

REPRESENTATIVE FOR PETITIONER:

Carol Brown, Pro Se

REPRESENTATIVES FOR RESPONDENT:

Kristie L. Dressel, Center Township Assessor

Robert W. Metz, Commercial Supervisor, Center Township

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Carol Brown Trust,)	Petition Nos.: 45-042-03-1-5-00001
)	45-042-03-1-5-00002
Petitioner,)	45-042-03-1-5-00003
)	
)	
v.)	Parcels: 003-31-25-0089-0014
)	003-31-25-0089-0016
Center Township Assessor,)	003-31-25-0089-0015
)	
Respondent.)	County: Lake
)	Township: Center
)	
)	Assessment Year: 2003

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

March 20, 2009

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 was whether the assessed value of the subject properties exceeds their market value.

PROCEDURAL HISTORY

2. The Lake County Property Tax Assessment Board of Appeals (PTABOA) issued its assessment determinations upholding the Center Township Assessor's 2003 assessments of the subject properties on March 8, 2007.
3. Pursuant to Ind. Code § 6-1.1-15-1, the Petitioner filed Form 131 Petitions for Review of Assessment on April 5, 2007, petitioning the Board to conduct an administrative review of the subject property's 2003 assessment.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (the ALJ), Ellen Yuhan, held a hearing on January 13, 2009, in Crown Point, Indiana.
5. The following persons were sworn and presented testimony at the hearing:
For the Petitioner:
Carol Brown, taxpayer's representative,
Robert C. Brown, witness for the taxpayer,

For the Respondent:
Kristie L. Dressel, Center Township Assessor,
Robert W. Metz, Commercial Supervisor, Center Township.
6. The Petitioner presented the following exhibits:

Petitioner Exhibits 1-15 – Photographs of the subject property,
Petitioner Exhibit 16 – Cedar Lake Residential Zoning Ordinances.

7. The Respondent did not present any exhibits.
8. 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 November 7, 2008,
 - Board Exhibit C – Sign-in Sheet.
9. The subject properties are Parcel No. 003-31-25-0089-0014 (Parcel 14), which is a residential lot improved with a dwelling located at 7315 W. 128th Place and Parcel Nos. 003-31-25-0089-0015 (Parcel 15) and 003-31-25-0089-0016 (Parcel 16), two vacant residential lots located at 7313 128th Place, Cedar Lake.
10. The ALJ did not conduct an on-site inspection of the subject property.
11. For 2003, the PTABOA determined the assessed value of Parcel 14 to be \$7,900 for the land and \$26,400 for the improvements, for a total assessed value of \$34,300. The PTABOA determined the assessed values of Parcel 15 and Parcel 16 to be \$6,200 each. There are no improvements on Parcel 15 and Parcel 16.¹
12. For 2003, the Petitioner contends the assessed value of the land should total \$2,500 and the improvements should be assessed for \$12,500.

¹ The record is not clear on the assessed value of all of the parcels. The Form 115 did not have any assessed value recorded. *Board Exhibit A*. A spreadsheet purportedly attached to the 115 identified the subject parcels and listed the above values.

JURISDICTIONAL FRAMEWORK

13. 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

14. A Petitioner seeking review of a determination of the 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).
15. 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. Wash. 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”).
16. 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

17. The Petitioner contends the assessed value of the properties are excessive and presented the following evidence in support of its contentions:
- A. The Petitioner contends that the house is in poor condition. *R. Brown testimony*. According to the Petitioner's witness, the house has a partial unfinished basement, but the rest of the structure is pillar and post construction without a foundation. *Id.* In support of this contention, the Petitioner presented photographs of the exterior of the house. *Petitioner Exhibits 2-5.*
- B. The Petitioner further contends that if the house were to be destroyed it could not be rebuilt because there is not enough area for the required setback. *R. Brown testimony; Petitioner Exhibits 6 and 16.* Similarly, the Petitioner argues, the lots are worth nothing because an easement exists on one side of the house and on both sides of the far lot. *C. Brown testimony; R. Brown testimony*. According to the Petitioner's witness, you can not build on the far lot and the lots can not be combined because of the easements. *Id.* In support of this contention, the Petitioner presented photographs of the easement. *Petitioner Exhibits 7 and 13.*
- C. Finally, the Petitioner argues that the house is on a dead-end street and there is no room to turn around. *C. Brown testimony*. According to the Petitioner's witness, there is no driveway and no place to park except at the end of the street. *Id.* Ms. Brown testified that the occupant of the house must turn around two houses down in the backyard of another property the Petitioner owns. *Id.* In support of this contention, the Petitioner submitted photographs showing the turn around area. *Petitioner Exhibits 8 and 9.* Moreover, the Petitioner contends the house sits at the top of a steep ravine. *C. Brown testimony; R. Brown testimony*. According to the Petitioner's witness, this

property is too dangerous to rent to families with young children. *Id.* In support of this contention, the Petitioner submitted photographs showing the house and the ravine. *Petitioner Exhibits 3, 10-12, and 14-15.*

18. The Respondent contends the property is correctly assessed and presented the following evidence:
 - A. The Respondent contends the Petitioner’s evidence shows the property in its current state and not the condition that existed on the 2003 assessment date. *Dressel testimony.*
 - B. The Respondent further contends the Petitioner has no documentation to support its contention that the house could not be rebuilt if it were to be destroyed. *Metz testimony.*

ANALYSIS

19. 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. 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.
20. A property’s market value-in-use, as determined using the Guidelines, 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 Ct. 2006). But 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 or comparable properties and any other information compiled according to generally accepted appraisal practices. MANUAL at 5.

21. The Petitioner first contends that the house is in poor condition. *Brown testimony*. The Board interprets this to be an argument that the condition of the subject dwelling was improperly assessed. A condition rating is a "rating assigned each structure that reflects its effective age in the market." *See REAL PROPERTY ASSESSMENT GUIDELINES, VERSION A, app. B, at 5*, (incorporated by reference at 50 IAC 2.3-1-2). A condition rating is determined by relating the structure to comparable structures within the subject property's neighborhood. While the Petitioner presented pictures purporting to show the condition of the exterior of the house, the Petitioner presented no evidence of the condition rating that the house was assigned in its 2003 assessment. Nor did the Petitioner relate its property to comparable properties within the neighborhood. Thus, the Petitioner failed to show that its assessment was in error.

22. The Petitioner also argues that the properties are over-assessed because they are steep and mostly ravine. Further, the Petitioner contends that the properties are burdened by easements and lack any place to park. Land values in a given neighborhood are generally determined through the application of a Land Order that was developed by collecting and analyzing comparable sales data for the neighborhood and surrounding areas. *See Talesnick v. State Bd. of Tax Comm'rs*, 693 N.E.2d 657, 659 n. 5 (Ind. Tax Ct. 1998). However, properties often possess peculiar attributes that do not allow them to be lumped with each of the surrounding properties for purposes of valuation. The term "influence factor"

refers to a multiplier “that is applied to the value of land to account for characteristics of a particular parcel of land that are peculiar to that parcel.” GUIDELINES, glossary at 10. The Petitioner has the burden to produce "probative evidence that would support an application of a negative influence factor and a quantification of that influence factor." *See Talesnick v. State Bd. of Tax Comm'rs.*, 756 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001). While the properties' topography and characteristics may be relevant to the issue of whether a negative influence factor should apply here, the Petitioner failed to show how these conditions would impact the market value-in-use of the subject properties. *See Talesnick*, 756 N.E.2d at 1108. Thus, the Petitioner failed to raise a prima facie case that the subject properties are over-valued due to the steep elevation of the properties.

23. Here, the Petitioner did not present any market-based evidence of the type recognized by the Manual to demonstrate that the subject properties are assessed in excess of their true tax values. Instead the Petitioner relies solely on the methodology used to assess the parcels rather than upon evidence probative of the subject property's true tax value. The goal under Indiana's new assessment system is to ascertain market value-in-use. Even if the Respondent's assessment did not fully comply with the Guidelines, the Petitioner must show that the total assessment is not a reasonable measure of true tax value. Arguments based on strict application of the Guidelines are not enough to rebut the presumption that the assessment is correct. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 764, 768 (Ind. Tax Ct. 2006).
24. Where the Petitioner has not supported its claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacey Diversified Indus., LTD v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

SUMMARY OF FINAL DETERMINATION

25. The Petitioner failed to establish a prima facie case of error. The Board finds for the Respondent. No change in the assessment is warranted.

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

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

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>.