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

Petition Number: **87-015-09-1-5-00008**
Petitioners: **Douglas G. Kildsig**
Respondent: **Warrick County Assessor**
Parcel No.: **87-06-35-100-056.000-015**
Assessment Year: **2009**

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 Warrick County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated April 15, 2010.

2. The Petitioner received notice of the decision of the PTABOA dated May 21, 2010.

3. The Petitioner filed a Form 131 petition with the Board on June 3, 2010. The Petitioner elected to have his case heard according to the Board's small claims procedures.

4. The Board issued a notice of hearing to the parties dated July 2, 2010.

5. The Board scheduled an administrative hearing on August 12, 2010, before the duly appointed Administrative Law Judge (the ALJ) Rick Barter.

6. The following persons were present and sworn in at the hearing:[1]

    a. For Petitioner: Douglas G. Kildsig, Petitioner

    b. For Respondent: Angela Wilder, Warrick County Assessor
    Brett Bombick, Tyler Technologies, county contractor

FACTS

7. The property at issue is an improved residential parcel of 12.6480 acres located at 4400 Lincoln Trail Road, Owen Township, Tennyson, Warrick County, Indiana.

[1] Marilyn S. Meighen of Meighen & Associates, P.C., appeared at the hearing representing the Respondent.

8. The ALJ did not conduct an on-site visit of the property.

9. For 2009, the PTABOA determined the assessed value of the subject property to be $68,900 for the land and $123,700 for the improvements, for a total assessed value of $192,600.

10. The Petitioner requested an assessed value of $12,840.25 for the land and $105,145 for the improvements, for a total assessed value of $117,985.25.

ISSUES

11. Summary of the Petitioner's contentions in support of an alleged error in his property's assessment:

    a. The Petitioner argues that, because the 2009 assessed value of his property increased by more than five percent over the property's 2008 assessment, the assessor has the burden to prove the assessment is correct. *Kildsig testimony.* In support of this contention, Mr. Kildsig cites a Department of Local Government Finance (the DLGF) memorandum reporting that "In the 2009 Special Session, the General Assembly passed legislation that states the assessing official now has the burden of proof where the assessment increased by more than five percent (5%) over the preceding assessment date…" *Petitioner Exhibit 1.*

    b. The Petitioner also contends the property's 2009 assessed value is over-valued based on the assessor's re-classification of 11.6480 acres of his parcel as excess residential land rather than agricultural land. *Kildsig argument.* According to Mr. Kildsig, his property has always been assessed as agricultural land and nothing has changed in the use of the property since he purchased the property in 2005. *Id.* Mr. Kildsig argues that his property should be classified as agricultural because he uses the land to raise and harvest timber to burn in his fireplace and wood-burning appliances. *Id.* In addition, the Petitioner argues, he has a Woods Management Plan approved by the Indiana Department of Natural Resources (DNR) in 2010 which "proves" that his land is used for agricultural purposes. *Kildsig argument; Petitioner Exhibit 1.* According to Mr. Kildsig, the plan fulfills the requirements of the "Warrick County Woodland Property Taxation" policy, which outlines how the county assesses property on which woods are located. *Kildsig argument; Petitioner Exhibit 3.*

    c. The Petitioner also contends that his property is over-assessed compared to the assessed value of the parcel adjacent to his. *Kildsig argument.* According to Mr. Kildsig, the parcel to east of his is used for similar purposes as his property, but the neighboring parcel is assessed as agricultural. *Id.* Mr. Kildsig argues that assessing his property differently than the neighboring property violates "the principle of horizontal equity through uniformity." *Id.*

    d. Finally, the Petitioner contends his house is over-assessed because the assessor failed to reduce the value of the improvements despite economic conditions that have

resulted in a diminution of property values. *Kildsig argument.* In support of his contention, Mr. Kildsig argues that data from the National Association of Realtors found that both the median and mean sales prices of existing homes dropped by almost fifteen percent for the years 2007, 2008 and 2009. *Kildsig testimony; Petitioner Exhibit 1, Page 2.*

12. Summary of the Respondent's contentions in support of the assessment:

a. The Respondent argues that the Petitioner's land classification was properly changed in 2009. *Meighen argument.* Ms. Wilder testified that the previous county assessor changed the land classification from agricultural to excess residential for the 2006 assessment year because the property was not being used for agricultural purposes. *Wilder testimony.* When Mr. Kildsig appealed and met with the assessor, however, she noted that not all similarly-situated parcels had been corrected. *Id.* Therefore, Ms. Wilder testified, the former assessor returned Mr. Kildsig's land to its prior agricultural classification until she could examine the use of land in the entire area. *Id.* For the 2009 tax year, the assessor determined which property's land classifications should be changed based on use and conformity and corrected Mr. Kildsig's land to reflect that it was not being used for agricultural purposes. *Id.*

b. Further, the Respondent argues, the fact that the property was considered to be agricultural for prior assessments is not relevant to the property's 2009 assessment because each tax year stands alone. *Meighen argument, citing Quality Stores, Inc., v. State Board of Tax Commissioners,* 740 N.E.2d 939, 942 (Ind. Tax Ct. 2000); *Barth, Inc. v. State Bd. of Tax Commissioners,* 699 N.E.2d 800, 808 n. 14 (Ind. Tax Ct. 1998).

c. The Respondent also contends that the county's 2009 assessed value is correct based on the Petitioner's use of the land. *Meighen argument.* According to the Respondent's counsel, in order for the land to be classified as agricultural, the taxpayer has to demonstrate that he devoted the property to agricultural purposes as of the assessment date in controversy. *Meighen argument; Respondent Exhibit D.* The fact that the taxpayer harvested and burned some timber to heat his house does not establish that his property was devoted to agricultural use. *Id.* In fact, Ms. Meighen argues, the Petitioner uses the property for many purposes, including as a primary residence, for recreational use, and for hunting. *Id.; citing Board decisions in King v. Washington Twp. Assessor,* Petition No. 07-004-02-1-5-000183 *et al.* (decided May 22, 2007); *Barkhimer v. Washington Twp. Assessor,* Petition No. 07-004-02-1-5-00184A (decided August 8, 2007); and *Ritterskamp v., Jackson Twp. Assessor,* Petition No. 07-002-02-1-5-00040 *et al.* (decided March 23, 2007).

d. Ms. Meighen similarly argues that the Petitioner's Woods Management Plan by itself does not qualify his land as agricultural. *Meighen argument.* According to Ms. Meighen, the Petitioner's plan was not in place until 2010. *Id.* Further, the Board ruled in *Piles v. Van Buren Twp. Assessor,* Petition No. 07-003-02-1-5-00174

(decided March 22, 2007) that a forest stewardship management plan did not automatically qualify land as agricultural. *Meighen argument; Respondent Exhibit H.*

e. Further, the Respondent argues, the fact that an adjoining parcel is classified as agricultural does not make the Petitioner's property agricultural. *Meighen argument.* According to Ms. Meighen, the neighboring parcel is part of a larger farm property that is classified by the U.S. Department of Agriculture (USDA) Farm Service Agency (FSA) as farm property that is used to grow commercial crops such as wheat, corn and soybeans. *Id.; Respondent Exhibit A.* Ms. Meighen argues that the Petitioner presented no evidence that his land is classified by the USDA-FSA as a farm. *Id.*

f. Finally, the Respondent's attorney argues that the property is not over-valued based on its market value-in-use. *Meighen argument.* According to Ms. Meighen, the Petitioner paid $207,000 for the property in 2005 and on October 13, 2008, listed the property for $450,000. *Id.; Respondent Exhibit C.* Although the listing included $40,000 for custom furniture and electronics, Ms. Meighen argues, clearly, the Petitioner believed his property to be worth far more than its 2009 assessed value. *Id.*

RECORD

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

a. The Petition and all other submitted documents.

b. The digital recording of the hearing.

c. Exhibits:

Petitioner Exhibit 1 – Narrative of the Petitioner's contentions and copies of correspondence from the Petitioner to the County Assessor and Warrick County PTABOA,
Petitioner Exhibit 2 – Excerpt of the Petitioner's Form 115 Notification of Final Assessment Determination,
Petitioner Exhibit 3 – Copy of Warrick County's Woodland Property Taxation Policy,

Respondent Exhibit A – Aerial map, USDA-FSA farm record, and property record cards for the parcels adjoining the Petitioner's property,
Respondent Exhibit B – Copy of the subject property's property record card,
Respondent Exhibit C – Copy of the listing for the subject property,
Respondent Exhibit D – Summary and copies of relevant Board decisions,
Respondent Exhibit E – Copy of the Petitioner's Stewardship Plan for the subject property,

Board Exhibit A – Form 131 Petition and the related attachments,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing sign-in sheet.

d. These Findings and Conclusions.

ANALYSIS

14. The Petitioner has the burden to establish a prima facie case proving that the current assessment is incorrect. The Board reached this decision for the following reasons:

a. The Petitioner argues that the assessor has the burden of proof because the assessed value of his property increased by more than five percent over the preceding assessment date. *Kilsdig testimony.* In support of this contention, Mr. Kilsdig cites a DLGF memorandum, which reports that "In the 2009 Special Session, the General Assembly passed legislation that states the assessing official now has the burden of proof where the assessment increased by more than five percent (5%) over the preceding assessment date…" *Petitioner Exhibit 1.* Although the Petitioner failed to present a copy of the memorandum, the document appears to be referring to Indiana Code § 6-1.1-15-1, which governs the review of certain actions by the county property tax assessment board of appeals. The specific provision, Indiana Code § 6-1.1-15-1(p), states, "This subsection applies if the assessment for which a notice of review is filed increased the assessed value by more than five percent (5%) over the assessed value finally determined for the immediately preceding assessment date. The county assessor or township assessor making the assessment has the burden of proving that the assessment is correct." Ind. Code § 6-1.1-15-1(p); P.L. 182-2009(ss) § 111. That amendment was effective July 1, 2009. P.L. 182-2009(ss) § 111. No such provision exists in Indiana Code § 6-1.1-15-3 and Indiana Code § 6-1.1-15-4, which govern appeals to the Board.

b. When interpreting a statute, a court or quasi-judicial body must first ask whether the statute's language is clear and unambiguous. *See State v. American Family Voices, Inc.*, 898 N.E.2d 293, 297 (Ind. 2008). Where the language is clear, the words and phrases must be given their plain, ordinary, and usual meanings. *Id*. Where a statute is ambiguous, however, the rules of statutory construction may be applied. *Id.* The Board finds that subsection (p) is ambiguous because it does not state whether its burden-shifting provision applies only to PTABOA proceedings or applies to the Board's proceedings as well.

c. The primary goal of statutory interpretation is to determine and implement the legislature's intent. *See Town of Dyer v. Town of St. John*, 919 N.E.2d 1196, 1200 (Ind. Ct. App. 2010). Key to determining the legislature's intent are the legislature's decisions to: (1) place the language only in the section dealing with PTABOA appeals, (2) use language specific to PTABOA appeals, and (3) place the burden of proof, in some instances, on the township assessor.

d. First, the legislature added the burden-shifting language at issue to Indiana Code § 6-1.1-15-1—the statutory section governing review proceedings before the PTABOA—but did not add similar language to the sections governing appeals to the Board. *See* Ind. Code §§ 6-1.1-15-3 and -4. Thus, it appears the legislature intended to limit that burden-shifting provision to PTABOA proceedings. *See Jefferson v. Smurfit Corporation*, 681 N.E.2d 806, 810-11(Ind. Tax Ct. 1997) ("Courts are not free to assume that the legislature's use of language in one subsection [is] applicable to a separate and distinct subsection: It is an elementary rule of statutory construction, that when a definite provision is made with reference to one particular subdivision of a section of the law dealing with identical subject matter as the other subdivisions thereof and a similar reference is omitted from the other subdivisions thereof as well as from all the rest of the section, the particular reference is intended to apply solely to the subdivision in which it is contained and to exclude its application from all of the rest.")

e. The legislature further highlighted its intent to limit the burden-shifting provision to PTABOA proceedings by using language uniquely tied to those proceedings. Thus, the provision applies "if the assessment *for which a notice of review is filed*" increased a property's assessment by more than 5% over the previous year's assessment. Ind. Code § 6-1.1-15-1(p) (emphasis added). The reference to a "notice of review" ties the provision to a conscious and significant distinction between PTABOA proceedings and Board proceedings. To initiate a review before the PTABOA, a taxpayer need only file a written notice with very basic identification and contact information. By contrast, to appeal a PTABOA determination to the Board, a taxpayer must file a "petition for review" on a Board-prescribed form specifying why the taxpayer believes the PTABOA's assessment determination is wrong.[2] Ind. Code § 6-1.1-15-3(d) and (e).

[2] Granted, although "notice for review" is used throughout Indiana Code § 6-1.1-15-1 to refer to the written notice that triggers a PTABOA hearing, it is not a defined term. And subsection (p) refers to a "notice *of* review," which is slightly different. Thus, the legislature arguably could have intended the term "notice of review" as used in subsection (p) to encompass both the written notice that initiates a PTABOA hearing and the petition for review to the Board. But given how the term "notice for review" came to appear in Indiana Code § 6-1.1-15-1, that is unlikely. Before its amendment in 2004, Indiana Code § 6-1.1-15-1 required a taxpayer to "file a petition" with the assessor. Ind. Code § 6-1.1-15-1(b) (2003 supp.). The DLGF was required to prescribe a form for that petition. Ind. Code § 6-1.1-15-1(c) (2003 supp.). That form, in turn, had to require the taxpayer to specify: (1) the property's relevant physical characteristics, (2) all other facts relevant to the assessment, and (3) the reasons why the taxpayer believed that the assessment was wrong. Ind. Code § 6-1.1-15-1(e) (2003 supp.). In 2004, the legislature amended Indiana Code § 6-1.1-15-1 to eliminate the requirement that a taxpayer file its appeal on a DLGF-prescribed form and instead required a taxpayer only to "request in writing a preliminary conference. . . ." P.L. 1-2004 § 13; P.L. 23-2004 § 14 (Ind. Code § 6-1.1-1-15(b) (2004)). Three years later, in 2007, the legislature eliminated the requirement for a taxpayer to affirmatively request a preliminary conference and simply required the taxpayer to file a "notice in writing," which the legislature then referenced at various points throughout Indiana Code § 6-1.1-15-1 either as "the written notice filed by the taxpayer" or "notice for review." P.L. 219-2007 § 38 (Ind. Code § 6-1.1-15-1(d), (f), (h) and (i) (2007 supp.). Thus, the term "notice for review" represents the legislature's conscious effort to lessen the taxpayers' burden of pleading before the PTABOA. And subsection (p)'s remarkably similar reference to a "notice *of* review" echoes that.

f. Finally, subsection (p) also places the burden of proof on "the county assessor or township assessor making the assessment." The township assessor, however, is not a party to Board proceedings; instead, the county assessor is the party to defend the PTABOA's determination. Ind. Code § 6-1.1-15-3(b).

g. That the petitioner bears the burden of proof in a Board proceeding is both well settled and fundamental to the proceeding. One cannot assume that the legislature chose to overturn that settled procedure implicitly by amending a section of the statute dealing with entirely separate proceedings and using language specifically tied to those other proceedings.[3]

15. The Petitioner failed to raise a prima facie case for a reduction in the property's assessed value. 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). Appraisers have traditionally 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. Indiana assessing officials generally assess 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

[3] Because subsection (p)'s burden-shifting provision does not apply to Board proceedings, it is unnecessary to address the various interpretational challenges that it would present. For example, it is unclear whether the statute – which is effective July 1, 2009, would apply to assessments prior to the March 1, 2010, assessment date. Further, it is not clear what "the assessed value *finally determined* for the immediately preceding assessment date" means. That phrase seems to contemplate the assessment left after all appeals have been exhausted through and including Indiana Supreme Court review. Of course, that could take years, leaving the parties in limbo as to who bears the burden of proof in an appeal of the succeeding year's assessment. If complete exhaustion is not what the legislature contemplated, however, subsection (p) gives little indication about which of the several potentially intervening assessment determinations controls. Similarly, subsection (p) does not explicitly limit itself to real property assessments and the provision does not easily lend itself to personal property assessment appeals. Taxpayers self-report personal property assessments based on the cost and acquisition dates of many individual pieces of property. *See generally* 50 IAC 4.2-4. And taxpayers may scrap or sell old equipment and buy new equipment from year to year. Thus, it is not apparent that the legislature would have intended the burden-shifting provision to be triggered by the previous year's assessment when that assessment may be based on the cost and acquisition dates for completely different property. Finally, subsection (p) does not say what happens if an assessor fails to meet its burden. Unlike a normal appeal where the petitioner's failure to meet its burden leaves the status quo undisturbed, subsection (p) places the burden on the assessor to prove that the status quo is correct. Does the assessor's failure to meet its burden mean that there is no assessment at all? Surely the legislature did not intend that. But it is unclear whether the legislature intended for the assessment to revert to the previous year's assessment or to the previous year's assessment plus 5%.

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. Regardless of the method used to rebut an assessment's presumption of accuracy, a party must explain how its evidence relates to the subject property's market value-in-use as of the relevant valuation date. *O'Donnell v. Department of Local Government Finance,* 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2009, assessment, the valuation date was January 1, 2008. 50 IAC 21-3-3.

d. The Petitioner first contends that 11.6480 acres of his property should remain assessed as "agricultural" land as it has been since he purchased the property in 2005, rather than reclassified "residential excess acreage." *Kildsig argument.* According to Mr. Kildsig, he uses the property to raise and harvest trees to heat his home and his use of the property has not changed since he bought the property. *Id.* Further, as of this year, the property has a "Woods Management Plan" in place with DNR which, the Petitioner contends, complies with the county's Woodland Property Taxation Policy. *Id.; Petitioner Exhibit 3.*

e. The Indiana General Assembly directed the DLGF to establish rules for determining the true tax value of agricultural land. Ind. Code § 6-1.1-4-13(b). The DLGF, in turn, established a base rate to be used in assessing agricultural land across the State of Indiana. GUIDELINES, ch. 2 at 98-99. The Guidelines direct assessors to adjust the base rate using soil productivity factors developed from soil maps published by the United States Department of Agriculture. *Id.* at 105-106. The Guidelines further require assessors to classify agricultural land-use types, some of which call for the application of negative influence factors in pre-determined amounts. *Id.* at 102-05.

f. Indiana Code § 6-1.1-4-13 states that that "[i]n assessing or reassessing land, the land shall be assessed as agricultural *only* when it is devoted to agricultural use." Ind. Code § 6-1.1-4-13(a) (emphasis added). The word "devote" means "to give or apply (one's time, attention, or self) completely." WEBSTER'S II NEW RIVERSIDE DICTIONARY 192 (revised edition). Agricultural use is the "production of crops, fruits, timber, and the raising of livestock." GUIDELINES, Glossary at 1. Thus, in order to rely upon the base rate and negative influence factors for agricultural woodland set forth in the Guidelines, the Petitioner was required to demonstrate that he used the property for agricultural purposes as of the March 1, 2008, assessment date.

g. Here the Petitioner only argues that the land at issue in this appeal is wooded and he cuts down trees to burn in his fireplace and wood-burning stove. *Kildsig testimony.* Mr. Kildsig, however, admitted that the property was his homesite and that he used

the acreage for walking and hunting. *Id.* Thus, Mr. Kildsig failed to sufficiently show that his property is devoted to an agricultural use. Residential acreage not used for agricultural purposes is valued using the "excess acreage base rate established by the township assessor." GUIDELINES, Chap. 2, p. 69. The Board, therefore, finds that the Petitioner failed to raise a prima facie case that the land's classification as excess residential acreage was in error.

h. The Petitioner also argues that the DNR's acceptance of his "Woods Management Plan," somehow automatically qualifies his land for the agricultural classification under the "Warrick County Woodland Property Taxation" policy. *Kildsig argument.* That policy however provides that woodlands can be taxed as excess acreage, as the Petitioner's property was assessed for 2009, it can be taxed as agricultural land, or it can be taxed as Classified Forest and Wildlands.[4] *Petitioner Exhibit 3.* According to the policy, "agricultural land is acreage used for a commercial crop such as row crops, hay, timber, or grazing for livestock." While timber is listed as one of the uses of agricultural land, the plan specifically states that agricultural land is acreage used for a "commercial" crop. *Id.* The Petitioner ignores this requirement and urges this Board to accept his Woods Management Plan alone to be sufficient. This the Board will not do. The Petitioner presented no evidence that he raises and harvests timber for commercial purposes. In fact his testimony was clear: Mr. Kildsig only cuts down trees to provide wood for his fireplace and wood burning stove.[5] Because the Petitioner produces no crop for commercial purposes, the land is not devoted to agricultural use and the assessor did not err in refusing to make the change in his assessment that Mr. Kildsig argues he is entitled to.

i. Alternatively, the Petitioner argues that even if his land is not agricultural land, it is comparable to a neighboring parcel that is assessed as agricultural woodland and should be assessed in the same manner. *Kildsig argument.* The Petitioner, however, failed to sufficiently show that the neighboring property was comparable to his property for valuation purposes. He merely pointed to a single parcel and testified that the land was used in a similar manner to his land. The Respondent, however, presented evidence that the small parcel Mr. Kildsig argues is comparable is only one of many parcels comprising a single farm that raises commercial crops like wheat, corn and soybeans. That one parcel of a larger farm is wooded and used similarly to the Petitioner's property does not make the Petitioner's property a farm. Therefore the assessed value of the neighboring parcel has no probative value in determining the market value-in-use of the Petitioner's property. *See Long v. Wayne Township Assessor,* 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005) (Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the properties being examined.)

[4] The Petitioner specifically stated the land was not classified forestland. *See Petitioner Exhibit 1* ("This Woods Management Plan does NOT constitute that this property is entering into the DNR Classified Forest & Wildlands program.")

[5] Even if the Board accepted the plan as some probative evidence of agricultural use, the plan was not executed until May 25, 2010 – some fifteen months beyond the March 1, 2009, assessment date.

j. Further, the Petitioner's argument was found to be insufficient to show an error in an assessment in *Westfield Golf Practice Center, LLC v. Washington Township Assessor,* 859 N.E.2d 396 (Ind. Tax Ct. 2007). In that case, the Indiana Tax Court held that it is not enough for a taxpayer to show that its property is assessed higher than other comparable properties. *Id.* Instead, the taxpayer must present probative evidence to show that the assessed value does not accurately reflect the property's market value-in-use. *Id. See also P/A Builders & Developers, LLC v. Jennings County Assessor,* 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (The focus is not on the methodology used by the assessor, but instead on determining whether the assessed value is actually correct. Therefore, the taxpayer may not rebut the presumption merely by showing the assessor's technical failure to comply strictly with the Guidelines). Here the Petitioner presented no evidence of the market value-in-use of this property.[6] Thus, he failed to show his property was assessed in error.

k. Finally the Petitioner argues that the assessor erred in failing to reduce the assessed value of his property based on economic conditions in the housing market. *Kildsig argument.* In support of this contention, Mr. Kildsig cited statistics by the National Association of Realtors purportedly reporting that the median and mean sales price in the Midwest fell fifteen percent in 2007, 2008 and 2009. *Id.* However, the Petitioner testified that he would not rehash the county hearing evidence and he did not seek to have that record entered into evidence in his case before the Board. *See* 50 IAC 2-7-1(g) ("Materials submitted to or made a part of the record at a PTABOA hearing, department hearing, or other proceeding from which the appeal arises will not be made part of the record of the board proceeding unless submitted to the board.") The Board, therefore, has no record before it of the Petitioner's purported "market conditions" evidence and finds no probative value in Mr. Kildsig's unsupported testimony. *See Whitley Products, Inc. v. State Board of Tax Commissioners,* 704 N.E.2d 1119, 1120 (Ind. Tax Ct. 1998) (Conclusory statements, unsupported by factual evidence, are not sufficient to establish an error in an assessment). Thus, Mr. Kildsig failed to raise a prima facie case that his house and homesite was assessed in error.

l. Where a 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 Lacy Diversified Indus. v. Dep't of Local Gov't Fin.,* 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

CONCLUSION

16. The Petitioner failed to raise a prima facie case that the subject property is over-valued. The Board finds in favor of the Respondent.

[6] The Respondent submitted the only market evidence in the record - the Petitioner's 2005 purchase of the property for $207,000 and his attempt to sell the property in 2009 for $450,000 – both of which exceed the property's 2009 assessed value of $192,600.

FINAL DETERMINATION

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now determines that 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

- 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.