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

Petition: **50-020-13-1-4-00020**
Petitioner: **Van Vactor Farms**
Respondent: **Marshall County Assessor**
Parcel: **50-41-36-000-014.000-020**
Assessment Year: **2013**

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

Procedural History

1. The Petitioner appealed the subject property's 2012 assessment to the Marshall County Property Tax Assessment Board of Appeals ("PTABOA"). On March 21, 2014, the PTABOA issued notice of its determination denying the Petitioner relief.

2. The Petitioner timely filed a Form 131 petition with the Board, electing to have its appeal heard under our small claims procedures.

3. On November 19, 2014, our designated administrative law judge, Ellen Yuhan ("ALJ") held a hearing on the petition. Neither she nor the Board inspected the property.

4. The following people were sworn and testified: Patty Wright, secretary/treasurer of Van Vactor Farms; Kathleen Sheely; and Debra A. Dunning, Marshall County Assessor

Facts

5. The PTABOA determined the following assessment:

   Land: $180,600 Improvements: $96,200 Total: $276,800.

6. The Petitioner requested that the land be assessed as agricultural and that the home not be assessed at all because it is inventory.

Record

7. The official record contains the following:

   a. A digital recording of the hearing,

b. Petitioner Exhibit 1: Aerial map, property record card ("PRC"), and tax information for 26326 E. U. S. 6, Nappanee, IN
Petitioner Exhibit 2: Aerial map, PRC, and tax information for 2616 Lincolnway, Goshen, IN,
Petitioner Exhibit 3: E-mail from Mindy Relos-Penrose to Patty Wright,
Petitioner Exhibit 4: Excerpt from Wikipedia regarding property taxation in Indiana,

Respondent Exhibit 1: Form 115 and \minutes from the PTABOA hearing,
Respondent Exhibit 2: Letter requesting evidence,
Respondent Exhibit 3: Aerial photograph of the subject property,
Respondent Exhibit 4: Aerial photograph of the subject property in a TIF district,
Respondent Exhibit 5: Photographs of the subject property,
Respondent Exhibit 6: PRC for contiguous lot with handwritten notations,
Respondent Exhibit 7: Indiana Administrative Code 50 IAC 4.2-5-1,
Respondent Exhibit 8: PRC for the subject property,
Respondent Exhibit 9: Blank Form 53812 Application for Model Residence Deduction,

Board Exhibit A: Form 131 petition,
Board Exhibit B: Hearing notice,
Board Exhibit C: Hearing sign-in sheet.

c. These Findings and Conclusions.

Objections

8. The Respondent objected to the Petitioner's exhibits because the Petitioner did not comply with her request to provide copies of those exhibits in advance of the hearing. The Petitioner's secretary, Ms. Wright, acknowledged receiving the request but thought that it pertained to another appeal. Consequently, she did not send the request to Ms. Sheely, who works for the company that rents the property. For her part, Ms. Sheely testified that she thought she only needed to bring exhibits to the hearing. Regardless, she testified that Petitioner's Exhibit 1 was offered at the PTABOA hearing.

9. Our pre-hearing exchange rule provides: "*If requested* not later than 10 business days prior to hearing by any party, the parties shall provide to all other parties copies of any documentary evidence … at least five business days before the small claims hearing." 52 IAC 3-1-5(d). Failure to comply may serve as grounds for excluding documents that were not timely exchanged. *Id.*

10. The Petitioner's failure to exchange its exhibits was inadvertent. And the Respondent suffered no prejudice with regard to two of the exhibits—Exhibit 1, which the Petitioner

offered at the PTABOA hearing, and Exhibit 3, an e-mail exchange between Ms. Wright and one of the Respondent's employees. We therefore overrule the Respondent's objection as to those two exhibits. We sustain her objection as to Petitioner's Exhibits 2 and 4.

Burden of Proof

11. Generally, a taxpayer seeking review of an assessing official's must prove that a property's assessment is wrong and what its correct assessment should be. 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(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).

12. Neither of those circumstances applies here. Although the 2012 assessment was apparently reduced pursuant to a successful appeal, the amount that it was reduced to—$276,800—is the same as the 2013 assessment. Thus, the Petitioner has the burden of proof.

Contentions

13. Summary of the Petitioner's case:

    a. Ms. Sheely's business rents the property from the Petitioner to display model homes. The home that was on the property in 2013 was a 1,715-square-foot modular home with an attached garage.[1] It sat on a permanent foundation that included a crawl space and basement. It was on the foundation so customers could see what a nine-foot basement wall and crawl space look like. The home could be removed in approximately three hours. In fact, another model home on the property, which sat on concrete blocks, was removed. Thus, the model home at issue is inventory—it could be removed from the site taken elsewhere and sold. *Sheely testimony*.

    b. For support, Ms. Sheely pointed to a Napanee property leased to Heckaman Homes. Heckaman has four model homes on two acres of leased ground. Three are Cape Cod models and one is a ranch. They range from 1,400 to 2,000 square feet. One of them sits on a block foundation and is 1,700 square feet, which Ms. Sheely described as being similar to the subject home. The homes do not appear on the property record card for the Napanee property, meaning Elkhart County must treat them as inventory.

[1] The property record card lists 2,330 feet for the home, but it does not separately list an attached garage. *Resp't Ex. 9*.

The law should be applied the same throughout the state. High taxes forced the previous tenant to sell and forced another dealer out of business. *Sheely testimony; Pet'r Ex. 1*.

c. The Petitioner filed appeals on the surrounding properties. They were being taxed as commercial but were actually agricultural. The farmer who rents those parcels plants crops and keeps inventory. He does not pay inventory tax and the parcels are priced as farm ground. The Petitioner's land has always been agricultural. Because the Petitioner has not sold the land, it should be classified and assessed as agricultural. The .78-acre portion classified as undeveloped usable land is assessed at $73,940. That is more than the assessment for the entire Nappanee property. *Wright testimony.*

14. Summary of the Respondent's case:

a. The previous tenant wanted the land value reduced to compare more closely to the surrounding undeveloped parcels. The Petitioner, which Ms. Dunning referred to as a "developer," has listed a contiguous parcel for sale. That parcel's land is classified as undeveloped usable, but it will receive a developer's discount until it sells. By contrast, the property under appeal is used for commercial, rather than agricultural, purposes. Thus, the Respondent cannot price it as agricultural. Although the Petitioner's other parcels were changed to agricultural pricing, they were cash rented and used for agricultural purposes. D*unning testimony; Resp't Exs. 1, 6.*

b. The Respondent reduced the property's land value as far as possible by changing the one acre that was previously classified as primary land to secondary and classifying the remaining .78 acres as undeveloped usable land. *Dunning testimony; Resp't Ex. 8.*

c. The Petitioner's model home is not is not inventory. Inventory means the aggregate of those elements of costs incurred to acquire or produce items of personal property that are held for sale in the ordinary course of business. According to the Assessor, model homes like the one at issue in this appeal are not sold immediately to someone who is interested in buying a home. To the extent model homes sell, they sell at reduced rates, which reflect the cost of moving them. *Dunning testimony; Resp't Ex. 7*.

Analysis

15. The Petitioner failed to make a prima facie case for changing the assessment. We reach this conclusion for the following reasons:

a. The Petitioner makes two claims: (1) that the land should be classified and assessed as agricultural, and (2) that the model home should be treated as inventory and not assessed or taxed.

A. Land Assessment

b. While the land may have been used for agricultural purposes in the past, its use changed when the Petitioner began leasing it to Ms. Sheely's company and its predecessor to display their model homes. According to Indiana Code § 6-1.1-4-13(a), "land shall be assessed as agricultural land only when it is devoted to agricultural use." I.C. § 6-1.1-4-13(a).

c. The Petitioner, however, appears to argue that the change in use does not matter because it did not sell the property. The Petitioner did not explain the legal basis for its argument, but it may have been claiming that it was entitled to what is commonly known as the "developer's discount." The Assessor apparently thought the Petitioner was making such a claim. In any case, the developer's discount does not apply.

d. Indiana Code § 6-1.1-4-12, which creates the developer's discount, provides:

> (a) As used in this section, "land developer" means a person that holds land for sale in the ordinary course of the person's trade or business….
> (b) As used in this section, "land in inventory" means:
> (1) a lot; or
> (2) a tract that has not been subdivided into lots;
> to which a land developer holds title in the ordinary course of the land developer's trade or business.
> (c) As used in this section, "title" refers to legal or equitable title, including the interest of a contract purchaser.
> …
> (e) Except as provided in subsections (i) and (j), if:
> (1) land assessed on an acreage basis is subdivided into lots; or
> (2) land is rezoned for, or put to, a different use;
> the land shall be reassessed on the basis of its new classification.
> (f) If improvements are added to real property, the improvements shall be assessed.
> (g) An assessment or reassessment made under this section is effective on the next assessment date.
> …
> (i) Subject to subsection (j), land in inventory may not be reassessed until the next assessment date following the earliest of:
> (1) the date on which title to the land is transferred by:
> (A) the land developer; or
> (B) a successor land developer that acquires title to the land;
> to a person that is not a land developer;
> (2) the date on which construction of a structure begins on the land; or
> (3) the date on which a building permit is issued for construction of a building or structure on the land.

(j) Subsection (i) applies regardless of whether the land in inventory is rezoned while a land developer holds title to the land.

I.C. § 6-1.1-1-4-12.

e. Thus, under Ind. Code § 6-1.1-1-4-12, land must generally be reclassified when certain events occur, including a change in use. Subsections (i) and (j) create an exception to that rule for some land held by land developers. Here, there is little evidence that the Petitioner is a "land developer" within the meaning of the statute or that the land qualifies as "land in inventory." The record is silent regarding the Petitioner's trade or business aside from the fact that it leases some of its land for the display of model homes and other portions to a farmer. Nonetheless, the Assessor referred to the Petitioner as a developer and claims to have applied the developer's discount to a contiguous parcel that the Petitioner owns.

f. Even if one assumes that the Petitioner is a land developer and the subject property is land in inventory, the Petitioner lost the benefit of the developer's discount. Contrary to the Petitioner's belief, selling land is not the only event that triggers reclassification—beginning to build a structure does as well. Thus, the Petitioner lost the benefit of the developer's discount when it rented out the land and either it or its tenant began building a foundation and basement on the property. At that point, the Respondent properly reclassified and assessed the land based on its new use.

B. The Model Home's Assessment

g. The Petitioner also contends that the model home is inventory and therefore should not be taxed or assessed. The Petitioner is correct that Indiana no longer assesses or taxes inventory. I.C. § 6-1.1-2-7(b)(6). Only personal property qualifies as inventory, however. A home is generally considered real property. *See* I.C. § 6-1.1-1-15 (defining real property as, among other things, "a building or fixture situated on land located within this state.").

h. Nonetheless, the legislature recognizes that certain homes, such as mobile or manufactured homes, may be treated as personal property, and even as inventory. *See* I.C. § 6-1.1-1-11(3) and (4) (defining personal property to include mobile homes that do not qualify as real property and are not otherwise depreciable property or being held as an investment); I.C. § 6-1.1-1-8.4(b) (defining mobile and manufactured homes that are not real property and that are held for sale by the owner of a mobile home community in the regular course of business as inventory). The regulations of the Department of Local Government Finance ("DLGF") likewise classify some mobile and manufactured homes as personal property. *See* 50 IAC 3.3-2-2 and -4 (defining "real property mobile home(s)" and "annually assessed mobile home(s)"; *see also*, 50 IAC 3.3-3-1 (providing rules for assessing real property and annually assessed mobile homes and further providing that mobile homes held for sale in the ordinary course of a trade or business shall be treated as inventory).

i. Thus, the Petitioner needed to make a threshold showing that the model home in question qualifies as a mobile or manufactured home. The DLGF treats those types of homes together under the heading of mobile homes, which it defines as dwellings described in Ind. § 6-1.1-7-1(b) and manufactured homes defined by Ind. Code § 9-13-9-26. The first statute provides:

> (b) For purposes of this chapter, "mobile home" means a dwelling which:
> (1) is factory assembled;
> (2) is transportable;
> (3) is intended for year around occupancy;
> (4) exceeds thirty-five (35) feet in length; and
> (5) *is designed either for transportation on its own chassis or placement on a temporary foundation*.

I.C. § 6-1.1-7-1(b) (emphasis added). The second statute provides:

> (a) "Manufactured home" means, except as provided in subsection (b), a structure that:
> (1) is assembled in a factory;
> (2) *bears a seal certifying that it was built in compliance with the federal Manufactured Housing Construction and Safety Standards Law (42 U.S.C. 5401 et seq.)*;
> (3) is designed to be transported from the factory to another site in one (1) or more units;
> (4) is suitable for use as a dwelling in any season; and
> (5) is more than thirty-five (35) feet long.
> (b) "Manufactured Home," for purposes of IC 9-17-6, means either of the following:
> (1) *A structure having the meaning set forth in the federal Manufactured Housing Construction and Safety Standards Law of 1974 (42 U.S.C. 5401 et. seq.).*
> (2) A mobile home.[2]

I.C. § 9-13-2-96 (emphasis added). The Manufactured Housing Construction and Safety Standards Law, in turn, defines a "manufactured home" as follows:

> [A] structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three hundred twenty or more square feet, and *which is built on a permanent chassis* and designed to be used as a dwelling with or without a permanent

[2] That chapter's definition of a mobile home mirrors I.C. § 9-13-2-96(a), except that it does not require a seal if the home was built before the effective date of the Manufactured Housing Construction and Safety Standards Law of 1974. I.C. § 9-13-2-103.2.

> foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein; except that such term shall include any structure which meets all the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary and complies with the standards established under this chapter; and except that such term shall not include any self-propelled recreational vehicle[.]

42 U.S.C. § 5402(6).

j. The Petitioner offered little information about the model home at issue, other than Ms. Sheeley referring to it as a "modular home" supplied by Heckaman Homes. Nonetheless, the property record card shows that the home is more than 35 feet long. The evidence also supports inferences that it is suitable for use as a dwelling in any season. But there is little evidence about whether the home was assembled in a factory instead of on site. The same is true for the degree to which the home is transportable. Ms. Sheely testified that the home could be removed in approximately three hours and that the attached garage could be moved if the shingles were removed. But she offered nothing to show what the process would entail.

k. More importantly, the Petitioner offered no evidence to show that the model home was designed for transportation on its own chassis or placement on a temporary foundation. Ms. Sheeley said nothing about whether the home even had its own chassis. And it was actually placed on a permanent, rather than temporary, foundation. Although Ms. Sheeley testified that another home that had previously been at the site sat on blocks and posts, she did not claim that it was the same as, or even similar to, the home at issue. Indeed, a photograph offered by the Respondent shows little structural similarities between the homes. Ms. Sheely likewise did little to compare the home at issue to the Heckaman homes in Napanee that sat on concrete blocks aside from her broad testimony that they were all generally similar to each other. Thus, the Petitioner failed to prove the elements necessary to show that the model home at issue here is a mobile home within the meaning of Ind. Code § 6-1.1-7-1(b).

l. The Petitioner similarly failed to make a prima facie showing that the model home meets either of the definitions of a manufactured home from Ind. Code § 9-13-2-96. There is no evidence to show that the home bears a seal certifying that it was built in compliance with the Manufactured Housing Construction and Safety Standards Law or that it was built on a permanent chassis.

m. It is possible that the model home really is a mobile or manufactured home. But the Petitioner had the burden of proving that fact, and it offered very little evidence or argument to do so. We cannot make the Petitioner's case for it. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Ass'r*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct.

2004) ("[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis").

n. Because the Petitioner failed to make a prima facie case that the model home was a mobile or manufactured home, we need not decide whether its placement on a permanent foundation nonetheless made it real property. *See* 50 IAC 3.3-1-2-4 (defining a real property mobile home, in part, as a mobile home that "has a certificate of title issued by the bureau of motor vehicles under IC 9-17-6 and is attached to a permanent foundation.").

Conclusion

16. The Petitioner failed to make a prima facie case that its land was misclassified or that its model home should have been treated as inventory. We therefore find for the Respondent and order no change to the assessment.

Final Determination

In accordance with the above findings of fact and conclusions of law, there is no change to the assessment.

ISSUED: April 2, 2015

_____
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>.