

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

**Petition:** 62-003-10-1-5-00013  
**Petitioner:** Darryl W. Irvin  
**Respondent:** Perry County Assessor  
**Parcel:** 62-08-12-200-023.000-010  
**Assessment Year:** 2010

The Indiana Board of Tax Review (Board) issues this determination, finding and concluding as follows:

**Procedural History**

1. The Petitioner timely initiated a 2010 assessment appeal with the Perry County Property Tax Assessment Board of Appeals (PTABOA).
2. The PTABOA mailed its Notification of Final Assessment Determination (Form 115) on August 9, 2011.
3. The Petitioner filed a Form 131 Petition with the Board on August 24, 2011. He elected to have this appeal heard according to small claims procedures.
4. Administrative Law Judge Rick Barter held the administrative hearing on November 14, 2012. He did not inspect the property.
5. Petitioner Darryl W. Irvin and County Assessor Mendy Lassaline were sworn as witnesses.

**Facts**

6. The subject property is a 2.04-acre parcel with a cabin located along the Ohio River at 17675 Magnet Valley Road in Magnet, Indiana.
7. The PTABOA determined the assessment is \$86,200 for land and \$63,300 for improvements (total \$149,500).
8. The Petitioner claims the assessment should be \$25,000 for land and \$45,000 for improvements (total \$70,000).

## Contentions

9. Summary of the Petitioner's case:
- a. The subject property is over-assessed because this lot has vastly different characteristics than most other lots in the subdivision. The Magnet Valley map shows how a gravel road cuts through all these lots. The assessment should be lowered because more than half of the subject parcel is in a flood zone. Consequently, building on the river side of this lot is not permitted. Most owners of other lots in the subdivision can build on the river side. Specifically, the owners of lots 20-36 can build on both sides of their property. *Irvin testimony; Pet'r Ex. 1, 2, 3.*
  - b. The property is in a subdivision that is zoned as residential. It also is in a conservation zone. *Pet'r Ex. 1, 2, 4, 5.* The only permissible new uses supposedly are those that would not detract from the residential character of the neighborhood. The purpose is to create an attractive, stable and orderly residential environment. The residential zoning, however, is not being enforced. As a result, commercial properties have been allowed to develop in this subdivision. The commercial operations detract from the residential characteristics of the area and decrease the value of the subject property. *Irvin testimony.*
  - c. Two brochures show that other properties in the subdivision are used as rental cabins. Their owners also rent boats, pontoons, and other equipment such as jet skis. This is a violation of the zoning codes. *Irvin testimony; Pet'r Ex. 6, 7.*
  - d. The Petitioner's small cabin is over-valued based on the assessed value of a comparable property owned by Donald D. Fisher. The subject property is on a heavily used, dusty gravel road in a commercial area that flooded twice in 2011. The Fisher property is located on Parks Road within one eighth of a mile of the subject property. But the Fisher property is located in a different neighborhood, which is why it is assessed lower. Although these two properties are very similar, the Fisher property's assessed value is \$21,000 for land and \$55,600 for improvements (total \$76,700) and the assessment of the subject property is \$86,200 for land and \$63,300 for improvements (total \$149,500). *Irvin testimony; Pet'r Ex. 8; Resp't Ex. E.*
  - e. The assessed value of the subject property has increased over several years. The Petitioner purchased the lot in 1997 and built the cabin for approximately \$45,000 in 2000. The assessed value increased from \$13,100 for land and \$60,100 for improvements (total \$73,200) in 2007 to \$61,800 for land and \$63,300 for improvements (total \$125,100) in 2008. It increased to \$126,300 in 2009, and then to \$149,500 in 2010 and 2011. As a result, the taxes rose from just over

\$2,000 to nearly \$3,000 during the period 2008 through 2011. *Irvin testimony; Pet'r Ex. 9.*<sup>1</sup>

10. Summary of the Respondent's case:

- a. The 2010 assessment is correct. It is based on the market value-in-use established by sales in the neighborhood. The Department of Local Government Finance (DLGF) approved the sales ratio studies in the area. *Lassaline testimony.*
- b. The subject property is assessed as residential property, which is how it actually is used. Some of the differences the Petitioner identified between his property and neighboring properties exist. The commercial use of nearby properties might affect the value of the subject property, but not necessarily decrease it. Sales in the neighborhood do not demonstrate a decrease in value. *Lassaline testimony.*
- c. It is not the assessor's responsibility to enforce zoning rules concerning commercial use of property in a residential area. *Lassaline testimony.*
- d. The Storey property is located at 18150 Magnet Valley Road in the same neighborhood as the subject property. The Storey property is on the market and listed for \$295,000. Mr. Irvin is the listing agent and as a real estate agent he is aware of the market values in the neighborhood. *Lassaline argument; Resp't Ex. B, C, F.*
- e. The Fisher property identified by the Petitioner as a comparable is assessed at a considerably lower value than the subject property. The Fisher parcel has 1.05 acres and the land is assessed at \$21,100. The subject property has 2.04 acres and the land is assessed at \$86,200. The Fisher property is located in a different neighborhood identified as #9702 Union River View and land values there are lower. *Lassaline argument; Resp't Ex. A, E.*

**Record**

11. The official record contains the following:

- a. The Petition,
- b. A digital recording of the hearing,
- c. Petitioner Exhibit 1 – Perry County zone map,  
Petitioner Exhibit 2 – Magnet Valley map,  
Petitioner Exhibit 3 – Drawing and notes on subject property,  
Petitioner Exhibit 4 – Two pages of Subdivision Control Ordinance No. C-97-9,

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<sup>1</sup> Other evidence contradicts these figures. Specifically, the property record card shows assessed values of \$125,100 (for 2007), \$126,300 (for 2008), and \$149,500 (for 2009, 2010 and 2011). *Resp't Ex. A.*

Petitioner Exhibit 5 – Perry County zoning ordinance excerpts,  
Petitioner Exhibit 6 – Brochure, “Vinnie’s Ohio River Log Cabins,”  
Petitioner Exhibit 7 – Brochure, “Colucci Log Cabins on the Ohio River,”  
Petitioner Exhibit 8 – Notes on Fisher property assessment,  
Petitioner Exhibit 9 – Assessment history of subject property,  
Petitioner Exhibit 10 – Page 2 of Form 130 from May 31, 2011,  
Petitioner Exhibit 11 – Page 2 of Form 131 from August 18, 2011,

- d. Respondent Exhibit A – Property record card (PRC) for the subject property,  
Respondent Exhibit B – PRC for parcel #62-08-01-400-009.000-010, the Storey property,  
Respondent Exhibit C – Realtor’s data sheets with the listing for the Storey property shown on page 4,  
Respondent Exhibit D – Form 115 dated August 22, 2012,  
Respondent Exhibit E – PRC for parcel #62-08-12-400-007.000-010, the Fisher property,  
Respondent Exhibit F – Aerial map of Buzzard Roost subdivision,  
Respondent Exhibit G – Aerial map highlighting the Fisher property,
- e. Board Exhibit A – Form 131 Petition,  
Board Exhibit B – Notice of Hearing,  
Board Exhibit C – Hearing sign-in sheet,
- f. These Findings and Conclusions.

### **Analysis**

12. 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.

I.C. § 6-1.1-15-17.2.

13. The assessed value of the subject property did not change from 2009 to 2010. Accordingly, the burden shifting provision of I.C. § 6-1.1-15-17.2 does not apply.
14. In making a 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”).
15. The Petitioner failed to make a prima facie case for any assessed value reduction. The Board reached this decision for the following reasons:
  - a. 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 PTABOs that concern property valuations, property tax deductions, property tax exemptions, or property tax credits. Ind. Code § 6-1.5-4-1(a). No statute authorizes the Board to review tax rates or tax bills. Therefore, to the extent that the Petitioner may have attempted to contest his tax liability, the Board lacks jurisdiction.
  - 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); 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). 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. Indiana promulgated Guidelines that explain the application of the cost approach. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002—VERSION A (incorporated by reference at 50 IAC 2.3-1-2). The value established by use of the 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.
  - c. Regardless of the method used to rebut the presumed accuracy of an assessment, a party must explain how its evidence relates to the required valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 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 2010 assessment was March 1, 2010. I.C. 6-1.1-4-4.5(f); 50 IAC 27-5-2(c). Any evidence of value relating to a different date must have an explanation about how it demonstrates, or is relevant to, value as of that date. *Long*, 821 N.E.2d at 471.

- d. The purchase price of the subject property can be a good way to prove market value-in-use (if it is an arm's-length transaction and if it relates to the relevant valuation date). *See Hubler Realty, Inc. v. Hendricks Cty. Ass'r*, 938 N.E.2d 311, 314 (Ind. Tax Ct. 2010). The Petitioner bought the property in 1998 and spent \$45,000 building the residence in 2000, but he failed to establish how that cost relates to the required valuation date for a 2010 assessment or how it supports the proposed assessed value. In this case, the Petitioner's costs do not help to prove what a more accurate 2010 assessed value might be.
- e. Either party may introduce evidence of the assessments of comparable properties to help accurately determine market value-in-use. The determination of comparability is made using generally accepted appraisal and assessment practices. Ind. Code § 6-1.1-15-18(c). Accordingly, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the two properties. *Long*, 821 N.E.2d at 470. The proponent is "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. When seeking to establish comparability of land, the relevant characteristics to compare include things such as location, accessibility, and topography. *See Blackbird Farms Apts., LP v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002). In this appeal, the Petitioner failed to offer a meaningful comparison of the Fisher property to his own. Furthermore, the Petitioner failed to establish that drawing any conclusion about the valuation of the subject property based on evidence of the assessed value of a single property would comply with generally accepted appraisal and assessment practices.
- f. The Petitioner also argued that the value of his property is reduced by its location in a flood plain, building restrictions, the heavy traffic via a gravel road, and the presence of nearby commercial use properties in violation of local zoning ordinances. The Petitioner, however, presented no substantial, probative evidence to quantify the impact of any of these factors on the market value-in-use of his parcel. Unsubstantiated conclusions regarding these negative characteristics do not constitute probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). Even if some or all of these factors have a negative impact on the value of the subject property, the Petitioner failed to make his case by simply contesting the methodology used to compute the assessment. To successfully make his case he needed to show the assessment does not accurately reflect the subject property's market value-in-use. *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 677 (Ind. Tax Ct. 2006); *see also P/A Builders & Developers, LLC v. Jennings County Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (explaining the proper focus is not on methodology, but rather on what the correct value actually is).

- g. Finally, the Petitioner discussed the increase in his assessed value from 2007 to 2011. But each tax year stands alone. *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)). Evidence of those other assessments does not help to prove what a more accurate valuation might be for 2010.
  - h. The Petitioner failed to present probative evidence of his property's market value-in-use as of March 1, 2010. Therefore, he failed to make a prima facie case.
16. The Respondent's duty to support the assessment with substantial evidence was 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**

17. 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 finds the total assessed value of the property will not be changed.

ISSUED: January 31, 2013

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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>.