REPRESENTATIVE FOR PETITIONERS: Thomas L. McDonald, Tax Representative

REPRESENTATIVE FOR RESPONDENT: Beth Henkel, Attorney

BEFORE THE
INDIANA BOARD OF TAX REVIEW

Mark C. and Meredith L. Easley,	)	Petition Numbers:	49-101-03-3-4-00163
	)		49-101-04-3-4-00127
Petitioners,	)		49-101-05-3-4-00059
	)		49-101-03-3-3-00160
v.	)		49-101-04-3-3-00124
	)		49-101-05-3-5-00056
Marion County Assessor,	)		49-101-03-3-4-00161
	)		49-101-04-3-4-00125
Respondent.	)		49-101-05-3-4-00057
	)		49-101-03-3-4-00162
	)		49-101-04-3-4-00126
	)		49-101-05-3-4-00058
	)	Parcel Numbers:	1-041078
	)		1-047825
	)		1-096464
	)		1-028189
	)	Marion County, Center Township	
	)	2003, 2004 and 2005 Assessments	

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

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has reviewed the evidence and arguments presented in this case. The Board now enters its findings of fact and conclusions of law.

ISSUE

1. The Petitioners filed Petitions for Correction of an Error for the 2003, 2004, and 2005 assessments on the subject property, claiming that their land is assessed as commercial land when it should be assessed as industrial land. Must the assessments for those years be changed to reflect a land classification of industrial rather than commercial? More importantly, without getting into matters of subjective judgment, did the Petitioners prove what more accurate assessed valuations might have been?

HEARING FACTS AND OTHER MATTERS OF RECORD

2. The subject property is a winery located on four contiguous parcels at 204 Spring Street, 201 North College Avenue, 210 Fulton Street, and 205 College Avenue in Indianapolis.

3. The Petitioners filed Petitions for Correction of an Error (Form 133) for each parcel for assessment years 2003, 2004, and 2005 on November 7, 2007. On January 25, 2008, the Marion County Property Tax Assessment Board of Appeals (PTABOA) denied them. On March 5, 2008, the Petitioners filed with the Board.

4. The PTABOA sustained annual assessed values for the parcels that together amount to $123,200 for land and $116,800 for improvements (total assessment of $240,000).

5. The Petitioners contended the annual combined total assessed value should be $129,600.

6. Administrative Law Judge Paul Stultz held a hearing for these petitions on April 21, 2010. He did not inspect the property.

7. Petitioner Mark Easley, Tax Representative Thomas L. McDonald, and Douglas E. Rogers, a commercial/industrial valuation analyst for the Marion County Assessor's office, testified as witnesses at the hearing.

8. The Petitioners presented the following exhibits:

Petitioners Exhibit 1 – Summary of Issues and Evidence,
Petitioners Exhibit 2 – Property record cards for the subject properties,
Petitioners Exhibit 3 – Property record cards for comparable properties,
Petitioners Exhibit 4 – Zoning information for the subject properties,
Petitioners Exhibit 5 – Zoning use synopsis,
Petitioners Exhibit 6 – PTABOA Form 133 land determinations,
Petitioners Exhibit 7 – A 1999 State Board of Tax Commissioners' determination for *RGK Real Estate Development Group*,
Petitioners Exhibit 8 – Copy of *Indianapolis Historic Partners*, 694 N.E.2d 1224,
Petitioners Exhibit 9 – Real Property Assessment Guidelines, chapter 2 at 32,
Petitioners Exhibit 9(A) – Real Property Assessment Guidelines, glossary at 16,
Petitioners Exhibit 10 – Real Property Assessment Guidelines, glossary at 23,
Petitioners Exhibit 11 – 2007 zoning variance for the subject property.

9. The Respondent presented the following exhibits:

Respondent Exhibit A – The Respondent's Exchange of Exhibits and Summary of Witness Testimony and Argument,
Respondent Exhibit B – Copy of Board's determination for *Samuel and Mary Jane Lyle Revocable Living Trust v. St. Joseph County Assessor*,
Respondent Exhibit C – Copy of Board's determination for *JACO LLC v. Bolivar Township Assessor*.

10. The following additional items are recognized as part of the record:

Board Exhibit A – Form 133 Petitions for each parcel and each year,
Board Exhibit B – Notices of Hearing,
Board Exhibit C – Hearing Sign-In Sheet,
Board Exhibit D – List of petition and parcel numbers.

SUMMARY OF THE PETITIONERS' CASE

11. The subject property is a winery. Although there always has been a small retail area where the Petitioners' wine is sold to the public, the bulk of the wine that the Petitioners make at this facility is distributed to wholesalers. *Easley testimony*.

12. The Petitioners are appealing only their land value—it was assessed as commercial, but the correct classification should be industrial.[1] *McDonald testimony; Easley testimony; Pet'rs. Ex. 1.*

13. For the 2006 assessment, the Respondent agreed the land should be classified as industrial. *McDonald testimony.*

14. Comparable properties in the area are assessed as industrial. *McDonald testimony; Pet'rs Ex. 3.*

15. The property is zoned as industrial. In 2007, a zoning variance allowed additional retail activities. *McDonald testimony; Pet'rs Ex. 4, 11.*

16. The Marion County Land Order makes the issue an objective matter that can be corrected based on a Form 133. The land should be assessed as industrial and priced at $22,000 per acre in accordance with the certified Marion County Land Order. *McDonald testimony; Pet'rs Ex. 1.*[2]

17. The Marion County PTABOA has made changes to land assessments due to the incorrect classification of land use in other Form 133 appeals. *McDonald testimony; Pet'rs Ex. 6.*

18. The State Board of Tax Commissioners changed a commercial land classification to apartment land on an appeal made on a Form 133. *McDonald testimony; Pet'rs Ex. 7.*

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[1] A commercial class code indicates "taxable land and improvements used for general commercial and recreational purposes." An industrial class code indicates "taxable land and improvements used primarily for manufacturing, processing, or refining foods and materials." GUIDELINES, ch. 2 at 32 (*Pet'rs Ex. 9*).

[2] The Respondent objected to Mr. McDonald's testimony about the County Land Order, arguing that it is hearsay. The Respondent also pointed out that the Petitioners failed to offer a copy of any such document as evidence. Our Procedural Rules permit hearsay to be admitted; however, they do not require that it be allowed. 52 IAC 2-7-3. Here it is not necessary to sustain the hearsay objection. Regardless of the hearsay nature of Mr. McDonald's testimony about the existence of 2003, 2004, and 2005 County Land Orders, his testimony is inconsistent with the methodology for determining land values that has been used since 2002. County Land Orders were replaced by Neighborhood Valuation Forms. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002—VERSION A, ch. 2 at 6-27 (incorporated by reference at 50 IAC 2.3-1-2). Neighborhood Valuation Forms serve much the same purpose by specifying base rates for land. There probably is a Neighborhood Valuation Form that specifies a land base rate applicable to the subject property, but it is not in evidence in this case.

19. This appeal is similar to *Indianapolis Historic Partners* where the Indiana Tax Court ruled that assessing apartment land using commercial values flies in the face of the classification system set forth in the Marion County Land Valuation Order. *McDonald testimony; Pet'rs Ex. 8*.

20. Selecting the correct classification code is critical to arrive at a correct land assessment. The Guidelines establish the appropriate class code for the property is 310, which is a classification for industrial property. *McDonald testimony; Pet'rs Ex. 9*.

SUMMARY OF THE RESPONDENT'S CASE

21. The Petitioners are improperly seeking to challenge land values for the four parcels for years 2003, 2004, and 2005 using Form 133 Petitions. Only objective errors (those that require a simple observation of fact without resort to any subjective judgment) may be addressed on a Form 133. The requested change is based on a land value issue that is not objective. *Henkel argument*.

22. Assessments for land for 2002 and going forward are based on market value. Assessing land value has many subjective components, including market value-in-use and influence factors. *Henkel argument ; Resp't Ex. B*.

23. The Tax Court has stated that with our current system it sees no opportunity to use a Form 133 Petition as a means of applying real world evidence retroactively to change an assessment: "Because errors involving subjective judgment are not correctable via a Form 133 Petition, the Court does not foresee any opportunity to apply real world evidence retroactively by using the Form 133 process." *Town of St. John v. State Bd. of Tax Comm'rs*, 698 N.E.2d 399, 400 (Ind. Tax Ct. 1998); *Henkel argument*.

24. An assessor must make several subjective judgments when assessing land. Initially, the assessor identifies neighborhoods in which to group the properties. Based on sales data, the assessor next determines a base rate to apply to the parcels within a specific

neighborhood. A determination must also be made as to whether to apply an influence factor and, if so, what the correct percentage of adjustment should be. *Rogers testimony*.

25. The Petitioners are arguing about assessment methodology. Even if the land classification was incorrect, that point does not necessarily establish the assessed value is wrong. *Henkel argument; Resp't Ex. A, C*.

ANALYSIS

26. 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).

27. 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").

28. 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.

29. Taxpayers have two methods to appeal an assessment: a Petition for Review of Assessment (Form 131) authorized by Ind. Code § 6-1.1-15-1, or a Petition for Correction of an Error (Form 133) authorized by Ind. Code § 6-1.1-15-12. "A taxpayer that challenges a property assessment bears the responsibility of using the appropriate method." *Franchise Realty Corp. v. State Bd. of Tax Comm'rs*, 682 N.E.2d 832, 833

(Ind. Tax Ct. 1997); *Bender v. State Bd. of Tax Comm'rs*, 676 N.E.2d 1113, 1114 (Ind. Tax Ct. 1997).

30. A taxpayer can file a Form 131 challenging any element of an assessment, but it can only be initiated within 45 days after getting notice of what the assessment will be, or by May 10 of the assessment year, whichever is later. Ind. Code § 6-1.1-15-1(b).

31. The time for filing a Form 133 is longer.[3] But the issues that can be raised with a Form 133 are much more limited. Only objective errors that can be corrected with exactness and precision can be addressed with a Form 133. It is not for changes that require subjective judgment. Ind. Code § 6-1.1-15-12; *O'Neal Steel v. Vanderburgh Co. Property Tax Assessment Bd. of Appeals*, 791 N.E. 2d 857, 860 (Ind. Tax Ct. 2003); *Barth, Inc. v. State Bd. of Tax Comm'rs*, 756 N.E.2d 1124, 1128 (Ind. Tax Ct. 2001); *Bender*, 676 N.E.2d at 1114; *Reams v. State Bd. of Tax Comm'rs*, 620 N.E.2d 758, 760 (Ind. Tax Ct. 1993); *Hatcher v. State Bd. of Tax Comm'rs*, 561 N.E.2d 852, 857 (Ind. Tax Ct. 1990).

32. A determination is objective if it hinges on a simple, true or false finding of fact. *See Bender*, 676 N.E.2d at 1115. "[W]here a simple finding of fact does not dictate the result and discretion plays a role, [the] decision is considered subjective and may not be challenged through a Form 133 filing." *Id.*

33. The Petitioners focused entirely on the contention that their land should have been classified as industrial, but they have not presented a case that actually hinges on a simple, objective finding of fact. They acknowledged the business has always been a mixed-use facility, combining wine production with a small retail area for the sale of their wines to the public. "The basis for classification is the predominant current use." Guidelines, ch. 2 at 31, step 9. A determination of predominant use in any mixed-use facility requires subjective judgment. *See Bender*, 676 N.E.2d at 1116 ("In some cases,

[3] Indiana Code § 6-1.1-15-12 does not specify a time limit. Nevertheless, the time limit for filing a Form 133 is three years. *See Will's Far-Go Coach Sales v. Nusbaum*, 847 N.E.2d 1074, 1078 (Ind. Tax Ct. 2006).

[a selection] will be a closer call than in others, but regardless of the closeness of the judgment, it remains a judgment committed to the discretion of the assessor.")

34. In attempting to characterize the land classification determination as one that is objective, the Petitioners relied on *Indianapolis Historic Partners v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1224 (Ind. Tax Ct. 1998) because the Tax Court said, "Assessing apartment land using commercial values flies in the face of the classification system set forth in the Marion County Land Valuation Order." *Id.* at 1227. But unlike the Petitioners, Indianapolis Historic Partners (IHP) had appealed a 1989 assessment with a Form 131. Specifically, IHP claimed the land assessment was too high because it was determined from the rate for commercial land, rather than the much lower rate specifically for apartment land. The Tax Court explained that for 1989 county land valuation commissions determined the value of land in each county. "The Marion County Land Valuation Commission adopted the Marion County Land Valuation Order (which was subsequently approved by the State Board). *** The Marion County Land Valuation Order provides acreage values for Apartment Land (the Apartment Land Schedule) and Commercial Land (the Commercial Land Schedule)." *Id.* at 1225. The Tax Court concluded that "[u]sing the Commercial Land Schedule to value [IHP's] apartment land violates the plain language of the Marion County Land Order." *Id.* at 1227.

35. The decision for IHP clearly provides no support for the Petitioners' claim that the land classification for their winery must be changed in this case. Because IHP's case was not based on a Form 133 claim, the question of whether changing land classification required subjective judgments was irrelevant. Perhaps more importantly, the precise terms of the then-applicable Marion County Land Order were the crux of the IHP determination; however, no such evidence was presented in this case. As previously noted, since 2002 the old system of establishing land values through County Land Orders has not been used.[4] Mr. McDonald's conclusory testimony that according to the Marion County Land

[4] Nevertheless, when land orders were part of the assessment system and a taxpayer challenged its assessment under the land order, it was essential to have a copy of the land order in the record to read and analyze. A taxpayer who failed to provide such evidence failed to make a prima facie case. *See Goodhost v. Dep't of Local Gov't Fin.*, 786 N.E.2d 813, 815 (Ind. Tax Ct. 2003).

Order industrial land should be priced at $22,000 per acre is not supported by probative evidence—no such Land Order is in evidence. Furthermore, for years 2003, 2004 and 2005, that testimony simply cannot be accurate.

36. Furthermore, even assuming *arguendo* that Mr. McDonald intended to say the applicable Neighborhood Valuation Form specifies $22,000 per acre for industrial land, the circumstances are analogous to disputes about the proper application of a County Land Order. Therefore, it still is necessary for the evidence to contain a copy of the document that can be read and analyzed in determining the claim. Lacking such evidence in the record, the Petitioners failed to make a prima facie case for any change based on what the applicable Neighborhood Valuation Form might provide.

37. The Petitioners also attempted to support their claim by showing that the PTABOA and the State Board of Tax Commissioners have allowed taxpayers to get land reclassified where they filed Form 133s. Petitioners' Exhibit 6 shows that two taxpayers got the PTABOA to lower land values based on Form 133s that claimed industrial land values should have been used. In those cases the PTABOA determinations said, "The subject property is zoned as industrial and used industrially therefore, should be priced at the industrial rate, like other industrial properties in the proximity." Apparently on that basis those assessments were changed. The Board, however, owes the PTABOA determinations no deference and nothing persuades us that the PTABOA was correct when they made those changes. The State Board of Tax Commissioners' determination for RGK Real Estate Development Group, Petitioners' Exhibit 7, was for the 1995 assessment year and consequently it had nothing to do with our current market value-in-use system or real world evidence of value. Similar to the *Indianapolis Historic Partners* case, the determination indicates RGK's claim was based on particular provisions of a Marion County Land Order. Furthermore, the parties did not dispute the correct classification and base rate should be $25,000. The RGK determination also does not persuade us that the Petitioners' claim for a reclassification of their land is permissible on a Form 133.

38. Offering the property record cards of four other properties (*Pet'rs Ex. 3*), Mr. McDonald made some conclusory statements that comparable properties in the area are assessed as industrial. Again, such conclusory statements are not probative evidence. None of those property record cards contain information for years 2003, 2004 and 2005. Examination of those property record cards shows that only two of the properties are in the same neighborhood as the subject property. Of the two that are identified with the same neighborhood number as the subject property, neither of those has the same property class code as the subject property. In addition, the Petitioners failed to establish facts or provide any substantial explanation to support the claim about comparability. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470-471 (Ind. Tax Ct. 2005).

39. And while the Petitioners established their property was assessed as industrial land in 2006, each assessment and each tax year stand alone. *Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (citing *Glass Wholesalers, Inc. v. State Bd. of Tax Comm'rs*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991)). The industrial classification for 2006 does not help to prove that the assessed values for 2003, 2004, or 2005 must be corrected.

40. Classification of the Petitioner's land as commercial or industrial is a subjective issue that cannot be reviewed by using the Form 133 process. But more importantly, land classification is merely a tangent. Even if the classification of their land were an objective issue, the Petitioners failed to demonstrate the current assessments do not accurately reflect the true tax value of their property. Even if the land classification were changed to industrial, the record does not establish as an objective matter what a more accurate valuation might be—and with the inherent limitations of the Form 133 process we do not believe it would be possible for the Petitioners to do so.[5]

41. Real property is assessed based on its "true tax value," which does not mean fair market value. It means "the market value-in-use of a property for its current use, as reflected by

[5] The Tax Court has observed correctly that using the Form 133 process, which does not allow for subjective judgments, does not fit with our current assessment system where valuations stem from "real world evidence." *See Town of St. John*, 698 N.E.2d at 400.

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). There are three generally accepted techniques to calculate market value-in-use: the cost approach, the sales comparison approach, and the income approach. The primary method for assessing officials to determine market value-in-use is the cost approach. *Id.* at 3. To that end, Indiana promulgated Guidelines that explain the application of the cost approach. The value established by use of the Guidelines, while presumed to be accurate, 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.

42. Local assessing officials record the true tax value of the various land classifications on neighborhood valuation forms. GUIDELINES, ch. 2 at 26–28. As in the case of the Guidelines themselves, a neighborhood valuation form created pursuant to the Guidelines provides merely a starting point for the assessor. With respect to selecting base rates for land valuation, the Guidelines stress that "the pricing method for valuing the neighborhood is of less importance than arriving at the correct value of the land as of the valuation date." *Id*. at 16.

43. Nevertheless, the Petitioners presented no evidence regarding how their land value was calculated for 2003, 2004, or 2005. Perhaps more importantly, they presented no proposed corrected calculations that even purported to give a more accurate valuation.

44. The Petitioners failed to show that their assessments were not a reasonable measure of true tax value. *See* Ind. Admin. Code tit. 50, r.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 Petitioners presented no market evidence to show that the assessments are not a reasonable measure of the property's true tax value. Their arguments regarding a strict application of proper methodology (i.e., land classification)

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) (explaining that to be successful a petitioner must show that the assessor's valuation does not accurately reflect the property's market value-in-use because merely arguing about strict application of methodology is not enough to rebut the presumption that the assessment is correct.) Petitioners must show through the use of market-based evidence that the assessed value does not accurately reflect the property's market value-in-use. But here, the Petitioners did not. Therefore, they failed to make a prima facie case. *See id.* (holding that where a petitioner offered no market value-in-use evidence and merely focused strictly on an assessor's methodology such a case could not show an assessment failed to accurately reflect market value-in-use).

45. Consequently, the Petitioners failed to make a prima facie case.

SUMMARY OF FINAL DETERMINATION

46. The Board finds in favor of the Respondent. In accordance with the above findings and conclusions, there will be no change in the assessments.

ISSUED: __________________

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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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