

REPRESENTATIVES FOR PETITIONER:
George Yeager, Petitioner

REPRESENTATIVES FOR RESPONDENT:
Linda Kovacich, Jennings County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

In the matter of:

GEORGE YEAGER)	
)	
)	
)	
Petitioner)	
)	
v.)	Petition No.: 40-003-02-1-5-00001
)	County: Jennings
)	Township: Center
)	Parcel No.: 081900000800011
)	Assessment Year: 2002
CENTER TOWNSHIP,)	
)	
Respondents)	
)	

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

March 12, 2004

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

Issue

1. The issue presented for consideration by the Board was:

Whether the subject property has been valued correctly.

Procedural History

2. Pursuant to Ind. Code § 6-1.1-15-3 George Yeager (Petitioner) filed a Form 131 petitioning the Board to conduct an administrative review of the above petition. The Form 131 was filed on July 29, 2003. The Notification of Final Assessment Determination of the Jennings County Property Tax Assessment Board of Appeals (PTABOA) was mailed on July 3, 2003.

Hearing Facts and Other Matters of Record

3. Pursuant to Ind. Code § 6-1.1-15-4 a hearing was held on September 30, 2003 in Vernon, Indiana before Jennifer Bippus, the duly designated Administrative Law Judge (ALJ) authorized by the Board under Ind. Code § 6-1.5-5-2.
4. The following persons were present at the hearing:

For the Petitioner:

Mr. George Yeager, Petitioner

Mr. Kevin Miller, Witness

For the Respondent:

Ms. Linda Kovacich, Jennings County Assessor

5. The following persons were sworn in as witnesses and presented testimony:

For the Petitioner:

Mr. George Yeager

Mr. Kevin Miller

For the Respondent:

Ms. Linda Kovacich

6. At the hearing, the parties agreed to waive the exchange requirements of 52 IAC 2-7-1, which requires parties to an appeal to exchange statements of testimonial evidence, lists of witnesses and exhibits prior to the Board's hearing. Further, both parties agreed to proceed with the hearing as scheduled.

7. The following exhibits were presented:

For the Petitioner:

No evidence was submitted at the hearing

For the Respondent:

Respondent's Exhibit 1 – A copy of the property record card (PRC) for
the subject property

Respondent's Exhibit 2 – A copy of sales for rural residential, vacant property in
Center Township, Jennings County

Respondent's Exhibit 3 – A copy of the Jennings County Land Valuation Order
(Land Order) for Center Township, Jennings County

Respondent's Exhibit 4 – A copy of the depreciation adjustment page for Residential
Residual Land from the Land Order

Respondent's Exhibit 5 – A copy of a land sale dated 6/7/1999

Respondent's Exhibit 6 – A copy of a land sale dated 5/14/1998

Respondent's Exhibit 7 – A copy of a land sale dated 2/2/2000

Respondent's Exhibit 8 – A copy of a land sale dated 2/2/2000

8. At the hearing, additional evidence was requested by the ALJ from the Petitioner (See Board's Exhibit 4). The Petitioner was given until October 10, 2003 to submit the requested information. The Petitioner submitted the following exhibits in a timely manner on October 7, 2003:

For the Petitioner:

Petitioner's Exhibit 1 – Petitioner's statement that the subject property is assessed higher than other properties owned by the Petitioner

Petitioner's Exhibit 2 – A copy of the Petitioner's assessment for property he owns in Lancaster Township, Jefferson County

Petitioner's Exhibit 3 – A copy of the Petitioner's assessment for property he owns in Campbell Township, Jennings County

Petitioner's Exhibit 4 – A copy of the Petitioner's assessment for property he owns in Campbell Township, Jennings County

Petitioner's Exhibit 5 – A copy of the Petitioner's assessment for property he owns in Campbell Township, Jennings County

Petitioner's Exhibit 6 – A copy of the Petitioner's assessment for property he owns in Geneva Township, Jennings County

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

For the Board:

Board's Exhibit 1 - Form 131 petition

Board's Exhibit 2 - Notice of Hearing on Petition

Board's Exhibit 3 - Authorization from Mr. Mick, Center Township Assessor giving permission for Ms. Kovacich, Jennings County Assessor to represent Center Township at the Board's hearing

Board's Exhibit 4 - Request for Additional Evidence given to the Petitioner, dated September 30, 2003

10. Per the Form 115, the subject property for the March 1, 2002 assessment date is valued in the following manner:

Improvements	\$ 0
Land	<u>\$ 23,700</u>
Total	\$ 23,700

11. The subject property is vacant land located at 2800 - 2900 Block Road 300 North, North Vernon, Center Township, Jennings County.
12. The ALJ did not conduct an on-site inspection of the subject property.

Jurisdictional Framework

13. This matter is governed by the provisions of Ind. Code § 6-1.1-15, and all other laws relevant and applicable to appeals initiated under those provisions, including all case law pertaining to property tax assessment or matters of administrative law and process.
14. The Board is authorized to issue this final determination pursuant to Indiana Code §6-1.1-15-3.

Indiana's Property Tax System

15. The Indiana Constitution requires Indiana to create a uniform, equal, and just system of assessment. See Ind. Const. Article 10, §1.

State Review and Petitioner's Burden

16. The State does not undertake to reassess property, or to make the case for the petitioner. The State decision is based upon the evidence presented and issues raised during the hearing. See *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E. 2d 1113 (Ind. Tax 1998).

17. The petitioner must submit ‘probative evidence’ that adequately demonstrates all alleged errors in the assessment. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. See *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E. 2d 1113 (Ind. Tax 1998), and *Herb v. State Bd. of Tax Comm’rs*, 656 N.E. 2d 890 (Ind. Tax 1995). [‘Probative evidence’ is evidence that serves to prove or disprove a fact.]
18. The petitioner has a burden to present more than just ‘de minimis’ evidence in its effort to prove its position. See *Hoogenboom-Nofzinger v. State Bd. of Tax Comm’rs*, 715 N.E. 2d 1018 (Ind. Tax 1999). [‘De minimis’ means only a minimal amount.]
19. The petitioner must sufficiently explain the connection between the evidence and petitioner’s assertions in order for it to be considered material to the facts. ‘Conclusory statements’ are of no value to the State in its evaluation of the evidence. See *Heart City Chrysler v. State Bd. of Tax Comm’rs*, 714 N.E. 2d 329 (Ind. Tax 1999). [‘Conclusory statements’ are statements, allegations, or assertions that are unsupported by any detailed factual evidence.]
20. Essentially, the petitioner must do two things: (1) prove that the assessment is incorrect; and (2) prove that the specific assessment he seeks, is correct. In addition to demonstrating that the assessment is invalid, the petitioner also bears the burden of presenting sufficient probative evidence to show what assessment is correct. See *State Bd. of Tax Comm’rs v. Indianapolis Racquet Club, Inc.*, 743 N.E.2d 247, 253 (Ind., 2001), and *Blackbird Farms Apartments, LP v. DLGF* 765 N.E.2d 711 (Ind. Tax, 2002).
21. The State will not change the determination of the County Property Tax Assessment Board of Appeals unless the petitioner has established a ‘prima facie case’ and, by a ‘preponderance of the evidence’ proven, both the alleged error(s) in the assessment, and specifically what assessment is correct. See *Clark v. State Bd. of Tax Comm’rs*, 694 N.E. 2d 1230 (Ind. Tax 1998), and *North Park Cinemas, Inc. v. State Bd. of Tax Comm’rs*, 689 N.E. 2d 765 (Ind. Tax 1997). [A ‘prima facie case’ is established when the petitioner has presented enough probative and material (i.e. relevant) evidence for the State (as the fact-

finder) to conclude that the petitioner's position is correct. The petitioner has proven his position by a 'preponderance of the evidence' when the petitioner's evidence is sufficiently persuasive to convince the State that it outweighs all evidence, and matters officially noticed in the proceeding, that is contrary to the petitioner's position.]

Discussion of Issue

Whether the subject property has been valued correctly.

22. The Petitioner contends that the subject property has been assessed too high.
23. The Respondent contends that the property is assessed in line with other properties in the area, that the Petitioner did not show any evidence to the contrary, and that no change in the assessment is warranted.
24. The applicable rules governing this Issue are:

Version A - Real Property Assessment Guideline – Book 1, Chapter 1 Mission of Assessment, page 2

The mission of a reassessment is to inventory, verify, and value all real estate parcels. This process distributes the property tax burden in a uniform and equitable manner. The reassessment of real property includes the following:

- Land
- Buildings and fixtures situated on the land
- Appurtenances to land
- An estate in land or an estate, right, or privilege in mines located on the land or minerals located in the land if the estate, right, or privilege is distinct from the ownership of the surface of the land.

Residential, commercial and industrial land, and agricultural homesites are valued based on values established by the township assessor and reviewed by the Property Tax Assessment Board of Appeals (PTABOA). The primary method for valuing buildings and other improvements is the cost of replacing the improvement minus depreciation, but the comparable sales approach and capitalized income approach may be used by the assessor if shown to be applicable.

Version A - Real Property Assessment Guideline – Book 1, Chapter 2 – page 68
Valuing Residential Acreage and Agricultural Homesites

There is subtle distinction between residential acreage tracts and land valued using the agricultural soil productivity method. The basis for this distinction is the different valuation methods used to determine land value for the two types of land. **Agricultural land** is valued using statewide base rate and a soil productivity index system, as described in the section **Valuing Agricultural Land** in this chapter. All land utilized for agricultural purpose is valued in this manner. **Residential-land** is land that is utilized or zoned for residential purposes.

The parcel's size does not determine the property classification or pricing method for the parcel. The property classification and pricing method are determined by the property's use or zoning. Land purchased and utilized for residential purposes is based on market worth as of January 1, 1999.

Version A - Real Property Assessment Guideline – Book 1, Chapter 2 – page 69
Valuing Residential Acreage Parcels Larger Than One Acre

Residential acreage parcels of more than one acre and not used for agricultural purposes are valued using the residential homesite base rate and the excess acreage base rate established by the township assessor. The excess acreage base rate represents the 1999 acreage value of land when purchased for residential purposes. The land value of the subject parcel should represent the January 1, 1999 market value in use in the neighborhood.

If the parcel has a dwelling, one acre is valued using the residential homesite value. The remaining acreage is valued using the excess acreage rate. There must be a residential dwelling unit on the parcel before the homesite acreage rate can be used.

If there is no dwelling unit on the parcel, the amount of acreage in the entire parcel is multiplied by the appropriate excess acre rate. The excess acre base rate represents the 1999 acreage value of the land purchased for residential purposes in this neighborhood. The value of the subject parcel should represent the January 1, 1999 market value in use of the property.

25. Evidence and testimony considered particularly relevant to this determination include the following:
- a. The subject property is wet and sloppy timberland with no improvements. *Yeager testimony.*
 - b. The assessment has gone up twenty (20) times since the last assessment. *Yeager testimony.*
 - c. Mr. Miller, the Petitioner's neighbor, is the only person that has shown any interest in the subject property. *Yeager testimony.*

- d. Other properties owned by the Petitioner have only doubled in value. *Yeager testimony & Petitioner's Exhibits 1, 2, 3, 4, 5 and 6.*
- e. The land is only worth about \$1,000 per acre. *Miller testimony.*
- f. The County has taken all properties similar to the subject and addressed them uniformly by valuing them the same. *Kovacich testimony.*
- g. In the past, land of this type was assessed as agricultural land. In the current reassessment, this type of land is assessed as residential/residual lands because it is not used for agricultural purposes. *Kovacich testimony.*
- h. Sales were used to arrive at a fair value for this type of land. *Kovacich testimony & Respondent's Exhibit 2.*
- i. The Land Order was used uniformly throughout Jennings County, for this type of property. *Kovacich testimony & Respondent's Exhibit 3.*
- j. An influence factor was applied to the tract of land based on the size of the tract. *Kovacich testimony & Respondent's Exhibit 4.*
- k. The Petitioner submitted comparable property sales. *Petitioner's Exhibits 5, 6, 7 and 8.*

Analysis of Issue

- 26. The Petitioner submitted copies of the Notices of Assessment of Land and Structures, Form 11's (Petitioner's Exhibits 2, 3, 4, 5, and 6) for other properties he owns as evidence to support his contention that the assessment is too high on the subject property.
- 27. Identifying comparable properties and demonstrating that the property under appeal has been treated differently for property tax purposes can show an error in assessment. However, the Petitioner did not submit an explanation on or how the properties were in fact comparable to the subject. The fact that the Petitioner owned the other properties that were submitted into evidence does not automatically make the properties similar or comparable.
- 28. The Form 11's do not give any detailed information about the specific properties other than the assessed values for the land and the structures. There is not enough information

about any of the tracts to establish a clear picture of the properties and to identify any similarities.

29. The Respondent submitted the Land Order (Respondent's Exhibits 3 and 4) and comparable sales (Respondent's Exhibits 5, 6, 7, and 8) in order to explain the change in the land to residential/residual from agricultural. The Respondent stated that Residual Land in Jennings County is assessed at \$5,000 per acre per the Land Order and is done in a uniform manner throughout the County.
30. Further, the Respondent opined that there were several tracts in Jennings County that had been changed from agricultural to residential/residual because they were not used for agricultural purposes. Version A – Real Property Assessment Guideline, Book 1, Chapter 2 – page 68, defines agricultural land as land utilized for agricultural purposes. And Residential-land as land that is utilized or zoned for residential purposes.
31. In addition, if there is no dwelling unit on the parcel, the amount of acreage in the entire parcel is multiplied by the appropriate excess acre rate. The excess acre base rate represents the 1999 acreage value of the land purchased for residential purposes in this neighborhood.
32. At the hearing, the Petitioner presented a witness (Mr. Miller) who was his neighbor. Mr. Miller testified that he would pay the Petitioner \$1,000 per acre for the subject property. There was no appraisal or other documentation submitted that supported Mr. Miller's \$1,000 per acre claim. The petitioner must sufficiently explain the connection between the evidence and petitioner's assertions in order for it to be considered material to the facts. Conclusory statements are of no value to the State in its evaluation of the evidence. See *Heart City Chrysler v. State Bd. of Tax Comm'rs*, 714 N.E. 2d 329 (Ind. Tax 1999). Mr. Miller's statement of value is conclusory and strictly an opinion on Mr. Miller's part.
33. The petitioner has a burden to present 'probative evidence' that adequately demonstrates all alleged errors in the assessment. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. *Whitley*, 704 N.E. 2d 1113

(Ind. Tax 1998), and *Herb*, 656 N.E. 2d 1230 (Ind. Tax 1998). [‘Probative evidence’ is evidence that serves to prove or disprove a fact.]

34. In addition to demonstrating that the assessment is invalid, the Petitioner also bears the burden of presenting sufficient probative evidence to show what assessment is correct. See *Racquet Club, Inc.*, 743 N.E. 2d 247, 253 (Ind. Tax, 2001), and *Blackbird Farms Apartments, LP*, 765 N.E. 2d 711 (Ind. Tax, 2002).
35. For all the reasons set forth above, the Petitioner failed to prove that the assessment was incorrect, and failed to show that the assessment he sought, was correct.

Summary of Final Determination

36. The Petitioner failed in his burden to submit probative evidence to show that local officials erred in their assessment of the subject property. There is no change in the assessment as a result of this issue.

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

Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice.