

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

Petition #: 48-001-02-1-1-00005
Petitioner: Esta Adams
Respondent: Adams Township Assessor (Madison County)
Parcel #: 0100051042
Assessment Year: 2002

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 Petitioner initiated an assessment appeal with the Madison County Property Tax Assessment Board of Appeals (“PTABOA”) by written document dated January 16, 2004.
2. The PTABOA’s Notice of Final Assessment Determination was mailed to the Petitioner on Mach 22, 2004.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the county assessor on April 21, 2004. The Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated January 14, 2005.
5. The Board held an administrative hearing on April 26, 2005, before the duly appointed Administrative Law Judge (ALJ) Debra Eads.
6. Persons present and sworn in at hearing:
 - a) For Petitioner: Betty Swift, (daughter of the Petitioner) by power of attorney
 - b) For Respondent: Cheryl Heath, Chief Deputy County Assessor
Lloyd Brumback, Deputy County Assessor

Facts

7. The subject property is classified as agricultural, as is shown on the property record card (PRC) for parcel # 0100051042.
8. The ALJ did not conduct an inspection of the property.
9. Assessed Values of subject property as determined by the Madison County PTABOA:
Land \$26,000 Improvements \$-0-
10. Assessed Values requested by Petitioner per the Form 131 petition:
Land \$20,176 Improvements \$-0-

Issues

11. Summary of Petitioner's contentions in support of alleged error in assessment:
 - a) The subject property is located in a flood plain and has experienced severe flooding several times in the past ten (10) years. *Swift testimony*. A letter from Mike Hughes, District Conservationist for the Natural Resources Conservation Service, states that Sly Creek overflows two out of three years on the subject property, and that 10.7 acres of the subject property have been "drowned out, and destroyed or damaged." *Swift testimony; Petitioner Exhibits 1-2*. A letter from Pat Manship, previous Madison County Surveyor, states that the subject property is in a flood plain and has experienced flooding several times in the past ten (10) years. *Petitioner Exhibit 4*.
 - d) Based upon the Real Property Assessment Guidelines for 2002 – Version A ("Assessment Guidelines"), a negative influence factor of 50% should be applied to the 10.7 acre portion of the subject property that floods. *Swift testimony; Petitioner Exhibits 1, 4, 13*.
 - e) The western boundary of the subject property includes 2,513 lineal feet of the Sly Fork legal drain. *Swift testimony; Petitioner Exhibit 5*. The Assessment Guidelines provide that legal ditches should not be included in the valuation of a property. *Id.*
 - f) A deduction for a legal drainage ditch (Sly Fork) of 2,513 feet by 30 feet or 1.73 acres should be made. *Swift testimony; Petitioner Exhibits 6-7*.

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

The Respondent acknowledged that Sly Fork is a legal drain and that no adjustments had been made to the assessment in consideration of that fact. *Heath testimony; Brumback 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 # 6176.
- c) Exhibits:

Petitioner Exhibit 1: Statement from Mike Hughes, District Conservationist, Natural Resources Conservation Service

Petitioner Exhibit 2: Aerial photograph of area in question: red designation is area that floods; yellow designation is subject parcel

Petitioner Exhibit 3: 2003 SIMS aerial map

Petitioner Exhibit 4: Statement from Pat Manship, previous Madison County Surveyor, dated July 14, 2004

Petitioner Exhibit 5: Letter from Brad Newman, current Madison County Surveyor, dated March 28, 2005

Petitioner Exhibit 6: Sly Fork aerial boundary map

Petitioner Exhibit 7: Plat map footage – 01-0005-1-042 (2,513 feet of legal ditch along Sly Ford)

Petitioner Exhibit 8: Form 130 Petition, page 1

Petitioner Exhibit 9: Form 130 Petition, page 2

Petitioner Exhibit 10: Form 115, page 1

Petitioner Exhibit 11: Form 115, page 2

Petitioner Exhibit 12: Property tax card (PRC) January 2, 2003

Petitioner Exhibit 13: Summary of Findings

Respondent: No written evidence submitted

Board Exhibit A: Form 131 Petition

Board Exhibit B: Notice of Hearing on Petition

- d) These Findings and Conclusions.

Analysis

14. The most applicable governing cases are:

- a) A petitioner seeking review of a determination of a local 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 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 Petitioner’s evidence. *See American United Life Ins. 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. at 2d 479.
15. The Petitioner did provide sufficient evidence to support her contentions. This conclusion was arrived at because:
- a) The Real Property Assessment Guidelines for 2002 – Version A (“Assessment Guidelines”) direct local assessing officials to classify agricultural land based upon certain physical characteristics affecting the use of the land. *See REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A* ch. 2 at 102-06 (incorporated by reference at 50 IAC 2.3-1-2). The Assessment Guidelines also specify influence factors to be applied to several of those classifications. *Id.*

- b) The following classifications are relevant to this appeal:

Type 42 – Land flooded severely – damaging floods occur five times or more in a ten year period. A 50% influence factor deduction applies to this land use type.

Type 81 – Legal ditch. The area used and occupied as part of a legal drainage ditch is considered to have no value and is deducted from the total parcel acreage. This area also includes the area adjacent to the ditch that cannot be farmed because of the need for access to the ditch.

GUIDELINES at 104-05.

- c) The Petitioner presented evidence to demonstrate that a 10.7 acre portion of the subject property is damaged by flooding two out of every three years. *Swift testimony; Petitioner Exhibits 1-2*. That evidence is sufficient to establish a prima facie case that the 10.7 acre portion of the subject property affected by such flooding should be assessed as Type 42 land, with a negative influence factor of 50%.

- d) The Respondent made no attempt to rebut or impeach the Petitioner's evidence concerning the flooding of the 10.7 acre portion of the subject property.
- e) The Petitioner also contends that a 1.73 acre portion of the subject property consisting of a legal ditch should be deducted from the total acreage of the subject property being valued for purposes of assessment. An aerial photograph of the subject property submitted by the Petitioner shows the existence of a drainage ditch, the Sly Fork legal drain, on the western edge of the subject parcel. *Petitioner Exhibit 6.* Betty Swift testified that a thirty foot wide portion of the ditch is within the boundaries of the subject property and runs for 2,513 feet along the western edge of the property. *Swift testimony.*
- f) The Petitioner therefore established a prima facie case that 1.73 acres of the subject property should be classified as Type 81 Land consisting of a legal ditch, and that such portion should be removed from the total acreage of the subject property.
- g) The Respondent did not present any evidence to rebut or impeach Swift's testimony regarding the presence of the Sly Fork drain on the subject property. The Board notes that the Petitioner submitted a plat map that does not reflect the presence of the Sly Fork drain. There is no evidence in the record, however, that such maps invariably show the presence of drainage ditches. Consequently, the Board finds Swift's testimony that the subject property contains a portion of the Sly Fork drain to be persuasive.

Conclusion

- 16. The Petitioner made a prima facie case for the application of a negative influence factor of 50% to a 10.7 acre portion of the subject property. The Respondent did not rebut or impeach the Petitioner's evidence. The Board finds in favor of the Petitioner.
- 17. The Petitioner made a prima facie case that a 1.73 acre portion of the subject property consists of a legal ditch, which should be removed from the total acreage of the subject property. The Respondent did not impeach or rebut the Petitioner's evidence. The Board finds in favor of the Petitioner.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now determines that a 10.7 acre portion of the subject property should be classified as Type 42 Land and that a negative influence factor of 50% should be applied to that portion of the subject property. The Board further finds that a 1.73 acre portion of the subject property should be

classified as Type 81 Land. The portion of the subject property consisting of Type 81 Land should be deducted from the subject property's acreage and no value should be assigned to it.

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 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>.