

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

**Petition:** 43-028-06-1-5-00001  
**Petitioner:** Beer Family Revocable Living Trust  
**Respondent:** Kosciusko County Assessor  
**Parcel<sup>1</sup>:** 43-03-09-300-205.000-028  
**Assessment Year:** 2006

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

**Procedural History**

1. The Petitioner initiated an assessment appeal with the Kosciusko County Property Tax Assessment Board of Appeals (PTABOA) by written document dated June 8, 2007.
2. The PTABOA mailed notice of its decision on September 12, 2007.
3. The Petitioner appealed to the Board by filing a Form 131 on October 2, 2007, and elected small claims procedures.
4. The Board issued a notice of hearing to the parties dated November 15, 2007.
5. Administrative Law Judge Patti Kindler held the administrative hearing in Warsaw on January 9, 2008.
6. The following persons were present and sworn as witnesses at the hearing:  
For the Petitioner – Max Beer, Trustee,  
For the Respondent – Laurie Renier, County Assessor,  
Gerald Bitner, PTABOA member,  
Susan Myrick, PTABOA member,  
Richard Shipley, PTABOA member,  
Brock Ostrom, PTABOA member.

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<sup>1</sup> Documents provided by both parties also refer to the parcel by its Tax ID number, 20-712000-65. *Pet'r Ex. 1; Resp't Ex. 3.*

## Facts

7. The subject property is a residential dwelling on approximately 5 acres located at 309 Shade Tree Lane in Milford, Indiana.
8. The Administrative Law Judge did not conduct an inspection of the property.
9. The PTABOA determined the assessed value is \$37,000 for land and \$65,600 for improvements (total \$102,600).
10. The Petitioner requested \$21,400 for the land and \$65,600 for the improvements (total \$87,000).

## Issue

11. Summary of the Petitioner's contentions:
  - a) The assessment at \$102,600 is excessive and should be based on market value. This property and an adjacent parcel, a driveway assessed at \$3,000, have a combined total assessment of \$105,600. On May 8, 2007, the highest bid for these two parcels at a real estate auction was \$90,000. *Beer testimony; Pet'r Ex. 1 at 2, 4.* The Petitioner rejected this bid. *Beer testimony.*
  - b) The auction bid reflects the market value for the subject parcel. Subtracting the driveway parcel's assessed value of \$3,000 from the \$90,000 auction bid establishes the correct assessment of the subject parcel should be \$87,000. *Beer testimony; Pet'r Ex. 1 at 2.*
  - c) The property values should have trended downward. The \$15,000 increase in the assessed value of the subject property in one year is excessive. The Board should look at what an actual buyer would pay for the property. *Beer testimony.*
12. Summary of the Respondent's contentions:
  - a) The subject property was offered at sale on May 8, 2007, and the highest bid was \$90,000. *Renier testimony; Resp't Ex. 5.* The Petitioner did not accept that bid, yet is now contending that the property should be assessed at \$87,000. The property is worth more than \$90,000 or the Petitioner would have sold the property at the auction. *Renier testimony.*
  - b) A comparable property owned by the Donald H. Beer Revocable Trust is listed for \$250,000. It includes a 16 foot by 24 foot heated cabin with a well and septic on 4.56 acres. It also has a separate 1.10 acre parcel that includes the driveway. *Renier testimony; Resp't Ex. 6A-E.*

- c) The Niles property, another comparable, is located in Turkey Creek Township with nine unimproved acres. On May 17, 2007, it sold for \$58,000. *Renier testimony; Resp't Ex. 7A-D.*
- d) On the Form 130, the Petitioner claimed that the land should be assessed as agricultural rather than residential, but the Petitioner also stated that the land use is recreational. *Renier testimony; Resp't Ex. 4 at 2.* The Board's final determination for *Bryan K. Piles v. Van Buren Twp. Assessor* stated that the goal under Indiana's new assessment system is to ascertain market-value-in-use. The determination further stated that a taxpayer may not focus its claims solely on the methodology used to determine the assessment. The determination concluded that, even if the assessment did not comply with the Guidelines, the Petitioner failed to show that the assessment was not a reasonable measure of true tax value. *Renier testimony; Resp't Ex. 8 at 9.*
- e) The Board's final determination for *Ritterskamp v. Jackson Twp. Assessor* is also significant because it explained that real property is assessed based on its current use. The final determination in the *Ritterskamp* appeal concluded the Petitioner was required to demonstrate that the subject property was devoted to agricultural purposes on the assessment date. *Renier testimony; Resp't Ex. 9 at 4.* Here, the Petitioner failed to show the subject property was used for agricultural purposes. *Renier testimony.*

**Record**

- 13. The official record for this matter is made up of the following:
  - a) The Petition,
  - b) A digital recording of the hearing,
  - c) Petitioner Exhibit 1 – Form 131 Petition with attachments including letter from Hahn Auctioneers, Inc., plat map, Form 115, tax statement for the subject property, and tax statement for an adjoining parcel,  
 Respondent Exhibit 1A – Geographic information system (GIS) map showing subject property,  
 Respondent Exhibit 1B – Property record card,  
 Respondent Exhibit 1C – Photograph,  
 Respondent Exhibit 1D – GIS map showing Shade Tree Lane,  
 Respondent Exhibit 1E – Property record card for Shade Tree Lane driveway property,  
 Respondent Exhibit 2 – Form 131 Petition,  
 Respondent Exhibit 3 – Form 115 Notification of Final Assessment,

Respondent Exhibit 4 – Form 130 Petition,  
Respondent Exhibit 5 – Letter from Hahn Auctioneers, Inc.,  
Respondent Exhibit 6A – Donald H. Beer Revocable Trust GIS map,  
Respondent Exhibit 6B – Donald H. Beer Revocable Trust property record card,  
Respondent Exhibit 6C – Photograph of Donald H. Beer property,  
Respondent Exhibit 6D – GIS map for adjoining driveway,  
Respondent Exhibit 6E – Property record card for adjoining driveway,  
Respondent Exhibit 7A – Adam J. Niles property GIS map,  
Respondent Exhibit 7B – Sales disclosure form for Niles property,  
Respondent Exhibit 7C – Property record card,  
Respondent Exhibit 7D – MLS information,  
Respondent Exhibit 8 – Board determination for *Bryan K. Piles v. Van Buren Township Assessor*,  
Respondent Exhibit 9 – Board determination for *Diane Ritterskamp v. Jackson Township Assessor*,  
Board Exhibit A – Form 131 petition with attachments,  
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.

15. The Petitioner did not provide sufficient evidence to support its contentions. This conclusion was arrived at because:

- a) Real property is assessed on the basis of its “true tax value,” which does not mean fair market value. It means “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.” Ind. Code § 6-1.1-31-6(c); 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). There are three generally accepted techniques to calculate market value-in-use: the cost approach, the sales comparison approach, and the income approach. The primary method for assessing officials to determine market value-in-use is the cost approach. *Id. at 3*. To that end, Indiana promulgated a series of guidelines that explain the application of the cost approach. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (incorporated by reference at 50 IAC 2.3-1-2). The value established by use of the GUIDELINES, while presumed to be accurate, is merely a starting point. A taxpayer is permitted to offer evidence relevant to construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.
- b) The Petitioner failed to demonstrate that its evidence of value conforms to generally accepted appraisal principles. It contended the market value-in-use of the subject property could be determined by subtracting the assessed value of an adjoining driveway from a \$90,000 auction bid. But the Petitioner rejected the \$90,000 bid. Therefore, the auction did not result in a sale or passing of title. That bid does not establish market value-in-use.
- c) Further, the 2006 assessment is to reflect the value of the property as of January 1, 2005. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. A Petitioner who presents evidence of value relating to a different date must provide some explanation about how it demonstrates, or is relevant to, the subject property’s value as of January 1, 2005. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The Petitioner failed to establish how an auction bid on May 8, 2007, is relevant to the valuation date of January 1, 2005.
- d) When a taxpayer fails to provide probative evidence supporting his position that an assessment should be changed, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *See Lacy Diversified Indus. v. Dep’t 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**

16. The Petitioner failed to make a prima facie case. 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>>