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

Petition: **20-005-12-1-5-00049**
Petitioners: **Ralph D. & Bonnie L. Gentle**
Respondent: **Elkhart County Assessor**
Parcel: **20-01-11-476-002.000-005**
Assessment Year: **2012**

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

Procedural History

1. The Petitioners initiated their 2012 assessment appeal with the Elkhart County Assessor on September 10, 2012.

2. On August 5, 2013, the Elkhart County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the Petitioners relief.

3. The Petitioners filed a Petition for Review of Assessment (Form 131) with the Board on September 19, 2013. They elected the Board's small claims procedures.

4. The Board issued a notice of hearing on August 8, 2014.

5. Administrative Law Judge (ALJ) Jennifer Bippus held the Board's administrative hearing on September 10, 2014. She did not inspect the property.

6. Petitioners Ralph and Bonnie Gentle appeared *pro se* and were sworn as witnesses. Attorney Beth Henkel represented the Respondent. Gavin Fisher was sworn as a witness for the Respondent.

Facts

7. The property under appeal is a 7.86-acre unimproved parcel located at 29121 County Road 2 in Elkhart.

8. The PTABOA determined the 2012 land assessment is $23,400.

9. On the Form 131 petition, the Petitioners requested a land assessment of $2,400.

Record

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

a) Petition for Review of Assessment (Form 131) with attachments,

b) A digital recording of the hearing,

c) Exhibits:

The Petitioners did not present any exhibits.

Respondent Exhibit A:	Subject property record card created on July 30, 2014,
Respondent Exhibit B:	Memorandum from Department of Local Government Finance (DLGF) to Assessing Officials dated February 12, 2008,
Respondent Exhibit C:	Memorandum from DLGF to Assessing Officials dated November 9, 2010,
Respondent Exhibit D:	"2012 Ad Valorem Appeal Analysis" prepared by Gavin Fisher,
Respondent Exhibit E:	*Harry L. Davis, III v. Jasper County Ass'r*, Ind. Bd. of Tax Rev. pet. no. 37-031-12-1-1-00001 (January 10, 2014),
Respondent Exhibit F:	Indiana Code § 6-1.1-15-17.2,
Respondent Exhibit G:	Respondent's Request for Documentary Evidence dated August 19, 2014,
Respondent Exhibit H:	Subject property record card created on April 17, 2013.

Board Exhibit A: Form 131 petition with attachments,
Board Exhibit B: Notice of appearance from Beth Henkel,
Board Exhibit C: Notice of hearing dated August 8, 2014,
Board Exhibit D: Hearing sign-in sheet.

d) These Findings and Conclusions.

Objections

11. The Petitioners did not present any evidence at the hearing because they claimed they did not know they were required to submit evidence they already offered at the PTABOA hearing. However, as explained at the hearing, the Board's proceedings are *de novo*. Materials submitted to, or made a part of the record at the PTABOA hearing, department hearing or other proceeding from which the appeal arises will not be made part of the record of the Board's proceeding unless submitted to the Board. 52 IAC 2-7-1(g). Further, that specific instruction was included in an attachment to the hearing notice. Ms. Henkel objected to any exhibit submitted by the Petitioners because the Petitioners failed to provide copies of their evidence at least five business days before the hearing. However, because the Petitioners did not offer any exhibits, the Respondent's objection is moot.

12. The Petitioners argued that the sales included in Respondent Exhibit D were not comparable to the subject property. To the extent that the Petitioners intended this argument to be an objection to the admissibility of the exhibit, this objection goes to the weight of the evidence rather than its admissibility. Thus, the objection is overruled, and the exhibit is admitted.

13. Finally, Ms. Henkel raised a hearsay objection to the Petitioners' testimony regarding what was stated by the Elkhart County Building Department. "Hearsay" is a statement, other than one made while testifying, that is offered to prove the truth of the matter asserted. Such a statement can be either oral or written. (Ind. R. Evid. 801(c)). The Board's procedural rules specifically address hearsay evidence:

> Hearsay evidence, as defined by the Indiana Rules of Evidence (Rule 801), may be admitted. If not objected to, the hearsay evidence may form the basis for a determination. However, if the evidence is properly objected to and does not fall within a recognized exception to the hearsay rule, the resulting determination may not be based solely upon the hearsay evidence.

52 IAC 3-1-5(b). The word "may" is discretionary, not mandatory. In other words, the Board can permit hearsay evidence to be entered in the record, but it is not required to allow it.

14. Because the Petitioners did not offer any documentation regarding the Elkhart County Building Department's purported proclamation, and no one from the Building Department was present to testify, the Petitioners' testimony in this regard is hearsay. Here, while it does nothing to either prove or disprove the subject property's market value-in-use, the Petitioners' testimony is admitted. However because the Respondent properly objected to the testimony, it cannot serve as the sole basis for the Board's decision.

Contentions

15. Summary of the Petitioners' case:

    a) The subject property is assessed too high. Further, the property's classification was improperly changed from agricultural to excess residential. The subject property is a 7.68-acre "landlocked" parcel, located behind the Petitioners' home. The property is separate from the Petitioners' home site, but the property can only be accessed through their home site. The Elkhart County Building Department informed the Petitioners they could not build on the property. *R. Gentle testimony; B. Gentle testimony.*

    b) The Petitioners purchased the property for $18,800, on January 5, 2007. They purchased the property as "wildlife land where the grandkids could go out and have fun and to help out the neighbor who was financially in trouble with his land." The

land was never officially designated as wildlife habitat or woodland because, according to the Department of Natural Resources (DNR), those designations require a total of at least ten acres. *R. Gentle testimony.*

c) The subject property is all marsh, wetlands, and swamp land. The Petitioners cut timber on the property and sell firewood. Further, they intend to make the property a "wildlife habitat." Thus, the property should not be classified as excess residential. *R. Gentle argument.*

d) On August 28, 2012, the neighboring property was sold at a Sheriff's sale, for $60,023. Due to a mistake, the Petitioners' 7.68-acre property was initially included as part of that sale. The mistake was corrected, but that sale is still listed on the subject's property record card. The 2012 assessment should not be based on that erroneous recording. *R. Gentle argument (referencing Resp't Ex. H).*

16. Summary of the Respondent's case:

a) The subject property is correctly assessed. The Respondent's decision to change the property's classification from agricultural woodland to excess residential was triggered by a memorandum from the DLGF, dated February 12, 2008. This memorandum addressed the proper classification and valuation of agricultural land. *Henkel argument; Fisher testimony; Resp't Ex. A, B.*

b) Prior to the 2012 reassessment, the subject property was incorrectly classified as agricultural woodland with a negative 80% reduction of the agricultural base rate. The Respondent delayed classification changes until the 2012 reassessment so that all misclassified land could be changed at once. Upon inspection of the property, the Respondent determined that the property was misclassified as agricultural, and should be classified as excess residential land. *Fisher testimony; Resp't Ex. A, B, C, H.*

c) The subject property is not being farmed. Although there is some evidence of a wooded area, it is no different than a recreational property. The use is more residential in nature. The property has not been dedicated in any formal sense as woodlands. The evidence tends to indicate the property has incremental value to the Petitioners' main residential property. *Henkel argument; Resp't Ex. D.*

d) The Respondent presented a sales comparison analysis for the subject property. The properties in the analysis were marketed as residential, even though some were dedicated to agricultural use. The sales occurred between 2010 and 2012. The sale prices ranged from $3,750 per acre to $38,438 per acre. Three of these sales were most relevant to the overall valuation. The property located at 30371 County Road 6 is the most reliable comparable, priced at $7,400 per acre. Utilizing this sale, the Respondent determined that the market value of the subject property is approximately $58,000. *Fisher testimony; Resp't Ex. D.*

e) Finally, the Petitioners' incorrectly argue the subject property is "landlocked." The property is not "landlocked," because they have access to the property through the "residential road property, also owned by the Petitioners." *Fisher argument.*

Burden of Proof

17. 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 recently amended by P.L. 97-2014 creates two exceptions to that rule.

18. 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).

19. Second, Ind. Code section 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 is effective March 25, 2014, and has application to all appeals pending before the Board.

20. At the hearing, the ALJ preliminarily determined the burden of proof rested with the Petitioners. Upon further review, however, the Board now determines that the burden of proof rests with the Respondent. There is no dispute that the assessment increased more than 5% from 2011 to 2012. Indeed, the 2011 assessment was $2,400, and the 2012 assessment is $23,400.

21. The Respondent argued that the use of the subject property was new. And that according to the DLGF, she was directed to change the classification from agricultural and woodland to residential excess acreage, thereby exempting this matter from the new burden statute. True, Ind. Code section 6-1.1-15-17.2(c)(3) specifically excludes the consideration of the burden statute if the assessment is based on a use that was not considered in the assessment for the prior tax year. Here, while the Respondent changed the classification of the property, the use of the property remained the same. The Petitioners used the property in 2012 just as they had used it in 2011. The Respondent

noted no change to the property.[1] Therefore, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 apply and the burden rests with the Respondent.

Analysis

22. The Respondent failed to make a prima facie case that the 2012 assessment was correct.

a) Real property is assessed based on its "true tax value," which means "the 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." 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. *Id*. Assessing officials primarily use the cost approach. The cost approach estimates the value of the land as if vacant and then adds the depreciated cost new of the improvements to arrive at a total estimate of value. *Id*. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut an assessed 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 appealed property's market value-in-use 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); *see also Long v. Wayne Twp. Ass'r,* 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For 2012 assessments, the assessment and valuation date were March 1, 2012. *See* Ind. Code § 6-1.1-4-4.5(f).

c) Here the Respondent has the burden of proof and it is important to understand exactly what that burden is. "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 the Indiana tax court." Ind. Code § 6-1.1-15-17.2(b) (emphasis added). In other words, the Respondent must prove that its $23,400 assessment is correct. Absent from the statute is any requirement that the Respondent prove that the *land classification*, or any of the other nuts and bolts methodology used to compute the assessment, are correct. The Respondent's burden here is to prove that the *value* she assigned to the subject property is correct. Just as it is not enough for a Petitioner to simply challenge the methodology used to compute the assessment, it is not enough for a Respondent to rely on methodology to

[1] As part of her argument, the Respondent pointed to, *Harry L. Davis, III v. Jasper Co. Ass'r*, Ind. Bd. of Tax Rev. pet. no. 37-031-12-1-1-00001 (January 10, 2014). In that case, the Respondent discovered a cell tower on the property that had not been previously considered, added a value for that cell tower, and therefore was not assessing the *same property* in the year of appeal as in the previous year. Again, in the current appeal, the Respondent noted *nothing that had changed*, and nothing that had not been previously considered for the previous year's assessment. Thus, in this appeal, the Respondent was assessing the *same property* in 2012 as she was in 2011.

defend an assessment. *See Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674 (Ind. Tax Ct. 2006). Instead, the Respondent was required to rely on market-based evidence to prove that the assessed value reflects the property's market value-in-use, which she failed to do.

d) The Respondent, did attempt to prove the market value-in-use by offering a listing of 19 land sales that occurred in Elkhart County from 2010 through 2012. The Respondent proceeded to select the three most comparable sales, and determined value for the subject property at $58,000, or $7,400 per acre.

e) For sales data to be probative, however, the sold properties must be sufficiently comparable to the property under appeal. Conclusory statements that a property is "similar" or "comparable" to another property do not show comparability. *See Long*, 821 N.E.2d 466, 470. Instead, one must identify the characteristics of the property under appeal and explain both how those characteristics compare to the characteristics of the sold properties and how any relevant differences affect the properties' relative market values-in-use. *See id*. at 471. Here, the Respondent failed to provide any qualitative or quantitative analysis of any differences that existed between the subject property and her purportedly comparable properties. Her sale comparison lacked the type of analysis contemplated by *Long*. Therefore, the sales data presented lacks probative value.

f) Further, the Respondent appears to have ignored a factor that potentially has an effect on the market value-in-use of the subject property. If the Petitioners were to sell the subject property separate from their main residential property, the new owner would have no access to it other than through the Petitioners' main parcel. The Respondent seems to have failed to take this into consideration when she determined the value of the subject property.

g) The Respondent provided conclusory statements that the subject property should no longer be classified as agricultural woodland. Indiana Code § 6-1.1-4-13 states 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) (emphasis added). The word "devote" means "to attach the attention or center the activities of (oneself) wholly or chiefly on a specified object, field, or objective." WEBSTER'S THIRD NEW INTERNATIONAL UNABRIDGED DICTIONARY at 620. Because the burden was on the Respondent, it was her duty to provide the Board with probative evidence supporting her notion that the subject property was incorrectly classified. Statements such as "the property is more residential in nature" do not constitute probative evidence. The Respondent does point to the fact that the subject property has not been "dedicated in any formal sense as woodlands." While this may be true, the Petitioners did testify that they "cut timber on the property and sell firewood." Further, a wooded parcel of land less than 10 acres may be assessed using the agricultural soil productivity method *upon evidence of timber production or other agricultural use*. 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by

reference at 50 IAC 2.4-1-2) (emphasis added). Again, because the onus was on the Respondent to prove that the property was incorrectly classified, she failed to do so.

h) For these reasons, the Respondent did not offer enough probative evidence to indicate the 2012 assessment was correct. Thus, she failed to make a prima facie case that the 2012 assessment is correct. Therefore, the Petitioners are entitled to have their assessment returned to its 2011 level of $2,400. This ends the Boards inquiry because the Petitioners only requested the assessment be reduced to its 2011 level.

Conclusion

23. The Respondent had the burden of proving the 2012 assessment was correct. She failed to make a prima facie case, thus the assessment must be reduced to the previous year's amount.

Final Determination

In accordance with these findings and conclusions, the 2012 assessment must be changed to $2,400.

ISSUED: March 26, 2015

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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>.