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**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Thomas G. Leisure,	)	Petition No. 72-007-11-1-5-00014
	)	
Petitioner,	)	Parcel No. 72-04-24-110-001.010-008
	)	
v.	)	
	)	
Scott County Assessor,	)	Scott County
	)	Vienna Township
	)	2011 Assessment
Respondent.	)	

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

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**July 17, 2013**

**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. Did the Petitioner prove that the assessed value for his home is not an accurate market value-in-use and did he prove what a more accurate valuation number would be?

**HEARING FACTS AND OTHER MATTERS OF RECORD**

2. The Petitioner initiated an assessment appeal with the Scott County Property Tax Assessment Board of Appeals (PTABOA) by written document dated June 11, 2011.

3. The PTABOA issued notice of its decision on August 22, 2011.
4. The Petitioner appealed to the Board by filing a Form 131 petition on September 7, 2011.
5. Administrative Law Judge Paul Stultz held the Board's administrative hearing on May 2, 2013. He did not conduct an inspection of the property.
6. The following persons were sworn as witnesses:
  - Thomas Leisure,  
Scott County Assessor Diana Cozart (who did not testify),  
Deputy Assessor Jennifer Binkley,  
Consultant Aaron Shelhamer.
7. The property is a single-family residence located at 251 Nicole Lane, Scottsburg, Indiana.<sup>1</sup>
8. The PTABOA determined that the assessed value is \$28,400 for land and \$143,500 for improvements (total assessed value of \$171,900).
9. The Petitioner requested a total assessed value of \$170,300.

### **RECORD**

10. The official record contains the following:
  - a. Form 131 Petition,
  - b. Digital recording of the hearing,
  - c. Petitioner Exhibit 1 – Three page statement of contentions,  
Petitioner Exhibit 2 – Aerial map of subject property,  
Petitioner Exhibit 3 – Page with an arrow pointing down,  
Respondent Exhibit 1 – Form 131 with attachments,  
Respondent Exhibit 2 – Property record card for the subject property,

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<sup>1</sup> The street number 15 Nicole Lane appears on some documents in the record. Mr. Leisure testified that recently the postal service informed him his correct street number is 251 Nicole Lane.

Respondent Exhibits 3A, 3B, 3C – Area market surveys,  
Respondent Exhibit 4 – Comparable sales report,  
Respondent Exhibit 5 – Property record card for the Jonas property,  
Respondent Exhibit 6 – Value calibration analysis by neighborhood,  
Board Exhibit A – Form 131 Petition,  
Board Exhibit B – Notice of Hearing,  
Board Exhibit C – Hearing Sign-In Sheet,

d. These Findings and Conclusions.

#### SUMMARY OF THE PETITIONER'S CASE

11. The Petitioner's property tax should not have increased. The assessment also should not have increased because the trend for local property values is in a downward direction. *Leisure testimony; Pet'r Ex. 1.*
  
12. Sales of six nearby properties show the downward trend. (The Petitioner did not give street names for these properties.) The property at 1604 was listed for \$289,000 and sold for \$175,000. The property at 1615 had an asking price of \$299,000 and it sold for \$160,000. The asking price for property at 1644 was \$225,000 and it sold for \$160,000. The property at 1655 was listed for \$140,000 and it sold for \$120,000 at an auction sale. Property located at 1675 had an asking price of \$189,000 and it sold at a private sale for \$150,000. The asking price was \$279,000 for property at 312 and it sold for \$166,000. The average asking price of these properties was \$236,000 and the average sale price was \$155,000. This difference represents a 34% reduction in value. The subject property also should get a reduction of approximately 34%. *Leisure testimony; Pet'r Ex. 1.*
  
13. A ditch separates the Petitioner's property from a nearby parcel that is being developed into a subdivision. A heavy rain causes water to accumulate in this ditch up to a foot deep. The platted lots in the new subdivision are small. The road along the other side of the new subdivision has a high volume of traffic. This new development will decrease the value of the property in the area. *Leisure testimony; Pet'r Ex. 1.*

14. Wildlife such as opossum, deer, foxes, and coyotes in the area are a problem. A neighboring goat farm will hinder development of the subdivision, resulting in those parcels remaining vacant for several years. *Leisure testimony; Pet'r Ex. 1.*
15. Several years ago the Petitioner was offered \$215,000 for the subject property, but that offer was declined. And now the value is only approximately \$150,000. *Leisure testimony.*

#### **SUMMARY OF THE RESPONDENT'S CASE**

16. The assessed value of \$171,900 is an increase of approximately 1% from the prior year's assessment. *Binkley testimony.*
17. From January 1, 2009, to March 1, 2010, the average sale price for homes was \$148,273. From January 1, 2010, to March 1, 2011, the average increased to \$156,956. The average was static at \$156,597 from January 1, 2011, to March 1, 2012. The median sale price was \$137,500 for the period ending March 2010. For the period ending March 2011 the median increased to \$140,500. For the period ending March 2012 the median increased to \$146,250. *Binkley testimony; Resp't Ex. 3A, 3B, 3C.*
18. Five comparable properties were used to determine the value of the subject property. Sale prices of the comparable properties were adjusted based on differences in features to arrive at a value of \$175,000. *Binkley testimony; Resp't Ex. 4.*
19. The 31.834 acres identified as the goat farm are located on the other side of Lake Road. The owners purchased that parcel for \$225,000 on August 15, 2011. The owners did not start raising goats until January 2013. *Binkley testimony; Resp't Ex. 5.*
20. The home is not in a flood zone. *Shelhamer testimony.*
21. The value calibration analysis by neighborhood shows sales to assessed value ratios. The property at 1644 West Monique sold for \$160,000 on August 6, 2010, and was assessed

at \$156,600 at the time of sale. The property at 1675 West Monique sold for \$160,000 on November 3, 2010, and was assessed at \$137,400 at the time of sale. This report shows values are increasing in the neighborhood. *Binkley testimony; Resp't Ex.6.*

### **BURDEN**

22. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that a property's assessment is wrong and what its correct assessment should 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). Nevertheless, the Indiana General Assembly enacted a statute that in some cases shifts the burden of proof:

This section applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal increased the assessed value of the assessed property by more than five percent (5%) over the assessed value determined by the county assessor or township assessor (if any) for the immediately preceding assessment date for the same property. The county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.

Ind. Code § 6-1.1-15-17.2.

23. In this particular case the burden-shifting statute does not apply. The assessed value increase was approximately 1%. Both parties agreed that the Petitioner has the burden to establish a prima facie case proving that the current assessment is incorrect and specifically what a correct assessment would be.

### **ANALYSIS**

24. The Petitioner did not make a prima facie case for any assessment change. The Board reached this decision for the following reasons:

- a. To the extent that the Petitioner may be attempting to dispute the amount of his taxes rather than the assessment of the subject property, the Board lacks jurisdiction to hear his claim. The Board is a creation of the legislature and has only the powers conferred by statute. *Whetzel v. Dep't of Local Gov't Fin.*, 761 N.E.2d 904, 908 (Ind. Tax Ct. 2001) (citing *Matonovich v. State Bd. of Tax Comm'rs*, 705 N.E.2d 1093, 1096 (Ind. Tax Ct.1999)). The Board can address appeals from determinations made by local assessing officials or county PTABOAs that concern property valuations, property tax deductions, property tax exemptions, or property tax credits. Ind. Code § 6-1.5-4-1(a).
  
- b. Real property is assessed based on its "true tax value," which 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). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach. A taxpayer, however, is permitted to offer other evidence relevant to market value-in-use to rebut an assessed valuation. That 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.
  
- c. Regardless of the method used to rebut an assessment's presumption of accuracy, a party must explain how its evidence relates to market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for a 2011 assessment was March 1, 2011. 50 IAC 27-5-2(c). Any evidence of value relating to a different date must also have an explanation about how it demonstrates, or is relevant to, the value as of that required valuation date. *Long*, 821 N.E.2d at 471.

- d. The Petitioner compared the asking price and the sale price of six parcels in the area and determined the average asking price was \$236,000 and the average selling price was \$155,000. The Petitioner claimed that this information demonstrated a 34% reduction in value, but he failed to offer any substantial authority that this methodology conforms to generally accepted appraisal principles for determining value. The Petitioner's conclusory calculation of a 34% differential does not measure anything of significance regarding the actual market value-in-use of the subject property. Furthermore, this calculation does not prove that values are decreasing.
- e. To effectively use any kind of comparison approach to value a property, one must establish that properties truly are comparable. Conclusory statements that properties are "similar" or "comparable" are not sufficient. *Long*, 821 N.E.2d at 470. In this case, the Petitioner was "responsible for explaining to the Indiana Board the characteristics of their own property, how those characteristics compared to those of the purportedly comparable properties, and how any differences affected the relevant market value-in-use of the properties." *Id.* at 471. Except for proximity to his property, the Petitioner provided no comparison whatsoever regarding the other homes. Additionally, the Petitioner did not provide the dates of the sales. Therefore, those sales are not probative evidence for an accurate assessed valuation of the subject property.
- f. The Petitioner identified other purported problems with the subject property. They include a ditch, small nearby lots unsuitable to build on, a road with a high volume of traffic, a goat farm, and the presence of undesirable wildlife. An influence factor can be used to account for characteristics of a particular parcel of land that are peculiar to that parcel. It is expressed as a percentage that represents the composite effect of the factor that influences the value. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, Glossary at 10 (incorporated by reference at 50 IAC 2.3-1-2). To prevail on the issue of an influence factor, the taxpayer must present probative evidence that would support an application of a negative influence factor and provide a quantification of that influence factor at the administrative level. *Talesnick v. State*

*Bd. of Tax Comm'rs*, 756 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001). While the factors identified by the Petitioner might affect his property, he offered no probative evidence to quantify any of them. The Petitioner's unsubstantiated conclusions do not constitute probative evidence. *See Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

- g. The Petitioner did not make a prima facie case for any assessment change. Consequently, the Respondent's duty to support the assessment with substantial evidence was 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*, 704 N.E.2d at 1119.

### CONCLUSION

25. The Petitioner 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 total assessed value of the property will not be changed.

This Final Determination of the above captioned matter is issued on the date first written above.

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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>