

Representative for Petitioners: Douglas K. Walker, Attorney

Representative for Respondent: None

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

ARTHUR and MARY PUTRUS	)	Petition No.: 45-036-06-1-4-00001
As Co-Trustees of the	)	Parcel: 0009-20-13-0126-0007
ARTHUR and MARY PUTRUS	)	
REVOCABLE LIVING TRUST,	)	
	)	
Petitioners,	)	
	)	
v.	)	
	)	Lake County
LAKE COUNTY ASSESSOR,	)	St. John Township
	)	Assessment Year: 2006
Respondent.	)	

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

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**September 3, 2009**

**CORRECTED FINAL DETERMINATION ON SUMMARY JUDGMENT**

The Indiana Board of Tax Review (Board) has reviewed the facts, evidence, and argument presented in this case on the Petitioners' Summary Judgment Motion. The Board now finds and concludes the following:

**ISSUE**

Do the undisputed facts presented in this case show that as a matter of law the subject property should be assessed as agricultural land for the 2006 assessment? The short answer is yes.

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **UNDISPUTED FACTS AND OTHER MATTERS OF RECORD**

1. The subject property is 9.53 acres of unimproved land located at 7310 West Lincoln Highway, Schererville.
2. The Petitioner initiated an appeal regarding the subject property on or about January 15, 2008. The Lake County Property Tax Assessment Board of Appeals (PTABOA) issued its determination for that appeal on June 16, 2008.
3. The Petitioners filed a Petition for Review of Assessment (Form 131) with the Board on July 29, 2008. The Petitioner elected not to follow small claims procedures.
4. The PTABOA determined the assessed value is \$1,505,700 (for land only).
5. On the Form 131, the Petitioner claimed the assessed value should be \$23,800. The Petitioners' summary judgment argument contends the assessment should be \$8,386.40.
6. The Petitioners filed a Motion For Summary Judgment on February 19, 2009.
7. There has been no response to the Motion For Summary Judgment.
8. The Form 131 Petition with attachments is recognized as part of the record.
9. The Petitioners presented and designated the following exhibits to support their motion:
  - Petitioner Exhibit 1 – Affidavit of Arthur Putrus,
  - Petitioner Exhibit 2 – Property Record Card for parcel 0009-20-13-0126-0007,
  - Petitioner Exhibit 3 – Form 133, Petition for Correction of an Error for parcel 0009-20-13-0126-0007 for the 2007 assessment,
  - Petitioner Exhibit 4 – Affidavit of Stan Sims,
  - Petitioner Exhibit 5 – Affidavit of Gerald Gayda,
  - Petitioner Exhibit 6 – DLGF Agricultural Land Base Rates,

Petitioner Exhibit 7 – DLGF Memo dated February 12, 2008, “Classification and Valuation of Agricultural Land,”

Petitioner Exhibit 8 – Letter to Arthur Putrus from Dale Wietbrock dated July 19, 2002.

10. The Respondent did not present any evidence.

### CONTENTIONS

11. Summary of the Petitioner’s case:

- a. The subject property was purchased by the Putrus family back in the 1930’s. Arthur Putrus inherited it from his parents. The subject property had been part of a larger tract that was split between children after the parents died. It has always been devoted to agricultural use since that time. *Pet’r Ex. 1.*
- b. Gerald Gayda, a nephew, owns adjacent property. The subject property produces hay to feed Mr. Gayda’s cattle as well as timber for the saw mill he owns and operates. He cut and baled hay on the subject property at least twice in 2006. He also harvested timber from the subject property in 2006 and used it to build fences, feeders, and gates. *Pet’r Exs. 1, 5.*
- c. The county extension director for Purdue University Cooperative Extension Service in Lake County, Stan Sims, personally observed the subject property on February 25, 2008, and he noted that it is devoted to agricultural use. Furthermore, it has been devoted to agricultural use consistently for some time. Photographs from 2004, 2005, and 2006 show hay being baled on the subject property. *Pet’r Ex. 4.*
- d. The subject property was always assessed as agricultural land until 2006. *Pet’r Ex. 1.*

- e. For the subsequent assessment year, St. John Township Assessor Hank Adams acknowledged that the land was being farmed. He changed the 2007 assessment to \$10,860 because the land is being farmed.<sup>1</sup> Pet'r Exs. 1, 3, 6.
12. The Respondent did not present any case.<sup>2</sup>

### SUMMARY JUDGMENT STANDARD

13. The Board's Procedural Rules permit a party to move for summary judgment. 52 IAC 2-6-8. Summary judgment is appropriate where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Wittenberg Lutheran Village Endowment Corp. v. Lake Co. Property Tax Assessment Bd. of Appeals*, 782 N.E.2d 483, 487 (Ind. Tax Ct. 2003).
14. The party seeking summary judgment bears the burden of demonstrating through designated evidence that there are no genuine issues of material fact and that it is entitled to judgment as a matter of law. *Coffman v. PSI Energy, Inc.*, 815 N.E.2d 522, 526 (Ind. Ct. App. 2004). If the movant satisfies its burden, the non-movant cannot rest upon its pleadings, but instead must designate sufficient evidence to show the existence of a genuine issue for trial. *Id.* The Board must construe all evidence in favor of the non-moving party, and all doubts as to the existence of a material issue of fact must be resolved against the moving party. *See Tibbs v. Grunau Co., Inc.*, 668 N.E.2d 248, 249 (Ind. 1996).

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<sup>1</sup> Although nobody explained the calculation, it is apparent that the 2007 assessed value was determined by simply multiplying 9.53 acres by the 2007 agricultural land base rate of \$1140 per acre.

<sup>2</sup> The Respondent's total failure to respond to this case is troubling. The divergence of positions regarding the true tax value of the subject property is extreme. The additional tax burden that the existing assessment would impose on the Petitioners is very significant. If the Respondent truly believed that the assessment was correct, why was there no evidence or argument submitted to the Board in support of that position? The record here implies that the Respondent (and the PTABOA for that matter) perceived the burden falling on the Petitioners as being insignificant. The Board is bothered by such a cavalier approach. These matters should be taken seriously by the Assessor and the PTABOA. If they have no evidence to the contrary, or are unwilling to defend their assessment before the Board, then this type of dispute should be resolved short of requiring the Petitioners to expend the funds, time, and effort necessary to appeal their case to the Board.

## ANALYSIS

15. Indiana Code § 6-1.1-4-13 states that “land shall be assessed as agricultural land only when it is devoted to agricultural use.”
16. “Agricultural property” means “land and improvements devoted to or best adaptable for the production of crops, fruits, timber and the raising of livestock.” REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002—VERSION A, Glossary at 1.
17. The Petitioners offered substantial proof that the subject property is agricultural land and that it should be assessed as such. The Affidavit of Arthur Putrus states that the property “has always been devoted to agricultural use” since his parents bought it in the 1930’s. A neighbor cuts and bales hay to feed his cattle. He also cuts timber from the property. The Affidavit of Gerald Gayda (that neighbor) verifies that he gets hay and timber from the property. The Affidavit of Stan Sims (the Purdue County Extension Director) further supports the claim that the subject property has been consistently devoted to agricultural use “for some time.”
18. The Property Record Card, which only has data back to 2002, appears to confirm Arthur Putrus’s statement that prior to 2006 the property had been assessed as agricultural land. Furthermore, the Form 133 Petition For Correction Of Error for the 2007 assessment (Pet’r. Ex 3) corroborates Arthur Putrus’s statement that St. John Township Assessor Hank Adams agrees the property is being farmed and should be assessed as agricultural land.
19. These undisputed facts are sufficient to make a prima facie case that the subject property should be assessed as agricultural land.
20. The Tax Court has held that taxpayers cannot rebut the presumption that an assessment is correct by simply showing a technical failure to follow the Guidelines. *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *see also* 50 IAC 2.3-1-

1(d). The Tax Court has not distinguished between property devoted to agricultural use and property devoted to other uses on this point. Nevertheless, all of the methodology claims rejected by the Tax Court have been attacks on the application of the Guidelines in assessing improvements. *See, e.g., Eckerling*, 841 N.E.2d at 678; *P/A Builders & Developers, LLC v. Jennings Co. Assessor*, 842 N.E.2d 899, 900-901 (Ind. Tax Ct. 2006); *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E. 2d 90, 94-95 (Ind. Tax Ct. 2006). In previous cases, the Board has found that the Legislature intended to treat the assessment of agricultural land differently from the assessment of other types of property and did not apply the restrictions in *Eckerling* to agricultural land cases. Therefore, in establishing its prima facie case for an assessment change, the Board finds it to be sufficient for the Petitioners to show that the land in question was devoted to agricultural use, without showing what a more accurate market value-in-use might really be.

21. The Lake County Assessor failed to provide any evidence or argument to dispute the Petitioners' case. Trial Rule 56(E) provides in relevant part that "[w]hen a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleadings, but his response, by affidavit or as otherwise provided in this rule must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him." Thus, the Board concludes that the Petitioners are entitled to summary judgment that their land was used for the production of crops and was devoted to agricultural use in 2006. They are entitled to have their assessment determined accordingly.
  
22. The Petitioners made conflicting claims about what the correct assessment should be. They claimed that the assessment should be \$23,800 when they filed their Form 131 Petition. The Motion For Summary Judgment claims that the assessment should be \$8,386.40. Even though nobody explained how that number was calculated, it is apparent that it is simply the product of multiplying the 9.53 acres by the agricultural land base rate for 2006, which was \$880 (that is *not* how agricultural land valuation should be determined). The Petitioners showed that the base rate for agricultural land for 2006 was

\$880 per acre, but additional information that is not contained in this record would be required to determine the assessed value of the subject property properly as agricultural land. *See* GUIDELINES, ch. 2 at 102-108 (discussing land use types, soil maps, and the soil productivity index). Ultimately, the Petitioners failed to establish that either amount would be the correct agricultural land value.

### CONCLUSION

23. The undisputed facts establish that the subject property should have been assessed as agricultural land, but all the data required to calculate exactly what that valuation would be (the soil maps and soil productivity index) are not in the record. Therefore, the Board finds in favor of the Petitioners and as a final summary judgment orders that the 2006 assessment for the subject property must be changed so that it is assessed as agricultural land. The exact amount of that assessment, however, must be calculated by the Respondent.

### FINAL DETERMINATION

In accordance with the above findings and conclusions, the assessment must be changed to a valuation as agricultural land.

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Commissioner, 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

**- 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>>