

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

**Petition:** 64-001-19-1-5-00369-20  
**Petitioners:** David A. and Nichelle L. Gertz  
**Respondent:** Porter County Assessor  
**Parcel:** 64-15-09-451-002.000-001  
**Assessment Year:** 2019

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

**PROCEDURAL HISTORY**

1. David A. and Nichelle L. Gertz contested the 2019 assessment of their property located at 775 S. 250 W. in Hebron. The Porter County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination valuing the property at \$387,600 (land at \$107,400 and improvements at \$280,200).
2. The Gertzes filed a Form 131 petition with the Board and elected to proceed under our small claims procedures. On March 4, 2021, Ellen Yuhan, our designated administrative law judge (“ALJ”) held a telephonic hearing on the Gertzes’ petition. Neither she nor the Board inspected the property.
3. David Gertz appeared pro se. The Assessor appeared by Terry Newhard, Assessment Specialist III and Peggy Hendron, Residential Real Estate Supervisor. All were sworn as witnesses.

**RECORD**

4. The official record for this matter contains the following:
  - a. Petitioner Exhibit 1: Property Valuation List 1997-2020
  - Petitioner Exhibit 2: Photo of farmer cutting and baling for cattle feed
  - Petitioner Exhibit 3: Photo of farmer cutting and baling for cattle feed
  - Petitioner Exhibit 4: Photo of farmer cutting and baling for cattle feed
  - Petitioner Exhibit 5: Photo of honeybee colony at subject property
  - Petitioner Exhibit 6: Photo of honeybee colony at subject property
  - Petitioner Exhibit 7: Apiary box at subject property
  - Petitioner Exhibit 8: Property record card for the subject property

Petitioner Exhibit 9:	Property record card for south adjacent parcel (Parcel No. 64-15-09-451-007.000-001)
Petitioner Exhibit 10:	Picture of south adjacent parcel
Petitioner Exhibit 11:	Picture of south adjacent parcel
Petitioner Exhibit 12:	Video with audio of south adjacent parcel
Petitioner Exhibit 13:	Property record card for north adjacent parcel (Parcel 64-15-09-401-004.000-001)
Petitioner Exhibit 14:	Picture of north adjacent parcel
Petitioner Exhibit 15:	2011 Real Property Assessment Guidelines (Book 1, Chapter 2, pages 82 and 83)
Respondent Exhibit 1:	Appraisal Report dated January 1, 2021
Respondent Exhibit 2:	Property record card for subject property
Respondent Exhibit 3:	Agricultural Land Assessment and Questions and Answers (DLGF presentation)
Respondent Exhibit 4:	DLGF memo with frequently asked questions

- b. The record for the 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.

#### **BURDEN OF PROOF**

5. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances--where the assessment under appeal represents an increase of more than 5% over the prior year's assessment, or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. I. C. § 6-1.1-15-17.2 (b) and (d).
6. Because the Gertzes successfully appealed the 2018 assessment and their assessment increased from 2018 to 2019, the Assessor has the burden of proof.

#### **SUMMARY OF CONTENTIONS**

7. The Assessor's case:
- a. The Assessor provided an appraisal that complies with the Uniform Standards of Professional Appraisal Practice ("USPAP") prepared by Jeff Sands, a certified Indiana residential appraiser. Sands estimated the subject's market value at \$380,000 as of January 1, 2019. *Newhard testimony; Resp't Ex. 1.*
- b. Before 2002, any parcel with more than five acres would receive a lower agricultural rate for excess land over that five acres. Porter County received a letter from the State in 2012 stating that they needed to remove those rates. The Gertzes contend

they were not informed that the agricultural rate was removed from the property, but they were informed through the Form 11 issued in 2012. The Gertzes did not appeal at that time. They did appeal in 2013 and settled based on comparable sales. They filed, again, in 2017 and that appeal was settled for the appraised value. The 2018 appeal was settled by trending the 2017 appraisal. It was not until the PTABOA hearing for the 2019 assessment that the Gertzes addressed the removal of the agricultural land rate. *Newhard testimony.*

- c. To be considered agricultural land, the Porter County directive requires the taxpayer to supply a signed statement by the farmer farming the land, an FSA number, the cash rent lease, or the personal property filing of the farmer. The Gertzes have not provided any of this information and Mr. Gertz stated he did not need to provide it. *Newhard testimony.*
  - d. A DLGF memo on agricultural assessments states that a five-acre parcel with four acres used for hay production may have the four acres assessed as agricultural land, but in that example the owner has a signed statement from the farmer. The photos the Gertzes submitted show a tractor cutting the grass, but there is no proof it is used for hay. That is why the county requires a signed statement. *Newhard testimony; Resp't Ex. 4.*
  - e. The Gertzes contend that adjacent properties have lower assessments, but both adjacent parcels are tilled. The county also has either FSA numbers or signed statements from farmers for those properties. *Newhard testimony.*
  - f. The Gertzes talk about taxes not assessments. Taxes cannot be appealed. Also, part of the reason their taxes are high is because there is a school referendum, which is voted on by the taxpayers in that district. *Newhard testimony.*
8. The Gertzes' case:
- a. The Gertzes purchased the subject property in 2003 for \$290,000. At that time, the one-acre homesite was assessed at \$22,700 and designated Cap 1. The remaining 10.094 acres was Type 4 agricultural land that was valued at \$8,000 and designated Cap 2. In 2012, there was a substantial increase of \$1,500 in the Gertzes' taxes. Mr. Gertz was told this was due to trending. However, his research showed that the Type 4 agricultural land was changed to 91rr, valued at \$87,300 and capped at 3%. The homestead acre also increased to \$34,600. This resulted in an increase in the land assessment from \$43,000 in 2011 to \$121,900 in 2012. *Gertz testimony; Pet'r Ex. 1.*
  - b. Since the Gertzes purchased the property in 2003, they have always had local farmers cut and bale the non-homestead acreage to be used as cattle feed. The parcel is also used for beekeeping. There was no reason for the land to be reclassified as residential excess acreage and the Gertzes request those acres revert to Type 4 agricultural land. *Gertz testimony; Pet'r Exs. 2-7.*

- c. The property is located in unincorporated Boone Township, which has the 11<sup>th</sup> highest tax rate of the 44 districts in Porter County. Being in an unincorporated area, there is no access to public services such as: water, sewer, storm sewer drainage, sidewalks, curbs, fire hydrant, trash, and recycling pick-up. Other than the new school, there have been no further developments or improvements to the district, but the Gertzes' tax bill has nearly doubled and continues to rise. *Gertz testimony*.
- d. Parcels that adjoin their property are assessed at a different rate. The property to the north is assessed at \$1,280 per acre. The property to the south is assessed at \$1,280 per acre, but the owner has used it as a trucking terminal for his company since 2007. *Gertz testimony; Pet'r Exs. 9-14*.

#### ANALYSIS

- 9. The Assessor failed to make a prima facie case supporting the 2019 assessment, while the Gertzes submitted evidence demonstrating that 10.094 acres of their property should be assessed as agricultural land. The Board reached this decision for the following reasons:
  - a. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting the property's true tax value. 50 IAC 2.4-1-1(c); 2011 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). It is instead 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). 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." MANUAL at 2.
  - b. Evidence in an assessment appeal should be consistent with that standard. For example, market value-in-use appraisals that comply with USPAP often will be probative. *See id.; see also Kooshtard Property VI, LLC v. White River Twp. Ass'r*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct.2005). So may cost or sales information for the property under appeal, sales or assessment information for comparable properties, and any other information compiled according to generally accepted appraisal principles. *Id.; see also* I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments in property tax appeals but explaining that the determination of comparability must be made in accordance with generally accepted appraisal and assessment practices).
  - c. Regardless of the method used to prove true tax value, a party must explain how its evidence relates to the property's value as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006). The valuation date for this appeal is January 1, 2019. I.C. § 6-1.1-2-1.5(a).

- d. As discussed above, the Assessor has the burden of proving that the 2019 assessment is correct. The Assessor presented a USPAP-compliant appraisal prepared by Sands, a certified residential appraiser. Sands relied on the sales comparison approach and estimated the subject's market value to be \$380,000 as of January 1, 2019.
- e. While Sands' appraisal is probative valuation evidence, we conclude it is insufficient to establish a prima face case that the assessment is correct because his value conclusion is lower than the current assessment of \$387,600. The Gertzes are therefore entitled to have their assessment reduced to the previous year's assessed value. That does not end our inquiry, however, because the Gertzes challenged the land classification of the 10.094 acres of non-homestead land, claiming it should be assessed as Type 4 agricultural land as it had been prior to 2012.
- f. While a party must normally present market-based evidence to prove the value of the property at issue, agricultural land is assessed according to specific statutes and regulations. The legislature has directed the Department of Local Government Finance ("DLGF") to use distinctive factors, such as soil productivity, that do not apply to other types of land. Ind. Code § 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* 2011 REAL PROPERTY ASSESSMENT GUIDELINES, CH. 2 at 77-78; *see also* Ind. Code § 6-1.1-4-4.5(e). 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. *See* 2011 GUIDELINES, CH. 2 at 77, 89, 98-99.
- g. 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." "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.
- Ind. Code § 6-1.1-4-13(b).
- h. Here, Mr. Gertz testified that he and his wife have had local farmers cut and bale their non-homestead acreage for use as cattle feed since they purchased the property in 2003. The Assessor asserted that the photos the Gertzes submitted showing a tractor cutting the grass do not prove that the grass is used for hay, but he failed to address, much less rebut, Mr. Gertz's testimony that that is precisely what it is used for.

- i. The Assessor also argued that a “directive” in Porter County requires taxpayers to supply a signed statement by the farmer farming the land, an FSA number, the cash rent lease, or the personal property filing of the farmer in order to receive an agricultural land classification. He also pointed to an example contained in a DLGF memo in which the owner has a signed statement from the farmer to support the agricultural classification. However, the Assessor failed to cite any authority requiring such evidence to establish that a particular property is devoted to agricultural use and we are aware of none.
- j. Because the Gertzes demonstrated that the 10.094 acres of non-homestead land they own is used for the production of hay, we conclude that it is devoted to agricultural use and should therefore be classified as agricultural land. We now turn to addressing their claim that it should be classified as Type 4—tillable land.
- k. The DLGF Guidelines define Type 4—tillable land, in relevant part, as cropland with no impediments to routine tillage that is used for production of grain or horticultural crops such as hay. *See* 2011 GUIDELINES, CH. 2 at 88. We find the photos and the un rebutted testimony from Mr. Gertz sufficient to support the Gertzes’ claim that the 10.094 acres of non-homestead land should be classified as Type 4—tillable land for the 2019 assessment year.
- l. Indiana Code § 6-1.1-20.6-7.5, also known as the property tax cap statute, limits a property owner’s tax liability to a percentage of the property’s gross assessment. The amount of the credit depends on the property type:

A person is entitled to a credit against the person’s property tax liability for property taxes first due and payable after 2009. The amount of the credit is the amount by which the person’s property tax liability attributable to the person’s:

- (1) homestead exceeds one percent (1%);
- (2) residential property exceeds two percent (2%);
- (3) long term care property exceeds two percent (2%);
- (4) agricultural land exceeds two percent (2%);
- (5) nonresidential real property exceeds three percent (3%); or
- (6) personal property exceeds three percent (3%);

of the gross assessed value of the property that is the basis for determination of property taxes for that calendar year.

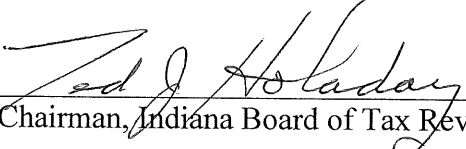
Ind. Code § 6-1.1-20.6-7.5(a).

- m. Because we have determined that the 10.094 acres of non-homestead land should be classified as agricultural land for 2019, we also conclude that the Gertzes are entitled to receive the 2% tax cap on that portion of their land.

**FINAL DETERMINATION**

In accordance with the above findings of fact and conclusions of law, we find for the Gertzes. We order the Assessor to revert the values of the improvements and the one-acre homesite to their 2018 assessed values. We further order the Assessor to reclassify the 10.094 acres of non-homestead land as agricultural land, reassess it as Type 4—tillable land, and apply the 2% tax cap to it for the 2019 assessment year.

ISSUED: 6-1-21

  
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>.