

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

**Petition:** 10-005-07-1-5-00002  
**Petitioners:** Osman Senler, et al.  
**Respondent:** Clark County Assessor  
**Parcel:** 04-00001-0999-1  
**Assessment Year:** 2007

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

**Procedural History**

1. The Petitioners initiated an assessment appeal regarding the subject property by filing written notice with the Clark County Property Tax Assessment Board of Appeals (PTABOA) on December 9, 2008.
2. The PTABOA mailed notice of its decision on April 6, 2009.
3. The Petitioners appealed to the Board by filing a Form 131 on April 27, 2009. They elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing to the parties dated October 16, 2009.
5. Administrative Law Judge Paul Stultz held the Board's administrative hearing on December 09, 2009. He did not inspect the property.
6. Osman Senler, Carleton Godsey, County Assessor Vicky Kent Haire and Frank Kelly were sworn as witnesses. Assessor Haire, however, did not testify.

**Facts**

7. The property is 6.77 acres of vacant land located along Utica Pike in Jeffersonville.
8. The PTABOA determined the total assessed value is \$247,900.
9. The Petitioners claimed the assessed value should be \$134,250.

## **Record**

10. The official record for this matter is made up of the following:
  - a. Petition for Review of Assessment (Form 131) with attachments,
  - b. Notice of Hearing,
  - c. Hearing Sign-In Sheet,
  - d. Digital recording of the hearing,
  - e. Petitioners Exhibit 1 – Site plan of subject parcel,  
Petitioners Exhibit 2 – Petitioners’ value calculation,  
Respondent Exhibit 1 – Property record card,
  - f. These Findings and Conclusions.

## **Contentions**

11. Summary of the Petitioners’ case:
  - a. The original 2007 assessment was \$670,000. A member of the county assessor’s staff offered to change it to \$177,800. But then the PTABOA increased it to \$247,900 with no explanation. *Godsey testimony; Senler testimony.*
  - b. The property is approximately 6.77 acres. About 27% of it (1.86 acres) is in the Ohio River normal pool, which means it is always under water. This area is blue on the site map. About 70.7% (4.77 acres) is in the 100-year floodway. When the river floods this area can be under water. Only the green area on the map (0.15 acres) is out of the floodway and useable. *Godsey testimony; Pet’r Ex. 1.*
  - c. If raised above the flood level, building in the floodway is possible. But that requirement adds to construction costs. Building in the floodway also requires permission from the Army Corps of Engineers. *Godsey testimony.*
  - d. The base rate established for all property along Utica Pike is \$100,000 per acre. Using that base rate, the assessment for the subject property should be \$134,000. The 1.86 acres in the Ohio River normal pool has no value. The 4.77 acres in the floodway should be assessed at \$119,000 (\$25,000 per acre). The remaining 0.15 acres should be assessed at \$15,000 (\$100,000 per acre). *Godsey testimony; Pet’r Ex. 2.*

12. Summary of Respondent's case:
  - a. The Petitioners rejected an offer to reduce the assessment to \$177,800 before the PTABOA hearing. Consequently, the matter went before the PTABOA and it determined the assessment should be \$247,900. The PTABOA made adjustments for size, shape, and flooding issues. *Kelly testimony*.
  - b. The Petitioners presented no evidence that would establish a prima facie case to change the assessment. Their opinion of value is not based on any objective and verifiable data showing market value as of January 1, 2006. *Kelly argument*.

### Analysis

13. A petitioner who seeks 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).
14. In making its case, a petitioner 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”).
15. The Petitioners did not make a case for any assessment change.
  - a. 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 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). Indiana promulgated Guidelines for assessing officials that are based on the cost approach. The value established by use of those 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.
  - b. Although the size information that the parties presented varies slightly, the subject property is a parcel that altogether totals approximately 6.77 or 6.78 acres. A part is always underwater because it is in the “normal pool” of the Ohio River—and that part properly has an assessed value of zero.<sup>1</sup> Most of the parcel is in the

---

<sup>1</sup> The Petitioners’ map indicates this area is 1.86 acres, but the property record card indicates 1.82 acres.

floodway.<sup>2</sup> Only a small part of the parcel with a steep slope is higher than the floodway.<sup>3</sup> Neither party focused on their differences in the precise measurements for these areas or provided probative evidence that might help to determine which exact area measurements might actually be correct. And the determination of this case does not require the minor differences in the exact size of these areas to be resolved. Therefore, we will not do so.

- c. Other than the area normally covered by the waters of the Ohio River that had no assessed value assigned to it, the property record card shows the balance of the property was assessed with a base rate of \$100,000 per acre and a negative 50% influence factor, which amounts to \$50,000 per acre. The Petitioners acknowledged that \$100,000 per acre was the established base rate. Although the Petitioners did not specifically make their claim in terms of a negative influence factor, their claim that the valuation for the biggest part of the property should be based on only \$25,000 per acre because it is in the floodway amounts to claiming the negative influence factor should be 75% rather than 50%. *See REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002—VERSION A*, ch. 2 at 11; Glossary at 10 (incorporated by reference at 50 IAC 2.3-1-2). In making such a claim, the Petitioners were required to submit probative evidence that (1) identified their land's deviation from the norm and (2) quantified the impact of that deviation on the land's value. *Kooshtard Property VIII v. Shelby Co. Assessor*, 902 N.E.2d 913, 916 (Ind. Tax Ct. 2009).
- d. The Petitioners established that a portion of the subject property is subject to flooding and part of it has a steep slope, but there is no probative evidence that quantifies the resulting reduction in value. Similarly, there is no probative evidence that the negative 50% influence factor already applied to the assessment does not sufficiently account for the flooding and topography issues. The Petitioners failed to make a case for any assessment change because they did not present probative evidence for a more accurate valuation. Their calculation that the value should be \$134,000 is merely a conclusion that is not supported by probative evidence. *See Whitley Products v. State Bd. Of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). Such unsupported conclusions do not help to prove that any assessment change must be made.
- e. A taxpayer must show through the use of market-based evidence that the assessed value does not accurately reflect market value-in-use. *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674 (Ind. Tax Ct. 2006). The Petitioners made no such showing in this case.
- f. When a taxpayer fails to provide probative evidence supporting his position that an assessment should be changed, the Respondent's duty to support the

---

<sup>2</sup> The Petitioners' map indicates the floodway area is 4.77 acres, but the property record card indicates 4.24 acres.

<sup>3</sup> The Petitioners' map indicates the area above the floodway is only 0.15 acres, but the property record card indicates 0.7175 acres.

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); *Whitley Products*, 704 N.E.2d at 1119.

### Conclusion

16. The Petitioners failed to make a prima facie case. The Board finds in favor of the Respondent.

### Final Determination

In accordance with the above findings and conclusions, the assessment will not be changed.

ISSUED: \_\_\_\_\_

\_\_\_\_\_  
Commissioner, 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>>