

REPRESENTATIVE FOR PETITIONER: Ronald Milliken, *pro se*
REPRESENTATIVE FOR RESPONDENT: Frank Agostino, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

RONALD MILLIKEN,)	Petition No.: 71-029-22-1-5-00934-22
)	
Petitioner,)	
)	Parcel No.: 71-02-12-400-003.000-029
v.)	
)	
ST. JOSEPH COUNTY ASSESSOR,)	County: St. Joseph
)	
Respondent.)	Assessment Year: 2022

FINAL DETERMINATION

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

Findings of Fact and Conclusions of Law

Introduction

1. Ronald Milliken’s assessment increased by more than 5% between 2021 and 2022. Under Ind. Code § 6-1.1-15-20, the St. Joseph County Assessor therefore had the burden of proof in Milliken’s assessment appeal. The Assessor did not meet his burden, and the totality of the evidence is not sufficient for us to determine the property’s true tax value. Under those circumstances, we must presume that its true tax value equals the 2021 assessment of \$82,900.

Procedural History

2. On May 11, 2022, Milliken filed a Form 130 petition contesting the 2022 assessment of his property located at 25301 Adams Road in South Bend. The Assessor valued the property at \$182,000 (\$118,900 for land and \$63,100 for improvements). On November 14, 2022, Milliken filed a Form 131 petition directly with us. *See* I.C. § 6-1.1-15-1.2(k) (allowing taxpayers to appeal directly to us if a county property tax assessment board of appeals has not issued a determination within 180 days of the date a notice of appeal was filed).

3. We originally set a hearing on Milliken’s petition for June 27, 2023, but rescheduled the hearing at Milliken’s request. On August 9, 2023, our designated administrative law judge, Joseph Stanford (“ALJ”), held the hearing. Neither he nor the Board inspected the property. The following people testified under oath: Milliken, St. Joseph County Assessor Michael Castellon, Kristie Miller (the Assessor’s agriculture specialist deputy), and Shannon Schalk (the Assessor’s personal property director).

4. Milliken submitted the following exhibits:

Petitioner Exhibit 1:	Letter sent by the Assessor accompanying Form 134,
Petitioner Exhibit 2:	Property record card (“PRC”) for Irish Rentals LLC, 56969 Orange Road,
Petitioner Exhibit 3:	PRC for Joseph & Kimberly Agostino,
Petitioner Exhibit 4:	PRC for Lane Ehninger, 24927 Adams Road,
Petitioner Exhibit 5:	PRC for Lane Ehninger, 25251 Adams Road,
Petitioner Exhibit 6:	PRC for Wayne & Gina Sams,
Petitioner Exhibit 7:	PRC for Brian Stone,
Petitioner Exhibit 8:	PRC for Irish Rentals LLC, 25190 Adams Road,
Petitioner Exhibit 9:	PRC for Irish Rentals LLC, 52190 Adams Road,
Petitioner Exhibit 10:	Subject PRC,
Petitioner Exhibit 11:	Conservation Plan Map,
Petitioner Exhibit 12:	2010-2014 subject PRC,
Petitioner Exhibit 13:	PRC for Bret Enright,
Petitioner Exhibit 14:	PRC for Stacey MacDonald.

5. The Assessor submitted the following exhibits:

Respondent Exhibit 1:	Form 131,
Respondent Exhibit 2:	Form 134,
Respondent Exhibit 3:	Form 130,
Respondent Exhibit 4:	Subject PRC,
Respondent Exhibit 5:	Proposed subject PRC,
Respondent Exhibit 6:	Memorandum list and valuation history.

6. The record also includes the following: (1) all petitions and other documents filed in this appeal, (2) all notices and orders issued by the Board or the ALJ, and (3) an audio recording of the hearing.

Objections

7. Milliken objected to all the Assessor's exhibits initially, but then confined his objection to only Respondent's Exhibit 5, a "worksheet" property record card with a proposed assessment of \$118,300. Milliken also objected to the testimony of Kristie Miller and Shannon Schalk. Milliken claimed that he did not receive either a witness list or a copy of the Assessor's exhibits before the hearing and was therefore unprepared to address the witnesses' testimony and the Assessor's proposed assessment. Schalk testified that she mailed the Assessor's lists and copies of exhibits to Milliken in advance of the originally scheduled hearing date, although Milliken claimed that he did not receive anything then, either. The ALJ took the objections under advisement. *Milliken, Schalk and Miller testimony; Milliken and Agostino argument.*

8. We overrule the objections. Our procedural rules require a party to an appeal to provide all other parties with copies of its documentary evidence at least five business days before a hearing, and with a list of its witnesses and exhibits at least 15 business days before the hearing. 52 IAC 4-8-1(b). Failure to comply with these exchange requirements "*may* serve as grounds to exclude the evidence or testimony at issue." 52 IAC 4-8-1(f) (emphasis added). We credit Shalk's testimony that she mailed Milliken the Assessor's witness and exhibit lists and copies of the Assessor's exhibits before the originally

scheduled hearing date. While Milliken may not have received them, that fact does not justify excluding Respondent's Exhibit 5 or prohibiting Miller and Schalk from testifying. At most, it might support granting a continuance so Milliken could prepare to address those witnesses and the contested exhibit. But Milliken did not ask for a continuance. In any case, the Assessor only called Shalk to testify in her capacity as a records custodian. While Miller testified to substantive matters, much of her testimony was cumulative of the Assessor's testimony about his proposed assessment. And Milliken did not object to the Assessor's testimony. Similarly, Respondent's Exhibit 5 largely illustrates the witnesses' testimony about that proposed assessment.

Findings of Fact

9. The subject property contains a home and other improvements as well as eight acres of land. One acre is assessed as a homesite, and .46 acres are assessed as agricultural excess acreage. The rest is assessed as a mixture of tillable and nontillable land with various soil types. The lion's share of the \$182,000 assessment under appeal is for the homesite (\$104,000) and the improvements (\$63,100). The property was assessed for only \$82,900 in 2021. *Resp't Ex, 4; Milliken testimony.*

Parties' Contentions

A. The Assessor's Contentions

10. Initially, the Assessor conceded that the assessment should be reduced from \$182,000 to \$118,300. *Agostino argument; Castellon testimony.*
11. The Assessor pointed to several changes in arriving at his proposed assessment:
 - He changed the base rate for the areas classified as tillable land from \$2,500/acre, which he acknowledged was erroneous, to \$1,500/acre.
 - He reduced an area assessed as tillable land with HdB soil type from 3.32 acres to 2.9 acres.

- He reduced the value applied to the one-acre homesite from \$104,000 to \$28,300. He explained that base rates for agricultural homesites had been determined from a land study commissioned by his predecessor in office. That study included sales of all types of vacant land that, on review, the Assessor did not believe represented the value of agricultural homesites. He therefore determined a new base rate for agricultural homesites in the township by applying a 4.5% adjustment to the previous year's base rate.
- He changed the home's condition rating from "average" to "good" and the rating for a barn from "fair" to "average." He based those changes on a review of the property and of homes that he described as comparable (but that he did not identify).

Miller and Castellon testimony; Agostino argument; Resp't Exs. 4-5.

12. The Assessor disagreed with Milliken's claim that part of the property should be classified as agricultural "woodland." According to Miller, to justify that classification, Milliken needed to show either (1) that the property was at least 10 acres and that he had a stewardship plan, or (2) that he used the property to produce timber for sale. *Miller testimony.*

B. Milliken's Contentions

13. Milliken argued that the Assessor misclassified his land. Milliken believes that he has three types of land: nontillable land (including woodland), pastureland, and "house." A Conservation Plan Map from the United States Department of Agriculture ("USDA") outlines the subject property. The map has a heading that lists a farm number,¹ and it contains an aerial photograph of the property. The photograph refers to a 2.1-acre area as "pollinator habitat," although it does not delineate the area encompassed by that habitat:

¹ The heading contains the notation: "Legal Description: Farm: 6761, Tract 12488."



*Pet'r Ex. 11.*²

14. According to Milliken, the pollinator habitat refers to a tillable area where he could plant wildflowers for his apiary. He believes that the area is actually closer to 2.5 acres, although he alternately testified that the property had between 2.3 and 2.4 acres of tillable land. According to Milliken, the area to the east of his home has a hill that is too steep to till. He also argued that the wooded areas, which he described as having “100% canopy,” should be classified as woodland. *Milliken testimony and argument; Pet'r Ex. 11.*

15. Turning to the improvements, Milliken argued that his home is old, small, and in poor condition. It has only one bedroom, although there are some “tiny” rooms upstairs. It originally did not have heating, air-conditioning, or closets. He made a closet for his bedroom by knocking out a hole underneath the stairs. He believes that the home would be difficult to sell. *Milliken testimony and argument.*

16. According to Milliken, assessments in St. Joseph County are unfair. For support, he pointed to the assessments of several other properties. For example, a property owned by Irish Rentals is assessed as a dairy farm even though Milliken claims that it has not had a

² The reference to the “2.1 Acre Pollinator Habitat” appears only faintly on the reproduced image. It is written in the non-wooded area to the west of the buildings. There are no lines to indicate the extent of that habitat.

cow or operated as a dairy farm for 35 years. Other properties have -20% influence factors applied to their homesites and excess acreage. Milliken believes that his property should receive a similar discount. He also claimed that land developers get discounts he and other property owners do not receive. *Milliken testimony and argument; Pet'r Exs. 2-14.*

17. Finally, Milliken contended that assessments in the county are not at market value. To illustrate, he pointed to two properties owned by the same person located at 24927 and 25251 Adams Road, respectively. According to Milliken, the properties are separated only by a common driveway, which sits on the line between German and Warren Townships. Despite being side-by-side, the German Township property has a homesite base rate of \$103,200, while the Warren Township property has a homesite base rate of \$104,000. *Milliken testimony and argument; Pet'r Exs. 4-5.*

Conclusions of Law and Analysis

A. Because the assessment increased by more than 5% between 2021 and 2022, the Assessor has the burden of proof.

18. 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).
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.* 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).

20. Here, the subject property’s assessment increased by more than 5% between 2021 and 2022, and the Assessor acknowledged that he had the burden of proof.

B. Because the Assessor failed to meet his burden and neither side offered sufficient evidence to determine the property’s true tax value, the assessment must revert to its 2021 level.

21. We are 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).

22. 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). For land devoted to agricultural use, true tax value must be determined in accordance with the DLGF’s Real Property Assessment Guidelines and Ind. Code § 6-1.1-4-13. 2021 REAL PROPERTY ASSESSMENT MANUAL at 2. The Guidelines classify agricultural land types. For most of those classifications, the land must be assessed using a statewide base rate for each year, which assessors then adjust based on soil productivity. *See* 2021 REAL PROPERTY ASSESSMENT GUIDELINES, ch. 2 at 77-78. Assessors must also apply influence factors in predetermined amounts depending on the type of agricultural land at issue. *Id.* at 85-93, 98-99. For example, “nontillable land”—which the Guidelines define as “land covered with brush or scattered trees with less than 50% canopy cover, or permanent pastureland with natural impediments that deter the use of the land for crop production”—receives a -60% influence factor. *Id.* at 87. Similarly, “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.*

23. For other property types, 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. For those 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 Cty. Ass’r*, 842 N.E.2d 899, 900, (Ind. Tax Ct. 2006). They instead “must present objectively verifiable, market-based evidence” of the property’s value. *Piotrowski v. Shelby Cty. 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)). This is because the “formalistic application” of the procedures and schedules from the DLGF’s 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.
24. Thus, for agricultural properties like the subject property, the parties are faced with a hybrid regime for proving true tax value. Land devoted to agricultural use, such as tillable and nontillable land and woodlands, must be valued using the soil-productivity method, and the parties’ evidence must conform to the Guidelines. For improvements, including homes, the parties must offer market-based evidence to establish market value-in-use. That is also true for land used as agricultural homesites (Type 9), which the Guidelines define as one acre per dwelling on agricultural land, and “agricultural excess acreage” (Type 92), which consists of land that “is presently dedicated to a non-agricultural use normally associated with the homesite.” GUIDELINES at 90. Those two nominally agricultural land types are valued in the same way as residential land instead of through the soil productivity method. *Id.* at 50, 90 (explaining that agricultural homesites and agricultural excess acreage are not determined using the soil-productivity method but are instead determined using base rates determined from sales data).

25. With that in mind, we turn to the evidence. The parties agreed that most of the land other than the homesite should be assessed as agricultural, although they disagreed as to how much should be assessed as tillable and whether some of it should be classified as woodland. They also disagreed about whether a .46-acre portion should be classified and assessed as agricultural excess acreage.
26. Neither party offered much evidence to support his proposed classifications. The Guidelines set forth defining characteristics for each land type. For example, to qualify as tillable, land must not have any impediments to routine tillage. GUIDELINES at 80. Yet the Assessor offered nothing about whether there were any impediments to tilling the property's non-wooded areas. Nor did he offer evidence to show that Milliken dedicated any of the land beyond his one-acre homesite to a "non-agricultural use normally associated with the homesite," as is required for it to be classified as excess acreage. Instead, the Assessor testified that he considers any land that is neither being tilled nor producing an agricultural product as excess acreage.
27. Milliken similarly did little to support most of his proffered classifications. He offered largely conclusory testimony about his land, asserting that somewhere between 2.3 and 2.5 acres were tillable, that a portion to the east of his home could not be tilled because the hill was too steep, and that the rest of the land should be considered pastureland or woodland. He did not offer any evidence to map the areas corresponding to his proposed classifications, much less to show their soil productivity factors.
28. That said, we agree that the Assessor should have classified the canopied portion of the property as woodland. The Assessor's claim that those areas could not be classified as woodland because they were less than 10 acres and Milliken did not show that he had a stewardship plan or produced timber for sale misinterprets the Guidelines. At best, those last two factors might relate to whether the wooded areas qualify as agricultural land. But there does not appear to be any dispute on that point: the Assessor classified the areas

as agricultural in both his original assessment and his proposed revision, and he assessed most or all of them using the soil-productivity method. Also, the conservation map shows that the wooded areas are within the larger tract to which the USDA has assigned a farm number.³ Having decided that the wooded areas are agricultural, the conservation map, which depicts canopy cover equal to or approaching 100%, supports a finding that they should be classified as woodland.

29. But that begs the question: how much of the property's eight acres should be classified as woodland and which soil productivity factors should be applied to them? Again, neither side offered evidence mapping the dimensions of the wooded areas, or of any other portion of the property.⁴ The property record card does list soil types and acreage for all the land that the Assessor classified as nontillable. And we infer that at least some of those areas are wooded. But it is unclear which ones.
30. We therefore find that neither side's evidence sufficed to show how the portions of the land that are currently classified as tillable, nontillable, or excess acreage should properly be classified and assessed.
31. In any case, the value of the land assessed using the soil productivity method accounts for only a small fraction of the subject property's overall assessment. The bulk of the assessment lies in the value assigned to the homesite and improvements. As explained above, true tax value for those property types is based on market value-in-use, which the parties must prove using objectively verifiable market-based data. Such evidence may include "sales data, appraisals, or other information compiled in accordance with

³See I.C. § 6-1.1-4-13(b)(1)(providing that land enrolled in a "conservation or reserve program" administered by the USDA is considered to be devoted to agricultural use. *See also* GUIDELINES, ch. 2 at 78 ("Assessors are further directed that all acres enrolled in programs of the Department of Agriculture (USDA), Farm Services Agency, and Natural Resources Conservation Service and have received a 'farm number' are eligible for classification as 'agricultural.'").

⁴ The conservation map included a scale legend. Assuming that the legend could be used to map the dimensions of specific portions of the property, neither party attempted to do so. We will not undertake that task on our own; instead, it is the parties' duty to walk us through an analysis of their evidence. *See Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (explaining that it is the taxpayer's duty to walk us and the Tax Court through every element of its analysis).

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 Cty. Ass’r*, 119 N.E.3d 1152, 1156 (Ind. Tax Ct. 2019).

32. Neither side offered any probative market-based evidence to establish the market value-in-use for the homesite or improvements. The Assessor testified that he arrived at his proposed value for the homesite (and for other agricultural homesites) by using the consumer price index to adjust the previous year’s base rate. But he did not explain what, if any, sales data was used to determine the previous year’s base rate or how that data related to the subject homesite. And he offered almost nothing to show the improvements’ value beyond testifying that he adjusted the home’s condition rating from “average” to “good” based on the ratings assigned to other unidentified homes that he believed were comparable.
33. Milliken’s evidence fares no better. While he pointed to negative influence factors applied to homesites and excess acreage for several other properties, he did not explain how they compared to his property or how any relevant differences affected their relative values. *See Long v. Wayne Twp. Ass’r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (finding that the taxpayers’ comparable sales data lacked probative value where they failed to explain how their property’s characteristics compared to those of purportedly comparable properties, and how differences affected market value-in-use). Similarly, Milliken’s conclusory testimony about his home’s quality and condition and his speculation about how those issues would affect his ability to sell it do nothing to support any particular value, or even a range of values.
34. Because the totality of the evidence does not allow us to determine the subject property’s true tax value, we must presume that its value is equal to the 2021 assessment.

Conclusion

35. The subject property's assessment increased by more than 5% between 2021 and 2022, and neither side offered sufficient evidence to establish the property's true tax value. Under Ind. Code § 6-1.1-15-20(f), the property's true tax value for 2022 is presumed to equal its 2021 assessment of \$82,900. We therefore order that the 2022 assessment be changed to \$82,900.

Date: NOVEMBER 1, 2023



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 of 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>>.