

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

**Petition Nos.:** 09-009-09-1-5-00003  
09-009-09-1-5-00004  
09-009-09-1-5-00005  
**Petitioner:** Timothy A. Oldham / Oldham, Inc.<sup>1</sup>  
**Respondent:** Cass County Assessor  
**Parcel Nos.:** 09-07-28-300-029.000-009  
09-07-28-300-028.000-009  
09-07-28-328-013.000-009  
**Assessment Year:** 2009

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

**Procedural History**

1. Timothy A. Oldham filed three Form 130 petitions challenging the above-captioned parcels’ March 1, 2009, assessments. On October 7, 2011, the Cass County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determinations denying Mr. Oldham the relief he requested.<sup>2</sup>
2. Mr. Oldham then timely filed three Form 131 petitions with the Board. He elected to have his appeals heard under the Board’s small claims procedures. The Assessor did not exercise her option to remove the appeals from the Board’s small claims docket.
3. On July 10, 2012, the Board held an administrative hearing through its designated Administrative Law Judge, Jennifer Bippus (“ALJ”). Mr. Oldham moved to consolidate his appeals into one hearing. *Pet’r Ex. 1*. The Assessor did not object; the Board therefore granted Mr. Oldham’s motions.
4. The following people were sworn in and testified:
  - a) Timothy A. Oldham<sup>3</sup>

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<sup>1</sup> For Petition Nos. 09-009-09-1-5-00003 and 09-009-09-1-5-00004, Timothy A. Oldham is the Petitioner. For Petition No. 09-009-09-1-5-00005, the Petitioner is Oldham, Inc.

<sup>2</sup> The PTABOA lowered the assessment of Parcel No. 09-07-28-328-013.000-009 from \$11,500 to \$8,700, but that decrease was not to the level that Mr. Oldham requested.

<sup>3</sup> Nelson J. Becker, Attorney, represented Mr. Oldham.

b) Cathy Isaacs, Cass County Assessor  
Brian Thomas, expert witness

### **Facts**

5. The subject parcels are unimproved residential lots located on Tomlinson Drive, in Logansport, Indiana. Parcel No. 09-07-28-300-029.000-009 is a 1.82 acre parcel; Parcel No. 09-07-28-300-028.000-009 is a 1.21 acre parcel; and Parcel No. 09-07-28-328-013.000-009 is a 100 foot by 150 foot lot in the Marleton Hills subdivision located across the street from Mr. Oldham's 1.82 acre parcel and 1.21 acre parcel.
6. Mr. Oldham filed motions requesting that the ALJ view the subject parcels. *Pet'r Ex. 2*. The ALJ made a preliminary determination denying those motions at the hearing. Indiana Code § 6.1.1-15-4(b) provides that the Board may conduct site inspections. But the Board does not assess property; the Board's statutory function is to adjudicate assessment appeals based exclusively upon evidence entered into the record at hearing. *See Ind. Code § 6.1.1-15-4(b, j)*. Rarely, a circumstance may exist that prevents the Board from accomplishing that function without a site inspection. Here, however, Mr. Oldham noted no such circumstance. The Board therefore upholds the ALJ's preliminary denial of Mr. Oldham's motions. Consequently, neither the ALJ nor the Board inspected the subject parcels.
7. For 2009, the PTABOA determined the assessed value of the 1.82 acre parcel, Parcel No. 09-07-28-300-029.000-009, to be \$7,100 for the land; the assessed value of the 1.21 acre parcel, Parcel No. 09-07-28-300-028.000-009, to be \$4,700 for the land; and the assessed value of the lot in Marleton Hills, Parcel No. 09-07-28-328-013.000-009, to be \$8,700 for the land. There are no improvements on any of the parcels.
8. Mr. Oldham requested an assessed value of \$3,500 for Parcel No. 09-07-28-300-029.000-009; \$2,500 for Parcel No. 09-07-28-300-028.000-009; and \$2,000 for Parcel No. 09-07-28-328-013.000-009.

### **Summary of Parties' Contentions**

9. Mr. Oldham's evidence and contentions:
  - a) Mr. Oldham testified that the smallest of the three parcels is Parcel No. 09-07-28-328-013.000-009, which he refers to as "Lot 34." *Oldham testimony; Pet'r Exs. 6, 8*. Lot 34 is located in the Marleton Hills subdivision. *Id.* According to Mr. Oldham, Lot 34 is approximately 100 feet wide and 150 feet deep, but a large ditch or ravine covers the entire depth of the lot and 80 feet of the width. *Id.* The ravine handles drainage for 18% of the subdivision and runs to an 18-inch culvert under Tomlinson Drive which empties onto his other two parcels across the road. *Id.* According to Mr. Oldham, it would take Lot 34 and its neighboring lot, Lot 36, together to build a house on and even then "the septic system would be a challenge." *Id.* Similarly, he

argues, the 1.82 acre parcel and the 1.21 acre parcel cannot be built on because of their topography. *Id.* Moreover, the 1.21 acre parcel is “land-locked;” it can only be accessed through the 1.82 acre parcel. *Id.* Mr. Oldham admitted, however, that he bought the properties because he “likes buffer.” *Id.*

- b) Mr. Oldham argues that the drainage causes a great deal of erosion on Lot 34. *Id.*; *see Pet’r Ex. 8.* If he filled the lot, however, the drainage would be blocked. *Oldham testimony.* In support of this contention, Mr. Oldham offered a letter from Rusty Deichman of Deichman Excavating Co., Inc. *Pet’r Ex. 12.* Mr. Deichman agrees that Lot 34 cannot be filled in because it drains to other properties. *Id.* According to the letter, the lot would “require major culvert and stone work to be usable.” *Id.* He also states that the other two parcels “have major drainage issues and would require a substantial and costly amount of work to make them accessible.” *Id.*
- c) Mr. Oldham argues that his properties are assessed too high based on the assessed values of other lots in the neighborhood. *Oldham testimony; Pet’r Ex. 9.* According to Mr. Oldham, Lots 44, 45, and 46, which are side-by-side lots, owned by the same individual, have assessed values of \$4,700, \$4,800 and \$4,800, respectively. *Id.* There is a ditch that continues through Lot 46, but the lots are “theoretically buildable.” *Oldham testimony.* Further, two unbuildable lots, Lots 51 and 63, are assessed for only \$2,400 and \$2,200, respectively. *Id.; Pet’r Ex. 10.* Mr. Oldham also argued that Lot 80 is assessed for only \$4,800. *Oldham testimony; Pet’r Ex. 11.* While it has some slope, Mr. Oldham argues, Lot 80 is far superior to Lot 34; yet Lot 80 is assessed for far less. *Oldham argument.*

10. The Assessor’s evidence and contentions:

- a) The Assessor’s representative testified that the assessed values of the Petitioners’ parcels were calculated after viewing them and determining their best possible use. *Thomas testimony.* According to Mr. Thomas, Lot 34 was assessed with a base rate of \$170 “like all of the lots in the subdivision.” *Id.* Because Lot 34 has a ravine running through it, however, the Assessor applied a negative 25% influence factor for the lot’s topography. *Id.* In addition, the Assessor applied a negative 30% influence factor for the lot’s lack of a septic system and well. *Id.* According to Mr. Thomas, the report on Lot 34 noted that the lot “would not be sellable without adjacent parcels.” *Id.* The 1.82 acre parcel and the 1.21 acre parcel, on the other hand, were considered developable. *Id.* Thus, Mr. Thomas testified, they were assessed as excess residential acreage, but were given a negative 10% influence factor because of drainage and topography. *Id.*
- b) Mr. Thomas testified that the owner of Lots 44, 45, and 46 provided the Assessor with evidence that it would take all three lots together to make a home site, and that none of the lots alone could be used to build a house. *Thomas testimony.* According to Mr. Thomas, there is a ravine running through the parcels, and all of the lots drop off in the back. *Id.* Mr. Thomas argued that “we were basically asking for information that says it is not buildable” because “the Assessor must use ascertainable

information as to how they set the values.” *Thomas argument*. But the Petitioner did not provide such information. *Id.* However, Mr. Thomas agreed that nothing could be built on Lot 34. *Id.*

- c) Finally, Mr. Thomas testified that the Assessor had not previously seen the letter from Mr. Deichman. *Thomas argument*. Regardless, he argues, it simply serves as one opinion. *Id.*

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 Exhibit 1: Motions to Consolidate,
- Petitioner Exhibit 2: Motions for Viewing,
- Petitioner Exhibit 3: Form 131 for Parcel No. 09-07-28-300-029.000-009 (the 1.82 Acre Parcel”),
- Petitioner Exhibit 4: Form 131 for Parcel No. 09-07-28-300-028.000-009 (the “1.21 Acre Parcel”),
- Petitioner Exhibit 5: Form 131 for Parcel No. 09-07-28-328-013.000-009 (“Lot 34”),
- Petitioner Exhibit 6: Topography map of area,
- Petitioner Exhibit 7: “Property report card” for the 1.82 Acre Parcel and the 1.21 Acre Parcel,
- Petitioner Exhibit 8: Photographs and “property report card” for Lot 34,
- Petitioner Exhibit 9: Photograph and “property report cards” for Lots 44, 45 and 46,
- Petitioner Exhibit 10: Photograph of Lots 51 and 63; and “property report card” for Lot 63,
- Petitioner Exhibit 11: Photograph of Lot 80,
- Petitioner Exhibit 12: Letter from Deichman Excavating Co., Inc.,
- Petitioner Exhibit 13: Chart of assessed values for twelve properties.

The Respondent did not present any exhibits.

- Board Exhibit A: Form 131 petitions,
- Board Exhibit B: Hearing notice,
- Board Exhibit C: Notice of appearance for Nelson J. Becker,
- Board Exhibit D: Hearing sign-in sheet.

- d) These Findings and Conclusions.

## Analysis

### Burden of Proof

12. Generally, a taxpayer seeking review of an assessing official's determination must make a prima facie case proving both that the current assessment is incorrect and 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 taxpayer 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) (“[I]t is the taxpayer’s duty to walk the Indiana Board . . . through every element of the analysis”).
14. If the taxpayer makes a prima facie case, the burden shifts to the respondent to offer evidence to impeach or rebut the taxpayer’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.

### Merits of the Case

15. Mr. Oldham raised a prima facie case that Lot 34 was over-valued for the 2009 assessment year. The Board reached this conclusion for the following reasons:
  - a) Indiana assesses real property based on its true tax value, which is “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). Evidence in a tax appeal must be consistent with that standard. For example, a market value-in-use appraisal prepared according to Uniform Standard of Professional Appraisal Practice (“USPAP”) often will be probative. *See Kooshtard Property VI, LLC v. White River Twp. Assessor*, 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 property or comparable properties, and any other information compiled according to generally acceptable appraisal principles. MANUAL at 5.
  - b) Regardless of the method used to rebut an assessment’s presumed accuracy, a party must explain how its evidence relates to the property’s market value-in-use as of the relevant valuation date. *O’Donnell v. Dep’t of Local Gov’t Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2009 assessment date, the valuation date was January 1, 2008. 50 IAC 21-3-3 (2009).
  - c) Here, Mr. Oldham generally claimed that the subject parcels were assessed too high in comparison to other parcels in his area, even though some of the other parcels are buildable. Pursuant to Indiana Code § 6-1.1-15-18(c), “To accurately determine

market-value-in-use, a taxpayer or an assessing official may ... introduce evidence of the assessments of comparable properties located in the same taxing district or within two (2) miles of a boundary of the taxing district..." Ind. Code § 6-1.1-15-18.<sup>4</sup> The statute states that "the determination of whether properties are comparable shall be made using generally accepted appraisal and assessment practices." *Id.*

- d) In support of his contentions, Mr. Oldham submitted "Property Assessment Detail Reports" which provide a total assessed value for each parcel. Mr. Oldham also provided a plat map to show that Parcel 34 was virtually the same size as every other lot in the subdivision and provided pictures to show that Lots 51 and 63 had a similar ravine running through the center of the property as Lot 34. In addition, Mr. Oldham testified that a ditch runs through Lots 44, 45, and 46.
- e) The Board notes that to compare the assessed values of comparable properties, at a minimum the proponent must provide property record cards to show how the various properties are assessed. Here the Petitioners provided no such data. The Petitioners' "Property Assessment Detail Reports" are not the kind of report that would allow the Board to determine how a property was assessed and whether the subject parcels were assessed differently.
- f) Despite the Petitioners failure to provide detailed assessment information, the Respondent's representative testified that each lot in the subdivision was assessed with a base rate of \$170. And while Lot 34 was given a 30% adjustment for its lack of septic and well and a 25% adjustment for topography, Mr. Thomas testified that Lots 44, 45 and 46 received a 30% adjustment for their lack of septic and well; a 30% adjustment for "excess frontage" because it would require all three lots together to be a buildable lot; and the PTABOA applied a 44% adjustment because the lots individually were not buildable.
- g) While conceding the parcels were similar in topography, the Respondent argued that the owner of Lots 44, 45 and 46 provided evidence to the PTABOA that its properties were not buildable; whereas the Petitioner did not. But the Assessor's contractor noted that Lot 34 "would not be sellable without adjacent parcels" and, in fact, Mr. Thomas agreed in hearing that Lot 34 was unbuildable.<sup>5</sup>
- h) Given the Respondent's admission that Lot 34 suffers from the same unbuildable conditions as Lots 44, 45 and 46 as a result of the parcels' topography, and given the Petitioners' evidence that the parcels were located in the same subdivision and were

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<sup>4</sup> Indiana Code § 6-1.1-15-18 applies to "any proceeding pending or commenced after June 30, 2012."

<sup>5</sup> The Assessor argued that she did not have the authority to apply an influence factor to the Petitioners property unless the PTABOA told her to. However, Assessors are tasked with assessing property based on its "true tax value" – which includes the application of any influence factors or adjustments that may be necessary for the property to reflect its market value-in-use. Thus, to the extent Ms. Isaacs believed the property was unbuildable and should have been adjusted accordingly, she clearly had the authority and the power to do so.

all virtually identical in size, the Board finds that the totality of the evidence shows that Lot 34 should be assessed no more than the highest assessed value assigned to Lots 44, 45 or 46. Thus, the Board holds that the assessed value of Lot 34 should be reduced to \$4,800 for the 2009 assessment year. Mr. Oldham, however, failed to show that the 1.82 Acre Lot or the 1.21 Acre Lot were comparable to the parcels in the subdivision sufficient to make a prima facie case that they were over-valued for the 2009 assessment.

### **Conclusion**

16. Mr. Oldham raised a prima facie case for a lower assessment on Lot 34. However, he failed to sufficiently support a lower value for either the 1.82 Acre Parcel or the 1.21 Acre Parcel.

### **Final Determination**

In accordance with the above findings of fact and conclusions of law, the Board orders the Assessor to lower the assessment on Parcel No. 09-07-28-328-013.000-009 ("Lot 34") to \$4,800. The Board, however, sustains the assessed value for Parcel No. 09-07-28-300-029.000-009 (the "1.82 Acre Parcel") and Parcel No. 09-07-28-300-028.000-009 (the "1.21 Acre Parcel").

ISSUED: October 9, 2012

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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>.