

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

Petition: 02-057-02-1-5-00372
Petitioner: Evelyn Brosch
Respondent: Perry Township Assessor (Allen County)
Parcel: 24-0006-0027
Assessment Year: 2002

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

Procedural History

1. The Petitioner initiated an assessment appeal with the Allen County Property Tax Assessment Board of Appeals (PTABOA) by written document.
2. The PTABOA issued its decision on January 25, 2005.
3. The Petitioner, by her attorney, William D. Swift, appealed to the Board by filing a Form 131 with the county assessor on February 24, 2005. The Petitioner elected small claims procedures.
4. The Board issued a notice of hearing dated November 15, 2006.
5. Administrative Law Judge Patti Kindler held the hearing in Fort Wayne on January 25, 2007.
6. Mr. Swift represented the Petitioner and F. John Rogers, Attorney at Law, represented the Respondent at that hearing.
7. Evelyn Brosch and Angela Sorg, Perry Township Assessor, were sworn as witnesses at the hearing.

Facts

8. The subject property is 32.69 acres of vacant land located at 3000 North of McComb Road in Hometown, Indiana.
9. The Administrative Law Judge did not conduct an inspection of the property.

10. The PTABOA determined the assessed value is \$192,500.
11. At the hearing, the Petitioner claimed the assessed value should be \$85,000.

Contentions

12. Summary of the Petitioner's contentions:
 - a) The Petitioner owns a front 18-acre parcel with a dwelling, and an unimproved rear parcel that has 34 acres.¹ Only the rear parcel is the subject of this appeal. *Brosch testimony.*
 - b) The Allen County Zoning Commission will not permit this parcel to be subdivided into more than two addresses. There are no public roads leading to the rear parcel. There is limited access to the only private road on the property due to flooding and county restrictions. *Brosch testimony; Pet'r Ex. 5.* Approximately fifteen acres of the parcel are wetlands that are strictly regulated by the Indiana Department of Natural Resources (DNR). Photographs taken in 2006 show the standing water and ice in this area. *Brosch testimony; Pet'r Ex. 2.* The DNR will not allow this acreage to be drained or otherwise disturbed. The parcel basically is unusable and would be very costly to improve. *Brosch testimony.*
 - c) The Petitioner purchased both parcels in 1996 for \$229,000, which is approximately \$4,400 per acre for the 52-acre site. *Brosch testimony; Pet'r Ex. 5.* Because that purchase occurred prior to 1999, that price is the determining factor for its value. If the front 18 acres that are not subject to flooding were valued at \$8,000 per acre (or \$144,000), then the rear 34 acres should be valued at \$2,500 per acre (a total of \$85,000). *Pet'r Ex. 5.*
 - d) Mr. John Sullivan, a real estate broker/associate, has had the subject parcel listed for sale for over a year, but there has been very little interest from prospective buyers. *Brosch testimony; Pet'r Ex. 1.* Based on three sales of usable land, Mr. Sullivan concluded the value of the Petitioner's acreage as of January 18, 2007, was \$80,000 to \$90,000. *Pet'r Ex. 1.* Mr. Sullivan did not determine the value of the property as of either the valuation date of January 1, 1999, or the assessment date of March 1, 2002. *Brosch testimony.*
 - e) The Hermance comparable property has a lower assessed value per acre than the Petitioner's property. *Brosch testimony; Pet'r Ex. 4.* Additionally, the Hermance property got a negative influence factor of 35 percent for flooding, but no similar influence factor was applied to the subject parcel. *Id.*

¹ The Petitioner described the appealed parcel's area as 34 acres. *Brosch testimony; Pet'r Ex. 5.* The property record card lists the parcel's size as 32.69 acres. *Resp't Ex. 4.* The difference is not significant to the outcome of this appeal.

- f) The neighborhood boundaries used to determine the land value are flawed. The Petitioner's unusable land should not be included in a neighborhood classified as good. It should be classified as below average or poor. The neighborhood boundary lines should have been moved. The good neighborhood should be located on the west side of the swamp. *Brosch testimony.*
13. Summary of the Respondent's contentions:
- a) The subject parcel is located in a good neighborhood. It cannot be classified as poor. *Sorg testimony.* As instructed by the Department of Local Government Finance, the parcel was assessed using the Neighborhood Land Order excess acreage base rate of \$8,000 for a good neighborhood. *Sorg testimony; Resp't Ex. 7.* The land pricing for 27.6 acres was reduced to \$5,500 per acre to account for the lowland flooding. *Resp't Ex. 4.* The current listing on the market for \$190,000 supports the \$192,500 assessment. *Sorg testimony; Resp't Ex. 5.*
- b) Property record cards for eight properties located in the subject neighborhood show that the excess acreage value of \$8,000 per acre applied to the subject parcel was applied consistently to other similar parcels in the neighborhood. *Sorg testimony; Resp't Ex. 8.*
- c) The purportedly comparable Hermance property is not located in the subject's neighborhood. Therefore, it is not valued at the same price per excess acre. *Sorg testimony.* Further, the negative influence factor given to the Hermance parcel is based on shape and size, rather than flooding. *Id.*
- d) The Sullivan one-page opinion of value dated January 18, 2007, which was identified as an appraisal by the Petitioner, does not trend the value to the March 1, 2002, assessment date or the January 1, 1999, valuation date. Similarly, the evidence regarding three comparable properties attached to the Sullivan report and the subject parcel's current sale listing price do not reflect the 1999 value. The Indiana Tax Court has ruled that appeals of the 2002 assessment must relate back to the valuation date of January 1, 1999. *Rogers argument; Resp't Ex. 10.* Because the Petitioner has not trended any of her evidence to 1999, she has not met her burden to establish a prima facie case. *Rogers argument.*

Record

14. The official record for this matter is made up of the following:
- a) The Petition,
- b) The digital recording of the hearing,

- c) Petitioner Exhibit 1 – Opinion of value by John Sullivan, Real Estate Broker/associate, dated January 18, 2007, with information about three purportedly comparable land sales,
 - Petitioner Exhibit 2 – Aerial photograph of the subject neighborhood, a plat map, and twelve photographs of the subject parcel,
 - Petitioner Exhibit 3 – Notification of Final Assessment Determination (Form 115) and the property record card for the taxpayer’s home-site parcel (not the subject of this appeal),
 - Petitioner Exhibit 4 – Property record card for the Hermance property,
 - Petitioner Exhibit 5 – Summary of argument and proposed valuation,
 - Respondent Exhibit 1 – Notice of Hearing,
 - Respondent Exhibit 2 – Form 131 Petition,
 - Respondent Exhibit 3 – Notice of PTABOA hearing and request for witnesses and exhibits,
 - Respondent Exhibit 4 – Form 115, property record cards for both the subject property and the contiguous home-site parcel, and the PTABOA’s Findings and Conclusions,
 - Respondent Exhibit 5 – Internet listing data for the subject parcel,
 - Respondent Exhibit 6 – Aerial photograph of the neighborhood with four photographs of the acreage,
 - Respondent Exhibit 7 – Neighborhood Valuation Form (Land Order) for the subject neighborhood,
 - Respondent Exhibit 8 – Eight property record cards for comparable assessments and market data from the subject neighborhood,
 - Respondent Exhibit 9 – Tax statement for 2002 pay 2003 with preliminary local appeal data attached,
 - Respondent Exhibit 10 – Copy of decision, *O’Donnell v. Dept’ of Local Gov’t Fin.*, 854 N.E.2d 90 (Ind. Tax Ct. 2006),
 - Board Exhibit A – Form 131 Petition with attachments,
 - Board Exhibit B – Notice of Hearing,
 - Board Exhibit C – Hearing Sign In Sheet,
- d) These Findings and Conclusions.

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 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.
16. The Petitioner did not provide sufficient evidence to support her contentions. This conclusion was arrived at because:
- a) The Petitioner established several facts regarding the subject property that the Board accepts as true. The wetlands designation and related restrictions on development appear to be the most significant. The lack of a public road access to the rear parcel (there is only limited access by private road) and the fact that the county zoning commission will not permit the parcel to be subdivided into more than two addresses also were established without any real dispute. It seems reasonable to conclude that these factors probably have some negative impact on the usefulness and marketability of the subject property, but that is not enough to make a case. In order to make a prima facie case for any assessment change, the Petitioner must offer probative evidence that quantifies the impact in terms of value.
 - b) Real property is assessed on the basis of its "true tax value," which does not mean fair market value. It 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). 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. 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) The Petitioner contended that the purchase of the front and rear parcels for \$229,000 in 1996 should be the determining factor in arriving at the correct assessment. She failed, however, to provide probative evidence to establish how much of that amount was for the land that is the subject of this appeal. Furthermore, the 2002 assessment must reflect the value of the property as of January 1, 1999. MANUAL at 4. If a Petitioner presents evidence of value relating to a different date, the Petitioner is required to provide some explanation about how that value demonstrates, or is relevant to, the value as of January 1, 1999. See *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The Petitioner failed to relate the 1996 purchase price to January 1, 1999. Accordingly, her purchase price is not probative evidence.
- d) The Petitioner also introduced a broker's opinion of value that concluded the January 2007 value of the property was between \$80,000 and \$90,000.² This conclusion of value is based on a review of three January 2005 sales of purportedly comparable land. In presenting this evidence, the Petitioner essentially relies on a sales comparison approach to establish the market value-in-use of the subject property. See MANUAL at 3 (stating that the sales comparison approach "estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market."). In order to use the sales comparison approach as evidence in a property assessment appeal, the proponent must establish comparability. The broker's analysis, however, failed to establish the comparability of the three properties to the Petitioner's property. For example, the listing reports for the three other properties indicate that they have usable acreage zoned as agricultural sites in Springfield and Lafayette Townships without encumbering restrictions. *Pet'r Ex. 1 at 2-4*. In contrast, the Petitioner's parcel is located in Perry Township, is subject to flooding, and its use is restricted by the DNR. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the properties. See *Long*, 821 N.E.2d at 470; *Blackbird Farms Apts. v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002). In presenting such evidence, one must explain the characteristics of the subject property and compare them to those of the purportedly comparable properties. One must also explain how any differences affected the relevant market value-in-use of the properties. See *Long*, 821 N.E.2d at 471. The Petitioner offered no such explanation. Furthermore, the Petitioner failed to establish any link between the January 2007 broker's opinion of value and the January 1, 1999, valuation date. The broker's opinion of value is not probative evidence.

² The Tax Court has previously stated 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 (USPAP)." *Kooshtard Prop. VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n. 6 (Ind. Tax Ct. 2005). The document presented by the Petitioner is not an appraisal performed by a certified real estate appraiser. It is simply a one-page broker's opinion that contains no reference or claim about conforming with USPAP. *Pet'r Ex. 1*.

- e) The Petitioner also attempted to make a case by comparing her assessment to that of the Hermance property. The Petitioner, however, did not establish the comparability of the Hermance property to her own. She failed to explain how the characteristics of her property compared to those of the Hermance property (located in a different neighborhood), and how any differences affected the relevant market value-in-use. *See Long*, 821 N.E.2d at 471. Accordingly, this evidence does not make a prima facie case.
- f) The Petitioner disputed the neighborhood designation and the lack of a negative influence factor. This argument focused solely on the methodology used to determine the assessment. Even if the Respondent's assessment did not fully comply with the Guidelines, the Petitioner must show that the total assessment was not a reasonable measure of true tax value. *See Ind. Admin. Code tit. 50, r. 2.3-1-1(d)*. One cannot make a prima facie case based only on disputes about how the Guidelines were applied. *See O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 94-95 (Ind. Tax Ct. 2006). Arguments regarding strict application of the Guidelines are not enough to rebut the presumption that the assessment is correct. *See Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). The Petitioner was required to show through market-based evidence that the assessed value does not accurately reflect the property's market value-in-use, but she did not do so. This part of the claim does not present a prima facie case that the assessment must be changed.
- g) When a taxpayer fails to provide probative evidence for an assessment change, the Respondent's duty to support the assessment with substantial evidence is not triggered. *See Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003); *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

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: _____

 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>>.