

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

**Petition No.:** 64-023-07-1-4-00053  
**Petitioner:** Wingfield L. Chubb, Trustee  
**Respondent:** Porter County Assessor  
**Parcel No.:** 64-04-31-100-063.000-023  
**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 Petitioner initiated an assessment appeal with the Porter County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated April 9, 2009.
2. The PTABOA issued notice of its decision on October 12, 2010.
3. The Petitioner filed an appeal to the Board by filing a Form 131 on November 22, 2010. The Petitioner elected to have its case heard pursuant to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated August 10, 2011.
5. The Board held an administrative hearing on September 19, 2011, before the duly appointed Administrative Law Judge (the ALJ) Ellen Yuhan.
6. Persons present and sworn in at hearing:  
  
    For Petitioner: Larry Chubb, Trustee,  
  
    For Respondent: Jon M. Snyder, Porter County Assessor,  
                          Timothy A. Jorczak, Director of Commercial Operations.<sup>1</sup>

**Facts**

7. The subject property is an improved .24 acre parcel located at 558 Indian Boundary Road, Chesterton, Porter County.

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<sup>1</sup> Christopher A. Buckley appeared as counsel for the Respondent.

8. The ALJ did not conduct an on-site visit of the property.
9. For 2007, the Porter County PTABOA determined the assessed value of the property to be \$97,900 for the land and \$6,200 for the improvements, for a total assessed value of \$104,100.
10. The Petitioner requested an assessment of \$17,250 for the land and \$6,200 for the improvements, for a total assessed value of \$23,450.

### **Issues**

11. Summary of the Petitioner's contentions in support of an error in its property's assessment:
  - a. The Petitioner's representative contends that the Petitioner's property was not assessed in a uniform and equal manner with other similar properties. *Chubb testimony*. According to Mr. Chubb, the property is a .24 acre parcel with a storage structure that has no frontage on any road. *Id.* For 2007, the property was assessed at a base rate of \$200,000 per acre, to which the assessor applied a multiplier that doubled the base rate. *Id.* Mr. Chubb argues that there is no basis for the multiplier on the subject property's land and no other parcels in the area have a similar multiplier applied to them. *Id.* In fact, Mr. Chubb argues, the subject parcel should have a negative adjustment to the base rate like other parcels in the neighborhood that have no frontage. *Id.*
  - b. Mr. Chubb further contends that the Best Western, which is located within a couple hundred feet of the subject property, was assessed at \$73,000 per acre for its primary land. *Chubb testimony; Petitioner 7B*. Mr. Chubb argues that the assessed value of the land on the subject property should be reduced with an influence factor to \$73,000 an acre like the Best Western property. *Chubb argument*. Based on that rate, Mr. Chubb calculated the land value for the Petitioner's property to be \$17,520. *Id.*
  - c. Finally, Mr. Chubb contends the value of commercial land in the subject property's neighborhood should be adjusted downward, because the base rates of \$185,000 to \$200,000 were based on one sale in the neighborhood. *Chubb testimony; Petitioner Exhibit 3*. According to Mr. Chubb, that sale was a prime parcel directly fronting on Indian Boundary Road that sold to McDonald's in 2005. *Id.* Moreover, Mr. Chubb argues, the parcel had two buildings on it and nearly all of the property's value was in the buildings. *Id.* Based on this sale, Mr. Chubb argues, the assessed value of commercial property increased up to 800%. *Id.*
12. Summary of the Respondent's contentions in support of the assessment:

- a. The Respondent's witness contends that the assessed value of the Petitioner's property was correct. *Jorczak testimony*. According to Mr. Jorczak, the subject parcel was valued based on sales in the property's market area. *Id.* Mr. Jorczak testified that the assessor analyzed sales in the township and calculated and applied a base rate for each of the four land types. *Id.* Mr. Jorczak contends the Petitioner's property was valued the same as other primary land in the neighborhood. *Id.*
- b. Mr. Jorczak further testified that a multiplier may be applied to a property based on any number of characteristics relative to the functional utility and desirability of the property. *Jorczak testimony*.
- c. Finally, the Respondent's counsel argues that the Petitioner failed to show the subject property was assessed in excess of its market value-in-use. *Buckley argument*. Mr. Buckley argues that the Petitioner presented no evidence of the property's market value, such as an appraisal. *Id.* Moreover, the Respondent's counsel argues, the Petitioner did not present a ratio study comparing the assessed value of nearby properties to the properties' market values as dictated in *Westfield Golf Practice Center, LLC v. Washington Township Assessor*. *Id.*

### **Record**

13. The official record for this matter is made up of the following:
  - a. The Petition,
  - b. The digital recording of the hearing labeled Chubb/Indian Oak,
  - c. Exhibits:
    - Petitioner Exhibit 1 – Form 131 petition,
    - Petitioner Exhibit 2 – Form 115, PTABOA decision,
    - Petitioner Exhibit 3 – Summary of the Petitioner's arguments,
    - Petitioner Exhibit 4 – Porter County Ratio Study,
    - Petitioner Exhibit 5 – Department of Local Government Finance Memorandum, dated January of 2010,<sup>2</sup>
    - Petitioner Exhibit 6 – Property record card for McDonald's Real Estate Company's property on Indian Boundary Road,
    - Petitioner Exhibit 7 – Property record cards for comparable parcels,
    - Petitioner Exhibit 8 – Aerial photograph of the neighborhood,
    - Board Exhibit A – Form 131 petition,
    - Board Exhibit B – Notice of Hearing, dated August 10, 2011,

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<sup>2</sup> The Petitioner did not submit a copy of the DLGF Memorandum at hearing; instead it requested that the Board take judicial notice of the document.

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 Petitioner failed to raise a prima facie case for a reduction in its property's assessed value for 2007. 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). 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.
  - b. 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*, 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.

- 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. The Petitioner first claims that its property's assessment lacks uniformity and equality. *Chubb argument*. According to Mr. Chubb, other commercial properties in Westchester Township are assessed at a lower base rate per acre than the subject property. *Id.* In support of its argument, the Petitioner submitted property record cards for four properties. *Petitioner Exhibits 7A, 7C, 7D, and 7E*. The base rates for those properties ranged from \$90,000 to \$200,000 for 2007. *Id.*
- e. In *Westfield Golf Practice Center v. Washington Twp. Assessor*, 859 N.E.2d 396 (Ind. Tax Ct. 2007), the Indiana Tax Court addressed a similar "lack of uniformity and equality" claim under Indiana's present market-value-in-use system. As the court explained, under the old system of assessment, true tax value was determined according to Indiana's own assessment regulations and bore no relation to any external, objectively verifiable measurement standard. *Westfield Golf*, 859 N.E.2d at 398. Properties within the same neighborhood in a land order were presumed to be comparable to each other, and the principles of uniformity and equality were therefore violated when those properties were assessed and taxed differently. *Id.*
- f. That changed under the new system, which incorporates market value-in-use as its external, objectively verifiable benchmark. *Westfield Golf*, 859 N.E.2d at 398. The focus shifted from examining how assessment regulations were applied to examining whether a property's assessed value actually reflects the property's market value-in-use. *Id.* at 399. Thus, the taxpayer in *Westfield* lost on its "lack of uniformity and equality" claim because the taxpayer focused solely on the base rate used to assess its driving-range landing area compared to the rates used to assess other driving ranges and failed to show the actual market value-in-use for any of the properties. *Id.* The Petitioner's claim here fails for the same reason.

- h. The Petitioner also argues that there is no basis for the multiplier applied to the land value that actually increases the base rate to \$400,000, while the adjacent Best Western property has a negative influence factor to reduce the value to \$73,000 per acre.<sup>3</sup> Again, the Petitioner misses the point. The Petitioner has failed to show that the property's assessment does not accurately reflect the market value of its property. A Petitioner fails to sufficiently rebut the presumption that an assessment is correct by simply contesting the methodology used to compute the assessment. *Eckerling v. Wayne Township Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *P/A Builders & Developers v. Jennings County Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (recognizing that the current assessment system is a departure from the past practice in Indiana, stating that "under the old system, a property's assessed value was correct as long as the assessment regulations were applied correctly. The new system, in contrast, shifts the focus from mere methodology to determining whether the assessed value is *actually correct*").
- i. Finally, the Petitioner argues that the county's base rate for the subject property's neighborhood was flawed because it was based on a single sale in the subject property's neighborhood. However, the Petitioner's evidence shows that, while only one sale occurred in the Petitioner's neighborhood, the county used seven sales in the township to determine the land rates for the neighborhood. The Petitioner neither presented evidence that seven sales were insufficient to determine a base rate; nor did the Petitioner present evidence of any other sales or prepare a study to show a more accurate land value for its property.
- j. The Petitioner appears to contend that the use of the McDonald's purchase was somehow an error. But the Petitioner failed to present probative evidence in support of its allegation. 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 Board of Tax Commissioners*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). In fact, its contention that most of the value of the property was in the buildings rather than the land was demonstrably wrong. According to the property record card, the McDonald's purchase occurred on November 3, 2005. *Petitioner Exhibit 6*. The same exhibit shows that the buildings were demolished before the next assessment date, March 1, 2006. *Id.* Thus, contrary to the Petitioner's contentions, the evidence suggests that McDonald's assigned very little value to the improvements on that parcel.
- k. The Board finds that the Petitioner failed to raise a prima facie case that its property was assessed inequitably or non-uniformly; nor did the Petitioner

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<sup>3</sup> An influence factor is "[a] multiplier that is applied to the value of the land to account for the characteristics of a particular parcel of land that are peculiar to that parcel. The factor may be positive or negative and is expressed as a percentage." GUIDELINES, Glossary at 10

sufficiently show that its property was assessed in excess of the property's 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 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**

- 15. The Petitioner failed to establish a prima facie case. The Board finds for 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>.