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

Petition No: **59-014-15-1-5-01874-16**
Petitioner: **Tom Whitfield**
Respondent: **Orange County Assessor**
Parcel: **59-10-01-200-001.000-014**
Assessment Year: **2015**[1]

The Indiana Board of Tax Review ("Board") issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. The Petitioner sought review of his 2015 assessment. On October 19, 2016, the Orange County Property Tax Assessment Board of Appeals ("PTABOA") issued notice of its determination upholding the assessment.

2. The Petitioner then timely filed a Form 131 petition with the Board. He elected our small claims procedures.

3. On January 18, 2017, our designated administrative law judge, Gary Ricks ("ALJ"), held a hearing. Although the Petitioner requested an "on site" inspection in his Form 131 petition, we exercised our discretion not to inspect the property.

4. The following people were sworn as witnesses: the Petitioner; Linda Reynolds, the Orange County Assessor; and Kirk Reller, who identified himself as a technical advisor to the Respondent.[2]

[1]This appeal was originally filed for the 2016 tax year, but the parties stipulated at the hearing that the year under appeal is actually 2015.

[2] Reller also asked questions, offered exhibits, and made arguments on the Respondent's behalf. Our procedural rules identify various categories of people who may represent an assessor in appeals concerning the valuation of real property: attorneys, certified tax representatives, local government representatives, and assessing officials or full-time employees of local units of government. 52 IAC 2-2-4. Reller indicated that he is a Level III Assessor-Appraiser and that he had a contract with the Respondent. Thus, he might qualify for approval as a "professional appraiser" by the Department of Local Government Finance, which is a prerequisite to appearing as a local government representative. *See* 52 IAC 1-1-3.5(a) (defining "local government representative"); 50 IAC 50-4-1 (laying out requirements for certification as professional appraiser). But he still needed to file a written verification of his status as a professional appraiser as well as a power of attorney. *See* 52 IAC 1-1-3.5(b); 52 IAC 2-3-2; 52 IAC 3-1-4. He did not do either of those things. Despite those problems, nobody objected to Reller's role at the hearing. Under those circumstances, we will treat Reller's actions as if they were the Respondent's. We remind Reller to comply with our rules in the future.

Facts

5. The property is agricultural land located at 120 S. Co. Rd. 500 E. in Paoli. There is a mobile home on the property, which serves as a single family residence. There are also other improvements.

6. The PTABOA determined the following values:

Land: $55,700 Improvements: $68,200 Total: $123,900.

7. The Petitioner did not ask for any specific value, but he claimed that the Respondent improperly assessed 26 of his 32 acres as tillable land.

8. The official record of the hearing consists of the following:

a. A digital recording of the hearing.

b. Exhibits:

Petitioner Exhibit 1:	2014 Property record card ("PRC") for the subject property,
Petitioner Exhibit 2:	2015 PRC for the subject property,
Petitioner Exhibit 3:	2015 tax summary,
Petitioner Exhibit 5:	Photograph of subject property,
Petitioner Exhibit 6:	Photograph of subject property,
Petitioner Exhibit 7:	Photograph of subject property,
Petitioner Exhibit 8:	Photograph of subject property,
Petitioner Exhibit 9:	Photograph of subject property,
Petitioner Exhibit 10:	Photograph of subject property.
Respondent Exhibit 1:	2011 Real Property Assessment Guidelines, p. 76,
Respondent Exhibit 2:	2014 PRC for the subject property,
Respondent Exhibit 3:	2015 PRC for the subject property,
Respondent Exhibit 4:	Aerial photograph of the subject property,
Respondent Exhibit 5:	Aerial photograph of the subject property,
Respondent Exhibit 6:	Soil and land use survey,
Respondent Exhibit 7:	Hearing notice cover letter,
Respondent Exhibit 8:	Form 115 determination from the PTABOA,
Respondent Exhibit 9:	Handwritten notes from PTABOA hearing.
Board Exhibit A:	Form 131 petition with attachments,
Board Exhibit B:	Hearing notice,
Board Exhibit C:	Hearing sign-in sheet.

c. These Findings and Conclusions

Objection

9. The Petitioner objected to Respondent's Exhibit 6—which the Respondent characterized as a soil and land-use survey—because he did not agree with its contents. The ALJ took the objection under advisement. We overrule the objection. Simply disagreeing with factual statements contained within an exhibit is not grounds for exclusion. The Petitioner's objection instead goes to the exhibit's probative weight, something he was free to challenge through his own evidence and argument.

Contentions

A. Summary of the Petitioner's case

10. The assessment increased significantly from the previous year due to an unjustified increase in the portion of the property classified as "tillable." The property is pasture land. It is straight uphill. There are areas that the Petitioner cannot walk up without stopping to rest. He cannot get farm machinery on it to plow or disc the land. Even if he could, the soil would just wash out. *Whitfield testimony; Pet'r Exs. 6-8, 10.*

11. In other areas, the property has waterways and ditches. The Petitioner fills in ditches every year, but they keep washing out. He plowed the area from 1983 to 1986, but he could not cross the ditches with a combine; he broke the rear end of his combine trying to do so. He leased 10 acres to someone for a year, but the renter refused to lease it again, saying that he had broken an axle on his combine trying to get it across a ditch. *Whitfield testimony; Pet'r Ex. 9*.

12. Although the PTABOA asked the Petitioner to produce a record from the Farm Service Agency ("FSA"), that record only shows base acres; it does not show how much of the property is actually tillable. The Petitioner did not leave the record with the PTABOA because he believes it is private. He declined to offer it at our hearing for the same reason. *Whitfield testimony.*

B. Summary of the Respondent's case

13. During cyclical reassessment, the Respondent's office used aerial photographs from around the March 1, 2015 assessment date and soil overlays from "Soil Conservation" to determine soil types and land use for agricultural properties, including the subject property. Based on those photographs and overlays, a state-approved software program prepared a digitized soil and land-use survey indicating the use type and soil make-up of various portions of the property. The Respondent used that information to assess the property. *Reller testimony, Reynolds testimony, Resp't Exs. 1, 4-6.*

14. One of the use types identified on the aerial photographs and the soil and land-use survey is "tillable." Tillable land includes cropland, pastures, and land used for growing hay. Before the cyclical reassessment, the property was assessed as having 14.1083 acres of tillable land and 15.892 acres of non-tillable land. The survey shows 25.248 acres of tillable land and 4.721 acres of non-tillable land. In each year, the property also had other agricultural subtypes, including a one-acre homesite, land used for farm buildings and barns, land covered by a farm pond or running water, and public roads.[3] *Reller testimony, Reynolds testimony, Resp't Exs. 1, 4-6; see also,* 2011 REAL PROPERTY ASSESSMENT GUIDELINES, ch.2 at 92.

15. The 2011 Real Property Assessment Guidelines are general, and they do not address what degree of slope is too steep to be tillable. Before the PTABOA hearing, the Respondent sent the Petitioner a letter asking him to bring his FSA record. As secretary of the PTABOA, the Respondent asks all taxpayers who are appealing agricultural assessments to bring their FSA records. The PTABOA generally makes the amount of tillable land match those records. The Petitioner brought his FSA record, but he would not show it to the PTABOA or leave it so the PTABOA could look at it when making its decision. The PTABOA therefore had no evidence to contradict the assessment. *Reynolds testimony; Resp't Ex. 7; Reller argument.*

Burden of Proof

16. 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 in specified circumstances, including where the assessment under appeal represents an increase of more than 5% over the prior year's assessment for the same property. I.C. § 6-1.1-15-17.2(a) and (b). If the assessor has the burden and fails to prove the assessment is correct, it reverts to the previous year's level or to another amount shown by probative evidence. *See* Ind. Code § 6-1.1-15-17.2(b).

17. The assessment increased by more than 5% between 2014 and 2015, going from $112,700 to $123,900. The parties agreed that the Respondent had the burden of proof.

Analysis

18. The Respondent failed to make a prima facie that the 2015 assessment is correct. The Board reaches this conclusion for the following reasons:

    a) Indiana assesses real property based on its true tax value, which the 2011 Real

[3] The amount of land under farm buildings or barns and covered by a farm pond and running water also changed slightly between the 2014 and 2015 assessments. *See Resp't Exs. 2-3.*

Property Assessment Manual defines as "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, for the property." 2011 REAL PROPERTY ASSESSMENT MANUAL 2 (incorporated by reference at 50 IAC 2.4-1-2). Assessors usually value property using a mass-appraisal version of the cost-approach set forth in the 2011 Real Property Assessment Guidelines. But in assessment appeals, parties normally cannot make a case either supporting or opposing an assessment simply by showing how the Guidelines 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, they must offer market-based evidence to show a property's true tax value. *See id*.

b) The statutory and regulatory scheme for assessing agricultural land however requires us to treat challenges to those assessments differently than we treat other assessment challenges. For example, the legislature has directed the Department of Local Government Finance ("DLGF') to value 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. It has also given the DLGF increasingly detailed instructions on how to determine a statewide base rate using a rolling average of capitalized net income from agricultural land. I.C. § 6-1.1-4-4.5(e). Assessors then use the required soil productivity factors to adjust that base rate. 2011 REAL PROPERTY ASSESSMENT GUIDELINES, ch. 2 at 99 (incorporated by reference at 50 IAC 2.4-1-2). They also classify agricultural land into various use types and subtypes, including tillable and non-tillable land. Depending on the classification, assessors then apply influence factors in predetermined amounts, such as a negative 60% influence factor for non-tillable land. 2011 GUIDELINES, ch. 2 at 85-96, 98-100. Thus, unlike other types of real property, the true tax value of agricultural land (other than agricultural homesites and excess acreage) is determined by applying the Guidelines rather than by reference to independent market-based evidence.[4]

c) Here, the Petitioner has challenged only how the Respondent allocated his agricultural property between tillable and non-tillable land. Under those circumstances, the Respondent could attempt to meet her burden of proof by focusing on that part of the assessment and showing that the farmland was correctly assessed under the Guidelines.

d) The Guidelines require assessors to identify agricultural tracts using data from detailed soil maps, aerial photography, and local plat maps. And "each variable in the land assessment formula is measured using appropriate devices to determine its size and effect on the parcel's assessment." 2011 GUIDELINES, ch. 2, at 76. The

[4] One acre per dwelling on agricultural property is classified as an agricultural homesite and is valued in the same as un-platted residential land. Similarly, agricultural excess acres—land dedicated to non-agricultural use, such as areas of manicured yard beyond the one-acre homesite—are valued the same as residential excess acreage. 2011 GUIDELINES, ch. 2 at 53, 93.

Guidelines identify tillable land as "land used for cropland or pasture that has no impediments to routine tillage." *Id.* at 88. It does not receive a negative influence factor, unless it floods or qualifies as "farmed wetlands." *See id*. at 88-89. By contrast, non-tillable 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*." *Id*. at 89 (emphasis added). It receives a negative 60% influence factor.

e) The Respondent testified that her office based its allocation of tillable and non-tillable land on aerial photographs from around the March 1, 2015 assessment dates, soil-type overlays, and a digitized report generated by the office's state-approved software program. It is not clear how the soil-type overlays contributed to the allocation. It is similarly unclear whether the software program simply measured various areas from the aerial photograph that the Respondent independently designated as tillable and non-tillable, or whether the program itself both made the designation and measured the respective areas. If it is the latter, the Respondent did not identify the factors the program used in designating the use types. Without more information, we find that the Respondent failed to make a prima facie case that she properly allocated the farmland between tillable and non-tillable land.

f) In any case, the Petitioner rebutted the Respondent's allocation. The Petitioner testified that he used the property as pasture land and that large portions of it could not be tilled due to its slope and the presence of ditches, both of which prevent him from using farm machinery. He offered photographs that support his testimony to some extent, although it is difficult to judge the steepness of the slope depicted in the photographs. And while the Petitioner did not offer specific measurements of the areas with those impediments, he testified that they pervaded the property.

g) The Respondent offered nothing to dispute the Petitioner's testimony, other than to point out that he refused to provide a copy of his FSA record. While that record might have corroborated the Petitioner's testimony by showing the number of acres on which he planted crops, nothing in the relevant statute, case law, or administrative regulations requires a taxpayer to submit such a document in an assessment appeal to show the portions of his property that are or are not tillable.[5] Conversely, if the Respondent thought the report might support her assessment or impeach the Petitioner's testimony, she could have opted out of small claims and sought to compel the Petitioner to produce it through discovery. *Compare* 52 IAC 3-1-5(c) (limiting discovery in small claims to names and addresses of witnesses and copies of documentary evidence) *with* 52 IAC 2-8-3 (allowing parties to use discovery methods

[5] In some instances, information from the FSA may be required, such as to support classification of land as "Farmed Wetlands," a subtype of Tillable Land (Type 43) and "Wetlands," a subtype of "Other Farmland" (Type 73). *See* 2011 GUIDELINES, ch. 2 at 89, 92 (Requiring those use types to be "verified through records obtained from the U.S. Department of Agriculture, Farm Service Agency.").

under the Indiana Rules of Trial Procedure in non-small-claims appeals).[6] She did not do so.

h) Because the Respondent failed to meet her burden of proving that the 2015 assessment was correct, the assessment must revert to the previous year's level.

Final Determination

19. The Respondent failed to meet her burden of proving that the 2015 assessment was correct. We therefore order that the total assessment must be reduced to the previous year's level of $112,700.

Issued: April 17, 2017

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

-APPEAL RIGHTS-

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of 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>.

[6] The Petitioner characterized the document as "private." Because the question is not before us, we do not offer any opinion on whether the Petitioner would be entitled to a protective order if the Respondent sought the document through a discovery request.