

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

Petition No.: 59-014-08-1-5-00001
Petitioner: Thomas G. Whitfield
Respondent: Orange County Assessor
Parcel No.: 59-10-01-200-001.000-014
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 Orange County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated July 27, 2009.
2. The PTABOA issued its decision on October 21, 2009.
3. The Petitioner timely initiated an appeal to the Board by filing a Form 131 petition dated November 20, 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 February 3, 2010.
5. The Board held an administrative hearing on April 8, 2010, before the duly appointed Administrative Law Judge (the ALJ) Rick Barter.
6. The following persons were present and sworn in at the hearing:
 - a. For Petitioners: Tom Whitfield, Petitioner
 - b. For Respondent: Linda Reynolds, Orange County Assessor

FACTS

7. The property under appeal is an improved residential parcel containing 32.88 acres of land, located 120 South County Road 500 East, Stampers Creek Township, Paoli, Indiana.
8. The ALJ did not conduct an on-site visit of the property.

9. For 2008, the PTABOA determined the assessed value of the property to be \$29,900 for the land and \$75,500 for the improvements, for a total assessed value of \$105,400.
10. The Petitioner requested an assessed value of \$18,290 for the land and \$51,200 for the improvements, for a total assessed value of \$69,490.

PARTIES' CONTENTIONS

11. Summary of the Petitioner's contentions in support of an alleged error in his assessment:
 - a. The Petitioner contends that the property's land assessment is overstated. *Whitfield testimony.* According to Mr. Whitfield, the land classified as "agricultural tillable" is over-valued because the land floods and water run-off from nearby higher ground washes over the property during rains, which results in trenching and washouts. *Id.* This reduces the productivity of the land compared to neighboring agricultural land. *Id; Petitioner Exhibits 7 through 10.* In support of this contention, the Petitioner submitted three photographs of the tillable ground while flooded; a report dated March 5, 2010, from the U.S. Department of Agriculture Farm Service Agency detailing crop expectations on the tillable portions of the subject property; and a letter dated March 5, 2010, from the Orange County Farm Service Agency stating it cannot reveal production information on other owners' crop lands without their permission. *Petitioner Exhibits 7 through 12.*
 - b. The Petitioner further argues that the house on the property is over-assessed because it is in extremely poor condition. *Whitfield testimony; Petitioner Exhibits 1 through 6.* According to Mr. Whitfield, the house has holes in the roof and the living room floor has fallen into the basement. *Whitfield testimony.* Mr. Whitfield contends the house is a detriment to the property because it will cost \$17,000 to raze it. *Id.* In support of this contention, the Petitioner offered six photographs of the exterior and interior of the house. *Petitioner Exhibits 1 through 6.*
 - c. Finally, the Petitioner contends the mobile home on the property is over-valued. *Whitfield testimony.* Mr. Whitfield testified that he purchased the mobile home in 1992 for \$37,000. *Id; Petitioner Exhibit 13.* According to Mr. Whitfield, he has only been offered \$12,000 in trade-in value for it. *Whitfield testimony.* In support of this contention the Petitioner submitted a copy of a sales agreement dated June 6, 1992, between the Petitioner and Carroll's Mobile Homes, Inc., showing a sales price of \$37,693 for the mobile home. *Petitioner Exhibit 13.*
12. Summary of the Respondent's contentions in support of the assessment:

- a. The Respondent contends the Petitioner's 2008 assessed value is correct and that Mr. Whitfield offered no timely market value-in-use evidence to rebut the assessed value. *Reynolds argument.*
- b. According to Ms. Reynolds, she adjusted the number of acres of tillable land based on information from the Petitioner. *Reynolds testimony.* However, she contends, the property is not entitled to an adjustment for flooding because the water on the land is not standing flood water, but is wash-over water that comes up and goes down quickly during rain *Id.*
- c. Further, Ms. Reynolds testified that as a result of previous appeals, the county lowered the value of the original house to \$1,000 based on its condition. *Reynolds testimony.*
- d. Finally, Ms. Reynolds argues, the mobile home is assessed by the county based on the value it adds to the overall property's value. *Reynolds testimony.* According to Ms. Reynolds, the Petitioner presented no evidence of the market value of the improvement as of January 1, 2007, which is the valuation date for the 2008 assessment at issue in this appeal. *Id.*

RECORD

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

a. Exhibits:

- Petitioner Exhibit 1 – Photograph of the original house,
- Petitioner Exhibit 2 – Photograph of the interior of the house showing the living room floor from the bedroom,
- Petitioner Exhibit 3 – Photograph of the interior of the house showing the living room floor from the kitchen,
- Petitioner Exhibit 4 – Photograph of the interior of the house showing the living room floor from the outside front door,
- Petitioner Exhibit 5 – Photograph of the interior of the house showing the living room ceiling,
- Petitioner Exhibit 6 – Photograph of the house showing the exterior of the roof,
- Petitioner Exhibit 7 through 10 – Photographs of the land during rain and the over-wash of water,
- Petitioner Exhibit 11 – USDA Farm Service Agency report on the tillable land of the subject property,
- Petitioner Exhibit 12 – Orange County Farm Service letter to the Petitioner regarding his request for information on other owners' land,
- Petitioner Exhibit 13 – Copy of the bill-of-sale for the purchase of the mobile home in 1992,

Respondent Exhibits – None submitted,

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 evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
15. The Petitioner failed to establish a prima facie case that his property's assessment is over-valued. 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). The appraisal profession has 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. In 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.
 - 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. Regardless of the method used to rebut an assessment's presumption of accuracy, a party must explain how its evidence relates to the subject property's market value-in-use as of the relevant valuation date. *O'Donnell v. Department of Local Government Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2008, assessment, the valuation date was January 1, 2007. 50 IAC 21-3-3.
 - d. The Petitioner first contends that the assessed value of his land does not reflect the damage caused by flooding. *Whitfield testimony*. In Indiana, agricultural land is valued based on the productive capacity of the land, regardless of the land's potential or highest and best use. GUIDELINES, ch. 2 at 99. Soil maps prepared by the United States Department of Agriculture categorize land according to its productivity. *Id.* at 106. There are seven categories of agricultural land use types including classified land, tillable land, nontillable land, woodland, other farmland, agricultural support land, and homesite. *Id.* at 102 - 105. Tillable land is further divided into subtypes to compensate for flooding. *Id.* at 104. Type 41 agricultural land has "damaging floods [that] occur two to four times in a ten-year period"; Type 42 land has "damaging floods [that] occur five times or more in a ten-year period"; and Type 43 land is "farmed wetlands" which is land verifiably designated as such by the U.S. Department of Agriculture. *Id.* Specific influence factors are applied based on each subtype of tillable land. *Id.*
 - e. The Petitioner's property record card identifies approximately 14.1 acres of land as "tillable land." *Board Exhibit A*. The Petitioner's Farm Services Agency Report, on the other hand, identifies 14.7 acres of land as cropland. *Petitioner Exhibit 11*. Thus, arguably, the Assessor is undervaluing the Petitioner's tillable land – rather than over-valuing the acreage. Mr. Whitfield argues, however, that drainage from neighboring properties causes trenching and washouts on his property and therefore the value of the tillable land should be reduced. *Whitfield testimony*. In support of this contention, Mr. Whitfield presented photographs of standing water on the property. *Petitioner Exhibits 7 through 10*. However, Mr. Whitfield presented no evidence regarding how often such flooding occurs or how long such standing water lasts. Further, there is no evidence of how much of the Petitioner's property is effected by the alleged flooding. 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 Board of Tax Commissioners*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998); *and Herb v. State Board of Tax*. Thus, Mr. Whitfield has not sufficiently shown that any of his land should be reclassified based on flooding.

- f. The Petitioner further contends that the original house on the property was over-valued based on its condition. *Whitfield testimony*. A condition rating is a “rating assigned each structure that reflects its effective age in the market.” See GUIDELINES, App. B, at 5-7. Condition ratings range from “excellent” to “very poor” and are used to determine depreciation on a structure. *Id.* Here, the Petitioner testified that the house has holes in the roof and that the living room floor fell into the basement. *Whitfield testimony*. However, the Respondent testified that the house was “sound valued” for only \$1,000.¹ *Reynolds testimony*. Thus, while the Petitioner’s evidence may be sufficient to show the house is in a “very poor” condition, which would result in a 95% depreciation factor, the application of that depreciation factor to the property’s \$50,340 “replacement cost new” results in a higher value than the house’s existing \$1,000 valuation. Therefore, the Petitioner failed to raise a prima facie case that the house was assessed in error based on its condition.
- g. Finally, the Petitioner argues that the mobile home on the property has been over-assessed based on the fact that he purchased the mobile home for approximately \$37,000 in 1992 and its trade-in value is only \$12,000.² *Whitfield testimony*. While the purchase of a property can be evidence of its market value-in-use, the sale must be sufficiently timely to be probative of a property’s value. Here, Mr. Whitfield purchased the mobile home in 1992. This is too far removed from the January 1, 2007, valuation date to show an error in his assessment. To the extent Mr. Whitfield contends the mobile home’s trade-in value is only \$12,000, Mr. Whitfield presented no evidence in support of that conclusion. Mr. Whitfield merely testified “I have tried for the last six months to sell it and tried to trade it in. They say it is worth \$12,000. How it depreciated that much, I don’t know.” *Whitfield testimony*. While the rules of evidence generally do not apply in the Board’s hearings, the Board requires some evidence of the accuracy and credibility of the evidence. 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 Board of Tax Commissioners*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998); and *Herb v. State Board of Tax Commissioners*, 656 N.E.2d 890, 893 (Ind. Tax Ct. 1995).

¹ A “sound value estimate” is “an estimate of the depreciated value of an improvement made directly by comparing the improvements of comparable condition, desirability, and usefulness without first estimating its replacement cost new.” GUIDELINES, Glossary at 19.

² According to 50 IAC 3.3-2-2 and 50 IAC 3.3-2-4, a mobile home can be assessed as real or personal property. Here, the parties do not dispute the fact that the mobile home at issue in this case is assessed as real property. Indiana Code § 6-1.1-4-39(b) states that the gross rent multiplier method is the preferred method for valuing mobile homes. However, there is no evidence that the Petitioner used the subject property for rental income and neither party presented *any* evidence that could be used to determine an assessed value for the subject property based on a gross rent multiplier. Indiana Code § 6-1.1-31-7(b)(6) allows personal property mobile homes to get the benefit of the lowest value indicated by the National Automobile Dealers Association Guide (NADA), by the purchase price – if the purchase occurs within one year of the assessment date, or by sales data for comparable mobile homes. However, this provision does not apply to real property mobile homes. Even if it did, the Board notes that the Petitioner purchased the property approximately eighteen years prior to the assessment date and he presented no evidence of the NADA Guide or the value of comparable mobile homes.

- h. The Petitioner failed to raise a prima facie case that his property was assessed in error. Where the Petitioner has not supported his claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *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 the appealed property was 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 the assessment of the property should not be changed.

ISSUED: _____

Chairman,
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>.