

REPRESENTATIVE FOR PETITIONER:
Cheryl L. Gall, pro se

REPRESENTATIVE FOR RESPONDENT:
Michael Schultz, LaPorte County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Cheryl L. Gall,)	Petition Nos.: 46-050-08-1-5-00003
)	46-050-09-1-5-00003
)	46-050-10-1-5-00007
Petitioner,)	
)	
)	Parcel No.: 46-04-33-226-007.000-050
v.)	
)	
LaPorte County Assessor,)	LaPorte County
)	
)	
Respondent.)	Assessment Years: 2008, 2009, & 2010

Appeal from the Final Determination of the
LaPorte County Property Tax Assessment Board of Appeals

FINAL DETERMINATION

The Indiana Board of Tax Review (“the Board”) having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

INTRODUCTION

1. There is significant confusion about the basic facts for these appeals, such as how the subject parcel was actually assessed for each year. Despite that confusion, the undisputed evidence shows the parcel should be assessed as 1.41 acres of agricultural land for each year.

HEARING FACTS AND OTHER MATTERS OF RECORD

2. The Petitioner, Cheryl Gall, appealed her 2008 through 2010 assessments to the LaPorte County Property Tax Assessment Board of Appeals (the “PTABOA”). On October 24, 2013, the PTABOA held a hearing on all three appeals.
3. On December 6, 2013, Ms. Gall filed a Form 131 petition with the Board for the 2010 assessment year. She filed Form 131 petitions for the other two assessment years on January 27, 2014.
4. Through a series of defect notices, it became apparent that the PTABOA had not issued determinations in any of Ms. Gall’s appeals, but that the statutory deadline for the PTABOA to do so had not yet run.¹ In accordance with those notices, Ms. Gall ultimately re-filed her petitions after the deadline had run without the PTABOA issuing determinations.
5. On January 29, 2015, the Board’s designated administrative law judge, Ellen Yuhan, held a hearing on all three petitions. Neither she nor the Board inspected the parcel.
6. The following people were sworn and testified: Ms. Gall; LaPorte County Assessor Michael Schultz; and the Assessor’s deputies, John Baumann and Kristi Brownd.

¹ A PTABOA must hold a hearing on a taxpayer’s notice for review within 180 days and must give notice of its written decision within 120 days of its hearing. I.C. § 6-1.1-15-1(k) and (n). A taxpayer may file a petition with the Board after the maximum time for a PTABOA to take those actions elapses. I.C. § 6-1.1-15-1(o).

7. Ms. Gall offered the following exhibits:

- Petitioner Exhibit 1: Form 134 for 2006 pay 2007,
- Petitioner Exhibit 2: Handwritten note,
- Petitioner Exhibit 3: Beacon description of the parcel and assessment data (2011-2013 assessments) with handwritten notes,
- Petitioner Exhibit 4: Beacon description of the parcel and assessment data (2005-2010 assessments) with handwritten notes,
- Petitioner Exhibit 5: Property record card (“PRC”) with 2005-2008 assessments and handwritten notes,
- Petitioner Exhibit 6: PRC with 2009-2012 assessments and handwritten notes,
- Petitioner Exhibit 7: 2008 and 2009 Reconciliation Appeal Form,
- Petitioner Exhibit 8: Handwritten note regarding Form 134s,
- Petitioner Exhibit 9: Form 134 for 2008 pay 2009,
- Petitioner Exhibit 10: Form 134 for 2009 pay 2010,
- Petitioner Exhibit 11: Form 134 for 2010 pay 2011,
- Petitioner Exhibit 12: Form 134 for 2011 pay 2012,
- Petitioner Exhibit 13: Form 134 for 2011 pay 2012,
- Petitioner Exhibit 14: Map with parcel lines and handwritten notes,
- Petitioner Exhibit 15: 2010 Assessment Appeal Form,
- Petitioner Exhibit 16: 2010 Notice of Assessment of Land and Structures (Form 11),
- Petitioner Exhibit 17: Quit Claim Deed,
- Petitioner Exhibit 18: Hand-drawn map.

8. The Assessor offered the following exhibits:

- Respondent Exhibit A: Photograph of a vacant parcel,
- Respondent Exhibit B: Aerial photograph with parcel lines,
- Respondent Exhibit C: Real Property Maintenance Report,
- Respondent Exhibit D: PRC for 46-04-33-128-007.000-050,
- Respondent Exhibit E: Plat map,
- Respondent Exhibit F: PRC for 46-04-33-226-007.000-050,
- Respondent Exhibit G: Photograph of vacant parcel,
- Respondent Exhibit H: Photograph of vacant parcel,
- Respondent Exhibit I: Photograph of vacant parcel with animals,
- Respondent Exhibit J: Map with parcel lines and handwritten notes.

9. The following additional items are part of the record of proceedings:

- Board Exhibit A: Form 131 petitions and defect notices,
- Board Exhibit B: Hearing notices,
- Board Exhibit C: Hearing sign-in sheet.

10. It is unclear exactly what the assessment of record is for each year. The PTABOA did not issue determinations on Ms. Gall’s appeals. Ms. Gall offered property record cards with handwritten notations purporting to alter the typewritten assessment for 2009 and 2010. The typewritten entries are as follows:

Year	Assessment
2008	\$10,400 ²
2009	\$9,900
2010	\$1,900 ³

11. The record also contains Form 134 reports. On their faces, the forms are designed to inform a county PTABOA of the results of a preliminary informal conference between an assessor and taxpayer. The Form 134 reports at issue here are signed by the Assessor or his representative, but not by Ms. Gall. Under the section designated “Results of Preliminary Informal Meeting,” the reports reflect the following amounts for the assessments under review and what Ms. Gall and the Assessor thought those assessments should be:

Year	Current Assessment	Taxpayer	Assessor
2008	\$10,400	\$1,400	\$1,400
2009	\$9,900	\$1,400	\$1,400
2010	\$7,100	\$1,900	\$1,900

Each report also contains the notation “Changed to Ag Land, Pasture All Land 2%.”

Pet’r Exs. 9-11.

12. Ms. Gall requests an assessment of \$600 for each year, which is the value she and the Assessor agreed to in settling her appeal for the 2006 assessment year.

² There are three entries for 2008: \$1,700, \$9,900, and \$10,400. The value indicated in the table is the last entry. *Pet’r Ex. 5.*

³ There are two entries for 2010. The second value, which is reflected in the table, indicates that it is a revision pursuant to a Form 134 report. *Pet’r Ex. 6.*

OBJECTIONS

13. Ms. Gall objected to Respondent's Exhibit A, a photograph of a vacant parcel, and Respondent's Exhibit B, an aerial photograph with parcel lines, on grounds that neither exhibit depicts the subject parcel. While that appears to be true, a central issue in this case is whether the Assessor erroneously used information from a different parcel to classify and assess the subject parcel. The exhibits are therefore relevant and the Board overrules Ms. Gall's objection.

FINDINGS OF FACT

14. The subject parcel is a vacant 1.41-acre strip of land. A plat map and the legal description on property record cards offered by both parties confirm those dimensions. *Gall testimony; Brownd testimony; Pet'r Exs. 5-6; Resp't Exs. E-F.*
15. Sometime after the 2008 assessment date, the Assessor apparently began to confuse the parcel with a separate parcel also owned by Ms. Gall—parcel 46-04-33-128-007.000-050 ("Parcel 128-007"). Thus, the Assessor appears to have used the subject parcel's dimensions (totaling 1.41 acres) in assessing Parcel 128-007.⁴ That may have caused the Assessor to make changes in how it assessed the subject parcel as well. In later years, the Assessor assessed the parcel as having only .39 acres. It does not appear that was the case for 2008, but the record is unclear regarding the dimensions used to assess the parcel for 2009 and 2010. *See Resp't Exs. D, F; Pet'r Exs. 5-6.*
16. In any case, the Assessor agrees that the 1.41-acre parcel owned by Ms. Gall, which the evidence in this case shows is the subject parcel, should have always been assessed as agricultural. The Assessor's own photographs show horses, mules, or donkeys on the land. *See Baumann testimony; Brownd testimony; Resp't Ex. I.*

⁴ The legal description on that parcel's property record card refers to two sections of .92 acres and .29 acres. The confusion may have begun in conjunction with Ms. Gall's appeal of Parcel 128-007's 2010 assessment. The property record card contains the following notation in conjunction with that appeal: "Per PTABOA land size is 1.41 acres." *Resp't Ex. D.*

CONCLUSIONS OF LAW AND ANALYSIS

17. Generally, a taxpayer appealing an assessment must prove the assessment is incorrect and what the correct assessment should be. Indiana Code § 6-1.1-15-17.2 shifts the burden to the assessor to prove that an assessment is correct in certain circumstances, such as where an assessment has increased by more than 5% between years or where the taxpayer has successfully appealed the prior year's assessment and the assessment currently under appeal is higher, regardless of how much higher. I.C. § 6-1.1-15-17.2(a)-(b) and (d). Where an assessor fails meet his burden, the assessment reverts to the prior year's level or to any different amount established by probative evidence. *See* I.C. § 6-1.1-15-17.2(b).
18. Given the lack of clarity concerning what the actual assessments were for any of the years under appeal, sorting out who has the burden of proof is a difficult and ultimately meaningless exercise in this case. As discussed below, the undisputed evidence shows how the parcel must be assessed for each year.
19. Based on the property record cards, it appears that the subject parcel was improperly classified as residential excess acreage instead of agricultural land in some or all of the years under appeal, although the Form 134 reports, which the Assessor claims reflect the parcel's assessment of record, indicate an agricultural classification for each year. The parcel may also have been assessed for only .39 acres instead of its correct size—1.41 acres—in 2009 and 2010.
20. To the extent it is not already the case, the Board finds that the parcel should be classified and assessed as 1.41 acres of agricultural land for each year under appeal. The dollar value for those assessments will depend on the appropriate agricultural land type and soil identification factors, as well as the agricultural base rate for each year. Those are largely mechanical calculations the Assessor must make on remand.

21. Ms. Gall requested an assessment of \$600—the amount she and the Assessor agreed to in settling her appeal for the 2006 assessment year. But she did not offer any evidence to show that the agreement purported to cover assessment years beyond 2006. Thus, Ms. Gall is not entitled to have the parcel’s assessment reduced to its 2006 level.

SUMMARY OF FINAL DETERMINATION

22. Although unclear what the assessments of record for at least two of the years under appeal are, it appears that the Assessor may have misclassified the parcel as excess residential land and used incorrect dimensions. The parcel should be classified as agricultural land and assessed based upon 1.41 acres, using the appropriate agricultural land type, soil productivity factors, and base rate for each year.

FINAL DETERMINATION

In accordance with the above findings and conclusions, the Board determines that each assessment should be changed to reflect 1.41 acre of agricultural land.

ISSUED: April 28, 2015

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>>.