

REPRESENTATIVE FOR PETITIONER: Donna Lutes, Pro se

REPRESENTATIVE FOR RESPONDENT: Marilyn Meighen, Attorney at Law

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Kelp Heirs,)	Petition: 07-004-12-1-5-00001
)	Parcel: 07-06-21-100-116.000-004
Petitioners,)	
)	
v.)	
)	
Brown County Assessor,)	Brown County
)	Washington Township
)	2012 Assessment
Respondent.)	

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

INTRODUCTION

In this case, an improvement is located on the subject parcel and has been assessed a value of \$1000. The Petitioner claims that the improvement has no value, and in fact, is not an improvement. However, the parcel has previously been assessed with a home-site and even received the benefit of a homestead credit. The issue on appeal is whether there is a home-site on this property, and whether the assessment reflects the market value-in-use of the property.

HEARING FACTS AND OTHER MATTERS OF RECORD

1. The property and improvement is located at 3434 Pole Cat Ridge in Nashville, Indiana.
2. On March 15, 2013, the Brown County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the Petitioner's appeal. The PTABOA determined the assessed value is \$38,500 for land and \$1,000 for improvements (total \$39,500).
3. On April 22, 2013, the Petitioners filed a Form 131 Petition seeking the Indiana Board of Tax Review's ("Board") review of that determination.
4. Administrative Law Judge Paul Stultz conducted the hearing on August 21, 2013. Neither the ALJ nor the Board inspected the property.
5. Petitioner Donna Lutes, a part owner of the property, appeared pro se and was sworn as a witness. Attorneys Marilyn Meighen and Brian Cusimano represented the Brown County Assessor, and Gerald Cox, of the Nexus Group and a county consultant, was sworn as a witness for the Respondent.
6. The Petitioners presented the following exhibits:
 - Petitioners Exhibit 1 – A photograph of relatives standing by the door of the improvement,
 - Petitioners Exhibit 2 – A photograph of relatives beside a vehicle with a portion of the improvement in the background.
7. The Respondent presented the following exhibits:
 - Respondent Exhibit A1 – Current property record card (PRC),
 - Respondent Exhibit A2 – PRC of the property under appeal for the years 1991 through 2006,
 - Respondent Exhibit B – Spreadsheet of five comparable properties, accompanying data, sales disclosure forms, and PRCs.

8. 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.

Objection

9. Initially, Ms. Lutes testified she had no objection to the PRC for the years 1991 through 2006 (*Resp't Ex. A2*). Later in the hearing, she objected to the admission of this exhibit, contending that this PRC was not relevant to the issue before the Board. This argument goes to the weight to be given the exhibit rather than to its admissibility. The PRC will be admitted into the record and given the appropriate consideration.

Burden of Proof

10. 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 the 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.

Ind. Code § 6-1.1-15-17.2.

11. The record establishes that the 2012 assessment under appeal decreased from the assessor's 2011 assessment. *Resp't Ex. A1*. Ms. Lutes agreed that the assessment under

appeal had indeed decreased from the prior year assessment and that she had the burden to prove the current assessment is in error.

CONTENTIONS

12. Summary of the Petitioner's Case:

- a. Ms. Lutes was the Brown County Assessor from 1987 to 2006 and is currently a realtor. She acquired an interest in the property in 2002. *Lutes testimony.*
- b. The improvement, which has been owned by the same family for several generations, was last inhabited in 1999 or 2000. The parcel does not have a septic or sewer system. Instead, it has a well with a hand-pump in the front yard and another hand-pump at the kitchen sink. There is one electrical line running from a utility pole to the house that is currently disconnected because it is a fire hazard. The house has no bathroom and the windows are broken out. The structure, in its current condition, is better described as a shed and is still standing for sentimental value only. This is not a homesite. *Lutes testimony; Pet'r Exs. 1, 2.*
- c. The parcel was assessed with a homesite from 1995 to 2001. It also received a homestead credit. *Lutes testimony.*
- d. The land value for the parcel under appeal is approximately \$4,000 - \$5,000 per acre. The building is worthless. *Lutes testimony.*

13. Summary of the Respondent's Case

- a. The Petitioners have to demonstrate with evidence that the assessment under appeal does not reflect market value and the Petitioner has to prove what the actual value of the property is with market based evidence rather than with conclusions and opinions.

Ms. Lutes has not presented any market based evidence to demonstrate what the Petitioners' property is worth. *Meighen argument.*

- b. Several Tax Court cases, including *P/A Builders & Developers, LLC v. Jennings Co. Assessor*, 842 N.E.2d 899 (Ind. Tax Ct. 2006), *Kooshtard Prop. VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501 (Ind. Tax Ct. 2005), *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90 (Ind. Tax Ct. 2006), and *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674 (Ind. Tax Ct. 2006) state in some form that failure to adhere to strict application of the guidelines is not enough. Challenging the methodology is not enough. *Meighen argument.* The Petitioner failed to provide any market based evidence as to the value of the property. *Meighen argument.*
- c. The method of assessing the Petitioner's property with one acre being classified as a homesite and assessed higher than the remaining acres places the value of the land at its market value-in-use. The land's true tax value is \$38,500 or \$11,562 per acre. *Cox testimony; Resp't Ex. A1.*
- d. Four comparable vacant land sales in the same neighborhood as the Petitioners' property support the land assessment. *Cox testimony; Resp't Ex. B.* Comparable #1 is assessed at \$61,600 and sold for \$75,000 or \$8,427 per acre. Comparable #2 is assessed at \$35,100 and sold for \$40,000 or \$30,769 per acre. Comparable #3 is assessed at \$37,500 and sold for \$29,900 or \$14,961 per acre. Comparable #4 is assessed at \$104,200 and sold for \$138,000 or \$6,553 per acre. *Id.*
- e. A fifth comparable property, also located in Washington Township, is located at 6163 TC Steele Road. This parcel sold for \$31,500 or \$10,900 per acre. *Cox testimony; Resp't Ex. B.*
- f. All the comparable sales support the land assessment. The comparable parcels are assessed in the same manner as the Petitioners' property and have similar assessed values. They have similar utility, are in the same taxing district, approximately the same area, similar excess to roads and schools, and are all vacant land sales. The

assessed value reflects the property's market value-in-use. *Cox testimony; Resp't Ex. B.*

- g. Comparable #3 and the comparable property located at 6163 TC Steele Road are the most comparable to the Petitioners' property. Both of these properties are in the same area as the Petitioners' parcel, are similar in size, and are vacant land with no improvements. They have similar characteristics as the Petitioners' property, have the same utility, are acceptable building areas, have access to the highway and similar road frontage. Comparable #3 sold for \$14,961 per acre and property at 6163 TC Steele Road sold for \$10,900 per acre. The Petitioners' land is assessed at \$11,562 per acre. *Cox testimony; Resp't Ex. B.*
- h. People will pay a little more for a larger parcel but not in the same proportion as the increase in size due to the concepts of the diminishing return and economy of scale. *Cox testimony.*

ANALYSIS

- 14. 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 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. Regardless of the method used, a party must explain how its evidence relates to the required valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct.). The valuation date for a 2012 assessment is March 1, 2012. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c). Any evidence of value relating to a different date must have an explanation about how it demonstrates, or is relevant to, value as of that date. *Long*, 821 N.E.2d at 471.

16. In making a case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington 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”).
17. 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.
18. 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); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. *Id.* at 2. Assessing officials primarily use the cost approach. *Id.* at 3. The cost approach estimates the value of the land as if vacant and then adds the depreciated cost new of the improvements to arrive at a total estimate of value. *Id.* at 2. Any evidence relevant to the true tax value of the property as of the assessment date may be presented to rebut the presumption of correctness of the assessment, including an appraisal prepared in accordance with generally recognized appraisal standards. *Id.* at 3.
19. The Petitioners offered two photographs to show the improvement is more like a shed than a house and therefore one acre should not be classified as a homesite. These exhibits, however, are only family photographs and reveal no significant features of the home. Additionally, photographs are akin to conclusory statements and offer no probative value unless accompanied by some explanation relating them to the property’s true tax value. *See Bernacchi v. State Bd. of Tax Comm’rs*, 727 N.E.2d 1133 (Ind. Tax

Ct. 2000) (stating in dicta that the photographs of the residence . . . were merely conclusory statements).

20. The record establishes the parcel has a home (albeit apparently in need of considerable repairs), a well, and electrical connections. The Petitioners acknowledged the parcel has previously been assessed with a homesite and even received the benefit of a homestead credit. The Petitioners therefore failed to show that the parcel lacks a homesite.
21. The Petitioners further failed to introduce any market evidence, such as an appraisal or evidence of the sales of comparable properties, to show what a more accurate assessed value might be. Conclusory statements that the house is worthless and the land is worth \$4,000 - \$5,000 per acre are not probative. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). Accordingly, the Petitioners did not make a prima facie case that there is an error in the current 2012 assessment. *See Eckerling*, 841 N.E.2d at 674 (stating “when a taxpayer chooses to challenge an assessment, he or she must show that the assessor's assessed value does not accurately reflect the property's market value-in-use.”)
22. When a taxpayer fails to provide probative evidence supporting the position that an assessment should be changed, the Respondent's duty to support the assessment with substantial evidence is not triggered. *See Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003); *Whitley Products*, 704 N.E.2d at 1119.

SUMMARY OF FINAL DETERMINATION

The Petitioners failed to make a prima facie case for a change in assessed value. The Board finds in favor of the Respondent. The assessment will not be changed.

In accordance with the above findings of fact and conclusions of law, the 2012 assessed value is affirmed.

ISSUED: December 31, 2013

Commissioner, Indiana Board of Tax Review

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- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.