

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

Petition: 72-005-11-1-5-00015
Petitioners: Tonnie A. and Judith A. Carter
Respondent: Scott County Assessor
Parcel: 72-06-26-200-006.000-005
Assessment Year: 2011

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

Procedural History

1. The Petitioners initiated an assessment appeal with the Scott County Property Tax Assessment Board of Appeals (PTABOA) by filing a Petition for the Correction of an Error, Form 133, dated July 6, 2011. The PTABOA accepted the Form 133 and processed it as a written notice the Petitioners wanted to file an appeal with the PTABOA—it was treated as if it were a Form 130. *T. Carter testimony; Binkley testimony.*
2. The PTABOA mailed notice of its decision, Form 115, on August 22, 2011.
3. The Petitioners appealed to the Board by filing a Petition for Review of Assessment, Form 131, on September 28, 2011. The Petitioners elected to have this appeal heard according to small claims procedures.
4. The Board issued a notice of hearing on August 22, 2012.
5. Administrative Law Judge Paul Stultz held the Board’s administrative hearing on October 11, 2012. He did not inspect the property.
6. Attorney Ralph E. Randall represented the Petitioners. Tonnie and Judith Carter were sworn as witnesses. Deputy Assessor Jennifer Binkley represented the Respondent, but she was not sworn as a witness. County Assessor Diana Cozart and Aaron Shelhamer were sworn as witnesses, but they did not testify.

Facts

7. The property is a single family residence with a detached garage and 18.61 acres of land. It is located at 9045 East Horner Road, Lexington, Indiana.

8. The PTABOA determined the assessed value for the land is \$39,400 and the assessed value of the improvements is \$100,700 (total of \$140,100).
9. The Petitioners claim the assessment should be \$17,500 for land and \$51,000 for improvements (total \$68,500).

Record

10. The official record for this matter contains the following:
 - a. The Form 131 Petition,
 - b. Petitioner Ex. A1 – Property record card (PRC) with 2010 land value computations for the subject property,
Petitioner Ex. A2 – Property record card with 2011 land value computations for the subject property,
Petitioner Ex. A3 – Topographic map,
Petitioner Ex. A4 – Initial Forest Management survey,
Respondent Exhibit 1 – Board notice of hearing,
Respondent Exhibit 2 – Form 133,
Respondent Exhibit 3 – Notice of Hearing on Petition – Real Property (Form 114),
Respondent Exhibit 4 – Notification of Final Assessment Determination (Form 115),
Respondent Exhibit 5 – Form 131,
Respondent Exhibit 6 – Subject property record card,
Respondent Exhibit 7 – Photograph of the subject property,
Respondent Exhibit 8 – Geographic information system map of subject property,
Respondent Exhibit 9 – Comparable PRC and map for Brown property,
Respondent Exhibit 10 – Comparable PRC and map for Gasser property,
Respondent Exhibit 11 – Comparable PRC and map for Bodkin property,
Respondent Exhibit 12 – Comparable PRC and map for Goretcki property,
Respondent Exhibit 13 – Department of Local Government Finance (DLGF) Certification of Agricultural Land Base Rate Value for Assessment Year 2011,
Respondent Exhibit 14 – Frequently Asked Questions: Agriculture Land Base Rate for March 1, 2011 Assessment,
Respondent Exhibit 15 – DLGF memorandum dated November 9, 2010, Woodlands Guidance,
Respondent Exhibit 16 – DLGF memorandum dated February 12, 2008, Classification and Valuation of Agricultural Land,
Respondent Exhibit 17 – Email from Michael Duffy dated June 4, 2012,
Respondent Exhibit 18 – “Value Calibration Analysis by Neighborhood” sales from 1/1/2010 to 2/29/2012, neighborhood 7200510,

Respondent Exhibit 19 – “Value Calibration Analysis by Neighborhood” sales from 1/1/2009 to 3/1/2011, neighborhoods 7200510 to 7200591,

Respondent Exhibit 20 – Appraisal of the subject property as of September 20, 2011,

Respondent Exhibit 21 – Letter from John Dickerson dated October 10, 2012,

Respondent Exhibit 22 – Real Property Assessment Guidelines for 2002 pages 68-69 and 104,

Respondent Exhibit 23 – 2011 Real Property Assessment Manual pages 1-20,

Board Exhibit A – Form 131 Petition,

Board Exhibit B – Notice of Hearing,

Board Exhibit C – Hearing Sign In Sheet,

- c. Digital recording of the hearing,
- d. These Findings and Conclusions.

Contentions

11. Summary of the Respondent’s case:

- a. One acre of the Petitioners’ land is assessed as a homesite and the remaining 17.61 acres are assessed as undeveloped land at a rate of \$1,500 per acre. The agricultural land rate for the 2011 assessment also is \$1,500 per acre. *Binkley argument.*
- b. The assessment date is March 1, 2011. The Petitioners’ Forest Management request is dated September 12, 2011. This request would apply for the 2012 assessment, not the 2011 assessment. *Binkley argument; Resp’t Ex. 5, attachment to Form 131.*
- c. The residential land rate for this area is \$5,000 per acre. But the land is assessed at the rate of \$1,500 per acre because the residential rate of \$5,000 is too high for this area. *Binkley argument; Resp’t Ex. 13-16.*
- d. All the land in the area was assessed in the same manner. The class codes were changed from agriculture to residential by direction from the DLGF, but the properties remained assessed at the agriculture rate of \$1,500 per acre. *Binkley argument; Resp’t Ex. 9-11.*
- e. The property owned by Brian and Nicole Goretcki is comparable to the subject property. It sold for \$187,000 on November 19, 2010. It is assessed for \$184,500. This similarity of values demonstrates the assessments are in line with the market values-in-use. *Binkley argument; Resp’t Ex. 12.*

- f. The sales ratio analyses of the Petitioners' neighborhood and of Lexington Township both support the fact that assessed values are in line with the selling prices. *Binkley argument; Resp't Ex. 18, 19.*
 - g. An appraisal of the property determined its value was \$125,000 as of September 20, 2011, but the appraiser's \$900 per acre adjustment for the difference in land size is too low. *Binkley argument; Resp't Ex. 20 at 2.*
 - h. John Dickerson, a local appraiser, states in a letter that very good land would require a \$1,000 to \$2,000 per acre adjustment. If land is not very good the adjustment per acre would be \$1,000 to \$1,500. Increasing the land adjustment would change the appraised value to the assessed value. *Binkley argument; Resp't Ex. 21.*
12. Summary of the Petitioners' case:
- a. The subject property should be assessed as agricultural land as it was for prior assessments. Timber was marked by the state forestry service in April 2012. Then the trees were cut and sold during a five month period ending in September 2012. This was a selective harvest and was not performed to clear the land. *T. Carter testimony; J. Carter testimony.*
 - b. The house was built in 2002 by the Petitioners, their son, and a neighbor for a cost of \$35,000. The garage was built in 1999 by the Petitioners for a cost of \$7,000. There is also a goat house with one goat. *T. Carter testimony; J. Carter testimony.*
 - c. The appraisal establishes a fair value for the property. *T. Carter testimony.*
 - d. The alleged comparable properties presented by the Respondent are not comparable to the subject property. One comparable property is a 40 acre track with a lake. *Randall argument.* The Petitioners' property has three or four ravines, little road frontage, no lake, and the topography is rolling hills. *T. Carter testimony.*

Analysis

13. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that a property's assessment is wrong and what its 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). Nevertheless, the Indiana General Assembly enacted Ind. Code § 6-1.1-15-17.2 and in some cases it shifts the burden of proof:

This section applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal

increased the assessed value of the assessed property by more than five percent (5%) over the assessed value determined by the county assessor_or township assessor (if any) for the immediately preceding assessment date for the same property. 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 to the Indiana tax court.

I.C. § 6-1.1-15-17.2.

14. Both parties agreed the \$140,100 assessment for 2011 increased by more than 5% from the 2010 assessor's assessment (\$120,500). Therefore, the Respondent had the burden of proving the 2011 assessment is correct.
15. Prior to 2011, the subject property had an agricultural land classification, but the 2011 assessment changed the classification to residential.¹ According to the Respondent, all the land in the area got this same reclassification. The evidence related to the Brown, Gasser, Bodkin, and Goretcki properties seems to show other instances of a change to residential classification. The purported consistency, however, proves nothing without a meaningful, factual analysis of how the properties are actually used. The Respondent also relied on the fact that the Petitioners filed for an initial Forest Management review on September 12, 2011, which was after the assessment date. The Respondent admitted that document *would* apply to show agricultural use for the 2012 assessment. Furthermore, the Respondent did not dispute the testimony about how a selective harvest of trees actually took place in 2012—a fact that clearly indicates those same trees would have been growing in 2011 because, unlike most other agricultural crops, trees take several years to grow to a marketable size. The Respondent offered no evidence that the property was not devoted to the agricultural use. Therefore, the Respondent failed to prove changing the land classification from agricultural to residential was correct.
16. The Respondent also failed to prove the assessed value of \$140,100 is correct.
 - a. The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. The primary method for assessing officials is the cost approach. Either party is permitted to offer evidence relevant to market value-in-use. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.

¹ The Petitioners mistakenly referred to the assessment change from agricultural classification to residential classification as a zoning change, which it was not. The Indiana General Assembly directed the DLGF to establish rules for determining the true tax value of agricultural land. Ind. Code § 6-1.1-4-13(c). Only land actually “devoted to agricultural use” may be assessed as agricultural land. Ind. Code § 6-1.1-4-13(b). The use of agricultural land value methodology generally results in values that are more favorable to a taxpayer than residential land value methodology.

- b. Regardless of the valuation method used, a party must explain how its evidence relates to market value-in-use as of the relevant valuation date. *See O'Donnell v. Dep't of Local Gov't Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for a 2011 assessment was March 1, 2011. IC 6-1.1-4-4.5(f); *Resp't Ex. 23 at 7*. Any evidence of value relating to a different date must also have an explanation about how it demonstrates, or is relevant to, that required valuation date. *Long*, 821 N.E.2d at 471.
- c. An appraisal, completed in conformance with the Uniform Standards of Professional Appraisal Practice, often can be the best indication of value. *O'Donnell*, 854 N.E.2d at 94; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n. 6 (Ind. Tax Ct. 2005). The Respondent introduced an appraisal valuing the subject property at \$125,000 as of September 20, 2011. *Resp't Ex. 20*. Among other things, the appraisal indicates it was performed by an Indiana Certified Residential Appraiser and it contains a certification that it was performed "in accordance with the requirements of the Uniform Standards of Professional Appraisal Practice...." The appraisal date is approximately six months after the valuation date, March 1, 2011, and all three of the comparable sales identified in the appraisal occurred between September 2010 and January 2011. This timing would be sufficiently close for the appraisal to be relevant. But in this case neither side argued in favor of the value indicated by the appraisal.
- d. The Respondent argued that the appraised value is not reliable evidence. The Respondent attacked the validity of the appraisal's conclusion about the value of the subject property because purportedly the appraiser's adjustment of each comparable sale by \$900 per acre for the difference in land size was too low, and consequently, the appraised value was too low.² In making this argument against the appraisal, the Respondent relied on a letter from John Dickerson, who apparently is a local appraiser. *Resp't Ex. 21*. The letter is generic, making no reference to the subject property. There is no indication that Mr. Dickerson actually appraised the subject property and he did not testify at this hearing. The letter itself indicates it is merely speculation:

In response to your inquiry, I am happy to discuss with you how I most likely might make appraisal adjustments for significant market value differences of smaller home-sites' land sizes pertaining to comparable residential properties sales being compared to a subject residential property with a 2-20 acre home-site being appraised situated in Lexington Township of Scott County, IN.

² Each of the comparables has 2 acres and the subject property has 18.61 acres. The appraisal adjusted each comparable sale up by \$15,000 (i.e. \$900 per acre) to account for that difference.

I likely might justify making land size differences adjustments to the comparables at a rate between \$1,000 and \$2,000 per acre according to my judgment of the potential utility level of the excess land being compared. If the excess land were to be considered to have low utility potential I likely might make adjustment of the acreage difference between \$1,000 and \$1,500 per acre.

In short, the Dickerson letter has no probative value. But even if it did, the adjustments in the appraisal were only slightly less than the lower end of the range suggested in the letter. The Respondent made a conclusory attempt to manipulate the appraisal by changing the adjustments to the sales comparables, but the Respondent did nothing to establish that doing so is consistent with generally accepted appraisal principles. Ultimately, this part of the Respondent's case does nothing to help prove the market value-in-use of the subject property.

- e. The Goretcki property sold for \$187,000 and was assessed at \$184,500. Although the figures for that particular property are similar, the similarity does not establish the market value-in-use of the subject property or the accuracy of its existing assessed value. The sales/assessment ratio studies for the Petitioners' neighborhood and Lexington Township may have been within the state requirements for a proper assessment and the DLGF may have approved both ratio studies. The Respondent, however, offered no support for the premise that the assessment of the subject property is actually a correct market value-in-use simply because assessments in general are within acceptable statistical ranges for measuring the overall uniformity, equality, and accuracy of mass appraisals. *See Canal Square Limited Partnership v. State Bd. of Tax Comm'rs*, 694 N.E.2d 801, 808 (Ind. Tax Ct. 1998) (in order to carry its burden, the assessor must do more than merely assert that it assessed the property correctly).
- f. In other cases where the Respondent had the burden to prove the assessment is correct and the Respondent failed to do so, the Board has ordered the assessment to be returned to the assessed value of the year before. In this case doing so reduces the assessment to \$120,500 and reinstates the agricultural land classification upon which that number was based.
- g. To the extent that the Petitioners sought an even lower assessed value, they had the burden to prove it. They did not do so. Their cost evidence for the garage and house was from 1999 and 2002. Nothing related those costs to March 1, 2011. Therefore, the construction costs were not probative. *Long*, 821 N.E.2d at 471.

Conclusion

- 17. The Respondent failed to prove that 17.61 acres of the subject property is not devoted to agricultural use. The Respondent also failed to prove that the assessed value of \$140,100 is correct. Therefore, the assessment must be changed.

Final Determination

18. In accordance with the above findings and conclusions, the assessment will be changed back to the same valuation as 2010, which was \$120,500.

ISSUED: January 8, 2013

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>