

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

Petitions: 07-002-02-1-5-00040
07-002-02-1-5-00041
Petitioner: Diane Ritterskamp
Respondent: Jackson Township Assessor (Brown County)
Parcels: 005-05580-00
005-05680-05
Assessment Year: 2002

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

Procedural History

1. The Petitioner initiated an assessment appeal with the Brown County Property Tax Assessment Board of Appeals (PTABOA) by written document dated April 27, 2005.
2. The PTABOA issued notice of its decision on February 15, 2006.
3. The Petitioner appealed to the Board by filing a Form 131 with the county assessor on February 23, 2006. The Petitioner elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing to the parties dated October 12, 2006.
5. Administrative Law Judge Paul Stultz held the administrative hearing on December 19, 2006.
6. The Petitioner appeared and was sworn as a witness at the hearing. No one appeared at the hearing on behalf of the Respondent.

Facts

7. The property is classified as a residential homesite and excess residential acreage located at 6172 Northshore Drive, Unionville, Indiana. The property was initially assessed in 2002 as two individual parcels (005-05580-00 and 005-05680-05). During the local appeal process, the PTABOA administratively combined the two parcels into a single parcel (005-05580-00).

8. The Administrative Law Judge did not conduct an inspection of the property.
9. After the administrative combination, the assessed value of parcel 005-05580-00 as determined by the PTABOA is:¹

land \$56,000	improvements \$49,600	total \$105,600.
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10. The Petitioner contended the land should be classified as agricultural, but did not propose a revised assessed land value. The Petitioner did not contest the assessed value of the improvements.

Issue

11. Summary of the Petitioner's contentions in support of alleged error in the assessment:
 - a. The land is pasture and woodland. It should be classified as agricultural, as it was for the 1995 reassessment. *Ritterskamp testimony; Pet'r Ex. 5.*
 - b. In a document dated December 19, 2006, Mr. Frank Rodgers stated he had cut hay on the Petitioner's parcel for several years. *Pet'r Ex. 2.* The Petitioner could not remember if Mr. Rodgers did so in 2002. *Ritterskamp testimony.*
 - c. The Petitioner presented a proposed timber contract dated April 23, 2006. *Pet'r Ex. 3.* This proposed contract was never finalized. *Ritterskamp testimony.* The Petitioner also presented information from the Indiana Department of Natural Resources concerning logging activities, including a blank timber contract and a list of potential timber buyers in the area to establish that she was serious about conducting logging activities on the parcel. *Ritterskamp testimony; Pet'r Ex. 4.*
 - d. The Petitioner presented a realtor's market analysis dated November 9, 2004. The analysis concluded the November 2004 value of the property was in a range between \$111,521 and \$114,345. *Pet'r Ex. 7.*

Record

12. The official record for this matter is made up of the following:
 - a. The Petitions,
 - b. A digital recording of the hearing,
 - c. Petitioner Exhibit 1 - Notification of Final Assessment Determination (Form 115),
Petitioner Exhibit 2 - Statement of Frank Rodgers dated December 19, 2006,
Petitioner Exhibit 3 - Proposed timber contract dated April 23, 2006,

¹ The Petitioner filed Form 131 Petitions for both parcels, 005-05580-00 and 005-05680-05, but the Notification of Final Assessment Determination (Form 115) indicates there is no assessed value assigned to parcel 005-05680-05 (Petition 07-002-02-1-5-00041) after combining the parcels. *Bd. Ex. A.*

Petitioner Exhibit 4 - Timber contract information from the Indiana Department of Natural Resources,
Petitioner Exhibit 5 - Property record card for the 1995 reassessment,
Petitioner Exhibit 6 - Form 130 and 131 Petitions,
Petitioner Exhibit 7 - Market analysis,
Board Exhibit A - Form 131 Petitions for Review of Assessment,
Board Exhibit B - Notices of Hearing on Petition,
Board Exhibit C - Hearing sign-in sheet,

d. These Findings and Conclusions.

Analysis

13. The most applicable cases are:

- a. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect and specifically what the correct assessment would 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).
- b. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer’s duty to walk the Indiana Board . . . through every element of the analysis”).

14. The Petitioner did not provide sufficient evidence to support her contentions. This conclusion was arrived at because:

- a. The Indiana General Assembly directed the Department of Local Government Finance (DLGF) to establish rules for determining the true tax value of agricultural land. Ind. Code § 6-1.1-4-13. The DLGF established a base rate of \$1050 for assessing agricultural land throughout the state. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002—VERSION A, ch. 2 at 98-99 (incorporated by reference at 50 IAC 2.3-1-2). These Guidelines direct assessors to adjust the base rate using soil productivity factors developed from soil maps published by the United States Department of Agriculture. *Id.* at 105-06. The Guidelines also authorize some negative influence factors. *Id.* at 102-05.
- b. In order to get an agricultural land assessment as set forth in the Guidelines, the Petitioner would have to demonstrate that she devoted the subject property to agricultural purposes as of the assessment date, March 1, 2002. Merely proving *some* agricultural use is not sufficient for a parcel to be assessed as agricultural land because the statute requires "land shall be assessed as agricultural land only

when it is devoted to agricultural use." Ind. Code § 6-1.1-4-13(a). The word "devote" means "to give or apply (one's time, attention, or self) completely." WEBSTER'S II NEW RIVERSIDE DICTIONARY 192 (revised edition). This statutory language does not appear to preclude other incidental uses, but the weight of the evidence in this case does not establish that the subject property is *devoted* to agricultural use. The fact that the property was considered to be agricultural for prior assessments is irrelevant. The fact that someone cut hay on part of the property and took the hay as payment establishes little, if anything, toward the purported agricultural use of the property. (The Petitioner explained, "I get my field mowed and he gets the hay.") The Petitioner failed to establish how the fact that she considered cutting and selling some trees in 2006 proves agricultural use of the property in 2002. Therefore, the subject property cannot be assessed as agricultural land.

- c. Real property is assessed on the basis of 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). There are three generally accepted techniques to calculate market value-in-use: the cost approach, the sales comparison approach, and the income approach. The primary method for assessing officials to determine market value-in-use is the cost approach. *Id.* at 3. The value established by use of the Guidelines, while presumed to be accurate, is merely a starting point. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut that presumption. 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. MANUAL at 5.
- d. The Petitioner introduced a market analysis that concluded the November 2004 value of the property was between \$111,521 and \$114,345 (more than the current assessment). In presenting this evidence, the Petitioner essentially relies on a sales comparison approach to establish the market value-in-use of the subject property. *See* MANUAL at 3 (stating that the sales comparison approach "estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market."). In order to use the sales comparison approach as evidence in a property assessment appeal, the proponent must establish the comparability of the properties. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the two properties. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). The Petitioner is "responsible for explaining to the Indiana Board the characteristics of [her] own property, how those characteristics compared to those of the purportedly comparable properties, and how any differences affected the relevant market value-in-use of the properties." *Id.* at 471. The Petitioner offered no such explanation. Additionally, for the 2002 reassessment, an assessment is to reflect

the value of the property as of January 1, 1999. MANUAL at 4. If the Petitioner presents evidence of value relating to a different date, she is required to relate it to value as of January 1, 1999. *Id.* at 471. The Petitioner, however, failed to establish any link between the November 2004 market analysis range of values and the January 1, 1999, valuation date. For both reasons, the market analysis has no probative value.

- e. The Petitioner's argument focuses on the methodology used for the assessment. Even if the assessment of the subject property did not fully comply with the Guidelines, the Petitioner failed to show that the assessment was not a reasonable measure of true tax value. *See* Ind. Admin. Code tit. 50, r.2.3-1-1(d) (“failure to comply with the ... Guidelines ... does not in itself show that the assessment is not a reasonable measure of ‘True Tax Value[.]’”). *See Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). The Petitioner was required to show through market-based evidence that the assessed value does not accurately reflect the property’s market value-in-use. *See Id.* (stating that a taxpayer who focused only on methodology and did not prove what the market value-in-use should be failed to make a prima facie case). The Petitioner did not do so. Accordingly, the Petitioner failed to establish a prima facie case.
- f. When a taxpayer fails to provide probative evidence supporting its 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).

Conclusion

- 15. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should not be changed.

ISSUED: _____

Commissioner,
Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Trial Rules are available on the Internet at http://www.in.gov/judiciary/rules/trial_proc/index.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.