

REPRESENTATIVE FOR PETITIONER:
Charles Wismiller

REPRESENTATIVES FOR RESPONDENT:
Robert Metz, Lake County Hearing Officer
Joseph E. James, Lake County Hearing Officer

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Charles G. and Jacqueline S.)	Petition No.:	45-037-18-1-5-00892-19
Wismiller Revocable Living Trust,)		
)	Parcel No.:	45-19-19-201-005.000-037
Petitioner,)		
)	County:	Lake
v.)		
)	Assessment Year:	2018
Lake County Assessor,)		
)		
Respondent.)		

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

January 8, 2021

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. On August 29, 2018, the Charles G. and Jacqueline S. Wismiller Revocable Living Trust (the “Trust”) purchased a 4.25-acre parcel located at 13443 W. 173rd Avenue in Lowell. The Trust claims that the Assessor improperly changed the property’s classification from agricultural to residential for the 2018 assessment year, resulting in an incorrect

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assessment. The Assessor attempted to support the classification change by claiming that the Trust purchased the property for recreational purposes. However, her evidence related to the Trust’s intended use is irrelevant to the property’s correct classification for 2018 because the Trust purchased it more than eight months after the assessment date. The Assessor’s remaining evidence regarding the proper classification is insufficient to prove the property was being put to residential use. Thus, her valuation evidence regarding the Trust’s purchase price is irrelevant because agricultural land is not assessed using market-based evidence. We therefore order the 2018 assessment reduced to its 2017 assessed value of \$1,300.

PROCEDURAL HISTORY

2. The Trust filed a Form 130 petition with the Lake County Assessor contesting its 2018 assessment. On August 7, 2019, the Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued a final determination upholding the original assessment.
3. The Trust timely filed a Form 131 petition with the Board. On October 22, 2020, our designated administrative law judge, Ellen Yuhan (“ALJ”), held a hearing on the petition. Neither she nor the Board inspected the property.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. Charles Wismiller and Rick Niemeyer testified on behalf of the Trust. Lake County Hearing Officers Robert Metz and Joseph E. James testified on behalf of the Assessor.
5. The Trust submitted the following exhibits:

Petitioner Exhibit 1:	Cash Farm Lease Form
Petitioner Exhibit 2:	Parcel Identification Information
Petitioner Exhibit 3:	Aerial view of the subject property
Petitioner Exhibit 4:	Aerial view of the subject property
Petitioner Exhibit 5:	Map from the planning commission

6. The Assessor submitted the following exhibits:
- Respondent Exhibit 1: Sales Disclosure Form for the subject property
 - Respondent Exhibit 2: Minutes from the PTABOA meeting
 - Respondent Exhibit 3: Sales Disclosure Form for a property in Sheridan Acres
 - Respondent Exhibit 4: *Bryan K. Piles v. Van Buren Township Assessor* (Indiana Board of Tax Review, March 22, 2007)
 - Respondent Exhibit 5: *Douglas G. Kildsig v. Warrick County Assessor* (Indiana Board of Tax Review, December 1, 2010)
 - Respondent Exhibit 6: Property record card
7. The record also includes the following: (1) all pleadings, briefs, and documents filed in this appeal; (2) all orders and notices issued by the Board or our ALJ; and (3) an audio recording of the hearing.

BURDEN OF PROOF

8. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances—where the assessment under appeal represents an increase of more than 5% over the prior year's assessment, or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. I. C. § 6-1.1-15-17.2 (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. I.C. § 6-1.1-15-17.2(b).
9. Additionally, when an assessor changes a property's land classification, "the county assessor or township assessor making the change in the classification has the burden of proving that the change in the classification is correct...in any appeals taken to the Indiana board of tax review or to the Indiana tax court." Ind. Code § 6-1.1-15-17.1 (2).

10. In this case, the property's assessment increased by more than 5% from 2017 to 2018. The Assessor admitted that she therefore bears the burden of proving that the 2018 assessment is correct. However, we conclude she also has the burden of proving that the change in the property's land classification is correct.

SUMMARY OF THE ASSESSOR'S CASE

11. The Trust purchased the property in August 2018 for \$42,500. It is a 4.25-acre parcel that is contiguous with another property owned by Charles Wismiller. This sale is considered an arm's-length transaction and valid even though Charles is a contiguous property owner. *Metz testimony; Resp't Ex. 1.*
12. At the PTABOA meeting, Charles stated that the property is landlocked. He purchased it because he has no woods on his property and he intends to hunt deer on it. The Assessor therefore believes the Trust purchased the property for recreational use and not for farming. The prior owner, Kevin Hitzeman, was not farming it either—he was just letting it sit there. *Metz testimony; Wismiller testimony; Resp't Ex. 2.*
13. A 5-acre property in Sheridan Acres with a similar use sold for \$42,500, but the Assessor did not base the increased assessment on the purchase price of either property. *Metz testimony; Resp't Ex. 3.*
14. The Indiana Board has previously determined that property purchased for recreational use or for harvesting firewood for personal use is not agricultural. The Trust has not produced any evidence showing this parcel would be used for any agricultural purposes. *Metz testimony; Resp't Exs. 4, 5.*

SUMMARY OF THE TRUST'S CASE

15. The subject parcel has no frontage on a road and no utilities. It is landlocked and located about ¼ mile from the Wismiller residence. It is on the back side of a 50-acre parcel that

Charles owns which is actively farmed. Charles bought the property to keep people off his land and to cut some firewood for his personal use. It is zoned A1 and has always been zoned A1. The property is unusable, agricultural land because of the tree canopy. Just because someone hunts on a property does not mean it is not agricultural. *Niemeyer testimony; Wismiller testimony; Pet'r Ex. 1.*

16. The sales disclosure form shows the Trust purchased the property for \$10,000 per acre. This is not unreasonable for agricultural land in this area. Farm ground can bring anywhere from \$5,500 to \$10,000 per acre depending on where it is located. *Niemeyer testimony.*
17. The property in Sheridan Acres that the Assessor discussed is a platted lot used for residential purposes. Years ago, some houses were built in that subdivision. If you wanted to build a house in there, the planning commission would look at that property differently than the subject property. *Niemeyer testimony.*

ANALYSIS

18. Indiana assesses property based on its “true tax value,” which is determined under the rules of the Department of Local Government Finance (“DLGF”). I. C. § 6-1.131-5(a); I.C. § 6-1.1-31-6(f). True tax value does not mean “fair market value” or “the value of the property to the user.” I.C. § 6-1.1-31-6(c) and (e). The DLGF defines “true tax value” as “market value-in-use,” which it in turn defines as “[t]he 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.” 2011 REAL PROPERTY ASSESSMENT MANUAL at 2. Evidence in an assessment appeal should be consistent with that standard. For example, USPAP-compliant market value-in-use appraisals 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).

19. However, assessment appeals addressing agricultural land are treated differently than other assessment challenges. While a party must normally 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.
20. As discussed above, the Assessor’s burden in this case was two-fold. Because of the fundamental difference between how residential and agricultural land is assessed, she first needed to provide us with probative evidence demonstrating that changing the property’s classification from agricultural to residential was justified. If successful, she then needed to offer probative market-based evidence to support the 2018 assessment.
21. Indiana Code § 6-1.1-4-13(a) provides that “land shall be assessed as agricultural land only when it is devoted to agricultural use.” “Agricultural property” is defined as land “devoted to or best adaptable for the production of crops, fruits, timber, and the raising of livestock.” GUIDELINES, GLOSSARY at 1. The word “devote” means “to attach the attention or center the activities of (oneself) wholly or chiefly on a specified object, field, or objective.” WEBSTER’S THIRD NEW INTERNATIONAL UNABRIDGED DICTIONARY at 620.
22. “Residential property” is defined as “vacant or improved land devoted to, or available for use primarily as a place to live,” and is normally construed to mean a structure where less than three families reside in a single structure.” GUIDELINES, GLOSSARY at 19.

Residential land is land that is utilized or zoned for residential purposes. The parcel's size does not determine the property classification or pricing method for the parcel. The property classification and pricing method are determined by the property's use and zoning.

GUIDELINES, CH 53. Furthermore, "residential acreage parcels of more than one acre and not used for agricultural purposes are valued using the residential homesite base and the excess acreage base rate established by the assessing official." *Id.* At 54.

23. The Tax Court has defined "residential excess" as land "dedicated to a nonagricultural use normally associated with the homesite." *Stout v. Orange County Assessor*, 996 N.E.2d 871, 875 n.6. (Ind. Tax Ct. 2013). Similarly, "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." 2011 GUIDELINES, CH. 2 at 93. "The agricultural excess acre rate is the same rate that is established for the residential excess acre category." *Id.*
24. In contrast, land purchased and used for agricultural purposes includes cropland or pasture land (i.e., tillable land) as well as woodlands. 2011 GUIDELINES, CH. 2 at 80. Additional categories of agricultural property include Type 4 "idle cropland" and Type 5 non-tillable land that is "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. Thus, by definition, agricultural property may include property that is not suitable for forestry or "farming."
25. The Assessor's evidentiary presentation focused almost exclusively on demonstrating that the Trust purchased the property for recreational purposes. But the Trust's intended use has no bearing on the property's correct classification for 2018 since the Trust purchased it on August 29, 2018—more than eight months after the January 1, 2018 assessment date.

26. In fact, the only evidence put forward by the Assessor that might have some bearing on this issue was a brief exchange during the cross-examination of Wismiller in which the Assessor elicited testimony that the prior owner was not farming the property. However, we cannot find any support for the proposition that an agricultural classification depends solely on whether the property is actively farmed. The classification depends on whether the acreage in question is put to agricultural or residential use.
27. Given the complete lack of evidence demonstrating that the property was being put to any type of residential use, we conclude that the Assessor failed to prove that changing the property's classification to residential was correct. Because Indiana does not value agricultural land using market-based evidence, that failure also renders her valuation evidence relating to the Trust's purchase price irrelevant. Accordingly, we conclude that the Assessor failed to make a prima facie case supporting the 2018 assessment.

SUMMARY OF FINAL DETERMINATION

28. The Assessor failed to make a prima facie case supporting the classification change or the 2018 assessment. The Trust is therefore entitled to have its assessment reduced to the previous year's assessed value of \$1,300.

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>>.