

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

Petition No.: 64-003-06-1-5-00007
Petitioner: Jeffrey L. Dennis
Respondent: Porter County Assessor
Parcel No.: 64-09-09-100-011.000-003
Assessment Year: 2006

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

Procedural History

1. The Petitioner initiated an assessment appeal with the Porter County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated May 7, 2007.
2. The Petitioner received notice of the decision of the PTABOA on October 2, 2008.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the Board on October 17, 2008. The Petitioner elected to have his case heard pursuant to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated July 8, 2009.
5. The Board held an administrative hearing on September 16, 2009, before the duly appointed Administrative Law Judge (the ALJ) Ellen Yuhan.
6. Persons present and sworn in at hearing:

For Petitioner: Jeffrey L. Dennis, Taxpayer,

For Respondent: Sharon S. Meier, Hearing Officer, Porter County,
Peggy Hendron, Deputy Assessor, Porter County.

Facts

7. The subject property is a residential property located at 477 N. State Road 149, Valparaiso, in Porter County.
8. The ALJ did not conduct an on-site visit of the property.
9. For 2006, the PTABOA determined the assessed value of the subject property to be \$50,600 for the land and \$5,000 for the improvements, for a total assessed value of \$55,600.
10. The Petitioner requested an assessed value of \$18,000 for the land and \$4,000 for the improvements, for a total assessed value of \$22,000.

Issues

11. Summary of the Petitioner's contentions in support of an error in his assessment:
 - a. The Petitioner contends that his property is unbuildable and has no value, because he cannot obtain a permit for a septic system. *Dennis testimony*. According to Mr. Dennis, the Porter County Health Department determined the site was unsuitable for a septic system because of the property's muck soil. *Petitioner Exhibit 1*. In support of his contention, the Petitioner submitted a Field Investigation Report from the Porter County Health Department. *Id.*
 - b. The Petitioner further contends that adjoining properties are assessed much lower than the assessed value that he requested. *Dennis testimony*. In addition, the Petitioner argues that the sales information the county used was inappropriate for trending the value of the subject property because only properties that cannot be improved are comparable to his property. *Id.*
 - c. Finally, the Petitioner argues that the PTABOA increased the assessment of his property after their hearing on the matter. *Dennis testimony*.
12. Summary of the Respondent's contentions in support of the assessment:
 - a. The Respondent contends the property is usable. *Meier testimony*. According to the Respondent's witness, Ms. Meier, the Petitioner has a well, a mobile home and a pole barn on the property. *Id.* In support of this contention, the Respondent submitted a property record card and an aerial photograph of the property. *Respondent Exhibits 2 and 4*.
 - b. In addition, the Respondent argues that the property may be buildable. *Meier testimony*. The Respondent's witness, Ms. Hendron, argues that the Porter County Health Department only prohibited the addition of a septic tank "until

the permeability of soil and reaction of sewage to soil can be determined.” *Hendron testimony* (referring to Petitioner’s Exhibit 1). Similarly, Ms. Meier argues that, according to the Porter County Surveyor, there is an area of the property that could be considered for a septic field location subject to limitation by the Porter County Health Department. *Meier testimony; Respondent Exhibit 4.*

- c. Finally, the Respondent’s witness, Ms. Hendron, agreed that the assessment increased as a result of the PTABOA hearing, but argues that when the PTABOA changed the breakdown of the land, the base rate changed. *Hendron testimony.* In support of this contention, the Respondent submitted the property record card and the PTABOA’s calculation for the land assessment. *Respondent Exhibits 2 and 5.*

Record

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

- a. The Petition,
- b. The compact disk recording of the hearing labeled 64-003-06-1-5-00007 Jeffrey L. Dennis,
- c. Exhibits:

Petitioner Exhibit 1 – Field Investigation Report and a copy of the Petition,¹

Respondent Exhibit 1 – Petitioner’s original 2006 property record card,
Respondent Exhibit 2 – Petitioner’s corrected property record card,
Respondent Exhibit 3 – PTABOA minutes,
Respondent Exhibit 4 – Surveyor’s letter,
Respondent Exhibit 5 – PTABOA Final Determination,

Board Exhibit A – Form 131 petition,
Board Exhibit B – Notice of Hearing dated July 8, 2009,
Board Exhibit C – Hearing sign-in sheet,

- d. These Findings and Conclusions.

¹ On September 17, 2009, the Petitioner mailed a letter to the ALJ purporting to provide additional evidence that the Board did not request. By its own rules, the Board does not accept posthearing evidence “unless it is requested by the administrative law judge or the board”. See 50 IAC 2-8-8(a). In addition to its rules, the Hearing Instructions, mailed to the Petitioner with his Notice of Hearing, clearly states, “Evidence will not be accepted after the hearing.” Therefore, the Petitioner’s letter is not considered a part of the evidence and it was not considered in these findings.

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 Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 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 Township 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 failed to provide sufficient evidence to establish an error in his assessment. The Board reached this decision for the following reasons:
 - a. 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). Appraisers traditionally have 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 assess real property using a mass-appraisal version of the cost approach, as set forth in the REAL PROPERTY ASSESSMENT GUIDELINES – VERSION A.
 - b. 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); *P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 2006). But a taxpayer may rebut that assumption 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 (USPAP) often will suffice. *See Kooshtard Property VI,*

836 N.E.2d at 505, 506 n.1. A taxpayer may also offer sales information regarding the subject property or comparable properties. MANUAL at 5.

- c. Regardless of the method used to rebut an assessment's presumption of accuracy, a party to an appeal must explain how his evidence relates to the property's market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2006, assessment, that valuation date is January 1, 2005. 50 IAC 21-3-3.
- d. Here, the Petitioner contends that the property has no value because he cannot build on it. In support of this contention, the Petitioner presented a Field Investigation Report dated July 22, 1992. That report, however, merely states that the site is unsuitable for any on-site sewage disposal system "until permeability of soil and reaction of sewage to soil can be determined." Thus, the Petitioner failed to prove that the subject property is unbuildable. Even if the Petitioner had shown that he could not improve his property, the Petitioner failed to show the effect of this limitation on the property's market value-in-use. *See Talesnick v. State Bd. of Tax Comm'rs.*, 756 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001).
- e. Moreover, the Petitioner failed to show that his assessment did not accurately reflect the market value of the property. A Petitioner fails to sufficiently rebut the presumption that an assessment is correct by simply contesting the methodology used to compute the assessment. *Eckerling v. Wayne Township Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *P/A Builders & Developers v. Jennings County Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (recognizing that the current assessment system is a departure from the past practice in Indiana, stating that "under the old system, a property's assessed value was correct as long as the assessment regulations were applied correctly. The new system, in contrast, shifts the focus from mere methodology to determining whether the assessed value is *actually correct*").²
- f. The Petitioner also contends that other adjoining properties are assessed lower than his property. This argument, however, was found to be insufficient to show an error in an assessment by the Indiana Tax Court in *Westfield Golf Practice Center, LLC v. Washington Township Assessor*, 859 N.E.2d 396 (Ind. Tax Ct. 2007) (rejecting taxpayer's lack of uniformity and equality claim where the taxpayer showed neither its own property's market value-in-use nor the market values-in-use of purportedly comparable properties). In that case, the Tax Court held that it is not enough for a taxpayer to show that its property

² Mr. Dennis' argument that the assessor used improper sales information in trending his assessment because "only properties that cannot be improved are comparable to his property," similarly only attacks the methodology of his assessment without showing that the actual assessed value does not reflect the market value-in-use of his property.

is assessed higher than other comparable properties. *Id.* Instead, the taxpayer must present probative evidence to show that its assessed value does not accurately reflect the property's market value-in-use. *Id.* This the Petitioner failed to do.

- g. Finally, the Petitioner argues that the assessment increased as a result of the PTABOA hearing. Indiana Code § 6-1.1-13-3 directs a PTABOA “on its own motion or on sufficient cause shown by any person” to add to the assessment lists the correct assessed value of any undervalued property. Ind. Code § 6-1.1-13-3. Further, the Form 130 petition to the PTABOA clearly states, “As a result of filing this petition, the assessment may increase, may decrease, or may remain the same.” Thus, while the Petitioner’s assessment may have increased, that is a possibility when any taxpayer appeals his assessment.
- h. The Petitioner failed to establish a prima facie case that the property is over-valued. When the Petitioner fails to provide probative evidence for an assessment change, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

- 16. The Petitioner failed to raise a prima facie case that the property is over-valued. The Board finds in favor of the Respondent.

Final Determination

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

ISSUED: _____

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>>