REPRESENTATIVE FOR THE PETITIONER: Ronald Milliken, *pro se*

REPRESENTATIVE FOR THE RESPONDENT: Kristie Miller, Reassessment Deputy

BEFORE THE INDIANA BOARD OF TAX REVIEW

Ronald Milliken,	)	Petition No.: 71-029-23-1-5-00643-23
	)	
Petitioner,	)	Parcel No.: 71-02-12-400-003.000-029
	)	
v.	)	County: St. Joseph
	)	
St. Joseph County Assessor,	)	Township: Warren
	)	
Respondent.	)	Assessment Year: 2023

November 14, 2024

FINAL DETERMINATION

The Indiana Board of Tax Review ("Board") having reviewed the facts and evidence, and having considered the issues, now finds, and concludes the following:

INTRODUCTION

1. The Petitioner appealed the 2023 assessment of his property in South Bend. The Assessor had the burden of proof but failed to provide reliable, market-based evidence supporting any value for the subject property. The Petitioner likewise failed to present probative evidence supporting a specific value. Thus, we order the assessment reduced to the prior year's value of $82,900.

PROCEDURAL HISTORY

2. The Petitioner filed a Form 130 appeal with the county on May 1, 2023, appealing the 2023 assessment of his property located at 25301 Adams Road in South Bend.

3. The St. Joseph County Property Tax Assessment Board of Appeals ("PTABOA") failed to hold a hearing withing 180 days. *See* Indiana Code § 6-1.1-15-1.2(k) (requiring a county PTABOA to hold a hearing within 180 days of a taxpayer filing written notice of review). On November 14, 2023, the Petitioner opted to appeal to the Board rather than wait for the PTABOA to act. *See* I.C. § 6-1.1-15-1.2(k) (allowing a taxpayer to appeal to the Board once the maximum time for a PTABOA to hold a hearing has elapsed).

4. The assessment of record is $111,300 for land and $66,300 for improvements for a total of $177,600.

5. On July 24, 2024, Dalene McMillen, the Board's Administrative Law Judge ("ALJ"), held an in-person hearing. Neither the Board nor the ALJ inspected the property.

6. Christine Milliken, Ronald Milliken, Reassessment Deputy Kristie Miller, and the Auditor's office manager Kathy Gregorich testified under oath.

7. The Petitioner offered the following exhibits:

Petitioner Exhibit 1:	2023 subject property record card ("PRC"),
Petitioner Exhibit 2:	2014 subject PRC,
Petitioner Exhibit 3:	2013 PRC for 25190 Adams Road (parcel no. 71-02-13-200-004.000-029),
Petitioner Exhibit 4:	2023 PRC for 25190 Adams Road (parcel no. 71-02-13-200-002.000-029),
Petitioner Exhibit 5:	2023 PRC for 24756 Adams Road,
Petitioner Exhibit 6:	2023 PRC for 56969 Orange Road,
Petitioner Exhibit 7:	2023 PRC for 25251 Adams Road,
Petitioner Exhibit 8:	2023 PRC for 24927 Adams Road,
Petitioner Exhibit 9:	2023 PRC for 25160 Adams Road,
Petitioner Exhibit 10:	2023 PRC for 25511 Adams Road,
Petitioner Exhibit 11:	2023 PRC for 50950 Poppy Road,
Petitioner Exhibit 12:	Request for subpoena for Kathy Gregorich, Auditor's office and Shannon Schalk, Assessor's office[1],
Petitioner Exhibit 13:	Photograph of subject barn,
Petitioner Exhibit 14:	Conservation plan map,

[1] In accordance with 52 IAC 4-8-6, any party may request that the **Board issue** a subpoena or subpoena duces tecum by filing a request with the Board at least ten (10) business days before the date on which the hearing commences. The Petitioner never requested the Board issue any subpoenas.

Petitioner Exhibit 15:	Contour map,
Petitioner Exhibit 16:	Subject property 17T form for 2023 pay 2024,
Petitioner Exhibit 17:	Subject property 17T form for 2023 pay 2024,
Petitioner Exhibit 18:	Subject property value allocation form,
Petitioner Exhibit 19:	2021 subject PRC,
Petitioner Exhibit 20:	Taxpayer and property information form for subject property.

8. The Respondent offered no exhibits.

9. The Petitioner requested that the exhibits from his 2022 Board hearing be included in his 2023 appeal. But our hearing instructions specifically state that parties must provide copies of all evidence at the hearing. Because the Petitioner did not provide copies of the evidence from his prior appeal, we deny the request to admit that evidence.

10. 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

11. The subject property is a 1.5-story frame home with a barn and pole barn located on approximately eight acres of land. The buildings suffer from some deficiencies including broken doors, roofs in need of replacement, and missing glass in the barn windows. *R. Milliken testimony; Pet'r Ex. 1, 13.*

12. The assessment under appeal of $177,600 is an approximately 214.2% increase over the prior year's value of $82,900. *R. Milliken testimony; Miller testimony; Pet'r Ex. 1.*

RESPONDENT'S CONTENTIONS

13. The Assessor proposed an assessed value of $109,300 based on the change in agricultural base rates between 2022 and 2023. *Miller testimony.*

PETITIONERS' CONTENTIONS

14. The Petitioner argued that the agricultural land should be classified as 2.06 acres tillable land, 0.517-acres non-tillable land, and 4.41 acres woodland for a total of 7.987 acres. He also argued that a negative 60% influence factor should be applied to the non-tillable land and a negative 80% influence factor should be applied to the woodland. *R. Milliken testimony; Pet'r Ex. 14.*

15. The Petitioner also claimed that assessments in his surrounding area are inconsistent and unfair. He presented property record cards from nine properties and argued that they demonstrate that influence factors and depreciation are applied inconsistently. He argued the subject home should be assessed at 75% depreciation, the barn at 90%, and the pole barn at 70%. The Petitioner asked the Board to order the Assessor to correct the property record card to reflect these values. *R. Milliken testimony; Pet'r Exs. 3-11.*

16. Finally, The Petitioner argued that the refund for his 2022 assessment appeal was incorrect, and the Auditor's office would not explain how they calculated the amount. *R. Milliken testimony; Pet'r Exs. 16-18 & 20.*

BURDEN OF PROOF

17. Generally, the taxpayer has the burden of proof when challenging a property 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." I.C. § 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). Subject to certain exceptions, 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.*

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 is an increase of approximately 214.2% over the prior year's assessment. Thus, the Assessor has the burden of proof.

ANALYSIS

21. The Indiana Board of Tax Review is the trier of fact in property tax appeals, and its 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 it. I.C. § 6-1.1-15-20(f). The Board's 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).

22. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting a property's true tax value. 52 IAC 2.4-1-2; 2021 REAL PROPERTY ASSESSMENT 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).

23. For most 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 a similar user, from the property." MANUAL at 2. In order to meet its burden of proof, a party "must present objectively verifiable, market-based evidence." *Piotrowski v. Shelby County 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)). 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 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 County 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).

24. In addition, I.C. § 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." 2021 REAL PROPERTY ASSESSMENT GUIDELINES, Glossary at 2. The statutory and regulatory scheme for 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. I.C. § 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* GUIDELINES, Ch. 2 at 73-74. 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 83, 87, 95-96. For example, "nontillable land" — which the Guidelines define as "land covered with brush or scattered trees with less than 50% canopy cover, or permanent pastureland with natural impediments that deter the use of the land for crop production" — receives a -60% influence factor. *Id.* at 87. Similarly, "woodland" — which the Guidelines define as "land supporting trees capable of producing timber or other wood products" that has "50% or more canopy cover or is a permanently planted reforested area," — receives a -80% influence factor. *Id.*

25. As part of determining true tax value, the Guidelines allow one acre per dwelling on agricultural property, which is classified as type 9 agricultural homesite. GUIDELINES, Ch. 2 at 90. The homesite makes up a portion of a property's land value. Also, areas containing a large manicured yard above the accepted one-acre homesite are classified as

type 92 agricultural excess acreage. 2021 GUIDELINES, Ch. 2 at 51, 52 & 90. Unlike other subtypes of agricultural land, homesite and agricultural excess acreage true tax values cannot be established on appeal by applying the Guidelines. Instead, a party needs to offer probative market-based evidence.

26. In this case, the Assessor has the burden of proving the 2023 assessment is correct. The Assessor did not offer any evidence, but instead requested that the assessment be reduced to $109,300. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs,* 704 N.E.2d 113, 1118 (Ind. Tax Ct. 1998). Thus, the Assessor failed to meet the burden of proof.

27. We now turn to the Petitioner's evidence. He first challenged the agricultural assessments. There is no dispute that a portion of the property should be classified as agricultural. However, the Petitioner offered largely conclusory testimony about his land. While he did provide a USDA conservation plan map, it only outlines the subject property, it does not provide a breakdown of the amount of acreage in each land classification nor the soil types. Thus, this evidence is insufficient to support any value. Furthermore, even were we to find that the Petitioner successfully demonstrated the value of the agricultural land, the relief we order would not change. Because the burden-shifting provisions of I.C. § 6-1.1-15-20 have been triggered, unless the totality of the evidence is sufficient to prove a value for the entire property, the prior year's assessment is presumed to be correct. As we discuss in more detail below, the Petitioner failed to provide reliable evidence for the value of the non-agricultural portions of the property.

28. These non-agricultural portions include both the homesite and the improvements. As explained above, the true tax value for those property types is based on market value-in-use, which the parties must prove using objectively verifiable market-based evidence. *Piotrowski v. Shelby County 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)). The

Petitioner failed to offer any probative market-based evidence to establish the market value-in-use of the homesite or the improvements.

29. The Petitioner did offer evidence of deficiencies in the subject property, but he failed to present reliable evidence quantifying the effect those deficiencies had on the overall value of the property as of the valuation date. The Petitioner also requested specific amounts of depreciation on the improvements, but he did not offer any reliable evidence supporting those amounts. More importantly, as discussed above, neither party may rely on the mass appraisal assessment regulations in order to prove the value of the non-agricultural components. We also decline to order any changes to the property record card on these grounds.

30. The Petitioner did present some evidence in the form of comparable assessments from his area. But a party offering sales or assessment data must use generally accepted appraisal or assessment practices to show that the purportedly comparable properties are comparable to the property under appeal. *Long v. Wayne Twp. Ass'r,* 821 N.E.2d 466, 470-71 (Ind. Tax Ct. 2005). Conclusory statements that properties are "similar" or "comparable" do not suffice; instead, parties must explain how the properties compare to each other in terms of characteristics that affect market value-in-use. *Id.* at 471. They must similarly explain how relevant differences affect values. *Id.* The Petitioner's comparable assessments showed negative influence factors applied to homesites, and various amounts of depreciation applied to improvements, but he did not sufficiently explain how they compared to his property, how any relevant differences affected their relative values, or why such evidence was sufficient to establish a value for the subject property. Without such analysis, this evidence is insufficient to support any value.

31. Next, we recognize that the Petitioner may also have been concerned that his assessment was disproportionately higher than similar properties. We take this as a challenge to the uniformity and equality of the assessment as mandated by I.C. § 6-1.1-2-2 and Article 10 of the Indiana Constitution. As the Tax Court has explained, "when a taxpayer challenges the uniformity and equality of his or her assessment one approach that he or

she may adopt involves the presentation of assessment ratio studies, which compare the assessed values of properties within an assessing jurisdiction with objectively verifiable data, such as sales prices or market value-in-use appraisals." *Westfield Golf Practice Center v. Washington Twp. Ass'r,* 859 N.E.2d 396, 399 n.3 (Ind. Tax Ct. 2007) (emphasis in original). Such studies, however, should be prepared according to professionally acceptable standards. *Kemp v. State Bd. of Tax Comm'rs,* 726 N.E.2d 395, 404 (Ind. Tax Ct. 2000). They should also be based on a statistically reliable sample of properties that actually sold. *Bishop v. State Bd. of Tax Comm'rs,* 743 N.E.2d 810, 813 (Ind. Tax Ct. 2001) (*citing Southern Bell Tel. and Tel. Co. v. Markham,* 632 So.2d 272, 276 (Fla. Dist. Co. App. 1994)).

32. When a ratio study shows that a given property is assessed above the common level of assessment, the property's owner may be entitled to an equalization adjustment. *See Dep't of Local Gov't Fin. v. Commonwealth Edison Co.,* 820 N.E.2d 1222, 1227 (Ind. 2005) (holding that taxpayer was entitled to seek an adjustment on grounds that its property taxes were higher than they would have been if other property in Lake County had been properly assessed). The equalization process adjusts the property assessments so "they bear the same relationship of assessed value to market value as other properties within that jurisdiction." *Thorsness v. Porter County Assessor,* 3 N.E.3d 49, 52 (Ind. Tax Ct. 2014) (citing *GTE N. Inc. v. State Bd. of Tax Comm'rs,* 634 N.E.2d 882, 886 (Ind. Tax Ct. 1994)). Article 10, Section 1 (a) of Indiana's Constitution, however, does not guarantee "absolute and precise exactitude as to the uniformity and equality of each individual assessment." *State Bd. of Tax Comm'rs v. Town of St. John,* 702 N.E.2d 1034, 1040 (Ind. 1998).

33. As discussed above, one of the requirements for a reliable ratio study is a comparison between the assessments used and objectively verifiable market data such as sale prices or appraisals. But the Petitioner did not demonstrate that he provided a statistically reliable sample of properties, nor did he compare the assessments of the purportedly comparable properties with objectively verifiable market data. For these reasons, he has failed to show he is entitled to any relief.

34. Finally, the Petitioner requested relief regarding issues with his refund from his 2022 assessment appeal. But that matter is not properly before us. I.C. § 6-1.1-26-2.1 outlines the procedure for obtaining a refund. It also provides that appeals of refund claims are to be filed in a court of competent jurisdiction in the county where the property is located. Ultimately, we lack jurisdiction to grant the Petitioner any relief regarding his refund claim.

SUMMARY OF FINAL DETERMINATION

35. Because the burden of proof shifted and the totality of the evidence was insufficient to support any value, the prior year's assessment is presumed correct. I.C. § 6-1.1-15-20(f). Thus, we order the 2023 assessment reduced to the prior year's value of $82,900.

The Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date written above.

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>.