

REPRESENTATIVE FOR PETITIONER:

Robert C. Brown, Pro Se

REPRESENTATIVES FOR RESPONDENT:

Kristie L. Dressel, Center Township Assessor

Robert W. Metz, Commercial Supervisor, Center Township

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Robert C. Brown Trust,	)	Petition Nos.:	45-032-03-1-5-00032
	)		45-032-03-1-5-00033
Petitioner,	)		45-032-03-1-5-00034
	)		45-032-03-1-5-00035
	)		45-032-03-1-5-00036
	)		45-032-03-1-5-00037
v.	)		45-032-03-1-5-00038
	)		45-032-03-1-5-00039
	)		45-032-03-1-5-00040
	)		45-032-03-1-5-00041
Center Township Assessor,	)	Parcels:	003-31-25-0119-0012
	)		003-31-25-0119-0007
Respondent.	)		003-31-25-0119-0006
	)		003-31-25-0119-0009
	)		003-31-25-0119-0010
	)		003-31-25-0119-0011
	)		003-31-25-0119-0013
	)		003-31-25-0119-0008
	)		003-31-25-0119-0005
	)		003-31-25-0119-0004
	)		
	)	County:	Lake
	)	Township:	Center
	)	Assessment Year:	2003

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

**March 4, 2009**

**FINAL DETERMINATION**

The Indiana Board of Tax Review (the Board) having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**ISSUE**

1. The issue presented for consideration by the Board was whether the assessed value of the subject property is excessive because the land is wetlands and may be unbuildable.

**PROCEDURAL HISTORY**

2. The Lake County Property Tax Assessment Board of Appeals (PTABOA) issued its assessment determinations upholding the Center Township Assessor's 2003 assessment of the subject property on March 8, 2007.
3. Pursuant to Ind. Code § 6-1.1-15-1, the Petitioner filed Form 131 Petitions for Review of Assessment on April 5, 2007, petitioning the Board to conduct an administrative review of the subject property's 2003 assessment.

**HEARING FACTS AND OTHER MATTERS OF RECORD**

4. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (the ALJ), Ellen Yuhan, held a hearing on January 13, 2009, in Crown Point, Indiana.
5. The following persons were sworn and presented testimony at the hearing:

For the Petitioner:

Robert C. Brown, Representative of the Petitioner  
Carol Brown, Witness for the Petitioner,

For the Respondent:

Kristie L. Dressel, Center Township Assessor  
Robert W. Metz, Commercial Supervisor, Center Township.

6. The Petitioner presented the following exhibits:  
Petitioner Exhibit 1-3 – Photographs of the parcels.
7. The Respondent did not present any exhibits.
8. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:  
Board Exhibit A – Form 131 Petitions  
Board Exhibit B – Notices of Hearing dated November 6, 2008  
Board Exhibit C – Sign-in Sheet.
9. The subject property consists of one residential lot improved with a dwelling located at 12812 Hilltop (Parcel 003-31-25-0119-0012) (Parcel 12) and nine vacant residential lots located at 12826 Blaine Street (Parcel 003-31-25-0119-0004) (Parcel 4), 12824 Blaine Street (Parcel 003-31-25-0119-0005) (Parcel 5), 12822 Blaine Street (Parcel 003-31-25-0119-0006) (Parcel 6), 12820 Blaine Street (Parcel 003-31-25-0119-0007) (Parcel 7), 12818 Blaine Street (Parcel 003-31-25-0119-0008) (Parcel 8), 12816 Blaine Street (Parcel 003-31-025-0119-0009) (Parcel 9), 12814 Blaine Street (Parcel 003-31-25-0119-0010) (Parcel 10), 12812 Blaine Street (Parcel 003-31-25-0119-0011) (Parcel 11), 12808 Blaine Street (Parcel 003-31-25-0119-0013) (Parcel 13), in Cedar Lake.<sup>1</sup>

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<sup>1</sup> The Board notes the Petitioner sold three of the ten parcels, Parcel 11, Parcel 12 and Parcel 13, since the March 1, 2003, assessment date. Although the Petitioner did not withdraw the Petitions related to these parcels, the Petitioner's representative testified that the Petitioner was only contesting the remaining seven vacant parcels

10. The ALJ did not conduct an on-site inspection of the subject property.
11. The PTABOA determined the assessed value of the subject parcels to be \$7,400 for the land and \$21,200 for the improvements, for a total assessed value of \$28,600 for Parcel 12 and \$4,500 for land on each of the vacant parcels, Parcel 4, Parcel 5, Parcel 6, Parcel 7, Parcel 8, Parcel 9, Parcel 10, Parcel 11 and Parcel 13.<sup>2</sup>
12. The Petitioner contends the assessed value of the vacant parcels should be \$1,000 each.

#### **JURISDICTIONAL FRAMEWORK**

13. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property; (2) property tax deductions; and (3) property tax exemptions; that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Ind. Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

#### **ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN**

14. A Petitioner seeking review of a determination of the county Property Tax Assessment Board of Appeals has the burden to establish a prima facie case proving, by a preponderance of the evidence, that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian*

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<sup>2</sup> The record is not clear on the assessed value of all of the parcels. The Form 115 did not have any assessed value recorded. *Board Exhibit A*. A spreadsheet purportedly attached identified the subject parcels but only indicated a 04/05 tax of \$119.38 for each parcel, suggesting that all of the vacant lots were assessed for the same value. Finally, property record cards were attached to the Petition for Parcel 10, Parcel 11 and Parcel 13 identifying an assessment of \$4,500 for each of those three lots.

*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).

15. 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. Wash. 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”).
16. 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.

#### ANALYSIS

17. The Petitioner contends that the subject parcels are wetlands and should be assessed at \$1,000 per parcel and presented the following evidence in support of his contentions:
  - A. The Petitioner contends the properties are over-valued because they are wetlands. *R. Brown testimony*. According to the Petitioner’s witness, a ditch runs through the center of the lots and the property is covered in cattails. *Id.* In support of this contention, the Petitioner presented photographs showing the topography of the lots and an area where cattails grow. *Petitioner Exhibits 1-3*.
  - B. The Petitioner further contends the lots are unbuildable. *R. Brown testimony*; *C. Brown testimony*; *Petitioner Exhibits 1-3*. According to the Petitioner’s

witness, because they are wetlands, the lots likely have the wrong kind of soil for building any structure. *R. Brown testimony*. Moreover, Mr. Brown argues, the lots are too low for building in their present condition. *Id.*

- C. Finally, the Petitioner argues that another taxpayer in Hanover Township got his assessments lowered to \$1,000 per lot. *R. Brown testimony*.
18. The Respondent contends the property is correctly assessed and presented the following evidence:
- A. The Respondent contends they applied a 70% influence factor to the lots for vacancy and for the lack of drainage. *Metz testimony; Dressel testimony*. According to the Respondent, the fact that a taxpayer in another township has a lower assessment is irrelevant because the Respondent has to stay within the neighborhood for assessment purposes. *Metz testimony*.
- B. The Respondent further contends that the Petitioner has not presented any documentation from a legal authority to show that the lots are wetlands, nor has the Petitioner had the soil tested to show the lots are unbuildable. *Metz testimony; Dressel testimony*.

#### ANALYSIS

19. 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). The appraisal profession traditionally has 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 value real property using a mass-appraisal version of the cost approach,

as set forth in the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A.

20. A property's market value-in-use, as determined using the Guidelines, is presumed to be accurate. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005) *reh'g den. sub nom. P/A Builders & Developers, LLC*, 842 N. E.2d 899 (Ind. Tax Ct. 2006). But 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 or comparable properties and any other information compiled according to generally accepted appraisal practices. MANUAL at 5.
  
21. The Petitioner first argues that the properties are over-assessed because they are wetlands and unbuildable. Land values in a given neighborhood are generally determined through the application of a Land Order that was developed 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).

22. Here, the Respondent's witness testified that the assessor applied a 70% negative influence factor for the properties' vacancy and drainage. The Petitioner failed to rebut the presumption of the assessment's accuracy when it failed to quantify the impact of the negative factors on the market value of the parcels. While the properties' topography or drainage may be relevant to the issue of whether a different negative influence factor should apply here, the Petitioner failed to show how these conditions would impact the market value-in-use of the subject properties. Further, the Petitioner failed to show the actual market value of the properties. *See Talesnick*, 756 N.E.2d at 1108. Thus, the Petitioner failed to raise a prima facie case that the subject properties are over-valued due to the wetlands, the elevation of the properties or because of the location of the drainage ditch.
23. The Petitioner further argued that the assessments of other lots in another township were reduced to \$1,000. The Petitioner, however, failed to present any evidence to support its claim or to show that the other lots were comparable to the subject parcels. A conclusory statement is insufficient to establish a prima facie case of error in assessment. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E. 2d 1113, 1122 (Ind. Tax 1998).
24. Even if the Petitioner had shown that another similar lot was assessed for a different value, that 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.*



25. Here, the Petitioner did not present any market-based evidence of the type recognized by the Manual to demonstrate that the subject properties are assessed in excess of their true tax values. Instead the Petitioner relies solely on the methodology used to assess the parcels rather than upon evidence probative of the subject property's true tax value. The goal under Indiana's new assessment system is to ascertain market value-in-use. Even if the Respondent's assessment did not fully comply with the Guidelines, the Petitioner must show that the total assessment is not a reasonable measure of true tax value. Arguments based on strict application of the Guidelines are not enough to rebut the presumption that the assessment is correct. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 764, 768 (Ind. Tax Ct. 2006).
26. Where the Petitioner has not supported its claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacey Diversified Indus., LTD v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

#### **SUMMARY OF FINAL DETERMINATION**

27. The Petitioner failed to establish a prima facie case of error. The Board finds for the Respondent. No change in the assessment is warranted.

This Final Determination of the above captioned matter is issued this by the Indiana Board of Tax Review on the date first written above.

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Chairman, 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>.