REPRESENTATIVES FOR PETITIONERS:
Paul L. Chavez, *pro se*

REPRESENTATIVE FOR RESPONDENT:
Brian Cusimano, Attorney

BEFORE THE
INDIANA BOARD OF TAX REVIEW

Paul L. & Joan E. Chavez,	)	Petition No.: 17-024-13-1-5-00001
	)	
Petitioners,	)	Parcel No.: 17-06-21-226-001.000-024
	)	
v.	)	County: Dekalb
	)	
Dekalb County Assessor,	)	Township: Union
	)	
Respondent.	)	Assessment Year: 2013

Appeal from the Final Determination of the
Dekalb County Property Tax Assessment Board of Appeals

January 6, 2015

FINAL DETERMINATION

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Introduction

1. The previous owner of the subject property used it to harvest trees, and the Petitioners bought the property intending to do the same. Although the Petitioners have done little to

harvest trees since buying the property, they have done nothing to convert the bulk of the property to any other type of use. They are therefore entitled to have 2.72 acres of the property reclassified from excess residential land to agricultural land and assessed accordingly.

Procedural History

2. The subject property consists of a mobile home, a detached garage, and three pole barns on 5.18 acres of land located at 3578 County Road 36 in Auburn.

3. On April 3, 2013, the Petitioners initiated an appeal of the property's 2013 assessment. On February 20, 2014, the Dekalb County Property Tax Assessment Board of Appeals ("PTABOA") issued its determination reducing the assessment, although not by as much as the Petitioners had requested. The Petitioners then timely filed a Form 131 petition with the Board.

4. On August 14, 2014, the Board's administrative law judge, Dalene McMillen, held a hearing. Neither she nor the Board inspected the property.

5. The following people were sworn as witnesses: Paul L. Chavez; Shelia Stonebraker, Dekalb County Assessor; and Aaron Suozzi, Nexus Group.

6. The Petitioners offered the following exhibits:

Petitioners Exhibit 1: Five photographs of the subject property,
Petitioners Exhibit 2: Property record card ("PRC") for Parcel No. 17-06-22-103-004.000-024 located at County Road 35 in Auburn.

7. The Respondent offered the following exhibits:

Respondent Exhibit A: Aerial map and the 2011-2013 PRCs for the subject property,
Respondent Exhibit B: Page entitled "Glossary of Frequently Used FEMA/NFIP Terms-Acronyms,"

Respondent Exhibit C: Aerial maps and PRCs for the following properties: 3566 County Road 36; 3526 County Road 36; 3524 County Road 36; 3314 County Road 36; 3280 County Road 36; Parcel 17-06-21-201-018,000-024 located at County Road 36 in Waterloo; Parcel No. 17-06-21-277-002.000-024 located at County Road 35 in Auburn; and Parcel No. 17-06-22-103-002.000-024 located at County Roads 35 & 36 in Auburn.

8. The following items are also recognized as part of the record:

Board Exhibit A: Form 131 petition with attachments,
Board Exhibit B: Hearing notice, dated June 27, 2014,
Board Exhibit C: Hearing sign-in sheet.

9. The PTABOA determined the following assessment:

Land: $32,800 Improvements: $16,400 Total: $49,200

10. At the hearing, the Petitioners requested the following assessment:

Land: $8,000 Improvements: $16,400 Total: $24,400

Burden of Proof

11. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that his property's assessment is wrong and what its 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). If the taxpayer makes a prima facie case, the burden shifts to the assessor to offer evidence to impeach or rebut the taxpayer'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.

12. Indiana Code § 6-1.1-15-17.2, as amended, creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances. Where the assessment under appeal represents an increase of more than 5% over the prior year's assessment for

the same property, the assessor has the burden of proving that the assessment under appeal is correct. I.C. § 6-1.1-15-17.2(b). The assessor similarly has the burden where a property's gross assessed value was reduced in an appeal, and the assessment for the following date represents an increase over "the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase …." I.C. § 6-1.1-15-17.2(d).[1]

13. The Petitioners pointed to what Mr. Chavez characterized as a 655.91% increase in the property's assessment. *Chavez testimony*. As the property's record card shows, that increase occurred between 2011 and 2012, when the assessment went from $9,500 to $59,900. *Resp't Ex. B*. The burden-shifting statute, however, focuses on what happened between 2012 and 2013—the year at issue in this appeal. And the property's assessment actually decreased during that interval, going from $59,900 in 2012 to $49,200 in 2013 (as determined by the PTABOA). Thus, neither circumstance outlined in the Ind. Code § 6-1.1-15-17.2 applies, and the Petitioners have the burden of proof.

Summary of Petitioners' Contentions

14. The Petitioners bought the property for $2,500 sometime in the 1980s. Its previous assessment of $9,500 was much closer to the purchase price than is its current assessment of $49,200. *Chavez testimony.*

15. According to the Petitioners, the Respondent wrongly classified the land as residential rather than agricultural. The property is swamp land with a "scrub woods" located in a flood plain. Although the previous owner "logged [the property] out," the trees have since re-grown and some are ready to be cut. Other than cutting some firewood, Mr. Chavez has not harvested any of the trees yet. But he intends to do so. *Chavez testimony, argument.*

[1] Those provisions may not apply if there was a change in improvements, zoning, or use, or if the assessment was based on an income capitalization approach. I.C. § 6-1.1-15-17.2(c) and (d).

16. The assessment should account for the property flooding every spring. It is in a flood plain and cannot be farmed. The floodwater comes up to the floor of the subject property's pole barns and covers the four acres behind those barns. Mr. Chavez raised the ground under the mobile home to prevent it from flooding. Nonetheless, the flooding makes the property unsuitable for building a house. *Chavez testimony; Pet'rs Ex. 1.*

17. According to Mr. Chavez, three neighboring farms are assessed at a lower rate per acre than the subject property. The Betz farm has 40 acres assessed at about $40,000 or $1,000 per acre.[2] A portion of the land is assessed as swamp. The Aschleman farm is assessed at an average of $1,800 per acre. Theo Britton has one acre with a pole barn, which is not located in a flood plain. His land was assessed at $6,200 per acre. *Chavez testimony; Pet'rs Ex. 2.*

18. Finally, the homesite should not be assessed the same as land in nearby housing additions. Those additions have homes ranging from $200,000 to $300,000, while the subject property has a "junk trailer" attached to a foundation by metal straps. And those housing additions are not in the flood plain. *Chavez testimony.*

Summary of Respondent's Contentions

19. For 2013, the subject property's land was assessed as follows: a one-acre residential homesite assessed at $21,000; 2.72 acres of residential excess acreage assessed at a rate of $6,200 per acre; .68 acres classified as a legal ditch, and .78 acres classified as public road. The ditch and road were assessed at zero. The Respondent did not classify the land as agricultural because the Petitioners were not harvesting anything and were not using the land to produce income. *Suozzi testimony; Resp't Ex. A.*

20. All the land in the area was assessed in the same manner—homesites were valued using a base rate of $21,000 per acre, while excess residential land was valued at $6,200 per acre. None of the three properties Mr. Chavez identified are comparable to the subject

[2] The Petitioners did not offer a property record card for the Betz Farm. The property record card that the Respondent offered shows that the farm was 6.2 acres and was assessed for a total of $7,500. *Resp't Ex. C.*

property. Two of them—the Betz and Aschleman farms—were classified as agricultural and were therefore assessed using the base rate for agricultural land adjusted by appropriate soil productivity factors. The third property—a one-acre parcel owned by Theo Britton—was assessed using the $6,200 rate for excess residential land. Unlike the subject property, the Britton property was not developed for residential use with a septic system and well. It therefore was not assessed as a homesite. *Suozzi testimony; Resp't Ex. C; Pet'rs Ex. 2.*

21. Similarly, the Aschleman and Betz farms, as well as a farm owned by Coleman, share the same creek that runs behind the subject property. None of those properties receives a negative influence for flooding. Thus, properties in the area are assessed uniformly. *Suozzi testimony; Resp't Exs. A, C.*

22. Mr. Chavez focused on the increase in the subject property's assessment in 2012. Before the 2012 reassessment, the land was classified as non-buildable. The homesite and excess acreage therefore received negative influence factors of 90% and 80%, respectively. When the Respondent's witness, Aaron Suozzi, inspected the property in connection with the reassessment, he noticed a mobile home on a permanent foundation and other structures. The Respondent therefore removed the negative influence factors. *Suozzi testimony; Resp't Ex. A.*

23. Although Mr. Chavez testified about the land flooding, the State assessment guidelines do not allow adjustments for flooding on land classified as excess residential acreage. Regardless, the surveyor's office shows that the property is not in a flood plain, but is instead in the flood fringe, which the Federal Emergency Management Agency ("FEMA") defines as "areas outside the regulatory floodway but still inundated by the designated 1 percent annual chance flood…." *Suozzi testimony; Resp't Ex. B.*

24. The PTABOA applied a negative 30% influence factor to the subject property's residential excess acreage, which addressed some of the issues associated with the land. *Suozzi testimony; Resp't Ex. A.*

Analysis

25. Indiana assesses real property based on its true tax value, which the 2011 Real Property Assessment Manual defines as "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, for the property." 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). A party's evidence in a tax appeal should be consistent with that standard. For example, a market value-in-use appraisal prepared according to Uniform Standards of the Professional Appraisal Practice often will be probative. *See id.; see also, Kooshtard Property VI, LLC v. White River Township Assessor,* 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). A party may also offer actual construction costs, sale or assessment information for the subject or comparable properties, and any other information compiled according to generally acceptable appraisal principles. *See id*; *see also,* I.C. Code § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments to determine an appealed property's market value-in-use).

26. The Petitioners offered little evidence that was probative of the property's true tax value. The purchase price is more than 20 years removed from the March 1, 2013 valuation date. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (holding that taxpayers' evidence was not probative absent some explanation as to how it demonstrated or was relevant to property's value as of valuation date). While the fact that the subject property floods is relevant, the Petitioners offered nothing from which to even approximately quantify how the flooding affects the property's value.

27. Their attempt to prove the subject property's true tax value through assessments for nearby farms similarly lacks probative weight. A party may offer evidence of assessments of comparable properties to show the market value-in-use of a property under appeal. I.C. § 6-1.1-15-18. The determination of whether properties are comparable must be based on generally accepted appraisal and assessment practices. *Id.* Conclusory statements that a property is "similar" or "comparable" to another property

do not suffice. *Long*, 821 N.E.2d at 471. Instead, one must identify the characteristics of the property under appeal and explain how those characteristics compare to the characteristics of the purportedly comparable properties. Similarly, one must explain how any differences between the properties affect their relative market values-in-use. *See id.*

28. Mr. Chavez did little to meaningfully compare the three neighboring properties to the subject property or to account for important differences. For example, two of the three properties were classified as agricultural while the subject property is classified as residential, and the one neighboring property classified as residential does not have a homesite. Indeed, the Respondent used the same base rates to assess both the subject property and other similarly classified land.

29. Of course, that begs the question: Did the Respondent appropriately classify the subject property's land? The Petitioners claim that she did not, arguing that the property should have been classified as agricultural. The Board agrees. And that error entitles the Petitioners to some relief despite their lack of probative market-based evidence.

30. 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 Department of Local Government Finance ("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 77-78; *see also* I.C. § 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 apply influence factors in predetermined amounts. *Id*. at 77, 89, 98-99. Thus, once a taxpayer shows that land should be classified under one or more agricultural subtypes, its true tax value may be determined by simply applying the Guidelines.

31. The legislature has directed that "[i]n assessing or reassessing land, the land shall be assessed as agricultural only when it is devoted to agricultural use." I.C. § 6-1.1-4-13(a). Growing timber is an agricultural use. GUIDELINES, ch. 2 at 81-82. Indeed, the Guidelines include woodland, which they define as "land supporting trees capable of producing timber or other wood products," as an agricultural subtype.[3] *Id*. at 89.

32. The DLGF recognizes that "certain circumstances may blur the line between the residential property class designation and the agricultural designation when wooded areas are involved," and has offered guidance for determining whether such property is devoted to agricultural use. GUIDELINES, ch. 2 at 82. Thus, the DLGF has explained:

> Of assistance to the assessor in determining the classification is evidence of enrollment in programs which assign a "farm number" or programs designed to foster timber production management. The determining factors are provided in IC 6-1.1-4-13 and the Guidelines. *Of particular interest to the assessor is the reason for the purchase of the land*.
> …
> While not controlling in the assessor's determination, the following factors may be of assistance: (1) the acreage is designated by the [Department of Natural Resources ("DNR")] as qualifying for one of their classified programs. The DNR has established a 10 acre minimum for its programs; (2) the owner can show an active timber management program in place which will improve the marketability of the forest for an eventual harvest; (3) the owner possesses a DNR management plan to further enhance the forest quality; and (4) the owner can show that regular forest harvests have occurred over a long time period.

GUIDELINES, ch. 2 at 89-90 (emphasis added).

33. This is a close case. As the 2011 Real Property Assessment Guidelines indicate, an owner's intent when purchasing a property is significant. Mr. Chavez testified without rebuttal that the previous owner used the property for logging and that the Petitioners bought the property intending to do the same. The Respondent pointed to the fact that the Petitioners had not harvested trees other than Mr. Chavez cutting some firewood. As Mr. Chavez explained, however, it takes time for trees to mature, and the previous owner had

[3] The Guidelines further explain, "This land has 50% or more canopy cover or is a permanently planted reforested area." Guidelines, ch.2 at 89.

"logged [the property] out." *Chavez testimony*. The Petitioners' case might have been stronger had they developed a formal plan or taken other steps to actively prepare the woods for harvesting. Nonetheless, the mere lack of recent harvesting does not preclude the Petitioners' claim.

34. That is particularly true given the lack of evidence that the Petitioners took any steps to convert the bulk of the property from its original agricultural use to a residential use. At most, they developed a homesite on a portion of the land and installed a mobile home. But they did not do anything aimed at altering the use of the land beyond the homesite, such as turning it into manicured lawn or using it for recreational activities associated with the homesite.

35. The Petitioners therefore demonstrated that the Respondent erred in classifying and assessing 2.72 acres as excess residential land. That portion of the property should instead be classified and assessed as agricultural.

36. The Petitioners, however, did not make a prima facie case for changing the homesite's assessment. The Guidelines provide that one acre per dwelling on agricultural property should be classified as agricultural homesite. *See* GUIDELINES, ch. 2 at 93. Unlike other subtypes of agricultural land, a homesite's true tax value is not determined simply by applying a statewide base rate adjusted by soil productivity factors and influence factors in pre-determined amounts. Instead, agricultural homesites are assessed at a flat rate that the assessor determines by examining the costs for vacant land and improvements to the land, such as a water well and septic system. *Id.* at 53, 93. Thus, the Petitioners needed to offer probative market-based evidence to show the homesite's true tax value. As explained above, none of the Petitioners' evidence—the property's purchase price from the 1980s, general evidence of flooding, or evidence of other properties' assessments—suffices.

37. Thus, the Petitioners proved that the 2.72 acres currently classified as excess residential acreage should be re-classified as agricultural land. Based on the aerial photographs

offered by the Respondent, it appears that most, if not all, of the area qualifies as agricultural woodland, although those photographs do not precisely delineate where certain structures are located. Small portions might appropriately be classified as "nontillable land" or "land used for farm buildings and barn lots." *See* GUIDELINES at 89, 92. The Board therefore orders the Respondent to reclassify those 2.72 acres as agricultural land under the appropriate subtype and assess them accordingly. The Board orders no other change to the property's assessment.

SUMMARY OF FINAL DETERMINATION

38. The Petitioners proved that 2.72 acres of the subject property is improperly classified as excess residential land. The Respondent must therefore reclassify that portion of the land under the appropriate agricultural subtype(s) and assess it in accordance with the Guidelines. The Board orders no other changes.

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>.