

REPRESENTATIVES FOR PETITIONERS:
Ronald T. & Patricia A. Scott, Taxpayers

REPRESENTATIVES FOR RESPONDENT:
Marilyn Meighen, Monroe County Legal Representative

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Ronald T. & Patricia A. Scott,	)	Petition No.:	53-017-05-1-4-00807
	)	Parcel:	011-08105-00
Petitioners,)		
)		
v.)		
	)	County:	Monroe
Washington Township Assessor,	)	Township:	Washington
	)	Assessment Year:	2005
Respondent.)		

Appeal from the Final Determination of
Monroe County Property Tax Assessment Board of Appeals

August 3, 2006

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 parties presented the following restated issue for consideration by the Board:
Whether the land portion of the subject property's assessment is incorrect

PROCEDURAL HISTORY

2. Pursuant to Ind. Code § 6-1.1-15-3, Ronald T. & Patricia A. Scott filed a Form 131 Petition to the Indiana Board of Tax Review for Review of Assessment (Form 131 petition), petitioning the Board to conduct an administrative review of the assessment of the subject property. The Petitioners filed their Form 131 petition on July 6, 2005. The Monroe County Property Tax Assessment Board of Appeals (PTABOA) issued its Form 115 Notification of Final Assessment Determination on July 15, 2005.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, a hearing was held on April 18, 2006, in Bloomington, Indiana before Jennifer Bippus, the duly designated Administrative Law Judge (the ALJ) authorized by the Board under Ind. Code § 6-1.5-3-3.
4. The following persons were sworn and presented testimony at the hearing:

For the Petitioner:

Ronald T. Scott, Petitioner
Patricia A. Scott, Petitioner
Jeffrey A. Scott, Petitioner's Son

For the Respondent:

Marilyn Meighen, Monroe County Legal Advisor
Judy Sharp, Monroe County Assessor
Ken Surface, Monroe County Technical Advisor

5. The Petitioner did not submit any exhibits for consideration by the Board.

6. The Respondent presented the following exhibits:
 - Respondent Exhibit A – Photograph of subject property,
 - Respondent Exhibit B – Property Record Card – parcel 01-08105-00,
 - Respondent Exhibit C – Property Record Card – parcel 011-08545-08 with
Department of Local Government Finance (DLGF) 2005
farm land value,
 - Respondent Exhibit D – Property Record Card – parcel 011-07290-00,
 - Respondent Exhibit E – Property Record Card – parcel 011-02280-00.

7. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:
 - Board Exhibit A – The Form 131 petition and attachments,
 - Board Exhibit B – Notice of Hearing dated February 24, 2006,
 - Board Exhibit C – Notice of Appearance for Marilyn Meighen,
 - Board Exhibit D – Hearing sign-in sheet.
 - Board Exhibit E – Notice of County Representation

8. The subject property is classified as “other commercial property,” as shown on the property record card for parcel 011-08105-00. The property is located at 4269 East Farr Road, Bloomington, Indiana. The subject property contains three acres of land with improvements.

9. The ALJ did not conduct an on-site inspection of the subject property.

10. The PTABOA determined that the assessed value of the property is \$32,400 for the land and \$155,000 for the improvements for a total assessed value of \$187,400.

11. On their Form 131 petition, the Petitioners request a value of \$3,600 for the land and \$23,000 for the improvements for a total value of \$29,600.¹

¹ At the hearing, the Petitioners did not address any issues with regard to the assessment of the subject improvements.

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 a county property tax assessment board of appeals has the burden to establish a prima facie case proving, by a preponderance of the evidence, 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).
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 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”).
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.

ANALYSIS

Whether the land portion of the subject property's assessment is incorrect

Parties' Contentions

16. The Petitioners presented the following evidence and argument in support of their contentions:
 - A. The Petitioners own two other parcels of land in Washington Township. *R. Scott testimony*. Those two parcels are assessed at a substantially lower rate per acre than the rate at which the subject land is assessed. *R. Scott testimony*. One of those two parcels, which is adjacent to the subject property, is assessed at \$900 per acre. *Id.* The other parcel is assessed at \$109.54 per acre. *Id.* The subject land, by contrast, is assessed at \$10,800 per acre. *Id.*
 - B. One acre of the subject property is assessed at the rate of \$22,500 per acre. *R. Scott testimony*. It is the assessment of that acre that largely creates the discrepancy in assessments. *Id.* The Petitioners do not understand why that portion of the subject property is assessed at a rate so disproportionate to the rates applied to the remainder of the subject property and to the other property that they own. *Id.*
17. The Respondent presented the following evidence and argument in support of the current assessment:
 - A. Ronald Scott's son built a house on the subject property in 2003. *Sharpe testimony; Resp't Ex. B*. The Respondent therefore assessed one (1) acre of the subject property as a homesite. *Id.* The base rate for land used as a homesite in the assessment neighborhood in which the subject property is located is \$9,000 per acre. *Id.* The Respondent valued an additional one (1) acre portion of the subject property at rate of \$900 per acre. *Id.* That is the rate applied to excess acreage associated with

- homesites. *Id.* The Petitioners son does not receive a homestead exemption because the Petitioners own the land upon which the house is located.² *Id.*
- B. The subject property also contains a commercial pole building out of which the Petitioners run a business. *Sharpe testimony.* Consequently, the Respondent valued one (1) acre of the subject property at the rate of \$22,500. *Id.; Resp't Ex. B.* That is the rate applied to commercial land. *Id.*
- C. One of the parcels to which the Petitioners seek to compare the subject property is assessed as agricultural land. *Surface testimony.* The other parcel, which is adjacent to the subject property, is assessed as excess acreage. *Surface testimony.* Where the same person owns two contiguous parcels with one parcel containing a dwelling and the other being vacant, it is common practice in Monroe County to assess the parcel containing the dwelling as a homesite and to assess the contiguous parcel as excess acreage. *Id.*
- D. The Respondent assessed the subject parcel in the same manner as it assessed comparable parcels that contain both a home and a commercial building. *Id.; Resp't Exs. D, E.*
- E. The Respondent also asks the Board to take notice of pages 68-69 and 84 from the Real Property Assessment Guidelines for 2002 – Version A (Guidelines) in support of its position. Those pages set forth procedures for valuing residential acreage, agricultural homesites and commercial and industrial land. *Meighen argument.*

Discussion

18. 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

² The question of whether the Petitioners and/or their son are entitled to a homestead exemption is not before the Board.

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.

19. 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. Petitioners did not provide sufficient evidence to support the Petitioners’ contentions.
20. The Petitioners did not present any of the types of market-based evidence recognized by the Manual and the Tax Court as sufficient to rebut the presumption that the current assessment is correct. Instead, the Petitioners seek to compare the land portion of the subject property’s assessment to the assessments of two other parcels of land also owned by the Petitioners. To establish a prima facie case that a property has not been assessed in a uniform and equal manner, however, a taxpayer must submit probative evidence demonstrating that comparable properties are assessed and taxed differently. *Home*

Federal Savings Bank v. Madison Twp. Assessor, 817 N.E.2d 332 (Ind. Tax Ct. 2004). The taxpayer must explain how the allegedly comparable properties compare to the subject property, including factors such as “size, shape, topography accessibility and use.” *Id.*

21. While Ronald Scott testified that the Petitioners own two parcels of land in Washington Township that are assessed at lower rates per acre than the rate at which the subject property is assessed, the Petitioners presented virtually no evidence regarding the physical characteristics or uses of those properties. The Petitioners therefore have made only a “de minimus” factual showing and have failed to establish a prima facie case that the Respondent did not assess the subject property in a uniform and equal manner in comparison to other properties. *See Home Federal Savings Bank* 817 N.E.2d 332 (holding that taxpayer made only a “de minimus” factual showing where its tax representative testified in a conclusory manner about the property record cards for two purportedly comparable properties).

22. Although its duty to do so was not triggered because the Petitioner failed to make a prima facie case, the Respondent presented evidence to show that the two parcels upon which the Petitioners rely are not comparable to the subject property as a whole. The parcel that is not adjacent to the subject property is assessed as agricultural land. *Surface testimony; Resp’t Ex. C.* Thus, the Petitioners devote that parcel to an entirely different use than any of the uses to which the Petitioners devote the subject property. Similarly, Mr. Surface testified that the Respondent assessed the adjacent parcel as excess acreage based upon the fact that it is contiguous to the homesite located on the subject property. *Surface testimony.* Thus, while the adjacent parcel is devoted to the same use as a portion of the subject property, it is assessed at the same rate at which the comparable portion of the subject property is assessed. The adjacent parcel, however, is not used for commercial purposes. Consequently, it is not comparable to the portion of the subject property devoted to commercial use. In fact, the Respondent presented evidence demonstrating that it assesses other properties with mixed residential/commercial uses using the same methodology that it applied to the subject property. *See Resp’t Exs. D-E.*

23. The Board recognizes that it is entirely possible that Petitioners' use of a portion of the subject property for commercial purposes does not increase the property's market value to the extent reflected in the assessment. As discussed above, however, the Petitioners did not present any market-based evidence from which the Board can make such a determination.
24. Based on the foregoing, the Petitioners failed to establish that the current assessment is in error.

SUMMARY OF FINAL DETERMINATION

25. The Petitioner failed to make a prima facie case. The Board finds for the Respondent. The assessment shall not be changed.

This Final Determination of the above captioned matter is issued this 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>.