

FOR PETITIONERS: Milo Smith, Certified Tax Representative

FOR RESPONDENT: Marilyn Meighen, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

CURTIS C. CURRY TRUST,)	Petition Nos. 53-005-09-1-4-00021
)	53-005-10-1-4-00030
)	
Petitioners,)	Parcel No. 53-05-35-300-021.000-005
)	
v.)	
)	Monroe County
MONROE COUNTY ASSESSOR,)	Bloomington Township
)	2009 and 2010 assessment
Respondent.)	

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

January 15, 2014

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Introduction

The issue on appeal in this case is whether the assessment exceeds the market value-in-use. The evidence presented by the Petitioner was insufficient to show that the 2009 and the 2010 assessments were incorrect.

HEARING FACTS AND OTHER MATTERS OF RECORD

1. The property is a vacant parcel located on E. State Road 46, Bloomington, Indiana.
2. The Petitioner initiated its 2009 assessment appeal by timely filing a Form 130 on May 24, 2010, petitioning for a review of the assessment by county officials. The Monroe County Property Tax Assessment Board of Appeals (PTABOA) issued notice of its assessment determination denying the Petitioner's appeal on August 9, 2010.
3. The Petitioner initiated its 2010 assessment appeal by filing a Form 130 on September 14, 2010, petitioning for a review of the assessment by county officials. The PTABOA issued notice of its assessment determination denying the Petitioner's appeal on December 6, 2010.
4. The Petitioner filed a Form 131 Petition for Review of Assessment on September 15, 2010, petitioning the Board to conduct an administrative review of the property's 2009 assessment. The Petitioner filed a second Form 131 on January 20, 2011, petitioning the Board to conduct an administrative review of the property's 2010 assessment. The Petitioner elected to have these appeals heard according to small claims procedures.
5. The Assessor filed a motion on March 22, 2011, requesting the 2010 hearing to be transferred from small claims procedures and instead heard under the Board's standard hearing procedures. This motion was granted by the Board on April 4, 2011. The Assessor filed a second motion on December 31, 2012, requesting that the 2009 hearing also be transferred from small claims procedures and instead heard under the Board's standard hearing procedures. This motion was granted by the Board on January 4, 2013. Accordingly, the consolidated hearing for the 2009 and 2010 appeals proceeded under the standard hearing procedures governed by 52 IAC 2.
6. Administrative Law Judge Ronald Gudgel held the hearing on November 21, 2013. Neither the ALJ nor the Board conducted an on-site inspection of the property.

7. Certified Tax Representative Milo Smith represented the Petitioner and was sworn as a witness. County Assessor Judith Sharp and Ken Surface were both sworn as witnesses but did not testify.
8. The Petitioner presented the following exhibits:
 - Petitioner Exhibit 1 – Property record card and overlay report for the Petitioner’s property,
 - Petitioner Exhibit 2 – Geographic information system (GIS) map with property record cards of comparable properties and overlay reports,
 - Petitioner Exhibit 2b– Aerial map,
 - Petitioner Exhibit 2c – Aerial map,
 - Petitioner Exhibit 2d – Overlay.
9. The Respondent did not present any exhibits.
10. The following additional items are recognized as part of the record:
 - Board Exhibit A – The 131 Petitions,
 - Board Exhibit B – Notice of Hearing,
 - Board Exhibit C – Hearing Sign in Sheet.
11. For both the 2009 and 2010 assessment years, the PTABOA determined the market value-in-use of the land is \$816,800. The issues raised in the Form 131 Petitioners are whether the assessment exceeds the market value-in-use. *See Board Ex. A.*

BURDEN OF PROOF

12. Generally, a taxpayer seeking review of an assessing official’s determination has the burden of proving that a property’s assessment is wrong and what its correct assessment should 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). Nevertheless, the Indiana General Assembly enacted a statute that in some cases shifts the burden of proof:

This section applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal increased the assessed value of the assessed property by more than five percent (5%) over the assessed value determined by the county assessor or township assessor (if any) for the immediately preceding assessment date for the same property. The county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.

Ind. Code § 6-1.1-15-17.2.

13. Here, the parties agreed that the Petitioner has the burden of proving the current 2009 and 2010 assessments are incorrect and what the correct assessments should be.

SUMMARY OF THE PETITIONER'S CASE

14. The correct size of the parcel should be .781 acres and 25% of the primary land should be reclassified as unusable undeveloped land. The correct total assessed value of the land should be \$450,000. *Smith testimony.*
15. The property under appeal has been highlighted in blue on a GIS map as a triangular portion in the upper left portion of the map. *Smith testimony; Pet'r Ex. 2.* As shown on the map, the parcel under appeal can be accessed only by crossing properties one and two (both of which are owned by the Petitioner). *Id.*
16. The initial overlay of the parcel showed its size was .781 acres, which was subsequently changed to 1.21 acres. *Pet'r Ex. 1.* Property number two has been assessed as .81 acres in size. The Petitioner's representative copied the triangular parcel and then pasted it on the GIS map of property number two. The parcel under appeal does not cover property number two. *Smith testimony; Pet'r Ex. 2b.* Clearly, property number two is larger than the parcel under appeal, which should be reduced in size to the .781 acre shown on the original overlay. *Smith testimony.*

17. Property three is a drugstore with 1.61 acres located across the street from the property under appeal. The overlay for property three shows 1.61 acres, the same as the PRC for that property. *Smith testimony; Pet'r Ex. 2, property three.*
18. The north point of the subject parcel, approximately 25%, is not primary land but should be classified as unusable undeveloped land. *Smith testimony; Pet'r Ex. 2 and 2c.*
19. Although the legal description describes the parcel as 1.21 acres, that includes an area to the middle of State Road 46, an area that is not assessable. *Smith testimony.*

SUMMARY OF THE RESPONDENT'S CASE

20. Monroe County assesses based on the legal description of the property. Parcel lines on GIS maps are estimates and the first page of the GIS website cited by Mr. Smith states its descriptions should not be used for legal purposes. The legal description on the property record card shows 1.21 acres, for which the property was assessed. The legal descriptions on the properties identified by the Petitioner's representative also match the acreage for which they were assessed. The Petitioner has presented no survey or other legal document to establish the current acreage in incorrect. *Meighen argument.*
21. The base rate is \$675,000 for all of the properties identified by the Petitioner. *Meighen argument.*
22. The Petitioner's argument regarding land classification addresses the methodology used for assessing property and is insufficient to establish error. *Meighen argument.*
23. The Petitioner has presented no market evidence to show what the correct assessment should be. *Meighen argument.*

ANALYSIS

24. Real property is assessed based on "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." Ind. Code § 6-1.1-31-6(c); 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2).¹ The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. The primary method for assessing officials is the cost approach. *Id.* at 3. Indiana has Guidelines that explain the application of the cost approach. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 - VERSION A (incorporated by reference at 50 IAC 2.3-1-2). The value established by use of the Guidelines is presumed to be accurate, but it is merely a starting point. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut that presumption. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.
25. Regardless of the method used to rebut the presumed accuracy of an assessment, a party must explain how its evidence relates to the required valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for a 2009 assessment was January 1, 2008. The valuation date for a 2010 assessment date was March 1, 2010. I.C. 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).
26. According to Mr. Smith, the assessed acreage is excessive; however, he agreed the assessed acreage (1.21 acres) conforms to the legal description shown on the Property Record Card. *Pet'r Ex. 1*. The GIS website relied upon by the Petitioner to determine acreage specifically states its descriptions are not to be used for legal purposes. *Meighen argument*. According to Mr. Smith, the legal description includes a portion of State Road

¹ 50 IAC 2.3-1-2 was repealed and replaced by the REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2).

46, but he presented no substantial evidence to support this conclusion. Unsubstantiated conclusions do not constitute probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

27. The Petitioner also contended a portion of the land had been incorrectly classified as primary. In support of this position, the Petitioner provided only two aerial photographs of the parcel. Without explanation, photographs are conclusory and of no probative value. *Bernacchi v. State Bd. of Tax Comm'rs*, 727 N.E.2d 1133 (Ind. Tax Ct. 2000).

28. Here, the Petitioner failed to show that the assessment was not a reasonable measure of true tax value. *See* 50 IAC 2.3-1-1(d) (“failure to comply with the ... Guidelines ... does not in itself show that the assessment is not a reasonable measure of ‘True Tax Value[.]’”). The Petitioner presented no market evidence to show that the assessment is not a reasonable measure of the true tax value and the Petitioner’s arguments regarding a strict application of the GUIDELINES are not enough to rebut the presumption that the assessment is correct. *See Eckerling v. Wayne Township Assessor*, 841 N.E.2d 674 (Ind. Tax Ct. 2006) (stating that “when a taxpayer chooses to challenge an assessment, he or she must show that the assessor's assessed value does not accurately reflect the property's market value-in-use. Strict application of the regulations is not enough to rebut the presumption that the assessment is correct.”) Thus, the Petitioner must show through the use of market-based evidence that the assessed value does not accurately reflect the market value-in-use of this property. Here, the Petitioner did not. Therefore, the Petitioner failed to make a prima facie case. *See Eckerling*, (“In challenging their assessment, the Eckerlings have offered [no] market value-in-use evidence. Rather, they have focused strictly on the Assessor's methodology. The Eckerlings have not shown, however, that the Assessor's methodology resulted in an assessment that failed to accurately reflect their property's market value-in-use. Accordingly, the Court cannot say that the Eckerlings presented a prima facie case that their assessment was in error.”)

29. When a taxpayer fails to provide probative evidence supporting the position that an assessment should be changed, the Respondent’s duty to support the assessment with

substantial evidence is not triggered. *See Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003); *Whitley*, 704 N.E.2d at 1119. Here, the Petitioner failed to provide any probative evidence that the assessment should be changed, and the Assessor's duty to support the assessment was not triggered.

CONCLUSION

30. The Petitioner failed to make a prima facie case for a change in the assessed value. The Board finds in favor of the Respondent and the 2009 and 2010 assessments will not be changed.

The Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review.

Commissioner, Indiana Board of Tax Review

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- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice.

The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.