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

Petition: **91-013-12-1-5-00040**
Petitioner: **David Cox**
Respondent: **White County Assessor**
Parcel: **91-85-11-000-002.201-013**
Assessment Year: **2012**

The Indiana Board of Tax Review ("Board") issues this determination, finding and concluding as follows:

Procedural History

1. The Petitioner filed a Form 130 petition with White County Property Tax Assessment Board of Appeals ("PTABOA") contesting his property's assessment. On August 20, 2013, the PTABOA issued a determination denying him relief.

2. The Petitioner then timely filed a Form 131 petition with the Board. He elected to have this appeal heard under the Board's small claims procedures.

3. On August 13, 2014, the Board's designated administrative law judge, Ellen Yuhan, held a hearing on the petition. Neither she nor the Board inspected the property.

4. The Petitioner and the Respondent's representative, Scott Potts, were sworn and testified at the hearing.

Facts

5. The property is a 40-acre agricultural parcel with a single-family home located at 9195 N. 500 West, Monon.

6. The PTABOA determined the following assessment:

   Land: $49,300 Improvements: $40,200 Total: $89,500

7. The Petitioner requested the following values:

   Land: $26,300 Improvements: $40,000 Total: $66,300

Record

8. The official record contains the following:

   a. A digital recording of the hearing,

   b. Board Exhibit A: Form 131 petition,
      Board Exhibit B: Hearing notice,
      Board Exhibit C: Hearing sign-in sheet,
      Board Exhibit D: Property record card printed August 13, 2014[1]

   c. These Findings and Conclusions.

Burden

9. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that his 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). If the taxpayer makes a prima facie case, the burden shifts to the assessor to offer evidence to impeach or rebut the taxpayer's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.

10. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances. Where the assessment under appeal represents an increase of more than 5% over the prior year's assessment for the same property, the assessor has the burden of proving that the assessment under appeal is correct. I.C. § 6-1.1-15-17.2(a) and (b). The assessor similarly has the burden where a property's gross assessed value was reduced in an appeal, and the assessment for the following date represents an increase over "the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase …." I.C. § 6-1.1-15-17.2(d).

11. The assessment actually decreased between 2011 and 2012, going from $90,300 down to $89,500. Thus, the burden-shifting statute does not apply and the Petitioner has the burden of proof.

[1] Mr. Potts referred to the property record card at the hearing and handed it to the ALJ without formally offering it as an exhibit.

Contentions

12. Summary of the Petitioner's case:

    a. The Petitioner claims that a property across the road owned by a man named George is assessed for less than his property. Both properties have 40 acres and a homesite, although the George house is nicer than the Petitioner's house. Both properties have woodlands. George cut a little hay off the ground. The Petitioner "ran cows" on his property or could have cut hay. George's land is assessed for only $26,300 while the Petitioner's land is assessed for $49,300. *Cox testimony.*

    b. The Petitioner has the worst farmland around. It is nothing but a sand ridge from the road to almost the end of the property where it goes into a wet spot. Looking at the property from the north, there is a big sand dome that runs along the south side of road 900. The ridge is five feet high. It just blows if there is no grass on it. It is not good ground for production because "if we don't have rain, it don't grow." The property's north side also has a big sand hill that rises to about eight feet and drops off into the woods. The federal government only gives the Petitioner $230 for having 24 acres as a farm. *Cox testimony.*

13 Summary of the Respondent's case:

    a. Several differences between the George property and the Petitioner's property account for the differences in their assessments. The George property has about 21 acres of woodland while the Petitioner's property has only 7 acres of woodland. The George property also has 16 to 17 acres of nontillable land compared to only two acres of nontillable land for the Petitioner's property. *Potts testimony*.

Analysis

14. The Petitioner failed to make a prima facie case for reducing the assessment. The Board reaches this decision for the following reasons:

    a. The Department of Local Government ("DLGF") has promulgated guidelines for assessing agricultural land using distinctive factors, such as soil productivity, that do not apply to other types of land. Ind. Code § 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* 2011 REAL PROPERTY ASSESSMENT GUIDELINES, Chapter 2 at 77-78; *see also* I.C. § 6-1.1-4-4.5(e) (directing the DLGF to use a six-year, instead of a four-year, rolling average and to eliminate from the calculation the year for which the highest market value-in-use is determined). Assessors then adjust that base rate according to soil productivity factors. They also classify agricultural land into various types and subtypes. Depending on the classification, assessors may then apply influence factors in predetermined amounts. 2011 GUIDELINES, Chapter 2 at

77, 89, 98-100. For example, nontillable land receives a 60% negative influence factor and woodlands receive an 80% negative influence factor. *Id*. at 89-90.

b. According to Mr. Potts, the Petitioner's land is divided into four types: a one-acre agricultural homesite, tillable land, nontillable land, and woodland. The Petitioner's complaint appears to be with how the land other than the homesite was assessed. The Board therefore turns to the Guidelines' definitions for those other classifications:

- Tillable land is "land used for cropland or pasture that has no impediments to routine tillage." Cropland includes "land used for production of grain or horticultural crops such as … hay[,] rotation pasture [or] idle cropland."

- Nontillable land is "land covered with brush or scattered trees with less than 50% canopy cover, or permanent pasture land with natural impediments that deter the use of the land for crop production."

- Woodland is "land supporting trees capable of producing timber or other wood products" that "has 50% or more canopy cover or is a permanently planted reforested area."

Id. at 89-90.

c. The Petitioner offered broad testimony about his property. He testified (1) that the property has woods, (2) that it has two sand ridges, one of which runs from the road almost to the end of the property, and (3) that he did not plant crops. But he also testified that he "ran cows" and could have cut hay. At best, his testimony arguably shows that part of his property should be classified as woodland and that other parts should be classified as nontillable land, i.e. permanent pasture land with a natural impediment—sand—that deters using it for crop production. Of course, portions of the property already are classified as woodland and nontillable land, and the Petitioner's testimony is too vague to show that the current allocations between tillable land, nontillable land, and woodland are incorrect, much less what a more appropriate allocation would be.

d. The Petitioner's attempt to compare his property to the farm across the street suffers from the same shortcomings. Indeed, he offered even less evidence about that property than his own. The Petitioner therefore failed to make a prima facie case for changing his assessment.

Conclusion

15. The Petitioner failed to make a prima facie case for reducing the assessment. The Board finds for the Respondent.

Final Determination

In accordance with the above findings of fact and conclusions of law, the assessments should not be changed.

ISSUED: February 9, 2015

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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>.