

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

**Petition No.:** 91-020-07-1-5-00092  
**Petitioners:** Edward and Lucille Svoboda  
**Respondent:** White County Assessor  
**Parcel No.:** 014-35020-00  
**Assessment Year:** 2007

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 White County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated June 20, 2008.
2. The Petitioners received notice of the decision of the PTABOA on July 22, 2009.
3. The Petitioners filed an appeal to the Board by filing a Form 131 with the Board on September 3, 2009. The Petitioners elected to have their case heard pursuant to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated March 22, 2010.
5. The Board held an administrative hearing on May 6, 2010, before the duly appointed Administrative Law Judge (the ALJ) Ellen Yuhan
6. Persons present and sworn in at hearing:

For Petitioners: Edward Svoboda, Taxpayer

For Respondent: Scott Potts, County Representative.<sup>1</sup>

### Facts

7. The subject property is a house located at 5187 S. Stone Drive, Monticello, in White County.
8. The ALJ did not conduct an on-site visit of the property.
9. For 2007, the PTABOA determined the assessed value of the subject property to be \$135,700 for the land and \$141,100 for the improvements, for a total assessed value of \$276,800.
10. The Petitioners requested an assessment of \$91,680 for the land and \$131,400 for the improvements, for a total assessed value of \$223,080.

### Issues

11. Summary of the Petitioners' contentions in support of an error in their assessment:
  - a. The Petitioners contend that their land is over-assessed compared to similar lake-front properties in their neighborhood. *Svoboda testimony*. In support of this contention, the Petitioners presented a list of the land assessments for their property and eight other lots in the Freeman View subdivision. *Petitioner Exhibit 3*. According to Mr. Svoboda, their property's assessment has been higher than the average land assessment since 1996. *Svoboda testimony; Petitioner Exhibit 3*. For example, Mr. Svoboda argues, their land is assessed for \$140,900 in 2007, which is 52% higher than the average land assessment of \$92,475. *Id.*
  - b. The Petitioners further contend their land is over-assessed based on its frontage. *Svoboda testimony*. In support of this contention, the Petitioners submitted a list of the effective front footage, the actual lake frontage and the assessed value per front foot using both actual frontage and effective frontage from 1996 through 2007 for their lot and eight neighboring parcels. *Petitioner Exhibit 3*. According to Mr. Svoboda, the Petitioners' assessed value per actual front foot was twice the average

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<sup>1</sup> The only authorized representatives in a Board hearing are "(1) a permanent full-time employee of the owner of a property; (2) assessing officials and permanent, full-time employees of local units of government appearing on behalf of the unit or as the authorized representative of another unit; (3) a tax representative as defined in 52 IAC 1-1-6; (4) a representative of a minor or incapacitated party as defined in 52 IAC 1-2-1.1; (5) a local government representative as defined in 52 IAC 1-1-3.5; (6) a certified public accountant when the certified public accountant is representing a client in a matter that relates only to personal property taxation; or (7) an attorney who is a member in good standing of the Indiana bar..." 52 IAC 2-2-4. Mr. Potts is neither the assessor, nor a permanent full time employee of the assessor's office. He could have filed to represent the Respondent as a local government representative under 52 IAC 1-1-3.5, but he failed to file a written verification that he is a "professional appraiser" approved by the Department of Local Government Finance as required by 52 IAC 1-1-3.5. Thus, Mr. Potts was not properly representing the Respondent. The Board is aware that Mr. Potts has frequently appeared before it as a Representative of White County and notes that the Petitioners here did not object to Mr. Potts' participation. Mr. Potts, however, is admonished that he must comply with the Board's representation rules in any future proceedings.

- value in 2001 and three times the average value in 2006. *Id.* For 2007, Mr. Svoboda argues, their front foot value was 73% higher than the average front foot value. *Id.*; *Svoboda testimony*. The Petitioners contend it is unfair to be assessed at a higher value than their neighbors for less lake frontage. *Svoboda testimony*. According to Mr. Svoboda, they have been paying more than their fair share of taxes for a number of years. *Id.* Mr. Svoboda argues that, based on the average front foot value, the Petitioners' land assessment should be \$1,146 a front foot, or \$91,680. *Id.*
- c. Additionally, the Petitioners contend that the houses on the neighboring properties all received a reduction in their assessed values for 2007. *Svoboda testimony*. Mr. Svoboda testified that the reductions ranged from 1.3% to 13.5% with an average reduction of 6.3%. *Id.*; *Petitioner Exhibit 4*. According to Mr. Svoboda, the Petitioners requested a similar reduction, because their house's assessment was only reduced by 2.5%, but the county denied their request. *Svoboda testimony*. Mr. Svoboda argues that, based on the average reduction, the assessed value of their improvements should only be \$131,400. *Petitioner Exhibit 4*.
- d. Finally, the Petitioners contend there is an unreasonable difference between the assessed values of lake front properties and the assessed values of lake view lots. *Svoboda testimony*. According to Mr. Svoboda, the lots that are located across from the lake have water views. *Id.* They also have full access to the lake, a boat launch, and boat docks. *Id.* However, Mr. Svoboda argues, the lots across the street are assessed for less than \$12,000, which is one-tenth to one-fifteenth of the assessments of the lots actually located on the lake. *Id.*

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

- a. The Respondent's representative contends that all of the Petitioners' cited lake front properties are assessed at the same base rate. *Potts testimony*. According to Mr. Potts, most of the lots shown in the Petitioners' evidence are double lots to which the assessor applied an influence factor for excess frontage. *Id.* The land assessments of those double lots totaled about \$180,000; whereas the Petitioners' land is only assessed for \$140,000. *Id.*
- b. Mr. Potts further argues that Mr. Svoboda is incorrect in his characterization that the lots located across the street from the lake are lake view lots. *Potts testimony*. According to Mr. Potts, there is a ridge that blocks the view of those properties. *Id.* Regardless, Mr. Potts argues, sales dictate the value of the lots and the waterfront properties are worth more than their non-waterfront counterparts. *Id.*
- c. Finally, Mr. Potts contends that the Petitioners' property's assessment is correct based on the property's market value-in-use. *Potts testimony*. In support of this contention, Mr. Potts submitted evidence of two sales in the Petitioners' neighborhood. *Respondent Exhibits A and B*. According to Mr. Potts, the property at 5725 East Sheridan Road is a 1,108 square foot house located on a high-bank lot with 50 feet of water frontage and 80 feet of depth that sold for \$249,000 in June of 2004. *Id.* The

property located at 5077 South Stone Drive, which corresponds to Lots 9 and 10 in the Petitioners' evidence, is also a high bank, waterfront property. *Potts testimony; Respondent Exhibit B*. It has 160 feet of water frontage and 160 feet of depth and a house with 3,308 square feet of living area. *Id.* 5077 South Stone Drive sold in March of 2004 for \$460,000. *Id.* The Petitioners' lot has 80 feet of water frontage and 172 feet of depth and their house has 2,074 square feet of living area. *Potts testimony*. It is assessed for only \$276,800, which, Mr. Potts argues, falls proportionately between the two sales. *Id.*

### **Record**

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

- a. The Petition,
- b. The compact disk recording of the hearing labeled 91-020-07-1-5-00092 Svoboda,
- c. Exhibits:

Petitioner Exhibit 1 – Newspaper article from the HERALD JOURNAL,

Petitioner Exhibit 2 – Plat of the Freeman View subdivision,

Petitioner Exhibit 3 – 1996, 2001, 2005, 2006 and 2007 land assessments for lake-front lots in Freeman View,

Petitioner Exhibit 4 – Assessed value per foot based on effective frontage and actual lake frontage for each lot,

Petitioner Exhibit 5 – Property record cards for nine lots in Freeman View,

Respondent Exhibit A – Property record card for 5725 East Sheridan Road,

Respondent Exhibit B – Property record cards for 5077 South Stone Drive,

Board Exhibit A – Form 131 petition,

Board Exhibit B – Notice of Hearing dated March 22, 2010,

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 Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 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 Township 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 case. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
15. The Petitioners failed to provide sufficient evidence to establish an error in their assessment. The Board reached this decision for the following reasons:
- a. 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). Appraisers traditionally use 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. Indiana assessing officials generally assess real property using a mass-appraisal version of the cost approach, as set forth in the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A.
  - b. A property’s market value-in-use as determined using the Guidelines is presumed to be accurate. *See* MANUAL at 5; *Kooshtard Property, VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501,505 (Ind. Tax Ct. 2005); *P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 2006). A taxpayer may rebut that assumption 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 (USPAP) often will suffice. *See Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer actual construction costs, sales information for the subject property or comparable properties and any other information compiled according to generally accepted appraisal practices. MANUAL at 5.
  - c. 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.
  - d. Here, the Petitioners first argue that their land is over-valued based on the assessed values of other lake front properties in their neighborhood. *Svoboda testimony*. In support of this contention, the Petitioners compared their land’s assessment to other

- properties' assessments in their neighborhood based on each lot's effective frontage and actual lake frontage. *Id.* According to the Respondent's representative, however, the base rate used on all of the lots was identical. *Potts testimony.* The Petitioners' evidence likewise shows that each lot cited by Mr. Svoboda was assessed at a base rate of \$1,600.<sup>2</sup> *Petitioner Exhibit 5.* Thus, the Petitioners failed to show that their property was assessed differently than any of their neighbors' properties were assessed.
- e. Even if the neighboring properties had been assessed differently than the Petitioners' property, this argument was found to be insufficient to show an error in an assessment by the Indiana Tax Court in *Westfield Golf Practice Center, LLC v. Washington Township Assessor*, 859 N.E.2d 396 (Ind. Tax Ct. 2007) (rejecting taxpayer's lack of uniformity and equality claim where the taxpayer showed neither its own property's market value-in-use nor the market values-in-use of purportedly comparable properties). In that case, the Tax Court held that it is not enough for a taxpayer to show that its property was assessed higher than other comparable properties. *Id.* Instead, the Court found that the taxpayer must present probative evidence to show that its assessed value does not accurately reflect the property's market value-in-use.<sup>3</sup> *Id.* Here the Petitioners failed to present any market based evidence to show that the assessed value of their property exceeded its market value-in-use.
- f. The Petitioners also contend that other properties received a larger reduction in the assessed value of their houses than the Petitioners' house received. *Svoboda testimony.* However, the fact that improvement values on eight other properties decreased by an average of 6.3%, while the Petitioners' house's assessment only decreased by 2.5% over the same period does little to show whether the property was assessed at or near its market value-in-use. The Petitioners' property may simply have been assessed closer to its market value to begin with.
- g. The Petitioners failed to raise a prima facie case that their land was assessed in excess of its market value-in-use. Where a taxpayer has not supported its claim with probative evidence, the Respondent's duty to support the assessment with substantial

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<sup>2</sup> The lots, however, had different depth factors to account for the size differences between them and some lots had a negative influence factor applied to the parcel's assessment. An influence factor accounts for "characteristics of a particular parcel of land that are peculiar to that parcel." GUIDELINES, Glossary at 10. An influence factor "may be positive or negative and is expressed as a percentage." *Id.* Here, the Petitioners presented no evidence that their lot should receive an influence factor.

<sup>3</sup> The Petitioners similarly argue that the assessed value of land located across the street from the lake is disproportionately lower than the assessed values of lake front properties. *Svoboda testimony.* The Petitioners, however, presented no evidence of the market value of their property. Nor did the Petitioners present any evidence of the market value of the lake-view parcels. In fact, the Petitioners failed to present any evidence of the actual assessed values of the parcels that are located across the street from the lake front lots. Mr. Svoboda merely alleged that the ten-fold or fifteen-fold difference in assessed values between lake front lots and lake view lots was unreasonable. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998); and *Herb v. State Bd. of Tax Comm'rs*, 656 N.E.2d 890, 893 (Ind. Tax Ct. 1995). While the parcels located across the street may, in fact, be undervalued, Mr. Svoboda's unsupported testimony falls far short of the evidence required to prove there was an error in the Petitioners' assessment or in the assessment of the lake view parcels.

evidence is not triggered. *Lacy Diversified Indus. LTD v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

**Conclusion**

16. The Petitioners failed to establish a prima facie case that their property is over-valued. 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: \_\_\_\_\_

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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>