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

Petition No.: **53-015-15-1-5-00158-15**
Petitioner: **William J. Schaefer**
Respondent: **Monroe County Assessor**
Parcel No.: **53-09-09-200-042.000-015**
Assessment Year: **2015**

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

Procedural History

1. Petitioner initiated his assessment appeal for 2015 with the Monroe County Property Tax Assessment Board of Appeals ("PTABOA"). On August 21, 2015, the PTABOA issued its final determination making no change to the assessment. Petitioner then filed his Form 131 petition on October 7, 2015.

2. Petitioner elected to have this appeal heard under the Board's small claims procedures. Respondent did not elect to have the appeal removed from those procedures.

3. On May 31, 2017, Dalene McMillen, the Board's Administrative Law Judge ("ALJ"), held a hearing. Neither the Board nor the ALJ inspected the property.

4. Attorney John Richards represented Petitioner. Property owner William Schaefer was sworn and testified. Attorney Heather Scheel represented Respondent. Ken Surface of Nexus Group was sworn and testified for Respondent.

Facts

5. The property under appeal consists of 21 acres with a single-family home, two utility sheds, and a lean-to structure located at 2050 South Garrison Chapel Road in Bloomington.

6. For 2015, the PTABOA determined the following values:

   Land: $105,000 Improvements: $24,300 Total: $129,300.

7. For 2015, Petitioner requested the following values:

Land: $29,100 Improvements: $23,700 Total: $52,800.

Record

8. The official record for this matter is made up of the following:

   a. A digital recording of the hearing,

   b. Exhibits:

Petitioner Exhibit 1:	Property record card ("PRC"), aerial map, three exterior photographs, and parcel information for 2340 South Garrison Chapel Road in Bloomington,
Petitioner Exhibit 2:	Mitigation and Conservation Easement between William Schaefer and the State of Indiana,
Respondent Exhibit M:	Department of Local Government Finance ("DLGF") Memorandum entitled "Certification of Agricultural Land Base Rate Value for Assessment Year 2015,"[1]
Board Exhibit A:	Form 131 petition and attachments,
Board Exhibit B:	Notice of hearing,
Board Exhibit C:	Hearing sign-in sheet,

   c. These Findings and Conclusions.

Objections

9. Ms. Scheel objected to Mr. Richards questioning of Mr. Surface with regard to the Indiana Department of Natural Resources ("DNR") classified forest program because he failed to provide a copy of the Indiana Code outlining that program. Mr. Richards stated he did not expect Mr. Surface to have the statute memorized and that he was just asking general questions. The objection goes to weight of the evidence rather than its admissibility and is overruled.

Burden of Proof

10. 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

[1] The ALJ confirmed Ms. Scheel's inquiry as to whether the PRC for the subject property was contained as part of the record as an attachment to Board Exhibit A.

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). A burden-shifting statute creates two exceptions to that rule.

11. First, Ind. Code § 6-1.1-15-17.2 "applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year." Ind. Code § 6-1.1-15-17.2(a). "Under this section, 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." Ind. Code § 6-1.1-15-17.2(b).

12. Second, Ind. Code § 6-1.1-15-17.2(d) "applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15," except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), "if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct." Ind. Code § 6-1.1-15-17.2(d).

13. These provisions may not apply if there was a change in improvement, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).

14. The parties agreed that the assessed value increased by more than 5% from 2014 to 2015. Respondent argued that the property was reclassified from agricultural to excess residential in 2015, which therefore constituted a change in use, thus making the burden-shifting rules inapplicable. Petitioner argued, on the other hand, that the use did not change from 2014 to 2015. The ALJ made a preliminary determination that the burden remained with Respondent.

15. Under the plain language of Ind. Code § 6-1.1-15-17.2, the burden shifts to an assessor when the assessed value of the same property increases by more than 5%. For reasons discussed herein, the Board disagrees with Respondent that there was a change in use which should result in an increased assessment. Thus, the Board concurs that Respondent has the burden of proof in this appeal.

Summary of the Parties' Contentions

16. Respondent's case:

    a. Respondent contends that the land at issue is correctly assessed as a one acre rural homesite and the remaining 20 acres as excess rural residential acreage. Respondent contends that Petitioner purchased the property for his own

enjoyment and that a 2014 field inspection revealed no evidence that the property was being farmed, or that any agricultural use was being undertaken. Petitioner has never submitted a farm report, nor has he presented a personal property report that would indicate any farm equipment was being used on the property. The property is also not subject to any timber management program. *Scheel argument; Surface testimony.*

b. Respondent contends that when a property contains a home, the DLGF rules call for a one-acre homesite even if the property is used for agricultural purposes. Respondent determined the rural homesite value based on sales in the subject property's neighborhood at $25,000 per acre. The excess rural residential land value based on sales in the neighborhood was set at $4,000 per acre. *Surface testimony.*

c. Petitioner's counsel questioned Mr. Surface with regard to Petitioner Exhibit 1, which is a PRC for a purportedly comparable property located at 2340 South Garrison Chapel Road. Mr. Surface acknowledged that the property is located in the same neighborhood as the subject property. However, he contends that property contains 27.5 acres enrolled in the Indiana Department of Natural Resources ("DNR") classified forest program and that is why its land is classified as agricultural and not excess residential like the subject property. *Surface testimony; Pet'r Ex. 1.*

d. Petitioner's counsel then asked Mr. Surface if the Indiana Code provides that land enrolled in a program "similar" to the DNR's classified forest program may be defined as agricultural. While Mr. Surface testified that he had "seen documents" that would indicate such, he does not believe that Petitioner's mitigation and conservation easement with the State of Indiana would be considered the same as the DNR's classified forest program. Mr. Surface testified that his interpretation of that easement indicated that it prohibited Petitioner from conducting agricultural activity on the subject property. *Surface testimony; Pet'r Ex. 2.*

17. Petitioner's case:

a. Petitioner purchased the property in 2000 on a land contract. The property consists of 21 acres and contains a homesite and woodland acreage. Petitioner purchased the property with the intention of possibly living on it at some point to enjoy the woodlands and the wildlife inhabiting the property. *Schaefer testimony.*

b. Petitioner entered into a mitigation and conservation easement agreement with the State of Indiana in 2011.[2] Pursuant to the agreement, the Indiana Department of

[2] It is not clear what portion of the property is subject to the easement agreement. While the agreement has been included as Petitioner Exhibit 2, the exhibit referenced in the agreement describing that portion of the property was not included.

Transportation was to perform wetland, stream, and forest mitigation on the easement area related to the I-69 extension project. *Schaefer testimony; Pet'r Ex. 2.*

c. Petitioner contends that the Indiana Guidelines provide that if land is classified as agricultural it can only be changed if there is a change in use. He contends Respondent has provided no proof that there has been any change in the 20 acres at issue that would justify a change from agricultural to excess residential. *Richards argument.*

d. When asked why he had not had the subject property enrolled in the DNR's classified forest program, Petitioner testified that he was "happy the way it was going" until 2015 when the land was reclassified from agricultural to excess residential. *Schaefer testimony.*

Analysis

18. Respondent failed to establish a prima facie case that the 2015 assessed value is correct. The Board reached this decision for the following reasons:

a. The statutory and regulatory scheme of 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. 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) (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. 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. Indiana 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 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 1. The word "devote" means "to attach the attention or center the activities of (oneself) wholly or chiefly on a specified object, field, or objective." WEBSTER'S THIRD NEW INTERNATIONAL UNABRIDGED DICTIONARY at 620.

c. Here, the burden was on Respondent to provide the Board with probative evidence supporting the notion that the subject property was correctly classified. Respondent argues that Petitioner, pursuant to its easement agreement with the State of Indiana, is prohibited from undertaking any agricultural activity on the

property. Respondent further contends that because the property is not being farmed, and because Petitioner has not submitted a farm report, it should be assessed as excess residential rather than agricultural.

d. "Residential property" is defined as "vacant or improved land devoted to, or available for use primarily as, a place to live," and is "normally construed to mean a structure where less than three families reside in a single structure." GUIDELINES, GLOSSARY at 18.

> Residential land is land that is utilized or zoned for residential purposes. The parcel's size does not determine the property classification or pricing method for the parcel. The property classification and pricing method are determined by the property's use or zoning.

Id. at 53. Furthermore, "residential acreage parcels of more than one acre and not used for agricultural purposes are valued using the residential homesite base rate and the excess acreage base rate established by the assessing official." *Id.* at 54.

e. The Tax Court has defined "residential excess" as land "dedicated to a nonagricultural use normally associated with the homesite." *Stout v. Orange Co. Ass'r,* 996 N.E.2d 871, 875 n.6. (Ind. Tax Ct. 2013). Similarly, "agricultural excess acreage" is defined as land "dedicated to a non-agricultural use normally associated with the homesite," and it is intended to apply to "areas containing a large manicured yard over and above the accepted one acre homesite." 2011 GUIDELINES, CH. 2 at 105-6. "The agricultural excess acre rate is the same rate that is established for the residential acre category." *Id.*

f. In contrast, land purchased and used for agricultural purposes includes cropland or pasture land (i.e. tillable land) as well as woodlands. 2011 GUIDELINES, CH. 2 at 80. Additional categories of agricultural property include Type 4 "idle cropland" and Type 5 nontillable land that is "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." *Id.* at 103, 104. Thus, by definition, agricultural property may include property that is not suitable for forestry or "farming."

g. The Board cannot find any support for the proposition that an agricultural classification depends solely on whether the property is actively farmed. The classification depends on whether the property is put to agricultural or residential use. Respondent did not adequately articulate what characteristics or use of the property led to the conclusion that the property should be classified as excess residential. The crux of Respondent's argument is that because Petitioner's easement prohibits agricultural activity and, as a result, the property is not farmed, it should be assessed as excess residential acreage.

h. Respondent's argument that the property is not being farmed is inadequate. Furthermore, Petitioner has shown that 20 acres of the subject property should be classified as agricultural.[3] The property was classified as agricultural prior to 2015, its use has not changed since then, and it is situated in a neighborhood where other properties are classified as agricultural. Furthermore, the easement agreement to which the property is subject calls for the property to be used for retaining and protecting natural or scenic values; assuring its availability for forest, wetland, fish and wildlife habitat, scientific, biological and ecological uses; protecting natural resources; and maintaining or enhancing water quality. The fact that the easement agreement prohibits certain uses also calls into question Respondent's assessment. Clearly the easement must have some impact on the excess acreage value. Respondent has failed to prove either a change in use or a prima facie value for the acreage.

Conclusion

19. Respondent failed to make a prima facie case that the assessed value for 2015 was correct. Accordingly, the Board orders Respondent to correctly classify Petitioner's land as agricultural and reassess it appropriately.

Final Determination

In accordance with the above findings of fact and conclusions of law, the Board finds that the assessed value of the subject property must be reduced for 2015.

ISSUED: August 28, 2017

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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

[3] Neither party contested the assessed value of the one-acre homesite nor the improvements.

- 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>.