

REPRESENTATIVE FOR PETITIONER:
Charles Braxton, Pro Se

REPRESENTATIVE FOR RESPONDENT:
Ken Surface, Nexus Group

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Charles Braxton,)	Petition No.:	07-004-02-1-5-00096
)	Parcel:	003082310003200
Petitioner,)		
)		
v.)		
)	Brown County	
Washington Township Assessor)	Washington Township	
)	2002 Assessment	
Respondent.)		

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

February 27, 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 subject land be valued as agricultural woodland and not as residential excess acreage?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Brown County Property Tax Assessment Board of Appeals (PTABOA) issued its determination on November 9, 2005. On November 28, 2005, the Petitioner filed a Form 131 Petition for Review of Assessment seeking a review of that decision.

2. Paul Stultz, the Board's designated Administrative Law Judge (ALJ), held a hearing on that petition in Nashville on August 29, 2006.

3. The following persons were sworn as witnesses:
 - Charles Braxton, owner,
 - Mary Braxton¹,
 - Donna Lutes, Brown County Assessor,
 - Ken Surface, Nexus Group.

4. The Petitioner presented the following exhibits:
 - Petitioner Exhibit 1 – Aerial map of the subject property identified as 137.000,
 - Petitioner Exhibit 2 – Elevation map showing the subject property outlined in red,
 - Petitioner Exhibit 3 – Ownership information for the subject property, the Martha Johnston property and an additional property the Petitioner owns,
 - Petitioner Exhibit 4 – Pages 99 through 106 from the Real Property Assessment Guidelines for 2002 – Version A with portions circled,
 - Petitioner Exhibit 5 – Copy of the Amendments to Land Values for 2002 Reassessment,
 - Petitioner Exhibit 7 – Copy of a contract to harvest timber on the subject property.

5. During the hearing, the Respondent objected to the admission of the timber contract, identified as Petitioner Exhibit 7. The Respondent argued that the document is not relevant to the 2002 assessment because the timber contract was executed in 2006. The Petitioner argued that the timber contract demonstrates the use of the land for producing timber even though the year of sale is different. The ALJ sustained the objection to the contract at the hearing, but upon further consideration, the Board overrules that objection. The contract shows that on January 1, 2006, the Petitioner sold 140 trees of mixed species to Wilkerson Logging for a total of \$4,200. It is common knowledge that growing marketable trees takes several years. There can be no reasonable doubt that the trees the Petitioner sold in 2006 would have been growing in 2002, and probably for many years before that. Therefore, the contract is relevant to the dispute about agricultural woodland classification because it helps to establish that the land supported trees capable of producing timber or other wood products for some years before 2006.

¹ Mary Braxton did not testify.

6. The Respondent presented the following exhibits:
 - Respondent Exhibit 1 – Property record card for an adjacent property,
 - Respondent Exhibit 2 – Copy of plat map showing the subject property outlined in yellow,
 - Respondent Exhibit 3 – Power of attorney.
7. The following additional items are recognized as part of the record of proceedings:
 - Board Exhibit A – The 131 Petition,
 - Board Exhibit B – Notice of Hearing,
 - Board Exhibit C – Hearing Sign in Sheet.
8. The subject property is 5 acres of wooded land. There are no improvements on it.
9. The ALJ did not conduct an on-site inspection of the property.
10. The PTABOA determined the assessed value of the land is \$21,900.
11. The Petitioner contends the assessed value of the land should be \$520.
12. The Board conducts an impartial review of appeals from determinations by an assessing official or a county property tax assessment board of appeals that concern assessed value of tangible property, property tax deductions, and property tax exemptions. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15.
13. 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).
14. In making a 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”).

15. 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

16. The Petitioner contends the land classification of the subject property should be agricultural woodland and not excess residential acreage because the subject property is used for timber production and not for residential purposes. In support of his position, the Petitioner presented the following testimony and other evidence:
 - A. The aerial map used for the assessment identifies the subject property as 137.000. It shows that the subject property is wooded, as is the land to the north, which belongs to the state forestry. *C. Braxton testimony; Pet’r Ex. 1.*
 - B. The elevation map has the location of the subject property outlined in red. It indicates elevations with 10-foot increments between each line. The lines shown in the red outlined area are very close together, meaning the elevation changes very quickly. In other words, this map shows that the subject property is a very steep hillside. *C. Braxton testimony; Pet’r Ex. 2.*
 - C. For that reason, the property is not buildable. It does not have, and could not have road access without obtaining an easement from neighboring properties. The property cannot have a septic system installed because the system would run off into the water source below it. *C. Braxton testimony.*

- D. The use of the property has not changed. It was not used for residential purposes. The Petitioner held it for timber production, but there was no income until the timber was harvested. *C. Braxton testimony.*
 - E. Martha Johnston's property adjoins the subject property. It is woodland like the subject property, but it is assessed in a different manner than the subject property. *C. Braxton testimony; Pet'r Ex. 3.*
 - F. The notation that the Petitioner agrees with the Form 115 changes does not indicate that the Petitioner agrees with the assessment. It merely means that the Petitioner understands the PTABOA determination and agrees that the Form 115 reflects that determination. *Lutes testimony.*
17. The Respondent contends that the subject property is properly valued as excess residential acreage because it is not an income producing property. In support of the assessment, the Respondent presented the following testimony and other evidence:
- A. The land order provides that land not used for agricultural purposes or “not legally classified” as agricultural land is valued at \$3,500 per acre for the first 20 acres and \$1,050 for each acre thereafter. Parcels with less than 10 acres are valued using a higher per acre value for the first acre. *Surface testimony.*
 - B. The subject property is a 5-acre tract. It is not used for agricultural purposes. It is valued as residential excess acreage. *Surface testimony.*
 - C. The Johnston property is an 8.82-acre parcel that is valued as residential excess acreage as is the subject property. *Surface testimony; Resp't Ex. 1.*
 - D. The current system is a market value-in-use system. The Petitioner has not shown that the subject property is incorrectly valued at \$21,900. If the Board determines

that the \$21,900 value will not stand, it should return the value to the original assessment of \$31,700. *Surface testimony.*

18. "**Agricultural land** is valued using a statewide base rate.... All land utilized for agricultural purpose is valued in this manner. **Residential land** is land that is utilized or zoned for residential purposes." REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, ch. 2 at 68 (incorporated by reference at 50 IAC 2.3-1-2). Different methods determine land value for residential or agricultural land. Size does not determine the classification or pricing method for the parcel. The classification and pricing method are determined by use or zoning. *Id.* Agricultural land is valued using a statewide base rate and a soil productivity index system. All land utilized for agricultural purposes is valued in this manner. Residential land is land utilized or zoned for residential purposes. Land purchased and utilized for residential purposes is based on market worth as of January 1, 1999. *Id.*
19. 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. Agricultural land assessment uses data from detailed soil maps, aerial photography, and local plat maps. GUIDELINES, ch. 2 at 100. Agricultural woodland has 50% or more canopy cover and supports trees capable of producing timber or other wood products. It gets a negative 80% influence factor. GUIDELINES, ch. 2 at 104.
20. The Petitioner presented an aerial photograph of the subject property showing that the subject property is completely wooded having more than 50% canopy cover. The Petitioner also presented evidence that the subject property is intended for the harvesting of timber rather than for residential use. *C. Braxton testimony; Pet'r Ex. 1.* The timber contract is strong evidence that the Petitioner sold trees on the subject property (and several additional acres) to a logging company. The Respondent did not dispute the fact that the Petitioner sold the trees, but simply argued that the sale was not relevant because it did not take place during 2002. The fact that the sale of the trees did not take place during 2002, however, is not important because clearly the land was used to grow the

trees for many years before the 2006 sale. This evidence shows that the subject property meets the description of agricultural woodland. It should be valued as such.²

21. The Petitioner also presented an elevation map of the subject property to show that the subject property is on a steep hillside that would not be suitable for residential use because it lacks access and it would be impossible to install a septic system. *C. Braxton testimony; Pet'r Ex. 2*. While this evidence does not prove the subject property is agricultural woodland, it does tend to show that the subject property would not be appropriate for residential use.
22. The Petitioner offered data about the Martha Johnston property to show that the subject property and a comparable property are valued differently. The evidence regarding the Martha Johnston property does not demonstrate how it is valued. The evidence only shows that Martha Johnston owns 8.82 acres of land located in Washington Township. This part of the Petitioner's case is conclusory and has no probative value.
23. The Petitioner made a prima facie case and the burden has shifted to the Respondent to rebut or impeach that case.
24. The Respondent merely offered statements that the subject property was determined not to be used for agricultural purposes and should be valued as excess residential acreage. The Respondent failed to present probative evidence that the subject property is not used for agricultural purposes. The Respondent simply pointed to the current method of valuing the subject property and claimed it was correct.
25. The Respondent pointed out that the current valuation system is a market value-in-use system and claimed the Petitioner did not show that the subject property is incorrectly valued at \$21,900. Again, the Respondent simply points to the current assessment and

² The agricultural base rate is \$1050 per acre and the woodland classification dictates a negative 80% influence factor. GUIDELINES, ch. 2 at 100, 104. Thus, the subject property assessed value would be \$210 per acre. The total for 5 acres would be \$1,050, which rounds to an assessed value of \$1,100. GUIDELINES, ch. 2 at 119.

claims the assessment to be correct. The Respondent has not presented any probative evidence to establish that the subject property should be classified as excess residential acreage rather than agricultural woodland.

26. The Respondent's unsubstantiated, conclusory claims do not constitute probative evidence. The Respondent failed to rebut or impeach the Petitioner's evidence.

SUMMARY OF FINAL DETERMINATION

27. The Petitioner presented a prima facie case. The Respondent failed to rebut that case. The assessment for the subject property must be changed to \$1,100.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

- Appeal Rights -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Trial Rules are available on the Internet at http://www.in.gov/judiciary/rules/trial_proc/index.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.