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

Petition No.: **06-010-14-1-1-10067-15**
Petitioner: **Kouns Farms Inc.**
Respondent: **Boone County Assessor**
Parcel No.: **010-04110-00**
Assessment Year: **2014**

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

Procedural History

1. Petitioner initiated its assessment appeal for 2014 with the Boone County Property Tax Assessment Board of Appeals ("PTABOA") on August 29, 2014. On January 30, 2015, the PTABOA issued its final determination sustaining the assessment. Petitioner then filed its Form 131 petition on March 17, 2015.

2. Petitioner elected to have the appeal heard under the Board's small claims procedures. Respondent did not elect to have the appeal removed from those procedures.

3. On March 10, 2016, Dalene McMillen, the Board's Administrative Law Judge ("ALJ"), held a hearing. Neither the Board nor the ALJ inspected the property.

4. The following people were sworn as witnesses:

   - Paul Kouns, Secretary for Kouns Farms, Inc.
   - Lisa Garoffolo, Boone County Assessor
   - Janis Wilson, Vendor
   - Peggy Lewis, PTABOA member

Facts

5. The property under appeal consists of 140 acres with a single-family home, a detached garage, two poultry houses, eight barns, three lean-tos, three hog buildings, and four grain bins located at 759 North 1100 East in Sheridan.

6. For 2014, the PTABOA determined the following values:

Land: $305,500 Improvements: $243,700 Total: $549,200.

7. For 2014, Petitioner requested the following values:

Land: $299,460 Improvements: $205,900 Total: $505,360.

Record

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

a. A digital recording of the hearing,

b. Exhibits:

Petitioner Exhibit 1:	Petitioner's written homesite presentation,
Petitioner Exhibit 2:	Page 1 of 3 of subject property record card ("PRC"),
Petitioner Exhibit 3:	Petitioner's written neighborhood factor presentation,
Petitioner Exhibit 3A:	Pages 2 and 3 of subject PRC,
Petitioner Exhibit 4:	Petitioner's written land code presentation,
Petitioner Exhibit 4A:	Page 1 of 3 of subject PRC,
Petitioner Exhibit 4B:	Page 1 of 3 of subject PRC,
Petitioner Exhibit 4C:	Aerial map of the subject property,
Petitioner Exhibit 5:	Petitioner's written land code "drainage" presentation,
Petitioner Exhibit 5A:	Page 1 of 3 of subject PRC,
Petitioner Exhibit 5B:	Page 1 of 3 of subject PRC,
Petitioner Exhibit 5C:	Soil map of subject property,
Petitioner Exhibit 5D:	Aerial map of subject property,

Respondent Exhibit 1:	Boone County Appeal Worksheet,
Respondent Exhibit 2:	Assessor's Notice of Preliminary Hearing on Appeal,
Respondent Exhibit 3:	Joint Report by Taxpayer / Assessor to the County Board of Appeals of a Preliminary Informal Meeting – Form 134,
Respondent Exhibit 4:	Notice of Hearing on Petition – Real Property – Form 114,
Respondent Exhibit 5:	Notification of Final Assessment Determination – Form 115,[1]
Respondent Exhibit 7:	Four exterior photographs of the subject property,
Respondent Exhibit 8:	2014 subject PRC,
Respondent Exhibit 9:	The Board's Notice of Hearing on Petition,
Respondent Exhibit 10:	Aerial map of subject property,
Respondent Exhibit 11:	Version A – Real Property Assessment Guidelines, Chapter 2, page 105,

[1] Respondent did not submit a Respondent Exhibit 6.

Board Exhibit A: Form 131 petition,
Board Exhibit B: Hearing notice,
Board Exhibit C: Hearing sign-in sheet,

c. These Findings and Conclusions.

Burden of Proof

9. 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). A burden-shifting statute creates two exceptions to that rule.

10. First, Ind. Code § 6-1.1-15-17.2 "applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year." Ind. Code § 6-1.1-15-17.2(a). "Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court." Ind. Code § 6-1.1-15-17.2(b).

11. Second, Ind. Code § 6-1.1-15-17.2(d) "applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15," except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), "if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct." Ind. Code § 6-1.1-15-17.2(d).

12. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).

13. The 2013 assessed value was $527,100. The 2014 assessed value was $549,200. The parties agreed that the subject property was successfully appealed at the county level in 2013. They also agreed that the 2014 assessment increased. Respondent therefore has the burden of proving that the 2014 assessment is correct. To the extent that Petitioner seeks an assessment below the previous year's level, however, it bears the burden of proving that lower value.

Summary of the Parties' Contentions

14. Respondent's case:

a. As discussed, the subject property consists of 140 acres with 8 barns, 3 lean-tos, 4 grain bins, 2 poultry houses, 3 hog barns, a detached garage, and a house. According to Respondent, she followed the 2011 Real Property Assessment Guidelines in valuing the improvements. Because various sales during that period were higher than other assessments, Respondent applied a 1.23 neighborhood factor, or trending factor, to the subject improvements. She claims that in Boone County, such a factor has always been applied to all improvements on any given property. *Garoffolo & Wilson testimony; Resp't Ex. 7 & 8.*

b. Respondent's witness, Janis Wilson claims that in 2012, the Legislative Services Agency informed the county that, based on a farm report, their soil type classifications had not been updated. According to Ms. Wilson, Purdue University and the United States Department of Agriculture ("USDA") updated the county's soil type classifications in 2005. After the error was pointed out in 2012, the Assessor and the GIS Department updated all of the soil type classifications in the county. The update in Union Township, where the subject property is located, was completed in 2014. *Wilson testimony.*

c. The subject property's land uses and soil type classifications were recalculated in 2014. Another change, the farmland base rate, increased between 2013 and 2014. The property was assessed with a 1 acre homesite, 2.17 acres of other farm buildings, 0.04 acres for the pond, 0.5 acres of legal ditch, 2.79 acres of public road, 16.92 acres of non-tillable land,[2] and 114.48 acres of tillable land.[3] Ms. Wilson also pointed out that in 2014, 0.29 acres were classified as excess residential. Then, in 2015, the 0.29 acres of excess residential were removed and reclassified. *Wilson testimony; Resp't Ex. 8 & 10.*

d. Petitioner questioned the amount of land classified as ditch. Ms. Wilson testified that, according to the Real Property Assessment Guidelines, only a legal ditch is considered to have no value and is deducted from the total parcel acreage. The GIS program shows the subject property has approximately 0.0508 acres of legal ditch. The county recognizes that Petitioner may have other drainage areas on the property, but those areas are not recognized as legal ditches by the county. *Wilson testimony; Resp't Ex. 11.*

[2] At the hearing, Ms. Wilson testified Petitioner had 14.53 acres "plus or minus" of non-tillable land, while the property record card showed 16.92 acres. *Wilson testimony; Resp't Ex. 8.*

[3] Ms. Wilson testified that other farm building land receives a negative 40% influence factor and non-tillable land receives a negative 60% influence factor, so the county only classifies the footprint of the buildings as other farm buildings, while the land surrounding the building is classified as non-tillable land, thereby giving the taxpayer a greater negative influence. *Wilson testimony.*

e. Where a property contains a home, the Department of Local Government Finance's ("DLGF") rules and guidelines call for a one-acre homesite even if the property is used for agricultural purposes. Respondent determined the homesite value based on sales in the subject property's neighborhood at $60,000 per acre. Also, Petitioner's property is located in the Zionsville school district and properties located in that district are in high demand and tend to sell quickly. *Garoffolo & Wilson testimony.*

15. Petitioner's case:

a. Petitioner contends that the one acre homesite rate of $60,000 is excessive. According to Petitioner, the subject house is a 90 to 100 year old farmhouse which is located on a gravel road with no dust control. He argues that the homesite rate should be reduced to $22,000 per acre, which is the value of the home where he currently lives. *Kouns testimony; Pet'r Ex. 1 & 2.*

b. Petitioner argues that the 1.23 neighborhood factor should be applied to only the house. He contends that the neighborhood factor has been applied to the hog buildings and grain bins because they are located in the Zionsville taxing district. He claims that those buildings are 40 to 50 years old and they are not used in the same manner as the house, and therefore the neighborhood factor should be removed. In addition, he claims that the property is located in Union Township and not the town of Zionsville, so the property is not receiving the same services or amenities. *Kouns testimony; Pet'r Ex. 3.*

c. Petitioner testified that the county reduced the size of the ditch from 1.59 acres to 0.05 acres, however, the area has not changed. According to Petitioner, the area is part of Findley Creek and not actually a ditch. He claims that the level of the creek is low and rainfall causes it to overflow onto the surrounding land. Petitioner further claims that he installed waterways and filter strips to keep fertilizer from running into the creek. *Kouns testimony; Pet'r Ex. 5-5D.*

Analysis

16. Respondent failed to provide sufficient evidence to establish a prima facie case that the 2014 assessed value was correct. The Board reached this decision for the following reasons:

a. Indiana assesses real property based on its true tax value, which does not mean fair market value, but rather the value determined under the Department of Local Government Finance's rules. The DLGF's 2011 Real Property Assessment Manual defines true tax value as "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from 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 USPAP often will be probative. *See id.; see also, Kooshtard Property VI, LLC v. White River Twp. 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 property under appeal or comparable properties, and any other information compiled according to generally recognized appraisal practices. *See Eckerling v. Wayne Twp. Assessor,* 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *see also* Ind. 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).

b. Regardless of the type of evidence offered, a party must explain how that evidence relates to the property's market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.,* 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor,* 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For 2014 assessments, the valuation date was March 1, 2014. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).

c. Normally, a party may not make a case for changing an assessment simply by showing how the DLGF's assessment guidelines should have been applied. *See Eckerling v. Wayne Twp. Assessor,* 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) ("Strict application of the regulations is not enough to rebut the presumption that the assessment is correct."). Instead, the party must offer the types of market-based evidence as described above. *See Id.* That general principle, however, does not apply to land used for agricultural purposes. The DLGF has promulgated guidelines for assessing agricultural land using distinctive factors, such as soil productivity, that do not apply to other types of land. Ind. Code § 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* 2011 REAL PROPERTY ASSESSMENT GUIDELINES, ch. 2 at 77-78; *see also* Ind. Code § 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. They also classify agricultural land into various types and subtypes. Depending on the classification, assessors may then apply influence factors in predetermined amounts. 2011 GUIDELINES, ch. 2 at 85-96, 98-100.

d. The evidence before the Board is that the adjustments made by Respondent regarding the agricultural land were not simply changes to base rates and soil productivity, but also changes in market factors related to land treated as tillable or non-tillable. The Respondent did not present a break-down of the actual adjustments.[4] The burden, here, was on Respondent to walk the Board through its

[4] Janis Wilson testified that the base rate for the farm land did increase, but she would have to "look back and see how much." *Wilson testimony*.

case. Because Respondent did not provide evidence of how the value of the agricultural land was calculated, Respondent has failed to make a prima facie case for the increased assessment.

e. The Board now turns to the homesite. Under the DLGF's guidelines, one acre per dwelling on agricultural property must be assessed as a homesite. *See* 2011 GUIDELINES, ch. 2 at 93. Unlike other types 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 an assessor determines by examining the costs for vacant land and improvements to the land, such as a well and septic system. *Id.* At 53, 93. Thus, Respondent needed to offer probative market-based evidence to show the true tax value of both the homesite and improvements.

f. As stated above, Respondent had the burden of proving that the subject property's assessment was correct. It was her duty to provide the Board with probative evidence supporting her notion that the subject property is correctly classified and that the one-acre homesite and neighborhood factor are correct.

g. The majority of Respondent's defense of the assessment centered on the methodology used to arrive at the value. Respondent largely relied on the fact that she followed the Guidelines, statistical data, and other assessment regulations. But as the Tax Court has explained, strictly applying assessment regulations does not necessarily prove a property's true tax value in an assessment appeal. *See Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (holding that taxpayers failed to make a case by simply focusing on the assessor's methodology instead of offer market value-in-use evidence).

h. That is particularly true concerning the sale-to-assessment ratio study (i.e. neighborhood factor) for the subject property. Respondent offered no authority to support using a ratio study to prove that an individual property's assessment reflects its true tax value. In fact, the IAAO Standard on Ratio Studies, which 50 IAC 27-1-4 incorporates by reference, prohibits using ratio studies for that purpose:

> Assessors, appeal boards, taxpayers, and taxing authorities can use ratio studies to evaluate the fairness of finding distributions, the merits of class action claims, or the degree of discrimination… **However, ratio study statistics cannot be used to judge the level of appraisal of an *individual* parcel.**

INTERNATIONAL ASSOCIATION OF ASSESSING OFFICERS STANDARD ON RATIO STUDIES VERSION 17.03 Part 2.3 (Approved by IAAO Executive Board 07/21/2007) (bold added, italics in original).

i. Because Respondent failed to meet her burden of proof, the subject property's 2014 assessment must be reduced to the previous year's level of $527,100. That, however, does not end the Board's inquiry because Petitioner requested an assessed value of $505,360 on its Form 131. As explained above, Petitioner has the burden of proving that it is entitled to that additional reduction.

j. Here, Petitioner offered testimony and written evidence regarding the property's one-acre homesite value, size of the ditch, and neighborhood factor. While these factors could have an effect on the property's value, they do not establish that the assessment was made in error.

k. Conclusory statements, such as Petitioner's unsupported claim that the one-acre homesite rate is excessive, that the neighborhood factor should be removed, and that the ditch is low and overflows, do not constitute probative evidence with regard to the subject property's value. *Heart City Chrysler v. State Board of Tax Comm'rs,* 714 N.E.2d 329 (Ind. Tax Ct. 1999) (Citing *Whitley Products v. State Board of Tax Comm'rs,* 704 N.E.2d at 1119 (Ind. Tax Ct. 1998)).

l. The Board can rely on an opinion of value only if it is based on reliable and quantifiable evidence.

> Indiana law makes clear that the probative value of an opinion depends on whether the proponent of that opinion has shown that he adhered to generally recognized appraisal principles in formulating the opinion. This requirement remains the same whether an assessing official, an appraiser, or a taxpayer is the proponent of the opinion.

Grabbe v. Carroll Co. Ass'r, 1 N.E.3 226, 231 (Ind. Tax Ct. 2013).

m. As mentioned, while Petitioner offered several PRCs and accompanying handwritten descriptions thereof, he did not endeavor to establish, under generally accepted appraisal practices, a probative quantitative analysis that would suggest the appropriate valuation of the subject property.

Conclusion

17. Respondent failed to make a prima facie case that the 2014 assessment was correct. Therefore, the property's assessment must revert to its 2013 assessed value of $527,100. Petitioner then bore the burden of proving that the property was entitled to further reduction, and he failed to meet that burden.

Final Determination

In accordance with the above findings of fact and conclusions of law, the Board determines that the assessed value of Petitioner's property should be reduced to $527,100 for 2014.

ISSUED: September 6, 2016

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

- 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>.