

REPRESENTATIVES FOR PETITIONER:

David Hornback, Board Member, Faith Community Church of God
Steve Stull, Senior Pastor, Faith Community Church of God

REPRESENTATIVE FOR RESPONDENT:

Terri Boone, Huntington County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Faith Community Church of God)	Petition Nos.: 35-004-14-1-6-00001
)	35-004-15-1-5-00191-15
Petitioner,)	
)	
)	Parcel No.: 35-05-18-200-024.500-004
v.)	
)	
Huntington County Assessor,)	County: Huntington
)	
Respondent.)	Assessment Years: 2014 & 2015

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

June 6, 2016

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

PROCEDURAL HISTORY

1. Petitioner initiated its 2014 and 2015 assessment appeals with the Huntington County Property Tax Assessment Board of Appeals (“PTABOA”) on August 8, 2014, and August 14, 2015, respectively. The PTABOA issued its determination for the 2014 appeal on October 24, 2014, and its determination for 2015 on October 13, 2015. Petitioner timely filed its Form 131 petitions with the Board.
2. Ellen Yuhan, the Board’s designated administrative law judge (“ALJ”), held the hearing on March 8, 2016. Neither the Board nor the ALJ inspected the property.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. The following people were sworn as witnesses:
 - For Petitioner:
 - David Hornback, Board Member
 - Steve Stull, Senior Pastor
 - For Respondent:
 - Terri Boone, Huntington County Assessor
 - Julie Newsome, Deputy Assessor
4. Petitioner offered the following exhibits:
 - Petitioner Exhibit 1: Appeals timeline,
 - Petitioner Exhibit 2: Farming income and loan payments,
 - Petitioner Exhibit 3: Four pages from an appraisal prepared by John M. Thistlethwaite,
 - Petitioner Exhibit 4: Property record card (“PRC”) and GIS map.
5. Respondent offered the following exhibits:
 - Respondent Exhibit 1: Form 131 (2015),
 - Respondent Exhibit 2: Form 115 (2015),
 - Respondent Exhibit 3: Form 130 (2015),
 - Respondent Exhibit 4: Subject PRC (2015),
 - Respondent Exhibit 5: Certification of Agricultural Base Rates (2015),
 - Respondent Exhibit 6: Form 131 (2014),
 - Respondent Exhibit 7: Form 115 (2014),

- Respondent Exhibit 8: Letter of appeal (2014),
- Respondent Exhibit 9: Subject PRC (2014),
- Respondent Exhibit 10: Certification of Agricultural Base Rates (2014)
- Respondent Exhibit 11: Aerial photographs of subject property and soil assessment report,
- Respondent Exhibit 12: Indiana Code § 6-1.1-10-36.3,
- Respondent Exhibit 13: Forms 120 and 136.

6. The following additional items are officially recognized as part of the record:

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

7. The subject property is a church situated on 48.96 acres located at 3615 N. Norwood Road in Huntington.

8. The PTABOA determined the following assessments for the parcel under appeal:

Years	Land	Improvements	Total
2014	\$375,500	\$1,021,300	\$1,396,800
2015	\$375,500	\$ 973,000	\$1,348,500

OBJECTIONS

9. Respondent contends Petitioner did not provide copies of its exhibits before the hearing. The Board’s procedural rules require that a party to an appeal must provide other parties with a list of exhibits to be presented at the hearing at least fifteen business days before the hearing. 52 IAC 2-7-1(b)(2). Copies of documentary evidence must be exchanged at least five business days prior to the hearing. 52 IAC 2-7-1(b)(1). Failure to comply with these requirements may be grounds to exclude evidence. 52 IAC 2-7-1(f). The purpose of this requirement is to allow parties to be informed, avoid surprises, and promote an organized, efficient, and fair consideration of cases. The Board, therefore, sustains the objection and excludes Petitioner’s Exhibits 1 and 2 but notes the exclusion does not

affect the determination in this appeal. Exhibit 3 is part of the appraisal that was presented to the PTABOA.¹

10. Petitioner presented the appraisal at the PTABOA hearings for 2014 and 2015 as noted on the Form 115. The Board may waive the deadlines for materials that were submitted at the PTABOA hearing. The Board overrules Respondent's objection to Exhibit 3.
11. Respondent also objected to Petitioner's complete appraisal on the grounds that it states that the intended users are identified as those persons expected to receive or rely upon the appraisal. Accountants, legal counsel, governmental agencies, and partners or related parties to the users are not intended users.
12. Petitioner contends that the appraisal does not say that those parties listed cannot be intended users. The Board finds that the objection goes to the weight of the exhibit rather than to its admissibility. Respondent's objection is overruled.

BURDEN OF PROOF

13. 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). A burden-shifting statute creates two exceptions to that rule.
14. First, Indiana 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

¹ Respondent did not object to Petitioner Exhibit 4.

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).

15. 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 Ind. Code § 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).
16. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
17. In this case, the 2014 assessed value decreased from 2013. The ALJ made a preliminary determination that Petitioner has the burden of proof for 2014. The burden with regard to the 2015 value depends on the resolution of the 2014 matter and will be addressed in turn.

PETITIONER’S CONTENTIONS

18. According to Petitioner, there are three issues. The first issue is the exemption appeal that was denied on a technicality.² The second issue is the appraisal that Respondent’s office refused to consider. The third issue is the number of acres being taxed.

² Faith Community Church of God filed a Form 136 requesting a total exemption. The PTABOA issued a determination on June 20, 2014, granting an exemption on the improvements and 11 acres of land. The church filed the Form 132 with the Board on August 19, 2014. The Board dismissed the petition because the 45-day deadline to appeal had passed.

19. When Petitioner filed the original petition for total exemption, the PTABOA denied it because it said farmland was not exempt. Petitioner does not feel it should be taxed at all because the farm income is insignificant. Over six years, the total farm income only accounted for approximately 4.48% of the total annual mortgage and parking lot loan payments. Such an insignificant amount is not what one normally considers in terms of business income. *Hornback testimony; Pet'r Ex. 2.*

20. The farmer working the land comes from Faith Farms, LLC. Faith Farms, LLC absorbs all of the costs of planting, fertilizing, and harvesting. At the end of the year, when they sell the crop, if there is a crop, the profit is split with the church. If there is no profit, Faith Farms, LLC absorbs the loss. Petitioner contends, from that aspect, the income is really similar to a gift from Faith Farms, LLC. *Hornback testimony.*

21. Petitioner contends that the farm income could also be considered as a fundraiser. There are several organizations that have similar fundraisers such as bingo games or fish fries. One example is the 4H Club which has many fundraisers throughout the year that have nothing to do with 4H projects, yet they are still tax exempt. If the church conducted fish fries or other fundraisers, Petitioner contends it would not be taxed on those. Petitioner questions why the church is being singled out when it had been tax exempt prior to this. *Hornback testimony.*

22. In November of 2014, the church was going to have a large balloon payment due on its mortgage. Consequently, Mr. Hornback began exploring refinancing options. His objective was to consolidate the church mortgage with the parking lot loan and have one payment with a lower interest rate. The current mortgage holder, iAB, presented the best offer which was a 4% rate with a maximum of no higher than 5.25% for five years over a 15-year amortization period. The bank was also willing to consolidate the parking lot loan. There would be no balloon payment at the end of the term and the interest was lower than what Petitioner was paying, so they decided to move forward with the arrangement. *Hornback testimony.*

23. The bank ordered an appraisal and the value determination was much lower than expected. The bank withdrew its original offer. It offered a ten-year balloon payment mortgage with a fixed rate but would not consolidate the parking lot loan. *Hornback testimony; Pet'r Ex. 3; Board Ex. A.*
24. The appraisal indicated that the sales comparison approach was the only reliable approach for the valuation. The appraiser valued the property at \$900,000 (rounded) with \$713,000 allocated to the building and nine acres to primary land. He valued the remaining acreage at \$180,000. *Hornback testimony; Pet'r Ex. 3; Attachment to Board Ex. A.*
25. The PRC shows a significant increase from 2011 to 2012. The latter year was the first year that the church was assessed as taxable. Petitioner finds it disturbing that the assessed value tripled when they started to tax the church. He also contends that was the year the church had no income from farming because the crops were so bad. In response to questioning, Mr. Hornback stated that the church has been assessed since its construction in 2005.³ *Hornback testimony; Pet'r Ex. 4.*

RESPONDENT'S CONTENTIONS

26. The subject property is a 19,260 square foot church situated on 48.96 acres. Eleven acres are assigned as primary land that supports the church, related paving, and a soccer field. Twenty-two acres are valued as tillable agricultural land. The remaining land is classified as various other land types. The church is not being taxed on its income from farming. It is, however, being taxed on the agricultural portion of the land because agricultural land is not tax exempt. *Newsome testimony; Resp't Exs. 4, 9, and 10.*
27. The agricultural land is valued using the agricultural base rates mandated by the state. For 2014, the base rate for tillable land was \$2,050. For 2015, the base rate increased to \$2,420 an acre. *Newsome testimony; Resp't Exs. 5 and 10.*

³ From 2011 to 2012, the entire assessment did not triple. However, the land assessment did.

28. Respondent considered the sales comparison approach, the income approach, and the cost approach in assessing the property. Due to the unavailability of comparable properties sold, the sales comparison approach was given no weight. Similarly, due to the lack of relevant data, the income approach was given no weight.
29. Respondent ultimately relied upon the cost approach to value the property. Based on that approach, the 2014 value is \$1,396,800 and the 2015 value is \$1,348,500. *Newsome testimony; Resp't Ex. 10.*
30. Respondent has followed the guidelines set forth by the Department of Local Government Finance ("DLGF") and the Uniform Standards of Professional Appraisal Practice ("USPAP"). *Newsome testimony; Resp't Ex. 10.*
31. Respondent argues that the appraiser states that the intended users of the appraisal are identified as those persons expected to receive or rely upon the appraisal. Accountants, legal counsel, governmental agencies, and partners or related parties to the users are not intended users. *Newsome testimony; Board Ex. A.*

ANALYSIS

32. Indiana assesses real property based on its true tax value, which the 2011 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 by a similar user, from the property." 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). Evidence in a tax appeal must be consistent with that standard. For example, a market value-in-use appraisal prepared according to Uniform Standards of the Professional Appraisal Practice often will be probative. *See id.; see also, Kooshtard Property VI, LLC v. White River Township Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). A party may also offer actual construction costs, sale or assessment information for the subject or comparable properties, and any other information compiled

according to generally acceptable appraisal principles. *See Kooshtard Property VI*, 836 N.E.2d at 506; *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).

33. 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 each assessment year at issue, the valuation date was March 1 of that year. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-1-2(c).
34. Petitioner first contends that the issue of the exemption is properly before the Board. Petitioner is incorrect. Petitioner requested a total exemption of its property for 2014. The PTABOA granted an exemption on the improvements and 11 acres of land, but did not grant an exemption on the agricultural land. Petitioner had 45 days from the PTABOA determination to file a Form 132 with the Board. Petitioner failed to timely file with the Board. The Board denied the appeal and declines to revisit its denial.
35. Petitioner contends it should not be taxed on non-tillable land. The PTABOA found the agricultural land to be 100% taxable. The land is assessed according to the guidelines using the statewide base rate with appropriate productivity factors and influence factors applied where applicable. There is no provision in the Indiana Code that allows the non-exempt, non-tillable land to be excused from payment of taxes. Rather, non-tillable land may be entitled to a negative influence factor. *See* GUIDELINES CH. 2, p. 89.
36. Petitioner contends the property is overvalued. Petitioner offered an appraisal conducted by Mr. Thistlethwaite, a certified appraiser, performed in accordance with USPAP. Mr. Thistlethwaite estimated the subject property's value at \$900,000 as of April 23, 2014. An appraisal performed in conformance with generally recognized appraisal principles is

often enough to establish a prima facie case that a property's assessment is overvalued. *See Meridian Towers*, 805 N.E.2d at 479.

37. In Indiana, agricultural land is treated differently than other types of land. 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* I.C. § 6-1.1-4-4.5(e) (directing the DLGF to use a six-year, instead of a four-year, rolling average and to eliminate from the calculation the year for which the highest market value-in-use is determined). 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. Thus, the appraisal is not relevant in determining the value of the agricultural land.
38. Petitioner failed to prove the assessment was incorrect and failed to establish a prima facie case for a reduction in the 2014 assessed value. Where a petitioner has not supported his claim with probative evidence, a respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).
39. The Board now turns to the 2015 assessment. For 2015, the assessment decreased. Petitioner, therefore, had the burden of proof to show the assessment was incorrect. Petitioner presented the same evidence for 2015 as it did for 2014 and failed to prove the 2015 assessment was incorrect.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Board determines that the assessed values of Petitioner's property for the March 1, 2014, and March 1, 2015 assessments should not be changed.

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 within 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 Rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.