

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

Petition #: 01-022-06-1-6-00001A
Petitioners: Herman W. & Mable Jean Hammond
Respondents: Washington Township Assessor, Adams County Assessor¹
Parcel #: 01-05-01-101-041.000-022
Assessment Year: 2006

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

Procedural History

1. On November 22, 2006, the Petitioners appealed their property’s assessment to the Adams County Property Tax Assessment Board of Appeals (“PTABOA”).
2. The PTABOA issued its determination on February 14, 2007.
3. On March 12, 2007, the Petitioners filed a Form 131 Petition to the Indiana Board of Tax Review for Review of Assessment. The Petitioners elected to have this case heard under the Board’s procedures for small claims.
4. The Board issued a notice of hearing to the parties dated September 12, 2007.
5. On November 15, 2007, the Board held an administrative hearing through its Administrative Law Judge, Jennifer Bippus (ALJ).
6. Persons present and sworn in at hearing:
 - a) For Petitioners: Herman Hammond, Taxpayer
 - b) For Respondent: Rex King, Washington Township Assessor,
Jeffrey Kiess, District Supervisor, Appraisal Research Corp.
Judith Affolder, Adams County Assessor

¹ The Adams County Assessor, Judith Affolder, appeared as an additional party under Ind. Code § 6-1.1-15-4(p) (2006). For ease of reference, the Board captions the County Assessor as a Respondent. Ms. Affolder did not present any evidence or argument.

Facts

7. The Petitioners use the subject property as their primary residence. The property is located at 103 Lake Court, Decatur, Indiana.
8. Neither the Board nor the ALJ inspected the subject property.
9. The PTABOA's determination lists the subject land at \$38,600 and the improvements at \$93,300, for a total assessment of \$131,900.
10. On their Form 131 petition, the Petitioners requested a value of \$35,500 for the land and \$90,000 for the improvements for a total assessment of \$125,500. At hearing, they requested land and improvement values of \$29,700 and \$86,500, respectively, for a total assessment of \$116,200.

Parties' Contentions

11. The Petitioners offered the following evidence and arguments:
 - a) The Petitioners first contend that their land is assessed too high. To demonstrate that point, they submitted a list of vacant lots from their subdivision with asking prices for each lot, and in some instances, sale prices as well. *Pet'rs Ex. 3-5, 7.*
 - b) Mr. Hammond argued that the Petitioners' land should be assessed for \$29,700. They own a corner lot. *Hammond testimony.* Corner lots are priced at either \$30,000 or \$33,000. *Pet'rs Exs. 3-5.* In calculating his requested land assessment, Mr. Hammond used the higher value—\$33,000—and applied a 10% negative influence factor to reflect that the lot has only a limited view of the water. *Id.* That is the same negative influence factor that the Washington Township Assessor applied to the Petitioners' lot.
 - c) Mr. Hammond does not believe that it was appropriate for the assessor to consider various developmental costs in valuing the Petitioners' land. The costs of hooking up water and septic services are included in the lot prices. *Hammond testimony.* While the costs of planting grass and installing a driveway are not included, he asserted that they totaled no more than \$900. *Id.*
 - d) The Petitioners also contend that their house is assessed too high. Mr. Hammond compared the Petitioners' house to a nearby house bought by Edwin Geyer. *Hammond testimony; see also Pet'rs Ex. 2.* Using values from the Real Property Assessment Guideline for 2002 – Version A, Mr. Hammond calculated the costs for various differences between the two houses. He concluded that the Petitioners' house should be priced for \$6800 less than the Geyer's house. *Pet'rs Ex. 8.* He then subtracted that amount from the current assessment for the Petitioners' house to arrive at an improvement value of \$86,500.

- e) Thus, according to Mr. Hammond, the Petitioners' property should be valued at \$29,700 for the land and \$86,500 for the improvements for a total assessment of \$116,200. Mr. Hammond also testified to his belief that the subject property would sell for \$127,000. *Hammond testimony.*
 - f) Mr. Hammond also pointed to the fact that the Petitioners bought their property for \$98,000 in 1992. *Hammond testimony.* And he asserted that prices have been trending downward. He did not, however, attempt to quantify the rate at which they were doing so, nor did he identify specific timeframes during which that downward trend was occurring. *See id.; see also Pet'rs Ex. 9.*
12. The Respondent, Washington Township Assessor, offered the following evidence and arguments:
- a) The assessor relied on six actual sales from 2003-2005 in determining the base rate that it applied to the Petitioners' land. *Kiess testimony; Resp't Ex. 4.* The average sale price was \$36,400, and the standard lot size was 110 feet by 150 feet. *Id.* The assessor added \$4760 to each lot to account for septic hook-up, driveway installation, and landscaping. *Keiss testimony.* It based that amount on actual costs. *Id.*
 - b) Using those calculations, the assessor determined that lots in the Petitioners' neighborhood were worth \$395 per front foot. *Keiss testimony.* That calculation produced a "very tight" sales-to-assessment ratio. *Id.; Resp't Ex. 4.* The assessor applied a 10% negative influence to the subject's assessment to account for it not being on the water, even though actual lot sales showed no difference between on-water and off-water prices. *Keiss testimony.*
 - c) The assessor also found seven sales of improved properties in the Petitioners' neighborhood. *Id.* Only one of those properties was comparable to the subject property—the same Geyer home that the Petitioners referenced. *Id.; Resp't Ex. 7.* While the Geyer property sold for \$137,000, the assessor valued the Petitioners' property at only \$131,900. *Keiss testimony.*

Record

13. The official record for this matter is made up of the following:
- a) The Form 131 petition.
 - b) A digital recording of the hearing.
 - c) Exhibits:

Petitioners Exhibit 1: Subject property record card

Petitioners Exhibit 2: Property record card for the Geyer home

Petitioners Exhibits 3-5: Lake Shore Addition sales listing
Petitioners Exhibit 6: Lake Shore Addition plat map
Petitioners Exhibit 7: Comparable lot sales
Petitioners Exhibit 8: Calculation of differences between subject and comparable
using Real Property Assessment Manual values
Petitioners Exhibit 9: General comments regarding the subject property

Respondent Exhibit 1: Subject property record card
Respondent Exhibit 2: Form 131 petition
Respondent Exhibit 3: PTABOA hearing record
Respondent Exhibit 4: Land sales summary
Respondent Exhibit 5: Comparable property grid
Respondent Exhibit 6: Subject property photograph
Respondent Exhibit 7: Comparable property photograph
Respondent Exhibit 8: Summary of comments

Board Exhibit A: Form 131 Petition
Board Exhibit B: Notice of Hearing
Board Exhibit C: Notice of Appearance of County Assessor
Board Exhibit D: Hearing Sign-In Sheet

d) These Findings and Conclusions.

Analysis

Burden of Proof

14. A petitioner seeking review of an assessing official's determination must 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).
15. In making its case, the petitioner 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. 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.

The Petitioners' Case

17. The Petitioners did not prove that their assessment is incorrect. The Board reaches this conclusion for the following reasons:
- a) The 2002 Real Property Assessment Manual defines “true tax value” 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 2 (incorporated by reference at 50 IAC 2.3-1-2). The appraisal profession traditionally has used three methods to determine a property’s market value: the cost, sales-comparison and income approaches to value. *Id.* at 3, 13-15. Indiana assessing officials generally assess real property using a mass-appraisal version of the cost approach, as set forth in the Real Property Assessment Guidelines for 2002 – Version A.
 - b) A property’s market value-in-use, as determined using the Guidelines, 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). But a taxpayer may rebut that presumption with evidence that is consistent with the Manual’s definition of true tax value. MANUAL at 5. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer sales information for the subject or comparable properties and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.
 - c) By contrast, a taxpayer does not rebut the presumption that an assessment is correct simply by contesting the assessor’s methodology in computing it. *See Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). Instead, the taxpayer must show that the assessor’s methodology yielded an assessment that does not accurately reflect its property’s market value-in-use. *Id.* And strictly applying the Guidelines is not enough to make that showing. *Id.*
 - d) The Petitioners nominally attempted to use the cost approach to rebut the current assessment and to establish their property’s true market value-in-use. The cost approach assumes that potential buyers will pay no more for a property than it would cost them to purchase an equally desirable parcel of vacant land and construct an equally desirable substitute improvement. MANUAL at 13. One calculates the “cost new” of the improvement and subtracts from that the amount of accrued depreciation to arrive at an estimate of its value. *Id.* One then adds the value of the land as if vacant to arrive at the property’s total value. *Id.*
 - e) Mr. Hammond’s method for determining each component under the cost approach, however, was significantly flawed. In determining the subject lot’s value, Mr. Hammond looked to sales of vacant lots that, at best, were only partially developed for improvements. There is a factual dispute as to whether the “vacant” lot sale prices

- included the costs for utility hook-ups. Neither side offered any evidence to corroborate its assertions. The Board need not resolve that factual dispute, however, because Mr. Hammond admittedly ignored at least some costs of developing his lot for improvements. And the Board gives no weight to his unsupported assertion that those amounted to no more than \$900.
- f) Also, while Mr. Hammond testified that corner lots were selling for either \$30,000 or \$33,000, he offered no evidence of corner lots that actually sold around the relevant January 1, 2005, valuation date. *See* Ind. Admin. Code tit. 50, r. 21-3-3 (stating that beginning with the March 1, 2006, assessment, the valuation date is January 1st of the calendar year preceding the assessment date). His summary of asking prices shows corner lots listed between \$28,000 and \$36,000. *Pet'rs Exs. 3-5*. And the non-corner lots that actually sold in 2005 ranged from \$35,000 to \$37,500. *Id.*
 - g) Plus, Mr. Hammond offered no market-based evidence to justify applying a negative 10% influence factor to the Petitioners' lot. Instead, he simply asserted that any realtor would say that lots that "touch" water sell for more than lots that do not. *Hammond testimony*. Mr. Hammond's summary of asking prices does identify one lot—Lot #1—that has no lake view. *Pet'rs Exs. 3-6*. That lot is listed for only \$28,000. But it is irregularly shaped and sits at the subdivision's far edge. The Board cannot tell whether its relatively lower asking price stems from not being on the water, from its irregular shape and location, or from some combination of those factors.
 - h) True, the Washington Township Assessor applied the same negative 10% influence factor in assessing the subject lot. But the Petitioners needed to introduce independent market-based evidence to rebut their property's assessment, not simply rely on Mr. Hammond's own strict application of the Guidelines. And the Petitioners did not offer market-based evidence to quantify the significance of a water view.
 - i) In summary, the Petitioners' evidence, at most, supports an inference that their land is assessed slightly too high. But they did not demonstrate the land's actual market value-in-use. They certainly did not support their requested value of \$29,700. And while assigning value to an improved property's land, as if it were vacant, is a necessary component of the cost approach, Indiana's assessment scheme is ultimately concerned with the property's value as a whole. Thus, the Board is reluctant to lower an improved property's land assessment without some assurance that the property as a whole is assessed for more than its market value-in-use.
 - j) Mr. Hammond's attempt to value the Petitioners' house suffers from even greater problems. He simply compared the assessment of the Geyer's house to that of the Petitioners' house. Thus, he based his calculation exclusively on the Guidelines. As explained above, however, strictly applying the Guidelines generally will not suffice to rebut the presumption that an assessment is correct.

- k) Even if that were generally a valid approach, Mr. Hammond did not apply it persuasively. He simply pointed to some differences between the two houses, while ignoring others. For example, the Geyer house was built three years before the Petitioners', entitling it to greater depreciation under the Guidelines. *Resp't Ex. 1; Pet'rs Ex. 2*. But Mr. Hammond ignored that difference in his calculations. *See Hammond testimony; Pet'rs Exs. 7-8*. Plus, rather than subtracting the \$6,800 in differences between the two houses from the Geyer house's assessment, he subtracted in from the subject house's already lower assessment. *See Resp't Ex. 1; Pet'rs Exs. 2, 7-8*.
- l) Finally, while Mr. Hammond testified that the Petitioners bought the subject property for \$98,000 in 1992, he did not explain how that remote sale related to the subject property's market value-in-use as of the relevant January 1, 2005, valuation date.
- m) For the reasons set forth above, the Petitioners failed to make a prima facie case for lowering their property's assessment.

Conclusion

- 18. The Petitioners failed to establish a prima facie case. The Board finds for the Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be affirmed.

ISSUED: _____

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>