

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

Petition #s: 75-003-02-1-1-00007
75-003-02-1-1-00008
Petitioner: Dean L. Steinhilber Trust
Respondent: California Township Assessor (Starke County)
Parcel #s: 0030001300
0030001400
Assessment Year: 2002

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 initiated assessment appeals with the Starke County Property Tax Assessment Board of Appeals (“PTABOA”) by written documents dated December 19, 2003.
2. The PTABOA issued its Form 115 Notification of Final Assessment Determination concerning both parcels on February 24, 2004.
3. The Petitioner initiated an appeal on March 23, 2004, by filing a Form 131 Petition to the Indiana Board of Tax Review for Review of Assessment (“Form 131 petition) for each of the above captioned parcels with the Starke County Assessor. The Petitioner elected to have these cases heard under the Board’s procedures for small claims. As requested by the Petitioner, the ALJ issued a pre-hearing order consolidating the Form 131 petitions on May 26, 2006. *Board Ex. C.*
4. The Board issued a notice of hearing to the parties dated June 1, 2006.
5. The Board held an administrative hearing on July 12, 2006, before the duly appointed Administrative Law Judge, David Pardo.
6. The following persons were present at hearing:

For Petitioner: Dean L. Steinhilber, Trustee

For Respondent: Judy Ahlenius, California Township Trustee Assessor
Ronald L. Simoni, PTABOA
John Viveiros, Property Systems

Shirley Sims, Starke County Assessor
Jody Czerniak, PTABOA

7. The following persons were sworn in as witnesses and presented testimony

For Petitioner: Dean L. Steinhilber

For Respondent: Ronald L. Simoni
John Viveiros

Facts

8. The subject property consists of two adjacent vacant agricultural land parcels: Parcel # 003001300, located at 700 East; and parcel # 003001400, located at Range Road, North Judson. For purposes of this decision, the Board shall refer to the parcels collectively as the “subject property,” unless otherwise indicated.

9. The Administrative Law Judge (“ALJ”) did not conduct an inspection of the property.

10. Assessed value of subject property as determined by the Starke County PTABOA:

<u>Petition #</u>	<u>Parcel #</u>	<u>Land</u>
75-003-02-1-1-00007	0030001300	\$ 5,100
75-003-02-1-1-00008	0030001400	<u>\$16,700</u>
	Total	\$21,800

11. Assessed value requested by Petitioner on Form 131 petitions:

The Petitioner requests a total value of \$20,000 for both parcels.

Issues

12. Summary of the Petitioner’s contentions in support of alleged error in assessment:

a) The Petitioner contends that the subject property should be assessed for \$20,000, which is the amount that it paid for the property. *Steinhilber testimony*. Mr. Steinhilber, on behalf of the Petitioner, successfully bid on the subject property at auction in November 1997, and the owner, Key Bank, conveyed the property to the Petitioner by warranty deed on December 30, 1997.¹ *Id.*; *Pet’r Exs. 1-2*.

b) Mr. Steinhilber characterized the purchase transaction as meeting the “classic” definition of fair market value: a willing, knowledgeable seller offered the property at auction, and a willing, knowledgeable buyer bought the property after making the

¹ Mr. Steinhilber testified that the sale closed in February of 1998. *Steinhilber testimony*. The warranty deed bears a stamp reflecting that it was recorded on February 9, 1998; however, the deed purports to have been executed on December 30, 1997. *Pet’r Ex. 1*.

- highest bid. *Steinhilber testimony*. A number of people attended the auction. *Steinhilber testimony*. Mr. Steinhilber was cold and he returned to his car after making an initial bid on behalf of the Petitioner. *Id.* Finally, the auctioneer told Mr. Steinhilber that he was lucky; his bid met the minimum acceptable bid, and the Petitioner was awarded the property. *Id.*
- c) When questioned as to how long the subject property was on the market prior to being sold, Mr. Steinhilber testified “most of the year.” *Id.* During the summer preceding the auction, Mr. Steinhilber had looked at the subject property and another property located within a few miles of the subject property that was also for sale. *Id.* Mr. Steinhilber testified that he did not know who had the listing, but he assumed it was Davis Realty, because that is who provided him with information about the properties. *Id.*
 - d) When asked to relate the purchase price to the January 1, 1999, valuation date set forth in the 2002 Real Property Assessment Manual (Manual), Mr. Steinhilber testified that he did not have exact figures, but that there had not been any “gigantic” increases in value. *Steinhilber testimony*. According to Mr. Steinhilber, American money is not worth anything on the world market, and it would not be worth as much as it was two to four years ago. *Id.*
 - e) The appeal guidelines provided by the Respondent strongly recommend that a taxpayer appealing his assessment obtain an appraisal. *Steinhilber testimony; Pet’r Ex. 3*. The Respondent should be held to the same standard. *Steinhilber testimony*.

13. Summary of the Respondent’s contentions in support of the assessment:

- a) The Petitioner did not demonstrate that the current assessment is incorrect, nor did it present an appraisal to show what the correct assessment should be. *Simoni testimony*.
- b) The Respondent does not agree with Mr. Steinhilber’s characterization of the sale price at auction being representative of the subject property’s market value. *Simoni testimony*. In order for the sale price of a property to be reflective of the property’s market value, the property must have been exposed to the market for a reasonable amount of time. *Id.* Auctioneers advertise properties on the auction block, and they may even advertise properties several months in advance of an auction; however, that does not qualify as reasonable market exposure. *Id.* At an auction, value is set at the time of the bidding. *Id.* It was very cold on the day of the auction at issue in this case. *Id.* One expects fewer bidders on such a day than on a nice, sunny day. *Id.* Mr. Steinhilber himself testified that the auctioneer told him he was “lucky.” *Id.*
- c) The Respondent further disagrees with Mr. Steinhilber’s characterization of Key Bank as a knowledgeable seller. *Simoni testimony*. A bank that has foreclosed its mortgage lien is not concerned with fair market value; it just wants to recoup the debt owed to it. *Simoni testimony*.

- d) The Petitioner purchased the subject property for \$20,000. That sale price amounts to \$550 per acre, which is ridiculously low and does not represent the property's fair market value. *Simoni testimony.*
- e) The subject property receives negative influence factors for periodic flooding and marsh ground. *Simoni testimony; Pet'r Ex. 1.* The Respondent believes that those negative influence factors may be excessive and that they should be re-examined. *Simoni testimony.*

Record

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

- a) The Form 131 petitions.
- b) The recording of the hearing on cassette tape nos. 5769-70.
- c) The following Exhibits were admitted without objection:

- Petitioner's Exhibit 1: Property Deed
- Petitioner's Exhibit 2: Purchase & Sale Contract
- Petitioner's Exhibit 3: Appeal Guidelines
- Petitioner's Exhibit 4: Copies of Property Record Cards
- Petitioner's Exhibit 5: Aerial Photograph of Properties
- Petitioner's Exhibit 6: Printed Photographs of Properties
- Petitioner's Exhibit 7: Copies of Form 133²
- Petitioner's Exhibit 8: Copies of Form 115

- Respondent's Exhibit 1: Copies of Property Record Card for Subject Parcels
- Respondent's Exhibit 2: Aerial Photographs of Subject Parcels
- Respondent's Exhibit 3: Printed Photographs of Subject Parcels
- Respondent's Exhibit 4 A-B: Copies of Forms 133 for Subject
- Respondent's Exhibit 5: Copy of Form 115 for (both) Subject Parcels

- Board Exhibit A: Form 131 Petitions with attachments
- Board Exhibit B: Notice of Hearing
- Board Exhibit C: Pre-Hearing Order dated May 26, 2006
- Board Exhibit D: Order Regarding Filings by Petitioner dated June 8, 2006
- Board Exhibit E: Order Regarding Hearing Procedures dated June 28, 2006
- Board Exhibit G: Hearing Sign-In Sheet

- d) These Findings and Conclusions.

² This exhibit is the same as Respondent's Exhibit 4. The parties did not discuss the significance of those exhibits. The appeal at issue in this case concerns the Petitioner's Form 131 petitions.

Analysis

15. 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 a 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.

16. The Petitioner did not provide sufficient evidence to support its contentions. This conclusion was arrived at because:
 - a) The 2002 Real Property Assessment Manual (“Manual”) defines the “true tax value” of real property 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 at 2 (incorporated by reference at 50 IAC 2.3-1-2). As set forth in the Manual, the appraisal profession traditionally has used three methods to determine a property’s market value: the cost approach, the sales comparison approach, and the income approach. *Id.* at 3, 13-15. In Indiana, assessing officials primarily use the cost approach, as set forth in the Real Property Assessment Guidelines for 2002 – Version A (“Guidelines”), to assess real property.
 - b) A property’s market value-in-use, as ascertained through application of the Guidelines’ cost approach, 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). A taxpayer, however, may offer evidence to rebut that presumption, as long as such evidence is consistent with the Manual’s definition of true tax value. MANUAL at 5. Thus, appraisals prepared in accordance with the Manual’s definition of true tax value may be used to rebut the presumption that an assessment is correct. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1 (“[T]he Court believes (and has for quite some time) that the most effective method to rebut the presumption that an assessment is correct is through the presentation of a market value-in-use appraisal, completed in conformance with the Uniform Standards of Professional

Appraisal Practice. . .”). A taxpayer may also rely upon actual construction costs, sales information regarding the subject or comparable properties and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.

- c) The Petitioner bases its claim on grounds that it bought the subject property for \$20,000 at the end of 1997. As explained above, the Manual contemplates that the sale price of a property may be used to rebut the presumption that an assessment is correct. The Respondent, however, contends that sale price at issue in this case is not probative of the subject property’s market value, because the property was sold at auction.
- d) The Manual provides the following definition of “market value”:

The most probable price (in terms of money) which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- The buyer and seller are typically motivated;
- Both parties are well informed and advised and act in what they consider their best interests;
- A reasonable time is allowed for exposure in the open market;
- Payment is made in terms of cash or in terms of financial arrangements comparable thereto;
- The price is unaffected by special financing or concessions.

MANUAL at 10.

- e) It is apparent from the above definition that a property’s sale price at auction may not reflect its market value for reasons such as a lack of exposure to the open market or the seller not being typically motivated. In fact, the Respondent questions the probative value of the sale price of the subject property on precisely those grounds.
- f) As to the latter concern, the record contains little evidence to suggest that the seller was not typically motivated. The Respondent makes much of the fact that the seller was a bank and offers the sweeping generalization that banks are interested only in recouping the debts owed to them when it sell properties at auction. It may be true that, when a bank forecloses its mortgage lien and buys a property at sheriff’s sale, it is interested in selling the property quickly. Thus, a bank may be motivated to accept a lower offer than would other sellers, provided the offer makes the bank whole. That being said, the record is devoid of evidence that Key Bank was so motivated in this case. In fact, there is no evidence that Key Bank bought the subject property pursuant to foreclosing a mortgage lien, or if it did, what the amount of that lien was.

- g) The question of whether the subject property was sufficiently exposed to the market is more problematic. The Petitioner provided little evidence regarding the extent to which the subject property was exposed to the market, other than Mr. Steinhilber's testimony that he had obtained some information on the subject property from Davis Realty the summer before the auction. *See Steinhilber testimony*. There is no evidence regarding the extent to which the subject property was advertised for sale in advance of the auction. In fact, Mr. Steinhilber testified that a "few" people attended the auction, that he was the only person to bid on the subject property, and that the auctioneer told him that he had been "lucky" because his bid met the minimum bid required by the seller. *Id.* Those facts raise serious questions regarding whether the subject property was sufficiently exposed to the market such that its sale price at auction may be considered probative of its market value.
- h) An additional issue detracts from the probative value of the sale price in this case. The Manual provides that for the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. MANUAL at 4, 8. Consequently, a taxpayer relying on evidence establishing the market value of a property as of a date prior to or substantially after January 1, 1999, must explain how that evidence relates the property's value as of January 1, 1999. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (holding that an appraisal indicating a property's value for December 10, 2003, lacked probative value in an appeal from a 2002 assessment). The Petitioner bid on the subject property in November of 1997, and received title to the property by warranty deed on December 30, 1997. The Petitioner, however, provided little or no explanation regarding how that sale price related to the subject property's values as of January 1, 1999. At most, Mr. Steinhilber made unsupported statements regarding the value of American currency on the world market.
- i) The combination of the lack of evidence concerning the extent to which the subject property was exposed to the open market and the Petitioner's failure to relate the sale price to a value as of January 1, 1999, deprives the sale price of sufficient probative value to overcome the presumption that the current assessment is correct. That is particularly true where the assessed value of \$21,800 is only \$1,800 more than the sale price.
- j) Finally, Mr. Steinhilber repeatedly testified to his opinion that it is unfair to require taxpayers to obtain appraisals while not holding assessors to the same standards. Mr. Steinhilber, however, misapprehends the burden of proof in a property tax appeal. As explained above, the Board must presume that an assessment prepared in accordance with the Guidelines is correct. *See MANUAL at 5; see also, Kooshtard Property VI*, 836 N.E.2d at 505. A taxpayer normally must introduce evidence probative of his property's market value in order to overcome that presumption. *See id.* That evidence may take the form of an appraisal, but it may also consist of other types of market-based evidence. Unless and until a taxpayer presents such evidence, an assessor need not present market-based evidence of its own. If, however, an assessor finds itself in the position of having to rebut market-based evidence presented by a

taxpayer, the Board must evaluate the assessor's evidence using the same standard that it applies to a taxpayer's evidence. *See Kooshtard Property VI*, 836 N.E.2d at 506 n.6 ([T]o the extent that assessing officials themselves utilize other market value-in-use evidence to justify their assessments, their evidence must conform to the same standards to which they would hold taxpayers' evidence."). In this case, the Petitioner failed to introduce probative evidence of the subject property's market value sufficient overcome the presumption that the assessment is correct. The Respondent, therefore, was not required to come forth with market-based evidence of its own.

Conclusion

17. The Petitioner failed to make 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 that the assessment should not be changed.

ISSUED: October 11, 2006

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>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>.