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

Petition No.: **45-002-06-1-5-00001**
Petitioner: **Lake County Trust No. 4853**
Respondent: **Lake County Assessor**
Parcel No.: **002-02-03-007-0018**
Assessment Year: **2006**

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, Lake County Trust No. 4853, through its representative, Rex Bennett, initiated its assessment appeal with the Lake County Property Tax Assessment Board of Appeals (the "PTABOA") by filing a Form 130, Petition to the Property Tax Assessment Board of Appeals for Review of Assessment on July 20, 2007.

2. The PTABOA issued a Form 115, Notification of Final Assessment Determination, upholding the property's 2006 assessment on July 8, 2010.

3. The Petitioner's representative filed a Form 131, Petitioner to the Indiana Board of Tax Review for Review of Assessment, appealing the property's 2006 assessment on July 28, 2010. Mr. Bennett elected to have the Petitioner's case heard according to the Board's small claims procedures.

4. The Board issued a notice of hearing to the parties dated February 2, 2012.

5. The Board held an administrative hearing on April 23, 2012, before the duly appointed Administrative Law Judge (the "ALJ") Carol S. Comer.

6. The following individuals were present and sworn in at hearing:

    a. For Petitioner: Rex Bennett, petitioner's representative
    Deborah Bohling, petitioner's witness

    b. For Respondent: Sherry Stone-Lucas, Lake County representative.

Facts

7. The property in dispute is a barn converted into a residence located at 21306 Chase Street, Lowell, in Lake County.

8. For 2006, the assessor determined the assessed value of the Petitioner's property to be $33,700 for the land and $221,400 for the improvements, for a total assessed value of $255,100.

9. For 2007, the Petitioner requested an assessed value of $23,400 for the land and $106,400 for the improvements, for a total assessed value of $129,800.

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

Issues

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

    a. The Petitioner's representative testified that an abatement was granted for the Petitioner's property on July 30, 2007. *Bennett testimony*. Mr. Bennett admitted that he was satisfied with the deduction beginning in 2007. *Id.* However, he argues, the abatement on the property should be granted for a ten year period under the Barn America Act, which Mr. Bennett argues is "a federal congressional act to keep the barns of America on the landscape instead of pole barns." *Id.*

    b. In addition, the Petitioner's representative contends that the property's assessed value increased from $129,800 in 2002 to $255,000 in 2006, but nothing was done to improve or enlarge the property during that time period. *Bennett testimony*. Because of the poor economy and the declining prices of properties, Mr. Bennett argues, the increase in the subject property's value was an error. *Id.* Therefore, he concludes the property's assessed value in 2006 should be returned to its $129,800 value. *Id.*

    c. Finally, the Petitioner's representative contends that the Petitioner's property was over-valued for the 2006 assessment year. *Bennett testimony.* According to Mr. Bennett, a realtor valued the subject property at $159,000. *Id.* Mr. Bennett testified that Steve Likus of Century 21 Realty said the Petitioner "would be lucky to get $159 for it right now" and it may take a year to sell the property. *Id.*

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

    a. The Respondent's representative first contends that the Petitioner's property was granted a deduction in 2007 under Indiana Code § 6-1.1-12-22 in the amount of $124,800, which is the maximum deduction allowed under the Code. *Stone-Lucas testimony.* In addition, Ms. Stone-Lucas presented property record cards showing that the Petitioner received the rehabilitated property deduction on its property in 2008,

2009, 2010, and 2011. *Id.* According to Ms. Stone-Lucas, the "Barn America Act" is not a state law and therefore does not apply to the property's Indiana property tax assessment. *Id.*

b. The Respondent's representative further argues that the Petitioner's evidence of the property's 2002 assessment has no bearing on the property's 2006 assessment. *Stone-Lucas testimony.* According to Ms. Stone-Lucas, "trending" started in 2006 and therefore property values change every year based on the local market. *Id.*

c. Finally, the Respondent's representative argues that the Petitioner's representative presented no evidence of the value of the property for 2006. *Stone-Lucas testimony.* According to Ms. Stone-Lucas, the property's value has already been reduced from $297,600 to $255,100 for the 2006 assessment year. *Id.*

Record

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

a. The Form 131 petition,

b. The digital recording of the hearing,

c. Exhibits:

Petitioner Exhibit A:	Barn Again pamphlet,
Petitioner Exhibit B:	Barn Again internet article,
Petitioner Exhibit C:	Application for a Deduction on Assessment of Rehabilitated Property for 2007 (Form 322), dated July 30, 2007,
Petitioner Exhibit D:	Application for a Deduction on Assessment of Rehabilitated Property for 2007 (Form 322), dated July 30, 2007, with hand-written notes,
Petitioner Exhibit E:	Settlement agreement between the Petitioner's representative and the Department of Local Government Finance on the property's 2002 assessment, dated October 5, 2005,
Petitioner Exhibit F:	Notice of Stipulated Agreement and Order of Dismissal of the Petitioner's 2002 appeal, dated October 17, 2005,
Petitioner Exhibit G:	Hand-written note from the Petitioner's representative arguing that state law allows for a ten year application of Indiana Code § 6-1-1-12-22,
Petitioner Exhibit H:	Application for Deduction from Assessed Valuation of Rehabilitated Property for 2007 (Form 322A and Form 322), dated April 14, 2009,

Petitioner Exhibit I: Hand-written note from the Petitioner's representative requesting all records held by the state regarding the current petition,

Respondent Exhibit 1: Petition to the Property Tax Assessment Board of Appeals for Review of Assessment (Form 130) for the 2006 assessment, dated August 16, 2007,
Respondent Exhibit 2: Notification of Final Assessment Determination (Form 115) for the 2006 assessment, dated July 8, 2010,
Respondent Exhibit 3: Notice of Assessment by Assessing Officer for the 2006 assessment, dated December 3, 2007,
Respondent Exhibit 4: Petition to the Indiana Board of Tax Review for Review of Assessment (Form 131) for 2006, dated July 28, 2010,
Respondent Exhibit 5: Copy of Indiana Code § 6-1.1-12-22,
Respondent Exhibit 6: Property Record Cards for 2007, 2008, and 2009,
Respondent Exhibit 7: Real Property Maintenance Reports for 2006, 2007, 2008, 2009, 2010, and 2011,
Respondent Exhibit 8: Print-out showing notification to the Petitioner of the hearing on its 2006 appeal in 2010,

Board Exhibit A: Form 131 petition,
Board Exhibit B: Notice of hearing, dated February 2, 2012,
Board Exhibit C: Hearing sign-in sheet.

Analysis

14. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that his property's assessment is wrong and what its 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). Effective July 1, 2011, however, the Indiana General Assembly enacted Indiana Code § 6-1.1-15-17.2, which has since been repealed and re-enacted as Indiana Code § 6-1.1-15-17.2.[1] That statute shifts that burden to the assessor in cases where the assessment under appeal has increased by more than 5% over the previous year's assessment:

> 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

[1] HEA 1009 §§ 42 and 44 (signed February 22, 2012). This was a technical correction necessitated by the fact that two different provisions had been codified under the same section.

> 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. In the present case, the Petitioner argues that the $255,000 assessment in 2006 is unreasonable based on the property's 2002 assessment of $129,800. *Bennett Testimony.* However, the 5% increase must be measured against "the immediately preceding assessment date." Ind. Code § 6-1.1-15-17.2. The Respondent's evidence shows that the property's assessed value in 2005 was $305,600 and the value in 2006, as determined by the PTABOA in the Form 115, totaled $255,100. *Respondent Exhibit 6.* Because the property did not increase 5% between 2005 and 2006, the Petitioner bears the burden of proving that the property's assessment in 2006 was incorrect, and showing what the value of the property should be.

15. The Petitioner failed to provide sufficient evidence to raise a prima facie case that its property was over-valued for the 2006 assessment year. The Board reached its decision for the following reasons:

    a. In Indiana, assessors value real property based on the property's market value-in-use, 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." MANUAL at 2. Thus, a party's evidence in a tax appeal must be consistent with that standard. *Id.* A market value-in-use appraisal prepared according to USPAP often will suffice. *Kooshtard Property VI v. White River Twp. Ass'r,* 836 N.E.2d 501,506 n. 6. (Ind. Tax Ct. 2005). A party 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.

    b. Regardless of the method used to prove a property's true tax value, 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 March 1, 2006, assessment date, the valuation date was January 1, 2005. 50 IAC 21-3-3.

    c. The Petitioner's representative first contends that the assessed value of the Petitioner's property was incorrect for 2006 based on the property's 2002 stipulated value. However, the Indiana Tax Court has held that prior settlement agreements are inadmissible under Indiana Evidence Rule 408. *See Boehning v. State Bd. Of Tax Com'rs*, 763 N.E.2d 502, at 504-505 (Ind. T.C. 2001). Indiana Evidence Rule 408 states that "Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept a valuable consideration in compromising or attempting to compromise a claim, which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount." According to the Indiana Tax Court, "[the] general intent of Indiana Evidence Rule 408 is to encourage parties to engage in settlement negotiations

without a judgment or admission of liability or wrong-doing." *Boehning*, 763 N.E.2d at 504-505. Allowing taxpayers to use prior settlements "thwarts the intent of that rule." *Id.* The Court further reasoned that, allowing a taxpayer to present prior settlement agreements as evidence of a property's value "would have a chilling effect on the incentive of all assessing officials to resolve cases outside the courtroom." *Id.* Because the property's assessment in 2002 was the result of an agreement between the Petitioner and the Department of Local Government Finance, Indiana Evidence Rule 408 prohibits the Petitioner from using the agreed upon value as evidence in the present case. Similarly, the settlement agreement itself prohibits such an act. *See Petitioner Exhibit E* (the parties agreed that the assessed value stipulated within the settlement "does not represent a final determination of the most appropriate or accurate assessed valuation of the property," and that the terms of the settlement "should not be used as evidence of the assessed valuation" of the property).

d. Moreover, the Board notes, the property's "value" that the parties purportedly stipulated to for 2002 is unclear. On its face, the stipulation document states that the parties agreed to "(1) change[] 2 story house into dairy barn (no living area); (2) change[] shed measurements to 20x40 for 40x72; and (3) [give] 50% obsolescence depreciation to concrete silo." *Id.* But no assessed value is identified in the stipulation. A hand-written notation in the upper corner of the document shows two columns of figures: "L 23,400, I 276,600, total 300,000" and "L 23,400, I 106,400, total $129,800." But there is no evidence as to who wrote the figures, when the figures were written or what the figures actually represented.[2] 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).

e. Even if the hand-written notation was determined to be reliable and admissible evidence of the property's 2002 value, it would still be insufficient to show that the property's assessed value in 2006 was incorrect. Each assessment and each tax year stand alone. *Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (citing *Glass Wholesalers, Inc. v. State Bd. of Tax Comm'rs*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991)). Thus, evidence as to a property's assessment in one tax year is not probative of its true tax value in a different tax year. *Id.* There are numerous reasons why the value of a property would change over a five year period, and it is the Petitioner's burden to show that the assessment for the year at issue was incorrect.

[2] Similarly, the Board's "Notice of Stipulated Agreement, Order of Dismissal" merely "accepts the stipulation between the Petitioner and the Department of Local Government Finance." *Petitioner Exhibit F*. It does not identify the amount of that stipulation.

f. The Petitioner's representative also argues that the property was entitled to a "ten year deduction" under the "Barn America Act." *Bennett testimony.* However, the Board was unable to find any federal act named the "Barn America Act." The Petitioner may be confusing the Barn America Act with the Better Agricultural Resources Now Act (the "BARN Act"). However, the BARN Act is currently still in the committee stage and addresses the nonimmigrant agricultural workers' visa program. It is more likely that the Petitioner confused "Barn Again," which is a program provided by the National Trust for Historic Preservation in partnership with Successful Farming magazine, with a federal act. However, Barn Again does not possess any of the weight of law. Instead, it provides publications on technical issues, organizes workshops, and has an awards program.[3] In fact, the "Barn Again" materials the Petitioner offered as evidence specifically refer the reader to contact their state's Historic Preservation Office to determine if there are any tax benefits from restoring historic buildings in their state.[4] *Petitioner Exhibit B.*

g. The State of Indiana does provide a tax benefit for the rehabilitation of property in Indiana Code § 6.1-1-12-22. That section states:

> (a) If the assessed value of property is increased because it has been rehabilitated and the owner has paid at least ten thousand dollars ($10,000) for the rehabilitation, the owner is entitled to have deducted from the assessed value of the property an amount equal to fifty percent (50%) of the increase in assessed value resulting from the rehabilitation. The owner is entitled to this deduction annually for a five (5) year period. However, the maximum deduction which a property owner may receive under this section for a particular year is:
>
> (1) one hundred twenty-four thousand eight hundred dollars ($124,800) for a single family dwelling unit; or
>
> (2) three hundred thousand dollars ($300,000) for any other type of property.

Ind. Code § 6-1.1-12-22(a). In addition, Indiana Code § 6-1.1-12-23 provides that the rehabilitation deduction "shall continue for the taxes first due in payable in the following five (5) years" after the deduction is given.

h. In the present case, the Petitioner applied for a rehabilitation deduction on July 30, 2007. *Petitioner Exhibit C.* The Respondent's evidence shows that the deduction was applied to the Petitioner's property for the 2008, 2009, 2010, and 2011 tax years. *Respondent Exhibit 7.* Indiana Code § 6.1-1-12-22 provides for a maximum deduction of $124,800 on a single family dwelling, which is the amount of the

[3] http://www.preservationnation.org/information-center/saving-a-place/rural-heritage/barn-again/.

[4] The Petitioner's materials state: "The BARN AGAIN! Program does not provide grants to private individuals to fix up their barns... Some federal, state and local programs are available, however, to help defray the costs of a barn preservation project. Some states offer property or income tax relief for the rehabilitation of historic buildings, and a few localities have grant or loan programs for preservation." *Petitioner Exhibit B.*

deduction given to the Petitioner's property for each year. *Petitioner Exhibit C*. While the Petitioner's representative testified that the Petitioner was not seeking the rehabilitation deduction for 2006, for the sake of clarity, the Board notes that Indiana Code § 6-1.1-12-23 does not allow for the deduction to be applied retroactively. Thus, because the Petitioner did not apply for the rehabilitation deduction until 2007, the deduction could not be applied in 2006 – the tax year at issue in the present case. Moreover, because the deduction, by law, is only for five years, the deduction will end with the property's March 1, 2012, assessment.[5]

i. Finally, the Petitioner's representative argues that the Petitioner's property is not worth its assessed value. *Bennett argument.* However, the only evidence Mr. Bennett offered of the property's value was his testimony that a realtor from Century 21 said the Petitioner "would be lucky to get $159 for it right now." Even if the Board gave any weight to Mr. Bennett's hearsay testimony, the valuation date for the March 1, 2006, assessment was January 1, 2005. 50 IAC 21-3-3. Because Mr. Bennett failed to relate Mr. Likus' opinion of the property's value "right now" to the property's value in 2005, the evidence fails to show the property's 2006 assessment was incorrect. *See Long v. Wayne Township Assessor,* 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).

j. The Petitioner failed to provide any evidence that the property's 2006 assessed value was incorrect, or what the correct assessment would be. Where a Petitioner has not supported its claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *See Lacy Diversified Indus. v. Department of Local Government Finance,* 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

16. The Petitioner failed to raise a prima facie case that the property's March 1, 2006, assessment was incorrect. The Board therefore finds in favor of the Respondent and holds that the property's assessed value for 2006 is $255,100.

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 subject property should not be changed.

ISSUED: June 28, 2012

[5] The Board is unsure on what basis the Petitioner argues the deduction should be for ten years. Indiana Code § 6.1-1-12-22 on its face states that the deduction is granted for five years only and nothing in the Petitioner's "BARN AGAIN" materials identify any ten year deduction or exemption.

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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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>.