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

Petition: **59-011-12-1-1-00004**
Petitioner: **Philip R. and Madge C. Bosley, Trustees of the Bosley Trust Agreement**
Respondent: **Orange County Assessor**
Parcel: **59-10-16-200-027.000-011**
Assessment Year: **2012**

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:

PROCEDURAL HISTORY

1. Philip R. Bosley (the "Petitioner"), on behalf of Philip R. Bosley and Madge C. Bosley, Trustees of the Bosley Trust Agreement, initiated the assessment appeal with the Orange County Property Tax Assessment Board of Appeals (the "PTABOA") by filing a Form 130 dated December 18, 2012.

2. The PTABOA mailed notice of its final assessment determination ("Form 115") on July 30, 2013. The PTABOA increased the assessment.

3. The Petitioner appealed to the Board by filing a Form 131 petition for review on August 28, 2013.

4. Where a property under appeal is assessed for less than $1 million, the Form 131 petition calls for a petitioner to check one of two boxes to indicate whether the petitioner accepts the Board's small claims procedures or instead wishes to opt out of those procedures. In this case, Mr. Bosley left both boxes blank. Given the default assumption that eligible appeals will be heard under the Board's small claims procedures, the Board sent a hearing notice to the parties indicating that the appeals would proceed under the small claims procedures. *See Board Exhibit B; see also,* 52 IAC 3-1-2 and -3 (providing for eligible appeals to be heard under small claims procedures unless the petitioner opts out or either party files timely written notice to transfer the case out of small claims). Neither party filed written notice to transfer the case out of small claims. At the hearing, both parties agreed to the small claims procedures.

5. Paul Stultz, the Board's appointed Administrative Law Judge (the "ALJ"), held the administrative hearing on April 16, 2014. The ALJ did not inspect the subject property.

6. The Petitioner was sworn and testified. County Representative Kirk Reller and County Assessor Linda Reynolds were sworn and testified for the Respondent.

FACTS

7. The subject property is a 5.2 acre agricultural lot containing two mobile homes located at 2400 E US Highway 150 in Paoli.[1]

8. The PTABOA determined the 2012 assessed value for land is $16,200. The two mobile homes are assessed as personal property. Therefore, the total assessed value for the subject property is $16,200.

RECORD

9. The official record contains the following:[2]

   a. A digital recording of the hearing

   b. Respondent Exhibit A – Subject property record card ("PRC") for 2011
   Respondent Exhibit B – Subject PRC for 2012
   Respondent Exhibit C – Amended subject PRC for 2012 after PTABOA corrections
   Respondent Exhibit D – Copy of Farm Service Agency farmland record
   Respondent Exhibit E – Letter showing history of pricing for subject property

   c. Board Exhibit A – Form 131 petition and attachments
   Board Exhibit B – Notice of hearing
   Board Exhibit C – Hearing Sign-in Sheet
   Board Exhibit D – Power of Attorney for Kirk Reller
   Board Exhibit E – Letter from Kirk Reller Regarding Certification

   d. These Findings and Conclusions.

BURDEN OF PROOF

10. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that a property's assessment is wrong and what its correct assessment should 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). A burden-shifting statute creates two exceptions to that rule.

11. First, Ind. Code § 6-1.1-15-17.2(a) "applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior year." Under Ind. Code § 6-1.1-15-17.2(b), "the county assessor or township

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[1] On the Form 131, the Petitioner listed the subject property address as 2167 S CR 250 E which is the same as the property owner's address. The property record cards, the Form 115, and the Form 130, however all show the subject property address as 2400 East US Highway 150.
[2] The Petitioner did not offer any exhibits.

assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or the Indiana tax court."

Second, Ind. Code § 6-1.1-15-17.2(d) "applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under Ind. Code 6-1.1-15." Under those circumstances,

> if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving the assessment is correct.

12. Ind. Code § 6-1.1-15-17.2 was amended on March 25, 2014, to include this language. This change applies to all appeals pending before the Board. *See* P.L. 97-2014.

13. At the Board hearing, the Respondent acknowledged that the 2012 assessment had increased by more than 5% over the 2011 assessment and that, ordinarily, the burden would shift to the Respondent to show that the assessment was correct. The Respondent went on to argue, however, that the burden should remain with the Petitioner because the property being assessed in 2012 was not the "same property" that was assessed in 2011.

14. Once a taxpayer has established that the assessment has increased by more than 5% from the prior assessment (a fact which the Respondent conceded in this case as discussed above), the burden is on the assessor to show that the property falls within an exception to the rule. The burden-shifting statute states:

> This section does not apply to an assessment if the assessment that is the subject of the review or appeal is based on:
> (1) structural improvements;
> (2) zoning; or
> (3) uses;
> that were not considered in the assessment for the prior tax year.
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> Ind. Code § 6-1.1-15-17.2(c).

15. The Board interprets the statute as a recognition by the Legislature that an increase in assessed valuation in excess of 5% from one year to the next, under typical market conditions, is aberrational. Consequently, under such circumstances, the assessor should lose the presumption that the assessment is correct. Similarly, the Legislature has recognized that an increase in an assessment in excess of 5% would not necessarily be aberrational if there were substantial changes in the property that were not considered in the prior year and, under such circumstances, the assessor should retain the presumption

that the assessment is correct. Thus, the question before the Board is whether the nature and degree of the changes are such that the taxpayer should be expected to bear the burden of proving the correct assessment.

16. The Board notes that the nature of this review is fact-sensitive and must be considered on a case-by-case basis. The facts of each case will determine whether the burden-shifting statute should apply. Furthermore, it should be noted that prior versions of the burden-shifting statute did not have express exceptions to the rule, and the Board analyzed whether the subject property should no longer be considered the "same property" previously assessed due to improvements or other factors.

17. For 2011, the Petitioner was assessed for land consisting of a one acre homesite containing one personal property mobile home, tillable land, non-tillable land, and woodlands. Other than a slight increase in base rates, in 2012 the subject property was assessed identically to how it was assessed in 2011 with regard to acreage allocation. However, at the PTABOA hearing, the Respondent discovered that there were actually two personal property mobile homes on the subject property. The PTABOA also considered evidence from the Farm Service Agency indicating that none of the subject property was tillable.

18. As a result of the PTABOA hearing, a new PRC was issued for 2012. The new PRC showed the original one acre homesite, one acre of excess residential property[3] and a deduction for a public road. The balance of the property was classified as non-tillable. The Respondent argues that the inclusion of the second personal property mobile home results in the subject property not being the "same property" for 2012 as it was in 2011.

19. As discussed above, the 2012 assessment reflected an additional mobile home homesite (classified as excess residential property) not considered in the 2011 assessment. The 2012 assessment also recognized a public road not considered in the 2011 assessment. Finally, the 2012 assessment characterized certain portions of the property as non-tillable, whereas that land had been characterized as tillable or woodland in 2011. While the Petitioner did not proactively make any changes to the subject property, the consideration of the additional homesite and mobile home, the recognition of the road, and the reclassification of other portions of the property are significant. Consequently, the Board finds that the property assessed in 2012 is not the same property as that assessed in 2011 and that the Petitioner has the burden to prove that the assessment is not correct.

CONTENTIONS

20. Summary of the Petitioner's case:

[3] The Respondent testified that the excess residential acreage was added to account for the homesite of the newly discovered second mobile home. The Respondent indicated that while the additional homesite must be accounted for, it should be done so at a lesser rate than that of the original homesite (i.e. at the "excess residential rate" as opposed to the "homesite" rate) because of certain shared utility equipment.

a. The Petitioner contends that in 1907 his grandfather purchased land in the area including the subject property. The Petitioner sold a portion of the land in 1992, had a survey done and a new deed was prepared. The Petitioner owns the subject property and the property located across the street where his house is located. *Bosley testimony.*

b. The Petitioner contends that in the early 1980s his mother placed a mobile home on the subject property. Subsequently, approximately 28 years ago, the Petitioner's son placed a second mobile home on the subject property. There are two septic tanks located on the subject property and both of the mobile homes are situated on concrete pads. *Bosley testimony.*

c. The Petitioner contends that the subject property is situated on somewhat rocky ground on which he cuts 1 to 1.5 acres of hay. The subject property is assessed at approximately $3,100 per acre, which is what the Petitioner contends prime farm ground is worth.[4] The Petitioner contends that the subject property is not prime farm ground and that it is not tillable. *Bosley testimony.*

d. The Petitioner talked to neighbors about their assessments. The Petitioner contends that one of the neighbors indicated their assessment decreased by $10,000 from 2011 to 2012 while other neighbors said their assessments either stayed the same or increased insignificantly from 2011 to 2012. *Bosley testimony.*

e. Prior to the 2011 assessment, the subject property was separated from other property owned by the Petitioner. The Petitioner contends the subject property should, at most, be assessed the same as his property across the street, even though the property across the street is superior to the subject property. *Bosley testimony.*

21. Summary of the Respondent's case:

a. The Respondent contends that, prior to 2011, the legal description was in error and that the subject property had been assessed as part of an adjacent property. Consequently, the subject parcel was created for the March 1, 2011 assessment. Upon its creation, the new parcel consisted of 5.2 acres containing a one acre homesite (for one personal property mobile home), tillable land, non-tillable land and woodlands[5]. *Reller testimony; Respondent Exhibit A.*

b. The Respondent contends that the original 2012 assessment was similar to the 2011 assessment with a one acre homesite, tillable land, nontillable land, and woodlands, but with the new, slightly higher base rates. *Reller testimony; Respondent Exhibit B.*

c. The Respondent contends that at the PTABOA hearing with regard to the 2012 assessment, it was discovered that there were two personal property mobile homes

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[4] The Petitioner divided the land value ($16,200) by the acreage (5.2) to arrive at $3,100 per acre.

[5] Respondent Exhibits A and B show 5 acres of land. Mr. Reller stated that the deeded acreage is 5.2 acres and that Respondent Exhibits A and B should have reflected 5.2 acres, not 5 acres.

located on the subject property. As a result, a corrected PRC was issued to reflect the additional homesite. The PTABOA assessed the second homesite as residential excess acreage. The PTABOA felt it was warranted to assess the additional homesite as residential excess acreage, which is assessed at a lower rate than a typical homesite, because the second homesite shared certain utility equipment with the original homesite. *Reller testimony; Respondent Exhibit C.*

d. The Respondent contends that the Petitioner presented a Farm Service Agency map of the subject property to the PTABOA. The map indicates 19.58 tillable acres on the Petitioner's adjacent property and no tillable acres on the subject property. The PTABOA changed the tillable land on the corrected 2012 PRC to non-tillable land and also included a deduction for a public road. *Reller testimony; Respondent Exhibits C and D.*

ANALYSIS

22. Real property is assessed based on its "true tax value," which 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); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. *Id*. Assessing officials primarily use the cost approach. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut or affirm an assessed valuation. 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. *Id* at 3.

23. Regardless of the type of evidence, a party must explain how that evidence relates to the relevant valuation date; otherwise, the evidence lacks probative value. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006). For 2012, the assessment and valuation dates were the same, March 1, 2012. I.C. § 6-1.1-4-4.5(f). Any evidence of value relating to a different date must have an explanation as to how it demonstrates, or is relevant to, value as of that date. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).

24. The Petitioner gave a history of the subject property and the adjacent property across the street that he also owns. The Petitioner contends that the subject property should be assessed the same as the adjacent property. However, the Petitioner offered no information about the characteristics or uses of the adjacent property. At best, the Petitioner stated that the subject property was once assessed with the adjacent property as a single parcel. The information provided is insufficient for the Board to conclude that the adjacent property is in fact comparable to the subject property or that the assessed value of the subject property is incorrect. *See Kooshtard Property VIII, LLC, v. Shelby County Assessor*, 987 N.E. 2d 1178, 1181 (Ind. Tax Ct. 2013). Conclusory statements are of no probative value unless accompanied by some explanation relating them to the

property's true tax value. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs,* 704 N.E.2d 1113, 1116 (Ind. Tax Ct. 1998).

25. Accordingly, the Petitioner failed to establish a prima facie case that there is an error in the 2012 assessment of the subject property. *See Eckerling v. Wayne Twp. Ass'r,* 841 N.E.2d 674 (Ind. Tax Ct. 2006), (stating that "when a taxpayer chooses to challenge an assessment, he or she must show that the assessor's assessed value does not accurately reflect the property's market value-in-use.").

26. 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 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

27. The Petitioner failed to make a prima facie case that the 2012 assessment is incorrect. The Board finds in favor of the Respondent.

FINAL DETERMINATION

In accordance with the above findings and conclusions, the 2012 assessment will not be changed.

ISSUED: October 10, 2014

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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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 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. The Indiana Tax Court's rules are available at <http://www.in.gov/judiciary/rules/tax/index.html>.