

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

**Petition:** 48-026-16-1-1-00717-17  
**Petitioner:** H&B Mays Farms LLC  
**Respondent:** Madison County Assessor  
**Parcel:** 48-04-10-800-001.000-026  
**Assessment Year:** 2016

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

**PROCEDURAL HISTORY**

1. H&B Mays Farms LLC contested the 2016 assessment of its property located at 0 1300 North in Elwood. The Madison County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination valuing the agricultural land as follows:  

2016: Land: \$95,800	Improvements: \$0	Total: \$95,800
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2. H&B filed a Form 131 petition with the Board, and elected to proceed under our small claims procedures. On October 31, 2018, Joseph Stanford, our designated administrative law judge (“ALJ”) held a hearing on the petition. Neither he nor the Board inspected the property.
3. H&B appeared by Jeffrey V. Mays. The Assessor appeared by Ayn K. Engle, attorney. The following people were sworn as witnesses: Mays, Roger R. Mays, and Larry Perry, a coordinator for Nexus Group.<sup>1</sup>

**RECORD**

4. The official record contains the following:

a) Exhibits:

Petitioner Exhibit 1:	Flood plain map
Petitioner Exhibit 2:	Aerial photograph of the subject property
Petitioner Exhibit 3:	Soil ID map
Respondent Exhibit A:	Form 131 petition
Respondent Exhibit B:	Form 130 petition

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<sup>1</sup> Attorney Brian Cusimano was present, but he did not participate in the hearing.

- Respondent Exhibit C: 2015 and 2016 property record cards for the subject property
- Respondent Exhibit D: Federal Emergency Management Agency (“FEMA”) maps; definitions of FEMA flood zone designations
- Respondent Exhibit E: Soil ID maps
- Respondent Exhibit F: Aerial photographs of the subject property
- Respondent Exhibit G: Photographs of the subject property
- Respondent Exhibit H: Selection from Chapter 2 of the Real Property Assessment Guidelines
- Respondent Exhibit I: Department of Local Government Finance (“DLGF”) memorandums regarding Certification of Agricultural Land Base Rate Value for Assessment Year 2016 and Legislative Changes Affecting the Assessment of Agricultural Land and Excess Residential Land
- Respondent Exhibit J: DLGF’s Reference Materials for Valuing Agricultural Land for January 1, 2016

- b) The record also includes the following: (1) all pleadings, briefs, motions, and documents filed in this appeal; (2) all notices and orders issued by the Board or our ALJ; and (3) an audio recording of the hearing.

**BURDEN OF PROOF**

- 5. Generally, a taxpayer seeking review of an assessing official’s determination has the burden of proof. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances—where the assessment under appeal represents an increase of more than 5% over the prior year’s assessment, or where it is above the level determined in a taxpayer’s successful appeal of the prior year’s assessment. I.C. § 6-1.1-15-17.2(b) and (d).
- 6. Here, the Assessor conceded that he bears the burden of proof because the assessment increased by more than 5% from 2015 to 2016.

**SUMMARY OF CONTENTIONS**

- 7. The Assessor’s case:
  - a) Indiana assesses agricultural land according to DLGF guidelines. The DLGF determines the base rate for agricultural land and the productivity factors for the different soil types. The State of Indiana provides assessors with soil ID maps and satellite imagery, which the assessors use to measure the different soil types and the amount of tillable land. *Perry testimony; Resp’t Exs. E, F, H.*
  - b) The assessment for H&B’s 51.1-acre farm increased from 2015 to 2016 because the Assessor accounted for more soil types and changed approximately 17 acres of land from untillable to tillable. *Perry testimony; Resp’t Ex. C.*

- c) Prior to 2016, the Assessor assessed approximately 22 acres of H&B's property as non-tillable, but satellite imagery reviewed for the 2016 assessment showed that H&B farms all but about 5 acres. *Perry testimony; Resp't Exs. C, F.*
  - d) For 2016, the base rate for agricultural land was \$1,960 per acre. The Assessor used that base rate, along with the soil ID map and corresponding productivity factors to assess H&B's property. The untilled land, the creek, and the public road received negative influence factors of 60%, 40%, and 100%, respectively. *Perry testimony; Resp't Exs. C, E, H, I, J.*
  - e) The Assessor correctly assessed H&B's property. The Assessor valued H&B's property in accordance with the DLGF's Real Property Assessment Guidelines and reference materials for 2016, applying the appropriate base rate and soil productivity factors to both the tilled and untilled areas. *Engle argument.*
8. H&B's case:
- a) H&B's assessment for this property went up in 2016, while assessments on its other properties went down. H&B did not change the amount of land it farmed in 2016. The Assessor had never told the Mays that there was an error regarding the amount of tillable land assessed. *J. Mays testimony; R. Mays testimony.*
  - b) Three-quarters of the property is in a flood plain. When the property floods, it brings in a lot of debris. When floodwaters recede, there is a layer of sand and silt left behind that cuts off oxygen to the soil and reduces its productivity. In May 2017, the entire field had to be re-planted because of a flood. *J. Mays testimony; Pet'r Ex. 1.*
  - c) In any event, the soil contains a lot of rock and is not very productive. In 2017, the corn yield was 158 bushels per acre. On another farm H&B owns in the Elwood area, the corn yield in 2018 was 244 bushels per acre. It is difficult to understand how soil types and productivity can be determined from a satellite. *J. Mays testimony; Pet'r Ex. 3.*

#### ANALYSIS

9. 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.

10. As explained above, the Assessor has the burden of proof. In order to meet that burden, the Assessor must show that he correctly applied the Guidelines in determining the property's assessment.
11. The Assessor walked us through the process he used to determine the amount of H&B's acreage that is tillable and non-tillable and the soil productivity factors he found applicable to each soil type. He also described how he calculated the 2016 assessment using the 2016 base rate supplied by the DLGF, the applicable soil productivity factors, and the negative influence factors applicable to the non-tillable acreage. Because the Assessor provided evidence that he correctly applied the Guidelines, we find that he made a prima facie case supporting the current assessment.
12. For its part, H&B argued that it was farming the same number of acres it always had, and therefore questioned why the assessment suddenly increased in 2016. But H&B did not argue that the assessment was based on incorrect acreage calculations. In fact, H&B confirmed that it farms most of the property. While it appears that H&B may have benefitted from an error related to the amount of tillable land in assessment years before 2016, H&B failed to show that the Assessor erred in estimating the amount of tillable and non-tillable acreage used to calculate the 2016 assessment.
13. H&B also argued that sand and silt left behind by flooding reduces the property's soil productivity, but H&B failed to demonstrate that damaging floods occur more than two times in a ten-year period, which is the minimum frequency that requires the application of an influence factor to tillable land affected by flooding. *See* 2011 GUIDELINES, CH. 2 at 88-89. Similarly, H&B failed to show that the U.S. Department of Agriculture has designated its tillable land as farmed wetlands. *See Id.*
14. H&B's argument regarding reduced productivity attributable to the rocky nature of the property's soil fails no better. Assessors do not use satellite imagery to determine the soil productivity factors themselves; they simply review the soil ID maps and apply the predetermined productivity factors for each particular soil type to the applicable portion of land. And the soil productivity factors are based on average corn yield estimates over a 10-year period, not actual yields. *See* 2011 GUIDELINES, CH. 2 at 95-96. Thus, the actual yields produced by H&B's property in any given year are not controlling. We also note that H&B did not argue that the Assessor applied the wrong productivity factor for any of its particular soil types.
15. The Assessor made a prima facie case that the property's 2016 assessment is correct. Because H&B failed to rebut the Assessor's case, it is not entitled to a reduction.

**FINAL DETERMINATION**

In accordance with the above findings of fact and conclusions of law, we find for the Assessor and order no change to the property's 2016 assessment.

ISSUED: April 10, 2019

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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

**- 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>>.