

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-037-02-1-5-00014
Petitioner: Charles W. Grubb Revocable Trust
Respondent: Department of Local Government Finance
Parcel #: 010-10-01-0016-0023
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 for the subject property was \$8,400, and notified the Petitioner on March 23, 2004.
2. The Petitioner filed a Form 139L petition on April 12, 2004.
3. The Board issued notice 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 property is located at 12509 Belshaw Road, Lowell, West Creek Township, Lake County.
6. The subject property is 28.54 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:
Land: \$8400 Improvements: \$0

- b. As requested by the Petitioner:

The Petitioner did not request a specific assessed value.

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

For Petitioner: Michael R. McIntire, Witness
 Edward E. Charbonneau, Attorney for Petitioner¹

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 subject property's entire 28.54 acres was classified by the Department of Natural Resources (DNR) as Wildlife Habitat on November 4, 1994. *McIntire testimony; Charbonneau argument; Petitioner Exhibit 5*. The land is not classified as such for assessment purposes. *Id.*
- b. In support of the Petitioner's contentions, he submitted a letter from the DNR, the application for the classification of land as wildlife habitat survey, the appraisal report prepared by the Lake County Assessor's office, and a survey plat and aerial photograph of the subject area. *Petitioner Exhibit 1, 2 & 5*.

11. Summary of Respondent's contentions in support of the assessment:

- a. The Respondent testified that if the Petitioner's evidence in fact shows that the 28.54 acres was included as part of the classification of wildlife habitat the DLGF would accept the reclassification of the land. *Yohler testimony*.

Record

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

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

- 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 surveyor's plat map of the subject property.

Petitioner Exhibit 2 - An aerial photograph of the subject area prepared by Matt Lake, DNR.

Petitioner Exhibit 3 - The Lake County Auditor's transfer record on the subject property, dated June 16, 1998.

Petitioner Exhibit 4 - The 2004 pay 2005 real property maintenance report on the subject property.

Petitioner Exhibit 5 - Letter from Steven Winicker, District Forester, DNR, letter from Dick Hudson, Regional Supervisor, DNR, dated November 4, 1994, application for the classification of land as wildlife habitat, dated February 22, 1993, appraisal report prepared by the Lake County Assessor, dated February 22, 1994, director's report prepared by Dick Hudson, DNR, dated November 4, 1994, and Surveyor's plat, dated February 22, 1993.

Petitioner Exhibit 6 - Power of attorney from Phyllis Grubb to Edward Charbonneau, dated March 18, 2005.

Petitioner Exhibit 7 - Notice of Appearance by Attorney, prepared by Edward Charbonneau.

For the DLGF:

Respondent Exhibit 1 - A copy of the Form 139L petition.

Respondent Exhibit 2 - A copy of Charles Grubb Revocable Trust 2002 property record card.

For the Board:

Board Exhibit A - Form 139L petition, dated April 12, 2004.

Board Exhibit B - Notice of Hearing on Petition, dated February 14, 2005.

Board Exhibit C - Hearing sign-in sheet.

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

- d. These Findings and Conclusions.

Analysis

13. The most applicable laws are:

- a. A Petitioner seeking review of a determination of the Department of Local Government Finance has the burden to establish a prima facie case proving, by a preponderance of the evidence, 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 provided sufficient evidence to support the Petitioner’s contentions. This conclusion was arrived at because:
- a. The Petitioner contends that the subject property is classified as Wildlife Habitat by the Department of Natural Resources, and should be classified as such for assessment purposes.
 - b. For agricultural land, by definition, to be assessed as classified land, the land must have been applied for and approved for specific programs administered by the Indiana Department of Natural Resources or county surveyor. A 100% influence factor deduction applies to classified land. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, ch. 2 at 102-103 (incorporated by reference at 50 IAC 2.3-1-2).
 - c. Land which is classified as Wildlife Habitat shall be assessed at one dollar (\$1) per acre for general property taxation purposes. Ind. Code § 6-1.1-6.5-8.
 - d. Petitioner provided evidence that the subject property, containing 28.54 acres, was classified as Wildlife Habitat 1994. *McIntire testimony; Petitioner Exhibit 5*.
 - e. Petitioner entered evidence to showing the application for the classification of land as wildlife habitat, the appraisal report prepared by the Lake County Assessor, surveyor plat of the Wildlife Habitat area and two letters indicating the property was approved by the DNR. *Petitioner Exhibit 5*.

- f. Petitioner also entered as evidence the Lake County transfer record showing the 28.54 acres being transferred from three separate parcel numbers and combined into the parcel number 010-10-01-0016-0023 on June 16, 1998. Also, Petitioner submitted the real property maintenance report for 2004, pay 2005, which shows 28.54 acres being reclassified and assessed as Wildlife Habitat. *Petitioner Exhibit 3-4.*
- g. Through this evidence, the Petitioner has presented a prima facie case showing the subject land has been applied for and approved by the Indiana Department of Natural Resources for the classification of Wildlife Habitat land.
- h. Once a Petitioner has made a prima facie case the burden of proof shifts to the Respondent to refute or disprove Petitioner's evidence. *Meridian Towers*, 805 N.E.2d at 479.
- i. The Respondent did not dispute the Petitioner's testimony. Instead, the Respondent stated that if the Petitioner's evidence in fact shows that the 28.54 acres was included as part of the classification of Wildlife Habitat, the DLGF would accept the reclassification of the land. *Yohler testimony.*
- j. Based on the foregoing, the evidence in the record supports a finding that the 28.54 acres be classified as Wildlife Habitat and assessed at one dollar (\$1) per acre.

Conclusion

- 15. The Petitioner presented a prima facie case. The Respondent did not rebut Petitioner's evidence. The Board finds in favor of Petitioner.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed. The subject parcel should be classified as Wildlife Habitat and assessed at one dollar (\$1) per acre.

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>.