

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

Petition No.: 53-009-06-1-5-00046
Petitioners: Samuel R. & Patricia S. Ardery
Respondent: Perry Township Assessor
Parcel No.: 015-03380-00
Assessment Year: 2006

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

PROCEDURAL HISTORY

1. The Petitioners challenged the subject property’s assessment by filing a Form 130 petition with the Monroe County Property Tax Assessment Board of Appeals (“PTABOA”).
2. On June 13, 2007, the PTABOA issued its determination denying the Petitioners relief.
3. On July 16, 2007, the Petitioners filed a Form 131 petition with the Board. They elected to have this case heard according to the Board’s small claims procedures.
4. The Board issued a notice of hearing to the parties dated November 19, 2008.
5. On January 13, 2009, the Board held an administrative hearing before its duly appointed Administrative Law Judge, Rick Barter (“ALJ”).
6. Marilyn Meighen appeared as counsel for the Respondent. The following people were present and sworn in at hearing:
 - a. For Petitioners: Gregory A. Poore, Tax Representative
 - b. For Respondent: Ken Surface, Contractor for Monroe County
Judith Sharp, Monroe County Assessor

FACTS

7. The subject property contains a house and is located at 2203 E. Maxwell Lane in Bloomington.

8. The ALJ did not inspect the property.
9. The PTABOA determined the following values for the subject property:
Land: \$81,800 Improvements: \$223,500 Total: \$305,300.
10. The Petitioners did not challenge their house's value. They requested that the property's land value be reduced to \$22,000, which would reduce the property's total assessment to \$245,500.

CONTENTIONS OF PETITIONERS' TAX REPRESENTATIVE

11. In a radio interview, the Monroe County Assessor said that "the Indiana Constitution says property taxes are to be administered in a fair and equitable manner." *Pet'rs Ex. 1 (Form 131 petition); Poore testimony*. The Respondent, however, did not assess the Petitioners' land fairly and equitably compared to properties across the street. *Poore argument*. The subject property and other properties on the north side of Maxwell Lane were assessed at roughly \$218,000 per acre, while properties on the south side of the street were assessed at rates ranging from roughly \$41,000 per acre to \$59,000 per acre. *Poore testimony; Pet'rs Ex.3*.
12. The Respondent's witness, Mr. Surface, said that the disparity in land values stemmed from trying to make properties' bottom-line values fair and equitable. But the Respondent should have valued land along Maxwell Lane using sales of vacant lots. That is what appraisers do. *Poore testimony*. The Respondent's failure to do that resulted in vastly different assessments for residential lots that, by virtue of their proximity to each other, have similar values. *Poore argument*.
13. Although the Respondent pointed to decisions from the Indiana Tax Court, this case is distinguishable from those cases. The golf driving ranges at issue in *Westfield Golf Practice Center LLC v. Washington Twp. Assessor* 859 N.E.2d 396 (Ind. Tax Ct. 2007) were scattered, and the subdivision at issue in *O'Donnell v. Dep't of Local Gov't Fin.* 854 N.E.2d 90 (Ind. Tax Ct. 2006) straddled the line between two towns. Here, by contrast, the disparately assessed properties are across the street from each other. *Poore argument*.

RESPONDENT'S CONTENTIONS

14. The Petitioners failed to make a prima facie case. *Meighen argument*. Indiana's new assessing system focuses on a property's bottom-line value, not its separate land and improvement components. *Id.* The Petitioners, however, failed to address the subject property's bottom-line value. Instead, they focused on the Respondent's methodology. *Id.*
15. In *O'Donnell* and *Westfield Golf*, the Tax Court rejected claims where taxpayers challenged an assessor's methodology rather than focusing on their property's bottom-

line value. *Meighen argument; Resp't Exs. 2, 4.* In fact, in *Westfield Golf*, the taxpayer argued exactly what the Petitioners argue in this case—that its assessment violated Article X section 1 of the Indiana Constitution. The Tax Court said that, to prove a lack of uniformity and equality under the constitution, a taxpayer must show the bottom-line market value of its property and compare it to the bottom-line market values of other properties, probably through sales-ratio studies. *Meighen argument.* Also, in *Pilachowski v. Monroe County Assessor*, the Board ruled against another Monroe County taxpayer who claimed that land values differed between two sides of the same street. *Meighen argument; Resp't Ex. 3.*

16. There are a number of different land values in the subject property's immediate area. *Surface testimony; Resp't Ex. 1.* The Respondent stratified those values in order to bring both land and improvements in line and to be fair and equitable to all properties. *Surface testimony.*

RECORD

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

- a. The Form 131 petition,
- b. A digital recording of the hearing,
- c. Exhibits:

Petitioners Exhibit 1 – Copy of Form 131 petition,
Petitioners Exhibit 2 – Copy of Form 130 petition to the PTABOA,
Petitioners Exhibit 3 – Aerial photograph of Maxwell Lane; diagram with land assessments highlighted; map with portion of Maxwell Lane highlighted,

Respondent Exhibit 1 – Color-coded neighborhood map,
Respondent Exhibit 2 – Copy of *Westfield Golf Practice Center, LLC v. Washington Twp. Assessor*,
Respondent Exhibit 3 – Copy of *Pilachowski v. Monroe Co. Assessor*, Pet. 53-009-06-1-5-00103 (Ind. Bd. of Tax Rev. July 15, 2008),
Respondent Exhibit 4 – Copy of *O'Donnell v. Dep't of Local Gov. Fin.*,

Board Exhibit A – Form 131 petition and attachments,
Board Exhibit B – Notice of hearing,
Board Exhibit C – Hearing sign-in sheet.

- d. These Findings and Conclusions.

ANALYSIS

18. The most applicable governing cases are:
- a. A petitioner seeking review of an assessing official's determination 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.
19. The Petitioners failed to make a prima facie case. The Board reaches this decision for the following reasons:

Mr. Poore Violated the Board's Rules of Practice

- a. The Petitioners did not personally appear at the hearing. They were instead represented by Gregory Poore, a certified tax representative. Although not admitted to practice law, a certified tax representative can practice before the Board, subject to several express limitations. Among other things, a tax representative cannot make a claim regarding the constitutionality of an assessment or engage in any other representation that involves the practice of law. 52 IAC 1-2-1(b)(3) – (4).
- b. Mr. Poore violated both those restrictions. In both the Form 131 petition, which he signed on the Petitioners' behalf, and his argument at the hearing, Mr. Poore tied the Petitioners' claim to what he described as the Indiana Constitution's requirement that “property taxes are to be administered in a fair and equitable manner.” *Board Ex. A; Pet'rs Ex. 1; Poore testimony (quoting the Monroe County Assessor)*. True, in mentioning the Indiana Constitution, Mr. Poore purported to quote the Monroe County Assessor. But Mr. Poore's statement is most reasonably interpreted as raising a constitutional challenge to the subject property's assessment. And that challenge not only violated 52 IAC 1-2-1(b)(3)'s explicit prohibition on making constitutional claims, but was itself practicing law. In fact, in *Indiana State Bar Ass'n v. Miller*, 770 N.E.2d 328(Ind. 2002), a majority of justices on the Indiana Supreme Court found that a tax representative engaged in the practice of law when he made a similar claim. *See* 770 N.E.2d at 330 (plurality opinion)(“Miller's conduct amounted to the

practice of law, and we are inclined to agree, at least as to the constitutional claim”) and 770 N.E.2d at 331(Shepard, J. dissenting) (Miller used, or attempted to use, all the tools of the legal profession to represent a client before a state adjudicative body. . . [He] even presented state constitutional claims.”).

- c. Mr. Poore also attempted to distinguish this case’s facts from the facts in *O’Donnell* and *Westfield Golf*. Distinguishing potentially adverse cases is part of a lawyer’s stock-in-trade. While Mr. Poore did little to analyze *O’Donnell* and *Westfield Golf*, his actions at least walked up to the line demarcating the practice of law and may have crossed over it.
- d. Because Mr. Poore’s violations appear to be isolated, the Board will not take any further action. The Board, however, strongly cautions Mr. Poore against further violating its rules of practice. And it reminds him that practicing law without a license is a crime. *See* Ind. Code § 34-43-2-1(making it a class-B misdemeanor to “engage[] in the business of a practicing lawyer” without having been admitted as an attorney by the Indiana Supreme Court). If Mr. Poore again violates the Board’s rules of practice, the Board may take further action, such as reporting Mr. Poore’s violation to the Department of Local Government Finance, the Indiana Attorney General, the Supreme Court Disciplinary Commission, and the Indiana State Bar Association.¹

The Petitioners Failed to Make a Prima Facie Case

- e. The Board now turns to the Petitioners’ appeal. Because Mr. Poore violated the Board’s rules of practice by claiming that the subject property’s assessment violated the Indiana Constitution, all his arguments relating to that claim were nullities. The Petitioners therefore failed to make a prima facie case.
- f. Even if the Board were to address Mr. Poore’s improperly advanced claim, that claim would have failed. To successfully claim that assessments are not uniform and equal, or as Mr. Poore phrased it, “were not administered in a fair and equitable manner,” Mr. Poore needed to offer evidence showing the respective market values-in-use of the properties that he felt were disparately assessed. And he offered no such evidence.
- g. The Indiana Tax Court reached the same conclusion in *Westfield Golf*. There, the taxpayer claimed a constitutional lack of uniformity and equality because the landing area for its golf driving range was assessed using a different base rate than the rate used to assess other driving ranges’ landing areas. *Westfield Golf*, 859 N.E.2d at 397-98. The court focused on the change in Indiana’s assessment scheme from one where true tax value was based solely on correctly applying assessment regulations, to the current system, which measures true tax value by the objectively verifiable

¹ The Department of Local Government Finance oversees the certification and de-certification of tax representatives. *See* 50 IAC 15-5-8. The Attorney General, Supreme Court Disciplinary Commission, and Indiana State Bar Association can all bring actions to restrain or enjoin the unauthorized practice of law. *See* Ind. Admission and Discipline Rule 24.

benchmark of market value-in-use. *Id.* at 398-399. Previously, the only way to determine whether assessments were uniform and equal was to determine whether the assessment regulations were applied similarly to comparable properties. *Id.* at 398. Properties within each assessment neighborhood in a land order were presumed to be comparable, both in distinguishing characteristics and market value. Thus, principles of uniformity and equality were violated when parcels of land in the same assessment neighborhood were assessed and taxed differently. *See id.* By contrast, the new market value-in-use system’s “overarching goal” is “to measure a property’s value using objectively verifiable data.” *Id.* at 399. Thus, while the end result must be a uniform and equal rate of assessment, the procedures used to arrive at that result need not be uniform. *Id.*

- h. The court rejected the taxpayer’s claim because that claim ignored the new system. Rather than focusing on the end result by comparing the actual market value-in-use of its property to the market values-in-use of the other driving ranges, the taxpayer focused solely on the methodology used to compute the properties’ assessments. *Id.*
- i. Mr. Poore did precisely what the unsuccessful taxpayer did in *Westfield Golf*—he focused solely on the Respondent’s methodology in valuing land on each side of Maxwell Lane without offering any evidence to show the properties’ market values-in-use. Thus, his claim must also fail.

CONCLUSION

- 20. The Petitioners failed to make a prima facie case. Because their tax representative was not authorized to claim that the subject property’s assessment violated the Indiana Constitution’s requirement for uniformity and equality, his actions and arguments were a nullity. Even if the Board were to address the claim’s merits, that claim would have failed because the Petitioners’ tax representative focused solely on the Respondent’s methodology rather than offering evidence of the market values-in-use of the subject property and the other properties that allegedly were assessed more favorably.

FINAL DETERMINATION

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines the subject property’s assessment should not be changed.

ISSUED: April 6, 2009

Chairman,
Indiana Board of Tax Review

Commissioner,
Indiana Board of Tax Review

Commissioner,
Indiana Board of Tax Review

IMPORTANT NOTICE

- 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>.