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

Petition No.: **19-001-06-1-5-00032**
Petitioner: **Blitzway, Inc.**
Respondent: **Bainbridge Township Assessor**
Parcel No.: **001-07850-13**
Assessment Year: **2006**

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's representative initiated an assessment appeal with the Dubois County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated May 9, 2007.

2. The Petitioner received notice of the decision of the PTABOA via a Form 115 Notification of Final Assessment Determination dated September 21, 2007.

3. The Petitioner's representative initiated an appeal to the Board by filing a Form 131 dated November 2, 2007. The Petitioner elected to have this case heard according to the Board's small claims procedures.

4. The Board issued a notice of hearing to the parties dated March 17, 2008.

5. After the Board received and granted a request for continuance filed by the Respondent, the Board held an administrative hearing on May 29, 2008, before the duly appointed Administrative Law Judge (the ALJ) Rick Barter.

6. The following persons were present and sworn in at hearing:

   a. For Petitioner: Gerald S. Blessinger, Petitioner

   b. For Respondent:[1] Natalie Jenkins, Dubois County PTABOA,
   Greg Abell, Dubois County PTABOA
   Larry Persohn, Dubois County PTABOA
   Gail Gramelspacher, Dubois County Assessor

[1] Marilyn Meighen appeared as counsel for the Respondent and for Dubois County.

Facts

7. The property under appeal is an unimproved residential parcel located on South Meridian Road, Bainbridge Township, Dubois County, Jasper, Indiana.

8. The ALJ did not conduct an on-site visit of the property.

9. The PTABOA determined the assessed value of the subject property is $34,300 for the 2006 tax year.

10. The Petitioner requested an assessed value of $1,350.

Issues

11. Summary of the Petitioner's contentions in support of alleged error in assessment:

    a. The Petitioner argues that his property's 2006 assessed value is over-stated because the property is assessed as "residential excess acreage" when it should be assessed as "agricultural." *Blessinger testimony*

    b. The Petitioner testified that the land under appeal is fenced and can be used as pasture land for farm animals or for growing hay. *Blessinger testimony, Petitioner Exhibit 11A through 11E.* In support of his argument, Mr. Blessinger offered five photographs he testified he shot "about a month ago." *Id.* Three of the photographs picture sections of metal poles and wire fencing. *Id.* In response to questions from the Respondent, however, Mr. Blessinger testified the property was last used for growing hay in 2003 or 2004 and was last used as pastureland in 1998. *Blessinger testimony.*

    c. The Petitioner also argues that several nearby and surrounding properties are assessed as agricultural properties. *Blessinger testimony.* In support of this contention, the Petitioner submitted property data sheets from the county assessor's internet site printed May 4, 2007, and property record cards printed March 23, 2007, for six properties he identified as comparable to the appealed property. *Id., Petitioner Exhibits 2 through 7.*

12. Summary of the Respondent's contentions in support of the assessment:

    a. The Respondent contends that the 2006 assessed value is correct because in order to be assessed as "agricultural" the land must be devoted to agricultural use. *Meighen argument.* In support of its argument, the Respondent cited Indiana Code § 6-1.1-4-13(a) which states that "[i]n assessing or reassessing land, the land shall be assessed as agricultural land only when it is devoted to agricultural use." *Id.; Respondent Exhibit 7.*

b. Ms. Meighen contends that the Petitioner offered no probative evidence of agricultural activity during the 2006 tax year. *Meighen argument.* Further, the Respondent's witness, Larry Persohn, testified that he reviewed the Petitioner's photographs, and that in his opinion there was no appearance of farming activity. *Persohn testimony.*

c. Moreover, the Respondent contends, the Petitioner's purchase of the parcel supports the assessed value of the property. *Meighen argument.* According to the Respondent, the Petitioner purchased the property in 1996 for $32,000. *Id.* In support of this argument, the Respondent submitted a copy of a sales disclosure for the subject property showing a sales price of $32,000. *Respondent Exhibit 2.* Although the document is undated, the Dubois County Assessor testified it was filed in 1996. *Gramelspacher testimony.*

d. Finally, Ms. Meighen argues that two of the six properties cited by the Petitioner as comparable and assessed as agricultural for 2006 are assessed as residential and that three others are located in a different subdivision than the subject property. *Meighen argument, Respondent Exhibits 4 through 6, 8 and 9.* In support of its contention, the Respondent offered property record cards for 2645 South Meridian Road, 2651 South Meridian Road, 2663 South Meridian Road, 2667 South Meridian Road and 2675 South Meridian Road. *Id.*

Record

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

a. The Petition and related attachments,

b. The digital recording of the hearing labeled 19-001-06-1-5-00032BlitzwayInc,

c. Exhibits:

Petitioner Exhibit 1 – Copy of Form 131 Petition,
Petitioner Exhibit 2 – Data sheet and property record card for Parcel No. 0010785005,
Petitioner Exhibit 3 – Data sheet and property record card for Parcel No. 0010785008,
Petitioner Exhibit 4 – Data sheet and property record card for Parcel No. 0010785004,
Petitioner Exhibit 5 – Data sheet and property record card for Parcel No. 0010785000,
Petitioner Exhibit 6 – Data sheet and property record card for Parcel No. 0010785003,
Petitioner Exhibit 7 – Data sheet and property record card for Parcel No. 0100455012,

Petitioner Exhibit 8 – Form 115, dated September 21, 2007,
Petitioner Exhibit 9 – Property record card for the subject property,
Petitioner Exhibit 10 – Copy of Form 130 appeal,
Petitioner Exhibit 11 – Photographs of the subject property,

Respondent Exhibit 1 – Aerial photograph of the subject property,
Respondent Exhibit 2 – Sales disclosure form for the purchase of the property,
Respondent Exhibit 3 – 2006 property record card for the subject property,
Respondent Exhibit 4 – Property record card for Parcel No. 19-11-13-100-014.000-001,
Respondent Exhibit 5 – Property record card for Parcel No. 19-11-13-100-013.000-001,
Respondent Exhibit 6 – Property record card for Parcel No. 19-11-13-100-011.000-001,
Respondent Exhibit 7 – Copy of Indiana Code § 6-1.1-4-13,
Respondent Exhibit 8 – Property record card for Parcel No. 19-11-13-100-008.000-001,
Respondent Exhibit 9 – Property record card for Parcel No. 19-11-13-100-010.000-001,

Board Exhibit A – Form 131 petition and related attachments,
Board Exhibit B – Notice of Hearing and the Board's notice rescheduling the 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 provide sufficient evidence to establish a prima facie case for a reduction in value. The Board reached this decision for the following reasons:

    a. The Petitioner contends that the appealed parcel should be assessed as "agricultural" land rather than assessed as "excess residential." In support of his contention, Mr. Blessinger testified the parcel is fenced and could be used as grazing pasture for farm animals or to grow hay. *Blessinger testimony.* The Petitioner admitted, however, that the land had last been used as pasture in 1998 and had last been used for growing hay in 2003 or 2004. *Id.*

    b. Indiana Code § 6-1.1-4-13(a) states that that "[i]n assessing or reassessing land, the land shall be assessed as agricultural only when it is devoted to agricultural use." The word "devote" means "to give or apply (one's time, attention, or self) completely." WEBSTER'S II NEW RIVERSIDE DICTIONARY 192 (revised edition). Agricultural use is the "production of crops, fruits, timber, and the raising of livestock." 2002 REAL PROPERTY ASSESSMENT GUIDELINES – VERSION A, Glossary at 1 (incorporated by reference at 50 IAC 2.3-1-2). Here, the Petitioner admitted that no crop has been grown on the property since 2003 and the property has not been used as pastureland since 1998. Although the property is fenced and "can be used" as pastureland, that is insufficient to show that the property is put to an "agricultural use." Residential acreage parcels not used for agricultural purposes are valued using the "excess acreage base rate established by the township assessor." GUIDELINES Chap. 2, p. 69. The Board, therefore, finds that the Petitioner failed to raise a prima facie case that the property's classification as excess residential acreage is in error.

    c. Further, the 2002 Real Property Assessment Manual (hereinafter MANUAL) defines the "true tax value" of real estate 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, for the property." 2002 REAL PROPERTY ASSESSMENT MANUAL (incorporated by reference at 50 IAC 2.3-1-2). There are three generally accepted techniques to calculate market value-in-use: the cost approach, the sales comparison approach and the income approach. The primary method for assessing officials to determine market value-in-use is the cost approach. *Id.* at 3. To that end, Indiana promulgated a series of guidelines that explain the application of the cost approach. The value established by use of the Guidelines, while presumed to be accurate, is merely a starting point. "[A]ny individual assessment is to be deemed accurate if it is a reasonable measure of "True Tax Value'...No technical failure to comply with the procedures of a specific assessing method violates this [assessment] rule so long as the individual assessment is a reasonable measure of 'True Tax Value'..." 50 IAC 2.3-1-1(d).

    d. Here, by merely arguing that the property was classified incorrectly, the Petitioner restricted his argument to the methodology of his assessment. The Petitioner did not present any evidence to support his contention that the property was worth only

$1,350. In fact, the Respondent provided undisputed evidence that Mr. Blessinger purchased the property in 1996 for $32,000. The Tax Court explained how Indiana's assessment system has changed: "Simply put, under the old system, a property's assessed value was correct as long as the assessment regulations were applied correctly. The new system, in contrast, shifts the focus from mere methodology to determining whether the assessed value *is actually correct.*" *P/A Builders & Developers, LLC v. Jennings Co. Assessor,* 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (emphasis in original). The Petitioner had the burden to present market data to establish the true tax value of the property. Mr. Blessinger chose not to present such evidence. Thus, even if the Board found the property's classification to be in error, the Petitioner failed to show that the total assessment is not a reasonable measure of true tax value. Arguments based on strict application of the Guidelines are not enough to rebut the presumption that the assessment is correct. *O'Donnell v. Dep't. of Local Gov't. Finance,* 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *Eckerling v. Wayne Twp. Assessor,* 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006).

e. Finally, the Petitioner contends that the parcel should be assessed as "agricultural" because adjacent parcels are assessed that way. Presently, "Indiana's overhauled property tax assessment system incorporates an external, objectively verifiable benchmark -- market value-in-use." *Westfield Golf Practice Center, LLC v. Washington Township Assessor et al.,* 859 N.E.2d 396, 399 (Ind. Tax Ct. 2007). "As a result, the new system shifts the focus from examining how the regulations were applied (i.e., mere methodology) to examining whether a property's assessed value actually reflects the external benchmark of market value-in-use." *Id.* Thus, it is not enough for a taxpayer to show that its property is assessed higher than other comparable properties. *Id.* Instead, the taxpayer must present probative evidence to show that the assessed value, as determined by the assessor, does not accurately reflect the property's market value-in-use. *Id.* Thus, the Petitioner failed to raise a prima facie case that his property's assessment in 2006 was in error.

f. Where the taxpayer fails to provide probative evidence that an assessment should be changed, the Respondent's duty to support the assessment with substantial evidence is not triggered. *See Lacy Diversified,* 799 N.E.2d at 1221-1222; *Whitley Products,* 704 N.WE.2d at 1119.

Conclusion

16. The Petitioner failed to raise a prima facie case. 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 should not be changed.

ISSUED: _____

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Chairman,
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

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.