PETITIONER:
Russell E. Neukam, Petitioner

REPRESENTATIVE FOR RESPONDENT:
Marilyn S. Meighen, Meighen & Associates, P.C.

BEFORE THE
INDIANA BOARD OF TAX REVIEW

Russell E. Neukam,	)	Petition No.:	19-006-06-1-5-00019
	)		
Petitioner,	)		
	)	Parcel:	006-02290-15
v.	)		
	)	County:	Dubois
Hall Township Assessor,	)	Township:	Hall
	)		
Respondent.	)	Assessment Year:	2006

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

August 25, 2008

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:

ISSUES

1. The issue presented for consideration by the Board is whether the property should be assessed as "agricultural land" rather than "excess residential land" as the property is currently assessed.

PROCEDURAL HISTORY

2. Pursuant to Ind. Code § 6-1.1-15-1, the Petitioner, Russell E. Neukam, filed a Form 130 Petition to the Dubois County Property Tax Assessment Board of Appeals (the PTABOA) for review of the property's 2006 assessment on May 11, 2007. The PTABOA issued its determination on September 21, 2007. The Petitioner subsequently filed a Form 131 Petition to the Board to conduct an administrative review of the PTABOA's 2006 assessment on November 5, 2007.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (the ALJ), Rick Barter, held a hearing on May 29, 2008, in Jasper, Indiana.

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

For the Petitioner:

Russell E. Neukam, Petitioner

For the Respondent:

Larry Persohn, Dubois County PTABOA
Gregory Abell, Dubois County PTABOA
Natalie Jenkins, Dubois County PTABOA
Gail Gramelspacher, Dubois County Assessor

5. The Petitioner presented the following evidence:[1]

Petitioner Exhibit 1 – Color-coded map of the appealed property and surrounding properties,

[1] The Respondent's counsel objected to the Petitioner's exhibits, noting that the Petitioner failed to follow the Board's requirements concerning discovery. *Meighen argument.* Ms. Meighen contends that the county submitted its evidence and witness lists to the Petitioner in advance of the hearing in accordance with the Board's rules and requested that the Petitioner do likewise. *Id.* Ms. Meighen argued that, in light of Petitioner's failure to provide his exhibits to the Respondent in a timely manner, the exhibits should not be admitted by the Board. *Id.* The Petitioner acknowledged that he understood the requirements of the evidence exchange as detailed in the Board's Notice of Hearing. *Neukam testimony.* The Board, therefore, sustains the Respondent's objection and will not consider the Petitioner's exhibits in making its determination.

Petitioner Exhibit 2 – Property data sheet and photographs of the subject property,
Petitioner Exhibit 3 – Property data sheet, property record card, and photographs for Parcel No. 006-00041-00,
Petitioner Exhibit 4 – Property data sheet, property record card, and photographs for Parcel No. 006-01460-00,
Petitioner Exhibit 5 – Property data sheet, property record card, and photographs for Parcel No. 006-03340-00,
Petitioner Exhibit 6 – Property data sheet, property record card, and photographs for Parcel No. 006-02290-14.

6. The Respondent presented the following evidence:

Respondent Exhibit 1 – Property record card and sales disclosure for the subject property, Parcel No. 006-02290-15, dated May 4, 2000,
Respondent Exhibit 2 – Aerial photograph of the appealed property,
Respondent Exhibit 3 – Copy of Indiana Code § 6-1.1-4-13,
Respondent Exhibit 4 – Sales disclosure form for Parcel No. 006-02310-00, dated August 12, 2000,

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 and the Board's notice rescheduling the hearing, dated March 17, 2008,
Board Exhibit C – Hearing sign-in sheet.

8. The property under appeal is an unimproved residential parcel consisting of 10.12 acres located on East Indiana Route 164 in Hall Township, Dubois County, Celestine, Indiana.

9. The ALJ did not conduct an on-site inspection of the subject property.

10. For 2006, the PTABOA determined the assessed value of the property to be $50,600.

11. The Petitioner requested an assessed value of $3,000 to $5,000.

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 Ind. 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 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).

14. In making its case, the taxpayers must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Wash. 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").

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

PETITIONER'S CONTENTIONS

16. The Petitioner contends that the 2006 assessed value on the subject property is incorrect because the land is assessed as "residential excess acreage" when it should be assessed as "agricultural" land. *Neukam testimony.* According to Mr. Neukam, the land is agricultural because he had hay cut and baled once in the spring of 2006. *Id.* In response to questions from the Respondent's representative, Mr. Neukam admitted that he had not planned to raise hay on the land, but had decided to mow and have baled what was growing there because he acquired some livestock, including a steer in 2006, two lambs in 2007 and later some goats, that are kept on another parcel.[2] *Id.*

17. The Petitioner also testified that, while he had previously dabbled in farming and never identified himself as a farmer on federal tax returns, he is now getting serious about farming. *Neukam testimony.* Thus, on the advice of his accountant, Mr. Neukam plans to file paperwork with the Internal Revenue Service concerning his farming activities. *Id.* According to Mr. Neukam, he is also currently in the process of fencing the property with the assistance of a neighbor. *Id.*

18. The Petitioner argues that he should be assessed fairly and have his parcel valued as agricultural land just as the land of four of his neighbors is assessed. *Neukam testimony.*

19. Finally, the Petitioner argues that the Respondent's contention that the land was "for sale" is incorrect. *Neukam testimony.* According to the Petitioner, the parcel was listed three or four years ago when he allowed a Realtor to put a price on it of $12,000 an acre, but it did not sell. *Id.* Mr. Neukam also testified that he sold some land in 2007, but could not remember if he sold any in 2006. *Id.*

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[2] Initially Mr. Neukam testified that he only had two lambs in 2006. *Neukam testimony.* Later he testified he had a steer at that time. *Id.* Regardless, Mr. Neukam admitted that no livestock has been housed or pastured on the subject property. *Id.*

RESPONDENT'S CONTENTIONS

20. The Respondent argues that Indiana Code § 6-1.1-4-13(a) states that "land shall be assessed as agricultural land only when it is devoted to agricultural use." *Respondent Exhibit 3.* According to the Respondent, the Petitioner presented no evidence of agricultural activity in 2006 on the parcel under appeal. *Meighen testimony.*

21. The Respondent argues that an aerial photograph taken in the spring of 2007 shows no evidence of farming activity. *Meighen argument, Respondent Exhibit 2.* The Respondent's witness, Larry Persohn testified that over half of the parcel is covered in trees and another area is a pond. *Persohn testimony.* Further, much of the land is scrubland, or land not worked for several years covered in brush. *Id.* In addition, the land is too hilly, which limits its use for crop production. *Id.* Ms. Meighen argues that the fact that the Petitioner has not filed personal property tax returns for farm equipment or livestock further strengthens the argument that the land is not used for agricultural purposes. *Id.*

22. Finally, the Respondent argues that the property's assessment is correct based on its market value. *Meighen argument.* According to the Respondent, the parcel was purchased by Petitioner in 2000 for $47,500. *Respondent Exhibit 1.* Similarly, a 7.53-acre parcel of land near the appealed parcel was sold for $40,000 on August 12, 2000. *Respondent Exhibit 4.*

ANALYSIS

23. The Petitioner contends that the appealed parcel should be assessed as "agricultural" land rather than assessed as "excess residential." *Neukam testimony.* In support of his contention, Mr. Neukam testified that he had a neighbor cut and bale hay once in the spring of 2006. *Id.* The Petitioner admitted, however, that he had not "planned" to grow hay on the property at that time. *Id.* Nor had he "planted" hay on the property. *Id.* He merely arranged for a neighbor to mow and bale the existing vegetation on the parcel. *Id.*

Further, the Petitioner admitted he did not house or pasture any animals on the property and that he had not filed personal property tax returns for any farming equipment. *Id.*

24. Indiana Code § 6-1.1-4-13(a) states that that "[i]n assessing or reassessing land, the land shall be assessed as agricultural only when it is devoted to agricultural use." 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." 2002 REAL PROPERTY ASSESSMENT GUIDELINES – VERSION A, Glossary at 1 (incorporated by reference at 50 IAC 2.3-1-2). Here, the Petitioner admitted that, while he arranged to have hay cut, it was not his intention in 2006 to grow hay on the property. The Petitioner planted no crop. He pastured no animals. He simply chose to have the existing vegetation cut on the parcel. This falls well below the burden to show that the property is "devoted" to agricultural use.[3] *See Ritterskamp v. Jackson Twp. Assessor,* Petition Nos. 07-002-02-1-5-00040 and 07-002-02-1-5-00041 (March 23, 2007) ("The fact that someone cut hay on part of the property and took the hay as payment establishes little, if anything, toward the purported agricultural use of the property.") 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 Petitioner failed to raise a prima facie case that the property's classification as excess residential acreage is in error.

25. Further, the 2002 Real Property Assessment Manual (hereinafter MANUAL) defines the "true tax value" of real estate 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, for the property." 2002 REAL PROPERTY ASSESSMENT MANUAL (incorporated by reference at 50 IAC 2.3-1-2). There are three generally accepted techniques to calculate market value-in-use: the cost approach, the sales comparison approach and the income approach. The primary method

[3] The Petitioner's testimony that he is currently fencing the property for future use and that he is in the process of filing tax returns for the first time reflecting farming activities reinforces the Board's determination that in 2006 the property was not used for agricultural purposes.

for assessing officials to determine market value-in-use is the cost approach. *Id.* at 3. To that end, Indiana promulgated a series of guidelines that explain the application of the cost approach. The value established by use of the Guidelines, while presumed to be accurate, is merely a starting point. "[A]ny individual assessment is to be deemed accurate if it is a reasonable measure of "True Tax Value'...No technical failure to comply with the procedures of a specific assessing method violates this [assessment] rule so long as the individual assessment is a reasonable measure of 'True Tax Value'..." 50 IAC 2.3-1-1(d).

26. Here, by merely arguing that the property was classified incorrectly, the Petitioner restricted his argument to the methodology of his assessment. The Petitioner failed to present any market evidence to show the assessed value of the property was incorrect in 2006. The Tax Court explained how Indiana's assessment system has changed: "Simply put, 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.*" *P/A Builders & Developers, LLC v. Jennings Co. Assessor,* 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (emphasis in original). The Petitioner had the burden to present market data to establish the true tax value of the property. Mr. Neukam chose not to present such evidence. Thus, even if the Board found the property's classification to be in error, the Petitioner failed to show that the total assessment is not a reasonable measure of property's true tax value in 2006. Arguments based on strict application of the Guidelines are not enough to rebut the presumption that the assessment is correct. *O'Donnell v. Dep't. of Local Gov't. Finance,* 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *Eckerling v. Wayne Twp. Assessor,* 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006).

27. Finally, the Petitioner contends that the parcel should be assessed as "agricultural" because neighboring parcels are assessed that way. Presently, "Indiana's overhauled property tax assessment system incorporates an external, objectively verifiable benchmark -- market value-in-use." *Westfield Golf Practice Center, LLC v. Washington Township Assessor et al.,* 859 N.E.2d 396, 399 (Ind. Tax Ct. 2007). "As a result, the new

system shifts the focus from examining how the regulations were applied (i.e., mere methodology) to examining whether a property's assessed value actually reflects the external benchmark of market value-in-use." *Id.* Thus, 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, as determined by the assessor, does not accurately reflect the property's market value-in-use. *Id.* Thus, the Petitioner failed to raise a prima facie case that his property's assessment in 2006 was in error.

28. 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,* 799 N.E.2d at 1221-1222; *Whitley Products,* 704 N.WE.2d at 1119.

SUMMARY OF FINAL DETERMINATION

29. The Petitioner failed to establish that the land was classified in error. The Board finds in favor of Respondent.

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

ISSUED: _____

_____
Chairman,
Indiana Board of Tax Review

_____
Commissioner,
Indiana Board of Tax Review

_____
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.