

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Steven and Erin Jungbauer, ¹)	
)	Petition Nos.: 43-016-18-1-5-01240-19
Petitioners,)	43-016-19-1-5-01241-19
)	
v.)	Parcel No.: 43-07-12-300-502.000-016
)	
Kosciusko County Assessor,)	
)	Assessment Years: 2018 & 2019
Respondent)	

September 22, 2020

FINAL DETERMINATION

The Indiana Board of Tax Review (“Board”), having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

I. Introduction

1. Petitioners, Steve and Erin Jungbauer, moved for Summary Judgment on two Form 131 petitions. They claim that the Kosciusko County Assessor incorrectly classified their land as residential when it should have been classified as agricultural. The designated evidence shows that the Jungbauers bought the property to further expand their existing agricultural business. They promptly split-off and sold the part of the parcel that contained a home and homesite and immediately began preparing the remaining land for commercial tree growing and apiary activities, eventually installing multiple beehives and planting hundreds of Christmas trees. Because the undisputed evidence supports

¹ These appeals were initiated at the local level in the names of both Steven and Erin Jungbauer. Before the Board, some documents were filed or captioned in Steven Jungbauer’s name alone, while others were captioned with both names.

only one conclusion—that the Jungbauers devoted the land to agricultural use—they are entitled to summary judgment.

II. Procedural History

2. The Jungbauers challenged their 2018 and 2019 assessments, contending that their property should be classified as agricultural rather than as residential. On October 29, 2019, the Kosciusko County Property Tax Assessment Board of Appeals (“PTABOA”) issued determinations upholding the assessments. The Jungbauers responded by timely filing Form 131 petitions with us. Although the Jungbauers originally opted to file their petitions under our procedures for small claims, we granted the Assessor’s request to transfer the appeals to our standard hearing procedures.

3. On May 14, 2020, the Jungbauers filed a Motion for Summary Judgment and supporting brief covering both petitions. They designated the following evidence in support of their motion:

- Exhibit 1: Beacon map with four parcels identified
- Exhibit 2: Beacon map with zoning identified and property record card (“PRC”) for the subject parcel
- Exhibit 3: PRC for adjacent property owned by Jungbauers
- Exhibit 4: June 21, 2017 USDA map for Farm 9224 Tract 20692
- Exhibit 5: Micro Farming Business Plan for Stersara Farms
- Exhibit 6: 2017 Timber Management Plan
- Exhibit 7: Affidavit of Steven Jungbauer
- Exhibit 8: Excerpt from PTABOA minutes for October 21, 2019, Steven Jungbauer testimony
- Exhibit 9: December 14, 2017 USDA map for Farm 9224 Tract 20692
- Exhibit 10: PRC for parcel 43-07-12-300-9300.000-16
- Exhibit 11: April 18, 2018 USDA map for Farm 9224 Tract 20692
- Exhibit 12: May 21, 2018 USDA Determination Map
- Exhibit 13: August 2, 2018 letter from Jungbauers to Assessor
- Exhibit 14: Excerpt from PTABOA minutes for October 21, 2019, Kim Carson testimony
- Exhibit 15: Excerpt from PTABOA minutes for October 21, 2019 Chad Miner argument

4. The Assessor filed responses (one each for 2018 and 2019) to the Jungbauers' motion, but she did not designate any additional evidence.² Neither party asked for oral argument.

III. Undisputed Facts

5. The Jungbauers live on a lakefront parcel. They also own an adjacent parcel of about 13-acres ("13-acre parcel"). In 1995, they developed a business plan to operate a for-profit micro farm under the business name Stersara Farms on that 13-acre parcel. They planted hardwood trees for later harvesting and got a farm number for the parcel from the United States Department of Agriculture, Farm Services Agency ("USDA"). *Exs. 4-5, 7-9.*
6. On November 3, 2017, the Jungbauers bought property adjacent to their farm. They bought the property to expand their farming operations, which they intended to include apiary products and Christmas trees. They immediately split off and sold approximately 1.91 acres, including a lakefront home, from the newly acquired property, which left them with a 6.53-acre parcel that is the subject property. Most of the subject property is zoned agricultural, with a portion along the southern border zoned as residential. *Exs. 2, 7-8, 10.*
7. The Jungbauers promptly began preparing to use the subject property for growing Christmas trees for harvest, keeping bees, and producing apiary products:
 - They updated and expanded their existing business and timber plans and set up a financial-records system.
 - They met with representatives from the USDA to identify resources to support their farming operation and to get a farm number for the property.

² On June 18, 2020, the Assessor moved for an extension of time, through July 24, within which to respond to the Jungbauers' summary judgment motion. The Jungbauers objected, claiming that the Assessor's counsel should have been able to respond within 30 days and that the motion for extension was untimely. Although the date line on the Jungbauers' cover letter for their summary judgment motion was May 14, 2020, the envelope enclosing the motion was postmarked May 19, as was the envelope enclosing the service copy on the Assessor's counsel. *See Reply to Taxpayer's Objection to Request for Extension of Time to Reply to Taxpayer's Motion for Summary Judgment.* The Assessor's request was therefore timely. The Assessor filed its responses to the Jungbauers' motion on June 29, well within the requested extension. We grant the Assessor's request for extension and accept her responses.

- They got surveys and met with county planners to identify appropriate agricultural uses on the property.
- They identified soil needs for fertilizer and weed treatments.
- They cleared out underbrush and unwanted trees, and they sprayed for poison ivy and broadleaf weeds.
- They prepared the ground for planting Christmas trees.

Exs. 7-8.

8. In December 2017, the USDA combined the subject property under the same farm number as the Jungbauers' 13-acre parcel. In May and June 2018, the Jungbauers installed three beehives at the subject property. The following spring, they planted 450 Christmas trees in the areas they had sprayed for poison ivy and weeds. They also planted clover to support the bees. *Exs. 7-8, 10.*

IV. Conclusions of Law

A. Summary Judgment Standard

9. Our procedural rules allow parties to move for summary judgment “pursuant to the Indiana Rules of Trial Procedure.” 52 IAC 4-7-3. Summary judgment is appropriate only where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *See Wittenberg Lutheran Village Endowment Corp. v. Lake Cty. Prop. Tax Assessment Bd. of Appeals*, 782 N.E.2d 483, 487 (Ind. Tax Ct. 2002). The party moving for summary judgment must make a prima facie showing of both those things. *See Coffman v. PSI Energy, Inc.*, 815 N.E.2d 522, 526 (Ind. Ct. App. 2004). If the movant satisfies its burden, the non-movant cannot rest upon its pleadings but instead must designate sufficient evidence to show that a genuine issue exists for trial. *See Hughley v. State*, 15 N.E.3d 1000, 1003 (Ind. 2014). In deciding whether a genuine issue exists, we must construe all facts and reasonable inferences in favor of the non-movant. *See Carey v. Ind. Physical Therapy, Inc.*, 926 N.E.2d 1126, 1128 (Ind. Ct. App. 2010).

B. The undisputed facts show that the Jungbauers devoted the subject property to growing trees for harvest, keeping bees, and producing apiary products, all of which are agricultural uses.

10. The Jungbauers claim that the Assessor incorrectly classified and assessed the subject property based on residential—rather than agricultural—use. We agree.
11. Land may be assessed as agricultural only where it is “devoted to agricultural use.” Ind. Code § 6-1.1-4-13(a). Agricultural use includes, among other things, “timber, trees, [and] bees and apiary products” and may not be determined by a parcel’s size. I.C. § 6-1.1-4-13(b).
12. The Department of Local Government Finance’s 2011 Real Property Assessment Guidelines offer additional guidance, identifying two key factors for determining if a property should be assessed as agricultural: (1) whether it was bought for agricultural use, and (2) whether it is used or zoned for agricultural purposes:

Unless provided elsewhere in the law, the Manual, or Guidelines, the parcel’s size does not determine the property classification or pricing method for the parcel. Rather the property classification and pricing method are determined by the property’s use or zoning. For example, some commercial and industrial zoned acreage tracts devote a portion of the parcel to an agricultural use. The assessing official must classify these parcels as either commercial or industrial. However, the portions of the land devoted to agricultural use are to be valued using the agricultural land assessment formula. . .

Therefore, the controlling factors that determine whether land is to be assessed as agricultural land are whether the land was purchased for a non-agricultural use, and whether the land is currently used or zoned for an agricultural purpose. . . .

2011 REAL PROPERTY GUIDELINES, Ch. 2 at 78-81. The Guidelines also direct assessors that “all acres enrolled in programs of the . . . USDA, Farm Services Agency” and that have received a farm number are eligible to be classified as agricultural because that agency has determined they are part of an agricultural operation. *Id.* at 81.

13. In his affidavit, Steven Jungbauer explained that they bought the property to expand Stersara Farms' operations into planting and harvesting Christmas trees as well as maintaining beehives and producing apiary products. Indiana Code § 6-1.1-4-13(b) expressly defines those activities as agricultural uses. Everything the Jungbauers did with the property after buying it was designed to further those purposes. Although they did not install beehives or plant Christmas trees until the spring of 2018 and 2019, they actively prepared both the property and their farming business for those endeavors. And the USDA determined that the property was part of an agricultural operation when it assigned the property a farm number.

14. The Assessor did not designate any countervailing evidence. Instead, she pointed to the fact that the property was near the Jungbauers' home. She also highlighted some of the steps the Jungbauers took to prepare the land for their operations—such as mowing, and clearing trees and underbrush—and argued that those activities were at least as consistent with residential use as they were with agricultural use, if not more so.

15. We disagree. First, the Jungbauers took more steps to prepare the land than the ones the Assessor highlights. Second, while things like mowing and clearing underbrush might be consistent with residential use when combined with other factors, such as where the area being cleared is part of landscaping around a homesite, none of those other factors are present here. Although the property originally had a lakeside home, the Jungbauers promptly split that area from the subject parcel and sold it. And while the property is near the Jungbauers' home, there is no evidence to support a reasonable inference that they bought it to use as their yard or as some type of buffer area. *See* 2011 GUIDELINES ch. 2 at 93 (explaining that areas containing a large manicured yard over and above the accepted one-acre homesite would qualify as excess agricultural, which should be valued the same as excess residential land). To the contrary, the Jungbauers' efforts in preparing the land led to exactly what they were designed to accomplish—using the property for statutorily recognized agricultural uses. Based on the designated evidence, a reasonable trier-of-fact could conclude only that the Jungbauers devoted the property to agricultural use.

C. The property should be assessed applying the 2011 Guidelines

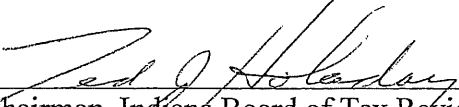
16. Of course, that begs the question: What should the property be assessed for? Simply showing how land should be classified does not, by itself, produce a specific value. And in most cases, a taxpayer cannot simply point to the Guidelines to determine the appropriate amount, but instead must offer market-based evidence of value.

17. But the statutory and regulatory scheme for assessing agricultural land requires us to treat challenges to those assessments differently than we treat other assessment challenges. For example, the legislature has directed the Department of Local Government Finance (“DLGF”) to use distinctive factors, such as soil productivity, in assessing agricultural land that do not apply when assessing other types of land. I.C. § 6-1.1-4-13. The DLGF determines a statewide base rate by taking a rolling average of capitalized net income from agricultural land. *See* 2011 GUIDELINES, ch. 2 at 77-78; *see also*, I.C. § 6-1.1-4-4.5(e). Assessors then adjust that base rate according to soil productivity factors. Depending on the type of agricultural land at issue, assessors apply influence factors in predetermined amounts. *Id.* at 77, 89, 98-99. Thus, once a taxpayer shows that land should be classified under one or more agricultural subtypes, its true tax value is determined by simply applying the 2011 Guidelines.

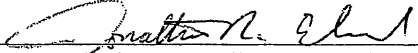
V. Final Determination

18. Because the undisputed evidence conclusively shows that the Jungbauers devoted the subject property to agricultural use, we grant summary judgment in their favor and order the Assessor to assess the land as agricultural using the 2011 Guidelines.

We issue this Final Determination on the date written above.


Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review


Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. The Indiana Tax Court's rules are available at <http://www.in.gov/judiciary/rules/tax/index.html>