

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

Petition #: 18-014-02-1-5-00043
Petitioners: John P. and Lois J. Strouse
Respondent: Monroe Township Assessor (Delaware County)
Parcel #: 18-10-21-201-001.000-014
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 Petitioners initiated an assessment appeal with the Delaware County Property Tax Assessment Board of Appeals (PTABOA) by written document dated May 8, 2003.
2. The PTABOA’s Notification of Final Assessment Determination (Form 115) was mailed to the Petitioners on December 1, 2003.
3. The Petitioners filed an appeal to the Board by filing a Form 131 with the county assessor on December 20, 2003. Petitioners elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated February 26, 2004.
5. The Board held an administrative hearing on April 28, 2004, before the duly appointed Administrative Law Judge (ALJ) Brian McKinney.
6. Persons present and sworn in at hearing:
 - a) For Petitioner: John P. Strouse, property owner
 - b) For Respondent: Charles Ward, PTABOA & Township representative
Deborah Crosley, Monroe Township Assessor

Facts

7. The property is classified as agricultural land, as is shown on the property record card (PRC) for parcel # 18-10-21-201-001.000-014.

8. The ALJ did not conduct an inspection of the property.
9. There are no improvements located on this parcel, therefore land value is the only issue under review in this appeal. The Assessed Value of subject's land as determined by the Delaware County PTABOA is \$24,600.
10. Assessed Value requested by Petitioners on the Form 131 is \$13,060 for the land.

Issues

11. Summary of Petitioners' contentions in support of alleged error in assessment:
 - a) The Petitioners testified that the subject parcel, which consists of 25.83 acres of land, should be assessed for 16.9 acres of tillable land and not 18.91 acres as shown on the current PRC.
 - b) The Petitioners further testified the field had flooded at least five (5) times in the last 10 years and thus the land should be classified as Land Use Type 42 (land flooded severely) which would then entitle it to receive a 50% negative influence factor.
 - c) The Petitioners opined that the classification of approximately two acres as Land Use Type 5 (Nontillable land) is in error. The Petitioners contend this area should be classified as Land Use Type 72 (land covered by a farm pond or running water) because it is covered by the White River, as indicated by the legal description of the property.
12. Summary of Respondent's contentions in support of the assessment:
 - a) The Respondent acknowledged that the amount of tillable land could be 16.9 acres and not the 18.91 acres as shown on the current PRC.
 - b) The Respondent agreed that the Petitioners' evidence establishes that damaging floods occur at levels of 10.80 feet and above. However, the Respondent contended that no evidence, such as photographs, crop records, or insurance claims, was presented to establish the Petitioners experienced damage from flooding that occurred at lower levels.
 - c) The Respondent agreed that, if the deed for the subject property indicated that approximately two (2) acres of land was the riverbed of the White River, this portion of the parcel should be assessed as Land Type 72 (land covered by a farm pond or running water).

Record

13. The official record for this matter is made up of the following:
 - a) The Petition, and all subsequent pre-hearing and post-hearing submissions by either party.
 - b) The tape recording of the hearing labeled BTR #5787.

c) Exhibits:

Petitioners' Exhibit 1: Four (4) photographs of the subject property (dated on the back as to when the photographs were taken).

Petitioners' Exhibit 2: E-mail to Mr. Strouse from Barb Smith, Superintendent, Muncie WPCF (Muncie Sanitary District).

Petitioners' Exhibit 3: Aerial photo showing acreage breakdown of tillable land for subject property.

Petitioners' Exhibit 4: Aerial photo showing total acreage of subject property.

Petitioners' Exhibit 5: Administrator's Deed of subject property.

Petitioners' Exhibit 6: Report of Acreage Farm and Tract Detail Listing for 2003 of subject property.

Petitioners' Exhibit 7: Copy of two (2) pages from the Real Property Assessment Manual Guideline, Book 1, Version A, (incorporated by reference in 50 IAC 2.3-1-1(b)).

Respondent's Exhibit 1: General information on subject property.

Respondent's Exhibit 2: Two (2) photographs of subject property.

Respondent's Exhibit 3: Subject's PRC.

Respondent's Exhibit 4: Aerial photograph of subject property.

Respondent's Exhibit 5: Aerial photograph of subject property showing acreage of tillable land.

Respondent's Exhibit 6: Aerial photograph of subject property showing soil type.

Respondent's Exhibit 7: Listing of soil types, codes, and productivity factors used for the 2002 reassessment.

Board's Exhibit A – Form 131.

Board's Exhibit B – Notice of Hearing on Petition.

d) These Findings and Conclusions.

Analysis

14. The most applicable governing cases/rules are:

- a) The Board will not change the determination of the PTABOA unless the Petitioner has established a prima facie case and, by a preponderance of the evidence, proven both the alleged errors in the assessment and specifically what assessment is correct. See *Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230 (Ind. Tax Ct. 1998); *North Park Cinemas, Inc. v. State Board of Tax Commissioners*, 689 N.E. 2d 765 (Ind. Tax Ct. 1997).
- b) The Petitioner must sufficiently explain the connection between the evidence and Petitioner's assertions in order for it to be considered material to the facts. See

generally, *Heart City Chrysler v. State Board of Tax Commissioners*, 714 N.E. 2d 329, 333 (Ind. Tax Ct. 1999).

- c) Real Property Assessment Guidelines – Version A, Book 1, Chapter 2 – Classifying Agricultural Land into Land Use Types, page 102 – 106:
 - Land Use Type 4 – Tillable Land (includes Tillable Land Subtypes – Type 41, Type 42 and Type 43)
 - Land Use 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.
 - Land Use Type 7 – Other Farmland (includes Other Farmland Subtypes – Type 71, Type 72 and Type 73)
 - Land Use Type 72 – Land covered by a farm pond or running water. The value is determined using a productivity factor of .50 and a 40% influence factor deduction.
15. The Petitioners did provide sufficient evidence to support their contention that there should only be 16.9 acres of tillable land. This conclusion was arrived at because:
- a) The Petitioners provided an aerial photograph of the subject property indicating a portion of the land near the river was not tillable. The Petitioners also provided a computer printout indicating that, in 2003, 16.9 acres of land were used to grow yellow corn. *See Petitioners' Exhibits 4, 5, & 6.*
 - b) The Respondent indicated it would not object to the changing of the amount of tillable land from 18.91 acres to 16.9 acres. *Ward Testimony.*
16. The Petitioners did not provide sufficient evidence to support their contention that the land should be classified as Land Use Type 42 (land severely flooded). This conclusion was arrived at because:
- a) By definition, to establish a claim for Land Use Type 42, the Petitioners were required to demonstrate three elements: (1) flooding; (2) that caused damage; and (3) occurred at least five times in a ten-year period. (*Version A – Real Property Assessment Guideline, Chapter 2, p. 104.*)
 - b) The Petitioners provided a copy of an e-mail from Barb Smith, Superintendent of the Muncie WPCF (Muncie Sanitary District) in which she indicated that there were five (5) times the river stage had been at 8.34 feet or above during the period 1993 through 2003.¹ *See Petitioners' Exhibit 2.*
 - c) The Guidelines indicate Land Use Type 42 should be used when flooding causes damage at least five times in a ten-year period. The Guideline is not specific to whether any ten-year period would be sufficient. However, it would be difficult for the assessor to know of events that occurred after the assessment date calling the 2003 flooding dates into question.

¹ The list originally identified six floods. The Petitioners observed that the July 9, 2003, and July 10, 2003, dates were actually the result of the same flood and crossed out the July 9, 2003, date on the exhibit.

- d) The Petitioners presented probative evidence of only three floods during the relevant time period of 1992 through 2002:
 - 1) November 15, 1993 with a flood stage at 13.0 feet;
 - 2) April 12, 1994 with a flood stage of 8.34 feet; and
 - 3) October 25, 2001 with a flood stage of 9.04 feet.
 - e) The Respondent acknowledged that the photographs showed crop damage at a flood stage of 10.80 feet and above. However, the record is inconclusive on what level of flooding caused damage to the subject property. The Respondent correctly observed that no evidence, such as photographs, crop records, or insurance claims, was presented to establish that crop damage occurred at a lesser level of flooding. *Ward Testimony.*
 - f) Accordingly, the Petitioners failed to make a prima facie case that damaging floods occurred more than once during a ten-year period preceding the assessment date.²
17. The Petitioners did provide sufficient evidence to support their contention that approximately two acres of land should be classified as Land Use Type 72 (land covered by a farm pond or running water). This conclusion was arrived at because:
- a) The Petitioners submitted an Administrator’s Deed indicating the boundaries of the subject property included the “south bank” of the river. *Petitioners’ Exhibit 5.*
 - b) The Respondent testified that, if the deed included the riverbed, there would be no objection to a change in the assessment to Land Use Type 72 for that portion of the subject property. *Ward Testimony.*

Conclusions

18. The Petitioners made a prima facie case with respect to the amount of tillable land. The Respondent indicated there would be no objection to changing the amount of tillable land from 18.91 acres to 16.9 acres. The Board finds in favor of Petitioners regarding this issue. The Board determines that the amount of land classified as Land Use Type 4 (Tillable land) should be changed from 18.91 acres to 16.9 acres. In addition, the Board determines the remaining 2.01 acres previously classified as Land Use Type 4 should now be assessed in a manner that best describes the land use type.³ There is a change in the assessment as a result of this issue.

19. The Petitioners failed to make a prima facie case to establish a portion of the parcel should be classified as Land Use Type 42 (land severely flooded). There is no change in the assessment as a result of this issue.

² It is worth noting that the Guidelines establish a Type 41 land. Type 41 land is: “Land flooded occasionally-damaging floods occur two to four times in a ten-year period. A 30% influence factor deductions applies to this land use type.

³ The parties agree the total area of this portion of the parcel was 18.91 acres. Although the record establishes that 16.9 acres should be classified as Land Use Type 4 (Tillable land), neither party presented sufficient evidence to allow the Board to make a conclusion concerning the correct classification of the remaining 2.01 acres.

20. The Petitioners made a prima facie case that approximately two acres should be classified as Land Use Type 72 (land covered by a farm pond or running water). The Respondent did not dispute that, if the Petitioners' deed included the riverbed, this portion of the parcel should be assessed as Land Use Type 72. There is a change in the assessment as a result of this issue.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should 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.