

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

Petition: 19-019-20-1-5-00835-20
Petitioner: Lawrence Earl Carter
Respondent: Dubois County Assessor
Parcel: 19-12-36-300-018.001-019
Assessment Year: 2020

The Indiana Board of Tax Review issues this determination, finding and concluding as follows:

Procedural History

1. Lawrence Earl Carter contested the 2020 assessment of his property located at 5930 South State Road 161 in Huntingburg. The Dubois County Property Tax Assessment Board of Appeals (“PTABOA”) issued a Form 115 determination reducing the property’s assessment to \$1,085,300 (\$131,900 for land and \$953,400 for improvements).¹
2. Carter then filed a Form 131 petition with the Board and elected to proceed under our small claims procedures. On July 22, 2021, our designated administrative law judge, Joseph Stanford (“ALJ”), held a telephonic hearing on Carter’s petition. Neither he nor the Board inspected the property.
3. Marilyn Meighen appeared as counsel for the Dubois County Assessor and Carter represented himself. Carter, Austin Budell of Tyler Technologies, and Dubois County Assessor Angela Giesler were sworn as witnesses. Only Carter and Budell testified.

Record

4. The official record for this matter includes the following:

Petitioner Exhibit 1: ²	“Reason for appeal” to the PTABOA,
Petitioner Exhibit 2:	“Additional support” for the appeal,
Petitioner Exhibit 3:	Aerial photograph of the subject and surrounding properties; property record cards (“PRCs”) for subject property, F & S Family LLC, and Kathleen I. Haller Revocable Trust,
Petitioner Exhibit 4:	PRCs for 15 “other properties with woodland classification,”

¹ The PTABOA increased the land assessment from \$117,300 to \$131,900 but reduced the improvement assessment. The total assessment decreased from \$1,103,400 to \$1,085,300. See *Pet’r Ex. 3; Resp’t Ex. A*.

² Carter also submitted a cover sheet containing a detailed description of some of his exhibits and some of his contentions.

Petitioner Exhibit 5: PRCs for Jeffrey L. Thomas & Erin L. Haaff, and Redbird Developments LLC.

Respondent Exhibit A: PRC for the subject property,

Respondent Exhibit B: Two aerial photographs and one street photograph of the subject property,

Respondent Exhibit C: Indiana Code § 6-1.1-4-13,

Respondent Exhibit D: Carter's "reason for appeal" (Pet'r Ex. 1),

Respondent Exhibit E: PRCs and aerial photographs for Antley, Neukam, Ferguson, and Mundy properties,

Respondent Exhibit F: PRCs and aerial photographs for Hoist and Seib properties.

5. The record also includes: (1) all petitions and other documents filed in this appeal, (2) all notices and orders issued by the Board or the ALJ, and (3) an audio recording of the hearing.

Contentions

A. Carter's Contentions

6. Carter alleges that the Assessor misclassified all the land beyond his one-acre homesite as residential rather than as agricultural woodland. The land was classified as agricultural woodland when Carter bought the property, and he argues that 14.89 of the 15.89 total acres should return to that classification. *Carter argument and testimony.*
7. Carter bought the property in 1998 intending to build a house to "live in the woods" and "be in the country," although he did know that the property was "a possible source of income if I so choose to have it that way." The land was all woods and was part of the Freyberger property that still adjoins Carter's property to the north. The Freyberger property is still classified as woodland. The Haller property to the south is also classified as woodland. Those properties look no different than Carter's property. *Carter testimony; Pet'r Ex. 3.*
8. Carter has never received an explanation as to why his land classification was changed from agricultural woodland or why his assessment keeps going up. He was only told that he needed to have "an income." The property "had just previously been logged" before Carter bought it. Carter explained that "recently, I had talked to, and previously had talked to people that log woods like mine, and they tell me you need to wait at least 20 years to make it profitable and viable to log." He acknowledged that "we now have reached that 20 years, but in the meantime, back since my property value was changed and reclassified as non ag, I was told by the experts that this property is not ready to be logged." *Carter testimony.*
9. Carter's land assessment increased 107% over the past six years. During that period, the Freyberger property's land assessment decreased 37.5%, and the Haller property's land assessment decreased 25.9%. At least 15 other properties "surrounding" Carter's

property also have land classified as woodland, and those assessments decreased between 2.4% and 59.2% over the past six years. Even properties with homesites had their land assessments decrease. The Haller property and another property owned by Jeffrey L. Thomas & Erin L. Haaff had their assessments decrease even though there were houses on those properties. Carter also discovered that ponds “get a 40% reduction.” *Carter testimony; Pet’r Exs. 3- 4.*

B. The Assessor’s Contentions

10. The Assessor argues that Carter’s land was properly classified. The 14.89 acres in dispute has been classified as nonagricultural for at least a decade. *Meighen argument; Budell testimony; Carter testimony; Resp’t Ex. A.*
11. The mere fact that there are trees on a property does not mean it should be classified as agricultural woodland. The property must be devoted to agricultural use. Carter simply wanted to live in the woods. There is no evidence that he devoted the property to agricultural use. *Budell argument and testimony; Resp’t Exs. B-D.*
12. Dubois County has no specific requirements for a property owner to be enrolled in a government program, such as a timber management plan, or to derive income from the property to qualify for a woodland classification. The PTABOA simply asked Carter those questions to help him establish that the property was devoted to agricultural use. There are many properties in the county devoted to agricultural use that are classified as agricultural, and many other properties with both homesites and trees that are not classified as agricultural. *Budell testimony; Resp’t Exs. E-F.*

Analysis

13. Generally, a taxpayer seeking review of an assessing official’s determination has the burden of proof. Various statutes, including Ind. Code § 6-1.1-15-17.2, create exceptions to that general rule and assign the burden of proof to the assessor under specified circumstances, including where a property’s assessment has increased more than 5% over the previous year.³
14. Carter argued that the burden should shift to the Assessor because his land assessment increased by 58% between 2019 and 2020, jumping from \$83,300 to \$131,900. But Carter’s total assessment increased by only 1.9%, rising from \$1,064,600 in 2019 to \$1,085,300 in 2020. We have repeatedly held that the burden-shifting statute does not contemplate piecemeal approaches focusing on the individual components of an assessment but is instead intended to apply to the assessment of the entire economic unit. We therefore adopt the ALJ’s preliminary ruling that Carter had the burden of proof.

³ A separate statute, Ind. Code § 6-1.1-15-17.1, requires an assessor to notify a taxpayer of any changes to the classification of its land and the reasons for those changes. The statute also assigns the assessor the burden of proving that the change is correct in an appeal. I.C. § 6-1.1-15-17.1. But that statute applies only to changes occurring after February 28, 2015. *Id.* The Assessor changed the classification of Carter’s land long before that date, so Ind. Code § 6-1.1-15-17.1 does not apply.

15. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting a property's true tax value. 50 IAC 2.4-1-1(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 3.⁴ 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), (e). Instead, it is determined under the rules of the Department of Local Government Finance (“DLGF”). I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f).
16. For most real property, 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.” MANUAL at 2. Evidence in an assessment appeal should be consistent with that standard. For example, a market-value-in-use appraisal prepared in accordance with the Uniform Standards of Professional Appraisal Practice 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, sales information for the property under appeal, sales or assessment information for comparable properties, and any other information compiled according to generally accepted appraisal principles. *See Eckerling v. Wayne Twp. Ass’r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *see also*, I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties’ assessments to determine an appealed property's market value-in-use).
17. Determining true tax value for agricultural land is different, however. For the assessment year at issue, the true tax value of agricultural land must be determined in accordance with the DLGF’s 2011 Real Property Assessment Guidelines and Ind. Code 6-1.1-4-13. MANUAL at 2. Under those Guidelines, the DLGF determines a statewide base rate for each year, which assessors then adjust based on soil productivity. *See* 2011 REAL PROPERTY ASSESSMENT GUIDELINES, ch. 2 at 77-78 (incorporated by reference at 50 IAC 2.4-1-2 (2011)). They may also apply influence factors in predetermined amounts depending on the type of agricultural land at issue. *Id.* at 85-93, 98-99. For example, land classified as agricultural woodland receives a negative 80% influence factor. According to the Guidelines, woodland is agricultural land “supporting trees capable of producing timber or other wood products [that] has 50% or more canopy cover or is a permanently planted reforested area.” *Id.* at 89-90.
18. This case turns on how the land beyond Carter’s homesite should be classified. If the property is correctly classified as residential or some other non-agricultural use, Carter failed to make a prima facie case because he offered no market-based evidence to show the property’s value. *See Piotrowski BK #5643 v. Shelby Cnty. Ass’r* 2021 Ind. Tax Lexis 39 at *6-7 (Ind. Tax Ct. Sept. 16, 2021) (explaining that a taxpayer must “present objectively verifiable, market-based evidence” to show that a property’s assessment does not reflect its market value-in-use). At most, Carter claimed that his land assessment had increased more than the assessments for other properties in the area. Even if true, that

⁴ The Department of Local Government Finance has adopted a new assessment manual and guidelines that apply to assessments for 2021 forward. 52 IAC 2.4-1-2 (filed Nov. 20, 2020) (incorporating 2021 Real Property Assessment Manual and Real Property Assessment Guidelines for 2021 by reference).

does little to show Carter's assessment was wrong or what the correct value should be. Each tax year stands alone, and evidence of a property's assessment in one tax year is not probative of its true tax value in a different tax year. *Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (citing *Glass Wholesalers, Inc. v. State Bd. of Tax Comm'rs*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991)).

19. But if Carter is right that his land should be classified as agricultural woodland, his failure to offer market-based evidence is not fatal to his claim. To the contrary, the true tax value of the land beyond the homesite would be determined simply by applying the Guidelines. We therefore turn to whether Carter proved that his land should be classified as agricultural.
20. He did not. 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." The DLGF defines "[a]gricultural property" as land "devoted to or best adaptable for the production of crops, fruits, timber, and the raising of livestock." 2011 REAL PROPERTY ASSESSMENT GUIDELINES, glossary at 1.; *see also* I.C. § 6-1.1-4-13(b)(4) (providing that land devoted to harvesting hardwood timber is considered land devoted to agricultural use). 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. Land bought and used for agricultural purposes can include woodlands, which the DLGF defines as land that has "50% or more canopy." GUIDELINES, ch. 2 at 90.
21. The DLGF recognizes that "certain circumstances may blur the line between the residential property class designation and the agricultural designation when wooded areas are involved," and it has offered guidance for determining whether such properties are devoted to agricultural use. GUIDELINES, ch. 2 at 82. In that guidance, the DLGF points to the owner's reasons for buying the land as well as to other objective indicia of agricultural use:

Of assistance to the assessor in determining the classification is evidence of enrollment in programs which assign a "farm number" or programs designed to foster timber production management. The determining factors are provided in IC 6-1.1-4-13 and the Guidelines. *Of particular interest to the assessor is the reason for the purchase of the land.*

...

While not controlling in the assessor's determination, the following factors may be of assistance: (1) the acreage is designated by the [Department of Natural Resources ("DNR")] as qualifying for one of their classified programs. The DNR has established a 10 acre minimum for its programs; (2) the owner can show an active timber management program in place which will improve the marketability of the forest for an eventual harvest; (3) the owner possesses a DNR management plan to further enhance the forest quality; and (4) the owner can show that regular forest harvests have occurred over a long time period.

GUIDELINES, ch. 2 at 89-90 (emphasis added).

22. Carter argues that the land beyond his one-acre homesite should be classified as woodland because it was classified that way when he bought it and it is covered with trees. But those facts are not sufficient. Carter instead needed to show that he devoted the land to agricultural use. He acknowledged that he bought the property intending to “live in the woods” and “be in the country”—in short, for residential purposes. The fact that he knew the property could be used to produce income does not change his intent. Nor do vague conversations with “experts” about needing to wait 20 years to log the property. That is particularly true where more than 20 years passed without Carter having taken any steps either to log the property or to prepare it for an eventual harvest.
23. While Carter pointed to adjoining wooded properties that were classified as agricultural woodland, including some with homes on them, he did not show how those properties were used. At most, he testified that a couple of the owners did not receive any income from the land. But that does not address whether those owners bought the properties for agricultural purposes or provided the Assessor with other indicia of agricultural use.

Conclusion

24. Carter did not show that any of his land should be classified as agricultural woodland. Nor did he offer any market-based evidence to show that his property was assessed for more than its market value-in-use. We therefore find for the Assessor and order no change.

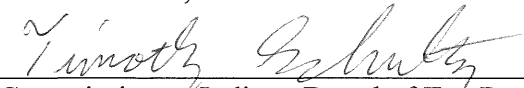
Date: NOVEMBER 17, 2021



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>.