

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

Petition Nos.: 76-005-07-1-5-00025
76-005-07-1-5-00026
76-005-07-1-5-00027
76-005-07-1-5-00028

Petitioner: Vijay Kharbas

Respondent: Steuben County Assessor

Parcel Nos.: 76-05-29-310-403-000-005 [Lot 1]
76-05-29-310-303-000-005 [Lot 12]
76-05-28-310-304-000-005 [Lot 13]
76-02-29-310-404-000-005 [Lot 2]

Assessment Year: 2007

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

Procedural History

1. Vijay Kharbas filed four Form 130 petitions contesting the March 1, 2007 assessments for his four lots. On November 30, 2009, the Steuben County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determinations. The PTABOA lowered the assessments for three of the four lots. With the exception of Lot 2, however, the PTABOA did not lower the assessments to the amount that Mr. Kharbas had requested.
2. Mr. Kharbas then timely filed four Form 131 petitions with the Board. He elected to have his appeals heard under the Board’s small claims procedures.
3. On June 7, 2011, the Board held a hearing through its designated Administrative Law Judge, Jennifer Bippus (“ALJ”). A single hearing was held for all four petitions, although the parties addressed the petitions one at a time.
4. The following people were sworn in and testified:
 - a) Vijay Kharbas, Owner
 - b) Marcia Seevers, Steuben County Assessor
Phyl Olinger, County Representative

Facts

5. The parcels at issue are four vacant residential lots located at Otter Lake in Angola, Indiana. Lots 1 and 2 are adjoining lakefront lots. Lots 12 and 13 are adjoining off-water

lots located across a road and behind Lots 1 and 2. The Form 131 petitions, property record cards, and Form 115 determinations show various street addresses for the lots; however, the parcel numbers and lot numbers are consistent on all documents. There is a utility shed valued at \$200 on Lot 2, but that shed is not at issue in this appeal.

6. Neither the Board nor the ALJ inspected the subject lots.
7. The PTABOA determined the following values for the lots:

<u>Petition Number</u>	<u>Parcel Number</u>	<u>Land</u>
76-005-07-1-5-00025	76-05-29-310-403-000-005 - Lot 1	\$34,300
76-005-07-1-5-00026	76-05-29-310-303-000-005 - Lot 12	\$2,300
76-005-07-1-5-00027	76-05-29-310-304-000-005 - Lot 13	\$3,100
76-005-07-1-5-00028	76-05-29-310-404-000-005 - Lot 2	\$28,400

8. On his Form 131 petitions, Mr. Kharbas requested the following values:

<u>Petition Number</u>	<u>Parcel Number</u>	<u>Land</u>
76-005-07-1-5-00025	76-05-29-310-403-000-005 - Lot 1	\$29,940
76-005-07-1-5-00026	76-05-29-310-303-000-005 - Lot 12	\$100
76-005-07-1-5-00027	76-05-29-310-304-000-005 - Lot 13	\$1,250
76-005-07-1-5-00028	76-05-29-310-404-000-005 - Lot 2	\$28,380

Parties' Contentions

9. Mr. Kharbas offered the following evidence and arguments:
 - a) Mr. Kharbas made three claims: (1) that utility costs should be removed from the land assessments for Lots 1, 12 and 13, (2) that Lots 12 and 13 should receive a negative influence factor for excessive frontage, and (3) that he should receive an amount equal to 10% of his overpayment as a penalty for the PTABOA's failure to act on his Form 130 petitions within statutory deadlines.
 - b) Mr. Kharbas pointed to six properties in Fry Back's subdivision—the subdivision in which Mr. Kharbas's lots are located. The PTABOA approved removing utility costs of \$4,350 from the assessments for those six properties. *Kharbas testimony; Pet'r Ex. 4 [Lots 12, 13]*. The PTABOA, however, did not give Mr. Kharbas's lots the same benefit. While the PTABOA removed the whole amount (\$4,350) from Lot 2's assessment, it only partially reduced the assessments for Lots 12 and 13. *Kharbas testimony; Pet'r Ex. 2 [Lots 2, 12, 13]*. And the PTABOA did not remove any utility costs from Lot 1. *Kharbas testimony; Pet'r Ex. 2 [Lot 1]*. The PTABOA, however, did apply a negative 25% influence factor to Lot 1 to account for its slope. *Kharbas testimony*.
 - c) Lot 1 previously contained a house. But that house burned down in 2004. The previous owner disconnected and removed the electric and gas utilities. The owner also removed the house debris, foundation, and septic system. *Kharbas testimony*.

To illustrate his point, Mr. Kharbas offered aerial photographs from 2003, 2005, and 2009. *Id.*; *Pet'r Ex. 4 [Lot 1]*. The 2003 photo shows the house before the fire. The 2005 photo was taken just after Mr. Kharbas bought the property. That photo shows a bulldozer that was being used in an attempt to make the terrain smoother. In the 2009 photo, the land had been completely re-seeded and there were no buildings, utility poles, or anything that would indicate the presence of a septic system. *Id.*

- d) When questioned by the Assessor about Lot 1's septic system, Mr. Kharbas testified that the previous owner was the one who actually removed that system. According to Mr. Kharbas, removing the house's foundation would have destroyed the septic system. Thus, even if the system was still there, he could not use it. *Kharbas testimony.*
 - e) According to Mr. Kharbas, the six properties from Fry Back's subdivision that received the full \$4,350 reduction for utility costs are comparable to Lots 12 and 13. The properties are all in the same subdivision, are located on the non-lake side of the lane, and have similar dimensions. *Kharbas testimony; Pet'r Ex. 4 [Lots 12 and 13]*. While giving the full \$4,350 reduction would result in a negative value for Lot 12, one of the comparables (Lot 44) had the same issue, and that lot was given a token assessment of \$100. *Id.* Lot 12 should likewise be assessed at \$100. *Kharbas testimony.*
 - f) Also, Ms. Olinger testified that three of Mr. Kharbas's comparable lots—lots 44, 45, and 46, owned by Patricia and Dana Slack—received a negative influence factor for excess frontage. If that is the case, the same factor should be applied to Lots 12 and 13, because they have similar dimensions. *Kharbas testimony.*
 - g) According to Mr. Kharbas, the PTABOA should have heard his Form 130 petitions within 180 days, but instead waited 216 days to hear them. Similarly, the PTABOA should have issued determinations within 120 days of the hearing, but instead took 210 days. If Mr. Kharbas had failed to timely pay his taxes, he would have been penalized 10%. In his view, the same should hold true for the county, and the county should be penalized an amount equal to 10% of Mr. Kharbas's overpayment. Instead, only 4% (presumably for interest) was added to Mr. Kharbas's refund. *Kharbas testimony.*
10. The Assessor offered the following evidence and arguments:
- a) The PTABOA looked at all four lots in depth and addressed Mr. Kharbas' concerns by applying negative influence factors to all four lots. According to Ms. Olinger, some of the values that Mr. Kharbas asked for were unrealistic. *Olinger testimony.*
 - b) The PTABOA did not remove utility costs from Lot 1 because there was nothing to show that the septic system and well had been removed. *Olinger testimony; Resp't Ex. 4a.* Septic systems must be removed in accordance with state and local laws, and a form must be filed with the health department. When the Assessor receives

notification from the health department, she changes the assessment. *Seever's testimony.*

- c) Some of the purportedly comparable lots that Mr. Kharbas pointed to have a negative influence factor for excess frontage. Lots 12 and 13 do not have an influence factor for excess frontage. *Olinger testimony.*
- d) Finally, this is not the forum to address Mr. Kharbas' request for a 10% penalty; penalties are beyond the Assessor's scope of authority. *Olinger testimony.*

Record

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

- a) The Form 131 petition,
- b) A digital recording of the hearing,
- c) Exhibits:

Petitioner Exhibits

76-005-07-1-5-00025 – Lot 1

Petitioner Exhibit 1: Form 131 petition

Petitioner Exhibit 2: Form 115, Notification of Final Assessment Determination

Petitioner Exhibit 3: Form 130, Petition for Review of Assessment

Petitioner Exhibit 4: Aerial photographs of the subject property

Petitioner Exhibit 5: Timeline

76-005-07-1-5-00026 – Lot 12

Petitioner Exhibit 1: Form 131 petition

Petitioner Exhibit 2: Form 115, Notification of Final Assessment Determination

Petitioner Exhibit 3: Form 130, Petition for Review of Assessment

Petitioner Exhibit 4: Additional Comparables: table, map, 6 property record cards

Petitioner Exhibit 5: Timeline

76-005-07-1-5-00027 – Lot 13

Petitioner Exhibit 1: Form 131 petition

Petitioner Exhibit 2: Form 115, Notification of Final Assessment Determination

Petitioner Exhibit 3: Form 130, Petition for Review of Assessment

Petitioner Exhibit 4: Additional Comparables: table, map, 6 property record cards

Petitioner Exhibit 5: Timeline

76-005-07-1-5-00028 – Lot 2

Petitioner Exhibit 1: Form 131 petition

Petitioner Exhibit 2: Form 115, Notification of Final Assessment Determination

Petitioner Exhibit 3: Form 130, Petition for Review of Assessment

Petitioner Exhibit 4: Timeline

- Respondent Exhibit 1: Respondent Exhibit Coversheet¹
- Respondent Exhibit 2: Steuben County Assessor Summary of Testimony
- Respondent Exhibit 3: Power of Attorney Certification attached to Power of Attorney
- Respondent Exhibit 4: Property record card (PRC) for parcel 76-05-29-310-403.000-005 (Lot 1)
- Respondent Exhibit 4a: Form 115 for parcel 76-05-29-310-403.000-005
- Respondent Exhibit 5: Property record card (PRC) for parcel 76-05-29-310-303.000-005 (Lot 12)
- Respondent Exhibit 5a: Form 115 for parcel 76-05-29-310-303.000-005
- Respondent Exhibit 6: Property record card (PRC) for parcel 76-05-29-310-304.000-005 (Lot 13)
- Respondent Exhibit 6a: Form 115 for parcel 76-05-29-310-304.000-005
- Respondent Exhibit 7: Property record card (PRC) for parcel 76-05-29-310-404.000-005 (Lot 2)
- Respondent Exhibit 7a: Form 115 for parcel 76-05-29-310-404.000-005
- Respondent Exhibit 8: Aerial map (from Beacon) of the four subject parcels
- Respondent Exhibit 9: Respondent Signature and Attestation Sheet

- Board Exhibit A: Form 131 petitions
- Board Exhibit B: Hearing notices dated March 25, 2011
- Board Exhibit C: Hearing sign-in sheet

d) These Findings and Conclusions.

Analysis

A. Burden of proof

12. A taxpayer seeking review of an assessing official's determination must make a prima facie case proving both that the current assessment is incorrect 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).
13. In making its case, the taxpayer must explain how each piece of evidence relates to its 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”).
14. If the taxpayer makes a prima facie case, the burden shifts to the respondent to offer evidence to impeach or rebut the taxpayer’s evidence. *See American United Life Ins. Co v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.

¹ The Respondent presented a single set of exhibits for all four of the petitions.

B. Discussion

15. Mr. Kharbas proved that his lots' assessments should be reduced for the lack of utility improvements. But Mr. Kharbas did not make a prima facie case for applying a negative influence factor to Lots 12 and 13 to account for excess frontage, nor did he show that he was entitled to an additional tax refund as a penalty for the PTABOA's failure to comply with statutory deadlines. The Board reaches these conclusions for the following reasons:
- a) Mr. Kharbas makes two claims: (1) that utility costs should be removed from the land assessments for lots 1, 12, and 13, (2) that Lots 12 and 13 should receive a negative influence factor for excess frontage, and (3) that he should receive an amount equal to 10% of his overpayment as a penalty for the PTABOA's failure to act on his Form 130 petitions within statutory deadlines. The Board addresses those claims in order.

1. Utility Costs

- b) 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 at 2 (incorporated by reference at 50 IAC 2.3-1-2). Appraisers traditionally have used three methods to determine a property's value: the cost, sales-comparison, and income approaches. *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.
- c) 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 ("USPAP") often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 506 n. 6. A taxpayer may also offer actual construction costs, sales information for the subject or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.
- d) The Board finds that Lots 1, 12 and 13 have no improvements for utilities. The Assessor did not dispute that fact with regard to Lots 12 and 13. And as to Lot 1, she did not really disagree with Mr. Kharbas's testimony that the lot had no utility improvements as much as she took issue with the failure of the lot's previous owner to follow state and local laws governing the removal of septic systems.

- e) Of course, Mr. Kharbas did not offer an appraisal to show the value of the lots without utilities, nor did he offer any of the other types of market-based evidence contemplated by the Manual. Instead, Mr. Kharbas pointed to six instances where the PTABOA had reduced a lot's assessment by \$4,350 to account for a lack of utilities, and claimed that his lots should receive the same treatment. Indeed, the Guidelines call for a negative influence factor to be applied to a platted lot that lacks improvements for utilities where the assessment neighborhood's base lot includes those improvements. *See* GUIDELINES, ch. 2 at 56-58. And that influence factor is based on the depreciated cost of those improvements for the neighborhood. *See id.*
- f) Tax Court, however, has often explained that an assessor's misapplication of the Guidelines will not *necessarily* invalidate an assessment; rather, the pivotal question is, notwithstanding the misapplication, does the assessment accurately reflect the property's market value-in-use? *See, Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *see also, 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, 94-95 (Ind. Tax Ct. 2006). At first blush, *Eckerling* and its progeny may appear to caution against Mr. Kharbas's approach. But Mr. Kharbas did more than just challenge the methodology used to compute the assessments of his lots under the Guidelines. He instead showed that the lots were assessed for something that did not exist—improvements for utilities. And he quantified the value of those improvements by showing that the PTABOA uniformly reduced the assessments of lots in Mr. Kharbas's subdivision by \$4,350 when those lots did not have utility improvements.²
- g) Had the Assessor offered her own market-based evidence to show that the assessments of Mr. Kharbas's lots nonetheless reflected the lots' market values-in-use, the fact that the assessments did not conform to the Guidelines would matter little. But the Assessor did not offer any market-based evidence. Thus, Mr. Kharbas proved that the three lots should be assessed as follows:

- Lot 1: \$29,900
- Lot 12: \$100
- Lot 13: \$1,300³

Mr. Kharbas agreed that the PTABOA reduced Lot 2's assessment by the full amount attributable to utilities. So that lot's assessment does not change.

² Lot 1 is located in assessment neighborhood 955023, while Lots 12 and 13 are located in assessment neighborhood 955026. *Resp't Exs. 4, 5, 6.* The properties that received \$4,350 reductions were from both neighborhoods. *Pet'r Ex. 4.*

³ The Board rounded the total assessment to the nearest \$100 increment. *See* 2002 REAL PROPERTY ASSESSMENT GUIDELINES, ch. 2 at 130 (incorporated by reference at 50 IAC 2.3-1-2)(2009)(instructing assessors to report assessed value "rounded to the nearest \$100").

2. Excess frontage

- h) Mr. Kharbas's second claim—that Lots 12 and 13 should received a negative influence factor for excess frontage—is a different story. It amounts to little more than what *Eckerling* and its progeny caution against: a challenge to the methodology used to compute the lots' assessments. Granted, Mr. Kharbas pointed to three adjacent lots owned by Patricia and Dana Slack (Lots 44, 45 and 46) that received a negative 40% influence factor for excess frontage. But Mr. Kharbas did nothing to show how the lots' respective amounts of frontage affected their market values-in-use. At most he claimed that the lots generally had the same dimensions. When viewed as a whole, however, Mr. Kharbas's lots had 72 front feet, while the Slacks' lots had 84 front feet. *Pet'r Ex. 4; Resp't Exs. 5, 6.*

3. Penalty

- i) Mr. Kharbas's second claim—that the county should be penalized an amount equal to 10% of his overpayment—is a different story. Mr. Kharbas rightly points out that the PTABOA failed to act within the statutory deadlines for holding a hearing and issuing a determination. But Mr. Kharbas is mistaken about his remedy. Indiana Code § 6-1.1-15-1 does not provide for any penalty against the county when the PTABOA fails meet its statutory deadlines. Instead, the statute allows the taxpayer to either wait for the PTABOA to hold a hearing and issue its determination or to bypass the PTABOA and file a petition for review with the Board. I.C. § 6-1.1-15-1(o). Here, Mr. Kharbas waited for the PTABOA to hold hearings and issue its determinations and then filed his Form 131 petitions asking the Board to review those determinations. Thus, while the delay in having his appeals decided by the PTABOA was undoubtedly frustrating to Mr. Kharbas, he points to no authority for applying a penalty against the county.

Conclusion

16. Mr. Kharbas proved that the assessments for Lots 1, 12 and 13 should be reduced to the following amounts: \$29,900 (Lot 1), \$100 (Lot 2), and \$1,300 (Lot 3). He did not make a prima facie case for any further reduction. Mr. Kharbas similarly is not entitled to an additional tax refund as a penalty for the PTABOA's failure to meet its statutory deadlines for holding hearings and issuing determinations.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now affirms the assessments.

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>>.