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

Petitions:	**20-009-17-1-5-00010-18**
	20-009-17-1-5-00008-18
Petitioners:	**James & Martha Tibbets**
Respondent:	**Elkhart County Assessor**
Parcels:	**20-06-28-426-025.000-009**
	20-06-28-426-007.000-009
Assessment Year:	**2017**[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 Petitioners initiated their 2017 assessment appeals with the Concord Township Assessor on June 30, 2017. The Elkhart County Property Tax Assessment Board of Appeals (PTABOA) failed to act on the Petitioners' appeals. Thus, the Petitioners sought review with the Board. *See* Ind. Code § 6-1.1-15-1(k) and (o) (allowing a taxpayer to seek review by the Board if a county PTABOA does not hold a hearing within 180 days of the taxpayer filing its notice of review with the county or township assessor). The Petitioners filed Petitions for Review of Assessment (Form 131s) with the Board on January 4, 2018, and elected the Board's small claims procedures.

2. On January 24, 2019, Administrative Law Judge (ALJ) Dalene McMillen held a consolidated hearing on the petitions. She did not inspect the property.

3. James and Martha Tibbets appeared *pro se*. Deputy Assessor Jeffrey Phillips appeared for the Respondent. Licensed residential appraiser Gavin Fisher and Tylan Miller were witnesses for the Respondent. All of them were sworn.

Facts

4. The properties under appeal consist of a 3.005 acre vacant lot and a 3.33 acre lot including a single-family home and utility shed. Both properties are located at 59785 County Road 11 in Elkhart. The two parcels collectively form one economic unit. Thus,

[1] The Petitioners sent a letter to the Board on January 22, 2018, stating the assessment year under appeal for both parcels "should be 2017, not 2016." The Respondent submitted the Taxpayer's Notice to Initiate an Appeal (Form 130) indicating the Petitioners initiated their assessment appeal on parcel 20-06-28-426-025.000-009 on June 30, 2017, however, the county inadvertently marked the year under appeal as 2016 instead of 2017. Thus, the Board determines, based on the agreement of the parties on the record, the assessment year under appeal is 2017 for both parcels.

unless otherwise indicated, the Board will refer to the parcels together as "the subject property."

5. Parcel 20-06-28-426-025.000-009 (parcel 426-025) was assessed at $34,800 (land only). Parcel 20-06-28-426-007.000-009 (parcel 426-007) was assessed at $185,000 (land $56,000 and improvements $129,000).

6. The Petitioners request their land currently assessed as "excess residential" be reclassified as "agricultural woodland."

Record

7. The official record for this matter is made up of the following:

   a) A digital recording of the hearing.

   b) Exhibits:

Petitioner Exhibit 1:	2017 subject property record card for parcel 20-06-28-426-007.000-009 (Page 1),
Petitioner Exhibit 2:	2017 subject property record card for parcel 20-06-28-426-025.000-009 (Page 1),
Petitioner Exhibit 3:	2011 REAL PROPERTY ASSESSMENT GUIDELINES (GUIDELINES), Chapter 2, page 90,
Petitioner Exhibit 4:	*Ronald O. Guingrich v. Allen Co. Ass'r,* 49T10-0812-SC-68 (Ind. Tax Ct. 2010),
Petitioner Exhibit 5:	*Paul L. & Joan E. Chavez v. Dekalb Co. Ass'r,* Pet. No. 17-024-13-1-5-00001 (Ind. Bd. Tax Rev. Jan. 6, 2015),
Petitioner Exhibit 6:	*Dekalb Co. Ass'r v. Paul L. & Joan E. Chavez,* 49T10-1502-TA-00006 (Ind. Tax Ct. 2016),
Petitioner Exhibit 7:	Letter from Tim Eizinger, ACP Forester from the Department of Natural Resources (DNR) to Dave Tibbets dated August 8, 1978, with attachments entitled "Forest Management Plan," "Tree Planting," and "The Consultant Forester," [2]
Petitioner Exhibit 8a:	Article "Seedling Orders Being Taken for Energy Acres Program" prepared by The Republic dated October 22, 1981,
Petitioner Exhibit 8b:	Letter from Tim Eizinger to Dave Tibbets dated August 8, 1978,
Petitioner Exhibit 8c:	DNR tree order form dated October 9, 1982,
Petitioner Exhibit 9:	Indiana Code § 36-7-4-616,

[2] James Tibbets also goes by J. David Tibbets.

Petitioner Exhibit 10:	Department of Local Government Finance (DLGF) memorandum "Classification and Valuation of Agricultural Land" dated February 12, 2008,
Petitioner Exhibit 11:	Indiana Code § 6-1.1-4-13,
Petitioner Exhibit 12:	GUIDELINES, Chapter 2, page 89,
Petitioner Exhibit 13:	Four photographs of the subject property,
Petitioner Exhibit 14:	Aerial map/photograph of the subject property,
Petitioner Exhibit 17:	Petitioners' assessment comparable analysis,
Petitioner Exhibit 18a:	2017 property record card for 59693 County Road 11, Elkhart (Page 1),
Petitioner Exhibit 18b:	2017 property record card for 25246 County Road 32, Goshen (Page 1),
Petitioner Exhibit 18c:	2017 property record card for County Road 9, Elkhart (Page 1),
Petitioner Exhibit 18d:	2017 property record card for Mishawaka Road, Elkhart (Page 1),
Petitioner Exhibit 18e:	2017 property record card for Mishawaka Road, Elkhart (Page 1),
Petitioner Exhibit 18f:	2017 property record card for County Road 8, Bristol (Page 1).[3]

Respondent Exhibit 1:	Taxpayer's Notice to Initiate an Appeal (Form 130) dated June 30, 2017,
Respondent Exhibit 2:	2015, 2016, & 2017 subject property record cards,
Respondent Exhibit 3:	Various emails between Tylan Miller and Steven Winicker; letter from Tim Eizinger to Dave Tibbets dated August 8, 1978, including attachments entitled "Forest Management Plan," "Tree Planting" and "The Consultant Forester,"
Respondent Exhibit 4:	Restricted Appraisal Report of the subject property prepared by Gavin Fisher, Fisher Appraisal, LLC with an effective date of January 1, 2017.

c) The record also includes the following: (1) all pleadings and documents filed in this appeal; (2) all orders and notices issued by the Board or ALJ; and (3) these findings and conclusions.

Contentions

8. Summary of the Petitioners' case:

a) The Petitioners claim their land is improperly classified as residential rather than agricultural. The lot including the home, should be classified as one-acre homesite and the remaining 2.33 acres as "101 agricultural cash, grain or general farm." The

[3] The Petitioners' exhibit coversheet listed Petitioners' Exhibits 15, 16, 19, and 20, but the Petitioners did not submit these exhibits into the record, and the Board will not consider them.

vacant lot "with 2.7719 acres, the whole thing (should be) labeled as woodland."[4] *J. Tibbets testimony; Pet'r Ex. 1, 2.*

b) Based on decisions from the Board, Indiana Tax Court, and guidance from the DLGF, the owner's intent is "significant" in determining use and assessment of their land. The Petitioners purchased the subject property "back in the 1970's" with the intent of growing trees for heating their home. Since the time of purchase, the Petitioners have planted and harvested trees. *J. Tibbets testimony; Pet'r Ex. 3, 4, 5, 6.*

c) On August 8, 1978, the Petitioners enrolled 2.33 acres of their residential lot (parcel 426-007) into a DNR forest management plan. Admittedly, the DNR program no longer exists, but they have continued to follow the management plan as it was originally laid out. The trees located on these acres are harvested for firewood and Christmas trees. *J. Tibbets testimony; Pet'r Ex. 7, 8a, 8b, 13, 14.*

d) In the spring of 1983 over 3,000 trees were planted on the vacant lot (parcel 426-025) for the express purpose of producing firewood as part of the DNR Energy Acres Program. Again, this DNR program no longer exists. In addition to harvesting trees for firewood, Christmas trees have also been harvested from this lot "through the mid-90s." *J. Tibbets testimony; Pet'r Ex. 8a, 8c.*

e) In response to the Respondent's questioning, the Petitioners admitted they have never "sold" any of the harvested wood. The Christmas trees that were harvested were given away. Additionally, their property is "not mature enough to harvest hardwood." Currently, there are "approximately 700 red oak trees growing straight and tall that can be harvested in the future." It "may be a future possibility" to harvest hardwood, but currently they have only been harvesting firewood. *J. Tibbets testimony.*

f) In an effort to prove the subject property should be classified as agricultural woodland, the Petitioners offered photographs, an aerial map/photograph, statutes, DLGF memorandum and Guidelines. Agricultural use is defined as the production of timber land and land devoted to the harvesting of hardwood timber. The DLGF memorandum states that the Indiana State Department of Agriculture considers growing timber as an agricultural crop and should be assessed as such. Specifically, woodland is defined as land supporting trees capable of producing timber or other wood products. The subject property has "50% or more canopy cover or is a permanently planted reforested area." Accordingly, the subject property meets the definition of agricultural woodland. *J. Tibbets testimony; Pet'r Ex. 9, 10, 11, 12, 13, 14.*

g) The Petitioners also prepared a comparable land assessment analysis of six comparable properties. The comparable properties have more than 50% canopy cover, were purchased with the intent of harvesting timber and wood production, and have been part of a formal DNR program. According to the Petitioners, the property

[4] According to the subject property record card, this lot consists of 3.005 acres. *Pet'r Ex. 2.*

owned by Edward Short is located 220 feet from the subject property and is the most comparable. Both properties participated in the same DNR program and are planted with the same types of trees. All of the comparable properties woodland are assessed at $1,850 per acre. The subject property's woodland is assessed at $12,500 per acre. Accordingly, the subject property's woodland assessment should be lowered to $1,850 per acre. *J. Tibbets testimony; Pet'r Ex. 1, 2, 14, 17, 18a-f.*

9. Summary of the Respondent's case:

a) For 2017, parcel 426-025 was assessed as 2.746 acres of residential excess acreage at a rate of $12,500 per acre and 0.259 acre of undeveloped land at a rate of $1,960 per acre. For parcel 426-007, the residential homesite (1 acre) was assessed at $26,900 and 2.33 acres of residential excess acreage was assessed at $12,500 per acre. The Respondent did not classify the land as agricultural because the county was unable to find any proof the Petitioners had a timber management plan, were harvesting trees, or using the land to produce income. *Phillips testimony; Miller testimony; Resp't Ex. 2.*

b) The land base rate has been the only change made to the subject property. The land classified as residential excess acreage has been the same since 2015. *Miller testimony; Resp't Ex. 2.*

c) The Petitioners provided the Respondent with a copy of a 1978 letter from Tim Eizinger, ACP Forester, to indicate that approximately two acres were part of a documented tree planting plan. To verify the subject property is still part of an active stewardship or timber management plan, the Respondent contacted Steven Winicker, Forester for the DNR. According to Mr. Winicker, he was unable to find any evidence of the Petitioners' plan on file. *Miller testimony; Resp't Ex. 3.*

d) According to Mr. Miller, he spoke to Brenda Huter, stewardship coordinator for the DNR, on December 12, 2018. Ms. Huter stated she could not find anything on file for the Petitioners. Ms. Huter went on to indicate the Petitioners would need to supply documented timber harvest, consultation with a forester, herbicide records, or treatment of other species eradications to establish that the 1978 plan is active. The Respondent recognizes the Petitioners did have a plan in 1978, but because there was no evidence of an active timber plan or stewardship plan in 2017, the subject property was deemed residential use rather than agricultural use and priced accordingly. *Miller testimony.*

e) The Respondent offered an appraisal prepared by certified residential appraiser Gavin Fisher. Mr. Fisher prepared the appraisal in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP). He estimated the total value of the subject property was $279,500 as of January 1, 2017. *Phillips testimony; Fisher testimony; Resp't Ex. 4.*

f) Mr. Fisher began by determining the two parcels should be valued as one economic unit. Parcel 426-025 measures 3.005 acres and is located behind the Petitioners' residence. This parcel has no separate road access nor does it appear to have any recorded or deeded easements. Therefore, it is unlikely this parcel could be sold separately from parcel 426-007. *Fisher testimony; Resp't Ex. 4.*

g) To obtain his final estimate of value, Mr. Fisher developed the sales-comparison approach. He selected three comparable properties in subject property's area. The comparables sold between January 21, 2015, and September 3, 2015. The sale prices ranged from $265,000 to $280,000. Adjustments were made to account for various differences including depreciation, square footage, basement finish, and land size. After adjustments were made the sale prices ranged from $268,500 to $292,500. Based on this approach, Mr. Fisher calculated the market value of the subject property at $279,500. *Fisher testimony; Resp't Ex. 4.*

h) According to Mr. Fisher, he did not develop the cost approach because of the "high land to building ratio and the age of the structures." For these reasons, the cost approach would have yielded a less reliable indication of value. *Fisher testimony.*

i) Mr. Fisher also attached a plat map to his appraisal showing unadjusted sale prices of "competing neighboring properties" that ranged in sale price from $228,000 in 2012 to $278,000 in 2017.[5] *Fisher testimony; Resp't Ex. 4.*

j) In response to the Petitioners' questioning, Mr. Fisher testified that he did not know whether the comparable properties in his appraisal report were capable of harvesting hardwood timber or if they were used for the production of timber. Additionally, Mr. Fisher testified the comparable properties he utilized did not have canopy cover greater than 50%. *Fisher testimony; Resp't Ex. 4.*

k) Based on the appraisal of the subject property, the Respondent is requesting the 2017 assessment be increased to $279,500. *Phillips testimony; Resp't Ex. 4.*

l) Finally, the Petitioners comparable assessment analysis is flawed. According to the Respondent, the six purportedly comparable properties used in the analysis are classified agricultural. The subject property's property class is "residential one-family dwelling and residential un-platted vacant land." *Phillips argument (referencing Pet'r Ex. 17, 18a-f); Resp't Ex. 2.*

Burden of Proof

10. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass'r,* 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax*

[5] According to the plat map, neighboring properties sold from May 6, 2011, to July 19, 2018, with unadjusted sale prices ranging from $98,000 to $289,000. *Resp't Ex. 4.*

Comm'rs, 694 N.E2d 1230 (Ind. Tax Ct. 1998). The burden-shifting statute as amended by P.L. 97-2014 creates two exception to that rule.

11. First, Ind. Code § 6-1.1-15-17.2 "applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year." Ind. Code § 6-1.1-15-17.2(a). "Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeal taken to the Indiana board of tax review or to the Indiana tax court." Ind. Code § 6-1.1-15-17.2(b).

12. Second, Ind. Code § 6-1.1-15-17.2(d) "applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15." Under those circumstances, "if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject for an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct." Ind. Code § 6-1.1-15-17.2(d). This change was effective March 25, 2014, and has application to all appeals pending before the Board.

13. Here, the parties agree the total assessed value of the subject property increased by more than 5% from 2016 to 2017. Accordingly, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 apply, and the Respondent has the burden of proving the 2017 assessments are correct. To the extent the Petitioners request assessments below the 2016 level, they have the burden to prove that lower value.

Analysis

14. The Respondent failed to make a prima facie case. To the extent the Petitioners sought a lower value, they made a prima facie case for reducing the assessments.

    a) Real property is assessed based on its "true tax value," which means, "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, from the property." Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. 2011 MANUAL at 2. Assessing officials primarily use the cost approach, but other evidence is permitted to prove an accurate valuation. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.

    b) Regardless of the method used, a party must explain how the evidence relates to the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.,* 854 N.E.2d 90, 95

(Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Ass'r,* 821 N.E.2d 466, 471 (In. Tax Ct. 2005). For a 2017 assessment, the valuation date was January 1, 2017. *See* Ind. Code § 6-1.1-2-1.5.

c) However, the statutory and regulatory scheme of assessing agricultural land requires the Board to treat challenges to those assessments differently than other assessment challenges. For example, the legislature 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 REAL PROPERTY ASSESSMENT GUIDELINES, chapter 2 at 77-78 (incorporated by reference at 50 IAC 2.4-1-2); *see also* Ind. Code § 6-1.1-4-4.5(e) (directing the DLGF to use a six-year, instead of a four-year, rolling average and to eliminate from the calculation the year for which the highest market value-in-use is determined). 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.

d) 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.

e) "Residential property" is defined as "vacant or improved land devoted to, or available for use primarily as, a place to live," and is "normally constructed to mean a structure where less than three families reside in a single structure." GUIDELINES, glossary at 18. Additionally, the Tax Court has defined "residential excess" as land "dedicated to a nonagricultural use normally associated with the homesite." *Stout v. Orange Co. Ass'r,* 996 N.E.2d 871, 875 n.6 (Ind. Tax Ct. 2013).

f) In contrast, land purchased and used for agricultural purposes includes cropland or pasture land (i.e. tillable land) as well as woodlands. GUIDELINES, chapter 2 at 80. Additional categories of agricultural property include Type 4 "idle cropland" and Type 5 non-tillable land. *Id.* at 103, 104.

g) Here, the Respondent has the burden of proof and it is important to understand exactly what that burden is. "Under this section, the county assessor or township assessor making the assessment has the burden of *proving that the assessment is correct* in any review or appeal under this chapter and in any appeals take to the Indiana board of tax review or the Indiana tax court." Ind. Code § 6-1.1-15-17.2(b) (emphasis added). Additionally, when the assessor changes the 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 review or

appeal." Ind. Code § 6-1.1-15-17.1(2) (emphasis added). In other words, the Respondent must prove the total 2017 assessment of $219,800 is correct.

h) According to the Respondent, she was unable to find any evidence the subject property was actively farmed, used for agricultural purposes, or used for the production of income. Further, there is no evidence of a timber plan or any other DNR program. Accordingly, the land is classified as residential excess acreage.

i) In an effort to prove an accurate value for the subject property, the Respondent offered a USPAP compliant appraisal performed by Gavin Fisher, a certified residential appraiser. Mr. Fisher estimated the subject property's market value-in-use at $279,500 as of January 1, 2017, based on the sales-comparison approach to value. Mr. Fisher selected three purportedly comparable properties near the subject property and made various adjustments to account for differences. Based on this appraisal, the Respondent argued the 2017 total assessment should be increased to $279,500.

j) The Respondent's argument for change is focused on the property's fair market value. However, as already stated, the true tax value of agricultural land is, unlike most other types of property, determined by applying the Guidelines and the proper agricultural rates, something Mr. Fisher did not do.

k) The Board cannot find any support for the proposition that an agricultural classification depends solely on whether the property is "actively farmed" or is under a DNR program. The classification depends on whether the property is put to agricultural or residential use. The Respondent failed to adequately articulate what characteristics, or use of the property, led to the conclusion that the property should be classified as excess residential and not agricultural.

l) The Board now turns to the area the Petitioners described as "woodland." According to the Guidelines, land that has "50% or more canopy" may be considered agricultural woodland. GUIDELINES, CH. 2 at 90. Here, the Petitioners' testimony indicates the property was acquired for and is currently used for agricultural purposes, and the area in question has 100% canopy cover. Further, the undisputed testimony indicates the wooded area in question extends to the adjoining neighboring property that is currently receiving the woodland designation. It is clear from the aerial map of the subject property, the area is entirely covered with tree canopy, with the exception of the one-acre homesite.

m) In addition, the 2015 and 2016 property record cards show portions of the subject property received an agricultural land base rate, although the land type is shown as 91 excess residential.[6] Nothing has changed in this area since the 2015 and 2016 assessment years. The record is void of any explanation as to why the land base rate designation was changed. For these reasons, the Board finds the Petitioners have made a prima facie case that the "wooded area" in question is entitled to an

[6] The Board came to this conclusion based on the land base rate of $2,050 per acre in 2015 and $1,960 per acre in 2016. *See Resp't Ex. 2.*

agricultural woodland designation. The Respondent failed to present any probative evidence to support how these particular portions of the subject property are currently assessed. Additionally, Mr. Fisher's appraisal lacks probative value because he failed to properly value the land by applying the Guidelines and the proper agricultural rates.

n) While the Petitioners failed to clearly identify the specific amount of acreage to be classified as woodland, the 2017 property record cards indicate that for parcel 426-025 there are 2.746 acres currently classified as land type 91 excess residential. For parcel 426-007 there are 2.33 acres currently classified as land type 91 excess residential. Accordingly, the Board orders the Respondent to reassess the portions of the subject property identified as land type 91 excess residential, the "woodland" area outlined in orange and yellow according to Petitioners' Exhibit 14, assigning the proper woodland designation. *See Pet'r. Ex. 14.*

Conclusion

15. The Respondent had the burden of proving the 2017 assessments were correct. She failed to make a prima facie case. The Petitioners made a prima facie case for reclassifying portions of their property. The Respondent is directed to reassess the property in conformity with these findings and conclusions.

Final Determination

In accordance with these findings and conclusions, the Board orders the Respondent to reclassify the property in accordance with this determination.

ISSUED: April 24, 2019

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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>.