REPRESENTATIVE FOR THE PETITIONERS: Sherry J. Chapo, *pro se*

REPRESENTATIVE FOR THE RESPONDENT: Amanda Roselle, Jefferson County Assessor

BEFORE THE
INDIANA BOARD OF TAX REVIEW

Joseph & Sherry J. Chapo,	)	Petition No.: 39-001-22-1-1-00692-23
Petitioners,	)	Parcel No.: 39-06-13-000-001.000-001
v.	)	County: Jefferson
Jefferson County Assessor,	)	Township: Graham
Respondent.	)	Assessment Year: 2022

April 01, 2024

FINAL DETERMINATION

The Indiana Board of Tax Review ("Board") having reviewed the facts and evidence, and having considered the issues, now finds, and concludes the following:

INTRODUCTION

1. The Petitioners appealed their 2022 assessment of their property in Jefferson County arguing that their assessment was incorrect, unconstitutional, and that they received the wrong tax cap credits. But they failed to present reliable evidence supporting a different assessment, nor did they adequately support their other claims. Thus, we find for the Assessor and order no change in the assessment.

PROCEDURAL HISTORY

2. The Petitioners filed a Form 130 appeal on June 14, 2023, appealing the 2022 assessment of their property located at 10214 West Deputy Pike Road in Deputy.

3. The Jefferson County Property Tax Assessment Board of Appeals ("PTABOA") held a hearing on October 4, 2023. On October 31, 2023, the PTABOA sustained the assessment at $90,700 for land and $264,800 for improvements for a total of $355,500. The Petitioners filed a 131 petition with the Board on December 11, 2023.

4. On August 6, 2024, Dalene McMillen, the Board's Administrative Law Judge ("ALJ"), held a telephonic hearing. Neither the Board nor the ALJ inspected the property.

5. Sherry Chapo and Amanda Roselle, Jefferson County Assessor, testified under oath.

6. The Petitioners offered the following exhibits:

Petitioner Exhibit 1:	Petitioners' summary of argument,
Petitioner Exhibit 1A:	Subject property record card ("PRC") and sketches of three buildings,
Petitioner Exhibit 1B:	Contact information, 2023 PRC for 39-04-15-000-008.000-004, three aerial maps, website information and 2023 PRC for 39-04-09-000-016.000-005,
Petitioner Exhibit 1C:	2023 PRC for 39-08-02-000-001.000-006, aerial map and website information,
Petitioner Exhibit 1D:	2023 PRC for 39-06-22-000-005.007-001, aerial map, and website information,
Petitioner Exhibit 1E:	2023 PRC for 39-06-13-000-013.000-001, aerial map and website,
Petitioner Exhibit 1F:	2023 PRC for 39-07-36-000-021.000-006, aerial map and website information,
Petitioner Exhibit 1G:	2023 PRC for 39-14-36-000-001.010-012, aerial map and website information,
Petitioner Exhibit 2:	Photographs and information about other properties.,
Petitioner Exhibit 3:	Notice of Hearing on Petition,
Petitioner Exhibit 4:	Petitioner's notice of findings of fact and conclusions of law.

7. The Respondent offered the following exhibits:

Respondent Exhibit 1:	2021 subject PRC,
Respondent Exhibit 2:	2022 subject initial cyclical reassessment PRC,
Respondent Exhibit 3:	Emails between Chapo and Creech-Roselle, two 2022 subject PRCs, two aerial maps,
Respondent Exhibit 4:	2022 subject PRC,
Respondent Exhibit 5:	2022 final subject PRC,
Respondent Exhibit 6:	Email and Taxpayer's Notice to Initiate an Appeal – Form 130,
Respondent Exhibit 7:	Emails between Chapo and Roselle,
Respondent Exhibit 8:	Notification of Final Assessment Determination – Form 115,
Respondent Exhibit 9:	Tiny Timbers website,
Respondent Exhibit 10:	Spring 2009 article "Business Best Grand Champion Tiny Timbers,"
Respondent Exhibit 11:	Secretary of State certificate of assumed business name for Tiny Timbers.

8. The record also includes the following: (1) all pleadings and documents filed in this appeal, (2) all orders, and notices issued by the Board or ALJ; and (3) a digital recording of the hearing.

FINDINGS OF FACT

9. The subject property consists of a one-story brick home, two barns, a utility shed, a gun shop, a timber mill, and a timber showroom/storage building located on approximately 117 acres of land. *Chapo testimony; Roselle testimony; Pet'r Ex. 1; Resp't Exs. 5, 9-11.*

10. For the 2022 assessment year, as part the cyclical reassessment, a pole barn was assessed for the first time although it had been on the property since at least 2005. In addition, the gun shop, mill, and showroom were changed from agricultural assessments to commercial assessments. Finally, three acres of land were reassessed as commercial primary land at $7,000 per acre. The tax cap for that land also changed from 2% to 3% on the tax bill. *Roselle testimony; Resp't Exs. 1-5 & 9-11.*

11. The assessment under appeal of $355,500 is an approximately 84% increase over the prior year's assessment of $192,900. *Pet'r Ex. 1A; Resp't Ex. 1.*

PETITIONERS' CONTENTIONS

12. The Petitioners allege there are several errors in the assessment, including reclassifying a portion of the land and some of the buildings from agricultural use to commercial use. In addition, they argued that the Assessor used the incorrect model when assessing the mill. *Chapo testimony; Pet'r Ex. 1.*

13. The Petitioners noted that the subject property is located in an agricultural zone according to the Jefferson County zoning ordinance. They claimed the subject property has always had an agricultural use within the meaning of Indiana Code § 6-1.1-4-13. They also argued that according to *Dekalb County Assessor v. Chavez,* 48 N.E.3d 928 (Ind. Tax Ct. 2016) a parcel that is classified as agricultural should continue to be classified as agricultural when its use has not changed. *Chapo testimony; Pet'r Ex. 4.*

14. Furthermore, the Petitioners claim that the reclassified land should have received the 2% tax cap for agricultural land rather than the 3% cap according to the Indiana Constitution. *Chapo testimony; Pet'r Ex. 4.*

15. The Petitioners also offered evidence of six purportedly comparable agricultural business properties that they claim the Assessor failed to similarly reclassify. They claimed this is a violation of the property taxation and equal privileges and immunity clauses of the Indiana Constitution. *Chapo testimony; Pet'r Exs. 1 & 2.*

16. Finally, the Petitioners argued that the Assessor should have to "forfeit" any constitutional claims because the Assessor did not have an attorney and local government representatives are not permitted to argue constitutional issues under 52 IAC 4-3-1.

RESPONDENT'S CONTENTIONS

17. The Assessor argued that the subject property was properly assessed as a mixed-use property consisting of a residential homesite and dwelling, agricultural buildings and land, classified forest, and commercial buildings and land. She argued that under market value-in-use the land and buildings should be valued based on their use. *Roselle testimony; Resp't Ex. 5.*

BURDEN OF PROOF

18. Generally, the taxpayer has the burden of proof when challenging a property 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).

19. 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). Subject to certain exceptions, 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.* This does not apply if the increased assessment is based on substantial renovations or new improvements, zoning, or uses that were not considered in the assessment for the prior tax year. I.C. § 6-1.1-15-20(d)

20. 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).

21. At the outset of the hearing, the ALJ asked the parties if they wished to make any argument about the burden of proof. Both parties declined. The ALJ then made a preliminary determination that the burden was on the Assessor because the assessment increased more than 5% over the prior year's assessment. The Petitioners made some

references to the burden of proof statute during their case-in-chief and in their "Summary of Argument," but they did not tie it to the facts of this case. Now, having the benefit of the entire record, we find that the burden shifting provisions of I.C. § 6-1.1-15-20 do not trigger because the increase in the assessment was based on new improvements and uses that were not considered in the prior year's assessment—namely the additional barn that was not previously assessed and the commercial uses such as the gun shop. Thus, the current assessment is presumed correct, and the Petitioner has the burden to prove a different value.

ANALYSIS

A. The Assessor was permitted to address the constitutional claims.

22. We first address the Petitioners' claim that the Assessor must "forfeit" the constitutional issues because she was not represented by an attorney. In this case, the Assessor was representing herself in her official capacity as the County Assessor. She was not acting as a "local government representative" within the meaning of 52 IAC 4-3-1. Thus, she is entitled to make any arguments an attorney or self-represented litigant might make. In addition, even if the Assessor was represented by a local government representative, that would not require a "forfeit" of the constitutional issues.

B. The True Tax Value Standard.

23. We now turn to the merits of this appeal. The Indiana Board of Tax Review is the trier of fact in property tax appeals, and its 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 it. I.C. § 6-1.1-15-20(f). The Board's 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).

24. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting a property's true tax value. 52 IAC 2.4-1-2; 2021 REAL PROPERTY ASSESSMENT MANUAL at 3. 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 rules of the Department of Local Government Finance ("DLGF"). I.C. § 6-1.1-31-5 (a); I.C. § 6-1.1-31-6 (f).

25. For most real property, 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 a similar user, from the property." MANUAL at 2. In order to meet its burden of proof, a party "must present objective verifiable, market-based evidence." *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)). 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'Donell v. Dept. of Local Gov't Fin.,* 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006).

26. In addition, I.C. § 6-1.1-4-13(a) provides that "land shall be assessed as agricultural land only when it is devoted to agricultural use." "Agricultural property" is defined as land "devoted to or best adaptable for the production of crops, fruits, timber and the raising of livestock." 2021 REAL PROPERTY ASSESSMENT GUIDELINES, Glossary at 2. The statutory and regulatory scheme for assessing agricultural land requires the Board to treat challenges to those assessments differently than other assessment challenges. For example, the legislature directed the DLGF to use distinctive factors such as soil

productivity that do not apply to other types of land. I.C. § 6-1.1-4-13. The DLGF determines a statewide base rate by taking a rolling average of capitalized net income from agricultural land. *See* GUIDELINES, Ch. 2 at 73-74. Assessors then adjust that base rate according to soil productivity factors. Depending on the type of agricultural land at issue, assessors may then apply influence factors in predetermined amounts. *Id.* at 83-96. For example, "woodland" — which the Guidelines define as "land supporting trees capable of producing timber or other wood products" that has "50% or more canopy cover or is a permanently planted reforested area," — receives a -80% influence factor. *Id.* Similarly, land used for "farm buildings and barn lots" receives a -40% influence factor. *Id.*

C. The Petitioners failed to provide market-based evidence supporting a different value.

27. Here, the Petitioners had the burden of proof. They made numerous criticisms of how the Assessor developed the assessment such as arguing that the Assessor used the wrong cost model for the timber mill. But simply attacking the methodology used to develop the assessment is insufficient to establish a value. *Piotrowski,* 177 N.E.3d at 133. Rather, they needed to provide market-based evidence to "demonstrate that the suggested value accurately reflects the property's true market value-in-use." *Eckerling v. Wayne Twp. Ass'r,* 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). The Petitioners did not provide market-based evidence sufficient to support any value.

D. The Petitioners did not show that any of the land was incorrectly assessed as non-agricultural.

28. In addition, the Petitioners claimed they should have received agricultural assessments for the entire property.[1] As discussed above, agricultural land is assessed differently than other types of land. The fact that it is zoned for agricultural use is relevant, but it is not

[1] According to the 2021 REAL PROPERTY ASSESSMENT MANUAL, the true tax value of agricultural land is determined under the guidelines. The same is not true for agricultural improvements. Thus, to the extent the Petitioners disagreed with the assessments of any of the improvements, they needed to provide market-based evidence supporting their requested values as discussed above.

dispositive. This is particularly true when, as here, the subject property clearly hosts both agricultural and non-agricultural uses.

29. We first address the land used for the gun shop. A gun store does not fit the definition of agricultural use by any stretch of the imagination. The gun shop is a retail use that clearly falls outside the Guidelines classification of "farm buildings and barn lots." Thus, the land underneath the gun shop, as well as any additional land that is used to support it, cannot receive an agricultural assessment.

30. This is not to suggest that any commercial activity will cause agricultural land to be considered commercial for assessment purposes. A farmstand is entirely consistent with an agricultural use. De minimis commercial activities, like sharpening mower blades, will not change a barn into a service center any more than a home office would cause a residence to become an office building. But here, the undisputed facts establish that the property includes a building solely used as a gun shop. The Petitioners are not entitled to a tax rate intended for agricultural use simply because their gun store is adjacent to their farmland. Until the statutes or Guidelines create an exception for gun shops owned by farmers, the Petitioners must be taxed at the same rate as any other owner of a gun shop.

31. Now we turn to the sawmill and showroom. Growing and harvesting of timber is certainly an agricultural use under the Guidelines. Processing timber into lumber with a sawmill is not necessarily an agricultural use—more like grinding wheat than shucking sweetcorn. A lumber mill operation would *not* be considered an agricultural use standing on its own. The Petitioners have made neither a sufficient factual showing nor a cogent legal argument that the buildings encompassing the sawmill and showroom amount to a de minimis use consistent with an agricultural classification, and we may not make their case for them. *CVS Corp. v. Prince*, 149 N.E.3d 323 (Ind. Tax Ct. 2020). Thus, we cannot conclude the land under and supporting any of those buildings should be classified as agricultural land.

32. As to the remaining land, because of the mixed uses, the Petitioners needed to provide reliable evidence breaking down exactly how each part of the land was used or supported the various activities such as the timber harvesting or the gun shop, showroom, etc. We are unable to conclude from the record what land supported the commercial buildings and what land may have supported other activities. For that reason, we cannot say that the Assessor erred when assessing three acres of the property as commercial land, nor is there any basis to order any specific portion of the property to be reassessed as agricultural.

33. The Petitioners also claimed that according to *Dekalb County Assessor v. Chavez,* 48 N.E.3d 928 (Ind. Tax Ct. 2016), they should continue to receive an agricultural assessment because the use of the property had not changed. But that case stands for the proposition that land purchased with the intent of growing and harvesting timber should continue to receive an agricultural assessment when there has not been a change of use. It does not mandate that land that is erroneously classified as agricultural despite being used for non-agricultural purposes must continue to receive an erroneous classification until there is a change in use. In this case, where there are clearly non-agricultural uses on the subject property, a non-agricultural assessment for a portion of the subject property is warranted. Because the Petitioners failed to present reliable evidence showing that any specific portion of the land should have been assessed as agricultural instead of commercial, they are not entitled to any relief on these grounds.

E. The Petitioners did not show their assessment was not uniform or equal.

34. In addition, the Petitioners argued that their assessment was unfair compared to other purportedly comparable properties under the property taxation and equal privileges and immunities clauses of the Indiana Constitution. We first note that the Petitioners failed to cite to any authority or make any cogent argument as to why their assessment violated the equal privileges and immunities clause. Thus, this argument is waived. As to the rest of their claim, we interpret this as a challenge to the uniformity and equality of the assessment as mandated by I.C. § 6-1.1-2-2 and Article 10 of the Indiana Constitution.

As the Tax Court has explained, "when a taxpayer challenges the uniformity and equality of his or her assessment one approach that he or she may adopt involves the presentation of assessment ratio studies, which compare the assessed values of properties within an assessing jurisdiction with objectively verifiable data, such as sales prices or market value-in-use appraisals." *Westfield Golf Practice Center v. Washington Twp. Ass'r,* 859 N.E.2d 396, 399 n.3 (Ind. Tax Ct. 2007) (emphasis in original). Such studies, however, should be prepared according to professionally acceptable standards. *Kemp v. State Bd. of Tax Comm'rs,* 726 N.E.2d 395, 404 (Ind. Tax Ct. 2000). They should also be based on a statistically reliable sample of properties that actually sold. *Bishop v. State Bd. of Tax Comm'rs,* 743 N.E.2d 810, 813 (Ind. Tax Ct. 2001) (*citing Southern Bell Tel. and Tel. Co. v. Markham,* 632 So.2d 272, 276 (Fla. Dist. Co. App. 1994)). But the Petitioners did not demonstrate that they provided a statistically reliable sample of properties, nor did they have reliable market data showing the value of the subject property or the comparable properties. For these reasons, they failed to make a prima facie case showing a lack of uniformity and equality in the assessment.

F. The Petitioners did not show that they received the wrong tax caps.

35. Finally, we turn to the Petitioners claim that they should have received a 2% tax cap credit for the land. Indiana provides credits that effectively cap property tax liability at a specified percentage of gross assessed value. I.C. § 6-1.1-20.6-7.5. The amount of the credit depends on the property's classification. *Id.* Agricultural land gets a 2% cap while nonresidential real property gets a 3% cap. I.C. § 6-1.1- 20.6-7.5(a).

36. Our analysis here mirrors our discussion of agricultural assessments. The Petitioners failed to show that any specific portion of the land currently taxed at the 3% cap was devoted to agricultural use. Thus, they are not entitled to any relief on these grounds. The Petitioners also made similar constitutional claims regarding the tax caps that they did for their assessment. We reach similar conclusions and find that they failed to cite to relevant authority or make cogent argument as to why the imposition of the 3% cap on a portion of the assessment was a constitutional violation.

CONCLUSION

37. The Assessor did not request a change in the assessment or present any evidence supporting a different value. Thus, we need not examine her evidence. The Petitioner failed to make a case for any change in the assessment or the tax bill. Thus, we order no changes.

The Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date written above.

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>.