

REPRESENTATIVE FOR PETITIONER:

Carol Brown, Pro Se

REPRESENTATIVES FOR RESPONDENT:

Kristie L. Dressel, Center Township Assessor

Robert W. Metz, Commercial Supervisor, Center Township

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Carol Brown Trust	)	Petition Nos.:	45-032-03-1-5-00022
	)		45-032-03-1-5-00023
Petitioner	)		45-032-03-1-5-00024
	)		45-032-03-1-5-00025
	)		45-032-03-1-5-00026
	)		45-032-03-1-5-00027
	)		45-032-03-1-5-00028
)		
v.	)	Parcels:	003-31-25-0253-0038
	)		003-31-25-0253-0041
	)		003-31-25-0253-0039
Center Township Assessor	)		003-31-25-0253-0042
	)		003-31-25-0253-0040
Respondent	)		003-31-25-0253-0022
	)		003-31-25-0253-0021
)		
	)	County:	Lake
	)	Township:	Center
	)	Assessment Year:	2003

Appeal from the Final Determination of
Lake County Property Tax Assessment Board of Appeals

March 5, 2009

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 is excessive due to the condition of the improvements, the presence of a steep ravine on the property, and errors concerning the basement and loft finish.

PROCEDURAL HISTORY

2. The Lake County Property Tax Assessment Board of Appeals (PTABOA) issued its assessment determinations upholding the Center Township Assessor's 2003 assessments of the subject parcels on March 8, 2007.
3. Pursuant to Ind. Code § 6-1.1-15-1, the Petitioner filed Form 131 Petitions for Review of Assessment on April 5, 2007, petitioning the Board to conduct an administrative review of the subject property's 2003 assessment.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (the ALJ), Ellen Yuhan, held a hearing on January 13, 2009, in Crown Point, Indiana.
5. The following persons were sworn and presented testimony at the hearing:
For the Petitioner:

Carol Brown, Representative of Petitioner
Robert C. Brown, Witness for Petitioner,

For the Respondent:

Kristie L. Dressel, Center Township Assessor
Robert W. Metz, Commercial Supervisor, Center Township.

6. The Petitioner presented the following exhibits:
Petitioner Exhibit 1 – 7 Photographs of the subject parcels.
7. The Respondent did not present any exhibits.
8. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:
Board Exhibit A – Form 131 Petitions
Board Exhibit B – Notices of Hearing dated November 6, 2008
Board Exhibit C – Sign-in Sheet.
9. The subject property consists of one residential lot improved with a dwelling located at 13037 Fulton Street, Parcel 003-31-25-0253-0040 (Parcel 40), four vacant residential lots also located at 13037 Fulton Street, Parcel 003-31-25-0253-0038 (Parcel 38), Parcel 003-31-25-0253-0039 (Parcel 39), Parcel 003-31-025-0253-0041 (Parcel 41) and Parcel 003-31-025-0253-0042 (Parcel 42), and two vacant residential lots located at 13025 Fulton Street, Parcel 003-31-25-0253-0022 (Parcel 22) and Parcel 003-31-25-0253-0021 (Parcel 21), in Cedar Lake.¹
10. The ALJ did not conduct an on-site inspection of the subject property.
11. The PTABOA determined the assessed value of the subject parcels to be \$15,800 for the land and \$36,800 for the improvements, for a total assessed value of

¹ The Petitioner did not address each individual parcel specifically because, according to the Petitioner, the parcels have been combined since the 2003 assessment. The Board, therefore, will address the seven parcels collectively as the subject property.

\$52,600 for Parcel 40; \$4,300 for land for Parcel 38; \$4,100 for land for Parcel 39; \$4,000 for land for Parcel 41; \$4,100 for land for Parcel 42; \$3,900 for land for Parcel 22; and \$3,900 for land for Parcel 21.²

12. The Petitioner contends the total assessed value for the parcels should be between \$35,000 and \$38,000.

JURISDICTIONAL FRAMEWORK

13. 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

14. A Petitioner seeking review of a determination of the county Property Tax Assessment Board of Appeals has the burden to establish a prima facie case proving, by a preponderance of the evidence, 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).

² The record is not clear on the assessed value of all of the parcels. The Form 115 did not have any assessed value recorded. *Board Exhibit A*. A spreadsheet purportedly attached to the 115 identified the subject parcels and listed the above values.

15. 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”).
16. 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.

PARTIES’ CONTENTIONS

17. The Petitioner contends that the subject property should be assessed for between \$35,000 and \$38,000 because of the condition of the structure and the characteristics of the land. The Petitioner presented the following evidence in support of its contentions:
 - A. The Petitioner contends the property is over-valued based on the characteristics of the lots. *R. Brown testimony*. According to the Petitioner’s witness, a steep ravine takes up approximately 50% of the back of the property. *Id.* In support of this contention, the Petitioner presented photographs showing the ravine located behind the house. *Petitioner Exhibits 1, 4, 6 and 7*. The Petitioner further contends the back lots are landlocked because only two lots have street frontage. *R. Brown testimony*.
 - B. The Petitioner also argues that the dwelling is in poor condition. *R. Brown testimony*. According to the Petitioner, the foundation needs to be repaired and siding installed. *Id.* In support of this contention, the Petitioner submitted photographs showing the exterior of the dwelling. *Petitioner Exhibits 1-4*.

The Petitioner contends the condition of the house was worse in 2003 than what the current photographs show. *C. Brown testimony.*

- C. Finally, the Petitioner contends that the basement and loft area in the house are unfinished and have been that way since they purchased the property. *C. Brown testimony.*
18. The Respondent contends that the Petitioner’s evidence shows the current condition of the property and not the condition of the structure on the March 1, 2003, assessment date. *Metz testimony.* The Respondent further contends the records do not show a finished basement. *Id.*

ANALYSIS

19. The 2002 Real Property Assessment Manual defines “true tax value” as “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.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). The appraisal profession traditionally has used three methods to determine a property’s market value: the cost approach, the sales-comparison approach and the income approach to value. *Id.* at 3, 13-15. Indiana assessing officials generally value real property using a mass-appraisal version of the cost approach, as set forth in the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A.
20. A property’s market value-in-use, as determined using the Guidelines, is presumed to be accurate. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005) *reh’g den. sub nom. P/A Builders & Developers, LLC*, 842 N. E.2d 899 (Ind. Tax Ct. 2006). But a taxpayer may rebut that presumption with evidence that is consistent with the Manual’s definition of true tax value. MANUAL at 5. A market value-in-use

appraisal prepared according to the Uniform Standards of Professional Appraisal Practice often will suffice. *Id.*; *Koostard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer sales information for the subject or comparable properties and any other information compiled according to generally accepted appraisal practices. MANUAL at 5.

21. The Petitioner first argues that the properties are over-assessed because they are steep and mostly ravine. Further, the Petitioner contends that all but two of the lots are landlocked. Land values in a given neighborhood are generally determined through the application of a Land Order that was developed by collecting and analyzing comparable sales data for the neighborhood and surrounding areas. *See Talesnick v. State Bd. of Tax Comm'rs*, 693 N.E.2d 657, 659 n. 5 (Ind. Tax Ct. 1998). However, properties often possess peculiar attributes that do not allow them to be lumped with each of the surrounding properties for purposes of valuation. The term "influence factor" refers to a multiplier "that is applied to the value of land to account for characteristics of a particular parcel of land that are peculiar to that parcel." GUIDELINES, glossary at 10. The Petitioner has the burden to produce "probative evidence that would support an application of a negative influence factor and a quantification of that influence factor." *See Talesnick v. State Bd. of Tax Comm'rs.*, 756 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001). While the properties' topography may be relevant to the issue of whether a negative influence factor should apply here, the Petitioner failed to show how these conditions would impact the market value-in-use of the subject properties. Further, the Petitioner failed to show the actual market value of the properties. *See Talesnick*, 756 N.E.2d at 1108. Thus, the Petitioner failed to raise a prima facie case that the subject properties are over-valued due to the steep elevation of the properties.³

³ To the extent that the Petitioner claims individual properties are "landlocked," the Board notes that the Petitioner's witness testified the parcels are used as a single property and the property as a whole can be accessed through Fulton Street.

22. The Petitioner also contends that the house is in poor condition. *Brown testimony*. The Board interprets this to be an argument that the condition of the subject dwelling was improperly assessed. A condition rating is a “rating assigned each structure that reflects its effective age in the market.” *See REAL PROPERTY ASSESSMENT GUIDELINES, VERSION A, app. B, at 5*, (incorporated by reference at 50 IAC 2.3-1-2). A condition rating is determined by relating the structure to comparable structures within the subject property’s neighborhood. While the Petitioner’s representative testified that the foundation has to be fixed and siding is off the house, the Petitioner presented no evidence of the condition rating that the house was assigned in its 2003 assessment. Nor did the Petitioner relate its property to comparable properties within the neighborhood. Thus, the Petitioner failed to show that its assessment was in error.
23. Here, the Petitioner did not present any market-based evidence of the type recognized by the Manual to demonstrate that the subject properties are assessed in excess of their true tax values. Instead the Petitioner relies solely on the methodology used to assess the parcels rather than upon evidence probative of the subject property’s true tax value. The goal under Indiana’s new assessment system is to ascertain market value-in-use. Even if the Respondent’s assessment did not fully comply with the Guidelines, the Petitioner must show that the total assessment is not a reasonable measure of true tax value. 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 764, 768 (Ind. Tax Ct. 2006).
24. Where the Petitioner has not supported its claim with probative evidence, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacey Diversified Indus., LTD v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

SUMMARY OF FINAL DETERMINATION

25. The Petitioner failed to establish a prima facie case of error. The Board finds for the Respondent. No change in the assessment is warranted.

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

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

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>>