

REPRESENTATIVE FOR PETITIONER:

Paul J. Wallace, Attorney

REPRESENTATIVES FOR RESPONDENT:

Marvin M. Folkerts, Contractor for Bainbridge Township Assessor  
Natalie Jenkins, Dubois County Property Tax Assessment Board of Appeals  
Raymond Lueken, Dubois County Assessor

**BEFORE THE  
INDIANA BOARD OF TAX REVIEW**

Tri-State Investment, LLC,	)	Petition No.:	19-018-05-1-4-00024
	)	Parcel:	018-29330-06
Petitioner,	)		
	)		
v.	)		
	)	County:	Dubois
Bainbridge Township Assessor,	)	Township:	Bainbridge
	)	Assessment Year:	2005
Respondent.	)		

Appeal from the Final Determination of  
Dubois Property Tax Assessment Board of Appeals

**July 13, 2006**

**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**

### **ISSUES**

1. The issue presented for consideration by the Board is whether the change of assessed value of the land in 2005 was unlawful under Indiana Code § 6-1.1-4 and whether the assessor should be estopped from changing this assessment in 2006-pay-2007.

### **PROCEDURAL HISTORY**

2. Pursuant to Ind. Code § 6-1.1-15-1, Petitioner's representative, filed a Form 131 Petition for Review of Assessment on October 20, 2005, petitioning the Board to conduct an administrative review of the above petition. The Dubois County Property Tax Assessment Board of Appeals (the PTABOA) issued its determination on October 7, 2005.

### **HEARING FACTS AND OTHER MATTERS OF RECORD**

3. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (the ALJ), Rick Barter, held a hearing on May 9, 2006, in Jasper, Indiana.
4. The following persons were sworn and presented testimony at the hearing:

For the Petitioner:

Paul J. Wallace, attorney

For the Respondent:

Marvin M. Folkerts, Tyler/CLT Co., contractor to township assessor  
Natalie Jenkins, Dubois County PTABOA  
Raymond Lueken, Dubois County Assessor

5. The Petitioner presented the following exhibits:<sup>1</sup>
  - Petitioner's Exhibit 1 – Copy of subject property Form 11 dated June 24, 2005,
  - Petitioner's Exhibit 2 – Copy of Form 115 for subject dated October 7, 2005,
  - Petitioner's Exhibit 3 – Copy of Form 130 filed July 20, 2005,
  - Petitioner's Exhibit 4 – Form 130 hearing transcript dated September 20, 2005.
  
6. The Respondent presented the following exhibits:
  - Respondent's Exhibit 1 – Summary of contentions,
  - Respondent's Exhibit 2 – Assessors' land value approval dated March 2, 2001,
  - Respondent's Exhibit 3 – Copy of legal notice on land order hearing,
  - Respondent's Exhibit 4 – PTABOA land value approval dated October 2, 2001,
  - Respondent's Exhibit 5 – Indiana [Administrative] Code 50 IAC 21-4-1,
  - Respondent's Exhibit 6 – Subject property record card (PRC),
  - Respondent's Exhibit 7 – Notice of Appearance at hearing by consultant,
  - Respondent's Exhibit 8 – List of hearing witnesses,
  - Respondent's Exhibit 9 – Copy of Forms 131, 115 and 130 for subject property,
  - Respondent's Exhibit 10 – Copy of Notice of Hearing.
  
7. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:
  - Board Exhibit A – Form 131 Petition,
  - Board Exhibit B – Notice of Hearing dated February 17, 2006,
  - Board Exhibit C – Hearing Sign-in Sheet.
  
8. The subject property is a commercial parcel including a fast food restaurant located at 762 Second Street in Jasper.
  
9. The ALJ did not conduct an on-site inspection of the subject property.
  
10. For 2005, the PTABOA determined the assessed value of the property to be \$172,400 for the land and \$214,900 for the improvements, for a total assessed value of \$387,300.
  
11. For 2005, the Petitioner contends the assessed value of the property should be \$43,300 for the land and \$214,900 for the improvements, for a total assessed value of \$258,200.

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<sup>1</sup> The Respondent claims that the Petitioner did not send a witness list or exhibits. The Petitioner stated he received only a list. Both parties agreed to continue with this administrative hearing in light of the fact that the transcript from the PTABOA hearing was included with the Form 131 petition and the same witnesses are present.

## JURISDICTIONAL FRAMEWORK

12. 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

13. 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).
14. 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”).
15. 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

16. The Petitioner contends that the township's change of assessment for tax year 2005 was unlawful under Ind. Code § 6-1.1-4, in that there was no land subdivision, no substantial destruction, no petition for reassessment or other basis which could justify a unilateral change in assessment of the taxpayer's property. *Wallace argument; Petitioner's Form 131*. Petitioner further contends the assessed land value of the subject property for 2005 should remain at the 2002 assessed land value of \$43,300. *Wallace argument*. The assessed value of improvements is not disputed. *Id.*
  
17. The Respondent contends that the change in assessed value to the Petitioner's property for tax year 2005 was not a "reassessment," but a correction based upon the discovery that the Petitioner's land was undervalued. *Jenkins testimony; Respondent's Exhibit 1*. The authority to so do is granted in Ind. Code § 6-1.1-13-3 and Ind. Code § 6-1.1-13-5. *Id.*
  
18. The Petitioner presented the following testimony in regard to this issue:
  - A. The Petitioner argues that the township assessor's decision to issue a new Form 11 and change the assessed value of the Petitioner's property for 2005 was based on the contract assessor's decision that the prior assessment was too low. *Wallace argument*. According to the Petitioner, this amounts to an annual adjustment which is not permitted by the Indiana code. *Id.*
  
  - B. The Petitioner argues that Indiana code sets out certain things that must happen to make a change in any year other than a general reassessment. *Wallace argument*. According to the Petitioner, the fundamental error the township makes in this situation is that Indiana law dictates that an assessment can be changed only if certain tests are met. *Id.* The Petitioner contends that the statute that allows a change defines a specific method. *Id.; Board Exhibit A*. According to the Petitioner, none of the

situations that would allow a change in assessment, such as the addition of improvements or the destruction of property, has occurred. *Wallace argument.*

- C. The Petitioner argues that the change made by the township was based simply on an opinion of the contract assessor. *Wallace argument.* According to the Petitioner, there was no independent, third-party evaluation used in making the determination of error. *Id.* Further, the Petitioner argues, there is no state mandate or ruling that the subject property is under-assessed. *Id.* Thus, the Petitioner contends that the change in assessment was without basis and argues that arbitrary and capricious changes by assessment officials undermine the entire assessment system. *Id.*
  - D. Finally, the Petitioner argues that it is not the Petitioner's burden to prove the new assessment wrong. *Wallace argument.* According to the Petitioner, the burden is on the assessor to prove a change. *Id.* Because there has been no evidence put forth for Petitioner to disprove, the Petitioner contends the assessment was in error. *Id.*
19. The Respondent presented the following evidence and testimony in support of the assessment:
- A. The Respondent argues that the property is assessed correctly. *Jenkins testimony.* According to the Respondent, the subject property is assessed under the land order established in the 2002 general reassessment. *Id.; Respondent Exhibit 1.* Rates were approved by the PTABOA following an advertised public hearing. *Id.; Respondent Exhibits 1-4.* The base rates established in the land order were not changed and the new neighborhood rates range from \$175,000 per acre to \$225,000 per acre, which are within the range established by the 2002 land order for Dubois County. *Id.; Respondent Exhibit 1.*
  - B. The Respondent argues that the subject property's original neighborhood classification was incorrect because it is unreasonable to conclude that properties

along U.S. Highway 231 are worth the same as properties not located there. *Jenkins testimony*. The Respondent contends that the method used to determine the changed assessed value followed Indiana Guidelines, which allow for partitioning of neighborhoods where a study of sales of similar properties reflects disparity in existing assessments. *Id.*; *Respondent Exhibit 1*. In this case, according to the Respondent, a new neighborhood was created because the subject property gained unfair advantage by being grouped with properties not located along U.S. Highway 231. *Id.* The Respondent contends that properties not fronting the highway are secondary locations and reflect lower values both in assessment and prices paid in the market. *Id.*

- C. The Respondent argues that Indiana code mandates that assessing officials correct errors in assessments when they are discovered. *Folkerts testimony*. The Respondent cites to Ind. Code § 6-1.1-13-3, “Additions of undervalued or omitted property to list,” which states in part: “A county property tax assessment board of appeals shall, on its own motion or on sufficient cause shown by any person, add to the assessment lists the names of persons, the correct assessed value of undervalued or omitted personal property, and the description and correct assessed value of real property undervalued or omitted from lists.” *Respondent Exhibit 1 at 3*. Similarly, the Respondent cites to Ind. Code § 6-1.1-13-5, “Reduction or increase of assessed value,” which states, “A county assessor shall reduce or increase the assessed value of any tangible property in order to attain a just and equal basis of assessment between the taxpayers of the county.” *Id.*
- D. According to the Respondent, the changes in assessed land values were made under the guidelines issued by the state, in compliance with Indiana code, and were made after township and county assessing officials sought the counsel of the Indiana Department of Local Government Finance (DLGF). *Jenkins testimony*. The fact that an error existed does not render the correction of it invalid. *Id.*

- E. The Respondent argues that the subject property's previous under-assessment is an omission of base rates for a geographic area not specifically identified in the Land Valuation report. *Jenkins testimony*. Because the Board, under the Extended Application of Base Rates, allows for the assessing official to identify a comparable area and apply the base rate indicated to the area in question, the establishment of a new neighborhood that relies on previously approved land rates for comparable areas is considered reasonable. *Id.*
20. Indiana Code § 6-1.1-4 *et seq.* governs the procedures for real property assessment in Indiana. Ind. Code § 6-1.1-4-4 establishes a schedule of general reassessment of real property. Pursuant to that statute, "a general reassessment, involving a physical inspection of all real property in Indiana" began July 1, 2000. Ind. Code § 6-1.1-4-4(a). Further, under Ind. Code § 6-1.1-4-4, "a general reassessment, involving a physical inspection of all real property in Indiana, shall begin July 1, 2009, and each fifth year thereafter." Ind. Code § 6-1.1-4-4(b).
21. The Petitioner contends that once a general reassessment is completed, an assessing official cannot change the value of an assessment until the next general reassessment unless there is a change in the property's circumstances such as the destruction of property, subdivision of land, or rezoning.<sup>2</sup> *See* Ind. Code §§ 6-1.1-4-11 and -12. The Petitioner's argument, however, overlooks the statutes that specifically allow for interim assessments and reassessment of property that is under-valued. Sec. 30 envisions that changes to assessments would occur between general reassessments. Ind. Code § 6-1.1-4-30. That section states that "[i]n making any assessment or reassessment of real property in the interim between general reassessments, the rules, regulations, and standards for assessment are the same as those used in the preceding general

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<sup>2</sup> The Petitioner concedes that after 2006, assessing officials have a right to re-evaluate property annually. *See* Ind. Code § 6-1.1-4-4.5(a) and (b) ("The department of local government finance shall adopt rules establishing a system for annually adjusting the assessed value of real property to account for changes in value in those years since a general reassessment of property last took effect. ... [T]he system must be applied to adjust assessed values beginning with the 2006 assessment date and each year thereafter that is not a year in which a reassessment becomes effective.")



reassessment.” Ind. Code § 6-1.1-4-30. Similarly, Ind. Code § 6-1.1-13-3 requires assessors to add undervalued or omitted properties to the tax roles and Ind. Code § 6-1.1-13-5 requires that assessments be increased or decreased to attain a just and equal basis of assessment between taxpayers. These statutes express a clear intent that assessments may change outside of the general reassessment procedures. Further, it is clear that identifying a property or properties as being under-valued is not only sufficient to warrant a change but, in fact, requires a change in assessment.<sup>3</sup>

22. This interpretation is supported by various Indiana Tax Court rulings that hold that each tax year stands alone. If the Petitioner is correct and an assessing official is bound to the value of a property determined during a general reassessment, then, by definition, evidence of that property’s assessment in a general reassessment year would be probative of its value in subsequent years. The Indiana Tax Court, however, has determined that evidence as to a property’s assessment in one tax year is not probative of its true tax value in a different tax 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)) (“Finally, the Court reminds Fleet Supply that each assessment and each tax year stands alone. ... Thus, evidence as to the Main Building's assessment in 1992 is not probative as to its assessed value three years later.”) Thus, the Petitioner’s argument that an assessment cannot be changed year to year does not square with previous Indiana Tax Court rulings that each year stands alone.
23. Finally, we note that from a policy standpoint, the Petitioner’s argument is untenable. If the Board were to read Ind. Code § 6-1.1-4 *et seq.* as the Petitioner urges, an over-assessment of property could be addressed because the taxpayer can appeal the assessment, but an under-assessment of property must remain in place until the next general reassessment unless the taxpayer seeks to increase its assessment. Thus, an over-

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<sup>3</sup> Under Indiana Code, not only can the assessor change a valuation between general assessments, an assessor can even go back and change a previous assessment if a property is under-valued. *See* Ind. Code § 6-1.1-9-4 (Real property may have its assessed value increased for a prior year, if notice is given “within three (3) years after the assessment date for that prior year”).

assessment can be corrected by a taxpayer on appeal, but the assessors are bound to an under-assessment until the following general reassessment at least five years later. This interpretation violates the goal of just and equal assessments and cannot be the Legislature's intention when it promulgated Ind. Code § 6-1.1-4 *et seq.*

24. The Petitioner further argues that the Respondent has the burden to prove the assessment is correct or to prove a change in assessment is warranted. The Petitioner contends that a “thought” or a “belief” that the property is under-valued is insufficient to support a decision to change the assessment. The Petitioner is again mistaken. First, the Legislature, itself, refers to a “belief” that property is under-assessed. Section 1 states that “[i]f a township assessor, county assessor, or county property tax assessment board of appeals believes that any taxable tangible property has been omitted from or undervalued on the assessment rolls or the tax duplicate for any year or years, the official or board shall give written notice under IC 6-1.1-3-20 or IC 6-1.1-4-22 of the assessment or increase in assessment.” Ind. Code § 6-1.1-9-1. Moreover, it is not the Respondent's burden to prove its assessment is correct. A petitioner must show that the current assessment is incorrect, and specifically what the correct assessment would be. *See e.g., Meridian Towers East & West*, 805 N.E.2d at 478. Here the Petitioner presented no evidence that the Respondent failed to follow proper procedures in determining its assessment. Nor did the Petitioner allege that the assessment was incorrect.<sup>4</sup> The Petitioner merely complained that the assessing official changed its assessment. This is insufficient to raise a *prima facie* case that the assessment is in error.<sup>5</sup>

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<sup>4</sup> The value determined according to the rules prescribed in the manual is presumed to be “the true tax value of the subject property.” Manual at 5. However, a taxpayer is permitted to “offer evidence relevant to the fair market value-in-use of the property to rebut such presumption...” *Id.* Here, Petitioner presented no evidence of the market value of the property. Nor does the Petitioner argue that its property is now over-assessed based on the 2005 assessment. We presume, therefore, that the Petitioner agrees that the assessment is a fair and equitable valuation of the property, but feels as if it is entitled to the continuation of any under-valuation that the property had previously received.

<sup>5</sup> To the extent that the Petitioner argues that the Respondent should be estopped from making changes to the 2006 assessment of the subject property, the Petitioner also failed to establish a *prima facie* case. Petitioner's argument is little more than unsupported allegations. 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 Bd. of Tax Comm'rs*, 704 N.E.2d 1113 (Ind. Tax 1998); and *Herb v. State Bd. of Tax Comm'rs*, 656 N.E.2d 1230 (Ind. Tax 1998).

28. 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).

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

29. Petitioner failed to make a prima facie case. The Board finds in favor of the Respondent and holds that no change in assessment is warranted.

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

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Commissioner, Indiana Board of Tax Review

## IMPORTANT NOTICE

### - APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>, The Indiana Trial Rules are available on the Internet at [http://www.in.gov/judiciary/rules/trial\\_proc/index.html](http://www.in.gov/judiciary/rules/trial_proc/index.html). The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.