

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

**Petitions:** 83-008-09-1-5-00805  
83-008-10-1-5-00005  
**Petitioners:** Robert & Patsy Penn  
**Respondent:** Vermillion County Assessor  
**Parcel:** 83-08-26-240-096.000-008  
**Assessment Years:** 2009 and 2010

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 Petitioners initiated assessment appeals for the subject property with the Property Tax Assessment Board of Appeals (PTABOA) for 2009 and 2010.
2. The PTABOA mailed notice of its decision regarding the 2009 assessment on August 10, 2010, and it mailed notice for the 2010 assessment on February 21, 2011.
3. The Petitioners appealed both determinations to the Board by timely filing Form 131 petitions for each year. They elected to have both cases heard according to small claims procedures.
4. Administrative Law Judge Paul Stultz held the Board’s administrative hearing on January 24, 2012. He did not inspect the property.
5. Patsy Penn, County Assessor Patricia Richey, William Birkle, and Brian McHenry were sworn as witnesses.

**Facts**

6. The subject property is an unimproved parcel located at 101 Briarwood in Dana.
7. The PTABOA determined the assessed value is \$2,600 for both 2009 and 2010.
8. The Petitioners requested an assessment of \$1,500 for both years.

## Contentions

9. Summary of the Petitioners' case:
  - a. The subject property is worth no more than \$1,500. *Penn testimony.*
  - b. There are no improvements on the subject parcel. It has no utilities. It sits across from railroad tracks. Most of the time train cars are parked in front of the property. *Penn testimony.*
  - c. Dana is a depressed community. Therefore, there are no sales to use as evidence. The Respondent cannot support the current value because she has no comparables. *Penn argument.*
  
10. Summary of the Respondent's case:
  - a. The Respondent followed Indiana and International Association of Assessing Officers (IAAO) guidelines in determining the assessment. *McHenry, Birkle testimony.*
  - b. Specifically, the Respondent used improved sales and the allocation method to determine land values and develop the Land Order. Then the subject property was assessed in accordance with the Land Order. *Birkle testimony.*
  - c. The Respondent applied a 63% negative influence factor to the assessment because the subject parcel lack improvements and utilities. *McHenry testimony.*

## Record

11. The official record contains the following:
  - a. The Petition,
  - b. A digital recording of the hearing,
  - c. Petitioner Exhibits – None,  
Respondent Exhibits – None,  
  
Board Exhibit A – Form 131 Petitions,  
Board Exhibit B – Notices of Hearing,  
Board Exhibit C – Hearing Sign-In Sheet,
  - d. These Findings and Conclusions.

## Analysis

12. 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.
13. The Petitioners did not make a prima facie case for any assessment change.
  - a. Real property is assessed based on "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). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. The primary method for assessing officials is the cost approach. *Id.* at 3. Indiana has Guidelines that explain the application of 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 the Guidelines is presumed to be accurate, but it 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 Petitioners needed to offer probative evidence about what a more accurate valuation would be. *See Talesnick v. State Bd. of Tax Comm'rs*, 756 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001). They offered no such proof. The statements that the value should be only \$1,500 were conclusory and not probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d at 1119 (Ind. Tax Ct. 1998).
  - c. The subject parcel lacks utilities and train cars are usually parked in front of the property, but the Petitioners offered no probative evidence to quantify any loss in

value related to those points. Therefore, they do not help to prove that the assessment must be changed. See *Talesnick*, 756 N.E.2d at 1108.

- d. When a taxpayer fails to provide probative evidence 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); *Whitley Products*, 704 N.E.2d at 1119.

### **Conclusion**

- 14. The Petitioners failed to make a prima facie case. The Board finds in favor of Respondent for both the 2009 and 2010 assessments.

### **Final Determination**

In accordance with the above findings and conclusions, these assessments will not be changed.

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

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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

- 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>>