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

Petition #: **43-032-07-1-5-00009**
Petitioners: **Martin A. & Susan K. Stephens**
Respondent: **Kosciusko County Assessor**
Parcel #: **43-11-05-400-118.000-032**
Tax ID: **0472200410**
Assessment Year: **2007**

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

Procedural History

1. On April 24, 2008, the Petitioners appealed the subject property's March 1, 2007, assessment to the Kosciusko County Property Tax Assessment Board of Appeals ("PTABOA"). On August 15, 2008, the PTABOA mailed notice of its determination denying the Petitioners relief.

2. The Petitioners disagreed with the PTABOA's determination and timely filed a Form 131 petition with the Board. They elected to have their appeal heard under the Board's small-claims procedures.

3. On January 27, 2009, the Board held a hearing before its administrative law judge, Patti Kindler ("ALJ").

4. People present and sworn in at hearing:

    a) For the Petitioners: Martin Stephens
    Susan Stephens

    b) For the Respondent: Laurie Renier, County Assessor
    Jennifer Streeter, PTABOA secretary
    Jake Bitner, PTABOA member
    Susan Myrick, PTABOA member
    Richard Shipley, PTABOA member
    Brock Ostrom, PTABOA member

Facts

5. The subject property is a single-family residential property located at 2020 Deer Trail in the Rolling Hills subdivision of Warsaw.

6. Neither the Board nor the ALJ inspected the property.

7. The PTABOA valued the land at $42,200 and the improvements at $181,200 for a total assessment of $223,400.

8. The Petitioners requested a total assessment of $190,000.

Parties' Contentions

9. The Petitioners offered the following evidence and arguments:

   a) This case stems from the Respondent's failure to use the correct March 1, 2006, assessment as the starting point for the subject property's trended March 1, 2007, assessment. *M. Stephens testimony; Pet'rs Ex. 1.* The subject property was originally assessed at $234,300 for the March 1, 2006, assessment date. The Petitioners appealed that assessment, and the Board reduced it to $200,000. *Id.*; *Pet'rs Ex. 3.* But when the Wayne Township Assessor computed the property's 2007 assessment, she used the original 2006 assessment of $234,300 instead of the Board-determined value of $200,000. *M. Stephens testimony; Pet'rs Ex. 4.* By using the original 2006 assessment as the starting point for 2007, the assessor negated the Board's decision. If the Respondent disagreed with that decision, she should have appealed it. *M. Stephens testimony; Resp't Ex. 1A at 4.*

   b) Using the original 2006 assessment as the starting point for calculating the subject property's trended 2007 assessment distorted that later assessment. As shown by the Form 11s for the subject property and two neighboring properties, a negative trending factor of more than 4% was used for properties in Rolling Hills. *M. Stephens testimony; Pet'rs Exs.1-2.* The township assessor told Mr. Stephens that trending factors were applied uniformly throughout neighborhoods rather than each property having its own factor. *M. Stephens testimony.* If the assessor had used the Board-determined value of $200,000 and applied a trending factor of negative 4.7%—the difference between the 2006 and 2007 assessments as listed on the subject property's Form 11— the property's 2007 assessment would have been approximately $190,000. *Id.*

   c) To further show that the real estate market was declining, the Petitioners offered an article from the *Warsaw Times-Union* indicating that the average home in Warsaw sat on the market 143 days before selling. *Pet'rs Ex. 5.* A property at 2010 Deer Trail has been on the market for more than two years. The owner reduced the asking price several times by a total of 20%. *M. Stephens testimony.* That decline was in line with the S & P/Case-Shiller Home Price Indices, which

show a 16% market decline in 2006 and a 20% decline in early 2007. *Id.; Pet'rs Exs. 5-6.*

d) At the PTABOA hearing, a board member attempted to support the property's 2007 assessment by pointing to sales from 2005 and 2006. Those sale prices ranged from the high $100,000s to the mid $200,000s. But none of the properties abutted an industrial park and few were located on Deer Trail. The subject property, by contrast, abuts an industrial park along its 300-foot northern property line. *Stephens testimony*; *Pet'rs Ex.*7. Although the Respondent mistakenly claimed otherwise, that industrial park was not there when the Petitioners bought the subject property. *M. Stephens testimony*. A Penn State University study concludes that the "least desirable land use within 400 meters of a home was industrial." *Pet'rs Ex. 8*. The industrial park could be the reason that the property at 2010 Deer Trail has been on the market for two years. *M. Stephens testimony; Pet'rs Exs. 7-8.*

e) The Petitioners also offered a 2007 article from *smartmoney.com* that describes mass appraisal as "a systematic approach (sometimes computer-assisted) to valuing groups of properties that, while practical, doesn't take into account the unique characteristics of an individual home or lot." *Pet'rs Ex. 9*. Having an industrial park in one's backyard is a unique characteristic. Mass appraisal techniques also ignore interior design, interior age and condition, and surrounding influences. *M. Stephens testimony; Pet'rs Ex. 9.*

10. The Respondent offered the following evidence and arguments:

a) When assessing real property, Indiana assessors are instructed to use mass-appraisal procedures as well as Marshall & Swift pricing and the Uniform Standards of Professional Appraisal Practice ("USPAP"). The Respondent employed those practices in performing annual trending. *Renier testimony.*

b) The Respondent cannot go back to the $200,000 value that the Board recommended when it decided the Petitioners' appeal of their 2006 assessment. *Renier testimony*. The Board gave only a blanket value without specifying the portions attributable to land and improvements. The Respondent, however, cannot arbitrarily use a flat figure for the subject property's assessment. *Renier testimony; Resp't Ex. 3A.*

c) Assessments for 2006 were based on sales data from 2004 and 2005, while the 2007 trending was based on data from 2005 and 2006. According to the Respondent, property values in Rolling Hills were increasing or holding steady. *Renier testimony*. On the other hand, the Respondent agreed that a declining trending factor was applied to Rolling Hills properties. For 2007, the trending factor for Rolling Hills was 92%. That marked a 4% decline from 2006 when the factor was 96%. *Renier testimony; Resp't Ex. 1A*. In any event, because the same

trending factor was used throughout Rolling Hills, adjusting the subject property's trending factor through this appeal would create a lack of uniformity. *Id.*

d) At least two vacant lots in Rolling Hills sold during 2005 and 2006. Those lots were just west of the subject property and sold for $24,000 and $25,000, respectively. *Renier testimony; Resp't Ex. 4B.*

e) While the Petitioners argue that the neighboring industrial park hurts the subject property's value, that park was platted before they brought the property. And the industrial park put up a tree barrier to alleviate the neighboring homeowners' concerns. *Renier testimony.*

Record

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:

Petitioners Exhibit 1 – Form 11 for 2020 Deer Trail,
Petitioners Exhibit 2 – Form 11s for 2010 Deer Trail and 2026 Deer Trail,
Petitioners Exhibit 3 – Indiana Board of Tax Review Final Determination and page 8 of Board's findings and conclusions for appeal of subject property's March 1, 2006, assessment,
Petitioners Exhibit 4 – 2007 property record card ("PRC") for subject property,
Petitioners Exhibit 5 – *Warsaw Times-Union* article dated 4/17/08,
Petitioners Exhibit 6 – *S & P/Case-Shiller Home Price Indices* graph,
Petitioners Exhibit 7 – Aerial photograph showing the subject property and industrial park,
Petitioners Exhibit 8 – Copy of article entitled "Penn State analyzes the value of houses from *Philadelphia Business Journal*,
Petitioners Exhibit 9 – April 16, 2007, article entitled "With Home Prices falling, Look to Reassess for Lower Taxes" from *smartmoney.com*,

Respondent Exhibit 1A – Form 130 petition to the PTABOA,
Respondent Exhibit 1B – Form 114 - Notice of Hearing on Petition,
Respondent Exhibit 1C – Petitioners' Exhibits for PTABOA hearing,
Respondent Exhibit 1D – PTABOA Hearing Script,
Respondent Exhibit 1E – Form 115 - Notification of Final Assessment Determination,
Respondent Exhibit 1F – Form 131 petition,
Respondent Exhibit 2A – Copy of photograph of unidentified house,
Respondent Exhibit 2B – Aerial photograph showing the subject property and

industrial park,
Respondent Exhibit 2C – PRC for subject property,
Respondent Exhibit 3A – Final Determination and Findings and Conclusions for *Stephens v. Kosciusko County Assessor,* Pet. no. 43-11 05-400-118.000-032 (Ind. Bd. of Tax Rev. April 3, 2008),
Respondent Exhibit 4A – Trending information on Neighborhood 400900, Cama Analysis, plat of subject and comparables sales, PRCs and MLS Data Sheet on Sales in Analysis,
Respondent Exhibit 4B – Maps and listing information for two vacant lot sales (lots 82 and 83) in the Rolling Hills subdivision,

Board Exhibit A – Form 131 petition,
Board Exhibit B – Notice of hearing,
Board Exhibit C – Hearing sign-in sheet,

d) These Findings and Conclusions.

Analysis

Burden of Proof

12. A petitioner seeking review of an assessing official's determination must establish a prima facie case proving both that the current assessment is incorrect, and specifically 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 petitioner 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. Once the petitioner establishes a prima facie case, the burden shifts to the respondent to impeach or rebut the petitioner'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.

Discussion

15. The Petitioners proved that the subject property's assessment should be reduced to $192,000. The Board reaches this conclusion for the following reasons:

a) Indiana assesses real property based on its "true tax value," which the 2002 Real Property Assessment Manual defines 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." REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). A property's assessment, as determined using the

Real Property Assessment Guidelines for 2002-Version A, is presumed to accurately reflect its market value-in-use. *See* MANUAL at 5; *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 677-678 (Ind. Tax Ct. 2006). But a taxpayer may rebut that presumption with evidence that is consistent with the Manual's definition of true tax value. MANUAL at 5. By contrast, a taxpayer does not rebut the presumption that an assessment is correct simply by contesting the assessor's methodology. *See Eckerling*, 841 N.E.2d at 678. Instead, the taxpayer must show that the assessor's methodology yielded an assessment that does not accurately reflect the property's market value-in-use. *Id*. And strictly applying the Guidelines is not enough to make that showing. *Id.*

b) Also, each year's assessment is based on an earlier valuation date. Thus, regardless of the method used to rebut the assessment's presumption of accuracy, a party must explain how its evidence relates to the appealed 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, 2006, and March 1, 2007, assessments, those valuation dates were January 1, 2005, and January 1, 2006, respectively. 50 IAC 21-3-3.

A. The Petitioners Made a Prima Facie Case Rebutting the Subject Property's March 1, 2007, Assessment.

c) The Petitioners focused on how the statutory and administrative requirements for annually adjusting assessments in years between general reassessments were applied. *See* Ind. Code § 6-1.1-4-4.5(b) (requiring the Department of Local Government Finance ("DLGF") to adopt rules for establishing a system to adjust assessed values in years between general reassessments); 50 IAC 21 (DLGF's rules governing annual adjustments). In the Petitioners' view, local assessing officials wrongly used the subject property's original March 1, 2006, assessment as the starting point for determining its trended March 1, 2007, assessment. Had they instead used the revised 2006 assessment ordered by the Board, the property's March 1, 2007, assessment would have been much lower.

d) At first blush, it may appear that the Petitioners merely challenged the methodology used to compute the subject property's 2007 assessment. As the Tax Court held in *Eckerling*, such an approach does not suffice to rebut an assessment's presumption of correctness. But the Petitioners' argument does more than simply challenge methodology. First, by offering the Board's earlier determination adjudicating the property's March 1, 2006, assessment, the Petitioners purported to show the property's market value-in-use as of January 1, 2005—the relevant valuation date for 2006 assessments. Second, the Petitioners sought to explain how that value related to the property's market value-in-use as of January 1, 2006—the relevant valuation date for the 2007 assessment at issue in this appeal. The Board will address each step of the Petitioners' argument in turn.

1. The Board's determination of the Petitioners' 2006 appeal conclusively established the subject property's market value-in-use as of January 1, 2005.

e) The Petitioners did not just offer evidence tending to show that the subject property was worth $200,000 as of January 1, 2005—they pointed to an earlier Board decision that conclusively established that fact. In fact, the subject property's market value-in-use as of January 1, 2005, was the central issue in the Petitioners' 2006 appeal. In that appeal, the Petitioners offered an appraisal estimating the property's value at $200,000 as of December 31, 2004. The Kosciusko County Assessor, who is also the Respondent in this appeal, sought to impeach that appraisal and also offered her own valuation evidence. After weighing all the evidence, the Board found for the Petitioners and ordered the property's 2006 assessment to be reduced to $200,000. *Resp't Ex. 3A (Stephens v. Kosciusko County Assessor*, Pet. no. 43-11-05-400-118.000-032 (Ind. Bd. of Tax Rev. April 3, 2008).

f) The doctrine of collateral estoppel (also called issue preclusion) bars a party from re-litigating a fact or issue that was necessarily adjudicated in an earlier action where that fact or issue is presented in a later action. *Tofany v. NBS Imaging Systems, Inc*., 616 N.E.2d 1034, 1037 (Ind. 1993). Because administrative agencies operate differently from courts, special concerns arise when a party asks for preclusive effect to be given to an administrative determination. *See South Bend Federation of Teachers v. Nat'l Education Assoc., South Bend*, 180 Ind. App. 299, 389 N.E.2d 23 (1979). Thus, the Indiana Supreme Court adopted the following four-part test for determining whether an administrative determination should estop later civil litigation[1]:

> 1) [W]hether the issues sought to be estopped were within the statutory jurisdiction of the agency;
> 2) whether the agency was acting in a judicial capacity;
> 3) whether both parties had a fair opportunity to litigate the issues; [and]
> 4) whether the decision of the administrative tribunal could be appealed to a judicial tribunal.

McClanahan v. Remington Freight Lines, 517 N.E.2d 390, 394 (Ind. 1988); *see also Lindemann v. Wood*, 799 N.E.2d 1230, 1234 (Ind. Tax Ct. 2003).

[1] The court arguably left open the question of whether the test would strictly apply in cases where a party seeks preclusive effect for an administrative agency's determination not in a later civil action, but in a later administrative action on the same subject. *See McClanahan*, 398 N.E.2d at 394(distinguishing *South Bend Federation* because it involved applying collateral estoppel "to two rulings by the same administrative board on the same subject."). The Board, however, need not address that question because it finds that its earlier determination satisfied the test.

g) The Board's earlier determination satisfies that test. First, the central issue decided by that determination—the subject property's market value-in-use as of January 1, 2005—was within the Board's statutory jurisdiction. *See* Ind. Code § 6-1.5-4-1(a) (directing the Board to hear appeals from PTABOAs concerning the assessed value of tangible property). Second, the Board acted in a quasi-judicial capacity by providing notice to the parties, taking evidence, and making a determination based on that evidence. *See Resp't Ex. 4; see also* Ind. Code § 6-1.1-15-4 (setting forth requirements for Board hearings). Third, the parties had a fair and full opportunity to litigate the issue in question; they were allowed to call witnesses and offer any other evidence that they believed was relevant. Finally, the Respondent had the right to seek judicial review of the Board's determination. *See* Ind. Code § 6-1.1-15-5; Ind. Code § 33-3-5-2.

h) Also, the fundamental principles underlying the doctrine of collateral estoppel apply to this case. As the Indiana Tax Court recognized:

> Absent a change in conditions or circumstances, [an administrative body] should not indiscriminately or repeatedly consider the same evidence and announce a contrary finding. [Res judicata[2]] seeks to guard parties against vexatious and repetitious litigation of issues which have been determined in a judicial or quasi-judicial proceeding.

Lindemann, 799 N.E.2d at 1233-34 (quoting *Shortridge v. Review Bd. of Indiana Employment Sec. Div*., 498 N.E.2d 82, 90 (Ind. Ct. App. 1986)). The Petitioners already incurred the expense of successfully litigating the subject property's market value-in-use as of January 1, 2005. To the extent that the property's January 1, 2005, value is relevant to this appeal, they should not have to re-litigate that factual issue. Of course, the ultimate issue in this appeal is the property's true tax value for the March 1, 2007, assessment date. And the property's value as of January 1, 2005, is not automatically relevant to, or especially probative of, that question. For example, an intervening change to the property could make the Board's earlier determination irrelevant. Or the Respondent could have offered her own independent evidence of the property's market value-in-use as of the January 1, 2006, valuation date for 2007 assessments. Here, though, the Respondent simply argued that the Board's earlier determination was based on an appraisal that she disagreed with. She already litigated that issue and lost. Her attempt to re-litigate the issue is precisely what the doctrine of collateral estoppel seeks to avoid.

i) The Board does not lightly reach the decision to apply collateral estoppel. It recognizes that, because "each assessment year and each tax year stands alone," collateral estoppel generally does not apply in tax cases. *Miller Brewing Co., v. Ind. Dep't of State Revenue*, 903 N.E.2d 64, 2009 Ind. LEXIS 228 * 11(Ind.

[2] Collateral Estoppel is a branch of the doctrine of *res judicata*. *Afolbi v. Atl. Mortgage & Inv. Corp*., 849 N.E.2d 1170, 1173 (Ind. Ct. App. 2006).

2009)(quoting *Glass Wholesalers v. Ind. Bd. of Tax Comm'rs*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991). Collateral estoppel is also less favored against a governmental agency responsible for administering a body of law, such as tax law, that affects the general public. *Miller Brewing*, 2009 Ind. LEXIS at *9 (citing Restatement (Second) of Judgments § 27 at 278). Nonetheless, the Indiana Supreme Court did not foreclose the applicability of collateral estoppel in all property tax cases. Indeed, it cited to *Lindemann*, a case in which the Indiana Tax Court applied collateral estoppel to an assessment appeal. *Miller Brewing* 2009 Ind. LEXIS at *13.

j) Thus, recognizing the narrow applicability of collateral estoppel to assessment appeals, particularly under the current system where assessments are annually adjusted, the Board finds that its prior determination conclusively established one, and only one, factual issue—the subject property's market value-in-use as of January 1, 2005.

2. The Petitioners showed how the subject property's value as of January 1, 2005, related to its true tax value for the 2007 assessment.

k) By itself, that fact is not dispositive, or even probative. The Petitioners needed to do two more things: (1) show that the property did not materially change between the two assessment dates, and (2) explain how the property's value as of January 1, 2005, related to its value as of January 1, 2006.

l) As to the first question, Mr. Stephens testified that "no significant alterations have transpired to [the subject] property since the state ruling was issued." *M. Stephens testimony*. By referring to the Board's ruling, Mr. Stephens's testimony arguably could be viewed as addressing only the period between April 3, 2008, the date the Board issued its determination of the Petitioners' 2006 appeal, and the date of the hearing in this appeal. The Board, however, infers that Mr. Stephens was referring to whether the property had been altered between the time at issue in the earlier appeal (*i.e.* the March 1, 2006), assessment date, and the date of his testimony in this appeal. Thus, Mr. Stephens's testimony supports a finding that the subject property did not materially change between the 2006 and 2007 assessment dates.

m) To address the second question—how the property's value as of January 1, 2005, related its value one year later—the Petitioners relied on the following:

- an article from the local paper discussing the Kosciusko County real estate market;
- a graph of S&P/Case-Shiller Home Price Indices showing a 16% decrease in home prices in the United States between 2006 and 2007; and
- the fact that assessing officials used a negative trending factor throughout Rolling Hills for 2007 assessments.

n) The article and graph do little to help the Petitioners. The article offered few specifics about relative market values between 2006 and 2007. The S&P/Case-Shiller graph, by contrast, did quantify a market decline between 2006 and 2007. But that graph referred to the national housing market rather than to the local market at issue in this appeal.

o) Nonetheless, the Respondent agreed that a "declining trending factor from the year before" was uniformly applied to Rolling Hills properties. *Renier testimony*. She referred to that factor as 92%, which was 4% lower than the 96% that was applied in 2006. *See Renier testimony; see also Resp't Ex. 1A at 4*. While the Respondent did little to explain how that factor was determined—she offered various reports that are not self-explanatory—she is in no position to contest it.

p) Thus, the Petitioners made a prima facie case showing that, for the March 1, 2007, assessment date, the subject property's market value-in-use was $192,000 ($200,000 reduced by 4%).

B. The Respondent did not Impeach or Rebut the Petitioners' Evidence.

q) The burden therefore shifted to the Respondent to impeach or rebut the Petitioners' evidence. The Respondent offered no probative evidence to show the subject property's market value-in-use as of January 1, 2006. She instead tried to justify the decision to use the subject property's original 2006 assessment as the starting point for calculating the property's March 1, 2007, assessment. As already explained, however, she was estopped from doing so.

r) The Respondent appears to have acted on a mistaken belief about the effect of this Board's determinations. She referred to the $200,000 value from the Board's earlier determination as a "recommendation." *Renier testimony*. A determination by the Board is not merely a recommendation; it is a binding order. If an assessor does not agree with that determination, she can seek judicial review. But she cannot simply choose whether or not to comply with the determination based on her view of its relative merits. The Respondent also claimed that it would have been arbitrary to use the $200,000 value from the Board's determination as the starting point for computing the subject property's 2007 trended assessment. But that value was determined after fully litigating the question of the property's true tax value for 2006. Thus, using it as the starting point for determining the property's 2007 assessment would hardly have been arbitrary.

Conclusion

16. By offering the Board's determination of their 2006 appeal, the Petitioners conclusively showed the property's market value-in-use as of January 1, 2005. Given that the property had not materially changed and that assessing officials had used a negative 4% trending factor throughout the subject property's neighborhood, the Petitioners showed how that earlier value related to the subject property's true tax value for the March 1, 2007,

assessment. The Board therefore finds for the Petitioners and orders that the property's assessment be reduced to $192,000.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines the subject property's March 1, 2007, assessment must be changed to $192,000.

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 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>