

REPRESENTATIVE FOR PETITIONER:
Stephen DeVoe, Bose McKinney & Evans, LLP

REPRESENTATIVE FOR RESPONDENT:
Beth H. Henkel, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Indianapolis Racquet Club, Inc.	)	Petition Nos.:	49-800-02-1-4-01016
	)		49-800-02-1-4-01018
	)		49-800-02-1-4-01019
Petitioner,)		
)		
	)	Parcel Nos.:	8048124
v.	)		8049954
	)		8051129
)		
Marion County Assessor,	)	County:	Marion
)		
Respondent.	)	Assessment Year:	2002

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

November 30, 2011

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has 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 is whether the assessed values of the land on the Petitioner's three parcels were over-stated for the 2002 assessment year.

PROCEDURAL HISTORY

2. The Petitioner, Indianapolis Racquet Club, Inc. (IRC), initiated assessment appeals by filing Form 130 Petitions with the Marion County Property Tax Assessment Board of Appeals (PTABOA) for Review of Assessment on June 8, 2003. The PTABOA issued its assessment determinations on August 25, 2006.
3. Pursuant to Indiana Code § 6-1.1-15-1, the Petitioner filed Form 131 Petitions for Review of Assessment on September 15, 2006, petitioning the Board to conduct an administrative review of the properties' 2002 assessments.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. Pursuant to Indiana Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (the ALJ), Carol Comer, held a hearing on June 15, 2011, in Indianapolis, Indiana.
5. The following persons were sworn at the hearing:
 - For the Petitioner:
Stephen E. DeVoe, President and Shareholder of IRC,
 - For the Respondent:
George Spenos, Deputy Assessor of Marion County.
6. The Petitioner presented the following exhibits:
 - Petitioner Exhibit A – 2002 Washington Township Land Order.

7. The Respondent presented the following exhibits:
 - Respondent Exhibit 1 – *Eckerling v. Wayne Township Assessor*, 841 N.E.2d 674 (Ind. Tax Ct. 2006),
 - Respondent Exhibit 2 – *Indianapolis Racquet Club, Inc. v. Washington Township Assessor*, 802 N.E.2d 1018 (Ind. Tax Ct. 2004),
 - Respondent Exhibit 3 – *Westfield Golf Practice Center, LLC v. Washington Township Assessor*, 859 N.E. 2d 396 (Ind. Tax Ct. 2007),
 - Respondent Exhibit 4 – Property record cards, Form 115s and evidence from the PTABOA hearing for the three parcels,
 - Respondent Exhibit 5 – Aerial view of the Petitioner’s properties,
 - Respondent Exhibit 6 – 2007 sales information for Parcel No. 8051129 and Parcel No. 8049954,¹
 - Respondent Exhibit 7 – Comparable sales information.

8. The following additional items are officially recognized as part of the record of proceedings and labeled as Board Exhibits:
 - Board Exhibit A – Form 131 Petitions,
 - Board Exhibit B – Notices of Hearing, dated February 11, 2011,
 - Board Exhibit C – Hearing sign-in sheet.

9. The subject property consists of three contiguous parcels located at 8249 Dean Road, in Indianapolis. Parcel No. 8049954, is .54 acres of vacant land. Parcel No. 8051129 is 2.75 acres of land assessed with outdoor tennis courts and Parcel No. 8048124 is 4.37 acres of land with a 16-court indoor tennis club.

10. The ALJ did not conduct an on-site inspection of the subject property.

11. For 2002, the PTABOA determined the assessed values of the Petitioner’s property to be \$56,500 for the land for Parcel No. 8049954; \$240,500 for the land and \$34,700 for the improvements, for a total assessed value of \$275,200 for Parcel No. 8051129; and \$1,412,000 for the land and \$410,100 for the improvements, for a total assessed value of \$1,822,100 for Parcel No. 8048124.

¹ The Petitioner’s representative objected to the admission of Respondent Exhibit 6 on the basis of its relevancy to the assessment date under appeal. Respondent’s counsel agreed that the sale was several years after the March 1, 2002, assessment date, but contends the exhibit addresses the Petitioner’s allegation that the value of the land is substantially affected by its current use. The ALJ entered Respondent Exhibit 6 over the Petitioner’s objection.

12. For 2002, the Petitioner's representative requested land values of no more than \$14,115 for Parcel No. 8049954, \$161,035 for Parcel No. 8051129, and \$956,375 for Parcel No. 8048124. The Petitioner did not dispute the value of the improvements on any of its parcels.

JURISDICTIONAL FRAMEWORK

13. The Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property, (2) property tax deductions, (3) property tax exemptions, and (4) property tax credits that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Indiana Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

14. A Petitioner seeking review of a determination of the county Property Tax Assessment Board of Appeals 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 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).
15. 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. Wash. 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”).
16. 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 case. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

PETITIONER'S CONTENTIONS

17. The Petitioner contends that the assessed value of its land is over-stated for 2002. The Petitioner presented the following evidence in support of its contentions:
 - A. The Petitioner's representative contends that the only issue in dispute in its appeals is the assessed value of the land on the Petitioner's three parcels. *DeVoe testimony*. Mr. DeVoe testified that the properties are located on the edge of a continuous stretch of a very high density retail area that stretches along 82nd Street from Keystone on the west to the Castleton Mall on the east. *Id.* According to Mr. DeVoe, all of the properties on the south side of the road have direct access to 82nd Street and 86th Street and are visible from those streets. *Id.* The Petitioner's properties, on the other hand, do not have direct access to 82nd Street or 86th Street, have little visibility, and are zoned SU3, or special use. *Id.* Moreover, Mr. DeVoe argues, the surrounding properties are all used for commercial purposes such as restaurants, banks, gas stations and retail stores. *Id.* The Petitioner's property is a "white elephant," Mr. DeVoe argues, which significantly affects the value of its parcels. *Id.*
 - B. The Petitioner's representative testified that Parcel No. 8051129, which was assessed as primary land in 2002, contains eight clay tennis courts, walkways to the courts and two small storage sheds. *DeVoe testimony*. According to Mr. DeVoe, he agrees that the area of the tennis courts and walkways is primary land, but he argues the remaining 56,000 square feet of land should be classified as usable undeveloped land. *Id.* Further, Mr. DeVoe testified that the clay courts cannot be used from October until May, and also from May to October when it rains. *Id.* Similarly, Mr. DeVoe argues, the tennis courts are positioned in an inefficient manner. *Id.* Thus, Mr. DeVoe contends, a 75% influence factor should be applied to the land. *Id.* If the parcel was properly assessed, Mr. DeVoe argues, the assessment would be \$161,050 for the land. *Id.*

- C. Further, Mr. DeVoe testified that Parcel No. 8049954, which is 0.54 acres with no access road that fronts on 82nd street, should be assessed in connection with Parcel No. 8051129. *DeVoe testimony*. According to Mr. DeVoe, the parcel is not “marketable” on its own because of the small size of the lot. *Id.* Mr. DeVoe testified that the parcel is currently assessed as usable undeveloped, but the assessor failed to apply any adjustment factor, so the usable undeveloped land on Parcel No. 8049954 is assessed higher than primary land on Parcel No. 8051129. *Id.* In response to cross examination, Mr. DeVoe admitted that the property, together with Parcel No. 8051129 sold for \$2,237,340 in 2007, but he argues, that sale is far too removed from the applicable valuation date for the sale price to probative of the property’s value for the 2002 assessment. *Id.*
- D. The Petitioner’s representative also contends that the assessor erred in assessing the land on Parcel No. 8048124. *DeVoe testimony*. According to Mr. DeVoe, the parcel is 4.371 acres, but it is assessed with an additional 19,062 square feet. *Id.*
- E. Mr. DeVoe argues that the assessed value of the Petitioner’s land does not comply with either the Manual’s requirements for mass appraisal or the common rules and accepted standards for appraising property. *DeVoe argument*. Mr. DeVoe contends that “true tax value” does not equal market value-in-use or the value of the property’s highest and best use, but rather values a property for its current use. *DeVoe argument*. According to Mr. DeVoe, the Petitioner’s land was not grouped with comparable properties for valuation purposes, but instead was valued according to a land order based on properties that have significantly different uses. *Id.*
- F. Finally, Mr. DeVoe argues that the Petitioner’s land was not assessed uniformly and equally with other properties in the county. *DeVoe argument*. According to Mr. DeVoe, the Petitioner’s property was assessed at \$348,000 an acre in 2002, while three similar properties were assessed at a much lower value. *Id.* For example, Mr. DeVoe testified that an eight-court tennis facility in Marion County owned by the Petitioner was assessed for roughly \$100,000 an acre. *Id.* Similarly, a major

competitor in Carmel, which is also located in a high-density area, was assessed at \$150,000 for primary land. *Id.* In addition, a tennis facility in Pike Township was assessed for only \$55,000 an acre. *Id.* According to Mr. DeVoe, the Pike Township property has significantly different improvements, but the land usage is the same as the Petitioner's property. *Id.* Based on these comparable properties, Mr. DeVoe contends, he has shown that the land on the Petitioner's three parcels was over-valued for the 2002 assessment year. *Id.*

RESPONDENT'S CONTENTIONS

18. The Respondent contends that the assessed values of the Petitioner's properties are correct for 2002. The Respondent presented the following evidence in support of its contentions:
 - A. The Respondent's counsel argues that the Petitioner failed to raise a prima facie case that its properties were over-valued. *Henkel argument.* According to Ms. Henkel, the Petitioner's representative merely focused on whether an influence factor should be applied to the land on the three parcels. *Id.* However, Ms. Henkel argues, the Petitioner ignored the requirement to prove any impact on the value of its property. *Id.* In *Indianapolis Racquet Club, Inc. vs. Washington Township*, 802 N.E.2d 1018 (Ind. Tax Ct. 2004), Ms. Henkel contends, the very same arguments were made by the Petitioner and rejected by the Court. *Id.*; *Respondent Exhibit 2.*
 - B. Moreover, Ms. Henkel argues, the Tax Court ruling in *Indianapolis Racquet Club, Inc. vs. Washington Township*, was based on the "old" system of assessment. *Henkel argument.* Under the "new" system of assessment, it is not enough to contest the method by which a property is assessed. *Id.*; citing *Eckerling v. Wayne Township Assessor*. According to Ms. Henkel, the Petitioner purports to contest only the land value of the properties. *Id.* However, the properties are not vacant lots. *Id.* Instead of focusing on the value of the property as a whole, Ms. Henkel argues, the Petitioner argues about the classification of the land and whether an influence factor should be

- applied. *Id.* Ms. Henkel argues that the evidence shows that there was not a substantial reduction in value to the Petitioner's property as result of its use. *Henkel argument.* To the contrary, Ms. Henkel argues, Parcel No. 8051129 and Parcel No. 8049954 sold in 2007 for \$2,337,340, or \$708,000 per useable acre. *Henkel argument; Respondent Exhibit 6.*
- C. In addition, Ms. Henkel contends, the Board should give little weight to the Petitioner's argument that its tennis facility was not assessed uniformly or equally. *Henkel argument.* According to Ms. Henkel, the Tax Court in *Westfield Golf* held that in order to make a "uniformity and equality" argument, a taxpayer must show that other properties are assessed lower than their market values; whereas the taxpayer's property is not. *Id.* While the Petitioner presented some evidence of the assessed value of purportedly comparable properties, Ms. Henkel argues, it failed to present any evidence comparing the assessed value of the properties to their market values. *Id.*
- D. Finally, Ms. Henkel argues, the properties were correctly assessed based on the sale prices of other properties in the area. *Henkel argument.* According to the Respondent's witness, he compared the 1998 sale prices of three vacant lots to the Petitioner's land values. *Spenos testimony.* Mr. Spenos testified that the property located at 8448 Union Chapel Road sold for \$6.90 a square foot and the property at 8470 Allison Pointe sold for \$5.74 per square foot. *Id.; Respondent Exhibit 7.* Both vacant lots, however, were located several miles away from the Petitioner's properties. *Id.* Mr. Spenos also compared the sale price of 5375 East 82nd Street to the Petitioner's property. *Id.* After adjusting the sale price for the value of the improvements, Mr. Spenos contends, 5375 East 82nd Street sold for \$20.74 per square foot. *Id.*

ANALYSIS

19. The Petitioner failed to raise a prima facie case for a reduction in the assessed value of its properties. The Board reached this decision for the following reasons:

- A. The 2002 Real Property Assessment Manual 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). 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 to value. *Id.* at 3, 13-15. In Indiana, assessing officials generally value real property using a mass-appraisal version of the cost approach, as set forth in the Real Property Assessment Guidelines for 2002 – Version A.
- B. A property’s assessment under the Guidelines is presumed to accurately reflect its true tax value. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005); *P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax 2006). 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 sales information for the subject property or comparable properties and other information compiled according to generally accepted appraisal principles. MANUAL at 5.
- C. The cost approach in the Guidelines is only a starting point for determining market value-in-use. Accordingly, when taxpayers challenge the accuracy of their assessments, they must do more than complain that the method by which their assessment was computed was incorrect; rather, they must also present objectively verifiable evidence demonstrating their property’s actual market value-in-use. *See, e.g., Westfield Golf Practice Ctr. v. Washington Twp. Assessor*, 859 N.E.2d 396, 399 (Ind. Tax Ct. 2007); *O’Donnell v. Dep’t of Local Gov’t Fin.*, 854 N.E.2d 90, 94 (Ind. Tax Ct. 2006); *P/A builders & Developers, LLC v. Jennings Co. Assessor*, 842 N.E.2d 899,900 (Ind. Tax Ct. 2006); *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 677 (Ind. Tax Ct. 2006). In this case, the Petitioner offered no such evidence. Rather

than focusing on the market values-in-use of their properties, the Petitioner focused entirely on the method by which the properties' assessments were computed.

- D. Even under the old system of assessment, the Petitioner's evidence was insufficient to raise a prima facie case. Here, as in its 1995 assessment appeal to the Indiana Tax Court, the Petitioner contends that an influence factor should be applied to the properties' land values because the properties' usage was inconsistent with surrounding properties.² As Judge Fisher explained to the Petitioner in *Indianapolis Racquet Club, Inc. v. Washington Township Assessor*, 802 N.E.2d 1018 (Ind. Tax Ct. 2004), land values in a given neighborhood are generally developed by collecting and analyzing comparable sales data for the neighborhood and surrounding areas. 802 N.E.2d at 1020. However, properties often possess peculiar attributes that do not allow them to be grouped with each of the surrounding properties for purposes of valuation. *Id.*; citing *Phelps Dodge v. State Board of Tax Commissioners*, 705 N.E.2d 1099, 1105 (Ind. Tax Ct. 1999). To establish a prima facie case that an influence factor should apply to a parcel, a taxpayer must make a two pronged showing: first the taxpayer must submit probative evidence sufficient to show that its property possessed attributes that made it different from the surrounding properties; and second, the taxpayer must show that those attributes "negatively impacted its land's value." 802 N.E.2d at 1021.
- E. Just as in its previous appeal to the Tax Court, the Petitioner here merely argued that its property was different than the surrounding properties and claimed that the property should be granted a 75% influence factor." 802 N.E.2d at 1023. However, as in its Tax Court appeal, the Petitioner here failed to link its properties' use and limitations to "an *actual* loss of value." *Id.* (emphasis in original). The Petitioner "needed to submit evidence demonstrating how the alleged inconsistent use negatively impacted its land's value. Instead [the Petitioner] focused exclusively on the differing land uses and ignored the need to identify a decrease in value.

² The term "influence factor" refers to a multiplier "that is applied to the value of land to account for characteristics of a particular parcel of land that are peculiar to that parcel." GUIDELINES, glossary at 10.

Consequently, [the Petitioner] failed to establish the second prong necessary for a prima facie case.” *Id.*

- F. The Petitioner’s counsel also contends that the land on its properties was assessed much higher than three other properties in the county. This exact argument was rejected by the Indiana Tax Court in *Westfield Golf Practice Center, LLC v. Washington Township Assessor et al.*, 859 N.E.2d 396 (Ind. Tax Ct. 2007). In that case, the landing area for the property owner’s driving range was assessed as “usable undeveloped” land and assigned a value of \$35,100 per acre, while the landing areas of other driving ranges were assessed at a golf course rate of \$1,050 per acre. 859 N.E.2d at 397. Westfield appealed contending that its assessment was not uniform and equal. *Id.*
- G. The Court explained that under Indiana’s prior assessment system, “true tax value” was determined by Indiana’s assessment regulations and “bore no relation to any external, objectively verifiable standard of measure.” 859 N.E.2d at 398. Therefore, “the only way to determine the uniformity and equality of assessments was to determine whether the regulations were applied similarly to comparable properties.” *Id.* Presently, “Indiana’s overhauled property tax assessment system incorporates an external, objectively verifiable benchmark -- market value-in-use.” 859 N.E.2d at 399. “As a result, the new system shifts the focus from examining how the regulations were applied (i.e., mere methodology) to examining whether a property’s assessed value actually reflects the external benchmark of market value-in-use.” *Id.*
- H. The Tax Court in that case found that the property owner’s claim “solely focused on the methodology used to determine its assessment.” 859 N.E.2d at 399. According to Judge Fisher, Westfield Golf did not show its property’s market value-in-use. *Id.* Nor did it show the market value of any comparable property. *Id.* Therefore, Westfield Golf failed to prevail on its claims that its assessment was not uniform or equitable. *Id.* Like the Petitioner in *Westfield Golf*, the Petitioner here merely argues about the method by which the assessor assessed its properties. IRC presented no

evidence of the market value of their properties. Nor did it present evidence of the market values of neighboring properties. Therefore it failed to raise a prima facie case that its properties' assessments were not uniform or equitable.

- I. Finally, the Petitioner contends that Parcel No. 8048124 was incorrectly assessed with an additional 19,062 square feet of land and Parcel No. 8051129 should have had 56,000 square feet of land classified as usable undeveloped land rather than primary land. However, the Petitioner presented nothing to substantiate its claims. While the rules of evidence generally do not apply in the Board's hearings, the Board requires some evidence of the accuracy and credibility of the evidence. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998); and *Herb v. State Board of Tax Commissioners*, 656 N.E.2d 890, 893 (Ind. Tax Ct. 1995).
- J. The Petitioner failed to offer any evidence to show that its properties' assessments exceeded the properties' market values-in-use in 2002. Similarly, the Petitioner failed to show that its properties were not assessed uniformly or equitably with other properties in the same taxing district. Thus, the Petitioner failed to raise a prima facie case that its properties were over-valued for the March 1, 2002, assessment. 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. *Lacy Diversified Indus. LTD v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

CONCLUSION

20. The Petitioner failed to raise a prima facie case that its properties were over-valued for the March 1, 2002, assessment. The Board finds in favor of the Respondent.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review determines that the assessed value of the Petitioner's properties for the March 1, 2002, assessment date should not be changed.

Chairman, 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>.