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

Petition: **19-006-09-1-5-00019**
Petitioner: **Edward Wineinger**
Respondent: **Dubois County Assessor**
Parcel: **19-01-27-100-003.000-006**
Assessment Year: **2009**

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

Procedural History

1. On May 15, 2010, the Petitioner initiated an assessment appeal with the Dubois County Property Tax Assessment Board of Appeals (PTABOA).

2. The PTABOA issued notice of its decision on September 10, 2010.

3. On October 15, 2010, the Petitioner filed a Form 131 petition with the Board and elected to have his appeal heard according to the Board's small claims procedures.

4. The Board's designated administrative law judge, Rick Barter, held a hearing on January 10, 2012. He did not inspect the subject property.

5. Petitioner Edward Wineinger, Dubois County Assessor Gail Gramelspacher, her deputy Angie Giesler, and her contract employee Natalie Jenkins, were sworn as witnesses. James E. Stoltz appeared as the Petitioner's counsel. Marilyn Meighen appeared as the Respondent's counsel.

Facts

6. The subject property is 30 acres of unimproved land located off North County Route 925 East, in Dubois, Indiana.

7. The PTABOA determined that the subject parcel's 2009 assessment was $63,000.

8. The Petitioner claimed the assessment should be $9,600.

Contentions

9. Summary of the Petitioner's case:

a. Under Ind. Code § 6-1.1-15-17, an assessor has the burden of proof in appeals where a property's assessment increased by more than 5% over the previous year. The subject property's 2008 assessment was only $9,600—far less than the March 1, 2009 assessment under appeal. The Respondent therefore has the burden of proof. *Stoltz argument; Wineinger testimony; see also, Resp't Ex. A.*

b. Regardless, the property's 2009 assessment is too high. The Respondent should not have changed a portion of the land's classification from "agricultural woodland" to "residential non-ag." The subject parcel is completely wooded and cannot be used for residential development because it lacks utilities or an access road. The parcel is landlocked; the Petitioner can only access it by getting permission to trespass on neighboring land. Nobody has lived on the property for 75 years and there are no structures on it. *Wineinger testimony; see also, Pet'r Exs. 1-3.*

c. Most of the neighbors' assessments are substantially lower than the subject property's assessment even though the neighbors' properties are as heavily timbered as the subject property. To illustrate that point, Mr. Wineinger pointed to the following information:

- A 119.7-acre adjoining parcel owned by Frank and William Otte is assessed at $8,100 and is classified as agricultural, including tillable land, woodland and classified forest.
- A 39-acre non-adjoining parcel owned by Nordoff Real Estate Trust is assessed at $100 and is classified as agricultural, classified forest land.
- A 40-acre non-adjoining parcel owned by William A. Nordoff is assessed at $100. It is also classified as agricultural, classified forest land.
- A 25-acre parcel owned by Michael K. Braun is assessed at $100. Like the two previous parcels, it is classified as agricultural, classified forest land.
- A 40-acre adjoining parcel to the east of the subject property owned by James & Linda McGovren, is assessed at $200. It is assessed as agricultural and divided between classified forest, woodland, and tillable land.
- A 35-acre parcel owned by Jason and Jennifer Braunecker is located just to the northeast of the subject property and is assessed at $72,800. It is classified as residential, non-agricultural land.

Wineinger testimony; Pet'r Exs. 3-4.

d. The subject parcel was once part of a farm owned by the Petitioner's grandfather. The Petitioner has no plans to develop or build on the land, and in 2011, he secured a Forest Management Plan for the subject property. The plan acknowledges that the parcel includes substantial forestry and has previously undergone tree harvests. It

also lays out a growth and enhancement plan for harvesting timber once an access road can be built. *Wineinger testimony; Pet'r Ex. 5.*

10. Summary of the Respondent's case:

a. Because Ind. Code § 6-1.1-15-17 does not apply to this case, the Petitioner has the burden of proof. That statute should be applied prospectively only. The next assessment date following the statute's July 1, 2011 effective date is March 1, 2012; the statute therefore should first apply to 2012 assessment appeals. *Meighen argument.*[1]

b. As to the subject property's assessment, some properties in the area are classified as agricultural while others are assessed as "classified forest," as defined in Indiana Code § 6-1.1-6-1. Both Ind. Code § 6-1.1-4-13 and Department of Local Government Finance ("DLGF") regulations require land to be actively farmed or wooded as a prerequisite to being classified as agricultural. And wooded land cannot be classified as agricultural unless the owner produces a registered forestry or timber plan for the property. *Jenkins testimony.* In this case, the Petitioner offered no proof of agricultural use; he did not file a farmer's personal property return (Form 102), and while he has a Forest Management Plan from October 2011, he did not have such a plan in place on March 1, 2009. *Id.; Resp't Ex. B; Meighen argument.*

c. The Respondent based the $2,100 per acre base rate that she used to assess the subject land on unimproved residential land sales from Columbia Township. The price per acre was determined by parcel size—the larger the parcel, the lower the price per acre. The Respondent used those same sales in her annual ratio study as dictated by 50 IAC 27. And the DLGF approved that ratio study. *Jenkins testimony; Resp't Exs. D-E.*

Record

11. The official record is made up of the following:

a. The Form 131 petition,

b. Digital recording of the hearing,

c. Petitioner Exhibit 1 – Four photographs of subject property,
Petitioner Exhibit 2 – Four photographs of adjoining property,
Petitioner Exhibit 3 – Plat map including subject property,
Petitioner Exhibit 4 – Property record cards ("PRCs") for subject property and six nearby properties,

[1] The Respondent indicated that, although she was offering evidence, she did not intend to waive her argument that the Petitioner had has burden of proof. *Meighen argument*.

Petitioner Exhibit 5 – The Wineinger Forest Management Plan,
Petitioner Exhibit 6 – Tax bill for subject property dated April 12, 2010,

Respondent Exhibit A – PRC for subject property with computer screen shot,
Respondent Exhibit B – Results for personal property search and blank Form 102 return,
Respondent Exhibit C – Wineinger Forest Management Plan,
Respondent Exhibit D – Letter from DLGF confirming acceptance of 2009 Dubois County ratio study and 2009 ratio study (four pages),
Respondent Exhibit E – Excerpts from 50 IAC 27,

Board Exhibit A – Form 131 petition,
Board Exhibit B – Hearing notice,
Board Exhibit C – Hearing sign-in sheet.

d. These Findings and Conclusions.

Analysis

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). Effective July 1, 2011, however, the Indiana General Assembly enacted Ind. Code § 6-1.1-15-17, which has since been repealed and re-enacted as Ind. Code § 6-1.1-15-17.2.[2] That statute shifts the burden to the assessor in cases where the assessment under appeal has increased by more than 5% from its previous year's level:

> 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.

I.C. § 6-1.1-15-17.2.

[2] HEA 1009 §§ 42 and 44 (signed February 22, 2012). This was a technical correction necessitated by the fact that two different provisions had been codified under the same section number.

13. There is no dispute that the subject property's assessment increased more than 5% between March 1, 2008, and March 1, 2009. But the parties disagree about whether Ind. Code § 6-1.1-15-17.2 applies to this proceeding. In the Petitioner's view, the statute should apply because the hearing was held after the statute's original effective date. The Respondent, by contrast, argues that the statute should first apply to appeals of assessments made in 2012.

14. The Board recently answered that question in two cases. *See Echo Lake, LLC v. Morgan County Assessor*, pet. nos. 55-016-09-1-4-00001 -02 and -03 (Ind. Bd. of Tax Rev. Nov. 4, 2011) and *Stout v. Orange County Assessor*, pet. no. 59-007-09-1-5-00001 (Ind. Bd. Tax Rev. Nov. 7, 2011). In each case, the Board held that Ind. Code § 6-1.1-15-17 applied to appeals where the Board conducted its hearing after July 1, 2011, even if the assessment under appeal was made before that date. *Id.* As explained in those decisions, "'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.'" *Echo Lake,* slip op. at 8-9 (quoting *Tarver v. Dix,* 421 N.E.2d 693, 696 (Ind. Ct. App. 1981)). According to the U.S. District Court for 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).

15. The Board's decisions also point to *City of Indianapolis v. Wynn,* 157 N.E.2d 828, 834-835 (Ind. 1959), where the Indiana Supreme Court held that a statutory amendment specifying that evidence of certain factors constituted primary determinants 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 693, 696 (Ind. Ct. App. 1981) (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.").

16. Indiana Code § 6-1.1-15-17.2 does not change the rules or standards for determining whether an assessment is correct. Nor does it change an assessor's duties in making assessments. Assessors must assess real 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

(2009)). This definition "sets the standard upon which assessments may be judged." *Id.* Moreover, property values are to be adjusted each year to reflect the change in a property's value between general reassessment years. *See* Ind. Code § 6-1.1-4-4.5. The question of whether the assessor will have the burden of proof at hearing based on how much a property's value changes year over year should not affect the assessor's obligation to assess the property according to its market value-in-use.

17. Thus, the "affected thing" under Ind. Code § 6-1.1-15-17.2 is the evidentiary hearing wherein the Board evaluates the proof offered by the parties—not the assessor's act of valuing the property in the first place. If the Indiana General Assembly had not intended the law to apply to pending appeals, it could have said that the law only applies to future assessments. But the General Assembly did not do so.

18. Consequently, Ind. Code § 6-1.1-15-17.2 applies to all appeals that had not been heard as of July 1, 2011. Because the subject property's March 1, 2009 assessment increased by more than 5% over its assessment for the previous year, the Respondent has the burden of proof in this appeal.

19. The Respondent failed to make a prima facie case to support the subject property's March 1, 2009 assessment. The Board reaches this decision for the following reasons:

    a. As explained above, Indiana assesses real property based on its market value-in-use. MANUAL at 2. Thus, a party's evidence in an assessment appeal must be consistent with that standard. *See id*. For example, a market-value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice often will often be probative. *Id.; see also, Kooshtard Property VI*, 836 N.E.2d at 506 n. 6. A taxpayer may also offer actual construction costs, sales information for the subject or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.

    b. The Respondent correctly points out that Ind. Code § 6-1.1-4-13 requires land to be devoted to agricultural use before it can be classified and assessed as agricultural. The Respondent further argues that her assessment should stand because the Petitioner failed to offer evidence that he devoted the subject property to agricultural use as of the March 1, 2009 assessment date. But it was not the Petitioner's burden to prove that the assessment wrong; rather, the Respondent had the burden of proving that the assessment was correct. And the Respondent failed to meet that burden.

    c. The Respondent offered nothing to show that the subject property's use had changed between 2008, when it was assessed as agricultural land, and 2009, when the Assessor re-classified the property.[3] Indeed, the Respondent offered little evidence to show how the Petitioner used the subject property at all. At most, the

[3] The Board therefore need not decide if an intervening change in a property's use affects whether Ind. Code § 6-1.1-15-17.2's burden-shifting provision is triggered in the first place.

Respondent pointed to the facts that the Petitioner had not filed a farmer's personal property tax return and that the Petitioner did not enter into a Forest Management Plan until October 2011.

d. But even if one assumes that the Petitioner devoted the subject property to something other than agricultural use in 2009 and therefore that the property should not have been assessed as agricultural land, the Respondent failed to offer any probative evidence to show what the property's actual market value-in-use was. The Respondent primarily claimed that the property's assessment was valid because (1) the assessment/sale ratios of other properties fell within statistically acceptable ranges and (2) DLGF accepted the Respondent's ratio study.

e. The Board is not persuaded. The Respondent offered no support for her underlying premise—that an assessment is correct even if it exceeds a property's market value-in-use as long as assessments in general are within acceptable statistical ranges for measuring the overall uniformity, equality, and accuracy of mass appraisals. To the contrary, an individual taxpayer has the right to appeal his property's assessment on grounds that the assessment does not accurately reflect the property's market value-in-use. *See* MANUAL at 5 (allowing a taxpayer to offer evidence of a property's market value-in-use to rebut assessment and to show property's actual true tax value). And that right exists independently of any constitutional or statutory requirements for uniform and equal assessments.[4]

f. Because the Assessor failed to meet her burden of proof, the subject property's assessment must be returned to its March 1, 2008 level of $9,600.

Conclusion

20. Because the subject property's assessment increased by more than 5% between March 1, 2008 and March 1, 2009, the Respondent bore the burden of proving that the property's 2009 assessment was correct. The Respondent, however, failed to make a prima facie case supporting that assessment. The Board therefore finds in favor of the Petitioner.

Final Determination

In accordance with the above findings and conclusions, the subject property's March 1, 2009 assessment must be changed to $9,600.

[4]The Indiana Constitution requires the General Assembly to provide "a uniform and equal rate of property assessment and taxation." IND. CONST. ART. 10 § 1. Indiana Code § 6-1.1-2-2 similarly requires property to "be assessed on a just valuation basis and in a uniform and equal manner."

ISSUED: April 12, 2012

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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.