

REPRESENTATIVE FOR PETITIONER:

Lewis F. Hass Jr., *pro se*

REPRESENTATIVES FOR RESPONDENT:

John R. Scott, Portage Township Assessor

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Lewis F. Hass Jr.,	)	Petition No.: 64-015-02-1-1-00028
	)	Parcel: 0630200001
Petitioner,	)	
	)	
v.	)	
	)	County: Porter
Portage Township Assessor,	)	Township: Portage
	)	Assessment Year: 2002
Respondent.	)	

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

**March 26, 2007**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (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

### ISSUES

1. The parties presented several issues, which the Board consolidates and restates as:  
*Did the Petitioner establish an error in the subject property's assessment based on evidence that the property's midsection floods, its south end is contaminated, and target shooting events on a neighboring property interfere with its use?*

### PROCEDURAL HISTORY

2. The Porter County Property Tax Assessment Board of Appeals (PTABOA) issued its determination on March 11, 2005. On April 8, 2005, the Petitioner, Lewis F. Hass, Jr., filed a Form 131 Petition to the Indiana Board of Tax Review for Review of Assessment (Form 131 petition).

### HEARING FACTS AND OTHER MATTERS OF RECORD

3. On September 27, 2006, Alyson Kunack, the duly designated Administrative Law Judge (ALJ) authorized by the Board under Ind. Code § 6-1.5-3-3, held an administrative hearing in this matter. The hearing occurred in Valparaiso, Indiana.
4. The following persons were sworn and presented testimony at the hearing:

For the Petitioner:

Lewis F. Hass, Jr., Owner

For the Respondent:

John R. Scott, Portage Township Assessor  
Kathleen Sonaty, Chief Deputy, Portage Township  
Shirley Lafever, Porter County Assessor  
Janine Chrisman, President, Porter County PTABOA  
Lindy Wilson, Chief Deputy, Porter County

5. The parties agreed to waive the requirements under 52 IAC 2-7-1 regarding the exchange of documents, witness and exhibit lists, and summaries of expected testimony.
  
6. The following exhibits were presented by the Petitioner:
  - Petitioner Exhibit 1 – Copy of fax sent to county officials and agencies
  - Petitioner Exhibit 2 – Editorial from local newspaper
  - Petitioner Exhibit 3 – Newspaper article on shooting incidents
  - Petitioner Exhibit 4A – Photograph of shooting range with a date of 10/21/00
  - Petitioner Exhibit 4B – Photograph of shooting range with a date of 10/21/00
  - Petitioner Exhibit 4C – Photograph of shooting range backstop with a date of 10/22/00
  - Petitioner Exhibit 5 – Police report dated 10/21/00
  - Petitioner Exhibit 6 – Police report dated 11/19/00
  - Petitioner Exhibit 7 – Portion of a newspaper article (the Petitioner marked 2 paragraphs)
  - Petitioner Exhibit 8 – Newspaper photograph showing shooting activity
  - Petitioner Exhibit 9 – Conclusions page from soil analysis report
  - Petitioner Exhibit 10 – Photograph of subject property as of March 2004
  
7. The Respondent did not submit any exhibits.<sup>1</sup>
  
8. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:
  - Board Exhibit A – Form 131 Petition
  - Board Exhibit B – Notice of Hearing dated August 14, 2006
  - Board Exhibit C – Hearing Sign-In Sheet
  
9. The subject property consists of 50.38 acres used for farming. The subject property does not have a street address.
  
10. The ALJ did not inspect the subject property.

---

<sup>1</sup> After the hearing ended, Ms. Sonaty submitted a packet of exhibits to the ALJ. The Board does not consider those documents because the Respondent presented them after the conclusion of the hearing. The Board notes, however, that those exhibits largely appear to duplicate exhibits offered by the Petitioner and/or procedural documents attached to the Petitioner's Form 131 petition.

11. For 2002, the PTABOA determined the assessed value of the property to be:  
Land: \$49,100.
12. The Petitioner did not request a specific value on his Form 131 petition.

### **OBJECTION**

13. The Respondent objected to Petitioner's Exhibit 5, a police report summarizing the Petitioner's complaint that his farm equipment had been damaged by shots fired from a neighboring property owned by the American Legion. The Respondent contended that the exhibit was irrelevant to the issues on appeal. The ALJ took the Respondent's objection under advisement.
14. The Board overrules the Respondent's objection and admits Petitioner's Exhibit 5 into evidence. The Petitioner offered the exhibit to show how the American Legion's activities interfered with his ability to use the subject property safely. Any interference with the Petitioner's ability to use the subject property is relevant to determining the property's market value-in-use. While such evidence may not be sufficient, by itself, to show an error in assessment, that goes to the weight of the evidence, not to its admissibility.

### **JURISDICTIONAL FRAMEWORK**

15. 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; or (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

16. 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).
17. 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”).
18. 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

### Parties' Contentions

19. The Petitioner presented the following evidence and argument:
  - A. The Petitioner contends that the subject property's value is “not bad,” but that his right to use and enjoy the property is restricted. The main restriction is posed by the American Legion, which hosts target-shooting events on a neighboring property. *See Hass testimony*; *see also Pet'r Exs. 2-6*. The shooting takes place in spring and fall and coincides with the Petitioner's planting and harvesting. *Hass testimony*. The Petitioner offered several photographs of the shooting range. *Pet'r Exs. 4A-4C, 8*.

- B. The Petitioner believes that local governmental officials have failed to enforce his constitutional right to use and enjoy his property. *Hass testimony*. According to the Petitioner, applicable zoning classifications do not allow the American Legion to operate a shooting range. *Hass testimony*. The Petitioner sent faxes to county officials and appeared at zoning board meetings to make that point, but neither the officials nor the zoning board took any action. *Id.*
- C. The Petitioner also complained to the police, but his complaints met with similar results. *See Hass testimony; Pet'r Exs. 5-6*. The Petitioner submitted two police reports made in response to his complaints. The first report stems from the Petitioner's complaint on October 21, 2000. On that date, the Petitioner claimed that his farm equipment had been damaged by shots fired from the American Legion's range. *Pet'r Ex. 5*. The second report relates to the Petitioner's complaint on November 19, 2000, in which the Petitioner claimed that a stray shotgun pellet had grazed his right ear lobe. *Hass testimony; Pet'r Exs. 5, 6*.
- D. The Petitioner also contends that the American Legion's shooting range has caused significant contamination to the subject property. The Petitioner paid \$4,000 for a technical report showing that the property has lead and antimony levels that are "borderline dangerous" and that exceed the default residential-closure levels. *Hass testimony; Pet'r Ex. 9*. Although the entire parcel is not affected, the contamination affects several hundred feet off the line between the subject property and the American Legion's property. *Id.*
- E. The Petitioner also submitted a photograph taken in March 2004 showing a portion of the subject property. *Pet'r Ex. 10*. According to the Petitioner, the photograph depicts the land after a fire had occurred. *Hass testimony*.
- F. Finally, the Petitioner contends that the middle of the subject property floods. *Hass testimony*. The flooding is caused by a poorly planned house and swale installed by the City of Portage. *Hass testimony*.

20. The Respondent presented the following evidence and argument:
- A. The Respondent contends the subject land is valued correctly as farmland. In response to questioning by the Respondent, the Petitioner testified that he recently planted soybeans and that he planted and harvested corn in 2002. *Scott testimony; Lafever testimony; Hass testimony.* According to the Respondent, the Petitioner's complaints focus on his dispute with the American Legion and governmental officials who have not acted to solve that dispute rather than with his property's assessment. *Scott argument.*
  - B. With respect to his allegations that the subject property is partially contaminated, the Respondent notes that the Petitioner did not submit his technical report to the people who perform the soil productivity and mapping used in valuing agricultural land. *Scott testimony.*
  - C. The Respondent also contends that the Petitioner failed to submit any evidence to support his claim that the subject property floods. *Scott argument.*

### Discussion

21. 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 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 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 (Guidelines).

22. 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). But a taxpayer may offer evidence to rebut that presumption, provided such evidence is consistent with the Manual's definition of true tax value. MANUAL at 5. An appraisal prepared in accordance with the Manual's definition of true tax value generally will suffice. *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 the Uniform Standards of Professional Appraisal Practice (USPAP).”). A taxpayer may also rely upon sales information for the subject or comparable properties and any other information compiled in accordance with generally accepted appraisal principles to rebut the presumption that an assessment is correct. MANUAL at 5.
23. Here, the Petitioner identified several conditions that might affect the market value-in-use of his property — the danger posed by the American Legion's shooting range, contamination caused by that shooting range, and the property's susceptibility to flooding. And the Petitioner arguably submitted at least some evidence to substantiate the first two of those conditions. But the Petitioner did not present any market-based evidence to quantify the extent to which those conditions affect the property's market value-in-use. As a result, the Petitioner failed to establish a *prima facie* case that the subject property's assessment is incorrect.
24. Indeed, the Petitioner geared little of his testimony toward valuation questions. Instead, the Petitioner testified at length about his belief that government officials such as the zoning board members and law enforcement officers were not enforcing his constitutional right to use and enjoy his property. Those questions, however, concern matters outside the Board's jurisdiction. The Board is a creature of the legislature and has only the powers conferred by statute. *Whetzel v. Dep't of Local Gov't Fin.*, 761 N.E.



2d 904, 908 (Ind. Tax Ct.2002), *citing Matonovich v. State Bd. of Tax Comm'rs*, 705 N.E.2d 1093, 1096 (Ind. Tax Ct. 1999); *Hoogenboom-Nofziger v. State Bd. of Tax Comm'rs*, 715 N.E.2d 1018, 1021 (Ind. Tax Ct. 1999). Those powers include the authority to address real-estate-assessment appeals; they do not include the authority to compel government officials to enforce land-use regulations. *See generally*, Ind. Code § 6-1.5-4-1 (stating that the Board shall conduct an impartial review of appeals concerning the assessed valuation of tangible property, property tax deductions or property tax exemptions)

### **SUMMARY OF FINAL DETERMINATION**

25. The Petitioner failed to make a prima facie case of error in the subject property's assessment. The Board finds in the Respondent's favor.

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](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>>.