

PETITIONER BERT S. ENGLER, PRO SE

MARILYN S. MEIGHEN, ATTORNEY FOR RESPONDENT

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

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|-----------------------------|---|-------------------------------------|
| Bert S. Engler, |) | Petition No. 88-009-11-1-5-00002 |
| |) | |
| Petitioner, |) | |
| |) | Parcel No. 88-42-35-000-001.000-001 |
| v. |) | |
| |) | Washington County |
| Washington County Assessor, |) | Brown Township |
| |) | 2011 Assessment |
| Respondent. |) | |

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

March 20, 2013

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has reviewed the evidence and arguments presented in this case. The Board now enters its findings of fact and conclusions of law.

ISSUE

Is the current 2011 assessment of \$217,400 an accurate market value-in-use for the subject property and does the evidence show what a more accurate assessed valuation would be?

HEARING FACTS AND OTHER MATTERS OF RECORD

1. The property includes 93.66 acres, a single family residence, grain bins, multiple pole barns and hog farm structures located at 9340 West Sparksville Road, Campbellsburg, Indiana.
2. The Petitioner initiated an assessment appeal for 2011 with the Washington County Property Tax Assessment Board of Appeals (PTABOA) by timely filing a Form 130 Petition.
3. On June 29, 2012, the PTABOA mailed its Notification of Final Assessment Determination (Form 115) for 2011, concluding that the assessment is \$85,400 for land and \$132,000 for improvements (total \$217,400).
4. On August 6, 2012, the Petitioner filed a Form 131 Petition seeking the Board's review of that determination. The Form 131 stated the assessed value should be \$85,400 for land and \$85,900 for improvements (total \$171,300).
5. Administrative Law Judge Rick Barter held the Board's administrative hearing on October 30, 2012. He did not conduct an on-site inspection of the property.
6. Petitioner Bert Engler, Washington County Assessor Jason Cockerill, and licensed Indiana appraiser Richard Sceifers were sworn as witnesses.
7. The Petitioner presented the following exhibits:
 - Petitioner Exhibit A – Property record card (PRC) and photograph of the house under appeal,
 - Petitioner Exhibit A1 – MLS Listing Contract, page 1,
 - Petitioner Exhibit A2 – Fred J. Ramoni appraisal of residence and 1 acre,
 - Petitioner Exhibit B – Notice of Assessment (Form 113) dated February 14, 2012,
 - Petitioner Exhibit B1 – Notice of Assessment (Form 113) dated February 28, 2012, and PRC printed February 22, 2012,

Petitioner Exhibit C, C1, C2 and C3 – Letters requesting information/records and responding to those requests,
Petitioner Exhibit D – Photographs of building 04 on PRC,
Petitioner Exhibit E – photographs of building 05 on PRC,
Petitioner Exhibit F – Photographs of building 09 on PRC,
Petitioner Exhibit G – Estimate from Temple & Temple to remove farrowing houses and feeding building,
Petitioner Exhibit H – Pages from assessment guidelines,
Petitioner Exhibit H1– Map and drawing of land type 71 (land used for farm buildings and barn lots),
Petitioner Exhibit H2 – Map and drawing of land type 81 (a legal ditch),
Petitioner Exhibit H3 – Assessed value summary.

8. The Respondent presented the following exhibits:

Respondent Exhibit A – Property record cards for the subject property,
Respondent Exhibit B – Not submitted,
Respondent Exhibit C – Aerial and other photographs of the subject property,
Respondent Exhibit D – Richard Sceifers’ appraisal of the subject property,
Respondent Exhibit E – Realtor’s listing for the subject property from Southern MLS book,
Respondent Exhibit F – Not submitted.

9. The following additional items are recognized as part of the record:

Board Exhibit A – Form 131 Petition,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing sign-in sheet.

SUMMARY OF THE PETITIONER’S CASE

10. When this appeal was initiated, it was believed that the land value was accurate and the dispute was about the improvements. But since then, errors with the assessed land value have also been discovered. *Engler testimony.*

11. Fred J. Ramoni is a licensed Indiana appraiser. His appraisal of the house complies with the Uniform Standards of Professional Appraisal Practice and is based on a valuation date of March 1, 2011. The appraised value of the house is only \$85,000. That total consists of \$10,000 for the one-acre homesite and \$75,000 for the structure. That valuation is

based on the sales comparison approach using three comparable properties, all just over 20 miles from the subject property. Those sale dates range from September 2009 to March 2010. The Ramoni appraisal did not develop a value based on the cost approach or the income approach. *Pet'r Ex. A2.*

12. A market adjustment on the property of 1.25% is inappropriate and over-states the value. *Engler testimony; Pet'r Ex. C.*
13. The 2011 assessment contains several errors, including a basement garage that has been removed and is still assessed at \$2,600. A road right-of-way on the property is inaccurately assessed and a drainage ditch also is not assessed in accordance with the procedures described in the Indiana Assessing Manual. *Engler testimony; Pet'r Ex. H, H1, H2.*
14. The subject property used to have a hog farm. Old structures related to the hog operation still exist, but are in poor condition. They are not used or usable. They are functionally obsolete and have no value. They are over-assessed. A letter from a local contractor states that it would cost \$20,640 to remove them. *Engler testimony; Pet'r Ex. D through G.*
15. In October 2012, the Petitioner listed the subject property with Mainstreet Realtors with an asking price of \$359,900. The Petitioner would have sold it for less. *Engler testimony; Pet'r Ex. A1.*

SUMMARY OF THE RESPONDENT'S CASE

16. The 2011 assessed value of even more than \$217,400 is supported by the Richard Sceifers appraisal. Mr. Sceifers is a licensed Indiana residential appraiser, real estate broker and auctioneer. His appraisal complies with the Uniform Standards of Professional Appraisal Practice. He concluded the property's value was \$300,000 as of March 1, 2011. *Meighen argument; Sceifers testimony; Resp't Ex. D.*

17. The Respondent requests the assessment be increased to \$300,000 based on the Sceifers appraisal. *Meighen argument.*
18. The appraisal used the sales comparison approach to determine the value of the subject property, but the cost approach and the income approach were not developed. The appraisal used 6 comparable sales. Details of the comparison are shown on pages 1 and 17 of the appraisal. The appraisal considers studies of Washington County property values and Indiana agricultural land values as determined by the Department of Local Government Finance. The appraiser made adjustments to the comparable sales to account for the required \$1,500 agricultural land base rate. The very large adjustments on all the comparables primarily come from the specifically established agricultural land base rate for Indiana assessment purposes. Without the adjustment for the agricultural land base rate, the other adjustments on the comparables are small—well within the generally accepted range. *Sceifers testimony; Resp't Ex. A, C, D, E.*
19. This appraisal did not attempt to determine a value for just the house or any of the improvements. *Sceifers testimony; Resp't Ex. D.*
20. The market value/value-in-use of the entire subject property as of March 1, 2011, was \$300,000. *Sceifers testimony; Resp't Ex. D.*
21. In May 2012 the Petitioner had the subject property listed with a realtor and his asking price was \$469,900. In southern Indiana, it is not likely that the value of a property actually increases by \$100,000 in one year. *Cockerill testimony; Resp't Ex. E.*

BURDEN

22. 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). Nevertheless, the Indiana General Assembly enacted a statute that in some cases shifts the burden of proof:

This section applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal increased the assessed value of the assessed property by more than five percent (5%) over the assessed value determined by the county assessor or township assessor (if any) for the immediately preceding assessment date for the same property. The county assessor or township 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 to the Indiana tax court.

IC § 6-1.1-15-17.2

23. The assessor's assessment for 2010 was \$67,200 for land and \$127,700 for improvements (total \$194,900). The PTABOA determined the 2011 assessment is \$85,400 for land and \$132,000 for improvements (total \$217,400).
24. The assessment increased by more than 5%. Therefore, the Respondent has the burden to prove the existing assessed value is correct.

ANALYSIS

25. 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); 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 550 IAC 2.3-1-2). There are three generally accepted techniques to calculate market value-in-use: the cost approach, the sales comparison approach, and the income approach. Indiana assessing officials primarily use the cost approach. *Id.* at 3. Indiana promulgated Guidelines that explain the application of the cost approach. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002

– VERSION A (incorporated by reference at 50 IAC 2.3-1-2). The value established by use of the Guidelines is presumed to be accurate, but it is merely a starting point. Other evidence relevant to market value-in-use can rebut that presumption. That 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. MANUAL at 5.

26. Regardless of the valuation method used, a party must explain how its evidence relates to market value-in-use as of the relevant valuation date. *See O'Donnell v. Dep't of Local Gov't Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for a 2011 assessment was March 1, 2011. IC 6-1.1-4-4.5(f). Any evidence of value relating to a different date must also have an explanation about how it demonstrates, or is relevant to, that required valuation date. *Long*, 821 N.E.2d at 471.
27. The most effective method to establish value can be through the presentation of a market value-in-use appraisal, completed in conformance with the Uniform Standards of Professional Appraisal Practice. *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n. 6 (Ind. Tax Ct. 2005).
28. The disputed 2011 PTABOA assessment is \$217,400. The Respondent presented Mr. Sceifers' testimony and his appraisal, which both concluded that the value of the subject property was \$300,000 as of March 1, 2011.¹ The Respondent offered evidence of Mr. Sceifers' qualifications and otherwise established that his appraisal is relevant, probative evidence. Furthermore, there was no objection to this testimony or appraisal. The Respondent at least satisfied the initial burden to support the existing assessed value with this evidence. Therefore, our analysis moves to the next level, which involves weighing all the evidence in order to reach a conclusion about the most accurate market value-in-use for the subject property.

¹ The Respondent also offered other evidence, but that opinion is the heart of the Respondent's case.

29. The Petitioner offered evidence and argument that various features were incorrect on his property record card. But even if the property record card has errors concerning hog barns, a basement garage, and land classification, the Petitioner failed to make his case by simply contesting the methodology used to compute the assessment. *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 677 (Ind. Tax Ct. 2006). To successfully make his case he needed to show the assessment does not accurately reflect the subject property's market value-in-use. *Id.*; *see also P/A Builders & Developers, LLC v. Jennings County Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (explaining that proper focus is not on methodology, but rather, on what the correct value actually is). The Petitioner failed to prove what a more accurate value for the subject property would be if these purported data errors were corrected. Therefore, they do not help him prove his case.
30. Ultimately, this final determination boils down to whether the Board is more persuaded by the Sceifers appraisal and testimony about the entire property or by the Ramoni appraisal of only the house and 1-acre homesite. *In this case, neither side presented evidence that is particularly convincing. Both may have significant weaknesses;* however, the Board must operate within the limitations explained in *Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 480 (Ind. Tax Ct. 2003) (explaining that the Board exceeds its authority where it attempts to make the case for a party).
31. The Ramoni appraisal concluded that the value of the house and 1-acre homesite is \$85,000. The Sceifers appraisal concluded the entire property has a value of \$300,000, but it does not separate anything for just the house and homesite. Neither party attempted to directly compare these numbers. And the Board finds nothing in the record that allows it to do so—trying to compare these two appraisals is like trying to compare apples to oranges. This kind of disconnect unnecessarily complicates the analysis of the issue.

32. Comparing the Ramoni appraised value to the current assessed value for the house and homesite, however, is possible. The PRC indicates the assessed value of the house is \$109,000 and the assessed value of the homesite is \$10,000. Thus, the difference between the current assessment for that part of the property and the value arguably supported by the Ramoni appraisal is \$34,000. If the Petitioner had confined his appeal to only the house and homesite, the Board might have simply ordered a change that reduced the current assessment by that amount. But he did not limit the appeal to just that part of the property. Therefore, the overall valuation approach in the Sceifers appraisal is appropriate to consider.
33. Mr. Sceifers testified to explain his conclusions and answer questions. For example, noting that his adjustments were unusually large, he explained that the land adjustments were made because agricultural market values vary considerably from the mandated agricultural land base rate. In contrast, Mr. Ramoni did not appear at the hearing. This distinction makes a significant difference in the relative weight we assign to each appraisal. The testimony provided by Mr. Sceifers to explain his appraisal (and the opportunity for cross examination) helps establish his appraisal as the more credible document in this case.
34. We make this determination in favor of the Sceifers opinion about the value of the subject property even though the Petitioner's cross examination revealed troubling responses about Mr. Sceifers' knowledge regarding the selling price of different types of agricultural land in Washington County. The Petitioner's attempt to impeach the appraiser about land valuation, however, was not sufficiently developed to be very meaningful. In addition, the Petitioner made virtually no attempt at impeachment or rebuttal on anything else.
35. Although the evidence contains two appraisals, in this particular case we do not consider either appraisal to be particularly strong evidence. It should be recognized that the

Board's determination is primarily the result of satisfying *minimum* requirements. It is not an indication of anything that a party should strive to achieve.

SUMMARY OF FINAL DETERMINATION

36. The Respondent specifically requested the assessment be raised to the Sceifers' appraisal value. After weighing all the evidence, the Board concludes that the most credible evidence establishes that the subject property altogether had a total market value-in-use of \$300,000 as of March 1, 2011. Accordingly, the assessed value will be changed to \$300,000 for 2011.

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

Commissioner, 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>.