

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

**Petition #:** 07-006-02-1-5-00171  
**Petitioners:** Ken and Barbara Tuxhorn  
**Respondent:** Hamblen Township Assessor (Brown County)  
**Parcel #:** 0040593000  
**Assessment Year:** 2002

The Indiana Board of Tax Review (Board) issues this determination in the above matter, and finds and concludes as follows:

**Procedural History**

1. The Petitioners initiated an assessment appeal with the Brown County Property Tax Assessment Board of Appeals (PTABOA) by written document dated May 31, 2005.
2. The PTABOA mailed notice of its determination on August 10, 2005.
3. The Petitioners initiated an appeal to the Board by filing a Form 131 petition with the Brown County Assessor on September 12, 2005. The Petitioners elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated April 21, 2006.
5. The Board held an administrative hearing on June 1, 2006, before the duly appointed Administrative Law Judge Alyson Kunack.
6. Persons present and sworn in at hearing:
  - a) For Petitioners: Barbara Tuxhorn, Owner  
Ken Tuxhorn, Owner
  - b) For Respondent: Frank Kelly, Nexus Group

**Facts**

7. The subject property consists of seventy-six (76) acres of land classified as residential excess acreage, as is shown on the property record card for parcel #0040593000. The property record card shows a property address of Beanblossom-Gatesville Road. The Petitioners testified that the property is closest to Bear Wallow Road, Nashville.

8. The Administrative Law Judge (ALJ) did not conduct an inspection of the property.
9. Assessed value of subject property as determined by the PTABOA:  
Land \$77,300.
10. Assessed value requested by Petitioners on the Form 131 petition:  
The Petitioners wrote “perhaps original purchase price” in the space designated for the Petitioners to provide their requested value.

### **Issue**

11. Summary of Petitioners’ contentions in support of alleged error in assessment:
  - a) The subject property consists of seventy-six (76) acres of forest. *K. Tuxhorn testimony*. The subject property is landlocked. *Id.* The property contains the third highest hill in the State of Indiana and the second highest hill in Brown County. *Id.* In addition, the terrain is rugged, and it is not suitable for farming or residential development. *B. Tuxhorn testimony*.
  - b) The Petitioners bought the subject property in 1987 to protect and preserve two hiking trails - the Yellowwood Trail and American Heritage Trail – that pass through the property. *K. Tuxhorn testimony*. Mr. Tuxhorn founded a trail system under the name of Outdoor Educational Activities, which is a nonprofit organization. *Id.* The Petitioners operate an outdoor education program and hiking trails on the subject property. *Id.*
  - c) The subject property was classified as woodlands in the prior assessment. *K. Tuxhorn testimony; Pet’rs Ex. 2*. Pursuant to the 2002 general reassessment, however, the Respondent classified the property as residential excess acreage. *Id.* The Petitioners do not believe that the subject property should be valued as residential excess acreage given that there is no house on the property, just trees. *Id.*
  - d) The taxes on the subject property changed from \$82 to \$1,257, which amounts to an increase of 2500% from the previous assessment. *K. Tuxhorn testimony*. Similarly, the assessed value changed from \$4,000 to \$128,800, which represents an increase of 3,200%. *Id.* Although the PTABOA reduced the assessment to \$77,300, that still represents a substantial increase over the previous assessment. *Id.*
  - e) Had the Petitioners known in 2002 that the taxes on the subject property would be so high, they would have filed an application to have the property classified as forest land. *K. Tuxhorn testimony*. The Petitioners did not know until 2005 what the taxes on the subject property were going to be. *Id.* By that time, it was too late to apply to have the subject property classified as forest land for 2002 through 2005. *Id.* The Petitioners filed such an application for 2006, and the subject property currently is classified as forest land. *Id.*

- f) The system for payment of property taxes creates an unfair burden on taxpayers. *K. Tuxhorn argument*. Paying two years of taxes in 2005 and two years of taxes in 2006 is a financial hardship for many taxpayers. *Id.* Less than thirty (30) days after receiving the tax statement in April 2005, payment for a full year of taxes was due. *Id.*

12. Summary of the Respondent's contentions in support of the assessment:<sup>1</sup>

- a) In an appeal before the Board, a Petitioner must establish a prima facie case as to the market value-in-use of its property as of January 1, 1999. *Kelly argument*. The Petitioners did not present any evidence of market value. *Id.* Because the Petitioners failed to establish a prima facie case, the burden never shifted to the Respondent to rebut or impeach the Petitioners' evidence. *Id.*
- b) The Petitioners had the opportunity to enter the classified forest program but did not do so. *Kelly testimony*. The Petitioners similarly had the opportunity to designate the property as a "not for profit" in order to qualify for an exemption. *Id.* Once again, the Petitioners chose not to do so. *Kelly testimony*.
- c) There is no evidence that the Petitioners use the subject property for agricultural activity such as logging or farming. *Kelly testimony*.
- d) Tax rates are based on the total assessed value of property within each taxing jurisdiction. *Kelly testimony*. Any reduction in the Petitioners' assessment will result in the tax burden shifting to other property owners. *Id.*
- e) The Indiana General Assembly had the opportunity to address the large increases in property taxes resulting from the 2002 general reassessment. *Kelly argument*. It could have placed caps or ceilings on increases, but it chose not to do so. *Id.* Assessors do not have the authority to place caps or ceilings on tax increases. *Id.*

### Record

13. The official record for this matter is made up of the following:

- a) The Form 131 petition.
- b) The recording of the hearing.
- c) Exhibits:

Petitioners Exhibit 1: Reassessment Time Line 1999 - 2005

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<sup>1</sup> The Board sets forth contentions made by Frank Kelly purportedly on behalf of the Respondent. As explained, *infra*, however, the Board grants the Petitioners' objection to Mr. Kelly's appearance on behalf of the Respondent, and the Board will not consider Mr. Kelly's testimony and argument in making its determination.

Petitioners Exhibit 2: Property record cards (PRCs) for the subject property before and after the reassessment  
Petitioners Exhibit 3: Plight of Woodland Land Owners - Letters to the Editor from the *Brown County Democrat*  
Petitioners Exhibit 4: Form 130 filed May 31, 2005  
Petitioners Exhibit 5: Notice of PTABOA hearing on petition dated July 8, 2005  
Petitioners Exhibit 6: Form 115 dated August 10, 2005  
Petitioners Exhibit 7: Form 131 filed September 12, 2005  
Petitioners Exhibit 8: Notice of hearing  
Petitioners Exhibit 9: Form 130 filed January 12, 2006 (*for March 1, 2003 assessment date*)

Respondent: No Exhibits presented

Board Exhibit A: Form 131 petition  
Board Exhibit B: Notice of Hearing  
Board Exhibit C: Hearing Sign In Sheet

d) These Findings and Conclusions.

### Analysis

14. The most applicable governing cases are:
- a) 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).
  - b) 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 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”).
  - c) 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.

### Petitioners' Objection to the Appearance of Frank Kelly for the Respondent

15. The Petitioners objected to Mr. Kelly's appearance on behalf of the Respondent in this matter. *K. Tuxhorn objection*.<sup>2</sup> Mr. Kelly responded that the Hamblen Township Assessor was out-of-town and asked him to attend the hearing on her behalf. *Kelly testimony*.
16. A party may appear by authorized representative pursuant to the Board's procedural rules. Ind. Admin. Code tit. 52, r. 2-3-2; Ind. Admin. Code tit. 52, r. 3-1-4. The representative, however, must file with the Board written notice of his or her authorization to represent the party. *Id.* Moreover, because Mr. Kelly is neither an elected or appointed official nor an employee of any local unit of government, he could only represent the Respondent in his capacity as a certified tax representative. *See* 52 IAC 1-1-6 (stating that the term "tax representative means a person who represents another person at a proceeding before the board under IC 6-1.1-15," but does not include "representatives of local units of government appearing on behalf of the unit as the authorized representative of another unit."). Mr. Kelly, however, did not file a power of attorney with the Board as required for tax representatives. 52 IAC 2-3-2; 52 IAC 3-1-4. In fact, Mr. Kelly did not file any written notice of appearance whatsoever.
17. The Board therefore grants the Petitioners' objection to Mr. Kelly's appearance at the hearing as the representative of the Respondent. Because the Respondent did not otherwise appear at the hearing to proffer Mr. Kelly's testimony, the Board will not consider any testimony or argument offered by Mr. Kelly on behalf of the Respondent.

### Merits of Petitioners' Claims

18. The Petitioners did not provide sufficient evidence to support their claim for a reduction in assessment. The Board reaches this conclusion for the following reasons:
  - a) The 2002 Real Property Assessment Manual ("Manual") defines the "true tax value" of real property 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 at 2 (incorporated by reference at 50 IAC 2.3-1-2). As set forth in the Manual, 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. In Indiana, assessing officials primarily use the cost approach, as set forth in the Real Property Assessment Guidelines for 2002 – Version A ("Guidelines"), to assess real property.
  - b) A property's market value-in-use, as ascertained through application of the Guidelines' cost approach, is presumed to be accurate. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005) *reh'g den. sub nom. P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind.

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<sup>2</sup> While Mr. Tuxhorn did not use the term "object," he clearly contested Mr. Kelly's appearance at the hearing in the place of the Respondent.

Tax 2006). A taxpayer, however, may offer evidence to rebut that presumption, as long as such evidence is consistent with the Manual's definition of true tax value. MANUAL at 5. Thus, appraisals prepared in accordance with the Manual's definition of true tax value may be used to rebut the presumption that an assessment is correct. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1 (“[T]he Court believes (and has for quite some time) that the most effective method to rebut the presumption that an assessment is correct is through the presentation of a market value-in-use appraisal, completed in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP).”). A taxpayer may also rely upon sales information regarding the subject or comparable properties and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.

- c) The Petitioners did not offer any of the market-based types of evidence recognized by the Manual and the Tax Court as being relevant to establish the true tax value of real property. For example, the Petitioners testified that the subject property is “landlocked,” that it has rugged terrain, and that it is situated on the third highest hill in Indiana. *See K. Tuxhorn testimony; B. Tuxhorn testimony*. Those factors may well detract from the market value of the subject property. Unfortunately, the record is devoid of evidence from which to quantify the degree to which those factors detract from the property's value. Moreover, the Petitioners' evidence regarding the physical features of the land is limited to their vague testimony. The Petitioners did not present photographs, maps or other documentary evidence to demonstrate the degree to which the terrain is rugged or to illustrate the lack of access.
- d) The Petitioners do make at least one argument, which if successful, would supply a means by which to quantify the value of the subject property. The Petitioners contend that the subject property should be classified as agricultural woodland with a negative influence factor of 80%.
- e) The Indiana General Assembly has directed the Department of Local Government Finance (DLGF) to establish rules for determining the true tax value of agricultural land. Ind. Code § 6-1.1-4-13(b). The DLGF, in turn, established a base rate of \$1050 to be used in assessing agricultural land across the State of Indiana. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, ch. 2 at 98-99(incorporated by reference at 50 IAC 2.3-1-2).<sup>3</sup> The Real Property Assessment Guidelines for 2002 – Version A (Guidelines) direct assessors to adjust the base rate using soil productivity factors developed from soil maps published by the United States Department of Agriculture. *Id.* at 105-06. The Guidelines further require assessors to classify agricultural land-use types, some of which call for the application of negative influence factors in pre-determined amounts. *Id.* at 102-05. One such classification is “woodland (land type 6),” which the Guidelines describe as “land supporting trees

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<sup>3</sup> The Guidelines originally were promulgated by the State Board of Tax Commissioners (State Board). The Indiana General Assembly abolished the State Board as of December 31, 2001. 2001 Ind. Acts 198 § 119(b)(2). Effective January 1, 2002, the General Assembly created the DLGF. *See* Ind. Code § 6-1.1-30-1.1 (West Supp. 2005-06)(eff. 1-1-02); 2001 Ind. Acts 198 § 66. The DLGF incorporated the Manual into its administrative regulations by reference. Ind. Admin. Code tit. 50 r. 2.3-1-2.

capable of producing timber or other wood products” that has “50% or more canopy cover or is a permanently planted reforested area.” *Id.* at 104. The Guidelines direct assessors to apply an 80% influence factor deduction to woodland. *Id.*

- f) Only land actually devoted to agricultural use, however, may be assessed under the DLGF’s rules for assessment of agricultural land. Ind. Code § 6-1.1-4-13(a). Thus, in order to rely upon the base rate and negative influence factors for agricultural woodland set forth in the Guidelines, the Petitioners were required to demonstrate that they used the subject property for agricultural purposes as of the March 1, 2002, assessment date. Mr. Tuxhorn testified that the Petitioners operate an outdoor education facility and operate hiking trails on the subject property. *K. Tuxhorn testimony*. He did not testify that the Petitioners harvested timber or conducted any other agricultural activities on the property.
- g) Nevertheless, the Petitioners apparently argue that they need not demonstrate that they actually devoted the subject property to an agricultural use as of the March 1, 2002, assessment date because the Respondent classified the subject property as agricultural woodland in prior assessments. Each assessment and each tax year, however, stands alone. *Fleet Supply, Inc. v. State Bd. of Tax Comm’rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001). Thus, evidence as to a property’s assessment in one tax year is not necessarily probative of its true tax value in a different year. *See, id.* (“[E]vidence as to the Main Building’s assessment in 1992 is not probative as to its assessed value three years later.”). That is particularly true where, as here, the change in assessment stems from a property being revalued in conjunction with the 2002 general reassessment. Prior to the 2002 general reassessment, true tax value was simply the value determined by applying regulations promulgated by the State Board of Tax Commissioners. *Commonwealth Edison*, 820 N.E.2d at 1224. For the 2002 general reassessment, however, true tax value is defined 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.” MANUAL at 2; *see also, Commonwealth Edison*, 820 N.E.2d at 1224.
- h) At best, the prior assessment might be viewed as some indication either that the Petitioners actually harvested trees or otherwise devoted the subject property to an agricultural use in the past or that the Respondent previously valued the land as agricultural despite the absence of such activity. It does not demonstrate that the Petitioners devoted the subject property to an agricultural use as of the relevant assessment date of March 1, 2002.
- i) Mr. Tuxhorn also testified that the subject property is now “classified forest,” but that the Petitioners did not apply to have the land so classified until 2006. *See K. Tuxhorn testimony*. Mr. Tuxhorn apparently was referring to the “native forest” or “forest timberland” classifications described in Ind. Code § 6-1.1-6-2 and Ind. Code § 6-1.1-6-3. Land in those classifications is assessed at the rate of \$1 per acre. Ind. Code § 6-1.1-6-14. In order for land to receive such favorable treatment, however, the owner must apply to the state forester for its land to be classified and it must abide by

limitations on its use and management. *See* Ind. Code § 6-1.1-6-3.5; Ind. Code § 6-1.1-6-11; Ind. Code § 6-1.1-6-16. Favorable tax treatment, therefore, is not retroactive.

- j) Finally, the Petitioners contend that the dramatic increase in their tax liability and the system for the payment of taxes is unfair. *See K. Tuxhorn argument*. The Board, however, lacks the authority to address the “fairness” of the system of taxation established by the Indiana General Assembly. The Petitioners should address their concerns regarding the propriety of existing laws and administrative rules to the appropriate bodies.

### **Conclusion**

- 19. The Petitioners failed to make a prima facie case. The Board finds in favor of Respondent.

### **Final Determination**

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now determines that the assessment should not be changed.

ISSUED: \_\_\_\_\_

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Commissioner,  
Indiana Board of Tax Review



## IMPORTANT NOTICE

### - Appeal Rights -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <<http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Trial Rules are available on the Internet at <[http://www.in.gov/judiciary/rules/trial\\_proc/index.html](http://www.in.gov/judiciary/rules/trial_proc/index.html)>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>.