PETITIONER APPEARING PRO SE:
RONALD O. GUINGRICH
Leo, IN

ATTORNEYS FOR RESPONDENT:
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IN THE
INDIANA TAX COURT

RONALD O. GUINGRICH,

Petitioner,

v.

ALLEN COUNTY ASSESSOR,

Respondent.

Cause No. 49T10-0812-SC-68

ON APPEAL FROM A FINAL DETERMINATION OF
THE INDIANA BOARD OF TAX REVIEW

NOT FOR PUBLICATION
March 24, 2010

FISHER, J.

Ronald O. Guingrich (Guingrich) appeals the final determination of the Indiana Board of Tax Review which upheld the Allen County Assessor's (Assessor) assessment of his land for the 2006 tax year (the year at issue). The sole issue for review is whether the Indiana Board's final determination is supported by substantial evidence.

FACTS AND PROCEDURAL HISTORY

Guingrich owns 6½ acres of land in Leo, Indiana, Allen County. Guingrich's residence is located on one acre of the land; the other 5½ acres is primarily wooded.

This appeal concerns the assessment of the latter only (i.e., the 5½ acres). (*See* Cert. Admin. R. at 106, 187.)

For the year at issue, the Assessor issued a "Notice of Assessment by Assessing Officer" (Form 113) to Guingrich reclassifying his land from woodland to excess residential acreage.[1] As a result, the assessment on the 5½ acres of land was increased from $900 to $24,800. (*See* Cert. Admin. R. at 62, 66.)

Guingrich subsequently filed a Petition for Review (Form 130) with the Allen County Property Tax Assessment Board of Appeals (the PTABOA). On November 8, 2007, the PTABOA denied Guingrich's Form 130.

On or about December 6, 2007, Guingrich timely filed a Petition for Review (Form 131) with the Indiana Board. The Indiana Board held a hearing on the Form 131 on July 31, 2008. During the hearing, Guingrich asserted that not only did his land meet the definition of "woodland" (i.e., 50% or more canopy covered land that produced timber or other wood products), but that his harvesting activities clearly established that he used the land for agricultural purposes. More specifically, Guingrich testified that he

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[1] Indiana's assessment guidelines define "woodland" as:

> land supporting trees capable of producing timber or other wood products. This land has 50% or more canopy cover or is a permanently planted reforested area. This land use type includes land accepted and certified by the Indiana Department of Natural Resources as forest plantation under guidelines established to minimize soil erosion. An 80% influence factor deduction applies to woodland.

REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (2004 Reprint) (hereinafter, "Guidelines") (incorporated by reference at 50 IND. ADMIN. CODE 2.3-1-2(c) (2002 Supp.)), Bk. 1, Ch. 2 at 104. In turn, "residential excess acreage" is land which "is presently dedicated to a non-agricultural use normally associated with a homesite. Areas containing a large manicured yard over and above the accepted one acre homesite would qualify for the agricultural excess acre designation." *Id*. at 105-06.

had owned this agriculturally zoned property since 1992. (*See* Cert. Admin. R. at 195-96, 216.) Guingrich explained that he purchased the densely wooded property with the intent to sell some of the trees as firewood in order to supplement his retirement income.[2] (Cert. Admin. R. at 195-96 (footnote added).) In 1994, Guingrich built his residence; he retired in 2000 and began to actively sell firewood in 2005.[3] (*See* Cert. Admin. R. at 216-19 (footnote added).) Between 2005 to 2007, Guingrich's total gross income from firewood sales was approximately $710, which represented a "total of eight and one half cord[4] of firewood, or a stack of wood four foot high, eight feet deep, and thirty-four foot wide." (*See* Cert. Admin. R. at 83, 199; Am. Cert. Admin. R. at 83A-83B (footnote added).) Guingrich also presented his federal farm number, and several photographs of his land depicting, *inter alia*, a "Firewood For Sale" sign, views of the woods beyond his residence, and stacks of firewood. (*See* Cert. Admin. R. at 75-81.)

In response, the Assessor explained the "genesis" of Guingrich's woodland classification:

> Wh[en Guingrich's land] was all one parcel . . . [it] would have been [classified as] woodland, because a woodland is a [piece] of property . . . that is within tillable farmland. The [land is] . . . given a[n influence factor adjustment] . . . because it takes away from the[] income producing property. Clearly, you can farm all the way

[2] Guingrich submitted a notarized statement that substantiated his description of the land. (*See* Cert. Admin. R. at 91 (providing that the land "has always been a dense woodland area and remains today as it has been always been . . . a rolling woodland area with many trees reaching 100 feet height and having a full canopy of trees beyond the actual one (1) acre home site").)

[3] Guingrich decided to sell firewood instead of "logging out [wood] as timber" because the former was more profitable. (Cert. Admin. R. at 196, 200-01, 217-18.)

[4] A "cord" is defined as "any of various units of quantity for wood cut for fuel or pulp; [] a unit equal to a stack 4×4×8 foot or 128 cubic feet[.]" WEBSTER'S THIRD NEW INT'L DICTIONARY 505 (2002 ed.).

> around, but the[prior owners] couldn't farm this because it was wooded, and you couldn't grow crops on there. So [this land originally] . . . would have been qualified as farmland.

(Cert. Admin. R. at 232.) According to the Assessor, Guingrich, like several of his neighbors, had actually purchased this property in order to build his residence. (*See* Cert. Admin. R. at 232-36.) The Assessor therefore asserted that Guingrich used the land for residential purposes and that any agricultural uses of the land were "*de minimis*" because he: 1) had not purchased the land for agricultural purposes; 2) had no active timber management plan; 3) had no DNR management plan designed to enhance forest quality; 4) had no evidence of longstanding forest harvests; and 5) only harvested firewood. (*See* Cert. Admin. R. at 225-29.)

On October 23, 2008, the Indiana Board issued its final determination denying Guingrich's request for relief. In its final determination, the Indiana Board stated that:

> Land may only be assessed as agricultural if it is "devoted to agricultural use." Ind. Code § 6-1.1-4-13(a).[5] The word "devote" means "to give or apply (one's time, attention, or self) completely." WEBSTER'S II NEW RIVERSIDE DICTIONARY 192 (revised edition). Thus, where agriculture is simply one activity for which land is used, that land should not be classified as agricultural. That being said, truly incidental non-agricultural uses would not prohibit an agricultural classification.
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> [] Guingrich[] own[s] the property, in part, for agricultural purposes. [He] harvest[s] and sell[s] firewood to supplement [his] retirement income. That agricultural use may even be more than incidental. But [] Guingrich[] ha[s] never *devoted* [his] property to agricultural use. [He] use[s] the 5 ½-acres of woods as a buffer for [his] house. In fact, [he] did not start selling firewood until 2005, years after [he] first built the[] house. Even then, the most [he] ha[s] sold in a year is $750. [He] do[es] not have a farm number nor do[es] [he] participate in DNR programs to improve the quality of [his] stand or

[5] The relevant portion of Indiana Code § 6-1.1-4-13 reads: "In assessing or reassessing land, the land shall be assessed as agricultural land only when it is devoted to agricultural use." IND. CODE ANN. § 6-1.1-4-13(a) (West 2006).

> the marketability of [his] harvest. While none of those factors is controlling, together they support [the] conclusion that [] Guingrich[] do[es] not devote [his] land to agriculture.

(Cert. Admin. R. at 27 (footnote added).)

On December 1, 2008, Guingrich filed this original tax appeal. The Court heard the parties' oral arguments on July 17, 2009. Additional facts will be supplied as necessary.

STANDARD OF REVIEW

When this Court reviews a final determination of the Indiana Board, it is limited to determining whether it is:

> (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
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> (2) contrary to constitutional right, power, privilege, or immunity;
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> (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory jurisdiction, authority, or limitations;
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> (4) without observance of procedure required by law; or
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> (5) unsupported by substantial or reliable evidence.

IND. CODE ANN. § 33-26-6-6(e)(1)-(5) (West 2010). The party seeking to overturn the Indiana Board's final determination bears the burden of proving its invalidity. *Osolo Twp. Assessor v. Elkhart Maple Lane Assocs.*, 789 N.E.2d 109, 111 (Ind. Tax Ct. 2003).

ANALYSIS AND OPINION

On appeal, Guingrich contends that the Indiana Board's final determination is not supported by substantial evidence.[6] More specifically, Guingrich claims that when the

[6] "'Substantial evidence is more than a scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'" *Amax Inc. v. State Bd. of Tax Comm'rs*, 552 N.E.2d 850, 852 (Ind. Tax Ct. 1990) (citation omitted).

evidence is fully considered, a reasonable mind would conclude that he used his land for agricultural purposes. (*See* Oral Argument Tr. at 3-4, 16-17.) The Court agrees.

During the Indiana Board hearing, the Assessor presented a Department of Local Government Finance (DLGF) memorandum which explains that the determination whether woodland is "devoted" to an agricultural use is a fact sensitive inquiry. (*See* Cert. Admin. R. at 146-53.) The memorandum offers different factual scenarios to demonstrate how land should be classified. One of those scenarios is particularly relevant in this instance:

> (3) An eight acre parcel contains a one acre home site and seven acres of woods in an exclusive residential setting. Lots are purchased and sold in this neighborhood as residential. The owner asserts that the land is properly classified as agricultural because he cuts and sells firewood. He also files a farm schedule with his Federal Income Tax [return] claiming that he is an agricultural producer, but does not have a farm number.
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> *Conclusion*: Firewood *alone* is not evidence of agricultural activity. The assessor should examine the reasons for the purchase of the land and its current use. Evidence of a farm number, enrollment in classified forest programs, or timber harvests may be taken into consideration. In making a final determination, the assessor should outline statutory or rule reference to support the conclusion.

(Cert. Admin. R. at 152 (second emphasis added).) The memorandum therefore clearly provides that firewood harvesting may be deemed an agricultural use when certain evidence or factors are present.

The administrative record reveals that Guingrich presented such evidence. First, Guingrich presented sworn testimony as to the reason why he purchased the land: he intended to harvest firewood upon retirement. *See supra* p. 3. Second, and contrary to the Indiana Board's finding, the administrative record plainly evidences that Guingrich presented an aerial photograph from the USDA Farm Services Agency website which provided that his farm number was 9167. (*See* Cert. Admin. R. at 75.) Third, the Indiana Board's finding as to Guingrich's participation in DNR timber or forest management plans is irrelevant because the DNR prescribes management plans for parcels that are a *minimum* of ten contiguous acres. *See* IND. CODE ANN. §§ 6-1.1-6-5, -16(b) (West 2006). The land at issue is only 5½ acres. Finally, while Guingrich left the land in its original state until he was ready to begin his harvesting activities, upon commencing those activities, he filed federal income tax returns reporting his farming income.[7] Thus, the fact that Guingrich built his residence on another portion of land and the fact that his neighbors used their land for residential purposes has no bearing upon whether Guingrich's use of his 5½ acres was agricultural.

This Court has previously explained that when a taxpayer offers probative evidence, it must be dealt with in some meaningful manner and not ignored. *See Canal Square Ltd. P'ship v. State Bd. of Tax Comm'rs*, 694 N.E.2d 801, 805 (Ind. Tax Ct. 1998). In this case, the Indiana Board offered no explanation as why it disregarded the majority of Guingrich's evidence. Consequently, the Court cannot say that Indiana Board's final determination is supported by substantial evidence.

CONCLUSION

For the above stated reasons, the final determination of the Indiana Board is REVERSED.

[7] While Guingrich and the Assessor advanced differing opinions as to whether Guingrich's harvests were "substantial" due to the amount of income generated from the sales, neither party presented any evidence to support their respective opinions. Accordingly, the fact that Guingrich only earned $710 is just that: a fact.