

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

Petition: 28-009-22-1-5-00636-23
Petitioner: Timmy Ray Phegley
Respondent: Greene County Assessor
Parcel: 28-02-28-000-003.010-009
Assessment Year: 2022

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

PROCEDURAL HISTORY

1. On May 5, 2023, Timmy Ray Phegley filed a Form 130 notice challenging the 2022 assessment of his property located on North LaSalle Estate Lane in Bloomfield. On September 18, 2023, the Greene County Property Tax Assessment Board of Appeals (“PTABOA”) issued a final determination valuing the subject property at \$12,400 (\$12,400 for land and \$0 for improvements).
2. Phegley timely filed a Form 131 petition with the Board and elected to proceed under our small claims procedures. On March 14, 2024, our designated administrative law judge, David Smith (“ALJ”), held a hearing on Phegley’s petition. Neither he nor the Board inspected the subject property.
3. Phegley appeared pro se. Attorney Marvin Abshire appeared as counsel for Dawn Abrams, the Greene County Assessor. Phegley and Abrams testified under oath.

RECORD

4. Phegley submitted the following exhibits:

Petitioner Exhibit 1:	GIS photo of parcel 28-02-28-000-003.012-009
Petitioner Exhibit 2:	GIS photo of subject property
Petitioner Exhibit 3:	GIS photo of parcel 28-02-28-000-003.016-009
Petitioner Exhibit 4:	GIS photo of parcel 28-02-29-000-008.000-009
Petitioner Exhibit 5:	GIS photo of parcel 28-02-29-000-001.005-009
Petitioner Exhibit 6:	GIS photo of parcel 28-02-28-000-004.000-009
Petitioner Exhibit 7:	GIS photo of parcel 28-02-29-000-009.002-009
Petitioner Exhibit 8:	GIS photo of parcel 28-02-28-000-006.004-009
Petitioner Exhibit 9:	GIS photo of parcel 28-06-22-444-023.000-018
Petitioner Exhibit 10:	GIS photo of parcel 28-06-23-224-124.000-018
Petitioner Exhibit 11:	2023 Property Record Card (“PRC”) for

	parcel 28-06-23-224-126.000-018 ¹
Petitioner Exhibit 1A:	2023 PRC for parcel 28-02-28-000-003.012-009
Petitioner Exhibit 2A:	2023 PRC for subject property
Petitioner Exhibit 3A:	2023 PRC for parcel 28-02-28-000-003.016-009
Petitioner Exhibit 4A:	2023 PRC for parcel 28-02-29-000-008.000-009
Petitioner Exhibit 5A:	2023 PRC for parcel 28-02-29-000-001.005-009
Petitioner Exhibit 6A:	2023 PRC for parcel 28-02-28-000-004.000-009
Petitioner Exhibit 7A:	2023 PRC for parcel 28-02-29-000-009.002-009
Petitioner Exhibit 8A:	2023 PRC for parcel 28-02-28-000-006.004-009
Petitioner Exhibit 9A:	2023 PRC for parcel 28-06-22-444-023.000-018
Petitioner Exhibit 10A:	2023 PRC for parcel 28-06-23-224-124.000-018

5. The Assessor submitted the following exhibits:

Respondent Exhibit 1:	GIS photo of subject property
Respondent Exhibit 2:	2021 PRC for subject property
Respondent Exhibit 3:	2022 PRC for subject property
Respondent Exhibit 4:	2023 PRC for subject property
Respondent Exhibit 5:	Indiana Code § 6-1.1-4-13
Respondent Exhibit 6:	Plat of Beechwood Heights

6. The official record for this matter also includes the following: (1) all pleadings, briefs, motions, and documents filed in this appeal; (2) all orders and notices issued by the Board or our ALJ; and (3) an audio recording of the hearing.

FINDINGS OF FACT

7. The subject property is an unimproved, 4.12-acre lot located on North LaSalle Estates Lane in Bloomfield, Indiana. It consists of woods, a naturally grown hayfield (i.e., not sown), and a pond. The lot was established with the recording of the Plat of Beechwood Heights on November 2, 2000, and Phegley purchased it in 2017. Since his purchase, Phegley has allowed a third party to cut the hayfield and take the hay for their own use at no charge. Phegley mows around the perimeter of the lot, and he mows a path to access the woods and the pond. *Phegley testimony; Abrams testimony; Pet'r Exs. 2, 2A; Resp't Exs. 1-4, 6.*

SUMMARY OF CONTENTIONS

8. **Phegley's case:**

- a) Phegley wants to be treated fairly and equally regarding the assessment of his land. There has been no change in the way he uses the subject property since he purchased it, and it should still be classified as agricultural land. Phegley does not believe that anything requires him to plant or to sell crops for the land to be considered

¹ Although Phegley submitted a document labeled Exhibit 11A, it is in fact page 2 of Exhibit 11 and is therefore not listed separately.

agricultural. There are larger parcels like his near the subject property that are still designated as agricultural land. Abrams has been the Assessor for many years, and she had never questioned the classification of the land before. The fact that Phegley's taxes tripled in one year caused him to pursue this appeal. *Phegley testimony; Pet'r Exs. 1-8, 1A-8A.*

9. **The Assessor's case:**

- a) The Assessor previously classified land with woods and hay as agricultural land, but she now believes such property does not qualify as an agricultural use under Indiana Code § 6-1.1-4-13. Prior to completing the 2022 assessments, the Assessor started a review of land classified as agricultural to determine if it still qualified. In the interests of economy and efficiency, the Assessor only reviewed parcels with less than 10 acres. *Abrams testimony; Resp't Ex. 5.*
- b) The subject property had been classified as agricultural farmland for 5-6 years prior to 2022, and the Assessor based the subject property's prior assessments on that classification. Starting with the 2022 assessment, however, she determined that Phegley's use of the subject property to grow hay does not qualify as agricultural use under the statute. The subject property is now properly assessed as excess residential land and valued as such according to the state guidelines. *Abrams testimony; Resp't Exs. 1, 5, 6.*

BURDEN OF PROOF

10. Generally, the taxpayer has the burden of proof when challenging a property's tax assessment. Accordingly, the assessment on appeal, "as last determined by an assessing official or the county board," will be presumed to equal "the property's true tax value." Ind. Code § 6-1.1-15-20(a) (effective March 21, 2022).
11. However, the burden of proof shifts if the property's assessment "increased more than five percent (5%) over the property's assessment for the prior tax year." I.C. § 6-1.1-15-20(b). In that situation, the assessment "is no longer presumed to be equal to the property's true tax value, and the assessing official has the burden of proof." *Id.* But the burden shifting provision does not apply if the assessment increase is based on 1) substantial renovations or new improvements; 2) zoning; or 3) uses that the assessing official did not consider in the assessment for the prior tax year. I.C. 6-1.1-15-20(d).
12. If the burden has shifted, and "the totality of the evidence presented to the Indiana board is insufficient to determine the property's true tax value," then the "property's prior year assessment is presumed to be equal to the property's true tax value." I.C. § 6-1.1-15-20(f).

13. Here, the current assessment of \$12,400 was an increase of more than 5% over the previous year's assessment of \$900. The Assessor stipulated that she therefore has the burden of proof.²

ANALYSIS

14. The Indiana Board of Tax Review is the trier of fact in property tax appeals, and our charge is to “weigh the evidence and decide the true tax value of the property as compelled by the totality of the probative evidence” before us. I.C. § 6-1.1-15-20(f). Our conclusion of a property's true tax value “may be higher or lower than the assessment or the value proposed by a party or witness.” *Id.* Regardless of which party has the initial burden of proof, either party “may present evidence of the true tax value of the property, seeking to decrease or increase the assessment.” I.C. § 6-1.1-15-20(e).
15. In order to meet its burden of proof, a party “must present objectively verifiable, market-based evidence” of the property's value. *Piotrowski v. Shelby County Ass'r*, 177 N.E.3d 127,132 (Ind. Tax Ct. 2021) (citing *Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 677-78 (Ind. Tax Ct. 2006)). For most real property types, neither the taxpayer nor the assessor may rely on the mass appraisal “methodology” of the “assessment regulations.” *P/A Builders & Developers, LLC v. Jennings County Ass'r*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006). This is because the “formalistic application of the procedures and schedules” from the Department of Local Government Finance's (“DLGF”) assessment guidelines lacks the market-based evidence necessary to establish a specific property's market value-in-use. *Piotrowski*, 177 N.E.3d at 133.
16. Market-based evidence may include “sales data, appraisals, or other information compiled in accordance with generally accepted appraisal principles.” *Peters v. Garoffolo*, 32 N.E.3d 847, 849 (Ind. Tax Ct. 2015). Relevant assessments are also admissible, but arguments that “another property is ‘similar’ or ‘comparable’ simply because it is on the same street are nothing more than conclusions ... [and] do not constitute probative evidence.” *Marinov v. Tippecanoe County Ass'r*, 119 N.E.3d 1152, 1156 (Ind. Tax Ct. 2019). Finally, the evidence must reliably indicate the property's value as of the valuation date. *O'Donnell v. Dept. of Local Gov't. Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006). For 2022 assessments, the valuation date was January 1, 2022. Ind. Code § 6-1.1-2-1.5.
17. As explained above, the Assessor has the burden of proof. However, she did not present any objectively verifiable, market-based evidence showing the subject property's true tax value as of January 1, 2022. Instead, the Assessor simply asserted that she properly assessed it as excess residential land and valued it according to the DLGF's assessment guidelines. We therefore conclude that the Assessor failed to make a case supporting the 2022 assessment.
18. We now turn to Phegley's case. He similarly failed to present any objectively verifiable, market-based valuation evidence. Instead, Phegley claimed that he has continuously used

² We note the Assessor did not argue that any of the exceptions outlined in I.C. 6-1.1-15-20(d) apply.

the subject property to farm naturally grown hay since he purchased it and argued that it should therefore still be classified and assessed as agricultural land. Although the Assessor acknowledged that she had previously classified land with woods and hay as agricultural land, she maintained that Phegley's use of the subject property to grow hay does not qualify as an agricultural use under Indiana Code § 6-1.1-4-13.

19. 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." 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. "Agricultural use" includes but is not limited to uses such as:

the production of livestock or livestock products, commercial aquaculture, equine or equine products, land designated as a conservation reserve plan, pastureland, poultry or poultry products, horticultural or nursery stock, fruit, vegetables, forage, grains, timber, trees, bees and apiary products, tobacco, other agricultural crops, general farming operation purposes, native timber lands, or land that lays fallow. Agricultural use may not be determined by the size of a parcel or size of a part of the parcel.

Ind. Code § 6-1.1-4-13(b).

20. As relevant here, any land classified in the category of other agricultural use by the DLGF's real property assessment guidelines is also considered to be devoted to agricultural use. Ind. Code § 6-1.1-4-13(b)(3). The DLGF's guidelines provide a number of examples of other agricultural uses including the following:

c. A five acre parcel has a one acre home site and the remaining four acres is devoted to hay production. The county classified the hay field using the residential excess acre rate. The owner has a signed statement from a neighboring dairy farmer that the neighbor harvests the hay from the field for his cattle.

Conclusion: The acreage meets the criteria of agricultural "tillable land" as defined in the *Guidelines*. The four acres should be priced using the agricultural soil productivity method. The size of the parcel has no bearing on the determination of agricultural classification.

2021 REAL PROPERTY ASSESSMENT GUIDELINES, CH. 2 at 79-80.


21. In contrast, the Tax Court has defined "residential excess" as land "dedicated to a nonagricultural use normally associated with the homesite." *Stout v. Orange County Assessor*, 996 N.E.2d 871, 875 n.6. (Ind. Tax Ct. 2013). Similarly, the DLGF's guidelines describes "agricultural excess" as land that is "presently dedicated to a non-agricultural use normally associated with the homesite." 2021 GUIDELINES, CH. 2 at 90.

22. Here, we have unrebutted testimony from Phegley establishing that he has continuously used the subject property as a naturally grown hayfield since he purchased it in 2017, and that he allows a third party to harvest the hay for their own use at no charge. Against that, there is a dearth of evidence from the Assessor showing that the subject property is dedicated to a nonagricultural use normally associated with a homesite. Indeed, the subject property is unimproved, and the Assessor failed to offer any evidence indicating that Phegley has ever used or intended to use his 4.12-acre lot for any type of residential purpose. We are also unaware of any statutes or regulations that require the planting or selling of crops for land to be considered agricultural. Thus, we conclude that the subject property is devoted to agricultural use and should be classified and assessed as agricultural land. However, Phegley did not even attempt to prove the subject property's true tax value for 2022 using the agricultural soil productivity method.³ Accordingly, his evidence is insufficient to support any value.
23. When, as here, the totality of the evidence presented by the parties is insufficient to determine the property's true tax value, I.C. § 6-1.1-15-20(f) mandates that the property's assessment revert to the assessed value from the previous assessment year. We therefore conclude that the subject property's 2022 assessment must revert to its assessed value from 2021.

FINAL DETERMINATION

24. Because neither party provided probative evidence of the subject property's true tax value, we order its 2022 assessment reduced to \$900.

ISSUED: June 12, 2024



Chairman, Indiana Board of Tax Review



Commissioner, Indiana Board of Tax Review



Commissioner, Indiana Board of Tax Review

³ In Indiana, the true tax value of agricultural land must be determined in accordance with the DLGF's guidelines and I.C. § 6-1.1-4-13. 2021 REAL PROPERTY ASSESSMENT MANUAL at 2. Under those guidelines, the DLGF sets a statewide base rate for each year, which assessors then adjust based on soil productivity. They may also apply influence factors in predetermined amounts depending on the type of agricultural land at issue. 2021 REAL PROPERTY ASSESSMENT GUIDELINES, CH. 2 at 77-78, 94-99.

- 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>.