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

Petition #:	**02-042-06-1-5-01739**
Petitioners:	**Ronald O. & Emily M. Guingrich**
Respondent:	**Allen County Assessor**
Parcel #:	**02-03-07-400-014.000-042**
Assessment Year:	**2006**

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

PROCEDURAL HISTORY

1. Ronald & Emily Guingrich filed a written request asking the Allen County Property Tax Assessment Board of Appeals ("PTABOA") to reduce their land's assessment. The PTABOA issued its determination on November 8, 2007.

2. The Guingriches disagreed with the PTABOA's determination and timely filed a Form 131 petition with the Board. They elected to have this case heard under the Boards' procedures.

3. On July 31, 2008, the Board's Administrative Law Judge, Jennifer Bippus ("ALJ") conducted an administrative hearing.

4. People present and sworn in at hearing:

   a) For the Guingriches: Ronald Guingrich, Owner

   b) For Allen County Assessor: Laura Roberts, Cedar Creek Township Chief Deputy[1]
   Ryan Keuneke, Deputy County Assessor

5. F. John Rogers appeared as counsel for the Allen County Assessor.[2]

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[1] The Allen County Assessor filed two documents authorizing the Cedar Creek Township Assessor to represent him at the hearing. *Board Exs. C-D.* Although one of those documents was titled Notice of Township Assessor Appearance as an Additional Party, the body of that document says nothing about the Cedar Creek Township Assessor seeking to intervene as a party. We therefore do not address whether the Township Assessor had a right to intervene as a party.

[2] Mr. Rogers also appeared for the Cedar Creek Township Assessor. As we have already explained, the Cedar Creek Township Assessor is not a party to this appeal. *See note 1, supra.*

FACTS

6. The Guingriches own a single-family home on 6.5 acres of land. The property is located at 6815 Schlatter Road in Leo.

7. The ALJ did not inspect the Guingriches' property.

8. The PTABOA valued the Guingriches' land at $47,300 and their improvements at $279,400 for a total assessment of $326,700.

9. On their Form 131 petition, the Guingriches requested values of $27,450 for their land and $279,400 for their improvements for a total assessment of $306,850.

PARTIES' CONTENTIONS

10. The Guingriches offered the following evidence and arguments:

    a) The Guingriches own a 6½-acre tract, which contains their home and a 5½-acre dense stand of mixed hardwood trees. *R. Guingrich testimony.*

    b) The land is zoned agricultural and the Guingriches work it for its timber. *R. Guingrich testimony.* They bought the property intending to sell some of the standing and downed dead trees as firewood and to market some of the mature trees to supplement their retirement income. *R. Guingrich testimony; Pet'rs Ex. 6.* The Guingriches sell more than the occasional wheelbarrow of firewood—from 2005 to 2007 they sold a total of 8½ cords. To get that much firewood, the Guingriches harvested the equivalent of 12 large trees, 18 inches in diameter with a 48 inch tall log. *R. Guingrich testimony; Pet'rs Ex. 9.*

    c) To further show that they harvested timber, the Guingriches offered photographs showing their firewood at various stages of the production process and a roadside sign advertising the firewood for sale. *R. Guingrich testimony; Pet'rs Ex. 8.* They also offered a Compliance Agreement for Movement of Firewood that they filed with the Indiana Department of Natural Resources. *R. Guingrich testimony; Pet'rs Ex. 12.*

    d) Despite the Guingriches' timber-harvesting activities, their 5 ½-acre stand was misclassified under the Real Property Assessment Guidelines for 2002 – Version A. The property has always been densely wooded. *Pet'rs Ex. 13.* The previous township assessor had properly classified the stand as type 6 agricultural woodland with a negative 80% influence factor. The new assessor, however, changed the stand's classification to type 92 agricultural excess acreage. *R. Guingrich testimony; Pet'rs Ex. 2.*

    e) The Guingriches' 5 ½-acre stand mirrors the Guidelines' description of agricultural woodland, because it is "land supporting trees capable of producing

timber or other wood products," that has "50% or more canopy cover." *Id.* And it differs from what the Guidelines describe as agricultural excess acreage. That classification covers "land presently dedicated to a non-agricultural use normally associated with the homesite," such as "areas containing a large manicured yard over and above the accepted one acre homesite." *Pet'rs Ex. 5.*

f) Properties in the area have not been assessed consistently. For example, two properties that appear to actually have "manicured woods" are assessed as woodlands. *R. Guingrich testimony; Pet'rs Ex. 14.* Another, which is located at 6517 Schlatter Road that looks much like the Guingriches' property, is also assessed as woodland. *Pet'rs Ex. 14-15.* Yet the Guingriches' 5 ½-acre stand is assessed as if it were a manicured lawn.

11. The Allen County Assessor offered the following evidence and arguments:

a) Ind. Code § 6-1.1-4-13(a) states that land shall be assessed as agricultural land only when it is devoted to agricultural use. *Rogers argument; Resp't Ex. 2, 16.* The county assessor does not dispute that the Guingriches' land is capable of producing timber and has 50% or more canopy cover. But the Guingriches' agricultural activities are *de minimis.* They do not harvest sufficient forest products to show that they devote their land to agricultural use. *Rogers argument; Resp't Ex. 16.*

b) The Department of Local Government Finance ("DLGF") issued a memorandum about valuing agricultural land. *Resp't Ex. 11.* That memorandum lists at least five non-controlling factors for assessors to consider in determining if wooded land should be assessed as agricultural:

- Whether the Indiana Department of Natural Resources has designated the land as being qualified for a classified forest program.
- Whether the owner has an active timber-management plan to improve the market for eventual harvest.
- Whether the owner possesses a DNR management plan to further the forest's quality.
- Whether the owner can show regular harvests over a long period of time.
- Whether the land has been enrolled in programs of the United States Department of Agriculture, the Farm Services Agency, or the Natural Resources Conservation Service and received a farm number.

Resp't Ex. 11 at 2, 7. The Guingriches did not show any of those factors. The DLGF's memorandum also says that "[f]irewood is not evidence of agricultural activity." *Id. at 7.*

c) The Guingriches' property sits in a very nice area and people buy houses there because the ground is beautiful and the trees afford privacy. *Roberts testimony.* Most of the houses in the area are worth between $200,000 and $400,000. *Id.*

d) Despite Mr. Guingriches' claims to the contrary, other wooded properties in the area are assessed as excess residential acreage instead of agricultural woodland. *Roberts testimony*; *Resp't Exs. 4a, 4b, 14, 17-21.* Historically, people had farmed much of the land in the area. As the parcels were split and people began buying them to build homes with wooded yards for privacy, the assessor began assessing the land surrounding homesites as excess acreage. *Roberts testimony.*

RECORD

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

a) The Form 131 petition,

b) A digital recording of the hearing.

c) Exhibits:

Petitioners Exhibit 1:	Form 131 petition,
Petitioners Exhibit 2:	Previous assessment with land assessed as agricultural woodlands (Type 6),
Petitioners Exhibit 3:	Notice of Assessment by Assessing Officer,
Petitioners Exhibit 4:	Real Property Assessment Guidelines for 2002 – Version A, Ch. 2 pp. 99-100,
Petitioners Exhibit 5:	Guidelines, Ch. 2 pages 102 – 106,
Petitioners Exhibit 6:	Opening statement for PTABOA appeal,
Petitioners Exhibit 7:	Aerial view of 6815 Schlatter Road and surrounding area,
Petitioners Exhibit 8:	12 photographs of 5½-acre stand and timber products,
Petitioners Exhibit 9:	Internal Revenue Service Form 1040, Schedule F (Profit or Loss from Farming) for 2005-2007,
Petitioners Exhibit 10:	Check from Neil Graber, Graber Logging and attached handwritten notes,
Petitioners Exhibit 11:	June 13, 1993, letter from Robert M. Tucker to Ronald Guingrich,
Petitioners Exhibit 12:	DNR Compliance Agreement for Movement of Firewood,
Petitioners Exhibit 13:	Notarized statement of Arthur Fisher with attached handwritten notes,
Petitioners Exhibit 14:	Photographs and property record cards ("PRCs") for three properties with attached typewritten notes,
Petitioners Exhibit 15:	Photographs and PRCs for 6815 Schlatter Road and 6517 Schlatter Road, Guidelines Ch. 2, p. 68, and attached typewritten notes,
Petitioners Exhibit 16:	Five reproduced photographs of the Guingriches' property with attached handwritten notes,

Petitioners Exhibit 17: Form 115 Notification of Final Assessment Determination for pet. no. 02-042-06005-01739, attached findings and conclusions, and attached typewritten notes,

Respondent Exhibit 1: PRC for the Guingriches' property,
Respondent Exhibit 2: Ind. Code § 6-1.1-4-13,
Respondent Exhibit 3: Guidelines, Ch. 2 pp. 68-69, 99, 100-106,
Respondent Exhibit 4a: Printout with aerial photograph of the Guingriches' property,
Respondent Exhibit 4b: Reproduction of aerial photograph of the Guingriches' property,
Respondent Exhibit 5: Form 115, Notification of Final Assessment Determination dated 8/23/05,
Respondent Exhibit 6: Eight one-page documents dated 2/6/06 and signed by Thomas A. Yoder that address a change in the assessment of parcel no. 13-0007-0037,
Respondent Exhibit 7: Allen County PTABOA Findings and Conclusions,
Respondent Exhibit 8: Form 113 Notice of Change in Assessment, dated 3/15/07,
Respondent Exhibit 9: Notarized letter from Arthur Fisher, real estate broker, dated 10/28/05,
Respondent Exhibit 10: Four photographs of the Guingriches' property,
Respondent Exhibit 11: DLGF memorandum dated 2/12/08, titled *Classification and Valuation of Agricultural Land*,
Respondent Exhibit 12: Agricultural Homesite and Rural Residential Cedar Creek Township Neighborhood Valuation Form,
Respondent Exhibit 13: Copies of two Board decisions:
(a) *Braxton v. Washington Twp Assessor*, pet. no.07-004-02-1-5-00096 (Ind. Bd. of Tax Rev. February 27, 2007);
(b) *King v. Washington Twp Assessor*, pet. no. 07-004-02-1-5-00183 (Ind. Bd. of Tax Rev. May 22, 2007),
Respondent Exhibit 14: PRC for 6517 Schlatter Road,
Respondent Exhibit 15: PRC for 6736 Schlatter Road,
Respondent Exhibit 16: Respondent's Position Statement,
Respondent Exhibit 17: PRC for 16515 Viberg Road,
Respondent Exhibit 18: PRC for 16605 Viberg Road,
Respondent Exhibit 19: PRC for 6801 Schlatter Road,
Respondent Exhibit 20: PRC for 6605 Schlatter Road,
Respondent Exhibit 21: PRC for 6611 Schlatter Road,

Board Exhibit A: Form 131 petition and attachments,
Board Exhibit B: Notice of hearing,
Board Exhibit C: Notice of Township Assessor Representation,
Board Exhibit D: Notice of Township Assessor Appearance as Additional Party,
Board Exhibit E: Appearance of Counsel for Allen County,

Board Exhibit E: Hearing sign-in sheet,

d) These Findings and Conclusions.

ANALYSIS

Burden of Proof

13. A petitioner seeking review of an assessing official's determination must establish a prima facie case proving both that the current assessment is incorrect and specifically what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs,* 694 N.E.2d 1230 (Ind. Tax Ct. 1998).

14. In making its case, the petitioner must explain how each piece of evidence relates to its requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) ("[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis").

15. Once the petitioner establishes a prima facie case, the burden shifts to the respondent to impeach or rebut the petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.

The Guingriches' Case

16. The Guingriches did not make a prima facie case for changing their property's assessment. The Board reaches this conclusion for the following reasons:

A. Land Classification

a) The Guingriches claim that a 5 ½-acre portion of their property was misclassified as agricultural excess acreage when it should have been classified as agricultural woodland. They, however, offered nothing to show that the assessment failed to accurately reflect their property's market value-in-use. Because existing case law and administrative regulations require a taxpayer to offer probative market-based evidence to show its property's market value-in-use, we find that the Guingriches failed to make a prima facie case.

b) The regulations and the cases that we refer to are the product of a landmark shift in Indiana's property-assessment system. Indiana assesses property based on its "true tax value." IND. CODE § 6-1.1-1-3. Before 2002, true tax value was determined solely by reference to the State Board of Tax Commissioners' regulations and bore no relation to any objectively verifiable standard of measure. *Westfield Golf Practice Center, LLC v. Washington Twp. Assessor*, 859 N.E.2d 396, 399 (Ind. Tax. Ct. 2007). Thus, taxpayers could prove their property's true tax value only by reference to the applicable assessment regulations. *Id.*

c) Beginning in 1996, the Indiana Tax Court and Indiana Supreme Court issued a series of decisions addressing whether that system violated our state constitution's requirement for a uniform and equal rate of property assessment.[3] *See State Bd. of Tax Comm'rs v. Town of St. John*, 702 N.E.2d 1034, 1035-36 (Ind. 1998) ("St. John V").[4] The Supreme Court ultimately affirmed the Tax Court's finding that the State Board's cost schedules, which formed the heart of its regulations, did not sufficiently relate to objectively verifiable data to ensure uniform and equal assessments based on property wealth. *St. John V,* 702 N.E.2d at 1043.

d) When it promulgated new regulations for the 2002 general reassessment, the State Board of Tax Commissioners provided that missing link to objectively verifiable data by tying a property's assessment to its "market value-in-use." Thus, the 2002 Real Property Assessment Manual now defines "true tax value" as "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property." 2002 REAL PROPERTY ASSESSMENT MANUAL 2 (incorporated by reference at 50 IAC 2.3-1-2).[5]

e) As before, assessors typically use a mass-appraisal version of the cost approach in assessing individual properties. The Real Property Assessment Guidelines for 2002 – Version A describe that approach in detail. But we no longer measure an assessor's success by whether he followed the state's guidelines; we instead look to whether his assessments accurately reflect the assessed properties' market values-in-use. *See* MANUAL at 20 (discussing the use of ratio studies to measure a mass-appraisal's accuracy and uniformity).

f) That shift from focusing on methodology to focusing on measurable results applies equally to how we must judge appeals from individual assessments. Thus, while the Manual directs us to presume that a property's assessment under the Guidelines accurately reflects its true tax value, a taxpayer can rebut that presumption with evidence showing the property's actual market value-in-use. *See* MANUAL at 5; *Eckerling v. Wayne Twp. Assessor,* 841 N.E. 2d 674, 678 (Ind. Tax. Ct. 2006). A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice often will suffice. *Id.* A taxpayer may also offer actual construction costs, sales information for the subject or comparable properties, and other information compiled according to generally accepted appraisal principles. *Id.*

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[3] IND. CONST. ART. X § 1.

[4] (Citing to four earlier reported decisions involving that case: *Town of St. John v. State Bd. of Tax Comm'rs*, 665 N.E.2d 965 (Ind. Tax Ct. 1996)("St. John I"); *Boehm v. Town of St. John*, 675 N.E.2d 318 (Ind. 1996) ("St. John II"); *Town of St. John v. State Bd. of Tax Comm'rs*, 690 N.E.2d 370 (Ind. Tax Ct. 1997) ("St. John III"); and *Town of St. John v. State Bd. of Tax Comm'rs* , 691 N.E.2d 1387 (Ind. Tax Ct. 1998)("St. John IV")).

[5] The Indiana General Assembly abolished the State Board as of December 31, 2001. 2001 Ind. Acts 198 § 119(b)(2). Effective January 1, 2002, the General Assembly created the Department of Local Government Finance. *See* Ind. Code § 6-1.1-30-1.1 (West Supp. 2005-06)(eff. 1-1-02); 2001 Ind. Acts 198 § 66. The DLGF incorporated the Manual into its administrative regulations by reference. 50 IAC 2.3-1-2.

g) But a taxpayer no longer can rebut an assessment simply by pointing to an assessor's technical failure in applying the Guidelines. *Eckerling* 841 N.E.2d at 676; *see also* Ind. Admin. Code tit.50, r. 2.3-1-1(d). Instead, the taxpayer should offer the types of market-based evidence described in the Manual. *See Eckerling* 841 N.E.2d at 478 (finding that taxpayers failed to make a prima facie case by focusing strictly on the assessor's methodology rather than offering market value-in-use evidence).

h) That is true regardless of the use to which taxpayers devote their property. When it comes to a taxpayer's burden on appeal, the relevant administrative regulations do not distinguish between property devoted to agriculture and property devoted to other uses. MANUAL at 5; 50 IAC 2.3-1-1(d). And neither does the Tax Court. Although the methodology-based claims that the Court has rejected have largely dealt with attacks on how assessors applied the Guidelines in assessing improvements, the Court has not purported to limit its holdings to those types of cases. *See, e.g., Eckerling, supra*; *O'Donnell v. Dep't of Local Gov't Fin.* 854 N.E.2d 90, 94-95 (Ind. Tax Ct. 2006); *P/A Builders & Developers, LLC v. Jennings County Assessor*, 842 N.E.2d 899, 900-01 (Ind. Tax Ct. 2006). Therefore, while the Guidelines value agricultural land using a mass-appraisal version of the income approach rather than the mass-appraisal cost approach used to value improvements, that distinction should not lead to a different result. In either case, taxpayers cannot win by simply attacking an assessor's methodology in valuing their property; but must instead offer probative market-based evidence to show that the error led to an inaccurate assessment.

i) Thus, even if the Guingriches' land were misclassified, that fact would not entitle them to relief.

j) Regardless, the Guingriches did not show that their land was misclassified. Land may only be assessed as agricultural if it is "devoted to agricultural use." Ind. Code § 6-1.1-4-13(a). The word "devote" means "to give or apply (one's time, attention, or self) completely." WEBSTER'S II NEW RIVERSIDE DICTIONARY 192 (revised edition). Thus, where agriculture is simply one activity for which land is used, that land should not be classified as agricultural. That being said, truly incidental non-agricultural uses would not prohibit an agricultural classification.

k) The Guingriches own the property, in part, for agricultural purposes. They harvest and sell firewood to supplement their retirement income. That agricultural use may even be more than incidental. But the Guingriches have never *devoted* their property to agricultural use. They use the 5 ½-acres of woods as a buffer for their house. In fact, they did not start selling firewood until 2005, years after they first built their house. Even then, the most they have sold in a year is $750. They do not have a farm number nor do they participate in DNR programs to improve the quality of their stand or the marketability of their harvest. While none of those factors is controlling, together they support our conclusion that the Guingriches do not devote their land to agriculture. *See Resp't*

Ex. 9, DLGF Memorandum on Classification and Valuation of Agricultural Land, at 5, 7.

B. Uniformity and Equality

l) The Guingriches also claim that wooded land surrounding other homesites is assessed as agricultural woodland. While the Guingriches did not explain the relevance of that information, we presume that they were contesting the uniformity and equality of assessments. Once again, however, the Guingriches focused on methodology used to assess the properties in question rather than their market values-in-use.

m) The Indiana Tax Court rejected a similar claim in *Westfield Golf Practice Center, LLC v. Washington Twp. Assessor,* 859 N.E.2d 396, 399 (Ind. Tax Ct. 2007). In that case, a taxpayer grounded its lack-of-uniformity-and-equality claim on the fact that the landing area for its driving range was assessed using a different base rate than the rate used to assess other driving ranges' landing areas. *Id.* at 397-98. In rejecting the taxpayer's claim, the court explained that "the overarching goal of Indiana's new assessment scheme is to measure a property's value using objectively verifiable data." *Id.* at 399. Thus, while uniformity and equality is required in the end result, the procedures used to arrive at that result need not be uniform. *Id.* Rather than focusing on that end result by comparing the actual market value-in-use of its property to the market values-in-use of the other driving ranges, the taxpayer focused solely on the methodology used to compute the properties' assessments. *Id.*

n) Like the petitioner in *Westfield Golf,* the Guingriches focused only on the purported lack of uniformity in the procedures used to assess wooded properties and not whether their property was assessed at a higher percentage of its market value-in-use than other properties. The Guingriches' lack-of-uniformity claim therefore fails.

Conclusion

17. The Guingriches failed to make a prima facie case for a change in their assessment. The Board finds for the Allen County Assessor.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now affirms the assessment.

ISSUED: _____

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Commissioner, 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

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. P.L. 219-2007 (SEA 287) is available on the Internet at <http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>