

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

**Petition:** 17-024-21-1-1-00818-21  
**Petitioner:** William Fribley  
**Respondent:** DeKalb County Assessor  
**Parcel:** 17-06-21-100-001.000-024  
**Assessment Year:** 2021

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

**Procedural History**

1. William Fribley contested the 2021 assessment of his property. The DeKalb County Property Tax Assessment Board of Appeals issued a Form 115 determination valuing the property at \$26,200 (\$23,600 for land and \$2,600 for improvements).
2. Fribley then filed a Form 131 petition with the Board and elected to proceed under our small claims procedures. On September 28, 2022, our designated administrative law judge, Joseph Stanford (“ALJ”), held a telephonic hearing on Fribley’s petition. Neither he nor the Board inspected the property.
3. Fribley represented himself. Zachary Price appeared as counsel for the Dekalb County Assessor. Fribley and Andrew Smethers, a project manager and consultant for the Assessor, testified under oath.

**Record**

4. The official record for this matter includes the following:<sup>1</sup>
  - Respondent Exhibit A: Subject property record card,
  - Respondent Exhibit B: Photograph of the subject property taken from the west facing the pond toward the east,
  - Respondent Exhibit C: Photograph taken from the subject property facing west toward the neighboring property,
  - Respondent Exhibit D: Photograph taken from the subject property facing east-southeast,
  - Respondent Exhibit E: Photograph taken from the subject property facing south-southwest,
  - Respondent Exhibit F: Photograph taken from the subject property facing south,
  - Respondent Exhibit G: Photograph taken from the subject property facing south,

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<sup>1</sup> Fribley did not offer any exhibits. He talked about the Assessor’s exhibits in case-in-chief.

- Respondent Exhibit H: Photograph of the subject property taken from the neighboring property,
- Respondent Exhibit I: Photograph taken from the neighboring property to the west, and facing east,
- Respondent Exhibit J: Aerial map,
- Respondent Exhibit K: Farm Pond Guide from the U.S. Army Corps of Engineers.

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.

### **Findings of Fact**

6. The subject property is a 25.89-acre parcel with a utility shed located on County Road 36 in Auburn.<sup>2</sup> It has been in Fribley's family since 1936. Much of the property was set aside in 1954 for the classified forest and wildlands program through the Department of Natural Resources ("DNR"). Fribley and his father have planted 8,500 trees in that area of the property. *Fribley testimony; Ex. A.*
7. A 3.38-acre portion of the property consists of a pond. It is currently assessed as agricultural excess land. Fribley's father built the pond when Fribley, who is now 66 years old, was "too young to run the equipment." The pond is not entirely contained on the subject property. Part of it extends to a neighboring property owned by Fribley's sibling. Originally, the pond was used in connection with a dairy farm and cattle operation on the subject property. *Fribley testimony; Exs. C, J.*
8. Fribley, who lives 110 miles away, no longer uses the property for those purposes, but he does raise trees as a crop.<sup>3</sup> In the past, the subject property had been over-harvested for timber. According to the DNR, the property may not be ready for a timber harvest for a "significant time." About once a year, Fribley pumps water from the pond to use with herbicide that he sprays on his trees. The pond is also a water source for Fribley's young trees. In addition, water from the pond has been used on adjacent farmland over the years. *Fribley testimony.*
9. The neighboring property owned by Fribley's sibling has a pier and a pontoon boat in the water on the connecting shoreline. While the sibling has access to the subject property, the sibling rarely uses it. Fribley has fished the pond about ten times in his life. *Fribley testimony; Exs. C, I.*
10. The Army Corps of Engineers issued a guide to assist producers seeking written verification that constructing or maintaining a farm pond in a stream, wetland, or other water of the United States is exempt from permit requirements under the Clean Water

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<sup>2</sup> Fribley explained that the property has not been assigned an address, but that "County Road 36" is a convenient place to send mail regarding the property.

<sup>3</sup> Fribley testified that while he grows corn on the property, he uses it as a food block for wildlife rather than as a crop.

Act. According to that guide, a farm pond is a water source created by constructing a dam or excavating pit in a stream, wetland, or other water. It is to be used by a producer for agricultural or livestock production. *Resp't Ex. K.*

### Analysis

11. Generally, an assessment determined by an assessing official is presumed to be correct. 2021 REAL PROPERTY ASSESSMENT MANUAL at 3 (incorporated by reference at 50 IAC 2.4-1-2 (2021)). A petitioner has the burden of proving the assessment is incorrect and what the correct assessment should be. *Piotrowski v. Shelby Cnty. Assessor*, 177 N.E.3d 127, 131-32 (Ind. Tax Ct. 2022).
12. 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); MANUAL at 3. 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).
13. For most types of 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 USPAP-certified market-value-in-use appraisal 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 or 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).
14. Determining true tax value for agricultural land is different, however. The true tax value of agricultural land must be determined in accordance with the DLGF's 2021 Real Property Assessment Guidelines and Ind. Code § 6-1.1-4-13. MANUAL at 2. Under those Guidelines, the DLGF sets a statewide base rate for each year, which assessors then adjust based on soil productivity. *See* 2021 REAL PROPERTY ASSESSMENT GUIDELINES, ch. 2 at 77-78. They may also apply influence factors in predetermined amounts depending on the type of agricultural land at issue. *Id.* at 85-93, 98-99. The value for Type 72 agricultural land, which the Guidelines describe as "[l]and covered by a farm pond or running water," is determined using a productivity factor of .50 and a "40% influence factor deduction." *Id.* at 89.
15. By contrast, the Guidelines provide for classification of one acre of land per dwelling as "agricultural homesite" (Type 9). They also provide for agricultural excess acreage (Type 92), which consists of land that "is presently dedicated to a non-agricultural use normally associated with the homesite." *Id.* at 90. According to the Guidelines, "areas containing a large manicured yard over and above the accepted one acre homesite" would

qualify. Those two land types are valued in the same way as residential land instead of through the soil productivity method. *Id.* at 90.

16. Fribley challenges the classification of a 3.38-acre pond currently assessed as agricultural excess land. He believes that it should be classified as Type 72 land with an accompanying reduction in its soil productivity factor and negative influence factor. The Assessor disagrees, arguing: (1) that Fribley used the pond for recreational, rather than farming, purposes, both because he does not raise traditional crops like corn or soybeans and because his sibling's neighboring property has a pontoon boat and pier, and (2) that the pond does not meet the Army Corps of Engineers' definition of a "farm pond."
17. We agree with Fribley that the 3.38 acres should be assessed as Type 72 agricultural land. Contrary to the Assessor's assertions, Fribley uses the pond for agricultural purposes by drawing water from it to spray the trees in his classified forest. For assessment purposes, we must consider land enrolled in the DNR's classified forest and wildlands program as being devoted to agricultural use. I.C. § 6-1.1-4-13(b)(2); GUIDELINES, ch. at 77. The same is true for land devoted to the harvesting of hardwood timber. *Id.* Indeed, the Assessor herself considered the entire property to be agricultural.
18. We disagree with the Assessor's characterization of Fribley's use of the pond as recreational. The boat and pier at the neighboring property do little to show how Fribley, or anyone else, used the portion of the pond located on the subject property. Indeed, Fribley's sibling rarely accessed the subject property, and Fribley fished the pond no more than 10 times over his lifetime. By themselves, those things do not suffice to transform the pond's use to something other than agricultural.<sup>4</sup>
19. Nor are we persuaded by the fact that the pond may not meet the Army Corps of Engineers' definition of a "farm pond." The Guidelines do not expressly incorporate the Corps' definition of that term. That is unsurprising, given that the Corps' guidance addresses requirements for obtaining a permit under a federal statute regulating the environment, which implicates concerns different from those that the Guidelines address.
20. We therefore find that the 3.38-acre pond on the subject property should be assessed as Type 72 agricultural land using a .50 productivity factor and a 40% influence factor deduction.

### **Conclusion**

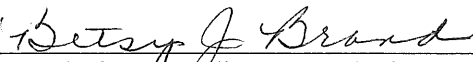
21. We find for Fribley and order that the 3.38-acre pond on the subject property be assessed as Type 72 agricultural land using a .50 productivity factor and a 40% influence factor deduction.

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<sup>4</sup> We need not address whether, if the pond were used primarily for recreational purposes, it would qualify as Type 92 excess agricultural acreage even though the property does not have a homesite.

Date: December 21, 2022

  
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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 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>>.