REPRESENTATIVE FOR PETITIONER:
Cheryl L. Gall, pro se

REPRESENTATIVE FOR RESPONDENT:
John Baumann, LaPorte County Chief Deputy Assessor

BEFORE THE
INDIANA BOARD OF TAX REVIEW

Cheryl L. Gall,	)	Petition Nos.:	46-050-10-1-5-00002
	)		46-050-10-1-5-00003
	)		
Petitioner,	)		
	)		
	)	Parcel Nos.:	46-04-33-128-007.000-050
v.	)		46 04-33-201-015.000-050
	)		
	)		
LaPorte County Assessor,	)	County:	LaPorte
	)		
	)		
Respondent.	)	Assessment Year:	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

In these assessment appeals, Cheryl L. Gall (the "Petitioner") contested the March 1, 2010 assessments of the above-captioned parcels. The Board finds that the Respondent had the burden

of proof and made a prima facie case that the assessments are correct. The Petitioner failed to rebut the Respondent's case.

HEARING FACTS AND OTHER MATTERS OF RECORD

1. The subject properties are two vacant agricultural parcels located at 8674 E. 700 North in New Carlisle.

2. The Petitioner initiated the 2010 assessment appeals with the LaPorte County Property Tax Assessment Board of Appeals (the "PTABOA") on December 4, 2012.

3. On October 24, 2013, the PTABOA held a hearing for both parcels.

4. The Petitioner filed the Form 131 petitions for 2010 on December 9, 2013.

5. The Board sent the Petitioner Notice of Defect in Completion of Assessment Appeal Forms ("Notices of Defect") on December 26, 2013, informing the Petitioner that the statutory time limit for the PTABOA to issue a determination had not elapsed. *See* Ind. Code § 6-1.1-15-1(n) ("the county board shall, by mail, give notice of its determination not later than one hundred twenty (120) days after the hearing"). Consequently, the Petitioner had until January 27, 2014, to respond to the Notices of Defect.

6. The Petitioner responded to the Notices of Defect in a timely fashion, however, the PTABOA had still not issued a determination nor had the statutory period to do so elapsed. The Board again sent Notices of Defect instructing the Petitioner to re-file the petitions by March 24, 2014. The Petitioner timely re-filed the petitions.

7. The Board issued notices of hearing to the parties on August 15, 2014.

8. The Board's administrative law judge Ellen Yuhan (the "ALJ"), held the hearing on September 18, 2014. Neither the Board nor the ALJ inspected the subject parcels.

9. Cheryl L. Gall and David L. Gall were sworn and testified for the Petitioner. LaPorte County Chief Deputy Assessor John Baumann, and LaPorte County Deputy Assessor Kristi Brownd, were sworn and testified for the Respondent.

10. The Petitioner presented the following exhibits:

For parcel 46-04-33-128-007.000-050 ("128-007"):

Petitioner Exhibit 1 – Hand-drawn map of the parcel,
Petitioner Exhibit 2 – Quit Claim Deed for the subject property,
Petitioner Exhibit 3 – Summary of the issues,
Petitioner Exhibit 4 – Property record card ("PRC") for the subject parcel.

For parcel 46-04-33-201-015.000-050 ("201-015"):

Petitioner Exhibit 1 – Hand-drawn map of the parcel,
Petitioner Exhibit 2 – Quit Claim Deed for the subject property,
Petitioner Exhibit 3 – Assessment information for the subject parcel from the Beacon website,
Petitioner Exhibit 4 – PRC for the subject parcel.

11. The Respondent presented the following exhibits:

For parcel 128-007:

Respondent Exhibit 1 – Documents showing the appeal process including: the Form 115 for 2006; the Form 134 for 2006; Real Property Maintenance Records; the 2010 appeal form with attached Form 11; the Petitioner's issues; information from the Beacon website dated 1/4/2013; PRC dated 12/4/2012; PRC dated 12/28/2012; PRC dated 10/28/2013; PRC dated 9/12/2013; Auditor's card for subject parcel; Auditor's card for 26-04-33-226-006; Quit Claim Deed dated October 5, 1999; Quit Claim Deed dated November 1983; Quit Claim Deed for October 5, 1999 (duplicate); Deed dated February 25, 1969; Form114; Withdraw Notice dated October 24, 2013; Letter from the LaPorte County Assessor to Ms. Gall; Petitioner's contention that she did not receive Forms 115 or 134 for the parcel.

For parcel 201-015:

Respondent Exhibit 2 – Documents showing the appeal process including: the Form 115 for 2006; the Form 134 for 2006; Real Property

Maintenance Records; the 2010 appeal form with attached Form 11; the Petitioner's issues; information from the Beacon website dated 1/5/2013; PRC dated 1/4/2013; Auditor's card for subject parcel; Quit Claim Deed dated October 5, 1999; PRC dated 10/28/2013; Form114; Withdraw Notice dated October 24, 2013; Form 131; Letter from the LaPorte County Assessor to Ms.Gall.

For both parcels:

Respondent Exhibit 3 – Plat map for the subject properties.

12. The following additional items are officially recognized as part of the record of proceedings:

Board Exhibit A – Form 131 Petitions,
Board Exhibit B – Notices of Hearing,
Board Exhibit C – Hearing sign-in sheet.

13. The Assessor determined the assessed value of parcel 128-007 was $1,600 for the land and the assessed value of parcel 201-015 was $2,000 for the land.

14. On the Form 131 petitions, the Petitioner requested an assessed value for parcel 128-007 of $400 and an assessed value for parcel 201-015 of $600.

BURDEN OF PROOF

15. Generally, a taxpayer has the burden to prove that an assessment is incorrect and what the 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 the rule.

16. 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 Indianan board of tax review or to the Indiana tax court." Ind. Code § 6-1.1-15-17.2(b).

17. 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 Ind. Code 6-1.1-15. Under those circumstances,

> 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.

18. Ind. Code § 6-1.-1-15-17.2 was amended on March 25, 2014, to include the above burden-shifting language. The change applies to all appeals pending before the Board. *See* P.L. 97-2014.

19. The 2009 assessed value for parcel 128-007 was $1,500 and the 2010 assessed value was $1,600, an increase of approximately 6.7%. The 2009 assessed value for parcel 201-015 was $1,900 and the 2010 assessed value was $2,000, an increase of approximately 5.2%. Consequently, it is the Board's determination that the Respondent bears the burden of proving the assessments are correct.

SUMMARY OF THE RESPONDENT'S CASE

Parcel 128-007

20. The Respondent's witness, Mr. Baumann, testified that property is assessed based on its legal description. The legal description on the property record card for this parcel shows .92 acres plus .29 acres for a total of 1.21 acres. For the assessor to change the size of the

lot the legal description would need to be changed. *Baumann testimony; Respondent Exhibit 1.*

Parcel 201-015

21. The legal description for this parcel shows 1.5 acres. It is assessed at 1.4 acres. The land assessment should be changed to 1.5 acres to match the legal description. *Baumann testimony; Respondent Exhibit 2.*

22. The survey map shows the locations and sizes of both parcels. *Baumann testimony; Respondent Exhibit 3.*

SUMMARY OF THE PETITIONER'S CASE

Parcel 128-007

23. The Petitioner argues that the correct size of the parcel should be .45 acres classified as agricultural.[1] The legal description on the property record card incorrectly shows .92 acres plus .29 acres. The legal description on the deed shows .92 acres for this parcel and that is also incorrect. According to the Petitioner, the land has been over-assessed since her family owned it because the legal description is wrong. *C. Gall testimony; Petitioner Exhibits 1, 2, and 4.*

24. According to Ms. Gall, a .29 acre parcel is assessed twice, once on parcel 128-007 and again on an adjacent parcel (226-006) not under appeal here. She is being taxed for more land than she owns. *C. Gall testimony; Petitioner Exhibits 1 and 3.*

25. The Petitioner argues that the Respondent changed the classification of the land to agricultural land in 2006. The Petitioner further argues that the land was subsequently re-

[1] While the Petitioner seems to be arguing that the parcel consists of .45 acres, there is one instance in the record where the Petitioner appears to suggest the parcel consists of .39 acres.

classified as residential land. The Petitioner contends that agricultural is the proper classification for the land. *C. Gall testimony; Petitioner Exhibit 4.*

Parcel 201-015

26. The parcel is assessed at 1.5 acres. The Petitioner contends that the parcel should be assessed at 1.4 acres and classified as agricultural. *C. Gall testimony; Petitioner Exhibits 1-4.*

ANALYSIS

27. Indiana assesses real property based on its true tax value, which is the market value-in-use of a property for its current use, as reflected by the utility received by the owner or similar user, from the property. Evidence in a tax appeal must be consistent with that standard. For example, a market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice will often be probative. *See Kooshtard Property VI, LLC v. White River Township Assessor*, 836 N.E.2d 501,506 n. 6 (Ind. Tax Ct. 2005). The actual sale price or construction costs for a property under appeal, sales, or assessment information for comparable properties, and any other evidence compiled according to generally accepted appraisal principles may also be probative.

28. Regardless of the type of evidence, a party must explain how its evidence relates to the required valuation date. *O'Donnell v. Dep't of Local Gov't Fin*., 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005. For 2010, the assessment and valuation dates were both March 1, 2010. Ind. Code § 6-1.1-4-4.5(f). Any evidence of value relating to a different date must have an explanation about how it demonstrates, or is relevant to, value as of that date. *Long*, 821 N.E.2d at 471.

29. In this case, the land is being assessed as agricultural land. Land is classified and assessed as agricultural when it is devoted to an agricultural use. Ind. Code § 6-1.1-4-13(a). *See Orange County Assessor v. Stout*, 996 N.E.2d 871, 875 (Ind. Tax Ct. 2013).

30. The statutory and regulatory scheme for assessing agricultural land requires the Board to treat agricultural assessments differently than other assessment cases. Indeed, the Indiana General Assembly directed the Department of Local Government Finance ("DLGF") to establish rules for determining the true tax value of agricultural land. Ind. Code § 6-1.1-4-13(b). The DLGF, in turn, established a base rate to be used in assessing agricultural land in Indiana. GUIDELINES, ch. 2 at 76-78. The Guidelines direct assessors to adjust the base rate using soil productivity factors developed from soil maps published by the United States Department of Agriculture. *Id.* at 93-96. The Guidelines further require assessors to classify agricultural land-use types, some of which call for the application of negative influence factors in pre-determined amounts. *Id.* at 98-101.

31. Here, the Respondent has classified the land as agricultural. The Respondent has applied the agricultural base rates in accordance with the DLGF guidelines as discussed above and such is enough to establish that the Respondent has met its initial burden of proving that the assessments are correct. To rebut the Respondent's case, the Petitioner has the burden to present probative evidence to establish its prima facie case. *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005).

32. The Petitioner contends the assessments of the parcels are excessive because parcel 226-006 is being assessed with parcel 128-007 as well as separately, and because the assessments are based on incorrect acreages.

33. As stated, the Petitioner argues that parcel 128-007 is being assessed with parcel 226-006 and that parcel 226-006 is being assessed separately as well. However, the Respondent did not concede that parcel 226-006 was being assessed separately as well as with parcel 128-007, nor did either party provide a PRC for parcel 226-006 or any other

documentation to indicate that parcel 226-006 was being assessed separately as well as with parcel 128-007.

34. The legal description on the property record card for parcel 128-007 shows .92 acres plus .29 acres for a total of 1.21 acres. The quitclaim deed for parcel 226-006 and 128-007 describes the parcel as .92 acres.

35. The Petitioner argues that the quitclaim deed, prepared by the Petitioner, for parcels 226-006 and 128-007 provides that parcel 128-007 consists of (albeit incorrectly according to the Petitioner) .92 acres. However, the quitclaim deed does not contain a valid legal description of parcel 128-007. The description of parcel 128-007 in the quitclaim deed references the range location but has no references or dimensions and does not provide probative evidence of the legal dimensions of the parcel.

36. The Petitioner contends that parcel 128-006 actually consists of .45 acres. While Respondent Exhibit #3, a plat map, shows a total acreage of .92 acres, it indicates length and width dimensions of 395 ft. and 50 ft. respectively. Multiplying those numbers results in 19,750 square feet, or approximately .45 acres. However, the map is incomplete in that it only indicates the dimensions of two sides of the four-sided parcel. While the parcel appears rectangular in nature, it cannot be assumed such as many other parcels are indicated as having parallel sides of differing lengths. Consequently, the map is not probative evidence as to the size of parcel 128-006.

37. For parcel 201-015, the Petitioner contends the acreage is 1.4 acres. The Petitioner presented the deed for the property. The deed states the parcel of land consists of "one and one-half (1 ½) acres, *more or less*" (emphasis added). The deed goes on to describe the parcel more specifically as measuring 1,221 feet by 50 feet. The property is 61,050 square feet or 1.4 acres. The Petitioner made a prima facie case that the parcel is 1.4 acres.

38. The Respondent contends the legal description says parcel 201-015 is 1.5 acres and, although the property is currently assessed at 1.4 acres, it should be changed to 1.5 acres. As stated above, the deed says "one and one-half (1 ½) acres, more or less." The dimensions shown in the deed indicate the property consists of 1.4 acres.

39. The Petitioner contends parcel 201-015 is incorrectly assessed as residential excess acreage. The Petitioner submitted a property record that shows the parcel as residential excess acreage but the Petitioner printed the property record card on October 28, 2013 and the assessed value of $5,000 is not the value shown for the 2010 assessment year.

40. The Respondent submitted a property record card that shows the property assessed as agricultural acreage with the 2010 state-mandated base rate of $1,290 per acre, although it shows the incorrect acreage of 1.5 acres.

41. The Petitioner's claim that the Respondent incorrectly assessed the parcels as residential excess acreage is unsubstantiated. Even if the land was classified as residential in error, the Petitioner failed to make a case by simply contesting the method the assessor used to compute the assessment. *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct.).

CONCLUSION

42. The Respondent met its initial burden of proof and established a prima facie case that the assessments are correct. The Petitioner failed to rebut the Respondent's case with substantial probative evidence. The Board finds the assessments should not be changed.

FINAL DETERMINATION

In accordance with the above findings and conclusions, the assessed values will not be changed.

ISSUED: December 17, 2014

_____
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>.