

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

Petition No.: 09-003-06-1-1-00012
Petitioner: William Fox
Respondent: Cass County Assessor
Parcel No.: 0302004009
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 Cass County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated June 27, 2007.
2. The PTABOA issued notice of its decision on June 20, 2008.
3. The Petitioner filed a Form 131 petition with the Board on July 11, 2008. The Petitioner elected to have this case heard according to the Board's small claim procedures.
4. The Board issued a notice of hearing to the parties dated February 18, 2009.
5. The Board held an administrative hearing on April 29, 2009, before the duly appointed Administrative Law Judge (the ALJ) Dalene McMillen.
6. The following persons were present and sworn in at hearing:
 - a. For Petitioner: William Fox, Property owner
Dorothy Fox, Property owner
 - b. For Respondent: Judy Lewis, Cass County Assessor
Brian Thomas, County representative

Facts

7. The property is a single-family residence with thirteen farm structures on 145.73 acres located at 9855 North Royal Center Pike, Royal Center, Boone Township, in Cass County.
8. The ALJ did not conduct an on-site inspection of the properties under appeal.
9. The PTABOA determined the assessed value to be \$153,500 for the land and \$254,700 for the improvements, for a total assessed value of \$408,200.
10. The Petitioner requested an assessed value of \$150,000 for the improvements.¹

Issue

11. Summary of the Petitioner's contentions in support of an alleged error in the assessment:
 - a. The Petitioner contends a neighboring property has diminished the value of the property under appeal. *W. Fox testimony*. According to Mr. Fox, the odor from a neighbor's 12,000 head of hog adversely affects the value of his property. *Id.* The Petitioner also argues that the marketability of his property is affected because his land and water wells have been contaminated with bacteria from the neighbor's disposal of hog waste. *Id.*
 - b. The Petitioner testified he built his house for \$160,000 in 1992. *W. Fox testimony*. According to the Petitioner, the house and other farm structures would have a value of approximately \$260,000. *Id.*²
12. Summary of the Respondent's contentions in support of the assessment:
 - a. The Respondent contends the property under appeal is correctly assessed at \$408,200. *Thomas testimony*. According to the Respondent's representative, the Petitioner's argument that the neighbor's hog confinement facility affects the subject's property's market value-in-use is flawed. *Respondent Exhibit A; Thomas testimony*. Mr. Thomas argues that the Petitioner was also raising hogs on his property during the assessment year at issue. *Id.* Therefore, Mr. Thomas contends, it would be impossible for the Petitioner to prove whether his property's marketability is affected by the neighbor's hog confinement facility or the Petitioner's own hog operation. *Thomas testimony*.

¹ Mr. Fox did not specify a requested assessed value for the land on his Form 131.

² In response to questioning from the Respondent, Mr. Fox testified that he does not have any idea what the land value should be.

- b. Further, the Respondent contends the Petitioner did not present any probative evidence to establish that the current assessment is incorrect. *Thomas testimony*. According to the Respondent’s representative, the Petitioner testified the improvements’ value would be approximately \$260,000. *Id.* For 2006, the county assessed the improvements for \$254,000. *Id.*; *Respondent Exhibit A*. Thus, the Respondent concludes, the county’s assessed value for 2006 is correct. *Thomas testimony*.

Record

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

- a. The Form 131 petition and related attachments.
- b. The digital recording of the hearing.
- c. Exhibits:³

Respondent Exhibit A – Respondent’s testimony brief,

Respondent Exhibit B – Notice of Appearance of Consultant on Behalf of Assessor between Judy Lewis, Cass County Assessor and Brian Thomas, Ad Valorem Solutions, dated April 29, 2009,

Respondent Exhibit C – Verification by Local Government Representative pursuant to 52 IAC 1-1-2.5 (b),

Board Exhibit A – Form 131 petition with attachments,

Board Exhibit B – Notice of Hearing,

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 Bd. of Tax Comm’rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).

³ The Petitioner did not present any exhibits.

- 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 a prima facie case for a reduction in value. The Board reached this decision for the following reasons:
- a. Indiana assesses real property based on its “true tax value,” which the 2002 Real Property Assessment Manual defines 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 (MANUAL) (incorporated by reference at 50 IAC 2.3-1-2). The appraisal profession traditionally has used three methods to determine a property’s market value: the cost approach, the sales comparison approach, and the income approach. *Id.* at 3, 13-15. Indiana assessing officials generally use a mass appraisal version of the cost approach, as set forth in the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (incorporated by reference at 50 IAC 2.3-1-2) (the GUIDELINES).
 - 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) *reh’g den. sub nom.*; *P/A Builders & Developers, LLC*, 842 N. E.2d 899 (Ind. Tax Ct. 2006). But 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 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. Here, the Petitioner contends the value of his property is diminished because of the effects of the hog farming activities at another property in the surrounding area. *W. Fox testimony*. External obsolescence is caused by an influence outside

of a property's boundaries that has a negative impact on the property's value. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, app. F at 4 (incorporated by reference at 50 IAC 2.3-1-2) (the GUIDELINES), intro. at 1. For the Petitioner to show he is entitled to receive an adjustment for obsolescence, the Petitioner must first identify the causes of obsolescence the Petitioner believes are present then quantify the amount of obsolescence he believes should be applied to the property. *Clark v. State Board of Tax Commissioners*, 694 N.E.2d 1230, 1241 (Ind. Tax Ct. 1998). Thus, the Petitioner must present probative evidence that the causes of obsolescence identified are resulting in an actual loss in value to the property. *See Miller Structures, Inc. v. State Board of Tax Commissioners*, 748 N.E.2d 943, 954 (Ind. Tax Ct. 2001). Further, Petitioner's quantification of the amount of obsolescence must be converted into a percentage reduction and applied against the structure's overall value. *See Clark*, 694 N.E.2d at 1238.

- d. The Petitioner testified that the disposal of hog waste from the neighbor's property has contaminated the land and wells of the subject property. *W. Fox testimony*. He also argues that the odor of the hog farming operations affects the marketability of the property. *Id.* The Petitioner, however, provided no evidence that the disposal of hog waste or the odor from the neighbor's property has caused a loss in the market value of the subject property. It is not sufficient for the Petitioner to merely identify random factors that may cause the property to be entitled to an obsolescence adjustment. The Petitioner must show that the property has suffered an actual loss in value. *See Champlin Realty Co. v. State Board of Tax Commissioners*, 745 N.E.2d 928, 936 (Ind. Tax Ct. 2001). *See also Indian Industries, Inc. v. Department of Local Government Finance*, 791 N.E.2d 286, 290 (Ind. Tax Ct. 2003).
- e. Further, 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*"). Thus, in failing to offer any market evidence of the property's value, the Petitioner has failed to raise a prima facie case that the subject property's assessment was incorrect.
- f. Where the taxpayer 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. *See Lacey Diversified Indus. v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221 – 1222 (Ind. Tax Ct. 2003).

Conclusion

15. The Petitioner failed to raise a prima facie case. 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 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

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>.