

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #s: 45-044-02-1-1-00092
45-044-02-1-1-00093
Petitioners: Spase & Trajanka Salkovski, et. al.
Respondent: Department of Local Government Finance
Parcel #s: 011-44-54-0016-0015
011-44-54-0004-0003
Assessment Year: 2002

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

Procedural History

1. The Petitioners appealed the real estate assessments upon receiving the tax bills for the above reference parcels. The tax bills, attached to the Form 139L petitions, were due on July 12, 2004. Although the Petitioners did not participate in an informal hearing, the Petitioners were directed not to do so. The Respondent did not raise any objection based upon the Petitioners' failure to participate in the informal hearing.
2. The Petitioners filed Form 139L petitions on July 21, 2004.
3. The Board issued notices of hearings to the parties dated March 3, 2005.
4. Special Master Alyson Kunack held the hearings on the Form 139 L petitions in Crown Point, Indiana, on April 5, 2005.

Facts

5. The subject properties are located at:

Petition #45-044-02-1-1-00092, Parcel #011-44-54-0016-0015: 109th Avenue, Crown Point, Whitfield Township, Lake County, Indiana

Petition #45-044-02-1-1-00093, Parcel #011-44-54-0004-0003: 4001 East 109th Avenue, Crown Point, Whitfield Township, Lake County, Indiana

6. The subject properties are:

Petition #45-044-02-1-1-00092, Parcel #011-44-54-0016-0015:
37.3 acres of farmland with no improvements

Petition #45-044-02-1-1-00093, Parcel #011-44-54-0004-0003:
77.197 acres of land, currently classified as residential excess acreage with no improvements

7. The Special Master did not conduct an on-site visit of the properties.

a) Assessed Values of subject properties as determined by the DLGF:

For Petition #45-044-02-1-1-00092, Parcel #011-44-54-0016-0015:
Land \$187,200 Improvements \$ -0-

For Petition #45-044-02-1-1-00093, Parcel #011-44-54-0004-0003:
Land \$36,300 Improvements \$ -0-

b) Assessed Values requested by the Petitioners per the Form 139L Petitions:

For Petition #45-044-02-1-1-00092, Parcel #011-44-54-0016-0015:
Land \$67,000 Improvements \$ -0-

For Petition #45-044-02-1-1-00093, Parcel #011-44-54-0004-0003:
Land \$20,000 Improvements \$ -0-

8. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearings.

9. Persons sworn in at hearings:

For Petitioners: Mitre Kutanovski, Property Owner¹

For Respondent: John Toumey, representing the DLGF

Issues

10. Summary of Petitioners' contentions in support of an alleged error in the assessments:

¹ Although the Form 139L petitions and property record cards for the subject parcels list the owners as Spase & Trajanka Salkovski, Mr. Kutanovski identified himself as an owner of the properties when he signed the petitions. *See Board Ex. A.*

- a) The Petitioners contend that Parcel #011-44-54-0004-0015 (“Parcel #0015”), consisting of 77.197 acres, should be priced as agricultural land and wetlands. *Kutanovski testimony.*
- b) Property that adjoins Parcel # 0015 is classified as farmed and has a lower assessed value than does the subject property. The individual who owns the adjoining property rents the Parcel # 0015 and farms it as well. Parcel # 0015 was farmed on March 1, 2002, and is still farmed. Since both the adjoining property and Parcel #0015 are farmed, their values should be consistent. *Id.*
- c) Approximately 10 acres of Parcel #0015 are wetlands. The wetland designation occurred ten years ago. *Id.*
- d) Parcel #011-44-54-0004-0003 (“Parcel # 0003”) is farmed by the same individual who farms Parcel #0015. Parcel # 0003 was farmed as of March 1, 2002, and is still being farmed. The land should be valued accordingly. *Id.*

11. Summary of Respondent’s contentions in support of the assessment:

- a) The Respondent proposed changing the classification of Parcel #0015 from residential excess acreage to tillable farmland. The Respondent explained how the soil ID (MUB) and the productivity factor (.81) were determined in this proposed change. The Respondent proposed that the land be valued at \$65,700 ($\$1,050 \text{ per acre} \times .81 = \$851/\text{acre} \times 77.197 \text{ acres} = \$65,700$). *Toumey testimony.*
- b) The Petitioners did not submit any documentation from either the U.S. Department of Agriculture or the Farm Services Agency to show that any portion of Parcel #0015 was designated as wetlands. If such a document existed, the Petitioners would be entitled to a further adjustment. *Id.*
- c) A review of the current PRC for Parcel #0003 shows that the land is already valued as farmland at \$1,050 per acre. No other adjustments are necessary. *Toumey testimony; Respondent’s Exhibit 2(Pet. No #45-044-02-1-1-00093).*

Record

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

- a) The Petition.
- b) The tape recording of the hearing labeled BTR # 729.
- c) Exhibits:

Petitioners’ Exhibits

Petitioners Exhibit 1: Packet of information relating to wetland classification

Respondent's Exhibits

Pet. No. 45-044-02-1-1-00092

Respondent Exhibit 1: Copy of Form 139L Petition
Respondent Exhibit 2: Copy of subject's PRC

Pet. No. 45-044-02-1-1-00093

Respondent Exhibit 1: Copy of Form 139L Petition
Respondent Exhibit 2: Copy of subject's PRC

Board Exhibits

Pet. No. 45-044-02-1-1-00092

Board Exhibit A: Form 139 L Petitions
Board Exhibit B: Notices of Hearings on Petitions
Board Exhibit C: Sign in Sheet
Board Exhibit D: Request for Additional Evidence

Pet. No. 45-044-02-1-1-00093

Board Exhibit A: Form 139 L Petitions
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Board Exhibit C: Sign in Sheet
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- d) These Findings and Conclusions.
13. At the hearing, Mr. Kutanovski requested an opportunity to submit information pertaining to the issue of wetlands. The Special Master gave the Petitioners until April 19, 2005, to submit this information. The Petitioners submitted such additional evidence on April 12, 2005. The Special Master's request for additional evidence and the Petitioners' response are entered into the record and labeled as Board Exhibit D and Petitioners' Exhibit 1, respectively.

Analysis

14. The most applicable laws 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 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).

- 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 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”).
 - 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 provided sufficient evidence to support their contention that Parcel #0015 should be assessed as agricultural land. The Petitioners did not provide sufficient evidence to support their remaining contentions. This conclusion was arrived at because:

Parcel #0015

- a) The Petitioners contend that the 77.197 acres of land contained in Parcel #0015 should be classified as agricultural land. The Petitioners further contend that a 10-acre portion of that parcel should be classified as wetlands. *Kutanovski testimony*.
- b) Mr. Kutanovski testified that, as of March 1, 2002, Parcel #0015 was farmed by the owner of an adjoining parcel. The Respondent agreed with the Petitioners that the land should be valued as agricultural land. *Toumey testimony*. Consequently, the Petitioners proved by a preponderance of the evidence that Parcel #0015 should be classified as agricultural land and assessed accordingly.
- c) The Respondent, however, did not agree to the Petitioners' request that a portion of Parcel #0015 be assessed as wetlands. Thus, the Board must determine whether the Petitioners established a prima facie case that any portion of Parcel #0015 is entitled to a reduction in assessment on the basis that it constitutes wetlands.
- d) The Guidelines provide for the application of a negative influence factor of fifty percent (50%) to land classified as “farmed wetlands.” The Guidelines further provide, however, that the classification of such land “must be verified through records obtained from the U.S. Department of Agriculture, Farm Service Agency.” GUIDELINES, ch. 2 at 104. .
- e) Although Mr. Kutanovski testified as to the classification of a portion of the parcel as wetlands, his testimony is insufficient to establish entitlement to a negative influence factor of fifty percent (50%) absent records verifying that such land has been so designated by the U.S. Department of Agriculture. Moreover, there is no such verification contained in the post-hearing evidence submitted by the Petitioners.

While those documents generally refer to land classified as wetlands pursuant to Section 404 of the Clean Water Act of 1977, none of the documents purport to be from the U.S. Department of Agriculture.

- f) Furthermore, the documents submitted by the Petitioners do not sufficiently identify the location of the wetlands to which they refer. The only reference to a parcel number contained in those documents is the notation “Property # 445400040015” written diagonally across a June 1997 letter from John B Richardson, of J.F. New and Associates to Marty Maupin, of the Indiana Department of Environmental Management. *Petitioners’ Exhibit 1*. The Petitioners did not explain who made that notation. The only document that specifically identifies any land is a topographical map highlighting a 4.5-acre portion of land identified as “J.F. New & Associates, Inc. Area.” There is a metes and bounds description of the area covered by the map, which is of same the quarter section of the township in which Parcel #0015 is located. It is impossible to tell from that map, however, whether the highlighted portion is located within Parcel #0015.²
- g) The Petitioners therefore failed to establish a prima facie case that Parcel #0015 should be classified as wetlands.

Petition #0003

- h) The Petitioners contend that Parcel #0003 should be valued as farmland for the same reasons they argued with regard to Parcel #0015. *Kutanovski testimony*. There is no issue regarding wetlands on this parcel.
- i) A review of the current PRC for Parcel #0003, however, indicates that the 37.3 acres under appeal are already valued as farmland at \$1,050 per acre. *Respondent’s Exhibit 2 (#45-044-02-1-1-00093)*. The Petitioners therefore failed to establish a prima facie case of error regarding the assessment of Parcel #0003.

Conclusion

- 16. The Petitioners failed to establish a prima facie case showing that 10 acres of Parcel #0015 should be classified as wetlands. The Board finds in favor of the Respondent on that issue. The Petitioners did prove by a preponderance of the evidence that Parcel #0015 should be classified as agricultural land. The assessment should be changed accordingly.
- 17. The Petitioners failed to establish a prima facie case of error with regard to the assessment of Parcel #0003. The Board finds in favor of the Respondent.

² The Petitioners also attached documents to their 139 petitions. Those documents are not part of the evidentiary record except to the extent that they are included in Petitioners’ Exhibit 1, which the Petitioners offered into evidence.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed for Parcel #011-44-54-0016-0015. The Indiana Board of Tax Review further finds that assessment for Parcel #011-44-54-0004-0003 should not be changed.

ISSUED: **December 30, 2005**

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>>.