

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

Petition #: 39-001-04-1-5-00032
Petitioners: James C. and Edith L. Pendleton
Respondent: Shelby Township Assessor (Jefferson County)
Parcel: 0010000300
Assessment Year: 2004

The Indiana Board of Tax Review (the Board) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. The Petitioners initiated an assessment appeal with the Jefferson County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated November 16, 2004.
2. The Petitioners received notice of the decision of the PTABOA on February 8, 2005.
3. The Petitioners filed an appeal to the Board by filing a Form 131 with the county assessor on February 14, 2005. The Petitioners elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated August 11, 2005.
5. The Board held an administrative hearing on November 2, 2005, before the duly appointed Administrative Law Judge (the ALJ) Jennifer Bippus.
6. Persons present and sworn in at hearing:
 - a) For Petitioners: James C. Pendleton, Taxpayer
 - b) For Respondent: Gale H. Ferris Sr., Shelby Township Trustee Assessor
Margaret Hoffman, Jefferson County Assessor

Facts

7. The subject property is 68 acres of agricultural land located on Lemon Road, Madison, in Shelby Township.
8. The ALJ did not conduct an on-site visit of the subject property.

9. The PTABOA determined the assessed value of subject property to be \$41,900 for the land. There are no improvements on the property.
10. The Petitioners requested that the subject property be assessed in the same manner as an adjacent property (the Kurr property).

Issue

11. Summary of Petitioners' contentions in support of an error in the assessment:

- a) The Petitioners contend that the land assessment is too high. *J. Pendleton testimony.* The Petitioners claim that a neighboring property's land value is assessed less than the subject property. *Id.* According to the Petitioners, the Kurr property is almost identical to the subject property. *Id.*
- b) The Petitioners further claim that they have only 32 acres of tillable land as opposed to the 38 acres shown on the property record card (PRC). *Id.* In support of this contention, the Petitioners submitted maps that they contend came from the soil office. *Petitioner Exhibits 3 & 5; J. Pendleton testimony.*
- c) Finally, the Petitioners argue that the subject property has three creeks on it causing the land to be split into small sections that are hard to farm. *Id.* The Petitioners contend that they can only rent the subject land for \$25 an acre as pasture because it is not fit to till. *Id.* According to the Petitioners, the rental rate for tillable land is \$80 to \$100 an acre. *Id.*

12. Summary of Respondent's contentions in support of the assessment:

- a) The Respondent testified that the county obtained soil identification information from the ASCS farm service agency office for all of the farm properties in the county. *Hoffman testimony.* According to the Respondent, the ASCS farm report shows 38 acres of tillable cropland for the Petitioners with the rest of the land being woodland and ponds which receive influence factors. *Id.*
- b) The Respondent further argues that the subject property differs from the neighboring property in that the subject property has more tillable land than the Kurr property. *Hoffman testimony.* According to the Respondent, soil types were used to value the subject property and there is only 21 acres of tillable land shown for the Kurr's property, whereas the Petitioners' property has 38.15 acres. *Id.*
- c) Finally, the Respondent contends that the Petitioners could bring in an actual printout of the correct land acreage from the ASCS office and, if there are discrepancies, corrections could be made. *Hoffman testimony.*

Record

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

- a) The Petition.
- b) The tape recording of the hearing labeled BTR #6174.
- c) Exhibits:

Petitioner Exhibit 1: Copy of the Form 115

Petitioner Exhibit 2: Copy of Petitioner's issues from the Form 131

Petitioner Exhibit 3: Copy of parcel map showing 32.8 acres of tillable land

Petitioner Exhibit 4: Copy of photograph of old improvement on the subject property

Petitioner Exhibit 5: Copy of the soil map from the soil book provided by the land soil office

Respondent Exhibit 1: Subject PRC

Respondent Exhibit 2: Authorization Letter

Board Exhibit A: Form 131 Petition

Board Exhibit B: Notice of Hearing on Petition

Board Exhibit C: Sign-in Sheet

- d) These Findings and Conclusions.

Analysis

14. The most applicable governing cases are:

- a) 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 Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
- b) 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 Township Assessor*, 802 N.E.2d 276 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer’s duty to walk the Indiana Board... through every element of the analysis”).

- c) 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.
15. The Petitioners failed to provide sufficient evidence to establish a prima facie case for a reduction in value. The Board reached this decision for the following reasons:
- a) The Petitioners contend that their land assessment is excessive when compared to an adjacent property (the Kurr property). *J. Pendleton testimony*. The Petitioners further contend that the amount of their tillable land is incorrect. *Id.* Finally, the Petitioners claim that streams on the subject property limit the tillable areas of the property. *Id.*

Comparable Property

- b) The Petitioners claim that a neighboring property adjacent to the subject property is valued less than the subject property. According to the Petitioners, the subject property is assessed for \$41,900 while the Kurr property is assessed for only \$24,500. *J. Pendleton testimony*.
- c) Indiana Code § 6-1.1-2-2 requires uniform and equal assessments. Thus to the extent that the Petitioner proves that its property is not assessed uniformly or equal to the comparable property, Petitioner's assessment should be equalized. However, "taxpayers are required to make a detailed factual showing at the administrative level." *Home Federal Savings Bank v. Madison Township Assessor*, 817 N.E.2d 332 (Ind. Tax Ct. 2004). To meet this showing, "the taxpayer must not only present probative evidence in support of its argument, but must also sufficiently explain that evidence." *Id.*
- d) To introduce evidence of comparable properties, a taxpayer must explain *how* the properties are comparable. *See Blackbird Farms Apts. v. Department of Local Government Finance*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002) (holding that the taxpayer did not present a prima facie case where it provided assessment information for allegedly comparable properties but failed to explain *how* the properties were comparable). Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the two properties. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. The proponent likewise must explain how any differences between the properties affect their relative market value-in-use. *Id.* *See also, Hoogenboom-Nofziger*, 715 N.E.2d at 1024 (holding that taxpayer failed to make a prima facie case when he offered conclusory statements and photographs without further

explanation); *Lacy Diversified Industries, Ltd. v. Department of Local Government Finance*, 799 N.E.2d 1215, 1220 (Ind. Tax Ct. 2003) (holding that taxpayer failed to make a prima facie case when he offered conclusory statements, property record cards, and photographs without further explanation).

- e) In the case at bar, the Petitioners have not met their burden. While the Petitioners identify a neighboring property that may be assessed lower, the Petitioners did not make any attempt to explain how or why the property was comparable to the subject property. The Petitioners failed to provide a property record card for the neighboring property. Nor did the Petitioners identify the topographic features of the “comparable” property. The Petitioners merely compared the tillable acres of the two properties. This falls far short of the burden the Petitioners face. The Petitioners only made a “de minimus factual showing” and has failed to “sufficiently link [their] evidence to the uniform and equal argument they raise.” *See Home Federal Savings Bank*, 871 N.E.2d 332 (Ind. Tax Ct. 2004).

Tillable Land

- f) The Petitioners further allege that the land on the subject property was incorrectly classified. According to the Petitioners, the land has AVA and ROB2 rated soil like the neighboring property. *J. Pendleton testimony*. Further, the Petitioners allege, there are only 32.8 acres of tillable land and not the 38 acres of tillable land for which the property is presently assessed. *Id.* The Petitioners also provided maps in support of their claim that the subject property consists of 32.8 acres of tillable land. *Petitioner Exhibits 3 and 4*.¹
- g) The agricultural land assessment formula involves the identification of agricultural tracts using data from detailed soil maps, aerial photography, and local plat maps. Uniformity is maintained in the assessment of agricultural land through the proper use of soil maps, interpreted data and unit values. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002, VERSION A, ch. 2 at 99 (the GUIDELINES) (incorporated by reference at 50 IAC 2.3-1-2).

¹ The Petitioners also allege that the property’s value is limited by the creeks on the property. According to the Petitioners, the subject property has three creeks that run through the property, cutting the parcel into small areas that makes farming difficult. *J. Pendleton testimony*. The Petitioners also allege that “good” farmland rents for \$80 to \$100 per tillable acre and that the Petitioners could only get \$25 for the property as pasture land because of the creeks. *Id.* Agricultural lands receive automatic influence factors based on soil productivity and land classification. *See* 50 IAC 1-3-4; GUIDELINES, ch. 2 at 113-114. Here, the Petitioners do not contend that the property covered by the creeks has been improperly classified. Thus, no further influence factor is warranted. Even if an influence factor is appropriate for the property, however, the Petitioners must prove (1) its parcel did not have the same use as surrounding parcels and (2) the inconsistent usage negatively impacted the subject parcel’s value. *Cf. Talesnick v. State Board of Tax Commissioners*, 693 N.E.2d 657, 661 (Ind. Tax Ct. 1998). Here, the Petitioners failed to prove that its parcel did not have the same use as surrounding parcels and that the conditions on the property negatively impacted the subject property’s value. It is not sufficient for the Petitioners to simply allege that they could get \$80 to \$100 in rental for good tillable land. They must present probative evidence of a reduction in rent due to the conditions on the property. Unsubstantiated conclusions do not constitute probative evidence. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1113, 1120 (Ind. Tax Ct. 1998).

- h) The 2002 general reassessment agricultural land value utilizes the land's current market value-in-use, which is based on the productive capacity of the land, regardless of the land's potential or highest and best use. GUIDELINES, ch. 2 at 99. The statewide agricultural land base rate value for the 2002 general reassessment is the average market value-in-use or \$1,050 per acre. *Id.* at 100. The agricultural land assessment formula also values farmland, in part, based on the productivity of each parcel's soil resources. *Id.* at 106. Soil maps prepared by the United States Department of Agriculture categorize land according to its productivity. *Id.* at 106. There are seven categories of agricultural land use types including classified land, tillable land, nontillable land, woodland, other farmland, agricultural support land, and homesite. *Id.* at 102 - 105. Only the agricultural homesite is excluded from the application of a soil productivity factor.
- i) Here, the Petitioners allege that the amount of tillable soil assessed to the subject property is incorrect. According to the Petitioners, the property only has 32.8 acres of tillable land. *J. Pendleton testimony*. In support of this allegation, the Petitioners submitted two maps. One of the maps is an aerial photograph with various lettering and number labels and a handwritten "32.8" designation on the map. *Petitioner Exhibit 3*. The second map is purportedly a "soil map" from the "land soil office" that shows a wide area with soil type labels. *Petitioner Exhibit 5*. However, the subject property is not identified on either map. The Petitioners failed to identify the location of their parcel on the maps. Further, the Petitioners failed to explain the significance of the various numbers and labels on the maps they submitted. Finally, there was no evidence submitted as to how the Petitioners determined that there was 32.8 acres of tillable land on the subject property. *Id.* 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 Township Assessor*, 802 N.E.2d 276 (Ind. Tax Ct. 2004) ("[I]t is the taxpayer's duty to walk the Indiana Board... through every element of the analysis"). Thus, while the property may, in fact, only have 32.8 acres of tillable land, the Petitioners must have presented measurements or calculations or identified which areas were tillable on the map and how many acres each acre comprised. It is insufficient to simply present two unexplained maps and contend that it shows an error. Unsubstantiated conclusions do not constitute probative evidence. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1113, 1120 (Ind. Tax Ct. 1998).
- j) Because the Petitioners did not meet their burden of presenting a prima facie case, the Respondent's duty to rebut Petitioner's evidence was not triggered. *See Clark v. State Board of Tax Commissioners*, 694 N.E.2d 1230, 1233 (Ind. Tax Ct. 1998) (stating that once a taxpayer presents a prima facie case, it must be rebutted with substantial evidence).

Conclusion

16. The Petitioners failed to provide sufficient evidence to establish a prima facie case. The Board finds in favor of the Respondent.

Final Determinations

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should not be changed.

ISSUED: _____

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 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/trialproc/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.