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

Petition: **57-021-16-1-1-00216-17**
Petitioner: **Tara L. Thompson**
Respondent: **Noble County Assessor**
Parcel: **57-15-34-300-013.000-021**
Assessment Year: **2016**

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

Procedural History

1. The Petitioner initiated her 2016 assessment appeal with the Noble County Assessor on July 11, 2016.

2. On January 12, 2017, the Noble County Property Tax Assessment Board of Appeals (PTABOA) issued its determination lowering the assessment, but not to the level requested by the Petitioner.

3. The Petitioner timely filed a Petition for Review of Assessment (Form 131) with the Board, electing the Board's small claims procedures.

4. The Board issued a notice of hearing on October 30, 2017.

5. Administrative Law Judge (ALJ) Joseph Stanford held the Board's administrative hearing on December 7, 2017. He did not inspect the property.

6. Tara L. Thompson appeared *pro se*. County Assessor Kim Carson appeared for the Respondent. Tylan Miller was a witness for the Respondent.[1] All of them were sworn.

Facts

7. The property under appeal is located at 330 North Long Lake Road in Albion.

[1] Mr. Miller identified himself as an employee from "EquiVal Tax" and generally participated as the Respondent's representative. *Bd. Ex. C.* While the Petitioner did not object, to the extent the Respondent intended Mr. Miller to represent her at the hearing, the Respondent is reminded that Mr. Miller must comply with the Board's representation rules. Thus, he must submit written verification that he is a "professional appraiser" approved by the Department of Local Government Finance (DLGF) as required by 52 IAC 1-1-3.5 in addition to filing a power of attorney with the Board as required by 52 IAC 2-3-2. *See* 52 IAC 1-1-3.5. In this case, the Respondent is properly represented by County Assessor Kim Carson and the Board views Mr. Miller's role as a witness for the Respondent.

8. The PTABOA determined a total assessment of $182,000 (land $34,500 and improvements $147,500).

9. The Petitioner requested a total assessment of $172,718 (land $25,218 and improvements $147,500).

Record

10. The official record for this matter is made up of the following:

a) Form 131 with attachments,

b) A digital recording of the hearing,

c) Exhibits:

Petitioner Exhibit 1:	Aerial photograph of the subject property,
Petitioner Exhibit 2:	2016 subject property record card,
Petitioner Exhibit 3:	2012 subject property record card,
Petitioner Exhibit 4:	Beacon zoning map of the subject property,
Petitioner Exhibit 5:	Packing list from Allflex USA, Inc., photograph of USDA Farm Number,
Petitioner Exhibit 6:	Aerial photograph of the subject property,
Petitioner Exhibit 7:	Aerial photograph of the subject property indicating the area of the property known as the "rotating pasture" and the "woodland,"
Petitioner Exhibit 8:	Aerial photograph of the subject property and nearby properties,
Petitioner Exhibit 9:	Overview of the subject property and neighboring properties,
Petitioner Exhibit 10:	Aerial photograph of the subject property indicating the locations of ash trees,
Petitioner Exhibit 11:	Letter from Peter Rogers to Tara Thompson dated November 29, 2017,
Petitioner Exhibit 12:	Aerial photograph of the subject property indicating the location of the rotational pasture,
Petitioner Exhibit 13:	Photographs of trees located in the rotational pasture,
Petitioner Exhibit 14:	Photographs of shelters used on rotational pastures,
Petitioner Exhibit 15:	Five letters from the Petitioner's neighbors,
Petitioner Exhibit 16:	Aerial photographs and property record cards for area properties,
Petitioner Exhibit 17:	Memorandum from the Department of Local Government Finance (DLGF) regarding "Woodlands Guidance" dated November 9, 2010,
Petitioner Exhibit 18:	Memorandum from the DLGF regarding "Classification and Valuation of Agricultural Land" dated February 12, 2008,

Petitioner Exhibit 19:	Email correspondence between Barry Wood and Tara Thompson dated November 10, 2017,
Petitioner Exhibit 20:	*Rod A. & Elizabeth J. Herman v. Boone Co. Ass'r,* Ind. Bd. of Tax Rev. Pet. No. 06-005-13-1-5-00016 (September 19, 2014),
Petitioner Exhibit 21:	*Paul L. & Joan E. Chavez v. DeKalb Co. Ass'r,* Ind. Bd. of Tax Rev. Pet. No. 17-024-13-1-5-00001 (January 6, 2015),
Petitioner Exhibit 22:	"Managing Internal Parasitism in Sheep and Goats" written by Kate Hepworth and Terry Hutchens, "Late Summer Parasite Management Strategies in Goats" written by Dr. Ken Andries,
Petitioner Exhibit 23:	REAL PROPERTY ASSESSMENT GUIDELINES, pp. 78-93,
Petitioner Exhibit 24:	"Benefits of Trees on Livestock Farms" published by Woodland Trust.
Respondent Exhibit A:	2016 subject property record card,
Respondent Exhibit B:	2015 subject property record card,
Respondent Exhibit C:	Photographs of the subject property,
Respondent Exhibit D:	Email from Brenda Huter to Kim Carson dated June 21, 2017,
Respondent Exhibit E:	Multiple Listing Service (MLS) reports for various properties,
Respondent Exhibit F:	Sales analysis prepared by the Respondent,
Respondent Exhibit G:	MLS report for the subject property.
Board Exhibit A:	Form 131 with attachments,
Board Exhibit B:	Notice of hearing dated October 30, 2017,
Board Exhibit C:	Hearing sign-in sheet.

d) These Findings and Conclusions.

Objections

11. The Respondent objected to all of the Petitioner's exhibits on the grounds the Petitioner failed to timely provide copies prior to the hearing even though the Respondent requested them. There was no dispute the Petitioner eventually provided the exhibits to the Respondent, but not until December 4, 2017, three days prior to the hearing. It was also undisputed that "some" of the exhibits in question were submitted at the PTABOA hearing, but "some were not." The ALJ took the objection under advisement.

12. The Board's small claims procedural rules provide that, if requested, "the parties shall provide to all other parties copies of any documentary evidence and the names and addresses of all witnesses intended to be presented at the hearing at least five (5) business days before the small claims hearing." 52 IAC 3-1-5(d). The rules further provide that

failure to comply with that requirement "*may* serve as grounds to exclude evidence or testimony that has not been timely provided." 52 IAC 3-1-5(f) (emphasis added).

13. The purpose of this requirement is to allow parties to be informed, avoid surprises, and promote an organized, efficient, fair consideration of cases. Here, the Respondent identified four specific exhibits she claimed she had not seen before: Petitioner's Exhibits 11, 15, 20, and 21. The Petitioner did not dispute the Respondent's claim these exhibits had not been previously disclosed at the PTABOA hearing. Petitioner's Exhibits 20 and 21 are prior Board decisions and the Board can take judicial notice of its own decisions. Accordingly, the Respondent's objections to Petitioner's Exhibits 20 and 21 are overruled and the exhibits are admitted.

14. Petitioner's Exhibit 11 is a letter from Mr. Rogers of Kiwi Logging and Woodlot Management. Petitioner's Exhibit 15 includes five letters from the Petitioner's neighbors. Because the Petitioner failed to provide copies of these exhibits prior to the hearing, as the Respondent expressly requested, the Respondent's objections are sustained and Petitioner's Exhibits 11 and 15 are excluded. The Board notes the exclusion of these exhibits does not affect the Board's final determination.

15. As to the Petitioner's remaining exhibits, the Board overrules the Respondent's objections and the exhibits are admitted. The Respondent was not able to conclusively prove which of the remaining exhibits had or had not been provided at the PTABOA hearing.[2] The Respondent had three days to examine the exhibits and had ample time to properly articulate exactly what she had previously seen. For these reasons the Board does not believe the Respondent is prejudiced by the inclusion of the exhibits. The Board is unable to examine the PTABOA record to deduce which exhibits were presented. Because the Respondent was making the objection it was her duty to clearly identify for the Board which exhibits were not previously provided at the PTABOA hearing. Based on the Respondent's admission that "some of them (exhibits) may have been (provided)" the Board will not impose the extreme sanction of excluding all of the Petitioner's exhibits.

16. Finally, the Respondent objected to the Petitioner's interpretation of the Board's prior decisions, arguing the Petitioner is not an attorney. The ALJ inferred the Respondent was claiming the Petitioner was engaging in the unauthorized practice of law. The ALJ overruled the objection, explaining that because the Petitioner appeared *pro se*, she was representing herself and was entitled to present her argument. The Board adopts the ALJ's ruling.

[2] The Petitioner was also unable to articulate which exhibits were provided at the PTABOA hearing, she only stated "some of them are different."

Contentions

17. Summary of the Petitioner's case:

a) The subject property is incorrectly assessed. The Petitioner purchased the property in 2013 for $135,000 "for agricultural purposes." At that time, she had goats, cattle, ducks, chicken, and rabbits, and needed a place to "house and pasture them." According to the Petitioner, "at least a portion" of the property is incorrectly assessed because it is assessed as "excess acreage rather than agricultural." Prior to 2013, the entire property was assessed as agricultural "above the one-acre homesite." *Thompson argument; Pet'r Ex. 2, 3.*

b) The subject property is zoned agricultural, and the Petitioner has a "farm number" from the United States Department of Agriculture (USDA) which gives the property an agricultural designation. *Thompson testimony; Pet'r Ex. 4, 5.*

c) The Petitioner rotates pastures on her property. The rotational pastures are currently assessed as "excess acreage but should be assessed as non-tillable." Several neighbors have confirmed the Petitioner uses rotational pastures. Admittedly, permanent fencing is not utilized because of the "many trees" in the area that she is cutting down. Instead of using permanent fencing, movable pens have been erected for the goats. The pens are taken down and moved to other areas to "improve the quality of the grass that is grazed but also for the health of the goats." Contrary to the Assessor's claim, the Guidelines do not require permanent fencing for land to be assessed as agricultural. *Thompson argument; Pet'r Ex. 12, 15, 22.*

d) Small trees are planted in the rotational pasture area but are protected from the goats. The goats eat only the bottom branches, and are not in the same area long enough to destroy fully mature trees. The permanent and rotational pastures are occasionally mowed to prevent weeds and because the goats "do not like long grass." This should not preclude the land from being assessed as agricultural, because it is used agriculturally. *Thompson argument; Pet'r Ex. 13, 14.*

e) The Petitioner also had 120 ash trees covering "about an acre" of her rotational pastures. The area was previously assessed as tillable, because they were planted "methodically and in rows as a crop." However, in 2014 the ash trees were destroyed by the Emerald ash borer. The area has been mowed, but not "manicured" and some Norway spruce trees have been re-planted. On the whole, the area is currently utilized as pasture land. In assessing this pasture as excess acreage the Petitioner is being "penalized for a crop failure." *Thompson argument; Pet'r Ex. 10, 11.*

f) The Petitioner also testified regarding an area she referred to as "woodlands" and a "forest" with "100% canopy." The area is located "at the head of a legal drain." The wooded area extends to "several other properties." While this area is assessed as non-tillable on the subject property, the adjoining properties are assessed as woodlands. The Respondent erroneously argues the "area cannot produces trees" because "it gets

wet a couple times per year." According to the Army Corp of Engineers "the cutting down of trees in a wetland is allowed as long as the roots are not disturbed." Additionally, an area is not required to be in a classified program to be considered woodland nor be actively farmed to be classified agricultural. The trees in this area have "an agricultural purpose" in that they help minimize soil erosion, pollinate insects, and add shade for livestock and crops. *Thompson argument; Pet'r Ex. 6, 7, 8, 9, 17, 18, 19, 20, 21, 24.*

g) While the Respondent argues she must "treat all properties equally," several other properties are similarly used but are assessed as agricultural and tillable. Thus, "things aren't being done the same across the line." *Thompson argument; Pet'r Ex. 16.*

18. Summary of the Respondent's case:

a) The property is correctly assessed. The Respondent does not dispute that "there are agricultural activities going on." This disagreement centers on the use of "about 3.5 to 3.8 acres."[3] After several visits to the property, the Respondent reduced the excess acreage not dedicated to farming from 3.47 acres in 2015 to 1.72 acres in 2016. *Miller argument; Resp't Ex. A, B, C.*

b) In support of her position, the Respondent offered a letter from Brenda Huter, Forest Stewardship Coordinator with Department of Natural Resources (DNR) Division of Forestry. According to Ms. Huter, if trees are being mowed around, the area is likely not a forest because a forest is "a biological system, not just tall trees" and that the future use of the property appears to be like that of "a yard." The Respondent argues that Ms. Huter's written opinion should "carry more weight" than the DLGF memorandums presented by the Petitioner, because Ms. Huter "works with these issues daily." *Miller argument; Resp't Ex. D.*

c) The subject property was assessed in a similar fashion to all mixed-use properties with agricultural activities. The Respondent also completed a "qualitative analysis" utilizing comparable properties. According to this analysis the subject property's market value-in-use is "right around $210,000." This analysis supports the current assessment. *Miller argument; Resp't Ex. E, F.*

Burden of Proof

19. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass'r,* 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs,* 694 N.E.2d 1230 (Ind. Tax Ct. 1998). The burden-shifting statute as amended by P.L. 97-2014 creates two exceptions to that rule.

[3] The Board can reasonable conclude that the entire 1.72 acres assessed as agricultural excess acreage is in dispute. It is not entirely clear what else is in dispute.

20. First, Ind. Code § 6-1.1-15-17.2 "applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year." Ind. Code § 6-1.1-15-17.2(a). "Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court." Ind. Code § 6-1.1-15-17.2(b).

21. Second, Ind. Code § 6-1.1-15-17.2(d) "applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15." Under those circumstances, "if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct." Ind. Code § 6-1.1-15-17.2(d). This change was effective March 25, 2014, and has application to all appeals pending before the Board.

22. Here, according to the subject property record card, the total assessment increased from $180,100 in 2015 to $182,000 in 2016, an increase of roughly 1%. Neither party offered any argument regarding the burden. The Petitioner failed to offer any argument that the burden should shift to the Respondent. Accordingly, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 do not apply and the burden remains with the Petitioner.

Analysis

23. The Petitioner made a prima facie case for reducing the assessment.

    a) Generally, real property is assessed based on its market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach, but other evidence is permitted to prove an accurate valuation. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.

    b) Regardless of the method used, a party must explain how the evidence relates to the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.,* 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Ass'r,* 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For a 2016 assessment, the valuation date was January 1, 2016. *See* Ind. Code § 6-1.1-2-1.5.

    c) However, 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. 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 (incorporated by reference at 50 IAC 2.4-1-2); *see also* Ind. Code § 6-1.1-4-4.5(e) (directing the DLGF to use a six-year, instead of a four-year, rolling average and to eliminate from the calculation the year for which the highest market value-in-use is determined). Assessors then adjust that base rate according to soil productivity factors. Depending on the type of agricultural land at issue, assessors apply influence factors in predetermined amounts. *Id*. at 77, 89, 98-99. Thus, once a taxpayer shows that land should be classified under one or more agricultural subtypes, its true tax value may be determined by simply applying the Guidelines.

d) The legislature has directed that "[i]n assessing or reassessing land, the land shall be assessed as agricultural only when it is devoted to agricultural use." Ind. Code § 6-1.1-4-13(a). "Land purchased and used for agricultural purposes … includes cropland or pasture land (i.e., tillable land) as well as woodlands." GUIDELINES, CH. 2 at 80.

e) The Board will first examine the area the Petitioner referred to as her "rotating pasture." While neither party explained or testified with certainty, the Board can only assume this is the 1.72 acres currently assessed as agricultural excess acreage. The Petitioner argues this area should be assessed as non-tillable agricultural land based on its use.

f) The Board has little trouble concluding the Petitioner purchased the property for agricultural use. Under the previous owner, the property's land was assessed entirely as agricultural, outside of the one-acre homesite. The property is zoned agricultural and the Petitioner has a "farm number" designation. At the time she purchased the property, the Petitioner testified that she had goats, cattle, ducks, chickens, and rabbits. She needed a place to house and pasture them. As of the assessment date, the Petitioner only testified to having goats, but it does not appear her overall use of the area in question has changed. The Respondent agreed agricultural activities take place on the property, and has continued to assess most of it as agricultural.

g) "Agricultural excess acreage" is defined as land "dedicated to a non-agricultural use normally associated with the homesite," and it is intended to apply to "areas containing a large manicured yard over and above the accepted one acre homesite." GUIDELINES, CH. 2 at 93. "The agricultural excess acre rate is the same rate that is established for the residential excess acre category." *Id*.

h) A "non-agricultural use normally associated with the homesite" suggests a residential, rather than agricultural, use. "Residential property" is defined as "vacant

or improved land devoted to, or available for use primarily as, a place to live." GUIDELINES, GLOSSARY at 19.

i) The area in question is clearly used for agricultural, and not residential purposes. Thus, this portion of the assessment is incorrect and must be corrected. But, based on the evidence, the Board disagrees with the Petitioner's contention that the correct subtype is non-tillable. Non-tillable land is "land covered with brush or scattered trees with less than 50% canopy cover, or permanent pasture with natural impediments that deter the use of land for crop production." GUIDELINES, CH. 2 at 89.

j) On the other hand, tillable land is "land used for cropland or pasture" and includes "rotation pasture" and "orchard crops." GUIDELINES, CH. 2 at 88. The area in question includes rotation pasture, small trees from which the goats eat low-hanging branches, and previously supported an ash tree crop before that crop was destroyed. Thus, this area must be changed to tillable agricultural land.

k) The bulk of the Respondent's argument against any change is focused on the property's fair market value. However, as already stated, the true tax value of agricultural land is, unlike most other types of property, determined by applying the Guidelines and the proper agricultural rates. Further, the Respondent pointed to no residential use of the area in question, and failed to point to any authority suggesting that occasional mowing of an area disqualifies it from consideration to be assessed agriculturally.

l) The Board now turns to the area the Petitioner described as "woodland." According to the Guidelines, land that has "50% or more canopy" may be considered agricultural woodland. GUIDELINES, CH. 2 at 90. Here, the Petitioner's undisputed testimony indicates the property was acquired for and is currently used for agricultural purposes, the area in question has "100% canopy," and this area is unsuitable for residential development. Further, the undisputed testimony indicates the "wooded area" in question extends to other properties that are currently receiving the woodland designation. It is clear from the photographs of the subject property, this area is entirely covered with tree canopy.

m) According to the property record card, in 2012 a portion of the property received the woodland designation.[4] Nothing has changed in this area since the Petitioner acquired the property in 2013. The record is void of any explanation as to why this designation was removed. For these reasons, the Board finds the Petitioner has made a prima facie case the "wooded area" in question is entitled to an agricultural woodland designation. The Respondent failed to present any probative evidence to support how this particular portion of the property is currently assessed.

[4] The Board came to this conclusion based on the negative 80% influence factor applied to a portion of the land. *See Pet'r Ex. 3.*

n) While the Petitioner requested a land assessment of $25,218, she failed to offer any details as to how she arrived at that figure. The record is void of any particular acreage calculations aside from the Respondent stating she reduced the excess acreage not dedicated to farming from 3.47 acres in 2015 to 1.72 acres in 2016. The Board has attempted to comb through the evidence to determine the correct acreage calculations that should be changed. Based on the 2016 property record card, the Respondent has broken down the land calculation to thirteen separate land categories. *See Resp't Ex. A.* According to the 2015 property record card, the Respondent has broken down the land calculation to eight separate land categories. *See Resp't Ex. B.* And finally, according to the 2012 property record card, the Respondent has broken down the land calculation to eleven separate land categories. *See Pet'r Ex. 3.* Neither party clearly identified the proper acreage under appeal nor can the Board conclusively figure out the calculation. In an effort to prevent the Petitioner from being unfairly taxed on the same portion of property twice, the Board orders the Respondent to reassess the portion of the property identified as the "rotating pasture" outlined in red according to Petitioner's Exhibit 7 as non-tillable agricultural. *See Pet'r Ex. 7.* Additionally, the Board orders the Respondent to reassess the portion of the property identified as the "woodland" area outlined in blue according to Petitioner's Exhibit 7 assigning the proper woodland designation. *See Pet'r Ex. 7.*

Conclusion

24. The Petitioner made a prima facie case for reclassifying a portion of her property. The Respondent is directed to reassess the property in conformity with these findings and conclusions.

Final Determination

In accordance with these findings and conclusions, the Board orders the Respondent to reclassify the property in accordance with this determination.

ISSUED: April 23, 2018

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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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>.