

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

Petition #: 63-001-03-1-1-00002
Petitioners: John & Ellen Vinson
Respondent: Clay Township Assessor (Pike County)
Parcel #: 001-002-0000
Assessment Year: 2003

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 Petitioners initiated an assessment appeal with the Pike County Property Tax Assessment Board of Appeals (PTABOA) by written document dated December 18, 2003.
2. Notice of the decision of the PTABOA was mailed to the Petitioners on May 13, 2004.
3. The Petitioners filed an appeal to the Board by filing a Form 131 with the County Assessor on May 21, 2004. Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated June 9, 2004.
5. The Board held an administrative hearing on July 21, 2004, before the duly appointed Administrative Law Judge Rick Barter.
6. Persons present and sworn in at hearing:
 - a) For Petitioners: John Vinson, Taxpayer
Ellen Vinson, Taxpayer
 - b) For Respondent: Paul Lake, PTABOA Member
David A. Tisdale, PTABOA Member
Sam Polen, PTABOA Member

Facts

7. The property is classified as agricultural with an improved one-acre home site, as is shown on the property record card for parcel #001-002-0000.

8. The Administrative Law Judge did not conduct an inspection of the property.
9. Assessed Value of subject property as determined by the Pike County PTABOA:

Land \$127,700	Improvements \$66,300	Total: \$194,000
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10. Assessed Value requested by Petitioners:

Land \$95,700	Improvements \$49,725	Total: \$145,425
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Issues

11. Summary of Petitioners' contentions in support of alleged error in assessment:
 - a) The subject property is a parcel of 147.62 acres of land that has been dissected by a railroad and has suffered decreased value of the property for its intended use, which at the present time is agriculture crop production. *Petitioners' Exhibit 6.*
 - b) The Pike County PTABOA's response to our Form 130 Appeal was "...7.386 is road right-of-way for railroad on property." This statement has nothing to do with the reason for this appeal as the railroad would pay the property taxes on the land taken for the railroad. *Vinson testimony; Board Exhibit A, Notification of Final Assessment Determination, Form 115.*
 - c) It is questionable why the railroad land value is \$1,050 an acre and the tillable cropland has some land valued at \$1,208 and the railroad used only tillable land through the heart of this farm. *Vinson testimony.*
 - d) The 2002 Real Property Assessment Manual states that true tax value is defined 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." *Vinson testimony.*
 - e) IC 6-1.1-31-7(D) further defines true tax value: "True tax value does not mean fair market value." *Vinson testimony.*
 - f) If property A could produce 160 bushels per acre of corn and has a market value of \$2,500 per acre, then Property B, after being dissected by a railroad, has less value. That is because the resulting corners cannot be farmed and every row is a point row that results in over populating. This creates at least 25% less productivity potential. *Vinson testimony.*
 - g) The Petitioners use a 16-row planter at the present time which plants 40 feet at each pass and this over populates at least 40 feet of every row meeting at an angle. This over populating is detrimental, as having weeds in the fields as extra plants over the desired population uses fertilizer, moisture and sunshine from the other plants. This also uses extra seed at a cost of \$35 per acre and extra fertilizer at \$75 an acre. These plants also create harvest problems as they are out of the proper location of the rows. *Petitioners' Exhibit 6.*
 - h) This property has lost its potential for other possibilities, as it will never be returned to its original state by the railroad or Vectren Corporation, the utility company that receives coal via the subject railroad line. *Vinson testimony.*

- i) This property has a house about 140 years old and this railroad decreases the value of this house for rental or resale or being desirable for living quarters. A railroad never enhances anyone's property. *Vinson testimony; Petitioners' Exhibit 6.*

12. Summary of Respondent's contentions in support of the assessment:

Respondent offered no testimony in support of its assessment. One member of the PTABOA, Paul Lake, testified that the three members of the PTABOA present at the hearing believe the Petitioners' appeal should succeed because "...the land has lost some value, but the County and the PTABOA have no guidance in the manual or from DLGF guidelines to apply relief ...and prefer that the Indiana Board of Tax Review make the decision." *Lake testimony.*

Record

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

- a) The Petition, and all subsequent pre-hearing and post-hearing submissions by or to either party.
- b) Notes of the hearing prepared by the Administrative Law Judge.¹
- c) October 18, 2004 letter from John and Ellen Vinson to Ronald Gudgel.
- d) October 19, 2004 letter from Juanita Beadle to Ronald Gudgel.
- e) Exhibits:
 - Petitioners' Exhibit 1: Copy of the Form 130 Petition.
 - Petitioners' Exhibit 2: Copy of the Form 115 determination.
 - Petitioners' Exhibit 3: Copy of the Form 131 Petition.
 - Petitioners' Exhibit 4: Petitioners' statement.
 - Petitioners' Exhibit 5: Copy of property record card for subject.
 - Petitioners' Exhibit 6: Petitioners' arguments.
 - Petitioners' Exhibit 7: Aerial view of subject before railroad.
 - Petitioners' Exhibit 8: Aerial view of subject after railroad.
 - Petitioners' Exhibit 9: Copy of side-by-side plat drawing of subject before and after railroad easement in place.
 - Petitioners' Exhibit 10: Oversize sketch of subject with and without railroad right-of-way demonstrating point-row over-planting.
 - Petitioners' Exhibit 11: Copy of Page 11 of the January 2004 issue of *Prairie Farmer*.

The Respondent presented no exhibits.

- f) These Findings and Conclusions.

¹ Property tax appeal hearings are typically tape-recorded by the Indiana Board of Tax Review. A review of the tape of this hearing (labeled BTR #5833) indicates a malfunction occurred and the tape is blank. Accordingly, the Administrative Law Judge prepared notes reflecting the substantive matters discussed at the hearing. Copies of these notes were mailed to both parties, who were given ten days to comment on the contents of these notes. While neither party responded timely, both parties did agree to the accuracy of those notes.

Analysis

14. The most applicable governing cases are:
- a) The Petitioner must sufficiently explain the connection between the evidence and Petitioner's assertions in order for it to be considered material to the facts. *See generally, Heart City Chrysler v. State Bd. of Tax Comm'rs*, 714 N.E.2d 329, 333 (Ind. Tax Ct. 1999).
 - b) The Board will not change the determination of the PTABOA unless the Petitioner has established a prima facie case and, by a preponderance of the evidence, proven both the alleged errors in the assessment and specifically what assessment is correct. *See Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998); *North Park Cinemas, Inc. v. State Bd. of Tax Comm'rs*, 689 N.E.2d 765 (Ind. Tax Ct. 1997).
 - c) The Petitioner's unsubstantiated conclusions do not constitute probative evidence. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1113 (Ind. Tax 1998).
15. The Petitioners did not provide sufficient evidence to support their contentions. This conclusion was arrived at because:
- a) Petitioners calculated that one-fourth or 25% of the value of their land has been lost as a result of the railroad. This includes a higher cost to farm, decreased production, and decreased income potential. The Petitioners explained that the equipment currently used over populates every row meeting at an angle; this is detrimental because the process uses extra seed and fertilizer and it also creates harvesting problems. *Vinson testimony; Petitioners' Exhibit 10*.
 - b) For the 2002 reassessment, a base rate of \$1,050 per acre has been established as the starting point in calculating the True Tax Value of agricultural land. When appropriate, this base rate may be adjusted to account for soil productivity. *Version A-Real Property Assessment Guideline (incorporated by reference in 50 IAC 2.3-1-2) (Guideline), Chapter 2, pages 100 and 106*.
 - c) For agricultural land, influence factors (an adjustment to the base rate to account for characteristics peculiar to the parcel) may also be applied for specific land use types. For example, land classified as a forest (Type 21 land) receives a negative 100% influence factor. *Guideline, Glossary, page 10; Guideline, Chapter 2, pages 114-115*.
 - d) There can be no influence factor applied to the property under appeal because the Petitioners did not identify a land use type that would warrant one of the automatic influence factors for agricultural land.
 - e) Further, the area of land used for the right-of-way has been already deducted from the assessment. Additionally, the Petitioners testified they received lease payments for the easement, but did not establish that the lease payments did not offset any loss of value as a result of a decrease in crop production.
 - f) While the affected farmland may be more difficult to farm, the Petitioners did not present any market evidence to demonstrate that the land lost 25% of its value as a result of the right-of-way.

- g) Similarly, the Petitioners presented no market evidence to establish a loss of value to the one-acre home site, and the improvements contained thereon, as the result of the railroad. The Petitioners' conclusory statements are not probative evidence. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1113 (Ind. Tax 1998).
- h) The Petitioners acknowledged that their total asking price for the subject property would be \$280,000. *Board Exhibit A, Form 131 petition, page 2*. The current total assessed value of the property is \$194,000.
- i) Accordingly, the Petitioners failed to make a prima facie case of error in the assessment.

Conclusion

16. The Petitioners did not make a prima facie case demonstrating error in the assessed value of the land or the improvements. The Board finds in favor of 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: _____

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. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice.