

REPRESENTATIVE FOR PETITIONER:

Robert Eugene Hayes, *pro se*

REPRESENTATIVE FOR RESPONDENT:

Marilyn S. Meighen, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Robert Eugene Hayes,)	Petition No.:	29-008-14-1-1-01476
)		
Petitioner,)	Parcel No.	29-02-12-000-014.000-008
)		(03-02-12-00-00-014.000)
v.)		
)	County:	Hamilton
Hamilton County Assessor,)		
)	Assessment Year:	2014
Respondent.)		

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

August 26, 2016

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

PROCEDURAL HISTORY

1. Robert Eugene Hayes (“Petitioner”) initiated a 2014 assessment appeal on July 16, 2014. On October 7, 2014, the Hamilton County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination sustaining the 2014 assessment. The Petitioner then timely filed a Form 131 petition on October 24, 2014, with the Board.
2. On May 11, 2016, the Board’s designated administrative law judge, Dalene McMillen (“ALJ”), held a hearing on the petition. Neither the Board nor the ALJ inspected the property.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. The property under appeal is 4.77 acres with a single-family home, detached garage, three poultry houses, two barns, and a lean-to located at 8140 East 279th Street in Arcadia.
4. The following people testified under oath:
 - Robert Eugene Hayes, owner,
 - Robin Ward, Hamilton County Assessor,
 - Terry McAbee, Assessor’s director of commercial and industrial assessments.
5. Petitioner offered the following exhibits:
 - Petitioner Exhibit 1 – Nineteen (19) photographs of the subject property,
 - Petitioner Exhibit 2 – Compact disk of Petitioner’s October 2, 2014, PTABOA hearing,
 - Petitioner Exhibit 3 – Survey map of the subject property.
6. Respondent offered the following exhibits:
 - Respondent Exhibit A – Aerial map of subject property,
 - Respondent Exhibit B – 2013 subject property record card (“PRC”),

- Respondent Exhibit C – Department of Local Government Finance (“DLGF”) Certification of Agricultural Land Base Rate Value for Assessment Year 2013 memorandum,
- Respondent Exhibit D – 2014 subject PRC,
- Respondent Exhibit E – DLGF Certification of Agricultural Land Base Rate Value for Assessment Year 2014 memorandum,
- Respondent Exhibit F – Assessor’s value calibration analysis by neighborhood,
- Respondent Exhibit G – Assessor’s comparative market analysis,
- Respondent Exhibit H – Assessment comparable analysis, aerial photograph, and PRC for 29370 Anthony Road in Atlanta,
- Respondent Exhibit I – Hamilton County Circuit Court “Petition to Approve Sale and to Declare Setoffs,” dated October 3, 2012,
- Respondent Exhibit J – Hamilton County Circuit Court “Objection to Petition to Approve Sale and to Declare Setoffs,” dated October 5, 2012.

7. The following additional items are part of the record:

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

8. The PTABOA determined the following values:

Land: \$40,000 **Improvements:** \$51,400 **Total:** \$91,400.

OBJECTION

9. The Respondent objected to Petitioner’s Exhibits 1 and 3 because the Petitioner failed to provide the exhibits prior to the hearing.

10. Both parties were required to exchange copies of their documentary evidence at least five business days prior to the hearing. 52 IAC 2-7-1 (b)(1). The exchange requirement allows parties to be better informed and to avoid surprises, and it also promotes an organized, efficient, and fair consideration of the issues at a hearing. Failure to comply with this requirement can be grounds to exclude evidence. 52 IAC 2-7-1 (f).

11. The Petitioner contends he sent Petitioner Exhibit 1 in with a questionnaire he received from the county's counsel. The Respondent's counsel contends she never received Petitioner Exhibit 1. The Respondent did not offer any explanation of what specific prejudice she suffered because of the exhibits. We do not find that contents of either exhibit create any unfair surprise, and thus we decline to exclude them. We note that we do not rely on the exhibits in reaching our final determination.

BURDEN OF PROOF

12. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that a property's assessment is wrong and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 465, 468 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 594 N.E.2d 1230 (Ind. Tax Ct. 1998). A burden-shifting statute creates two exceptions to that rule.
13. 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).
14. 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).

15. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
16. The Respondent reduced the subject property’s assessment to \$88,200 in 2013. For 2014, the PTABOA determined the property’s assessment to be \$91,400. The parties agreed that the subject property was successfully appealed at the county level in 2013. They also agreed that the 2014 assessment increased. Thus, the Respondent has the burden of proof.

SUMMARY OF RESPONDENT’S CONTENTIONS

17. The Respondent contends the property is 4.77 acres with three poultry houses, a lean-to, two barns, detached garage and house. In addition, there are two mobile homes located on the property. According to the Respondent, the land was valued in accordance with the regulations set forth by the Department of Local Government Finance (“DLGF”). The land was classified with two one-acre homesites, and the remaining 2.77 acres were calculated using soil type classifications. *McAbee testimony; Resp’t Ex. A & B.*
18. The Respondent testified that the Petitioner’s land value increased between 2013 and 2014 due to a mandatory increase in the agricultural land base rate established by the DLGF. The 2013 agricultural land base rate was \$1760 per acre. In 2014, the agricultural land base rate increased to \$2050 per acre. According to the Respondent, no other changes were made to the subject land’s homesite base rate or the land type classifications between 2013 and 2014. *McAbee testimony; Resp’t Ex. B-E.*

19. Another increase in the subject property's assessment was due to an increase in the neighborhood trending factor applied to the house between 2013 and 2014. The county adjusts the assessed values of improvements up or down based on sales in the neighborhood. The subject property is located in neighborhood 50045, rural average. For 2013, the neighborhood factor was 0.95. In 2014, the neighborhood factor increased to 1.00, which was a 5% increase between the two years. The Respondent argues that the increase of the neighborhood trending factor is the reason the Petitioner's 2014 improvement assessed value increased slightly. *McAbee testimony; Resp't Ex. B, D & F.*

20. The DLGF requires the county to follow the International Association of Assessing Officers ("IAAO") standards and regulations to calculate the neighborhood trending factor and perform a statistical analysis every year to insure uniformity and equality within each neighborhood in the county. The county analyzed nine sales in the Petitioner's neighborhood. The data showed that after changing the Petitioner's neighborhood factor from 0.95 in 2013 to 1.00 in 2014, the median sales ratio was 96%. The median sales ratio fell within the required 90% to 110%. The coefficient of dispersion ("COD") for this type of neighborhood needs to be less than 10%. The subject neighborhood calculated out at 8%. Finally, the price-related differential should fall between 0.98 and 1.03, the subject property came in at 0.99. The Respondent argues that subject property's assessment falls within the statistical measures established by the DLGF. *McAbee testimony; Meighen argument (citing 50 IAC 27-2-14 and 50 IAC 27-4-5); Resp't Ex. F.*

21. The Respondent also examined the Metropolitan Indianapolis Board of Realtors' ("MIBOR") home sales from January 1, 2012, through March 1, 2013, and January 1, 2013, through March 1, 2014, for Jackson Township in Hamilton County. For January 1, 2012, through March 1, 2013, the average sale price was \$168,912. For January 1, 2013, through March 1, 2014, the average sale price was \$192,031. The MIBOR data shows that the average home sales in Jackson Township where the Petitioner's property is located increased 14% between 2013 and 2014. The MIBOR home sales were also used

to established values and neighborhood trending factors for the 2013 and 2014 years, respectively. *McAbee testimony; Resp't Ex. G.*

22. The Respondent submitted an assessment comparable analysis, aerial map, and property record card of a property located at 29370 Anthony Road. Using the county land order and the 2011 REAL PROPERTY ASSESSMENT GUIDELINES' cost tables, McAbee adjusted the property's assessment to compare it to the subject property. He adjusted for the homesite and agricultural land value differences, living area, partial basement versus crawl space, plumbing, heating, air conditioning, patios, roof extension, masonry stoop, grade, garage, and farm buildings. The comparable property's adjusted assessed value is \$92,378, while the subject property's assessed value is \$91,400. The Respondent contends that this demonstrates the subject property is not overassessed. *McAbee testimony; Resp't Ex. H.*
23. The Respondent presented two documents filed with the Hamilton County Circuit Court. The first shows that on October 3, 2012, Robert Hayes petitioned the court to approve the sale of the subject property for \$100,000. The second court document filed on October 5, 2012, contains an objection to that sale, as well as an offer to buy out Robert Hayes' half interest in the property for \$55,000. *McAbee testimony; Resp't Ex. I & J.*
24. In response to the Petitioner's complaints about his ditch, the Respondent asserted that ditch assessments and maintenance were not the responsibility of the Assessor. Rather, they were the responsibility of the Drainage Board. *Meighen argument; Ward testimony.*

SUMMARY OF the PETITIONER'S CONTENTIONS

25. The Petitioner contends that he is being charged an assessment for the maintenance and upkeep of two ditches located on his property. According to the Petitioner, the tiles the county used were insufficient to handle the amount of water passing through his ditch.

As a result, the drain is plugged and the property's land is "washing away." *Hayes testimony.*

26. Additionally, the Petitioner argues that the value of the property is affected by its location. According to the Petitioner, his property is located approximately 18 feet from the railroad tracks, which vibrate and cause his home to shake. *Hayes testimony.*
27. The Petitioner also criticized the Respondent's assessment comparable analysis. He claims the purportedly comparable property is a mobile home sitting on two acres of land located 6 ½ miles from the subject property in the town of Atlanta. The comparable property was also under construction at the time the county used it in its analysis. In contrast, the subject property contains a home and additional farm buildings on 4.77 acres of agricultural land. *Hayes testimony.*
28. The Petitioner testified that the subject property was appraised in 2012 and in 2016. In 2012, the property appraised at \$100,000, but he was unable to sell the property for that amount. In 2016, the property was appraised as a result of a court order, and the Petitioner believes that appraisal came to \$130,000. The Petitioner argues these appraised values are irrelevant because the property has failed to sell for either price. *Hayes testimony.*

Analysis

29. During the hearing, the Petitioner made a number of arguments regarding the ditches located on his property. Specifically, he believed the county was not adequately maintaining the ditches. He was particularly concerned that he was being charged a ditch assessment, but was getting no services in exchange for that fee. Indiana Code § 36-9-27-29 states in part that the county surveyor is the technical authority on the construction, reconstruction and maintenance of all regulated drains in the county. *See Ind. Code § 36-9-27-29.* The local county drainage board provides oversight of the surveyor. *See Ind.*

Code § 36-9-27-35. There are specific procedures for a landowner to request maintenance or reconstruction of a drain. *See Id.* In addition, there are provisions for judicial review of a drainage board's actions. *See Ind. Code § 36-9-27-35.*

30. The Board is a creation of the legislature and has only the powers conferred by statute. *Whetzel v. Dep't of Local Gov't Fin.*, 761 N.E.2d 904, 908 (Ind. Tax Ct. 2001) (citing *Matonovich v. State Bd. Of Tax Comm'rs*, 705 N.E.2d 1093, 1096 (Ind. Tax Ct. 1999)). No statute provides the Board authority to order the County to repair the Petitioner's ditches. Instead, the legislature has provided that a landowner may appeal actions of the drainage board to the local court.
31. Turning to the assessment of the subject property, Indiana assesses real property on the basis of its true tax value, which the Department of Local Government Finance ("DLGF") has defined as the property's market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). To show a property's market value-in-use, a party may offer evidence that is consistent with the DLGF's definition of true tax value. 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 (Ind. Tax Ct. 2005). Parties may also offer evidence of actual construction costs, sales information for the property under appeal, sale or assessment information for comparable properties, and any other information compiled according to generally acceptable appraisal principles. *See Id.; see also*, I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments to determine an appealed property's market value-in-use).
32. The statutory and regulatory scheme for assessing agricultural land requires the Board to treat challenges to those assessments differently than other assessment challenges. For example, the legislature 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.

33. 2.77 acres of the subject property were assessed as agricultural. Between 2013 and 2014, the assessment for that portion of the property increased by \$500. The Respondent explained that this increase was due to a change in the agricultural base rate. In 2013, the base rate was \$1760/acre. In 2014, the base rate was raised to \$2050/acre. Given these circumstances, we find the Respondent met the burden of proof for the agricultural portion of the subject property.
34. The Respondent also had the burden of proof for the improvements and the two acres assessed as homesites. To meet this burden, the Respondent needed to present probative market-based evidence of the subject property's true tax value. The Respondent relied on the fact that she followed the Guidelines, statistical data and other assessment regulations. However, as the Tax Court has explained, strictly applying assessment regulations does not 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 offering market value-in-use evidence).
35. The Respondent also presented a sales ratio study, but 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).

36. The Respondent also offered an assessment comparison using a single comparable property. Parties may offer evidence of comparable properties to prove the value of the property under appeal, but comparability must be determined using generally accepted assessment and appraisal practices. Ind. Code § 6-1.1-15-18. Conclusory statements that a property is “similar” or “comparable” to another property are not enough. *Indianapolis Racquet Club, Inc. v. Marion County Assessor*, 15 N.E.3d 150, 155 (Ind. Tax Ct. 2014); *see also, Long*, 821 N.E.2d at 471. Instead, one must compare the relevant characteristics of the purportedly comparable properties to those for the property under appeal and explain how any differences affect the values. *Id.* at 471.
37. In the analysis, the Respondent’s witness attempted to account for differences between the subject property and the purportedly comparable property by making adjustments for agricultural land value differences, living area, partial basement versus crawl space, plumbing, heating, air conditioning, patios, roof extension, masonry stoop, grade, garage and farm buildings, but he did not adequately explain the reasons for these adjustments. In addition, given the amount of adjustments made, we do not find this single property particularly persuasive.
38. We also give little weight to the Respondent’s evidence regarding the local market. While such data could be useful for trending purposes if used correctly, such trending necessarily requires a reliable market-based estimate of true tax value from which to trend from. The Respondent did not provide such an estimate.

39. We likewise give little weight to the evidence regarding potential offers the Petitioner may have received, or his testimony regarding the appraisals. The Respondent did not demonstrate that these were reliable arms-length offers. Nor did the Respondent relate the offers or the appraisal testimony to the appropriate valuation date as required by *Long*.

40. Thus, we find the Respondent met her burden regarding the increase in the agricultural assessment, but not as to the rest of the subject property. For those reasons, the 2014 assessment of the subject property is reduced to \$88,700.¹

SUMMARY OF FINAL DETERMINATION

41. The subject property's 2014 assessment is reduced to \$88,700.

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

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

¹ To the extent any of the Petitioner's testimony could be interpreted as seeking a lower value, we find he has not met his burden of proving that value with market-based evidence.

- 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>>.