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

Petition No.: **06-019-09-1-5-00287**
Petitioner: **PL Properties, LLC**
Respondent: **Boone County Assessor**
Parcel No.: **019-06811-02**
Assessment Year: **2009**

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

Procedural History

1. Steve Pittman, on behalf of PL Properties, LLC (the Petitioner), initiated an assessment appeal with the Boone County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated May 20, 2010.

2. The PTABOA issued notice of its decision on August 10, 2010.

3. Pursuant to Indiana Code § 6-1.1-15-1, Mr. Pittman filed a Form 131 petition with the Board on September 21, 2010. The Petitioner elected to have its case heard according to the Board's small claim procedures.

4. The Board issued a notice of hearing to the parties dated June 27, 2011.

5. Pursuant to Indiana Code § 6-1.1-15-4 and § 6-1.5-4-1, the Board held an administrative hearing on August 11, 2011, before the duly appointed Administrative Law Judge (ALJ) Dalene McMillen.

6. The following persons were present and sworn in at the hearing:

    a. For Petitioner: Steve A. Pittman, property owner

    b. For Respondent:[1] Lisa Garoffolo, Boone County Assessor
    Peggy Lewis, PTABOA member

[1] Lawrence Giddings of Giddings, Whitsitt & Williams appeared as counsel for the Respondent.

Facts

7. The property under appeal is vacant land located at 10371 Zionsville Road, Zionsville, in Boone County.

8. The ALJ did not conduct an on-site inspection of the property under appeal.

9. For 2009, the PTABOA determined the assessed value of the land to be $190,100.

10. The Petitioner did not request a specific assessed value.

Issue

11. Summary of the Petitioner's contentions in support of an alleged error in its property's assessment:

    a. The Petitioner's representative contends that the property's 2009 assessed value is over-stated based on the assessor's classification of the parcel as residential land rather than agricultural land. *Pittman testimony.* According to Mr. Pittman, the .63 acre property under appeal is the only means by which the Petitioner's lessee can access the adjoining 17.43 acres to farm the property. *Id.* In support of this contention, Mr. Pittman submitted an aerial photograph of the property under appeal and the adjoining acreage. *Petitioner Exhibit 1.* Mr. Pittman testified that there is no other use of the property. *Id.* Thus, he argues, the 0.63 acre parcel should be classified as agricultural land. *Pittman testimony.*

    b. Similarly, the Petitioner's representative argues that the property is agricultural land because it is leased for agricultural purposes. *Pittman argument.* According to the Petitioner's evidence, in 2008 and 2009, Carmel Swine Company, Inc., entered into a lease with PL Properties. *Petitioner Exhibits 5 and 6.* The "Cash Rent Farm Lease" is for both Parcel No. 019-06811-02 and Parcel No. 019-06811-00, totaling 18.06 acres. *Id.* In response to the Respondent's counsel's questions, Mr. Pittman agreed that there were no crops on the 0.63 acre parcel. *Pittman testimony.* In addition, Mr. Pittman admitted that there was a structure on the property which was used by the former owner to store his lawnmowers. *Pittman testimony.* However, Mr. Pittman testified that as part of the 2008 lease agreement, the Petitioner was required to remove the building prior to March 1, 2009. *Id.; Petitioner Exhibit 5.* Because other farms in Boone County with access property for their equipment and no crops growing on the access area are classified as agricultural land, Mr. Pittman argues, the property under appeal should be assessed in the same manner. *Id.*

c. The Petitioner's representative further argues that the 0.63 acre parcel under appeal is over-valued based on the taxes paid on the property. *Pittman argument.* According to Mr. Pittman, the subject property is taxed 515 times higher than the adjoining 17.43 acres. *Pittman testimony; Petitioner Exhibit 4.* In support of this contention, Mr. Pittman submitted the Petitioner's 2009 pay 2010 tax statements. *Petitioner Exhibits 7 through 9.* According to Mr. Pittman, both properties are farm land, but the Petitioner's 17.43 acre parcel was taxed at $204 per year or $11.70 per acre and the Petitioner's 0.63 acre parcel was taxed at $3,802 per year or $6,034.92 per acre. *Pittman testimony; Petitioner Exhibits 7 through 9.*

d. Moreover, the Petitioner's representative argues that the subject property's land value does not factor in the property's easement. *Pittman testimony.* According to Mr. Pittman, in 2010 the Town of Zionsville hired a construction company to install a sewer line in the surrounding area, which included the 0.63 acre parcel. *Id.* The construction company also used the property under appeal as a "staging" area for their equipment and supplies. *Id.* For this reason, the Petitioner's representative also argues, the land value should be reduced. *Id.*

e. Finally, the Petitioner's representative contends that on August 11, 2010, the assessor's office issued a "Correction of Error," changing the subject property's land classification to agricultural. *Pittman testimony.* In support of this contention, Mr. Pittman submitted a Correction of Error computer printout and a Notice of Assessment of Land and Structures – Form 11 R/A. *Petitioner Exhibit 10.* According to Mr. Pittman, because the assessor's office acknowledged the land was agricultural for 2010 and because the use of the property did not change between 2009 and 2010, the property's assessment for 2009 should also be agricultural. *Pittman testimony; Petitioner Exhibit 10.*

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

a. The Respondent contends that the county's 2009 assessed value was correct based on the Petitioner's use of the land. *Garoffolo testimony.* In support of this contention, Ms. Garoffolo submitted 2009 and 2011 aerial maps. *Respondent Exhibits 5 and 8A.* According to Ms. Garoffolo, the 2011 aerial map shows that the Petitioner's property "looks more like farm ground to me even though it might not be farmed" than it did on the 2009 aerial maps. *Garoffolo testimony; Respondent Exhibits 5 and 8.* Moreover, Ms. Lewis argues, the Petitioner failed to show that the property was devoted to an agricultural purpose. *Lewis testimony.* Because there was a building, shrubs and trees on the property in 2009, Ms. Garoffolo testified, the land was classified as residential. *Garoffolo testimony.*

b. Further, the Respondent's witness testified that the assessor's office only assesses an access road or an entrance to a farm as agricultural land when it is part of the

same parcel. *Lewis testimony.* Because the Petitioner's 0.63 acre parcel is not farmed and is not assessed as part of the adjoining 17.43 acre parcel, Ms. Lewis argues, it was properly assessed as residential land. *Lewis argument.*

Record

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

    a. The Form 131 petition and related attachments.

    b. The digital recording of the hearing.

    c. Exhibits:

Petitioner Exhibit 1 – Aerial map,
Petitioner Exhibit 2 – Petition to the Indiana Board of Tax Review for Review of Assessment – Form 131,
Petitioner Exhibit 3 – Notification of Final Assessment Determination – Form 115,
Petitioner Exhibit 4 – Notice of Hearing on Petition – Real Property (By County Property Tax Assessment Board of Appeals) – Form 114 and Boone County appeal worksheet,
Petitioner Exhibit 5 – Cash rent farm lease between Steve Pittman of PL Properties and Carmel Swine Company, Inc., dated November 18, 2008,
Petitioner Exhibit 6 – Cash rent farm lease between Steve Pittman of PL Properties and Carmel Swine Company, Inc., dated November 7, 2009,
Petitioner Exhibit 7 – Tax statement for the 0.63 acre parcel,
Petitioner Exhibit 8 – Tax statement for the 17.43 acre parcel,
Petitioner Exhibit 9 – Payment voucher for the 0.63 acre parcel and the 17.43 acre parcel,
Petitioner Exhibit 10 – Correction of Error and Notice of Assessment of Land and Structures – Form 11 R/A for the 0.63 acre parcel,

Respondent Exhibit 1 – Boone County appeal worksheet,
Respondent Exhibit 2 – Tax statements and payment voucher for the 0.63 acre parcel and 17.43 acre parcel,
Respondent Exhibit 3 – Cash rent farm leases, dated November 18, 2008, and November 7, 2009,
Respondent Exhibit 4 – Property record card for the 0.63 acre parcel,
Respondent Exhibit 5 – Four aerial maps,

Respondent Exhibit 6 – Notice of Hearing on Petition – Real Property (By County Property Tax Assessment Board of Appeals) – Form 114,
Respondent Exhibit 7 – Notification of Final Assessment Determination – Form 115,
Respondent Exhibit 8 – Petition to the Indiana Board of Tax Review for Review of Assessment – Form 131,
Respondent Exhibit 8A – Aerial map,
Respondent Exhibit 9 – Indiana Board of Tax Review Notice of Hearing on Petition,

Board Exhibit A – Form 131 petition with attachments,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing sign-in sheet,

d. These Findings and Conclusions.

Analysis

14. The most applicable governing 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 Township 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 Township 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 case. *Id.; Meridian Towers*, 805 N.E.2d at 479.

15. The Petitioner provided sufficient evidence to establish a prima facie case for a reduction in the assessed value of its property. The Board reached this decision for the following reasons:

a. The 2002 Real Property Assessment Manual defines "true tax value" 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." 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). The appraisal profession traditionally has used three methods to determine a property's market value: the cost approach, the sales-comparison approach and the income approach to value. *Id.* at 3, 13-15. In Indiana, assessing officials generally value real property using a mass-appraisal version of the cost approach, as set forth in the Real Property Assessment Guidelines for 2002 – Version A (the GUIDELINES).

b. A property's assessment under the Guidelines is presumed to accurately reflect its true tax value. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005)*; P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax 2006). A taxpayer may rebut that presumption with evidence that is consistent with the Manual's definition of true tax value. MANUAL at 5. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer sales information for the subject property or comparable properties and other information compiled according to generally accepted appraisal principles. MANUAL at 5.

c. Regardless of the method used to rebut an assessment's presumption of accuracy, a party must explain how its evidence relates to the subject property's market value-in-use as of the relevant valuation date. *O'Donnell v. Department of Local Government Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2009, assessment, the valuation date was January 1, 2008. 50 IAC 21-3-3.

d. Here, the Petitioner contends that the land on the subject property should be assessed as "agricultural" land rather than "residential" land. The Petitioner's representative and the Respondent do not dispute the facts. The Petitioner owned the 0.63 acre parcel at issue in this appeal and an adjoining 17.43 acre parcel and the Petitioner leased both parcels to Carmel Swine Company, Inc., under a "Cash Rent Farm Lease." While the 17.43 acre parcel was used to grow crops in 2009, nothing was being grown on the subject property. Instead, the parcel had woods and shrubs on it and the lessee used the land as access to the 17.43 acre parcel to farm.

e. The Indiana General Assembly directed the Department of Local Government Finance (DLGF) to establish rules for determining the true tax value of agricultural land. Ind. Code § 6-1.1-4-13(b). The DLGF, in turn, established a

base rate to be used in assessing agricultural land across the State of Indiana. GUIDELINES, ch. 2 at 98-99. The Guidelines direct assessors to adjust the base rate using soil productivity factors developed from soil maps published by the United States Department of Agriculture. *Id.* at 105-106. The Guidelines further require assessors to classify agricultural land-use types, some of which call for the application of negative influence factors in pre-determined amounts. *Id.* at 102-05. These land classifications include non-tillable land and woodland. *Id.*

f. Indiana Code § 6-1.1-4-13 states that "[i]n assessing or reassessing land, the land shall be assessed as agricultural only when it is devoted to agricultural use." Ind. Code § 6-1.1-4-13(a). The word "devote" means "to give or apply (one's time, attention, or self) completely." WEBSTER'S II NEW RIVERSIDE DICTIONARY 192 (revised edition). Agricultural use is the "production of crops, fruits, timber, and the raising of livestock." GUIDELINES, Glossary at 1. Thus, in order to rely upon the base rate and negative influence factors for agricultural land set forth in the Guidelines, the Petitioner was required to demonstrate that the property was used for agricultural purposes as of the March 1, 2009, assessment date.

g. While the Petitioner's witness argues that the subject property is used to access the adjoining 17.43 parcel which is indisputably being farmed, the Respondent, in essence, argues that only properties with crops grown in the ground can be agricultural land. However, other activities that are not dependent on the productivity of soil are identified as agricultural uses by the Guidelines – such as the raising of livestock or land used for farm buildings and barn lots. GUIDELINES, ch. 2 at 102 through 104. Thus, whether crops are grown in the ground cannot be the sole measure by which the Board determines that land has an agricultural use. In fact, the Guidelines clearly contemplate that some farmland is ill-suited for farming because it is woodlands or wetlands. That does not alter its agricultural use. To the contrary, such land is given a negative influence factor recognizing that the land is not productive tillable land. Thus, the mere fact that the subject property has trees and shrubs and even a storage building on the property does not make it residential land; rather it makes the land "nontillable land" to which an influence factor of 60% should be applied. GUIDELINES, ch. 2 at 104 ("Nontillable land is land covered with brush or scattered trees with less than 50% canopy cover, or permanent pasture land with natural impediments that deter the use of the land for crop production. A 60% influence factor deduction applies to nontillable land.")

h. Moreover, the Respondent's witness admitted that the subject property would have been classified as agricultural if it had been a part of the 17.43 acre parcel. However, because it was a separate parcel, Ms. Lewis argued, it was properly assessed as residential land. The Board finds to the contrary. The fact that the 0.63 acre parcel and the adjacent 17.43 acre parcel are separate parcels with distinct parcel numbers does not alter the intended use of the property. *See Cedar*

Lake Conference Assoc. v. Lake Cty. Property Tax Assessment Bd. of Appeals, 887 N.E.2d 205, 208-209 (Ind. Tax Ct. 1008) ("the fact that the RV Park and the Conference Center are delimited (i.e., they are separate parcels with distinct key numbers) neither alters the manner in which CLCA used those properties nor diminishes CLCA's religious purpose. *Cf. Ind. Code Ann.* § 6-1.1-1-8.5 (West 2000) (indicating that a "key number" is merely a tool used by assessing officials to distinguish properties from one another for various administrative purposes)"); *see also Lesea Broad Corp. v. State Board of Tax Commissioners,* 525 N.E.2d 637, 639 (Ind. Tax Ct. 1988) (stating that "innocent collateral activities and buildings essential to the furtherance of the true purposes of the corporation should not blind the court to the genuineness of the those purposes nor to the sincerity of their actual accomplishment").

i. The Board finds that the definitions of agricultural uses in the Guidelines are broad enough to encompass land that is necessary to and supportive of land being farmed. Because the subject property is used as part of a working farm and is used for no other purpose than to provide access to the Petitioner's cropland, the Board finds that the 0.63 acre parcel at issue in this appeal is agricultural land.[2] Further, the Board finds that the land meets the definition of "nontillable land" under the Guidelines and should be assessed with the negative influence factor associated with such land.

Conclusion

16. The Board finds the 0.63 acre parcel at issue in this appeal is nontillable agricultural land and holds that the property record card should be changed to reflect this finding and the land should be valued accordingly.

Final Determination

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review determines that the Petitioner's property's assessed value should be changed.

ISSUED: _____

[2] Ms. Lewis testified that the PTABOA also denied the Petitioner's claims because there was a building on the property in 2009. *Lewis testimony.* Mr. Pittman testified that the Petitioner was required by its lease agreement with Carmel Swine Company, Inc., to remove the building prior to March 1, 2009. *Pittman testimony.* The Petitioner's property record card shows the county did not assess a building on the property in 2009. *Respondent Exhibit 4.* Even if the building existed as of the date of the assessment, the Petitioner's witness testified that it was used for equipment storage. This is not inconsistent with the property's agricultural use.

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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 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.