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

Petition No.: **27-032-06-1-5-00201**
Petitioners: **Darrel L. and Betty J. McGriff**
Respondent: **Grant County Assessor**
Parcel No.: **27-02-20-204-018.000**
Assessment Year: **2006**

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

Procedural History

1. On November 30, 2006, the Petitioners appealed the subject property's March 1, 2006, assessment. On January 18, 2008, the Grant County Property Tax Assessment Board of Appeals ("PTABOA") issued its determination upholding the property's assessment.

2. On February 8, 2008, the Petitioners filed a Form 131 petition with the Board. They elected to have this case heard according to the Board's small claim procedures.

3. On August 14, 2008, the Board issued a notice of hearing to the parties.

4. On November 19, 2008, the Board held an administrative hearing before its duly appointed Administrative Law Judge, Dalene McMillen ("ALJ").

5. The following people were present and sworn in at the hearing:

    a. For Petitioners: Darrel L. McGriff, Owner

    b. For Respondent: Tamara Martin, Grant County Assessor
    Nancy Leming, Grant County Chief Deputy
    Gary Landrum, Grant County Deputy Assessor

Facts

6. The subject property is located at 880 East Bocock Road in Marion. It consists of 3.05 acres and contains a 1,352-square-foot single-family home with a detached garage and lean-to.

7. The ALJ did not inspect the subject property.

8. For March 1, 2006, the subject property was assessed at $91,800—$20,100 for land and $71,700 for improvements. In determining the land value, the assessor classified one acre as a homesite, with a base rate of $17,000 per acre, and 2.05 acres as "excess residential,"[1] with a base rate of $3,000 per acre. *See Martin testimony*.

9. The Petitioners asked for the 2.05-acre portion that is currently classified as "excess residential" to be reclassified as "agricultural" or "wildlife acres" and valued at $1,100 per acre. *Pet'r Ex. 3; McGriff testimony*.

Contentions

10. Summary of Petitioners' contentions:

    a. The Petitioners use the disputed 2.05-acre area to promote wildlife, which they argue is an agricultural use. They bought the property in 1970 and used the disputed area to raise calves for about 10 years until Mr. McGriff was transferred out of county. *McGriff testimony*. The Petitioners then planted warm-season grasses to attract wildlife. They have used the area to attract wildlife ever since. *Id.* The Respondent makes much of the fact that the Indiana Department of Natural Resources ("DNR") has not classified the area as wildlands. But the area could not be classified as wildlands because it does not meet the DNR's 10-acre threshold. *McGriff testimony*.

    b. On June 30, 2008, the Department of Local Government Finance ("DLGF") issued a memorandum to assessing officials with examples for classifying agricultural land. *Pet'r Ex. 7*. Some of those examples fit with how the Petitioners use their property. In particular, example 8(b) describes a five-acre parcel with a one-acre homesite and cattle grazing on the remaining four acres. *Id.; McGriff testimony*.

[1] Although Ms. Martin testified that the 2.05 acres were assessed as "excess residential," the subject property's record card uses code "91" for the 2.05 acres. That code corresponds to "Ag. Excess Acres." *Pet'r Ex. 1*.

c. In fact, the disputed 2.05 acres are unsuitable for any non-agricultural use. That area is located at the rear of the subject property and is therefore landlocked. *McGriff testimony.*

d. Although the Respondent pointed to sales and listings of other properties to support the subject property's assessment, only one of the listed properties—2403 East Bocock Road— is even arguably similar to the subject property. *McGriff testimony*.

11. Summary of Respondent's contentions:

a. The Petitioners did not support their claim that the disputed 2.05 acres should be assessed as agricultural land or wildlands. *Martin testimony.* A property cannot be assessed as wildlands unless the DNR has classified it as wildlands under Ind. Code § 6-1.1-6. *Martin and Leming testimony.* And the Petitioners offered nothing to show that the DNR had classified the subject property as wildlands. *Martin and Leming testimony.*

b. Also, assessing the disputed 2.05 acres as residential excess acreage results in an overall assessment that is in line with recent property sales in the area. *Martin testimony; see also Resp't Ex. A*. For example, in August 2005, the property at 2403 Bocock Road sold for $125,000. *Id*. That property had about one acre more land than the subject property and its house was 216 square feet larger than the Petitioners' house. *Id*.

Record

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

a. The Form 131 petition.

b. The digital recording of the hearing.

c. Exhibits:

Petitioner Exhibit 1 – Notification of Final Assessment Determination – Form 115, dated January 18, 2008, and property record card for the subject property,
Petitioner Exhibit 2 – Pages 1-2 of the Petitioners' Petition to the Property Tax Assessment Board of Appeals for Review of Assessment – Form 130,
Petitioner Exhibit 3 – Form 131 petition,

Petitioner Exhibit 4 – "Certificate Excluding Certain Division of Real Estate from the Subdivision Control Ordinance of Grant County, Indiana," dated June 10, 1959,
Petitioner Exhibit 5 – Brief history of the property prepared by Petitioners,
Petitioner Exhibit 6 – Two aerial photographs of the subject property,
Petitioner Exhibit 7 – January 30, 2008, memorandum from the Department of Local Government Finance entitled "Classification and Valuation of Agricultural Land,"

Respondent Exhibit A – Comparable analysis of five 2005 and 2006 sales and a listing sheet of 29 sales from 1998 through 2006,

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

13. The most applicable governing cases are:

a. A petitioner seeking review of an assessing official's determination 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 petitioner 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.

14. The Petitioners failed to make a prima facie case for lowering the subject property's assessment. The Board reaches this decision for the following reasons:

    a. Real property is assessed based on its "true tax value," which means "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." Ind. Code § 6-1.1-31-6 (c); 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). In conducting mass appraisals, assessors normally use the Real Property Assessment Guidelines for 2002-Version A. And a property's market value-in-use, as ascertained by applying those Guidelines, is presumed to be accurate. *Eckerling v. Wayne Township Assessor*, 841 N.E.2d 674, 676 (Ind. Tax Ct. 2006). To rebut that presumption, a taxpayer may use relevant evidence that is consistent with the Manual's definition of true tax value, such as actual construction costs, appraisals, sales information regarding the subject property or comparable properties, and other evidence compiled using generally accepted appraisal principles. *Id.* at 678*; see also* MANUAL at 5.

    b. By contrast, a taxpayer does not rebut an assessment's presumed accuracy simply by contesting the methodology that the assessor used to compute it. *Eckerling*, 841 N.E.2d at 678. Instead, the taxpayer must show that the assessor's methodology yielded an assessment that does not accurately reflect the property's market value-in-use. *Id*. A taxpayer cannot do that by strictly applying the Guidelines; rather, he should offer the types of market value-in-use evidence contemplated by the Manual. *Id*.

    c. The Petitioners' sole claim is that the assessor misclassified a 2.05-acre portion of the subject property as "residential excess acreage" instead of "agricultural" or "wildlife acres."[2] Thus, the Petitioners simply contest the methodology used to compute the property's assessment. As the Tax Court explained in *Eckerling*, that is not enough—the Petitioners needed to offer probative market-value-in-use evidence to show that the assessment did not accurately reflect the subject property's true tax value. *Eckerling*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). Because the

[2] The Petitioners did not claim that the subject property should be assessed and taxed as classified wildlands under Ind. Code § 6-1.1-6-2.5. Indeed, Mr. McGriff admitted that the subject property would not qualify for the special tax treatment given to classified wildlands, because it has fewer than 10 acres. *McGriff testimony*; *see also* Ind. Code 6-1.1-6-5 ("a parcel may not be classified as . . . wildlands unless it contains at least ten (10) contiguous acres.").

Petitioners offered no market value-in-use evidence, they failed to meet their burden of proof.

Conclusion

15. Because the Petitioners contested only the methodology used to compute their property's assessment and offered no independent probative evidence to show the property's true tax value, they failed to make a prima facie case. The Board therefore finds for the Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the subject property's March 1, 2006, assessment should not be changed.

ISSUED: _____

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Chairman,
Indiana Board of Tax Review

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Commissioner,
Indiana Board of Tax Review

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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**.**