

REPRESENTATIVE FOR RESPONDENT:
Terrance Wozniak, Attorney for Respondent

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Gladys Rita Kopala,	)	Petition No.:	71-027-02-1-1-04156
)		
Petitioner,	)	Parcel:	19-1047-0728
)		
v.)		
	)	County:	St. Joseph
Loren Geyer,	)	Township:	Union
Union Township Assessor)		
Respondent.	)	Assessment Year:	2002

Appeal from the Final Determination of
St. Joseph Property Tax Assessment Board of Appeals

November 13, 2006

FINAL DETERMINATION

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUE

1. The issue presented for consideration by the Board was whether the assessed value of the subject property exceeds its market value in use.

PROCEDURAL HISTORY

2. Pursuant to Ind. Code § 6-1.1-15-3, Gladys Rita Kopala, filed a Form 131 Petition for Review of Assessment on April 30, 2004, petitioning the Board to conduct an administrative review of the above petition. The St. Joseph County Property Tax Assessment Board of Appeals (PTABOA) issued its determination on April 2, 2004.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (the ALJ), Debra Eads, held a hearing on May 25, 2006, in South Bend, Indiana.¹
4. The following persons were sworn and presented testimony at the hearing:

For the Petitioner:

Gladys Rita Kopala, Property Owner

For the Respondent:²

Ralph Wolfe, PTABOA Member

Dennis Dillman, PTABOA Member

5. The official record for this matter is made up of the following:
 - a. The Petition,
 - b. The tape recording labeled IBTR #6240,
 - c. Exhibits:

¹ The Petitioner expressed concern that she had not had an opportunity to appear before the PTABOA. The Petitioner's appearance at this hearing, however, affords the Petitioner her due process rights.

² David Wesolowski, County Assessor and PTABOA Member, arrived late at the hearing. Mr. Wesolowski was not sworn in and did not testify.

- Petitioner's Exhibit 1 – Manila envelope delivered to the IBTR containing the following: a hand-written letter to IBTR dated 8-25-04; a photocopy of the front of a mailing envelope addressed to the Petitioner and mailed from the Township Assessor; two hand-written notes dated 1-14-04; a copy of the lease agreement between the Petitioner and Gary and Brian Good dated 4-18-02; copies of the property's property record card (the PRC) dated 12-3-03 and 4-8-04; multiple copies of tax bills and explanation of tax calculation; a transcript of the Petitioner meeting with the Union Township Assessor on 6-3-97; transcript of the Petitioner's meeting with the County Auditors office on 5-16-96; copy of page 1 of the Form 115 dated 4-2-04; and eleven photographs of the improvements located on the subject property,
- Petitioner's Exhibit 2 – Copy of a mailing envelope with a hand-written note dated 5-1-04; a note from the Clerk of Union Township with a hand-written response by Petitioner; and a transcript from the Petitioner's meeting with the Union Township Assessor dated 2-19-04,
- Petitioner's Exhibit 3 – Hand-written notes dated 1-14-04; two copies of the property's PRCs dated 12-3-03 and 4-8-04; Transcript of the Petitioner's meeting with the Union Township Assessor dated 6-3-97; multiple tax bills and tax calculation information; Transcript of the Petitioner's meeting with the County Auditors office on 5-16-96 and a copy of page 1 of the Petitioner's 115 dated 4-2-04,³
- Petitioner's Exhibit 4 – Multiple documents pertaining to meetings with Jerry Ivacic,
- Petitioner's Exhibit 5 – Typed letter to IBTR dated 8-25-04; typed letter to PTABOA dated 12-6-04; and a hand-written note to the IBTR appeals coordinator.

- Respondent's Exhibit 1 – Form 131 Petition,
 Respondent's Exhibit 2 – Form 115 dated April 2, 2004,
 Respondent's Exhibit 3 – Form 130, pages 2, 3 and 4,
 Respondent's Exhibit 4 – Form 130 Petition,
 Respondent's Exhibit 5 – Subject property's PRC,
 Respondent's Exhibit 6 – Appeals review by the PTABOA worksheet,
 Respondent's Exhibit 7 – View Payable 2005 Real Property Master,
 Respondent's Exhibit 8 – Tax Bill for 2005,
 Respondent's Exhibit 9 – Letter dated June 23, 2005, to the PTABOA from the Petitioner,

³ All documents included in Petitioner Exhibit 3 are duplicates from Petitioner Exhibit 1.

Respondent's Exhibit 10 – Letter dated June 27, 2005, from David Wesolowski to the Petitioner,
Respondent's Exhibit 11 – Letter from the Petitioner to the PTABOA dated July 7, 2004,
Respondent's Exhibit 12 – Property record card from Loren Geyer.

Board Exhibit A – The 131 Petition,
Board Exhibit B – Notice of Hearing dated February 23, 2006,
Board Exhibit C – Hearing Sign In Sheet.

d. These Findings and Conclusions.

6. The subject property is a 150 acre agricultural parcel improved with a dwelling and multiple out buildings, located at 66559 Ivy Road in Lakeville, Indiana.
7. The ALJ did not conduct an on-site inspection of the subject property.
8. For 2002, the PTABOA determined the assessed value of the property to be \$170,800 for the land and \$62,400 for the improvements for a total assessed value of \$233,200.
9. For 2002, the Petitioner contends the assessed value of the property is too high, but was unable to state for the record the specific value sought in her appeal.

JURISDICTIONAL FRAMEWORK

10. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property; (2) property tax deductions; and (3) property tax exemptions; that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

11. 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).
12. 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. 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”).
13. 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.

ANALYSIS

Whether the assessed value of the subject property exceeds its market value in use.

14. To the extent that we were able to discern the Petitioner's contentions, it appears that the Petitioner contends that her property is overvalued due to damage to the ditches located on the subject property.
15. The Petitioner presented the following evidence and testimony in regard to this issue:
 - A. The Petitioner contends that the taxes for the subject property are too high due to damage done to the ditches located on the property. *Kopala testimony*. According to

- the Petitioner, a contractor for the County Drainage Board damaged a private ditch on her property causing flooding. *Id.*
- B. The Petitioner further testified that she did not have a hearing before the St. Joseph County PTABOA and feels that she has not been treated fairly by the Township Assessor or the PTABOA. *Id.* In support of this contention, the Petitioner submitted transcripts of meetings with the Township Assessor and a staff member of the County Auditor's office to support her position that she had been misinformed or misled by people involved in the taxation process. *Kopala testimony; Petitioner Exhibits 1 and 3.*
- C. Finally, the Petitioner submitted copies of photos of the improvements on the property and copies of the property record card for the subject property. *Petitioner Exhibits 1 and 3.* The Petitioner also submitted a copy of a lease showing that the property was leased for \$70 per acre to Gary and Brian Good on the assessment date. *Kopala testimony; Petitioner Exhibit 1.*
16. The Respondent contends that the Petitioner has not met her burden of proof regarding the value of the property and argues that no change to the assessment should be made. *Wozniak argument.* The Respondent submitted their previously prepared exhibits, but did not testify regarding the content of the exhibits due to the Respondent's belief that the Petitioner had not made a prima facie case regarding an error in assessment. *Wozniak argument; Respondent Exhibits 1-12.*
17. The Board is a creation of the legislature and has only those powers conferred by statute. *Whetzel v. Department of Local Government Finance*, 761 N.E.2d 904, 908 (Ind. Tax Ct. 2001), *citing Matonovich v. State Board of Tax Commissioners*, 705 N.E.2d 1093, 1096 (Ind. Tax Ct. 1999); *Hoogenboom-Nofziger v. State Board of Tax Commissioners*, 715 N.E.2d 1018, 1021 (Ind. Tax Ct. 1999). By statute, the Board must conduct an impartial review of all appeals concerning the assessed valuation of tangible property, property tax deductions, and property tax exemptions that are made from a determination by an

assessing official or county property tax assessment board of appeals to the Board under any law.

18. Here, the Petitioner contends that the subject property's taxes are too high. The Petitioner also contends that the County Drainage Board destroyed her private ditch. The Petitioner further testified regarding her perceived mistreatment by the Township Assessor and others in local government. The Petitioner, however, did not provide any evidence that her property tax assessment was incorrect or that the ditches which she complained about should not be assessed to the property. In fact, it appears when reviewing all evidence and testimony, that the Petitioner actually disputes the locally assessed ditch tax rather than the property assessment that is within the jurisdiction of this Board. While the Petitioner may feel her taxes are incorrect, the Board has no jurisdiction over the Petitioner's taxes or the tax rate applied to her assessment. Further, to the extent that the Petitioner feels that she was mistreated or misguided by representatives of the assessor's or auditor's offices, the Board has no jurisdiction over local elected officials.
19. Real property in Indiana is assessed on the basis of its "true tax value." *See* Ind. Code § 6-1.1-31-6(c). "True tax value" is defined as "[t]he 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 2 (2001 (incorporated by reference at 50 IAC 2.3-1-2) (hereinafter the MANUAL)). The market value-in-use of a property may be calculated through the use of several approaches, all of which have been used in the appraisal profession. *Id.* at 3; *Long v. Wayne Township Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005). In the case at bar, the Petitioner failed to raise any issue of property value and thus failed to raise a prima facie case that there is any error in her assessment. Clearly, the Petitioner is frustrated by the process. While we empathize with her frustration, however, the Petitioner's remedy is not here.
20. Where the Petitioner has not supported her claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered.

Lacy Diversified Indus. v. Dep't of Local Gov't Fin., 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

SUMMARY OF FINAL DETERMINATION

21. The Petitioner has failed to raise a prima facia case for a reduction in assessment. There is no change in assessment as a result of this appeal.

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

Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>, The Indiana Trial Rules are available on the Internet at http://www.in.gov/judiciary/rules/trial_proc/index.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.