

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #s: 45-037-02-1-5-00013
45-037-02-1-5-00015
Petitioner: Charles W. Grubb Revocable Trust
Respondent: Department of Local Government Finance
Parcel #s: 010-10-01-0025-0001
010-10-01-0019-0001
Assessment Year: 2002

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

Procedural History

1. The informal hearing as described in Ind. Code § 6-1.1-4-33 was held in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment was \$36,700 for parcel 010-10-01-0025-0001, and \$73,000 for parcel 010-10-01-0019-0001, and notified the Petitioner on March 23, 2004.
2. The Petitioner filed Form 139L petitions on April 12, 2004.
3. The Board issued notices of hearing to the parties dated February 14, 2005.
4. A hearing was held on March 16, 2005 in Crown Point, Indiana, before Special Master Dalene McMillen.

Facts

5. The subject properties are located at 12509 Belshaw Road, Lowell, West Creek Township, Lake County.
6. Parcel 010-10-01-0025-0001 consists of 40 acres of agricultural land. Parcel 010-10-01-0019-0001 consists of 80 acres of agricultural land.
7. The Special Master did not conduct an on-site visit of the property.

8. The assessed value of the subject property;

a. As determined by the DLGF:

Parcel 010-10-01-0025-0001

Land: \$36,700 Improvements: \$0

Parcel 010-10-01-0019-0001

Land: \$73,700 Improvements: \$0

b. As requested by the Petitioner:

Parcel 010-10-01-0025-0001

Land: \$35,300 Improvements: \$0

Parcel 010-10-01-0019-0001

Land: \$71,700 Improvements: \$0

9. The following persons were present and sworn in at the hearing:

For Petitioner: Michael R. McIntire, Witness
 Edward E. Charbonneau, Attorney for Petitioner ¹

For Respondent: Stephen H. Yohler, Assessor/Auditor, DLGF

Issue

10. Summary of Petitioner's contentions in support of an alleged error in the assessment:

- a. The assessed values of the subject properties of \$36,700 and 73,700 are overstated. The Petitioner request that the assessments be lowered to \$35,300 for parcel 010-10-01-0025-0001, and \$71,700 for parcel 010-10-01-0019-0001. *McIntire argument.*
- b. Both parcels are affected by flooding from the Bailey ditch. In support of this issue, the Petitioner submitted property record cards for 2004 prepared by Mr. Rick Niemeyer, West Creek Township Assessor whereby the assessor classified four (4) acres on parcel 010-10-01-0025-0001, and six (6) acres on parcel 010-10-01-0019-0001, as occasionally flooding, and applied a 30% negative influence factor to the assessment of each parcel. *Petitioner Exhibit 1.*

¹ Mr. Edward Charbonneau was present during the administrative proceedings on behalf of the Petitioner, but he was not sworn in to present testimony.

11. Summary of Respondent's contentions in support of assessment:
 - a. The Respondent testified the assessment is fair and accurate. *Yohler testimony.*
 - b. Petitioner offered no evidence in support of the requested value or that the land floods or that the lands crop production is affected by flooding. *Yohler argument.*

Record

12. The official record for this matter is made up of the following:
 - a. The Petition and all subsequent submissions by either party.
 - b. The tape recording of the hearing labeled Lake Co - 693.
 - c. The following Exhibits were presented:

For the Petitioner:

Petitioner Exhibit 1 – A copy of Charles Grubb Revocable Trust 2004 property record cards.

Petitioner Exhibit 2 – Power of Attorney from Phyllis Grubb to Edward Charbonneau, dated March 18, 2005.

Petitioner Exhibit 3 – Notice of Appearance by Attorney, prepared by Edward Charbonneau.

For the DLGF:

Respondent Exhibit 1 – A copy of the Form 139L petitions.

Respondent Exhibit 2 – A copy of Charles Grubb Revocable Trust 2002 property record cards.

For the Board:

Board Exhibit A – Form 139L petitions, dated April 12, 2004.

Board Exhibit B – Notices of Hearing on Petition, dated February 14, 2005.

Board Exhibit C – Hearing sign-in sheets.

Board Exhibit D – Request for Additional Evidence from Petitioner, dated March 16, 2005.

- d. These Findings and Conclusions.

Analysis

13. The most applicable cases are:

- a. A Petitioner seeking review of a determination of assessing officials has the burden to establish 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 Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
 - b. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Township 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 establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner’s evidence. *See American United Life Insurance Company v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner’s evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
14. The Petitioner did not provide sufficient evidence to support the Petitioner’s contentions. This conclusion was arrived at because:
- a. The Petitioner claims that the assessments of the subject parcels are too high.
 - b. For the 2002 reassessment, a base rate of \$1,050 per acre has been established as the starting point in calculating the True Tax Value of agricultural land. When appropriate, this base rate may be adjusted to account for soil productivity. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, ch. 2 at 100, 106 (incorporated by reference in 50 IAC 2.3-1-2).
 - c. For agricultural land, influence factors (an adjustment to the base rate to account for characteristics peculiar to the parcel) may also be applied for specific land use types. For example, land that floods occasionally (Type 41 land) receives a negative 30% influence factor. *Id* at 114-115.
 - d. If agricultural tillable land is classified as farmed wetlands or experiences flooding from a nearby river or stream causing substantial damage or loss of crops between April and November, it is classified by three subtypes: land flooded occasionally (floods two to four times in a ten-year period); land flooded severely (floods five times or more in a ten-year period); and farmed wetlands (land designated by the U.S. Department of Agriculture). *Id* at 103-104.
 - e. The Petitioner offered testimony that the subject property floods occasionally, and a 2004 property record card showing that the township assessor has changed the

assessment, but presented no evidence to support that the property has flooded two to four times in the last ten years or that the assessment is in error.

- f. While the farmland may be more difficult to farm, the Petitioner did not present any market evidence to demonstrate that the land lost 30% of its value as a result of the occasional flooding. Consequently, the Petitioner’s statements amount to little more than conclusory statements, which, when unsupported by factual evidence, are insufficient to support a claim for a change in assessment. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1113, 1119 (Ind. Tax 1998).
- g. Accordingly, the Petitioner failed to establish a prima facie case for a reduction in assessment.

Conclusion

- 15. The Petitioner did not present sufficient evidence to make a prima facie case regarding an error in the assessment. The Board finds in favor of Respondent.

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: _____

Commissioner,
Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Trial Rules are available on the Internet at http://www.in.gov/judiciary/rules/trial_proc/index.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.