

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

Petition No.: 19-019-23-1-5-00108-24
Petitioners: Joseph W. and Norma Lee Blackgrove
Respondent: Dubois County Assessor
Parcel No.: 19-12-35-400-025.001-019
Assessment Year: 2023

The Indiana Board of Tax Review ("Board") issues this determination, finding and concluding as follows:

PROCEDURAL HISTORY

1. On November 8, 2023, Joseph W. and Norma Lee Blackgrove filed a Form 130 notice contesting the 2023 assessment of their property located at S. State Road 161, Huntingburg, Indiana. On January 12, 2024, the Dubois County Property Tax Assessment Board of Appeals ("PTABOA") issued a final determination valuing the subject property at \$111,400 (\$111,400 for land and \$0 for improvements).
2. On February 22, 2024, the Blackgroves filed a Form 131 petition with the Board and elected to proceed under our small claims procedures. On July 8, 2024, our designated administrative law judge, Tammy Sierp ("ALJ"), held a hearing on the petition. Neither she nor the Board inspected the subject property.
3. The Blackgroves appeared pro se and called their daughter, Katie Mutchman, as a witness. Attorney Marilyn S. Meighen appeared as counsel for the Dubois County Assessor, and called Austin Budell, a residential supervisor for Tyler Technologies, as a witness. The Blackgroves, Mutchman, and Budell testified under oath.

RECORD

4. The Blackgroves submitted the following exhibits:

Petitioner Exhibit A:	Copy of Indiana Code § 6-1.1-4-13 w/ notes
Petitioner Exhibit B:	Aerial photo of subject and neighboring properties
Petitioner Exhibit C:	Property Record Card ("PRC") for subject property
Petitioner Exhibit D:	PRC for Parcel 19-12-35-400-025.002-019
Petitioner Exhibit E1:	PRC for Parcel 19-12-35-400-025.010-019
Petitioner Exhibit E2:	PRC for Parcel 19-12-35-400-025.007-019
Petitioner Exhibit E3:	PRC for Parcel 19-12-35-400-025.000-019

5. The Assessor submitted the following exhibits:

Respondent Exhibit A:	GIS photo of subject property
Respondent Exhibit B1:	PRC for subject property
Respondent Exhibit B2:	Final Determination from PTABOA
Respondent Exhibit C1:	PRC for 19-12-35-400-025.002-019
Respondent Exhibit C2:	Portion of PTABOA's Final Determination
Respondent Exhibit D:	Copy of Assessor's letter to Blackgroves w/ notes
Respondent Exhibit E1-E5:	Photos of subject property
Respondent Exhibit E6:	GIS photo of subject property
Respondent Exhibit F:	Blackgroves' statement for appeal of subject property
Respondent Exhibit G:	Assessor's Statement Regarding the Issue on Appeal
Respondent Exhibit H1-H6:	Screenshots of personal property return search results

6. The official record for this matter also includes the following: (1) all pleadings, briefs, motions, and documents filed in this appeal; (2) all notices and orders 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, 12.97-acre parcel located at S. State Road 161, Huntingburg, Indiana which the Blackgroves purchased more than 30 years ago. Approximately 0.49 acres of the parcel is a public road right-of-way. The remainder of the parcel is hilly and partially wooded with a pond. The Blackgroves also own three contiguous parcels, one of which contains their residence. Some of the property is maintained to protect against erosion and the grade makes the land nontillable. The Blackgroves did not offer evidence of how they use the subject property nor evidence of a particular type of farming or agricultural use. Photographs of the property did not reveal any apparent agricultural use. *N. Blackgrove testimony; Budell testimony; Pet'r Exs. B, C; Resp't Exs. A, B1.*
8. Justin and Katelyn E. Love own two contiguous parcels that are located west of the subject property—a 12.17-acre property the Assessor classified as a mix of tillable land and woodland acreage, and a 11.26-acre property the Assessor classified as woodland acreage. Robert L. and Eileen M. Meyer own a 17.547-acre property located to the southwest of the subject property that the Assessor classified as woodland. The Assessor assesses all three properties as agricultural land. *Pet'r Exs. B, E1-E3.*
9. The Assessor changed the subject property's classification from agricultural land to non-agricultural land beginning in 2021. For 2023, the Assessor assessed the subject property as residential, non-agricultural acreage and originally assigned it an assessed value of \$118,800. The PTABOA subsequently reduced its 2023 assessment to \$111,400, which

is an increase of about 663% from its 2022 assessment of \$16,800. *Budell testimony; Resp't Ex. B1.*

SUMMARY OF CONTENTIONS

10. **The Blackgroves' case:**

- a) The Blackgroves contend that the subject property's assessed value per acre is too high. None of the properties in the Assessor's evidence have as high of an assessed value per acre. And the Assessor failed to prove that there are not enough trees or canopy cover for the subject property to qualify as agricultural land. Even if the subject property is not agricultural land, its elevation changes are significant and act as a watershed that would require a ridiculous amount of erosion control to make it tillable. *N. Blackgrove testimony; Pet'r Exs. A, B, C.*

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

- a) The Assessor contends that she has properly classified and assessed the subject property as residential land because the Blackgroves are not using it for agricultural purposes. A physical inspection of the subject property provided no indication that it was devoted to an agricultural use. Following the inspection, the Assessor sent the Blackgroves a letter in September 2020 requesting information to substantiate the property's agricultural use, but she did not receive a response. Consequently, the Assessor changed the subject property's classification from agricultural land to non-agricultural land beginning with the 2021 assessment year. The Blackgroves do not have a land management plan, a timber management plan, or a lease indicating that they have rented the subject property to a farmer. And they are not deriving any income from it that is attributable to an agricultural use. Nor have the Blackgroves filed any personal property returns for any sort of farm equipment. *Budell testimony; Meighen argument; Resp't Exs. A, B1, D, E1-E6, H1-H6.*

BURDEN OF PROOF

- 12. 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." I. C. § 6-1.1-15-20(a) (effective March 21, 2022).
- 13. 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).

14. 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).
15. Here, the current assessment of \$111,400 was an increase of more than 5% over the previous year’s assessment of \$16,800. The Assessor therefore has the burden of proof.

ANALYSIS

16. 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).
17. Real property is assessed based on its true tax value. I.C. § 6-1.1-31-5. True tax value does not mean “fair market value” or “the value of the property to the user.” I.C. § 6-1.1-31-6(c), (e). Instead, it is determined under the Department of Local Government Finance’s (“DLGF”) rules. I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). The DLGF defines true tax value as “market value-in-use,” which it in turn defines as “[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property.” 2021 REAL PROPERTY ASSESSMENT MANUAL at 2.
18. 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 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.
19. 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 the 2023 assessment, the valuation date was January 1, 2023. I. C. § 6-1.1-2-1.5.

20. 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, 2023. Instead, the Assessor simply argued that the land was properly classified and assessed as residential land. Consequently, the Assessor failed to make a case supporting the 2023 assessment.
21. We turn now to the Blackgroves' case. While they claimed that the subject property's assessed value was too high, they similarly failed to present any objectively verifiable, market-based valuation evidence. And to the extent they were claiming that the subject property should be assessed as agricultural land, they failed as well.
22. Indiana Code § 6-1.1-4-13(a) provides that "land shall be assessed as agricultural land only when it is devoted to agricultural use." In addition to "any other land considered devoted to agricultural use," any:
 - (1) land enrolled in:
 - (A) a land conservation or reserve program administered by the United States Department of Agriculture;
 - (B) a land conservation program administered by the United States Department of Agriculture's Farm Service Agency; or
 - (C) a conservation reserve program or agricultural easement program administered by the United States Department of Agriculture's National Resources Conservation Service;
 - (2) land enrolled in the department of natural resources' classified forest and wildlands program (or any similar or successor program);
 - (3) land classified in the category of other agricultural use, as provided in the department of local government finance's real property assessment guidelines; or
 - (4) land devoted to the harvesting of hardwood timber; is considered to be devoted to agricultural use.

I.C. § 6-1.1-4-13(b).

Agricultural use also 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. *Id.* (emphasis added).

23. There are various requirements for some of these categories. Regarding woodlands, the Tax Court has held that an assessor may not change a classification “from ‘agricultural’ to ‘residential excess’ solely on the basis that she did not have a forest management plan or a timber harvesting plan for the property.” *Orange County Assessor v. Stout*, 996 N.E.2d 871, 876, (Ind. Tax Ct. 2023). The Department of Local Government has adopted guidelines for classifying property as woodlands, including examples. We have held that the guiding principle is that there must be some evidence of an agricultural use of the property. *See Smith v. Bartholomew Cty Ass’r*, Pet. No. 10-039-14-1-4-00590-16, (IBTR December 15, 2020) (finding that a failure to provide any evidence of an agricultural use is insufficient to classify as agricultural), *see also Phegley v. Greene Cty Ass’r*, Pet. No. 28-009-22-1-5-00636-23, (IBTR June 12, 2024) (finding sufficient evidence to conclude the property was devoted to an agricultural use and reverting to prior year’s agricultural value).
24. The Blackgroves submitted an exhibit highlighting certain language in I.C. § 6-1.1-4-13(b), which we interpret as a claim that the subject property consists of native timber lands and fallow land. However, they failed to provide any evidence demonstrating that it is devoted to either type of agricultural use.
25. While the term “native timber lands” is expressly listed an agricultural use in I.C. § 6-1.1-4-13(b), it is still defined as a use, not simply a land characteristic. Other rules govern eligibility for the Department of Natural Resources’ (“DNR”) Classified Forest and Wildland Certification Program, which entitles certain wild, forested, and wetland properties to an agricultural classification. I.C. § 6-1.1-6.
26. Property that is solely owned and operated as a farm is clearly considered agricultural, and non-tillable areas, like woodlands, are easily demarcated and granted appropriate reductions as nontillable farmland. Where a parcel is part of a property used primarily as a residence, the taxpayer must show a *use*, not merely land characteristics, that proves the property is “land considered devoted to agricultural use” pursuant to the statute. I.C. § 6-1.1-4-13(b).
27. Because the Blackgroves submitted no evidence demonstrating a specific agricultural use or eligibility for the Classified Forest Program, we conclude that the subject property does qualify for an agricultural classification.¹
28. Finally, the Blackgroves appear to be claiming that the subject property’s use is the same as their neighbors’ woodland acreage that the Assessor assesses as agricultural land. This is akin to a uniformity and equality argument alleging disparate treatment. But the Blackgroves did not present any evidence as to the agricultural uses that were claimed by

¹ Likewise, the Blackgroves have failed to introduce evidence that the parcel has been left fallow for an agricultural purpose.

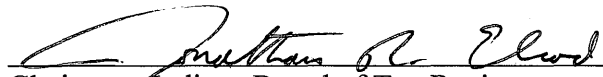
their neighbors in support of the classification. Accordingly, we cannot grant relief based on this record.

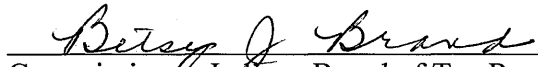
29. Because the Blackgroves did not present any objectively verifiable, market-based evidence of the subject property's true tax value, and because they did not demonstrate that the subject property should be assessed as agricultural land, they are not entitled to reclassification or a change in value.
30. When, as here, the burden has shifted to the Assessor and the totality of 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 2023 assessment must revert to its assessed value from 2022.

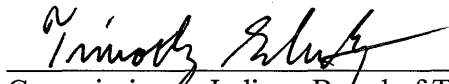
FINAL DETERMINATION

31. In accordance with the above findings of fact and conclusions of law, we order the 2023 assessment reduced to \$16,800.

ISSUED: December 6, 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>.