

REPRESENTATIVE FOR PETITIONER: Milo Smith, Certified Tax Representative

REPRESENTATIVE FOR RESPONDENT: Marilyn Meighen, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

INDIANA LIMESTONE CO. INC,)	Petition:	<i>See attached,</i>
))		
Petitioner,)	Parcel:	<i>See attached,</i>
))		
v.)	County:	Monroe
))		
MONROE COUNTY ASSESSOR,)	Township:	Perry
))		
Respondent.)	Assessment Years:	2011-2014

Appeal from the Final Determinations of the
Monroe County Property Tax Assessment Board of Appeals

October 19, 2015

FINAL DETERMINATION

The Indiana Board of Tax Review (Board), 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. Indiana Limestone Co. Inc. appealed the assessments for various parcels, most of which were (1) contiguous, (2) zoned for mineral extraction, and (3) bought for use as part of a limestone quarry. Given those facts, and the lack of any evidence to show that Indiana Limestone devoted any part of the contiguous parcels to agriculture, the Assessor properly reclassified those parcels as non-agricultural land. While the Assessor offered an appraisal valuing the property for substantially more than its assessment, Indiana

Limestone pointed to fundamental problems that raised significant doubt about the appraiser's competence¹ to appraise quarries and the reliability of his valuation opinion. We therefore order no change to the assessments for the contiguous parcels, although we find that four outlying parcels must be assessed as agricultural land.

PROCEDURAL HISTORY

2. Indiana Limestone timely filed Form 130 petitions with the Monroe County Property Tax Assessment Board of Appeals ("PTABOA") contesting the various parcels' assessments for 2011-2014.
3. The PTABOA issued determinations for each petition. When viewed in aggregate, those determinations were for the following amounts:

Year	Land	Improvements	Total
2011	\$1,509,200	\$75,900	\$1,585,100
2012	\$1,869,800	\$64,100	\$1,933,900
2013	\$1,957,000	\$60,300	\$2,017,300
2014	\$1,500,500	\$53,300	\$1,553,800

4. Believing those determinations to be too high, Indiana Limestone filed Form 131 petitions with the Board. On June 23, 2015, our designated administrative law judge, Andrew Howell ("ALJ"), held a hearing. Neither he nor the Board inspected the property.
5. The following people testified under oath: Milo Smith, Indiana Limestone's certified tax representative; Judith Sharp, Monroe County Assessor; and Wayne Johnson, an appraiser engaged by the Assessor.

¹ As discussed below, we do not use the term "competence" in the sense of the appraiser's skill or general abilities. We instead use the term in the sense described in the Competency Rule from the Uniform Standards of Professional Appraisal Practice, which require an appraiser either to have the knowledge and experience to complete a particular assignment competently or to acquire competency. See UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE U-11(2014-15).

6. Indiana Limestone submitted the following exhibits, which with the exception of Petitioner's Exhibits 2 and 4, were admitted without objection:

Petitioner's Ex. 1: Ind. Code § 6-1.1-4-4.4,
Petitioner's Ex. 2: Timber Sales Contract and spreadsheet with timber sales from Monroe County,
Petitioner's Ex. 3: DLGF memorandum dated February 4, 2009, "Annual Adjustment ("Trending") Guidance,
Petitioner's Ex. 4: Title 50, Article 27 of the Indiana Administrative Code,
Petitioner's Ex. 5: Senate Enrolled Act 436 from 2015 legislative session,
Petitioner's Ex. 6: Order from U.S. Bankruptcy Court In re: VICTOR OOLITIC STONE COMPANY, d/b/a/ INDIANA LIMESTONE CO., *et al.*, Debtors,
Petitioner's Ex. 7: Asset purchase agreement between Victor Oolitic Stone Company, d/b/a Indiana Limestone Co., Inc. and Indiana Commercial Finance, LLC,
Petitioner's Ex. 8: Page 22 of Respondent's Ex. W with notations from Milo Smith regarding 2011 assessments,
Petitioner's Ex. 9: Page 22 of Respondent's Ex. W with notations from Milo Smith regarding 2012 assessments,
Petitioner's Ex. 10: Page 22 of Respondent's Ex. W with notations from Milo Smith regarding 2013 assessments,
Petitioner's Ex. 11: Page 22 of Respondent's Ex. W with notations from Milo Smith regarding 2014 assessments,

7. The Assessor presented the following exhibits:

Respondent's Ex. A: Aerial photograph of southern Monroe County including subject parcels,
Respondent's Ex. B: Spreadsheet of subject petitions and parcels,
Respondent's Ex. C: Zoning ordinance from Monroe County,
Respondent's Ex. D: Aerial photos, zoning overlay, and property record card for 53-08-32-400-027.000-008 and consolidated parcels,
Respondent's Ex. E: Aerial photos, zoning overlay, and property record card for 53-08-32-300-006.000-008 and consolidated parcels,
Respondent's Ex. F: Aerial photos, zoning overlay, and property record card for 53-01-41-248-000.000-008 and consolidated parcels,
Respondent's Ex. G: Aerial photos, zoning overlay, and property record card for 53-08-32-300-004.000-008 and consolidated parcels,
Respondent's Ex. H: Aerial photos, zoning overlay, and property record card for 53-08-32-400-007.000-008,
Respondent's Ex. I: Aerial photos, zoning overlay, and property record card for 53-01-41-732-000.000-008 and consolidated parcels,
Respondent's Ex. J: Aerial photos, zoning overlay, and property record card for 53-08-33-300-001.000.008 and consolidated parcels,

- Respondent's Ex. K: Aerial photos, zoning overlay, and property record card for 53-11-08-200-010.000-006,
- Respondent's Ex. L: Aerial photos, zoning overlay, and property record card for 53-11-08-200-004.000-006,
- Respondent's Ex. M: Aerial photos, zoning overlay, and property record card for 53-11-08-300-032.000-008,
- Respondent's Ex. N: Aerial photos, zoning overlay, and property record card for 53-08-32-300-008.000-008 and consolidated parcels,
- Respondent's Ex. O: Aerial photos, zoning overlay, and property record card for 53-08-32-300-009.000-008 and consolidated parcels,
- Respondent's Ex. P: Aerial photos, zoning overlay, and property record card for 53-08-32-300-009.000-008,
- Respondent's Ex. Q: Aerial photos, zoning overlay, and property record card for 53-01-41-725-002.000-008,
- Respondent's Ex. R: Aerial photos, zoning overlay, and property record card for 53-08-31-400-001.000-008,
- Respondent's Ex. S: Aerial photos, zoning overlay, and property record card for 53-11-04-200-004.000-006 and consolidated parcels,
- Respondent's Ex. T: Aerial photos, zoning overlay, and property record card for 53-08-31-400-004.000-008,
- Respondent's Ex. U: Aerial photos, zoning overlay, and property record card for 53-08-32-300-005.000-008,
- Respondent's Ex. V: Aerial photos, zoning overlay, and property record card for 53-08-16-200-09.000-008,
- Respondent's Ex. W: Appraisal Report of subject property prepared by Wayne Johnson,
- Respondent's Ex. X: DLGF presentation on "Special Use Properties."

8. The record also includes the following: (1) all pleadings and documents filed in the appeals, (2) all orders and notices issued by the Board or our ALJ; and (3) the digital recording of the hearing.

OBJECTIONS

9. The Assessor objected to Petitioner's Exhibit 2—a Timber Sale Contract between Indiana Limestone and Knopp's Logging, LLC referencing timber sales from Indiana Limestone's land in Lawrence County, and a spreadsheet referencing timber sales from Monroe County. She argued that the entire exhibit was hearsay and that any reference to sales from Indiana Limestone's property in Lawrence County was irrelevant. Indiana

Limestone's tax representative, Milo Smith, responded that Indiana Limestone used the land in Lawrence County as part of the same property that is the subject of these appeals.

10. We agree that the exhibits are marginally relevant at best. But we will deal with that question as a matter of weight rather than admissibility. As to the Assessor's hearsay objection, Smith apparently prepared the spreadsheet based on information provided to him by someone at Indiana Limestone who did not testify at the hearing. And Indiana Limestone offered the exhibit to prove the truth of the matters asserted in those statements, i.e. that it sold timber in various amounts on several dates. The spreadsheet is therefore hearsay. *See* Ind. Evidence Rule 801(c) (defining hearsay as a statement that "(1) is not made by the declarant while testifying at the trial or hearing; and (2) is offered in evidence to prove the truth of the matter asserted."). While there are many exceptions to the hearsay rule, Indiana Limestone did not lay a foundation for applying any of them.
11. The Timber Sale Contract presents a slightly different question. A written contract is not hearsay when it is offered to prove that the parties entered into a binding agreement rather than to prove the truth of the matters asserted therein. *See Consolidated Rail Corp. v. Thomas*, 463 N.E.2d 315, 320 (Ind. Ct. App. 1984) ("This exclusion of 'verbal acts' from the hearsay rule obviously extends to a written contract offered in court not for the truth of any facts stated in it but to prove the existence of a contractual right or duty."). Of course, the existence of that obligation must be relevant to an issue in the proceedings. As we explain in our discussion of the merits, the fact that Indiana Limestone may have obligated itself to sell trees from land not under appeal has little or no relevance to any issue in this case.
12. In any case, our procedural rules allow us to admit hearsay, with one caveat: if the opposing party properly objects to the hearsay and it does not fall within a recognized exception to the hearsay rule, we cannot base our determination solely on that evidence. *See* 52 IAC 2-7-3. We therefore admit the Petitioner's Exhibit 2 over the Assessor's objection.

13. The Assessor also objected to Petitioner’s Exhibit. 4—a copy of an administrative rule from the Department of Local Government Finance. Although Indiana Limestone offered the document as an exhibit, it is not evidentiary. Indiana Limestone could just as easily have cited to the rule; providing us with a copy was merely a courtesy. We therefore overrule the objection.

FINDINGS OF FACT

14. The property under appeal is located in southern Monroe County. It covers a different amount of land for each year. The number of parcels also differs between years. The differences in parcels and total area apparently stem both from intervening sales and purchases and from previously separate tax parcels having been combined. The following table lists the total acreage and number of parcels for each year:

Year	Acres	Parcels
2011	857.298	32
2012	875.824	11
2013	878.974	13
2014	737.744	9

The acreage totals are from Wayne Johnson’s appraisal. Johnson, however, did not include parcel #53-08-33-300-009.000-008, an 18.526-acre parcel Indiana Limestone appealed only for 2011. *See Resp’t Ex. W at 22; Johnson testimony.*

A. The Property

15. The vast majority of the property consists of contiguous tax parcels, although there are four outlying parcels as well. The outlying parcels are largely wooded. The contiguous parcels are a mixture of wooded and cleared land. They include both inactive quarry pits that have filled with water and operating pits out of which limestone is extracted and sold. There are large collections of stone stored on parts of the cleared areas. The cleared areas are interspersed throughout the larger property but are mostly concentrated

toward the western half. There is one 3,520-square-foot building. *See Resp't Exs. A, D-V; W at 18-22.*

16. With only five exceptions, the parcels are located in areas designated as Mineral Extraction Districts under Monroe County's zoning ordinance. The first four exceptions involve the outlying parcels. A 20-acre parcel (#53-11-08-200-010.000-006) and a 39.99-acre parcel (#53-11-08-200-004.000-006) zoned as Agricultural/Rural Reserve. A 9.67-acre parcel (#53-08-34-300-032.000-008) is zoned as Limited Business. And a one-acre parcel (#53-08-16-200-039.000-008) is zoned as industrial. The fifth exception involves a small portion of one of the contiguous parcels (#53-08-33-300-001.000-008), which is zoned as Suburban Residential. *See Sharp testimony; Resp't Exs. D-V.*

17. The zoning ordinance defines a Mineral Extraction District as follows:

The character of the Mineral Extraction (ME) district is defined as that which is primarily intended for limestone extraction and stone processing activities and, where known limestone reserves exist but have not been tapped, limited agricultural uses. Its purposes are: to protect areas of known limestone reserves from encroachment by incompatible residential and business development; to discourage residential, commercial and industrial uses; to protect environmentally sensitive areas, such as floodplain, karst, and steep slopes; and to maintain compatibility with the character of the surrounding neighborhood to the greatest extent possible. The list of possible uses is severely limited due to the intensive nature of the extractive operations.

Resp't Ex. W at 4. Three defined agricultural uses are permitted in a Mineral Extraction District, including "Agricultural Uses, Non-Animal Related," which the ordinance defines as encompassing "Agricultural and farming activities involving the production and preparation of plants for human use, including ... forestry...." *Id. at 8, 27.* The ordinance requires approval of a site plan for some of those uses, but that condition applies regardless of the zoning district. There is no competent evidence to show that Indiana Limestone or the parcels' previous owners used the property for agriculture.

18. In the years leading up to 2011, the Assessor classified the land under appeal and other quarry land throughout the county as agricultural. She assessed the land using

agricultural base rates and influence factors. For example, she classified areas with more than 50% canopy cover as agricultural woodland and applied a -80% influence factor. The Assessor, however, believed those assessments were unfair and decided to re-examine quarry land throughout the county.

19. Because of improvements in aerial mapping, she developed a better feel for how quarries were divided between active pits and land held in reserve. She worked with quarry owners to come up with what she described as fair and equitable assessments. In 2011, she began by re-classifying quarry land as industrial. She left the base rate at \$1,500, which was the rate for agricultural land at the time. But she removed what she referred to as the “other stuff,” such as the -80% influence factors for wooded areas. By doing so, she tried to avoid “sticker shock” to the quarry owners. In later years, she increased the base rates for the areas she classified as primary industrial land. *Sharp testimony; see also Resp’t Exs. D-V.*

B. Wayne Johnson’s Appraisal

20. The Assessor engaged Wayne Johnson to appraise the property under appeal. Johnson is an experienced appraiser from Bloomington. He is an Appraisal Institute Member (“MAI”) and has various other professional designations. He certified that he prepared his appraisal in conformity with the Uniform Standards of Professional Appraisal Practice (“USPAP”). He also represented that he met USPAP’s competency requirements, pointing to his familiarity with the local market. *Johnson testimony; Resp’t Ex. W at cover letter, 12, 62, 66.*
21. Johnson considered the cost, sales-comparison, and income approaches. He rejected the sales-comparison approach for the property as improved because the main improvement—a 3,500-square-foot building that he ultimately estimated as being worth \$20,000—contributed little to the property’s overall value. He similarly rejected the income approach because the primary value was in the land. Also, there was no income stream from the real estate itself, and he believed that using income generated through the

quarry's operation would tend to reflect the value of the business. He therefore based his opinion solely on the cost approach. *Resp't Ex. W at 59-60.*

22. To determine a site value, Johnson analyzed four sales involving properties that were actively used as quarries:
- Sale #1. The property included 518.5 acres and various buildings in Harrison County. It was used to extract and sell crushed stone for roads. It sold for \$5,500,000 on May 9, 2014.
 - Sale #2. The property included 876.6 acres and a few small, old buildings. It was also used to extract and sell crushed stone for roads. It sold for \$9,477,500 on May 19, 2014.
 - Sale #3. The property included 2,333.15 acres and various improvements in Monroe and Lawrence Counties. It was used to extract and sell limestone. Many of the parcels included mineral extraction equipment and offices while many others were undeveloped woodlands. Johnson described the sale as a “compulsory sale due to bankruptcy” from Victor Oolitic Stone Company to Victor Acquisition Company. At different places in his report, Johnson identified the sale date alternately as May 2, 2014, and as November 2009. It appears the reference to 2014 was an error. In any case, the property sold for \$74,000,000.
 - Sale #4. Johnson reported two different amounts of land involved in this sale: 3,250.22 acres, and 2,249.05 acres. According to Johnson, the sale included the property at issue in these appeals. The property was used to extract and sell limestone and included various improvements. The sale, which Johnson described as a compulsory transaction due to bankruptcy, was from Victor Acquisition Corp. to Indiana Limestone Acquisition, LLC for \$26,000,000. He reported the sale dates as ranging from May 2014 to January 2015.

Johnson testimony: Resp't Ex. W at 38-55.

23. Johnson subtracted the improvements' assessments to extract the portion of each sale price attributable to land. He also adjusted the prices for time-related differences in market conditions, using an annual rate he identified alternately as 2% and 3%. He did not make any adjustments to account for any of the sales including non-realty interests, such as personal property or intangibles. When asked if he had tried to verify whether any of his sales included accounts receivable, personal property, or intangibles, Johnson responded that he did not have any information other than what was on the sales disclosure statements, that as an appraiser, "you have to work with what you have," and that "those intangibles, I had no values for." When asked specifically whether Sale #4 included any equipment, he again responded that the sales disclosure form did not indicate equipment was included. *Johnson testimony; Resp't Ex. W at 38-61.*
24. Regardless of what the disclosure forms said, Indiana Limestone claimed that Sale #4 included various non-realty interests. It offered a copy of an order from the United States Bankruptcy Court for the District of Delaware approving the sale of the debtor's assets in bankruptcy proceedings for Victor Oolitic Stone Company (d/b/a Indiana Limestone Company, Inc.).² The order incorporated an Asset Purchase Agreement between the debtor and Indiana Commercial Finance, LLC. Under that agreement, the debtor sold real property and various other assets, including designated personal property, accounts receivable, and goodwill, to Indiana Commercial (or its affiliated assignees, one of which is identified as Indiana Limestone Acquisition, LLC) for \$26,000,000.
25. The copy of the agreement offered into evidence did not include the schedules showing the number of acres involved. And the name of the seller/debtor does not match Johnson's description of the seller in his Sale #4. Despite those minor differences, Smith testified that the sale governed by the Asset Purchase Agreement and Johnson's Sale #4 were the same transaction, and the Assessor offered nothing to dispute that. We credit Smith's testimony and find that Johnson's Sale #4 included interests in addition to real

² Given the names in the caption of the bankruptcy proceedings and various other references throughout the record, it appears that Indiana Limestone was the debtor.

estate. In fact, the Assessor's own records indicate (1) that the \$26,000,000 transaction in which Indiana Limestone Acquisition bought some of the parcels under appeal included personal property and intangibles, and (2) that the real estate included in the sale could not be separately valued. *Pet'r Exs. 6-7; Resp't Ex. D; Smith Testimony.*

26. Johnson similarly did not adjust the prices from his first two sales to account for the fact that those properties were used to extract and sell crushed stone instead of block limestone. When asked on cross-examination whether a quarry that produces crushed stone would be more valuable or less valuable than a quarry that produces limestone, he responded, "that I don't know." *Johnson testimony.*
27. Johnson arrived at the following adjusted per-acre sale prices as of March 1, 2014: Sale #1, \$10,078.49; Sale #2, \$9,598.01; Sale #3, \$33,823.34; and Sale #4, \$7,462.87. He settled on a correlated value of \$13,000/acre. While Johnson explained that an appraiser may use various statistical methods to correlate values, he described his major consideration as "the merits of each individual sale." Despite the fact that Sales #3 and #4 were compulsory transactions, they included land involved in these appeals. He therefore believed it would be difficult to contend they were not comparable except for the conditions of sale. Although Johnson testified at the hearing that he discounted those sales, when asked how he did so he said only that it was part of his thought process and that he had to keep in mind they were forced sales. He did not purport to account for any of the sales including personal property or intangibles in his correlation. *Resp't Ex. W at 51-54; Johnson testimony.*
28. In his report, Johnson explained that his correlated \$13,000/acre figure included both quarry and "reserve land or wooded ground" and that his comparable sales "had a similar composition of land (both quarry and reserve land)," although he acknowledged that he had not considered the precise mix. *Resp't Ex. W at 55.* He described his correlated value as "essentially a weighted average" and explained, "[i]f allocation of value is required, an additional set of land sales are provided in the addendum to support a wooded land or reserve land value (as part of the whole)." *Id.*

29. Johnson then summarized that second set of sales from south of Bloomington, which he described as having similar zoning (Agricultural/Rural Residential) and similar limestone potential. He described the properties as being much like the subject property’s unused reserve land. Based on the adjusted sale prices, he concluded that the reserve land was worth \$4,500/acre. *Resp’t Ex. W at 55.*
30. At the hearing, Johnson testified that he had provided what a value would be for outlying land “not used for a quarry or not held by a quarry...in the southern part of Monroe County.” He described it as a supplemental value so the Assessor would have support for assessing other land types in the county. At another point, he explained that he did not split the reserve and quarry land for the subject property or for any of his quarry sales, and that his \$4,500/acre estimate was what “that land value would be from an appraisal standpoint not related to the operating quarry, not a part of the main operation.” *Johnson testimony.*
31. Thus, to reach his overall site value for 2014, Johnson multiplied his \$13,000/acre rate by the amount of land included in the property for that year. For the earlier years, he used the amount of land included in each year’s assessment and reduced his per-acre rate to account for 2% annual appreciation. To those land values, he added his estimate of \$20,000 for the building’s depreciated replacement cost and \$30,000 for what he described as “Observed Land Improvements.” He arrived at the following values:

Year	Value
2011	\$10,550,000
2012	\$11,000,000
2013	\$11,250,000
2014	\$9,650,000

As explained above, Johnson’s appraisal did not include parcel #53-08-33-300-009.000-008. He testified that including that parcel, which was only appealed for 2011, would

increase his valuation opinion by an amount corresponding to the product of the parcel's area and his per-acre rate. *Johnson testimony; Resp't Ex. W at 58-61.*

CONCLUSIONS OF LAW AND ANALYSIS

A. Burden of Proof

32. Generally, a taxpayer seeking review of an assessing official's determination has the burden of making a prima facie case both that the current assessment is incorrect and what the correct assessment should be. If the taxpayer makes a prima facie case, the burden shifts to the assessor to offer evidence to impeach or rebut the taxpayer's evidence.
33. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to an assessor in two circumstances. First, where the assessment under appeal represents an increase of more than 5% over the prior year's assessment for the same property, the assessor has the burden of proving that the assessment under appeal is correct. I.C. § 6-1.1-15-17.2(b). Second, the assessor has the burden where a property's gross assessed value was reduced in an appeal, and the assessment for the following year represents an increase over "the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase..." I.C. § 6-1.1-15-17.2(d). Even where one of those circumstances exists, there are situations where the burden-shifting statute does not apply, such as where the assessment under appeal is based on structural improvements, zoning, or uses "that were not considered in the assessment for the prior year." I.C. § 6-1.1-15-17.2(c).
34. Where an assessor has the burden and fails to meet it, the taxpayer may introduce evidence to prove the correct assessment. If neither party shows what the correct assessment should be, it reverts to the previous year's level. I.C. § 6-1.1-15-17.2(b).
35. Indiana Code § 6-1.1-4-4.4 provides another exception to the general rule that a taxpayer has the burden of proof:

- (a) This section applies to an assessment under section 4 or 4.5 of this chapter or another law.
- (b) If the assessor changes the underlying parcel characteristics, including age, grade, or condition, of a property, from the previous year's assessment date, the assessor shall document:
 - (1) each change; and
 - (2) the reason that each change was made.

In any appeal of the assessment, the assessor has the burden of proving that each change was valid.

- 36. Citing to Ind. Code § 6-1.1-4-4.4, Indiana Limestone argues the Assessor has the burden of proving she validly re-classified the land from agricultural to non-agricultural. The Assessor disagrees that changing the parcels' classifications amounted to a change in their underlying characteristics, but indicated she would accept the burden based on the property's overall assessment having increased by more than 5%.
- 37. We agree that the Assessor has the burden to show she properly re-classified the land from agricultural to non-agricultural. If she fails to meet her burden on that issue for any portion of the property, that portion must be valued using the soil-productivity method outlined in the 2011 Real Property Assessment Guidelines.
- 38. The question is more complicated if the Assessor demonstrates she properly re-classified the property. Under the general burden-shifting statute (I.C. § 6-1.1-15-17.2), the Assessor's failure to prove the 2011 assessment was correct would require the assessment to revert to its 2010 level, at least without some probative evidence showing a different value. Unfortunately, the parties did not tell us what the property's overall assessment was for 2010. And we do not have all the information necessary to determine that number even if we were inclined to relieve the parties of their duty to walk us through their evidence. *See Long v. Wayne Twp. Ass'r* 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (quoting *Clark v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1277, 1282 n.4 (Ind. Tax Ct. 2002) (explaining that in making a prima facie case, "it is the taxpayer's duty to walk the [Board and Tax Court] through every element" of its analysis).

39. The problem becomes more acute in later years. The property's overall composition changed from year to year, in one case by as much as 150 acres. Thus, even if we were to find that the Assessor failed to meet her burden, it is not clear we could effectively order the specified relief—reversion to the previous year's level—for the bulk of the property. Indeed, because of the property's changing composition, we cannot readily determine whether either trigger for shifting the burden even applies in later years.
40. As the party seeking to take advantage of the burden-shifting statute, Indiana Limestone needed to walk us through those issues and provide the information necessary to apply the statute.³ Because Indiana Limestone failed to do so, it retains the burden of proving the correct value for any portion of the property the Assessor correctly re-classified as non-agricultural.

B. Valuation Standard and Evidence in Assessment Appeals

41. In Indiana, 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 by a similar user, from the property.” I.C. § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL 2 (incorporated by reference at 50 IAC 2.4-1-2). A party's evidence in an assessment appeal must be consistent with that standard. For example, a market-value-in-use appraisal prepared according to USPAP often will be probative. *See id.*; *see also, Kooshtard Property VI, LLC v. White River Twp. Ass'r*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). A party may also offer actual construction costs, sale or assessment information for the property under appeal or comparable properties, and any other information compiled according to generally accepted appraisal principles. *See Kooshtard Property VI*, 836 N.E.2d at 506; *see also*, I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable assessments to determine an appealed property's market value-in-use).

³ As explained above, the burden-shifting statute does not apply where the assessment under appeal was based on . . . uses that were not considered in the assessment for the prior year.” I.C. § 6-1.1-15-17.2(c). The Assessor does not argue that by re-classifying the land she based her 2011 assessment on uses that were not considered in the prior year's assessment. We therefore do not address that question.

42. Regardless of the valuation method used, a party must explain how its evidence relates to the relevant valuation date. *See O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For each assessment year at issue, the valuation date was March 1 of that year. I.C. § 6-1.1-4-4.5(f); 50 IAC 27-1-2(c).
43. Normally, a party may not make a case for changing an assessment simply by showing how the assessment regulations should have been applied. *See Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (“Strict application of the regulations is not enough to rebut the presumption that the assessment is correct.”). Instead, the party must offer the types of market-based evidence described above. *See id.* That general principle, however, does not apply to land used for agricultural purposes. The Department of Local Government Finance (“DLGF”) has promulgated guidelines for assessing agricultural land using distinctive factors, such as soil productivity, that do not apply to other types of land. I.C. § 6-1.1-4- 13. The DLGF determines a statewide base rate by taking a rolling average of capitalized net income from agricultural land. *See* 2011 REAL PROPERTY ASSESSMENT GUIDELINES, ch. 2 at 77-78; *see also* I.C. § 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. They also classify agricultural land into various types. Depending on the classification, assessors may then apply influence factors in predetermined amounts. 2011 GUIDELINES, ch. 2 at 85-96, 98-100. Thus, for agricultural land, true tax value is the amount determined by applying the Guidelines.

C. Discussion

44. We turn first to the question of whether the Assessor properly changed the property's classification from agricultural to non-agricultural. The Indiana Code and the Guidelines both address the circumstances under which land should be classified as agricultural and assessed using the soil productivity method. During the years at issue in these appeals, Indiana Code § 6-1.1-4-13 provided, in relevant part:

(a) In assessing or reassessing land, the land shall be assessed as agricultural land only when it is devoted to agricultural use.

...

(d) This section does not apply to land purchased for industrial, commercial, or residential uses.

I.C. § 6-1.1-4-13 (2009, 2012, 2013 supps., 2014 repl. vol.). The DLGF offers further guidance through its Guidelines.

Unless provided elsewhere in the law, the Manual, or Guidelines, the parcel's size does not determine the property classification or pricing method for the parcel. Rather, the property classification and pricing method are determined by the property's use or zoning. For example, some commercial and industrial zoned acreage tracts devote a portion of the parcel to an agricultural use. The assessing official must classify these parcels as either commercial or industrial. However, the portions of land devoted to agricultural use are to be valued using the agricultural land assessment formula. Portions not used for agricultural purposes are to be valued using the commercial and industrial acreage guidelines. To illustrate:

(1) A major industrial corporation purchased a 40 acre cornfield to locate a corn processing facility in Indiana. After undergoing the local zoning process, the entire parcel was re-zoned from agricultural zoning to industrial zoning. The corporation has utilized 15 acres of the parcel by constructing a manufacturing and warehouse facility with the idea that the remaining 25 acres would be available for future expansion, if necessary. The 25 acres in reserve is currently being cash rented to a local agricultural producer, who row-crops the acreage.

Conclusion: The assessor should assign a property classification of 310—Food and Drink Processing Facility—to the 40 acre parcel. The 15 acre portion of the acreage that is utilized for industrial purposes should be assigned land use codes representing the industrial acreage base rates for that particular area of the jurisdiction. The 25 acre portion of the parcel

that is being row-cropped by the local farmer should be priced using the agricultural productivity method of pricing.

...

Therefore, the controlling factors that determine whether land is to be assessed as agricultural land are whether the land was purchased for a non-agricultural use, and whether the land is currently used or zoned for an agricultural purpose....

2011 GUIDELINES, ch. 2 at 78-81.

45. Thus, to determine whether a property is devoted to agriculture, the Guidelines focus both on the property's zoning and on the owner's intent in buying it. But intent to use part of the property for a non-agricultural purpose in the future does not preclude assessing all or part of it using the soil productivity method if the taxpayer currently devotes it to an agricultural use. The question is even blurrier when the disputed portion consists of woodlands. Trees take a long time to mature and harvests occur less frequently, so outward signs of agricultural activity may not be as readily apparent.
46. To support her re-classification, the Assessor points to the fact that Indiana Limestone bought the property with the intent of mining it and claims that the zoning classification for most of the property prohibits using it for anything except mineral extraction. Even Indiana Limestone does not appear to seriously contest that the quarry holes or other land actively used in quarrying operations, such as the areas where it stored mined limestone, were used for non-agricultural purposes.
47. Indiana Limestone, however, claims that the wooded portions of the property are agricultural. We disagree. With the exception of the outlying parcels and a small part of the contiguous parcels, the property is zoned for mineral extraction. In part because of that zoning, the Assessor has raised the inference that Indiana Limestone bought the property to mine it. In that respect, this case differs from the example in the Guidelines in which land is neatly divided into discrete sections, one where industrial activities are occurring, and another where they are not. The areas directly related to quarrying are more interspersed throughout the contiguous portion of the property, which raises a

stronger inference that Indiana Limestone intended to convert the entire mass to use for its quarrying operations.

48. We recognize that Monroe County's zoning ordinance expressly allows some limited agricultural activities to be conducted on land zoned as a Mineral Extraction District. Even if it did not, there are statutory limitations on a county's ability to restrict timber harvesting and other agricultural uses through zoning. *See* I.C. § 36-7-4-616 (prohibiting, with limited exceptions, counties or municipalities using zoning authority to terminate existing agricultural uses or restrict non-conforming agricultural uses). Nonetheless, the Assessor did not need to preclude any possible agricultural use of the property; she instead only had to make a prima facie case that Indiana Limestone had converted the property to a non-agricultural use. She did so.

49. Our inquiry does not end here. Indiana Limestone claims it actually devoted the portions of the property not directly involved in quarrying operations to agriculture. To that end, it offered the Timber Sale Contract for its property in Lawrence County and a chart prepared by its tax representative, Milo Smith, listing several sales of timber from its property in Monroe County. As explained above, the chart is hearsay, and we cannot base our determination solely on that evidence. *See* 50 IAC 2-7-3 (prohibiting us from basing our determination on hearsay if it is objected to and does not fall within a recognized exception to the hearsay rule).

50. While the Timber Sale Contract arguably may have been offered for a non-hearsay purpose—that Indiana Limestone has at least once obligated itself to sell timber from land it owns—that fact is marginally relevant at best. The contract did not involve the contiguous parcels at issue in these appeals, nor has Indiana Limestone shown that the two tracts of land are similarly situated. For example, Indiana Limestone did not offer anything to show whether there were any restrictions on using the Lawrence County land for mining operations, or even whether it had anything approximating the same type of timber as the contiguous parcels. The same points largely hold true for the sales listed in Smith's spreadsheet. Thus, Indiana Limestone has offered no competent evidence to

support a reasonable inference that it actually devoted any portion of the contiguous parcels to agriculture.

51. We find that the Assessor properly re-classified the contiguous portions of the property. We reach the opposite conclusion for the outlying parcels. Given their location and zoning, we cannot reasonably infer that Indiana Limestone has converted them into its integrated mining operation. The outlying parcels must be assessed as agricultural using the soil productivity method from the Guidelines, including the appropriate influence factors.
52. Our findings about the classification, however, do not resolve these appeals. We must still decide whether either party proved a value different from the assessments for the contiguous portion of the property. While Indiana Limestone offered no evidence on that point, the Assessor offered Johnson's appraisal in which he valued the land under appeal for a much higher amount than the assessments.
53. Johnson is an experienced appraiser. He relied on a generally accepted valuation methodology—the cost approach—after considering and rejecting other accepted approaches. And he certified that he prepared his appraisal in conformity with USPAP. Thus, at first blush, his appraisal appears probative of the property's true tax value.
54. That initial impression does not withstand scrutiny. Johnson has not shown that he was competent to appraise a quarry. He said almost nothing about what would logically appear to be a fundamental element of comparison between Indiana Limestone's property and any other property used to estimate a site value—the amount and quality of limestone under the land. For example, we doubt a buyer would pay the same price per acre for a heavily quarried property with little remaining limestone or limestone of relatively low quality as it would pay for a property with proven, but largely untapped, reserves of high-quality limestone. Yet Johnson did not expressly address the quality or amount of stone

under any of the properties.⁴ At most, he broadly addressed the division of land between active quarrying and reserve, saying that the property under appeal and his comparable properties had a similar composition in that regard. Even then, he acknowledged he did not determine the exact mix.

55. More telling, when asked whether crushed stone, which his first two comparable quarries were used to produce, was more or less valuable than the limestone from the property under appeal, he responded that he did not know. His inability to answer such a basic and highly relevant question about how half the properties in his analysis compared to the property he was appraising casts serious doubt on his competence⁵ for the assignment and the reliability of his opinions.
56. Indiana Limestone pointed to other problems with Johnson's appraisal as well. For example, Johnson acknowledged that the sales of the two properties that produced block limestone (Sales #3 and #4) were compulsory transactions. His appraisal report does not indicate that he adjusted the sale prices to account for that fact. At hearing, he testified that he "discounted" the sales. But when asked on cross-examination how he did that, he responded only that it was part of his thought process and that he had to keep in mind that they were forced sales. While we disagree with Indiana Limestone's claim that Johnson necessarily had to adjust those sale prices mathematically, he did need to cogently explain how he discounted them. He failed to do so both in his appraisal report and in his testimony.
57. Equally troubling, when asked if he verified whether either sale included interests beyond real property, Johnson responded only that the sales disclosure statements did not mention any. As shown by the asset purchase agreement and the Assessor's own records,

⁴ Johnson indicated that Sales #3 and #4 involved portions of the property under appeal. Thus, one might infer some comparability regarding the quality and amount of stone, although each sale involved a significant amount of land in addition to the parcels under appeal. In any case, as discussed below, there were significant problems with Johnson's treatment of Sale #4.

⁵ Again, we refer to competence in the sense of USPAP's Competency Rule, which explains that competency includes, among other things, familiarity with a specific type of property or asset. UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE at U-11.

however, one of the sales undoubtedly included personal and intangible property. That casts serious doubt on Johnson's credibility.

58. Given those fundamental problems, Johnson's appraisal is too unreliable to carry any probative weight. We therefore find that the assessment for the contiguous portions of the property should not be changed.

SUMMARY OF FINAL DETERMINATION

59. The Assessor failed to show that she properly re-classified the following outlying parcels as non-agricultural land:

- Parcel 53-11-08-200-010.000-006
- Parcel 53-11-08-200-004.000-006
- Parcel 53-08-34-300-032.000-008
- Parcel 53-08-16-200-039.000-008

We therefore order her to classify those parcels as agricultural and assess them using the soil productivity method. In doing so, she must use the appropriate agricultural base rate for each year and the applicable influence factors from the Guidelines.

60. As for the remainder of the property (the contiguous parcels), the Assessor proved that she properly re-classified the land as non-agricultural. But neither she nor Indiana Limestone offered probative evidence of the property's true tax value. We therefore order no change to the assessments for those parcels.

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date written above.

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.

Petition Number	Petitioner Name	State Parcel Nbr
53-006-11-1-5-00080	Indiana Limestone Co, Inc	53-11-04-200-007.000-006
53-006-11-1-5-00081	Indiana Limestone Co, Inc	53-11-04-200-004.000-006
53-006-11-1-5-00082	Indiana Limestone Co, Inc	53-11-08-200-010.000-006
53-006-11-1-5-00083	Indiana Limestone Co, Inc	53-11-08-200-004.000-006
53-006-12-1-5-00031	Indiana Limestone Co, Inc	53-11-08-200-004.000-006
53-006-12-1-5-00033	Indiana Limestone Co, Inc	53-11-08-200-010.000-006
53-006-13-1-3-00032	Indiana Limestone Co, Inc	53-11-04-200-004.000-006
53-006-13-1-5-00033	Indiana Limestone Co, Inc	53-11-08-200-010.000-006
53-006-13-1-5-00034	Indiana Limestone Co, Inc	53-11-08-200-004.000-006
53-006-14-1-3-00052	Indiana Limestone Co, Inc	53-11-04-200-004.000-006
53-008-11-1-3-00004	Indiana Limestone Co, Inc	53-08-32-400-027.000-008
53-008-11-1-3-00005	Indiana Limestone Co, Inc	53-08-31-400-002.000-008
53-008-11-1-3-00006	Indiana Limestone Co, Inc	53-08-31-400-003.000-008
53-008-11-1-3-00008	Indiana Limestone Co, Inc	53-01-41-732-000.000-008
53-008-11-1-3-00009	Indiana Limestone Co, Inc	53-08-32-300-006.000-008
53-008-11-1-3-00010	Indiana Limestone Co, Inc	53-08-33-400-002.000-008
53-008-11-1-3-00011	Indiana Limestone Co, Inc	53-01-41-248-000.000-008
53-008-11-1-3-00012	Indiana Limestone Co, Inc	53-08-33-400-006.000-008
53-008-11-1-3-00013	Indiana Limestone Co, Inc	53-08-33-400-007.000-008
53-008-11-1-3-00014	Indiana Limestone Co, Inc	53-08-31-400-001.000-008
53-008-11-1-3-00015	Indiana Limestone Co, Inc	53-08-31-400-006.000-008
53-008-11-1-3-00016	Indiana Limestone Co, Inc	53-08-32-400-007.000-008
53-008-11-1-3-00017	Indiana Limestone Co, Inc	53-08-32-300-007.000-008
53-008-11-1-3-00018	Indiana Limestone Co, Inc	53-08-32-300-005.000-008
53-008-11-1-3-00019	Indiana Limestone Co, Inc	53-08-33-400-001.000-008
53-008-11-1-3-00020	Indiana Limestone Co, Inc	53-08-33-300-006.000-008
53-008-11-1-3-00021	Indiana Limestone Co, Inc	53-08-31-400-007.000-008
53-008-11-1-3-00022	Indiana Limestone Co, Inc	53-08-32-300-009.000-008
53-008-11-1-3-00023	Indiana Limestone Co, Inc	53-08-34-300-032.000-008
53-008-11-1-3-00024	Indiana Limestone Co, Inc	53-08-31-400-004.000-008
53-008-11-1-3-00025	Indiana Limestone Co, Inc	53-08-32-300-004.000-008
53-008-11-1-3-00026	Indiana Limestone Co, Inc	53-01-41-729-000.000-008
53-008-11-1-3-00027	Indiana Limestone Co, Inc	53-08-32-300-002.000-008
53-008-11-1-3-00028	Indiana Limestone Co, Inc	53-08-32-300-008.000-008
53-008-11-1-3-00029	Indiana Limestone Co, Inc	53-08-32-200-007.000-008
53-008-11-1-3-00030	Indiana Limestone Co, Inc	53-08-33-300-001.000-008
53-008-11-1-3-00031	Indiana Limestone Co, Inc	53-08-32-400-013.000-008
53-008-12-1-3-00050	Indiana Limestone Co, Inc	53-01-41-248-000.000-008
53-008-12-1-3-00053	Indiana Limestone Co, Inc	53-08-33-300-001.000-008
53-008-12-1-3-00055	Indiana Limestone Co, Inc	53-11-04-200-004.000-006

53-008-12-1-3-00055A	Indiana Limestone Co, Inc	53-08-32-400-007.000-008
53-008-12-1-3-00056	Indiana Limestone Co, Inc	53-08-32-300-009.000-008
53-008-12-1-3-00057	Indiana Limestone Co, Inc	53-01-41-732-000.000-008
53-008-12-1-3-00058	Indiana Limestone Co, Inc	53-08-31-400-001.000-008
53-008-12-1-3-00059	Indiana Limestone Co, Inc	53-08-34-300-032.000-008
53-008-12-1-3-00060A	Indiana Limestone Co, Inc	53-08-32-400-027.000-008
53-008-13-1-3-00042	Indiana Limestone Co, Inc	53-08-32-400-027.000-008
53-008-13-1-3-00043	Indiana Limestone Co, Inc	53-08-34-300-032.000-008
53-008-13-1-3-00044	Indiana Limestone Co, Inc	53-08-33-300-001.000-008
53-008-13-1-3-00045	Indiana Limestone Co, Inc	53-01-41-732-000.000-008
53-008-13-1-3-00046	Indiana Limestone Co, Inc	53-08-32-400-007.000-008
53-008-13-1-3-00047	Indiana Limestone Co, Inc	53-08-32-300-009.000-008
53-008-13-1-3-00048	Indiana Limestone Co, Inc	53-08-31-400-001.000-008
53-008-13-1-3-00049	Indiana Limestone Co, Inc	53-01-41-248-000.000-008
53-008-13-1-3-00051	Indiana Limestone Co, Inc	53-01-41-725-002.000-008
53-008-13-1-3-00052	Indiana Limestone Co, Inc	53-08-16-200-039.000-008
53-008-14-1-3-00032	Indiana Limestone Co, Inc	53-01-41-248-000.000-008
53-008-14-1-3-00034	Indiana Limestone Co, Inc	53-08-32-300-009.000-008
53-008-14-1-3-00035	Indiana Limestone Co, Inc	53-08-32-400-027.000-008
53-008-14-1-3-00037	Indiana Limestone Co, Inc	53-08-16-200-039.000-008
53-008-14-1-3-00038	Indiana Limestone Co, Inc	53-08-33-300-001.000-008
53-008-14-1-3-00039	Indiana Limestone Co, Inc	53-08-34-300-032.000-008
53-008-14-1-3-00040	Indiana Limestone Co, Inc	53-01-41-732-000.000-008
53-008-14-1-3-00041	Indiana Limestone Co, Inc	53-08-31-400-001.000-008
53-008-11-1-3-00007	Indiana Limestone Co., Inc	53-08-33-300-009.000-008