

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

Petition Number: 87-002-08-1-5-00022
Petitioner: Michael L. Marshall
Respondent: Warrick County Assessor
Parcel No.: 87-13-02-200-034.000-002
Assessment Year: 2008

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

PROCEDURAL HISTORY

1. The Petitioner initiated an assessment appeal with the Warrick County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated June 29, 2009.
2. The PTABOA issued notice of its decision on October 5, 2009.
3. The Petitioner filed a Form 131 petition with the Board on November 16, 2009. The Petitioner elected to have his case heard according to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated July 2, 2010.
5. The Board held an administrative hearing on August 12, 2010, before the duly appointed Administrative Law Judge (the ALJ) Rick Barter.
6. The following persons were present and sworn in at the hearing:¹
 - a. For Petitioner: Michael L. Marshall, Petitioner
 - b. For Respondent: Angela Wilder, Warrick County Assessor
Brett Bombick, Tyler Technologies, county contractor

FACTS

7. The property at issue is an improved residential parcel located at 1355 West Maple Grove Road, Boon Township, Boonville, Warrick County, Indiana.²

¹ Marilyn S. Meighen of Meighen & Associates, P.C., appeared at the hearing representing the Respondent.

² Maple Grove Road was formerly named Cemetery Road and some older documents list the address of the subject property as 1355 Cemetery Road.

8. The ALJ did not conduct an on-site visit of the property.
9. For 2008, the PTABOA determined the assessed value of the subject property to be \$28,000 for the land and \$700 for the improvements, for a total assessed value of \$28,700.
10. The Petitioner requested an assessed value of \$20,500 for the land and \$700 for the improvements for a total assessed value of \$21,200 for the 2008 assessment.

ISSUES

11. Summary of the Petitioner's contentions in support of an alleged error in his property's assessment:
 - a. The Petitioner contends his property's 2008 assessed value is over-stated because an influence factor should have been applied to his excess acreage. *Marshall argument*. According to Mr. Marshall, his property had a negative fifty-percent influence factor applied to the 2.5 acres of his land classified as excess acreage after a 1991 appeal. *Id.*; *Petitioner Exhibit 9*. The Petitioner testified the negative influence remained on the land under appeal until the 2002 reassessment when it was removed as reflected by the 2002 property record card he presented as evidence. *Marshall testimony*; *Petitioner Exhibit 2*. Mr. Marshall argues that nothing on his property changed in that time and, therefore, the influence factor should still be applied to the excess acreage. *Marshall testimony*.
 - b. The Petitioner further contends that his property is over-valued based on the assessed values of neighboring parcels. *Marshall testimony*. For example, Mr. Marshall argues, the county granted a negative fifty-percent influence factor on the excess acreage of an adjoining parcel because of wet conditions caused by a lake and ditch on the parcel. *Marshall testimony*; *Petitioner Exhibit 6 at 2*. While the lake does not extend to his parcel, Mr. Marshall argues that the high level of the lake causes water to seep onto his property. *Id.* Similarly, drainage from the ditch on his property results in wet conditions like those on the neighboring property. *Marshall testimony*. As a result, Mr. Marshall contends, his property should receive a fifty-percent influence factor on the two and a half acres of land classified as excess acreage.³ *Marshall argument*.
12. Summary of the Respondent's contentions in support of the assessment:
 - a. Ms. Meighen argues that an influence factor is defined as "a multiplier that is applied to the value of the land to account for characteristics of a particular parcel of land that

³ The Petitioner also argued that other nearby parcels have negative influence factors because of flooding and the limited access caused by the location of a creek and a lake on the properties. *Marshall testimony*. Mr. Marshall argues that the same issues occur on his property, but are larger problems because his parcel is smaller than the neighboring lots. *Id.*

are peculiar to that parcel...” *Meighen argument, citing the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, BOOK 2, GLOSSARY at 10.* In order to prevail on the issue of the county’s failure to apply an influence factor, Ms. Meighen contends, a taxpayer must present probative evidence to support the application of a negative influence factor and to quantify that influence factor. *Meighen argument, citing Phelps Dodge v. State Board of Tax Commissioners, 705 N.E. 2d 1099, 1106 (1999).* Here, the Respondent argues, the Petitioner presented no evidence of flooding on his property.⁴ *Wilder testimony.*

- b. Further, the Respondent’s counsel argues, *Phelps Dodge* was issued under the old assessing system. *Meighen argument.* According to Ms. Meighen, under the present assessing system, a taxpayer that chooses to challenge an assessment cannot rely simply on alleging an error in the method by which the Assessor determined his assessment. *Id.; citing Eckerling v. Wayne Twp. Assessor, 841 N.E.2d 674, 678 (2006).* Instead the taxpayer must show that his assessed value does not accurately reflect the market value-in-use of the property. *Id.* Here, Ms. Meighen argues, the Petitioner failed to present any evidence of the property’s actual “bottom-line” value. *Meighen argument.*
- c. The Respondent also contends that the Petitioner’s 2008 assessment is correct. *Meighen argument.* According to the Respondent, all of the properties in the Petitioner’s neighborhood, including the subject property, are assessed at the same base rates per acre. *Wilder testimony.* Ms. Wilder testified that some parcels to the east of the Petitioner’s property have negative influence factors as a result of flooding and drainage problems caused by a lake created by surface coal mining and because the wetness and drainage issues result in some access issues. *Id.* The Petitioner’s property, however, has no lake on it and therefore was not granted a negative influence factor. *Id.* Similarly, the property immediately to the west of the Petitioner’s property does not have a lake or pond and, as a result, no influence factor was placed on that parcel either. *Id.; Respondent Exhibit G.*
- d. Finally, the Respondent’s attorney argues that each tax year stands alone. *Meighen argument.* Even if the State Board granted an influence factor as a result of the 1989 tax year hearing, the new assessing system calls for an annual trending review. *Id.* Thus, Ms. Meighen contends, adjustments to an assessment can be made each year. *Id.*

RECORD

13. The official record for this matter is made up of the following:
 - a. The Petition and all other submitted documents.

⁴ According to Ms. Wilder, the parcels with negative influence factors were the subjects of county-level appeals at which the owners presented evidence, photographs and documentations demonstrating that their land stays wet all year and access to portions of some parcels are cut off by the stripper pits. *Wilder testimony; Respondent Exhibits A through F.*

b. Exhibits:

Petitioner Exhibit 1 – 1995 property record card for the subject property,
Petitioner Exhibit 2 – 2002 property record card for the subject property,
Petitioner Exhibit 3 – 2009 property record card for Parcel No. 87-13-02-200-066.000-002, adjacent to the Petitioner’s property,
Petitioner Exhibit 4 – 2009 property record card for the subject property,
Petitioner Exhibit 5 - Copy of a plat map showing the subject property and neighboring parcels,
Petitioner Exhibit 6 – Copy of the Form 131 petition for the subject property,
Petitioner Exhibit 7 – Copy of the Form 115 notification from the county,
Petitioner Exhibit 8 – Copy of the Form 130 petition for the subject property,
Petitioner Exhibit 9 – Copy of the Petitioner’s Form 131 and 130 petitions from 1989,

Respondent Exhibit A – Aerial map of the area,
Respondent Exhibit B – Copy of the property record card for the subject property,
Respondent Exhibit C – Copy of the property record card for Parcel No. 87-13-02-200-066.000-002,
Respondent Exhibit D – Copy of the property record card for Parcel No. 87-13-02-200-069.000-002,
Respondent Exhibit E – Copy of the property record card for Parcel No. 87-13-02-200-068.000-002,
Respondent Exhibit F – Copy of the property record card for Parcel No. 87-13-02-200-035.000-002,
Respondent Exhibit G – Copy of the property record card for Parcel No. 87-13-02-200-067.000-002,
Respondent Exhibit H – Definition of influence factor and summary of *Phelps Dodge v. Wayne Twp. Assessor*,

Board Exhibit A – Form 131 Petition and related attachments,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing sign-in sheet.

d. These Findings and Conclusions.

ANALYSIS

14. The most applicable governing cases are:

- a. 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).

- b. 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”).
 - c. 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 case. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
15. The Petitioner failed to raise a prima facie case for a reduction in the assessed value of his property. The Board reached this decision for the following reasons:
- a. 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). Appraisers have traditionally 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 assess real property using a mass-appraisal version of the cost approach, as set forth in the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A.
 - b. A property’s assessment under the Guidelines is presumed to accurately reflect its true tax value. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005); *P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax 2006). 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 property or comparable properties and other information compiled according to generally accepted appraisal principles. MANUAL at 5.
 - c. Here, the Petitioner contends that because his property carried a negative influence factor in the past and because adjoining and nearby properties have negative influence factors on the excess acreage portions of the land, a fifty percent negative influence factor should be applied to the 2.5 acres of excess acreage on his parcel. *Marshall argument.*
 - d. Land values in a given neighborhood are generally determined 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).
- e. While the Petitioner contends that his property is "swampy," the Petitioner presented little evidence that his property floods and no evidence to quantify the effects of any such flooding on his property. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998); and *Herb v. State Bd. of Tax Comm'rs*, 656 N.E.2d 890, 893 (Ind. Tax Ct. 1995).
- f. Further, even if the Petitioner had shown that the Assessor erred in failing to apply an influence factor to his land, the Petitioner failed to show that the assessment did not accurately reflect the market value of the property. A Petitioner fails to sufficiently rebut the presumption that an assessment is correct by simply contesting the methodology used to compute the assessment. *Eckerling v. Wayne Township Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *P/A Builders & Developers v. Jennings County Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (recognizing that the current assessment system is a departure from the past practice in Indiana, stating that "under the old system, a property's assessed value was correct as long as the assessment regulations were applied correctly. The new system, in contrast, shifts the focus from mere methodology to determining whether the assessed value is *actually correct*").
- g. The Petitioner also contends his land should receive an influence factor because his neighbors have an influence factor on their land. This argument, however, fails for several reasons. First, the evidence suggests the neighboring properties that have received influence factor adjustments have a lake or pond located on the property. The Petitioner, himself, cited an adjoining parcel on which there was a lake as well as a ditch, while the subject property has no lake upon it. Second, Mr. Marshall's focus on comparing his assessment to the assessment of his neighbors' properties is misplaced. Such an argument was found to be insufficient to show an error in an assessment by the Indiana Tax Court in *Westfield Golf Practice Center, LLC v. Washington Township Assessor*, 859 N.E.2d 396 (Ind. Tax Ct. 2007) (rejecting taxpayer's lack of uniformity and equality claim where the taxpayer showed neither its own property's market value-in-use, nor the market values-in-use of purportedly comparable properties). In that case, the Tax Court held that it is not enough for a taxpayer to show that its property is assessed higher than other comparable properties. *Id.* Instead, the taxpayer must present probative evidence to show that its assessed value does not accurately reflect the property's market value-in-use. *Id.* This the Petitioner failed to do.

- h. Finally, to the extent the Petitioner contends the Assessor erred by removing the influence factor that formerly applied to his excess acreage, the Petitioner is similarly incorrect. 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)) (evidence as to a property's assessment in one tax year is not probative of its true tax value in a different tax year). Thus, the fact that the property was once granted an influence factor is not evidence that the property should still be receiving one.
- i. Where a taxpayer fails to provide probative evidence 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).

CONCLUSION

- 16. The Petitioner failed to raise a prima facie case that his property is over-valued. The Board finds in favor of the Respondent.

FINAL DETERMINATION

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now determines that the assessment should not be changed.

ISSUED: _____

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>.