

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

**Petition:** 06-005-02-1-5-00001  
**Petitioner:** Charles M. Brown  
**Respondent:** Eagle Township Assessor (Boone County)  
**Parcel:** 003-02222-32  
**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 Boone County Property Tax Assessment Board of Appeals (PTABOA) by filing a Form 130 on September 8, 2003.
2. The PTABOA mailed notice of its decision on July 13, 2007.
3. The Petitioner appealed to the Board by filing a Form 131 on August 8, 2007. He elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing dated November 13, 2007.
5. Administrative Law Judge Paul Stultz held an administrative hearing for this appeal in Lebanon on December 13, 2007.
6. The following persons were present and sworn as witnesses at the hearing:  
For the Petitioner - Charles M. Brown,  
For the Respondent - Lisa Garoffolo, County Assessor,  
Dan Spiker, assessment contractor,  
Charles Ewing, PTBOA member.

**Facts**

7. In 2002, the subject property consisted of 1.52 acres of vacant residential land located at 9563 Irishman's Run Lane in Zionsville. A dwelling was added subsequently. It first shows on the property record card for the 2003 assessment.
8. The Administrative Law Judge did not conduct an inspection of the property.

9. The PTABOA determined the assessed value of the land is \$114,600.
10. The Petitioner claims the assessed value should be \$83,500.

### **Contentions**

11. The Petitioner contends the subject property was not assessed correctly according to the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 - VERSION A (incorporated by reference at 50 IAC 2.3-1-2). The Petitioner argues that the influence factor of negative 20% is insufficient. He contends the subject property should have a negative 41.44% influence factor applied to both the base acreage and the excess acreage. *Brown testimony.*
12. The Respondent contends the subject property is assessed correctly. The Respondent asserts that the Petitioner's purchase price of \$115,000 on February 16, 2001, supports the current assessment of \$114,600 and it takes into account the deficiencies of the property. *Spiker testimony; Resp't Ex. 3.*

### **Record**

13. The official record includes the following:
  - a. The Petition,
  - b. A digital recording of the hearing,
  - c. Exhibits:
    - Petitioner Exhibit 1: Property record card,
    - Petitioner Exhibit 2: Form 11 R/A, Form 130 and Form 133,
    - Petitioner Exhibit 3: Page 28 from the Guidelines,
    - Petitioner Exhibit 4: Page 74 from the Guidelines,
    - Petitioner Exhibit 5: Platted map of subject property,
    - Petitioner Exhibit 6: Copy of fees and payment of legal drain,
    - Petitioner Exhibit 7: Three photos of subject property,
    - Petitioner Exhibit 8: Copy of Indiana Code 14-28-1-20,
    - Petitioner Exhibit 9: Page 42 of Declaration of Covenants and Restrictions for Woodlands at Irishman's Run Farm, Inc.,
    - Petitioner Exhibit 10: Letter from Charles M. Brown to Steve Niblick, Boone County Area Plan Commission dated February 17, 2004,
    - Petitioner Exhibit 11: Statement of issues and conclusion,
    - Petitioner Exhibit 12: Notice of PTABOA Appeal,
    - Petitioner Exhibit 13: Letter from Respondent dated July 13, 2007, to Petitioner and Form 115,
    - Petitioner Exhibit 14: Indiana Board of Tax Review Notice of Hearing,

Petitioner Exhibit 15: Procedural history, legal analysis and note,  
Respondent Exhibit 1: Letter to Petitioner dated July 13, 2007,  
Respondent Exhibit 2: Property record card,  
Respondent Exhibit 3: Purchase agreement, page 1,  
Respondent Exhibit 4: Letter to Petitioner dated December 6, 2007,  
Respondent Exhibit 5: Form 115,  
Respondent Exhibit 6: Letter to Petitioner dated May 30, 2007,  
Respondent Exhibit 7: Statement of facts and recommendation,  
Board Exhibit A: Form 131 Petition for Review of Assessment,  
Board Exhibit B: Notice of Hearing,  
Board Exhibit C: Hearing Sign-In Sheet,

d. These Findings and Conclusions.

### **Objections**

14. The Petitioner objected to the Respondent's cross examination regarding purchase price because the purchase price of the property was not part of the Petitioner's testimony. Technically, cross examination should be limited to the evidence presented by the opposing party. The purchase price, however, is listed in the Petitioner's Exhibit 2, the Form 130. The Respondent has every right to cross examine the Petitioner about his exhibits as well as his testimony. Furthermore, the question about purchase price and the objection occurred immediately before the Respondent started to present a case, where the Respondent would certainly be entitled to ask the Petitioner about the purchase price for the subject property without the limitations of what constitutes proper cross examination. Therefore, the Board overrules this objection.
  
15. The Petitioner objected to the admission of Respondent's Exhibits 2 and 3 because the Respondent did not provide those exhibits as part of the requested pre-hearing exchange of evidence. The Board's small claims rules provided that "the parties shall make available to all other parties copies of any documentary evidence and the names and addresses of all witnesses intended to be presented at the hearing at least five (5) days before the day of a small claims hearing." 52 IAC 3-1-5(f).<sup>1</sup> The Board interprets the phrase "shall make available" to mean that evidence must be provided if requested. The Petitioner testified that he requested exhibits from the Respondent. Ms. Garoffolo testified that she was unaware of the Board's requirement to provide copies because the exhibits were provided at the PTABOA hearing. Nevertheless, the Respondent should have provided copies of documentary evidence in response to the Petitioner's request. Respondent's Exhibit 2 is copy of the subject property record card that omits information in the last column. Petitioner's Exhibit 1 is a complete copy of the same property record card. The objection to Respondent's Exhibit 2 is sustained. Respondent's Exhibit 3 is a copy of the first page of the Petitioner's purchase agreement for the subject property. The Petitioner claims he would be harmed because he did not have an opportunity to review the exhibit in advance and because the purchase agreement is incomplete. Although the Respondent's Exhibit 3 is an incomplete document, it should be noted that

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<sup>1</sup> The quoted language has been amended, but the amendment took effect after this hearing.

Petitioner's Exhibit 9 is also a single page (page 42) from that purchase agreement. If the fact that those pages do not constitute the entire document is significant, the Petitioner clearly could have presented the entire document for consideration, but he did not. The only relevant part of Exhibit 3 appears to be documenting an undisputed fact—the Petitioner paid \$115,000 for the subject property. The Petitioner's claim that he did not have the opportunity to review this document in advance is not persuasive under these circumstances. Consequently, the objection to Exhibit 3 is overruled..

### Analysis

16. 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 a case, a party 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.
17. The Petitioner did not provide sufficient evidence to support his contentions. This conclusion was arrived at because:
  - a. The goal under Indiana's new assessment system is to ascertain market value-in-use. The Petitioner focused on the methodology used to determine the assessment. Even if the Respondent's assessment did not fully comply with the Guidelines, the Petitioner must show that the total assessment is not a reasonable measure of true tax value. 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 Fin.*, 854 N.E. 2d 90, 95 (Ind. Tax Ct. 2006); *Eckerling v. Wayne Twp. Assessor*, 841 N.E. 2d 764, 768 (Ind. Tax Ct. 2006).
  - b. An influence factor refers to a “multiplier that is applied to the value of land to account for characteristics of a particular parcel of land that are peculiar to that parcel. The factor may be positive or negative and is expressed as a percentage.” GUIDELINES, glossary at 10.

- c. The parties are in agreement that characteristics to support the application of a negative influence factor are present on the subject property. The floodway, drainage easement, and the hundred year floodplain are negative characteristics reducing the value of the subject property. *Brown testimony; Pet'r Exs. 5, 6, 7, 9, 10; Spiker testimony.*
- d. The Petitioner contends that a negative influence factor of 41.44% reflects the percentage of the total area affected by the alleged negative characteristics. *Brown testimony; Pet'r Exs. 5, 6, 7, 9, 10.* The Respondent, however, applied only a negative influence factor of 20% to the base acreage. Assuming, *arguendo*, that the Petitioner's measurements are correct and they support some negative influence factor, he failed to demonstrate that negative characteristics covering 41.44% of the land area correlate to a 41.44% decrease in market value-in-use. His calculation provides no probative evidence demonstrating how the floodway, drainage easement and floodplain areas actually impact market value-in-use. The Petitioner presented no market evidence supporting his contention that the property should be assessed at \$83,500.
- e. The Petitioner failed to rebut the assessment's presumption of accuracy when he failed to quantify the impact of the negative influence factor.
- f. When a taxpayer fails to provide probative evidence to support any change of an assessment, the Respondent's duty to support the current assessment with substantial evidence is not triggered. *See Lacy Diversified Indus. v. Dept' of Local Gov't Fin.*, 799 N.E. 2d 1215, 1221-1222 (Ind. Tax Ct. 2003); *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E. 2d 1113, 1119 (Ind. Tax Ct. 1998).

**Conclusion**

- 18. The Petitioner failed to make a prima facie case. Therefore, the Respondent's burden to support the assessment with substantial evidence is not triggered. The Board finds in favor of 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>