

REPRESENTATIVE FOR RESPONDENT:
Becca Briscoe, Elkhart Township Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

PAAT, INC., /DBA BLACK)	Petition Nos.: 20-015-03-1-4-00113
SQUIRREL GOLF CLUB)	20-015-03-1-4-00114
)	20-015-03-1-4-00115
)	
Petitioner,)	
)	Parcels Nos: 201117151004000015
)	201117126028000015
v.)	201117251013000015
)	
)	County: Elkhart
ELKHART TOWNSHIP)	Township: Elkhart
ASSESSOR,)	
)	
)	
Respondent.)	Assessment Year: 2003

Appeal from the Final Determination of
Elkhart Property Tax Assessment Board of Appeals

May 18, 2007

FINAL DETERMINATION

The Indiana Board of Tax Review (the Board) having 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 properties' assessed values have resulted in an unreasonable increase in the amount of property taxes.

PROCEDURAL HISTORY

2. Pursuant to Ind. Code § 6-1.1-15-3, Marilyn S. Meighen, Meighen & Associates, PC,¹ on behalf of PAAT, Inc., dba Black Squirrel Golf Club (the Petitioner), filed Form 131 Petitions for Review of Assessments on August 8, 2005, petitioning the Board to conduct administrative reviews of the above petitions. The Elkhart County Property Tax Assessment Board of Appeals (the PTABOA) issued its determinations on July 13, 2005.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (the ALJ), Dalene McMillen, conducted a hearing on February 28, 2007, in Goshen, Indiana.
4. The following persons were sworn in and present testimony at the hearing:

For the Petitioner:

Tony Krebs, Owner
Patricia Krebs, Owner

For the Respondent:

Becca Briscoe, Elkhart Township Assessor

¹ Marilyn Meighen filed a Motion to Withdraw as legal representative for the Petitioners on January 26, 2007. In her Motion to Withdraw, Ms. Meighen indicated that the owner, Tony Krebs, would represent the Petitioners at the Board hearing scheduled for February 28, 2007. The Board granted Ms. Meighen's Motion to Withdraw on January 29, 2007.

5. The Petitioner presented the following exhibit:

Petitioner Exhibit 1 – A letter from Tony Krebs to the Board outlining Petitioners’ argument, dated February 27, 2007.

6. The Respondent presented the following exhibits:

Respondent Exhibit 1 – GIS aerial map and two exterior photographs of the subject properties;

Respondent Exhibit 2 – Subject properties’ property record cards (PRCs);

Respondent Exhibit 3 – Letter from Marilyn Meighen to Becca Briscoe, dated November 15, 2004; 2001, 2002 and 2003 summary of audited financial statements; operating expenses; statements of operations and retained earnings; subject properties’ tax statements for 2003 payable 2004;

Respondent Exhibit 4 – Letter from Marilyn Meighen to Becca Briscoe, dated December 8, 2004;

Respondent Exhibit 5 – Letter from Becca Briscoe to Marilyn Meighen, dated February 2, 2005;

Respondent Exhibit 6 – Letter from Marilyn Meighen to Becca Briscoe, dated February 15, 2005;

Respondent Exhibit 7 – *Marshall Valuation Service* (1997) golf course pricing guide;

Respondent Exhibit 8 – Real Estate Mortgage and Security Agreement (IN) through 1st Source Bank, dated November 19, 2003; Mortgage through Lake City Bank, dated April 27, 1999; Mortgage through 1st Source Bank, dated December 30, 1994; Mortgage through and 1st Source Bank, dated March 4, 1992;

Respondent Exhibit 9 – Sales disclosure from T & T Golf, Inc., to D.R.S. Co., LLC, dated February 23, 2004; sales disclosure from D & J Parmore, Inc., to T & T Golf, Inc., dated December 30, 1999;

Respondent Exhibit 10 – Bent Oak Corporation’s 2004 PRC;

Respondent Exhibit 11 – Petitioners’ 2001, 2002 and 2003 summary of audited financial statements and statement of operations schedules reflecting adjustments made by the Elkhart Township Assessor; *Analysis and Valuation of Golf Courses and Country Clubs* published by the Appraisal Institute (2003); Department of Local Government Finance (the DLGF) guidelines on the income approach to value;

- Respondent Exhibit 12 – Comparison of Petitioners’ financial data to the national golf course averages from *Analysis and Valuation of Golf Courses and Country Clubs*;
- Respondent Exhibit 13 – Letter from Marilyn Meighen to Becca Briscoe, dated March 14, 2005, with an article titled *The Valuation of Golf Courses* by Stephen R. Hughes (January/February 2004);
- Respondent Exhibit 14 – Letter from Becca Briscoe to Marilyn Meighen, dated March 18, 2005;
- Respondent Exhibit 15 – Sales disclosure from Lloyd E. Graber to Timber Ridge Golf Club, LLC, dated January 12, 2005;
- Respondent Exhibit 16 – Letter from Josh Hire, Timber Ridge Golf Club to Elkhart Township Assessor, dated April 12, 2005;
- Respondent Exhibit 17 – Petitioner’s internet course and amenity information, dated February 1, 2005;
- Respondent Exhibit 18 – Letter from Becca Briscoe to the Elkhart PTABOA, dated April 28, 2005;
- Respondent Exhibit 19 – Copy of Petitioner’s Uniform Commercial Code (UCC) filings with the Elkhart County Recorder’s office;
- Respondent Exhibit 20 – Elkhart Township Assessor’s effective tax rate calculation;
- Respondent Exhibit 21 – Version A – Real Property Assessment Guidelines, Appendix G “Golf Courses” and Petitioner’s golf course information from the internet;
- Respondent Exhibit 22 – Subject properties’ proposed PRCs reflecting a “B” grade;
- Respondent Exhibit 23 – Subject properties’ Form 115s;
- Respondent Exhibit 24 – Petitioner’s interrogatories to Respondent and request for production of documents; sales disclosure form for C-Store Marketing, Inc., to Larimer Convenience, LLC, dated October 22, 1998; Larimer Convenience’s PRC; Timber Ridge Golf Club score card; four exterior photographs of Petitioner’s golf club; six exterior photographs of Timber Ridge Golf Club.

7. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:

- Board Exhibit A – Form 131 petitions,
- Board Exhibit B – Notices of Hearing, dated January 10, 2007,
- Board Exhibit C – Hearing sign-in sheet.

8. The subject property is the Black Squirrel Golf Club in Goshen, Indiana. The property is comprised of three parcels in Elkhart Township, Elkhart County. Parcel No. 20-11-17-151-004.000-015 (Petition No. 20-015-03-1-4-00113), located at State Road 119 (the SR 119 Parcel), consists of 62.026 acres including the golf course. Parcel No. 20-11-17-126-028.000-015 (Petition No. 20-015-03-1-4-00114), located at 1914 Berkey Avenue (the Berkey Avenue Parcel), consists of 7.401 acres and a small shop and Parcel No. 20-11-17-251-013.000-015 (Petition No. 20-105-03-1-4-00115), located at 1017 Larimer Drive (the Larimer Drive Parcel), consists of 46.834 acres with a two-story club house and storage facility.
9. The ALJ did not conduct an on-site inspection of the property.
10. For 2003, the PTABOA determined the assessed values of the properties to be \$65,100 for the land and \$442,200 for the improvements, for a total assessed value of \$507,300 for the SR 119 Parcel; \$76,700 for the land and \$97,900 for the improvements, for a total assessed value of \$174,600 for the Berkey Avenue Parcel; and \$187,100 for the land and \$705,900 for the improvements, for a total assessed value of \$893,000 for the Larimer Drive Parcel.
11. For 2003, the Petitioner contends that the assessed values for the three parcels under review should total \$110,684 for the land and \$419,410 for the improvements, for a total assessed value of \$530,094.

JURISDICTIONAL FRAMEWORK

12. 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, and (3) property tax exemptions, 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 Ind. Code § 6-1.1-15. See Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

13. 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).
14. 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”).
15. 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.

PARTIES’ CONTENTIONS

16. The Petitioner contends that the properties are over-valued and that the taxes on the properties are too high. *T. Krebs testimony*.
17. The Petitioner presented the following evidence and testimony in regard to this issue:
 - a. Mr. Krebs, one of the owners of the properties under review, testified that the property taxes on the properties have increased from 4.09% of gross income in

1998 to 7.64% of gross income in 2006. *T. Krebs testimony; Petitioner Exhibit 1.* Although Mr. Krebs admitted that he did not believe the assessed value was in error, he was concerned that the property taxes would force the closure of his business. *Id.*

- b. Mr. Krebs further testified that the golf business is quite different from most other types of businesses. *T. Krebs testimony.* According to Mr. Krebs, surveys by the National Golf Foundation, the Professional Golfers Association (PGA), and the United States Golf Association (USGA) have shown that only approximately 12% of the population plays golf. *Id.; Petitioner Exhibit 1.* Mr. Krebs contends that only 8% to 10% of people that play golf, play on private courses like the subject properties. *Id.* Mr. Krebs testified that the property is a privately owned golf course that competes against numerous municipal golf courses owned and operated by the government, which pay no property taxes. *Id.*
 - c. Finally, the Nexus Group through their counsel, Meighen & Associates, P.C., valued the properties at \$530,094 through an income approach to value calculation. *Respondent Exhibits 3, 4, 6 & 13.* Mr. Krebs admitted, however, that he purchased the property for \$1,500,000 in 1992 and that he did not believe the properties were over-assessed. *T. Krebs testimony.*
18. The Respondent contends that the subject properties were assessed in accordance with the 2002 REAL PROPERTY ASSESSMENT MANUAL (the MANUAL) and the properties were assessed comparable to similar golf course properties. *Briscoe testimony.*
19. The Respondent presented the following evidence and testimony in support of its assessment:

- a. The Respondent testified that the current assessments for the subject properties conforms to the MANUAL and also conforms to pricing set forth in the nationally recognized publication by *Marshall Valuation Services (1997)*. *Briscoe testimony; Respondent Exhibit 7*.
- b. The Respondent further submitted two comparable golf courses that sold for \$975,000 in 2004 and \$1,728,700 in 2005 respectively. *Briscoe testimony; Respondent Exhibits 9 & 15*. According to the Respondent, the comparables were also assessed using the cost approach from the MANUAL and supported by the *Marshall Valuation Services (1997)* pricing guide. *Id.; Respondent Exhibit 7*.
- c. Finally, the Respondent contends that the Petitioner's income approach to value does not accurately reflect the properties' market value. *Briscoe testimony*. According to the Respondent, the Petitioner's calculation shows deductions for expenses such as mortgage payments, interest payments and personal property that are not allowable expenses. *Briscoe testimony*. In addition, the Respondent claims that there is no supporting documentation for the expenses. *Id.*

ANALYSIS

20. The Petitioner contends that its property taxes increased significantly from 1998 to 2006. *T. Krebs testimony; Petitioner Exhibit 1*. The Board, however, has no jurisdiction over matters involving local tax rates. The Board is a creature of the legislature and has only the powers conferred by statute. *Whetzel v. Department of Local Government Finance*, 761 N.E.2d 904, 908 (Ind. Tax Ct. 2002), *citing Matonovich v. State Board of Tax Commissioners*, 705 N.E.2d 1093, 1096 (Ind. Tax Ct 1999); *Hoogenboom-Nofziger v. State Board of Tax Commissioners*, 715 N.E.2d 1018, 1021 (Ind. Tax Ct. 1999). By statute, the Board must conduct an impartial review of all appeals concerning the assessed valuation of tangible property, property tax deductions, and property tax exemptions that are made from a determination by an assessing official or county

property tax assessment board of appeals to the Board under any law. Ind. Code § 6-1.5-4-1. Here, the Petitioner does not claim that its assessment is in error.

21. Further, each tax year stands on its own. *Barth, Inc. v. State Board of Tax Commissioners*, 699 N.E.2d 800, 805 n. 14 (Ind. Tax Ct. 1998). Consequently, the properties' assessment or the taxes in prior years have no relevance or probative value in determining its 2003 assessments.² Thus, evidence of its prior tax rate is insufficient for the Petitioner to raise a prima facie case that its assessments are in error.
22. Where the Petitioner has not supported his claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacey Diversified Indus. v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221 – 1222 (Ind. Tax Ct. 2003).

SUMMARY OF FINAL DETERMINATION

23. The Petitioner failed to raise a prima facie case that the subject properties are over-valued. The Board finds in favor of the Respondent.

² A representative for the Petitioner prepared and presented an income approach valuation to the PTABOA, valuing the properties at \$530,094. *Respondent Exhibits 3, 4, 6, & 13*. While, as set forth in the MANUAL, the market value-in-use of a property may be calculated through the use of appraisal approaches, such as the income approach to value, here the Petitioner failed to refer to the income approach valuation and failed to explain how the value was calculated. 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”). Moreover, even if the Board were to consider this evidence, Mr. Krebs, one of the owners of the property, testified that he did not think that the assessed value was overstated. *T. Krebs testimony*. According to Mr. Krebs, he could not afford to sell the property for the amount it is currently assessed. *Id.*

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date first written above.

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. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>, The Indiana Trial Rules are available on the Internet at http://www.in.gov/judiciary/rules/trial_proc/index.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.