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

Petition: **59-007-11-1-5-00001**
Petitioner: **James E. Stout**
Respondent: **Orange County Assessor**
Parcel: **59-04-22-100-022.000-007**
Assessment Year: **2011**

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

Procedural History

1. The Petitioner initiated an assessment appeal for the subject property with the Orange County Property Tax Assessment Board of Appeals (PTABOA) for 2011.

2. The PTABOA issued its decision regarding the 2011 assessment on December 4, 2012.

3. The Petitioner timely filed a Form 131 petition with the Board on January 4, 2013. He elected to have the appeal heard under the Board's small claims procedures.

4. Administrative Law Judge Paul Stultz held the Board's administrative hearing on April 16, 2014. He did not inspect the property.

5. Attorney Marilyn Meighen represented the Respondent. James Stout, County Assessor Linda Reynolds, and her technical advisor Kirk Reller were sworn as witnesses. Ms. Reynolds and Mr. Reller did not testify.

Facts

6. The subject property is a single family residence on 9.12 acres located at 8619 North Hindostan Road in West Baden Springs. *Resp't Ex. A.*

7. The PTABOA determined the 2011 assessed value is $34,900 for land and $62,800 for improvements (total assessed value of $97,700).

8. The Petitioner is only contesting the land value. He requested an assessed value of $8,000 for the land. This is the land value that was determined by the Board as a result of the 2009 appeal.

Contentions

9. Summary of the Petitioner' case:

   a. The Petitioner appealed his 2009 land assessment. The Board found in favor of Mr. Stout and determined that the 2009 land value should be returned to the 2008 value of $8,000. *Stout testimony; Pet'r Ex. 1.*

   b. The Indiana Tax Court affirmed the Board's 2009 determination on Mr. Stout's appeal. *Stout testimony; Pet'r Ex. 2.*

   c. The Petitioner did not appeal the 2010 assessment because he thought the result of the 2009 appeal would carry forward to 2010. *Stout testimony.*

   d. The land should be considered agricultural woodland and be valued at $8,000. The Board has ruled on this issue and the Tax Court affirmed. The land is the same, nothing has changed. The $8,000 value should carry forward. *Stout testimony; Pet'r Exs. 1 & 2.*

   e. The Petitioner relies on the Board's determination stating that it contains everything he needs to say. *Stout testimony; Pet'r Ex. 1.*

10. Summary of the Respondent's case:

   a. The Respondent is presenting only a legal argument. In the 2009 determination, the Board found that the Respondent did not make a prima facie case. The determination was based on who had the burden of proof. The effective date of the burden statute was important to the Respondent, so the determination was appealed. The Tax Court affirmed the Board. *Meighen argument.*

   b. The question in this case is - does the value determined in the 2009 determination by the Board and affirmed by the Tax Court carry forward to the 2011 assessment? It does not. *Meighen argument.*

   c. Two Tax Court cases state that every assessment year stands alone. *Fleet Supply, Inc. v. State Board of Tax Commissioners*, 747 N.E.2d 645 issued in 2001. The *Fleet Supply* case cites to *Glass Wholesalers, Inc. v. State Board of Tax Commissioners*, 568 N.E.2d 1116 issued in 1991. *Meighen argument.*

   d. In this case, Mr. Stout has the burden and he has not met that burden. *Meighen argument.*

Record

11. The official record contains the following:

   a. The petition,

b. A digital recording of the hearing,

c. Petitioner Exhibit 1 – Indiana Board of Tax Review Final Determination for James E. Stout, #59-007-09-1-5-00001,
Petitioner Exhibit 2 – Indiana Tax Court opinion – Orange County Assessor v. James E. Stout, Cause No. 49T10-1112-TA-94,

Respondent Exhibit A – Subject property record card,

Board Exhibit A – Form 131 petition and attachments,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing Sign-In Sheet,

d. These Findings and Conclusions.

Burden

12. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that a property's assessment is wrong and what its correct assessment should 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). A burden-shifting statute creates two exceptions to that rule.

13. First, Indiana Code § 6-1.1-15-17.2 "applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior year." Ind. Code § 6.1.1-15-17.2(a). "Under this section, 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 the Indiana Tax Court." Ind. Code § 6-1.1-15-17.2(b).

14. Second, Indiana Code § 6-1.1-15-17.2(d) "applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC § 6-1.1-15." Under those circumstances, "if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving the assessment is correct." The statute was amended on March 25, 2014, to include this language. This change has application to all appeals pending before the Board. *See* P.L. 97-2014.

15. Turning to the case at hand, the assessment did not change between 2010 and 2011. The Petitioner did not appeal the 2010 assessment. The Petitioner, therefore, had the burden.

Analysis

16. The Petitioner made a prima facie case for classification as agricultural woodlands.

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). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut an assessed valuation. Such 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.

b. A party must explain how its evidence relates to the relevant valuation date; otherwise, that evidence lacks probative value. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006). For 2011, the assessment and valuation dates were the same - March 1, 2011. I.C. § 6-1.1-4-4.5(f). Any evidence of value relating to a different date must have an explanation about how it demonstrates, or is relevant to, value as of that date. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).

c. The Petitioner disputes the classification of the property. The only issue before the Board is whether the Petitioner presented a prima facie case that the property should be classified as agricultural rather than residential.

d. The Petitioner's testimony asserted that the subject property "should be considered agricultural—woodland." The Petitioner affirmed when the ALJ restated the Petitioner's position that the land should be assessed as "agricultural woodland for the 8 acres." In support of the Petitioner's claims, the Petitioner introduced without objection the Board determination and Tax Court opinion for the subject property's 2009 appeal. The Petitioner asserted that "everything I have to say is in [the exhibits]." The Petitioner indicated that his arguments were the same as those expressed in the 2009 tax year Board and Tax Court decisions.

e. The Board determination for 2009 summarizes the Petitioner's testimony regarding the subject property: (1) it is "100% canopied by trees, which are the only value," (2) it cannot be used for residential development, and (3) it has been planted with 1,000 trees. The Tax Court opinion for 2009 noted that an aerial map demonstrated that tree canopy covered more than 50% of the subject property.

f. The Petitioner further testified that "the information is the same, nothing has changed," and "nothing is different" from the evidence before the Board in the 2009 appeal.

g. The Respondent did not cross-examine the Petitioner or call any witness to dispute the Petitioner's testimony. The Respondent did not object to the Petitioner's clearly stated intention to rely on the factual assertions contained in the Board and Tax Court decisions.

h. The Respondent argued, correctly, that the holdings in both the Board and Tax Court decisions are irrelevant to the issues before the Board because each tax year stands on its own facts. The Respondent cited *Fleet Supply, Inc. v. State Bd. of Tax Comm'rs,* 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) and *Glass Wholesalers, Inc. v. State Bd. of Tax Comm'rs,* 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991)). Thus, the 2009 decisions cannot be used to invoke collateral estoppel or res judicata to compel a similar result for the 2011 appeal.

i. The Board reminds all persons who appear before the Board that property tax appeals involve complex matters of law. Persons appearing without counsel will be held to the same standard as persons represented by counsel. Many rules are counter-intuitive to a layperson, and some routinely become pitfalls even for seasoned attorneys.

j. The Board does not condone the Petitioner's approach to incorporating testimony and argument from a prior appeal and applying it to the relevant date by claiming that "nothing has changed." This approach would undoubtedly be insufficient to present a prima facie case if the issue were one of valuation. However, the issue before the Board is only whether the property should be classified as agricultural or residential; a determination that does not hinge on constantly changing market factors. Furthermore, the Respondent failed to object to the Petitioner's transparent endeavor to incorporate evidence from the prior appeal. The Board finds that the Respondent has clearly and successfully argued that the 2009 decisions cannot be considered as collateral estoppel or res judicata, but has failed to raise an objection to the incorporation of the decisions as a summary of the Petitioner's testimony and argument. To the extent the Petitioner's incorporation of evidence from the 2009 decisions is improper, the Board finds that the Respondent has waived any objections to the admission of that evidence.[1]

k. Under the Real Property Guidelines, 2002, Book 1, Chapter 2 at 99, land that is covered with more than 50% tree canopy may be considered agricultural woodland. *See also* Real Property Guidelines, 2011, Book 2, Chapter 2 at 89. The Petitioner's evidence indicates the subject property has more than 50% tree canopy, is unsuitable for residential development, and has been replanted with 1000 trees. This has been the case since the 2009 appeal. The Board finds that the Petitioner has presented a prima facie case that the property is entitled to an agricultural classification.

[1] The Board notes that counsel for the Respondent chose not to try this case on the merits, but rather gambled on the Board finding that the Petitioner failed to present a prima facie case. The Board would much prefer the parties to expend less effort on maximizing strategic or technical advantages, and more on presenting sound evidence and arguments in support of an assessment.

l. The burden now shifts to the Respondent to prove that the property must be classified as residential. The Respondent failed to present any evidence to support the claim that the property should be classified as residential. The Board must find for the Petitioner.

Conclusion

17. The Petitioner made a prima facie case for classification as agricultural. The Board therefore finds for the Petitioner. The Respondent is directed to assess the 8.12 acres as agricultural woodland for the 2011 assessment.

Final Determination

In accordance with the above findings and conclusions, the Respondent is directed to reclassify the subject property for the 2011 assessment in accordance with this determination.

ISSUED: July 7, 2014

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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

- 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 after 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>.