

REPRESENTATIVE FOR PETITIONER:

William Dobslaw, *pro se*

REPRESENTATIVE FOR RESPONDENT:

Frank Agostino, Attorney at Law

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

William Dobslaw,)	Petition No.: 71-002-03-1-5-00016
)	
Petitioner,)	Parcel No.: 23-1035-1729
)	
v.)	County: St. Joseph
)	
Centre Township Assessor,)	Township: Centre
St. Joseph County Assessor)	
)	Assessment Year: 2003
Respondents.)	

Appeal from the Final Determination of the
St. Joseph County Property Tax Assessment Board of Appeals

December 23, 2008

FINAL DETERMINATION

The Indiana Board of Tax Review (“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

INTRODUCTION

1. Indiana law requires a uniform and equal rate of assessment, but it does not require that uniform procedures be used to arrive at that rate. William Dobslaw claimed that he was

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treated unfairly because his land was assessed on an acreage basis while similar properties were assessed on a front-foot basis. But he offered no evidence to show that his property was assessed for a greater percentage of its market value-in-use than those other properties were. We therefore deny his appeal.

PROCEDURAL HISTORY

2. Mr. Dobslaw filed a Form 130 petition to the St. Joseph County Property Tax Assessment Board of Appeals (“PTABOA”) asking it to reduce his property’s assessment. On February 2, 2006, the PTABOA issued its determination denying Mr. Dobslaw relief. Mr. Dobslaw then timely filed a Form 131 petition asking us to review his assessment. We have jurisdiction over Mr. Dobslaw’s appeal under Ind. Code §§ 6-1.1-15 and 6-1.5-4-1.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. On September 30, 2008, Patti Kindler, the Board’s designated Administrative Law Judge (“ALJ”), held a hearing. Neither the Board’s nor the ALJ inspected Mr. Dobslaw’s property.
4. The following people were sworn and testified at the hearing:

William Dobslaw

For the Centre Township and St. Joseph County Assessors:

David Wesolowski, St. Joseph County Assessor
Ralph Wolfe, PTABOA Member
Dennis Dillman, PTABOA Member
Ross Portolese, PTABOA Member
Sue Tranberg, Appeals Manager

5. Mr. Dobslaw offered the following exhibits:
Petitioner’s Exhibit 1 – Property site plan,
Petitioner’s Exhibit 2 – March 1, 2001 Notice of Assessment,

Petitioner's Exhibit 3 – Property record card (“PRC”) printed January 14, 2004,
Petitioner's Exhibit 4 – PRC printed March 17, 2004,
Petitioner's Exhibit 5 – PRC printed January 19, 2006,
Petitioner's Exhibit 6 – PRC printed November 1, 2007,
Petitioner's Exhibit 7 – Form 130 Petition,
Petitioner's Exhibit 8 – Form 114 Notice of Hearing,
Petitioner's Exhibit 9 – Comparable property record card 23-1025-1335 printed
September 22, 2003,
Petitioner's Exhibit 10 – Comparable property record card 23-1025-1335 printed
January 10, 2006,
Petitioner's Exhibit 11 – Comparable property record card 23-1025-146301
printed May 20, 2004,
Petitioner's Exhibit 12 – Comparable property record card 23-1025-146301
printed January 10, 2006,
Petitioner's Exhibit 13 – Comparable property record card 23-1025-146701
printed May 20, 2004,
Petitioner's Exhibit 14 – Comparable property record card 23-1025-146701
printed January 10, 2006,
Petitioner's Exhibit 15 – Post hearing letter from Mr. Dobslaw to the PTABOA
dated January 23, 2006,
Petitioner's Exhibit 16 – Form 115 Notice of Final Assessment Determination,
Petitioner's Exhibit 17 – Form 131 Petition.

6. The Assessors offered the following exhibits:

Respondent's Exhibit 1 – Sales Disclosure Form for 1217 E. Ireland Road,
Respondent's Exhibit 2 – PRC for the Aldi property located at 202 E. Ireland
Road,
Respondent's Exhibit 3 – Sales Disclosure Form for 311 E. Ireland Road.

7. The Board recognizes the following additional items are as part of the record of
proceedings and label them as Board Exhibits:

Board Exhibit A – Form 131 petition,
Board Exhibit B – Notice of Hearing dated July 3, 2008,
Board Exhibit C – Hearing Sign-In Sheet,
Board Exhibit D – Notice of County Assessor Representation,
Board Exhibit E – Notice of County Assessor as an Additional Party,
Board Exhibit F – Notice of Appearance for Frank Agostino to represent the
PTABOA and Centre Township Assessor.

8. Mr. Dobslaw's property is located at 130 East Ireland Road in South Bend. He leases the property to Advance Auto Parts. The property contains a 7,000-square-foot building built in 2001. It has .8594 acres of land with 145 feet of frontage and 250 feet of depth.
9. The PTABOA valued the property's land at \$122,700 and its improvements at \$346,600 for a total assessment of \$469,300.
10. On his Form 131 petition, Mr. Dobslaw requested a value of \$65,250 for the land and \$215,000 for the improvements for a total value of \$280,250.
11. At the hearing, Mr. Dobslaw requested a value of \$68,511 for the land. His original request did not consider a depth factor. Mr. Dobslaw did not discuss the property's improvements other than to say that he told the PTABOA that he would accept the value for improvements if the PTABOA would reduce the property's land value.

ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

12. A petitioner seeking review of an assessing official's determination must establish a prima facie case proving both that the current assessment is incorrect and specifically what the 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).
13. In making its case, the petitioner must explain how each piece of evidence relates to its 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”).
14. Once the petitioner establishes a prima facie case, the burden shifts to the respondent to impeach or rebut the petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.

ANALYSIS

Parties' Contentions

A. Mr. Dobslaw

15. Mr. Dobslaw contends that he has been treated unequally compared to owners of similar properties. He pointed to seven nearby properties along Michigan Street and Ireland Road, all of which had their land valued using a rate of \$450 per front foot. *Dobslaw testimony; Pet'r Ex. 7*. Although Mr. Dobslaw's property is similar to those seven properties both in size and location, his land was assessed at the adjusted rate of \$142,800 per acre. *See Dobslaw testimony; Pet'r Ex. 4*. Had the Centre Township Assessor used the same \$450-per-front-foot rate that it used in assessing similar properties, Mr. Dobslaw's land would have been valued at only \$68,511. *Id.; Pet'r Ex. 17*. The Pizza Hut located at 209 East Ireland Road has almost the same front footage as Mr. Dobslaw's property, and the two properties are otherwise very comparable. Pizza Hut's land was assessed for only \$67,800. Had it been valued on an acreage basis like Mr. Dobslaw's property, it would have been assessed at \$148,760. *Dobslaw testimony; Pet'r Exs. 11-12*.
16. The PTABOA actually agreed with Mr. Dobslaw's position because it used a front-foot rate of \$450 in assessing his property for 2006. The PTABOA, however, added a 1.38 "market factor." *Dobslaw testimony; Pet'r Ex. 6*. A note on the property record card shows that the PTABOA agreed to assess Mr. Dobslaw's land using the \$450 front-foot rate, but that it added a "market factor" to bring the assessment back to its original value. *Id.* The PTABOA did not tell Mr. Dobslaw that it was taking those actions. *Dobslaw testimony*.
17. In any event, Mr. Dobslaw contends that his property's market factor should have been 1.0 like the other properties that were assessed on a front-foot basis. For support, he pointed to property record cards for the Instant Lube located at 4425 South Michigan

Street and a chiropractor's office at 219 East Ireland. Both properties had a market factor of 1.0. *Dobslaw testimony; Pet'r Exs. 9-10, 13-14.*

B. The Assessors

18. The Assessors contend that Mr. Dobslaw failed to meet his burden of proof. Mr. Dobslaw did not offer any market evidence to rebut his property's assessment. *Agostino argument*. Under Indiana's assessment system, it does not matter what the separate parts of a property are assessed for as long as the property's total assessment reflects its market value-in-use. *Wesolowski testimony*. Thus, the question of whether Mr. Dobslaw's land was valued using an acreage or front-foot method is irrelevant; what matters is whether the property as a whole was assessed for its market value-in-use. *Dillman testimony*.
19. The Assessors also contend that Mr. Dobslaw's assessment was fair and reasonable and that it accurately reflected the property's market value-in-use. St. Joseph County's land valuation commission used sales to determine commercial land values for the 2003 assessment. *Wesolowski testimony*. Mr. Wesolowski thought that the PTABOA changed the land valuation on Mr. Dobslaw's property record card from acreage to front-foot pricing to be consistent with other properties. He believed that adding the 1.38 market factor for the 2006 was "secondary" to that action. *Id.* The 2003 assessment did not use market factors. *Id.*
20. Mr. Dillman, who is an appraiser, testified that the rent that a property generates is important in determining its value. *Dillman testimony*. Based on Mr. Dobslaw's testimony about the rent that his property generated, the property could be valued anywhere from \$400,000 to \$800,000 under the income approach. *Id.*
21. The Assessors also offered sales and assessment information for three properties on Ireland Road. The Kroger property located at 1217 East Ireland Road sold for \$16,830,292 on September 26, 2005. *Resp't Ex. 1*. The Pep Boys property located at 311 East Ireland Road sold for \$2,794,525 on August 1, 2003. *Resp't Ex. 3*. While those

were multi-parcel properties, the land represented a significant portion of each property. *Agostino argument*. The Aldi property located at 202 East Ireland Road was assessed for \$1,208,300 in 2003. *Resp't Ex. 2*. That property was actually part of a larger property that had included the property under appeal before Mr. Dobslaw subdivided it. The three Ireland Road properties are located in the same neighborhood as Mr. Dobslaw's property and support its assessment. *Agostino argument*.

DISCUSSION

22. Mr. Dobslaw offered no independent market-based evidence to support his claims. Instead, he claimed that the township assessor improperly used a different methodology to value his land than it used to value the land of nearby improved properties. That methodology-based argument fails whether one views it as an attempt by Mr. Dobslaw to show that his property was assessed for more than its market value-in-use or a claim that assessments were not uniform and equal.

A. Market Value-in-Use

23. Before 2002, true tax value was determined solely by reference to the State Board of Tax Commissioners' regulations and bore no relation to any objectively verifiable standard of measure. *Westfield Golf Practice Center, LLC v. Washington Twp. Assessor*, 859 N.E.2d 396, 399 (Ind. Tax Ct. 2007). Thus, taxpayers could prove their property's true tax value only by reference to the applicable assessment regulations. *Id.*
24. Beginning in 1996, the Indiana Tax Court and Indiana Supreme Court issued a series of decisions addressing whether that system violated our state constitution's requirement for a uniform and equal rate of property assessment.¹ *See State Bd. of Tax Comm'rs v. Town of St. John*, 702 N.E.2d 1034, 1035-36 (Ind. 1998) ("St. John V").² The Supreme Court

¹ IND. CONST. ART. X § 1.

² (Citing to four earlier reported decisions involving that case: *Town of St. John v. State Bd. of Tax Comm'rs*, 665 N.E.2d 965 (Ind. Tax Ct. 1996) ("St. John 1"); *Boehm v. Town of St. John*, 675 N.E.2d 318 (Ind. 1996) ("St. John

ultimately affirmed the Tax Court's finding that the State Board's cost schedules, which formed the heart of its regulations, did not sufficiently relate to objectively verifiable data to ensure uniform and equal assessments based on property wealth. *St. John V*, 702 N.E.2d at 1043.

25. The regulations for the 2002 general reassessment provide that missing link to objectively verifiable data by tying a property's assessment to its "market value-in-use." Thus, the 2002 Real Property Assessment Manual now 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).
26. As before, assessors typically use a mass-appraisal version of the cost approach in assessing individual properties. The Real Property Assessment Guidelines for 2002 – Version A describe that approach in detail. But we no longer measure an assessor's success by whether he followed the state's guidelines; we instead look to whether his assessments accurately reflect the assessed properties' market values-in-use. *See* MANUAL at 20 (discussing the use of ratio studies to measure a mass-appraisal's accuracy and uniformity).
27. That shift from focusing on methodology to focusing on measurable results applies equally to how we must judge appeals from individual assessments. Thus, while the Manual directs us to presume that a property's assessment under the Guidelines accurately reflects its true tax value, a taxpayer can rebut that presumption with evidence showing the property's actual market value-in-use. *See* MANUAL at 5; *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice will often suffice. *Id.* A taxpayer may also offer actual construction costs, sales

II"); *Town of St. John v. State Bd. of Tax Comm'rs*, 690 N.E.2d 370 (Ind. Tax Ct. 1997) ("St. John III"); *Town of St. John v. State Bd. of Tax Comm'rs*, 691 N.E.2d 1387 (Ind. Tax Ct. 1998)("St. John IV").

information for the subject or comparable properties, and other information compiled according to generally accepted appraisal principles. *Id.*

28. But a taxpayer no longer can rebut an assessment simply by pointing to an assessor's technical failure in applying the Guidelines. *Eckerling*, 841 N.E.2d at 676; *see also* Ind. Admin. Code tit.50, r. 2.3-1-1(d). Instead, the taxpayer should offer the types of market-based evidence described in the Manual. *See Eckerling*, 841 N.E.2d at 478 (finding that taxpayers failed to make a prima facie case by focusing strictly on the assessor's methodology rather than offering market value-in-use evidence).
29. As already explained, Mr. Dobslaw did not offer any market value-in-use evidence. He instead argued only that the assessor should have used a different methodology to assess his land. He therefore failed to make a prima facie case rebutting his property's assessment.

B. Uniformity and Equality

30. Mr. Dobslaw's argument that his land was not assessed uniformly and equally compared to nearby commercial properties is just a different side of the same coin—it is still based solely on methodology. And methodology-based arguments fare no better when couched in terms of uniformity and equality than they do when presented as valuation claims.
31. Indeed, the Indiana Tax Court rejected a similar lack-of-uniformity-and-equality claim in *Westfield Golf Practice Center*. In that case, a taxpayer grounded its claim on the fact that the landing area for its driving range was assessed using a different base rate than the rate used to assess other driving ranges' landing areas. 859 N.E.2d at 397-98. In rejecting the taxpayer's claim, the court explained that “the overarching goal of Indiana's new assessment scheme is to measure a property's value using objectively verifiable data.” *Id.* at 399. Thus, while uniformity and equality is required in the end result, the procedures used to arrive at that result need not be uniform. *Id.* Rather than focusing on that 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 taxpayers focused solely on the methodology used to compute the properties' assessments. *Id.*

32. Like the taxpayer in *Westfield Golf Practice Center*, Mr. Dobslaw focused only on the difference in base rates used to assess his property and other commercial properties in the area. He did not address whether his property was assessed at a higher percentage of its market value-in-use than the other properties. Indeed, he did little to compare his property to any of the other properties aside from noting their proximity to each other. Thus, like the taxpayer's claim in *Westfield Golf Practice Center*, Mr. Dobslaw's lack-of-uniformity-and-equality claim fails.

SUMMARY OF FINAL DETERMINATION

33. Mr. Dobslaw failed to make a prima facie case for a change in his assessment. The Board therefore finds for the Centre Township and St. Joseph County Assessors.

The Indiana Board of Tax Review issues this Final Determination of the above captioned matter on the date first written above.

Commissioner, Indiana Board of Tax Review

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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>>