

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

**Petition:** 84-016-06-1-5-00030  
**Petitioner:** F. L. Wilson, Inc.  
**Respondent:** Vigo County Assessor  
**Parcel:** 84-12-27-478-009.000-016  
**Assessment Year:** 2006

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

**Procedural History**

1. The Petitioner initiated an assessment appeal regarding the subject property by filing a Form 130 petition with the Vigo County Property Tax Assessment Board of Appeals (“PTABOA”) on April 18, 2007.
2. The PTABOA issued notice of its decision for the 2006 assessment on March 3, 2008.
3. The Petitioner appealed to the Board by filing a Form 131 on April 2, 2008. It elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing to the parties dated February 10, 2009.
5. Administrative Law Judge Paul Stultz held the Board’s administrative hearing on March 19, 2009.
6. Fred Wilson, president of F. L. Wilson, Inc., and Edward Bisch, the Respondent’s tax representative, were present and sworn as witnesses at the hearing.

**Facts**

7. The property is identified as Middletown South ½ of lot 14 in Prairie Creek Township. It is on a corner in a rural area. It measures 33 feet by 132 feet.
8. The Administrative Law Judge did not conduct an inspection of the property.
9. The PTABOA determined the assessed value is \$2,700.
10. The Petitioner claimed the assessed value should be \$200.

## Contentions

### 11. Summary of the Petitioner's case:

- a. The subject property has been in the family for many years—it belonged to Mr. Wilson's grandparents. A house that had been there was torn down in about 1970. Except for the church sign, this lot is unimproved. Because of its small size, zoning restrictions, and lack of a sewage system this lot is unbuildable. A county road also encroaches on it. *Wilson testimony; Pet'r Exs. 1-3.*
- b. The Petitioner has tried, but cannot find anybody who has interest in buying this property at any price—nobody will even take it for nothing. The lot would have value only to the owners of adjoining parcels, but they are not interested in buying it. Mr. Wilson has offered the subject property to all the successive neighbors since 1970, saying “Would you give me anything for it? Would you take it?” Nobody would. At one time a neighbor was thinking about taking it, but then decided not to take it because he did not want to pay the taxes. He thought taking this property would only be a liability. *Wilson testimony.*
- c. The Petitioner was unable to obtain an appraisal because there are no comparable sales to consider. The appraisers that were contacted said, “How do I come up with an appraisal when I can't come up with a comparable?” *Wilson testimony.* Small, unbuildable lots such as this one do not sell. There are no sales of comparable property to help establish the value of the subject property. *Wilson testimony; Bisch testimony.*
- d. Mr. Wilson is a member of the Vigo County Building Inspection Board. It is the county agency that gets a property when people stop paying the taxes on it. Vigo County officials have stopped trying to sell unbuildable lots for the delinquent taxes. During a meeting of the Vigo County Building Inspection Board, county officials discussed giving away unbuildable lots such as this one (because nobody wants the responsibility for mowing), but concluded they had no authority to do so. As an alternative to giving them away, that Building Inspection Board discussed selling such properties for \$100 or \$200. *Wilson testimony.*
- e. The subject property is assessed for more than its market value-in-use. The assessment should be \$200. *Wilson testimony.*

### 12. Summary of the Respondent's case:

- a. The subject property is incorrectly assessed. The Respondent would have reduced the assessment if the Petitioner had shown what the correct assessment should be, but the Petitioner did not attend the PTABOA hearing. The Respondent could not reduce the assessment because a more reasonable value could not be determined. Assessing officials are not permitted to apply arbitrary values. *Bisch testimony.*

- b. There are no comparable sales to use for an appraisal of the subject property. *Bisch testimony.*
- c. The assessment includes a negative influence factor of 30% to account for the lack of sewer and water connections. *Bisch testimony; Resp't Ex. 2.*
- d. The Respondent is unable to compute an appropriate negative influence factor based on it being an unbuildable lot. The Respondent agrees that owners of similar unbuildable lots are unable to sell them. Referring to small unbuildable lots such as the subject property, Mr. Bisch testified, "As Mr. Wilson has already indicated, you can't give the things away. People that have them are stuck with them. We don't have any sales of those, so we have no way to build the influence factor." It would be great if the State's assessment regulations provided for how much influence factor to put on a property that has restricted use, but they don't. The county officials were unable to determine a negative influence factor that would get the assessment down to a "reasonable" number. Nevertheless, the Petitioner had the burden to present evidence establishing the correct assessment. The Petitioner has failed to do so. *Bisch testimony.*
- e. The subject property is in a rural, unincorporated town. It probably has a \$2 per hundred tax rate. The taxes on the \$2,700 assessment are probably \$54 per year and a \$200 assessment would be tax of \$4 per year. The time invested in this appeal has already "ate-up the tax bill." *Bisch testimony.*<sup>1</sup>

### **Record**

13. The official record for this matter is made up of the following:
- a. Form 131 Petition for Review of Assessment with attachments that include Form 130 and Form 115,
  - b. Notice of Hearing,
  - c. Hearing Sign-in Sheet,
  - d. Digital recording of the hearing,
  - e. Petitioner Exhibit 1 – Photograph,  
Petitioner Exhibit 2 – Photograph,  
Petitioner Exhibit 3 – Photograph,

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<sup>1</sup> The Respondent did not attempt to connect this point to the merits of what the market value-in-use of the subject property really is. Even if it is true that the difference in assessed value only amounts to about \$50 per year in taxes and the Respondent believes more time is invested in the case than it is worth, that point does not help to prove the \$2,700 assessment should be affirmed. If anything, the Respondent's point relates to reasons the matter should have been settled.

Respondent Exhibit 1 – Form 115 Notification of Final Assessment  
Determination,  
Respondent Exhibit 2 – Property record card,  
Respondent Exhibit 3 – Appearance,

f. These Findings and Conclusions.

### **Analysis**

14. Real property is assessed on the basis of its "true tax value," which does not mean fair market value. It 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 50 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. The primary method for assessing officials to determine fair market value-in-use is the cost approach. MANUAL at 3. To that end, Indiana promulgated Guidelines that explain the application of the cost approach. The value established by use of the Guidelines, while presumed to be accurate, is merely a starting point. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut that presumption. Such 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.
15. Both parties agree the subject lot is unbuildable, nobody will buy it, and the Petitioner is unable to give the property away. They agree the assessment of \$2,700 is too high. Even though there normally is a rebuttable presumption that the current assessment is accurate, here the Respondent's clear, specific admission that the subject property is incorrectly assessed obliterates that presumption. That admission makes the Respondent's argument that the assessment should not be changed very difficult to accept.
16. These circumstances demand that the Board somehow determine an assessed value that is closer to reality, if there is any possible way to do so from the evidence and arguments that were presented. Nobody offered the kind of evidence that one would normally expect or demand to prove value. The Petitioner has been trying to sell (or give away) the subject property for decades, but has been unable to do so. There are comparable properties, but they never sell. Consequently, there are no comparable sales. There is no appraisal. The parties argue that the subject property has very little value, but putting an exact number on it is very difficult. They are correct.
17. The Petitioner presented very little probative evidence about what the market value-in-use of the subject property really should be. The Respondent, however, did not materially dispute anything that was presented and actually corroborated much of it. The Respondent did not offer any probative evidence to support the value of \$2,700 or any other specific amount. Therefore, the outcome of this case rests on whether the

undisputed, un rebutted evidence at least minimally establishes what a more accurate assessment would be.

18. The Board concludes that the evidence is sufficient to make a prima facie case for changing the assessment.
  - a. Undisputed evidence established that there is virtually no use for the subject property because it is unbuildable. Other than a sign that directs people to a church, the property is vacant and unused.
  - b. The Petitioner tried to get neighbors to buy the property, or even take it for free, but nobody was interested. The Respondent agreed that nobody will buy this property. According to the Respondent, people who have this type of lot are stuck with them: "You can't give the things away."
  - c. Furthermore, it was undisputed that there have been no sales of comparable unbuildable lots. And that fact precluded getting any appraisal of the subject property.
  - d. The Vigo County Building Inspection Board has several similar properties where people stopped paying the taxes. They discussed selling such properties for \$100 or \$200, but apparently have not been able to get any interested buyers.
  - e. If the subject property has *any* actual market value-in-use (which seems to be doubtful), the amount is so small that it is difficult to measure accurately. Obviously it is nothing more than a nominal amount, which is consistent with the Petitioner's position that the assessment should be changed to \$200.

### **Final Determination**

The Board finds in favor of the Petitioner. The assessment will be changed to \$200.

ISSUED: June 12, 2009

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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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>>