

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

**Petition:** 50-015-18-1-5-01184-18  
**Petitioner:** Allen Gilmer  
**Respondent:** Marshall County Assessor  
**Parcel:** 50-23-05-000-004.000-015  
**Assessment Year:** 2018

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 his 2018 assessment appeal with the Marshall County Assessor on May 4, 2018.
2. On September 26, 2018, the Marshall 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 February 1, 2019.
5. On March 26, 2019, Administrative Law Judge (ALJ) Dalene McMillen held the Board's administrative hearing. She did not inspect the property.
6. Allen Gilmer appeared *pro se*. County Assessor Debra A. Dunning appeared for the Respondent. Both were sworn and testified.

**Facts**

7. The property under appeal is 32.01 acres of farmland located at 15549 Hickory Lane in Argos.
8. The PTABOA determined a total land assessment of \$46,000.
9. The Petitioner requested a total land assessment of \$33,768.

**Record**

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

a) A digital recording of the hearing.

b) Exhibits:

Petitioner Exhibit 1: Aerial map of the subject property highlighted in yellow indicating various soil types,  
Petitioner Exhibit 2: “Encirca yield by soil type map,”  
Petitioner Exhibit 3: 2012 photograph of the subject property,  
Petitioner Exhibit 4: 2018 photograph of the subject property.

Respondent Exhibit A: Taxpayer’s Notice to Initiate an Appeal (Form 130),  
Respondent Exhibit B: Joint Report by Taxpayer / Assessor to the County Board of Appeals of a Preliminary Informal Meeting (Form 134),  
Respondent Exhibit C: Marshall County Soil Productivity Report,  
Respondent Exhibit D: 2018 corrected subject property record card,  
Respondent Exhibit E: Aerial map of subject property dated April 8, 2017,  
Respondent Exhibit F: Soil typing map of subject property,  
Respondent Exhibit G: Notification of Final Assessment Determination (Form 115),  
Respondent Exhibit H: Form 131,  
Respondent Exhibit I: 2017 subject property record card,  
Respondent Exhibit J: 2018 original subject property record card,  
Respondent Exhibit K: 2018 corrected subject property record card,  
Respondent Exhibit L: Department of Local Government Finance (DLGF) memorandum “Certification of Agricultural Land Base Rate Value for Assessment Year 2018,”  
Respondent Exhibit M: Real Property Assessment Guidelines pages 88 and 89,  
Respondent Exhibit N: 2013 aerial map of subject property,  
Respondent Exhibit O: 2015 aerial map of subject property.

Rebuttal Exhibits:

Respondent Rebuttal Exhibit A: Soil type map of subject property,  
Respondent Rebuttal Exhibit B: DLGF memorandum “2013 Soil Productivity Factors” and a list of Marshall County’s soils and soil productivity factors for 2014 pay 2015.

c) 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) these findings and conclusions.

**Contentions**

11. Summary of the Petitioner’s case:

- a) The subject property is incorrectly assessed. The parcel under appeal consists of approximately 32 acres and has been farmed by the Petitioner’s family for 100 years. In 1980 a soil survey map was issued to Marshall County. Over a period of several years Purdue University pulled soil samples of several farms in the county. According to this report, the subject property had approximately 15% or 4.8 acres of Chelsey Sand soil. Chelsey Sand soil is the poorest soil in Marshall County. *Gilmer testimony; Pet’r Ex. 1.*
- b) Mr. Gilmer submitted a 2017 harvest map for his entire 96.22 acre farm generated from a computer on his combine. This map included the 32 acres under appeal and indicates the soil type, yield from each soil type, and the number of acres of each soil type. He underlined the soil types of the 32 acres in red. This harvest map confirms the soil types determined by Purdue University in 1980. The map also shows a “black section” in the northeast corner indicating an area without crops planted or harvested. *Gilmer testimony; Pet’r Ex. 2.*
- c) Mr. Gilmer submitted two photographs of the subject property in an effort to prove that between “8 and 10 acres” are not capable of producing a crop. The photographs show these acres are a “drain wetland that is just open muck.” According to Mr. Gilmer, the highway department and some neighbors are “directing water and drainage onto the property.” The last time a crop was harvested on this section of the property was in 2012. In 2013 and 2014 Mr. Gilmer attempted to plant a crop but “sank the combine.” *Gilmer testimony; Pet’r Ex. 3, 4.*
- d) The property record card indicates a 50% reduction and 30% reduction due to occasional flooding on several acres.<sup>1</sup> According to Mr. Gilmer, that would “infer” that 50% to 70% of the time this land would be capable of producing a crop. However, this portion of the property has not produced a crop since 2012, therefore it should have “no value.” *Gilmer testimony.*
- e) Mr. Gilmer argued the soil typing map presented by the Respondent is imperfect. Mr. Gilmer explained that the “flooded area acreage” indicated on this map can vary from year to year because “the water migrates to the north and west and sometimes this can be farmed and sometimes it can’t.” *Gilmer argument (referencing Resp’t Ex. F).*

12. Summary of the Respondent’s case:

- a) The property is correctly assessed. The Assessor issued a 2018 Notice of Assessment (Form 11) valuing the property at \$47,800. After receiving the Form 11, the Petitioner informed the Assessor of the severity of the flooding on a portion of the 32.01 acres. Accordingly, the Assessor issued a Form 134 proposing to increase the amount of acreage attributed to occasional and frequent flooding that the Petitioner rejected. The PTABOA adopted the Assessor’s proposed changes as set forth on the

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<sup>1</sup> The property record card shows 5.62 acres classified as land type 41 (30% reduction for flooding) and 4.11 acres classified as land type 42 (50% reduction for flooding). *See Resp’t Ex. D.*

- Form 134 and reduced the total assessment to \$46,000. *Dunning testimony; Resp't Ex. B, G.*
- b) The Assessor argued that the Petitioner has failed to give the exact acreage that floods and how often this area floods. For example the Form 130 claims 7 to 8 acres are flooded 9 to 10 months of the year and the Petitioner argues the assessment should be \$38,400. On the Form 131 the Petitioner claims that 10.3 acres has standing water for up to 6 months out of the year and the assessment should be \$33,768. *Dunning testimony; Resp't Ex. A, H.*
- c) The Assessor testified that she correctly assessed the property under the 2011 Real Property Assessment Guidelines and DLGF memorandum directives. She further explained how she used the county's GIS system, aerial maps, soil map, soil productivity report, DLGF's 2018 certified agricultural land base rate, and DLGF's 2013 soil productivity factor to accurately calculate what land type designation to assign to each portion of the property. *Dunning testimony; Resp't Ex. C, D, E, F, K, L, M, N, O; Resp't Rebuttal Ex. A, B.*
- d) The Assessor testified that soil types and soil productivity factors were last updated in 2013 and several of the new soil types do not have productivity factors. Accordingly, the DLGF instructed Marshall County to use the 2007 soil productivity factors. As a result, 2007 productivity factors benefit the taxpayers because the factors are lower. *Dunning testimony (citing Ind. Code § 6-1.1-4-13); Resp't Rebuttal Ex. B.*
- e) Based on the county's GIS system the flooding land acreage and soil type was calculated as 5.62 acres of land type 41 and soil type HTBAN. This is land that floods occasionally and receives a negative 30% influence factor. Additionally 4.06 acres of soil type HTBAN and .05 acres of soil type REYA were classified as land type 42. This is land that floods severely and receives a negative 50% influence factor. The county has allotted a total of 9.73 acres of the 32.01 acres for flooding. *Dunning testimony; Resp't Ex. K, M; Resp't Rebuttal Ex. A, B.*
- f) The Assessor pointed out, and the Petitioner confirmed, the harvest map indicates that 91.42 acres out of 96.22 acres of the total farm was harvested.<sup>2</sup> According to the Assessor, this would indicate that "only 4.8 acres" of the Petitioner's farm was not being harvested. *Dunning argument (referencing Pet'r Ex. 2); Gilmer testimony; Resp't Ex. D.*

### **Burden of Proof**

13. 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 exception to that rule.

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<sup>2</sup> The total 96.22 acres includes the 32.01 acres under appeal.

14. 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 appeal taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).
15. 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.
16. Here, according to the subject property record card, the total assessment increased from \$43,900 in 2017 to \$46,000 in 2018, an increase of less than 5%. 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 provision of Ind. Code § 6-1.1-15-17.2 do not apply and the burden remains with the Petitioner.

### **Analysis**

17. The Petitioner failed to make 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 (In. Tax Ct. 2005). For the 2018 assessment, the valuation date was January 1, 2018. *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 Petitioner argues that “8 to 10 acres” is a “drain wetland that is just open muck.” Accordingly, this portion of the property is not capable of producing a crop and therefore has “no value.” The Petitioner also claims the acreage varies from year to year, due to the water migration and how often it floods. Photographs were submitted that indicate significant water standing on a portion of the property.
- e) Although we are sympathetic to the Petitioner’s position, he presented no avenue for the Board to grant relief. It is the legislature’s prerogative to decide how real property is assessed, and the Board is charged only with enforcing the law. As the legislature has laid out specific guidelines for agricultural land, we are bound to enforce them.
- f) The 2011 Real Property Assessment Guidelines define land that floods into three tillable land subtypes.<sup>3</sup> Type 41 “[L]and flooded occasionally-damaging floods occur two to four times in a ten-year period.” A 30% influence factor deduction applies to this land use type. 2011 GUIDELINES, CH. 2 at 89. Type 42 “[L]and flooded severely-damaging floods occur five times or more in a ten-year period.” A 50% influence factor deduction applies to this land use type. *Id.* Type 43 “[F]armed wetlands-land that the U.S. Department of Agriculture has designated as farmed wetlands.” This land type applies only to areas of contiguous land measuring 2.5 acres or more. This land use type must be verified through records obtained from the U.S. Department of Agriculture, Farm Service Agency. A 50% influence factor deduction applies to this land use type. *Id.*

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<sup>3</sup> The Guidelines also define Type 5 “[N]ontillable land is land covered with brush or scattered trees with less than 50% canopy cover, or permanent pasture land with natural impediments that deter the use of the land for crop production.” 2011 GUIDELINES, CH. 2 at 89. The Board cannot find any reason to re-classify the flooded portion in question as nontillable because the Petitioner testified he harvested a crop in 2012. Additionally, nothing on the record indicates this portion of the property is incapable of producing a crop in the future.

- g) The Petitioner also introduced an Encirca “Yield by Soil Type Map” that provided soil types, yield per soil type, and number of acres per soil type. There is some dispute about the accuracy of those figures. In addition it was based on the Petitioner’s total 96.22 acre farm. Regardless of their accuracy, the Board finds those figures are unreliable because the Petitioner failed to show how the Encirca map determines the harvested area or outline any area that is not harvested due to flooding and how this related to the DLGF’s definition of tillable land subtypes that flood.
- h) There is no dispute that a portion of the subject property floods. Accordingly, the Assessor applied influence factors to a portion of the property to account for the flooding. The dispute here is how many acres flood and how often those acres are flooded. It was the Petitioner’s burden to prove to the Board the property was assessed incorrectly. The Petitioner argued that “8 to 10 acres” flood and presented two photographs showing the extent of the flooding. Those photographs were from 2012 and 2018. These photographs fail to show how many acres are under water and we are left to guess if the property was flooded at any other time. Additionally, the Petitioner testified that the “flooded area acreage” map introduced by the Respondent can vary from year to year because “the water migrates to the north and west and sometimes this can be farmed and sometimes it can’t.” Based on the testimony and evidence, the Petitioner failed to prove the assessor incorrectly assessed the property.
- i) The Petitioner also argued that 4.8 acres should be classified as Chelsey Sand soil. The soil map provided by the Petitioner is inconclusive on how much acreage and what types of soil are in the area that floods. In fact the soil types listed on the 1980 soil map provided by the Petitioner are not listed on the county’s 2013 list of current soil types in Marshall County provided by the DLGF and Purdue University College of Agriculture. The county’s 2013 soil map also does not list any soil type by the name of Chelsey Sand. An examination of the Respondent’s aerial map, soil map and 2018 property record card appear to show the flooded area and soil types are correctly assessed. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Ass’r*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer’s duty to walk the Indiana Board . . . through every element of the analysis”). The Petitioner failed to show how much acreage is in the flood land subtype category or how that land qualifies to be assessed at “no value.”
- j) For the reasons stated above, the Petitioner failed to make a prima facie case that the 2018 assessment is incorrect. Where the Petitioner has not supported his claim with probative evidence, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

### Conclusion

18. The Petitioner failed to make a prima facie case reducing the 2018 assessment. The Board finds for the Respondent.

## Final Determination

In accordance with the above findings and conclusions, the 2018 assessment is to remain the same.

ISSUED: June 24, 2019

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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 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>>.