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IN THE INDIANA TAX COURT

DAVID A. and NICHELLE L. GERTZ,	)	
	)	
Petitioners,	)	
	)	
v.	)	Case No. 21T-TA-00025
	)	
PORTER COUNTY ASSESSOR,	)	
	)	
Respondent.	)	

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

FOR PUBLICATION
April 14, 2022

WENTWORTH, J.

David A. and Nichelle L. Gertz challenge the Indiana Board of Tax Review's final determination that required the Porter County Assessor to reclassify 10.094 acres of their land as agricultural land, to reassess the land as tillable land, and to apply the 2% tax cap to the land solely for the 2019 tax year. Upon review, the Court affirms the Indiana Board's final determination.

FACTS AND PROCEDURAL HISTORY

In July of 2003, the Gertzes purchased a 4,106 square foot single-family residence in Porter County, Hebron, Indiana. (See Cert. Admin. R. at 52-53, 75.) Their home was situated on just over eleven acres of land. (See Cert. Admin. R. at 75, 52-53.) Thereafter, the Gertzes used part of the land for beekeeping, and they allowed local farmers to cut and bale hay on their land. (See Cert. Admin. R. at 13, 19-24, 77.)

Since their purchase, one acre of the Gertzes' land has been valued as a residential homesite.[1] (See Cert. Admin. R. at 75.) For eight years after their purchase, 10.094 acres were classified and assessed as agricultural land.[2] (See Cert. Admin. R. at 52, 73, 75.) A portion of that agricultural land was further classified and valued as tillable land,[3] and at least five acres were valued as agricultural excess acreage. (See Cert. Admin. R. at 73, 75.) Accordingly, the Gertzes' 2003 through 2011 land assessments ranged from $29,400 to $43,000. (See Cert. Admin. R. at 14-16.)

In 2012, after receiving guidance from the Department of Local Government Finance ("DLGF"), the Assessor reclassified and assessed the Gertzes' 10.094 acre tract as residential acreage, not agricultural acreage. (See, e.g., Cert. Admin. R. at 16-17, 25, 73.) The Assessor notified the Gertzes by mailing them a Form 11 that indicated the 2012 assessed value of their land had increased from $43,000 to $121,900. (See Cert. Admin.

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[1] The valuation of the Gertzes' residence is not at issue in this appeal. (See, e.g., Pet'rs' Br. at 12-13.)

[2] In Indiana, "[a]gricultural land is valued using a statewide base rate and a soil productivity index system[.]" REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (incorporated by reference at 50 IND. ADMIN. CODE 2.3-1-2 (2002) (repealed 2010)), Bk. 1 at 68 (emphasis omitted).

[3] "Tillable land" is "land used for cropland or pasture that has no impediments to routine tillage." Id. at 103 (emphasis added). Furthermore, "[c]ropland is . . . land used for production of grain or horticultural crops[,]" including hay. Id.

R. at 16, 73.) The Gertzes did not appeal the 2012 assessment. (See Cert. Admin. R. at 73.)

After the 2012 reclassification, however, the Gertzes noticed a "substantial increase in [their] annual tax bill." (See Cert. Admin. R. at 75 (providing that their 2013 tax bill was $1,500 higher than their 2012 tax bill).) Mr. Gertz began to discuss the matter with his neighbors, and when he discovered that their tax bills had not increased like his, he contacted the Assessor's office. (See Cert. Admin. R. at 75-76.) "Unsatisfied with the answer[s]" he received, the Gertzes appealed their 2013, 2017, and 2018 assessments. (See Cert. Admin. R. at 73, 76.) The parties resolved each of those appeals by agreement, reducing the Gertzes' assessments to be consistent with either comparable property data or certain appraisal data. (See Cert. Admin. R. at 73.) (See also Cert. Admin. R. at 16-18 (indicating that the Gertzes' assessments were reduced from $373,500 to $337,800 in 2013, from $385,400 to $367,000 in 2017, and from $387,600 to $370,700 in 2018).)

In 2019, the Assessor assigned the Gertzes' property an assessed value of $422,600 ($107,400 for land and $315,200 for improvements). (See Cert. Admin. R. at 2, 52.) Believing that value to be too high, the Gertzes sought review first with the Assessor and then with the Porter County Property Tax Assessment Board of Appeals ("PTABOA"). (See Cert. Admin. R. at 3-7.) After conducting a hearing, the PTABOA reduced the Gertzes' 2019 assessment to $387,600 ($107,400 for land and $280,200 for improvements). (See Cert. Admin. R. at 3-5.)

Dissatisfied with this result, the Gertzes filed an appeal with the Indiana Board on July 20, 2020, electing to have their case heard under the Indiana Board's small claims

procedures. (See Cert. Admin. R. at 1-2.) The Indiana Board held a hearing on the matter on March 4, 2021, during which the Assessor conceded that he bore the burden of proving the assessment was correct because the Gertzes had successfully appealed in 2018, and the 2019 value was higher than the property's final 2018 value.[4] (See Cert. Admin. R. at 69, 71.) To meet his burden, the Assessor presented an appraisal report that estimated the Gertzes' property value was $380,000 as of January 1, 2019, using the sales comparison approach.[5] (See Cert. Admin. R. at 36-51, 71-72.) In addition, the Assessor explained that the Gertzes' land should not be assessed as agricultural land because they had failed to comply with the county's binding "directives" to produce either (1) a signed statement from the farmer that farmed their land; (2) their USDA farm number; (3) a copy of a cash farm lease; or (4) copies of their tax returns. (See Cert. Admin. R. at 54-58, 72-75.)

In response, the Gertzes claimed that their 10.094 acres should be reclassified and valued as agricultural tillable land rather than as residential acreage. (See Cert. Admin. R. at 76-78.) Mr. Gertz testified that the land had been used for agricultural purposes since he and his wife purchased the property in 2003, because they had "always had local farmers cut and bale [hay on their] non-homestead acreage to be used as cattle feed." (Cert. Admin. R. at 77.) (See also Cert. Admin. R. at 19-21 (photographs depicting

[4] The Assessor bore the burden of proving the Gertzes' assessment was correct pursuant to Indiana Code § 6-1.1-15-17.2(d). See IND. CODE § 6-1.1-15-17.2(d) (2021) (repealed 2022).

[5] The sales comparison approach, one of the three generally accepted appraisal methods expressly authorized under Indiana's property tax assessment system, is "based on the assumption that potential buyers will pay no more for the subject property than it would cost them to purchase an equally desirable substitute improved property already existing in the [marketplace]." 2011 REAL PROPERTY ASSESSMENT MANUAL (incorporated by reference at 50 IND. ADMIN. CODE 2.4-1-2 (2011) (amended 2020)) at 9.

the cutting and baling activities).) In addition, Mr. Gertz presented photographs of their beekeeping activities to show that he and his wife used part of the land for beekeeping. (See Cert. Admin. R. at 22-24, 77.) Furthermore, Mr. Gertz explained that he was never told that the increases to their land assessments were due to the 2012 reclassification of the land. (See Cert. Admin. R. at 73, 76 (stating that the Assessor told him the increases were due to Indiana's annual trending process[6]).) Mr. Gertz, however, discovered by "extensively investigating" the matter on his own that his large assessment increases actually were due to the 2012 reclassification. (See Cert. Admin. R. at 75-78.)

On June 1, 2021, the Indiana Board issued its final determination. (See Cert. Admin. R. at 60-66.) The Indiana Board determined that the Gertzes' evidence demonstrated that their 10.094 acres should be classified and assessed as agricultural land. (See Cert. Admin. R. at 63 ¶ 9.) The Indiana Board explained that several factors led it to that conclusion, including the Assessor's failure to establish that the county's four "directives" were required by law and the unrebutted testimony of Mr. Gertz that the land was used for agricultural purposes in 2019. (See Cert. Admin. R. at 63-65 ¶¶ 9(h)-(i).) Consequently, the Indiana Board "order[ed] the Assessor to reclassify the [Gertzes'] 10.094 acres of non-homestead land as agricultural land, reassess it as . . . tillable land, and apply the 2% tax cap to it for the 2019 assessment year." (Cert. Admin. R. at 66.)

On June 9, 2021, the Gertzes requested a rehearing. Specifically, they sought to clarify a portion of the Indiana Board's final determination:

> The [final determination] only [requires that] a 2019 tax year

[6] "Trending" is the process that applies an adjustment factor to the value of a property to estimate its value on a specific date. See, e.g., 50 IND. ADMIN. CODE 27-5-1 (2022). In determining the adjustment factor, assessing officials typically use sales of properties in certain neighborhoods, areas, or classes that "ideally [occurred] not more than twelve (12) months before the January 1 assessment and valuation date." 50 IND. ADMIN. CODE 27-5-2(a) (2022).

> correction [be made] to the erroneous assessments of [the] land classification made to the 10.094 portion of our parcel. The erroneous conversion by [the A]ssessor to the 10.094 acre portion of the parcel was done unannounced to us in 2012. We also received an improper response of "trending" when questioning the [A]ssessor's office for a reason for the substantial tax increase resulting from [his] conversion of our land parcel back in 2012. This was explained in our testimony and was unrebutted by the [Assessor] at our [Indiana Board] hearing on March 4, 2021. We are therefore requesting that the [final determination] also include the tax years of 2012 to the current year . . . so that the proper tax may be recalculated based on the rates for those years set by the DLGF.

(Cert. Admin. R. at 67.) On June 21, 2021, the Indiana Board denied the Gertzes' request for rehearing. (Cert. Admin. R. at 68.)

On June 30, 2021, the Gertzes initiated this original tax appeal. On August 12, 2021, the Gertzes filed a "Motion In Limine to Admit Certain Evidence," specifically the four exhibits they attached to their petition for review. The Court denied the Motion on August 24, 2021, and took the Gertzes' appeal under advisement on November 9, 2021. Additional facts will be provided if necessary.

STANDARD OF REVIEW

The party seeking to reverse an Indiana Board final determination bears the burden of demonstrating its invalidity. Lowe's Home Ctrs., Inc. v. Monroe Cnty. Assessor, 160 N.E.3d 263, 268 (Ind. Tax Ct. 2020). Consequently, the Gertzes must demonstrate to the Court that the Indiana Board's final determination in this matter is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; contrary to constitutional right, power, privilege, or immunity; in excess of or short of statutory jurisdiction, authority, or limitations; without observance of the procedure required by law; or unsupported by substantial or reliable evidence. IND. CODE § 33-26-6-6(e)(1)-(5) (2022).

LAW AND ANALYSIS

On appeal, the Gertzes have asked the Court to provide them with two distinct remedies. First, they have requested that the Court reconsider its denial of their Motion to admit the four exhibits they attached to their petition for review. (See Pet'rs' Br. at 12.) Second, they have asked the Court to reverse the Indiana Board's final determination and apply its reclassification and reassessment of their 10.094 acres as tillable land for 2019 retroactively to the 2012 through 2018 tax years. (See, e.g., Pet'rs' Br. at 4-13.)

I. The Motion

The Gertzes have asked the Court to reconsider its denial of their Motion and examine the four exhibits they attached to their petition for review in ruling on their appeal. (See Pet'rs' Br. at 12.) In support of their request, the Gertzes cite Indiana Code § 33-26-6-5, maintaining that their exhibits are properly before the Court because they are relevant and were "not available at the time of [their Indiana Board] hearing[.]" (See Pet'rs' Br. at 12.)

The Tax Court's "review of disputed issues of fact must be confined to . . . the record of the proceeding before the [Indiana Board] and . . . any additional evidence" received pursuant to Indiana Code § 33-26-6-5. IND. CODE § 33-26-6-3 (2022). Indiana Code § 33-26-6-5 provides that the Court

> may receive evidence in addition to that contained in the record of the determination of the [Indiana Board] only if the evidence relates to the validity of the determination at the time it was taken and is needed to decide disputed issues regarding one (1) or both of the following:
>
> (1) Improper constitution as a decision[-]making body or grounds for disqualification of those taking the agency action.

> (2) Unlawfulness of procedure or decision[-]making process.
>
> This subsection applies only if the additional evidence could not, by due diligence, have been discovered and raised in the administrative proceeding giving rise to a proceeding for judicial review.

IND. CODE § 33-26-6-5(b) (2022).

The four exhibits that the Gertzes attached to their petition for review are copies of the following: (1) the Indiana Board final determination, (2) the Gertzes' request for a rehearing with the Indiana Board, (3) the Indiana Board's denial of the Gertzes' request for rehearing; and (4) an email from the Assessor regarding adjustments to the Gertzes' 2019 through 2021 assessments. (Pet'rs' Pet. Jud. Rev. Final Determination Indiana Bd. Tax Rev. ("Pet'rs' Pet."), Exs. 1-4.) The originals or duplicates of the first three of the four exhibits are already included in the certified administrative record. (Compare Cert. Admin. R. at 59-68 with Pet'rs' Pet., Exs. 1-3.) The fourth exhibit, the email, is not included in the certified administrative record, and while asserting it was not available at the time of the Indiana Board hearing, the Gertzes have not explained how the exhibit (1) demonstrates the constitution of the Indiana Board as a decision-making body was improper, (2) identifies the grounds for disqualification of the Indiana Board's decision-makers personally, or (3) demonstrates that the Indiana Board's decision-making process or procedure was unlawful. (See Pet'rs' Br. at 12; Pet'rs' Reply Br. at 5-14.) See also I.C. § 33-26-6-5(b). Consequently, the Court will not reconsider its denial of the Gertzes' Motion.

II. Additional Retroactive Relief

The Gertzes also assert that the Indiana Board erred by failing to order the Assessor to reclassify and reassess their 10.094 acres as agricultural tillable land for the

2012 through 2018 tax years, to apply the 2% tax cap to that land for that same period, and to refund any overpayment of taxes accrued during that period as it had done for 2019. (See, e.g., Pet'rs' Br. at 13.) The Gertzes contend that this additional relief is warranted because the "Assessor's office was deceptive by insisting and stating to [them] when questioned in 2013 and further . . . that the reasons for the initial $1,500 annual tax increase was due to 'trending[,]'" not to the 2012 reclassification.[7] (Pet'rs' Br. at 10-11.) (See also, e.g., Pet'rs' Reply Br. at 5.)

At the outset, the Court notes that the Gertzes have chosen to proceed pro se. Litigants are not given special consideration by virtue of their pro se status. Kelley v. State, 166 N.E.3d 936, 937 (Ind. Ct. App. 2021) (citing Sidener v. State, 446 N.E.2d 965, 966 (Ind. 1983)). To the contrary, "'[i]t is well settled that pro se litigants are held to the same legal standards as licensed attorneys.'" Id. (citation omitted and emphasis added). See also, e.g., Lacey v. Indiana Dep't of State Revenue, 959 N.E.2d 936, 940 (Ind. Tax Ct. 2011). Consequently, "'[t]his means that pro se litigants are bound to follow the established rules of procedure and must be prepared to accept the consequences of their failure to do so.'" Kelley, 166 N.E.3d at 937 (citation omitted and emphasis added).

Relying on their successful appeal for the 2019 tax year, the Gertzes have asked the Court to order the Indiana Board to provide them with additional retroactive relief that involves the correctness of their 2012 through 2018 assessments. When a taxpayer

[7] The Gertzes also claim that the 2012 reclassification of their land violated the Property Taxation and Equal Privileges and Immunities Clauses of Indiana's Constitution because the Assessor did not reclassify their neighbors' similar adjoining parcels. (See Pet'rs' Br. at 5, 8; Pet'rs' Reply Br. at 8-10, 13-14.) The Court will not address this claim because it was not specifically raised or argued at the Indiana Board hearing. See Inland Steel Co. v. State Bd. of Tax Comm'rs, 739 N.E.2d 201, 220 (Ind. Tax Ct. 2000) (explaining that when a litigant fails to raise an issue or present an argument at the administrative level, the issue is waived and may not be considered by this Court on appeal), review denied.

seeks to challenge the correctness of his real property tax assessment at the administrative level, he must follow the appeal process set forth under Indiana Code § 6-1.1-15-1.1 et seq. (hereinafter, "Chapter 15"). In summary, this process begins by filing certain written documentation with the taxpayer's local assessing official within the applicable period:

> (1) For assessments before January 1, 2019, the earlier of:
>
> (A) forty-five (45) days after the date on which the notice of assessment is mailed by the county; or
>
> (B) forty-five (45) days after the date on which the tax statement is mailed by the county treasurer, regardless of whether the assessing official changes the taxpayer's assessment.
>
> (2) For assessments of real property after December 31, 2018, the earlier of:
>
> (A) June 15 of the assessment year, if the notice of assessment is mailed by the county before May 1 of the assessment year; or
>
> (B) June 15 of the year in which the tax statement is mailed by the county treasurer, if the notice of assessment is mailed by the county on or after May 1 of the assessment year.

See IND. CODE § 6-1.1-15-1.1(a)(1), (b)(1)-(2) (2022). If the taxpayer and local assessing official are unable to reach an agreement, the taxpayer's appeal is then forwarded to the county property tax assessment board of appeals (the "county ptaboa") for review. See I.C. § 6-1.1-15-1.1(f)-(g). If the taxpayer is dissatisfied with the county ptaboa's resolution of the matter, the taxpayer may file an appeal with the Indiana Board. See IND. CODE §§ 6-1.1-15-3, -4 (2022). This administrative appeal process allows taxpayers to challenge assessments made within a finite period – it "applies only to the tax year corresponding to the tax statement or other notice of action" that the taxpayer received unless "a county

official took action regarding a prior tax year, and such action is reflected for the first time in the tax statement." I.C. § 6-1.1-15-1.1(c)-(d).

There is no dispute that the Gertzes challenged their 2019 assessment by following the Chapter 15 appeal process. Specifically, the certified administrative record establishes that they used the Assessor's website to initiate their 2019 appeal, the matter subsequently was forwarded to and reviewed by the PTABOA, and then the Gertzes timely sought review with the Indiana Board. (See Cert. Admin. R. at 1-7.) The limitation of the Gertzes appeal to the 2019 tax year is further illustrated by the parties' evidentiary presentations, which ultimately required the Indiana Board, as the trier of fact, to determine whether the Gertzes had demonstrated that the 10.094 acres should have been assessed as agricultural land during the 2019 tax year alone. (See, e.g., Cert. Admin. R. at 60-66, 70-79.) Therefore, the mere fact that the Gertzes sought rehearing to obtain relief for preceding tax years after discovering that the Indiana Board had ruled in their favor does not warrant the retroactive application of their 2019 appeal beyond the period prescribed by statute. Similarly, without something more,[8] their allegations concerning the Assessor's conduct are insufficient to extend their 2019 appeal to preceding years. Indeed, it has long been recognized that "in property assessment appeals at both the administrative and judicial levels, each tax year – and each appeals

[8] The Gertzes seem to make an equitable claim for retroactivity but have not provided the Court with the tools to do so. When properly pled and argued, equitable doctrines may be used to soften a laundry of harsh legal results. Moreover, the use of equitable doctrines may be particularly appropriate in tax cases where fairness of a monetary burden is always a concern. See, e.g., Doe v. Shults-Lewis Child & Fam. Servs., Inc., 718 N.E.2d 738, 747 (Ind. 1999) (stating that "[e]quitable doctrines, in contrast to the stricter rules of common law, are available to courts to administer justice according to fairness"). The Court applies what the law says but may do equity in deserving cases – but only if the equitable claims are put before the Court for its consideration. See, e.g., Lowe's Home Ctrs., Inc. v. Monroe Cnty. Assessor, 160 N.E.3d 263, 273-74 (Ind. Tax Ct. 2020) (explaining that the onus is on the parties, not the Court, to make cogent arguments).

process – stands alone." See, e.g., Fisher v. Carroll Cnty. Assessor, 74 N.E.3d 582, 588 (Ind. Tax Ct. 2017) (citation omitted). Consequently, the Gertzes have not demonstrated that the Indiana Board erred by failing to grant them additional relief for the 2012 through 2018 tax years.

CONCLUSION

To allow the Gertzes' challenges to their 2012 through 2018 real property assessments to proceed in these circumstances would provide them with an "end run" around the established rules of procedure for challenging the correctness of assessments. Consequently, the Indiana Board's final determination in this matter must be AFFIRMED.