

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petitions: 45-002-02-1-5-00172
45-002-02-1-5-00173
45-002-02-1-5-00174
45-002-02-1-5-00175
45-002-02-1-5-00176
45-002-02-1-5-00177
45-002-02-1-5-00178
45-002-02-1-5-00179

Petitioner: McCullough Family Farm Ltd.
Respondent: Department of Local Government Finance
Parcels: 002-02-03-0049-0018
002-02-03-0049-0016
002-02-03-0049-0015
002-02-03-0049-0014
002-02-03-0049-0008
002-02-03-0049-0007
002-02-03-0049-0004
002-02-03-0049-0003

Assessment Year: 2002

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 informal hearing as described in Ind. Code § 6-1.1-4-33 was held in February 2004. The Department of Local Government Finance (the DLGF) determined that the property tax assessments for the eight parcels are as follows:

<u>Parcel</u>	<u>Land</u>	<u>Improvements</u>	<u>Total</u>
002-02-03-0049-0018	\$19,500	0	\$19,500
002-02-03-0049-0016	\$4,300	0	\$4,300
002-02-03-0049-0015	\$4,300	0	\$4,300
002-02-03-0049-0014	\$73,800	0	\$73,800
002-02-03-0049-0008	\$68,200	0	\$68,200
002-02-03-0049-0007	\$6,900	0	\$6,900
002-02-03-0049-0004	\$33,900	0	\$33,900
002-02-03-0049-0003	\$88,700	\$97,400	\$186,100

2. The DLGF notified the Petitioner of the assessments on March 19, 2004.
3. The Petitioner filed a Form 139L for each parcel on April 19, 2004.
4. The Board issued a notice of hearing for each parcel dated October 22, 2004.
5. Special Master S. Sue Mayes held the hearing in Crown Point on November 30, 2004.

Facts

6. The subject property is located in Cedar Creek Township, Lake County.
7. Parcel 002-02-03-0049-0003 includes the homesite and other improvements. The other parcels are vacant agricultural land.
8. The Special Master did not conduct an on-site inspection of the property.
9. The assessed value of each parcel as determined by the DLGF is listed in paragraph one.
10. Petitioner did not request a specific assessed value for the property.
11. Persons sworn as witnesses at the hearing:
 - Patricia J. McCullough, General Partner, McCullough Family Farm Ltd.,
 - Joseph Lukomski, Jr., Assessor/Auditor for the DLGF.

Issues

12. Summary of Petitioner’s contentions in support of an alleged error in the assessment:
 - a. The subject property consists of eight parcels owned by the Petitioner.¹ Together the parcels are assessed for 307.8 acres of tillable land. The tillable land by parcel is as follows:

002-02-03-0049-0018	20 tillable acres
002-02-03-0049-0016	5 tillable acres
002-02-03-0049-0015	5 tillable acres
002-02-03-0049-0014	80 tillable acres
002-02-03-0049-0008	74 tillable acres
002-02-03-0049-0007	8.8 tillable acres
002-02-03-0049-0004	38 tillable acres
002-02-03-0049-0003	77 tillable acres

Respondent Exhibits 2, 6.

¹ The Petitioner filed separate appeals contesting the assessment of each parcel.

- b. Petitioner presented a report prepared by the United States Department of Agriculture (USDA), indicating the total tillable acreage of the farm is 299 acres. *Petitioner Exhibits 3 - 6; McCullough testimony.*
 - c. Petitioner added the total amount of tillable acreage, as indicated on the property record cards (PRCs), for all eight parcels. Petitioner determined the current assessment of these eight parcels indicates a total of 307.8 acres of tillable land, rather than the USDA amount of 299 acres. Petitioner asserted this evidence establishes the combined properties were assessed for 8.8 acres that were incorrectly classified as tillable land. *McCullough testimony.*
 - d. This USDA report describes the property as three tracts, rather than eight parcels, so a direct comparison between the report and the PRCs is not possible. Petitioner could not explain the discrepancy between the total acreage identified in the USDA report (357 acres) and the total assessed acreage of the eight parcels (320 acres). *Id.*
 - e. Petitioner also contended that a public road runs along the side of some parcels, but the right-of-way for all the public roads was not deducted from the assessed acreage of the subject property. Petitioner submitted a plat map, showing the public roads, in support of this contention. *Petitioner Exhibits 3, 6 - 9; McCullough testimony.*
 - f. Petitioner further contended that electrical transmission towers are located on three of the parcels (the ones ending with 0004, 0014, and 0018), but the assessed acreage was not reduced for the area of the towers. *Petitioner Exhibits 3, 10; McCullough testimony.*
 - g. In support of this argument, Petitioner provided the contract with Indiana & Michigan Electric Company for the right-of-way for power lines and erection of towers. Petitioner identified the location of the towers on the map. *Petitioner Exhibits 3, 10; McCullough testimony.*
13. Summary of Respondent's contentions in support of the assessment:
- a. Respondent agreed there should be an adjustment to the tillable acreage for the public utility transmission towers. *Lukomski testimony.*
 - b. Respondent agreed the tillable acreage should not include the public road right-of-way. *Lukomski testimony.*
 - c. Respondent contended the USDA report shows 357 total acres of agricultural land; however, the Petitioner is being assessed for a total of only 320 acres. *Petitioner Exhibits 5, 6; Lukomski testimony.*

Record

14. The official record for this matter is made up of the following:
- a. The Petitions for each parcel,
 - b. The tape recording of the hearing labeled Lake Co. 808,
 - c. Exhibits:
 - Petitioner Exhibit 1—Form 139L for each parcel,
 - Petitioner Exhibit 2—Outline of arguments and evidence,
 - Petitioner Exhibit 3—Map of farm, parcels, tracts, utility towers, and roads,
 - Petitioner Exhibit 4—Comparison of tillable acres,
 - Petitioner Exhibit 5—USDA Report-156EZ-R001 and Map E18A2,
 - Petitioner Exhibit 6—Indiana Agricultural PRCs for all parcels,
 - Petitioner Exhibit 7—Certified Plat Survey (parcel 002-02-03-0049-0018),
 - Petitioner Exhibit 8—Copy of Certified Survey (parcel 002-02-03-0049-0018),
 - Petitioner Exhibit 9—Map of Section 16, Township 33 N., Range 8 – 9 W,
 - Petitioner Exhibit 10—Court documents and drawing regarding utility towers,
 - Respondent Exhibit 1—Form 139L for each parcel,
 - Respondent Exhibit 2—PRC for each parcel,
 - Board Exhibit A—Form 139L for each parcel,
 - Board Exhibit B—Notice of Hearing,
 - Board Exhibit C—Sign-in sheet,
 - d. These Findings and Conclusions.

Analysis

15. The most applicable laws 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 Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut that 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 Petitioner's evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

16. Petitioner made a prima facie case that the assessment is in error on parcels 002-02-03-0049-0004, 002-02-03-0049-0014, and 002-02-03-0049-0018. Petitioner failed to make a prima facie case that the total tillable acreage is in error on the other parcels. This conclusion was arrived at because:

- a. Tillable land is described as "land used for cropland or pasture that has no impediments to routine tillage." REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002—VERSION A, ch. 2 at 103.
- b. Petitioner contended this amount of tillable acreage is excessive. Petitioner presented three arguments. (1) A USDA farmland report indicates total tillable land in the amount of 299 acres for all eight of the parcels. (2) The property has been erroneously assessed for a public road right-of-way area. (3) Three parcels have been erroneously assessed for acreage containing public utility transmission towers.

The USDA Report

- c. In support of its first contention, Petitioner presented a report prepared by the USDA. The USDA report indicates it was prepared on October 2, 2003, for the crop year 2004. This report concluded Petitioner's eight parcels encompassed a total of 357 acres, of which 299 acres were identified as cropland.
- d. Petitioner added the total amount of tillable acreage, as indicated on the PRCs, for all eight parcels. The assessment of these eight parcels indicates a total of 307.8 acres of tillable land, rather than the total USDA amount of 299 acres. Petitioner asserted this evidence establishes the combined properties were assessed for 8.8 acres that were incorrectly classified as tillable land.
- e. The current assessment reflects a total of only 320 acres for the eight parcels, rather than the 357 acres reported by the USDA. Petitioner was unable to explain this discrepancy in total acreage. In effect, Petitioner urges the Board to accept the USDA figure for tillable acreage, but to ignore the USDA figure for total acreage without any explanation. The Board does not find this argument persuasive.
- f. Petitioner failed to prove that the USDA cropland figure is comparable to what the Guidelines identify as tillable land. Petitioner's conclusory testimony that the USDA amounts should be used rather than the amounts listed on the property record cards is not probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
- g. Furthermore, Petitioner must prove specifically what the correct assessment would be. *See Meridian Towers*, 805 N.E.2d at 478; *see also Clark*, 694 N.E.2d 1230.

- h. The USDA report does not indicate land classifications based on parcel boundaries. Petitioner acknowledged it cannot allocate the difference in tillable acreage to individual parcels to identify specific error in any of the eight assessments. For all the above reasons, the USDA report is not probative of error in the assessment. If there is too much tillable acreage, there is no probative evidence to establish what parcel or parcels should be changed.

Public Roads

- i. Petitioner also asserted that no deduction was allowed for the public roads on some parcels. Petitioner submitted a plat map to show that a public road runs along some of the property.
- j. Agricultural support land containing public roads (land subtype 82) is described as: “A public road. The right-of-way area dedicated for public roads is deducted from the total parcel acreage.” GUIDELINES, ch. 2 at 105.
- k. Respondent agreed that a deduction from the tillable acreage should be allowed for the public road right-of-way. Some of the parcels already have such a deduction.
- l. Despite that agreement, neither party offered probative evidence to establish exactly how much land would be eligible for such a deduction, but did not already have it. Without probative evidence to establish what change should be made, there is no prima facie case for a change to account for the public roads.

Utility Transmission Towers

- m. Petitioner further asserted the subject’s PRC indicates that no deduction was allowed for the presence of three public utility transmission towers. Respondent did not dispute the existence of those towers or their locations as identified by Petitioner. There is one tower on each of the parcels ending with 0004, 0014, and 0018.
- n. Agricultural support land containing public utility transmission towers (land subtype 83) is described as: “Land on which public utility transmission towers are situated. The area of .125 (1/8) acre is deducted from the parcel acreage. The transmission line right-of-way is assessed according to the land use of the acreage and is not deducted from the parcel acreage.” GUIDELINES, ch. 2 at 105.
- o. Respondent agreed that a deduction from the tillable acreage should be allowed for the public utility transmission towers. Therefore, those three parcels must be corrected to indicate one utility transmission tower each.

Conclusions

17. The parties agree the amount of tillable acreage should be reduced to account for the public utility transmission tower. There is a change in the assessment as a result of this issue. No other change should be made.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the current assessed amount of total tillable acreage should be reduced to account for public utility transmission towers on three of the parcels.

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. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Trial Rules are available on the Internet at http://www.in.gov/judiciary/rules/trial_proc/index.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.