

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

**Petition:** 15-005-07-1-3-00015  
**Petitioners:** Steven L. Ochs  
**Respondent:** Dearborn County Assessor  
**Parcel:** 15-10-11-400-031.001-005  
**Assessment Year:** 2007

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

**Procedural History**

1. The Petitioner initiated an assessment appeal with the Dearborn County Property Tax Assessment Board of Appeals (PTABOA) by written notice dated September 12, 2008.
2. The PTABOA mailed notice of its decision on December 15, 2008.
3. The Petitioner appealed to the Board by filing a Form 131 on January 16, 2009, and elected to have this case heard according to small claims procedures.
4. The Board issued notice of hearing to the parties dated September 21, 2010.
5. Administrative Law Judge Kay Schwade held the Board's administrative hearing on October 28, 2010. She did not inspect the property.
6. The Petitioner appeared *pro se*. Attorney John Gay represented the Respondent.
7. Petitioner Steven Ochs and County Assessor Gary Hensley were sworn as witnesses.

**Facts**

8. The subject property is located at 13350 US Highway 50 in or near Dillsboro.
9. The PTABOA determined the assessed value is \$99,800 for land and \$117,500 for improvements (\$217,300 total).
10. The Petitioner requested an assessed value of \$40,000 to \$50,000 for land, but does not dispute the assessed value of the improvements.

## **Record**

11. The official record contains the following:
  - a. Petition for Review of Assessment (Form 131),
  - b. Notice of Hearing,
  - c. Hearing Sign-In Sheet,
  - d. Digital recording of the hearing,
  - e. Petitioner Exhibit 1 – Notice of Assessment effective March 1, 2006,  
Petitioner Exhibit 2 – Form 115 Notification of Assessment,  
Petitioner Exhibit 3 – Property Record Card (PRC) for 10150 Lenover Street,  
Petitioner Exhibit 4 – Subject property PRC,  
Petitioner Exhibit 5 – PRC for Laughery Valley Ag Co-op Inc.,  
Petitioner Exhibit 6 – Withdrawn,  
Petitioner Exhibit 7 – PRC for 231 Industrial Access Drive,  
Petitioner Exhibit 8 – Marketing flyer and PRC for 7235 US Highway 50,  
Petitioner Exhibit 9 – Marketing flyer and PRC for 14056 US Highway 50,  
Petitioner Exhibit 10 – Sale records for four properties,  
Petitioner Exhibit 11 – Sales Disclosure and PRC for 13327 Evgeny Ct,  
Petitioner Exhibit 12 – Sales Disclosure and PRC for 13375 Bank Street,  
Petitioner Exhibit 13 – Sales Disclosure and PRC for 14056 US 50,  
Petitioner Exhibit 14 – Sales Disclosure and PRC for 16947 State Road 350,  
Petitioner Exhibit 15 – Notice of Assessment effective March 1, 2010,  
Respondent Exhibit 1 – Notice of Hearing,  
Respondent Exhibit 2 – Petition for Review of Assessment (Form 130),  
Respondent Exhibit 3 – PRC for the subject property,  
Respondent Exhibit 4 – Form 115 Notification of Assessment,  
Respondent Exhibit 5 – Appraisal prepared by Jeffrey D. Thomas,  
Respondent Exhibit 6 – Form 134 Joint Report of Preliminary Informal Meeting,
  - f. These Findings and Conclusions.

## **Objections**

12. The Board's small claims rules provide that copies of any documentary evidence must be provided at least 5 business days before the hearing if they are requested. 52 IAC 3-1-5(d). The Respondent objected to the admission of Petitioner's Exhibits 2 through 15 because the Petitioner did not provide copies prior to the hearing. But the Petitioner testified that he was not asked to provide copies of the exhibits prior to the hearing and the Respondent admitted that such a request was not made. Therefore, that objection is overruled.

13. The Respondent also objected to these same exhibits as being irrelevant because of the sale dates and/or property classifications. Indeed, establishing what the relationship of commercial and industrial property values might be and establishing how sale prices from some other time help demonstrate value as of the required valuation date for a 2007 are problematic points. The Petitioner, however, will have the opportunity to overcome those problems. The objection is overruled. The probative value of that evidence, however, will be considered in the context of the entire case.
14. The Petitioner objected to the admission of an appraisal, Respondent's Exhibit 5, because it is just the appraiser's opinion and not a matter of actual fact. Nevertheless, properly prepared appraisals have been recognized many times as perhaps the best evidence of the actual market value-in-use of a property. Therefore, the objection is overruled.

### **Contentions**

15. Summary of the Petitioner's case:
  - a. The land assessment exceeds market value in this area. The county wants to say that the subject property is located in an industrial park, but it is not. *Ochs testimony.*
  - b. The notice of assessment states that sales data was used to calculate how much to adjust assessed values in an area and that the amount of change was applied to all the assessed values of the same type properties in the area. The assessed value of the subject property's land tripled between 2006 and 2007, but some land values along US 50 did not change at all. The variation in property valuations in Exhibits 3-9 shows that sales data in the subject property's area was not used to adjust all assessed values the same. *Ochs testimony; Pet'r Ex. 1, 3-9.*
  - c. One property on US 50 about 5 miles from the subject property has an assessed land value of \$17,300 that has not changed from 2002 through 2009. *Ochs testimony; Pet'r Ex. 8.*
  - d. There is a wide variation in the assessed values of commercial and industrial land along US 50. And the assessed land value of subject property—\$99,800 for only 1¼ acre of land—is more than any of the others. *Ochs testimony.*
  - e. In September 2004, a property across the street from the subject property sold for \$118,500. Its land is assessed as commercial land at \$80,000 an acre, which is \$10,000 an acre less than the subject property. *Ochs testimony; Pet'r Ex. 11.*
  - f. The Farrell Property located at 10150 Lenover Street is a machine shop like the subject property. It is classified as a commercial property rather than an industrial property; however, it is "similar" and "pretty much identical" to the subject property. It is not located directly on US 50, but has comparable access. The

Farrell Property is assessed at \$30,000 per acre, while the subject property is assessed at \$90,000 per acre. *Ochs testimony; Pet'r Ex. 3.*

- g. A 0.999 acre property located on US 50 sold for \$8,000 (a July 2010 sale). *Ochs testimony; Pet'r Ex. 10 at 1.*
  - h. A 175 acre property about 3 miles down the road sold for \$587,000. That is about \$3,500 an acre (a March 2010 sale). *Ochs testimony; Pet'r Ex. 10 at 2.*
  - i. About a quarter of a mile from the subject property, a 5.3 acre property located at Highway 62 and Highway 262 sold for \$150,000. That is about \$27,000 an acre (an April 2010 sale). *Ochs testimony; Pet'r Ex. 10 at 3.*
  - j. Less than a quarter of a mile from the subject property, a property that is zoned commercial on US 50 in Dillsboro sold for \$150,000 (a May 2010 sale). It included 5.43 acres of land and a building. *Ochs testimony; Pet'r Ex. 10 at 4.*
  - k. A 1.79 acre property directly across the street from the subject sold in 2005 for \$38,000 and its land assessment is valued at \$30,000 an acre. *Ochs testimony; Pet'r Ex. 12.*
  - l. Another property that is within a quarter of a mile from the subject property sold in June 2010 for \$150,000. It has one acre assessed at \$25,000 and another 4.43 acres assessed at \$15,000 per acre. *Ochs testimony; Pet'r Ex. 13.*
  - m. The PTABOA was supposed to explain the justification for the assessed value they determined for the subject property on the Form 115 Notice, but they failed to do so. It simply says "no change." *Ochs testimony; Pet'r Ex. 2.*
  - n. The Respondent appears to be relying on an appraisal, the "Limited Scope Evaluation" by Jeffrey Thomas, to justify the assessed valuation of the subject property. But the comparisons it relies on do not really support the assessed valuation that is on the subject property. One of the comparable properties used in the Respondent's appraisal sold for \$180,000 and it is assessed at \$153,600. The assessed value of this property is \$63,700 less than the subject property's total assessment. Another comparable used in the appraisal has an assessed value of \$144,400 which is \$72,900 less than the subject property's assessed value. *Ochs testimony; Pet'r Ex. 4, 14.*
16. Summary of the Respondent's case:
- a. There are not many sales of property in the area where the subject property is located. Mr. Ochs has stated that he paid \$145,000 for it and this land is assessed at only \$99,000. The property value has been static or gone down over the years. *Hensley testimony.*

- b. The properties presented by the Petitioner are not comparable to the subject property because they vary in use and location. The Petitioner has a better location. The subject property is on US Highway 50 and some of his comparables are not. *Hensley testimony; Pet'r Ex. 3, 5, 14, 7.*
- c. One of the sales referred to by the Petitioner occurred several years ago and more recent changes to the property that affected the assessment. Other sales offered by the Petitioner are in "future years" that are not applicable to the 2007 assessment year. Some of the evidence the Petitioner relied on is listings rather than actual sales and it should not be relied on to establish values. *Hensley testimony.*
- d. The appraisal was prepared to measure the accuracy of the assessed value. The appraised value was \$223,000. *Hensley testimony; Resp't Ex. 5.*
- e. The burden of proof is on the Petitioner to present evidence showing an error in the assessed value. The Petitioner did not meet this burden. *Gay argument.*

### Analysis

- 17. 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).
- 18. 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").
- 19. The Petitioners did not make a prima facie case for any assessment change for the following reasons:
  - a. Real property is assessed based on its "true tax value," which does not mean fair market value. It means "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." Ind. Code § 6-1.1-31-6(c); 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). Indiana promulgated Guidelines for assessing officials that are based on the cost approach. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002—VERSION A (incorporated by reference at 50 IAC 2.3-1-2). The value established by use of those Guidelines, while presumed to be accurate, is merely a starting point. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut that presumption. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.

- b. The valuation date for a 2007 assessment is January 1, 2006. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. Any evidence of value relating to a different date must have an explanation about how it demonstrates, or is relevant to, the value as of the required valuation date. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
- c. The Petitioner attempted to prove his value with comparisons; however, the Petitioner did not establish the basic requirements that might make such an approach meaningful.
- d. A comparison analysis in an assessment appeal requires showing how the properties upon which the analysis is based are comparable. Conclusory statements that a property is “similar” or “comparable” do not suffice. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). One must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the alleged comparable properties. Similarly, any differences between the properties and how those affect the relative market values-in-use must also be established. *Id.* at 471.
- e. It was the Petitioner’s duty to walk the Board through his comparison analysis. *See Long*, 821 N.E.2d at 471 (finding that the Board was not required to review the taxpayer’s documents to determine if the properties were comparable). But other than a little evidence about location and proximity, the Petitioner failed to substantially compare specific features of the subject property to those of the purportedly comparable properties. This failure makes it impossible to draw any legitimate conclusion about a possibly more accurate value of the subject property from such comparisons.
- f. Furthermore, nothing establishes how the sales from various other times might relate to values as of January 1, 2006. This failure also leaves that evidence without probative value for a 2007 assessment.
- g. The Petitioner attempted to compare his assessment to the assessment of purportedly comparable properties, apparently intending to show a lack of uniformity and equality. A taxpayer cannot make such a claim simply by comparing assessments without showing that his 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 taxpayer failed to prove a lack of uniformity and equality where it did not show the market values-in-use of its property or any of the purportedly comparable properties). The Petitioner did not offer that type of comparison or analysis. The attempted comparisons are not sufficient to draw any conclusion that principles of uniformity or equality of assessment require a change to the Petitioner’s existing assessment for 2007.

20. When a taxpayer fails to provide probative evidence supporting its position 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**

21. The Petitioner did not rebut the presumption that the current assessment is correct. Therefore, the Board finds in favor of the Respondent.

**Final Determination**

In accordance with the above findings and conclusions, there will be no change in the assessment.

ISSUED: \_\_\_\_\_

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Commissioner, 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

- 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>>