

REPRESENTATIVE FOR PETITIONERS:
Gregory Schafer, *pro se*

REPRESENTATIVE FOR RESPONDENT:
Jon Snyder, Porter County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Sandra and Gregory Schafer)	Petition Nos.: 64-002-07-1-3-00001
)	64-002-07-1-4-00004
)	
Petitioners,)	
)	Parcel Nos.: 64-14-11-331-004.000-002
)	64-14-11-331-003.000-002
v.)	
)	
)	
Porter County Assessor,)	County: Porter
)	
)	
Respondent.)	Assessment Year: 2007

Appeal from the Final Determination of the
Porter County Property Tax Assessment Board of Appeals

August 8, 2012

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUE

1. The issue presented for consideration by the Board is whether the assessed values of the Petitioners' properties were over-stated for the 2007 assessment year.

PROCEDURAL HISTORY

2. The Petitioners initiated their 2007 assessment appeals by filing Form 130, Petitions for Review of Assessment to the Property Tax Assessment Board of Appeals, on April 6, 2009. The Porter County Property Tax Assessment Board of Appeals (PTABOA) issued its assessment determinations on April 12, 2010.
3. Pursuant to Indiana Code § 6-1.1-15-1, the Petitioners filed Form 131 Petitions for Review of Assessment on May 12, 2010, petitioning the Board to conduct an administrative review of the properties' 2007 assessments.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. Pursuant to Indiana Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (the ALJ), Ellen Yuhan, held a hearing on May 14, 2011, in Valparaiso, Indiana.
5. The following persons were sworn at the hearing:

For the Petitioner:

Gregory Schafer, Taxpayer

For the Respondent:

Jon M. Snyder, Porter County Assessor

Timothy A. Jorczak, Director of Commercial Operations, Porter County

Janel Castro, Deputy Assessor, Porter County

6. The Petitioners presented the following exhibits:
 - Petitioner Exhibit 1 – Notice of Hearing; HUD settlement statements; purchase agreements; original lot plan; revised lot plan; tax appeal filings; construction costs for the building; cost of building a similar structure in 2009; cost of building a similar structure in 2012; insurance coverage on the building; quitclaim deed; power-of-attorney; assessed valuation of the lot prior to purchase; property record cards for the 28 lots in the industrial park.
7. The Respondent presented the following exhibits:
 - Respondent Exhibit 1 – Sales disclosure form for one of the Petitioner’s parcels,
 - Respondent Exhibit 2 – Assessed Valuation Report.
8. The following additional items are officially recognized as part of the record of proceedings and labeled as Board Exhibits:
 - Board Exhibit A – Form 131 Petitions with attachments,
 - Board Exhibit B – Notices of Hearing, dated April 13, 2011,
 - Board Exhibit C – Hearing sign-in sheet.
9. The subject properties consist of two adjacent lots in an industrial park: Parcel No. 64-14-11-331-004.000-002 (Parcel No. 4), located at 7-D Wood Court, is a vacant .45 acre parcel and Parcel No. 64-14-11-331-003.000-002 (Parcel No. 3), located at 7-C Wood Court, is a .51 acre parcel improved with a pole barn in Hebron, Indiana.
10. The ALJ did not conduct an on-site inspection of the subject property.
11. For 2007, the PTABOA determined the assessed value of Parcel No. 4 to be \$9,100 for the land, and the assessed value of Parcel No. 3 to be \$19,000 for the land and \$114,300 for the improvements, for a total assessed value of \$133,300.
12. The Petitioners contend that the assessed value of Parcel No. 4 should be \$5,500 for the land and Parcel No. 3 should be \$6,000 for the land and \$55,000 for the improvements, for a total assessed value of \$61,000.

JURISDICTIONAL FRAMEWORK

13. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property, (2) property tax deductions, (3) property tax exemptions, and (4) property tax credits that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Indiana Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

PARTIES' CONTENTIONS

14. The Petitioners contend that the assessed values of their properties were over-stated in 2007 based on the building's construction costs and the land's lack of utilities. The Petitioners presented the following evidence in support of their contentions:
- A. The Petitioners contend that their land is over-valued based on the properties' lack of utilities. *Schafer testimony*. According to Mr. Schafer, when the Petitioners purchased both parcels for \$17,500 each, or a total of \$35,000, one of the conditions in the purchase agreements was that the seller was to provide sewer and water to the sites at no cost to the Petitioners. *Id.* In support of this contention, the Petitioners presented the settlement statement and the purchase agreement for each parcel. *Petitioner Exhibit 1*. The seller never fulfilled this requirement. *Schafer testimony*. According to Mr. Schafer, a "very conservative" estimate to tap into the water and sewer system would be \$16,800 because the utility would have to run lines under the street. *Id.* Further, Mr. Schafer contends there is no gas or electric to the parcels and it would cost approximately \$6,800 to have NIPSCO install the utilities. *Id.* Mr. Schafer argues that the land assessments do not take into consideration the lack of essential services to the parcels. *Id.* According to Mr. Schafer, land without utilities is similar to farmland. *Id.*

- B. The Petitioners further contend that the land value of the parcels was over-stated compared to other parcels in the subdivision. *Schafer testimony*. In support of this contention, the Petitioners submitted property record cards for all 28 lots in the subject properties' industrial park. *Petitioner Exhibit 1, 33-63*. According to Mr. Schafer, Parcel No. 4 is assessed at about \$20,200 per acre with no improvements and Parcel No. 3 is assessed at \$37,000 per acre, also with no improvements; whereas the average land assessment in the industrial park was \$23,065 per acre. *Id.*; *Schafer testimony*. In addition, Mr. Schafer contends that property values have decreased at least 20% since 2006, especially for raw, unimproved land. *Id.* Therefore, Mr. Schafer contends a further 20% reduction of the land value is in order. *Id.*
- C. Finally, the Petitioners contend that the building was over-assessed based on the cost of constructing it in 2006. *Schafer testimony*. In support of this contention, the Petitioners submitted an itemized list of costs for constructing the storage facility. *Petitioner Exhibit 1, 22-23*. According to Mr. Schafer, the list includes all of the expenses associated with the construction of the building, including permits, excavation, materials, labor, and profit, which totaled \$55,025. *Id.*; *Schafer testimony*. In response to questioning, Mr. Schafer testified that, as a licensed contractor, he considers the construction costs as his sworn contractor's statement.¹ *Schafer argument*. Mr. Schafer contends that, to further demonstrate that the 2006 costs were realistic, he ran an estimate of the building costs in 2009 and 2012 and he could erect the building for less today because material and labor costs have gone down. *Id.*; *Petitioner 1, 24-25*.
- D. In response to the Respondent's case, the Petitioners argue that the Board should give little weight to the Respondent's sales comparison approach. *Schafer testimony*. According to Mr. Schafer, the Respondent's adjustments to the comparable

¹ Mr. Schafer testified that the assessor considered lowering the value of the improvements to \$58,000 during an informal meeting – which the Respondent objected to. The Board sustains the objection. Statements made in settlement negotiations should not be in evidence. See Ind. Evidence Rule 408 (“Evidence of conduct or statements made in compromise negotiations is . . . not admissible.”); see also *Boehning v. State Bd. of Tax Comm'rs*, 763 N.E.2d 502, 504-05 (Ind. Tax Ct. 2001) (applying Evidence Rule 408 to exclude evidence of settlement between State Board of Tax Commissioners and taxpayers in a separate appeal).

properties' sale prices do not adequately reflect the differences between the properties, because the Petitioners' property is a clear, open span, with a metal pole barn with no insulation, windows, plumbing, electric, or heat. *Id.* Mr. Schafer further contends that one of the sales was an auto repair shop and the sale included the business. *Id.*

15. The Respondent contends the properties' assessed values are correct and equitable. The Respondent presented the following evidence in support of the assessments:

- A. Mr. Jorczak contends that the Petitioners' land value is correct based on the Petitioners' purchase of the properties. *Jorczak testimony.* In support of this contention, the Respondent submitted the sale disclosure form for Parcel No. 4. *Respondent Exhibit 1.* The Petitioners purchased the property for \$17,500 on May 15, 2006, in an arms' length transaction. *Id.; Jorczak testimony.*
- B. Mr. Jorczak further contends that the Petitioners' property is correctly assessed based on its market value. *Jorczak testimony.* In support of this contention, Mr. Jorczak presented a sales comparison analysis based on the sale prices of four comparable properties. *Respondent Exhibit 2.* Mr. Jorczak testified that he valued the differences in building types using published cost data, resulting in adjusted sale prices for the comparable properties ranging from \$129,600 and \$136,800, which supports the improved parcel's assessed value of \$133,300. *Id.; Jorczak testimony.* Mr. Jorczak admitted that the assessor considered the property to be "under-developed" relative to the rest of the market because of its lack of functional utilities within the building. *Jorczak testimony.* However, Mr. Jorczak contends, his report takes into account the cost of supplying the building with the equipment it needs to function as a building. *Id.* Even without the utilities, Mr. Jorczak argues, the market is strong for a building like the subject property. *Jorczak testimony.*
- C. Finally, the Respondent contends that the Board should give little weight to the Petitioners' cost valuation. *Snyder testimony.* Mr. Snyder argues that the state only

recognizes nationally published cost sources such as Marshall & Swift and Craftsman. *Id.* According to Mr. Snyder, the state does not recognize Menards as source of cost information. *Id.*

BURDEN OF PROOF

16. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that its property's assessment is wrong 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). Effective July 1, 2011, however, the Indiana General Assembly enacted Indiana Code § 6-1.1-15-17, which has since been repealed and re-enacted as Indiana Code § 6-1.1-15-17.2.² That statute shifts the burden of proof to the assessor in cases where the assessment under appeal has increased by more than 5% over the previous year's assessment:

This section applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal increased the assessed value of the assessed property by more than five percent (5%) over the assessed value determined by the county assessor or township assessor (if any) for the immediately preceding assessment date for the same property. The county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.

Ind. Code § 6-1.1-15-17.2. While the parties agreed that the assessments of both parcels increased more than 5% between 2006 and 2007, the evidence shows that the Petitioners erected a 7,200 square foot commercial building on Parcel No. 3 in 2006.

17. Indiana Code § 6-1.1-15-17.2 applies where “the assessment that is the subject of the review or appeal increased the assessed value of the assessed property by more than five

² HEA 1009 §§42 and 44 (signed February 12, 201). This was a technical correction necessitated by the fact that two different provisions had been codified under the same section number.

percent (5%) over the assessed value determined by the county assessor or township assessor (if any) for the immediately preceding assessment date for the same property.” Ind. Code § 6-1.1-15-17.2. “When faced with a question of statutory interpretation, this Court looks first to the plain language of the statute. Where the language is unambiguous, the Court has no power to construe the statute for the purpose of limiting or extending its operation.” *Joyce Sportswear Co. v. State Board of Tax Commissioners*, 684 N.E.2d 1189, 1192 (Ind. Tax Ct. 1997), *review denied*. Under the plain language of Indiana Code § 6-1.1-15-17.2, the burden shifts to the assessor when the assessed value of the *same property* increases by more than five percent. Therefore, because the assessment in 2007 was for an improved property; whereas the properties were assessed as vacant land in 2006, the assessor was not assessing the “same property” in 2007 as he did in 2006. Thus, Indiana Code § 6-1.1-15-17.2 does not apply in this case and the Petitioners retain the burden of proof.³

ANALYSIS

18. The 2002 Real Property Assessment Manual defines “true tax value” 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, from the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). The appraisal profession traditionally has used three methods to determine a property’s market value: the cost approach, the sales-comparison approach and the income approach to value. *Id.* at 3, 13-15. In Indiana, assessing officials generally value real property using a mass-appraisal version of the cost approach, as set forth in the Real Property Assessment Guidelines for 2002 – Version A (the GUIDELINES).
19. A property’s assessment under the Guidelines is presumed to accurately reflect its true tax value. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*,

³ While the Administrative Law Judge treated Parcel No. 3 and Parcel No. 4 separately, the lots are contiguous lots and there is no evidence that they are used as separate economic units. Therefore, the Board treats Parcel No. 3 and Parcel No. 4 as a single property in its burden shifting analysis.

836 N.E.2d 501, 505 (Ind. Tax Ct. 2005); *P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax 2006). A taxpayer may rebut that presumption with evidence that is consistent with the Manual's definition of true tax value. MANUAL at 5. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer sales information for the subject property or comparable properties and other information compiled according to generally accepted appraisal principles. MANUAL at 5.

20. Regardless of the method used to rebut an assessment's presumption of accuracy, a party must explain how its evidence relates to the subject property's market value-in-use as of the relevant valuation date. *O'Donnell v. Department of Local Government Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2007, assessment, the valuation date was January 1, 2006. 50 IAC 21-3-3.
21. Here, the Petitioners seek to use the purchase of their land and the construction costs of the building to show that the assessed values of the properties were incorrect in 2007. In support of this contention, the Petitioners submitted the purchase agreements for Parcel No. 3 and Parcel No. 4 and an itemized cost schedule and two cost estimates for the storage building on the lots. *See Petitioner Exhibit 1*.
22. The presentation of cost data is a valid method of challenging an assessment. According to the Guidelines, however, construction costs must include all direct labor and materials plus the indirect expenses of constructing the building. "Examples of direct costs include labor, material, supervision, utilities used during construction, and equipment rental. Indirect cost examples are building permits, fees, insurance, taxes, construction interest, overhead, profit and professional fees....it is critical that the actual construction costs represent all costs (direct and indirect) regardless of whether or not they were realized, as in the case of do-it-yourself construction." GUIDELINES, Intro. at 1.

23. Here, the Petitioners' evidence shows that they purchased Parcel No. 3 and Parcel No. 4 in May of 2006 for \$17,500 each, with the provision that the seller would pay for the sewer and water lines to be brought to the property at no cost to the Petitioners. However, Mr. Schafer testified, utilities were never extended to the Petitioners' lots. He estimated the cost to extend the water and sewer lines to the lots would be approximately \$16,800. While Mr. Schafer's testimony is not supported by any estimate or contract, Mr. Schafer testified that he is a licensed contractor in the state of California, Illinois and Indiana who has done this kind of work for "many, many years." *Schafer testimony*. In fact, Mr. Schafer testified that it is not uncommon for appraisers to call his office for cost information when Marshall & Swift was not specific enough for a particular assignment. Given the testimony regarding Mr. Schafer's experience in construction, contracting and costing projects, the Board finds that the Petitioners presented some evidence that the value of the two parcels at issue in this appeal was \$18,200 for 2007 based on the properties' \$35,000 purchase price less the \$16,800 he estimated it would cost to bring the utilities to the land that the Petitioners' contracted for as part of their purchase price.⁴
24. The Petitioners also submitted a list showing the expenses associated with the construction of the building, which totaled approximately \$55,025. Mr. Schafer testified that the exhibit "shows all expenses associated with the improvement of that building." *Schafer testimony*. According to Mr. Schafer, "It starts, as you can see, with Homeland Security, which is building permits, the Town of Hebron permits, the poles, the hardware, Menards – which supplied some of the materials, the necessary labor to put the structure up, the concrete labor, the concrete, the trusses, the concrete floor ... and the stone for the parking lot out in front." *Id.* Mr. Schafer testified that it only took "three men, four days to erect that structure" and that his cost information included labor, materials and also "a \$3,000 profit..., which represents a 12% or 13% profit, which is typical and customary in a building like this." *Id.*

⁴ Mr. Schafer also testified that it would cost \$6,800 to bring gas and electric to the property. *Schafer testimony*. However, there is no evidence that the Petitioners' purchase of the properties was contingent on the provision of gas and electric to the lots.

25. To support the Petitioners' cost figures, Mr. Schafer offered two additional estimates showing that the building materials could be purchased for \$24,123.69 in 2009 and \$26,453 in 2011. *Petitioner Exhibit 1*. Mr. Schafer argues that he "could put the building up today for less money" because "material costs and labor costs have actually went down due to the depressed construction market." *Schafer testimony*. The Petitioners further supported the construction cost with a letter from their insurance company showing the building was insured for \$60,000.
26. Again, because of Mr. Schafer's experience in construction, contracting and costing projects, the Board finds that the Petitioners raised a prima facie case the value of the building on the lots was \$55,025.
27. Once a petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the taxpayer's evidence. *See American United Life Insurance Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). To rebut or impeach the Petitioners' case, the Respondent has the same burden to present probative evidence that the Petitioners faced to raise their prima facie case. *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Court 2005).
28. Here, the Respondent does not dispute the costs associated with building the storage barn, providing utilities to the lots, or Mr. Schafer's experience or expertise as a contractor. Instead, the Respondent argues that the Petitioners' properties' assessments were correct for 2007 based on the properties' market value-in-use. In support of this contention, the Respondent presented a valuation opinion prepared by Mr. Jorzak, the county's director of commercial operations. In his valuation opinion, Mr. Jorzak testified that he used four commercial properties and adjusted those sales for the differences in building type based on costs from published data.
29. While Mr. Jorzak's assertions may not differ significantly from those made by a certified appraiser in an appraisal report, the appraiser's assertions are backed by his education, training, and experience. The appraiser also typically certifies that he

complied with the Uniform Standards of Professional Appraisal Practice (USPAP). Thus, the Board, as the trier-of-fact, can infer that the appraiser used objective data, where available, to quantify his adjustments. And where objective data was not available, the Board can infer that the appraiser relied on his education, training and experience to estimate a reliable quantification. Here, however, there is no evidence that Mr. Jorczak is a certified appraiser; he did not establish that he has any particular expertise in applying generally accepted appraisal principles; and he did not certify that he complied with USPAP in performing his valuation analysis. Consequently, Mr. Jorczak's sales comparison approach lacks probative value in this case.⁵ *See Inland Steel Co. v. State Board of Tax Commissioners*, 739 N.E.2d 201, 220 (Ind. Tax Ct. 2000) (holding that an appraiser's opinion lacked probative value where the appraiser failed to explain what a producer price index was, how it was calculated or that its use as a deflator was a generally accepted appraisal technique).

CONCLUSION

30. The Petitioners established a prima facie case that the assessed values of its properties were over-stated for the 2007 assessment year. The Respondent failed to rebut the Petitioners' case. The Board therefore finds in favor of the Petitioners and holds that the value of the Petitioners' properties together in 2007 was \$18,200 for the land and \$55,025 for the structure for a total assessed value of \$73,225.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review now determines that the assessed values of the Petitioners' properties should be lowered to \$73,225 for 2007.

⁵ Mr. Schafer acknowledged that Mr. Snyder was a licensed appraiser. But Mr. Snyder testified that he was appearing as the county assessor rather than as an appraiser. Regardless, there is no evidence that Mr. Snyder prepared a USPAP-compliant appraisal to value the property here.

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

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>.