

REPRESENTATIVE FOR THE PETITIONERS: David A. Gertz, *pro se*

REPRESENTATIVE FOR THE RESPONDENT: Robert Schwerd, Schwerd, Fryman & Torrenga, LLP

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

David A. & Nichelle L. Gertz,	)	Petition No.:	64-001-22-1-5-00959-22
	)		
Petitioners,	)	Parcel No.:	64-15-09-451-002.000-001
	)		
v.	)	County:	Porter
	)		
Porter County Assessor,	)	Township:	Boone
	)		
Respondent.	)	Assessment Year:	2022

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**ORDER ON REHEARING**

1. On June 7, 2024, the Indiana Board of Tax Review issued its decision in the above-captioned matter, ordering the assessment reverted to the prior year's value under the burden-shifting statute. In the Final Determination, we noted that the documents submitted as Petitioners' Ex. 25 referenced only a 3,058 sq. ft area of land rather than the .41 acres that Gertz testified to. On June 11, 2024, the Petitioners filed a Motion for Rehearing alleging that they submitted additional documents showing two more alleged non-tillable areas of 7,152 sq. ft and 7,691 sq. ft., that taken together with the 3,058 sq. ft. area, add up to .41 acres. As a result, the Petitioners requested the Board order an assessment of \$377,498 based on adjustments to the agricultural land value from the 2021 assessment.

2. On June 25, 2024, we issued an order granting the Petitioners' request for rehearing. In the order, we noted that Petitioners electronic exhibits were not properly labeled or numbered as exhibits or sub-exhibits. We ordered the Petitioners to resubmit all of the exhibits "originally tendered to Board" with each exhibit "properly labelled as an exhibit or sub-exhibit, and each page of each exhibit numbered." In addition, the order stated that a hearing would be held for "argument as to which exhibits were properly admitted."
3. The Petitioner did not comply with this order. Instead, they resubmitted only those exhibits they deemed relevant to their rehearing request (Petitioners' Exs. 2 and 25). On July 10, 2024, we issued a second order on rehearing in which we stated "the Board will not consider any of the Petitioners' exhibits except those resubmitted in accordance with the Board's order on rehearing." The Petitioners submitted a response in which they argued it would be "unnecessarily burdensome" to comply with the Board's order.<sup>1</sup>
4. On August 5, 2024, we issued an order scheduling a telephonic rehearing on September 5, 2024. On August 9, 2024, the Petitioners requested the Board consolidate the September 5, 2024, hearing with their 2023 and 2024 petitions. On August 30, 2024, the Petitioners sent an e-mail withdrawing this request. Additionally, the Petitioners attached two documents to this e-mail and requested that they be added to the Petitioners' exhibits "as they were on our original list that we did not have adequate time to discuss at the original hearing." The documents were Petitioners' Exs. 36 and 37 and consisted of communications between the Petitioners and the Assessor's office. Petitioners' Ex. 37 was addressed at the rehearing and we discuss it below. We deny the request to admit Petitioners' Ex. 36 as it was not offered at the original hearing.

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<sup>1</sup> This response also included a number of additional requests and arguments not made in the Petitioners original motion for rehearing. These include claims related to uniformity and equality, sanctions, later tax years, and a request that the "the testimonial and exhibit citations contained in their Preliminary Injunction's Motion to be entered into this record on appeal." We note that that Petitioners' motion for preliminary injunction is part of the record for appeal, though it is not considered evidence. We summarily deny the rest of the Petitioners' claims as untimely.

5. On September 5, 2024, Chairman Jonathan Elrod, acting as the Board’s Administrative Law Judge (“ALJ”), conducted the telephonic rehearing.<sup>2</sup> At the rehearing, the ALJ went through the exhibits submitted at the original hearing and designated parts of each exhibit as subparts. For instance, the documents in Petitioners’ Ex. 2 were designated 2.1, 2.2, etc.<sup>3</sup> The Petitioners were given an opportunity state whether any of the exhibits were missing any specific documents or subparts. Additionally, the ALJ ordered the Petitioners to resubmit exhibits 23, 27, and 31.
  
6. After the rehearing, the Petitioners resubmitted paper, paginated copies of Petitioners’ Exs. 27 and 31. We accept those resubmissions into evidence and substitute them for the versions submitted before the original hearing. In addition, the Petitioners submitted an electronic, paginated version of Petitioners’ Ex. 23. We likewise accept that version into evidence and substitute it for the originally submitted version. Finally, the Petitioners resubmitted electronic, paginated versions of exhibits that they did not offer into evidence at the original hearing. To the extent this is a request to now admit those exhibits into evidence, it is denied.
  
7. Accordingly, we now revise the list of Petitioners’ exhibits offered into evidence:  
  
Petitioners’ Ex 2.1: 2006 property record card (“PRC) for subject property (2 pages)  
Petitioners’ Ex. 2.2: 2006 Form 115 for subject property (2 pages)  
Petitioners’ Ex. 2.3: 2007 PRC for subject property (2 pages)  
Petitioners’ Ex. 8.1: Photo of subject property  
Petitioners’ Ex. 8.2: Photo of subject property  
Petitioners’ Ex. 8.3: Photo of subject property  
Petitioners’ Ex. 8.4: Photo of subject property  
Petitioners’ Ex. 8.5: Photo of subject property  
Petitioners’ Ex. 8.6: Photo of subject property  
Petitioners’ Ex. 8.7: Photo of subject property

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<sup>2</sup> At the rehearing, the Petitioners made some arguments or claims unrelated to the issue of what exhibits were properly in evidence. We deny these claims as outside the scope of the rehearing.

<sup>3</sup> For exhibits 2 and 25, this re-numbering differed from how the Petitioners renumbered them in their first response to the order on rehearing. We use the exhibit numbers designated during the rehearing and the exhibits that were submitted before the original hearing.

Petitioners' Ex. 8.8: Photo of tractor  
 Petitioners' Ex. 8.9: Photo of subject property  
 Petitioners' Ex. 8.10: Photo of subject property  
 Petitioners' Ex. 8.11: Photo of subject property  
 Petitioners' Ex. 8.12: Photo of subject property  
 Petitioners' Ex. 8.13: Photo of subject property  
 Petitioners' Ex. 8.14: Photo of subject property  
 Petitioners' Ex. 8.15: Photo of subject property  
 Petitioners' Ex. 8.16: Photo of subject property  
 Petitioners' Ex. 8.17: Photo of subject property  
 Petitioners' Ex. 8.18: Photo of equipment  
 Petitioners' Ex. 9: United States Department of Agriculture Custom Soil Resource Report for Porter County, Indiana (20 pages)  
 Petitioners' Ex. 10.1: Sales disclosure form ("SDF") for 1001 S 400 W (5 pages)  
 Petitioners' Ex. 10.2: SDF addendum for 1001 S 400 W (3 pages)  
 Petitioners' Ex. 10.3: PRC for 1001 S 400 W (2 pages)  
 Petitioners' Ex. 10.4: Assessment history (2 pages)  
 Petitioners' Ex. 10.5: Parcel information for 76 W 600 W  
 Petitioners' Ex. 10.6: PRC for 373 S 100 W (2 pages)  
 Petitioners' Ex. 10.7: PRC for 777 S 200 W (2 pages)  
 Petitioners' Ex. 10.8: PRC for 1150 S 625 W (2 pages)  
 Petitioners' Ex. 10.9: PRC for 781 W 900 S (2 pages)  
 Petitioners' Ex. 10.10: PRC for 1118 S ST RD 231 (2 pages)  
 Petitioners' Ex. 10.11: PRC for 261 W 900 S (2 pages)  
 Petitioners' Ex. 10.12: PRC for 804 S 400 W (2 pages)  
 Petitioners' Ex. 10.13: PRC for 775 S 250 W (2 pages)  
 Petitioners' Ex. 11.1: 2003 Form 11 for 775 S 250 W  
 Petitioners' Ex. 11.2: 2006 Form 11 for 775 S 250 W  
 Petitioners' Ex. 11.3: 2010 Form 11 for 775 S 250 W  
 Petitioners' Ex. 11.4: 2011 Form 11 for 775 S 250 W  
 Petitioners' Ex. 11.5: 2012 Form 11 for 775 S 250 W  
 Petitioners' Ex. 11.6: 2013 Form 11 for 775 S 250 W  
 Petitioners' Ex. 11.7: 2014 Form 11 for 775 S 250 W  
 Petitioners' Ex. 11.8: 2015 Form 11 for 775 S 250 W  
 Petitioners' Ex. 11.9: 2016 Form 11 for 775 S 250 W  
 Petitioners' Ex. 11.10: 2017 Form 11 for 775 S 250 W  
 Petitioners' Ex. 11.11: 2018 Form 11 for 775 S 250 W  
 Petitioners' Ex. 11.12: 2019 Form 11 for 775 S 250 W  
 Petitioners' Ex. 11.13: 2021 Form 11 for 775 S 250 W  
 Petitioners' Ex. 11.14: 2022 Form 11 for 775 S 250 W  
 Petitioners' Ex. 11.15: 2023 Form 11 for 775 S 250 W  
 Petitioners' Ex. 11.16: Screenshot from Porter County website regarding "Employment of Relatives" and "Outside Employment and Activities"

- Petitioners' Ex. 11.17: Screenshot from Porter County website regarding "Policy Against Fraudulent or Dishonest Acts"
- Petitioners' Ex. 11.18: Screenshot from Department of Local Government Finance ("DLGF") website regarding Form 11s
- Petitioners' Ex. 13: DLGF 2022 certified budget order for Porter County dated January 7, 2022 (54 pages)
- Petitioners' Ex. 14.1: DLGF 2022 budget order amendment for Porter County
- Petitioners' Ex. 14.2: DLGF 2022 certified budget order for Porter County dated May 16, 2022 (54 pages)
- Petitioners' Ex. 15: Porter County 2022 ratio study (75 pages)
- Petitioners' Ex. 16: Porter County 2022 ratio study narrative (4 pages)
- Petitioners' Ex. 17.1: DLGF Porter County ratio study approval letter
- Petitioners' Ex. 17.2: Porter County 2022 circuit breaker report (18 pages)
- Petitioners' Ex. 18: 2021 DLGF checklist for sales data submission
- Petitioners' Ex. 19.1: DLGF Frequently Asked Questions (2 pages)
- Petitioners' Ex. 19.2: Indiana Code § 6-1.1-4-22 (2 pages)
- Petitioners' Ex. 20.1: 2022 Indiana House Bill No. 1260 digest dated January 10, 2022 (2 pages)
- Petitioners' Ex. 20.2 : 2022 introduced Indiana House Bill No. 1260 (94 pages)
- Petitioners' Ex. 21: Emails and a letter between Sue Neff, Porter County Assessor and David Gertz (4 pages).
- Petitioners' Ex. 23.1: 2021 Porter County Form 11s (1,950 pages)
- Petitioners' Ex. 23.2: 2022 Porter County Form 11s (234 pages)
- Petitioners' Ex. 25.1: Photo of subject property
- Petitioners' Ex. 25.2: Photo of subject property
- Petitioners' Ex. 25.3: Photo of subject property
- Petitioners' Ex. 25.4: Screenshot of soil report and GIS map
- Petitioners' Ex. 25.5: Photo of subject property
- Petitioners' Ex. 25.6: Photo of subject property
- Petitioners' Ex. 25.7: Screenshot of GIS map
- Petitioners' Ex. 25.8: Photo of subject property
- Petitioners' Ex. 25.9: Photo of subject property
- Petitioners' Ex. 25.10: Photo of subject property
- Petitioners' Ex. 25.11: Photo of subject property
- Petitioners' Ex. 25.12: Screenshot of GIS map
- Petitioners' Ex. 25.13: DLGF slides on valuing agricultural land (2 pages)
- Petitioners' Ex. 25.14: Excerpt from Real Property Assessment Guidelines chapter 2, page 87
- Petitioners' Ex. 27.1: PRCs SDFs, Excerpts from Real Property Assessments Guidelines, and SDF instructions (51 pages)
- Petitioners' Ex. 27.2: GIS maps, SDFs, PRCs, website printouts, and list of sales excluded from 2022 Porter County ratio study (96 pages)

- Petitioners' Ex. 28.1<sup>4</sup>: PRC for 783 S 250 W (2 pages)
- Petitioners' Ex. 28.2: PRC for 250 W
- Petitioners' Ex. 28.3: Photo of Parcel 64-15-09-451-007.000-001
- Petitioners' Ex. 28.4: SDF addendum for 783 S 250 W (3 pages)
- Petitioners' Ex. 28.5: Excerpt from Real Property Assessment Guidelines chapter 2 (9 pages)
- Petitioners' Ex. 28.6: Aerial Photo
- Petitioners' Ex. 28.7: SDF Instructions (11 pages)
- Petitioners' Ex. 37.1: E-mail exchange between David Gertz and Peggy Hendron
- Petitioners' Ex. 37.2: E-mail exchange between David Gertz and Peggy Hendron (2 pages)
- Petitioners' Ex. 37.3: E-mail exchange between David Gertz and Peggy Hendron (10 pages)
- Petitioners' Ex. 37.4: Settlement and Release
- Petitioners' Ex. 37.5: Settlement and Release
- Petitioners' Ex. 37.6: Settlement and Release
- Petitioners' Ex. 37.7: Settlement and Release
- Petitioners' Ex. 41.1: Form 11 and PRC for 9 W MARNE
- Petitioners' Ex. 41.2: Form 11 and PRC for 1024 N COUNTY LINE RD
- Petitioners' Ex. 41.3: Form 11 and PRC for 10 E HUNTER TRL
- Petitioners' Ex. 41.4: Form 11 and PRC for 103 S SAGER RD
- Petitioners' Ex. 41.5: Form 11 and PRC for 100 S STONE CREEK DR
- Petitioners' Ex. 41.6: Form 11 and PRC for 101 S STONE CREEK DR
- Petitioners' Ex. 41.7: Form 11 and PRC for 100 S MATT RIDGE
- Petitioners' Ex. 41.8: Form 11 and PRC for 104 S MATT RIDGE
- Petitioners' Ex. 41.9: Form 11 and PRC for 103 S MATT RIDGE
- Petitioners' Ex. 41.10: Form 11 and PRC for 102 S BRIDGEWATER CT
- Petitioners' Ex. 41.11: Form 11 and PRC for 101 S BRIDGEWATER CT
- Petitioners' Ex. 41.12: Form 11 and PRC for 103 S BRIDGEWATER CT
- Petitioners' Ex. 43.1: *Susan Mudge – Trustee/Trust v. Bartholomew County Assessor*, IBTR Pet. No. 03-001-17-1-5-01515-17 (March 11, 2019) (5 pages)
- Petitioners' Ex. 43.2: *S. Wismiller Revocable Living Trust v. Lake County Assessor*, IBTR Pet. No. 45-037-18-1-5-00892-19 (January 8, 2021) (9 pages)

8. We now turn to the Petitioners' original basis for their request for rehearing. As discussed above, our Final Determination stated that the documents submitted as

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<sup>4</sup> We note that Petitioners' Exs. 28.1-28.7 consist of fewer documents than we described as Petitioners' Ex. 28 in our original determination. As the rehearing was the opportunity for the parties to clarify what was originally offered into evidence, we consider these exhibits to be the entirety of Petitioners' Ex. 28.

Petitioners' Ex. 25 referenced only a 3,058 sq. ft area of land rather than the .41 acres that Gertz testified to. The Petitioners allege that they submitted additional documents showing two more alleged non-tillable areas of 7,152 sq. ft and 7,691 sq. ft. that taken together with the 3,058 sq. ft. area add up to .41 acres. After an additional search of the record, we find they are correct.<sup>5</sup> The three documents in question are Petitioners' Exs. 25.4, 25.7, and 25.12. Taken together, they show an alleged non-tillable area of approximately .41 acres.


9. But even were we to accept that the Petitioners successfully demonstrated the correct value of the agricultural land, they would still not be entitled to any relief. Indiana Code § 6-1.1-15-20 does not provide a mechanism for ordering a partial reversion of the assessment. When triggered, I.C. § 6-1.1-15-20(f) provides that if the totality of the evidence is insufficient for us to “determine the property’s true tax value” then the prior year’s assessment is presumed to equal the property’s true tax value. Here, the totality of the evidence was insufficient to establish a value for the entire property. Thus, I.C. § 6-1.1-15-20(f) compels us to order the assessment changed to the prior year’s unadjusted value of \$378,700.
10. In all other respects, we confirm our original Final Determination.

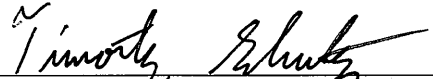
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<sup>5</sup> Our review of the record in this case has been impeded by the manner in which the Petitioners submitted their original exhibits. Their electronic submission included thousands of pages of documents in hundreds of files. Some individual exhibits contained multiple documents organized in multiple subfolders. They were not designated as sub-exhibits, and most were not paginated. In addition, the Petitioners generally did not clearly walk the Board through their evidence or cite to their exhibits with sufficient specificity.

ISSUED: SEPTEMBER 23, 2024

  
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>.