

INDIANA BOARD OF TAX REVIEW

Small Claims Final Determination Findings and Conclusions

Petition No.: 45-030-22-1-4-00551-23
Petitioner: Claven-Clifford, Inc.
Respondent: Lake County Assessor
Parcel: 45-12-29-202-001.000-030
Assessment Year: 2022

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 appealed the 2022 assessment of its property located at approximately 8600 Taft Street in Merrillville on November 3, 2022.
2. After holding a hearing, the Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination sustaining the assessment of the vacant land at \$665,400 on August 10, 2023.
3. On September 7, 2023, the Petitioner appealed to the Board, electing to proceed under the small claims procedures.
4. On June 4, 2024, Dalene McMillen, the Board’s Administrative Law Judge (“ALJ”), held a telephonic hearing. Neither the Board nor the ALJ inspected the property.
5. George Loxas, president of Claven-Clifford, Inc. appeared for the Petitioner. Ayn Engle appeared as the Respondent’s attorney. Loxas and John Yanek, representative for Nexus LTD, all testified under oath.

Record

6. The parties submitted the following exhibits:

Petitioner Exhibit 1: USDA Farm map prepared on November 29, 2016,
Petitioner Exhibit 2: USDA Farm map prepared on November 19, 2021,
Petitioner Exhibit 3: Rent lease agreement between George Loxas and JP Farms, dated March 14, 2022,

Petitioner Exhibit 4: FSA “Report of Commodities Farm and Tract Detail Listing” for JP Farms,
Petitioner Exhibit 5: Lake Circuit Court “Order Directing the Auditor of Lake County, Indiana to Issue Tax Deed,” dated December 9, 2021,
Petitioner Exhibit 6: Petition for Review of Assessment Before the Indiana Board of Tax Review – Form 131,
Petitioner Exhibit 7: Photograph of the subject property,
Petitioner Exhibit 8: 2022 subject property record card,
Petitioner Exhibit 9: GIS map of the subject property.

Respondent Exhibit A: 2008 through 2022 subject property record cards,
Respondent Exhibit B: Tax deed for the subject property,
Respondent Exhibit C: Sales disclosure form for the subject property,
Respondent Exhibit D: Two GIS maps of the subject property,
Respondent Exhibit E: Two Merrillville zoning maps,
Respondent Exhibit F: Two Google Earth maps of the subject property,
Respondent Exhibit G: Claven-Clifford property record cards for 9005 Taft Street, 3630 Calumet Avenue, 3700 Calumet Avenue, 4212 Johnson Avenue, 4536 Baltimore, 1205 Calumet Avenue, 8777 Taft Street, 4110 Calumet Avenue, 4120 Calumet Avenue and 520 Douglas Street.

- a) The record also includes the following: (1) all pleadings and documents filed in this appeal; (2) all orders, and notices issued by the Board or ALJ; and (3) a digital recording of the hearing.

Objection

7. The Assessor objected to all of the Petitioner’s exhibits on the grounds the Petitioner failed to mail or e-mail copies of the exhibits to the Assessor’s counsel as required by the Board’s hearing instructions. In response, the Petitioner argued that per the hearing instructions the exhibits were e-mailed directly to the Assessor. The ALJ took the objection under advisement.
8. The hearing instructions state, “**Prior to the hearing** both the taxpayer and the county assessor must **MAIL OR E-MAIL THEIR EXHIBITS** to the Board and the opposing party.” (emphasis in original). In addition, it listed e-mail addresses for the Petitioner and the Assessor. The Petitioner e-mailed its exhibits to the address listed for the Assessor. At the time the hearing instruction was sent out, the Assessor’s counsel had not yet entered her appearance. Her appearance was entered at the time the Petitioner exchanged its exhibits. While 52 IAC 4-4-6 requires service on an authorized representative such as an attorney, under these circumstances we do not find the Petitioner’s failure to serve the

exhibits on the Assessor's counsel in addition to the Assessor merits the exclusion of the exhibits. Thus, we overrule the objection and admit the exhibits.

Findings of Fact

9. The subject property consists of 10.011 acres of undeveloped land covered in brush and trees. It also contains drain tiles that traverse the subject property and an adjacent agricultural property. The subject property is zoned as "highway commercial." *Loxas testimony; Yanek testimony; Pet'r Ex. 8; Resp't Ex. A, E.*
10. In September of 2020, the Petitioner purchased the subject property at a tax sale. On December 9, 2021, the Lake Circuit Court issued an order directing the Lake County Auditor to issue a tax deed to the Petitioner. The Auditor issued the deed on February 18, 2022. *Loxas testimony; Yanek testimony; Pet'r Ex. 5; Resp't Exs. B & C.*
11. The subject property has had a United States Department of Agriculture Farm Service Administration ("FSA") farm number since November 29, 2016. On November 19, 2021, FSA combined the subject parcel with two adjoining parcels (also owned by the Petitioner) under a single farm number. Sometime in March of 2022, the Petitioner began leasing the subject property with the other two parcels to a farmer. The farmer chose not to till or plant the subject property because it was covered in brush and small trees. In addition, the farmer would need approval from FSA and the Indiana Department of Environmental Management to clear the trees. *Loxas testimony; Yanek testimony; Pet'r Exs. 1-5; Resp't Ex. G.*
12. The 2021 assessment was \$665,400, identical to the 2022 assessment under appeal. *Resp't Ex. A.*

Contentions

13. Summary of the Petitioner's case:
 - a) The Petitioner claimed that the subject property should be assessed as non-tillable agricultural land. In support of this, it noted that the subject property:
 - Consists of trees, brush, and drain tiles,
 - Has had an FSA farm number since 2016,
 - Is not being used for commercial activity, and
 - Was purchased with the intention of leasing it to a farmer along with other adjacent land.

Loxas testimony; Pet'r Exs. 1-5.

14. Summary of the Respondent's case:
- a) The Assessor argued that the subject property was properly assessed as commercial land because it is zoned for commercial use and has never been farmed. In addition, the Assessor argued the Petitioner failed to establish that the property is devoted to agricultural use. In particular, the Assessor argued that the intentions of the Petitioner are irrelevant because it did not own the property as of the assessment date. The Assessor also pointed out that the Petitioner is a general real estate investment company and not exclusively in the business of farming. *Yanek testimony; Resp't Exs. A & D-F.*

Burden of Proof

15. Generally, the taxpayer has the burden of proof when challenging a property tax assessment. Accordingly, the assessment on appeal, "as last determined by an assessing official or the county board," will be presumed to equal "the property's true tax value." Indiana Code § 6-1.1-15-20(a) (effective March 21, 2022).
16. However, the burden of proof shifts if the property's assessment "increased more than five percent (5%) over the property's assessment for the prior tax year." I.C. § 6-1.1-15-20(b). Subject to certain exceptions, the assessment "is no longer presumed to be equal to the property's true tax value, and the assessing official has the burden of proof." *Id.*
17. If the burden has shifted, and "the totality of the evidence presented to the Indiana board is insufficient to determine the property's true tax value," then the "property's prior year assessment is presumed to be equal to the property's true tax value." I.C. § 6-1.1-15-20(f).
18. Here, the current assessment and previous assessment were the same at \$665,400. Thus, the Petitioner has the burden of proof.

Analysis

19. The Petitioner made a prima facie case for a change in assessment. We reach this decision for the following reasons:
- a) The Indiana Board of Tax Review is the trier of fact in property tax appeals, and its charge is to "weigh the evidence and decide the true tax value of the property as compelled by the totality of the probative evidence before it. I.C. § 6-1.1-15-20(f). The Board's conclusion of a property's true tax value "may be higher or lower than the assessment or the value proposed by a party or witness." *Id.* Regardless of which party has the initial burden of proof, either party "may present evidence of the true tax value of the property, seeking to decrease or increase the assessment." I.C. § 6-1.1-15-20(e).

- b) The goal of Indiana’s real property assessment system is to arrive at an assessment reflecting a property’s true tax value. 52 IAC 2.4-1-2; 2021 REAL PROPERTY ASSESSMENT MANUAL at 3. True tax value does not mean “fair market value” or “the value of the property to the user.” I.C. § 6-1.1-31-6(c), (e). Instead, it is determined under the rules of the Department of Local Government Finance (“DLGF”). I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). The DLGF defines true tax value as “market value-in-use,” which it in turn defines as “[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property.” 2021 REAL PROPERTY ASSESSMENT MANUAL at 3.
- c) The statutory and regulatory scheme for assessing agricultural land requires the Board to treat challenges to those assessments differently than other assessment challenges. For example, the legislature directed the DLGF to use distinctive factors such as soil productivity that do not apply to other types of land. I.C. § 6-1.1-4-13. The DLGF determines a statewide base rate by taking a rolling average of capitalized net income from agricultural land. *See* 2021 GUIDELINES, Ch. 2 at 73-74. Assessors then adjust that base rate according to soil productivity factors. Depending on the type of agricultural land at issue, assessors may then apply influence factors in predetermined amounts. *Id.* at 83, 87, 95-96.
- d) I.C. § 6-1.1-4-13(a) provides that “land shall be assessed as agricultural land only when it is devoted to agricultural use.” “Agricultural property” is defined as land “devoted to or best adaptable for the production of crops, fruits, timber, and the raising of livestock.” GUIDELINES, Glossary at 2. It also includes several types of non-tillable land. In addition, the Guidelines provide that land enrolled in programs of the USDA, Farm Service Agency, and Natural Resources Conservation Service and have received a “farm number” are eligible for classification as “agricultural” because the land has been determined to be part of an “agricultural operation.” GUIDELINES, Ch. 2 at 78.
- e) We first note that it appears Assessor may have been arguing that the Petitioner did not have the authority to appeal the assessment because it was not the owner of record on the assessment date. But the Petitioner purchased the property at tax sale. That sale was finalized on February 18, 2022, when the Auditor issued the deed. Thus, the Petitioner was statutorily obligated to pay the taxes for the 2022 assessment year and had the authority to appeal the assessment. I.C. § 6-1.1-15-0.8.
- f) The Assessor also argued that the Petitioner’s intentions for the subject property are irrelevant because it was not the owner of record as of the assessment date. But even setting aside the Petitioner’s intentions, there is still enough evidence to show that the subject property should have been assessed as agricultural land for the 2022 assessment year. The subject property has had an FSA farm number since 2016, and was combined with a larger farm as of the assessment date. It also has drainage tiles that traverse adjacent farmland, and scattered brush and trees. Under the statutes and


the guidelines, this is sufficient evidence to show the land should have been classified and assessed as non-tillable agricultural land.

- g) The Assessor makes much of the fact that the subject property is zoned for commercial use and has not been actively farmed. But zoning is not dispositive, and there are many types of agricultural land classifications other than those traditionally thought of as “farming.” Moreover, the Assessor failed to show that the subject property was used for any commercial, non-agricultural use.
- h) The evidence shows the subject property should have been assessed as non-tillable agricultural land. Thus, we instruct the Assessor to reclassify the subject property accordingly using the appropriate rates.

Final Determination

In accordance with the above findings and conclusions, the Board orders the property to be reassessed as non-tillable agricultural land for the 2022 assessment year.

ISSUED: SEPTEMBER 3, 2024



Chairman, Indiana Board of Tax Review



Commissioner, Indiana Board of Tax Review



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>>.