

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

Petition: 03-011-19-1-5-00941-19
Petitioner: Milo and Diane Smith
Respondent: Bartholomew County Assessor
Parcel: 03-94-25-000-001.800-011
Assessment Year: 2019

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

PROCEDURAL HISTORY

1. Milo and Diane Smith contested their 2019 property tax assessment with the Bartholomew County Property Tax Assessment Board of Appeals (“PTABOA”) which maintained the assessed value at \$97,300 for a vacant, unimproved parcel located at 9815 West Raintree Drive, of the Harrison Lake subdivision in Columbus.
2. The Smiths then filed an appeal with the Board, contesting that the parcel should have been classified and assessed as agricultural land used to grow and harvest timber.
3. The Board’s Administrative Law Judge, Jennifer Thuma (“ALJ”), held a telephonic hearing on September 17, 2020. Neither she nor the Board inspected the property.
4. Milo Smith, Certified Tax Representative, represented himself and his wife as the taxpayers. Mr. Smith, Ginny Whipple, Bartholomew County Assessor, and Dean Layman, Data Analyst, were sworn as witnesses.

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

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| Petitioner’s Exhibit 1: | Property Record Card-Subject |
| Petitioner’s Exhibit 2: | GIS of the parcel and surrounding area |
| Petitioner’s Exhibit 3: | GIS of Subject and Neighboring Parcels |
| Petitioner’s Exhibit 4: | Property Record Card—High Acres, LLC |
| Petitioner’s Exhibit 5: | Property Record Card---High Acres, LLC |
| Petitioner’s Exhibit 6: | Property Record Card---High Acres, LLC |
| Petitioner’s Exhibit 7: | Property Record Card---High Acres, LLC |
| Petitioner’s Exhibit 8: | DLGF Memo (2008) |

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| Respondent’s Exhibit A: | Resume of Ginny Whipple |
| Respondent’s Exhibit B: | Statement of Professionalism |
| Respondent’s Exhibit C: | Property Record Card-Subject (2017-2018) |
| Respondent’s Exhibit D: | Property Record Card-Subject (2017-2019) |

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| Respondent's Exhibit E: | Aerial View-Subject and surrounding area |
| Respondent's Exhibit F: | Screen Shot of Influence Code |
| Respondent's Exhibit G: | Overlay of Harrison Lake Subdivision |
| Respondent's Exhibit H: | Property Record Card-Vacant Lot |
| Respondent's Exhibit I: | Property Record Card-Sycamore Land Trust |
| Respondent's Exhibit J: | Property Record Card-Subject |
| Respondent's Exhibit K: | Property Record Card-9806 West Raintree Drive |
| Respondent's Exhibit L: | Property Record Card-High Acres, LLC |
| Respondent's Exhibit M: | Property Record Card-9601 West Tulip Drive |
| Respondent's Exhibit N: | Property Record Card-9581 West Tulip Drive |
| Respondent's Exhibit O: | Property Record Card-High Acres, LLC |
| Respondent's Exhibit P: | List of Assessed Values for 9815 West Raintree Dr. |
| Respondent's Exhibit Q: | Property Record Card-Subject (2008) |
| Respondent's Exhibit R: | Property Record Card-Subject (2009) |
| Respondent's Exhibit S: | Property Record Card-Subject (2010-2011) |
| Respondent's Exhibit T: | Property Record Card-Subject (2012-2013) |
| Respondent's Exhibit U: | Property Record Card-Subject (2014) |
| Respondent's Exhibit V: | Property Record Card-Subject (2015-2016) |
| Respondent's Exhibit W: | Property Record Card-Subject (2017-2018) |
| Respondent's Exhibit X: | Property Record Card-Subject (2018-2019) |
| Respondent's Exhibit Y: | Warranty Deed-Subject-2011 |
| Respondent's Exhibit Z: | Warranty Deed-Subject-1949 |

- The official record also contains (1) all pleadings, briefs, motions and documents filed with this appeal; (2) all notices and orders issued by the Board or ALJ; (3) an audio recording of the hearing.

OBJECTIONS

- The Assessor objected to all of the Smiths' exhibits, contending that they were provided to her after the Board's deadline for small claims rules. She testified that Mr. Smith provided the evidence at 5:00 p.m. five business days in advance of the hearing, and that he should have provided it by 9:00 a.m. on that day. The Board's rules do not set a specific time in which exhibits are due. We overrule the objection and admit the exhibits.
- The Assessor objected to testimony Mr. Smith provided when he stated that the son of the previous owner of his parcel told him that he thought that his father had harvested timber from the subject property at some time in the past when he owned it. While the testimony is hearsay, and contains hearsay within hearsay, we do not base our decision upon it, and our rules allow its admission in this instance. We overrule the objection and allow the testimony.

BURDEN OF PROOF

- Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule

and assigns the burden of proof to the assessor in two circumstances—where the assessment under appeal represents an increase of more than 5% over the prior year’s assessment, or where it is above the level determined in a taxpayer’s successful appeal of the prior year’s assessment. Ind. Code. § 6-1.1-15-17.2 (b) and (d).

10. In this appeal, the assessment remained the same. The parties agreed that the taxpayer had the burden of proof. We agree that the Smiths have the burden of proof.

SUMMARY OF CONTENTIONS

11. **The Smiths’ Contentions:**

- a. The Smiths contend that the Assessor erroneously classified and assessed their parcel as residential instead of agricultural land used to grow and harvest timber. They bought a larger parcel in 2011 and platted two parcels, which they sold. The remaining subject parcel consists of 2.7 acres. It is an unimproved, vacant lot with no connection to water or sewer. Originally when they bought it they had planned to build a family home on the property but they have not built a house on the land. Smith testified that future development would be costly or nearly impossible due to the need for sewer. *Smith testimony; Pet’r. Exs. 1-3.*
- b. The Smith’s argued the subject property should be assessed at the agricultural rate with an 80% influence factor for timber growing because that is the only current use. The parcel features nearly 100% canopy of trees. *Smith testimony; Pet’r. Ex. 1-3,8.*
- c. At some point in the past, the son of the property’s prior owner said to Mr. Smith that he thought that his father may have harvested timber from the subject property. The Smiths have contacted a forester to discuss pricing and buying trees from it, although no timber has been sold yet. They do not have a land or timber management plan in place. They have not filed any specific forms with the county to indicate they are growing trees to harvest as timber. *Smith testimony.*
- d. Other parcels nearby are assessed at the agricultural rate and they produce timber. They argue the subject property should also be assessed at the agricultural rate because its present use is growing timber for sale. *Smith testimony; Pet’r. Exs. 4-8.*

12. **The Assessor’s Contentions:**

- a. The Assessor contended that the Smiths did not meet their burden of proof to demonstrate that the parcel is used for agricultural purposes. The property was classified as residential prior to the Smiths’ purchase in 2011 and has been part of the residential subdivision since the developer first created it in 1949. When the Smiths bought the land, they intended to build a house. The land continued to be

assessed as residential prior to their purchase, and after they purchased it. *Whipple testimony; Resp't. Exs. C, D, G, H, J, P, Q, R, S, T, V, W, X, Y, Z.*

- b. The Smiths divided and platted the property, selling two parcels. The Assessor continues to assess the remaining 2.7 acre parcel as excess residential acreage. She noted it still receives a “developer’s discount” because the Smiths have not developed the property and it remains a vacant, unimproved residential parcel. *Whipple testimony; Resp't. Ex.*
- c. The Assessor also pointed out that the Smiths do not have a timber management plan in place. They have never filed the form the county requires to be recognized for assessment purposes as harvesting timber. *Whipple testimony.*
- d. The Assessor assesses nearby parcels at the same rate as the Smiths’ property. She provided examples of land held by the Sycamore Land Trust in the same subdivision assessed as residential property at \$35,000 an acre for an unimproved, vacant lot. Unimproved, vacant lots are assessed at \$35,000 per acre and this is the assessment for the Smiths’ parcel lot per acre. The assessment is consistent with other unimproved lots in the same subdivision. *Whipple testimony; Resp't. Ex. I.*

ANALYSIS

- 13. The goal of Indiana’s real property assessment system is to arrive at an assessment reflecting the property’s true tax value. 50 IAC 2.4-1-1(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 3. True tax value does not mean “fair market value” or “the value of the property to the user.” Ind. Code § 6-1.1-31-6(c), (e). It is instead determined under the DLGF rules. Ind. Code § 6-1.1-31-5(a); Ind. Code § 6-1.1-31-6(f). The DLGF defines true tax value as “market value in use,” which it in turn defines as “[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property.” MANUAL at 2.
- 14. Generally, a party may not make a case for changing an assessment simply by showing how the assessment regulations should have been applied. See *Eckerling v. Wayne Twp. Ass’r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (“Strict application of the regulations is not enough to rebut the presumption that the assessment is correct.”). Instead, the party must offer market-based evidence. See *Id.* However, this general principle does not apply to land used for agricultural purposes. The Department of Local Government Finance (“DLGF”) promulgated guidelines for assessing agricultural land using distinctive factors, such as soil productivity, that do not apply to other types of land. See Ind. Code § 6-1.1-4-13. The DLGF determines a statewide base rate by taking a rolling average of capitalized net income from agricultural land. See 2011 REAL PROPERTY ASSESSMENT GUIDELINES, Ch. 2 at 77-78; See also Ind. Code § 6-1.1-4-4.5(e). Assessors then adjust that base rate according to soil productivity factors. They also classify agricultural land into various types. Depending on the classification, assessors may then apply influence factors in predetermined amounts. See 2011 GUIDELINES,

Ch. 2 at 85- 96, 98-100. Thus, for agricultural land, true tax value is the amount determined by applying the Guidelines.

15. Ind. Code § 6-1.1-4-13 provides, in relevant part:
 - (a) In assessing or reassessing land, the land shall be assessed as agricultural land only when it is devoted to agricultural use. (b) For purposes of this section, and in addition to any other land considered devoted to agricultural use, any: ... (4) land devoted to the harvesting of hardwood timber; is considered to be devoted to agricultural use. Agricultural use for purposes of this section includes but is not limited to the uses included in the definition of “agricultural use” in Ind. Code § 36-7-4-616(b), such as...timber, trees ... [or] native timber lands. (d) This section does not apply to land purchased for industrial, commercial, or residential uses.
16. When the claimed agricultural use is timber harvesting, the inquiry becomes challenging. Trees take significant time to mature and as a result harvesting occurs less often. Unlike other types of agriculture such as planting rows of corn, there is often no clear indication of agricultural intent solely from the presence of trees. This can make it more difficult to determine whether a forested property is actually devoted to agricultural use.
17. We first note that the Smiths are correct that for property to qualify as agricultural for assessment purposes, Indiana law does not require that taxpayers file a form with the county. Instead, it must be “devoted to an agricultural use”. The 2011 DLGF guidelines outline four factors related to agricultural timber harvesting: (1) existence of a timber management plan (2) evidence of harvest and sale of timber (3) purchaser intent (4) any change in use. (Chapter 2, p. 89-91). Further, the Guidelines define “woodlands” as “land supporting trees capable of producing timber or other wood products. This land has 50% or more canopy cover and is permanently planted reforested area. Assessors are to apply an influence factor of 80% to woodlands. (Chapter 2, p. 104).
18. In *DeKalb County Assessor v. Chavez*, 48 N.E. 3d 928 (Ind. Tax Court 2016) the Court found that a property purchased for timber harvesting qualified as agricultural even without a timber harvesting plan in place. Likewise, in *Orange County Assessor v. Stout*, 996 N.E. 2d 871 (Ind. Tax Court 2013), the lack of a timber management plan did not prevent a property from receiving an agricultural assessment.
19. This case is somewhat different from the two cases described above because the subject property’s historical use is residential. It is part of a residential subdivision, and the Smiths purchased the property with the intent to build a home. They provided some evidence of past timber harvesting, but as of their 2011 purchase of the subject property, its use was indisputably residential. Thus, we must determine whether the Smiths demonstrated that they have converted the use of the subject property from residential to agricultural.
20. There is some evidence to that effect. Mr. Smith testified that he contacted a forester to inquire about growing timber. He also stated that further development of the subject

property would be costly or nearly impossible. But he did not say that he had no intention of ever building a home on the subject property. It is possible for a property to have more than one use. For instance, a property could be used for timber growth while simultaneously being held for future development. But the law requires that a property be devoted to agricultural use to receive the agricultural rate. We are not convinced that the Smiths have entirely abandoned their original intent of building a home on the subject property. In addition, Ind. Code § 6-1.1-4-13 (d), the statute that provides the agricultural rate for timber harvesting, states that land is not devoted to agricultural use when it is purchased for industrial, commercial, or residential use. And the Smiths admitted to purchasing the property for residential use. Under these circumstances we cannot conclude that the subject property is devoted to agricultural use.

21. Further, the DLGF memo the Smiths provided as evidence also includes an example of facts very similar to this appeal. The DLGF advised then that when an owner admits purchasing a parcel for residential use, no timber management plan is in place, and there is no evidence of past timber harvests, the parcel should be priced using residential excess acreage rate and classification.
22. While both parties provided property records cards for neighboring lots which represented a mix of residential with improvements, unimproved residential lots, and agricultural designations for growing timber, these did not provide any evidence related to the use of the subject property, which is the issue here.

FINAL DETERMINATION

23. Because the Smiths failed to show the subject property was devoted to agricultural use, the Board finds for the Assessor and orders no change to the subject property's 2019 assessment.

ISSUED: December 15, 2020

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

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 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days of the date of this notice.

The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at<<http://www.in.gov/judiciary/rules/tax/index.html>>.