

FOR PETITIONERS: Brian W. Meyer, Pro Se

FOR RESPONDENT: Marilyn Meighen, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Brian W. and Janet L. Meyer,)	Petition No. 19-001-11-1-5-00015
)	Parcel No. 19-11-15-400-024.000-001
Petitioners,)	
)	
v.)	
)	Dubois County
Dubois County Assessor,)	Bainbridge Township
)	2011 assessment
Respondent.)	

Appeal from the Final Determination of the
Dubois County Property Tax Assessment Board of Appeals

January 2, 2014

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Introduction

In this case, in 2010, the subject property was classified primarily as agricultural. In 2011, the land was re-classified as excess acreage, and the PTABOA ultimately determined the value to be \$334,700. At the hearing, the Assessor conceded that the land should be classified as primarily agricultural, but did re-classify .5 acres as primary commercial. As a result, the Assessor claimed the value to be \$185,500. Did the Assessor meet her burden? The answer is yes.

HEARING FACTS AND OTHER MATTERS OF RECORD

1. The Petitioners timely initiated an assessment appeal with the Dubois County Property Tax Assessment Board of Appeals (PTABOA).
2. The PTABOA mailed notice of its decision (Form 115) on November 17, 2011.
3. The Petitioners appealed to the Board by filing a Form 131 on December 30, 2011.
4. The Board issued a notice of hearing dated August 15, 2013.
5. Administrative Law Judge Paul Stultz held the Board's administrative hearing on October 10, 2013. He did not inspect the property. Brian Meyer, County Assessor Gail Gramelspacher, and PTABOA member Natalie Jenkins testified at the hearing.
6. The property is located in a rural area on a total of 26.752 acres located at 2954 South US Highway 231 near Huntingburg.
7. The PTABOA determined the assessed value is \$224,400 for land and \$110,300 for improvements (total \$334,700). At the hearing, however, the Assessor admitted the PTABOA's value is incorrect.
8. The Petitioners claim the total assessed value should be \$48,000 for land and \$107,900 for improvements (total \$155,900).

Record

9. The record for this matter contains the following:
 - a. The Petition,
 - b. Digital recording of the hearing,
 - c. Petitioners Exhibit A - Two photographs of subject property with handwriting,
Petitioners Exhibit B - Photograph of wooded area,
Petitioners Exhibit C - Two photographs of subject property with handwriting,
Petitioners Exhibit D - Handwritten statement discussing timber management practices on subject property by unidentified individual,

Petitioners Exhibit E - Letter dated October 19, 2012, from David Seng discussing cutting timber on subject property,
Petitioners Exhibit F - Subject PRC for tax year 2013,
Petitioners Exhibit G - Handwritten statement to the attention of Gail from the Petitioners,
Petitioners Exhibits H and I - Page 1 and 2 of Sales Disclosure for property located at Highway 231 South, Jasper, Indiana,
Petitioners Exhibit J - PRC for parcel #19-11-03-100-014.001-002,
Petitioners Exhibit K - PRC for parcel #19-11-03-100-009.001-002,
Petitioners Exhibit L - PRC for parcel #19-11-03-100-013.000-002,
(The "Objections" section that follows, however, explains why the Respondent's objection to considering Petitioners Exhibits A-F and J was sustained.)

- d. Respondent Exhibit A - Subject PRC for 2010,
Respondent Exhibit B - DLGF memorandum dated March 26, 2010,
Respondent Exhibit C - DLGF memorandum dated December 29, 2010,
Respondent Exhibit D - Subject PRC for 2011,
Respondent Exhibit E - Not offered,
Respondent Exhibit F - Two photographs of signage at Meyer Creative Landscapes,
Respondent Exhibit G - Meyer Creative Landscapes business personal property tax return for 2011 tax year (CONFIDENTIAL)¹,
Respondent Exhibit H - 2002 Version A-Real Property Assessment Guideline, Chapter 2, p. 85,
Respondent Exhibit I-1 - Subject land calculation,
Respondent Exhibit I-2 - Aerial photograph,
Respondent Exhibit I-3 - Comparable commercial land sales,
Respondent Exhibit I-4 - Sales disclosure form for property at Highway 231,
Respondent Exhibit I-5 - Sales disclosure form for property at St. Charles Street,
- e. The following additional items are recognized as part of the record:

Board Exhibit A - Form 131 Petitions,
Board Exhibit B - Notice of Hearing,
Board Exhibit C - Hearing sign-in sheet.

¹ The Petitioners initially objected to the introduction of this exhibit because it contained confidential information. But later this objection was withdrawn. The document was submitted on green paper pursuant to Indiana Administrative Rule 9 and Indiana Trial Rule 5G to indicate it contains confidential information.

OBJECTIONS

10. The Petitioners objected to the admission of Respondent Exhibit H. Respondent Exhibit H is a copy of Version A-Real Property Assessment Guideline Chapter 2, p. 85. The Petitioners claim the source of the exhibit is not identified. The source of the document is identified on the exhibit. The Petitioners' objection is overruled.

11. The Petitioners objected to Respondent Exhibit I-1, claiming it contains a math error. The math error was corrected and the remaining objection goes to the weight of the evidence. Exhibit I-1 is demonstrative of the Assessor's testimony as to how she arrived at the valuation. The objection is overruled.

12. The Petitioners also objected to Respondent Exhibit I-2. Exhibit I-2 is an aerial view of the portion of the property the Assessor determined should be classified as primary commercial. The basis for the Petitioner's objection is that the red line on the photograph outlining the commercial portion was not accurate because it included allegedly State property. The Respondent stated that the photo was not intended to show the entire property, and the 2011 Property Record Card shows the deed line parallel to the highway and does not include the State property. The objection is overruled.

13. The Petitioners further objected to Respondent Exhibits I-3, I-4, and I-5, claiming the comparable commercial land sales are not relevant to the March 1, 2011, assessment date. Exhibit I-3 is demonstrative of the Assessor's and Natalie Jenkins' testimony as to commercial land rates. The objection is overruled. Exhibits I-4 and I-5 are supportive of Exhibit I-3. The objection goes to the weight of the evidence and is overruled.

14. Finally, the Petitioners objected to the portion of testimony by Ms. Jenkins clarifying her testimony relating to utilities on the comparable properties, claiming Ms. Jenkins had an opportunity to be advised by Counsel. There is no basis for this objection. All of these objections pertain to the weight of the evidence and not to their admissibility. The objections are overruled.

15. Respondent objected to the admission of Petitioners Exhibits A, B, C, D, E, F, and J. Ms. Meighen stated she had not received this evidence before the hearing as required by 52 IAC 2-7-1(a). Mr. Meyer acknowledged that he had not made any of his evidence available to the Respondent and that the evidence was not presented at the PTABOA hearing.

16. 52 IAC 2-7-1 states:

(b) A party to the appeal must provide the following to all other parties:

(1) Copies of documentary evidence and summaries of statements of testimonial evidence at least five (5) business days before the hearing.

(2) A list of witnesses and exhibits to be introduced at the hearing at least fifteen (15) business days before the hearing.

(c) For purposes of determining compliance with the deadlines under subsection (b), the parties must either provide personal or hand delivery or deposit the materials in the United States mail or with a private carrier three (3) days before the deadline in accordance with the provisions of 52 IAC 2-3-1. If a party uses a private carrier that guarantees next day delivery, the materials must be sent one (1) day before the specified deadline.

The Petitioners failed to comply with the Board's procedural rules regarding exchanging evidence. Therefore, Respondent's objection is sustained. This case will be decided without consideration of the Petitioner Exhibits A, B, C, D, E, F, and J.

17. The Respondent objected to the Petitioner's characterization that Tyler Technologies is just out to make money and to target people. The Petitioner's statement is not supported by any substantial evidence and therefore it has no probative value. Furthermore, it is not relevant to the issue before the Board. Nonetheless, the objection is overruled.

BURDEN

18. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that a property's assessment is wrong and what the correct assessment should 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). Nevertheless, the Indiana General Assembly enacted a statute that in some cases shifts the burden of proof:

This section applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal increased the assessed value of the assessed property by more than five percent (5%) over the assessed value determined by the county assessor or township assessor (if any) for the immediately preceding assessment date for the same property. The county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.

Ind. Code § 6-1.1-15-17.2

19. In this appeal, both parties agreed that the assessment increased by more than 5%. Specifically, the 2010 assessment was \$156,900 and the assessment under review (Form 115) is \$334,700. It is clearly an increase of more than 5%. Indiana Code § 6-1.1-15-17.2 is applicable and the Respondent has the burden of proving the assessment is correct.

SUMMARY OF THE RESPONDENT'S CASE

20. The 2011 assessed value of record (\$334,700) found by the PTABOA is incorrect. The improvement value of \$110,300 is correct, but the land assessment should be reduced to \$75,200 for a total assessed value of \$185,500. *Gramelspacher testimony; Resp't Ex. F, G, H*. The Assessor conceded that a majority of the subject property should be classified as agricultural rather than excess acreage. The Assessor would re-classified .5 acres as primary commercial, but otherwise would carry forward all of the information from the 2010 Property Record Card. *Gramelspacher testimony*.
21. A portion of the property (.5 acres) is used as a commercial landscaping business. The Petitioner used a portion of his property to sell agriculturally produced products. Meyer Creative Landscapes is located on the subject property and files a Business Tangible

Personal Property Assessment Return under Meyer Creative Landscapes using the subject property as the business address. *Meyer testimony; Gramelspacher testimony; Resp't Ex. G.* It has commercial buildings, includes parking area, storage area, and necessary support land. It is used as primary land for the Petitioners' landscaping business. *Gramelspacher testimony; Resp't Ex. I-2.* Moreover, the Petitioner agreed that he operated a commercial landscaping business on the property.

22. As a result of the commercial business on the subject property, the changes from the 2010 to the 2011 assessed values include a reclassification of .5 acre of tillable/woodland acreage to primary commercial land at a base rate of \$50,000 per acre. In 2011, the commercial land rates were \$50,600 per acre as set by the Land Commission. *Jenkins' testimony; Resp't Ex. I-3.*
23. The Assessor's proposed value would use the agriculture base rate for 2011 of \$1,500 per acre as determined by the Indiana Department of Local Government Finance (DLGF). A DLGF memorandum defines the agriculture base rates for 2010 and 2011. For 2010, the agriculture base rate is \$1,290 per acre and for 2011 the agricultural base rate is \$1,500. ; *Gramelspacher testimony; Resp't Ex. B, C.*
24. The soil types and negative influence factors due to flooding did not change from the 2010 Property Record Card; however, there is a math error on Respondent Ex. I-1. The \$4,373 figure in column 8 should be \$7,445. This change makes the true tax value \$75,200 for land. The 2011 land calculation should be as follows:
 - a. 1 acre homesite valued at \$35,000 per acre,
 - b. .5 acre primary commercial land valued at \$50,000 per acre (total of \$25,000),
 - c. .296 acre is public road with no assessed value,
 - d. The remaining acreage is tillable land or woodland (\$1,500/per acre).*Gramelspacher testimony; Resp't Ex. I-1.*
25. The 2009 commercial land sale is comparable to the March 1, 2011, assessment date because the two year look back period that exists when there are not adequate current

comparable sales, according to the Sales Data Administrative Guidelines. *Jenkins testimony*. The 2009 sale was a commercial land sale of 2.076 acres for \$187,500, which is \$90,318 per acre. This property is located on the corner of St. Charles Street, a side road off of Highway 231. This comparable property is a couple of miles from the Petitioners' property.

26. The 2007 comparable commercial land sale is 5.73 acres that sold for \$460,000, which is \$80,279 per acre. This property is vacant land and off of Highway 231, similar to the subject property. This comparable was used to show that in 2007 almost six acres of vacant land was selling for more than \$80,000 per acre. *Jenkins testimony*.
27. The commercial base rate for land is \$50,000 per acre in the location of both the Petitioners' and the comparable properties. Base rates for primary commercial land in Bainbridge Township did not change from 2002 to 2011. *Gramelspacher testimony; Jenkins testimony; Resp't Ex. I-3, I-4, I-5*.
28. The two comparable vacant land sales are similar in size and location to the subject property. The second comparable's higher value per acre (\$90,318) is because it is in a different neighborhood just off Highway 231 and the land itself is better and more desirable than the subject or the first comparable's land. *Jenkins testimony; Resp't Ex. I-3, I-4, I-5*.

SUMMARY OF THE PETITIONERS' CASE

29. The Petitioners' agreed the 2010 land assessment was correct. The 2011 assessment changed the land classification from agricultural to excess acreage solely to increase the Petitioners' taxes. The 2011 assessment also changed some of the soil types and acreage. The land should be assessed using agricultural rates, not excess acreage rates. The land assessment should be reduced to the 2010 assessed value of \$48,000. Property comparable to the Petitioners' parcel has gone down in value. *Meyer testimony*.

30. The issues brought before the PTABOA were not addressed. The PTABOA had an obligation to review the written contentions even though the Petitioners did not appear at the PTABOA hearing. Milo Smith, a certified tax representative, has said it is the duty of the PTABOA to address the issues when there is a three or five percent change in assessed value.² *Meyer testimony.*
31. Social responsibility requires that fairness be inserted to protect not only the Petitioners but to see what can be done to protect other taxpayers' interests. For example, it is a conflict of interest for Natalie Jenkins to serve on the PTABOA because she is charged with keeping revenue coming into the county. The more money she can generate the better the chance her company will be retained and this creates a conflict of interest. The company has to make as much money as they can for the county. The company targets different sections of the county, including the Petitioners' neighborhood. *Meyer testimony.*
32. Neighborhoods extend beyond township lines. The comparable properties identified by the Petitioners have land values based on agriculture rates rather than \$50,000 per acre commercial rates. These three comparable properties located on Wernsing Road have lower base rates than \$50,000 per acre. The land order used by the Respondent with no effort to change it is outdated. Land values should be based on land sales from this spring. *Meyer testimony; Pet'r Ex. K, L.*
33. The Petitioner confirmed that he operated a landscaping business on the subject parcel. The Petitioners' property is located on a flood plain and does not have utilities to support a major commercial operation. The parcel does not have a sanitary sewer or city water. *Meyer testimony.*
34. To the extent the Assessor was using the 2011 base rates for agricultural land, the Assessor could use the 2010 base rates instead. *Meyer testimony.*

² Milo Smith did not participate in this case.

Analysis

35. The Respondent abandoned the assessment made by the PTABOA on the Form 115, but made a prima facie case for a total assessment of \$185,500. The Board reaches this conclusion for the following reasons:
- a. Real property is assessed based on its "true tax value," which means "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property." Ind. Code § 6-1.1-31-6(c). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach. Other evidence relevant to market value-in-use can also be used to prove a case. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles. *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 676-77 (Ind. Tax. Ct. 2006).
 - b. Regardless of the method used, a party must explain how its evidence relates to the subject property's market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). A 2011 assessment must reflect the value of the property as of March 1, 2011. Ind. Code § 6-1.1-4-4.5. Any evidence of value relating to a different date must also have an explanation about how it demonstrates, or is relevant to, the value as of that required valuation date. *See Long*, 821 N.E.2d at 471.
 - c. Again, the Respondent conceded the 2011 assessment determined by the PTABOA is incorrect. And the parties agreed the improvements are assessed correctly at \$110,300. The dispute is about the land value. The Respondent testified the land value should be reduced to a value of \$75,200 for a total assessed value of \$185,500.

- d. There is no dispute that the Petitioners used a portion of the property to sell agriculturally produced products. Meyer Creative Landscapes is located on the subject property and files a Business Tangible Personal Property Assessment Return under Meyer Creative Landscapes using the subject property as the business address. It has commercial buildings on it, includes parking area, storage area, and necessary support land; and is used as primary land for the Petitioners' landscaping business. The evidence is sufficient to establish that Respondent properly re-classified .5 acre to primary commercial land.
- e. In support of the primary commercial land base rate, the Respondent relied on the rate of \$50,000 per acre as set by the Land Commission and also identified two sales of purportedly comparable properties. The first comparable is 5.73 acres of vacant land that sold for \$80,278 per acre in 2007. Like the subject, it is in a rural area located on State Highway 231. The second comparable was 2.076 acres of vacant land that sold for \$90,318 per acre in 2009. It is also in a rural area located just off State Highway 231. These parcels vary significantly in both size and price per acre when compared to the Petitioners' parcel. The sale dates were 2007 and 2009, which could be problematic. The Respondent, however, also performed sales ratio studies of land in Bainbridge Township each year and did not change the commercial primary land base rate of \$50,600 per acre from 2002 to 2011. This fact demonstrates the stability of the market value of land in Bainbridge Township over a period of almost ten years. These facts evaluated together are some evidence that the market value of the primary commercial land would be no less than \$50,000 per acre as of March 1, 2011.
- f. As support for a much lower land value, the Petitioners introduced two PRCs of purportedly comparable properties to show these properties had a lower land base rate than the subject parcel. But in order to effectively use a comparison approach to value a property, the proponent must establish actual comparability. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of comparability. *Long*, 821 N.E.2d

at 470. Instead, comparability must be proved through comparisons of the characteristics of the subject property and the comparables. Here, the properties identified by the Petitioners are classified as commercial and the land is assessed as undeveloped usable. The Petitioners, however, failed to demonstrate these properties are comparable to their parcel.

- g. The statewide agricultural land base rate value in 2010 was \$1,250 per acre based on a six-year rolling average of market value-in-use as calculated by the DLGF pursuant to 50 IAC 21-6-1(a).³ Using the six-year rolling average mandated by the Legislature, the DLGF determined the agricultural base rate for 2011 would be \$1,500 per acre. *Resp't Ex. C*. The Petitioners request for a return to the 2010 base rate of \$1,290 is contrary to the Legislature's instructions and unavailable.
- h. From this evidence, the Respondent showed the assessed value should be \$185,500. Specifically, the Petitioners agreed the 2010 assessment was correct and they agreed with the 2011 assessed value for their improvements. The dispute is only about the 2011 land value. The Petitioners also agreed they operate a commercial landscaping business on a portion of the parcel. Accordingly, to determine the 2011 land value (\$75,200), the Assessor re-classified .5 acres from tillable land to primary commercial land and used the 2011 agriculture land base rates to calculate the value of the remaining agricultural acres. *Resp't Ex. I-1*. The value of the .5 acres is \$25,000. The soil types and negative influence factors due to flooding were not changed from the 2010 assessment, which the Petitioner agreed is correct. From this the Assessor correctly determined that the property's total value for 2011 was \$185,500.
- i. The Petitioners claimed their property did not have the needed utilities to support a major commercial operation. Assuming the truth of that statement, the Petitioners presented no market evidence to quantify the impact of the alleged deficiency or show that the assessment is not a reasonable measure of the

³ The \$1,250 agricultural base rate does not apply to a one acre "homesite." The agricultural land assessment formula also values farmland, in part, based on the productivity of each parcel's soil resources.

property's true tax value. *See Eckerling*, 841 N.E.2d at 677 (holding when a taxpayer chooses to challenge an assessment, he or she must show that the assessor's assessed value does not accurately reflect the property's market value-in-use. Strict application of the regulations is not enough to rebut the presumption that the assessment is correct).

- j. The Petitioners spent much of their time arguing that the PTABOA did not properly consider their contentions and was improperly constituted. The credibility of these contentions is weakened by the fact the Petitioners did not appear at the PTABOA hearing to argue their position. Regardless, those claims are irrelevant at this point. The Board's proceedings are *de novo*, and nothing about how the PTABOA was constituted or conducted its deliberations hindered the Petitioners from presenting their valuation case to the Board.

- 36. The Respondent made a prima facie case for an assessment change from the total assessment of \$334,700 determined by the PTABOA to a total assessment of \$185,500. The Petitioners failed to rebut or impeach that case.

Final Determination

In accordance with the above findings and conclusions, the Board finds the assessment will be reduced to \$185,500.

Commissioner, Indiana Board of Tax Review

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- 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>>.