

REPRESENTATIVE FOR PETITIONER:

Jack R. Woodruff, Attorney, Hickam & Lorenz, P.C.

REPRESENTATIVE FOR RESPONDENT:

Nancy Snellenberger, Greene County Assessor

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

LEONARD WHITE,	)	Petition No.:	28-001-06-1-5-00001
)		
Petitioner,	)	Parcel:	001-00605-00
)		
v.)		
	)	County:	Greene
GREENE COUNTY ASSESSOR,	)	Township:	Beech Creek
)		
Respondent.	)	Assessment Year:	2006

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

June 10, 2008

FINAL DETERMINATION

The Indiana Board of Tax Review (“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

INTRODUCTION

1. In this assessment appeal, the Petitioner claims that the township assessor misclassified a portion of his real property as mobile-home park. While that may be true, the Petitioner did not offer any probative market-based evidence to show that the assessor's methodological error resulted in his property being assessed for more than its true tax value. The Board therefore finds for the Respondent.

PROCEDURAL HISTORY

2. On July 17, 2007, the Petitioner appealed his assessment to the Greene County Property Tax Assessment Board of Appeals ("PTABOA"). Less than three months later, on October 12, 2007, the PTABOA issued its determination denying the Petitioner relief. The Petitioner then timely filed a Form 131 petition with the Board. The Board has jurisdiction over the Petitioner's appeal under Ind. Code §§ 6-1.1-15 and 6-1.5-4-1.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. On March 18, 2008, the Board held an administrative hearing through its Administrative Law Judge, Alyson Kunack ("ALJ").
4. The following persons were present and sworn in at the hearing:

For the Petitioner:

Leonard White, Petitioner
Jack Simmerman, witness

For the Respondent:

Nancy Snellenberger, Greene County Assessor
Larry Shute, Beech Creek Township Assessor
Melissa Porter, Deputy Beech Creek Township Assessor
Charles Strickler, Greene County PTABOA

5. The Petitioner submitted the following exhibits:
 - Petitioner's Exhibit 1 – Highlighted map of subject parcel
 - Petitioner's Exhibit 2 – Subject property record card ("PRC")
 - Petitioner's Exhibit 3 – Copy of Indiana State Department of Health Mobile Home Park Law (Ind. Code. 16-41-27)
 - Petitioner's Exhibit 4 – Analysis of Property Value

6. The Respondent submitted the following exhibits:
 - Respondent's Exhibit 1 – Subject PRC
 - Respondent's Exhibit 2 – Information from PTABOA hearing
 - Respondent's Exhibit 3 – REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002-VERSION A, Appendix G, p. 39
 - Respondent's Exhibit 4 – Aerial photograph/map of the subject property

7. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:
 - Board Exhibit A – The Form 131 Petition and attachments
 - Board Exhibit B – Hearing notice dated February 11, 2008
 - Board Exhibit C – Hearing Sign-in sheet
 - Board Exhibit D – Notice of Appearance by Petitioner's counsel

8. The subject property is an approximately 91.22-acre subdivided lot located at 389 North Fletcher Avenue, Spencer, Indiana. The Petitioner has entered into land contracts with various people for the individual lots, but he holds legal title to the entire parcel. *White testimony.*

9. Neither the Board nor the ALJ inspected the subject property.

10. The PTABOA determined that the assessed value of the property is \$451,900 for the land and \$30,400 for the improvements, for a total assessment of \$482,300.

11. The Petitioner requests the following values: \$164,196 for the land, and \$18,244 for the improvements, for a total assessment of 182,440.

ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

12. A taxpayer seeking review an assessing official's determination must establish a prima facie case proving both that the current assessment is incorrect and what the 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).
13. In making its case, the taxpayer must explain how each piece of evidence relates 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”).
14. If the taxpayer establishes a prima facie case, the burden shifts to the assessing official to offer evidence to rebut or impeach the taxpayer's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.

ANALYSIS

Parties' Contentions

A. Petitioner

15. The Petitioner contends that part of his property has been misclassified as a mobile-home park. He has never operated the property as a mobile-home park, and the March 1, 2006, assessment is the first time that it has been assessed as one. That change in classification, without any corresponding change in the property's use, caused the land portion of the property's assessment to increase from \$131,900 in 2005 to \$451,900 in 2006. *White testimony*.

16. The Petitioner bought the property approximately 21 years ago. *White testimony*. He then divided the parcel into smaller lots, and sold those smaller lots on contract. *Id.* Despite being the legal and record owner, he does not control the land; the contract buyers control their respective lots. *Id.*
17. The property does not have concrete mobile-home pads or utility hook-ups. It similarly lacks common lighting or sewage systems. While the entire property is on county water, the contract buyers are responsible for connecting to that system. And the property has only a single access road. *White testimony*.
18. The Indiana Department of Health has never recognized the property as a mobile-home park. *White testimony*. And the property does not meet the definition of a mobile-home park contained in Indiana Code § 16-41-27-5, because it does not have at least five mobile homes being occupied as principle residences. Some of the lots do contain mobile homes, but the homes are almost all over twenty years old and several are used only for storage. *Id.*; *Pet'r Ex. 3*.
19. The Petitioner, and corporations that he controls, own other tracts near the subject property. *White testimony*. Like the subject property, some of those neighboring tracts have been subdivided and sold on contract. *Id.* But none of those properties is assessed as a mobile home park, despite the fact that they are devoted to the same use as the subject property. Thus, the subject property is being treated in a disparate manner compared with similarly situated properties. *Woodruff argument*.
20. Jack Simmerman, a licensed real estate broker, offered his opinion of the subject property's market value. *Simmerman testimony*; *Pet'r Ex. 4*. In forming that opinion, he looked at plat and survey books, aerial photographs, and listing data for other properties. *Simmerman testimony*. He also visited the subject property. *Id.* He completely discounted the value of any improvements based on their ages. In fact, he thought the mobile homes probably had negative value because of likely removal costs. *Id.* He did

not evaluate the condition of the property's septic system or determine if one even existed. He therefore analyzed the property's value as if it were vacant land. *Id.*

21. Mr. Simmerman used "comparable market data" in his analysis. *Simmerman testimony.* Because he could not find sales in the immediate area involving "parcels of size," he looked at sales from northeastern Greene County and southeastern Owen County. *Id.*; *Pet'r Ex. 4.* He identified nine properties ranging from 40 to 120 acres that sold between May 2000 and September 2006, and he adjusted their sale prices to 2007 values. *Id.* He also identified eight properties whose listings expired without the properties being sold. *Id.* Although Mr. Simmerman described several characteristics of the subject property, including its sloping terrain and poor soil content, he said almost nothing about the purportedly comparable properties. *Id.*
22. Mr. Simmerman concluded that the property's "high end" value would be \$1800 per acre. *Simmerman testimony; Pet'r Ex. 4.* He then increased that estimate to \$2,000 per acre to account for the property's access road and for the fact that it had been surveyed for subdivision into smaller lots. *Id.*

B. Respondent

23. The Respondent argues that the property's assessment is correct. The property contains 91.22 acres, and the Petitioner has sold all but five acres on contract. *Snellenberger testimony.* To qualify as a mobile-home park, a property need only have five mobile homes. *Id.* And the subject property has more than five mobile homes. *Snellenberger argument.*
24. In Beech Creek Township, homesites are valued at \$22,500. *Strickler testimony.* Valuing the Petitioner's property as a mobile-home park therefore accounts for the homesites on the property. *Strickler argument.*

Discussion

25. Indiana assesses property based on its true tax value. 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 2 (incorporated by reference at 50 IAC 2.3-1-2). Appraisers traditionally have used three methods to determine a property’s market value: the cost, sales-comparison and income approaches. *Id.* at 3, 13-15. Indiana assessing officials generally value real property using a mass-appraisal version of the cost approach set forth in the Real Property Assessment Guidelines for 2002 – Version A.

26. 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 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 (“USPAP”) often will suffice. *See id.*; *see also 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 other information compiled according to generally accepted appraisal principles. MANUAL at 5.

27. A taxpayer, however, does not rebut the presumption that an assessment is correct simply by contesting the assessor’s methodology in computing the assessment. *See Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). Instead, the taxpayer must use market-based evidence to show that the assessor’s methodology yielded an assessment that does not accurately reflect the assessed-property’s market value in-use. *Id.*

A. Misclassification as a mobile-home park

28. Although the parties refer to the property's valuation as a whole, much of their dispute centers on a 20-acre portion that the township assessor classified as a mobile-home park and to which the assessor applied the commercial base rate of \$22,000 per acre. *See Pet'r Ex. 2 (property record card)*. The Petitioner claims that the township assessor misclassified those 20 acres and therefore grossly overvalued his property.
29. The Petitioner's argument, however, attacks the assessor's methodology, rather than the resulting value. And as the Tax Court explained in *Eckerling*, simply attacking an assessor's methodology does not suffice to rebut an assessment's presumption of correctness. *Eckerling*, 841 N.E.2d at 678.
30. The Petitioner's claim that nearby properties being put to the same use are not assessed as mobile-home parks doesn't change the equation. At the end of the day, his argument still focuses solely on the assessor's methodology.
31. In fact, the Indiana Tax Court rejected a similar claim in *Westfield Golf Practice Center, LLC v. Washington Twp. Assessor*, 859 N.E.2d 396 (Ind. Tax Ct. 2007). In that case, the taxpayer contended that its assessment violated Article X section 1 of the Indiana Constitution because the assessor valued its driving range's landing area using a \$35,100-per-acre base rate but valued other driving-ranges using the Guidelines' \$1,050 golf-course base rate. 859 N.E. 2d at 397-98. The court rejected the taxpayer's claim because that claim focused solely on the assessor's methodology. *Id.* at 399. Indeed, the court noted that the taxpayer had not shown the actual market value in use either of its property or of any of the properties that it argued were being treated more favorably. *Id.*
32. Like the *Westfield Golf* taxpayer, the Petitioner simply claims that the township assessor used a different methodology to value his property than it used to other properties

devoted to a similar use. But like the *Westfield Golf* taxpayer, he did not show an actionable lack of uniformity, because he failed to show the market value-in-use of either his property or the surrounding properties to which he sought to compare its assessment.

B. Change in value between 2005 and 2006 assessments

33. The Board similarly rejects the Petitioner's claim that his property should be assessed at its 2005 level because its use has not changed. Each assessment year stands alone. Thus, evidence of a property's assessment in one year does not show its true tax value in a different year. *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)). That is particularly true where, as here, the disputed value increase occurred between the 2005 and 2006 assessment dates. Before the March 1, 2006 assessment date, assessed values typically rolled forward in the years between general reassessments unless an assessor took specific action. *Williams Industries v. State Bd. of Tax Comm'rs* 648 N.E.2d 713, 715 (Ind. Tax Ct. 1995). Beginning with the March 1, 2006 assessment date, however, assessors must annually adjust each property's assessment. Thus, a taxpayer has no reason to assume that his assessment will remain static from year-to-year.

C. Mr. Simmerman's valuation opinion

34. Finally, the Petitioner offered Mr. Simmerman's testimony and written valuation opinion. That was at least a step in the right direction. But Mr. Simmerman's opinion was ultimately too conclusory to rebut the assessment's presumption of correctness.
35. Mr. Simmerman formed his opinion largely through applying the sales-comparison approach to value. That approach assumes that a potential buyer will pay no more for a property than it would cost to purchase an equally desirable substitute improved property already existing in the market place. MANUAL at 13. The appraiser locates sales of comparable improved properties and adjusts their selling prices to reflect the subject

property's total value. *Id.* The adjustments represent a quantification of property characteristics that cause sale prices to vary. *Id.* Using objectively verifiable evidence, the appraiser examines all possible differences between the subject property and the comparable properties and isolates the items that influence market value. *Id.* The appraiser quantifies those items' contributory values and uses those contributory values to adjust the comparable properties' sale prices. *Id.*

36. Thus, in order to use the sales-comparison approach as evidence in an assessment appeal, the proponent of that evidence must establish the comparability of the properties being examined. Conclusory statements that a property is "similar" or "comparable" to another property do not suffice. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). Instead, the proponent must compare the subject property's characteristics to the characteristics of the purportedly comparable properties. *Id.* at 471. And the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*
37. Mr. Simmerman didn't show that he complied with those basic requirements for applying the sales-comparison approach. He offered only minimal information about his purportedly comparable properties, and he did almost nothing to explain how they compared to the subject property other than to say that all the properties were heavily influenced by their proximity to Monroe County. And Mr. Simmerman did not adjust the comparable properties' sale prices to reflect relevant differences between those properties and the subject property. At most, he added \$200 to his basic estimate of \$1,800 to account for the facts that the subject property had an access road and that it had been surveyed for subdivision into smaller parcels. Presumably, the comparable properties lacked those features. But Mr. Simmerman gave no information about how he quantified that adjustment.
38. We do not mean to discount Mr. Simmerman's 25 years of experience as a real-estate broker. But we cannot give weight to an opinion, even an expert opinion, without some

objective basis to support its reliability. And Mr. Simmerman's testimony and written analysis do not provide that basis.

SUMMARY OF FINAL DETERMINATION

39. For the reasons set forth, the Petitioner failed to make a prima facie case of error in the assessment. The Board therefore finds for the Respondent.

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

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>