

REPRESENTATIVE FOR PETITIONER: Milo Smith, Certified Tax Representative

REPRESENTATIVE FOR RESPONDENT: Karen Mannix, Jefferson County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

| | | | |
|----------------------------|---|------------------|---------------------------------|
| Perk Farms LLC, |) | Petitions: | <i>See attached</i> |
| Perkinson Farms LP, |) | | |
| |) | Parcel Nos.: | <i>See attached¹</i> |
| Petitioners, |) | | |
| |) | County: | Jefferson |
| v. |) | | |
| |) | Assessment Year: | 2017 |
| Jefferson County Assessor, |) | | |
| |) | | |
| Respondent. |) | | |

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

October 8, 2019

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:

INTRODUCTION

1. Perk Farms LLC and Perkinson Farms LP (collectively referred to as “Perk Farms”) own and manage land in Jefferson County, including the 22 parcels at issue in this appeal. Perk Farms claims that the portions of each parcel that the Assessor classified as Type 4—tillable land should be reclassified as Type 5—nontillable land and should receive the

¹ For ease of reference, we will refer to the individual parcels by the corresponding Map IDs shown on the attachment throughout this Final Determination.

associated 60% influence factor deduction. Perk Farms argues that all of the parcels have impediments that deter routine tillage, and that the parcels therefore meet the definition of nontillable land as defined by the Indiana Department of Local Government Finance (“DLGF”) in the 2011 REAL PROPERTY ASSESSMENT GUIDELINES. We conclude that Perk Farms failed to show that any of the land classified as Type 4—tillable land has impediments that deter routine tillage. We therefore order no changes to the assessments.

PROCEDURAL HISTORY

2. Perk Farms filed Form 130 petitions with the Jefferson County Assessor contesting its 2017 assessments. On November 13, 2018, the Jefferson County Property Tax Assessment Board of Appeals (“PTABOA”) issued final determinations upholding the original assessments.
3. Perk Farms timely filed Form 131 petitions with the Board and elected to proceed under our small claims procedures. On July 10, 2019, our designated administrative law judge, David Smith (“ALJ”), held a consolidated hearing on the petitions. Neither he nor the Board inspected the properties.
4. Milo Smith represented Perk Farms. Jefferson County Assessor Karen Mannix appeared pro se. Smith, consultant Mark McClain, and Perk Farm’s owner Lee Perkinson, testified on behalf of Perk Farms. Mannix and Jim Davis testified on behalf of the Assessor.
5. Perk Farms submitted the following exhibits:

| | |
|----------------------|---|
| Petitioner Ex. 1: | McClain’s resume` |
| Petitioner Ex. 2: | McClain’s property assessment report |
| Petitioner Ex. 3-24: | Property Record Cards (“PRC”) for the subject parcels |
| Petitioner Ex. 25: | Map of the subject parcels |
| Petitioner Ex. 26: | Table 2-3, Topography Options (DLGF Guidelines) |
| Petitioner Ex. 27: | Table 2-10, Influence Factor Codes (DLGF Guidelines) |
| Petitioner Ex. 28: | Type 4-Tillable Land (DLGF Guidelines) |
| Petitioner Ex. 29: | Table 2-21, Tillable Land Subtypes (DLGF Guidelines) |

Petitioner Ex. 30-49: PRCs with requested assessed values for 20 of the 22 parcels²

Petitioner Ex. 50: Lee Perkinson notebook of farm history, pictures, and Farm Service Agency (“FSA”) information

6. The Assessor submitted separate exhibit packets for each parcel. The packets are identical with the exception of Exhibits G-J, which contain information specific to each parcel. The packets include the following exhibits:

| | |
|-------------------|--|
| Respondent Ex. A: | <i>Perk Farms LLC/Perkinson Farms LP v. Jefferson County Assessor</i> , Pet. No. 39-011-14-3-1-00202-17, et al. (IBTR June 11, 2018) |
| Respondent Ex. B: | 2016 PRC for Map ID 1 |
| Respondent Ex. C: | 2017 PRC for Map ID 1 |
| Respondent Ex. D: | Indiana Code §§ 6-1.1-2-2; 6-1.1-4-4.5; and 6-1.1-13-6 |
| Respondent Ex. E: | Wikipedia and other documents on Land Sections |
| Respondent Ex. F: | Certification of Agricultural Land Base Rate Value for Assessment Year 2017 |
| Respondent Ex. G: | PRC for Assessment Year 2017 |
| Respondent Ex. H: | Agricultural Land Assessment Results (Soil Report) |
| Respondent Ex. I: | GIS Aerial Map |
| Respondent Ex. J: | Form 130 dated May 15, 2018 |

7. The record also includes the following: (1) all pleadings, briefs, and documents filed in the current appeals; (2) all orders and notices issued by the Board or our administrative law judge; and (3) an audio recording of the hearing.

² Perk Farms submitted two exhibits marked as Petitioner’s Exhibit 31. One is the PRC for Map ID 2 and the other is a series of documents related to timber sales. Given that Perk Farms did not address timber sales at any point during its evidentiary presentation, we infer that the documents related thereto were inadvertently included and we do not address them.

SUMMARY OF PERK FARMS' CASE

A. McClain's evaluation

8. Perk Farms employed Mark McClain to inspect the properties and report on the tillable capacity of the subject parcels. McClain has been a soil and wetland scientist for nearly 40 years. He attended Purdue University, where he earned a Master of Science and Ph.D. in Civil and Environmental Engineering. He has served as a Professor of Natural Resources at Ball State; held positions on several national boards; worked for numerous companies in the field; and has owned and operated SOILS1 Soil Science Experts since 2009. He serves as Principal Soil and Wetland Scientist at SOILS1. He has provided environmental consultation and support for over 10 years, which has included expert witness testimony in numerous legal cases. *McClain testimony; Pet. Ex. 1.*
9. McClain conducted on-site inspections of Perk Farms' parcels in June-July 2019 for his report. Based on his inspection of the land, he produced a report detailing his opinion of the agricultural suitability of the subject parcels. His report also includes supporting information in the form of soil charts; photos; a chart summarizing his findings; and other related tables and definitions. *McClain testimony; Pet. Ex. 2.*
10. McClain evaluated the parcels for the following issues: stream crossings; topography and soil erosion; brush obstructions; land capability classification; karst topography (limestone outcroppings); bedrock (shallow); flooding; ponding; and wetlands. He determined that all of the parcels are negatively affected by at least three of the above-listed impediments, and summarized his findings as follows:

| Map ID ³ | A | B | C | D | 1,7 | 2, 3 | 4,14 | 5,6,9,10,13,17,18 | 8,12,19 |
|--------------------------------|---|---|---|---|-----|------|------|-------------------|---------|
| Natural Impediments | | | | | | | | | |
| Stream Crossing | | X | X | | X | X | | X | X |
| Topography and Soil Erosion | X | X | X | X | X | X | X | X | X |
| Brush Obstruction | | | | X | X | X | | X | X |
| Land Capability Classification | X | X | X | X | X | X | X | X | X |
| Karst Topography | X | | X | | | | | | |
| Bedrock (shallow) | X | | X | | | | | | |
| Flooding | | X | | | X | X | | | |
| Ponding | | | | | X | | | | |
| Wetlands | | | | | X | | X | | |

McClain testimony; Pet. Ex. 2 at 3-8, 13.

11. Based on his evaluation of the impediments, McClain generally concluded that 100% of the land the Assessor classified as Type 4—tillable land for the parcels identified with Map IDs A, B, C, D, 1, 5, 6, 7, 8, 9, 10, 12, 13, 17, 18, and 19 should be reclassified as Type 5—nontillable. He further concluded that at least 90% of the Type 4—tillable land for the parcels identified with Map IDs 2, 3, 4, and 14 should be reclassified as Type 5—nontillable. *McClain testimony; Pet. Ex. 2 at 13-22.*

12. McClain acknowledged that he observed tilled parcels during his on-site inspections in 2019. He also agreed that the GIS aerial photos in his report and those submitted by the Assessor show some of the parcels had been tilled. However, he did not specifically identify the parcels. McClain further testified that another farmer could choose to till any of Perk Farms’ parcels despite his stated opinion. *McClain testimony; Pet. Ex. 2 at 14-25.*

³ The parcels McClain identified as Map IDs 15, 20, 21 and 22 are not part of this appeal and we have excluded them from the chart. Additionally, we note that McClain did not include Map IDs E or 11, which are before us.

B. Smith’s and Perkinson’s testimony

13. Perk Farms is only appealing those parts of the 22 parcels that the Assessor classified as Type 4—tillable land. Perk Farms contends that all of its property classified as Type 4—tillable land should be reclassified as Type 5—nontillable land and receive a 60% influence factor deduction pursuant to the DLGF Guidelines. It offered PRCs for 20 of the 22 parcels under appeal with handwritten calculations showing how it arrived at its requested land assessment for each parcel. *Smith testimony; Pet. Ex. 30-49.*

14. Lee Perkinson is the owner of the Perk Farms entities. He disagreed with the Assessor’s interpretation of McClain’s aerial photo of Map ID 14. According to Perkinson, the light-colored area shown on the map is a cattle trail, and his family has never tilled the parcel. In order to farm the parcel, it would have to be fenced off to prevent the cattle from ruining the crops. However, fencing the parcel off would not be consistent with the use of the property as a cattle ranch because this parcel provides water access for the cattle. Perkinson was also concerned that tilling the parcel would cause erosion. *Perkinson testimony; Pet. Ex. 2 at 20.*

C. Other evidence

15. Perk Farms submitted a binder containing a brief history of Perk Farms, a letter from the Jefferson County FSA, dated November 16, 2016, detailing Perk Farms’ total farmland and cropland acreage, and a United States Department of Agriculture (“USDA”) Fact Sheet concerning the use of geographic information systems. It also includes aerial photos of Perk Farms’ parcels by USDA Farm and Tract Number, brief descriptions of 32 parcels owned by Perk Farms, along with aerial maps and photos of some of the impediments that it claims deter tilling. However, Perk Farms offered no direct testimony about the binder or its contents. *Pet. Ex. 50.*

SUMMARY OF THE ASSESSOR'S CASE

16. The Assessor argued that the only basis provided in Perk Farm's Form 130 petitions was the preservation of the right to challenge its 2017 assessments to ensure that they are consistent with the Board's June 11, 2018 decision.⁴ *Mannix testimony; Resp. Exs. A-C.*
17. Her office followed Indiana law and DLGF regulations in a uniform manner and properly classified and assessed Perk Farms' properties based on all of the available information. The assessment process for these properties began with the creation of a new soil report for each parcel. The Assessor then applied the soil map information to the parcel map to assign the appropriate factors and values. The land with natural impediments such as streams and woods, as well as the land adjoining those impediments are already classified as either Land Use Type 5 or Type 6 and are receiving influence factors of 60% or greater. *Mannix testimony; Resp. Exs. D, F, G-J (all parcels).*
18. In its presentation, Perk Farms failed to specifically identify which parts of each parcel the alleged impediments affected. Moreover, the Assessor argued that many of the pictures submitted by both parties appear to show tilled land. *Mannix testimony; Davis testimony.*

CONCLUSIONS OF LAW

A. Burden of Proof

19. Generally, a taxpayer seeking review of an assessment must prove the assessment is wrong and what the correct value should be. Indiana Code § 6-1.1-15-17.2 creates an exception to the general rule and assigns the burden of proof to the assessor where (1) the assessment under appeal represents an increase of more than 5% over the prior year's assessment for the same property, or (2) the taxpayer successfully appealed the prior year's assessment, and the current assessment represents an increase over what was

⁴ See *Perk Farms LLC/Perkinson Farms LP v. Jefferson County Assessor*, Pet. No. 39-011-14-3-1-00202-17, et al. (IBTR June 11, 2018).

determined in the appeal, regardless of the level of that increase. *See* I.C. § 6-1.1-15-17.2(a), (b) and (d). If an assessor has the burden and fails to prove the assessment is correct, it reverts to the previous year's level (as last corrected by an assessing official, stipulated to, or determined by a reviewing authority) or to another amount shown by probative evidence. *See* I.C. § 6-1.1-15-17.2(b). Here, the assessments for all of the parcels at issue decreased from 2016 to 2017, and Perk Farms stipulated that it therefore has the burden of proof in this appeal.

B. Analysis

20. The subject property is assessed as agricultural land. While normally a party must present market-based evidence to prove the value of the property at issue, agricultural land is assessed according to specific statutes and regulations. The legislature has 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 GUIDELINES, CH. 2 at 77-78; *see also* Ind. Code § 6-1.1-4-4.5(e). 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. *Id.* at 77, 89, 98-99.

21. Perk Farms contends that all of its property classified as Type 4—tillable land should be reclassified as Type 5—nontillable land and receive a 60% influence factor deduction pursuant to the DLGF Guidelines. The DLGF Guidelines define Type 5—nontillable land as follows:

Nontillable 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. A 60% influence factor deduction applies to nontillable land.

2011 GUIDELINES, CH. 2 at 89.

22. Perk Farms failed to support its broad claim that all of its property classified as Type 4—tillable land should be reclassified as Type 5—nontillable land. In fact, Perk Farms submitted evidence demonstrating that it tilled portions of its property. It stands to reason that if a portion of the property is tilled, it cannot be 100% nontillable land. Nevertheless, we have examined whether Perk Farms proved that any portions of the individual parcels should be reclassified as Type 5—nontillable land.

a. Parcels with tillable land

23. We begin by addressing Map IDs 2, 3, 4, 14, A, B, C, and E. With the exception of Map ID 14, the exhibits from the FSA clearly show that each of these parcels has some tillable acreage. While the exhibits are less clear for Map ID 14, McClain admitted that the parcel was only 90% nontillable despite recognizing the potential for erosion. Perkinson testified his family has never tilled the parcel and that it would have to be fenced off to prevent the cattle from ruining the crops. However, the need to fence off an area due to the needs of the cattle operation is not a natural impediment. Thus, we conclude that some portion of Map ID 14 is in fact tillable.

24. Under the Guidelines, pasture land is considered tillable acreage. The burden is to show which portions of each parcel are nontillable due to impediments. As discussed above, because some portion of each of these eight parcels is unquestionably tillable, we cannot conclude that *all* of the Type 4—tillable land within these parcels is incorrectly classified. Perk Farms' evidence has also failed to demonstrate that any particular portion it claims should receive the Type 5—nontillable land classification is not *already* assessed as Type 5. Although McClain made specific findings regarding the natural impediments affecting each individual parcel, he failed to identify their locations with enough precision to demonstrate that they are within the specific areas the Assessor classified as Type 4—tillable land. The same is true for Perk Farms' aerial maps and photos.⁵

⁵ We also note that in calculating its proposed land assessments for Map IDs 3, A, and B, Perk Farms applied the 60% influence factor to Land Type 9, which is the homesite.

b. Parcels with no tillable land according to McClain and/or the FSA

25. We start by addressing Perk Farms' reclassification request for Map ID 11. While the FSA information shows the parcel has no tillable acreage, McClain failed to address this parcel in his review. Consequently, the only reason put forward by Perk Farms for why we should reclassify it as nontillable is that it would require fencing. We conclude, however, that fencing is not a natural impediment.
26. As for the remaining 13 parcels⁶, McClain asserted they were 100% nontillable. And the information from the FSA shows that they have no tillable acreage. However, McClain's admission that another farmer could choose to till any of Perk Farms' parcels casts significant doubt on his land classification conclusion. It is also unclear as to whether the FSA holds that pasture land is the same as tillable land. Our review of the aerial maps does not support the conclusion that the parcels are 100% nontillable, or more than 50% canopy cover. Once again, the burden is on the taxpayer to show that the assessor has failed to include those portions as nontillable.
27. Because Perk Farms offered no probative evidence showing that the property classified as Type 4—tillable land should be reclassified as Type 5—nontillable land, it failed to make a prima facie case for a lower assessment. Where a petitioner has not supported his claim with probative evidence, the respondent's duty to support the assessment with substantial evidence 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).

⁶ The remaining 13 parcels are Map IDs D, 1, 5, 6, 7, 8, 9, 10, 12, 13, 17, 18, and 19.

SUMMARY OF FINAL DETERMINATION

28. It is possible that there are portions of Perk Farms' property assessed as Type 4—tillable land with natural impediments that truly deter tilling. But Perk Farms failed to provide sufficient evidence for us to reach that conclusion. We therefore order no changes to the assessments.

This Final Determination 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>>.

ATTACHMENT
2017 Perk Farms appeals

| Map ID | Parcel | Petition |
|--------|--------------------------|------------------------|
| A | 39-15-13-000-020.000-011 | 39-011-17-1-1-01313-18 |
| B | 39-14-18-000-002.000-011 | 39-011-17-1-1-01316-18 |
| C | 39-14-18-000-011.000-011 | 39-011-17-1-1-01314-18 |
| D | 39-14-19-000-004.000-011 | 39-011-17-1-1-01317-18 |
| E | 39-15-14-000-017.000-011 | 39-011-17-1-1-01315-18 |
| 1 | 39-15-24-000-003.000-011 | 39-011-17-1-1-01324-18 |
| 2 | 39-15-24-000-008.000-011 | 39-011-17-1-1-01321-18 |
| 3 | 39-15-24-000-009.000-011 | 39-011-17-1-1-01327-18 |
| 4 | 39-15-14-000-015.000-011 | 39-011-17-1-1-01334-18 |
| 5 | 39-15-13-000-021.000-011 | 39-011-17-1-1-01320-18 |
| 6 | 39-15-13-000-024.000-011 | 39-011-17-1-1-01333-18 |
| 7 | 39-15-24-000-007.000-011 | 39-011-17-1-1-01332-18 |
| 8 | 39-15-23-000-003.000-011 | 39-011-17-1-1-01323-18 |
| 9 | 39-15-13-000-022.000-011 | 39-011-17-1-1-01331-18 |
| 10 | 39-15-13-000-023.000-011 | 39-011-17-1-1-01330-18 |
| 11 | 39-15-24-000-004.000-011 | 39-011-17-1-1-01335-18 |
| 12 | 39-15-23-000-001.000-011 | 39-011-17-1-1-01326-18 |
| 13 | 39-15-13-000-029.000-011 | 39-011-17-1-1-01328-18 |
| 14 | 39-15-14-000-016.000-011 | 39-011-17-1-1-01325-18 |
| 17 | 39-15-13-000-027.000-011 | 39-011-17-1-1-01329-18 |
| 18 | 39-15-13-000-028.000-011 | 39-011-17-1-1-01319-18 |
| 19 | 39-15-23-000-002.000-011 | 39-011-17-1-1-01322-18 |