

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

Petition: 48-033-06-1-1-06307
Petitioner: Betty Swift
Respondent: Union Township Assessor (Madison County)
Parcel: 15-0012-9-019
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 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 11, 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:
Betty Swift, property owner,
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 approximately 50.5 acres of vacant agricultural land located in or near Anderson.
8. The Administrative Law Judge did not conduct an inspection of the property.
9. The PTABOA determined the assessed value of the land is \$45,400.
10. The Petitioner did not request a specific value.

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. Three areas identified on an aerial photograph of the parcel are incorrectly assessed as tillable farmland. *Swift testimony; Pet'r Ex. 2.* Area A is 4 acres with numerous trees and rocks that render the area useless. *Swift testimony; Pet'r Exs. 2, 3.* Area B is .95 of an acre that has an old fence line with trees, rocks, ground cover, and a shared driveway. *Id.* Both areas should be classified as nontillable land and receive a negative 60% influence factor. *Swift testimony; Pet'r Ex. 3.*
 - c. Mill Creek Ditch (identified as Area C on the aerial photograph) is a legal ditch and should be classified as agricultural support land Type 81, which has no assessed value.¹ *Swift testimony; Pet'r Exs. 2, 3.* The county surveyor has yet to measure the ditch to determine the correct amount to deduct from the parcel's true tax value. *Swift testimony; Pet'r Ex. 3.*
12. The Respondent did not address the evidence or arguments regarding Areas A and B, but agreed the county surveyor must determine the size of the ditch. *Heath testimony.*

Record

13. The official record for this matter consists 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 - Land type descriptions and 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.

¹ Type 81 agricultural support land is "[a] legal ditch. The area used and occupied as part of a legal drainage ditch is considered to have no value and is deducted from the total parcel acreage. This area also includes the area adjacent to the ditch that cannot be farmed because of the need for access to the ditch." 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. The Petitioner’s claims are based solely on application of the Guidelines. Nevertheless, a critical element for application of the Guidelines is lacking from her evidence. She acknowledged that she cannot determine the correct assessment because the dimensions of the ditch have not been established, but the record also lacks probative evidence regarding the size of what she identified as Area A and Area B. The Petitioner’s conclusory testimony that Area A is 4 acres and Area B is .95 of an acre 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 sizes for the disputed areas, 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 parties appear to agree that the ditch area should be removed from the assessment. Although neither party cited any authority, their position appears to be consistent with Ind. Code § 6-1.1-4-14, which provides that a public ditch and adjacent land needed for access to the ditch either may not be assessed or must be deducted from the assessment. “If an assessor and a landowner fail to agree on the amount of land . . . , the assessor shall have the county surveyor make a survey

to determine the amount of land so described.” Ind. Code § 6-1.1-4-14(c). Undisputed testimony established that the failure of the surveyor to determine the size of the ditch was the stumbling block to deducting the ditch earlier in the assessment process. Who is responsible and the reasons for that failure are unclear, but also irrelevant. The testimony that the parties are waiting for the surveyor to measure the ditch is similarly irrelevant. Furthermore, that testimony indicates a failure on the part of both parties to understand their obligation to present probative evidence that proves what the assessment should be in order to get any change from the current assessment. Not knowing how much land to deduct for the ditch precludes the Board from making such a change.

- c. The Petitioner still 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.
- d. The Petitioner presented no appraisal, sales information, or other market data in support of her argument.
- e. The goal under Indiana’s new assessment process 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).
- f. When a taxpayer fails to provide probative evidence that an assessment should be changed, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *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 assessment will 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>>