

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

Petition No.: 59-013-06-1-5-00003
Petitioners: Marty & Lisa J. Dailey
Respondent: Orange County Assessor
Parcel No.: 013-001-040-006
Assessment Year: 2006

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 Petitioners initiated an assessment appeal with the Orange County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated December 27, 2006.
2. The Petitioners received notice of the decision of the PTABOA through a Form 115 Notification of Final Assessment Determination dated August 29, 2007.
3. The Petitioners initiated an appeal to the Board by filing a Form 131 received by the Board on October 19, 2007. The Petitioners elected to have this case heard pursuant to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated January 15, 2008.
5. The Board held an administrative hearing on February 20, 2008, before the duly appointed Administrative Law Judge (the ALJ) Rick Barter.
6. Persons present and sworn in at hearing:
 - a. For Petitioner: Marty Dailey, Petitioner
 - b. For Respondent: Linda J. Reynolds, Orange County Assessor

Facts

7. The subject property is a platted residential excess acreage parcel of 17.4990 acres located on E. County Road 925 South in Southeast Township, Orange County.

8. The ALJ did not conduct an on-site visit of the property.
9. The PTABOA determined the assessed value of the subject property is \$43,700 for the land and \$600 for the improvements, for a total assessed value of \$44,300.
10. The Petitioners did not request a specific amount for the assessed value of the property. The Petitioner only argued that the land should be classified as “agricultural” instead of “excess residential acreage.” The value of the improvement is not contested.

Issues

11. Summary of Petitioners’ contentions in support of alleged error in assessment:
 - a. The Petitioners contend that the property is not residential acreage. *M. Dailey testimony*. According to the Petitioners, the land is only used for hunting and cutting firewood. *Id.* Mr. Dailey testified that they have no plans to ever build a home on the property. *Id.* Therefore, the Petitioners contend, the property should be classified as agricultural. *Id.* Mr. Dailey admits, however, that the property is not being used to grow crops.
 - b. The Petitioners argue that they have been attempting to have the parcel removed from the residential subdivision classification since they purchased the property in August of 2001. *M. Dailey testimony*. According to Mr. Dailey, he was told to contact the county engineer who told him it was not possible for an engineer to make such a change. *Id.* Mr. Dailey testified that he has since been writing letters and contacting county officials in an effort to accomplish the change. *Id.*
 - c. Finally, Mr. Dailey testified that he is not contesting the assessed value of the subject property. *M. Dailey testimony*. The Petitioners argue, however, that the taxes on the property are much higher than the neighboring properties. *Id.* In support of this contention, the Petitioners submitted copies of three tax statements on the subject property showing taxes of \$31.42 for 2001-pay-2002 tax year, \$165.23 for 2002-pay-2003 tax year and \$276.46 for 2006-pay-2007 tax year. *Petitioners Exhibits 1 through 3.*
12. Summary of Respondent’s contentions in support of the assessment:
 - a. The Respondent contends the subject property is a platted residential parcel and, as such, is correctly classified and assessed. *Reynolds testimony*.
 - b. The Respondent further contends that the property is not being used for agricultural purposes as defined by Indiana law. *Reynolds testimony*. According to the Respondent, Indiana Code § 6-1.1-4-13 states that “[i]n assessing or reassessing land, the land shall be assessed as agricultural only when it is devoted to agricultural use.” *Respondent Exhibit 2.*

- c. Finally, the Respondent argues that the Petitioners are not contesting the property's 2006 assessed value because it is lower than the \$47,500 they paid for the property when they purchased it in August 2001. *Reynolds testimony*. In support of this contention, the Respondent submitted the sales disclosure filed with the county. *Respondent Exhibit 3*.

Record

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

- a. The Petition and related attachments,
- b. The digital recording of the hearing labeled 59-006-06-1-5-00003Dailey,
- c. Exhibits:
 - Petitioner Exhibit 1 – Copy of tax bill for tax year 2001-pay-2002,
 - Petitioner Exhibit 2 – Copy of tax bill for tax year 2002-pay-2003,
 - Petitioner Exhibit 3 – Copy of tax bill for tax year 2006-pay-2007,

 - Respondent Exhibit 1 – Property record card for subject property,
 - Respondent Exhibit 2 – Copy of IC 6-1.1-4-13,
 - Respondent Exhibit 3 – Copy of sales disclosure dated August 28, 2001,

 - Board Exhibit A - Form 131 petition and related attachments,
 - Board Exhibit B – Notice of Hearing,
 - Board Exhibit C – Hearing sign-in sheet.
- d. These Findings and Conclusions.

Analysis

13. The most applicable governing cases are:
 - a. A Petitioner seeking review of a determination of an assessing official 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 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).
 - 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 Twp. 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 Ins. Co. 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 Petitioners failed to provide sufficient evidence to establish a prima facie case for a reduction in value. The Board reached this decision for the following reasons:
- a. The Petitioners contend that the property should be classified as agricultural because, although they do not grow crops on the property, the property is not used for residential purposes. *M. Dailey testimony*. According to the Petitioners, they use the property to hunt and cut firewood, but they have no plans to build a home on the lot. *Id.* The Respondent argues that the property is properly classified as excess residential acreage because it is not devoted to agricultural purposes. *Reynolds testimony*.
- b. Indiana Code § 6-1.1-4-13(a) states that that “[i]n assessing or reassessing land, the land shall be assessed as agricultural only when it is devoted to agricultural use.” The word "devote" means "to give or apply (one's time, attention, or self) completely." WEBSTER'S II NEW RIVERSIDE DICTIONARY 192 (revised edition). Agricultural use is the “production of crops, fruits, timber, and the raising of livestock.” 2002 REAL PROPERTY ASSESSMENT GUIDELINES – VERSION A, Glossary at 1 (incorporated by reference at 50 IAC 2.3-1-2). Here, the Petitioners admit that they are not growing any crops on the property. The fact that the Petitioners may cut some firewood on the parcel is incidental to its main use as a place for Mr. Dailey to hunt. Thus, the Petitioners failed to sufficiently show that the property is put to an “agricultural use.” Residential acreage parcels not used for agricultural purposes are valued using the “excess acreage base rate established by the township assessor.” GUIDELINES Chap. 2, p. 69. The Board, therefore, finds that the Petitioners failed to raise a prima facie case that the property’s classification as excess residential acreage is in error.
- c. The 2002 Real Property Assessment Manual (hereinafter MANUAL) defines the “true tax value” of real estate as “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, for the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL (incorporated by reference at 50 IAC 2.3-1-2). There are three generally accepted techniques to calculate market value-in-use: the cost approach, the sales comparison approach and the income approach. The primary method for assessing officials to determine market value-in-use is the cost approach. *Id.* at 3. To that end, Indiana promulgated a series of guidelines that explain the application of the cost approach. The value established by use of the Guidelines, while presumed to be accurate, is merely a starting point. “[A]ny individual assessment is to be deemed accurate if it is a reasonable measure of “True Tax Value’...No technical failure to comply with the procedures of a specific assessing method violates this [assessment] rule so long as the individual assessment is a reasonable measure of ‘True Tax Value’...” 50 IAC 2.3-1-1(d).

- d. Here, the Petitioners restricted their argument to the methodology of their assessment. *M. Dailey testimony*. The Petitioners merely contend the property was classified incorrectly. *Id.* The Petitioners did not contend the property was valued incorrectly. *Id.* In fact, Mr. Dailey testified that they were not disputing the assessed value of the property. *Id.* The Tax Court explained how Indiana's assessment system has changed: "Simply put, under the old system, a property's assessed value was correct as long as the assessment regulations were applied correctly. The new system, in contrast, shifts the focus from mere methodology to determining whether the assessed value is actually correct." *P/A Builders & Developers, LLC v. Jennings Co. Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006). The Petitioners had the burden to present market data to establish the true tax value of the property. The Petitioners chose not to do so. Even if the Respondent's assessment did not fully comply with the Guidelines, the Petitioners failed to show that the total assessment is not a reasonable measure of true tax value. Arguments based on strict application of the Guidelines are not enough to rebut the presumption that the assessment is correct. *O'Donnell v. Dep't. of Local Gov't. Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006).¹
- e. Where the taxpayer fails to provide probative evidence that an assessment should be changed, the Respondent's duty to support the assessment with substantial evidence is not triggered. *See Lacy Diversified*, 799 N.E.2d at 1221-1222; *Whitley Products*, 704 N.WE.2d at 1119.

Conclusion

15. The Petitioners failed to make a prima facie case. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines the assessment should not be changed.

¹ The Petitioners also argue that the property's taxes are too high. *M. Dailey testimony*. Pursuant to Ind. Code § 6-1.5-4-1, the Board conducts an impartial review of all appeals concerning the assessed value of tangible property; property tax deductions; and property tax exemptions. Thus, the Board may consider any claims that the Respondent erred in assessing the subject property. The tax rate applied to that assessment, however, is not properly before the Board. Even if the Board had jurisdiction, each tax year stands on its own. *Barth v. State Board of Tax Commissioners*, 699 N.E.2d 800, 805 n. 14 (Ind. Tax Ct. 1998). Consequently, the taxes the Petitioners paid in prior years would have no relevance or probative value in determining the Petitioners' 2006 taxes or assessment.

ISSUED: April 15, 2008

Commissioner,
Indiana Board of Tax Review

IMPORTANT NOTICE
- 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>.