

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

Petition No.: 07-004-04-1-5-00001
Petitioner: Barbara O. Hoffman
Respondent: Brown County Assessor
Parcel No.: 003093280001200
Assessment Year: 2004

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 Brown County Property Tax Assessment Board of Appeals (PTABOA) by written document dated January 6, 2006.
2. The PTABOA issued its decision on August 27, 2007.
3. The Petitioner filed a Form 131 petition with the Board on October 10, 2007. The Petitioner elected to have her case heard pursuant to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated March 18, 2009.
5. The Board held an administrative hearing on June 3, 2009, before the duly appointed Administrative Law Judge Alyson Kunack.
6. Persons present and sworn in at hearing:
 - a) For Petitioner: John Johantges, Property Tax Group I, Inc.
 - b) For Respondent: Stephen W. Gore, Brown County Assessor
Frank Kelly, witness
Al Cox, Brown County PTABOA¹

Facts

7. The property is a vacant wooded lot located at 481 Whalen Drive, in the city of Nashville, Washington Township in Brown County.

¹ Although Mr. Cox was sworn, he did not present any testimony and was present simply to observe the hearing.

8. The Administrative Law Judge (ALJ) did not inspect the property.
9. For 2004, the PTABOA determined the assessed value of the subject property to be \$45,800 for the land. There are no improvements on the parcel.
10. The Petitioner did not specifically request a value for the property. Instead her representative requests that the land be given a negative 80% influence factor.

Issues

11. Summary of the Petitioner's contentions in support of an alleged error in the assessment:
 - a) The Petitioner contends that the assessed value of the property in question is excessive, given the nature of the property. *Johantges testimony*. The subject property is approximately 17 acres of vacant, wooded and hilly land that borders a subdivision. *Id.*; *Petitioner Exhibit 1*. The Petitioner's representative testified that the Petitioner's husband bought the property over thirty years ago, mainly for hunting, trapping and recreation. *Id.* According to Mr. Johantges, the Petitioner never intended to develop the land, and still has no plans to do so. *Id.* Therefore, he concludes, it should not be priced as residential excess acreage. *Id.*
 - b) The Petitioner contends that the property should receive an 80% negative influence factor. *Johantges testimony*. According to the Petitioner's representative, the Petitioner submitted the subject property for inclusion into the Department of Natural Resources' (DNR) classified forest program. *Johantges testimony*; *Petitioner Exhibit 2*. The DNR accepted the subject property into the program as of March of 2008. *Petitioner Exhibit 2*. Therefore, Mr. Johantges argues that the subject property qualifies for the negative 80% influence factor the Guidelines prescribe for land designated as classified forest. *Johantges testimony*; *Petitioner Exhibit 2*; REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, ch. 2 at 104.
 - c) Finally, the Petitioner's representative argues that the Respondent failed to submit any evidence showing how the assessed value of the property was determined. *Johantges testimony*. According to Mr. Johantges, the Assessor did not offer any evidence as to how the land values were determined, or what sales data was used to develop the land base rates. *Id.*
12. Summary of the Respondent's contentions in support of the assessment:
 - a) The Respondent argues that the property was properly classified as excess residential property. *Kelly testimony*. According to the Respondent's representative, at the time of the 2002 reassessment, the Assessor made the decision to reclassify a large number of vacant land tracts. *Kelly testimony*. Mr. Kelly testified that these tracts were previously classified and priced as agricultural land, but were not actually used for an agricultural purpose such as

farming or timber harvesting. *Id.* The Assessor therefore changed their classification to residential excess acreage and valued the parcels based on the sales of vacant land. *Id.*

- b) The Respondent argues that the property was not in the classified forest program at the time of the assessment. *Kelly testimony.* According to Mr. Kelly, the Petitioner had the option of placing the property into the classified forest program, but did not do so until 2008. *Id.* Thus, as of the assessment date at issue in this appeal, the subject property was not in the classified forest program, and therefore cannot be assessed as if it was. *Id.*
- c) The Respondent contends that the assessed value of the property is not overstated. *Kelly testimony.* While the subject property is currently assessed for approximately \$1,500 per acre for 2004, Mr. Gore, who is also a licensed real estate broker, observed similar land sales for \$2,500 to \$3,500 per acre during that period of time. *Gore testimony.* According to Mr. Gore, one parcel sold for \$17,000 an acre, and was subsequently placed into the Sycamore land trust, which is even more use-restricted than the classified forest program. *Id.*
- d) Finally, the Respondent contends that the Petitioner did not establish a prima facie case as to the market value-in-use of the subject property as of the assessment date in question. *Kelly testimony.* Therefore, the Respondent's representative argues, the Respondent does not need to justify the assessed value of the property. *Id.*

Record

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

- a. The Form 131 petition and related attachments.
- b. The digital recording of the hearing.
- c. Exhibits:

Petitioner Exhibit 1: Aerial map showing the subject property
Petitioner Exhibit 2: Application for Classification as Forest Land and
Wildlands, and DNR's acceptance letter
Petitioner Exhibit 3: Subject property's Property Record Card

Board Exhibit A: Form 131 Petition,
Board Exhibit B: Notice of Hearing,
Board Exhibit C: Hearing sign-in sheet,

- d. These Findings and Conclusions.

Analysis

14. The most applicable governing cases are:
 - a. A Petitioner seeking review of a determination of an assessing official 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 1018, 1022 (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 failed to provide sufficient evidence to establish a prima facie case for a reduction in value. The Board reached this decision for the following reasons:
 - a) The 2002 Real Property Assessment Manual defines “true tax value” as “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). The appraisal profession traditionally has used three methods to determine a property's market value: the cost approach, the sales-comparison approach and the income approach to value. *Id.* at 3, 13-15. In Indiana, assessing officials generally value real property using a mass-appraisal version of the cost approach, as set forth in the Real Property Assessment Guidelines for 2002 – Version A. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (incorporated by reference at 50 IAC 2.3-1-2).
 - b) A property's assessment under the Guidelines is presumed to accurately reflect its true tax value. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005) *reh'g den. sub nom.*; *P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax 2006). But a taxpayer may rebut that presumption with evidence that is consistent with the Manual's definition of true tax value. MANUAL at 5. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer sales information for the subject property or comparable

properties and other information compiled according to generally accepted appraisal principles. MANUAL at 5.

- c) In addition, for the 2004 assessment year, an assessment must reflect the value of the property as of January 1, 1999. *Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005); MANUAL at 2, 4, and 8. A Petitioner who presents evidence of value relating to a different date must provide some explanation about how it demonstrates, or is relevant to, the subject property's value as of that valuation date.
- d) Here the Petitioner argues that the subject property should receive a negative 80% influence factor because the property is included in the DNR's classified forest program. *Johantges testimony*; GUIDELINES, ch.2 at 104. The Petitioner, however, did not apply for classified forest land status until February of 2008 and the DNR did not accept the property into the program until March 11, 2008. *Petitioner Exhibit 2*. Evidence of the property's inclusion in the classified forest program in 2008 is not probative of any error in the property's assessment in 2004. *See Long*, 821 N.E.2d at 471. Thus, the Petitioner failed to raise a prima facie case that her assessment was in error.
- e) In the alternative, the Petitioner seems to argue that even if the land was not in the classified forest program in 2004, it should still qualify as woodlands according to the Guidelines and therefore receive the negative 80% influence factor. *Johantges testimony*.
- f) 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 across the State of Indiana. GUIDELINES, ch. 2 at 98-99. 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 105-06. 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 102-05. One such classification is "woodland (land type 6)," which the Guidelines describe as "land supporting trees capable of producing timber or other wood products" that has "50% or more canopy cover or is a permanently planted reforested area." *Id.* at 104. The Guidelines direct assessors to apply an 80% influence factor deduction to woodland. *Id.*
- g) Only land actually devoted to agricultural use, however, may be assessed under the DLGF's rules for assessment of agricultural land. Ind. Code § 6-1.1-4-13(a). Thus, in order to rely upon the base rate and negative influence factors for agricultural woodland set forth in the Guidelines, the Petitioner was required to demonstrate that she used the subject property for agricultural purposes as of the March 1, 2004, assessment date. The Petitioner's representative, however, only argued that the land had been assessed as agricultural land in prior years.

Johantges testimony. This is insufficient to prove that the property was devoted to agricultural purposes in 2004. See *Thousand Trails Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 1072, 1077 (Ind. Tax Ct. 2001) (each assessment and each tax year stands alone). Moreover, Mr. Johantges testified that the property was purchased to “hold in the family” and for “the kids to hunt and trap and play on the land.” *Johantges testimony.* Thus, it is clear the property is not “devoted” to agricultural use.

- h) The Petitioner failed to raise a prima facie case that her property was assessed in excess of its market value-in-use. When a taxpayer fails to provide probative evidence that an assessment should be changed, the Respondent’s duty to support the assessment with substantial evidence is not triggered. See *Lacy Diversified Indus. v. Dep’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

- 14. The Petitioner failed to raise a prima facie case. The Board finds in favor of the Respondent.

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: _____

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 under 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 Indiana 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/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>.