

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

Petition No.: 06-005-13-1-5-00016
Petitioner: Rod A. & Elizabeth J. Herman
Respondent: Boone County Assessor
Parcel No.: 005-05470-04
Assessment Year: 2013

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:

PROCEDURAL HISTORY

1. The Petitioners appealed the 2013 assessment to the Boone County Property Tax Assessment Board of Appeals (the “PTABOA”), which mailed notice of its final determination on August 21, 2013.¹
2. The Petitioners filed a Form 131 petition for review with the Board on September 23, 2013. The Petitioner elected to have the appeal heard under the Board’s small claims procedures.
3. The Board issued a notice of hearing to the parties dated March 7, 2014.
4. On May 29, 2014, the Board’s administrative law judge, Dalene McMillen (the “ALJ”), held an administrative hearing.
5. The following persons were present and sworn at the hearing:
 - a. For the Petitioner: Rod Herman, co-owner
Elizabeth Herman, co-owner
 - b. For the Respondent: Lisa Garoffolo, Boone County Assessor
Peggy Lewis, PTABOA member

¹ The Respondent stated that the PTABOA never conducted a hearing on the subject property because the Petitioner indicated at the preliminary conference that it wished to appeal directly to the Board and the Respondent inadvertently issued a Notification of Final Assessment (Form 115) to the Petitioner.

FACTS

6. The property under appeal consists of 19.12 acres of vacant land located at 11153 West 500 South in New Ross.
7. Neither the Board nor the ALJ inspected the property.
8. For the 2013 assessment, the PTABOA determined the assessed value was \$101,300.
9. The Petitioner requested an assessed value of \$6,112.

RECORD

10. The official record for this matter is made up of the following:
 - a. A digital recording of the hearing
 - b. Exhibits:
 - Petitioner Exhibit 1 – Property record card (“PRC”) for Marianne Hanson at 11347 West 500 South
 - Petitioner Exhibit 2 – Final Assessment Determination – Form 115 for the subject property dated August 21, 2013
 - Petitioner Exhibit 3 – Farm survey map
 - Petitioner Exhibit 4 – Aerial map for the subject property
 - Petitioner Exhibit 5 – Department of Natural Resources (“DNR”) flood plain map
 - Petitioner Exhibit 6 – Aerial map for the subject property
 - Petitioner Exhibit 7 – Natural Resources Conservation Service (“NRCS”) 2013 conservation plan for 3.1 acres for tract 203
 - Petitioner Exhibit 8 – DNR letter dated December 12, 2013, and an application for the classification of land as forest land and wildlands,
 - Petitioner Exhibit 9 – Department of Local Government Finance (“DLGF”) memorandum “Classification and Valuation of Agricultural Land” dated February 12, 2008
 - Petitioner Exhibit 10 – Internet article entitled “Indiana Tax Court affirms application of burden-shifting statute in property tax appeal; Assessor failed to show land should be assessed as ‘excess residential’ and not ‘agricultural’” and *Orange County Assessor v. James E. Stout*, 996 N.E.2d 871 (Ind. Tax Ct. 2013)
 - Petitioner Exhibit 11 – Board final determination in *Timothy E. Pratt v. Department of Local Government Finance*, Petition No. 45-037-02-1-1-00082

Petitioner Exhibit 12 – Notice of Assessment of Land and Improvement – Form 11R/A for parcel no. 005-08040-01 dated July 17, 2013
Petitioner Exhibit 13 – Photograph of produce field for the Petitioner’ adjoining parcel
Petitioner Exhibit 14 – Photograph of subject property dated April 201,

Respondent Exhibit 1 – Boone County appeal worksheet
Respondent Exhibit 1A –Form 130, Notice of Assessment of Land and Improvement – Form 11 R/A, Warranty Deed between Marianne Hanson and the Hermans, and aerial map of the subject property
Respondent Exhibit 2 – 2013 PRC for the subject property
Respondent Exhibit 3 – Aerial map for the subject property
Respondent Exhibit 4 – Joint Report by Taxpayer/Assessor to the County Board of Appeals of a Preliminary Informal Meeting – Form 134
Respondent Exhibit 5 – Notification of Final Assessment Determination – Form 115 dated August 21, 2013
Respondent Exhibit 6 – Petition to the Indiana Board of Tax Review for Review of Assessment – Form 131 dated September 20, 2013
Respondent Exhibit 7 – Notice of Hearing

Board Exhibit A – Form 131 petition with attachments
Board Exhibit B – Notice of Hearing
Board Exhibit C – Hearing sign-in sheet

c. These Findings and Conclusions

BURDEN OF PROOF

11. Generally, a taxpayer seeking review of an assessing official’s determination has the burden of proving 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 that rule.
12. First, Ind. Code § 6-1.1-15-17.2(a) “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 year.” Under Ind. Code § 6-1.1-15-17.2(b), “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 the Indiana tax court.”

13. 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 the assessment is correct.
14. The PRC shows that land totaling 19.12 acres was purchased on October 24, 2012. The 19.12 acres was split from 75.47 acres owned by Marianne Hanson. Because the subject property was a new parcel on March 1, 2013, it is not the “same property for the prior year” for purposes of Ind. Code § 6-1.1-15-17.2(a). Furthermore, this new parcel was not the subject of an appeal as described in Ind. Code § 6-1.1-15-17.2(d). Accordingly, the Petitioner has the burden of proof in this appeal.

CONTENTIONS

15. Summary of the Petitioners’ case:
 - a. The Petitioners contend that the assessed value is overstated based on the classification of the parcel as residential land rather than as agricultural land. The property was originally part of a 75.47 acre parcel zoned as agricultural. The Petitioner purchased the subject property on October 24, 2012. *Petitioner testimony; Petitioner Exhibit 1, 3, 4; Respondent Exhibit 2.*
 - b. The NRCS designated 3.1 acres of this land as agricultural land in a conservation plan on August 19, 2013. In addition, on December 12, 2013, 15.6 acres were accepted into the DNR Classified Forest & Wildlands Program (“Classified Forest Program”). *Petitioner testimony; Petitioner Exhibits 7, 8.*
 - c. The Petitioners submitted a Form 11R/A for, and a photograph of, a 20 acre farm that they also own and farm. That property is located adjacent to the subject property. The Petitioners have been in the farming business for approximately 20 years and the facts in this 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 had more than a 50% tree canopy cover and it was similar to the neighboring properties. *Petitioner testimony; Petitioner Exhibits 10, 12, 13.*
 - d. Finally, the property cannot be used for residential purposes because it is located in a designated flood plain. A photograph taken in April of 2014 shows that the property

floods after rain. In addition, the land is situated 10 to 15 feet below the grade of the road, thereby prohibiting construction without significant build-up. In support of this contention, the Petitioner cited the Board's decision in *Pratt v. Department of Local Government Finance*, Petition No. 45-037-02-1-1-00082, (Ind. Bd. of Tax Review). *Petitioner testimony; Petitioner Exhibits 5, 11, 14.*

16. The Respondent's case:

- a. The Petitioners purchased the property for \$80,520 on October 24, 2012. The property was reclassified from agricultural to excess residential after it was purchased because it was not being farmed and it did not have a forestry or habitat plan on file. *Lewis testimony; Respondent Exhibit 2.*
- b. The Respondent conceded that the letter from the DNR shows their land was accepted into the Classified Forest Program on December 12, 2013. Consequently, the Respondent agreed that the land should be classified as agricultural, but such classification should not take place until the 2014 assessment. *Respondent testimony.*

ANALYSIS

17. The Petitioner provided sufficient evidence to make a case for a reduction in the assessment. 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 Department of Local Government Finance 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 I.C. § 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 use." "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. The Petitioners have made a case that the subject property should be classified as agricultural, and specifically, as “woodland.” The subject property is contiguous to other property classified as agricultural and farmed by the Petitioners. Furthermore, photographic evidence and testimony of the Petitioners show that portions of the property have trees capable of producing timber and appear to have 50% or more canopy cover.
- d. Furthermore, the Petitioners documented that 15.6 acres of the subject property were enrolled in the Indiana Department of Resource’s Classified Forest Program in 2013, and another 3.1 acres are held pursuant to a conservation plan with the National Resources Conservation Service. This evidence more than suffices to establish entitlement to an agricultural classification and assessment based on soil productivity.
- e. The Respondent does not challenge any of the factual assertions of the Petitioners. Ms. Lewis testified that the Respondent has a policy of changing agricultural classifications to excess residential if the land is not actually used for farming or does not have a forestry or habitat plan.
- 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 Co. 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 nontillable land which 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 or has a forest or habitat plan. The classification depends on whether the property is put to agricultural or residential use. The record indicates there are no improvements, such as a dwelling, that might indicate a residential use. The Respondent does not even attempt to articulate what characteristics of the property or the taxpayer’s use of the property led her to the conclusion that the property should be classified as residential.² Moreover, in light of the inclusion of the property in state and federal conservation programs, the Respondent admitted the property should be classified as agricultural in the future. This conclusion, absent other evidence, would compel any reasonable person to believe the property had not been used for residential purposes in the preceding years.

CONCLUSION

18. The Petitioners have established a prima facie case that the subject property is devoted to agricultural use and should be assessed as agricultural land for the 2013 assessment. The Respondent failed to rebut or impeach the Petitioners’ case. The property is agricultural land and must be assessed accordingly. Consequently, a change is required.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Board determines that the assessed value of the property should be reduced for 2013.

² The Board is troubled by the failure of Ms. Garofolo and Ms. Lewis to understand these fundamental concepts of assessment. More troubling is the admission on the record that the Respondent is evidently systematically reclassifying properties throughout the county without inquiry into whether the property is used or held for residential purposes.

ISSUED: September 19, 2014

Chairman,
Indiana Board of Tax Review

Commissioner,
Indiana Board of Tax Review

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 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 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/bills/2007/SE0287.1.html>.