

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

Petitions: 64-006-19-1-5-00269-20
64-006-19-1-5-00270-20
64-006-19-1-5-00271-20
64-006-19-1-5-00272-20

Petitioner: Damon Run, LLC

Respondent: Porter County Assessor

Parcels: 64-06-23-402-002.000-006
64-06-23-402-001.000-006
64-06-23-326-007.000-006
64-06-23-426-003.000-006

Assessment Year: 2019

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

PROCEDURAL HISTORY

1. Damon Run, LLC contested the 2019 assessments of four vacant properties located in Valparaiso. The Porter County Property Tax Assessment Board of Appeals (“PTABOA”) issued determinations valuing the properties as follows:

Parcel No.	Land Assessment
64-06-23-402-002.000-006	\$ 5,000
64-06-23-402-001.000-006	\$18,100
64-06-23-326-007.000-006	\$ 4,400
64-06-23-426-003.000-006	\$35,000

2. Damon Run timely filed Form 131 petitions with the Board and elected to proceed under our small claims procedures. On January 14, 2021, Ellen Yuhan, our designated administrative law judge (“ALJ”) held a telephonic hearing on Damon Run’s petitions. Neither she nor the Board inspected the properties.
3. John F. Bramfeld appeared for Damon Run. Peggy Hendron, Residential Real Estate Supervisor, appeared for the Assessor. Both testified under oath.

RECORD

4. The official record for this matter contains the following:
- a. Petitioner Exhibit 1: Binder containing the 2019 appeal letter, photographs and maps showing wetlands, power lines, adjacent trailer parks, and pipeline easements, the Purchase Agreement, Amendment to Purchase Agreement, Settlement Statement, Amendment to Right-of-Way and Easement Grant
 - Petitioner Exhibit 2: Exhibit A to Form 130 Appeal of Assessment
 - Respondent Exhibit 1: 2019 property record card (“PRC”) for 64-06-23-326-007.000-006
 - Respondent Exhibit 2: Aerial of 71 W. Sands Mobile Park, 64-06-23-326-007.000-006
 - Respondent Exhibit 3: 2019 PRC for 64-06-23-402-002.000-006
 - Respondent Exhibit 4: Aerial of Whispering Sands-Vacant B 501, 64-06-23-402-002.000-006
 - Respondent Exhibit 5: 2019 PRC for 64-06-23-402.001.000-006
 - Respondent Exhibit 6: Aerial of Whispering Sands-Behind V 502, 64-06-23-402-001.000-0006
 - Respondent Exhibit 7: PRC for 64-06-23-426-003.000-006
 - Respondent Exhibit 8: Aerial of Meridian Road, 64-06-23-426-003.000-006
 - Respondent Exhibit 9: Exhibit from Petitioner’s Form 131 filing
 - Respondent Exhibit 10: Department of Local Government Finance (“DLGF”) Agricultural Land Assessments Presentation December 2020
 - Respondent Exhibit 11: August 28, 2018 e-mail between Petitioner and Assessor Staff
 - Respondent Exhibit 12: Form 115 for 64-06-23-426-003.000-006
 - Respondent Exhibit 13: Appraisal of William L. Eenshuistra, Jr. for the four parcels
 - Respondent Exhibit 14: Aerial of all four properties
- b. The record for the matter also includes the following: (1) all pleadings, briefs, motions, and documents filed in these appeals; (2) all notices and orders issued by the Board or our ALJ; and (3) an audio recording of the hearing.

BURDEN OF PROOF

5. Generally, a taxpayer seeking review of an assessing official’s determination has the burden of proof. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstance—where the assessment under appeal represents an increase of more than 5% over the prior year’s assessment, or where it is above the level determined in a taxpayer’s successful appeal of the prior year’s assessment. I. C. § 6-1.1-15-17.2 (b) and (d).

6. Here, the assessments for all four properties increased by more than 5% from 2018 to 2019. Their 2019 assessments are also higher than the resulting valuations from Damon Run's successful appeal of the four properties' 2018 assessments. The Assessor conceded that he therefore has the burden of proof.

SUMMARY OF CONTENTIONS

7. The Assessor's case:
 - a. There is no indication that there is any agricultural activity on the parcels. There are woodlands, but, according to the DLGF, when a woodland property is used primarily for residential use, be it homesite, recreation, privacy buffers, or wildlife viewing, the land should be assessed as residential or residential excess acreage. *Hendron testimony; Resp't Ex. 10.*
 - b. There are programs available that would enable the Assessor to assess the properties at a lower assessment by means of the agricultural land rate or the classified land rate. The Assessor's staff did recommend various programs to the Petitioner and gave it contact information for the district forester. *Hendron testimony; Resp't Ex. 11.*
 - c. For 2019, the 4-acre parcel at 71 W. Sands Mobile Park (Parcel No. 64-06-23-326-007.000-006) had a negative 40% influence factor applied for size and shape. It was assessed for \$17,000 before the PTABOA lowered it to \$4,400. The 4.99-acre parcel at Whispering Sands-Vacant B 501 (Parcel No. 64-06-23-402-002.000-006) also had a negative 40% influence factor. It was assessed at \$21,300. The PTABOA lowered its value to \$5,000. The 17.5-acre parcel at Whispering Sands-Behind V 502 (Parcel No. 64-06-23-402-001.000-006) had a negative 95% influence factor for a small portion of wetlands and a negative 40% influence factor for size and shape. It was originally assessed at \$72,900 before the PTABOA lowered it to \$18,100. Finally, the 33.3-acre parcel at Meridian Road (Parcel No. 64-06-23-426-003.000-006) had a negative 95% influence factor applied to the wetlands and another negative 40% influence factor applied for size and shape. The original 2019 assessment was \$79,300. The PTABOA determination was \$35,000. *Hendron testimony; Resp't Exs. 1, 3, 5, 7.*
 - d. The county engaged William L. Eenshuistra, Jr. to determine the market value for these parcels. He completed an appraisal that complies with the Uniform Standards of Professional Appraisal Practice ("USPAP") with an effective date of January 1, 2019. Eenshuistra noted that the sales comparison approach was the only applicable method because the parcels were vacant. He also noted that the highest and best use was for recreational purposes and personal enjoyment. *Hendron testimony; Resp't Ex. 13.*

- e. Eenshuistra used the same three comparable sales for all four parcels and adjusted them where he deemed appropriate. One sale occurred in January 2016. The other two sales took place on November 23, 2018. The appraiser did not adjust for property rights conveyed, financing conditions, conditions of sale, or market conditions. However, he did adjust for location, size, utilities, and percentage of wetlands. Eenshuistra concluded to the following values:

Parcel No.	Land Assessment
64-06-23-402-002.000-006	\$ 8,000
64-06-23-402-001.000-006	\$22,800
64-06-23-326-007.000-006	\$ 7,200
64-06-23-426-003.000-006	\$43,300

Hendron testimony; Resp't Ex. 13.

- f. The Assessor requests that the Board value the subject properties at the individual values stated in Eenshuistra's appraisal. *Hendron testimony; Resp't Ex. 13.*

8. Damon Run's case:

- a. Damon Run purchased the property, which consisted of five parcels, for \$49,000 in May 2017. Just a few months later, it was assessed at about four times that value. They filed an appeal and it went back to \$49,000. Then the county reassessed it again going up about 400%. *Bramfeld testimony; Pet'r Ex. 1.*
- b. The appraiser and the Assessor talk about limited access, but they do not understand how limited it is. The appraiser put the property on Rt. 6 when it is actually half a mile from Rt. 6. There are two trailer parks that border the property on the south. The appraiser notes there is access from there on a road called Vail Road, but there is no access from the trailer park. Vail Road is not a dedicated public road. It is a private road. The comparable properties in the appraisal do not have these issues. *Bramfeld testimony; Pet'r Ex. 1.*
- c. The biggest parcel is on Meridian, which is physically inaccessible due to protected wetlands. Immediately between the road and the property is wetlands. From the extreme south of the property to the north end, there is nothing but flood land and wetlands. You can walk in with waders but there is no other access. Also, the pipeline companies have enormous easements where nothing can be built. The fact that there are utilities is of no consequence because you cannot put improvements on the property. *Bramfeld testimony; Pet'r Ex. 1.*
- d. NIPSCO owns an adjacent property with high voltage power lines. Power lines decrease the property value by an average of 45%. Further, the NIPSCO property

bisects the eastern property from the western property. They are, in fact, trespassing when they cross the NIPSCO land. *Bramfeld testimony; Pet'r Ex. 1.*

- e. The property had been on the market for years for over \$100,000. Just before Damon Run purchased the property, the list price dropped to \$89,000. At that time, someone offered \$75,000 but that contract fell through. Damon Run offered \$52,000 provided the property could be accessed from the trailer park. When the owner failed to negotiate the access with the trailer park, Damon Run reduced the offer to \$49,000. The county completely disregards the fact that the property sold for \$49,000 in a recent sale, which is actually bracketed by the sales in the appraisal. *Bramfeld testimony.*
- f. The county has repeatedly suggested that the property be placed in some kind of conservancy. This is not necessarily a problem, but it is not the issue. The county keeps assessing the property for three to five times the actual value, making the property almost impossible to sell. *Bramfeld testimony.*

ANALYSIS

- 9. The Assessor made a prima facie case for increasing the assessment, which Damon Run failed to impeach or rebut. The Board reached this decision for the following reasons:
 - a. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting the property's true tax value. 50 IAC 2.4-1-1(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 3. "True tax value" does not mean "fair market value" or "the value of the property to the user." I.C. § 6-1.1-31-6(c), (e). It is instead determined under the rules of the DLGF. I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). The DLGF defines "true tax value" as "market value in use," which it in turn defines as "[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." MANUAL at 2.
 - b. All three standard appraisal approaches—the cost, sales-comparison, and income approaches—are "appropriate for determining true tax value." MANUAL at 2. In an assessment appeal, parties may offer any evidence relevant to a property's true tax value, including appraisals prepared in accordance with generally recognized appraisal principles. *Id.* at 3; *see also Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (reiterating that a market value-in-use appraisal that complies with USPAP is the most effective method for rebutting the presumption that an assessment is correct).
 - c. Regardless of the method used to prove true tax value, a party must explain how its evidence relates to the property's value as of the relevant 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. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for this appeal is January 1, 2019. Ind. Code § 6-1.1-2-1.5(a).

- d. As discussed above, the Assessor has the burden of proving that the 2019 assessments are correct. He offered a USPAP-compliant appraisal prepared by Eenshuistra, a certified general appraiser. Eenshuistra relied on the sales-comparison approach in estimating the four parcels' values to be as follows as of January 1, 2019:

Parcel No.	Land Assessment
64-06-23-402-002.000-006	\$ 8,000
64-06-23-402-001.000-006	\$22,800
64-06-23-326-007.000-006	\$ 7,200
64-06-23-426-003.000-006	\$43,300

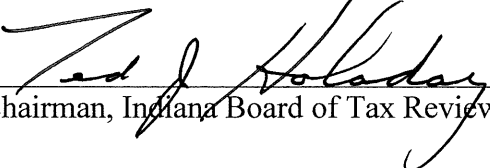
- e. In an effort to impeach the appraisal, Damon Run claimed that Eenshuistra failed to properly account for the parcels' access and easement issues, or the negative effect of high voltage power lines located on an adjacent property. However, based on our review of the appraisal, we find that Eenshuistra recognized these issues and made reasonable adjustments to account for the effects they had on each parcel's value.
- f. Because Damon Run failed to raise any valid concerns about the reliability of Eenshuistra's appraisal, we conclude it is probative evidence of the subject parcels' true tax value. Accordingly, the Assessor made a prima facie case that the four parcels' 2019 assessments should be increased to reflect the value conclusions from Eenshuistra's appraisal. The burden therefore shifts to Damon Run to rebut the Assessor's valuation evidence.
- g. Damon Run submitted evidence regarding its purchase of the four parcels (and a fifth parcel not included in this appeal) for \$49,000 in May 2017. While the purchase price of a property can be probative evidence of its value, we ultimately conclude that Eenshuistra's appraisal is the most persuasive valuation evidence before us.
- h. Damon Run's purchase may be direct evidence of how a buyer and seller valued the utility of the subject parcels, but it is evidence of how they valued it approximately 19 months before the January 1, 2019 valuation date at issue here. In contrast, two of the three comparable sales Eenshuistra relied on in his appraisal closed less than 2 months before the valuation date. We recognize that one of Eenshuistra's comparable sales was from January 2016 and that he did not adjust it for a change in market conditions. However, on balance, we find that Eenshuistra's inclusion of two comps from November 2018 helped him provide a more reliable estimate of the subject parcels' true tax value as of January 1, 2019.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, we find for the Assessor and order the 2019 assessments changed to reflect Eenshuistra's concluded values:

Parcel No.	Land Assessment
64-06-23-402-002.000-006	\$ 8,000
64-06-23-402-001.000-006	\$22,800
64-06-23-326-007.000-006	\$ 7,200
64-06-23-426-003.000-006	\$43,300

ISSUED: 4-13-21


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 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>>.