standard approaches are used to determine market value-in-use: the cost, sales-comparison, and income approaches. 2011 MANUAL at 2. Generally, any evidence relevant to a property’s true tax value as of the assessment date, including an appraisal prepared in accordance with generally recognized appraisal principles, may be offered in an assessment appeal. *Id.* at 3.
  
33. The statutory and regulatory scheme for assessing agricultural land, however, 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 promulgate guidelines for assessing agricultural land using distinctive factors, such as soil productivity, that do not apply to other types of land. I.C. § 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 REAL PROPERTY ASSESSMENT GUIDELINES ch. 2 at 77-78; *see also* I.C. § 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. 2011 GUIDELINES, ch. 2 at 77, 89, 98-99. For example, agricultural woodland (Type 6), which the Guidelines define as “land supporting trees capable of producing timber or other wood products” that “has 50% or more canopy cover or is a permanently planted reforested area,” receives an 80% negative influence factor. *Id.* at 89.

34. By contrast, the 2011 Real Property Assessment Guidelines direct assessors to determine influence factors for other land types by estimating the effect of a property's peculiar characteristics on its market value-in-use. *See id.* at 43-45, 57-59, 70-71.
35. Here, the Assessor justified the increase in the subject property's assessment between 2011 and 2012 on grounds that she reclassified all wooded properties that were not part of a farm. She changed the classification for those properties from agricultural land to a mixture of homesite, excess residential, and excess agricultural land, and then applied the base rates for those classifications from what she described as the county's land order. But the relevant statutes and regulations require land devoted to agriculture to be assessed under the DLGF's rules for assessing agricultural land. *See* I.C. § 6-1.1-4-13(a) (providing that "land shall be assessed as agricultural land only when it is devoted to agricultural use."); 2011 MANUAL ch. 2 at 78 ("[A]ll land *utilized* for agricultural purposes is valued as agricultural land. . .") (emphasis in original). The Assessor offered nothing to show how the Calverts used the subject property, much less to show that they used it for something other than agriculture. Indeed, the little evidence in the record that addresses that question—Mr. Calvert's testimony that his family had used the land to produce a timber crop for 170 years and did not use it for hunting or other recreation—supports a contrary finding. The Assessor therefore failed to meet her burden of proving that the 2012 assessment was correct.
36. Even if the Board were to assume that the Calverts used the property for something other than agriculture, the Assessor still failed to show what the property's market value-in-use was. Although her witness, Ms. Becker, pointed to sales of other wooded parcels in Carroll County, that sales data was not probative. Seven of the sales occurred more than 30 months before the March 1, 2012 valuation date at issue in this appeal, and Ms. Becker's attempt to relate those sales to the valuation date was unconvincing. Those sales therefore lack probative value. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (finding that an insurance policy and appraisal lacked probative value where taxpayers failed to explain how that evidence related to their property's value as of the relevant valuation date). In any case, Ms. Becker did little to compare any

of the sold properties to the subject property or to explain how any relevant differences affected their values. *See Long* 821 N.E.2d at 471 (holding that taxpayer's sales data lacked probative value where they failed to explain how the characteristics of any purportedly comparable properties compared to their property or how any differences affected the properties' values); *see also, Blackbird Farms Apts., LP v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002) (holding that taxpayer failed to establish the comparability of parcels of land where, among other things, taxpayer did not compare topography and accessibility).

### **SUMMARY OF FINAL DETERMINATION**

37. The Calverts timely appealed the subject property's 2012 assessment. The Assessor, who had the burden of proof by virtue of the dramatic increase in the subject property's assessment, failed to meet her burden. The Board therefore finds that the 2012 assessment must be reduced to the previous year's level of \$3,300.

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 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>>.