

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

Petition #: 40-008-04-1-5-00001
Petitioner: Robert L. Dalmbert
Respondent: Montgomery Township Assessor (Jennings County)
Parcel: 163300004000006
Assessment Year: 2004

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 Jennings County Property Tax Assessment Board of Appeals (PTABOA) by written document dated June 1, 2004.
2. The Petitioner received notice of the decision of the PTABOA on June 30, 2004.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the county assessor on July 27, 2004. Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated October 18, 2004.
5. The Board held an administrative hearing on November 18, 2004, before the duly appointed Administrative Law Judge Jennifer Bippus.
6. Persons present and sworn in at hearing:
 - a) For Petitioner: Milo E. Smith, Taxpayer Representative
 - b) For Respondent: Linda Kovacich, County Assessor (Authorized Representative for Montgomery Township)

Facts

7. The property is classified as agricultural/residential property as is shown on the property record card for parcel #16-33-000-040.000-06, Tax I.D. #0080031100.
8. The Administrative Law Judge (ALJ) did not conduct an inspection of the property.

9. Assessed Value of subject property as determined by the Jennings County PTABOA:
Land: \$12,800 Improvements: \$9,300.

10. Assessed Value requested by Petitioner: Land: \$1,000 Improvements: \$9,300.

Issues

11. Summary of Petitioner's contentions in support of alleged error in assessment:

- a) The subject property has not had a dwelling on it for years. There was a house at one time, but it burned down. *Smith testimony.*
- b) True Tax Value does not mean fair market value and that the subject property should be valued on the current use. The subject property is being charged for a homesite when it does not have one. *Smith argument; Petitioner Exhibit 2.*
- c) Ind. Code 6-1.1-2-2 states in part, "All tangible property which is subject to assessment shall be assessed on a just valuation basis and in a uniform and equal manner." *Smith argument; Petitioner Exhibit 3.*
- d) The subject property should be assessed at the appropriate excess acreage rate. *Smith argument.*
- e) The REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A state, "If there is no dwelling unit on a parcel, the amount of acreage in the entire parcel is multiplied by the appropriate excess acre rate." *Smith testimony. Petitioner Exhibit 4 (REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, ch. 2 at 69 (incorporated by reference at 50 IAC 2.3-1-2).*
- f) The subject property is .95 acre. *Smith testimony.* Because the subject property is almost one acre, the above-cited rule should apply to the subject property. *Smith argument.*
- g) The manual uses \$1,000 as the excess acreage amount to be applied, but the Petitioner yields to the base rate for excess acreage on the land order in the geographic area of the subject property. *Smith argument; Petitioner Exhibit 5.*

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

- a) The subject property was sold for \$22,000 on December 30, 1998. The use of the property has not changed since that time. *Kovacich testimony; Respondent Exhibits 1-3.*

- b) The subject property has a septic system and water readily available and a dwelling can be placed on the land immediately. *Kovacich testimony. Respondent Exhibit 3.*
- c) The excess acreage rate applies to vacant land. *Kovacich argument.* Jennings county assess all properties with water and septic available as a homesite. *Kovacich testimony.* To assess the subject property in another manner would impact the uniformity of assessment. *Kovacich argument.*
- d) The purchase price of \$22,000 is the best indicator of value of the property. *Kovacich argument.*

Record

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

- a) The Petition, and all subsequent pre-hearing, or post-hearing submissions by either party.
- b) The tape recording of the hearing labeled BTR # 5811.
- c) Exhibits:
 - Petitioner Exhibit 1: Copy of the subject property record card.
 - Petitioner Exhibit 2: TTV is not market value – Summary prepared by Milo Smith.
 - Petitioner Exhibit 3: Copy of Ind. Code 6-1.1-2-2 – Uniform and Equal Assessments.
 - Petitioner Exhibit 4: Valuing Residential Acreage Parcels (Version A – Real Property Assessment Guideline.)
 - Petitioner Exhibit 5: Copy of subject property record card with land pricing requested by petitioner.

 - Respondent Exhibit 1: Copy of subject property record card.
 - Respondent Exhibit 2: Copy of page 2 of Form 131.
 - Respondent Exhibit 3: Summary of case.
 - Respondent Exhibit 4: Land Valuation Form for subject area.
- d) These Findings and Conclusions.

Analysis

14. The most applicable governing law is:

- 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. Wash. 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 did not provide sufficient evidence to support his contentions. This conclusion was arrived at because:

- a) Real property in Indiana is assessed on the basis of its “true tax value.” *See* I.C. § 6-1.1-31-6(c). “True tax value” is defined as “[t]he 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)(hereinafter “Manual”).
- b) The GUIDELINES provide a method of mass appraisal to be used by local officials in assessing real property. They are designed to yield the true tax value of real property. However, the GUIDELINES stress that the choice of pricing methods for land specified under the GUIDELINES is less important than arriving at the correct value of the land as of the relevant valuation date of January 1, 1999. GUIDELINES, ch. 2 at 16.
- c) Here, the Petitioner argues based solely upon whether the Respondent chose the correct method under the GUIDELINES for pricing the subject land. However, the record contains powerful undisputed evidence concerning the market value-in-use of the subject property three days prior to the valuation date of January 1, 1999. The Respondent testified that the Petitioner bought the subject property for \$22,000 on December 28, 1998, and that the property was being used for the same purposes as it was at the time of purchase. *Kovacich testimony; Respondent Exhibit 1*. The Petitioner did not dispute the Respondent’s testimony in that regard. Given this evidence, the question of whether the Respondent utilized the correct pricing method under the GUIDELINES is secondary.

- d) The Petitioner relies heavily on the argument that true tax value does not mean fair market value, but rather market value-in-use. He argues that the subject property is not currently being used as a home site and therefore should not be assessed based upon such a use. However, as described above, the Respondent presented undisputed testimony that the Petitioner is using the subject property in the same manner as when he purchased it on December 28, 1998. The Petitioner therefore cannot credibly argue that the purchase price does not reflect the utility received by him or a similar user from the subject property. *See* MANUAL at 2 (stating that the true tax value of a property is reflected by the utility received by the owner or similar user).
- e) Based on the foregoing, Petitioner has failed to prove, by a preponderance of the evidence that the current assessment of the subject property is incorrect.

Conclusion

- 16. The Petitioner failed to establish that the current assessment of the subject property is incorrect. 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: _____

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. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice.