

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

Petition No.: 17-002-19-1-1-00617-22
17-002-20-1-1-00609-22
17-024-20-1-1-00608-22
17-024-20-1-1-00610-22

Petitioner: LD Farms, LLC

Respondent: DeKalb County Assessor

Parcel: 17-11-08-200-004.000-002
17-06-23-400-005.000-024
17-06-23-400-003.000-024

Assessment Years: 2019 and 2020

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

Procedural History

- On January 13, 2022, LD Farms, LLC (“LD Farms”) contested the 2019 and 2020 assessments of three parcels of land located in Auburn, Indiana. On July 11, 2022, the DeKalb County Property Tax Assessment Board of Appeals (“PTABOA”) issued Form 115 determinations with the following values:

Parcel Number: 17-11-08-200-004-000-002

Year	Land	Improvements	Total
2019	\$107,200	\$0	\$107,200
2020	\$107,200	\$0	\$107,200

Parcel Number: 17-06-23-400-005.000-024

Year	Land	Improvements	Total
2020	\$137,600	\$0	\$137,600

Parcel Number: 17-06-23-400-003.000-024

Year	Land	Improvements	Total
2020	\$230,300	\$0	\$230,300

- LD Farms timely appealed to the Board, electing to proceed under the small claims procedures. On February 9, 2023, Natasha Marie Ivancevich, the Board’s Administrative Law Judge (“ALJ”), held a telephonic hearing. Neither the Board nor the ALJ inspected the property.

3. Attorney Melissa Mitchie appeared on behalf of LD Farms. Attorney Zachary Price appeared as counsel for the Dekalb County Assessor. Andrew Smethers, a consultant for the Assessor, testified under oath.

Record

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

a) Exhibits:

Parcel Number: 17-11-08-200-004.000-002 ("Parcel A")

Pet'r Par. A Ex. 1: Form 130-2019
Pet'r Par. A Ex. 2: Form 130-2020
Pet'r Par. A Ex. 3: Form 115-2019
Pet'r Par. A Ex. 4: Form 115-2020
Pet'r Par. A Ex. 5: Form 134-2021
Pet'r Par. A Ex. 6: Form 131-2019
Pet'r Par. A Ex. 7: Form 131-2020
Pet'r Par. A Ex. 8: 2022 Property Record Card
Pet'r Par. A Ex. 9: 2021 Property Record Card
Pet'r Par. A Ex. 10: 2020 Property Record Card
Pet'r Par. A Ex. 11: 2019 Property Record Card
Pet'r Par. A Ex. 12: Assessor Survey
Pet'r Par. A Ex. 13: USDA Conservation Reserve Program Contract

Resp't Par. A Ex. A: Property Record Card
Resp't Par. A Ex. B: Assessor Survey

Parcel Number: 17-06-23-400-005.000-024 ("Parcel B")

Pet'r Par. B Ex. 1: Form 130-2020
Pet'r Par. B Ex. 2: Form 115-2020
Pet'r Par. B Ex. 3: Form 134-2021
Pet'r Par. B Ex. 4: Form 131-2020
Pet'r Par. B Ex. 5: 2022 Property Record Card
Pet'r Par. B Ex. 6: 2021 Property Record Card
Pet'r Par. B Ex. 7: 2020 Property Record Card
Pet'r Par. B Ex. 8: 2019 Property Record Card
Pet'r Par. B Ex. 9: USDA Conservation Reserve Program Contract

Resp't Par. B Ex. A: Property Record Card
Resp't Par. B Ex. B: Assessor Survey

Parcel Number: 17-06-23-400-003.000-024 ("Parcel C")

Pet'r Par. C Ex. 1: Form 130-2020
Pet'r Par. C Ex. 2: Form 115-2020
Pet'r Par. C Ex. 3: Form 134-2021
Pet'r Par. C Ex. 4: Form 131-2020
Pet'r Par. C Ex. 5: 2022 Property Record Card
Pet'r Par. C Ex. 6: 2021 Property Record Card
Pet'r Par. C Ex. 7: 2020 Property Record Card
Pet'r Par. C Ex. 8: 2019 Property Record Card
Pet'r Par. C Ex. 9: Assessor Survey
Pet'r Par. C Ex. 10: USDA Conservation Reserve Program Contract

Resp't Par. C Ex. A: Property Record Card
Resp't Par. C Ex. B: Assessor Survey

- b) 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) a digital recording of the hearing.

Findings of Fact

5. The subject property consists of three parcels with 55.14, 26.6, and 26.51 acres of undeveloped land in Auburn, Indiana. *Pet'r Par. A Ex. 8; Pet'r Par. B Ex. 5; Pet'r Par. C Ex. 5.*
6. Approximately June of 2000, Larry and Donna Seiler entered a Conservation Reservation Program Contract with the U.S. Department of Agriculture. The contract provided 297.1 acres, including the subject parcels, would be placed into a Conservation Reserve Program until September 30, 2006. *Pet'r Par. A Ex. 13; Pet'r Par. A Ex. 8; Pet'r Par. A Ex. 11.*
7. The subject property was assessed as agricultural land until 2019, when the Assessor reclassified Parcel A as residential land based on LD Farms' responses to a land use survey sent by the Assessor's office. In this survey, LD Farms gave negative responses to questions about various agricultural uses such as timber harvesting, crop production, or use as pasture. Its response also included a note that said "currently in no ag program, just using for my own private hunting." A second survey, sent in December of 2019, was returned with similar responses, although LD Farms did check the box stating the current use of the property was agricultural. For 2020, all three parcels were classified as residential. *Smethers testimony; Pet'r Par. A Ex. 7-9; Pet'r Par. B Ex. 7-9; Pet'r Par. C Ex. 7-9.*

Contentions

8. Summary of the Petitioners' case:
 - a) LD Farms argued the subject property's classification should not have been changed from agricultural land to residential. In support of this, it argued there have been no changes in use of the property since it was part of the USDA conservation program. *Michie argument.*
 - b) LD Farms also contended the Assessor should have the burden of proving the change in classification was correct under Indiana Code § 6-1.1-15-17.1 (Repealed by P.L.174-2022) because that statute was still in effect when the appeal was filed. *Michie argument.*
9. Summary of the Respondent's case:
 - a) The Assessor argued that LD Farms' petitions were untimely because they should have been filed under the shorter deadlines for valuation appeals under I.C. § 6-1.1-15-1.1(a)(1) rather than the longer deadlines from section (a)(4). The Assessor further argued that the classification of land is not an objective matter that would fall under "clerical, mathematical, or typographical mistake", but rather a decision that required the assessor to exercise subjective judgment. *Price argument.*
 - b) Additionally, the Assessor argued the burden-shifting statute does not apply because it was repealed prior to the hearing. *Price argument.*

Analysis

10. LD Farms' Form 130 petitions for the 2019 and 2020 assessment years were untimely.
 - a) As a threshold matter, the Assessor argued the Petitioner's appeals for 2019 and 2020 were untimely. Because determining whether a particular parcel is agricultural, and the application of the agricultural assessment guidelines, both require the exercise of subjective judgment, we agree with the Assessor and find LD Farms' 2019 and 2020 appeals are untimely.
 - b) As interpreted by the Tax Court, I.C. § 6-1.1-15-1.1 has a shorter filing deadline for appeals where the claimed error cannot be corrected without resorting to subjective judgment. Our analysis begins with I.C. § 6-1.1-15-1.1, which establishes the deadlines for filing an initial property tax appeal. Under the statute, a taxpayer could raise claims of error relating to the "assessed value of property" or relating to five other categories, including "[a] clerical, mathematical, or typographical mistake." I.C. § 6-1.1-15-1-1(a).
 - c) The statute lays out relatively short deadlines for filing an appeal challenging a property's assessed value. For real property assessments before January 1, 2019, a

taxpayer had to file by the earlier of: “(A) forty-five (45) days after the date on which the notice of assessment is mailed by the county or (B) forty-five (45) days after the date on which the tax statement is mailed by the county treasurer. . .” I.C. § 6-1.1-15-1(b)(1). For January 1, 2019, and later assessments, a taxpayer had to file its appeal by the earlier of “(A) June 15 of the assessment year, if the notice of assessment is mailed by the county before May 1 of the assessment year; or (B) June 15 of the year in which the tax statement is mailed by the county treasurer, if the notice of assessment is mailed by the county on or after May 1 of the assessment year.” I.C. § 6-1.1-15-1.1(b)(2).

- d) But the statute provides a much longer deadline for filing appeals raising claims of error related to the other enumerated categories. A taxpayer can file an appeal seeking to correct those types of errors up to three years “after the taxes were first due.” I.C. § 6-1.1-15-1.1(b).
- e) LD Farms does not claim that it filed its 2019 and 2020 appeals within deadlines for challenging the assessed value of its property, but it argues it was claiming an error relating to one of the other enumerated categories. Indeed, it filled out Section III on its Form 130 Petitions indicating it was claiming “[a] clerical, mathematical, or typographical mistake.” At the hearing, LD Farms argued that the subject property should have been assessed as agricultural land.
- f) We find LD Farms’ claim that the Assessor erred by not giving it the agricultural land rate does not fall within the categories of error for which the statute allows the extended three-year filing deadline. To understand why, we begin with the previous statutory regime where there were two main appeal procedures: one for general appeals, which could include any challenge to an assessment, including challenges to the methodology used to determine the assessment, and another for correction of narrowly enumerated errors. The general appeal statute, I.C. § 6-1.1-15-1 (2016), had filing deadlines akin to those now contained in I.C. § 6-1.1-15-1.1(b)(1) for errors related to property’s assessed value. The deadlines under the correction-of-error statute, Ind. Code § 6-1.1-12 (2016) varied. There was either no filing deadline or a deadline of three years after the taxes were first due depending on the year. *See, e.g., Hutcherson v. Ward*, 2 N.E.3d 138, 142 (Ind. Tax Ct. 2013); *Will’s Far-Go Coach Sales v. Nusbaum*, 847 N.E.2d 1074, 1075 (Ind. Tax Ct. 2006); 2014 Ind. Act 183 § 19. Different appeal forms were used under the two procedures: Form 130/131 for appeals under the general statute and Form 133 for correction of error. *Muir Woods, Inc. v. O’Connor*, 36 N.E.3d 1208, 1210 (Ind. Tax Ct. 2015) *review den.*
- g) Under case law interpreting the old regime, determining which appeal statute (and accompanying procedures) applied turned on whether the taxpayer claimed an error that could be corrected “without resort to subjective judgment and according to objective standards.” *Chevrolet of Columbus, Inc. v. Bartholomew Cty. Ass’r*, 187 N.E.3d 349, 352-53 (Ind. Tax Ct. 2022) quoting *Muir Woods*, 36 N.E.3D at 1213. If a “simple true or false finding of fact” dictated an issue’s resolution, the claimed error was considered objective and could properly be challenged using a Form 133 and the

correction of error process. *Square 74 Assocs., LLC v. Marion Cty. Ass'r*, 138 N.E.3d 336, 343 (Ind. Tax Ct. 2019). Otherwise, a taxpayer had to use Form 130/131 and the general appeal process.

- h) The Tax Court recently explained that when the Legislature repealed the old correction of error and general appeal statutes and enacted I.C. § 6-1.1-15-1.1, it adopted a single form for filing appeals relating to property assessments. *Chevrolet*, 187 N.E.3d at 354. But the Court found the Legislature did not eliminate¹ “the long-standing distinction between objective and subjective errors for purposes of the correction of error appeal procedure” which had existed under the old statutory scheme, and it observed “[f]or the most part,” the list of objective errors under the new appeal statute are “the same types of errors” previously listed in the correction-of-error statute. *Id.*
11. Next, we must determine whether subjective judgment is required to correct the error LD Farms alleges: that the properties should have been “classified and valued as agricultural land.” We find that it does, and thus that LD Farms claims are untimely.
- a) I.C. § 6-1.1-4-13 provides “land shall only be assessed or reassessed as agricultural land when it is devoted to agricultural use.”² Such a determination requires an assessor to consider various factors such as the use and zoning of the land, as well as the owners purpose in acquiring the land. GUIDELINES, Ch. 2 at 74. These determinations are inherently subjective.
- b) Beyond the initial classification as agricultural land, assessing land with its appropriate subtype also requires an assessor to use subjective judgment. Agricultural land is valued based on the productive capacity of the land, regardless of the land’s potential or highest and best use. GUIDELINES, Ch. 2 at 99. This requires the Assessor to classify the land into various land use types such as tillable, non-tillable, woodland, other farmland, and agricultural support land. *Id.* at 102-105. As an example, to decide whether a piece of agricultural land should be defined as nontillable, an assessor must decide whether the land is “covered with brush or scattered trees” or whether it has “natural impediments that deter the use of the land for crop production. *Id.* at 85. Reasonable minds could differ on whether a particular piece of land meets that definition based on subjective factors.
- c) Both the initial determination of whether land should be classified as agricultural, as well as the actual assessment of the property under the agricultural guidelines require an Assessor to consider a number of factors, many of which are subjective. Those

¹ Of course, the subjective-objective test was a creation of the Tax Court in *Hatcher*. Because the legislature never adopted the subjective/objective “distinction”, that language was never part of the appeal statutes and could not be simply repealed.

² I.C. § 6-1.1-4-13(b) does provide that land enrolled in a USDA conservation program is considered to be devoted to agricultural use. But while the subject property was enrolled in such a program up to 2006, there is no indication it was enrolled in such a program as of either of the assessments at issue.

determinations are a far cry from the type of “simple true or false finding of fact” that qualify an issue as objective. *See Barth, Inc. v N.E. State Bd. of Tax Comm’rs*, 756 N.E.2d 1124, 1131 (Ind. Tax Ct. 2001) (describing an objective determination as verifying “the existence of a component,” rather than “design or quality.”)

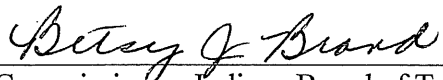
- d) Because LD Farms did not raise an objective error in its Form 130 Petitions for 2019 and 2020, it was not entitled to I.C. § 6-1.1-15-1.1(b)’s extended three-year deadline, and its appeals were untimely. Because its appeals were untimely, we need not address the remainder of LD Farms’ arguments.

Final Determination

12. For the reasons discussed above, we order no change to the 2019 and 2020 assessments.

ISSUED: MAY 08, 2023


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>.