

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

Petition #: 65-010-02-1-1-00009
Petitioners: Michael E. Hasting, *et al.*
Respondent: Point Township Assessor, Posey County
Parcel #: 011-00419-00
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 Petitioner initiated an assessment appeal with the Posey County Property Tax Assessment Board of Appeals (the "PTABOA") by written document dated November 3, 2003.
2. The Petitioner received notice of the decision of the PTABOA on March 15, 2004.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the county assessor on April 15, 2004. Petitioners elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated Aug. 13, 2004.
5. The Board held an administrative hearing on September 14, 2004, before the duly appointed Administrative Law Judge Rick Barter (the "ALJ"). This is one of 13 petitions on 13 parcels, most adjoining, all owned by the same owner, in the same township and dealing with the same issues. The parties agreed to hear all 13 at one time and consider all issues jointly.
6. Persons present and sworn in at hearing:
 - a) For Petitioner: Michael E. Hasting, Petitioner
Carla D. Bishop, Tax Representative
 - b) For Respondent: Kristi D. Carroll, Posey County Assessor
Ginny Whipple, Appraisal Research Corp.

Facts

7. The property is classified as agricultural, as is shown on the property record cards for parcels #011-00419-00. Total acreage is 69.27 acres, of which 1.19 acres is road and ditch, 22.65 acres is Type 4 tillable, 3.99 acres is Type 6 woodlands, and 42.63 acres is Subtype 42.
8. The correct surname of the owner of the subject is Michael E. Hasting. It was spelled incorrectly by the tax representative on the Form 131 Petition and as a result on all Indiana Board of Tax Review files and documents.
9. The ALJ did not conduct an inspection of the property.
10. Assessed Value of subject property as determined by the Posey County PTABOA:
Land \$47,100
11. Assessed Value requested by Petitioner:
Land \$36,300

Issues

12. Summary of Petitioner's contentions in support of alleged error in assessment:
 - a) There are errors in the calculation of agricultural value for the agricultural land. A total of 55.62 acres of land has experienced damaging flooding more than five times in the past ten years.
 - b) An additional 16 acres has experienced less damaging floods, but still more than two times in the past ten years.
 - c) The 55.62 acres should receive the negative 50% influence factor for flooding and 16 acres should receive the negative 30% influence factor.
 - d) All of this land lies in the 100-year flood plain and is thus subject to restrictions due to this status and impacting the value of the land.
 - e) An additional issue is raised in the evidence presented at the hearing. That is, there is a public road right-of-way on the north side of this parcel and State Highway 69 right-of-way intersecting this parcel that have not been correctly assessed. This area totals approximately 3.92 acres. This issue was not on the Form 131.
13. Summary of Respondent's contentions in support of the assessment:
 - a) Respondent contends Petitioner's evidence does not prove flooding of subject five times in ten years. Respondent admits flooding occurs but states that evidence from records of John T. Myers High Water Levels for the Year submitted by Petitioner and pictures submitted by Petitioner only prove two or three years of flooding in a ten-year period leading up to the March 1, 2002 reassessment.
 - b) Respondent also contends Petitioner presented no evidence to prove crop loss any time in the ten year period leading up to the 2002 reassessment, which the county defined as 1991 through 2001.

- c) Respondent presented as evidence a highlighted map of the subject area with three bridges marked and the river level at which those bridges flood.
- d) Respondent testified that woodlands acreage on this and other parcels “was calculated from 1987 maps and could be incorrect...”

Record

14. 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 either party.
- b) The tape recording of the hearing labeled BTR #5837
- c) Exhibits:
 - Petitioner Exhibit 1: Summary of issues
 - Petitioner Exhibit 2: Water level data for John T. Myers Locks & Dam
 - Petitioner Exhibit 3: Photographs of subject property during 1997 flood
 - Petitioner Exhibit 4: Photographs of subject property during 2004 flood
 - Petitioner Exhibit 5: Highlighted copy of Flood Hazard Boundary map
 - Petitioner Exhibit 6: Parcel grid and highlighted parcel maps of subject showing flood classification
 - Petitioner Exhibit 7: Real Property Assessment Guideline Page 113
 - Petitioner Exhibit 8: Real Property Assessment Guideline Page 115
 - Petitioner Exhibit 9: Summary of additional issue for Petitioners ending in -00009, -00011, and -00013
 - Petitioner Exhibit 10: Photograph of barnyard portions of Parcel 11-00232-00 on Petition ending -00011
 - Petitioner Exhibit 11: Photograph of wetland slough portions of Parcel 11-00220-00 on Petition ending -00011
 - Petitioner Exhibit 12: Photograph of portions of Parcel 011-00220-00 on Petition ending -00010
 - Petitioner Exhibit 13: Letter from Wilson Auction-Realty concerning value of Parcel 011-00238-00 on Petition ending -00013
 - Petitioner Exhibit 14: Photographs of portions of Parcel 011-00238-00 on Petition ending -00013
 - Petitioner Exhibit 15: Greg Knowles USDA FSA letter concerning Parcel 011-00220-00 on Petition ending -00011
 - Petitioner Exhibit 16: (a)-(m) Copies of Form 131s
 - Petitioner Exhibit 17: (a)-(c) Copies of amended Form 115s resulting from Form 130 appeal to Property Tax Assessment Board of Appeals

 - Respondent Exhibit 1: Cover letter from tax representative detailing attached evidence
 - Respondent Exhibit 2: Real Property Assessment Guideline Page 102
 - Respondent Exhibit 3: Real Property Assessment Guideline Page 103
 - Respondent Exhibit 4: Subject township map with three bridges near subject identified

- d) These Findings and Conclusions.

Analysis

15. The most applicable governing statutes and 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. Wash. 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.
- d) Real Property Assessment Guidelines – Version A, Book 1, Chapter 2 – Classifying Agricultural Land into Land Use Types, at 102-106:

Land Use Type 4 – Tillable Land (includes Tillable Land Subtypes – Type 41, Type 42 and Type 43)

Land Use Type 41 – Land flooded occasionally – damaging floods occur two to four times in a ten-year period. A 30% influence deduction applies to this land-use type.

Land Use Type 42 – Land flooded severely – damaging floods occur five times or more in a ten-year period. A 50% influence factor deduction applies to this land-use type.

16. Petitioner provided sufficient evidence to support his contentions. This conclusion was arrived at for the following reasons:

Prima Facie Case for Land Flooded Severely

17. By definition, to establish a claim for Land Use Type 42, the Petitioners were required to demonstrate three elements: (1) flooding; (2) that caused damage; and (3) occurred at least five times in a ten-year period. REAL PROPERTY ASSESSMENT GUIDELINE – Version A, at 104.
18. While the Guidelines indicate Land Use Type 42 should be assessed when flooding causes damage at least five times in a ten-year period, it is not specific to whether any

ten-year period would be sufficient. However, it would be difficult for the assessor to know of events that occurred after the assessment date of March 1, 2002.

19. Petitioner testified his farm is located approximately four miles from the confluence of the Ohio and Wabash rivers, approximately one mile from the Ohio River, and approximately three miles from the John T. Myers Locks & Dam on the Ohio River. *Hasting testimony.*
20. All but one small portion of the subject properties, including 100 percent of this parcel, are shown on a Flood Hazard Boundary Map from the Department of Housing and Urban Development presented as evidence by Petitioner. *Petitioner Exhibit 5.*
21. Petitioner entered as evidence parcel grid and highlighted parcel maps showing which portions of the subject qualify for Type 42 influence factor relief and which portions qualify for Type 41 influence factor relief. *Petitioner Exhibits 5 & 6.*
22. Petitioner also entered as evidence a listing of floods on the Ohio River as recorded at the John T. Myers Locks & Dams. Considering the ten-year period 1991 through 2001, the listing shows flood crest levels ranging from a low of 33.4 feet in 1992 to a high of 53.9 in 1997, one of the years for which the Petitioner presented pictures showing flooding of the subject. *Petitioner Exhibits 2 & 3.*
23. Ohio River stages of 40 feet or more create flooding and resulting damage to portions of the subject property. *Hasting testimony.*
24. The Myers flood documentation shows levels at 40 or more feet nine times between 1991 and 2001. Crests ranged from a low of 41.3 feet in 1993 to a high of 53.9 in 1997. *Petitioner Exhibit 2.*
25. At a river stage of 40 feet the west or lower elevation end of the subject properties floods. At a level of 42 feet approximately 200 acres of the approximately 1,550 acres under appeal, are under water. At 43.5 feet all roads running east from the subject are under water. At 45 feet only the home site portion of the subject remains above water and becomes an island. That level was reached or exceeded in 1991, 1994, 1995, 1996 and 1997, or five times in the 1991-2001 period. *Hasting testimony, Petitioners Exhibit 2.*
26. Petitioner detailed the type of damage that occurs when the subjects flood: crop loss, if flooding occurs during the growing season; ditches fill in and must be re-dug; top soil is eroded; silt and sand is deposited in fields and on roads and must be removed; roads and bridges wash out and must be replaced or shored up; driftwood litters the area and must be removed before planting; irrigation wells are contaminated and must be cleaned up; field tiles used for adequate drainage become blocked, collapse or stop working and must be repaired or replaced. *Hasting testimony.*

27. For example, the Petitioner received an estimate of \$13,000 to repair and replace drainage tiles that were damaged and destroyed during a 42-foot crest in 2004. *Hasting testimony*.
28. By this showing, Petitioner has presented a prima facie case showing (1) flooding, (2) which caused damage, (3) five times in a ten-year period. He has shown that in 1991, 1994, 1995, 1996, and 1997, severe flooding affected this property and caused substantial damage to it.

Respondent's Rebuttal

29. Once a Petitioner has made a prima facie case the burden of proof shifts to the Respondent to refute or disprove Petitioner's evidence. *Meridian Towers*, 805 N.E.2d at 479.
30. Respondent asked Petitioner if he had any evidence of crop loss, such as crop insurance claims, or copies of checks paid for claims. Petitioner did not present any as evidence during this appeal. *Whipple testimony*.
31. Respondent pointed out that Version A of the Real Property Assessment Guideline Page 103 under Type 4 – Tillable Land states:
- a. If tillable land is classified as farmed wetlands or experiences flooding from a nearby river or stream causing substantial damage **or** loss of crops between April and November, it is classified by subtype. *Id.* (emphasis added).
32. REAL PROPERTY ASSESSMENT GUIDELINE, at 104, Table 2-21, Tillable Land Subtypes defines:
- a. Type 41 as "Land flooded occasionally – damaging floods occur two to four times in a ten-year period. A 30% influence factor deduction applies to this land use type
 - b. Type 42 as "Land flooded severely – damaging floods occur five times or more in a ten-year period. A 50% influence factor deduction applies to this land use type."
33. Respondent opined that the "between April and November" clause detailed on page 103 of the guidelines, effectively eliminates from Petitioner's list of floods in the designated period 1991 through 2001, the year 1991 when the crest of 51.4 occurred on January 9, the 1993 crest which was logged on March 13, the 1996 crest of 44.8 on January 30, the 1997 crest of 53.9 on March 12, the 1999 crest of 43.6 on January 31 and the 2000 crest of 42.2 on February 26. *Whipple testimony*.
34. Respondent reasoned that only the flood crests in 1994, 1995 and 1996 qualify for inclusion since they occurred between April 1 and November 30. *Whipple testimony; Petitioners Exhibit 2*.

35. The county does not deny that damaging floods occur on the subjects, but counts fewer than five in the ten-year period leading to the contested 2002 reassessment. *Whipple testimony.*
36. In fact, after the Form 130 appeal on this parcel, the county and its Property Tax Assessment Board of Appeals changed to Subtype 42 some 42.63 acres of the Type 4 land on the 69.27-acre subject. *Whipple testimony.*
37. Respondent admits that the subject property floods and suffers damage. Respondent opted to counter Petitioner's prima facie case for damaging flooding by pinning its case to deny a Subtype 42 classification by disputing the number of verifiable floods of the subject in the ten-year period Respondent designated as applicable. *Whipple testimony.*
38. If Petitioner had limited his case to crop loss, this argument by Respondent might prevail because the "April to November growing season" clause might be applicable. However, the Petition and the Summary of Issues entered as evidence clearly cites "damaging flooding" as the qualifying event. Crop loss is not mentioned. While Petitioner listed "crop loss" in his testimony as one of eight damage elements resulting from flooding, it was just one element. *Board Exhibit A, Petitioners Exhibit 1; Hasting testimony.*
39. The rule as written in Version A of the REAL PROPERTY ASSESSMENT GUIDELINE at 103, requires **either** "flooding from a nearby river or stream causing substantial damage" **or** "loss of crops between April and November." *Id.* Here Petitioner is alleging flooding causing substantial damage has occurred five times within a ten-year period. This element is not limited to certain months of the year in order to qualify. As such, the Board rejects Respondent's argument that all flood damage must occur between April and November in order to qualify and finds that Respondent has failed to rebut Petitioner's prima facie case.
40. Petitioner attempted to introduce a second issue at the hearing that was not detailed on the Form 131 and cannot be considered in this appeal. By accepting the small claims procedure, the parties agreed that the issues contained in the appeal petition are substantially the same as those presented to the PTABOA and agreed that no new issues would be raised before the board. *See 52 IAC 3-2-1(b).*

Conclusion

41. The Petitioners made a prima facie case. The Respondent did not rebut petitioner's evidence. The Board finds in favor of Petitioner.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the 2002 assessment should be changed to reflect 55.62 acres of Subtype 42 and 16 acres of Subtype 41.¹

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.

¹ The Board recognizes that the acreage numbers requested by Petitioner add up to a figure higher than the total acreage of the parcel. This is apparently due to a rounding or approximation on the part of the Petitioner. *See Pet'r Ex. 1.*