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

Petition No.: **53-009-06-1-5-00103**
Petitioners: **Leo and Catherine Pilachowski**
Respondent: **Monroe County Assessor**
Parcel No.: **015-60280-00**
Assessment Year: **2006**

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 an assessment appeal with the Monroe County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated December 26, 2006. The Petitioners received notice of the decision of the PTABOA by a Form 115 Notification of Final Assessment Determination dated May 2, 2007.

2. The Petitioners initiated an appeal to the Board by filing a Form 131 with the county assessor on May 30, 2007. The Petitioners elected to have this case heard according to the Board's small claims procedures.

3. The Board issued a notice of hearing to the parties dated February 4, 2008.

4. The Board held an administrative hearing on April 16, 2008, before the duly appointed Administrative Law Judge (the ALJ) Rick Barter.

5. Persons present and sworn in at hearing:

   a. For Petitioners: Leo Pilachowski, Petitioner

   b. For Respondent:[1] Ken Surface, Contractor for Monroe County
      Judith Sharp, Monroe County Assessor

Facts

6. The subject property is an improved residential parcel located at 2326 E. Woodbine Avenue, Bloomington, in Perry Township, Monroe County.

[1] The Respondent was represented by Ms. Marilyn Meighen, Esq.

7. The ALJ did not conduct an on-site visit of the property.

8. The PTABOA determined the assessed value of the subject property to be $23,200 for the land and $233,600 for the improvements, for a total assessed value of $256,800.

9. The Petitioners requested an assessment of $23,200 for the land and $179,300 for the improvements, for a total assessed value of $202,500.

Issues

11. Summary of Petitioners' contentions in support of changing the assessment:

    a. The Petitioners argue that the PTABOA did not have jurisdiction to hear the December 26, 2006, Petition to the Property Tax Assessment Board of Appeals for Review of Assessment held April 5, 2007, because the hearing was held after the 90-day time limit required by Indiana Code § 6-1.1-15-1.[2] *L. Pilachowski testimony, Petitioner Exhibit 14.* As a result, the Petitioners argue, their contentions should have been declared valid and the assessment lowered. *Id.* Any subsequent appeal to the Board, then, would have been the responsibility of the Monroe County PTABOA. *Id.*

    b. The Petitioners further argue that the county assessed properties in a disparate manner resulting in assessments that are unequal and non-uniform. *Pilachowshi testimony.* Mr. Pilachowski argues that the 2006 assessment was detrimental to some taxpayers and beneficial to others.[3] *Id.* According to the Petitioners, there is a pattern of assessment discrepancies and neighborhood number inconsistencies which suggest errors in the county assessor's databases. *Pilachowski testimony, Petitioners Exhibits 15 through 21.* The Petitioners argue that these errors may be the cause of the unequal and non-uniform assessments which violate Indiana law. *Id.* In support of this contention, the Petitioners submitted a list of sales over the last ten years and each property's assessed value. *Petitioners Exhibits 15 through 21.* The Petitioners contend their exhibits show that high end homes are under-assessed and middle class homes are over-assessed. *Pilachowski testimony.* According to the Petitioners, the higher the sales price, the lower the assessed value on a relative basis. *Id.*

    c. In addition, the Petitioners contend that their property is over-valued compared to neighboring properties. *Pilachowski testimony.* In support of this contention, the Petitioners argue that the property located at 868 S. Woodcrest Drive is comparable to their property. *Pilachowski testimony.* According to the Petitioners, if their property was assessed in the same manner as the 868 S. Woodcrest Drive property, their property would be assessed at no more than $202,300. *Id.*

[2] Indiana Code § 6-1.1-15-1 has since been amended.

[3] Mr. Pilachowski cited to *Lake County PTABOA v. B.P Amoco,* (Ind. Supreme Ct. 2005) and argued that the Form 130 appeals process is the appropriate forum for the Petitioners' argument of disparate assessments. The Respondent did not dispute the Petitioners' right or ability to raise these issues to the Board in this appeal.

d. Finally, the Petitioners argue that their purchase of the subject property for $230,000, on August 15, 2001, should not influence the property's 2006 assessed value. *Pilachowski testimony.* The Petitioners admit they are not arguing their property decreased in value between the time they purchased it in 2001 and the 2006 assessment. *Id.* However, they contend that if their property was assessed in the same manner as neighboring properties it would have a lower assessment. *Id.*

12. Summary of the Respondent's contentions in support of the assessment:

a. The Respondent argues that there is no case law supporting the Petitioners' contention that the PTABOA lacked jurisdiction to issue its determination because it failed to hold a hearing within the 90 day deadline. *Meighen argument.* According to the Respondent, time limits have existed for many years in the appeals process and in *Indiana Board of Tax Commissioners v. Mixmill Manufacturing Co.,* 702 N.E.2d 701, (Ind. Sup. Ct. 1998), the Indiana Supreme Court ruled that when time limits are not met it is the responsibility of the taxpayer to petition a local trial court to issue a writ of mandamus in the matter and force the political body involved to act. *Id.* Ms. Meighen further argues that in *State Board of Tax Commissioners v. L.H. Carbide,* the Court dealt with a similar issue and again ruled the taxpayer's appropriate relief was the court and the writ of mandamus. *Id.*

b. The Respondent also contends that the Petitioners' uniformity allegations were addressed in *O'Donnell v. Department of Local Government Finance* 854 N.E.2d 90 (Ind. Tax Ct. 2006). *Meighen argument.* In that case, Ms. Meighen argues, the Court ruled that the taxpayer's contention that its assessment was incorrect because similar parcels were assessed at different levels by different townships, failed because the argument addressed the methodology of the assessment and not the bottom line market value of the properties. *Id.* Here, the Respondent contends, the Petitioners argue that some land is priced as acreage and other parcels are priced by front foot, and that some parcels have one neighborhood code and others have a different code. *Id.* According to the Respondent, to be successful in its appeal, a petitioner must have substantive evidence to prove the market value-in-use of the property under appeal. *Id.* As in the *O'Donnell* case, when no substantive evidence is brought forward, the Respondent argues, there is no prima facie case and the appeal fails. *Id.*

e. Similarly, the Respondent argues that *Westfield Golf Practice Center v. Washington Twp. Assessor,* 859 N.E.2d 396 (Ind. Tax Ct. 2006) is on point. *Meighen argument.* Ms. Meighen argues that, in the *Westfield Golf* case, the Petitioner presented evidence of other driving ranges whose land was assessed at a lower value as evidence his assessment was incorrect. *Id.* According to the Respondent, the Court found that the Petitioner missed the mark by focusing on the methodology of the assessment and not on the property's market value. *Id.*

f. The Respondent also contends that property is valued correctly based on its market value-in-use. *Meighen argument.* In support of this contention, Ms. Meighen argued the property was purchased on August 15, 2001, for $230,000. *Id.* In addition, the

Respondent presented an article published by MSN Money on August 30, 2007, showing that real property in Bloomington, Indiana, appreciated an average of 26.3 percent from 2002 through mid-2007. *Respondent Exhibit 5, Surface testimony.* Thus, the Respondent concludes, when the average increase in value between 2002 and 2007 of 26.3 percent is considered and the fact that the Petitioners purchased the property for $230,000 on August 15, 2001, the property's $256,800 assessment appears to be very accurate. *Respondent Exhibit 6, Surface testimony.*

g. Finally, the Respondent contends that the sale of a property near the subject property that is comparable in size and amenities to the subject property supports the 2006 assessed value of the Pilachowskis' property. *Meighen argument, Surface testimony, Respondent Exhibits 2 and 3.* According to the Respondent, the comparable property is assessed at $233,200. *Id.* The property sold in 2003 for $215,000 and it sold again in 2005 for $251,000. *Id.* The Respondent argues that is an appreciation rate of 17% in the two-year period between 2003 and 2005. *Id.*

Record

13. The official record for this matter is made up of the following:

a. The Petition and other relevant documents,

b. The digital recording of the hearing labeled 53-009-06-1-5-00103Pilachowski,

c. Exhibits:

Petitioner Exhibit 1 – Form 11 Notice of Assessment, Parcel No. 015-37230-00,
Petitioner Exhibit 2 – Form 11, Notice of Assessment, Parcel No. 015-60280-00,
Petitioner Exhibit 3 – Form 130, Parcel No. 015-37230-00,
Petitioner Exhibit 4 – Form 130, Parcel No. 015-60280-00,
Petitioner Exhibit 5 – Form 114, Notice of Hearing,
Petitioner Exhibit 6 – Form 115, Parcel No. 015-37230-00,
Petitioner Exhibit 7 – Form 115, Parcel No. 015-60280-00,
Petitioner Exhibit 8 – Form 131, Parcel No. 015-37230-00,
Petitioner Exhibit 9 – Form 131, Parcel No. 015-60280-00,
Petitioner Exhibit 10 – Request for exchange of documents,
Petitioner Exhibit 11 – Electronic mail message,
Petitioner Exhibit 12 – Electronic mail message,
Petitioner Exhibit 13 – Valuation date information,
Petitioner Exhibit 14 – Indiana Code § 6-1.1-15-1,
Petitioner Exhibit 15 – Sales data,
Petitioner Exhibit 16 – Sales graph,
Petitioner Exhibit 17 – Sales map,
Petitioner Exhibit 18 – Neighborhood code map,
Petitioner Exhibit 19 – Lot valuation calculations,
Petitioner Exhibit 20 – House valuation calculations,

Petitioner Exhibit 21 – Property record cards
A – Parcel No. 015-37230-00,
B – Parcel No. 015-60280-00,
C – Parcel No. 015-16090-00,
D – Parcel No. 015-16100-00,
E – Parcel No. 015-61020-00,
F – Parcel No. 015-28310-00,
G – Parcel No. 015-19330-00,
H – Parcel No. 015-48190-00,
I – Parcel No. 015-21290-00,
J – Parcel No. 015-34790-00,
K – Parcel No. 015-37100-00,
L – Parcel No. 015-11380-00,
M – Parcel No. 015-24460-00,
N – Parcel No. 015-18250-00.

Respondent Exhibit 1 – Neighborhood map with color codes and explanation,

Board Exhibit A – Form 131 petition and all subsequent mailings to the Board,
Board Exhibit B – Notice of Hearing,
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 Petitioners failed to provide sufficient evidence to establish a prima facie. The Board reached this decision for the following reasons:

a. The Petitioners first argue that the PTABOA lacked jurisdiction in hearing their Form 130 appeals and in issuing a decision. According to the Petitioners, because the deadline had passed by five days, the values that they requested should have been granted.[4]

b. The Respondent argues that the Indiana Supreme Court has already answered this question in *State Bd. of Tax Comm'rs v. Mixmill Manuafacturing Co.,* 702 N.E.2d 701 (Ind. 1998). In *Mixmill,* the Petitioner filed its petition to challenge the 1991 reassessment of its personal property. 702 N.E.2d at 702. The PTABOA did not act on its petition and in 1997 the taxpayer filed an appeal to the Indiana Tax Court. *Id.* The State Board of Tax Commissioners argued that the Tax Court lacked jurisdiction because the State Board had never received a petition from the taxpayer and had not issued a final determination on the matter. On appeal, the Indiana Supreme Court noted that there was no "explicit method for obtaining review of administrative determinations if a County fails to act." *Id.* at 703. The Court, however, stated that the "failure of an administrative agency to act can confer jurisdiction on the trial court to order the agency to act, but not to direct any portended result of that action." *Id.* at 704 (citing *MHC Surgical Ctr. Assocs., Inc. v. Office of Medicaid Policy & Planning*, 699 N.E.2d 306 (Ind. Ct. app. 1998). Thus, the Court found that the taxpayer's remedy for the PTABOA's failure to act was a mandamus action.[5]

c. The Petitioners contend that the *Mixmill* case does not apply because the statute at issue here imposed a 90 day deadline for the PTABOA to act, unlike the statute at issue in *Mixmill.* The statute at issue in *Mixmill,* however, stated that the hearing is to take place "either in the year in which the petition is filed or in the following year." Thus, like the statutory scheme in *Mixmill*, here there was a deadline for the PTABOA to act, but no explicit remedy if the PTABOA failed to act.[6]

d. Nothing in the statutes or case law would support the Petitioners' argument that because the PTABOA failed to meet its deadline to hold the hearing, the Petitioners' contentions must be accepted and the property's assessed value lowered. If the

[4] The Respondent objected to Petitioners' raising the jurisdictional issue at the Board hearing because it was not listed as an issue on the Form 131 that initiated the appeal to the Board. The Petitioners, however, argued that it was raised as a part of the county level hearing and, therefore, it was a valid point to raise to the Board. The Board overrules the Respondent's objection.

[5] The Court also denied the taxpayer's due process claims by finding that "there is no reason to believe that relief, although delayed, is not wholly obtainable." 702 N.E.2d at 705. The Court held that "the remedy of mandamus, although cumbersome, is available to taxpayers unwilling to wait in line." *Id.*

[6] The statute was later amended to allow a taxpayer to appeal directly to the Indiana Board of Tax Review where the PTABOA fails to timely act. Indiana Code § 6-1.1-15-1(o) presently states "If the maximum time elapses: (1) under subsection (k) for the county board to hold a hearing; or (2) under subsection (n) for the county board to give notice of its determination; the taxpayer may initiate a proceeding for review before the Indiana board by taking the action required by section 3 of this chapter at any time after the maximum time elapses."

Legislature had intended such a result, it would have promulgated legislation to that effect.[7] Without explicit instruction from the Legislature, the Board will not deem the Petitioners' contentions granted without a hearing on the matter. Further, whether the remedy for the PTABOA's failure to act is a mandamus action to compel the PTABOA to act or a direct appeal to the Board is a moot point. The PTABOA held its hearing and issued its order. The Petitioners filed their appeal and their contentions were heard and considered by the Board. As such, the Petitioners' due process rights have not been denied.

e. The Petitioners next seek to have their assessments lowered based on the assessments of other nearby properties. According to the Petitioners, the assessment of property in their neighborhood is not equal and uniform as required in Indiana assessing law. Here, Mr. Pilachowski presented property sales in the area from 1997 through 2008. He also plotted a graph, provided maps with numerous notations about neighborhood codes and identified properties whose assessments he claimed were trended and non-trended assessments.

f. The 2002 Real Property Assessment Manual (hereinafter MANUAL) defines the "true tax value" of real estate 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, for the property." 2002 REAL PROPERTY ASSESSMENT MANUAL – VERSION A at 2 (incorporated by reference at 50 IAC 2.3-1-2). There are three generally accepted techniques to calculate market value-in-use: the cost approach, the sales comparison approach and the income approach. The primary method for assessing officials to determine market value-in-use is the cost approach. *Id.* at 3. To that end, Indiana promulgated a series of guidelines that explain the application of the cost approach. The value established by use of the Guidelines, while presumed to be accurate, is merely a starting point. "[A]ny individual assessment is to be deemed accurate if it is a reasonable measure of "True Tax Value'…No technical failure to comply with the procedures of a specific assessing method violates this [assessment] rule so long as the individual assessment is a reasonable measure of 'True Tax Value'…" 50 IAC 2.3-1-1(d).

g. Here, the Petitioners failed to offer market evidence to support their request for an assessment of $202,300. The Petitioners merely argued that other properties were

[7] For example, Indiana Code § 6-1.1-16-1(a) states, that "an assessing official, county assessor, or county property tax assessment board of appeals may not change the assessed value claimed by a taxpayer on a personal property return unless the assessing official, county assessor, or county property tax assessment board of appeals takes the action and gives the notice required by IC 6-1.1-3-20 within the following time periods: (2) A county assessor or county property tax assessment board of appeals must make a change in the assessed value, including the final determination by the board of an assessment changed by a township or county assessing official, or county property tax assessment board of appeals, and give the notice of change on or before the latter of (A) October 30 of the year for which the assessment is made; or (B) five (5) months from the date the personal property return is filed if the return is filed after May 15 of the year for which the assessment is made." If the assessing official, county assessor, or the county property tax assessment board of appeals fails to change an assessment and give notice of the change within the time prescribed by this section, the assessed value claimed by the taxpayer on the personal property return is final. Indiana Code § 6-1.1-16-1(b).

assessed differently. This argument was rejected by the Indiana Tax Court in *Westfield Golf Practice Center, LLC v. Washington Township Assessor,* 859 N.E.2d 396 (Ind. Tax Ct. 2007). In that case, the landing area for the petitioner's driving range was assessed as "usable undeveloped" land and assigned a value of $35,100 per acre, while the landing areas of other driving ranges were assessed at a golf course rate of $1,050 per acre. 859 N.E.2d at 397. Westfield appealed contending that its assessment was not uniform and equal. *Id.*

h. The Indiana Tax Court held that under the prior assessment system, "true tax value" was determined by Indiana's assessment regulations and "bore no relation to any external, objectively verifiable standard of measure." 859 N.E.2d at 398. Therefore, "the only way to determine the uniformity and equality of assessments was to determine whether the regulations were applied similarly to comparable properties." *Id.*

i. Presently, "Indiana's overhauled property tax assessment system incorporates an external, objectively verifiable benchmark -- market value-in-use." 859 N.E.2d at 399. "As a result, the new system shifts the focus from examining how the regulations were applied (i.e., mere methodology) to examining whether a property's assessed value actually reflects the external benchmark of market value-in-use." *Id.* Thus, it is not enough for a taxpayer to show that its property is assessed higher than other comparable properties. *Id.* Instead, the taxpayer must present probative evidence to show that the assessed value, as determined by the assessor, does not accurately reflect the property's market value-in-use. *Id. See also P/A Builders & Developers, LLC v. Jennings Co. Assessor,* 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (The focus is not on the methodology used by the assessor, but instead on determining whether the assessed value is actually correct. Therefore, the taxpayer may not rebut the presumption merely by showing an assessor's technical failure to comply strictly with the Guidelines).

j. Like the petitioner in *Westfield Golf,* the Petitioners here only argued that the method of their assessment was not uniform. The Petitioners failed to offer any market evidence to show that the subject property was over-valued. The Petitioners, therefore, failed to raise a prima facie case.

k. 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).

Conclusion

16. The Petitioners 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 the assessment should 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

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to 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 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/bills/2007/SE0287.1.html**