

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

**Petition No.:** 71-026-06-1-5-08361  
**Petitioner:** 1507 Rush Land Trust  
**Respondent:** St. Joseph County Assessor  
**Parcel No.:** 18-7027-1069  
**Assessment Year:** 2006

The Indiana Board of Tax Review (the 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 St. Joseph County Property Tax Assessment Board of Appeals (the PTABOA).
2. The PTABOA issued notice of its decision on February 13, 2009.
3. The Petitioner filed an appeal to the Board by filing a Form 131 on March 27, 2009. The Petitioner elected to have its case heard pursuant to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated June 28, 2011.
5. The Board held an administrative hearing on August 31, 2011, before the duly appointed Administrative Law Judge (the ALJ) Ellen Yuhan.
6. On the date of the Board's hearing, the Petitioner retained an attorney, Michael Lipsky, to attend the hearing on its behalf. At the hearing, Mr. Lipsky testified he was "called in at the last minute to sit in and request a continuance." According to Mr. Lipsky, Petitioner's witness was ill and the Petitioner's regular lawyer, Don Wertheimer, was "unavailable." Mr. Lipsky gave no reason for Mr. Wertheimer's absence from the hearing. Nor did he explain why the Petitioner had been unable to file a request for continuance prior to all parties and the administrative law judge appearing for the hearing. The Respondent's counsel objected to the continuance on the grounds that the Petitioner had ample time to gather evidence for this case from the date of the PTABOA decision and also from the date of the hearing notice. The continuance request was therefore denied.

7. Persons present and sworn in at hearing:<sup>1</sup>

For Respondent: Patricia St. Clair, Chief Deputy Assessor.

**Facts**

8. The subject property is a house located at 1507 Rush Street, in South Bend, Indiana.
9. The ALJ did not conduct an on-site visit of the property.
10. For 2006, the PTABOA determined the assessed value of the subject property to be \$2,000 for the land and \$29,800 for the improvements, for a total assessed value of \$31,800.
11. The Petitioner requested an assessed value of \$3,519.60 for the land and \$9,050.40 for the improvements, for a total assessed value of \$12,570.

**Issues**

12. Summary of the Petitioner's contentions in support of an error in its property's assessment:
  - a. The Petitioner's counsel argues that the Petitioner was denied due process. *Lipsky argument*.
  - b. The Petitioner's counsel further argues that the determination of the assessed value of the Petitioner's property was arbitrary and capricious. *Lipsky argument*.
13. Summary of the Respondent's contentions in support of the assessment:
  - a. The Respondent's counsel argues that the Petitioner was not properly represented in its appeal. *Agostino argument*. According to Mr. Agostino, the Petitioner's Form 131 was filed by a tax representative, Eric LaFaucia, who is not certified by the Department of Local Government and, therefore, the filing is deficient. *Id.*; *Respondent Exhibit 1*. Further, Mr. Agostino testified that an attorney, Mr. Wertheimer, also signed the form, but failed to appear at the hearing. *Id.* Mr. Agostino contends that the petition was executed by a land trust, but there is no evidence showing the relationship between Mr. Kollar, who signed the petition, and the land trust. *Id.* Moreover, he argues, the Form 115 shows the Petitioner's authorized representative to be Rosemary Apple, rather than Mr. Kollar, Mr. LaFaucia, or Mr. Wertheimer. *Agostino argument*; *Respondent Exhibit 2*.

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<sup>1</sup> Michael Lipsky appeared as counsel for the Petitioner and Frank J. Agostino appeared as counsel for the Respondent.

- b. The Respondent's witness further contends that the assessed value of the Petitioner's property was correct for 2006. *St. Clair testimony*. In fact, Ms. St. Clair contends that the property may have been under-valued. *Id.* According to Ms. St. Clair, the property's value was determined by calculating a replacement cost and adjusting it to the market. *Id.* Ms. St. Clair testified that using the median price per square foot of \$74 derived from comparable residential sales, the value of the Petitioner's property would be approximately \$80,000. *Id.*; *Respondent Exhibit 4*.

### **Record**

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

- a. The Petition,
- b. The compact disk recording of the hearing labeled 1507 Rush Land Trust,
- c. Exhibits:

The Petitioner submitted no exhibits,

Respondent Exhibit 1 – Form 131 petition,  
Respondent Exhibit 2 – Form 115,  
Respondent Exhibit 3 – Property record card for the subject property,  
Respondent Exhibit 4 – List of sales information,

Board Exhibit A – Form 131 petition,  
Board Exhibit B – Notice of Hearing dated June 28, 2011,  
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 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 Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 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 Township 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 case. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
16. The Petitioner failed to provide evidence to establish a prima facie case. The Board reached this decision for the following reasons:<sup>2</sup>
- a. 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 IAC 2.3-1-2). Appraisers traditionally have used three methods to determine a property’s market value: the cost approach, the sales comparison approach and the income approach to value. *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 Real Property Assessment Guidelines – Version A.
- b. A property’s market value-in-use as determined using the Guidelines 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); *P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 2006). A taxpayer may rebut that assumption with evidence that is consistent with the Manual’s definition of true tax value. MANUAL at 5. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice (USPAP) often will suffice. *See Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. Taxpayers may also offer actual construction costs, sales information for the subject property or comparable properties and any other information compiled according to generally accepted appraisal practices. MANUAL at 5.
- c. Regardless of the method used to rebut an assessment’s presumption of accuracy, a party to an appeal must explain how his evidence relates to the property’s market value-in-use as of the relevant valuation date. *O’Donnell v. Dep’t of Local Gov’t Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2006, assessment, the valuation date was January 1, 2005. 50 IAC 21-3-3.
- d. The Petitioner’s counsel first argues that the Petitioner was denied due process of law in its appeal. Due process requires “an opportunity to meet and rebut adverse evidence.” *See Castello v. State Bd. of Tax Comm’rs*, 638 N.E.2d 1362, 1365 (Ind.

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<sup>2</sup> The Respondent contends the Petitioner failed to submit any evidence showing a relationship between Mr. Kollar and 1507 Rush Land Trust. Contrary to Mr. Agostino’s arguments, Mr. Kollar signed the petition as the trustee of the trust. Therefore, Mr. Kollar is a proper representative of the Petitioner.

Tax Ct. 1994). Here, the Petitioner had an opportunity for a comprehensive review of its assessment at hearings before both the PTABOA and the Board. However, the PTABOA determination indicates that the Petitioner failed to appear and present evidence at that hearing. Similarly, no representative of the Petitioner appeared before the Board to present evidence in its appeal. While the Petitioner apparently hired an attorney the day of the hearing, Mr. Lipski failed to file an appearance or provide any evidence that he was authorized to represent the Petitioner. Even if he was authorized to represent the Petitioner, Mr. Lipski presented no evidence to show that the Petitioner's property was assessed in error. Thus, the Petitioner had an opportunity to present evidence on the value of its property both before the Board and before the PTABOA. That the Petitioner failed to avail itself of those opportunities does not result in a finding that its due process rights were denied.

- e. Mr. Lipski also argues that the assessed value determination was arbitrary and capricious. The Petitioner misunderstands its burden here. It is the Petitioner's burden to show that the assessed value as determined by the Guidelines does not reflect the property's market value-in-use. *See O'Donnell v. Dep't. of Local Gov't. Fin.*, 854 N.E.2d 90, 94 (Ind. Tax Ct. 2006) (A property's assessed value, ascertained through an application of the Guidelines, is presumed to be accurate. That presumption is rebuttable if a taxpayer shows that the assessor's assessed value does not accurately reflect the property's market value-in-use). Because the Petitioner presented no evidence to support a finding that its property's assessed value was incorrect, the Petitioner failed to raise a prima facie case that its property was over-valued for the March 1, 2006, assessment.
- f. The Petitioner failed to raise a prima facie case that its property was assessed in error. Where the Petitioner has not supported its claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. LTD v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

### **Conclusion**

- 19. The Petitioner failed to establish a prima facie case for a reduction in the assessed value of its property. The Board finds in favor of the Respondent.

### **Final Determination**

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review determines that the assessed value of the Petitioner's property should not be changed.

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

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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, 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>.