

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

Petition Nos.: 06-010-14-1-5-00006
06-010-14-1-5-00015
06-010-14-1-5-00007
Petitioners: George & Pamela Faerber
Respondent: Boone County Assessor
Parcel Nos.: 010-06860-00
010-02960-01
010-06490-01
Assessment Year: 2014

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

Procedural History

1. Petitioners initiated three assessment appeals for 2014 with the Boone County Property Tax Assessment Board of Appeals (“PTABOA”). The PTABOA issued Notifications of Final Determination on January 22, 2015, and February 18, 2015. Petitioners then filed Form 131 petitions on February 19, 2015.
2. Petitioners elected to have their appeals heard under the Board’s small claims procedures. Respondent did not elect to have the proceedings removed from those procedures.
3. On January 19, 2016, the Board’s designated administrative law judge, Dalene McMillen (“ALJ”), held a hearing. Neither the Board nor the ALJ inspected the property.
4. The following people were sworn as witnesses:
 - George and Pamela Faerber, Petitioners,
 - Lisa Garoffolo, Respondent,
 - Peggy Lewis, former PTABOA member.

Facts

5. The properties under appeal are located at 8150 East 100 South and 1001 South 850 East in Zionsville. Parcel No. 010-06860-00 (“06860”) consists of 38.5 acres with a single-family home, two utility sheds, a garage, a poultry house, and a stable. Parcel No. 010-

02960-01 (“02960”) consists of one acre of vacant land. Parcel No. 010-06490-01 (“06490”) consists of 17.52 acres of vacant land.

6. The assessed values for 2013 are as follows:

Parcel No.	Land	Improvements	Total
010-06860-00	\$174,400	\$370,300	\$544,700
010-02960-01	\$11,000	-0-	\$11,000
010-06490-01	\$17,300	-0-	\$17,300
Total			\$573,000

7. The values determined by the PTABOA for 2014 are as follows:

Parcel No.	Land	Improvements	Total
010-06860-00	\$164,100	\$370,300	\$534,400
010-02960-01	\$8,300	-0-	\$8,300
010-06490-01	\$144,500	-0-	\$144,500
Total			687,200

8. Petitioners’ requested the following values:¹

Parcel No.	Land	Improvements	Total
010-06860-00	\$124,939.50	\$370,300	\$495,239.50
010-02960-01	\$2,050	-0-	\$2,050
010-06490-01	\$20,090	-0-	\$20,090
Total			517,379.50

Record

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

- a. A digital recording of the hearing,
- b. Exhibits:

- Petitioner Exhibit 1: Explanation of increases and property record cards (“PRCs”) for subject properties,
- Petitioner Exhibit 1A: PRC for PL Properties LLC,
- Petitioner Exhibit 2: Forms 11 for the subject properties,
- Petitioner Exhibit 3: Forms 115 for the subject properties,
- Petitioner Exhibit 4: Photographs of the area surrounding 06860,
- Petitioner Exhibit 5: Google Map images of the subject properties,

¹ Petitioners only appealed the classification of the land.

- Petitioner Exhibit 6: Photographs and aerial maps of the subject properties,²
 Petitioner Exhibit 8: Photographs of 06860,
 Petitioner Exhibit 9: Photographs, surveyor map and aerial maps of 06860,
 Petitioner Exhibit 10: Electric easement deed and photographs,
 Petitioner Exhibit 11: Forest Land and Wildlands application documents,
 Petitioner Exhibit 12: DNR documents,
 Petitioner Exhibit 13: Department of Local Government Finance (“DLGF”) memorandum,
 Petitioner Exhibit 14: Auberry burden-shifting article,
 Petitioner Exhibit 15: *Rod A. & Elizabeth J. Herman v. Boone County Assessor*,
 Petition No. 06-005-13-1-5-00016,
 Petitioner Exhibit 16: *Orange County Assessor v. James E. Stout*, 996 N.E.2d
 871 (Ind. Tax Ct. 2013),
 Petitioner Exhibit 17: *Timothy E. Pratt v. Department of Local Government
 Finance*, Petition No. 45-037-02-1-1-00082,
 Petitioner Exhibit 18: Various USDA letters and other items,
 Petitioner Exhibit 19: Co-Alliance statements,
 Petitioner Exhibit 20: Lease agreements (Kouns),
 Petitioner Exhibit 21: Lease agreements (Shoemaker and Burnell),
 Petitioner Exhibit 22: Senate Bill 436 excerpt,
 Petitioner Exhibit 23: Ind. Code § 6-1.1-15-17.2,
 Petitioner Exhibit 24: Potthoff email,
 Petitioner Exhibit 25: Summary of Petitioners’ testimony,
 Petitioner Exhibit 26: Summary of Petitioners’ exhibits and testimony,

Parcel No. 06860:

- Respondent Exhibit 1: Boone County appeal worksheet,
 Respondent Exhibit 2: 2014 subject PRC,
 Respondent Exhibit 3: Form 115,
 Respondent Exhibit 4: Amended Form 115,
 Respondent Exhibit 5: Boone County appeal worksheet,
 Respondent Exhibit 6: 2014 subject PRC,
 Respondent Exhibit 7: Petitioners’ letter of intent,
 Respondent Exhibit 8: Form 131,
 Respondent Exhibit 9: Notice of Hearing,
 Respondent Exhibit 10: Aerial map of subject property,

Parcel No. 02960:

- Respondent Exhibit 1: Boone County appeal worksheet,
 Respondent Exhibit 2: 2014 subject PRC,
 Respondent Exhibit 3: DLGF memorandum,

² Petitioners did not submit an Exhibit 7.

Respondent Exhibit 4: Page of the 2011 Real Property Assessment Manual,
Respondent Exhibit 5: Ind. Code § 6-1.1-4-13,
Respondent Exhibit 6: Form 114,
Respondent Exhibit 7: Form 115,
Respondent Exhibit 8: Form 131,
Respondent Exhibit 9: Notice of Hearing,

Parcel No. 06490:

Respondent Exhibit 1: Boone County appeal worksheet,
Respondent Exhibit 2: 2014 subject PRC,
Respondent Exhibit 3: Form 114,
Respondent Exhibit 4: Form 115,
Respondent Exhibit 5: 2014 subject PRC,
Respondent Exhibit 6: Form 131,
Respondent Exhibit 7: Notice of Hearing,

Board Exhibit A: Form 131 petitions,
Board Exhibit B: Hearing notices,
Board Exhibit C: Hearing sign-in sheets,

c. These Findings and Conclusions.

Burden of Proof

10. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that his 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). A burden-shifting statute creates two exceptions to that rule.
11. First, Ind. Code § 6-1.1-15-17.2 "applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year." Ind. Code § 6-1.1-15-17.2(a). "Under this section, 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." Ind. Code § 6-1.1-15-17.2(b).
12. Second, Ind. Code § 6-1.1-15-17.2(d) "applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15," except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), "if the gross assessed value of real property for an assessment date that follows the latest

assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d).

13. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
14. The total assessed values of the three parcels at issue increased by more than 5% from \$573,000 in 2013 to \$687,200 in 2014. Respondent therefore has the burden of proof. To the extent that Petitioners seek an assessment below the previous year’s level, however, they bear the burden of proving that lower level.

Summary of the Parties’ Contentions

15. Petitioners’ case:
 - a. Petitioners contend that the assessed values are overstated based on the classification of portions of the parcels as excess residential land rather than as agricultural land. When Petitioners purchased the three parcels they were all assessed as agricultural land. Since the time of purchase, Petitioners have not reduced the tillable area, grazing area, or wooded area. Additionally, they have not added any structures or increased the manicured land area. *G. & P. Faerber testimony; Pet’r Ex. 1.*
 - b. Petitioners cited a DLGF memorandum dated February 12, 2008. First, the memo states that according to Ind. Code § 6-1.1-4-12, “developer’s discount” land will remain agricultural land until it is developed or transferred to a person that is not a land developer. *P. Faerber testimony; Pet’r Ex. 13.*
 - c. The memo also states that all acres enrolled in programs of the USDA, Farm Services Agency, and Natural Resources Conservation Service, and have received a “farm number,” are eligible for the classification of agricultural land. *P. Faerber testimony; Pet’r Ex. 13.*
 - d. The memo, under the section entitled “Other Agricultural Uses,” states that:

A 40 acre parcel, which at one time was a small farm, has since become a mixture of small, scattered trees and brush with less than 50% canopy cover. The assessor classified this parcel as residential excess acreage; the effect of which created a higher assessed value and tax burden than the agricultural soil productivity method.

...

The current owner purchased the parcel as an agricultural property many years ago. The land is currently uncultivated or fallow, but has not changed use nor been rezoned. This parcel should continue to be classified as agricultural as it was purchased for agricultural use and is used as “non-tillable land” as defined in the Guidelines.

P. Faerber testimony; Pet’r Ex. 13.

- e. In 2014 Petitioners met with Michael Warner, a certified forester from ArborTerra Consulting, to begin developing a forest management plan. Later that year, James Potthoff, a state district forester, certified Petitioners’ forest management plan. As a result, in 2015, 12.67 acres of the 38.5 acres from Parcel No. 06860, 1 acre from Parcel No. 02960, and 17.52 acres from Parcel No. 06490 were accepted into the DNR Classified Forest & Wildlands Program. *P. Faerber testimony; Pet’r Ex. 11, 12, 15 & 24.*
- f. Petitioners were issued a farm number from the USDA in 2014. They are also members of CoAlliance, whom they use to spray their fields. Petitioners argue that the issuance of the farm number and the use of CoAlliance demonstrate that their properties are used for agricultural purposes. *P. Faerber testimony; Pet’r Ex. 18 & 19.*
- g. For Parcel No.06860 in 2014, the county has 12.26 acres of the 38.5 acres classified as excess residential. The land is actually woods and eight acres of that woods is located in a flood plain that prohibits construction. In addition, 20 acres of the parcel is leased by Craig Kouns of Kouns Agriculture. Mr. Kouns produces hay on this land that Petitioners buy back for their horses at a reduced rate. They share the farming expenses on their 20 acres with Mr. Kouns. Petitioners also lease pasture land to Robert Burnell for grazing cattle.³ *G. Faerber testimony; Pet’r Ex. 4-6, 8, 9, 17, 20 & 21.*
- h. Petitioners submitted photographs of neighboring properties to demonstrate that those properties are agricultural fields. A comparable property owned by PL Properties is located adjacent to Petitioners’ 38.5 acres. This property is identical to the subject property in that it has tillable farmland in the front of the property and approximately 12 acres of woodland. The 12 acres of woodland was given an 80% negative influence factor and has an assessed value of \$4,300. On the other hand, the subject property’s 12.6 acres of woodland area is classified as excess residential with no negative influence factor and an assessed value of \$134,860 *G. & P. Faerber testimony; Pet’r Ex. 1-1A & 4.*

³ Petitioners submitted a portion of Senate Bill 436, which passed in the spring of 2015 clarifying Ind. Code § 6-1.1-4-13. The statute states that equine or equine products and native timber lands or land that lays fallow is included in the definition of “agricultural use”. *P. Faerber testimony; Pet’r Ex. 22.*

- i. Parcel No. 02960 is a one acre parcel consisting of a narrow lane that regularly floods. Parcel No. 06490 is 17.52 acres of woods, a portion of which was used to grow turnips. Since June 30, 1966, both parcels have had an electric transmission line easement restricting construction. Petitioners submitted an aerial map to demonstrate where the electrical lines are located on both parcels. They argue that the electric lines limit the land to an agricultural use. *P. Faerber testimony; Pet'r Ex. 5, 6 & 10.*
 - j. Petitioners contend that for Parcel No. 06490, 30% of the 17.52 acres should be valued as woodland and the remaining acreage should be valued as fallow land. They further contend that Parcel No. 02960 should be valued at \$2,050 per acre with a negative influence factor applied for the power lines. *P. Faerber testimony.*
 - k. Petitioners finally contend that the facts in their case are very similar to the facts in *Orange County Assessor v. Stout*, 996 N.E.2d 871 (Ind. Tax Ct. 2013) where the court found that the land at issue qualified as agricultural because it has more than a 50% tree canopy cover and it was similar to the neighboring properties. *P. Faerber testimony; Pet'r Ex. 16*
16. Respondent's case:
- a. Respondent testified that the PTABOA made changes to Parcel No. 06860's classification that lowered the assessment. According to Respondent, the PTABOA removed a second homesite, applied a 75% negative influence factor to 10 acres, and reclassified 3.26 acres to "straight" excess residential. This resulted in the land value being reduced from \$295,600 to \$164,100. *Garoffolo & Lewis testimony; Resp't Ex. 3-5.*
 - b. Respondent claims the land classifications for Parcel No. 06860 show the parcel has some tillable land and non-tillable pasture land that is receiving a 60% negative influence factor. There are also other areas that are receiving a negative influence factor of 40% and a legal ditch and public road that are receiving a 100% negative influence factor. Respondent argues that Petitioners' land is classified correctly. *Garoffolo testimony; Resp't Ex. 6.*
 - c. Respondent testified that Parcel No. 06490 consists of 17.52 acres that are assessed as excess residential with a 25% negative influence factor attributed to the power lines. According to Respondent, the county has recognized the negative impact of the power lines. She further argued that no additional reduction is warranted. *Garoffolo testimony; Resp't Ex. 2 & 4.*
 - d. Respondent contends that Parcel No. 02960 consists of one acre used as a driving lane. It is assessed as excess residential because it is not being farmed based on its current use. In support of this contention, Respondent cited the DLGF memo dated February 12, 2008, that states that under Ind. Code § 6-1.1-4-13(a), "In assessing or

reassessing land, the land shall be assessed as agricultural land only when it is devoted to agricultural use.” Additionally, the PTABOA applied a negative 25% influence factor for power lines located on the property, thereby reducing the assessed value from \$11,000 to \$8,300. *Garoffolo testimony; Resp’t Ex. 3 & 7.*

Analysis

17. Petitioners provided sufficient evidence for a reduction in the assessments. The Board reached this decision for the following reasons:
 - a. The statutory and regulatory scheme for assessing agricultural land requires the Board to treat challenges to those assessments differently than other assessment challenges. For example, the legislature directed the DLGF to use distinctive factors such as soil productivity that do not apply to other types of land. Ind. Code § 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 GUIDELINES, CH. 2 at 77-78; see also Ind. Code § 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. *Id.* at 77, 89, 98-99.
 - b. Ind. Code § 6-1.1-4-13(a) provides that “land shall be assessed as agricultural land only when it is devoted to agricultural used.” “Agricultural property” is defined as land “devoted to or best adaptable for the production of crops, fruits, timber, and the raising of livestock.” GUIDELINES, GLOSSARY at 1. Agricultural land is further classified into land use types. One category of such land use type is “woodland,” which is defined as “land supporting trees capable of producing timber or other wood products” that “has 50% or more canopy cover.” A negative 80% influence factor applies to land classified as “woodland.” *Id.* CH. 2 at 102-104.
 - c. Petitioners have shown that the subject properties should be classified as agricultural, and specifically, as “woodland.” Photographic evidence and testimony of Petitioners show that portions of the properties have trees capable of producing timber and appear to have a 50% or more canopy cover. In addition, the evidence also shows that a portion of Parcel No. 06490’s 17.52 acres contained a turnip crop.
 - d. Furthermore, Petitioners documented that 12.67 acres of the 38.5 acres from Parcel No. 06860, the 1 acre of Parcel No. 02960, and 17.52 acres of Parcel No. 06490 were enrolled in the Indiana Department of Natural Resources Classified Forest Program in 2014, and accepted into the program in 2015. This evidence indicates that an agricultural classification is warranted.

- e. Respondent did not challenge the factual assertions of Petitioners. Respondent classified portions of the subject properties as excess residential because the land was not devoted to, or used for, farming.
- f. “Residential property” is defined as “vacant or improved land devoted to, or available for use primarily as, a place to live,” and is “normally construed to mean a structure where less than three families reside in a single structure.” GUIDELINES, GLOSSARY at 18.

Residential land is land that is utilized or zoned for residential purposes. The parcel’s size does not determine the property classification or pricing method for the parcel. The property classification and pricing method are determined by the property’s use or zoning.

Id. at 53. Furthermore, “residential acreage parcels of more than one acre and not used for agricultural purposes are valued using the residential homesite base rate and the excess acreage base rate established by the assessing official.” *Id.* at 54.

- g. The Tax Court has defined “residential excess” as land “dedicated to a non-agricultural use normally associated with the homesite.” *Stout v. Orange County Assessor*, 996 N.E.2d 871, 875 n.6. (Ind. Tax Ct. 2013). Similarly, “agricultural excess acreage” is defined as land “dedicated to a non-agricultural use normally associated with the homesite,” and it is intended to apply to “areas containing a large manicured yard over and above the accepted one acre homesite.” 2011 GUIDELINES, CH. 2 at 105-6. “The agricultural excess acre rate is the same rate that is established for the residential excess acre category.” *Id.*
- h. In contrast, land purchased and used for agricultural purposes includes cropland or pasture land (i.e., tillable land) as well as woodlands. 2011 GUIDELINES, CH. 2 at 80. Additional categories of agricultural property include Type 4 “idle cropland” and Type 5 non-tillable land that is “covered with brush or scattered trees with less than 50% canopy cover, or permanent pasture land with natural impediments that deter the use of the land for crop production.” *Id.* at 103, 104. Thus, by definition, agricultural property may include property that is not suitable for forestry or “farming.”
- i. The Board cannot find any support for the proposition that an agricultural classification depends solely on whether the property is actively farmed. The classification depends on whether the acreages in question are put to agricultural or residential use. Respondent did not articulate what characteristics of the acreages in question or Petitioners’ use thereof led her to the conclusion that they should be classified as residential.
- j. Thus, the Board finds that Petitioners have established a prima facie case that 12.67 acres of the 38.5 acres from Parcel No. 06860, 1 acre from Parcel No. 02960, and

17.52 acres from Parcel No. 06490 are devoted to agricultural use and should be assessed as agricultural land for 2014.

Conclusion

18. Respondent failed to make a prima facie case that the total assessed value for 2014 was correct. Petitioners, however, have established a prima facie case that the acreages in question on all three parcels are devoted to agricultural use and should be assessed as such for 2014.

Final Determination

In accordance with the above findings of fact and conclusions of law, the Board finds that the assessed values of the subject properties must be reduced for 2014.

ISSUED: June 17, 2016

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>>.