BEFORE THE
INDIANA BOARD OF TAX REVIEW

Nora Piepho as Trustee of the Nora Piepho Revocable Living Trust	)	Petition No.: 45-036-03-1-4-00002C
	)	Parcel No.: 20-13-0126-0012
Petitioner,	)	
v.	)	
	)	County: Lake
LAKE COUNTY ASSESSOR,	)	Township: St. John
Respondent.	)	Assessment Year: 2003

Appeal from the Final Determination of
Lake County Property Tax Assessment Board of Appeals

AMENDED

FINAL DETERMINATION ON SUMMARY JUDGMENT

The Indiana Board of Tax Review (the Board) having reviewed the facts and evidence and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUE

1. The issue presented for consideration by the Board was whether the Petitioner is entitled to summary judgment that the property was devoted to agriculture as of March 1, 2003.

PROCEDURAL HISTORY

2. The Petitioner initiated an assessment appeal for 2003 with the Lake County Property Tax Assessment Board of Appeals (the PTABOA) by written documents dated January 28, 2008.[1]

3. The PTABOA issued notice of its decision on June 16, 2008.

4. The Petitioner filed its Form 131 petition with the Board on July 29, 2008, and a Motion for Summary Judgment on February 17, 2009. The Petitioner filed a Motion for Ruling on Summary Judgment on April 7, 2009.

HEARING FACTS AND OTHER MATTERS OF RECORD

5. The property in question consists of an unimproved parcel located at 7311 W. Lincoln Highway, Schereville, in Lake County, St. John Township.

6. The ALJ did not conduct an on-site inspection of the subject property.

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[1] On July 16, 2004, the Department of Local Government Finance (the DLGF) determined that evidence submitted by the Petitioner demonstrated an error affecting the property's assessed value for March 1, 2002. *Petitioner's Form 131 Petition (Petition), Exhibit 2C.* The parties executed an agreement stipulating that the value of the land was $15,800, and not the assessed value of $1,005,600. *Id.* On February 4, 2005, a Form 113, Notice of Assessment, was filed by the St. John Township Assessor which changed the March 1, 2003, assessed value of the parcel from $15,800 to $1,005,600. *Petition, Exhibit 2E.* On March 21, 2005, Petitioner filed a Request for Preliminary Conference with the St. John Township Assessor and a Form 130, Petition for Review of Assessment, with the Lake County PTABOA. *Petition, Exhibit 2F.* On August 10, 2005, the PTABOA issued Form 115, Notification of Final Assessment Determination, indicating that an agreement could not be reached at the Township Assessor/Petitioner conference, and that the assessed value for 2003 would remain unchanged at $1,005,600. *Petition, Exhibit 2G.* Subsequent to the denial of the requested assessment change for 2003, however, the Petitioner received a full tax refund for the 2003 tax year from the Lake County Auditor. *Petition, Exhibit 2, pg. 3.* No further appeals were thereafter demanded by Petitioner because the assessment records at that time indicated that the parcel had been changed back to agricultural use valuation. *Id.* Property tax bills for tax years 2004 and 2005 indicated no tax due from previous years. *Id.* On January 24, 2007, a Form 113, Notice of Assessment, was filed by the St. John Township Assessor which again changed the March 1, 2003, assessed valuation of the subject parcel from $15,800 to $1,005,600. *Petition, Exhibit 2J.* The Petitioner's counsel contends that the Petitioner was not made aware of the January 24, 2007, filing until Ms. Piepho received a tax bill in January of 2008 showing prior year taxes, penalties and interest due in the amount of $22,077.26. *Petition, Exhibit 2P.* This appeal was initiated immediately thereafter.

7. For 2003, the PTABOA determined the assessed value of the property to be $1,005,600 for the land.

8. For 2003 the Petitioner requests the assessed value of the property be $15,800.

PARTIES' CONTENTIONS

9. Summary of the Petitioner's contentions in support of alleged error in assessment:

   a. The Petitioner contends that the land in question has at all relevant times been devoted to agricultural use. *Petitioner's Memorandum in Support of Her Motion for Summary Judgment (Memorandum), pg. 1.*

   b. In support of this contention, the Petitioner presented the Affidavit of Gerald Gayda. *Petitioner's Motion for Summary Judgment (Summary Judgment), Exhibit 1 (Gayda Aff.).* In his Affidavit, Mr. Gayda testified that in 2003 he "cut and baled the land at issue herein at least twice using the bales to feed my Belted Galloways on the adjacent property." *Id.* ¶ 4. Mr. Gayda attached a picture of the baled hay and also a receipt to show that the property was seeded with specific grasses for harvesting. *Id.* ¶¶ 5 and 7; *and attachments to the Gayda Aff.*

10. The Respondent failed to respond to the Petitioner's Motion for Summary Judgment and therefore presented no evidence or argument in support of its assessment.[2]

[2] The history in this case troubles the Board. The divergence of opinion regarding the true tax value of the subject property here is glaring - $989,800. The additional tax burden that the Assessors' position would impose upon the Petitioner is marked. If the Assessors truly believed that their assessment was correct, why then did they not submit any argument and evidence to the Board in support of that position? Complicating the matter further, the DLGF in a prior determination held that the Assessors had erred in arriving at the property's assessment for March 1, 2002. Apparently this finding by the DLGF prompted the Assessors to agree to a market value-in-use of $15,800 for that year, as contrasted to their prior determination of $1,005,600. Now the Assessors have returned to their previous positions and there is no record as to why. The record here implies that the Assessors (and the PTABOA for that matter) perceived the tax burden falling upon the Petitioner as insignificant. The Board is bothered by this cavalier approach. The Board suggests that these types of matters should be taken seriously by the Assessors and the PTABOA. If the Assessors have no evidence to the contrary, or are unwilling to defend their assessment before the Board, then this type of dispute should be resolved short of requiring the Petitioner to expend the funds, time and effort necessary to appeal its case to the Board.

JURISDICTIONAL FRAMEWORK

11. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property; (2) property tax deductions; and (3) property tax exemptions; that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

SUMMARY JUDGMENT STANDARD

12. Summary judgment is appropriate only where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Wittenberg Lutheran Village Endowment Corp. v. Lake County Property Tax Assessment Board of Appeals,* 782 N.E.2d 483, 487 (Ind. Tax Ct. 2002). The party seeking summary judgment bears the burden of demonstrating through designated evidence that there are no genuine issues of material fact and that it is entitled to judgment as a matter of law. *Coffman v. PSI Energy, Inc.,* 815 N.E.2d 522, 526 (Ind. Ct. App. 2004). If the movant satisfies its burden, the non-movant cannot rest upon its pleadings, but instead must designate sufficient evidence to show the existence of a genuine issue for trial. *Id.* The Board must construe all evidence in favor of the non-moving party, and all doubts as to the existence of a material issue of fact must be resolved against the moving party. *See Tibbs v. Grunau Co., Inc.,* 668 N.E.2d 248, 249 (Ind. 1996).

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. 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").

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.

The Petitioner Raised a Prima Facie Case

16. Indiana Code § 6-1.1-4-13 states that "land shall be assessed as agricultural land only when it is devoted to agricultural use." Indiana Code § 6-1.1-20.6-0.5 defines "agricultural land" as "land assessed as agricultural land under the real property assessment rules and guidelines of the department of local government finance." The REAL PROPERTY ASSESSMENT GUIDELINES – VERSION A holds that "agricultural property" is "land and improvements devoted to or best adaptable for the production of crops, fruits, timber and the raising of livestock." GUIDELINES, Glossary, p.1.

17. Here, the Petitioner provided evidence, in the form of an executed affidavit, that the land in question was used for the production of hay in 2003. *Summary Judgment, Exhibit 1,* ¶ 5. The Petitioner's affiant testified that he purchased seed and reseeded the land for harvest in 2003. *Id.* ¶ 4. Mr. Gayda further testified that he cut and baled the land at least twice that year. *Id.* ¶ 7. The Petitioner's photograph similarly shows several rows of large wrapped bundles of hay stored on the property. *Attachment to Summary Judgment, Exhibit 1.*

18. While simply mowing the lot and baling the clippings for feed may not be sufficient alone to raise a prima facie case of agricultural use, here the Petitioner has also shown

that the land was specifically seeded for that purpose. Thus, the Board finds that the Petitioner has produced sufficient evidence to raise a prima facie case.

19. The Respondent failed to provide any evidence to dispute the Petitioner's claim. Trial Rule 56(E) provides in relevant part that "[w]hen a motion for summary judgment is made and supported as provided in this rule, *an adverse party may not rest upon the mere allegations or denials of his pleading*, but his response, by affidavit or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him." (Emphasis added). Thus the Board concludes that the Petitioner is entitled to summary judgment that its land was used for the production of crops and therefore was devoted to agricultural use in 2003.

20. The Petitioner raised a prima facie case that the Respondent erred when it assessed the Petitioner's property as commercial property rather than agricultural. The Tax Court in *Eckerling v. Wayne Township Assessor,* 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006), however, held that taxpayers cannot rebut an assessment by simply showing an assessor's technical failure to apply the Guidelines. *See also* 50 IAC 2.3-1-1(d). The Tax Court did not distinguish between property devoted to agricultural use and property devoted to other uses. However, all of the methodology claims rejected by the Tax Court have dealt with attacks on the application of the Guidelines in assessing improvements. *See, e.g., Eckerling,* 841 N.E.2d at 678; *P/A Builders & Developers, LLC v. Jennings County Assessor,* 842 N.E.2d 899, 900-01; *O'Donnell v. Department of Local Government Finance,* 854 N.E.2d 90, 94-95 (Ind. Tax Ct. 2006). In a previous case the Board found that sufficient evidence existed that the Legislature intended to treat the assessment of agricultural land differently from the assessment of other types of property to not apply the restrictions in *Eckerling* to agricultural cases. Thus, in establishing its prima facie case for a change in assessment, the Board finds that it was sufficient for the Petitioner to show that the land in question was devoted to agricultural use, without showing the property's market value-in-use.

SUMMARY OF FINAL DETERMINATION

21. The Petitioner provided sufficient evidence to show that the land in question was devoted to agricultural use for 2003. The Respondent failed to reply at any step during this appeal process. Therefore, the Board finds in favor of the Petitioner and holds that the land in question should be assessed as agricultural land for 2003.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

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 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.