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

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| **Petition:** | 79-124-06-1-5-00001 |
| **Petitioner:** | Lavon R. Meyers |
| **Respondent:** | Shelby Township Assessor (Tippecanoe County) |
| **Parcel:** | 122-07500-0036 |
| **Assessment Year:** | 2006 |

The Indiana Board of Tax Review (Board) issues this determination in the above matter. The Board finds and concludes as follows:

### Procedural History

1. Petitioner initiated an assessment appeal with the Tippecanoe County Property Tax Assessment Board of Appeals (PTABOA).

2. The PTABOA issued notice of its decision on October 30, 2006.

3. Petitioner appealed to the Board by filing Form 131 with the Tippecanoe county assessor on November 27, 2006, and elected to have this case heard according to small claims procedures.

4. The Board issued a notice of hearing to the parties dated June 3, 2008.

5. The Board held an administrative hearing on July 21, 2008, before duly appointed Administrative Law Judge Debra Eads.

6. The following persons were sworn as witnesses at the hearing:
   For the Petitioner – Lavon R. Meyers,
   Vernon J. Meyers,
   For the Respondent – Pamela Hruska, Deputy County Assessor. [1]

[1] For appeals of PTABOA determinations issued prior to July 1, 2007, the township assessor is typically the proper Respondent. IC § 6-1.1-15-3. The Shelby Township Assessor did not appear at the hearing and the record contains no written authorization for the county assessor to provide representation. Nevertheless, nobody disputed the authority of the county assessor's deputy. Therefore, the Board will address the case on its merits.

## Facts

7. The subject property is a ten-acre tract consisting of a residence and approximately nine acres of wooded land located at 7190 Robert Ross Road in West Lafayette, Indiana.

8. The Administrative Law Judge did not conduct an on-site inspection of the property.

9. The PTABOA determined the assessed value of the subject property is $43,400 for land and $179,900 for improvements (total assessed value of $223,300).

10. Petitioner requested an assessment of $32,200 for land and $179,900 for improvements (total assessed value of $212,100).

## Issues

11. Summary of the Petitioner's case:

    a. Petitioner acquired the subject property in 1974 and soon thereafter began developing the land as a timber stand. *V. Meyers testimony*. Approximately five acres contain mature species while Petitioner has gradually converted four acres of grassland into developing timber land. *Id.; Petitioner Exhibit 2, attachment A*. As evidence in support of assessment error, Petitioner submitted an aerial photograph of the timber stand (*Petitioner Exhibit 2, attachments A1 and C*), correspondence between Petitioner and the state District Forester (*Petitioner Exhibit 2, attachment B*), state timber management reference materials (*Petitioner Exhibit 3*), and an inventory of the commercial sized trees on the property (*Petitioner Exhibit 4*).

    b. On appeal to the PTABOA, Petitioner's issue was the assessed value of a tennis court on the property. The PTABOA resolved that issue in Petitioner's favor, but it, *sua sponte,* inquired into the classification of the non-residential portion of the parcel and asked whether this land was cultivated. *V. Meyers testimony.* Upon Petitioner's negative response, the PTABOA unilaterally reclassified the woodland portion from agricultural to residential excess acreage. *V. Meyers testimony; Petitioner Exhibit 5*.

    c. Although no timber has been sold commercially, Petitioner has removed significant sections of smaller trees to facilitate growth of other larger, healthier, and more desirable species. *V. Meyers testimony; Petitioner Exhibit 2, attachment D*.

12. Summary of the Respondent's case:

    a. Because the tennis court assessment was the sole issue listed on Petitioner's Form 130 petition, the hearing before the Board should be limited to that single issue. *Hruska testimony*.

    b. The Respondent did not address the land classification or market value.

## Record

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

    a. The Petition,

    b. A digital recording of the hearing,

    c. Petitioner Exhibit 1 – Notification of Final Assessment Determination (Form 115),
    Petitioner Exhibit 2 – Form 131 petition and attachments,
    Petitioner Exhibit 3 – Timber management reference materials,
    Petitioner Exhibit 4 – Inventory of commercial sized trees,
    Petitioner Exhibit 5 – PTABOA Findings,
    Respondent Exhibits – None,
    Board Exhibit A – Form 131 petition,
    Board Exhibit B – Notice of Hearing,
    Board Exhibit C – Sign in sheet,

    d. These Findings and Conclusions.

## Limitation of Issues

14. The Board denies the Respondent's request to limit the scope of this hearing to the single issue raised on Petitioner's Form 130 appeal for the following reasons:

    a. The small claims procedural language on Form 131 states that "[b]y accepting the small claims procedure, the parties agree that the issues contained in the appeal petition are substantially the same as those presented to the PTABOA and agree that no new issues will be raised before the board." 52 IAC 3-1-2(b).

    b. The record clearly establishes the PTABOA raised, *sua sponte*, the issue of land classification and incorporated the residential excess acreage reclassification in its final determination. *Petitioner Exhibits 1, 5.* To deny Petitioner the opportunity to challenge PTABOA's unilateral action would deny Petitioner any right to ever be heard on that issue and would be contrary to the intent of the appeal rights contained in IC §§ 6-1.1-15-1, -3, and -4. Accordingly, the Petitioner is allowed to appeal the PTABOA's determination.

## Analysis

15. 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). 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").

16. Prior to the 2002 general reassessment, true tax value was determined solely by reference to Board of Tax Commissioners' regulations that bore no relation to any objectively verifiable data. *Westfield Golf Practice Center, LLC v. Washington Twp. Assessor,* 859 N.E.2d 396, 399 (Ind. Tax Ct. 2007). As a result, true tax value was solely and inextricably linked to proper application of the administrative regulations. *Id.* Beginning with the 2002 general reassessment, the Board of Tax Commissioners incorporated an external, objective benchmark to determine true tax value.[2] That benchmark is market value-in-use.[3] As a result, the current system shifts away from an examination of methodology. *See* 50 IAC 2.3-1-1(d). "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 focus from mere methodology to determining whether an assessed value is *actually* correct." *P/A Builders & Developers, LLC v. Jennings Co. Assessor,* 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006); *see* 50 IAC 2.3-1-1(d).

17. The Guidelines stress that methods are of less importance than arrival at a reasonably accurate market value on the valuation date. GUIDELINES, ch. 2 at 16. An assessment based on the Real Property Assessment Guidelines for 2002 is presumptively accurate, but a taxpayer can rebut this presumption with probative evidence showing the property's *actual* market value-in-use. 2002 REAL PROPERTY ASSESSMENT MANUAL at 5 (incorporated by reference at 50 IAC 2.3-1-2). A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice will often suffice. *Id.* Additionally, taxpayers may offer sales data and/or capitalized income models of the subject and comparable properties as well as other information compiled according to generally accepted appraisal principles. *Id.*

18. Taxpayers cannot rebut an assessment by simply showing a technical failure in applying the Guidelines. *Eckerling v. Wayne Twp. Assessor,* 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *see also* 50 IAC 2.3-1-1(d). In regard to this principle, neither the Tax Court nor the relevant administrative regulations distinguish between property devoted to agriculture and property devoted to other use. MANUAL at 5; 50 IAC 2.3-1-1(d). The majority of methodology claims rejected by the Tax Court have dealt with attacks on application of the Guidelines in assessing improvements, but the Court has not purported to limit its holdings to those types of cases. *See, e.g., Eckerling, 841 N.E.2d at 678; P/A Builders,* 842 N.E.2d at 900-01; *O'Donnell v. Dep't of Local Gov't Fin.* 854 N.E.2d 90, 94-95 (Ind. Tax Ct. 2006). While the Guidelines value agricultural land utilizing a mass-appraisal income approach, rather than the mass-appraisal cost approach used to value

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[2] The Indiana General Assembly abolished the Board of Tax Commissioners as of December 31, 2001. 2001 Ind. Acts 198 § 119 (b)(2). Effective January 1, 2002, the General Assembly created the Department of Local Government Finance (DLGF). *See* Ind. Code § 6-1.1-30-1.1 (West Supp. 2005-06)(eff. 1-1-02); 2001 Ind. Acts 198 § 66. The DLGF incorporated the Manual into its administrative regulations by reference. 50 IAC 2.3-1-2.

[3] "True tax value" is "[t]he 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, at 2 (incorporated by reference at 50 IAC 2.3-1-2).

improvements, this is a distinction without a difference.[4] In either case, a taxpayer cannot get an assessment changed by simply attacking methodology. Instead, the taxpayer must offer probative market-based evidence to show the assessment is inaccurate and prove what actual market value-in-use is. *See id.*

19. Petitioner was required to offer market-based evidence that the assessment was an inaccurate reflection of true tax value. *Id.* Petitioner, however, simply contested Respondent's methodology in classifying the parcel as residential excess acreage rather than agricultural woodlands. That is precisely the approach the Tax Court rejected in *Eckerling*. The fact the PTABOA classified the subject land as residential excess acreage, rather than agricultural land, does not entitle Petitioner to relief. Even if the PTABOA's reclassification was in error, Petitioner failed to demonstrate the total assessment was not a reasonable measure of true tax value.

**Conclusion**

21. Because Petitioner failed to offer probative market-based evidence of value, the case does not support a lower assessment.

**Final Determination**

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should not be changed.

ISSUED: _____

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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

[4] For 2002, the base rate is $1050 for assessing agricultural land. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002—VERSION A, ch. 2 at 98-99 (incorporated by reference at 50 IAC 2.3-1-2). Assessors adjust base rates using soil productivity factors developed from soil maps published by the United States Department of Agriculture. *Id.* at 105-06. The Guidelines also authorize adjustment for numerous negative influence factors. *Id.* at 102-05.

**- 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>