

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

Petition: See attached listing
Petitioner: Martin Blad Farms
Respondent: St. Joseph County Assessor
Parcel: See attached listing
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. The Petitioner initiated its 2014 assessment appeals with the St. Joseph County Assessor on November 14, 2014. On June 5, 2015, the St. Joseph County Property Tax Assessment Board of Appeals (PTABOA) issued its determinations for each parcel under appeal.
2. The Petitioner timely filed 32 Petitions for Review of Assessment (Form 131) with the Board, electing the Board's small claims procedures.¹
3. Administrative Law Judge (ALJ) Patti Kindler held the consolidated administrative hearing on August 9, 2016. She did not inspect the parcels.
4. Certified Tax Representative Jamie Ruiz and property manager Brent Burkus appeared for the Petitioner. Attorney Frank Agostino and St. Joseph County Assessor Rosemary Mandrici appeared for the Respondent.

Facts

5. There are 31 parcels of agricultural land under appeal, one of which is improved, located in South Bend. According to the Petitioner, only the land assessments are at issue.

Record

6. The official record for this matter is made up of the following:
 - a) Petitions for Review of Assessment (Form 131) with attachments,

¹ The Petitioner initially filed thirty-two appeals with the Board. At the hearing, the Petitioner agreed that Petition No. 71-010-14-1-1-20317-15 was a duplicate appeal and agreed it should be withdrawn.

b) A digital recording of the hearing,

c) Exhibits:

Petitioner Exhibit A:	Introduction to the appeals, a list showing the amount of acreage and percentage of soil type designations for the agricultural parcels, reason for appeal, calculation of the income approach to value, Petitioner's requested resolution, soil-type map, and map of field designations,
Petitioner Exhibit 1:	Graph showing the actual national 20-year corn yields vs. various trend-lines,
Petitioner Exhibit 2:	Page 7 from the Department of Local Government Finance's (DLGF) presentation of Soil Productivity Factors and Agricultural Land, January 2014,
Petitioner Exhibit 3:	Profit and loss statement for Martin Blad farms,
Petitioner Exhibit 4:	Page 13 from the DLGF's presentation of Soil Productivity Factors and Agricultural Land, January 2014,
Petitioner Exhibit 5:	Spreadsheet comparing the subject parcels' actual 2014 taxes to their purported tax bill with the application of a 50% influence factor and property record cards for 27 of the 32 parcels at appeal,
Petitioner Exhibit 6:	Spreadsheet of the subject property's 2012 to 2015 crop insurance payments,
Petitioner Exhibit 7:	E-mail from Mary S. Gumz, Northwest Indiana Product Agronomist, with Pioneer Hi-Bred International, dated August 8, 2016, regarding Pioneer's use of research plots located on the subject property along with an aerial map describing the soil's drainage ratings.
Respondent Exhibit 1:	Soil maps for each soil type attached to the hearing notice and property record card for all thirty-one parcels at appeal,
Respondent Exhibit 2:	A soil legend detailing each soil type symbol with its corresponding soil name,
Respondent Exhibit 3:	December 30, 2013, DLGF memorandum entitled Certification of Agricultural Land Base Rate Value for Assessment Year 2014.

Objections

7. Mr. Agostino objected to Petitioner Exhibits 6 and 7 because the Petitioner failed to exchange those documents prior to the hearing. The ALJ took the objection under advisement.

8. We overrule the objection. Our pre-hearing exchange rule for small claims cases requires parties to provide copies of their documentary evidence in advance of a hearing only if requested by another party no later than 10 business days before the hearing. 52 IAC 3-1-5(d). Because the Respondent did not purport that she requested the exhibits, there are no grounds to exclude them.

Contentions

9. Summary of the Respondent's case:
 - a) The Respondent argued that the subject property's assessment is correct. The assessments increased from 2013 to 2014 because the land base rate mandated by the DLGF rose from \$1,750/acre to \$2,050/acre. The Assessor applied the base rates for each different soil type using "Pictometry," a software program that delineates between soil types. The DLGF's base rate was adjusted up or down based on the productivity of each soil type. The Assessor then applied any warranted influence factors. *Mandrici testimony; Resp't Ex. 2, 3.*
 - b) To illustrate this, the Assessor presented the property record cards and Pictometry pages for several of the subject parcels. The Pictometry pages show the boundaries of the various soil types for each parcel. Each soil type classification on the property record card is priced at the 2014 agricultural base rate of \$2,050. This base rate was determined by Purdue University and mandated by the State of Indiana. Purdue University also determined the productivity of each soil type. As mandated by the state, soil types that are less productive than the base rate are multiplied by negative productivity factors. Soil types that are more productive than the base rate are multiplied by positive productivity factors. *Mandrici testimony.*
 - c) The Assessor pointed out that while the Petitioner requests a 50% influence factor for the subject agricultural parcels, some parcels are already receiving influence factors according to the land's soil type. She testified that parcel no. 71-08-30-300-002.000-010 has 60.8 acres of land with five separate soil types. There are 12 acres of Morley silty clay loam soil (MsD3) soil with a 50% influence factor resulting in a rate of \$1,025/acre. The rest of the parcel had influence factors ranging from 15%-28%. The Assessor verified the parcel's acreage measurements, land type, influence factors and soil types. *Mandrici testimony; Resp't Ex. 1, 2.*
 - d) She testified specifically about several more parcels, which had various soil types and influence factors. Ms. Mandrici stated that the remaining 27 property record cards were assessed in the same manner, and that each assessment reflects the acreage, land type, soil type and influence adjustments. The Respondent offered soil maps and property record cards for these parcels. No productivity factors or influence factors were changed between 2013 and 2014—the sole reason for the increase in the assessments was the increase in the base rate mandated by the DLGF. *Mandrici testimony; Resp't Ex. 3.*

10. Summary of the Petitioner's case:

- a) The Petitioner argued that the subject property's assessment is too high. It is a 2,584-acre muck farm producing corn and soybeans, located on the headwaters of the Grand Kankakee Marsh. 2,112 acres of the farm have muck soil, which is classified as very poorly drained according to United States Department of Agriculture (USDA) maps. Muck soil also subsides at a steady rate. *Ruiz testimony; Pet'r Ex. A at 1, 2, 3; Pet'r Ex. 7.*
- b) There are three ditches that feed into the farm. The Dixon Place Ditch that runs through the west side of the farm was once the main line of the Kankakee River. There are also underground springs throughout the farm that prevent planting. The Petitioner presented a letter from a product agronomist who performed research on the subject property in support of the contention that property was poorly drained. *Ruiz testimony; Burkus testimony; Pet'r Ex. 7.*
- c) The DLGF relies on Purdue University's Dideriksen model to evaluate and calculate soil productivity factors. The Petitioner argued that the model assumes there are drainage tiles in place, which is not the case with the subject land. The cost to retile the land exceeds \$2,000,000. Although tiling would improve the farm's productivity, current corn prices are not high enough to support \$2,000,000 in field tiling work. *Ruiz testimony; Pet'r Ex. A at 3.*
- d) There are also extra costs associated with farming muck soil. These include ditch maintenance, additional crop insurance, and irrigation. The farm also has low elevation, which means the planting season begins much later than most farms because of the risk of freezing. *Ruiz testimony; Pet'r Ex. A at 3-4, 6.*
- e) Ms. Ruiz developed an income approach to value because the DLGF uses an income approach as part of its valuation for setting base rates. She relied on a cap rate of 5.61% taken from the DLGF's model found in the Manual. She used the farm income from the fiscal years 2014, 2015, and 2016 to determine at a 3-year average market value of \$505 per acre, which falls well below the DLGF's unadjusted base rate of \$2,050 per acre currently applied to the assessment. Ms. Ruiz contends that the Petitioner is not requesting the \$505 per acre be applied to the subject land. Instead she offered it as an illustration to show the DLGF's income approach is not applicable to the subject parcels' land assessments. *Ruiz testimony; Pet'r Ex. A at 4, 5; Pet'r Ex. 3.*
- f) The land base rate is only one component of the land valuation calculation according to the DLGF. Land use type influences and soil productivity factors are also components of the calculation. Thus, Ms. Ruiz requests that the land type be changed from a "4" to "42," which is tillable land that floods five times or more times every ten years. Type "42" land, which is initially priced at \$2,050 by the DLGF, receives a negative 50% influence factor because it floods so often. Thus, Ms. Ruiz requested

the application of a negative 50% influence factor for 27 of the 31 parcels at appeal totaling 2,112 acres.² *Ruiz testimony; Pet'r Ex. A at 5; Pet'r Ex. 4.*

- g) As support for this, the Petitioner pointed to claims made under its flood insurance policy. The Petitioner did not acquire flood insurance until 2011, and since then there have been two claims under the policy. Brent Burkus, the farm's manager, testified that even prior to 2011 the farm would qualify for a 50% influence factor based on its history of flooding. *Burkus testimony; Pet'r Ex. 6.*
- h) The Petitioner also contended that assessment increases are going to be disastrous for farmers. It pointed out that in the last six years, tax rates for farmers have increased 68.5%. The Petitioner argued family farms cannot sustain these tax increases. *Ruiz argument.*

Burden of Proof

- 11. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass'r*, 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). The burden-shifting statute as recently amended by P.L. 97-2014 creates two exceptions to that rule.
- 12. 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).
- 13. 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.” Under those circumstances, “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). This change was effective March 25, 2014, and has application to all appeals pending before the Board.

² The Petitioner's appeal encompasses 31 parcels. Its evidence references only 27 of those parcels. No evidence was presented regarding parcel nos. 71-08-15-351-013.000-026, 71-08-29-126-002.000-010, 71-08-29-127-001.000-010 and 71-08-30-400-006.000-010.

14. Here, the parties agree the assessment for each parcel increased by more than 5% from 2013 to 2014. Thus, according to the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 the Respondent has the burden to prove the 2014 assessment is correct.

Analysis

15. The subject property has been assessed as agricultural land. While normally a party must present market-based evidence to prove the value of the property at issue, agricultural land is assessed according to specific statutes and regulations. The legislature has directed the DLGF to use 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 GUIDELINES, CH. 2 at 77-78; *see also* Ind. Code § 6-1.1-4-4.5(e). Assessors then adjust that base rate according to soil productivity factors. Depending on the type of agricultural land at issue, assessors may then apply influence factors in predetermined amounts. *Id.* at 77, 89, 98-99.
16. The Respondent had the burden of proof in this case. She explained that the subject property was assessed according to the statutes and rules for agricultural property. In support of this, she offered the relevant soil maps and property record cards. She further testified that the subject property's assessments increased solely due to DLGF's increase of the agricultural base rate. We find the Respondent made a prima facie case that the 2014 assessments were correct.
17. We now examine whether the Petitioner's evidence is sufficient to rebut this prima facie case. We begin by addressing two broad assertions from the Petitioner: (1) that the statutory assessment scheme for assessing agricultural land does not accurately reflect the income of the subject property; and (2) that the increased base rate is too much of a hardship on farmers.
18. Although we are sympathetic to the Petitioner's position, neither of these issues presents any avenue for the Board to grant relief. It is the legislature's prerogative to decide how real property is assessed, and the Board is charged only with enforcing the law. As the legislature has laid out specific guidelines for agricultural land, we are bound to enforce them.
19. However, the Petitioner also alleged that the guidelines were incorrectly applied. Specifically, it argued that most of the subject land should have received a Type 42 50% influence factor. The requirements for this are: "Land flooded severely—damaging floods occur five times or more in a ten-year period. A 50% influence factor deduction applies to this land use type." 2011 GUIDELINES, CH. 2 at 89. In support of this the Petitioner points to the recent insurance claims, as well as the testimony of Mr. Burkus.
20. We first note that the subject property is over 2,500 acres. The Petitioner asserts that they have had two insurance claims for floods since 2011, but offered no testimony on the specific floods. On their own, these claims fail to show that the entire property flooded.

Given the limited evidence, we cannot conclude what portion of the property was affected, nor assume that the entire property was affected equally.

21. Even were we to assume that the entire property flooded for each of the Petitioner's claims, the standard is five or more floods in a ten-year period. The Petitioner's insurance evidence shows only two floods, not five. Although Mr. Burkus testified that the property flooded often enough to meet the five or more standard, his testimony was conclusory. He did not point to any specific instances of flooding prior to 2011, nor did he address whether the entire property flooded or only a portion.
22. The Petitioner's additional evidence and testimony that the property was poorly drained, while extensive, does not address the relevant issue of the amount of flooding in a ten-year period. Thus while it is possible the subject property may flood often enough to warrant a 50% influence factor for flooding, the evidence before us fails to prove it.

Conclusion

23. The Respondent made a prima facie case that the 2014 assessments are correct. The Petitioner failed to rebut that case with probative evidence.

Final Determination

In accordance with these findings of fact and conclusions of law the 2014 assessments of the subject property are not changed.

ISSUED: November 4, 2016

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days of 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>>.

No.	Petition Number	Parcel Number
1	71-010-14-1-1-20312-15	71-12-03-100-002.000-010
2	71-010-14-1-1-20313-15	71-12-03-200-002.000-010
3	71-010-14-1-1-20314-15	71-07-25-400-001.000-029
4	71-010-14-1-1-20315-15	71-07-25-400-002.000-010
5	71-010-14-1-1-20316-15	71-07-34-400-004.000-010
6	71-010-14-1-1-20300-15	71-07-25-300-002.000-010
7	71-010-14-1-1-20318-15	71-08-21-200-004.000-025
8	71-010-14-1-1-20319-15	71-07-36-100-001.000-010
9	71-010-14-1-1-20321-15	71-08-30-100-002.000-010
10	71-010-14-1-1-20322-15	71-08-30-100-003.000-010
11	71-010-14-1-1-20323-15	71-08-16-400-004.000-026
12	71-010-14-1-1-20325-15	71-08-16-400-005.000-026
13	71-010-14-1-1-20336-15	71-07-34-400-002.000-010
14	71-010-14-1-1-20293-15	71-08-20-300-002.000-025
15	71-010-14-1-1-20294-15	71-08-30-200-001.000-010
16	71-010-14-1-1-202095-15	71-08-30-200-002.000-010
17	71-010-14-1-1-20296-15	71-08-30-100-004.000-010
18	71-010-14-1-1-20297-15	71-12-03-200-001.000-010
19	71-010-14-1-1-20298-15	71-07-36-100-002.000-010
20	71-010-14-1-1-20299-15	71-12-02-100-001.000-010
21	71-010-14-1-1-20301-15	71-08-21-300-002.000-025
22	71-010-14-1-1-20302-15	71-08-21-300-001.000-025
23	71-010-14-1-1-20303-15	71-08-15-351-013.000-026
24	71-010-14-1-1-20304-15	71-07-35-300-001.000-010
25	71-010-14-1-1-20305-15	71-08-29-101-006.000-010
26	71-010-14-1-1-20306-15	71-08-29-126-002.000-010
27	71-010-14-1-1-20307-15	71-08-29-127-001.000-010
28	71-010-14-1-1-20308-15	71-08-30-300-001.000-010
29	71-010-14-1-1-20309-15	71-08-30-300-002.000-010
30	71-010-14-1-1-20310-15	71-08-30-400-006.000-010
31	71-010-14-1-1-20311-15	71-12-02-200-001.000-010
32*	71-010-14-1-1-20317-15	71-07-25-300-002.000-010

*Petition # 71-010-14-1-1-20317-15 was a duplicate filing and is dismissed with this opinion.