

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

Petition #: 71-002-06-1-4-02235
Petitioner: William Dobslaw
Respondent: St. Joseph County Assessor
Parcel: 23-1035-1728
Assessment Year: 2006

The Indiana Board of Tax Review (“Board”) issues this determination in the above matter. The Board finds and concludes as follows:

Procedural History

1. On July 25, 2007, William Dobslaw appealed his property’s assessment to the St. Joseph County Property Tax Assessment Board of Appeals (“PTABOA”). On September 28, 2007, the PTABOA mailed notice of its determination denying Mr. Dobslaw relief.
2. Mr. Dobslaw then timely filed a Form 131 petition with the Board. He elected to have his appeal heard under the Board’s small-claims procedures.
3. On September 30, 2008, the Board held an administrative hearing before its administrative law judge, Patti Kindler (“ALJ”).
4. Persons present and sworn in at hearing:
 - a) William Dobslaw
 - b) For the St. Joseph County Assessor:

David Wesolowski, County Assessor
Ralph Wolfe, PTABOA Member
Dennis Dillman, PTABOA Member
Ross Portlese, PTABOA Member
Sue Tranberg, Appeals Manager

5. Frank J. Agostino appeared as counsel for the PTABOA and the Centre Township Assessor. *Board Exhibit D*. Neither of those officials were parties to this appeal. Because the PTABOA issued its determination after June 30, 2007, the St. Joseph County Assessor was the party to defend the PTABOA's determination. Ind. Code 6-1.1-15-3(b); P.L. 219-2007 § 156(c). Nonetheless, Mr. Wesolowski, the St. Joseph County Assessor, proceeded as if Mr. Agostino represented him, and Mr. Dobslaw did not object to Mr. Agostino's participation. The Board therefore will proceed as if Mr. Agostino had filed an appearance on behalf of the St. Joseph County Assessor.
6. Mr. Dobslaw's property is located at 4502 South Michigan Street in South Bend. Mr. Dobslaw leases the property to a video-rental store. The property has 1.3769 acres of land.
7. Neither the Board nor the ALJ inspected the property.
8. The PTABOA valued Mr. Dobslaw's land at \$234,600 and his improvements at \$157,500 for a total assessment of \$392,100.
9. Mr. Dobslaw requested a value of \$174,500 for the land and \$157,500 for the improvements for a total assessment of \$332,000.

Parties' Contentions

10. Mr. Dobslaw offered the following evidence and arguments:
 - a) The PTABOA's determination was illegal because (1) the township assessor refused to meet with Mr. Dobslaw before the PTABOA hearing, and (2) the PTABOA neither gave Mr. Dobslaw advance notice of the hearing nor explained the basis for its decision. *Dobslaw testimony; Pet'r Exs. 4, 6-8*. On July 25, 2007, Mr. Dobslaw sent a letter to the Centre Township Assessor asking to appeal his assessment. The township assessor responded with a letter saying that it was the taxpayer's responsibility to prove his property's value and asking Mr. Dobslaw to submit an appraisal or comparable-sales information. *Dobslaw testimony; Pet'r Exs. 3, 5*. The PTABOA then held a hearing and, on September 28, 2007, issued its determination upholding the contested assessment. Under Indiana Code § 6-1.1-15-1, however, the township assessor was supposed to meet with Mr. Dobslaw before the PTABOA held a hearing. *Dobslaw testimony; Pet'r Exs. 4, 7*.
 - b) Procedural issues aside, Mr. Dobslaw claimed that the Assessor unfairly valued his land on an acreage basis while valuing comparable land on a front-foot basis. As a result, Mr. Dobslaw's property was assessed for more than comparable properties. *Dobslaw testimony*. To show that disparity, Mr. Dobslaw offered property record cards for seven properties that he believed were comparable to his. Those properties all were located on South Michigan Street within a few blocks of Mr. Dobslaw's property. Most were used for retail, and all were valued

on a front-foot basis using a base rate of \$450 per front foot and a market factor of 1.38. *Id.*; *Pet'r Exs. 10-16*.

- c) Mr. Dobslaw therefore calculated his land's value using a \$450-per-front-foot rate and a 1.38 market factor. He measured 280.81 front feet and found that the property had an average depth of 215 feet, which translated to a 1.0 depth factor. Based on those numbers, his land should have been valued at \$174,500—significantly less than the \$234,600 that the Assessor determined by using an acreage basis. *Dobslaw testimony*; *Pet'r Ex. 17*.

11. The St. Joseph County Assessor offered the following evidence and arguments:

- a) The township assessor followed applicable rules and guidelines in assessing Mr. Dobslaw's land. That land has a metes and bounds legal description, which is typically un-platted and priced on an acreage basis. Assessors throughout the county consistently valued all metes-and-bounds properties on an acreage basis. *Wesolowski testimony*.
- b) More importantly, Mr. Dobslaw's property was fairly and accurately assessed. The total assessment of \$392,100 accurately reflects the property's market value-in-use. Mr. Dobslaw did not provide any market evidence to refute the assessment. For example, he did not offer an appraisal and he refused to give accurate rental data. Mr. Dobslaw therefore failed to meet his burden of proof. *Agostino argument*.

Record

12. The official record for this matter is made up of the following:

- a) The Form 131 petition,
- b) A digital recording of the hearing.
- c) Exhibits:

Petitioner's Exhibit 1: The Form 131 petition,
Petitioner's Exhibit 2: Notice of Assessment, Form 11,
Petitioner's Exhibit 3: 7/26/07 letter from Mr. Dobslaw to Mary Mangus,
Petitioner's Exhibit 4: Copy of Indiana Code 6-1.1-15-1,
Petitioner's Exhibit 5: 8/22/07 letter from Mary Mangus to Mr. Dobslaw,
Petitioner's Exhibit 6: 9/29/07 letter from Mr. Dobslaw to Mary Mangus,
Petitioner's Exhibit 7: 9/29/07 letter from Mr. Dobslaw to PTABOA,
Petitioner's Exhibit 8: PTABOA Form 115, Notice of Assessment Determination,
Petitioner's Exhibit 9: Property record card ("PRC") for Mr. Dobslaw's property,
Petitioner's Exhibit 10: Comparable PRC 23-1025-1335,
Petitioner's Exhibit 11: Comparable PRC 23-1025-1331,

Petitioner's Exhibit 12: Comparable PRC 23-1025-1328,
Petitioner's Exhibit 13: Comparable PRC 23-1025-1373,
Petitioner's Exhibit 14: Comparable PRC 23-1025-1377,
Petitioner's Exhibit 15: Comparable PRC 23-1025-1382,
Petitioner's Exhibit 16: Comparable PRC 23-1025-1378,
Petitioner's Exhibit 17: "Petitioner's Worksheet."

The Assessor did not offer any exhibits.

Board Exhibit A – Form 131 petition with attachments,
Board Exhibit B – Notice of hearing,
Board Exhibit C – Hearing sign-in sheet,
Board Exhibit D – Notice of Appearance by Frank Agostino.

d) These Findings and Conclusions.

Analysis

Burden of Proof

13. A petitioner seeking review of an assessing official's determination must establish a prima facie case proving both that the current assessment is incorrect and specifically what the 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).
14. In making its case, the petitioner must explain how each piece of evidence relates to its 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 respondent to impeach or rebut the petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.

Mr. Dobslaw's Case

16. Mr. Dobslaw did not make a prima facie case for changing his property's assessment. The Board reaches this conclusion for the following reasons:

A. Procedural Claims

- a) Mr. Dobslaw first argued that the PTABOA's determination was illegal because:
(1) he was denied a meeting with the township assessor, (2) the PTABOA held its

hearing without giving him advance notice, and (3) the PTABOA did not explain how it reached its decision.

- b) Mr. Dobslaw did not explain what, if any, remedy he wanted for those procedural failures at the local level. In any event, none of those things affected Mr. Dobslaw's appeal to the Board. Once a taxpayer has properly invoked the Board's jurisdiction, its proceedings are *de novo*. The taxpayer is not limited to evidence offered at the PTABOA hearing. *See* Ind. Code § 6-1.1-15-4(m) (A person participating in a hearing [before the Board] is entitled to introduce evidence that is otherwise proper and admissible without regard to whether that evidence has previously been introduced at a hearing before the county property tax assessment board of appeals.") And the Board owes the PTABOA determination no deference. Thus, while the lack of notice may have deprived Mr. Dobslaw of the ability to present evidence or arguments to the PTABOA, it did not hinder his ability to present his case to the Board. *Id.* The same is true for his claims that he was denied a preliminary informal meeting with the township assessor and that the PTABOA did not explain its decision.

B. Substantive Claims

- c) Mr. Dobslaw offered no independent market-based evidence to support his claims. Instead, he claimed that the assessor improperly used a different methodology to value his land than it used to assess the land of nearby improved properties. That methodology-based argument fails whether one views it as an attempt by Mr. Dobslaw to show that his property was assessed for more than its market value-in-use or as a claim that assessments were not uniform and equal.

1. Market value-in-use

- d) Before 2002, true tax value was determined solely by reference to the State Board of Tax Commissioners' regulations and bore no relation to any objectively verifiable standard of measure. *Westfield Golf Practice Center, LLC v. Washington Twp. Assessor*, 859 N.E.2d 396, 399 (Ind. Tax Ct. 2007). Thus, taxpayers could prove their property's true tax value only by reference to the applicable assessment regulations. *Id.*
- e) Beginning in 1996, the Indiana Tax Court and Indiana Supreme Court issued a series of decisions addressing whether that system violated our state constitution's requirement for a uniform and equal rate of property assessment.¹ *See State Bd. of Tax Comm'rs v. Town of St. John*, 702 N.E.2d 1034, 1035-36 (Ind. 1998) ("St. John V").² The Supreme Court ultimately affirmed the Tax Court's finding that

¹ IND. CONST. ART. X § 1.

² (Citing to four earlier reported decisions involving that case: *Town of St. John v. State Bd. of Tax Comm'rs*, 665 N.E.2d 965 (Ind. Tax Ct. 1996) ("St. John I"); *Boehm v. Town of St. John*, 675 N.E.2d 318 (Ind. 1996) ("St. John II"); *Town of St. John v. State Bd. of Tax Comm'rs*, 690 N.E.2d 370 (Ind. Tax Ct. 1997) ("St. John III"); *Town of St. John v. State Bd. of Tax Comm'rs*, 691 N.E.2d 1387 (Ind. Tax Ct. 1998) ("St. John IV").)

the State Board's cost schedules, which formed the heart of its regulations, did not sufficiently relate to objectively verifiable data to ensure uniform and equal assessments based on property wealth. *St. John V*, 702 N.E.2d at 1043.

- f) The regulations for the 2002 general reassessment provide that missing link to objectively verifiable data by tying a property's assessment to its "market value-in-use." Thus, the 2002 Real Property Assessment Manual now 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).
- g) As before, assessors typically use a mass-appraisal version of the cost approach in assessing individual properties. The Real Property Assessment Guidelines for 2002 – Version A describe that approach in detail. But the Board no longer measures an assessor's success by whether he followed the state's guidelines; the Board instead look to whether his assessments accurately reflect the assessed properties' market values-in-use. *See* MANUAL at 20 (discussing the use of ratio studies to measure a mass-appraisal's accuracy and uniformity).
- h) That shift from focusing on methodology to focusing on measurable results applies equally to how the Board must judge appeals from individual assessments. Thus, while the Manual directs the Board to presume that a property's assessment under the Guidelines accurately reflects its true tax value, a taxpayer can rebut that presumption with evidence showing the property's actual market value-in-use. *See* MANUAL at 5; *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice will often suffice. *Id.* A taxpayer may also offer actual construction costs, sales information for the subject or comparable properties, and other information compiled according to generally accepted appraisal principles. *Id.*
- i) But a taxpayer no longer can rebut an assessment simply by pointing to an assessor's technical failure in applying the Guidelines. *Eckerling*, 841 N.E.2d at 676; *see also* Ind. Admin. Code tit.50, r. 2.3-1-1(d). Instead, the taxpayer should offer the types of market-based evidence described in the Manual. *See Eckerling*, 841 N.E.2d at 478 (finding that taxpayers failed to make a prima facie case by focusing strictly on the assessor's methodology rather than offering market value-in-use evidence).
- j) As already explained, Mr. Dobslaw did not offer any market value-in-use evidence. He instead argued only that the assessor should have used a different methodology to assess his land. He therefore failed to make a prima facie case rebutting his property's assessment.

2. *Uniformity and equality*

- k) Mr. Dobslaw’s claim that his land was not assessed uniformly and equally compared to nearby commercial properties is just a different side of the same coin—it is still based solely on methodology. And methodology-based arguments fare no better when couched in terms of uniformity and equality than they do when presented as valuation claims.
- l) Indeed, the Indiana Tax Court rejected a similar lack-of-uniformity-and-equality claim in *Westfield Golf Practice Center*. In that case, a taxpayer grounded its claim on the fact that the landing area for its driving range was assessed using a different base rate than the rate used to assess other driving ranges’ landing areas. 859 N.E.2d at 397-98. In rejecting the taxpayer’s claim, the court explained that “the overarching goal of Indiana’s new assessment scheme is to measure a property’s value using objectively verifiable data.” *Id.* at 399. Thus, while uniformity and equality is required in the end result, the procedures used to arrive at that result need not be uniform. *Id.* Rather than focusing on that end result by comparing the actual market value-in-use of its property to the market values-in-use of the other driving ranges, the taxpayers focused solely on the methodology used to compute the properties’ assessments. *Id.*
- m) Like the taxpayer in *Westfield Golf Practice Center*, Mr. Dobslaw focused only on the difference in base rates used to assess his property and other commercial properties in the area. He did not address whether his property was assessed at a higher percentage of its market value-in-use than the other properties. Indeed, he did little to compare his property to any of the other properties aside from noting their proximity to each other. Thus, like the taxpayer’s claim in *Westfield Golf Practice Center*, Mr. Dobslaw’s lack-of-uniformity-and-equality claim fails.

Conclusion

- 17. Mr. Dobslaw failed to make a prima facie case for a change in his assessment. The Board finds for the St. Joseph County Assessor.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now affirms the assessment.

ISSUED: _____

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

- 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>>