

REPRESENTATIVE FOR PETITIONER: Milo Smith, Certified Tax Representative

REPRESENTATIVE FOR RESPONDENT: Marilyn Meighen, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

VICTOR ACQUISITION CORP.	)	Petition:	<i>See attached,</i>
)		
Petitioner,	)	Parcel:	<i>See attached,</i>
)		
v.	)	County:	Monroe
)		
MONROE COUNTY ASSESSOR,	)	Township:	Various
)		
Respondent.	)	Assessment Years:	2011-2014

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

May 10, 2016

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

- Victor Acquisition Corporation (“Victor Acquisition”)¹ appealed the assessments for various parcels that were zoned for mineral extraction and purchased for use as part of a limestone quarry. Given those facts, and the lack of any evidence to show that Victor Acquisition devoted any part of the parcels to agriculture, the Assessor properly

¹ There are various references to “Indiana Limestone” in the record. Victor Acquisition is part of Indiana Limestone Corporation Properties and the names of the two organizations occasionally overlap.

reclassified those parcels as non-agricultural land. The Board finds, however, that neither party offered probative evidence as to what the correct valuations should be. We therefore order no change to the assessments.

PROCEDURAL HISTORY

2. Victor Acquisition 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 resulted in the following amounts:

Year	Land	Improvements	Total
2011	\$250,700	\$80,000	\$330,700
2012	\$7,715,400	\$1,502,200	\$9,217,600
2013	\$7,730,900	\$1,570,300	\$9,301,200
2014	\$3,056,800	\$62,300	\$3,119,100

4. Victor Acquisition subsequently filed Form 131 petitions with the Board. On August 13, 2015, our designated administrative law judge, Gary Ricks (“ALJ”), held a hearing. Neither he nor the Board inspected the property.

5. The following people testified under oath: Milo Smith, Victor Acquisition’s certified tax representative; Judith Sharp, Monroe County Assessor; and Wayne Johnson, an appraiser engaged by the Assessor.

6. Victor Acquisition submitted the following exhibits which, with the exception of Petitioner’s Exhibit 3R, were admitted without objection:

Petitioner’s Ex. 1R: Information regarding Assessor’s comparable sale ME-2,
 Petitioner’s Ex. 2R: *Indianapolis Star* article dated February 26, 2014,
 Petitioner’s Ex. 3R: Timber sale contract between Indiana Limestone Co., Inc. and Knopp’s Logging, LLC,

- Petitioner’s Ex. 4R: Asset purchase agreement between Victor Oolitic Stone Company, d/b/a Indiana Limestone Co., Inc. and Indiana Commercial Finance, LLC,
- Petitioner’s Ex. 5R: Order from U.S. Bankruptcy Court In re: VICTOR OOLITIC STONE COMPANY, d/b/a/ INDIANA LIMESTONE CO., *et al.*, Debtors,
- Petitioner’s Ex. 6R: Valuation of Indiana Limestone Company, Inc. by Hilco Valuation Services.

7. The Assessor presented the following exhibits:

- Respondent’s Ex. A: Appraisal Report of subject property prepared by Wayne Johnson,
- Respondent’s Ex. A1: Supplement to Appraisal Report prepared by Wayne Johnson,
- Respondent’s Ex. B: Aerial photographs of subject property,
- Respondent’s Ex. C: Monroe County Zoning Ordinance Chapter 802,
- Respondent’s Ex. D: Zoning maps,
- Respondent’s Ex. E: Ind. Code § 6-1.1-4-13 (2014),
- Respondent’s Ex. F: Ind. Code § 6-1.1-4-13 (2015),
- Respondent’s Ex. G: Property record cards (2014),
- Respondent’s Ex. H: Property record cards (2013),
- Respondent’s Ex. I: Property record cards (2012),
- Respondent’s Ex. J: Property record cards (2011).

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 the ALJ; and (3) the digital recording of the hearing.

OBJECTIONS

9. The Assessor objected to Smith’s use of the word “storage” as being intentionally misleading in characterizing various piles of limestone situated on the subject property. The Assessor, however, did not elaborate as to how the word might be misleading. Furthermore, both Sharp and Johnson used the word “storage” in essentially the same context as Smith throughout the hearing. We therefore overrule the objection.

10. The Assessor objected to Petitioner’s Exhibit 3R—a timber sale contract between Indiana Limestone Co., Inc. and Knopp’s Logging, LLC. She argued that the exhibit is irrelevant because it involved timber sold in Lawrence County as opposed to Monroe County.

Smith argued that the contract is relevant because Indiana Limestone is a parent company

to Victor Acquisition and, when trees in Monroe County become large enough, they will eventually be harvested as well. We agree that the exhibit is marginally relevant at best, but we will deal with that question as a matter of weight rather than admissibility.

11. The Assessor objected to Smith’s account of a conversation he allegedly had regarding the aforementioned timber sale contract as hearsay. In reference to discussing the timber sale contract, Smith said “I asked them and they said ‘this timber land that we have, when timber is ready to sell, we sell it to generate revenue.’” The comment is hearsay and Smith expressly conceded such at the hearing. *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.”).

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. Our determination herein is not solely based on the conversation at issue and we therefore admit it over the Assessor’s objection.

FINDINGS OF FACT

13. The property under appeal is located in Monroe County. Different numbers of parcels and quantities of land are at issue for each year. The following table indicates how many appeals were filed by Victor Acquisition each year by township:

Township	Indian Creek	Clear Creek	Perry	Van Buren	Bean Blossom	Total
2011	1	2	3	0	0	6
2012	5	1	2	2	3	13
2013	7	2	2	2	3	16
2014	6	0	1	2	2	11

A. The Property

14. All of the parcels at issue are located in areas designated as Mineral Extraction Districts pursuant to Monroe County Zoning Ordinance Chapter 802. That 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. C, p. 4.

15. The property consists of two distinct areas. The first distinct area is located southwest of Bloomington in the southwest corner of the county. It includes parcels located in the townships of Indian Creek, Clear Creek, Perry, and Van Buren. *Resp't. Ex. D.*
16. Parcel No. 53-10-12-100-002.000-007, located in Indian Creek Township, is a large parcel containing the main quarry operation. This parcel includes both inactive quarry pits that have filled with water and operating pits out of which limestone is actively extracted and sold. There are large collections of stone blocks and crushed stone stored on parts of the cleared areas of this parcel. There are also various buildings situated on the parcel. This parcel generally appears as the white area in all of the aerial photographs contained in the record. This parcel is occasionally referred to as the "quarry land" throughout the record. *Sharp testimony; Johnson testimony; Resp't Ex. D.*
17. The other parcels located in the southwest corner of the county consist of what is referred to as "extra land." Extra land is generally wooded land situated adjacent to the active quarry land. These extra land parcels located in the southwest corner of the county are

occasionally collectively referred to as the “Victor Pike” land throughout the record. The Victor Pike parcels surrounding the parcel containing the quarry operation are all contiguous except for three (parcel nos. 53-09-36-300-005.000-015, 53-08-32-300-003.000-008, and 53-11-05-100-016.000-006). The three non-contiguous Victor Pike parcels are located in close proximity to the contiguous parcels and are all designated for mineral extraction. *Sharp testimony; Johnson testimony; Resp’t Ex. D.*

18. The second distinct area is located in the northwest corner of the county in Bean Blossom Township. This area consists of contiguous parcels characterized as extra land and designated for mineral extraction. This area is occasionally referred to as the “Stinesville” area throughout the record. *Johnson testimony; Resp’t Ex. D.*
19. In the years leading up to 2011, the Assessor classified the land under appeal and other quarry land throughout the county as agricultural. The Assessor, however, believed those assessments were unfair and decided to re-examine quarry land throughout the county. 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 re-classifying quarry land as industrial. *Sharp testimony.*

B. Summary of the Assessor’s Case

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. A at cover letter, 11, 94, 98.*
21. Johnson considered using the cost, sales-comparison, and income approaches. Johnson declined to use the sales comparison approach to value the buildings because the land

value is a large part of the subject value. Evidence of sales of multiple buildings used for quarries and milling were not found, and an alternative use comparison would not necessarily lead to a reliable value. Johnson decided not to use the income approach because the primary value is in the land and no income stream from the real estate exists or is known to be generated from a long-term arm's length lease. A value based on income generated through the operation of the quarry would tend to reflect the value of the business rather than the real estate. Johnson therefore based his opinion solely on the cost approach. *Johnson testimony; Resp't Ex. A at 89, 92.*

22. To determine a site value, Johnson analyzed three groups of sales:

The sales in the first group² were used as purported comparable sales with regard to the quarry land.

- Comparable Quarry Sale #1 (ME-1). The property included 518.5 acres and various improvements in Harrison County. It sold for \$5,500,000 on May 9, 2014. *Johnson testimony; Resp't Ex. A, p. 39.*
- Comparable Quarry Sale #2 (ME-2). The property included 876.6 acres and various improvements in Clark County. It sold for \$9,477,500 on May 19, 2014. *Johnson testimony; Resp't Ex. A, p. 41.*
- Comparable Quarry Sale #3 (ME-3). The property included 2333.15 acres in Monroe and Lawrence Counties. Many of the parcels included the existing mineral extraction equipment and offices while many others were undeveloped woodlands. On December 15, 2009, it sold for \$74,000,000 at a compulsory sale due to bankruptcy. *Johnson testimony; Resp't Ex. A, p. 45.*

² The sales in the first group are also referred to as Sales ME-1 through ME-5 at various locations in the record.

- Comparable Quarry Sale #4 (ME-4). The property included 3,250.22 acres³ and various improvements in Monroe and Lawrence Counties. It sold for \$26,000,000 at a compulsory sale due to bankruptcy. The sale date is listed as “2014-2015.” *Johnson testimony; Resp’t Ex. A, p. 47.*⁴
- Comparable Quarry Sale #5 (ME-5). The property included 27.95 acres in Monroe County. Johnson testified that this property was an agricultural field when it sold and that there is a “huge” factory built on it now. It sold for \$978,250 on July 2, 2009. *Johnson testimony; Resp’t Ex. A, p. 50.*

The sales in the second group were used as purported comparable sales with regard to the Stinesville area.

- Comparable Land Sale #9. The property included 52.37 acres in Monroe County. It sold for \$155,000 on October 19, 2010. *Johnson testimony; Resp’t Ex. A, p. 56.*
- Comparable Land Sale #10. The property included 58.34 acres in Monroe County. It sold for \$135,000 on May 31, 2012. *Johnson testimony; Resp’t Ex. A, p. 58.*
- Comparable Land Sale #11. The property included 44 acres in Monroe County. It sold for \$150,000 on September 2, 2014. *Johnson testimony; Resp’t Ex. A, p. 60.*
- Comparable Land Sale #12. The property included 50 acres in Monroe County. It sold for \$275,000 on January 31, 2014. *Johnson testimony; Resp’t Ex. A, p. 62.*
- Comparable Land Sale #13. The property included 61 acres in Monroe County. It sold for \$130,000 on July 30, 2013. *Johnson testimony; Resp’t Ex. A, p. 64.*

³ At page 47 of his appraisal, Johnson described this sale as consisting of 3250.22 acres in one location and 2429.05 acres in another location.

⁴ According to Johnson, because of “some discussion” that Comparable Quarry Sale #3 and Comparable Quarry Sale #4 included non-real estate components, Johnson did not include them in his final analysis but only showed them as supporting data.

- Comparable Land Sale #14. The property included 79 acres in Monroe County. It sold for \$350,000 on August 6, 2013. *Johnson testimony; Resp't Ex. A, p. 66.*

The sales in the third group were used as purported comparable sales with regard to the Victor Pike area:

- Comparable Land Sale #4. The property included 98.57 acres in Monroe County. It sold for \$480,000 on July 1, 2011. *Johnson testimony; Resp't Ex. A, p. 68.*
- Comparable Land Sale #5. The property included 60 acres in Monroe County. It sold for \$258,000 on March 29, 2013. *Johnson testimony; Resp't Ex. A, p. 70.*
- Comparable Land Sale #6. The property included 73.35 acres in Monroe County. It sold for \$320,500 on January 25, 2012. *Johnson testimony; Resp't Ex. A, p.73.*
- Comparable Land Sale #7. The property included 28.62 acres in Monroe County. It sold for \$133,892 on December 18, 2013. *Johnson testimony; Resp't Ex. A, p.76.*
- Comparable Land Sale #8. The property included 51.62 acres in Monroe County. It sold for \$210,000 on January 15, 2014. *Johnson testimony; Resp't Ex. A, p. 78.*

23. Johnson subtracted the improvements' assessments where applicable to extract the portion of each sale price attributable to land. He also adjusted the prices for size and time-related differences in market conditions. When asked what processes he used to confirm that there was no personal property or goodwill included in any of his purportedly comparable sales, he said he used the sales price disclosure documents and there was no personal property listed therein. When asked if he made personal contacts with brokers, previous owners, or new buyers to confirm what was included in the sale price, he said "I did not. They're swearing by filling out the disclosure" that there is nothing other than real property included in the sale price. *Johnson testimony.*

24. Based on his purported comparable sales as adjusted, Johnson settled on various correlated values with regard to the geographic areas and years at issue. In describing how he arrived at those correlated values, particularly with regard to the quarry land, Johnson stated that “it’s not mathematics” and it is “based on judgment.” *Johnson testimony.*
25. The correlated values are as follows:

Quarry Land: March 1, 2014	\$11,500 per acre
Quarry Land: March 1, 2013	\$11,500 per acre
Quarry Land: March 1, 2012	\$11,225 per acre
Quarry Land: March 1, 2011	\$11,000 per acre

Stinesville Area: March 1, 2014	\$2,750 per acre
Stinesville Area: March 1, 2013	\$2,700 per acre
Stinesville Area: March 1, 2012	\$2,650 per acre
Stinesville Area: March 1, 2011	\$2,600 per acre

Victor Pike Area: March 1, 2014	\$4,285 per acre
Victor Pike Area: March 1, 2013	\$4,200 per acre
Victor Pike Area: March 1, 2012	\$4,100 per acre
Victor Pike Area: March 1, 2011	\$4,000 per acre

Resp’t Ex. A, p 87; Resp’t Ex. A1

26. Applying the above correlated values, Johnson arrived at the following breakdown of land values by tax year:

2011:

Vacant Stinesville Land	\$0
Vacant Victor Pike Land [710 acres x \$4,000/acre]	\$2,840,000
Quarry Land	\$0
Total	\$2,840,000

2012:

Vacant Stinesville Land [280 acres x \$2,650/acre]	\$742,000
Vacant Victor Pike Land [1,520 acres x \$4,1000/acre]	\$6,232,000
Quarry Land	\$0
Total	\$6,974,000

2013:

Vacant Stinesville Land	\$0
Vacant Victor Pike Land [(1,207-549) acres x 4,200/acre]	\$2,763,500
Quarry Land [548 acres x \$11,500/acre]	\$6,302,000
Total	\$9,065,500

2014:

Vacant Stinesville Land [204.63 acres x \$2,750/acre]	\$563,000
Vacant Victor Pike Land [(1,288-204.63) acres x \$4,285/acre]	\$4,642,240
Quarry Land [548 acres x \$11,500/acre]	\$0
Total	\$5,205,240

*Resp't. Ex. 1A.*⁵

⁵ With regard to Johnson's appraisal at page 88 and the corresponding supplement at Respondent's Exhibit A1, there are apparently nine petitions not accounted for. Victor Acquisition filed 46 petitions but only 37 are listed in these exhibits. Also, parcel number 53-08-33-300-001.000-008 should read 53-08-32-300-001.000-008 and parcel number 53-00-06-200-008.000-006 should read 53-11-06-200-008.000-006 in these exhibits.

27. Johnson valued the improvements at \$200,000 for 2011, \$220,000 for 2012, and \$1,150,000 for 2013. Johnson’s appraisal only includes years 2011 through 2013 while his supplement at Respondent’s Exhibit A1 includes 2014. That supplement only contains land values and no improvement values. However, Johnson testified that there were no improvements to be included for 2014. He thus arrived at the following overall values:

Year	Land	Improvements	Total	Rounded
2011	\$2,840,000	\$200,000	\$3,040,000	\$3,050,000
2012	\$6,974,000	\$220,000	\$7,194,000	\$7,200,000
2013	\$9,065,500	\$1,150,000	\$10,215,500	\$10,215,000
2014	\$5,205,240	\$0	\$5,205,240	\$5,205,240 ⁶

Johnson testimony; Resp’t Ex. A, p. 93.

Summary of Victor Acquisition’s Case

28. Victor Acquisition offered an analysis of Johnson’s purportedly Comparable Quarry Sale #2. Smith argued that the property record cards in his analysis showed over \$1 million in improvements for which no adjustment was made. *Smith testimony; Pet’r Ex. 1R*
29. Victor Acquisition offered a newspaper article dated February 26, 2014, describing Indiana Limestone’s financial difficulty and its lay-off of 166 employees and filing of Chapter 11 bankruptcy. Smith claims the article shows that Indiana Limestone relied mainly on its inventory of already quarried stone and that it did not invest significant amounts in quarrying new stone or “opening new ledges” because they had sufficient quantities of stone to sell. Smith claims that the bankruptcy resulted in a value of \$26 million including inventory, goodwill and patents, among other items. *Smith testimony; Pet’r Ex. 2R.*

⁶ Since 2014 was not included in the actual appraisal but only in the supplement, no rounded figure was given for that year.

30. Victor Acquisition offered a timber sale contract from 2009. The contract indicates that Indiana Limestone sold approximately \$37,278 worth of timber in Lawrence County. Smith contends that even though the sale at issue was in Lawrence County, it is an indication that once timber in Monroe County becomes mature, it could be subject to similar sale. *Smith testimony; Pet'r Ex. 3R.*
31. Victor Acquisition offered an asset purchase agreement between Indiana Limestone and Indiana Commercial Finance, LLC. The agreement was executed pursuant to Indiana Limestone's 2014 Chapter 11 bankruptcy filing. The terms of the agreement correspond to sale ME-4 in Johnson's appraisal. Smith pointed out that the agreement includes all of the real estate, improvements, intellectual property, and personal property, among other items. Victor Acquisition also introduced a bankruptcy court order approving the asset purchase agreement. *Smith testimony; Pet'r Exs. 4R and 5R.*
32. Victor Acquisition finally introduced a valuation report of Indiana Limestone performed by Hilco Valuation Services. The valuation report is not an appraisal performed in conformity with USPAP. It calculates the value of the non-operating quarries using a 50% discount as compared to operating quarries. The valuation report indicates that the per acre price for operating quarries should be \$5,233 and the per acre price for non-operating quarries should be \$2,616. These values are significantly less than the values appearing in Johnson's appraisal. *Smith testimony; Pet'r Ex. 6R.*
33. Victor Acquisition contends that, because Johnson's ME-1 and ME-2 sales happened well over two years after the first petitions were filed in these appeals, they should not be used as comparables. Smith argues that Johnson's ME-5 sale is not relevant as a comparable sale. That sale, Smith argues, involves a much smaller property consisting of industrial land not comparable to a quarry. He also contends that the scope of Johnson's work did not include the classification, verification, or the quantity of materials located at the comparable sale sites. He argues that value-in-use cannot be determined without knowledge of the stone business or mineral rights. He does not believe that Johnson's appraisal described mineral rights nor were mineral rights discussed at the hearing. He

also believes when a party purchases land for industrial use, it should not be assessed as such until its use actually changes. Smith contends the assessed values should revert to what they were in 2010 and that those values should carry forward to all years under appeal. *Smith argument.*

CONCLUSIONS OF LAW AND ANALYSIS

A. Burden of Proof

34. 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.
35. 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).
36. 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).

37. 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.
38. Based on the property's overall assessment increasing by more than 5%, the Assessor conceded at the hearing that she had the initial burden for 2011. Regardless of that concession, the board finds 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.
39. 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. However, the parties did not tell us what the property's overall assessment was for 2010 and we do not have all of 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)).
40. The problem becomes more acute in later years because the property's overall composition changed from year to year. 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 of

reversion to the previous year's level. Because of the nature of the property, we cannot readily determine whether either trigger for shifting the burden even applies in later years.

41. As the party seeking to take advantage of the burden-shifting statute, Victor Acquisition needed to walk us through those issues and provide the information necessary to apply the statute. Because it 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

42. 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).
43. 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).

44. 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

45. 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....

2011GUIDELINES, ch. 2 at 78-81.

46. To determine whether a property is devoted to agriculture, the Guidelines focus both on the property's zoning and on the owner's intent. 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.

47. The Assessor points to the fact that Victor Acquisition bought the property with the intent of mining it and claims that the zoning classification for the property prohibits using it for anything except mineral extraction. Even Victor Acquisition 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.
48. Victor Acquisition, however, implies that other portions of the property are agricultural. We disagree. The property is zoned entirely for mineral extraction. In part because of that zoning, the Assessor has raised the inference that Victor Acquisition 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 property, which raises a stronger inference that Victor Acquisition intended to convert the entire mass to use for its quarrying operations.
49. 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 Victor Acquisition had converted the property to a non-agricultural use. She did so.
50. Our inquiry does not end here. Victor Acquisition implies it might actually devote portions of the property not directly involved in quarrying operations to agriculture. To that end, it offered a timber sale contract for its property in Lawrence County. While the

timber sale contract arguably may have been offered to show that its parent 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 parcels at issue in these appeals, nor has Victor Acquisition shown that the tracts of land are similarly situated. For example, Victor Acquisition 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 parcels at issue. Thus, Victor Acquisition has offered no competent evidence to support a reasonable inference that it actually devoted any portion of the parcels to agriculture.

51. We find that the Assessor properly re-classified the property. 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 property.

52. Victor Acquisition offered a valuation report of Indiana Limestone prepared by Hilco Valuation Services. The valuation report indicates certain values that are significantly less than the values suggested in Johnson’s appraisal. But the circumstances surrounding the valuation report are somewhat vague. When describing the valuation report during his testimony, Smith said “Taxpayer Exhibit 6R is, and I had no idea we had this, until I asked for this information about assets and they sent along a valuation and opinion from Hilco Valuation Services...”. That testimony suggests that Victor Acquisition neither expressly requested the valuation report nor was it undertaken pursuant to the appeals at issue. At any rate, the valuation report suggests values for areas labeled “Victor North Pike” and “Stinesville.” While the map in the valuation report seems to indicate those areas generally correspond to the areas containing the parcels under appeal, the specificity of the areas described in the valuation report is not entirely clear. The valuation report indicates that the “orderly liquidation value” was the approach used to arrive at the valuation. There is no indication how such a value might relate to an accurate market value-in-use as contemplated under Indiana’s system. Furthermore, the valuation report lists the Principal Appraiser and the Concurring Appraiser as the Vice President and Senior Financial Analyst of Hilco Valuation Services respectively. There

is no information with regard to their credentials or qualifications as appraisers or whether or not they are licensed to perform appraisals in Indiana. Finally, the report appears only to be a draft and there is no indication that it was undertaken pursuant to USPAP. In light of these considerations, the Board finds that the valuation report prepared by Hilco Valuation Services lacks probative weight.

53. The Assessor offered Johnson's appraisal. Johnson is an experienced appraiser. He relied on a generally accepted valuation methodology, the cost approach, after considering and rejecting other accepted approaches. He also certified that he prepared his appraisal in conformity with USPAP. Thus, the appraisal report would initially seem to be probative of the property's market value-in-use.
54. Nevertheless, Johnson has not shown that he was competent to appraise a quarry.⁷ He said almost nothing about what would logically appear to be a fundamental element of comparison between Victor Acquisition's property and any other property used to estimate a site value which is 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 sufficiently address the quality or amount of stone under the property. At most, he broadly addressed the division of land between active quarrying land and extra land.
55. Even though Johnson only used certain purportedly comparable sales as supporting data, two of those sales appear to have been compulsory transactions. His appraisal report does not indicate that he adjusted the sale prices to account for that fact, which calls into question his analysis of other purportedly comparable sales that he used. Furthermore, when asked if he verified whether any of his comparable sales included interests beyond

⁷ 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.

real property, Johnson responded only that the sales disclosure statements did not mention any. He specifically stated he made no adjustments for personal property, equipment, inventory, or goodwill for sales ME-1 or ME-2. He admitted he did not make any personal contacts with brokers, previous owners, or new buyers to confirm what was included in the sale prices. As shown by the asset purchase agreement offered by Victor Acquisition, one of the sales, albeit one used only for supporting data purposes, undoubtedly included personal and intangible property. That, accompanied by his testimony that he only relied on the sales disclosure statements with regard to other purportedly comparable sales, casts doubt on the reliability of Johnson's analysis. In light of these considerations, the Board finds that Johnson's appraisal report lacks probative weight.

SUMMARY OF FINAL DETERMINATION

56. The Assessor proved that she properly re-classified the land as non-agricultural. However, neither she nor Victor Acquisition offered probative evidence of the property's true tax value. We therefore order no change to the assessments.

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	County	Township	Parcel Number
53-001-12-1-3-00031	Victor Acq.	Monroe	Bean Blossom	53-03-17-400-013.000-001
53-001-13-1-3-00017	Victor Acq.	Monroe	Bean Blossom	53-03-17-400-013.000-001
53-001-14-1-3-00020	Victor Acq.	Monroe	Bean Blossom	53-03-17-400-013.000-001
53-001-12-1-3-00030	Victor Acq.	Monroe	Bean Blossom	53-03-20-100-006.000-001
53-001-13-1-3-00016	Victor Acq.	Monroe	Bean Blossom	53-03-20-100-006.000-001
53-001-14-1-3-00019	Victor Acq.	Monroe	Bean Blossom	53-03-20-100-006.000-001
53-001-12-1-3-00032	Victor Acq.	Monroe	Bean Blossom	53-03-21-200-002.000-001
53-001-13-1-3-00015	Victor Acq.	Monroe	Bean Blossom	53-03-21-200-002.000-001
53-006-13-1-3-00035	Victor Acq.	Monroe	Clear Creek	53-11-05-100-016.000-006
53-006-11-1-5-00084	Victor Acq.	Monroe	Clear Creek	53-11-06-200-008.000-006
53-006-11-1-5-00085	Victor Acq.	Monroe	Clear Creek	53-11-06-200-011.000-006
53-006-12-1-3-00034	Victor Acq.	Monroe	Clear Creek	53-11-06-200-012.000-006
53-006-13-1-3-00031	Victor Acq.	Monroe	Clear Creek	53-11-06-200-012.000-006
53-007-11-1-5-00006	Victor Acq.	Monroe	Indian Creek	53-10-01-100-004.000-007
53-007-12-1-3-00018	Victor Acq.	Monroe	Indian Creek	53-10-01-400-001.000-007
53-007-13-1-3-00017	Victor Acq.	Monroe	Indian Creek	53-10-01-400-001.000-007
53-007-14-1-3-00011	Victor Acq.	Monroe	Indian Creek	53-10-01-400-001.000-007
53-007-12-1-3-00020	Victor Acq.	Monroe	Indian Creek	53-10-11-400-005.000-007
53-007-13-1-3-00016	Victor Acq.	Monroe	Indian Creek	53-10-11-400-005.000-007
53-007-14-1-3-00008	Victor Acq.	Monroe	Indian Creek	53-10-11-400-005.000-007
53-007-12-1-3-00021	Victor Acq.	Monroe	Indian Creek	53-10-12-100-002.000-007
53-007-13-1-3-00018	Victor Acq.	Monroe	Indian Creek	53-10-12-100-002.000-007
53-007-13-1-3-00019	Victor Acq.	Monroe	Indian Creek	53-10-12-300-010.000-007
53-007-14-1-3-00009	Victor Acq.	Monroe	Indian Creek	53-10-12-300-010.000-007
53-007-12-1-3-00019	Victor Acq.	Monroe	Indian Creek	53-10-13-300-004.000-007

53-007-13-1-3-00014	Victor Acq.	Monroe	Indian Creek	53-10-13-300-004.000-007
53-07-14-1-3-00010	Victor Acq.	Monroe	Indian Creek	53-10-13-300-004.000-007
53-007-13-1-3-00020	Victor Acq.	Monroe	Indian Creek	53-10-13-400-001.000-007
53-007-14-1-3-00013	Victor Acq.	Monroe	Indian Creek	53-10-13-400-001.000-007
53-007-12-1-3-00017	Victor Acq.	Monroe	Indian Creek	53-10-14-100-001.000-007
53-007-13-1-3-00015	Victor Acq.	Monroe	Indian Creek	53-10-14-100-001.000-007
53-007-14-1-3-00012	Victor Acq.	Monroe	Indian Creek	53-10-14-100-001.000-007
53-008-11-1-3-00032	Victor Acq.	Monroe	Perry	53-08-31-300-006.001-008
53-008-12-1-3-00061	Victor Acq.	Monroe	Perry	53-08-31-300-006.001-008
53-008-13-1-3-00041	Victor Acq.	Monroe	Perry	53-08-31-300-006.001-008
53-008-14-1-3-00033	Victor Acq.	Monroe	Perry	53-08-31-300-006.001-008
53-008-11-1-3-00034	Victor Acq.	Monroe	Perry	53-08-32-300-001.000-008
53-008-11-1-3-00033	Victor Acq.	Monroe	Perry	53-08-32-300-003.000-008
53-008-12-1-3-00062	Victor Acq.	Monroe	Perry	53-08-32-300-003.000-008
53-008-13-1-3-00050	Victor Acq.	Monroe	Perry	53-08-32-300-003.000-008
53-015-12-1-3-00084	Victor Acq.	Monroe	Van Buren	53-09-36-300-005.000-015
53-015-13-1-3-00033	Victor Acq.	Monroe	Van Buren	53-09-36-300-005.000-015
53-015-14-1-3-00038	Victor Acq.	Monroe	Van Buren	53-09-36-300-005.000-015
53-015-12-1-3-00083	Victor Acq.	Monroe	Van Buren	53-09-36-400-001.000-015
53-015-13-1-3-00032	Victor Acq.	Monroe	Van Buren	53-09-36-400-001.000-015
53-015-14-1-3-00042	Victor Acq.	Monroe	Van Buren	53-09-36-400-001.000-015