

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

Petitions: 40-004-08-1-4-00001
40-004-09-1-4-00001
Petitioner: James Hudson
Respondent: Jennings County Assessor
Parcel: 40-09-33-120-002.000-004
Assessment Years: 2008 and 2009

The Indiana Board of Tax Review (Board) issues this determination in the above matter, finding and concluding as follows:

Procedural History

1. The Petitioner initiated an assessment appeal with the Jennings County Property Tax Assessment Board of Appeals (PTABOA) by filing a Form 130 for the 2008 appeal on June 22, 2009, and for the 2009 appeal on June 9, 2010.
2. The PTABOA mailed the Form 115 notice of its decision for the 2008 appeal on December 7, 2009, and for the 2009 appeal on September 7, 2010.
3. The Petitioner appealed to the Board by filing a Form 131 Petition for Review of Assessment for the 2008 appeal on January 20, 2010, and for the 2009 appeal on October 18, 2010. The Petitioner elected to have both cases heard according to small claims procedures.
4. Administrative Law Judge Paul Stultz held the Board's administrative hearing on August 14, 2012. He did not inspect the property.
5. Certified tax representative Milo Smith represented the Petitioner and was sworn as a witness. County Assessor Linda Kovacich appeared *pro se* and was sworn as a witness.

Facts

6. The property is a vacant lot located on North State Street in or near North Vernon.
7. The PTABOA determined the assessed value is \$198,300 for 2008 and 2009.
8. The Petitioner claimed the assessed value should be based on the agricultural rate of \$1,200 per acre for 2008 and \$1,250 per acre for 2009.

Record

9. The official record contains the following:
- a. The Form 131 Petitions and all attachments, specifically including the Form 130 Petitions and the Form 115 determinations,
 - b. Digital recording of the hearing,
 - c. Petitioner Exhibit 1 - Property record card,
Petitioner Exhibit 2 - Abstract of title,
Petitioner Exhibit 3 - February 17, 1953, survey,
Petitioner Exhibit 4 - Executor's deed transferring the subject property to the Petitioner,
Petitioner Exhibit 5 - Geographic information system (GIS) map and property record cards,
Petitioner Exhibit 6 - Affidavit of Jerry Lamb,
Respondent Exhibit 1 - Property record card,
Respondent Exhibit 2 - Real Property Assessment Guideline, chapter 2 page 85,
Respondent Exhibit 3 - Commercial area VI North Vernon City, neighborhood valuation form, page 6 of 7,
Respondent Exhibit 4 - Final Determination for the subject property for 2004 assessment with pages 1 and 2 of 8,
Respondent Exhibit 5 - Final Determination for the subject property for 2007 assessment,
Respondent Exhibit 6 - Property record card for 1989 through 1994 and attached photograph,
Respondent Exhibit 7 - Aerial photograph of subject property and surrounding area,
Respondent Exhibit 8(1) – Lease (only first page) and map,
Respondent Exhibit 8(2) - Lease dated October 15, 1987, (only part of first page),
Respondent Exhibit 9 - Photograph of the subject property,¹
Board Exhibit A - Form 131 Petitions,
Board Exhibit B - Notice of Hearing,
Board Exhibit C - Hearing Sign In Sheet,
 - d. These Findings and Conclusions.

¹ All of Respondents Exhibits 1-9 were offered and admitted without objection. Later in the hearing, Mr. Smith attempted to object to Exhibit 9 because the date the photograph was taken was not specified. Mr. Smith claimed he previously had reserved the right to object after hearing the testimony, but that claim is not accurate. He did not. Exhibit 9 was already admitted without objection. The admissibility of that photograph will not be reopened because of Mr. Smith's question about when it was taken.

Contentions

10. Summary of the Petitioner's case:
 - a. This undeveloped parcel is owned by a developer and should be assessed using the developer's discount. That discount is based on the agriculture land rate, which was \$1,200 per acre for 2008 and \$1,250 for 2009. *Smith testimony.*
 - b. This property formerly was owned by the Petitioner's father, who purchased 45 acres in July 1952. The Petitioner got the property after his father died. Over the years various pieces were split from the original parcel. What is now the subject property is 1.858 acres that remains from the original 45. *Smith testimony.*
 - c. The abstract of title details all transactions involving the property since 1942. The area that includes the parcel under appeal was deeded to the Petitioner on January 3, 1995. *Smith testimony; Pet'r Exs. 2, 4.*
 - d. Entry 5 in the abstract establishes that a 1942 lease to The Ohio Valley Oil Co. contained a condition that oil and gas operations would not interfere with farming privileges. *Smith testimony; Pet'r Ex. 2 at 15.* Included in the lease is a 50 foot easement for access to the back of the parcel. *Smith testimony; Pet'r Ex. 2 at 12.* The Petitioner never has leased that 50 foot easement to anybody. People are trespassing when they use it for driving or parking. *Smith testimony.*
 - e. The Petitioner developed the surrounding parcels—some were sold and some are leased. *Smith testimony; Pet'r Ex. 5.*
 - f. A deposition from Jerry Lamb, a realtor in Jennings County since 1970, establishes the Petitioner is a developer. *Smith testimony; Pet'r Ex. 6.*
 - g. The fact that the subject property previously was assessed as commercial usable undeveloped land for many years does not preclude the Petitioner from requesting the agricultural rates for 2008 and 2009. *Smith argument.*
 - h. The 2002 Real Property Assessment Manual states assessments are based on value-in-use, which reflects the utility received by the current owner. The parcel is being held for future development. The Petitioner receives no income from this parcel. Therefore he receives no utility from it. *Smith testimony.*
11. Summary of the Respondent's case:
 - a. The Petitioner is a local developer. *Kovacich testimony.*
 - b. Indiana Code 6-1.1-4-12 does not specify the use of agricultural land value as the basis for value with the developer's discount. It limits when land can be reassessed. Available records do not show this parcel has ever been classified and

assessed as agricultural land. At the time the Petitioner took possession of the parcel in 1995 it was assessed as usable undeveloped land. *Kovacich testimony; Resp't Ex. 5.*

- c. In 1942 virtually nothing in the county was developed. The abstract is not relevant. Aerial photographs dating back to 1962 show no indication of farm land in the area. *Kovacich testimony.*
- d. Primary land classification includes areas used regularly for parking and roadways. *Kovacich testimony; Resp't Ex. 2.* A small portion of the parcel, .19 acre, is used for access to lots contiguous on both sides of the parcel as well as parking. *Kovacich testimony; Resp't Exs. 1 and 9.* The remainder of the parcel is classified as usable undeveloped land. *Kovacich testimony; Resp't Ex. 1.*
- e. Mr. Smith testified at a prior Board hearing, Petition #40-13-04-1-4-00003, that this parcel was reserved for future development and cannot be farmed. *Kovacich testimony; Resp't Ex. 4.*
- f. Nothing in local records shows the parcel was being farmed at the time the Petitioner purchased it. The parcel is held for future development. It is assessed as usable undeveloped except for the front that is correctly assessed as primary land. *Kovacich testimony.*

Analysis

- 12. The parties agreed the Petitioner has the burden of proof for 2008 and 2009. Nothing in the record leads us to conclude otherwise.
- 13. The “developer’s discount” is based on Ind. Code § 6-1.1-4-12, which provides:
 - (a) As used in this section, "land developer" means a person that holds land for sale in the ordinary course of the person's trade or business.
 - (b) As used in this section, "land in inventory" means:
 - (1) a lot; or
 - (2) a tract that has not been subdivided into lots; to which a land developer holds title in the ordinary course of the land developer's trade or business.
 - (c) As used in this section, "title" refers to legal or equitable title, including the interest of a contract purchaser.
 - (d) Except as provided in subsections (h) and (i), if:
 - (1) land assessed on an acreage basis is subdivided into lots; or
 - (2) land is rezoned for, or put to, a different use;the land shall be reassessed on the basis of its new classification.
 - (e) If improvements are added to real property, the improvements shall be assessed.

- (f) An assessment or reassessment made under this section is effective on the next assessment date.
- (g) No petition to the department of local government finance is necessary with respect to an assessment or reassessment made under this section.
- (h) Subject to subsection (i), land in inventory may not be reassessed until the next assessment date following the earliest of:
 - (1) the date on which title to the land is transferred by:
 - (A) the land developer; or
 - (B) a successor land developer that acquires title to the land;
 to a person that is not a land developer;
 - (2) the date on which construction of a structure begins on the land; or
 - (3) the date on which a building permit is issued for construction of a building or structure on the land.
- (i) Subsection (h) applies regardless of whether the land in inventory is rezoned while a land developer holds title to the land.

14. This statute was amended in 2006, but the intent as explained in *Howser Development v. Vienna Twp. Assessor*, 833 N.E.2d 1108, 1110 (Ind. Tax Ct. 2005), and *Aboite Corp. v. State Bd. of Tax Comm'rs*, 762 N.E.2d 254, 257 (Ind. Tax Ct. 2001), remains the same: encouraging developers to buy farmland, subdivide it into lots, and resell the lots. The encouragement comes by providing that a land developer's land in inventory is not to be reassessed until after title is transferred to somebody who is not a developer, or construction begins on the land, or a building permit is issued for construction on the land. Ind. Code § 6-1.1-4-12(h). Agricultural land values tend to be lower. Consequently, where land previously was assessed with a lower agricultural land value, allowing it to retain that lower valuation for a longer time generally is an encouragement or benefit. Contrary to the Petitioner's claim, however, Ind. Code § 6-1.1-4-12 does not dictate agricultural land value for a property where the prior assessment was not based on agricultural land value.
15. The evidence that the Petitioner is a developer is undisputed. In fact, the Respondent did not contest that the Petitioner and the subject property come within the requirements specified by Ind. Code § 6-1.1-4-12. The dispute is only about where that status leads for purposes of the assessed value of the subject property. According to the Petitioner, the developer's discount in Ind. Code § 6-1.1-4-12 necessarily leads to an assessed land value based on agricultural land base rates of \$1,200 and \$1,250 per acre. That interpretation, however, is not supported by the statutory language.
16. Contrary to the Petitioner's claim, Ind. Code § 6-1.1-4-12 does not dictate agricultural land value for a property where the prior assessment was not based on agricultural land values. Rather than specifying agricultural land value, subsection 12(h) provides a limitation on when qualifying land is allowed to be reassessed and, until one of the specified events happens, the prior assessment classification is maintained. Of course, if the prior assessment was based on agricultural land valuation, that would be the one to be

maintained. But the Petitioner failed to prove this land had been classified or assessed as agricultural for any time that is relevant to this case.

17. To the contrary, the Petitioner's representative testified that an examination of records dating back to 1995 established the property had not been assessed as agricultural land. And the Respondent presented evidence that the property had not been assessed as agricultural land going back even farther.
18. The Petitioner also argued that he does not receive any utility from this parcel because it produces no income. The lack of current income does not establish the Petitioner receives no utility from the parcel, which is being held for future development. The Petitioner's conclusory argument on that point has no merit.

Conclusion

19. The Petitioner failed to make a prima facie case. The Board finds in favor of the Respondent for both years.

Final Determination

In accordance with the above findings and conclusions, the assessments will not be changed for 2008 or 2009.

ISSUED: October 30, 2012

Commissioner, Indiana Board of Tax Review

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- 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>