

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

Petition #: 16-007-02-1-1-00001
Petitioner: Forest Acres Inc.
Respondent: Jackson Township Assessor (Decatur County)
Parcel #: 05009081000100
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 Petitioner initiated an assessment appeal with the Decatur County Property Tax Assessment Board of Appeals (PTABOA) by written document dated September 5, 2003.
2. The PTABOA issued its determination on October 31, 2003, but it does not appear that the Petitioner received notice of that determination until on or after April 7, 2004. *See Board Exhibit A, letter from Decatur County Assessor.* The Petitioner filed an appeal to the Board by filing a Form 131 petition with the county assessor on May 5, 2004. The Petitioner elected to have this case heard in small claims.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the county assessor on May 5, 2004. Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated December 14, 2004.
5. The Board held an administrative hearing on February 23, 2005, before the duly appointed Administrative Law Judge (ALJ) Jennifer Bippus.
6. Persons present and sworn in at hearing:
 - a) For Petitioner: Milo Smith, Petitioner Representative
 - b) For Respondent: Helen Wagener, Appraisal Research Company, Jackson Township Representative

Facts

7. The property is classified as agricultural property, located at Co. Rd. 700 & 600 S, Greensburg, Jackson Township, Decatur County, Indiana as is shown on the property record card (PRC) for parcel # 05009081000100.
8. The ALJ did not conduct an inspection of the property.
9. Assessed Values of subject property as determined by the Decatur County PTABOA:
Land \$323,400 Improvements \$186,500
10. Assessed Values requested by Petitioner :
Total \$324,824

Issues

11. Summary of Petitioner's contentions in support of alleged error in assessment:
 - a) While the Form 131 petition raised issues concerning the grade of the dwelling, the market adjustment not being uniform or equal, and entitlement to an obsolescence adjustment, the Petitioner did not address those issues at the hearing. Instead, the Petitioner's representative sought to establish the market-value-in-use of the subject property through capitalizing its net income. *Smith testimony*.
 - b) When the Petitioner bought the subject property, it was a cattle operation. The last year the property was operated as a cattle ranch was 1999, and it had \$4,002 of income from that year. *Smith testimony*. The buildings are in bad shape due to a lack of maintenance. *Id.* The person who cash rents this farm uses a three (3) sided pole barn to store equipment. *Id.* This cash renter's son also lives in the house. *Id.*
 - c) In 2001, the ordinary income was \$29,559 from the land and all improvements, including the farm house. The Petitioner did not charge any rent for the farm house. The true tax value for the entire property in 2002 should be \$324,824. This value is a result of using the \$29,559 ordinary income and dividing it by 9.10% cap rate from the 2002 Real Property Assessment Manual. *Smith testimony; Petitioner Exhibits 1-4.*
12. Summary of Respondent's contentions in support of the assessment:
 - a) The State of Indiana set a land value for farmland of \$1,050 per acre across the State. Productivity factors come from Purdue University and are set in stone. *Wagner testimony*.
 - b) The subject PRC shows that the subject dwelling was assigned a depreciation percentage based upon having been constructed in 1900. *Id.; Respondent Exhibit 3.* The Respondent submitted a colored photograph showing a one-story addition to the

- dwelling that was clearly not built in 1900. *Wagener testimony; Respondent Exhibit 1*. The Respondent would need to know the year of construction for that part of the dwelling to determine an effective year of construction. *Id.* A change in the effective year of construction would lower the amount of physical depreciation applied to the subject dwelling, which in turn would increase its assessment. *Wagener testimony; Respondent Exhibits 1, 3*.
- c) Photographs from the 2002 Real Property Assessment Manual (“Manual”) of dwellings from the same era as the subject support the assignment of a quality grade of “B” to that dwelling. *Id.* Photographs from the 1995 version of the Manual also support the assignment of a “B” grade. The structure is a “B” grade house based on Respondent experience. *Id.*
 - d) The 113% market adjustment applied to the subject property is the market adjustment that the Respondent applied for all of Jackson Township. *Wagener testimony*.
 - e) The subject PRC shows that the Respondent applied an obsolescence adjustment to the outbuildings because the Petitioner was not using them for the purposes for which they originally were built. *Wagener testimony; Respondent Exhibit 3*. The assessment of the house must be correct, because the Petitioner did not state anything further about that structure at the informal hearing. *Wagener testimony*.

Record

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

- a) The Petition.
- b) The tape recording of the hearing labeled BTR #5893.
- c) Exhibits:

Petitioner Exhibit 1: Copy of the 1999 tax return

Petitioner Exhibit 2: Copy of the 2002 tax return

Petitioner Exhibit 3: Copy of the “Agricultural Land Base Rate Value, page 99, Version A - Real Property Assessment Guidelines

Petitioner Exhibit 4: Copy of the “Agricultural Land Base Rate Value, page 100, Version A - Real Property Assessment Guidelines

Petitioner Exhibit 5: Copy of the current PRC

Respondent Exhibit 1: Photo of dwelling and pages 18 and 22 from the 2002 Real Property Guideline for examples of similar structures in the “B” grade area

Respondent Exhibit 2: Copy of PRC to show market

adjustment of 113% for all of Jackson Township
Respondent Exhibit 3: PRC highlighting obsolescence given to
outbuildings

Respondent Exhibit 4: Authorization from Jackson Township for Ms.
Wagener to represent the township at the hearing

Board Exhibit A: Form 131 Petition

Board Exhibit B: Notice of Hearing on Petition

d) These Findings and Conclusions.

Analysis

14. The most applicable governing cases are:

- a) A Petitioner seeking review of a determination of the county Property Tax Assessment Board of Appeals 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 276 (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.

15. The Petitioner did not provide sufficient evidence to its contentions. This conclusion was arrived at because:

- a) The Petitioner relies solely on its valuation of the subject property under the income approach to value described in the Real Property Assessment Guidelines for 2002 – Version A (“Guidelines”).
- b) In setting the base rate for agricultural land, the Guidelines expressly recognize that the most frequently used valuation method for agricultural land is the income capitalization approach. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, ch. 2 at 99 (incorporated by reference at 50 IAC 2.3-1-2). Under that

approach, value-in-use is based on the residual or net income that will accrue to the land from agricultural production. *Id.*

- c) As explained in the Guidelines, one may calculate the market value in use of agricultural land by dividing the net income of each acre by the appropriate capitalization rate. *Id.* The Guidelines further state that:

The net income of agricultural land can be based on either the net operating income or the net cash rent. Net operating income is the gross income received from the sale of crops less the variable costs (i.e. seed and fertilizer) and fixed costs (i.e. machinery, labor, property taxes) of producing crops. The net cash rent income is the gross cash rent of an acre of farmland less the property taxes on the acre. Both methods assume the net income will continue to be earned into perpetuity.

Id. The Guidelines determined a base rate of \$1050 for agricultural land throughout the state using yearly averages for net cash rent and net operating income and capitalization rates based upon average annual interest rates for agricultural loans. *Id.* at 99-100.

- d) The Petitioner's representative, Milo Smith, testified that the Petitioner received "cash rent" for the subject property from a man who stored his equipment in the pole barn, and whose son resided in the subject dwelling. *Smith testimony.* The Petitioner requested a value for the subject property as a whole, including improvements, of \$324,824. This is only slightly more than the \$323,400 for which the land alone is assessed. The Petitioner apparently contends that, because the cash renter used some of the improvements as well as the land, the rent is attributable to the property as a whole, and capitalization of the rent income should yield a value for both the land and improvements.
- e) As an initial matter, the Petitioner bases its requested valuation upon the income capitalization approach utilized by the Guidelines to establish a base rate for agricultural land throughout the State of Indiana. *See GUIDELINES*, ch. 2 at 99-100. Contrary to the Petitioner's position, the Guidelines do not include the value of improvements when utilizing the income capitalization approach to value agricultural land. Instead, the Guidelines require assessors to value dwellings and other improvements located on agricultural land separately based upon their replacement costs new. *See GUIDELINES*, at chs. 3, 5.
- f) Nonetheless, the Board does not foreclose the possibility that an income approach may be adapted to the valuation of an agricultural property as a whole, including improvements. The Petitioner, however, did not present an adequate factual basis for doing so in this case.

- g) The Petitioner derived its “ordinary income” of \$29,559 by subtracting various expenses for things such as the purchase of seeds, plants, fertilizer and lime from a total of \$52,803 earned through a combination of sales of livestock, produce, grains or other products and the receipt of agricultural program payments. *See Petitioner Exhibit 2, at Schedule F to 2001 U.S. Income Tax Return for S Corporation.* The Petitioner did not explain why it deducted from its income costs associated with producing crops or other agricultural products. The Guidelines, on their face, do not contemplate such deductions in the case of income derived from cash rent. Such deductions are consistent with the capitalization of an owner-occupier’s net operating income from the sale of crops or other farm products. The Petitioner, however, bases its entire theory on the premise that it rented the property to a third party rather than operating the property itself.
- h) Based on the foregoing, the Petitioner failed to establish a prima facie case for a reduction in assessment.

Conclusion

16. The Petitioner did not make a prima facie case. The Board finds in favor of the Respondent. There is no change to the assessment.

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>.