

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

Petition No.: 64-003-07-1-5-00068
Petitioner: Jeffrey L. Dennis
Respondent: Porter County Assessor
Parcel No.: 64-09-09-101-008.000-003
Assessment Year: 2007

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 April 9, 2009.
2. The Petitioner received notice of the decision of the PTABOA on March 22, 2010.
3. The Petitioner filed an appeal with the Board on May 5, 2010. 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 March 22, 2011.
5. The Board held an administrative hearing on May 17, 2011, 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: Jon Snyder, Porter County Assessor.¹

Facts

7. The subject property is a 2.6 acre parcel improved with a pole barn, located at 477 North State Road 149, Valparaiso, in Porter County.

¹ Christopher Buckley appeared as counsel for the Respondent.

8. The ALJ did not conduct an on-site visit of the property.
9. For 2007, the PTABOA determined the assessed value of the subject property to be \$34,000 for the land and \$6,000 for the improvements, for a total assessed value of \$40,000.
10. The Petitioner requested an assessed value of \$15,000 for the land and \$5,000 for the improvements, for a total assessed value of \$20,000.

Issues

11. Summary of the Petitioner's contentions in support of an alleged error in his property's assessment:
 - a. The Petitioner contends that the subject property is unbuildable and has no value, because he cannot obtain a permit for a septic system. *Dennis testimony*. In support of this contention, the Petitioner submitted a Field Investigation Report from the Porter County Health Department. *Petitioner Exhibits 1 and 2*. According to Mr. Dennis, the Porter County Health Department deemed the site unsuitable for a septic system. *Id.*
 - b. The Petitioner further argues that testimony in the Board's hearing during his 2006 appeal was incorrect. *Dennis argument; Respondent Exhibit 3*. According to Mr. Dennis, Ms. Meier's testimony that the surveyor claims that an area of the property could be considered for a septic field is unsupported. *Id.* Mr. Dennis contends the Porter County Health Department conducted a soil test. *Dennis testimony*. The surveyor, however, has never been to his property but made his determination from maps in the office. *Id.*
 - c. Finally, the Petitioner contends that similar properties are taxed at substantially less than his property. *Dennis testimony*. According to Mr. Dennis, he submitted the tax records of those properties with his appeal.² *Id.*
12. Summary of the Respondent's contentions in support of the assessment:

² The Petitioner argued throughout the proceedings that he had included documentary evidence when he submitted the appeal. However, the Board received no documents either with the petition or separately. Additionally, the record of the PTABOA hearing shows that the Petitioner only submitted the Field Investigation Report from the Health Department. The Petitioner apparently believed that evidence submitted for a previous appeal or hearing would be available for these proceedings. The Petitioner is incorrect. Once a taxpayer has properly invoked the Board's jurisdiction its proceedings are *de novo*. See Ind. Code § 6-1.1-15-4(m) (A person participating in a hearing [before the Board] is entitled to introduce evidence that is otherwise proper and admissible without regard to whether that evidence has been previously been introduced at a hearing before the county property tax assessment board of appeals.) Thus, the Petitioner was obligated to present any evidence he wanted considered to the Board at its administrative hearing. Further, the Board's hearing instructions specifically state that the person filing the petition is responsible for providing the Board with evidence supporting the change requested and that evidence must be presented at the hearing.

- a. The Respondent's counsel contends the Petitioner's property may not be buildable but it is usable. *Buckley argument*. According to Mr. Buckley, the Petitioner has improvements on the property. *Id.* In support of this contention, the Respondent submitted the property record card for the subject property, the property record card for a manufactured home leasing space on the Petitioner's property, and an aerial photograph of the property. *Respondent Exhibits 1, 5, and 6.*
- b. The Respondent's counsel further argues that the burden of proof is on the Petitioner to prove that the property's current assessment is incorrect. *Buckley argument*. According to Mr. Buckley, the Petitioner failed to establish a prima facie case because he did not present any evidence showing the market value-in-use of his property or of any surrounding properties. *Id.*

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 64-003-07-1-5-00068 Jeffrey L. Dennis,
- c. Exhibits:
 - Petitioner Exhibit 1 – General Recommendations for Residential Sewage Disposal, dated July 22, 1992,
 - Petitioner Exhibit 2 – Field Investigation Report,
 - Respondent Exhibit 1 – Property record card for the subject property,
 - Respondent Exhibit 2 – Cost schedules for pole barns,
 - Respondent Exhibit 3 – Final Determination of the Indiana Board of Tax Review for the Petitioner's 2006 assessment appeal,
 - Respondent Exhibit 4 – Form 115 Notification of Final Assessment Determination for 2007,
 - Respondent Exhibit 5 – Property record card for a manufactured home leasing space on the subject property,
 - Respondent Exhibit 6 – GIS printout showing the pole barn and the manufactured home,
 - Board Exhibit A – Form 131 petition,
 - Board Exhibit B – Notice of Hearing dated March 22, 2011,
 - Board Exhibit C – Hearing sign-in sheet,
- d. These Findings and Conclusions.

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 case. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
15. The Petitioner failed to provide sufficient evidence to establish an error in his property’s 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. In 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 Township 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). 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 (USPAP) often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer actual construction costs, sales information for the subject property or comparable properties and any other information compiled according to generally accepted appraisal practices. *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, 2007, assessment, that valuation date was January 1, 2006. 50 IAC 21-3-3.
- d. The Petitioner first contends that the subject 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, in which the Porter County Health Department purportedly found the soil unsuitable for a septic system. Generally, land values in a given neighborhood are determined 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 grouped 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). Here, while the inability to install a septic system may negatively impact the value of the Petitioner's property, the Petitioner failed to quantify the effect of such a building restriction on the property's market value-in-use. *See Talesnick*, 756 N.E.2d at 1108.
- e. Further, even if the Petitioner had shown that an influence factor should have been applied to his property, the Petitioner failed to show that his property's assessment did not accurately reflect the property's market value. A Petitioner fails to sufficiently rebut the presumption that an assessment is correct by simply contesting the method the assessor 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*"). Here, the Petitioner failed to present any evidence of the market value-in-use of the subject property.
- f. The Petitioner also contends that other adjoining properties have lower taxes than his property. However, the Petitioner failed to present evidence of the amount of the taxes billed to the owners of such adjoining parcels. While the rules of evidence generally do not apply in the Board's hearings, the Board requires some evidence of the accuracy and credibility of the evidence. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its

determination. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998); and *Herb v. State Board of Tax Commissioners*, 656 N.E.2d 890, 893 (Ind. Tax Ct. 1995).

- g. Further, to the extent that the Petitioner argues that his taxes are higher than neighboring properties' taxes, the Board notes that several factors can affect a tax bill including the properties' assessed values and whether a property is entitled to various deductions, credits and exemptions. The Board, however, lacks jurisdiction to hear any claim that the Petitioner's taxes are too high or his taxes are higher than the taxes of other property owners. The Board is a creature of the legislature and has only the powers conferred by statute. *Whetzel v. Dep't of Local Gov't Fin.*, 761 N.E.2d 904, 908 (Ind. Tax Ct. 2002), citing *Matonovich v. State Bd. of Tax Comm'rs*, 705 N.E.2d 1093, 1096 (Ind. Tax Ct. 1999); *Hoogenboom-Nofziger v. State Bd. of Tax Comm'rs*, 715 N.E.2d 1018, 1021 (Ind. Tax Ct. 1999). Indiana Code § 6-1.5-4-1 gives the Board authority to determine appeals concerning assessed valuation, deductions, exemptions and credits. The Board has no jurisdiction over taxes or tax rates.
- h. To the extent that the Petitioner's argument can be seen as a claim that other properties are assessed lower than his property, this argument 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 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.
- f. The Petitioner failed to establish a prima facie case that his property is over-valued for the 2007 assessment year. When the Petitioner fails to provide probative evidence that an assessment should be changed, 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 his property is over-valued. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review determines that the subject property's assessed value 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>>