

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

**Petition #: 27-007-02-1-1-00003<sup>1</sup>**

**Petitioner: Larry L. Yeager**

**Respondent: Monroe Township Assessor (Grant County)**

**Parcel #: 0828-100-005.000-07**

**Assessment Year: 2002**

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 Grant County Property Tax Assessment Board of Appeals (“PTABOA”) by written document dated July 25, 2003.
2. The PTABOA issued its Form 115 Notification of Final Assessment Determination (“Form 115 Determination”) on June 30, 2004.
3. The Petitioner initiated an appeal to the Board by filing a Form 131 petition with the Grant County Assessor on August 3, 2004. The Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated March 30, 2006.
5. The Board held an administrative hearing on May 4, 2006, before the duly appointed Administrative Law Judge, Joan Rennick.
6. Persons present and sworn in at hearing:
  - a) For Petitioner: Larry L. Yeager, Professional Engineer, Owner
  - b) For Respondent: Marilyn Meighen, Attorney, Representative for Monroe Township Assessor and Grant County Assessor  
Jay Walters, Grant County Assessor, Representative for Monroe Township Assessor  
Gary Landrum, Grant County Assessor’s Office

---

<sup>1</sup> At the hearing, the Administrative Law Judge read the wrong petition number into the record. The correct petition number is as shown in these findings and on the hearing notice.

## Facts

7. The subject property is classified as Agricultural Improved, Cash Grain/General Farm, as is shown on the property record card for parcel # 0828-100-005.000-07. The subject property is located at 8716 E 300 S in Marion, Indiana.
8. The Administrative Law Judge (“ALJ”) did not conduct an inspection of the property.
9. Assessed value of subject property as determined by the Grant County PTABOA:  
Land: \$27,200            Improvements: \$115,800            Total: \$143,000.
10. Assessed value requested by Petitioner on the Form 131 petition:  
Land \$22,000            Improvements \$115,800            Total: \$137,800.

## Issues

### Timeliness of Form 131 Petition

11. At the hearing, the Respondent moved to dismiss the Form 131 petition as untimely filed. *Meighen argument.*
12. At the times relevant to this appeal, Ind. Code § 6-1.1-15-3(c) provided that, in order to obtain review by the Board of a determination of a county property tax assessment board of appeals, a party “must file a petition for review with the appropriate county assessor within thirty (30) days after the notice of the county property tax assessment board of appeals action is given to the taxpayer.” Ind. Code § 6-1.1-15-3(c) (2004)<sup>2</sup>; *see also* Ind. Admin. Code, tit. 52, r. 2-4-2 (2004). If the county property tax assessment board of appeals notifies the taxpayer of its determination through the mail, three days must be added to the filing period. *See* 52 IAC 2-3-1(e). Thus, a taxpayer has thirty-three (33) days from the date that a Form 115 Determination is mailed to file his or her Form 131 petition.
13. In this case, the Form 115 Determination indicates, on its face, that it was mailed on June 30, 2004. Thus, the Petitioner was required to file his Form 131 petition with the Grant County Assessor on or before Monday, August 2, 2004. The undisputed evidence, however, demonstrates that the Petitioner did not file his Form 131 petition until August 3, 2004. The Form 131 petition is file stamped August 3, 2006, and the Petitioner signed and dated the Form 131 petition on August 3, 2006.

---

<sup>2</sup> Ind. Code § 6-1.1-15-3(c) was amended in 2005. Acts 2005, P.L. 199-2005 SEC. 8. The statute currently provides that a party “must file a petition for review with the appropriate county assessor *not later than* thirty (30) days after the notice of the county property tax assessment board of appeals is given to the taxpayer.” Ind. Code § 6-1.1-15-3(c)(2005)(emphasis added). Even if the amendment were applicable to the Form 131 petition at issue in this case, that petition still would have been untimely.

14. Nonetheless, the Petitioner contends that he timely filed his Form 131 petition. The Petitioner did not present any evidence regarding the date he received the PTABOA's Form 115 Determination. Instead, the Petitioner simply asserts that the Respondent did not provide any evidence that it actually mailed the Form 115 Determination on June 30, 2006.
16. Absent evidence to the contrary, the Board presumes that the Form 115 Determination was mailed on the date set forth on the face of that document. The Petitioner could have rebutted that presumption in a variety of ways, including through testimony regarding the date he received the determination. The Petitioner, however, chose not to do so. Consequently, the Board finds that the Petitioner's Form 131 petition should be dismissed as untimely filed.
17. Given that the ALJ conducted a full hearing on the merits of the case, however, the Board addresses those merits as an alternate basis for its determination.

#### Objections

18. Before reaching the merits of the Petitioner's claims, the Board must address objections raised by the parties. Each party objected to the admission of the opposing party's exhibits on grounds that the objecting party did not receive copies of those exhibits at least five (5) days in advance of the hearing. *Yeager testimony; Meighen testimony.*
19. The parties elected to contest this case under the procedures governing small claims. *See* 52 IAC 3. Those procedures are intended to make the administration of small claims "more efficient, informal, simple, and expeditious than those administered under 52 IAC 2." 52 IAC 3-1-1(b).
20. The Board's small claims rules provide that "the parties shall *make available* to all other parties copies of any documentary evidence and the names and addresses of all witnesses intended to be presented at the hearing at least five (5) days before the day of a small claims hearing." 52 IAC 3-1-5(f) (emphasis added).
21. By contrast, the rules applicable to non-small claims proceedings state that a party to the appeal "*shall provide*" to the other parties: (1) copies of documentary evidence at least five (5) business days before the hearing; and (2) a list of witnesses and exhibits at least fifteen (15) business days before the hearing. 52 IAC 2-7-1(b).
22. The Board interprets the phrase "shall make available" contained in 52 IAC 3-1-5(f) to mean that the specified items must be provided to other parties if requested. The Board does not interpret that phrase to create an obligation to provide copies of documentary evidence to other parties independent of a request by one or more of those parties. This interpretation gives meaning to the difference between the language used in 52 IAC 3-1-5(f) and 52 IAC 2-7-1(b) and best reflects the principles underlying the more informal small claims procedures.

23. As to the Petitioner's objection, the Petitioner testified that he verbally requested information from the Grant County Assessor's office. The Petitioner, however, did not specify the date upon which he made that request. Moreover, the Petitioner did not notify Ms. Meighen of his request. Ms. Meighen filed her appearance on behalf of the Monroe Township Assessor on April 7, 2006. *Board Ex. D.* Ms. Meighen also sent the Petitioner a letter dated April 7, 2006, requesting that the Petitioner direct all communications regarding the appeal to her. *Meighen testimony; Resp't Ex. F.* Although not specifically addressed by the Board's procedural rules, it is axiomatic that once counsel has filed an appearance in a case, the opposing party should direct communications regarding that case to counsel. The Board is cognizant of the fact that the Grant County Assessor also appeared as a representative of the Respondent. Nonetheless, the Board will not exclude the Respondent's exhibits based upon its failure to provide copies of those exhibits to the Petitioner, where the Petitioner did not request copies from Respondent's counsel of record.
24. The Respondent, through counsel, properly requested copies of the Petitioner's exhibits well in advance of the administrative hearing. *Resp't Ex. F.* Once again, the Petitioner ignored Ms. Meighen's request that the documents be forwarded directly to her, and he instead brought the documents to the Grant County Assessor's office. As explained above, the Petitioner should have forwarded the documents to Ms. Meighen, or at the very least, he should have notified Ms. Meighen that he was providing the documents to the Grant County Assessor. Nonetheless, given that the Grand County Assessor has appeared in this action as a representative of the Respondent, the Board finds that the Respondent was not unduly prejudiced by Petitioner's failure to notify Ms. Meighen that he was delivering the documents to the Grant County Assessor. Moreover, the Board notes that the Respondent indicated a willingness to withdraw its objection to the admission of the Petitioner's exhibits if the Petitioner withdrew his objection to the admission of the Respondent's exhibits. Given the Board's ruling on the Petitioner's objection, the Respondent has achieved what it sought when it proposed a mutual withdrawal of objections – consideration by the Board of all of the parties' exhibits.

#### Claims on the Merits

25. Summary of Petitioner's contentions in support of alleged error in assessment:
- a) The Respondent deducted the value of a strip of the subject property that is burdened by a right-of-way. That strip of land consists of 0.2273 acres. The Respondent valued that strip of land using a base rate of \$880 per acre. Thus, the value deducted from the assessment is not significant. The right-of-way, however, is located in front of the subject house and adjacent to the road, and it is a premier part of the subject land. The Petitioner contends the one (1) acre homesite includes the right-of-way and that the right-of-way should have been removed from the assessment of the homesite at the rate of \$15,000 per acre. *Yeager testimony.*
  - b) The Petitioner is a professional engineer, and he is responsible for buying road rights-of-way for any improvements that Grant County makes. The Petitioner presented

evidence regarding the county's purchase of a right-of-way from property owned by Bonnie Hicks. The land in that transaction was appraised at \$20,000 per acre, which is significantly higher than the subject property's assessment at \$15,000 per acre. The county paid Bonnie Hicks \$2,290 for the right-of-way. *Yeager testimony; Pet'r Exs. 1-7.*

- c) The Respondent assessed a two (2) acre portion of the subject land as agricultural excess acreage and valued it at \$2,500 per acre. *Yeager testimony.* The land valued as excess acreage includes land around the barn, land on both sides of the house, a truck garden, and "tree farm." *Id.* The Petitioner contends that he uses all of that land for farming operations, including the farming of wood pulp. *Id.* The Petitioner contends that all of that two (2) acre portion of land should be valued as agricultural land at the base rate of \$880 per acre. *Id.*

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

- d) The Respondent used a "GIS" aerial view map to determine how much of the subject land was used for residential purposes. Based upon that map, the Respondent determined that three acres were used for residential purposes – a one (1) acre homesite and an additional two (2) acres used as a yard. *Landrum testimony.*
- e) The Real Property Assessment Guidelines for 2002 – Version A ("Guidelines") explain how to value agricultural land, agricultural homesites, and agricultural excess acreage. *Meighen statement; Resp't Ex. A at 2-3.* Pursuant to the Guidelines, one (1) acre per dwelling on agricultural land should be assessed as a homesite. *Resp't Ex. A at 2-3.*
- f) The Respondent presented a copy of the sales disclosure form for the subject property. *Landrum testimony; Resp't Ex. D.* The sales disclosure form shows that the Petitioner bought the subject property for \$160,000 in December 1999. *Id.* The subject property currently is assessed for \$143,000, well below its sale price. *Board Ex. A.*
- g) The Respondent submitted a copy of the Indiana Tax Court's decision in *Eckerling v. Wayne Township Assessor*, 841 N.E.2d 674 (Ind. Tax Ct. 2006) in support of its position that, under the new assessment system, bottom line value is what counts. *Resp't Ex. E.* The sale of the subject property for \$160,000 in December 1999 is the best evidence of the property's market value. *Meighen argument.* The Respondent requests that the Board raise the subject property's assessment to \$160,000. *Id.* Failing that, the Respondent requests that the Board uphold the current assessment. *Id.*

### **Record**

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

- a) The Form 131 petition.
- b) The recording of the hearing.
- c) Exhibits:

Petitioner Exhibit 1: Work sheet for Bonnie Hicks property [Property Record Card]

Petitioner Exhibit 2: Statement of the basis for just compensation of Bonnie Hicks property

Petitioner Exhibit 3: Market estimate for Bonnie Hicks property

Petitioner Exhibit 4: Right of way grant for Bonnie Hicks property

Petitioner Exhibit 5: Accounts payable voucher

Petitioner Exhibit 6: Claim filed 3/9/05

Petitioner Exhibit 7: Check number 273565

Petitioner Exhibit 8: Work sheet for Yeager property [Property Record Card]

Respondent Exhibit A: Excerpts from the Indiana Code and the Indiana Administrative Code

Respondent Exhibit B: 2004 calendar (Jan – Sept)

Respondent Exhibit C: *Williams Industries v. State Bd. Tax Commrs*, No. 49T10-9206-TA-41 (Ind. Tax Ct. March 30, 1995)

Respondent Exhibit D: Sales disclosure form

Respondent Exhibit E: *Eckerling v. Wayne Township Assessor* No. 49T10-0502-12 (Ind. Tax Ct. February 2, 2006)

Respondent Exhibit F: Letter to Petitioner dated April 7, 2006

Board Exhibit A: Form 131 Petition with attachments

Board Exhibit B: Notice of Hearing

Board Exhibit C: Hearing Sign-In Sheet

Board Exhibit D: Notice of Appearance for Marilyn Meighen

Board Exhibit E: Notice of County Assessor Representation

- d) These Findings and Conclusions.

### **Analysis**

28. 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 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).

- 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 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”).
- 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 evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
29. The Petitioner failed to present sufficient evidence to support his contentions. The Board reaches that conclusion for the following reasons:
- a) The Petitioner contends that the land portion of the current assessment is incorrect for two reasons. First, the Petitioner contends that the Respondent improperly deducted land burdened by a right-of-way from the portion of the subject property valued as agricultural land. According to the Petitioner, the Respondent should have deducted the right-of-way from the portion of the subject property valued as a homesite. Second, the Petitioner contends that Respondent incorrectly assessed two (2) acres of the subject property that the Petitioner devotes to agricultural uses as excess residential acreage rather than as agricultural land.
- b) The 2002 Real Property Assessment Manual (“Manual”) defines the “true tax value” of real property 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). As set forth in the Manual, 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. *Id.* at 3, 13-15. In Indiana, assessing officials primarily use the cost approach, as set forth in the Real Property Assessment Guidelines for 2002 – Version A (“Guidelines”), to assess real property.
- c) A property’s market value-in-use, as ascertained through application of the Guidelines’ cost approach, 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) *reh’g den. sub nom. P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax 2006). A taxpayer, however, may offer evidence to rebut that presumption, as long as such evidence is consistent with the Manual’s definition of true tax value. MANUAL at 5. Thus, appraisals prepared in accordance with the Manual’s definition of true tax value may be used to rebut the presumption that an assessment is correct. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1 (“[T]he Court believes (and has for quite some time) that the most effective method to rebut the presumption that an assessment is correct is through the presentation of a market value-in-use appraisal, completed in conformance with [USPAP].”). A taxpayer may also rely upon sales information regarding the subject or comparable properties and any other

information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.

- d) Here, the Petitioner did not present any market-based evidence concerning the market value-in-use of the subject property. At most, the Petitioner simply attacks the Respondent's methodology in classifying various portions of the subject land. The Indiana Tax Court rejected an analogous argument in *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674 (Ind. Tax Ct. 2006) (holding that the taxpayers who contested an assessors' choice of cost schedules in assessing their building did not show that the assessor's methodology failed to accurately reflect their property's market value-in-use). Thus, the Petitioner failed to establish a prima facie case for a change in assessment.
- e) Even if the Petitioner's evidence were sufficient to establish a prima facie case, the Respondent convincingly rebutted that evidence. The Respondent submitted a sales disclosure form showing that the Petitioner bought the subject property on December 1, 1999, for \$160,000. *Resp't Ex. D*. The Board recognizes that the sales disclosure form submitted by the Respondent does not contain the same parcel number contained on the Form 115 Final Determination for the subject property. *See id.; Board Ex. A*<sup>3</sup>. That disclosure form, however, indicates that the property at issue was located at 8716 E 300 S Marion, Indiana - the same address as the subject property. Moreover, the Petitioner himself acknowledged that he bought the subject property for at least \$150,000 in 1999. *See Board Ex. A; Yeager testimony*. Thus, the undisputed evidence demonstrates that the Petitioner bought the subject property for an amount in excess of the current assessment less than one year after the relevant valuation date of January 1, 1999. *See MANUAL* at 4, 8 (setting forth January 1, 1999, as the valuation date for the 2002 general reassessment). The sale price of the subject property is precisely the type of evidence contemplated by the Manual and the Tax Court as being probative of the property's market value-in-use.
- f) Based on the foregoing, the Board finds that the Petitioner failed to establish that the current assessment is incorrect. In fact, had the Petitioner timely filed his Form 131 petition such that the merits of that petition were clearly before the Board, the evidence may well have supported increasing the subject property's assessment.

### **Conclusion**

- 30. The Petitioner did not timely file his Form 131 petition. The Board therefore finds that the petition should be dismissed. Even if the merits of the Petitioner's Form 131 petition were properly before the Board, the Petitioner failed to establish that the current assessment is incorrect.

---

<sup>3</sup> The sales disclosure form identifies the property that is the subject of the disclosure as parcel/key number 007-02015-20. *Resp't Ex. D*. The Form 115 Determination and Form 131 petition identify the subject property by parcel number 0828-100-005.000-07. *Board Ex. A*.



## 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: \_\_\_\_\_

\_\_\_\_\_  
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](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>>.