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

Petition: **59-007-09-1-5-00001**
Petitioner: **James E. Stout**
Respondent: **Orange County Assessor**
Parcel: **59-04-22-100-022.000-007**
Assessment Year: **2009**

The Indiana Board of Tax Review (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 Orange County Property Tax Assessment Board of Appeals (PTABOA) by written document dated May 18, 2010.

2. The PTABOA failed to issue a decision following a July 27, 2010 hearing.

3. Indiana Code § 6-1.1-15-1(o) provides that a taxpayer may appeal directly to the Board if the PTABOA fails to give its decision within 120 days of the hearing. The Petitioner filed a Form 131 petition with the Board on December 28, 2010. The Petitioner elected to have the case heard according to the Board's small claims procedures.

4. The Board held the administrative hearing on July 7, 2011, before Administrative Law Judge Rick Barter. The Petitioner appeared *pro se*. The Respondent was represented by counsel, Marilyn S. Meighen.

5. James E. Stout, Assessor Linda Reynolds, and her technical advisor, Kirk Reller, were sworn as witnesses at the hearing.

Facts

6. The property at issue is an improved parcel including a one-acre homesite and 8.12 additional acres located at 8619 Hindoston Road, West Baden Springs, Indiana.

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

8. The county assessor determined the 2009 assessment is $45,600 for land and $62,800 for improvements (total assessed value of $108,400).

9. The Petitioner requested an assessed value of $16,000 for land and $62,800 for improvements (total assessed value of $77,800).

Contentions

10. Summary of the Petitioner's case:

a. The assessor has the burden to prove the assessment is correct because the 2009 assessed value of this property increased by more than five percent from the 2008 assessment. House Enrolled Act 1004, which went into effect July 1, 2011, added Indiana Code § 6-1.1-15-17. If the assessment that is the subject of the review or appeal increased by more than 5% over the assessed value determined by the county assessor for the immediately preceding assessment date for the same property, the county assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal. The prior year assessment was $8,000 for land and $61,600 for improvements. *Stout testimony; Petitioner Exhibits 1, 2.*

b. The 2009 assessment is over-valued based on the reclassification of 8.12 acres of the parcel as excess residential acreage at $4,500 per acre. The land should not be classified as excess residential. It was and should be classified as agricultural woodland. It is 100 percent canopied by trees, which are the only value. The land cannot be used for residential development. It is about a mile off a public road. There is a nearly 200-foot drop off behind the Petitioner's residence. *Stout testimony; Petitioner Exhibits 3, 7.*

c. Some of the neighbors' assessments are substantially lower than the assessment of the subject property even though those properties are similarly heavily timbered, have no road access, and have nearly a 200-foot drop-off. The Real Property Maintenance Report sheets printed from the Orange County Assessor's website show the subject property, the property located just west, and two parcels to the east. *Stout testimony; Petitioner Exhibit 4.*

d. A 10-acre parcel (No. 59-04-22-100-026.000-007) owned by Kevin Coyner, the neighbor to the west, has a one-acre home site that also is assessed like the Petitioner's home site at $6,900. But Mr. Coyner's additional 9 acres of woodland are assessed as non-residential land. A 9.1-acre parcel (#59-04-22-100-019.000-007) and a 9.8-acre parcel (59-04-23-200-025.000-007) are the neighbors to the east, Scott and Norma Anderson. The county assessed the first Anderson parcel as a one-acre home site and the remaining 8.1100 acres is assessed as agricultural land. The second Anderson parcel of 9.8 acres also is assessed as agricultural land. *Stout testimony; Petitioner Exhibit 4.*

e. A 26.68-acre parcel (Nos. 59-04-22-100-018.000-007 and 59-04-23-200-027.000-007) located just 200 yards from the subject property has been listed for-sale for more than two years, most recently for an asking price of $2,324 per acre. *Stout argument; Petitioner Exhibit 5.*

f. The Petitioner purchased the subject parcel on November 4, 2002, for $19,000. *Stout testimony; Petitioner Exhibit 6.*

g. The subject property was listed for-sale for $127,000 in September 2009, but that price would have included other property in addition to the real estate. Furthermore, the price was later lowered and still no offers were received from potential buyers. An asking price for a property that resulted in no offers has no bearing on the assessed value under appeal. *Stout testimony; Respondent Exhibit B.*

11. Summary of the Respondent's case:

a. The new statute concerning shifting the burden of proof from the taxpayer to the assessor when an appealed assessment increased more than five percent from the previous assessment does not apply to this case. The Petitioner still has the burden of proof to present a prima facie case that his 2009 assessment is incorrect. *Meighen argument; Respondent Exhibit F.*

b. The new section should be applied prospectively. The triggering event is the assessment. The next assessment date following the effective date is March 1, 2012. Therefore, this new statute should begin by applying to 2012 assessment appeals. *Meighen argument; Respondent Exhibit F.*

c. The application of Ind. Code § 6-1.1-15-17 should be fair to taxpayers and assessors alike. Information provided on the Board's web site reveals that from January 1, 2011, through and including June 30, 2011, in 63 appeals the Board decided valuation issues. In those the Board found that the petitioner (in each case the taxpayer) failed to make a prima facie case 59 times. Why should those 59 appeals be decided on a different standard? From the Assessor's point of view, how is it fair to have a different standard placed upon her when compared to other assessors in appeals already decided by the Board? Further, from the point of view of an efficient appeals process, how does the Board apply Ind. Code § 6-1.1-15-17 retroactively in those appeals that have already been heard, but not decided as of the effective date of the new legislation? The logical answer to those questions is that the new provision applies prospectively to the assessment date of March 1, 2012. When the legislature enacts new legislation during the pendency of a case, courts apply the substantive provisions of the old statute and may apply the procedural provisions of the new statute unless the procedural changes affect existing rights or obligations. Applying the rules to existing appeals means that a petitioner still has the burden to establish that the assessment is incorrect and to establish the "bottom line" market value-in-use of the property in existing appeals. *See Eckerling v. Wayne Township Assessor,* 841 N.E.2d 674, 676 (Ind. Tax Ct. 2006); *Meridian Towers East & West v. Washington Twp. Assessor,* 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *Clark v. State Bd. of Tax Comm'rs,* 694 N.E.2d 1230 (Ind. Tax Ct. 1998). *Meighen argument; Respondent Exhibit F.*

d. The Board should presume prospective operation only. There are strong and compelling reasons for prospective application. The Petitioner's burden of making a prima facie has been a fundamental principal of law in property tax appeals for many years and Indiana does not favor retroactively applying statutes and amendments. The new legislation does not contain plain language that it operates on appeals pending on the effective date. Strong and compelling reasons do not exist for retroactive application. If applied retroactively, taxpayers and assessors alike who have already received Board determinations on appeals under the pre-amendment statute will be treated differently than parties who are now before the Board on pending matters. Burden is not just a procedural matter. *Meighen argument; Respondent Exhibit F*.

e. A real estate multiple listing sheet from September 2009 shows the subject property listed for sale by Carpenter Realtors at $127,000. This listing supports the assessed value of the property. *Ms. Meighen argument; Respondent Exhibit B.*

f. In this same area some properties have different land types in their 2009 assessments: some are agricultural land and others are residential land. The Respondent presented an aerial view with parcels assessed as residential highlighted in pink and those assessed as agricultural highlighted in yellow. *Respondent Exhibits C, D1*. In addition the Respondent presented PRCs for each of the properties on the map. *Respondent Exhibits D2, D3.* The Indiana Department of Local Government Finance (DLGF) mandated county assessors to require evidence showing land with an agricultural classification is actively farmed or wooded. Wooded land cannot be classified as agricultural unless the owner shows proof, such as a registered forestry or timber plan for the property. As early as 2002 counties began reclassifying agricultural land depending on proof of use. Orange County began reclassifying land such as the Petitioner's where no proof of agricultural use had been provided, and continues to make changes as part of an ongoing process. *Reller testimony.*

g. Indiana Code § 6-1.1-4-13 provides that land is assessed as agricultural only when it is devoted to agricultural use. Mr. Stout may believe that his land should be classified as agricultural because there are trees on seven acres of it and because he has purchased 1,000 trees for the other acre. As the Board has thoroughly explained in other determinations, the fact that trees are located on the property is not enough for an agricultural classification, or a woodland sub-classification. Land is assessed as agricultural only when it is devoted to agricultural use. "Devote" means "to give or apply (one's time, attention, or self) completely. "Agricultural" use is the production of crops, fruits, timber, and the raising of livestock. In order to receive the base rate and negative influence factor for agricultural woodland, a taxpayer must demonstrate that he uses the property for agricultural purposes as of the contested assessment date. This land cannot be classified and valued as something it is not. *Meighen argument; Respondent Exhibit G.*

h. A ratio study of 2009 vacant land sales in Northwest Township of Orange County, approved by the DLGF, demonstrates that the assessment of the subject property is

appropriate. It shows a median sale price of $4,500 per acre for excess residential land between 2002 and 2007 in Northwest Township. *Meighen argument; Reller testimony; Respondent Exhibit E.*

Record

12. The official record contains the following:

a. The Petition,

b. The digital recording of the hearing,

Petitioner Exhibit 1 – "How Your Property Tax Bill Is Calculated" notice dated April 16, 2010,
Petitioner Exhibit 2 – Letter from the Board about Ind. Code § 6-1.1-15-17,
Petitioner Exhibit 3 – Pages 1 and 4 from decision on Pet. 45-037-02-1-1-00082,
Petitioner Exhibit 4 – Property maintenance sheets from assessor's web site for four neighboring parcels,
Petitioner Exhibit 5 – Multiple-listing-service (MLS) listing for a 26-acre parcel very close to the subject property,
Petitioner Exhibit 6 – Subject property's PRC showing date and price of sale,
Petitioner Exhibit 7 – Two photographs showing trees on subject property,
Respondent Exhibit A – PRC for Petitioner's subject property,
Respondent Exhibit B – MLS listing for subject property in 2009,
Respondent Exhibit C – Aerial photograph of subject and surrounding properties,
Respondent Exhibit D – Aerial map drawing of subject and neighboring properties, highlighted according to assessing classification, and PRCs for all properties listed,
Respondent Exhibit E – 2009 Sales Ratio Spreadsheet,
Respondent Exhibit F – Memorandum regarding burden of proof
Respondent Exhibit G – Memorandum regarding agricultural land classification,
Board Exhibit A – Form 131 Petition and the related attachments,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing sign-in sheet,

d. These Findings and Conclusions.

Analysis

13. The Respondent has the burden to establish a prima facie case proving that the current assessment is correct. The Board reached this decision for the following reasons:

a. The assessment of the subject property increased more than five percent from the prior year's assessment.

b. Prior to its hearing in this case the Board sent the following notice:

> On May 10, 2011 Governor Daniels signed House Enrolled Act 1004 into law. Section 32 of the law provides the following:
>
> 32. IC 6-1.1-15-17 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 17. This section applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal increased the assessed value of the assessed property by more than five percent (5%) over the assessed value determined by the county assessor or township assessor (if any) for the immediately preceding assessment date for the same property. The county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.**

c. When statutory language is unambiguous it must be given its clear and plain meaning. And this new provision states a basic rule about reviewing certain assessments in clear and unambiguous terms. Some important details, however, were not addressed when this statutory provision was added. For example, the meaning of the effective date is not specified. In the Petitioner's view, the burden shifting statute should apply because his hearing was held after the effective date of the statute. In the Respondent's view, however, the application of this new statute should begin with cases where 2012 assessments are disputed—not this case.

d. According to the Respondent, Ind. Code § 6-1.1-15-17 should not be applied retroactively. The Board, however, is not convinced that applying it in this case would be a retroactive application. "While statutes are generally given prospective effect absent a contrary legislative intent, it is also true that the jurisdiction in pending proceedings continues under the procedure directed by new legislation where the new legislation does not impair or take away previously existing rights, or deny a remedy for their enforcement, but merely modifies procedure, while providing a substantially similar remedy." *Tarver v. Dix*, 421 N.E.2d 693, 696 (Ind. Ct. App. 1981). According to the U.S. District Court in the Northern District of Indiana, "applying newly enacted procedure to a case awaiting trial in district court is not, strictly speaking, a retroactive application of the law" because the court has not yet "done the affected thing" when the new law is applied. *Brown v. Amoco Oil Co.*, 793 F. Supp. 846, 851 (N.D. Ind. 1992).

e. In *City of Indianapolis v. Wynn*, 157 N.E.2d 828, 834-835 (Ind. 1959), the Indiana Supreme Court held that a statutory amendment specifying that evidence of certain factors would constitute primary determinants of an annexation's merit was a procedural amendment. Because it was about a procedural matter, the amendment applied to a proceeding where the remonstrators had filed their challenge, but no

hearing had yet occurred. The Court reasoned that because the amendment "changes the method of procedure and elements of proof necessary to sustain an annexation ordinance, and does not change the tribunal or the basis of any right, it must be presumed that the Legislature intended that the proceedings instituted under the [prior version of the statute] should be continued to completion under the method of procedure prescribed by the [amendment]." *Id., see also Tarver v. Dix*, 421 N.E.2d at 696 (A statutory presumption of legitimacy applied to a case filed prior to its enactment but heard after the legislation was passed because "the new legislation … provided a substantially similar remedy while delineating more clearly the procedure to be followed in determining and enforcing this right.").

f. According to the Respondent, the assessment is the "thing affected." Indiana Code § 6-1.1-15-17, however, does not change the rules or standards for determining whether an assessment is correct. Nor does the statute make any change to the assessor's duties in making assessments. Assessors are tasked with assessing property based on its "true tax value" which is defined 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). This definition "sets the standard upon which assessments may be judged." *Id.* Moreover, under the trending rules, property values are to be adjusted each year to reflect the change in a property's market value between general reassessment years. Ind. Code § 6-1.1-4-4.5. Assigning the burden of proof during a review should have no impact on the assessor's obligation to value property according to its market value-in-use. In fact, the Respondent made no claim that it would have assessed the Petitioner's property differently if the burden shifting provision had been enacted before the assessment initially was made.

g. The "affected thing" is the review process for certain assessments. If the General Assembly had not intended the law to apply to pending appeals, it could have inserted language to that effect, stating that the law only applied to future assessments. It did not do so.

h. The Respondent raises an argument that some taxpayers and assessors will be treated differently depending on when their hearings are held. But a change in procedure often results in that kind of situation. It is not a reason to delay implementing the new burden shifting statute.

i. Consequently, this new law applies to all pending appeals. Because the assessed value of the Petitioner's property increased by more than 5% over the previous year's assessed value, the Respondent has the burden of proof in this proceeding.

14. The Respondent failed to make a prima facie case to support the existing 2009 assessment. The Board reached this decision for the following reasons:

a. Real property is assessed based on its "true tax value," which means "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." Ind. Code § 6-1.1-31-6(c); 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Relevant evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.

b. In making a case, one must explain how each piece of evidence is relevant to the assessment. *Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (explaining one must "walk the Indiana Board . . . through every element of the analysis").

c. Regardless of the valuation method used, a party must explain how its evidence relates to market value-in-use as of the relevant valuation date. *See O'Donnell v. Dep't of Local Gov't Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *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. The 2009 assessment for the entire property is $108,400. Although the Petitioner indicated he only disputed the land value part of that assessment (it went from $8,000 to $45,600), the Respondent tried to make a case by showing that the overall assessed value is not excessive. The Respondent introduced evidence that the Petitioner attempted to sell the property for $127,000 in September 2009. Nothing was presented, however, that might relate that asking price to the required valuation date, January 1, 2008. Significantly, the Petitioner testified without any contradiction that his asking price included some personal property. Furthermore, the Petitioner never got any offers at that price or even when he subsequently reduced the asking price. The totality of the presentation failed to establish how the Petitioner's asking price is a relevant or probative fact.

e. Other than the Petitioner's unsuccessful attempt to sell the subject property, the rest of the case from both parties was focused on how to value 8.12 acres of the land. More specifically, the focus was on the Petitioner's claim that 8.12 acres should remain assessed as "agricultural" land as it previously had been, rather than reclassified "residential excess acreage." The Respondent, on the other hand, claimed the classification of those 8.12 acres was correctly changed and the value correctly determined on the basis of that new classification.[1]

[1] The underlying premise, of course, is that the established rates for agricultural land values are much lower than the established rates for residential land.

f. The Respondent correctly pointed out that Ind. Code § 6-1.1-4-13 provides land may be assessed as agricultural only when it is devoted to agricultural use. The Respondent's evidence clearly shows that the subject property is in an area where some of the neighboring properties are classified as agricultural land and some are classified as residential land. The Respondent's evidence also shows that the DLGF mandated county assessors to require evidence that land with an agricultural classification is actively farmed or wooded—and wooded land cannot be classified as agricultural unless the owner provides proof, such as a registered forestry or timber plan for the property. Counties have been in the process of making changes on that basis for several years. Apparently the subject property is in an area where some owners provided that kind of proof and some did not. The Respondent changed the land classification and assessment because the Petitioner failed to provide the proof the Respondent required at the local level.

g. Nevertheless, at this point the burden to prove the assessment is correct is on the Respondent and the Petitioner's prior failure to provide proof about the agricultural use of the property during local proceedings is unimportant. What is important is that this record fails to disprove agricultural use or prove the land is used for some other purpose. Testimony merely established that 7 acres are fully canopied and the Petitioner purchased and planted 1,000 trees on the other acre. There is no relevant, probative evidence about the use of the 8.12 acres for some other purpose. The Respondent offered no substantial proof that the 8.12 acres actually is excess residential land. Similarly, the Respondent failed to establish that a median sale price of $4,500 per acre for excess residential land between 2002 and 2007 in Northwest Township has relevance to this case.

h. The Respondent had the burden of proof, but the evidence and arguments presented in this case do not establish that substantially increasing the value of the land based on reclassification from agricultural to residential was correct. More importantly, apart from the classification issue, there also is no probative evidence that the assessed valuation of the land or the entire property is actually the correct market value-in-use. *See O'Donnell*, 854 N.E.2d at 95; *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). The Respondent failed to make her case.

i. When the Respondent has the burden of proving the assessment is correct and fails to provide probative evidence supporting the assessment, the Petitioner's obligation to introduce substantial valuation evidence is not triggered. *Cf. 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

15. The Petitioner only sought relief concerning his land assessment, which increased from $8,000 for 2008 to $45,600 for 2009. The Respondent failed to make a prima facie case to support her change. Therefore, the Board finds in favor of the Petitioner.

Final Determination

In accordance with the above findings and conclusions, the assessment must be changed. The 2009 land assessment must be returned to what it was in 2008, with a total value of $8,000. No change on the improvements.

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.