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

Petition: **47-001-07-1-1-00002**
Petitioners: **Matthew & Adam Norman**
Respondent: **Lawrence County Assessor**
Parcel: **47-10-26-700-027.000-001**
Assessment Year: **2007**

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

Procedural History

1. The Petitioners initiated an assessment appeal with the Lawrence County Property Tax Assessment Board of Appeals (PTABOA) by written notice dated August 13, 2008.

2. The PTABOA mailed notice of its decision on December 11, 2008.

3. The Petitioners appealed to the Board by filing a Form 131 on January 5, 2009, and at that time they elected to have this case heard according to small claims procedures.

4. The Board issued notice of hearing to the parties dated July 27, 2010.

5. Administrative Law Judge Kay Schwade held the Board's administrative hearing on September 15, 2010. She did not inspect the property.

6. The following persons were present and sworn as witnesses:
   Petitioner Matthew Norman,
   Respondent County Assessor April Stapp-Collins.

Facts

7. The subject property consists of 140 acres located at 700 Gresham Road near Mitchell.

8. The PTABOA determined the assessed value is $89,100 for land and $3,100 for improvements ($92,200 total).

9. The Petitioners request an assessed value of $60,000 for land and $3,100 for improvements ($63,100 total).

Record

10. The official record for this matter contains the following:

    a. Petition for Review of Assessment (Form 131),

    b. Notice of Hearing,

    c. Hearing Sign-In Sheet,

    d. Digital recording of the hearing,

    e. Petitioner Exhibit A – Property record card (PRC), Real Property Maintenance Report (RPMR), aerial photograph and photograph of 302 Gresham Road (Gresham Property),
    Petitioner Exhibit B – PRC, RPMR, plat map, and aerial photograph for a parcel located on Scenic Hills Road (Waldbieser Property),
    Petitioner Exhibit C – PRCs for two parcels located on Mill Creek Road (Cessna Property),
    Petitioner Exhibit D – Subject property RPMR and PRC,
    Petitioner Exhibit E – PTABOA's Determination (Form 115),
    Petitioner Exhibit F – Map showing the subject property with tillable areas highlighted in yellow,
    Petitioner Exhibit G – Ten photographs of the subject property that has been assessed as tillable,
    Respondent Exhibit 1 – PRC showing assessed value of the subject property before the PTABOA determination,
    Respondent Exhibit 2 – PRC showing assessed value of the subject property after the PTABOA determination,
    Respondent Exhibit 3 – Page from Farm Subsidy Database,
    Respondent Exhibit 4 – Map and summary showing the subject property has 100.6 acres of cropland,
    Respondent Exhibit 5 – Form 130,
    Respondent Exhibit 6 – Sales disclosure form for the subject property,
    Respondent Exhibit 7 – Statement presented by the Petitioners,
    Respondent Exhibit 8 – Plat map with the subject property highlighted in yellow,
    Respondent Exhibit 9 – Soil map identifying the subject property's soil types,
    Respondent Exhibit 10 – Summary of assessor's position,

    f. These Findings and Conclusions.

Contentions

11. Summary of the Petitioners' case:

    a. The assessment has too much land classified as tillable cropland. There is a difference between tillable cropland and nontillable cropland. With the invention of no-till drills, farmers can put in crops without using a plow or disk. Now people can plant on nontillable ground. *Norman testimony.*

    b. The subject property has a total of 140 acres. On Exhibit F the areas marked 16, 19 and 21 are enrolled in the Conservation Reserve Program (CRP). There was testimony that the CRP area was approximately 78 acres. Exhibit F, however, shows areas 16, 19 and 21 have 76.82 acres. Other areas—identified as 5, 6 and some unnumbered areas—compose the balance of the total acreage. Although the assessed valuation considers 100.56 acres to be tillable land, only part of that acreage really is tillable. The tillable ground (all of area 6, part of area 16 and part of area 19) is approximately 30 acres. The tillable ground is shown by the yellow highlighted portions on Exhibit F. The remaining acreage cannot be tilled. The terrain is so rough it is difficult even to mow without damaging equipment. The photographs show both areas that could be tilled and areas that could not be tilled on the subject property. *Norman testimony; Pet'r Ex. F, G.*

    c. Other parcels have land enrolled in the CRP that also is assessed as nontillable land. Only 25% to 30% of property enrolled in the CRP is actually tillable ground. *Norman testimony; Pet'r Ex. A, B, C.*

    d. Land cannot be used to produce crops while it is in the CRP. Land enrolled in the program may be cut for hay every three years. In special circumstances (such as drought years), the land can be released from the program during interim years. *Norman testimony.*

    e. Only 30 acres of the subject property actually can be tilled and properly should be assessed as tillable. The remaining acreage should be assessed as nontillable land, except for what already is assessed as classified forest or woodland. *Norman testimony.*

12. Summary of the Respondent's case:

    a. Prior to the Petitioners' Form 130, the assessment was based on 54.2 acres of tillable cropland with the balance of the subject property in other classifications. The Petitioners appealed, claiming that what was assessed as tillable acres really is nontillable. The PTABOA, however, increased the area assessed as tillable to 100.6 acres. *Stapp-Collins testimony; Resp't Ex. 1, 2, 4.*

    b. The USDA Farm Service Agency identifies the subject property as Farm 3849 Tract 3498, which is shown on the aerial map. The aerial map indicates this farm

has 100.6 cropland acres. The assessment is based on a total of 140 acres composed of 100.56 acres tillable cropland, 12.55 acres woodland, and 26.89 acres classified forest. *Stapp-Collins testimony; Resp't Ex. 2, 4.*

c. The Petitioners are receiving payment through the CRP Farm Subsidy Program not to till 100.6 acres. If they are paid not to till it, the land must be tillable ground. *Stapp-Collins testimony*.

d. The Petitioners admitted that the land in CRP may be cropped, but just not on a yearly basis. *Stapp-Collins testimony*.

e. The Petitioners paid $280,000 for the property in February 2006. *Stapp-Collins testimony; Resp't Ex. 6.*

Analysis

13. 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).

14. 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").

15. 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.

16. The Petitioners completely ignored the fact that in February 2006 they paid $280,000 for their farm (more than 2½ times its assessed value). The time of their purchase corresponds closely with the required valuation date for the disputed assessment, which must reflect value of the property as of January 1, 2006. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. And although the Respondent presented evidence about the purchase price, there has been no claim that the assessment should correspond with that amount. Rather, both sides focused on points related to the methodology for assessing agricultural land according to the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A.

17. Agricultural land is categorized according to its land use type and soil identification. "Tillable" and "nontillable" are two of those types. Tillable land is land used for cropland or pasture that has no impediments to routine tillage. Cropland is used for production of grain or horticultural crops such as corn, soybeans, wheat, rotation pasture,

hay, vegetables, orchard crops, land used for cover crops, land in summer fallow, idle cropland, land used for Christmas tree plantations, land used for nursery plantings. Nontillable land is covered with brush or scattered trees, or permanent pasture land with natural impediments that deter use for crop production GUIDELINES, ch. 2 at 102-104.

18. Selecting the proper use type and soil identification are simply steps toward determining the productive capacity of agricultural land and, ultimately, its real value-in-use. Although the Petitioners presented some conclusory testimony about how it is possible to plant crops without tilling the land with a plow or disk, there is no substantial evidence about how no-till farming relates to productivity or earning capacity. Therefore, that evidence was not probative and did not help to prove the Petitioners' case.

19. It appears the disputed assessment increased the amount of land considered to be "tillable" (and thereby increased the assessed value) because of notations on USDA Farm Service Agency aerial maps (perhaps Respondent Exhibit 4 or Petitioner Exhibit F) stating that the Petitioners' farm contained 100.55 or 100.6 acres of cropland. But the record contains absolutely no indication of the basis for that statement or how it might indicate whether land is tillable or nontillable. Nothing in this case establishes the relevance of the federal agency's designated amount of cropland. Nevertheless, at this point that is not the determinative question.

20. Much of the evidence and argument from both parties related to land in the CRP. Among other things, the aerial maps (Respondent Exhibit 4 and Petitioner Exhibit F) show areas of the farm that were in CRP, but they differ in some respects. The differences might relate to time. One appears to be dated July 16, 2009. There is no evidence about what date the other might represent. There also is no evidence that either map represents the assessment date of March 1, 2007. None of the evidence indicates what acreage might have been in CRP on March 1, 2007. But even assuming, *arguendo*, that 77 or 78 acres of the subject property was in CRP on the assessment date, the amount of acreage in the CRP itself is irrelevant because no substantial evidence establishes the requirements, terms, conditions and limitations of that program. The parties offered only brief, conclusory testimony about the CRP and its subsidy payments. They failed to offer substantial evidence or meaningful explanation to establish how focusing on that program might help to determine what the assessed value of the subject property should be. In short, here the evidence and argument related to CRP does not help to prove that the existing 2007 assessment should be changed.[1]

[1] The Petitioners may have been claiming participation in the CPR simply is not relevant to their assessment. Very little evidence or cogent argument was presented about it. But based on what was presented here, the Board reaches the same conclusion.

21. The Petitioners presented credible evidence (photographs and testimony) that some of their land is nontillable and would have a reduced production capacity. They also acknowledged that some of their land (approximately 30 acres) is used for pasture or corn production and should be classified as tillable. Furthermore, there is no dispute that almost 40 acres are assessed as woodland or forest with minimal valuation. Consequently, merely establishing that some of the farm is not tillable does not prove what a more accurate assessed valuation would be.

22. The Petitioners attempted to make their case by proving that the agricultural land methodology prescribed in the Guidelines was not applied properly. More specifically, as the parties present it, the entire case is about how to distribute approximately 100 acres between tillable and nontillable land. The core of the Petitioners' case is represented by the areas shown on their Exhibit F and testimony conceding that the tillable (yellow highlighted) area is approximately 30 acres, so the balance of the disputed land (approximately 70 acres) should be reduced to nontillable land value. Unfortunately for the Petitioners, the evidence they offered to support such a change is far too conclusory to support the result they want. *See Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119, (Ind. Tax Ct. 1998).

23. Certainly some of the Petitioners' evidence is not conclusory. For example, some of the photographs show land that appears to have no impediment to tilling and growing crops, while other photographs show land with topography that does have such impediments. But the most significant point is how much land goes into each type. Only conclusory evidence was presented about that point. Although Exhibit F divides the farm into areas with specific acreage amounts, those divisions differ from what the Petitioner claims to be the tillable and nontillable areas. The evidence provides no substantial basis for allocating land to one category or the other.

24. The Petitioners may be correct that their farm contains something less than 100.6 acres of tillable land, but they failed to provide substantial, probative evidence for what the number should be. More importantly, that difference alone does not establish that the assessment must be changed. *See Meridian Towers*, 805 N.E.2d at 478; *see also Clark*, 694 N.E.2d 1230.

25. When a taxpayer fails to provide probative evidence supporting its position that an assessment should be changed, the Respondent's duty to support the assessment with substantial evidence is not triggered. *See Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003); *Whitley Products, Inc. v. State Bd. of Tax Comm'rs,* 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

Conclusion

26. The Petitioners failed to prove what a more accurate valuation of their farm might be. Therefore, the Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings and conclusions, the assessment will not be changed.

ISSUED: _____

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Commissioner, 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

- 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>