

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

Petition No.: 37-032-09-1-5-00001
Petitioner; Hans Markland
Respondent: Jasper County Assessor
Parcel No.: 013-00296-00
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 Jasper County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated July 24, 2009.
2. The PTABOA issued a notice of its decision.
3. The Petitioner filed a Form 131 petition with the Board on November 25, 2009. The Petitioner elected to have his case heard pursuant to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated March 16, 2010.
5. The Board held an administrative hearing on April 22, 2010, before the duly appointed Administrative Law Judge (the ALJ) Ellen Yuhan.
6. Persons present and sworn in at hearing:

For Petitioner: Hans Markland, Taxpayer,

For Respondent: Donna Wiseman, Deputy Assessor,
Earl D. Walton, PTABOA Chairman.

Facts

7. The subject property is 67.98 acres of agricultural land located at 8515 N. 200 W., Wheatfield, in Jasper County.
8. The ALJ did not conduct an on-site visit of the property.

9. For 2009, the PTABOA determined the assessed value of the land to be \$83,700.
10. The Petitioner did not request a specific assessed value.

Issues

11. Summary of the Petitioner's contentions in support of an error in his assessment:
 - a. The Petitioner contends that two-thirds of his land is untillable because the ground is too wet to farm. *Markland testimony*. According to Mr. Markland, government agencies paid his neighbors to the north, east, and south to reduce their land to swamp. *Id.* As a result, the water table rose on his land and he has acres of cattails. *Id.*
 - b. The Petitioner further contends that the east boundary of his land is a regulated drain. *Markland testimony*. According to Mr. Markland, the commissioners approved subdivisions upstream which increased the water going into the drain. *Id.* Because the commissioners refuse to clean the drain, Mr. Markland argues, the flooding of his land intensified. *Id.* As a result, he has only about fifteen acres of land left that he can farm. *Id.*
12. Summary of the Respondent's contentions in support of the assessment:
 - a. The Respondent's witness, Ms. Wiseman, testified that the property is assessed with approximately 45 acres of tillable land at a base rate of \$1,250 per acre. *Wiseman testimony*. According to Ms. Wiseman, an additional 24.76 acres receive a 30% influence factor reducing the value of that acreage to \$20,360. *Id.; Respondent Exhibit 2*.
 - b. The Respondent's witness, Mr. Walton, contends that flooding does not matter except during the growing season. *Walton testimony*. Mr. Walton agreed the land is extremely wet but, he contends, it is not clear if that is a result of the stream overflowing or ponding. *Respondent Exhibit 1*.

Record

13. The official record for this matter is made up of the following:
 - a. The Petition,
 - b. The compact disk recording of the hearing labeled 37-032-09-1-5-00001, 37-032-08-1-7-00001 Markland,
 - c. Exhibits:

The Petitioner presented no exhibits.

Respondent Exhibit 1 – Assessor’s contentions,
Respondent Exhibit 2 – Memorandum noting that 24.76 acres of the subject property receives 30% influence factor,

Board Exhibit A – Form 131 petition,
Board Exhibit B – Notice of Hearing, dated March 16, 2010,
Board Exhibit C – Hearing sign-in sheet,

d. These Findings and Conclusions.

Analysis

14. The most applicable governing cases are:
 - a. 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).
 - b. In making its 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”).
 - c. 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.
15. The Petitioner failed to provide sufficient evidence to establish an error in his assessment. The Board reached this decision 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.” 2002 REAL PROPERTY ASSESSMENT MANUAL (MANUAL) (incorporated by reference at 50 IAC 2.3-1-2). The appraisal profession has traditionally used three methods to determine a property’s market value: the cost approach, the sales comparison approach, and the income approach. *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 (the GUIDELINES).

- 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 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 date, the valuation date is January 1, 2008. 50 IAC 21-3-3.
- d. Here, the Petitioner contends that his property's assessed value does not reflect the damage to the land caused by flooding. *Markland testimony*. According to Mr. Markland, most of Petitioner's land is untillable because the county commissioners refuse to clean a regulated drain that runs along Petitioner's property. *Id.* The Petitioner further contends the actions of the neighboring property owners have raised the water table on his land and resulted in acres of cattails. *Id.*
- e. The agricultural land value utilizes the land's current market value-in-use, which is based on the productive capacity of the land, regardless of the land's potential or highest and best use. GUIDELINES, ch. 2 at 99. The statewide agricultural land base rate value in 2009 was \$1,250 based on a six-year rolling average of market value-in-use as calculated by the Department of Local Government Finance pursuant to 50 IAC 21-6-1(a). The agricultural land assessment formula also values farmland, in part, based on the productive capacity of each parcel's soil resources. *Id.* at 106. Soil maps prepared by the United States Department of Agriculture categorize land according to its productivity. *Id.* at 106.
- f. There are seven categories of agricultural land use types including classified land, tillable land, nontillable land, woodland, other farmland, agricultural support land, and homesite. *Id.* at 102 - 105. Tillable land is further divided into subtypes to compensate for flooding. *Id.* at 104. Type 41 agricultural land has "damaging floods [that] occur two to four times in a ten-year period"; Type 42 land has "damaging floods [that] occur five times or more in a ten-year period"; and Type 43 land is "farmed wetlands" which is land verifiably designated as such by the U.S.

Department of Agriculture. *Id.* Specific influence factors are applied based on each subtype of tillable land. *Id.*

- g. Here, Mr. Markland testified that two-thirds of the Petitioner's property floods every year. However, he presented no pictures or logs of the flooding. Nor did he present surveys or soil maps to define the area in which such flooding occurs. 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). Thus, while the Board could reasonably conclude that Mr. Markland has shown that some portion of his land is Type 41 or Type 42 agricultural land, he has not sufficiently shown what area and specifically how many acres should be classified in that manner. The agricultural land assessment formula involves the identification of agricultural tracts using data from detailed soil maps, aerial photography, and local plat maps. Uniformity is maintained in the assessment of agricultural land through the proper use of soil maps, interpreted data and unit values. GUIDELINES, ch. 2 at 99. Mr. Markland's vague reference to "two-thirds of his farmland" falls far short of the burden to prove any of the property's soil type has been improperly classified.
- h. The Petitioner failed to establish a prima facie case. Where the Petitioner has not supported his claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. LTD 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. The Board finds in favor of the Respondent.

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>>