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

Petition No.: **06-010-14-1-5-10097-15**
Petitioners: **Michael L. & Douglas W. Shoemaker**
Respondent: **Boone County Assessor**
Parcel No.: **010-0649-00**
Assessment Year: **2014**

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

Procedural History

1. Petitioners initiated an assessment appeal for 2014 with the Boone County Property Tax Assessment Board of Appeals ("PTABOA") on August 28, 2014. The PTABOA issued its Notification of Final Assessment Determination on January 30, 2015. Petitioners then timely filed a Form 131 petition on March 2, 2015, with the Board.

2. Petitioners elected to have the appeal heard under the Board's small claims procedures. Respondent did not elect to have the proceeding removed from those procedures.

3. On March 10, 2016, the Board held a hearing through its designated administrative law judge, Dalene McMillen ("ALJ"). Neither the Board nor the ALJ inspected the property.

4. The following people were sworn as witnesses:

   - Michael Shoemaker, owner,
   - Lisa Garoffolo, Boone County Assessor,
   - Janis Wilson, vendor employed by Boone County,
   - Peggy Lewis, PTABOA member.

Facts

5. The property under appeal is a 50.48 acre vacant parcel located at 8601 East 50 South in Zionsville.

6. The PTABOA determined the land value to be $198,800. Petitioners request a value of $24,200.

Record

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

   a. A digital recording of the hearing,

   b. Exhibits:

Petitioners Exhibit 1A:	2014 property record card ("PRC"),
Petitioners Exhibit 1B:	Notification of Final Assessment Determination,
Petitioners Exhibit 2A:	Photograph of property with roof on ground,
Petitioners Exhibit 2B:	Photograph of gravel road north of property,
Petitioners Exhibit 3A:	Aerial map of the subject property,
Petitioners Exhibit 3B:	Photograph of creek and drive path,
Petitioners Exhibit 3C:	Photograph of creek,
Petitioners Exhibit 3D:	Photograph of creek showing debris from flooding,
Petitioners Exhibit 4A:	DNRForest Land and Wildlands application,
Petitioners Exhibit 5A:	Photographs of the firewood business,
Petitioners Exhibit 5B:	Team Green Turfcare, Inc. firewood invoice,
Petitioners Exhibit 6A:	2011 lease agreement,
Petitioners Exhibit 6B:	2006 lease agreement,
Petitioners Exhibit 7A:	Electric transmission line easement, dated June 30, 1966,
Petitioners Exhibit 7B:	Photograph of power lines on subject property,
Petitioners Exhibit 7C:	Aerial map of the subject property,
Respondent Exhibit 1:	Boone County appeal worksheet,
Respondent Exhibit 2:	County's Notice of Preliminary Hearing on Appeal,
Respondent Exhibit 3:	Joint Report by Taxpayer / Assessor to the County Board of Appeals of a Preliminary Informal Meeting – Form 134,
Respondent Exhibit 4:	Photograph and two aerial maps of the subject property,
Respondent Exhibit 5:	Notice of Hearing on Petition – Real Property – Form 114,
Respondent Exhibit 6:	Notification of Final Assessment Determination – Form 115,
Respondent Exhibit 7:	2014 subject PRC,
Respondent Exhibit 8:	Petition to the Indiana Board of Tax Review – Form 131,
Respondent Exhibit 9:	Board's Notice of Hearing on Petition,
Board Exhibit A:	Form 131 petition,
Board Exhibit B:	Hearing notice,
Board Exhibit C:	Hearing sign-in sheet,

c. These Findings and Conclusions.

Burden of Proof

8. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that his property's assessment is wrong and what its 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). A burden-shifting statute creates two exceptions to that rule.

9. First, Ind. Code § 6-1.1-15-17.2 "applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year." Ind. Code § 6-1.1-15-17.2(a). "Under this section, 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(b).

10. Second, Ind. Code § 6-1.1-15-17.2(d) "applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15," except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), "if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct." Ind. Code § 6-1.1-15-17.2(d).

11. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).

12. The assessed value of the property increased from $24,000 in 2013 to $198,000 in 2014. The parties agreed that the assessment increased by more than 5%. Therefore, Respondent has the burden of proving that the 2014 assessment is correct.

Summary of the Parties' Contentions

13. Respondent's case:

    a. Respondent testified that her office has been reviewing land classifications in the county since 2007. She contends one of the biggest issues has involved classifying land as either agricultural or excess residential. *Garoffolo testimony.*

b. While Respondent stated no one had ever physically inspected the property, she did state that the county receives new aerial maps every two years showing changes that have occurred. *Garoffolo testimony.*

c. Respondent contends Petitioners did not have any animals grazing on their property nor were they growing any crops. Furthermore, Respondent did not believe the land was being used as a timber producing parcel. *Garoffolo testimony; Wilson testimony.*

d. Consequently, Respondent reclassified the land from agricultural land to excess residential land in 2014. The PTABOA upheld the reclassification. *Garoffolo testimony; Lewis testimony; Resp't Exs. 1 & 7.*

e. After reclassifying the land as excess residential, Respondent applied a 75% negative influence factor on 32.3 acres for a power line easement, which resulted in only 16 acres being assessed as excess residential land with no influence factor. Furthermore, the PTABOA applied an additional 25% negative influence factor to the entire property resulting in an assessed value of $198,800. *Garoffolo testimony; Resp't Exs. 1, 4 & 7.*

14. Petitioners' case:

a. The reclassification from agricultural to excess residential has resulted in a 995% increase from $24,200 in 2013 to $265,000 in 2014.[1] *Shoemaker testimony; Pet'r Ex. 1A.*

b. The subject property was purchased in the 1960s as additional grazing land for Shoemaker Farms. Since the purchase of the property, there have been only a few changes and no improvements have been added. *Shoemaker testimony; Pet'r Ex. 1A.*

c. Petitioners contend that 85% of the property is in a severe floodplain. The property floods multiple times per year which prohibits any construction. Also, because the property is located in a rural area, there is no city police protection, water, or septic service. *Shoemaker testimony; Pet'r Exs. 2A-3D.*

d. Since 1966, a portion of the property has had a utility easement restricting any construction around the power lines. Petitioners submitted an aerial map and photographs to show where the power lines limit the land to agricultural use. *Shoemaker testimony; Pet'r Exs. 7A-7C.*

[1] The $265,000 amount represents the 2014 assessed value prior to the 25% negative influence factor being applied by the PTABOA.

e. Petitioners claim they contacted a developer and, in his opinion, considering the floodplain and easement, only 2 acres of the 50.48 acres would qualify for a building permit. *Shoemaker testimony.*

f. Petitioners contend that fallen trees are cut and sold as firewood. To support this claim, Petitioners submitted photographs of cut and stored firewood as well as a firewood invoice. *Shoemaker testimony; Pet'r Exs. 5A-5B.*

g. Petitioners entered into two lease agreements that allowed a neighbor to use portions of the land for cattle grazing from 2006 through 2015. The neighbor would bring his cattle onto the land for purposes of weaning calves or when he was short of hay. During certain years, this activity would occur rarely while, during other years, it would be ongoing throughout the summer. *Shoemaker testimony; Pet'r Exs. 6A-6B.*

h. On December 21, 2015, State Forester James Potthoff examined the property. He certified that the land complied with the DNR Classified Forest and Wildlands Program under Ind. Code § 6-1.1-6. He further approved the management plan for the land being entered into that program. Petitioners argue this demonstrates that the State of Indiana recognizes that the property is used for agricultural purposes. *Shoemaker testimony; Pet'r Ex. 4A.*

Analysis

15. Respondent failed to provide sufficient evidence to establish a prima facie case that the 2014 assessed value was correct. The Board reached this decision for the following reasons:

a. The statutory and regulatory scheme for assessing agricultural land requires the Board to treat challenges to those assessments differently than other assessment challenges. For example, the legislature directed the Department of Local Government Finance ("DLGF") to use distinctive factors, such as soil productivity, that do not apply to other types of land. Ind. Code § 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* Ind. Code § 6-1.1-4-4.5(e) (directing the DLGF to use a six year, instead of a four-year, rolling average and to eliminate from the calculation the year for which the highest market value-in-use is determined). Assessors then adjust that base rate according to soil productivity factors. Depending on the type of agricultural land at issue, assessors may then apply influence factors in predetermined amounts. *Id.* at 77, 89, 98-99.

b. Ind. Code § 6-1.1-4-13(a) provides that "land shall be assessed as agricultural land only when it is devoted to agricultural use." "Agricultural property" is defined as land "devoted to or best adaptable for the production of crops, fruits, timber, and the raising of livestock." GUIDELINES, GLOSSARY at 1. Agricultural land is further classified into land use types. The word "devote" means "to attach the attention or center the activities of (oneself) wholly or chiefly on a specified object, field, or objective." WEBSTER'S THIRD NEW INTERNATIONAL UNABRIDGED DICTIONARY at 620.

c. Here, the burden was on Respondent to provide the Board with probative evidence supporting the notion that the subject property was correctly classified as excess residential.

d. "Residential property" is defined as "vacant or improved land devoted to, or available for use primarily as, a place to live," and is "normally construed to mean a structure where less than three families reside in a single structure." GUIDELINES, GLOSSARY at 19.

> Residential land is land that is utilized or zoned for residential purposes. The parcel's size does not determine the property classification or pricing method for the parcel. The property classification and pricing method are determined by the property's use or zoning.

GUIDELINES, CH. 2 at 53. Furthermore, "residential acreage parcels of more than one acre and not used for agricultural purposes are valued using the residential homesite base rate and the excess acreage base rate established by the assessing official." *Id.* at 54.

e. The Tax Court has defined "residential excess" as land "dedicated to a non-agricultural use normally associated with the homesite." *Stout v. Orange County Assessor,* 996 N.E.2d 871, 875 n.6. (Ind. Tax Ct. 2013). Similarly, "agricultural excess acreage" is defined as land "dedicated to a non-agricultural use normally associated with the homesite," and it is intended to apply to "areas containing a large manicured yard over and above the accepted one acre homesite." 2011 GUIDELINES, CH. 2 at 105-6. "The agricultural excess acre rate is the same rate that is established for the residential excess acre category." *Id.*

f. In contrast, land purchased and used for agricultural purposes includes cropland or pasture land (i.e., tillable land) as well as woodlands. 2011 GUIDELINES, CH. 2 at 80. Additional categories of agricultural property include Type 4 "idle cropland" and Type 5 non-tillable land which is "covered with brush or scattered trees with less than 50% canopy cover, or permanent pasture land with natural impediments that deter the use of the land for crop production." *Id.* at 103, 104.

Thus, by definition, agricultural property may include property that is not suitable for forestry or "farming."

g. Respondent argues that the land was not being devoted to or used for agricultural purposes. More specifically, there were no animals grazing on the property, no crops were being grown, and no timber was being produced.

h. The Board cannot find any support for the proposition that an agricultural classification depends solely on whether the property is actively farmed. The classification depends on whether the properties are put to agricultural or residential use. The record indicates there are no improvements, such as a dwelling, that might indicate residential use. Respondent does not articulate what characteristics of the property or Petitioners' use of the property led her to the conclusion that the property should be classified as excess residential. Finally, the classification of the property as excess residential is inaccurate because the record does not indicate the property is associated with a homesite. *See Stout*, 996 N.E.2d 871, 875 n.6.

i. Conversely, Petitioners have offered evidence that the property has been accepted into the DNR Classified Forest and Wildlands Program. They have offered evidence that the property is unfit for construction due to its location in a severe floodplain. Finally, they have offered evidence that both the grazing of cattle and the production of firewood occur or have occurred on the property. And, even if those activities were not occurring, as previously pointed out, it is not necessarily required that the property be actively farmed to be classified as agricultural.

Conclusion

16. Respondent failed to make a prima facie case that land was properly classified as excess residential or that the 2014 assessment was correct. The Board therefore finds that the 2014 assessment must be reduced to the previous year's level of $24,200.

Final Determination

In accordance with the above findings of fact and conclusions of law, the Board determines that the 2014 assessment must be changed.

ISSUED: June 1, 2016

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

*You may p*etition 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>