

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

Petition: 48-033-06-1-1-06305
Petitioner: Rose Adams Whitehead
Respondent: Union Township Assessor (Madison County)
Parcel: 15-0013-1-119
Assessment Year: 2006¹

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 Madison County Property Tax Assessment Board of Appeals (PTABOA) by written document dated May 10, 2006.
2. The PTABOA issued notice of its decision on September 18, 2006.
3. The Petitioner appealed to the Board by filing a Form 131 on October 18, 2006. The Petitioner elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing to the parties dated June 19, 2007.
5. Administrative Law Judge Paul Stultz held the Board's hearing on July 31, 2007.
6. The following persons were present and sworn as witnesses at the hearing:
Rose Adams Whitehead, property owner,
Betty Swift,
Linda Geiger, Union Township Assessor,
Cheryl Heath, Madison County Assessor,
Jennifer Robbins, Deputy Assessor,
Jack Norris, Deputy Assessor.

Facts

7. The subject property consists of 8.278 acres of vacant agricultural land located in or near Anderson.
8. The Administrative Law Judge did not conduct an inspection of the property.

¹ The Form 131 identifies the year under appeal as 2005. At the hearing, however, the parties agreed the year under appeal is 2006.

9. The PTABOA determined the assessed value of the land is \$9,000.
10. The Petitioner contends the assessed value of the land should be \$5,382.

Issue

11. Summary of the Petitioner's contentions:
 - a. The Petitioner's claims are based solely on the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 - VERSION A (incorporated by reference at 50 IAC 2.3-1-2). *Swift testimony; Pet'r Ex. 3.*
 - b. The area in dispute is outlined in blue on an aerial photograph of the parcel. *Swift testimony; Pet'r Ex. 2.* The western portion of the parcel is correctly assessed as Type 4 tillable farmland. *Id.* The eastern four acres has natural impediments such as a pond, trees, and rocks that make it nontillable. *Id.* This area should be classified as Type 72 nontillable land and given an 80% negative influence factor.² *Swift testimony; Pet'r Ex. 3.*
12. The Respondent did not address the Petitioner's contentions.

Record

13. The official record for this matter is made up of the following:
 - a. Petition,
 - b. Digital recording of the hearing,
 - c. Petitioner Exhibit 1 - Form 131 Petition for Review of Assessment,
Petitioner Exhibit 2 - Aerial map of the subject parcel,
Petitioner Exhibit 3 - Mathematical computations,
Petitioner Exhibit 4 - Notification of Final Assessment Determination (Form 115),
Petitioner Exhibit 5 - Property record card,
Respondent Exhibits - None,
Board Exhibit A - Form 131,
Board Exhibit B - Notice of Hearing on Petition,
Board Exhibit C - Hearing Sign In Sheet,
 - d. These Findings and Conclusions.

² Type 72 farmland is land "covered by a farm pond or running water. The value is determined using a productivity factor of .50 and a 40% influence factor deduction." GUIDELINES, ch. 2 at 105.

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 her contentions. This conclusion was arrived at because:
 - a. A critical element for application of the Guidelines is lacking from the Petitioner’s evidence. The record lacks probative evidence regarding the size of the area identified as the eastern four acre area. Conclusory testimony about the size is not probative evidence. *Lacy Diversified Indus. v. Dep’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1221 (Ind. Tax Ct. 2003); *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). Without first establishing specific land size for the disputed area, it is impossible to conclude that the current assessment is wrong and what the correct assessment should be according to the Guidelines. *See Meridian Towers*, 805 N.E.2d at 478; *see also Clark*, 694 N.E.2d at 1234.
 - b. The Petitioner might have made a case based on other approaches to value. 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 Guidelines that explain the

application of the cost approach. 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 market value-in-use to rebut that presumption. Such evidence may include actual 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.

- c. The Petitioner presented no appraisal, sales information, or other market data in support of her argument.
- d. The goal under Indiana's new assessment system is to ascertain market value-in-use. The purported errors focus solely on the methodology used to determine the assessment. Even if the Respondent's assessment did not fully comply with the Guidelines, the Petitioner failed to show that the total assessment is not a reasonable measure of true tax value. Her 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 674, 678 (Ind. Tax Ct. 2006).
- e. When a taxpayer fails to provide probative evidence supporting its position that an assessment should be changed, the Respondent's duty to support the assessment with substantial evidence is not triggered. See *Lacy Diversified*, 799 N.E.2d at 1221-1222; *Whitley Products*, 704 N.E.2d at 1119.

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: _____

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>