

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

**Petition #:** 02-041-02-1-4-00894  
**Petitioner:** Lawrence E. Miller  
**Respondent:** Adams Township Assessor (Allen County)  
**Parcel #:** 02-13-11-404-002.000-041  
**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 Petitioner initiated an assessment appeal with the Allen County Property Tax Assessment Board of Appeals (“PTABOA”) on May 7, 2004.
2. The PTABOA issued its decision on May 3, 2005.
3. The Petitioner filed a Form 131 Petition to the Indiana Board of Tax Review for Review of Assessment (“Form 131 petition”) on June 1, 2005. The Petitioner elected to have this case heard in small claims.
4. The Board originally scheduled a hearing on the Petitioner’s appeal for March 13, 2007. At that hearing, however, the Petitioner requested that the Board inspect the subject property. With the parties’ agreement, Alyson Kuncak, the Board’s duly designated Administrative Law Judge (“ALJ”), continued the hearing to allow for such an inspection. In a March 19, 2007, letter, however, the Petitioner withdrew his request for a property inspection and the Board rescheduled a hearing for May 10, 2007.
5. The ALJ held an administrative hearing on May 10, 2007.
6. F. John Rogers appeared as counsel for the Respondent.
7. Persons present and sworn in at hearing:
  - a) For Petitioner: Lawrence E. Miller, Petitioner
  - b) For Respondent: Teresa West, Adams Township Assessor’s Office<sup>1</sup>

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<sup>1</sup> Debbie Thomas was also present for the Respondent, but chose not to be sworn and did not present testimony.

## Facts

8. The subject land is classified as commercial, and it contains three structures — a residence that the Petitioner leases, a detached garage, and a building that the Petitioner uses for his automobile-sales business. The property is located at 104 – 112 State Road 930 East, New Haven.
9. The ALJ did not inspect the subject property.
10. The PTABOA assessed the subject land at \$12,000 and the improvements at \$33,600 for a total assessed value of \$45,600.
11. The Petitioner did not request a specific value.

## Issue

12. Summary of the Petitioner's contentions:
  - a) The subject property is "being taxed with abusive discretion." *Miller argument; Board Ex. A.* The PTABOA reduced the subject home's condition rating from "average" to "fair." The PTABOA, however, did not comply with the Petitioner's request to inspect the home, even though the PTABOA had agreed to do so. *Miller testimony; Pet'r Exs. 2, 3, 8.* The Petitioner believes that the home's condition rating should be further reduced to "poor." *Miller argument.* To support his contention, the Petitioner submitted photographs of the property showing deterioration in several places on the home and garage. *Pet'r Ex. 9.*
  - b) The Petitioner submitted a property record card and photographs of a nearby home owned by Herbert and Mary Weisenburger that he contends is comparable to the subject home. According to the Petitioner, the Weisenburgers' home is equivalent to the subject home in terms of condition, location and use and has approximately 30% more living space than the subject home. *Miller testimony; Pet'r Exs. 5, 11.* Also, the Weisenburgers' home has an attached garage as compared to the subject property's detached garage. The total assessed value of the subject home and garage is \$26,100, whereas the Weisenburgers' home and garage are assessed for a total of \$15,700. *Miller testimony; Pet'r Exs. 5, 11.*
  - c) As a result of the 2002 reassessment, the subject property's land value increased from \$10,500 to \$12,000, and the total improvement value increased from \$20,600 to \$33,600. *Miller testimony.* The Petitioner submitted assessment data from 1995, 1998, and 2000 to relate his evidence back to 1999. *Miller testimony; Pet'r Ex. 6.*

13. Summary of the Respondent's contentions in support of the assessment:
- a) The subject land is assessed as commercial due to its zoning, location and the commercial use of one of the three buildings on the property. The home and garage are assessed as residential. *West testimony; Resp't Exs. 7, 8, 10.*
  - b) The Respondent argues that the Weisenburgers' property is not comparable to the subject property because the Weisenburgers' property is zoned for residential use, while the subject property is zoned for commercial use. *West testimony and argument; Resp't Ex. 6.*
  - c) The Petitioner failed to overcome the presumption that the Respondent's assessment is correct. In fact, the Petitioner failed to even discuss value, focusing instead on the Respondent's methodology in applying the Real Property Assessment Guidelines for 2002 – Version A (“Guidelines”). *West and Rogers argument; Resp't Exs. 1, 7-9.*

### **Record**

14. The official record for this matter is made up of the following:
- a) The Form 131 petition.
  - b) The digital recording of the hearing.
  - c) Exhibits:
    - Petitioner Exhibit 1: Form 131 Petition and attachments
    - Petitioner Exhibit 2: Minutes of the PTABOA hearing
    - Petitioner Exhibit 3: Form 115
    - Petitioner Exhibit 4: Property Record Card (PRC) for subject property
    - Petitioner Exhibit 5: PRC for parcel 02-13-11-405-001.000-041
    - Petitioner Exhibit 6: Previous years' assessment data
    - Petitioner Exhibit 7: none submitted<sup>2</sup>
    - Petitioner Exhibit 8: PTABOA Findings and Conclusions
    - Petitioner Exhibit 9: Photographs of subject property
    - Petitioner Exhibit 10: Photographs of parcel 02-13-11-405-001.000-041
    - Petitioner Exhibit 11: Comparison of subject and parcel 02-13-11-405-001.000-041 structures, and statement of issues
    - Petitioner Exhibit 12: Complete PRC for subject property
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- Respondent Exhibit 1: Township position statement
  - Respondent Exhibit 2: PRC for parcel 02-13-11-404-001.000-041
  - Respondent Exhibit 3: PRC for parcel 02-13-11-404-002.000-041
  - Respondent Exhibit 4: PRC for parcel 02-13-11-404-003.000-041

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<sup>2</sup> The Petitioner chose not to submit Petitioner Exhibit 7 at the hearing.

Respondent Exhibit 5: PRC for parcel 02-13-11-404-004.000-041  
Respondent Exhibit 6: PRC for parcel 02-13-11-405-001.000-041  
Respondent Exhibit 7: Aerial photograph showing subject property  
Respondent Exhibit 8: Aerial photograph showing parcel 02-13-11-405-001.000-041  
Respondent Exhibit 9: *Kooshtard Property VI, LLC*, Cause No. 49T10-0412-TA-57, and *Thomas and Kathy O'Donnell*, Cause No. 49T10-0510-TA-79  
Respondent Exhibit 10: Close-up aerial photo graph of subject property

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

15. The most applicable governing cases are:

- a) A petitioner seeking review of an assessing official's determination 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.

16. The Petitioner did not provide sufficient evidence to support his contentions. 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 2 (incorporated by reference at 50 IAC 2.3-1-2). As related in the Manual, the appraisal profession

traditionally has used three methods to determine a property's market value: the cost, sales-comparison and income approaches. *Id.* at 3, 13-15. In Indiana, assessing officials generally assess real property using a mass appraisal version of the cost approach, as set forth in the Guidelines.

- b) A property's market value-in-use, as determined by applying 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. Tax 2006). But a taxpayer may offer evidence to rebut that presumption, provided such evidence is consistent with the Manual's definition of true tax value. MANUAL at 5. An appraisal prepared in accordance with the Manual's definition of true tax value generally will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also rely upon sales information for the subject or comparable properties and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.
- c) By contrast, a taxpayer does not rebut the presumption that an assessment is correct simply by contesting the methodology the assessor used to compute the assessment. *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). Instead, the taxpayer must show that the assessor's methodology yielded an assessment that does not accurately reflect its property's market value-in-use. *Id.*
- d) Here, the Petitioner submitted none of the types of market-based evidence that the Manual and Tax Court contemplate as being relevant to rebut the presumption that an assessment is correct. Instead, the Petitioner based his case largely on his claim that the subject home and garage should receive a lower condition rating. The Petitioner's claim, however, misses the point of the new assessment system because it focuses solely on methodology, rather than addressing whether the subject property's assessment reflects its market value-in-use.
- e) The Petitioner did present assessment information for the Weisenburgers' home and garage, which he contends are superior to the subject home and garage but are assessed for less. At most, however, one might argue such evidences shows that one of the two properties is incorrectly assessed. But it does nothing to show which one.
- f) Finally, the Petitioner points to what he characterized as the drastic increase in his improvements' assessment in 2002. *Miller testimony*. 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 of 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 changes in assessment stem from the property being

revalued in conjunction with the 2002 general reassessment. Indiana law changed dramatically between the 1995 general reassessment, which provided the rules upon which the subject property's prior assessments were based, and the 2002 general reassessment. Before the 2002 general reassessment, true tax value was simply the value determined by applying regulations promulgated by the State Board of Tax Commissioners. *Indiana Dep't of Local Gov. Fin. v. Commonwealth Edison Co.*, 820 N.E.2d 1222, 1224 (Ind. 2005). True tax value, however, is now 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.

- g) Based on the foregoing, the Petitioner failed to establish a prima facie case for a change in assessment.

### **Conclusion**

- 17. The Petitioner failed to make a prima facie case. The Board finds therefore finds for the 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

- 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>