

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

**Petition:** 72-007-11-1-4-00015  
**Petitioner:** John Wakelam  
**Respondent:** Scott County Assessor  
**Parcel:** 72-09-05-200-005.000-007  
**Assessment Year:** 2011

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

**Procedural History**

1. The Petitioner initiated an assessment appeal with the Scott County Property Tax Assessment Board of Appeals (PTABOA) by filing a Form 130 dated May 29, 2012.
2. The PTABOA mailed notice of its decision regarding the 2011 assessment on October 12, 2012.
3. The Petitioner appealed the determination to the Board by timely filing a Form 131 petition. He elected to have this case heard according to small claims procedures.
4. Administrative Law Judge Paul Stultz held the Board's administrative hearing on December 11, 2013. He did not inspect the property.
5. Tax Representative Jill Yount represented the Petitioner. Chief Deputy Assessor Jennifer Binkley represented the County Assessor. Jill Yount, John Wakelam, Jennifer Binkley, Aaron Shelhamer and County Assessor Diana Cozart were sworn as witnesses. Mr. Shelhamer and the Assessor did not testify.

**Facts**

6. The property is a saw mill located at 160 East State Road 356, Scottsburg, Indiana.
7. The PTABOA determined the assessed value is \$63,200 for the land and \$44,300 for the improvements for a total assessed value of \$107,500. *See Board Exhibit A.*

8. On the Form 131, the Petitioner claimed the total assessed value should be \$27,900 for land and \$19,000 for the improvements for a total assessed value of \$46,900. *See Board Exhibit A.*

### **Objection**

9. The Respondent objected to the admission of Petitioner Exhibit 2, the property record card of the Frank Miller Lumber Co. (Frank Miller Lumber), stating the property is located in Washington county and is not relevant to Scott County. The Petitioner claimed there are no sawmills in Scott County and there are times when one has to look in other locations and neighborhoods to find comparable property. The Board does not find the Respondent's clarification of her objection sufficient cause to sustain the objection. The exhibit will be admitted into the record and given the appropriate weight.

### **Record**

10. The official record contains the following:
- a. The Petition,
  - b. A digital recording of the hearing,
  - c. Petitioner Exhibit 1 – Handwritten statement by Jackie Roll dated December 10, 2013,  
Petitioner Exhibit 2 – PRC for Frank Miller,  
Petitioner Exhibit 3 – PRC for Burton, Henry & Christine,  
Petitioner Exhibit 4 – PRC for Neace, Shirley & Johnson, Robert,  
Petitioner Exhibit 5 – Photo of subject property taken the last year it was farmed,  
Petitioner Exhibit 6 – Photo of subject property with standing water from flood in 2011,  
Petitioner Exhibit 7 – Photo of Zimmerman property located across the road on same day Photo above (Pet'r Ex. 6),  
Petitioner Exhibit 8 – Photo of Vienna Bridge deck and subject building about eight years ago,  
Petitioner Exhibit 9 – Photo of road in close proximity of subject parcel,  
Petitioner Exhibit 10 – Subject PRC for 2013 showing the PTABOA changes,  
Petitioner Exhibit 11 – Subject PRC for 2013 prior to the PTABOA changes,  
Petitioner Exhibit 12- PRC for parcel #72-05-29-330-009.001-008 owned by Indianapolis Wood Products Inc.,  
Petitioner Exhibit 13- PRC for parcel #72-05-29-330-009.002-008 owned by Indianapolis Wood Products Inc.
  - d. Respondent Exhibit 1 – Letter regarding assessed value change from Diana Cozart, Scott County Assessor,  
Respondent Exhibit 2 – Subject PRC for 2013 showing the PTABOA changes

- e. Board Exhibit A – Form 131 Petition,  
Board Exhibit B – Notices of Hearing,  
Board Exhibit C – Hearing Sign-In Sheet.
- f. These Findings and Conclusions.

### **Burden**

- 11. 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). Nevertheless, the Indiana General Assembly enacted a statute that in some cases shifts the burden of proof:

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.

Ind. Code § 6-1.1-15-17.2.

- 12. The parties agree that the Petitioner has the burden in this case.

### **Contentions**

- 13. Summary of the Petitioner's case:
  - a. The land was initially classified as commercial land and assessed at \$45,000 per acre. The PTABOA reduced the assessment to \$18,000 per acre, which is the same value for industrial sites in Scottsburg. The subject property, however, is outside City of Scottsburg and is a swamp. *Yount testimony*. The land value should be reduced by classifying a portion of parcel as woodlands and negative influence factors for woods should be applied. Further, the fact that the subject property is in a flood plain should be considered in the assessment. *Yount testimony; Pet'r Ex. 4.*
  - b. Local farmer Jackie Roll wrote a statement attesting to the fact he farmed the subject parcel for two years during the 1970's, but he failed to raise a profitable crop due to poor drainage. He terminated the lease for that reason. *Yount testimony; Pet'r Ex. 1.*

- c. On days when the subject property floods, the Zimmerman property directly across the road does not flood. *Wakelam testimony; Pet'r Exs. 6-7.*
- d. The Vienna Bridge deck is a higher elevation than the improvement. The nearby train track has an even higher elevation than the Vienna Bridge deck. As a result, the road acts as a dam causing the water to come up to the floor of the improvement. Originally, the improvement was seven feet higher than the field. *Wakelam testimony; Pet'r Exs. 5-9.*
- e. The Petitioner purchased the subject property because he wanted a parcel without much car traffic. He raised the ground under the improvement, but did not improve the rest of the property because it is a swamp and is in a flood plain. *Yount testimony.*
- f. The Petitioner's representative submitted three comparable properties that have woodlands. First, Frank Miller Lumber is a sawmill located in Salem, Indiana. The land is assessed at \$5,000 per acre and a portion of the land is assessed as woodlands. The Respondent has proposed changing the assessment by classifying a portion of land as undeveloped land instead of woodland. The two properties are in the same business, but not comparable because the subject property is in a swamp. *Yount testimony; Pet'r Ex. 2.*
- g. Second, the Burton sawmill in Jefferson County has primary land assessed at \$7,000 per acre. It has non-tillable land and woodlands that have 60% and 80% influence factors. It is common for sawmill owners to have woodland. *Yount testimony; Pet'r Ex. 3.*
- h. Third, the Johnson's sawmill in Scott County sold for \$50,000 on July 10, 2010. The primary land is assessed at \$12,000 per acre. Similar to the sawmill in Jefferson County, it has non-tillable land and woodlands with 60% and 80% influence factors. This comparable is not in a swamp or in a flood plain. *Yount testimony; Pet'r Ex. 4.*
- i. Unlike the subject property, the three comparable properties do not flood. *Pet'r Ex. 6.* Also, the subject parcel is not developable because it has a large power line easement running through it.
- j. Additionally, the primary land of the subject property should not be assessed the same as the primary land on the parcel owned by Indianapolis Woods Products Inc. located in the city limits because it does not flood. *Wakelam testimony; Pet'r Ex. 12.*
- k. Furthermore, the subject property does not qualify for classified forest because the Petitioner does not intend to harvest timber from the woods on the parcel. Also,

he cannot get flood insurance since the property is in a flood plain. *Wakelam testimony.*

14. Summary of the Respondent's case:

- a. The assessor agrees that the land should be classified differently. The PTABOA changed the 2013 assessed value to \$88,500. The changes include:
- Changing land classification from 499 Commercial to 399 Industrial.
  - Changing agricultural land to undeveloped land.
  - Changing the building height from 16 feet to 14 feet.
  - Changing the condition of building from fair to poor.

Therefore, the total assessed value for 2011 should be \$88,500 due to the corrections immediately above. *Binkley testimony; Respondent's Exs. 1-2.*

- b. There are 1.3214 acres classified as primary land and the value changed from \$45,000 per acre to \$18,000 per acre. The agricultural land classification was changed to undeveloped land because there was no agricultural activity occurring on the property. A 25% influence factor was used to account for the flooding issues described by the Petitioner and is applicable to the undeveloped land. *Binkley testimony; Respondent's Exs. 1-2.*

### **Analysis**

15. The Petitioner failed to present a prima facie case for a change in the 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). 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. Regardless of the method used to challenge an assessment's presumption of accuracy, a party must explain how its evidence relates to market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the 2011 assessment, the valuation date was March 1, 2011. Ind. Code § 6-1.1-4-4.5(f) (2010).

- c. The Petitioner contended the primary industrial land rate of \$18,000 per acre determined by the PTABOA is the same rate used for primary industrial land inside the city of Scottsburg and is too high for the subject property because the subject parcel floods and it is a swamp. But the Petitioner failed to prove what the market value-in-use for the subject property should be. Stating the rate of \$18,000 per acre is too high is merely a conclusory statement. It is not probative evidence and does not help prove the actual market value for the land.
- d. According to the Petitioner, local farmer Jackie Roll stopped farming the subject parcel in the 1970's because he failed to raise a profitable crop due to poor drainage. Even if that is true, the Petitioner failed to explain how that fact relates to proving the market value for March 1, 2011.
- e. The Petitioner testified that the higher elevation of the road and the Vienna Bridge deck caused water to come up to the floor of the improvement. He also testified that the Zimmerman property across the road and three comparable properties do not flood. The frequency of the flooding was not stated. More importantly, the Petitioner did not quantify the decrease in market value based on the flooding. Such evidence does not help prove the assessment must be changed without evidence and analysis to quantify the effect of the flooding on the market value-in-use of the subject property.
- f. Next, the Petitioner presented evidence of three other sawmills and claimed their assessments should be similar to the subject property. A party to an appeal proceeding may introduce evidence of assessments of comparable properties located in the same taxing district or within two miles of the boundary of the taxing district. The determination of whether the properties are comparable shall be based on generally accepted appraisal and assessment principles. Ind. Code § 6-1.1-15-18.
- g. In order to rely on this evidence in an assessment appeal, a party must first show that the properties being examined really are comparable to each other. Conclusory statements that a property is "similar" or "comparable" to another property are not probative of actual comparability. *Long*, 821 N.E.2d at 471. Instead, one must identify the characteristics of the property under appeal and explain how those characteristics compare to the characteristics of the purportedly comparable properties. Similarly, one must explain how any differences between the properties affect their relative market values-in-use. *Id.*
- h. In this case, the Petitioner failed to offer a meaningful comparison of the purportedly comparable properties to the subject property. In fact, other than stating the comparables are saw mills, the Petitioner offered no other evidence comparing them to the subject property. Further, the PTABOA changed the classification of the subject property from agricultural land to undeveloped land due to Petitioner's claim there was no agricultural activity on the property. With this kind of evidence, the Board will not conclude these are comparable properties because they were classified as woodlands and the subject property was classified as industrial and undeveloped.

- i. The Petitioner claimed that the assessment of the subject property should be reduced by classifying a portion of the parcel as woodlands and applying the appropriate influence factor of 80% based on the swamp. But his request fails to conform to the definition of woodland.
- j. Woodlands is a particular land type used to assess agriculture land. *2011 Real Property Guidelines, Chapter 2, at 89-90:*

**Type 6—Woodland**

Woodland is land supporting trees capable of producing timber or other wood products. This land has 50% or more canopy cover or is a permanently planted reforested area. This land use type includes land accepted and certified by the Indiana Department of Natural Resources (DNR) as forest plantation under guidelines established to minimize soil erosion. An 80% influence factor deduction applies to woodland. A wooded parcel of land less than 10 acres may be assessed using the agricultural soil productivity method upon evidence of timber production or other agricultural use. In addition, smaller than 10 acre parcels not contiguous with other wooded parcels under the same ownership may qualify as —agricultural. Of assistance to the assessor in determining the classification is evidence of enrollment in programs which assign a —farm number<sup>l</sup> or programs designed to foster timber production management. The determining factors are provided in Indiana Code section 6-1.1-4-13, the Manual, and Guidelines. Of particular interest to the assessing official is the reason for the purchase of the land. While not controlling in the assessing official’s determination, the following factors may be of assistance: (1) the acreage is designated by the DNR as qualifying for one of their classified programs. The DNR has established a 10 acre minimum for its programs; and (2) the owner can show an active timber management program in place which will improve the marketability of the forest for an eventual harvest; and (3) the owner possesses a DNR management plan to further enhance the forest quality; and (4) the owner can show that regular forest harvests have occurred over a long time period.

Here, the Petitioner did not establish that there has been any agricultural activity on the subject property since the 1970’s. Also, he stated that the property does not qualify for a classified forest and that he did not intend to harvest timber from the woods on the parcel. The Petitioner failed to provide probative evidence that the subject proper should be classified as woodland.

- k. When taxpayers fail to provide probative evidence supporting their position that an assessment should be changed, the Respondent’s duty to support the assessment with

substantial evidence is not triggered. *See Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003); *Whitley Products*, 704 N.E.2d at 1119.

1. In this appeal, the Petitioner failed to provide probative evidence of comparable properties for classifying a portion of the land as woodland in order to support his position for a change in the assessment. While the Petitioner failed to make a prima facie case for reducing the subject property's assessment, the Assessor conceded that the property was worth only \$88,500 for 2011. The Board accepts the Assessor's concession

### **Final Determination**

The Petitioner failed to make a prima facie case. The Board, though, accepts the Assessor's concession that the subject property's assessment should be reduced to \$88,500 for 2011.

ISSUED: February 7, 2014

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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 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>>.