

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

Petitions: 20-026-20-1-3-00537-20; 20-026-20-1-3-00538-20
Petitioner: Shafer Land Corporation
Respondent: Elkhart County Assessor
Parcels: 20-02-31-301-011.000-026; 20-01-36-428-002.000-006
Assessment Year: 2020

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

Procedural History

1. On or before June 15, 2020, Shafer Land Corporation filed Form 130 petitions for its two parcels with the Elkhart County Assessor. The parcel ending in 006 is located on North Nappanee Street, while the parcel ending in 026 is located on West Bristol Street. On its petitions, Shafer crossed out Section II, the portion reserved for challenges to the current year’s assessment, and completed Section III, the portion reserved for “correction of error.” Shafer checked the box for a “clerical, mathematical, or typographical mistake,” and listed various land types with corresponding areas. It requested a reduced value for its land.
2. The Elkhart County Property Tax Assessment Board of Appeals (“PTABOA”) issued determinations denying Shafer relief, explaining that land allocation could not be addressed under the correction-of-error portion of a Form 130 petition, although land valuation could be addressed under Section II of that form. The PTABOA determined the following values:

Parcel	Land	Improvements	Total
Nappanee St.	\$110,400	\$363,600	\$474,000
Bristol St.	\$159,800	\$428,100	\$587,900

3. Shafer responded by filing Form 131 petitions with us, electing our small claims procedures. On both its Form 130 and Form 131 petitions, Shafer asked for the following values:

Parcel	Land	Improvements	Total
Nappanee St.	\$96,625	\$363,600	\$459,225
Bristol St.	\$126,056	\$428,100	\$554,156

4. On July 13, 2021, our designated administrative law judge, Joseph Stanford (“ALJ”), held a telephonic hearing on Shafer’s petitions. Neither he nor the Board inspected the properties. Gary Clevenger, a certified tax representative, appeared for Shafer. Beth

Henkel appeared as the Assessor's counsel. Clevenger and Tylan Miller, a deputy assessor, were sworn as witnesses, although only Clevenger testified.

Record

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

a) An audio recording of the hearing.

b) Exhibits:¹

Shafer's Exhibits

Nappanee St.

- Petitioner Exhibit 1: Aerial photographs of the Nappanee St. parcel with parcel boundaries, land types, and measurements superimposed,
- Petitioner Exhibit 2: Form 130 petition with PTABOA determination,
- Petitioner Exhibit 3: 2011 Real Property Assessment Guidelines, Ch. 2, pages 65 and 72,
- Petitioner Exhibit 4: Summary of property tax appeals written by Mr. Clevenger,
- Petitioner Exhibit 5: First page of Nappanee St. Parcel's property record card ("PRC").

Bristol St.

- Petitioner Exhibit 1: First page of PRC for Premark Packaging LLC,
- Petitioner Exhibit 2: First page of PRC for Complex Ten Inc,
- Petitioner Exhibit 3: Aerial photograph of the Bristol St. parcel with parcel boundaries, land types, and measurements superimposed,
- Petitioner Exhibit 4: Form 130 petition with PTABOA determination,
- Petitioner Exhibit 5: First page of Bristol St. Parcel PRC,
- Petitioner Exhibit 6: Clevenger's summary of property tax appeals,
- Petitioner Exhibit 7: 2011 Guidelines, Ch. 2, pp. 65, 72.

Assessor's Exhibits:

- Exhibit R-2 *Terrace Green Homeowners Ass'n v. Elkhart Cnty. Ass'r*, IBTR Pet. No. 20-015-09-3-4-90056-15 (June 18, 2019),
- Exhibit R-3 *Coca-Cola Bottling Co. v. Bartholomew Cnty. Ass'r*, IBTR Pet. No. 03-005-18-1-3-00105-20 (June 21, 2021).

Contentions

6. Summary of Shafer's case:

a) The Assessor erred in classifying the land for each parcel. The Assessor classified the entire Bristol St. parcel as primary land. She classified two acres of the Nappanee St. parcel as primary land and .853 acres as secondary land. Shafer offered aerial GIS maps and proposed revised property record cards segmenting each property into

¹ Shafer submitted a separate set of exhibits for each parcel, while the Assessor submitted one set of exhibits for both parcels.

multiple land types, including primary land (type 11), secondary land (type 12), useable undeveloped land (type 13, Bristol St. parcel only), and public roadway (type 82). Other than its claims regarding the public roadway, however, Shafer did not explain how it arrived at its conclusions that the land had been misclassified or how it determined what the correct classification was. *Clevenger testimony and argument; Pet'r Exs. 3, 5 (Bristol St. parcel); Pet'r Exs. 1, 5 (Nappanee St. parcel).*

- b) As for the roadway, Shafer pointed to aerial GIS maps purporting to show three roads—County Road 10 for the Bristol St. parcel, and Garvin St. and John Weaver Parkway for the Nappanee St. parcel—that were within the parcels' boundaries. Shafer offered measurements for the land area within each parcel that it asserted was occupied by the roadways (.02 acres for the Bristol St. parcel and .30 acres for the Nappanee St. parcel). Clevenger testified that he used the GIS tool from the Assessor's website for those measurements. *Clevenger testimony and argument; Pet'r Ex. 1 (Nappanee St. parcel); Pet'r Ex. 3 (Bristol St. parcel).*
- c) According to Shafer, while it is not technically contesting the parcels' values, correcting the errors would result in a decrease in both parcels' assessments. The land value for the Bristol St. parcel would drop from \$159,800 to \$126,056, and the land value for the Nappanee St. parcel would drop from \$110,400 to \$95,625. *Clevenger argument and testimony; Pet'r Ex. 5 (Bristol Street parcel); Pet'r Ex. 5 (Nappanee Street parcel).*
- d) Shafer believes that land classification is an objective issue that taxpayers should be able to address under Section III of a Form 130 petition. A public roadway is clearly not primary land. Other parcels, such as those owned by Premark Packaging, LLC and Complex Ten, Inc., have public roadways correctly assessed at \$0. *Clevenger testimony and argument; Pet'r Exs. 1-3, 5-7 (Bristol St. parcel); Pet'r Exs. 1, 3-5 (Nappanee St. parcel).*

7. Summary the Assessor's case:

- a) A change in land classification is not the type of error that can be addressed through the correction-of-error portion of a Form 130 petition. Challenges to assessed value, and to the methodology used to compute that value, can only be made to a current year's assessment, not prior years. In any case, Shafer failed to demonstrate that there should be a change in the assessment. *Henkel argument (citing Lake Cnty. Prop. Tax Assessment Bd. of Appeals v. BP Amoco Corp., 820 N.E.2d 1232 (Ind. 2005).*

Burden of Proof

8. Generally, a taxpayer has the burden to prove that its assessment is incorrect and what the correct value should be. Various statutes, including Ind. Code § 6-1.1-15-17.2, create exceptions to that general rule and assign the burden of proof to the assessor under specified circumstances, including where a property's assessment has increased by more

than 5% over the previous year. See I.C. § 6-1.1-15-17.2 (a)-(b). But there are exceptions to that rule as well, such as where the assessment under appeal was based on substantial renovations or new improvements, zoning, or uses that were not considered in the previous year's assessment. I.C. § 6-1.1-15-17.2(c). Although Shafer's tax representative recognized that each parcel's assessment increased by more than 5% between 2019 and 2020, he unequivocally stated that Shafer was accepting the burden of proof. Whether he should have done so is beside the point. Based on Shafer's concession we find that it had the burden of proof.

Analysis

9. Shafer devoted much of its case to arguing that its appeals addressed objective instead of subjective errors. In doing so, Shafer relied on concepts that arose from case law interpreting Indiana's previous true-tax-value system and the proper use of the now defunct Form (Form 133) for prosecuting claims under a since repealed correction-of-error statute.
10. Those arguments are moot. We now operate under a system where a property's value for taxation is no longer determined simply by correctly applying regulations but is instead measured against the objectively verifiable benchmark of market value-in-use. *Piotrowski BK #5643 v. Shelby Cnty. Ass'r* 2021 Ind. Tax Lexis 39 at *7 (Ind. Tax Ct. Sept. 16, 2021) (quoting *P/A Builders and Developers, LLC v. Jennings Cnty. Ass'r*, 842 N.E.2d 899, 900-01 (Ind. Tax Ct. 2006)). And in 2017, the legislature substantially overhauled the appeal statutes. The current statute, Ind. Code § 6-1.1-15-1.1, sets different deadlines for different types of appeals. To appeal the "assessed value" of its real property for assessment dates after January 1, 2019, a taxpayer must file its notice of appeal no later than: (1) June 15 of the year the notice of assessment is mailed if that assessment notice is mailed before May 1 of the assessment year, or (2) June 15 of the year the tax statement is mailed if the notice of assessment is mailed on or after May 1 of the assessment year. I.C. § 6-1.1-15-1.1(b)(2). For other enumerated errors, including claims that there was a clerical, mathematical, or typographical mistake, a taxpayer has three years after taxes were first due to appeal an assessment. I.C. § 6-1.1-15-1.1(b)(3).
11. Although Shafer checked the box indicating it was appealing a clerical, mathematical, or typographical mistake, its Form 130 petitions were timely to appeal any error, including an error in the parcels' assessed values. And that is what most of Shafer's claims boil down to. Shafer is challenging how the land was valued and argues that the Assessor should have allocated portions of its land into different classifications, which would have led to a different value conclusion.
12. But to win on its claims, Shafer needed to offer probative evidence to show the parcels' market values-in-use. The Indiana Tax Court recently reaffirmed that a taxpayer does not meet its burden of proof simply by contesting the methodology an assessor used to compute a property's assessment. Instead, it must offer "objectively verifiable, market-based evidence to show that the property's assessed value does not reflect its market value-in-use." *Piotrowski* 2021 Ind. Tax Lexis 39 at *6-7. Shafer offered nothing of the

sort. It instead attacked the Assessor's methodology, arguing that she should have allocated the land into different classifications. Even then Shafer merely pointed to descriptions from the 2011 Real Property Assessment Guidelines of what constitutes primary, secondary, and usable undeveloped land without bothering to explain how the disputed portions of its land fit within those descriptions. Because Shafer offered no probative evidence to show the parcels' market values-in-use, it failed to meet its burden of proof.

13. Part of Shafer's claims, however, address not just valuation, but whether part of each parcel is properly assessed to Shafer. Land within a right of way that is used and occupied as a public highway cannot be assessed to an adjacent landowner:

(a) Except as provided in subsection (b), land may not be assessed to an adjacent property holder if it:

...

(4) is within a right-of-way that is used and occupied as a public highway.

...

(c) If an assessor and a landowner fail to agree on the amount of land described in subsection (a)(1), (a)(2), (a)(3), or (a)(4), the assessor shall have the county surveyor make a survey to determine the amount of land so described.

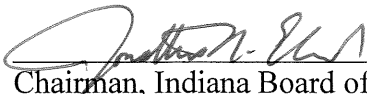
I.C. § 6-1.1-4-4.

14. This is a close question. Shafer did not offer deeds or surveys showing that the tax parcels included land within rights-of-way used and occupied as public highways. But it did offer GIS maps showing parts of three clearly public roads within the superimposed boundaries for its tax parcels. And it used a GIS tool from the Assessor's website to measure the area within the parcels occupied by those roads. The Assessor did not offer anything to dispute that evidence. Shafer therefore proved that .30 acres were improperly assessed to the Nappanee St. parcel and that .02 acres were improperly assessed to the Bristol St. parcel.

Conclusion

15. The Assessor improperly assessed .30 acres of public highway to Shafer's Nappanee St. parcel and .02 acres of public highway to its Bristol St. parcel. We order the Assessor to remove that land from Shafer's assessments. Shafer failed to meet its burden of proof for any other changes to the assessments.

ISSUED: OCTOBER 12, 2021



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>.