

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

Petitions: *See attached*
Petitioner: **John Loxas**
Respondent: **Lake County Assessor**
Parcels: *See attached*
Assessment Year: **2016**

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

PROCEDURAL HISTORY

1. John Loxas contested the 2016 assessments of nine parcels located in Merrillville. On October 1, 2018, the Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued determinations valuing the parcels as follows:

Parcel No.	PTABOA assessed value
45-12-19-402-002.000-030	\$307,800
45-12-19-404-002.000-030	\$133,300
45-12-19-404-004.000-030	\$155,800
45-12-19-403-001.000-030	\$131,000
45-12-19-401-001.000-030	\$134,800
45-12-19-402-001.000-030	\$298,900
45-12-19-404-003.000-030	\$294,200
45-12-19-451-002.000-030	\$1,700
45-12-19-451-003.000-030	\$34,000

2. Loxas timely filed Form 131 petitions with the Board and elected to proceed under our small claims procedures. On August 26, 2019, Ellen Yuhan, our Administrative Law Judge (“ALJ”), held two separate hearings on the petitions.¹ Neither she nor the Board inspected the properties.
3. Loxas appeared pro se. The Assessor appeared by Hearing Officers Robert Metz and Joseph E. James. Loxas, his son George Loxas, Metz, and James were all sworn as witnesses.

¹ We have consolidated the records from the two hearings for purposes of issuing one final determination addressing all nine Form 131 petitions.

RECORD

4. The official record contains the following:

- Petitioner Exhibit 1: 1978 Wirtz Farm aerial photograph
- Petitioner Exhibit 2: 2016 aerial map of the subject property²
- Petitioner Exhibit 3: United States Department of Agriculture (“USDA”) Map of Farm 3281, Tract 7971
- Petitioner Exhibit 4: USDA Application for Highly Erodible Land Conservation (HELIC) and Wetland Conservation (WC) Certification
- Petitioner Exhibit 5: USDA Highly Erodible Land and Wetland Conservation Determination for Farm 3281, Tract 7971
- Petitioner Exhibit 6: Signed written testimony of John Loxas

- Respondent Exhibit 1: Letter from Attorney George C. Patrick to the PTABOA, dated August 15, 2018

5. The record for this matter also includes the following: (1) all pleadings, briefs, motions, and documents filed in this appeal; (2) all notices and orders issued by the Board or our ALJ; and (3) an audio recording of the hearing.

BURDEN OF PROOF

- 6. Generally, a taxpayer seeking review of an assessing official’s determination has the burden of proof. Ind. 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, or where it is above the level determined in a taxpayer’s successful appeal of the prior year’s assessment. I.C. § 6-1.1-15-17.2(b) and (d).
- 7. Here, the parties agreed that all of the assessments at issue decreased from 2015 to 2016. Loxas therefore bears the burden of proof.

SUMMARY OF CONTENTIONS

- 8. Loxas’ contentions:
 - a. Loxas is appealing nine of ten parcels that collectively make up what he calls the Whitcomb Farm. For most of the 20th century, the property was a farm actively row-cropped by the Wirtz family. The Sohackis purchased the farm in 1983. Five years later, they subdivided the farm in an attempt to develop the land, but its agricultural use never changed. *G. Loxas testimony; Pet’r Exs. 1, 2, 6.*

² Loxas listed the exhibit as a 2013 aerial map on his Exhibit Coversheet, but George Loxas testified that the map shows the property as it was in 2016.

- b. Loxas purchased the parcels from the Sohackis on contract in 1991 and recorded the deed in 2002. He purchased the land for agricultural use—he has never used or intended to use the parcels for commercial or residential purposes. The fact that the Sohackis subdivided the land was not a signal that development into a commercial or residential use was imminent. Twenty-eight years have passed since the Sohackis subdivided the land and the land use has not changed. Yet, at some point, the Assessor reclassified seven of the parcels as commercial and one as residential, while leaving two assessed as agricultural land.³ *G. Loxas testimony; Pet'r Ex. 6.*
- c. Loxas has not tilled or row-cropped the parcels during the time he has owned them. Left to their own means, the parcels reverted to pasture grass, brush and scattered trees with less than 50% canopy cover. In 2014, the USDA gave the parcels a Farm Number and a Tract ID and the Farm Service Agency (“FSA”) certified the parcels for participation in its program for highly erodible land conservation and wetland conservation. *G. Loxas testimony; Pet'r Exs. 3-6.*
- d. A house and barn that appear on the 1978 property map were removed or destroyed sometime before 2016. Loxas has never added any buildings or other improvements to the parcels, nor has he sought any building permits. While Loxas is not currently farming the parcels, his plan is to clear them for future row-cropping. Since 2014, Loxas has done what he could to clear the brush and trees to move forward with the agricultural use. However, the task of clearing the land is daunting and the cost to hire a contractor is prohibitive because farming profits would not cover the expense. *G. Loxas testimony; Pet'r Exs. 1-3.*
- e. In 2014, prior to beginning to clear the land, George spoke with the planning director for the Town of Merrillville and an official from the storm water management district. Neither official objected to the intended agricultural use. Although the parcels were zoned C-3 in 1971, they were still being farmed in 1978. There are thousands of properties in Indiana that are used in ways that conflict with their zoning, but that continue to be used in a non-conforming way after a permit is sought or they are grandfathered in. And George believes that the parcels would be grandfathered in. *G. Loxas testimony.*
- f. Although he believes it was an error, Loxas is not contesting the original classification changes. He is solely challenging the classification of the parcels from the 2016 assessment year forward. While one parcel under appeal is currently assessed as Type 4 agricultural land, a correct assessment would reclassify all of the parcels as agricultural Type 5—nontillable land for 2016. *G. Loxas testimony; Pet'r Ex. 6.*

³ Only one of the two parcels that remain assessed as agricultural land is part of this appeal—Parcel No. 45-12-19-451-003.000-030.

9. The Assessor's contentions:
 - a. A letter from George C. Patrick, a former attorney for the PTABOA, sums up the issues the Assessor has with Loxas' appeal. The Town of Merrillville has zoning regulations that prohibit farming in the C-3 commercial district, and the subject property was zoned C-3 in 1971. Therefore, the subject property's current zoning does not allow farming. *Metz testimony; Resp. Ex. 1.*
 - b. The Assessor currently classifies the southern section of the subject property as agricultural land. However, a substantial portion of the property is part of a platted commercial development called Broadmoor Plaza that was approved and recorded in 1989. Metz was unaware of when the classification changed to commercial, but he assumed it was around the time the plat was recorded. Loxas did nothing with the land between 2002 and 2014. If Loxas truly intended to continue to farm the property, he would have stayed on it instead of allowing the property to become overgrown. *Metz testimony; Resp. Ex. 1; Pet'r Ex. 2.*

ANALYSIS

10. Loxas made a prima facie case that all nine of his parcels are agricultural land that should be assessed as Type 5—nontillable land. The Board reached this decision for the following reasons:
 - a. The statutory and regulatory scheme for assessing agricultural land requires the Board to treat challenges to those assessments differently than other assessment challenges. While normally a party must present market-based evidence to prove the value of the property at issue, agricultural land is assessed according to specific statutes and regulations. The legislature has directed the Department of Local Government Finance ("DLGF") to use 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 GUIDELINES, CH. 2 at 77-78; see also Ind. Code § 6-1.1-4-4.5(e).* 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 77, 89, 98-99.
 - b. Loxas contends that his parcels should be assessed as agricultural land. Ind. Code § 6-1.1-4-13(a) provides that "land shall be assessed as agricultural land only when it is devoted to agricultural use." "Agricultural use" includes but is not limited to uses such as:

the production of livestock or livestock products, commercial aquaculture, equine or equine products, land designated as a conservation reserve plan, pastureland, poultry or poultry products, horticultural or nursery stock, fruit, vegetables, forage, grains, timber, trees, bees and apiary products, tobacco,

other agricultural crops, general farming operation purposes, native timber lands, or land that lays fallow.

Ind. Code § 6-1.1-4-13(b).

- c. In relevant part, the statute further provides that in addition to any other land considered devoted to agricultural use, any:

(1) land enrolled in:

(A) a land conservation or reserve program administered by the United States Department of Agriculture;

(B) a land conservation program administered by the United States Department of Agriculture's Farm Service Agency; or

(C) a conservation reserve program or agricultural easement program administered by the United States Department of Agriculture's National Resources Conservation Service;

...

is considered to be devoted to agricultural use.

Ind. Code § 6-1.1-4-13(b).

- d. Loxas demonstrated that his parcels are enrolled in a land conservation program administered by the FSA. Specifically, the FSA certified the parcels for participation in its program for highly erodible land conservation and wetland conservation. Because the parcels comply with the requirements of Ind. Code § 6-1.1-4-13(b)(1)(B), they are considered to be devoted to agricultural use. Accordingly, we conclude the parcels should be classified as agricultural land.
- e. The Assessor's assertion that the parcels' current zoning does not allow farming is unavailing. The question of whether farming is a conforming use within the local zoning regulations has no bearing on the parcels' proper classification for assessment purposes. While the DLGF's regulations do consider zoning as a factor to determine a property's classification, they also direct assessors to consider its use. *See* 2011 GUIDELINES, CH. 2 at 78. Here, the parcels were zoned commercial in 1971 and granted the FSA certification in 2014. We find the FSA certification was a superseding change in use that takes precedence over the parcels' zoning classifications. And the Assessor's argument regarding the subdivision of the property into commercial lots suffers from the same fundamental problem—the plat was approved and recorded approximately 25 years before Loxas received the FSA certification. Most importantly, the property was never actually put to a commercial use.
- f. We also note that the USDA gave the parcels a Farm Number and a Tract ID in 2014, and the DLGF's regulations state that all acres that "have received a 'farm number' are eligible for classification as 'agricultural.'" *See* 2011 GUIDELINES, CH. 2 at 81.

Furthermore, the Assessor failed to rebut or impeach Loxas' assertion that he purchased the land for agricultural use. The Assessor likewise failed to offer any evidence showing that Loxas has ever used or intended to use the parcels for purposes other than agriculture. And we find no support for the proposition that an agricultural classification depends solely on whether the property is actively farmed. Thus, the fact that Loxas allowed the parcels to become overgrown does not help the Assessor's case. To the contrary, parcel that are not actively farmed they may expressly qualify as fallow land under Ind. Code § 6-1.1-4-13(b).

- g. Because we have determined that Loxas' parcels are agricultural land, we now turn to addressing his claim that they should all be classified as Type 5—nontillable land. The DLGF Guidelines define Type 5—nontillable land as follows:

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. A 60% influence factor deduction applies to nontillable land.

2011 GUIDELINES, CH. 2 at 89.

- h. We find that the aerial maps Loxas submitted support the unrebutted testimony that by 2016, the parcels had reverted to brush and scattered trees with less than 50% canopy cover. Accordingly, we conclude that Loxas made a prima facie case that all nine of his parcels should be assessed as Type 5—nontillable land for the 2016 assessment year.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, we find for Loxas and order the Assessor to reclassify the non-ag parcels as agricultural land and reassess all nine parcels as Type 5—nontillable land for the 2016 assessment year.

ISSUED: November 8, 2019

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>>.

ATTACHMENT
2016 Loxas appeals

Petition No.	Parcel No.
45-030-16-1-4-01205-18	45-12-19-402-002.000-030
45-030-16-1-4-01206-18	45-12-19-404-002.000-030
45-030-16-1-4-01207-18	45-12-19-404-004.000-030
45-030-16-1-4-01208-18	45-12-19-403-001.000-030
45-030-16-1-4-01209-18	45-12-19-401-001.000-030
45-030-16-1-4-01210-18	45-12-19-402-001.000-030
45-030-16-1-4-01211-18	45-12-19-404-003.000-030
45-030-16-1-4-01212-18	45-12-19-451-002.000-030
45-030-16-1-4-01213-18	45-12-19-451-003.000-030