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

Petition: **07-003-22-1-5-01093-22**
Petitioner: **Charles E. Hotka**
Respondent: **Brown County Assessor**
Parcel: **07-10-22-300-117.000-003**
Assessment Year: **2022**

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

PROCEDURAL HISTORY

1. On May 26, 2022, Charles E. Hotka filed a Form 130 notice challenging the 2022 assessment of his property located at 3705 Orchard Road in Columbus, Indiana. On November 15, 2022, the Brown County Property Tax Assessment Board of Appeals ("PTABOA") issued a final determination valuing the subject property at $299,800 ($27,700 for land and $272,100 for improvements).

2. Hotka timely filed a Form 131 petition with the Board and elected to proceed under our small claims procedures. On May 31, 2023, our designated administrative law judge, David Smith ("ALJ") held a telephonic hearing on Hotka's petition. Neither he nor the Board inspected the subject property.

3. Hotka appeared pro se. Attorney Ayn K. Engle represented the Assessor. Hotka and Ken Surface testified under oath.

RECORD

4. Hotka submitted the following exhibits:

Petitioner Exhibit 1:	2022 Property Record Card ("PRC")
Petitioner Exhibit 2:	Department of Local Government Finance ("DLGF") Assessment overview
Petitioner Exhibit 3:	DLGF fact sheet
Petitioner Exhibit 4:	Classified Forest contract for 3705 Orchard Road
Petitioner Exhibit 5:	I.C. § 6-1.1-4-13 and I.C. § 6-1.1-6-14
Petitioner Exhibit 6:	2021 Real Property Assessment Guidelines ("Guidelines") Chapter 2
Petitioner Exhibit 7:	2021 Real Property Assessment Manual ("Manual")
Petitioner Exhibit 8:	2022 Brown County ratio study summary ("Study")
Petitioner Exhibit 9:	Page 11 of Study

Petitioner Exhibit 10:	Page 7 of Study
Petitioner Exhibit 11:	Manual, Rule 1; 50 IAC § 2.4-1-1
Petitioner Exhibit 12:	Guidelines, Appendix C
Petitioner Exhibit 13:	2022 PRC for 10322 Timberstone Drive
Petitioner Exhibit 14:	2022 PRC for subject property without trending
Petitioner Exhibit 15:	Base Assessment of Vacant Land
Petitioner Exhibit 16:	2022 PRC for Grandview Road
Petitioner Exhibit 17:	Market Value v. Assessment Value Appraisal

5. The Assessor submitted the following exhibits:

Respondent Exhibit A:	Final 2021 PRC for subject property
Respondent Exhibit B:	2021 Form 11 notice
Respondent Exhibit C:	2021 Form 115 notice
Respondent Exhibit D:	IBTR decision dated September 19, 2022
Respondent Exhibit E:	PRC showing how final 2021 value was calculated
Respondent Exhibit F:	2022 PRC for subject property
Respondent Exhibit G:	Form 122 report dated May 24 2023
Respondent Exhibit H:	Form 113 notice dated May 24, 2023
Respondent Exhibit I:	2023 PRC for subject property
Respondent Exhibit J:	2022 Form 134 notice
Respondent Exhibit K:	2022 Form 115 notice

6. The official record for this matter also includes the following: (1) all pleadings, briefs, motions, 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.

OBJECTIONS

7. During the hearing, our ALJ ruled on several objections. There is no need to revisit those objections and we adopt our ALJ's rulings. However, our ALJ took some objections related to the admissibility of certain evidence under advisement. We now turn to those objections.

8. The Assessor objected to the admission of Petitioner Exhibit 13, a PRC for Hotka's property in Hamilton County, Indiana. She argued that information regarding property in another county and the trending data it contains was irrelevant to this proceeding. Hotka argued that he was offering it to show that other assessors use trending factors besides 66%. Because we find the document minimally relevant, we overrule the objection.

9. Hotka objected to the admission of several handwritten notations on Respondent Exhibit E, a PRC for the subject property. He argued that the Assessor failed to provide a foundation for the notations. Because the Assessor later offered testimony from Surface that provided a sufficient foundation to admit the notations, we overrule the objection.

10. Hotka also made a hearsay objection to Surface's testimony about events and statements made at the 2021 PTABOA meeting and discussions about the 2022 assessment year that occurred after the meeting. Our procedural rules allow us to admit hearsay, with the caveat that we cannot base our final determination solely on hearsay that has been properly objected to and that does not fall within a recognized exception to the hearsay rule. 52 IAC 4-6-9(d). We therefore overrule the objections and note that we do not base our determination on the challenged testimony.

11. Finally, Hotka asked us to exclude Respondent Exhibits G and H, a Form 122 report and a Form 113 notice the Assessor issued on May 24, 2023 increasing the subject property's 2022 assessment to $347,000. Hotka objected to the Assessor's actions, arguing that since he had already appealed his 2022 assessment to the PTABOA, the Assessor no longer held jurisdiction over his appeal. Hotka therefore felt that the Assessor's last-minute reassessment was retaliatory. The Assessor countered that there are no statutes preventing assessors from reporting unassessed or omitted property after a PTABOA has issued a decision and argued that she complied with the requirements of I.C. § 6-1.1-9-1, which specifically authorizes assessors to increase the assessment of any omitted or undervalued tangible property after giving notice to the auditor and the taxpayer. However, because the question of whether the Assessor could increase the assessment has no bearing on the admissibility of the documents, we overrule the objection.

12. As far as the propriety of the issuance of a Form 122/113 reassessment when a tax year has already been appealed, that issue is not properly before us. The appeal statute expressly permits the Assessor to present new evidence supporting a higher assessment in the proceedings before us. Accordingly, the issuance of the Form 113, in this context, is superfluous.

13. The Assessor has not at this point taken any action that would circumvent the tax appeal system, run afoul of the principles of res judicata, or compel the taxpayer to file successive appeals on the same year.

FINDINGS OF FACT

14. The subject property is located at 3705 Orchard Road in Columbus, Indiana. It consists of a 1-1/2 story home and a pole barn situated on approximately 121.032 acres. The home has 2,630 square feet of finished living area with two bedrooms, two and a half bathrooms, a basement with 1,240 square feet of unfinished space, and a 360 square foot basement garage. The home was 80% complete on the 2021 assessment date. No testimony or evidence in the record establishes any renovations following that date. In 2015, the Indiana Department of Natural Resources granted Hotka's application for classification of 119.856 acres of his land as Classified Forest and Wildland. For 2022, the Assessor assessed one acre of Hotka's property as a residential homesite, 0.176 acres as residential excess, and the remaining 119.856 acres as classified forest. *Hotka testimony; Surface testimony; Pet'r Ex. 4; Resp't Exs. C, F.*

SUMMARY OF CONTENTIONS

15. **Hotka's case**:

a) The Assessor is not properly assessing the subject property because she is not following the Manual and Guidelines. Therefore, the assessment is not entitled to the presumption of correctness. The subject property is classified as agricultural and is being trended at a rate of 166%, but trending is not allowed on agricultural property. The Manual says that agricultural land should not be valued using market value-in-use. Instead, its true tax value should be determined in accordance with the Guidelines. *Hotka testimony; Pet'r Exs. 1, 2, 3, 4, 5, 7.*

b) Hotka and the Indiana Department of Natural Resources entered into an "Application for Classification" of forest land contract in 2015 under which 119.856 acres is treated as classified forest land. This form was received, acknowledged, and signed by the Assessor. The Assessor acknowledges on the contract that the land will be assessed at $1.00 per acre. There should be no question that this classified land, which includes land and improvements, is excluded from market value-in-use valuation and trending. The Guidelines specifically exclude agricultural and classified forest land from mass appraisal valuation. *Hotka testimony; Pet'r Exs. 4, 6, 11.*

c) Hotka identified 17 properties in the Assessor's 2022 Brown County ratio study and determined that those properties had an average of 7 acres of excess land. He then calculated the average sale price per excess acre for properties with less than 10 acres to be $8,752. Hotka argues the Assessor is "capturing" or "overlaying" an average of 7 acres of his property and applying trending factors to it. Appendix C of the 2022 Guidelines specifically defines what his improvements are worth. Clearly, the true tax value is not the base acreage. There is plenty of room to capture land value. Hotka believes that 30-70% of the Assessor's trending factor is capturing land value. The Assessor is not following Appendix C in valuing the replacement cost of the improvements. If the Assessor believes the house is worth more, she should apply a location multiplier. The City of Fishers, Indiana (Hamilton County) captures value with only 5% trending while the Brown County trending factor is 166%. The total assessed value of the subject property at 100% completion would be $232,710, but the improvements should only be considered 80% complete, resulting in a total assessed value of $195,926. *Hotka testimony; Pet'r Exs. 8, 9, 10, 12, 13.*

d) Hotka denies that construction was completed in 2021. He could live in the house, but construction continued into 2022 and 2023. The PRC shows the classified forest land valued at $1,700, but it would not sell for that. The Assessor did apply a 95% location multiplier to the property. Hotka made no adjustments to any of the properties included in the ratio study he cited. *Hotka testimony; Pet'r Ex. 1.*

16. **The Assessor's case**:

a) Ken Surface is a Senior Vice President for Nexus Limited, where he assists counties in all facets of real property assessment, including new construction reassessment, trending, ratio studies, and appeal work. He received a Bachelor of Science degree from Indiana University and has over 20 years of assessing experience. The DLGF has also designated Surface as a Level 3 certified assessor/appraiser. *Surface testimony.*

b) The PTABOA reduced the subject property's 2021 assessment from $299,100 ($27,600 for land and $271,500 for improvements) to $250,000 ($27,600 for land and $222,400 for improvements). The original 2021 assessment valued the improvements as 100% complete. However, based on a discussion the PTABOA members had with Hotka, and a site visit conducted by a Nexus employee named Jerry Cox in November 2021, the PTABOA determined that the property was not 100% complete as of January 1, 2021 even though Hotka had already received a certificate of occupancy. The PTABOA then changed the dwelling to 80% complete for 2021. Following the PTABOA's decision for 2021, the Assessor was unable to update the specific findings in her data system because her office had already transitioned to the 2022 data set. All the Assessor could do was enter the $250,000 as an override value. *Surface testimony; Resp't Exs. A, B, C.*

c) The 2022 PRC and the Form 11 notice issued to Hotka showed a total assessed value of $299,100, but that value reflected an 80% completion factor for the dwelling instead of the 100% completion factor the Assessor intended to apply. The error was a result of the Assessor's system carrying the 2021 data forward into 2022, and the mistake carried through to the PTABOA's determination for 2022. Hotka did not raise the percentage of completion as an issue during this appeal and the PTABOA did not make any rulings about the percentage of completion in their final determination. *Surface testimony; Resp't Exs. F, J, K.*

d) On May 24, 2023, the Assessor issued a Form 122 report and a Form 113 notice increasing the 2022 assessment to $347,000 ($27,600 for land and $319,400 for improvements). In the Form 113 notice, the Assessor gave the following explanation for why she changed the 2022 assessment:

> The improvements were incorrectly assessed as 80% complete in the original 2022 assessment. Improvements should have been assessed as 100% complete because the taxpayer stated that construction of the improvements continued into 2021. The error occurred when we forced the 2021 value that was approved by the PTABOA in the CAMA software to get the proper breakdown. The 2021 value approved by the PTABOA valued the improvements at less than 100% complete based on testimony that construction was not complete on 1/1/2021. Typically, we make the adjustments in the current year (2022 at the time) and use those figures for the appeal year (2021 at the time), then we change the information back to

the original current year data. Unfortunately, the percentage complete was mistakenly not changed back to 100% for 2022. Mr. Hotka's appeal pointed out details in the sketch that needed to be changed. The basement garage was added to the sketch at this time.

Surface testimony; Resp't Exs. G, H.

e) Hotka made no adjustments to any of the comparable properties he presented, and the Assessor properly assessed his classified forest land using the Guidelines. Assessors can assess land that is not part of a classified forest separately from the forest land. Trending only applies to improvements, and the Assessor did not apply any trending to Hotka's land. The land values in the Brown County ratio study Hotka used contain additional factors that can cause positive and negative valuation changes that he did not take into account. There are many different base rates within neighborhoods and the county. The base rate in Hotka's neighborhood is $5,000, but the Assessor did not apply that same $5,000 base rate countywide. *Surface testimony.*

f) Because Hotka has not met his burden of proof, the Board should find in favor of the Assessor and uphold the corrected assessment of $347,000. *Engle argument.*

BURDEN OF PROOF

17. Generally, the taxpayer has the burden of proof when challenging a property's tax assessment. Accordingly, the assessment on appeal, "as last determined by an assessing official or the county board," will be presumed to equal "the property's true tax value." Ind. Code § 6-1.1-15-20(a) (effective March 21, 2022).

18. However, the burden of proof shifts if the property's assessment "increased more than five percent (5%) over the property's assessment for the prior tax year." I.C. § 6-1.1-15-20(b). In that situation, the assessment "is no longer presumed to be equal to the property's true tax value, and the assessing official has the burden of proof." *Id.* But the burden shifting provision does not apply if the assessment increase is based on 1) substantial renovations or new improvements; 2) zoning; or 3) uses that the assessing official did not consider in the assessment for the prior tax year. I.C. 6-1.1-15-20(d).

19. If the burden has shifted, and "the totality of the evidence presented to the Indiana board is insufficient to determine the property's true tax value," then the "property's prior year assessment is presumed to be equal to the property's true tax value." I.C. § 6-1.1-15-20(f).

20. Here, the current assessment of $299,800[1] was an increase of more than 5% over the previous year's assessment of $250,000[2]. The Assessor therefore has the burden of proof.

21. The Assessor argued an exception to the burden shifting rule should apply, but she failed to present evidence of substantial renovations or new improvements.

ANALYSIS

22. The Indiana Board of Tax Review is the trier of fact in property tax appeals, and our charge is to "weigh the evidence and decide the true tax value of the property as compelled by the totality of the probative evidence" before us. I.C. § 6-1.1-15-20(f). Our conclusion of a property's true tax value "may be higher or lower than the assessment or the value proposed by a party or witness." *Id.* Regardless of which party has the initial burden of proof, either party "may present evidence of the true tax value of the property, seeking to decrease or increase the assessment." I.C. § 6-1.1-15-20(e).

23. 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 DLGF. I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). 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.

24. In order to meet its burden of proof, a party "must present objectively verifiable, market-based evidence" of the property's value. *Piotrowski v. Shelby Cty. Ass'r*, 177 N.E.3d 127, 132 (Ind. Tax Ct. 2021) (*citing Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 677-78 (Ind. Tax Ct. 2006)). For most real property types, neither the taxpayer nor the assessor may rely on the mass appraisal "methodology" of the "assessment regulations." *P/A Builders & Developers, LLC v. Jennings Cty. Ass'r*, 842 N.E.2d 899, 900, (Ind. Tax Ct. 2006). This is because the "formalistic application" of the procedures and schedules from the DLGF's assessment guidelines lacks the market-based evidence necessary to establish a specific property's market value-in-use. *Piotrowski*, 177 N.E.3d at 133. However, 119.856 acres of the subject property is enrolled in the classified forest program under I.C. § 6-1.1-6-5.5 and must be assessed at the rates established under I.C. § 6-1.1-6-14.

25. Market-based evidence may include "sales data, appraisals, or other information compiled in accordance with generally accepted appraisal principles." *Peters v. Garoffolo*, 32 N.E.3d 847, 849 (Ind. Tax Ct. 2015). Relevant assessments are also

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[1] For purposes of the burden-shifting statute, I.C. § 6-1.1-15-20(c), it is irrelevant whether the "final value" is the number in the Assessor's Form 113 ("as last corrected by an assessing official") or the PTABOA's Form 115 ("as determined by a reviewing authority"). In either case, the value is an increase of more than 5% from the prior year's assessment.

[2] On September 19, 2022, we issued a Final Determination ordering no change to the subject property's 2021 assessment of $250,000. *Resp't Ex. D.*

admissible, but arguments that "another property is 'similar' or 'comparable' simply because it is on the same street are nothing more than conclusions . . . [and] do not constitute probative evidence." *Marinov v. Tippecanoe Cty. Ass'r*, 119 N.E.3d 1152, 1156 (Ind. Tax Ct. 2019). Finally, the evidence must reliably indicate the property's value as of the valuation date. *O'Donnell v. Dept. of Local Gov't. Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006). For 2022 assessments, the valuation date was January 1, 2022. I.C. § 6- 1.1-2-1.5(a).

26. As explained above, the Assessor has the burden of proof. The Assessor asserted that we should uphold the corrected assessment of $347,000 that she issued on May 24, 2023, but she failed to present any objectively verifiable, market-based evidence supporting that value. And she cannot simply rely on the mass appraisal methodology of the assessment regulations because the DLGF's assessment guidelines lack the market-based evidence necessary to establish a specific property's market value-in-use. *P/A Builders*, 842 N.E.2d at 900; *Piotrowski*, 177 N.E.3d at 133. The Assessor also failed to demonstrate that her assessment of the 119.856 acres of land that are enrolled in the classified forest program complied with the requirements of I.C. § 6-1.1-6-14. We therefore conclude that the Assessor failed to make a prima facie case.

27. We now turn to Hotka's case. He similarly failed to present any objectively verifiable, market-based evidence showing the subject property's true tax value as of January 1, 2022. Hotka instead chose to focus most of his presentation on the Assessor's alleged failure to properly apply the Manual and Guidelines based on his belief that she cannot apply trending factors to any portion of his property (land or improvements) because 119.856 acres of his land are classified forest. But as we explained in our Final Determination resolving his 2021 assessment appeal, the laws governing the assessment for classified forest apply only to the land in the classified forest program. They do not change how other land or improvements that are not classified forest are assessed, even for other property on the same tax parcel. Nor do we find any proof that the Assessor is "capturing" or "overlaying" an average of 7 acres of his property and applying trending factors to it or otherwise compensating for the classified forest land by increasing other parts of his assessment.

28. Hotka's remaining arguments regarding the proper percentage completion for his dwelling and the Assessor's alleged failure to follow Appendix C of the Guidelines in valuing the replacement cost of the improvements challenge the Assessor's methodology in computing his assessment. But it is insufficient to simply attack the methodology used to develop the assessment. Instead, parties must use market-based evidence to "demonstrate that the suggested value accurately reflects the property's true market value-in-use." *Eckerling, 841 N.E.2d at 678.*

29. Because Hotka offered no probative market-based evidence establishing the property's correct market value-in-use, he failed to make a prima facie case for a lower assessment.

30. When, as here, the totality of the evidence presented by the parties is insufficient to determine the property's true tax value, I.C. § 6-1.1-15-20(f) mandates that the property's

assessment revert to the assessed value from the previous assessment year. We therefore conclude that the subject property's 2022 assessment must revert to its assessed value from 2021.

FINAL DETERMINATION

Because neither party provided probative evidence of the subject property's true tax value, we order its 2022 assessment reduced to $250,000.

ISSUED: SEPTEMBER 27, 2023

Jonathan R. Elrod
Chairman, Indiana Board of Tax Review

Betsy J. Brand
Commissioner, Indiana Board of Tax Review

Timothy Ecker
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>.