REPRESENTATIVE FOR PETITIONERS:
G. Terrence Coriden, Coriden Law Office

REPRESENTATIVES FOR RESPONDENT:
Sheila M. Blake, Nexus Group

BEFORE THE
INDIANA BOARD OF TAX REVIEW

Gary & Kathy Anderson,	)	Petition No.: 07-006-02-1-5-00117
	)	07-006-02-1-5-00118
Petitioners,	)	07-006-02-1-5-00119
	)	
	)	Parcel No.: 004-093-09.00-001.00
v.	)	004-093-09.00-001.01
	)	004-093-09.00-001.02
	)	
Hamblen Township Assessor,	)	County: Brown
	)	Township: Hamblen
Respondent.	)	Assessment Year: 2002

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

September 10, 2007

FINAL DETERMINATION

The Indiana Board of Tax Review having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUES AND SHORT ANSWERS

1. The Respondent allegedly assigned the Petitioners' house an inappropriate quality grade and assessed customized features that they do not use. And while the Petitioners began taking steps to harvest trees in 2003, the Respondent classified their land as residential rather than agricultural. As to the first two claims, the Board must decide whether the Petitioners offered any market-based evidence to rebut the presumption that the current assessment accurately reflects their property's true tax value. As for the third claim, the Board must decide whether the property was devoted to agriculture on the assessment date.

2. All three claims fail. In contesting their house's quality grade, the Petitioners attacked the Respondent's methodology rather than offering market-based evidence to show their property's value. The Petitioners similarly failed to quantify how the purported inutility of various customized features affected their property's market value-in-use. Mr. Anderson did testify on cross-examination that the Petitioners bought the property for $1,050,000 in 2004.[1] But he did not explain how that sale price related to the property's market value-in-use as of the relevant January 1, 1999 valuation date. And the Petitioners' claim that 53 of the property's 54 acres should be classified as agricultural fails because they did not show that the property's former owners devoted it to agriculture on the March 1, 2002 assessment date. Nonetheless, the Respondent conceded that it had erred in assessing the subject land and recommended assessing a portion of it at $1,050 per acre. The Board finds that property's assessment should be reduced accordingly.

[1] The Petitioners did not offer any evidence to show that they were responsible for the property taxes from the March 1, 2002 assessment. But the Respondent did not contest the Petitioners' standing to appeal that assessment. The Board therefore addresses the Petitioners' claims on their merits.

PROCEDURAL HISTORY

3. The Petitioners originally filed three Form 130 petitions for a group of parcels that they use as one property. On September 14, 2006, the Brown County Property Tax Assessment Board of Appeals ("PTABOA") issued separate determinations for those parcels. On October 16, 2006, the Petitioners filed Form 131 Petitions to the Indiana Board of Tax Review for Review of Assessment for each parcel. The Board has jurisdiction over the Petitioners' appeals under Ind. Code §§ 6-1.1-15 and 6-1.5-4-1.

4. After the Petitioners filed their Form 131 petitions, local assessing officials combined parcels 004-093-09.00-001.00 and 004-093-09.00-001.01 into a single parcel under parcel no. 004-093-09.00-001.00. *Blake testimony.* The Respondent added the previously separate parcels' assessments together for a single assessment under the new parcel number. Parcel 004-093-09.00-001.02 remains separate. *Id.*

HEARING FACTS AND OTHER MATTERS OF RECORD

5. On June 20, 2007, Alyson Kunack, the Board's duly designated administrative law judge ("ALJ"), held a consolidated administrative hearing on the Petitioners' Form 131 petitions.

6. G. Terrence Coriden appeared as counsel for the Petitioners. The following persons were sworn and presented testimony:

For the Petitioners:

Gary Anderson, Petitioner

For the Respondent:

Sheila M. Blake, Hamblen Township Representative

7. The Petitioners submitted the following exhibits:

Petitioners Exhibit 1 – Affidavit of Stephen Miller, with attached grade specification table

8. The Respondent submitted the following exhibits:

Respondent Exhibit 1 – Property record card for parcel 004-093-09.00-001.00
Respondent Exhibit 2 – Property record card for parcel 004-093-09.00-001.01
Respondent Exhibit 3 – Property record card for parcel 004-093-09.00-001.02
Respondent Exhibit 4 – Listing for a property located at 2620 Clay Lick Road
Respondent Exhibit 5 – Listing for a property located at 2500 Clay Lick Road
Respondent Exhibit 6 – Map showing subject property
Respondent Exhibit 7 – Page of Brown County land order applicable to the subject property's neighborhood

9. The Board recognizes the following additional items as part of the record:

Board Exhibit A – The Form 131 petitions
Board Exhibit B – Notices of hearing dated May 15, 2007
Board Exhibit C – Hearing sign-in sheet
Board Exhibit D – Power of Attorney for Respondent

10. Because the Petitioners use the parcels as a single property, the Board refers to the parcels collectively as "the subject property." The subject property contains a single-family residence and a log cabin on 54.5 acres of wooded land. It is located at 2616 Clay Lick Road, Nashville, Indiana. The ALJ did not inspect the subject property.

11. For 2002, the PTABOA determined that the subject property's total assessed value was $1,166,000, broken down as follows:

Parcel 004-093-09-00-001[2]

Land: $74,000	Improvements: $47,900	Total: $121,900

Parcel 004-093-09-00-001.02

Land: $102,600	Improvements: $941,500	Total: $1,044,100

[2] Formerly 004-093-09.00-001.00 and 004-093-09.00-001.01.

12. The Petitioners did not request a specific value.

ADMINISTRATIVE REVIEW AND THE PETITIONERS' BURDEN

13. A taxpayer challenging an assessing official's determination must establish a prima facie case proving both that the current assessment is incorrect and what the 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).

14. In making its case, the taxpayer must explain how each piece of evidence relates to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Wash. 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").

15. If the taxpayer establishes a prima facie case, the burden shifts to the assessing official to offer evidence to impeach or rebut the taxpayer's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.

ANALYSIS

16. The Petitioners first contend that the Respondent should have used a quality grade of "A" rather than "AA+2" to assess their house. To support that claim, they submitted an affidavit from Stephen Miller, the house's architect. *Pet'rs Ex. 1.* Mr. Miller compared the house's features with those listed under each grade level in the Real Property Assessment Guidelines for 2002-Version A. *Id.* In Mr. Miller's opinion, the house's features conformed to an "A" house, with few items in the "AA" category. *Id.*

17. The 2002 Real Property Assessment Manual defines "true tax value" 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 Ind. Admin. Code 2.3-1-2). 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. Indiana assessing officials generally use a mass-appraisal version of the cost approach embodied in the Real Property Assessment Guidelines for 2002 – Version A.

18. An assessment determined using the Guidelines is presumptively accurate. *See* MANUAL at 5; *Kooshtard Prop. 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). A taxpayer may rebut that presumption and establish a different value by offering evidence that is consistent with the Manual's definition of true tax value. MANUAL at 5. A professional appraisal prepared according to that definition often will suffice. *Id*.; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer sales information for the subject or comparable properties and any other information compiled using generally accepted appraisal principles. MANUAL at 5.

19. By contrast, a taxpayer cannot rebut the presumption that an assessment is accurate simply by contesting an assessor's methodology in computing the assessment. *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). Thus, strictly applying the Guidelines is not enough; the taxpayer must offer market-based evidence to show that his or her suggested value accurately reflects the property's true market value-in-use. *Id*.

20. In challenging the grade assigned to their house, the Petitioners contested the Respondent's methodology rather than whether the assessment reflected their property's market value-in-use. The Petitioners relied solely on an affidavit from their architect, Mr. Miller. *Pet'rs Ex. 1*. Mr. Miller, however, simply provided his opinion about how the Guidelines should have been applied to determine an appropriate quality grade. *Id.* That is precisely the type of approach that Tax Court cautioned against in *Eckerling* when it

held that strictly applying the Guidelines does not rebut the presumption that an assessment is correct. *Eckerling*, 841 N.E.2d at 678.

21. The Petitioners also contend that their house includes customizations that have no value to them. *Anderson testimony.* For example, the house includes Ethernet wiring, costing approximately $50,000. But wireless internet access could be installed for a fraction of that cost. *Id.* The house also has an office network with 24 phone lines and 12-14 voice-mail lines costing $30,000-$40,000; a ceramics studio, including a display wall; and a reverse-osmosis water-purification system worth $3,500-$4,000. And the property includes a log cabin with electrical service and a water system. Other than an occasional guest, however, the cabin remains largely unoccupied. *Id.*

22. Because true tax value incorporates the concept of value-in-use, a customized feature's lack of utility to the current or similar user is relevant. The taxpayer, however, must offer objective evidence to demonstrate how that lack of utility affects the property's overall market value-in-use. For example, in performing a sales-comparison analysis, an appraiser might decline to adjust otherwise comparable properties' sale prices to account for the lack of similar customizations, reasoning that they have little value in the relevant market. Or a taxpayer could explain how the customizations' inutility causes abnormal functional obsolescence. *See* REAL PROPERTY ASSESSMENT GUIDELINES – VERSION A, App. F at 8-12.

23. But simply deducting the customizations' estimated costs from the property's assessment—as the Petitioners apparently want to do—amounts to little more than attacking the assessor's methodology. And it does not appear that the Petitioners' attack is even valid. The Petitioners did not show that the Respondent separately valued most of the customized features when it assessed the subject property. At best, Ms. Blake testified that the Respondent accounted for various unspecified customizations in assigning a quality grade to the Petitioners' house. *See Blake testimony.* While the Respondent did separately value the log cabin, Mr. Anderson admitted that the Petitioners

occasionally used that cabin for guests. *Anderson testimony*. So it had at least some value to the Petitioners or similar users.

24. Although the Petitioners did not expressly rely on it, the record does include a significant piece of market-based evidence—the property's 2004 sale price. The Manual, however, provides that a property's 2002 assessment must reflect its value as of January 1, 1999. MANUAL at 4, 8. Thus, where a party relies on evidence showing a property's value substantially after January 1, 1999, it must explain how that evidence relates to the property's value as of January 1, 1999. Otherwise, the evidence lacks probative value. *See Long v. Wayne Twp. Assessor,* 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (holding that an appraisal indicating a property's value for December 10, 2003, lacked probative value in an appeal from a 2002 assessment). The Petitioners did not explain how the subject property's 2003 sale price related to its value as of January 1, 1999. That sale price therefore cannot support a reduction in the Petitioners' assessment.

25. Finally, the Petitioners contest their land assessment. Specifically, they contend that the Respondent should have classified 53 of the property's 54.5 acres as agricultural. *Anderson argument.* Mr. Anderson testified that the Petitioners bought the property in 2003 intending to harvest timber. And they hired a contractor to improve an approximately 100-year-old logging road so they could access the best timber. *Anderson testimony.*

26. Only land actually "devoted to agricultural use," may be assessed as agricultural land. Ind. Code § 6-1.1-4-13(a). The word "devote" means "to give or apply (one's time, attention, or self) completely." WEBSTER'S II NEW RIVERSIDE DICTIONARY 192 (revised edition). Thus, a taxpayer seeking to have its land assessed as agricultural cannot prevail merely by showing that agriculture is one of several activities for which it uses the land. That being said, truly incidental non-agricultural uses do not disqualify land from being assessed as agricultural.

27. Here, the Petitioners offered virtually no evidence to show that the land was used for any agricultural purpose on March 1, 2002, much less that it was "devoted" to agriculture. Mr. Anderson's testimony about the 100-year-old logging trail is the only evidence that the property had ever been logged. Given that the Petitioners had to significantly improve that trail to access the best timber, the Board cannot infer that the previous owners had recently harvested timber. Even if the previous owners had logged the property, the presence of the house and log cabin suggest that they also used the land for a significant non-agricultural purpose—to support and buffer their residence.

28. Nonetheless, the Respondent conceded that it had incorrectly assessed a 34.5-acre portion of the subject land and recommended valuing that portion at $1,050-per-acre. *Blake testimony.* That change would lower the subject property's total assessment to $1,118,800.[3] *Id.* Based on the Respondent's concession, the Board finds that the subject property's assessment should be changed to $1,118,800.

29. Thus, the Petitioners have failed to make a prima facie case of error in the assessment. Given the Respondent's concession, however, the Board orders that the overall property assessment should be lowered to $1,118,800.

SUMMARY OF FINAL DETERMINATION

30. The Petitioners failed to make a prima facie case. The Respondent, however, conceded that it had incorrectly assessed a portion of the subject land. The Board accepts the Respondent's recommended change to the property's land value and finds that the total assessment should be reduced to $1,118,800.

[3] Specifically, the Respondent recommended that the two one-acre homesites be valued at a total of $30,200, 18 acres of excess acreage be valued at $3500 per acre, and the remaining 34.5 acres be valued at $1050 per acre. This results in a total land value of $129,425, and an overall value of $1,118,825. The Board has rounded that overall value down to the nearest $100 increment. *See* GUIDELINES, ch. 2 at 130 (instructing assessors to report total assessed value "rounded to the nearest $100").

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

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Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

- 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>