REPRESENTATIVE FOR PETITIONERS:
Roger Manship, *pro se*

REPRESENTATIVE FOR RESPONDENT:
Kelly Hisle, Deputy Assessor

BEFORE THE
INDIANA BOARD OF TAX REVIEW

Roger & Jeanne Manship,	)	Petition No.: 18-021-11-1-5-00020
	)	
Petitioners,	)	
	)	Parcel No.: 18-14-15-400-008.021
v.	)	
	)	County: Delaware
Delaware County Assessor,	)	Township: Salem
	)	
Respondent.	)	Assessment Year: 2011

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

December 31, 2013

FINAL DETERMINATION

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Introduction

1. Because the subject property's land assessment—which is all that Roger and Jeanne Manship have challenged in this appeal—increased by more than 5% between 2010 and 2011, the Delaware County Assessor had the burden of proof. The Assessor offered only

raw sales data for two nearby properties without meaningfully comparing those properties to the subject property. He therefore failed to carry his burden, and the Manships are entitled to have the land's 2011 assessment reduced to its 2010 level.

Procedural History

2. On November 26, 2012, the Manships filed a notice for review with the Assessor. The Delaware County Property Tax Assessment Board of Appeals ("PTABOA") issued its determination lowering the land's assessment, although not to the level that the Manships requested. The Manships then timely filed a Form 131 petition with the Board.

3. On October 16, 2013, the Board's administrative law judge, Patti Kindler ("ALJ"), held a hearing on the Manships' petition. Roger Manship, Jack Chambers, and Deputy Assessor Kelly Hisle testified under oath. Neither the Board nor the ALJ inspected the property.

4. The Manships offered the following exhibits:

Petitioners Exhibit 1:	Written Description of the Property
Petitioners Exhibit 2:	Aerial view of the subject property
Petitioners Exhibit 3:	Photographs of the subject land
Petitioners Exhibit 4:	Photographs of the subject land
Petitioners Exhibit 5:	Photographs of the Assessor's comparable properties
Petitioners Exhibit 6:	Aerial view of the subject property's flood zone
Petitioners Exhibit 7:	Aerial view of a declared wetland near the subject property
Petitioners Exhibit 8:	Progression of previous 7 years of Assessments
Petitioners Exhibit 9:	Calculated Assessment Value of the Land per Acre
Petitioners Exhibit 10:	December 1, 1994 Offer to Purchase the subject property
Petitioners Exhibit 11:	Form 11 R/A for the subject property's 2011 assessment

As explained below, the Board admits Petitioners' Exhibits 1 - 2 and 6 - 9 into evidence over the Assessor's objection. The Board, however, sustains the Assessor's objection to Petitioners' Exhibits 3 -5 and 10.

5. The Assessor offered the following exhibits, all of which are admitted into evidence without objection**:**

Respondent Exhibit 1:	Property record card ("PRC") for the subject property
Respondent Exhibit 2:	PRC for 8300 W CR 400S

Respondent Exhibit 3:	PRC for 7120 S CR 800W
Respondent Exhibit 4-5:	Printout with two-page excerpt from Glossary for International Association of Assessing Officers *Property Appraisal and Assessment*
Respondent Exhibits 6-13:	February 12, 2008 memorandum from Department of Local Government Finance ("DLGF")
Respondent Exhibit 14-15:	November 9, 2010 Woodlands Guidance from Barry Wood, Assessment Division Director of the DLGF
Respondent Exhibits 16-20:	Final Determination for *Charles Glotzbach v. Clark County Assessor,* Petition no. 10-010-08-1-5-00001 (Ind. Bd. of Tax Rev.)
Respondent Exhibits 21-25	Final Determination for *Norman & Susan Estes v. Clark County Assessor,* Petition no. 10-010-08-1-5-00001 (Ind. Bd. of Tax Rev.)[1]
Respondent Exhibit 26:	Beacon aerial map showing the subject property

6. The Board recognizes the following additional items as part of the record of proceedings:

Board Exhibit A:	Form 131 petition
Board Exhibit B:	Hearing notice
Board Exhibit C:	Hearing sign-in sheet
Board Exhibit D:	Letter from Roger Manship to the Board with list of witnesses and exhibits

7. The PTABOA determined the following assessment for March 1, 2011:

Land: $54,800 Improvements: $153,400 Total: $208,200

8. The Manships requested the following assessment:

Land: $28,300 Improvements: $153,400 Total: $181,700

Objection

9. The Assessor objected to the Manships' exhibits. Although the Manships timely served the Assessor with their witness and exhibit lists, they did not give the Assessor copies of their exhibits before the hearing as required by the Board's procedural rules. *Hisle*

[1] The Assessor marked each page of the Board's determinations and DLGF memoranda as separate exhibits. When offering an entire integrated document, a party normally should label the document as a single exhibit and cite to numbered pages within the document as necessary.

objection. Mr. Manship characterized that failure as a simple oversight. *Manship testimony.*

10. In a non-small-claims appeal, the Board's procedural rules require the parties to exchange witness and exhibit lists at least 15 business days before a scheduled hearing and to exchange copies of their documentary evidence at least five business days before the hearing. *See* 52 IAC 2-7-1(b)(1). Although the Board may exclude evidence based on a party's failure to comply with those deadlines, it is not required to do so. *See* 52 IAC 2-7-1(f) ("Failure to comply with subsection (b) *may* serve as grounds to exclude the evidence…at issue.") (emphasis added). For example, the Board may waive those deadlines for evidence that was submitted at the hearing before the county property tax assessment board of appeals. 52 IAC 2-7-1-(d).

11. The Board fails to see how the Assessor was prejudiced by the Manships' failure to give him copies of Petitioners' Exhibits 1-2, 6 -9, and 11 five business days before the hearing. Because the Manships served their exhibit list, the Assessor already generally knew what those exhibits were.[2] In many cases, he had ready access to the exhibits even without the Manships providing copies. For example, Exhibits 2, 6, and 7 are printouts showing aerial views of the subject property taken from websites. And the Manships attached copies of Exhibits 2, 6 and 11 to their Form 131 petition, which they served on the Assessor. In fact, Exhibit 11 is a copy of the Form 11 R/A that the Assessor's own office issued to notify the Manships of the subject property's 2011 assessment.

12. Three other exhibits, 1, 8 and 9 are narratives that appear to have been prepared by Mr. Manship, who testified at the Board's hearing. While those narratives might be objectionable on other grounds, the Assessor's failure to receive them before the hearing does not require their exclusion.

[2] The Manships also filed a witness and exhibit list with the Board, which presumably matches the list they served on the Assessor. While the list generally describes the documents that the Manships ultimately offered as Petitioners' Exhibits 1-2 and 6-9, it does not refer to the Form 11 R/A that the Manships offered as Petitioners' Exhibit 11. *See Board Ex. D.*

13. The Board therefore overrules the Assessor's objection to Petitioners' Exhibits 1-2, and 6-9. The Board does not condone failures to abide by its exchange rules. But under these circumstances, where the Manships' failure to exchange was inadvertent and did not prejudice the Assessor, the Board sees no reason to exclude those exhibits.

14. The Board, however, sustains the Assessor's objection to Petitioners' Exhibits 3-4 (photographs of the subject property), 5 (photographs of the Assessor's comparable properties), and 10 (a copy of a December 1, 1994 agreement to purchase the subject property). The Manships' exhibit list does not describe the photographs beyond simply referring to "pictures." *See Board Ex. D.* And the Assessor did not have access to those exhibits except through the Manships. Thus, the Assessor was likely prejudiced by the Manships' failure to provide copies of Petitioners' Exhibits 3-5 and 10 five business days before the hearing.

Parties' Contentions

A. Summary of the Manships' Case

15. Indiana Code § 6-1.1-15-17.2 places the burden of proof on an assessor where the assessment under review represents an increase of more 5% over the previous year's assessment. The Manships appealed only the land portion of the subject property's assessment, which increased more than 93% between 2010 and 2011. The Assessor therefore has the burden of proof. *Manship testimony; Pet'rs Ex. 1.*

16. The subject property is a 20.56-acre parcel improved with a home, pole barn, and small shed. Roughly seven acres are slightly rolling and wooded. The remaining 13.5 acres are on a low, flat plain that is within a flood zone declared by the Federal Emergency Management Agency ("FEMA"). The area has slowly reverted back to its natural wetland character since the original field tile broke down years before the Manships bought the property in 1994. The previous owners quit farming the land because it was underwater all the time, and it has not been farmed for more than a decade. Mr. Manship did not know that the Assessor had changed the land's classification from agricultural to

excess residential. But the 13.5 acres cannot be used for improvements or for farming. Thus, whatever its classification, the land is assessed too high. *Chambers testimony; Manship testimony; Pet'rs Exs. 1-4, 6.*

17. The Assessor did nothing to support the 2011 assessment. The allegedly comparable properties that the Assessor's witness pointed to are not even close to the subject property's size—one is two acres and the other is .88 acres. *Manship testimony.*

B. Summary of the Assessor's Case

18. The Department of Local Government Finance ("DLGF") directed assessors to re-evaluate property classifications. Based on that directive, the Assessor determined that the subject property should be classified as excess residential acreage rather than as agricultural land. Reclassifying the property led to the assessment increase. *Hisle testimony; Resp't Exs. 6-13.*

19. The Manships want a reduced agricultural value, but Mr. Manship admits that the Manships do not farm the property. And Indiana Code § 6-1.1-4-13(a) provides that land may be assessed as agricultural only when it is "devoted to agricultural use." *Hisle testimony; Resp't Ex. 6.* The land similarly does not fit the DLGF's description of woodlands. Nor does it qualify for the Department of Natural Resource's classified forest or wildlands programs, both of which offer reduced assessments for participants. *Hisle testimony; Resp't Exs. 14-15.*

20. Mr. Manship relied heavily on the fact that a portion of the property is within a FEMA-declared flood zone. But as the Board has repeatedly held in other appeals, the mere fact that land may be prone to flooding does not show that its assessment is wrong. And the subject land's assessment includes a negative 20% influence factor to account for occasional flooding. *Hisle argument; Resp't Exs. 1, 16-25.*

21. Regardless, the subject property's assessment was reasonable in light of the sale prices for the following two properties from the same neighborhood:

- 8300 W CR 400S sold for $115,000 on April 20, 2010. It is around the corner from the subject property. It has a 1,482 square-foot home on two acres.
- 7120 S CR 800W sold for $161,900 on October 12, 2010. It has a 1,978-square-foot home on approximately .88 acres.

Both properties have homes that are comparable to the subject home in age, construction quality, and condition, but which sit on substantially smaller lots. And the home at 8300 W CR 400S is 444 square feet smaller than the subject home. Yet the subject property is assessed for only $208,200. *Hisle testimony; Resp't Exs. 1-3.*

Discussion

A. Burden of Proof

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

23. Matters are reversed, however, where the assessment under appeal represents an increase of more than 5% over the previous year's assessment for the same property. In those cases, the assessor has the burden of proof. I.C. § 6-1.1-15-17.2. Here, the parties agree that the subject land's assessment went from $28,300 in 2010 to $54,800 in 2011—an

increase of far more than 5%.[3] And the two assessments address the same property—there were no intervening changes either to the property's physical make-up or to its use. Instead, the increase stemmed mainly from the Assessor's decision to re-evaluate how he had previously classified the land. The Assessor therefore has the burden of proving that the 2011 assessment is correct.

B. Analysis

24. Indiana assesses real property based on its true tax value, which the DLGF defines as the property's market value-in-use. Evidence in an assessment appeal must be consistent with that standard. A market-value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice often will be probative. *Kooshtard Property VI 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 or sales information for the property under appeal, sales or assessment information for comparable properties, and any other information compiled according to generally accepted appraisal principles. *See id.* at 506; *see also*, I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments to show the market value-in-use for a property under appeal).

25. The Assessor did little to support the land portion of the subject property's assessment. At most, his witness, Ms. Hisle, testified as to why the land should be classified as excess residential acreage rather than as agricultural. Even if Ms. Hisle is correct about the property's classification, however, that still begs the question: Does the land's assessment accurately reflect its market value-in-use? And the Assessor offered no probative evidence to answer that question.

26. The Assessor at least tried to address the property's value as a whole (including both improvements and land) by offering sales evidence for two other properties from the same neighborhood. For sales data to be probative, the sold properties must be

[3] The property's overall assessment also increased by more than 5%, going from $192,400 in 2010 to $208,200 in 2011.

sufficiently comparable to the property under appeal. Conclusory statements that a property is "similar" or "comparable" to another property do not show comparability. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). Instead, one must identify the characteristics of the property under appeal and explain both how those characteristics compare to the characteristics of the sold properties and how any relevant differences affect the properties' relative market values-in-use. *See id*. at 471.

27. Ms. Hisle did little to compare the sold properties to the subject property other than to point to each home's location, size, age, and construction quality. She did not address whether the sold properties were located in a flood plain. And she did even less to explain the degree to which significant differences between the sold properties and the subject property affect their relative values. She mainly relied on the fact that the subject property has substantially more land, and in one case, a larger home, than the other two properties. Yet those properties sold respectively for $93,200 and $46,300 less than the subject property's assessment. The Board will not simply assume that the subject property's larger home and extra land, much of which floods, necessarily accounts for such a wide gulf in values.

28. Because the Assessor did not offer probative evidence of the property's market value-in-use, he failed to meet his burden of proving that the assessment is correct. The property's land assessment for 2011 must therefore be reduced to its previous year's level of $28,300.

SUMMARY OF FINAL DETERMINATION

29. The Assessor bore the burden of proving that land portion of the subject property's 2011 assessment was correct. The Assessors failure to do so means that the land assessment must be reduced to the previous year's level of $28,300.

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

_____
Commissioner, 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>.