

REPRESENTATIVE FOR PETITIONER:

Charles E. Koziarz, *Pro se*

REPRESENTATIVE FOR RESPONDENT:

Debra A. Dunning, Marshall County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Charles E. Koziarz)	Petition Nos.: 50-017-12-1-5-00015
)	50-017-12-1-5-00016
)	
Petitioner,)	
)	Parcel Nos.: 50-31-21-000-382.000-017
)	50-31-21-000-009.000-017
v.)	
)	
Marshall County Assessor,)	Marshall County
)	West Township
)	
Respondent.)	2012 Assessment Year

Appeal from the Final Determination of the
Marshall County Property Tax Assessment Board of Appeals

May 22, 2014

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has 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. The issue on appeal is the correct assessment of two agricultural parcels. The Board finds that the Respondent failed to present a prima facie case to support the change in assessment.

HEARING FACTS AND OTHER MATTERS OF RECORD

2. The property consists of two contiguous vacant parcels. Parcel 50-31-21-000-382.000-017 (parcel 382) is 6.52 acres located on 12B Road. Parcel 50-31-21-000-009.000-017 (parcel 009) is a 59.98 acres located on Tamarack Road. Both parcels are enclosed by a single fence and form one farm.
3. The Petitioner initiated the 2012 assessment appeals with the Marshall County Property Tax Assessment Board of Appeals (PTABOA) on September 26, 2012.
4. On April 30, 2013, the PTABOA issued its assessment determinations affirming the assessments.
5. On May 6, 2013, the Petitioner filed Form 131 Petitions for Review of Assessment seeking the Board's review of the 2012 assessments.
6. Administrative Law Judge Ellen Yuhan held the hearing in Plymouth on February 26, 2014.
7. Charles E. Koziarz, Marshall County Assessor Debra A. Dunning, and Deputy Assessor Mindy S. Relos-Penrose testified under oath.
8. The Petitioner presented the following exhibits:

Petitioner Exhibit 4 – Department of Local Government Finance (DLGF)
Memorandum on the Classification and Valuation of
Agricultural Land,

Petitioner Exhibit 5 – Letter from the DNR dated January 29, 2014.¹

9. The Respondent presented the following exhibits:

For parcel 382:

Respondent Exhibit 1 – Form 130,
Respondent Exhibit 2 – Form 134,
Respondent Exhibit 3 – Form 115,
Respondent Exhibit 4 – Form 131,
Respondent Exhibit 5 – 2012 property record card,
Respondent Exhibit 6 – 2012 Certification of Agricultural Land Base Rate,
Respondent Exhibit 7 – Aerial map of the subject property,
Respondent Exhibit 8 – Agricultural land questionnaire,
Respondent Exhibit 9 – Letter to Mr. Koziarz dated 9/25/2013,
Respondent Exhibit 10 – Property record card 3/1/2011,
Respondent Exhibit 11 – Property record card and aerial map for adjacent
Property,
Respondent Exhibit 12 – Spreadsheet of comparable sales,
Respondent Exhibit 13 – Comparable sale, Upas Road,
Respondent Exhibit 14 – Comparable sale, 7B Road,
Respondent Exhibit 15 – Comparable sale, SR 17,
Respondent Exhibit 16 – Assessor's Operations Manual, page 4-1,
Respondent Exhibit 17 – DLGF Memo dated 2/12/2008,
Respondent Exhibit 18 – 2011 Real Property Assessment Manual, page 2 of 20.

For parcel 009:

Respondent Exhibit 1 – Form 130,
Respondent Exhibit 2 – Form 134,
Respondent Exhibit 3 – Form 115,
Respondent Exhibit 4 – Form 131,
Respondent Exhibit 5 – 2012 Property record card,
Respondent Exhibit 6 – 2012 Certification of Agricultural Land Base Rate,
Respondent Exhibit 7 – Aerial map of the subject property,
Respondent Exhibit 8 – Agricultural land questionnaire,
Respondent Exhibit 9 – Letter to Mr. Koziarz dated 9/25/2013,
Respondent Exhibit 10 – Property record card 3/1/2011,
Respondent Exhibit 11 – Property record card and aerial map for adjacent
property,
Respondent Exhibit 12 – Multiple Listing Service (MLS) report for sale of subject

¹ Petitioner Exhibits 1-3 were submitted for Petition Nos. 50-017-12-1-5-00012 and 50-017-12-1-5-00014.

property (10/31/98)

Respondent Exhibit 13 – Spreadsheet of comparable sales,
Respondent Exhibit 14 – Comparable sale, Upas Road,
Respondent Exhibit 15 – Comparable sale, 7B Road,
Respondent Exhibit 16 – Comparable sale, SR 17,
Respondent Exhibit 17 – Correspondence between taxpayer and assessor,
Respondent Exhibit 18 – Assessor’s Operations Manual, page 4-1,
Respondent Exhibit 19 – DLGF Memo dated 2/12/2008,
Respondent Exhibit 20 – 2011 Real Property Assessment Manual, page 2 of 20.

10. The following additional items are officially recognized as part of the record of proceedings and labeled as Board Exhibits:

Board Exhibit A – Form 131 Petitions with attachments,
Board Exhibit B – Notices of Hearing, dated January 15, 2014,
Board Exhibit C – Hearing sign-in sheet.

11. For 2012, the PTABOA determined the assessed value of parcel 382 to be \$11,100 and the assessed value of parcel 009 to be \$99,600.

12. The Petitioner requested assessed values of \$1,200 for parcel 382 and \$20,800 for parcel 009.

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. Assessor*, 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). A burden-shifting statute creates two exceptions to that rule in Ind. Code § 6-1.1-15-17.2 as amended by P.L.97-2014.

14. First, I.C. § 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.” I.C. § 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.” I.C. § 6-1.1-15-17.2(b).

15. Second, I.C. § 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.” These provisions may not apply if there was a change in improvements, zoning, or use, or if the assessment was based on an income capitalization approach.
16. To determine whether I.C. § 6-1.1-15-17.2 applies, the Board compares the assessment for the tax year on appeal, as determined by the PTABOA, to the assessment for the prior tax year.² In 2011, parcel 382 was assessed at \$1,200 and parcel 009 was assessed at \$20,800. For 2012, parcel 382 was assessed at \$11,100 and parcel 009 was assessed at \$99,600. The increase is 925% on parcel 382 and 479% on parcel 009. The Respondent has the burden of proof.

RESPONDENT’S CONTENTIONS

15. The Respondent contends the assessed values are correct and equitable. The Respondent presented the following evidence in support of the assessment:
 - A. Prior to the 2012 reassessment, parcel 382 was incorrectly classified as agricultural land that was soil-typed and the majority of the acreage was classified as woodland

² There is no evidence before the Board that 2011 was successfully appealed.

- with a -80% reduction of the agricultural base rate. Parcel 009 was incorrectly classified as agricultural that was soil-typed and the majority of the 60 acres was classified as non-tillable with a -60% reduction and woodland with an -80% reduction. Marshall County purposely delayed reclassifying this land as agricultural excess acreage in order to change similarly misclassified land at the same time. The 2012 reassessment left the land use as agricultural but removed the soil-typing classification. The agricultural land base rate is the same as the base rate for soil-typed property, \$1,630 per acre. *Dunning testimony; Respondent Exhibit 5.*
- B. The Petitioner purchased parcel 382 for \$6,000 in 2002. Because sales disclosure forms were not required at the time, the Respondent does not know if the sale was a valid sale. The seller, Mr. Williams, was an adjacent property owner. The use of the land has not changed since the purchase. It was purchased as non-income producing land and it is still non-income producing land. *Dunning testimony; Respondent Exhibit 5.*
- C. The Petitioner purchased parcel 009 in 1995 for \$75,000 from Ms. Sarna, who also previously owned parcel 382. The property was once used as a miniature golf course. Ms. Sarna could not remember exactly when the golf course closed, but the land was uncultivated afterwards. She did not hunt, plant crops or harvest timber on the property. According to Ms. Sarna, the property was not used for an agricultural purpose while she owned the property. *Relos-Penrose testimony; Respondent Exhibit 5.*³
- D. Aerial maps of both parcels show there is less than 50% canopy cover. The difference between the neighbor's tillable land and the subject properties is visible on the aerial map. *Dunning testimony; Respondent Exhibit 7.*

³ The Petitioner did object to the testimony of Ms. Relos-Penrose on this subject on the grounds of hearsay. The Board does not base its decision on this testimony.

- E. It appears there is no agricultural use of the subject properties. The properties are not-income producing, and no personal property was reported for farm equipment. The questionnaire that Mr. Koziarz completed discloses a farm number for the property, but that does not necessarily prove he operates an income-producing farm. *Dunning testimony; Respondent Exhibit 8.*
- F. The Respondent also requested federal tax forms to determine the use of the land. In his letter dated September 30, 2013, Mr. Koziarz stated that he files a Form 1040 and submitted a Schedule B showing the farm is a loss. Schedule B did not assist the Respondent in determining the use of the property. *Dunning testimony; Respondent Exhibit 8.*
- G. The Respondent contends the properties are assessed correctly when compared to sales of similar vacant properties classified as agricultural excess acreage. In support of this contention, Ms. Dunning submitted property record cards, sales disclosure forms, and a spreadsheet for four properties that sold between June 2011 and January 2013. The range of sale prices was from \$2,800 per acre to \$4,928 per acre, with the median at \$3,435. Parcel 382 is assessed at \$1,697 per acre and parcel 009 is \$1,660 per acre. The difference between the agricultural base rate and the actual assessment are due to deductions for public roads. *Dunning testimony; Respondent Exhibits 12-15 (parcel 382); Respondent Exhibits 13-16 (parcel 009).*
- H. The Respondent notes that land is classified and assessed as agricultural land when it is devoted to agricultural use pursuant to I.C. § 6-1.1-4-13(a). Devoting land to an agricultural use involves, among other things, the cultivation of income-producing crops. Under the Real Property Assessment Guidelines for 2002- Version A, in valuing agricultural land, assessing officials typically use the income approach to determine, “the residual or net income that will accrue to the land from the agricultural production.” The county removed the soil-typing because the properties are not income-producing and devoting land to an agricultural use involves the

cultivation of the land for income purposes. *Dunning testimony; Respondent Exhibit 17.*

- I. In the conclusion on page 7 and 8 of the memo referenced by Mr. Koziarz , it states that the parcel should continue to be classified as agricultural, not assessed using the soil productivity method. *Relos-Penrose testimony; Petitioner Exhibit 4; Respondent Exhibit 5.*
- J. The letter from Mr. Winicker is not a timber management plan. Mr. Winicker states in the letter that the tract is not ready for harvesting. The letter is dated January 29, 2014, and is after the assessment date of March 1, 2012. *Relos-testimony; Petitioner Exhibit 5.*

PETITIONER’S CONTENTIONS

16. The Petitioner contends the land should be assessed as agricultural with productivity factors applied. The Petitioner presented the following evidence in support of his contentions:

- A. The two parcels are one farm. Parcel 009 provides farm storage and a back entrance to the Tamarack farm. The Petitioner planned to combine the properties but there was an error on the name on parcel 382 and he has acted to have that corrected. He has installed a single fence line to make it one farm. *Koziarz testimony.*
- B. He cites an example in a DLGF memorandum dated February 12, 2008. The memo, under “Other agricultural uses,” states that:

A 40-acre parcel, which at one time was a small farm, has since become a mixture of small, scattered trees and brush with less than 50% canopy cover. The assessor classified this parcel as residential excess acreage, the effect of which created a higher assessed value and tax burden than the agricultural soil productivity method.

...

The current owner purchased the parcel as an agricultural property many years ago. The land is currently uncultivated or fallow but has not changed use nor been rezoned. The land should continue to be classified as agricultural as it was purchased for agricultural use and is used as “non-tillable land” as defined in the Guidelines.

Koziarz testimony; Petitioner Exhibit 4.

- C. The subject properties were bought as agricultural, used as agricultural, and should remain as agricultural. They should be assessed with the productivity factors, and the correct amount of tillable land, non-tillable land, and woodland. *Koziarz testimony.*
- D. I.C. § 6-1.1-4-13 is the guideline for assessing agricultural property, which includes wildlife, timber, forest products, vineyards, bees, raising of bees and fish. The State of Indiana considers these agricultural uses under the Indiana Code. *Koziarz testimony; Petitioner Exhibit 4.*
- E. The timber was harvested 15 years ago. A DNR report from Steve Winicker states that the property has a fairly good stand of oak with a scattering of invasive Asian honeysuckle. The stand is from small sawlog to pole size with some scattered larger trees. It also has some blocks of pine incorporated in with the oak. Mr. Winicker also lists the other types of trees on the tract. His recommendation is to let the tract grow for a few more years to allow the trees to mature. *Koziarz testimony; Petitioner Exhibit 5.*
- F. The farm should be assessed with the soil type it had two years ago. The farm had 24 acres of planted grass for pasture and clover. The previous owner planted five acres of red pine. Mr. Koziarz planted a nursery on the north end with five acres of Belgian Scotch pine, which are Christmas trees, and thousands of flowers, vines, and shrubs over the years. Approximately 26 acres, the middle part of the farm, is woodlands for forestry and logging. The GIS attached to the Form 131 shows the location of the ten-acre tree farm, the forestry and logging and the pasture land. *Koziarz testimony, Board Exhibit A.*

G. Three years ago Mr. Koziarz had to replant the pasture with a cover of millet and grass because his neighbor started a fire while installing an irrigation system and dented a fire line 20 feet by 1,100 feet. *Koziarz testimony*.

ANALYSIS

17. For 2012, 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." I.C. § 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. The cost approach estimates the value of the land as if vacant and then adds the depreciated cost of the improvements to arrive at a total estimate of value. *Id.* at 2. Any evidence relevant to the true tax value of the property as of the assessment may be presented, including an appraisal prepared in accordance with generally recognized appraisal standards. *Id.* at 3.
18. Regardless of the method used to rebut an assessment's presumption of accuracy, a party must explain how its evidence relates to the subject property's market value-in-use as of the relevant valuation date. *O'Donnell v. Department of Local Government Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2012, assessment, the valuation date is March 1, 2012. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).
19. 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 Department of Local Government Finance ("DLGF") to promulgate guidelines for assessing agricultural land using

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, Chapter 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. Depending on the type of agricultural land at issue, assessors may then apply influence factors in predetermined amounts. 2011 GUIDELINES, Chapter 2 at 77, 89, 98-99. For example, agricultural woodland (Type 6), which the Guidelines define as “land supporting trees capable of producing timber or other wood products” that “has 50% or more canopy cover or is a permanently planted reforested area,” receives an 80% negative influence factor. *Id.* at 89.

20. The Respondent correctly points out that I.C. § 6-1.1-4-13 requires land to be devoted to agricultural use before it can be classified and assessed as agricultural. The Assessor cites to an Indiana Tax Court case and the Guidelines which state that land devoted to agricultural use involves, among other things, the cultivation of income-producing crops. *Respondent Exhibit 17 (parcel 382); Respondent Exhibit 18 (parcel 009).*
21. But the Respondent’s focus on the use of the property is misplaced. Respondent concedes that the property is agricultural. The 2011 and 2012 property record cards for both parcels reflect that the subject properties were classified as agricultural vacant land at all relevant times. *Respondent Exhibits 5, 10.* Furthermore, the Respondent calculates the assessment by applying the 2012 agricultural base rate to both parcels. Because the parties agree the property is correctly classified as agricultural, the Board finds that the property is devoted to agricultural use as contemplated in the statute.
22. The Respondent argues that in 2011, the property was incorrectly classified as “agricultural land that was soil-typed.” *Dunning testimony.* The Respondent therefore

removed the “soil-typing classification” for 2012 and assessed the property as “agricultural excess acreage” at the statewide agricultural land base rate of \$1,630 an acre. *Id.* Ms. Dunning expressed her rationale as follows:

And to me I feel that it is the purpose of agricultural excess acreage to use the agricultural base rate which is way under what it sells for but it is not soil-typed. So that’s why the county did remove the soil-typing because it is not an income property and devoting land to agricultural use involves cultivation of the land for income purposes.

Id. Regardless of the rationale, the Respondent simply deleted the 2011 influence factors for portions of the parcel that were previously categorized as tillable, nontillable, or woodlands.

23. Whatever Ms. Dunning’s feelings may be on the matter, the law does not support her interpretation of the assessment rules. “Agricultural excess acreage,” also termed “Type 92” is a subtype of “Type 9 Homesite.” 2011 GUIDELINES, Chapter 2 at 105. 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.” *Id.* at 105-6. While it is true that a soil-type is not applied, nor is the agricultural base rate: “the agricultural excess acre rate is the same rate that is established for the residential excess acre category.” *Id.* The Guidelines are clear and unambiguous.

24. Moreover, the Guidelines do not contemplate any circumstance where the agricultural base rate is applied without the agricultural land categories and their influence factors:

Land purchased and used for an agricultural purpose qualifies for all land use types associated with the agricultural classification and agricultural soil productivity method of pricing. This includes cropland or pasture land (i.e., tillable land) as well as woodlands.

2011 GUIDELINES, Chapter 2 at 80. The Board does not find any authority for the proposition that a soil type or category is applied solely to income-producing agricultural property. To the contrary, Type 4 specifically references “idle cropland,” and Type 5 references nontillable 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.” *Id.* at 103, 104. These are obviously non-income producing uses of agricultural property. They also mirror the Respondent’s allegations regarding the Petitioner’s use of the subject property.⁴

25. Respondent’s own Exhibit 19, a DLGF memorandum, contains an example in section 8(a) that Ms. Relos-Penrose recites verbatim in her testimony. The example states that land left “uncultivated and fallow” such that it becomes covered with “scattered trees and brush” is still considered agricultural, and it is in error to apply excess acreage rather than the “agricultural soil productivity factor.” *Respondent Exhibit 19*. The example concludes that the land should be assessed as “*non-tillable land* as defined in the Guidelines.” *Id.* (emphasis added). Yet Ms. Relos-Penrose somehow comes to the conclusion that it should be “assessed as agricultural,” but “not assessed using the soil productivity method.” The Board finds that this example in the DLGF memo unequivocally directs assessors to use an agricultural soil productivity factor (i.e. the Type 5 *nontillable land* category and its influence factor) without regard to whether the land is income-producing.
26. In order for the Respondent to present a prima facie case for an assessment based on agricultural excess acreage, the Respondent must introduce evidence of a homesite and how the excess acreage relates to it.⁵ The Respondent has failed to do so.⁶
27. In order for the Respondent to present a prima facie case for an agricultural assessment, the Respondent must introduce evidence of the land use types to be applied to the

⁴ The Board is troubled by the Respondent’s evident failure to grasp these fundamental concepts of assessment of agricultural land.

⁵ The Respondent looks to *Stout v. Orange Co. Assessor*, 996 N.E.2d 871 (Ind. Tax Ct. 2013) for support. But it too defines “residential excess” as land “dedicated to a non-agricultural use normally associated with the homesite.” *Id.* at 875 n.6.

⁶ Even were the Board to find that the Respondent correctly assessed the property as agricultural excess acreage, the assessment would still be incorrect because the Respondent applied the agricultural base rate rather than the residential excess acreage rate.

agricultural acreage. *See* 2011 GUIDELINES, Chapter 2 at 80, 102. The Respondent has failed to do so.

28. The Respondent presented four sales of vacant land. *Respondent Exhibits 13-15 (parcel 382); Respondent Exhibits 14-16 (parcel 009)*. Respondent fails to explain to the Board what relevance these comparables have to the issues before the Board.
17. The Respondent fails to make a prima facie case that the assessments of the subject parcels are correct. Where the party with the burden has not supported its claims with probative evidence, the opposing party's duty to offer substantial evidence of the correct assessment is not triggered. *See Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003). The effect of this finding returns the valuation to the prior year's assessment. Because the Petitioner seeks the 2011 valuation, the Board will not review the Petitioner's evidence.

CONCLUSION

29. The Respondent failed to make a prima facie case that supported the assessed values of the subject properties. Therefore, the land assessments must be reduced to the 2011 assessed values. In this case, the assessments are reduced to \$1,200 for parcel 382 and \$20,800 for parcel 009.

FINAL DETERMINATION

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessed land values should be changed.

ISSUED: May 22, 2014

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>>.