

REPRESENTATIVE FOR PETITIONERS:

Charles R. Vaughan, *pro se*

REPRESENTATIVE FOR RESPONDENT:

Pamela J. Hruska, Tippecanoe County Deputy Assessor

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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

|                                  |   |                  |                     |
|----------------------------------|---|------------------|---------------------|
| Charles R. and Helen L. Vaughan, | ) | Petition No:     | 79-120-07-1-5-00001 |
|                                  | ) |                  |                     |
| Petitioners                      | ) | Parcel No:       | 120051000058        |
|                                  | ) |                  |                     |
| v.                               | ) |                  |                     |
|                                  | ) | County:          | Tippecanoe          |
| Tippecanoe County Assessor,      | ) | Township:        | Shelby              |
|                                  | ) |                  |                     |
| Respondent.                      | ) | Assessment Year: | 2007                |

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Appeal from the Final Determination of  
Tippecanoe Property Tax Assessment Board of Appeals

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**June 14, 2010**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (the 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**

### **ISSUE**

1. The issue presented for consideration by the Board is whether the assessed value of the subject property is overstated.

### **PROCEDURAL HISTORY**

2. Pursuant to Ind. Code § 6-1.1-15-1, Charles R. Vaughan filed a Form 131 Petition for Review of Assessment on April 20, 2009, petitioning the Board to conduct an administrative review of the above petition. The Tippecanoe County Property Tax Assessment Board of Appeals (the PTABOA) issued its determination on April 16, 2009.

### **HEARING FACTS AND OTHER MATTERS OF RECORD**

3. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, Dalene McMillen, the duly designated Administrative Law Judge (the ALJ) authorized by the Board under Indiana Code § 6-1.5-3-3 and § 6-1.5-5-2, conducted a hearing on December 17, 2009, in Lafayette, Indiana.

4. The following persons were sworn and presented testimony at the hearing:

For the Petitioners:

Charles R. Vaughan, Property owner  
David A Miller, Petitioner's Accountant

For the Respondent:

Pamela J. Hruska, Tippecanoe County Deputy Assessor

5. The Petitioner presented the following exhibits:

Petitioner Exhibit 1 – Exterior photograph of flooded farmland,  
Petitioner Exhibit 2 – Exterior photograph of flooded farmland,

Petitioner Exhibit 3 – Exterior photograph of farmland,  
Petitioner Exhibit 4 – Exterior photograph of the house,  
Petitioner Exhibit 5 – Exterior photograph of the house,  
Petitioner Exhibit 6 – Exterior photograph of the house,  
Petitioner Exhibit 7 – Exterior photograph of the pole barn and farm equipment,  
Petitioner Exhibit 8 – Exterior photograph of the pole barn and farm equipment,  
Petitioner Exhibit 9 – Exterior photograph of the pole barn and farm equipment,  
Petitioner Exhibit 10 – Exterior photograph of flooded farmland.

6. The Respondent presented the following exhibits:

Respondent Exhibit 1 – Tippecanoe County’s data worksheet on the property under appeal,  
Respondent Exhibit 2 – Assessor’s comparable worksheet,  
Respondent Exhibit 3 – Sales prices on five comparable properties,  
Respondent Exhibit 4 – Property record card for Parcel No. 1200051000058, located at West 600 North, West Lafayette,  
Respondent Exhibit 5 – Property record card for Parcel No. 1200051000058, located at West 600 North, West Lafayette,  
Respondent Exhibit 6 – GIS aerial map of the property under appeal,  
Respondent Exhibit 7 – Property record card for Parcel No. 140005000036, located at 4230 South 500 West,  
Respondent Exhibit 8 – Property record card for Parcel No. 120033000010, located at 721 North County Line Road West,  
Respondent Exhibit 9 – Property record card for Parcel No. 124040000073, located at 1450 East 500 North,  
Respondent Exhibit 10 – Property record card for Parcel No. 124033000146, located at 754 East 600 North.

7. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:

Board Exhibit A – Form 131 petition with attachments,  
Board Exhibit B – Notice of Hearing, dated October 6, 2009,  
Board Exhibit C – Hearing sign-in sheet.

8. The subject property is a 1,174 square foot house with a garage, shed, five barns and three grain bins on 200 acres of land located at West 600 North, West Lafayette, Shelby Township in Tippecanoe County.

9. The ALJ did not conduct an on-site inspection of the subject property.
10. For 2007, the PTABOA determined the assessed value of the property to be \$276,000 for land and \$65,400 for the improvements, for a total assessed value of \$341,400.
11. On their petition, the Petitioners contend the assessed value should be \$248,800 for the land and \$20,000 for the improvements, for a total assessed value of \$268,800 for 2007.

### **JURISDICTIONAL FRAMEWORK**

12. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property, (2) property tax deductions, and (3) property tax exemptions, that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Indiana Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

### **ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN**

13. 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 Board of Tax Commissioners*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
14. 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”).

15. 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.

#### **PETITIONER'S CONTENTIONS**

16. The Petitioners contend that their property's assessed value does not reflect the damage to the land caused by flooding. *Vaughan testimony*. In support of this contention, the Petitioners submitted four photographs of the land. *Petitioner Exhibits 1, 2, 3 and 10*. According to Mr. Vaughan, drainage from neighboring properties causes approximately forty acres of the land to pond every year. *Vaughan testimony*. In response to questioning, Mr. Vaughan testified that he simply took "half value" of the land rate to account for the flooding. *Id*. Further, he admitted that he had no survey of the property or other evidence to specifically show how much acreage is lost to ponding and where such acreage is located. *Id*.
17. The Petitioners further contend that the property is over-assessed because of the condition of the house, which, they argue, has been uninhabitable for approximately five years. *Vaughan testimony*. According to Mr. Vaughan, the exterior is very run-down and the house has no water, electric or heat. *Vaughan testimony*. Similarly, the Petitioners contend the "out-shed" is merely an outdoor cover for farm equipment and therefore is assessed incorrectly. *Id*. In support of this contention, the Petitioners submitted exterior photographs of the house and photographs of the shed. *Petitioner Exhibits 4 through 9*.

#### **RESPONDENT'S CONTENTIONS**

18. The Respondent contends the property under appeal is correctly assessed at \$341,400. *Hruska testimony*. In support of this position, the Respondent's representative submitted sales information for comparable properties located in the area of the Petitioners' property. *Respondent Exhibits 2; Hruska testimony*. According to Ms. Hruska, the first

property, located at 6617 Oxford Street, Montmorenci, has less living area and is located on .289 acre of land. *Id.* The house is in fair condition and is slightly newer than the property under appeal. *Id.* It has an adjusted sale price of \$308,748. *Id.* The second comparable property, located at 302 East Oxford, Otterbein, has slightly more living area and is located on .36 acre. *Id.* The house is in fair condition and is ten years older than the Petitioners' house. *Id.* It has an adjusted sales price of \$294,822. *Id.* The third property, located at 6516 State Road 25 South, West Point, has more living area and is located on 1.19 acres. *Id.* The house is in fair condition and is older than the Petitioners' house. *Id.* It has an adjusted sales price of \$310,047. *Id.*

19. The Respondent's sales comparison analysis shows that the "comparable" properties sold for \$60,900, \$50,800 and \$51,600 respectively. *Respondent Exhibit 2.* The county, however, adjusted the sales to add \$251,810 for the additional 197.656 acres of farm land and \$22,500 for the farm buildings located on the subject property. *Id.; Hruska testimony.* In support of the land value, the Respondent's representative submitted comparable sales information and property record cards for four additional properties that sold in the area. *Respondent Exhibits 3, 7, 8, 9 and 10; Hruska testimony.* According to Ms. Hruska, the four comparables are farm properties ranging in size from 29.55 acres to 115 acres that sold for \$276,990 to \$576,600 in 2006. *Id.* Thus, the Respondent's representative argues, these sales support the property's assessed value. *Hruska testimony.*
20. The Respondent further argues that the property's assessment accounts for the flooding on the Petitioners' property. *Hruska testimony.* According to Ms. Hruska, the Petitioners' property record card shows that six acres are currently receiving a negative influence factor of 40% - 60%. *Respondent Exhibits 4, 5, and 6; Hruska testimony.* In addition, eighteen acres have a 51% productivity factor. *Id.* Thus, Ms. Hruska concludes, the water conditions are already accounted for and no further adjustment is warranted. *Hruska testimony.*

21. Finally, the Respondent argues that, as a result of the PTABOA hearing, the condition of the Petitioners' house has been corrected. *Hruska testimony*. According to Ms. Hruska, the house's condition was lowered from average to fair as a result of a field inspection. *Id.*

#### ANALYSIS

22. Indiana assesses real property based on its "true tax value," which the 2002 Real Property Assessment Manual defines 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 (MANUAL) (incorporated by reference at 50 IAC 2.3-1-2). The appraisal profession traditionally has used three methods to determine a property's market value: the cost approach, the sales comparison approach, and the income approach. *Id.* at 3, 13-15. Indiana assessing officials generally use a mass appraisal version of the cost approach, as set forth in the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (the GUIDELINES).
23. A property's assessment under the Guidelines is presumed to accurately reflect its true tax value. *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 2006). A taxpayer may rebut that presumption 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 often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer sales information for the subject property or comparable properties and other information compiled according to generally accepted appraisal principles. MANUAL at 5.
24. 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, 2007, assessment date, the valuation date is January 1, 2006. 50 IAC 21-3-3.

25. Here, the Petitioners contend that the property's assessed value does not reflect the damage to the land caused by flooding. *Vaughan testimony*. According to Mr. Vaughan, drainage from neighboring properties from the north and west causes approximately forty acres of the land to pond every year. *Vaughan testimony*.
26. The agricultural land value utilizes the land's current market value-in-use, which is based on the productive capacity of the land, regardless of the land's potential or highest and best use. GUIDELINES, ch. 2 at 99. The statewide agricultural land base rate value in 2007 was \$1,140 based on a six-year rolling average of market value-in-use as calculated by the Department of Local Government Finance pursuant to 50 IAC 21-6-1(a). The agricultural land assessment formula also values farmland, in part, based on the productivity of each parcel's soil resources. *Id.* at 106. Soil maps prepared by the United States Department of Agriculture categorize land according to its productivity. *Id.* at 106.
27. There are seven categories of agricultural land use types including classified land, tillable land, nontillable land, woodland, other farmland, agricultural support land, and homesite. *Id.* at 102 - 105. Tillable land is further divided into subtypes to compensate for flooding. *Id.* at 104. Type 41 agricultural land has "damaging floods [that] occur two to four times in a ten-year period"; Type 42 land has "damaging floods [that] occur five times or more in a ten-year period"; and Type 43 land is "farmed wetlands" which is land verifiably designated as such by the U.S. Department of Agriculture. *Id.* Specific influence factors are applied based on each subtype of tillable land. *Id.*
28. Here, Mr. Vaughan testified that forty acres of the Petitioners' property "ponds" every year. In support of this contention, the Petitioners presented photographs of standing water on the property. While the rules of evidence generally do not apply in the Board's

hearings, the Board requires some evidence of the accuracy and credibility of the evidence. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998); and *Herb v. State Board of Tax Commissioners*, 656 N.E.2d 890, 893 (Ind. Tax Ct. 1995). Thus, while the Board could reasonably conclude that Mr. Vaughan has shown that some portion of its land is Type 41 or Type 42 agricultural land, the Petitioners have not sufficiently shown what area and specifically how many acres should be classified in that manner.<sup>1</sup> The agricultural land assessment formula involves the identification of agricultural tracts using data from detailed soil maps, aerial photography, and local plat maps. Uniformity is maintained in the assessment of agricultural land through the proper use of soil maps, interpreted data and unit values. GUIDELINES, ch. 2 at 99. Mr. Vaughan's vague reference to "forty acres" falls far short of the burden to prove any of the property's soil type has been improperly classified.

29. The Petitioners also argue that the assessor made an error in applying the condition rating on their house. *Vaughan testimony*. A condition rating is a "rating assigned each structure that reflects its effective age in the market." See GUIDELINES, App. B at 5. A condition rating is determined by relating the structure to comparable structures within the property's neighborhood. Here, Mr. Vaughan merely testified that the house was "uninhabitable" and has no heat or other utilities and therefore the house was over-assessed.<sup>2</sup> To support their assertion, the Petitioners must offer probative evidence regarding the condition of the structure. See *Phelps Dodge v. State Bd. of Tax Comm'rs*, 705 N.E.2d 1099, 1104 (Ind. Tax Ct. 1999). Again, vague, conclusory statements, unsupported by factual evidence are not sufficient to establish an error in an assessment. *Whitley Products, Inc.* 704 N.E.2d at 1119, 1120.

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<sup>1</sup> In response to the Respondent's representative's question as to whether Mr. Vaughan had any documentation or whether he could explain where on the property the ponding occurs, Mr. Vaughan testified "maybe, I don't know. Other than those photographs, I don't have anything. No." Further, when Ms. Hruska testified regarding soil typing, Mr. Vaughan testified "I don't have the slightest idea what the soil is. I bought the farm and we farmed it years ago."

<sup>2</sup> Although it is not clear in the record, Mr. Vaughan's responses to Ms. Hruska's cross examination suggested that the utilities were merely shut off rather than non-functional or non-existent.

30. Further, a Petitioner fails to sufficiently rebut the presumption that an assessment is correct by simply contesting the methodology used to compute the assessment. *Eckerling v. Wayne Township Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *P/A Builders & Developers v. Jennings County Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (recognizing that the current assessment system is a departure from the past practice in Indiana, stating that “under the old system, a property’s assessed value was correct as long as the assessment regulations were applied correctly. The new system, in contrast, shifts the focus from mere methodology to determining whether the assessed value is *actually correct*.”). Thus, in failing to offer any market evidence of the property’s value, the Petitioners have failed to raise a prima face case that the subject property’s assessment was incorrect.
31. Where the taxpayer fails 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).

#### **SUMMARY OF FINAL DETERMINATION**

32. The Petitioners failed to raise a prima facie case. The Board finds in favor of the Respondent.

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

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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 under 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 Indiana 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/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>.**