

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

**Petition #:** 76-005-06-1-5-00052  
**Petitioner:** Betty N. Lefevre Revocable Trust  
**Respondent:** Steuben County Assessor  
**Parcel #:** 76-05-02-220-109.000-005  
**Assessment Year:** 2006

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

**Procedural History**

1. On August 28, 2007, Allen & Betty Lefevre, trustees of the Betty N. Lefevre Revocable Trust, appealed the subject property’s assessment to the Steuben County Property Tax Assessment Board of Appeals (“PTABOA”). On December 31, 2008, the PTABOA issued its determination reducing the property’s land assessment, but making no change to the improvements’ assessment.
2. The Trust then timely filed a Form 131 petition with the Board. The Lefevres elected to have the appeal heard according to the Board’s small claims procedures.
3. On April 23, 2009, the Board held an administrative hearing through its administrative law judge, Patti Kindler (“ALJ”).
4. People present and sworn in at hearing:
  - a) For the Trust: Allen Lefevre, Trustee  
Betty Lefevre, Trustee
  - b) For the Assessor: Larry May, County Assessor  
Jennifer Becker, County Representative

**Facts**

5. The property is a single-family residence located at 6580 W. South Lake Gage Drive, Angola, Indiana.
6. Neither the Board nor the ALJ inspected the property.

7. The PTABOA valued the subject property's land at \$280,200 and its improvements at \$220,200, for a total assessment of \$500,400.
8. At the hearing, Mr. Lefevre said that the property's land value was no longer an issue. The Trust asks that the improvements be valued at \$170,100, for a total assessment of \$450,300.

### **Parties' Contentions**

9. The Trust offered the following evidence and arguments:
  - a) The assessment for the subject property's improvements increased almost 30% between 2005 and 2006. Given the increases for other homes around the same lake, the subject improvements' assessment should not have increased by more than 3.2%. To support that claim, the Trust offered an "Addendum to Appeal" that Mr. Lefevre had prepared. That addendum referenced properties owned by Rifkin, Reithmiller, DeRosa, Irving, Titsworth, and Baekgaard. Only one property—Baekgaard's—saw the assessment of its improvements increase between 2006 and 2007. *A. Lefevre testimony; Pet'r Ex. 2.*
  - b) Mr. Lefevre created the addendum when he was trying to figure out why the subject property's assessment increased. He now believes that the Assessor simply made a mistake on the subject property's 2006 assessment. For 2002 through 2005, the subject improvements were assessed for \$170,100. In 2006, that assessment jumped to \$220,200—an increase of \$50,100. In 2007, the assessment went back to \$170,100 and remained at that number for 2008. The Assessor did not explain the one-year increase. There have been no changes to the property's value since its original construction in 2000. *A. Lefevre testimony; Pet'r Ex. 2.*
10. The Assessor offered the following evidence and arguments:
  - a) The Assessor pointed to several errors on the Trust's Addendum to Appeal. First, Rifkin's 2005 improvement value was \$282,000, not \$283,500 as reported by Mr. Lefevre. So Rifkin's assessment actually increased between 2005 and 2006. Second, Mr. Lefevre used the Riethmiller property's land value rather than its improvement value in his analysis. Third, Mr. Lefevre made several errors concerning the Baekgaard property, including attaching the wrong property record card, using the 2005 land value, and listing 2007 values instead of 2006 values. Also, that property sold in November 2005 and the improvements were removed for the March 1, 2006, assessment. Fourth, the addendum is based on assessments instead of market evidence. Finally, none of the properties listed in the addendum are located in the same assessment neighborhood as the subject property. *Becker testimony; Resp't Ex. 5; Pet'r Ex. 3.*

- b) Also, each assessment year is separate. Annual trending of assessments did not begin until 2006, which explains the change in the subject property's assessment from 2005 to 2006. Trending is based on sales from two years prior to the assessment date. Thus, the subject property's 2006 assessment was based on sales from 2004 and 2005, while its 2007 assessment was based on sales from 2005 and 2006. Any difference between the property's 2006 and 2007 assessments would be attributed to the sales used for those particular assessment dates. *Becker testimony.*
- c) Ms. Becker did not feel comfortable commenting on the Trust's claim that the subject property's 2007 assessment, which reduced the improvements' values back to their pre-2006 levels, showed that the Assessor had simply made a mistake. Ms. Becker had not researched how the 2007 assessment was determined. *Becker testimony.*
- d) Because the Trust did not offer any market-based evidence to support its claims, the burden did not shift to the Assessor to defend the subject property's assessment. *Becker 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's Exhibit 1 – Subject property record card (front only),  
Petitioner's Exhibit 2 – Document titled "Addendum to Appeal" with three years of property record cards for the subject and six other properties,

Respondent's Exhibit 1 – Power of Attorney ("POA") for Jennifer Becker,  
Respondent's Exhibit 2 – Statement that the POA is a true and correct copy,  
Respondent's Exhibit 3 – Subject 2006 property record card,  
Respondent's Exhibit 4 – Form 115 Notice of Final Assessment,  
Respondent's Exhibit 5 – Copy of the Petitioner's evidence from the PTABOA hearing,  
Respondent's Exhibit 6 – Respondent Signature and Attestation Sheet<sup>1</sup>

Board Exhibit A – The Form 131 petition,  
Board Exhibit B – Notice of Hearing,

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<sup>1</sup> The Assessor's exhibits were attached to a document entitled "Summary of Respondent Exhibits and Testimony." The Assessor did not offer that document as an exhibit.

Board Exhibit C – Hearing Sign-In Sheet,

- d) These Findings and Conclusions.

**Analysis**

Burden of Proof

12. A petitioner seeking review of an assessing official's determination must establish a prima facie case proving both that the current assessment is incorrect and specifically 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 petitioner 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)
14. Once the petitioner establishes a prima facie case, the burden shifts to the respondent to rebut the petitioner'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.

The Trust's Case

15. The Trust did not make a prima facie case to rebut the presumption that the subject property was accurately assessed. The Board reaches this conclusion for the following reasons:
  - a) 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." 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 value: the cost, sales-comparison, and income approaches. *Id.* at 3, 13-15. 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, as determined using the Guidelines, is presumed to accurately reflect its market value-in-use. *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. PA Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax 2006). But a taxpayer may rebut that presumption with evidence that is consistent with the Manual's definition of true tax value. *Id.* A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice ("USPAP") often will suffice. *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; *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006).

- c) By contrast, a taxpayer does not rebut the presumption that a property's assessment is accurate simply by contesting the assessor's methodology in computing it. *See Eckerling* 841 N.E.2d at 678. Instead, the taxpayer must show that the assessor's methodology yielded an assessment that does not accurately reflect the property's market value-in-use. *Id.*
- d) Because the Trust offered no market value-in-use evidence, it failed to rebut the presumption that the subject property's assessment accurately reflected its market value-in-use. Instead, the Trust mainly claimed that the Assessor had made a mistake. Given that the assessment for the subject improvements changed for only one year, the Trust's claim is plausible. But that claim amounts to little more than an attack on the Assessor's methodology. Mistake or not, without market value-in-use evidence, the Trust did nothing to show that the subject property's March 1, 2006, assessment failed to accurately reflect its true tax value.
- e) Also, the Trust's position conflicts with the principle that each assessment and each tax year stands 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 year does not prove its true tax value in a different year. *See, Id.* That is particularly true given that, beginning with the March 1, 2006, assessment date, assessments are adjusted each year between general reassessments to reflect changes in property values. IND. CODE § 6-1.1-4-4.5. Thus, a property's 2006 assessment reflects its value as of January 1, 2005, while later assessments reflect the property's value as of January 1<sup>st</sup> of the calendar year preceding the assessment date. 50 IAC 21-3-3.<sup>2</sup>
- f) The Trust also pointed to the assessments for six other properties' improvements, most of which did not increase between 2005 and 2006. The Trust did not explain why it believed that information was relevant. To the extent that the Trust offered the information to contest the Assessor's methodology in computing the subject property's March 1, 2006, assessment, the Board has already explained why such a claim fails. Also, both the Guidelines and the Department of Local Government Finance's rules for annual adjustments generally call for assessors to group properties into assessment neighborhoods. *See* 50 IAC 21-4-1(annual adjustment rule requiring assessors to review neighborhood delineations); 50 IAC 21-5-3 (explaining when further stratification of properties within a neighborhood may

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<sup>2</sup> For non-general-reassessment years after 2009, "an adjustment in the assessed value of real property . . . shall be based on the estimated true tax value of the property on the assessment date that is the basis for taxes payable on that real property." I.C. § 6-1.1-4-4.5(f)(2009).

be necessary); *see also* GUIDELINES, ch. 2 at 8. Assessors use those neighborhood delineations when adjusting assessments to account for market factors. *See* GUIDELINES, ch. App. B at 8-9 (explaining how to calculate a neighborhood factor based on sales). The other properties that the Trust identified were all located in different assessment neighborhoods than the subject property. The lack of increases in their assessments therefore does little to show that the Assessor erred when he increased the subject property's assessment.

- g) The Trust may also have offered the information about the other properties' assessments to show a lack of uniformity and equality. The clearest way for a taxpayer to prove a lack of uniformity and equality in assessments is to show that its property is assessed at a higher percentage of its market value-in-use than other properties. *See Westfield Golf Practice Center, LLC v. Washington Twp. Assessor*, 859 N.E.2d 396, 399 (Ind. Tax Ct. 2007) (finding that the taxpayer failed to prove a lack of uniformity and equality where it did not show the market value-in-use of its own property or of any purportedly comparable properties). The Trust, however, did not offer probative evidence to show either the subject property's market value-in-use or the market values-in-use of any of the other properties identified in its Addendum to Appeal. Nor did the Trust meaningfully compare the subject property to the other properties. The Trust therefore failed to show a lack of uniformity and equality between assessments.
- h) Although the Trust's failure to meet its burden of proof requires the Board to find for the Assessor, the Board is troubled by the Assessor's cavalier disregard for what may have been a correctible mistake in the subject property's March 1, 2006, assessment. Whether in the context of the hearing or not, it would have been both appropriate and consistent with the obligations of public service for the Assessor to explain to the Lefevres why the subject property's assessment increased by \$50,100 for March 1, 2006, and then decreased by that same amount the following year. Ms. Becker's testimony that she had not researched how the property's 2007, assessment was determined is surprising, given that the Trust's Form 131 petition expressly points to the discrepancy between the 2006 and 2007 assessments. *See Board Ex. A.*

### **Conclusion**

16. Because the Trust offered no probative market-value-in-use evidence to rebut the presumption that the subject property's March 1, 2006, assessment was accurate, it failed to make a prima facie case. The Board finds for the Steuben County Assessor.

### **Final Determination**

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now affirms the 2006 assessment.

ISSUED: July 17, 2009

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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>>