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

Petition Nos.:	**29-014-06-1-4-00019**
	29-014-07-1-4-00019
Petitioner:	**Freedom Associates LLC**
Respondent:	**Hamilton County Assessor**
Parcel No.:	**0806310000005000**
Assessment Years:	**2006 and 2007**

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

Procedural History

1. The Petitioner initiated assessment appeals for 2006 and 2007 with the Hamilton County Property Tax Assessment Board of Appeals (the PTABOA) by written documents dated January 29, 2007, for 2006 and February 27, 2008, for 2007.

2. The PTABOA issued notices of its decisions on June 19, 2008, for 2006 and on October 7, 2008, for 2007.

3. The Petitioner filed Form 131 petitions with the Board on June 27, 2008, for 2006 and on October 30, 2008, for 2007. The Petitioner elected to have these cases heard according to the Board's small claim procedures.[1]

4. The Board issued a notice of hearing for the 2007 assessment appeal to the parties dated November 19, 2008. The record suggests that the Board did not issue a notice of hearing to the parties for the 2006 assessment appeal, but the parties agreed to waive the thirty day minimum advance notice of hearing for 2006,

[1] The Board's small claims procedures apply to, *inter alia*, "a parcel of land, as improved, with an assessed value for the land and improvements not in excess of one million dollars." 52 IAC 3-1-2(a)(2). The property at issue is assessed in excess of $3,000,000. A party to an appeal concerning property that does not meet the criteria for small claims may still elect to have the petition heard pursuant to the Board's small claims procedures by "(1) requesting so upon filing the appeal petition or by notifying the board, in writing, within thirty (30) days of filing his or her petition; and (2) obtaining the written consent to such election from the other parties to the proceeding." 52 IAC 3-1-2(d). The main differences between the Board's regular procedural rules and its small claims rules lie in its document exchange rules and the small claims procedures' limitation on the issues that can be presented at hearing and the time allotted for presenting evidence at hearing. Here there is no evidence that the Petitioner or the Petitioner's representative obtained written consent to have the petition heard pursuant to the Board's small claims procedures. The Respondent, however, did not object to the exhibits offered by the Petitioner or the presentation of evidence by the Petitioner's representative. Therefore, the Board views any objection to the application of the Board's small claims procedures to these matters to be waived by the Respondent.

established by Ind. Code §6-1.1-15-4. The Waiver of Notice was signed January 29, 2009, and hearing on the 2006 appeal proceeded on that date.

5. The Board held an administrative hearing on January 29, 2009, before the duly appointed Administrative Law Judge (the ALJ) Dalene McMillen.

6. The following persons were present and sworn in at hearing:

   a. For Petitioner: Michael F. Caron, Integrity Tax Consulting

   b. For Respondent: Debbie Folkerts, Hamilton County Assessor
   Terry McAbee, Hamilton County Deputy Assessor
   Marilyn S. Meighen, Meighen & Associates, P.C.[2]

Facts

7. The property under appeal consists of a 695,800 square foot greenhouse, a 7,500 square foot commercial storage building and a 64,896 square foot storage building, two storage tanks, a 4,033 square foot dwelling with an attached garage, a detached garage, a 120 square foot utility shed and a swimming pool on 81.78 acres located at 2621 186th Street East, Westfield, Washington Township, in Hamilton County.

8. The ALJ did not conduct an on-site inspection of the property under appeal.

9. For 2006, the PTABOA determined the assessed value to be $869,600 for the land and $2,184,900 for the improvements, for a total assessed value of $3,054,500; and for 2007, the PTABOA determined the assessed value to be $894,100 for the land and $2,127,400 for the improvements, for a total assessed value of $3,021,500.

10. For 2007, the Petitioner's representative argued the assessed value should be $125,800 for the land and $2,127,400 for the improvements, for a total assessed value of $2,253,200.[3] The Petitioner did not request a specific assessed value for 2006.[4]

[2] Ms. Meighen was sworn as a witness and also appeared as counsel for the Respondent.

[3] Petitioner used a base rate of $1,200 for tax year 2007. *Petitioner Exhibit AF*. The base value for 2007, however, appears to be $1,140. *Respondent Exhibits 2 & 3*.

[4] The Petitioner's representative, Mr. Caron testified that to calculate the land value for 2006, the agricultural land value for 2007 on Petitioner's Exhibit AF would need to be changed from $1,200 to $880. *Caron testimony; Petitioner Exhibit AF*.

Issue

11. Summary of Petitioner's contentions in support of alleged error in assessment:

    a. The Petitioner's representative contends that the assessed value on the subject property is incorrect because 44.7476 acres of the property's 81.78 acres are assessed as commercial and industrial land when they should be assessed as agricultural land.[5] *Caron testimony.* According to Mr. Caron, the 44.7476 acres are agricultural because the Petitioner uses the property as a wholesale greenhouse. *Petitioner Exhibit C; Caron testimony.* Mr. Caron argues, therefore, that the 44.7476 acres under appeal are used to produce horticultural products. *Caron testimony.*

    b. Mr. Caron argues that the City of Westfield and Washington Township Existing Land Use Map, March 2008, shows the parcel's existing use to be agricultural. *Petitioner Exhibit O; Caron testimony.* In addition, Mr. Caron testified that the property is zoned "Agriculture/Single Family 1" (AG-SF1). *Petitioner Exhibit O; Caron testimony.* According to Petitioner's representative, the City of Westfield and Washington Township Plan Commission defines AG-SF1 zoning as agricultural or single-family residential. *Petitioner Exhibit P; Caron testimony.* Permitted uses under AG-SF1 zoning include accessory buildings related to agricultural use and "nurseries, greenhouses, truck gardens, farms, or related products produced and sold on site." *Petitioner Exhibit Q; Caron testimony.* The Hamilton County zoning ordinance also recognizes a wholesale greenhouse as an agricultural activity. *Petitioner Exhibit S; Caron testimony.*

    c. The Petitioner's representative argues that Indiana statutes, the Real Property Assessment Guidelines for 2002 (the Guidelines) and rules established by the Department of Local Government Finance (DLGF) state that a property's classification is determined by the property's use or zoning. *Petitioner Exhibits F, G, H, I and J; Caron testimony.* According to the Petitioner, Indiana Code § 6-1.1-4-13, states "land shall be assessed as agricultural land only when it is devoted to agricultural use." *Petitioner Exhibit H; Caron testimony.* Mr. Caron argues that, under the 2002 Real Property Assessment Manual (the Manual), the property class of the land and improvements of greenhouses are agricultural when used for agricultural purposes. *Petitioner Exhibit AB; Caron testimony.* Greenhouses are not included in either the commercial or industrial property class codes of the Manual. *Id.*

[5] The Petitioner apparently does not contest the 1 acre classified as homesite, the 33.1101 acres classified as tillable cropland, or the 2.9223 acres classified as residential excess acreage that comprises the remainder of the property's 81.78 acres.

d. The Petitioner's representative notes that the Guidelines and the statutes do not specifically define agricultural use. *Caron testimony.* Mr. Caron, however, looked to other Indiana statutes to interpret that phrase. *Id.* According to Mr. Caron, Indiana Code § 32-30-6-1 states that an "agricultural operation" is defined as "any facility used for the production of crops, livestock, poultry, livestock products, poultry products, or horticultural products or for growing timber." *Petitioner Exhibit K; Caron testimony.* In addition, Indiana Code § 36-7-11.1-13.1 states that an "agricultural nonconforming use" includes land used for horticultural or nursery stock. *Petitioner Exhibit L; Caron testimony.* Further, Mr. Caron testified, the Merriam Webster dictionary defines "horticulture" as "the science and art of growing fruits, vegetables, flowers or ornamental plants." *Petitioner Exhibit N; Caron testimony.*

e. In addition, Mr. Caron testified that because Indiana statutes do not clearly define agricultural use, he turned to other states such as North Dakota, Illinois, Michigan, Wisconsin, Kentucky and Texas for their treatment and definition of agricultural property. *Petitioner Exhibits V, W, X, Y, Z, and AA, Caron testimony.* According to Mr. Caron, all of these states recognize horticulture and land on which a greenhouse is located as an agricultural use. *Caron testimony.*

f. Mr. Caron further contends the U.S. Department of Labor Standard Industrial Classification (SIC) system, which was replaced by the North American Industry Classification System (NAICS), defines greenhouses as agricultural production, which includes horticultural services and floriculture production.[6] *Petitioner Exhibits T and U; Caron testimony.*

g. Finally, the Petitioner's representative argues that, while there are no Indiana cases on point, there are two cases from Colorado holding that greenhouses are classified as other agricultural property. *Caron testimony.* According to Mr. Caron, Colorado recognizes two methods for assessing agricultural property. *Caron testimony.* The first method is for agricultural products that originate from the land which is valued using a productivity method. *Petitioner Exhibit AE; Caron testimony.* The second method is for other agricultural properties which are valued using the three valuation approaches in an appraisal based on the property's actual use on the assessment date. *Id.* According to the Petitioner's representative, although the Colorado court determined that greenhouses did not qualify as "farm" properties because nothing was grown in the ground, greenhouses were classified as other agricultural properties. *Id.* Thus, Mr. Caron concluded, greenhouse properties are still classified as an agricultural use in Colorado contrary to the Respondent's arguments.

[6] The NAICS defines floriculture production as being primarily engaged in growing or producing products such as cut flowers, roses, cut cultivated greens, potted flowering and foliage plans, and flower seeds under cover and in open fields.

Caron testimony. In support of this contention, the Petitioner's representative submitted two Colorado court cases, *Jefferson County Board of County Commissioners v. S.T. Spano Greenhouses, Inc.,* 155 P.3d 422 (Colo. Ct. App. 2006) and *Welby Gardens v. Adams County Board of Equalization; Board of Assessment Appeals,* 71 P.3d 992 (Colo. Sup. Ct. 2003). *Petitioner Exhibits AE and AG.*

12. Summary of Respondent's contentions in support of the assessment:

a. The Respondent contends the land under appeal is located under the greenhouse operation. *Respondents Exhibits 6-7; McAbee testimony.* According to the Respondent's witness, the greenhouse is an enclosed, environmentally controlled structure on asphalt and concrete paving. *Id.* Mr. McAbee testified that plants are grown in hanging basket and in flats. *Id.* Nothing is grown in the soil in the ground. *Id.* Therefore, the Respondent contends, the land is correctly classified and assessed as commercial/industrial land. *Meighen argument.*

b. The Respondent argues that Indiana Code § 6-1.1-4-13 (a) states that "land shall be assessed as agricultural land only when it is devoted to agricultural use." *Respondent Exhibit 11.* Further, Indiana Code § 6-1.1-31-6 (b), as well as the Real Property Assessment Guidelines for 2002 – Version A state agricultural land is valued based on the productivity or earning capacity of the land. *Petitioner Exhibit F; Respondent Exhibit 1; Meighen argument.* According to the Respondent, the agricultural land base rate for 2007 was calculated by using an income capitalization method, whereby a six year rolling average of the net income of both cash rent and owner-occupied production is divided by the capitalization rate.[7] *Id.* In support of this contention, the Respondent submitted the Department of Local Government Finance's reference materials for valuing agricultural land for March 1, 2007. *Respondent Exhibits 2-4.*

c. The Respondent argues that while Indiana has not addressed the issue of whether the land under a greenhouse is "devoted to agricultural use," a case in the Colorado Court of Appeals, *Welby Gardens Company v. Adams County Board of Equalization,* 56 P.3d 1121 (Colo. App. Ct. 2002), is instructive. *Meighen argument.* In that case, the court held that to qualify as "agriculture" a property must produce agricultural products "that originate from the land's productivity".[8] *Respondent Exhibit 5.* The Colorado Court of Appeals concluded the land under the greenhouse only

[7] For the assessment year of March 1, 2006, Senate Enrolled Act (SEA) 327, froze the agricultural land base rate at $880.

[8] In *Welby Gardens Company v. Adams County Board of Equalization,* 56 P.3d 1121, "Agriculture" means farming, ranching, animal husbandry and horticulture. *Respondent Exhibit 5.*

provided a site for the greenhouse operation, and that the products involved did not "originate from the productivity of the land" on which the greenhouse is located. *Id.*

d. The Respondent's witness, Mr. McAbee testified that the Westfield – Washington Township comprehensive plan adopted by the Westfield Town Council on February 12, 2007, shows the land use type of the property under appeal as industrial. *McAbee testimony.* In support of this contention the Respondent submitted the Westfield – Washington Existing Land Use Map. *Respondent Exhibit 8.*

e. Finally, Mr. McAbee testified that while the Westfield – Washington Plan Commission in Petitioner Exhibit Q shows properties such as greenhouses, churches, fire stations and golf courses as permitted uses under an Agriculture/Single Family 1 zoning classification, these types of properties are assessed as commercial properties according to the Real Property Assessment Guidelines – Version A. *McAbee testimony.*

Record

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

a. The Form 131 petitions and related attachments.

b. The digital recording of the hearing.

c. Exhibits:

Petitioner Exhibit A – Microsoft map of the area under appeal,
Petitioner Exhibit B – Aerial map of the area under appeal,
Petitioner Exhibit C – Heartland Growers' website information,
Petitioner Exhibit D – Partial property record card for 2621 – 186th Street East, Westfield,
Petitioner Exhibit E – 2006 and 2007 Notification of Final Assessment Determinations – Form 115,
Petitioner Exhibit F – Indiana Code § 6-1.1-31-6, "Real property assessment; classification of land and improvements",
Petitioner Exhibit G – 2002 Real Property Assessment Manual, pages 2 and 3,
Petitioner Exhibit H – Indiana Code § 6-1.1-4-12, "Agricultural land; assessment",
Petitioner Exhibit I – Real Property Assessment Guidelines – Version A, page 68,

Petitioner Exhibit J – Real Property Assessment Guidelines – Version A, page 99,
Petitioner Exhibit K – Indiana Code § 32-30-6-1, "Agricultural operation" defined,
Petitioner Exhibit L – Indiana Code § 36-7-11.1-13.1, "Agricultural nonconforming use",
Petitioner Exhibit M – Aerial map of an unrelated commercial enterprise,
Petitioner Exhibit N – Merriam-Webster online dictionary definition of "horticulture",
Petitioner Exhibit O – City of Westfield and Washington Township Existing Land Use Map,
Petitioner Exhibit P – Westfield – Washington Township Plan Commission district designations,
Petitioner Exhibit Q – Agriculture Single Family 1 (AG-SF1) permitted uses,
Petitioner Exhibit R – Westfield – Washington Township Zoning Ordinance,
Petitioner Exhibit S – Hamilton County Zoning Ordinance, Section 2 "A-2 agricultural district",
Petitioner Exhibit T – U.S. Department of Labor Standard Industrial Classification (SIC) codes,
Petitioner Exhibit U – U.S. Census Bureau North American Industry Classification System (NAICS) codes,
Petitioner Exhibit V – North Dakota Title 57 – 02 "General Property Assessment",
Petitioner Exhibit W – Illinois Compiled Statutes, 505 ILCS 5 "Agricultural Areas Conservation and Protection Act",
Petitioner Exhibit X – Michigan Department of Treasury State Tax Commission / Assessment and Certification Division, "Qualified Agricultural Property Exemption Guidelines",
Petitioner Exhibit Y – Excerpt of Wisconsin Statute, Chapter 91.01,
Petitioner Exhibit Z – Excerpts of Kentucky State Tax Laws,
Petitioner Exhibit AA – Texas Title 1, Subtitle D, Chapter 23 "Appraisal Methods and Procedures",
Petitioner Exhibit AB – 2002 Real Property Assessment Manual, Appendix A, pages 23 – 26,
Petitioner Exhibit AC – Real Property Assessment Guidelines – Version A, page 105,

Petitioner Exhibit AD – Electronic mail message from Marilyn Meighen to Debbie Folkerts, dated May 18, 2008,
Petitioner Exhibit AE – *Jefferson County Board of County Commissioners v. S.T. Spano Greenhouses, Inc.*, 155 P.3d 422 (Colo. Ct. App. 2006),
Petitioner Exhibit AF – Petitioner's proposed amended pricing for 2007,
Petitioner Exhibit AG – *Welby Gardens v. Adams County Board of Equalization; Board of Assessment Appeals,* 71 P.3d 992 (Colo. Sup. Ct. 2003)

Respondent Exhibit 1 – Respondent's argument on Agricultural Land Assessment for Property Taxes,
Respondent Exhibit 2 – Department of Local Government Finance reference materials for valuing agricultural land for March 1, 2007,
Respondent Exhibit 3 – Department of Local Government Finance "Agricultural Land Base Rate: 2004 – 2009",
Respondent Exhibit 4 – Department of Local Government Finance "Overview of Agricultural Land Values",
Respondent Exhibit 5 – *Welby Gardens Company v. Adams County Board of Equalization*, 56 P.3d 1121 (Colo. Ct. App. 2002),
Respondent Exhibit 6 – Interior photographs of the greenhouse,
Respondent Exhibit 7 – An aerial map and exterior photographs of the subject property and a plat map of the area,
Respondent Exhibit 8 – Westfield – Washington Township existing land use map,
Respondent Exhibit 9 – Real Property Assessment Guidelines – Version A, Appendix C, page 16,
Respondent Exhibit 10 – Real Property Assessment Guidelines – Version A, Appendix G, page 36,
Respondent Exhibit 11 – Indiana Code § 6-1.1-4-13 and definition from Version A – Real Property Assessment Guideline, Glossary, page 1,
Respondent Exhibit 12 – Property record card for 2621 – 186th Street East, Westfield,

Board Exhibit A – Form 131 petitions with attachments,
Board Exhibit B – Notice of Hearing for the 2007 appeal,

Board Exhibit C – Hearing sign-in sheets,
Board Exhibit D – Waiver of Notice for the 2006 appeal.

d. These Findings and Conclusions.

Analysis

14. The most applicable governing law is:

a. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect. *See Meridian Towers East & West v. Washington Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003). The evidence needed to make a prima facie case depends on the issues raised by the taxpayer's challenge. S*ee Clark v. State Board of Tax Commissioners*, 694 N.E.2d 1230, 1234 (Ind. Tax Ct. 1998).

b. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Township 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").

c. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner's evidence. *Id; Meridian Towers*, 805 N.E.2d at 479.

15. Notwithstanding a violation of the Board's Rules of Practice, the Board finds that the Petitioner provided sufficient evidence to establish a prima facie case for a reduction in value. The Board reached this decision for the following reasons:

Mr. Caron Violated the Board's Rules of Practice

a. The Petitioner did not personally appear at the hearing. Instead, the Petitioner was represented by Michael Caron, a certified tax representative with Integrity Tax Consulting. Although not admitted to practice law, a certified tax representative can practice before the Board, subject to several express limitations. Among other things, a tax representative cannot make a claim regarding the constitutionality of an assessment or engage in any other representation that involves the practice of law. 52 IAC 1-2-1(b)(3) – (4).

b. Here Mr. Caron violated these restrictions. He presented statutes from other states in an effort to interpret the meaning of the Indiana statutes. Mr. Caron also presented two cases from Colorado that he contended supported his interpretation of the statutory language. Finally, Mr. Caron attempted to distinguish facts in this case from the facts in *Welby Gardens Company v. Adams County Board of Equalization*, 56 P.3d 1121 (Colo. Ct. App. 2002), which was offered by the Respondent's attorney in support of her arguments. Distinguishing potentially adverse cases is part of a lawyer's stock-in-trade.

c. Because Mr. Caron's violations appear to be isolated, the Board will not take any further action. The Board, however, strongly cautions Mr. Caron against further violating its rules of practice. And it reminds him that practicing law without a license is a crime. *See* Ind. Code § 34-43-2-1(making it a class-B misdemeanor to "engage[] in the business of a practicing lawyer" without having been admitted as an attorney by the Indiana Supreme Court). If Mr. Caron again violates the Board's rules of practice, the Board may take further action, such as reporting his violation to the Department of Local Government Finance, the Indiana Attorney General, the Supreme Court Disciplinary Commission, and the Indiana State Bar Association.[9]

The Petitioner Raised a Prima Facie Case

d. The Board now turns to the Petitioner's appeal. The Petitioner's representative contends that 44.7476 acres of the Petitioner's land should be assessed as "agricultural" land rather than assessed as "commercial/ industrial". *Caron testimony.* According to Mr. Caron, the 44.7476 acres are used to conduct a wholesale greenhouse business. *Id.* The Respondent argues the property is properly classified as "commercial/industrial" land because it is not devoted to agricultural purposes. *Meighen testimony.*

e. Indiana Code § 6-1.1-4-13 states that "land shall be assessed as agricultural land only when it is devoted to agricultural use." Indiana Code § 6-1.1-20.6-0.5 merely defines "agricultural land" as "land assessed as agricultural land under the real property assessment rules and guidelines of the department of local government finance." The REAL PROPERTY ASSESSMENT GUIDELINES – VERSION A holds that "agricultural property" is "land and improvements devoted to or best adaptable for the production of crops, fruits, timber and the raising of livestock." GUIDELINES, Glossary, p.1. While none of these statutes address greenhouses or horticultural products, the Real Property Assessment Manual identifies greenhouses as a subclass of property Class Code 1 – "agricultural taxable land and improvements used primarily for agricultural purposes." 2002 REAL PROPERTY ASSESSMENT MANUAL, at 2 (incorporated by reference at 50 IAC 2.3-1-2) at p. 23. Greenhouses are not

[9] The Department of Local Government Finance oversees the certification and de-certification of tax representatives. *See* 50 IAC 15-5-8. The Attorney General, Supreme Court Disciplinary Commission, and Indiana State Bar Association can all bring actions to restrain or enjoin the unauthorized practice of law. *See* Ind. Admission and Discipline Rule 24.

identified as a subclass of an industrial use, under property Class Code 3 or as a subclass of commercial use under property Class Code 4. *Id.* at 23-26.

f. Further, agricultural use and agricultural products are defined elsewhere in the Indiana Code. The Board finds these definitions instructive, although not binding. "Agricultural products" for the purpose of Agricultural Cooperatives are defined to include "horticultural, viticultural, forestry, dairy, livestock, grain, poultry, bee and any other farm product." Ind. Code § 15-12-1-3. For the purpose of local planning and zoning, an agricultural use of land "refers to land that is used for … the production of livestock or livestock products, commercial aquaculture, equine or equine products, land designated as a conservation reserve plan, pastureland, poultry or poultry products, horticultural or nursery stock, fruit, vegetables, forage, grains, timber, trees, bees, and apiary products, tobacco, or other agricultural crops…" Ind. Code § 36-7-4-616.[10]

g. The facts of this case do not appear to be in dispute. The land at issue is used for a wholesale greenhouse. There are no retail sales that occur at the property. However, nothing is grown in the soil at the site.[11] The Respondent argues that Indiana values agricultural land based on the productivity or earning capacity of the land. Thus, according to the Respondent, only properties with crops grown in the ground can be agricultural land. The Board is not persuaded by this argument. Other agricultural uses that are not dependent on the productivity of soil are clearly contemplated to be agricultural uses – such as the raising of livestock. Thus, whether crops are grown in the ground cannot be the sole measure by which the Board determines agricultural use.[12]

h. The Board finds that the definitions of agricultural products and agricultural uses within various statutes in the Indiana Code are broad enough to encompass the growing of ornamental flowers or other nursery products. The fact that the plants are grown in hanging baskets and flats do not change that

[10] Mr. Caron provided the Board with statutes from other jurisdictions including North Dakota, Illinois, Michigan, Wisconsin, Kentucky and Texas. The Board, however, is more persuaded by the definition of agriculture and agricultural processes in Indiana law than it is by the definitions of foreign jurisdictions. Moreover, it was improper for Mr. Caron, who is not a lawyer, to cite to the laws of other jurisdictions in an effort to persuade the Board that the Petitioner's interpretation is the proper interpretation of Indiana law.

[11] The only disputed fact appears to be whether the existing land use is considered agricultural by the City of Westfield and Washington Township or whether it is industrial. The Petitioner's Exhibit O is a land use map showing the property as agricultural. The Respondent's Exhibit 8 is a land use map showing the parcel as industrial. The Petitioner's map is dated March 2008. The Respondent's map is undated. Regardless the Board's decision is not based on the land use reported by the City of Westfield, but the actual use of the land as determined by the evidence presented before the Board.

[12] The Respondent also cites a case *Welby Gardens Company v. Adams County Board of Equalization*, 56 P.3d 1121 (Colo. Ct. App. 2002), which purports to find that a greenhouse is not a farm because the agricultural products produced on the property do not originate from the land's productivity. 56 P.3d 1124. The property, however, was classified in the category of "all other agricultural property" which according to the Colorado Supreme Court "is used to describe all agriculture-related property which does not meet the statutory definition of agricultural land." *Welby Gardens Company v. Adams County Board of Equalization*, 71 P.3d 992, 993 fn.1 (Colo. Sup. Ct. 2003). Thus, this does not support the Respondent's case that the greenhouses are not an agricultural use.

determination. Thus the 44.7476 acres of land at issue in the Petitioner's appeal is agricultural land.

i. The Petitioner has shown that the Respondent erred when it assessed the Petitioner's property as commercial property rather than agricultural. The Tax Court in *Eckerling v. Wayne Township Assessor,* 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006), however, held that taxpayers cannot rebut an assessment by simply showing an assessor's technical failure to apply the Guidelines. *See also* 50 IAC 2.3-1-1(d). The Tax Court did not distinguish between property devoted to agricultural use and property devoted to other uses. However, all of the methodology claims rejected by the Tax Court have dealt with attacks on application of the Guidelines in assessing improvements. *See, e.g., Eckerling,* 841 N.E.2d at 678; *P/A Builders & Developers, LLC v. Jennings County Assessor,* 842 N.E.2d 899, 900-01; *O'Donnell v. Department of Local Government Finance,* 854 N.E.2d 90, 94-95 (Ind. Tax Ct. 2006). After extensive research into the matter, the Board finds that there is sufficient evidence that the Legislature intended to treat the assessment of agricultural land differently from the assessment of other types of property. Therefore, the Board will not apply the restrictions in *Eckerling* to this case.

j. Indiana law provides that local assessors shall determine the value of all classes of commercial, industrial and residential land, using guidelines determined by DLGF. Ind. Code § 6-1.1-4-13.6 (2002). By separate statute, the Indiana Legislature instructs DLGF to establish guidelines for the assessment of agricultural land, utilizing distinctive factors. Ind. Code § 6-1.1-4-13 (2002).[13] This statute expressly provides that the codified criteria used in assessing the value of agricultural land do not apply to land purchased for industrial, commercial or residential uses. *Id*. This distinction, in and of itself, does not make clear what the Legislature specifically intended. However, subsequent legislative actions that have made changes in the rules support the Board's finding that the Legislature intended to treat the assessment of agricultural land differently from the assessment of other types of property.

k. The Guidelines value agricultural land utilizing a mass-appraisal income approach, rather than the mass-appraisal cost approach or the mass-appraisal sales comparison approach used to value other land types. MANUAL, at pg. 13-14. *See also* GUIDELINES at pg. 99. For 2002, the statewide market value-in-use, or base rate, for agricultural land was established at $1,050 per acre.[14]

[13] For purposes of assessing agricultural land, DLFG must provide local assessors with soil productivity factors based on the United States Department of Agriculture's soil survey data. Ind. Code § 6-1.1-4-13(b) (2002). All assessing officials shall use the data in determining the true tax value of agricultural land. *Id*. *See also* GUIDELINES, ch. 2 at 106-08.

[14] The base rate is calculated using the formula "Market Value in Use = Net Income/Capitalization Rate," where net income is represented by a four-year rolling average of owner-occupied production income and cash rental income, and the capitalization rate is

l. For the assessment year of March 1, 2006, DLGF's unpublished base rate had been calculated at $1,050 and was based on data from 2000, 2001, 2002, and 2003. *Respondent Exhibit 3.* Senate Enrolled Act (SEA) 327, however, froze the agricultural land base rate at $880. 2005 Ind. Acts 3764. The Act further instructed DLGF to adjust the method used in determining the annual adjustment to a six-year rolling average as opposed to the four-year rolling average previously used. *Id*. At 3724. The legislature has not established any base rate for residential, commercial or industrial properties. Nor has it codified any method of calculating a base rate for such properties. Thus, in instructing DLGF to modify the Guidelines for the calculation of the base value of agricultural land, the Legislature again demonstrated its intent to treat the assessment of agricultural land differently from that of land purchased for industrial, commercial or residential use.

m. In some prior cases, the Board has held that market value-in-use evidence had to be presented in agricultural cases to effect a change in a property's assessment pursuant to the Tax Court's decision in *Eckerling v. Wayne Township Assessor,* 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). In light of the legislative activity in the area of agricultural land assessment – particularly the legislature's passage of SEA 327, the Board now reconsiders those decisions and holds that it is sufficient to show that land is agricultural, without showing the property's market value-in-use, to warrant a change in an assessment.

Conclusion

16. The Board finds the 44.7476 acres at issue in this appeal are agricultural and holds that the property record card should be changed to reflect this finding. The Hamilton County Assessor is instructed to value the land accordingly.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessments should be changed.

based on the annual average interest rate on agricultural real estate and operating loans in Indiana for the same four-year rolling period. GUIDELINES, ch. 2 at 99-100. The 2002 base rate of $1,050 was based on the four year period of 1995 – 1998. *Id.*

ISSUED: June 23, 2009

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Chairman,
Indiana Board of Tax Review

_____
Commissioner,
Indiana Board of Tax Review

_____
Commissioner,
Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to 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 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/bills/2007/SE0287.1.html**.**