

REPRESENTATIVE FOR PETITIONER:
Gary Emberton, Pro Se

REPRESENTATIVE FOR RESPONDENT:
Ronald Sanders

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Gary Emberton,)	Petition No.:	07-002-02-1-5-00186
)	Parcel:	0050743000
Petitioner,)		
)		
v.)		
)	Brown County	
Jackson Township Assessor,)	Jackson Township	
)	2002 Assessment	
Respondent.)		

Appeal from the Final Determination of the
Brown County Property Tax Assessment Board of Appeals

December 17, 2007

FINAL DETERMINATION

The Indiana Board of Tax Review (“Board”) has reviewed the evidence and arguments presented in this case. The Board now enters its findings of fact and conclusions of law on the following issue:

Should the land classification be changed to agricultural woodland rather than excess residential acreage?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

HEARING FACTS AND OTHER MATTERS OF RECORD

1. On November 7, 2005, the Brown County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination. On December 10, 2005, Gary Emberton (“Petitioner”) filed a Form 131 Petition for Review of Assessment, requesting the Board to conduct an administrative review.
2. Kay Schwade, the duly designated Administrative Law Judge (“ALJ”) authorized by the Board, held a hearing in Nashville on August 21, 2007.
3. The following persons were sworn as witnesses at the hearing:
 - For the Petitioner – Gary Emberton,
 - For the Respondent – Ronald Sanders.
4. The Petitioner presented a single group of exhibits that collectively apply to a total of seven parcels and appeals. The subject parcel was identified as “Parcel 3000” in exhibit references and in the testimony. The Petitioner presented the following exhibits:
 - Petitioner’s Exhibit 1 – 2002 Form 133 Petition for Correction of Error for Parcel 7001,
 - Petitioner’s Exhibit 2 – 2003 Form 133 Petition for Correction of Error for Parcel 7000,
 - Petitioner’s Exhibit 3 – Aerial map of Parcel 7000/7001,
 - Petitioner’s Exhibit 4 – Sales receipts for timber sales from Parcel 7000/7001,
 - Petitioner’s Exhibit 5 – 2002 Form 133 Petition for Correction of Error for Parcel 5000,
 - Petitioner’s Exhibit 6 – 2003 Form 133 Petition for Correction of Error for Parcel 5000,
 - Petitioner’s Exhibit 7 – Aerial map of Parcel 5000,
 - Petitioner’s Exhibit 8 – 2002 Form 133 Petition for Correction of Error for Parcel 2002,
 - Petitioner’s Exhibit 9 – 2003 Form 133 Petition for Correction of Error for Parcel 2002,
 - Petitioner’s Exhibit 10 – Aerial map of Parcel 2002,
 - Petitioner’s Exhibit 11 – Sales receipts for timber sales from Parcel 2002,
 - Petitioner’s Exhibit 12 – Aerial map of Parcel 3008,
 - Petitioner’s Exhibit 13 – Property record card for Parcel 3008,

Petitioner's Exhibit 14 – Sales receipts for timber sales from Parcel 3008,
Petitioner's Exhibit 15 – Property record card for Joan Collins property,
Petitioner's Exhibit 16 – Aerial map for Parcel 8000,
Petitioner's Exhibit 17 – Property record card for Parcel 8000,
Petitioner's Exhibit 18 – Sales receipts for timber sales from Parcel 8000,
Petitioner's Exhibit 19 – Property record card for Parcel 7000,
Petitioner's Exhibit 20 – Property record card for Parcel 3000,
Petitioner's Exhibit 21 – Letter from Paula Waterman,
Petitioner's Exhibit 22 – Aerial map for Parcel 3000,
Petitioner's Exhibit 23 – Sales receipts for timber sales from Parcel 3000,
Petitioner's Exhibit 24 – Pages 99 through 106 from the 2002 Real Property
Assessment Guidelines – Version A.

5. The Respondent also presented a collective group of exhibits for seven parcels and appeals. The Respondent presented the following exhibits:

Respondent's Exhibit 1 – Property record card for Parcel 8000,
Respondent's Exhibit 2 – Ind. Code § 6-1.1-4-13,
Respondent's Exhibit 3 – Bryan K. Piles, Findings and Conclusions, page 8 of 10
pages,
Respondent's Exhibit 4 – Diane Ritterskamp, Findings and Conclusions, pages 3
and 4 of 6 pages,
Respondent's Exhibit 5 – 2004 Sales Disclosure Form for property located on
Nelson Ridge Road,
Respondent's Exhibit 6 – Aerial map showing location of the Emberton, Burns,
Bay and Butler properties,
Respondent's Exhibit 7 – 2007 Sales Disclosure for the Butler property,
Respondent's Exhibit 8 – Property record card for the Butler property reflecting
the 3/1/2005 assessed value,
Respondent's Exhibit 9 – Property record card for the Burns property,
Respondent's Exhibit 10 – Property record card for the Butler property reflecting
the 3/1/2006 assessed value,
Respondent's Exhibit 11 – Property record card for the Emberton property
reflecting the 3/1/2005 assessed value.

6. The following additional items are recognized as part of the record:

Board Exhibit A – 131 Petition with attachments,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing Sign In Sheet.

7. The subject property is 15 acres of land with improvements located at 1966 Three Story Road, Morgantown.

8. The ALJ did not conduct an on-site inspection of the subject property.
9. The PTABOA determined the total assessed value is \$192,800 (land \$124,700 and improvements \$68,100).
10. The Petitioner did not request a specific value for the subject property.

OBJECTIONS

11. The Petitioner objected to the admission of Respondent's Exhibit 7 on the basis of relevance. The Petitioner claimed that the sale of a neighboring property does not pertain to the case. Comparable sales are one way that value-in-use can be proved. The Petitioner's objection on relevance is overruled.
12. The Petitioner also objected to Respondent's Exhibits 8, 9, 10, and 11 on the basis of relevance. The Petitioner did not explain why the exhibits relating to neighboring properties are irrelevant. The Petitioner's objection is overruled.
13. Even though these exhibits are admitted as evidence, the probative value and weight of those exhibits in reaching a final determination is another matter. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470-471 (Ind. Tax Ct. 2005) (explaining that specific reasons must be given as to why a property is comparable and that parties are responsible for explaining the characteristics of the subject property, how those characteristics compare to those of the purported comparable, and how any differences affect the relevant market value-in-use of the properties). The Board's determination is not based on any of them.

CONTENTIONS

14. The Petitioner bought this property in 2004, but he will have to pay any additional taxes that result from increasing the assessed value for 2002. According to the Petitioner, the subject property is devoted to agricultural use and is entitled to the negative 80% adjustment for woodland. *Emberton testimony.*
15. There is no dispute that the Petitioner is in the timber business. *Emberton testimony; Sanders testimony.*
16. The aerial map for the subject property shows the parcel outlined in yellow. Based on the aerial map, the subject property is all wooded. The subject property is not classified forest. *Emberton testimony; Pet'r Ex. 22.*
17. The sales receipt for timber shows that Wilkerson Sawmill, Inc. purchased timber in December 2004. That timber was harvested from the subject property. This receipt is just a sample—more timber was harvested from the subject property than shown by this one receipt. *Emberton testimony; Pet'r Ex. 23.*
18. The subject property was classified as agricultural woodland prior to the 2002 reassessment. The subject property is classified as agricultural woodland for March 1, 2005. Between the March 1, 2002, and the March 1, 2004, assessments, the subject property is classified as residential excess acreage. *Emberton testimony; Sanders testimony; Pet'r Ex. 20; Resp't 11.*
19. The aerial map shows the location of the subject property and neighboring properties. The sales disclosure and property record card for the Butler property, as well as the property record card for the Burns property, show that the subject property is assessed like neighboring comparable properties. *Sanders testimony; Resp't Ex. 6, 7, 8, 9, 10.*

ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

20. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect and specifically what the correct assessment would 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).
21. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 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”).
22. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner's evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

ANALYSIS

23. Property is assessed on its "true tax value." Ind. Code § 6-1.1-1-3. Prior to 2002, true tax value was determined under Indiana's assessment regulations. The determination of a property's assessed value was inextricably linked to how the regulations were applied. In 2002, Indiana overhauled its property tax assessment system to incorporate an external, objectively verifiable benchmark by which to determine true tax value. That benchmark is market value-in-use.¹ As a result, the new system shifts the focus from examining the methodology of an assessment to examining whether a property's assessed value actually reflects market value-in-use. *See* 50 IAC 2.3-1-1(d). Therefore, determining the use of the property is one of the most basic parts of assessment analysis.

¹ "True tax value" is "[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property." 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2).

24. The Indiana General Assembly directed the Department of Local Government Finance to establish rules for determining the true tax value of agricultural land. Ind. Code § 6-1.1-4-13. Agricultural property is "[t]he land and improvements devoted to or best adaptable for the production of crops, fruits, timber, and the raising of livestock." GUIDELINES, glossary at 1. By statute, "land shall be assessed as agricultural land *only* when it is devoted to agricultural use." Ind. Code § 6-1.1-4-13(a) (emphasis added). The word "devote" means, "to give or apply (one's time, attention, or self) completely." WEBSTER'S II NEW RIVERSIDE DICTIONARY 192 (revised edition).
25. The evidence shows that prior to the 2002 reassessment, this parcel was assessed with an agricultural woodland classification. But this fact is not probative evidence that the current land value is wrong because each tax year is separate and distinct. *See Quality Stores, Inc. v. State Bd. of Tax Comm'rs*, 740 N.E.2d 939, 942 (Ind. Tax Ct. 2000); *Barth v. State Bd. of Tax Comm'rs*, 699 N.E.2d 800, 806 (Ind. Tax Ct. 1998) (each tax year stands on its own and where taxpayer challenges an assessment the resolution does not depend on how the property was previously assessed).
26. Obviously the trees that were harvested as marketable timber in 2005 or 2006 would have been growing on the property in 2002. There is no dispute that the Petitioner is in the timber business and has been in that business for many years. Nevertheless, the Petitioner failed to establish how either of these facts proves that the subject property was devoted to agricultural use and must be classified as agricultural woodlands for the 2002 assessment.
27. Most of the Petitioner's evidence relates to his use since buying this parcel in 2004. (One exception is a written statement from a prior owner, Paula Waterman, that the property "was timbered once in Aug. of 1993 for the person that owned the property before us." *Pet'r. Ex. 21*.) The Petitioner admitted that some of his properties do not meet the definition of woodlands where the buildings are located, but when discussing this particular property, the Petitioner characterized it as all woodland, which does not appear

to be completely accurate. The aerial map clearly shows some kind of improvements on the south part of this parcel. *Pet'r. Ex. 22*. Neither party identified what those improvements are, but the old property record card shows a dwelling, barn and other buildings on the 2001 assessment. *Pet'r. Ex. 20*. The Board can reasonably conclude that they were the same as what appears on the aerial map. The evidence does not establish whether the dwelling was occupied or vacant. The evidence does not establish what use or uses might have been made of this parcel in 2002. Consequently, the evidence is not enough to make a prima facie case for changing the 2002 assessment to agricultural land value.

28. The Guidelines stress that the method for valuing land is of less importance than arriving at the correct value of the land as of the valuation date. GUIDELINES, ch. 2 at 16; *Westfield Golf Practice Center v. Washington Twp. Assessor*, 859 N.E.2d 396, 399 (Ind. Tax Ct. 2007). The Petitioner's argument focuses on the methodology used for the assessment. The Petitioner failed to show that the assessment was not a reasonable measure of true tax value. *See* Ind. Admin. Code tit. 50, r.2.3-1-1(d) ("failure to comply with the ... Guidelines ... does not in itself show that the assessment is not a reasonable measure of 'True Tax Value[.]'"). *See Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *Westfield Golf*, 859 N.E.2d at 399.
29. The Petitioner could have showed through market-based evidence that the assessed value does not accurately reflect the property's market value-in-use.² *Eckerling*, 841 N.E.2d at 678 (stating that a taxpayer who focused only on methodology and did not prove what the market value-in-use should be failed to make a prima facie case). He did not do so.
30. When a taxpayer fails to provide probative evidence supporting a claim that an assessment should be changed, the Respondent's duty to support the assessment with

² For example, apparently in 2007 the Petitioner paid \$240,000 for 72.64 acres of vacant land located near the subject parcel. *Resp't. Ex. 7*. That price would be approximately \$3,300 per acre. If the evidence had established comparability and if the 2007 price had been related to the required valuation date, January 1, 1999, that sale might have helped to prove a more accurate value for the subject property. *See Long*, 821 N.E.2d at 470-471. Neither party, however, took those necessary steps.

substantial evidence is not triggered. *See Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003); *Whitley Products*, 704 N.E.2d at 1119.

SUMMARY OF FINAL DETERMINATION

31. The Board finds in favor of the Respondent. The assessment will not be changed.

This Final Determination of the above captioned matter is issued on the date first written above.

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, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <<http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <<http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>>