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

Petition No.: **06-019-08-1-5-00031**
Petitioners: **Ian and Cynthia Leavesley**
Respondent: **Boone County Assessor**
Parcel No.: **019-05210-00**
Assessment Year: **2008**

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 Petitioners initiated an assessment appeal with the Boone County Property Tax Assessment Board of Appeals (the PTABOA) by written document on April 30, 2009.

2. The PTABOA issued notice of its decision on June 17, 2009.

3. The Petitioners filed a Form 131 petition with the Board on July 31, 2009. The Petitioners elected to have their case heard according to the Board's small claim procedures.

4. The Board issued a notice of hearing to the parties dated March 17, 2010.

5. The Board held an administrative hearing on June 8, 2010, before the duly appointed Administrative Law Judge (the ALJ) Dalene McMillen.

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

    a. For Petitioners: Ian Leavesley, property owner
    Cynthia Leavesley, property owner

    b. For Respondent: Lisa C. Garoffolo, Boone County Assessor
    Charles T. Ewing, PTABOA Member

Facts

7. The subject property is 3.80 acres of land located at 260 Raintree Drive, Zionsville, Eagle Township, in Boone County.

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

9. For 2008, the PTABOA determined the assessed value of the land to be $30,400.

10. The Petitioners requested the assessed value of the land to be $4,560.

Issue

11. Summary of the Petitioners' contentions in support of alleged error in their assessment:

    a. The property under appeal is 3.80 acres of woods located in a flood plain that borders the Raintree subdivision. *I. and C. Leavesley testimony; Petitioner Exhibits 1, 3 and 6.* While the Petitioners' home is located on Lot 64 in the Raintree subdivision and adjoins the property under appeal, Mr. Leavesley testified that the subject property is not in the subdivision. *I. Leavesley testimony; Petitioner Exhibit 1.* According to Mr. Leavesley, his family uses the property to access Eagle Creek and for recreational nature walks. *I. Leavesley testimony.*

    b. The Petitioners first contend that the property is over-valued because it is unbuildable. *I. Leavesley testimony.* According to Mr. Leavesley, the land is located along Eagle Creek which floods. *I. Leavesley testimony.* In addition, Mr. Leavesley argues, even if the property under appeal was located in the Raintree subdivision, the land is too low to build upon. *I. Leavesley testimony; Petitioner Exhibit 2.* Mr. Leavesley testified that the subdivision requires an elevation of at least 838.5 feet to develop; whereas the property's elevation is only about 825 feet above sea level. *I. Leavesley testimony; Petitioner Exhibit 16.*

    c. The Petitioners also contend the assessed value of the property under appeal is too high because the "rear 2/3 of the property" meets the agricultural land definition given in the 2002 REAL PROPERTY ASSESSMENT MANUAL.[1] *I. Leavesley testimony; Petitioner Exhibit 17.* According to Mr. Leavesley, the MANUAL defines agricultural property as property devoted to or best "suited" for the production of crops, fruit, timber or the raising of livestock. *Id.* Mr. Leavesley admitted, however, that the property is not devoted to agricultural use and he has no plans to develop the property. *I. Leavesley testimony.*

    d. Finally, the Petitioners argue that their property is over-valued based on the assessed value of similar properties in the area. *I. Leavesley testimony.* According to Mr. Leavesley, the subject property should be assessed as

[1] Mr. Leavesley further testified that the "front 1/3" of the property under appeal is correctly assessed as residential excess acreage with a negative 60% influence factor. *I. Leavesley testimony; Petitioner Exhibit 17.* According to Mr. Leavesley, the Manual defines residential property as land devoted to or available for use primarily as a place to live. *I. Leavesley testimony; Petitioner Exhibit 4.*

agricultural, or at least receive an 80% adjustment, because four comparable properties in the area are assessed in that manner. *I. Leavesley testimony; Petitioner Exhibit 17.* Mr. Leavesley testified that Parcel Nos. 019-18250-00, 019-282250-01 and 019-02090-00 are each classified and priced as agricultural properties.[2] *I. Leavesley testimony; Petitioner Exhibits 8, 9 and 12.* In addition, although Parcel No. 019-18252-03 is classified as having the "developer's discount,"[3] it is priced at the same agricultural base rate as the other comparable properties.[4] *I. Leavesley testimony; Petitioner Exhibits 7 and 17.* All of the comparable properties are similar to the Petitioners' property in topography and the frequency of flooding. *I. Leavesley testimony; Petitioner Exhibit 17.* Further, all of the properties are woodland with at least 50% canopy coverage. *Id.* Because the Petitioners' property floods and is woodland with 50% canopy coverage and is used for nature walks, Mr. Leavesley argues, the lot is entitled to be treated equally to the comparable properties and be classified as agricultural land or, at a minimum, receive the same 80% influence factor adjustment. *Id.*

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

a. The Respondent contends the property under appeal is correctly assessed. *Garoffolo testimony.* According to the Respondent, because the Petitioners are not actually using their property for an agricultural purpose, such as farming or timber harvesting, the land was properly assessed as residential excess acreage. *Garoffolo testimony.*

b. The Respondent admitted that the property is non-buildable land located in a floodplain and that its "rear" location would limit its marketability to neighboring property. *Garoffolo testimony; Respondent Exhibit 6.* Therefore, Ms. Garoffolo testified, the PTABOA applied a negative 60% influence factor on the land to reflect the property's market value-in-use. *Id.* However, she argues, because of the creek, the property has aesthetic value. *Id.* Further, the Respondent's witness contends, the subject property is located adjacent to the parcel on which the Petitioners' home sits and adds value to that homesite. *Ewing testimony.*

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[2] According to Mr. Leavesley, none of the comparable properties have been farmed in the last five years. *I. Leavesley testimony.*

[3] The statute commonly referred to as the "developer's discount" provides in part that if land assessed on an acreage basis is subdivided into lots, the lots "may not be reassessed until the next assessment date following the earliest of: (1) the date on which title to the land is transferred by the land developer or a successor land developer that acquires title to the land to a person that is not a land developer; (2) the date on which construction of a structure begins on the land; or (3) the date on which a building permit is issued for construction of a building or structure on the land." Ind. Code § 6-1.1-4-12(h).

[4] Mr. Leavesley contends that Parcel No. 019-18252-03 is the most comparable to the Petitioners' property because it can only be used in the summer when the river is down and is paved for nature walks. *I. Leavesley testimony; Petitioner Exhibit 11.* According to Mr. Leavesley, it is advertised as "80 acres of splendid nature designed to remain exactly that." *Id.* Therefore, he argues, the property owner has no plans to develop the property. *Id.*

c. Finally, the Respondent argues that the Petitioners' comparable properties should not be given any weight. *Garoffolo testimony.* According to Ms. Garoffolo, the Petitioners' comparable Parcel No. 019-18252-03 is located in a different neighborhood and the property is owned by a developer. *Garoffolo testimony; Respondent Exhibits 1 and 3.* Therefore the land is classified and assessed according to statute as "developer discount." *Id.* In addition, she argues, Parcel No. 019-02090-00 is farmed and therefore it is classified as agricultural land. *Garoffolo testimony; Respondent Exhibits 1 and 4.* Because the Petitioners are not developers and do not farm the parcel, the Respondent concludes, the Petitioners' "comparable" properties are not relevant to establish the market value-in-use of the property under appeal. *Garoffolo 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 1 – Plat map of Raintree Drive,
Petitioner Exhibit 2 – Excerpt of Raintree Place's covenants and code,
Petitioner Exhibit 3 – Topographic map from Digitial-Topo-Maps.com website,
Petitioner Exhibit 4 – 2002 Real Property Assessment Guidelines' definition of "residential property",
Petitioner Exhibit 5 – 2002 Real Property Assessment Guidelines' definition of "agricultural property",
Petitioner Exhibit 6 – Boone County geographic information system (GIS) map showing Parcel No. 019-05210-00,
Petitioner Exhibit 7 – Property record card for Parcel No. 019-18252, located at Lost Run Farm, Zionsville,
Petitioner Exhibit 8 – Property record card for Parcel No. 019-18250-00, located at 11425 East 550 South, Zionsville,
Petitioner Exhibit 9 – Property record card for Parcel No. 019-28250-01, located at 5625 South 1100 East, Zionsville,
Petitioner Exhibit 10 – Federal Emergency Management Agency (FEMA) map,
Petitioner Exhibit 11 – Lost Run Farm, Zionsville website advertisement,
Petitioner Exhibit 12 – Property record card for Parcel No. 019-02090-00, located at 11308 State Road 334, Zionsville,

Petitioner Exhibit 13 – Boone County appeal worksheet, dated April 30, 2009,
Petitioner Exhibit 14 – Copy of Respondent's exhibit coversheet,
Petitioner Exhibit 15 – 2002 Real Property Assessment Manual definition of "true tax value,"
Petitioner Exhibit 16 – River levels for Eagle Creek Hydrological station, Zionsville,
Petitioner Exhibit 17 – Petitioners' power-point presentation,

Respondent Exhibit 1 – Boone County appeal worksheet, dated April 30, 2009 and property record cards for Parcel No. 019-18252-03, located at Lost Run Farm, Zionsville, Parcel No. 019-02090-00, located at 11308 State Road 334, Zionsville and Parcel No. 019-05210-00, located at 260 Raintree Drive, Zionsville,
Respondent Exhibit 2 – Aerial map and property record card for Parcel No. 019-05210-00, located at 260 Raintree Drive, Zionsville,
Respondent Exhibit 3 – Aerial map and property record card for Parcel No. 019-18252-03, located at Lost Run Farm, Zionsville,
Respondent Exhibit 4 – Aerial map and property record card for Parcel No. 019-02090-00, located at 11038 State Road 334, Zionsville,
Respondent Exhibit 5 – Notice of Hearing on Petition – Real Property by County Property Tax Assessment Board of Appeals – Form 114, dated June 5, 2009,
Respondent Exhibit 6 – Notification of Final Assessment Determination – Form 115, dated June 17, 2009,
Respondent Exhibit 7 – Boone County 2008 pay 2009 tax calculation worksheet, dated June 19, 2009,
Respondent Exhibit 8 – Petition to the Indiana Board of Tax Review for Review of Assessment – Form 131, dated August 3, 2009,
Respondent Exhibit 9 – Indiana Board of Tax Review Notice of Hearing on Petition, dated March 17, 2010,

Board Exhibit A – Form 131 petition with attachments,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing sign-in sheet.

d. These Findings and Conclusions.

Analysis

14. The most applicable governing cases are:

    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, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Township 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).

    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 case. *Id; Meridian Towers,* 805 N.E.2d at 479.

15. The Petitioners failed to provide sufficient evidence to establish a prima facie case for a reduction in the assessed value of their property. The Board reached this decision for the following reasons:

    a. The 2002 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 a similar user, from the property." 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). Appraisers traditionally have used three methods to determine a property's market value: the cost approach, the sales comparison approach, and the income approach to value. *Id.* at 3, 13-15. In Indiana, assessing officials generally assess real property using a mass-appraisal version of the cost approach, as set forth in the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A.

    b. A property's market value-in-use as determined using the Guidelines is presumed to be accurate. *See* MANUAL at 5; *Kooshtard Property, VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501,505 (Ind. Tax Ct. 2005)*; P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 2006). A taxpayer may rebut that assumption with evidence that is consistent with the Manual's definition of true tax value. MANUAL at 5. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice (USPAP) often will suffice. *See Kooshtard Property VI,* 836 N.E.2d at 505, 506 n.1. A taxpayer may

also offer sales information regarding the subject property or comparable properties and other information compiled according to generally accepted appraisal principles. MANUAL at 5.

c. Regardless of the method used to rebut an assessment's presumption of accuracy, a party must explain how its evidence relates to the subject property's market value-in-use as of the relevant valuation date. *O'Donnell v. Department of Local Government Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2008, assessment, the valuation date was January 1, 2007. 50 IAC 21-3-3.

d. The Petitioners first contend that two-thirds of their 3.80 acres should be assessed as "agricultural" land rather than "residential excess acreage." *I. Leavesley testimony.* According to Mr. Leavesley, the rear two-thirds of their property are woodlands with 50% canopy cover located in a floodplain. *Id.*

e. The Indiana General Assembly directed the Department of Local Government Finance (DLGF) to establish rules for determining the true tax value of agricultural land. Ind. Code § 6-1.1-4-13(b). The DLGF, in turn, established a base rate to be used in assessing agricultural land across the State of Indiana. GUIDELINES, ch. 2 at 98-99. The Guidelines direct assessors to adjust the base rate using soil productivity factors developed from soil maps published by the United States Department of Agriculture. *Id.* at 105-106. The Guidelines further require assessors to classify agricultural land-use types, some of which call for the application of negative influence factors in pre-determined amounts. *Id.* at 102-05. One such classification is "woodland (land type 6)," which the Guidelines describe 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." *Id.* at 104. The Guidelines direct assessors to apply an 80% influence factor deduction to woodland properties. *Id.*

f. Indiana Code § 6-1.1-4-13 states that that "[i]n assessing or reassessing land, the land shall be assessed as agricultural *only* when it is devoted to agricultural use." Ind. Code § 6-1.1-4-13(a) (emphasis added).[5] The word "devote" means "to give or apply (one's time, attention, or self) completely." WEBSTER'S II NEW RIVERSIDE DICTIONARY 192 (revised edition). Agricultural use is the "production of crops, fruits, timber, and the raising of livestock." GUIDELINES, Glossary at 1.

[5] Mr. Leavesley quotes a broader definition that appears in the Guidelines which states 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 (emphasis added). However, this regulatory definition cannot expand the explicit requirements of the statute that states "land shall be assessed as agricultural *only* when it is devoted to agricultural use." Ind. Code § 6-1.1-4-13(a) (emphasis added). *See Berry v. Peoples Broadcasting Corp*., 547 N.E.2d 231, 234 (Ind. 1989) ("When a local board regulation is in conflict with a state statute, the local regulation is subordinated").

Thus, in order to rely upon the base rate and negative influence factors for agricultural woodland set forth in the Guidelines, the Petitioners were required to demonstrate that they used the property for agricultural purposes as of the March 1, 2008, assessment date.

g. Here the Petitioners only argued that their land has 50% canopy cover. They offered no evidence to show that the land was used for any agricultural purpose on March 1, 2008, much less that it was "devoted" to agriculture. According to Mr. Leavesley, the property is only used by his family to access the creek and for nature walks. *I. Leavesley testimony.* Thus, the Petitioners failed to sufficiently show that the property is devoted to an "agricultural use." Residential acreage parcels not used for agricultural purposes are valued using the "excess acreage base rate established by the township assessor." GUIDELINES, Chap. 2, p. 69. The Board, therefore, finds that the Petitioners failed to raise a prima facie case that the property's classification as excess residential acreage is in error.

h. Alternatively, the Petitioners argue that even if their land is not agricultural land, it is comparable to neighboring properties and should receive the same negative 80% influence factor as those properties. *I. Leavesley testimony.* In support of this contention, the Petitioners provided maps, website information and property record cards for their property and the neighboring parcels. *Petitioner Exhibits 3, 6-12 and 17.* The Petitioners also argue that their assessed value should be lowered because the property is located in a floodplain and therefore the lot is unbuildable. *C. and I. Leavesley testimony; Petitioner Exhibit 10.*

i. Generally, land values in a given neighborhood are determined through the application of neighborhood valuation forms that were developed by collecting and analyzing comparable sales data for the neighborhood and surrounding areas. *See Talesnick v. State Board of Tax Commissioners,* 693 N.E.2d 657, 659 n.5 (Ind. Tax Ct. 1998). However, properties often possess peculiar attributes that do not allow them to be grouped with each of the surrounding properties for purposes of valuation. The term "influence factor" refers to a multiplier "that is applied to the value of land to account for characteristics of a particular parcel of land that are peculiar to that parcel." GUIDELINES, glossary at 10. A Petitioner has the burden to produce "probative evidence that would support an application of a negative influence factor and quantification of that influence factor." *See Talesnick v. State Board of Tax Commissioners,* 756 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001). While the alleged use limitations on the Petitioners' property caused by flooding and the 50% canopy cover of the woods may be relevant to the issue of whether a negative influence factor should apply here, the Petitioners failed to show how these conditions would impact the market value of the subject property. *See Talesnick,* 756 N.E.2d at 1108. In fact, the Petitioners presented no evidence of the property's market value-in-use. They merely alleged that the county assessor's office should increase the current negative 60% influence factor applied to their land to the same negative 80% influence factor as neighboring

properties. *I. Leavesley testimony.* This falls far short of the Petitioners' burden to prove the county erred in assessing their property.

j. Finally, to the extent that the Petitioners argue that other properties were assessed differently than the subject property, this argument also fails to show an error in their assessment. The Indiana Tax Court in *Westfield Golf Practice Center, LLC v. Washington Township Assessor,* 859 N.E.2d 396 (Ind. Tax Ct. 2007), held that it is not enough for a taxpayer to show that its property is assessed higher than other comparable properties. *Id.* Instead, the taxpayer must present probative evidence to show that the assessed value does not accurately reflect the property's market value-in-use. *Id. See also P/A Builders & Developers, LLC v. Jennings County Assessor,* 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (The focus is not on the methodology used by the assessor, but instead on determining whether the assessed value is actually correct. Therefore, the taxpayer may not rebut the presumption merely by showing the assessor's technical failure to comply strictly with the Guidelines).[6]

k. Where the taxpayers fail to provide probative evidence that an assessment should be changed, the Respondent's duty to support the assessment with substantial evidence is not triggered. *See Lacy Diversified Indus. v. Department of Local Government Finance,* 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

16. The Petitioners failed to provide sufficient evidence to support a change in the assessment. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should not be changed.

[6] Further, the Petitioners failed to sufficiently show the neighboring properties are comparable to the subject property for valuation purposes. The Petitioners offered four properties they contend are comparable to their property. However, three of the properties are classified as agricultural and one property is receiving the statutorily mandated "developer's discount." The Petitioners' property is neither agricultural property as the Board held above; nor is it subject to the "developer's discount." Therefore the assessed values of the neighboring properties have no probative value in determining the market value-in-use of the Petitioners' property. *See Long v. Wayne Township Assessor,* 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005).

ISSUED: _____

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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

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**.**