

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

Petition #'s: 25-010-03-1-5-00008
25-010-03-1-5-00008A
Petitioners: Michael & Linda Wagoner
Respondent: Rochester Township Assessor (Fulton County)
Parcel #'s: 010-07224-00
010-07225-00
Assessment Year: 2003

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 Petitioners initiated two assessment appeals with the Fulton County Property Tax Assessment Board of Appeals (the PTABOA) by written documents dated February 23, 2005.
2. The Petitioners received notices of the decisions of the PTABOA on May 27, 2005.
3. The Petitioners filed two appeals to the Board by filing Form 131s with the county assessor on June 20, 2005. The Petitioners elected to have these cases heard in small claims.
4. The Board issued notices of hearings to the parties dated March 7, 2006.
5. The Board held administrative hearings on April 11, 2006, before the duly appointed Administrative Law Judge (the ALJ) Dalene McMillen.
6. The following persons were present and sworn in at the hearing:
 - a. For Petitioners: Linda Wagoner, Petitioner
 - b. For Respondent: Vicki Dreibelbis, Fulton County Reassessment Deputy
Susan Carr, Fulton County Assessor
Carol Loebig, Rochester Township Assessor

Facts

7. The subject properties are vacant lots (Lots 24 and 25) located in the Deere Run II Addition, each measuring 125 feet by 180 feet or .517 acres of land. The properties are located on Deere Trail Court East, Rochester, in Rochester Township, Fulton County.
8. The ALJ did not conduct on-site visits of the properties.
9. The PTABOA determined the assessed values for each of the subject properties to be \$13,100 for the land. There are no improvements on the lots.
10. The Petitioners requested assessed values for each of the subject properties to be \$10,500 each.

Issue

11. Summary of Petitioners' contentions in support of alleged error in assessment:
 - a. The Petitioners contend that based upon the subject parcels purchase prices that the subject properties are over-valued. *L. Wagoner testimony*. The Petitioners contend that they purchased the subject parcels from the developer of the subdivision, G & M Development, LLC, on June 3, 2004, for \$9,250 each. *L. Wagoner testimony; Petitioner Exhibit 23*. The Petitioners allege that at the time of the purchase of the subject parcels, the subject properties were receiving a "developer's factor" and thus were being assessed at \$500 per lot. *L. Wagoner testimony*. The Petitioners further allege that the assessment on the subject properties was changed from \$500 each to \$13,100 each. *Id.*
 - b. The Petitioners also argued that the subject properties were valued in excess of similar vacant lots. *Id.* In support of this contention, the Petitioners submitted sales listings for vacant properties in the subject properties' subdivision from January 1996 through December 2005, whose per half acre lot prices ranged from \$5,000 to \$21,500. *L. Wagoner testimony; Petitioner Exhibits 5 – 15*. The Petitioners added that properties in other subdivisions similar to the subject's had a per half acre range of \$4,070 to \$6,788. *Id.; Petitioner Exhibits 16 – 22*.
12. Summary of Respondent's contentions in support of the assessment:
 - a. The Respondent contends the subject lots are properly assessed. *Loebig testimony*. The Respondent submitted evidence of nine "comparable" properties that sold in 1999 and 2000 for \$8,500 to \$28,000. *Loebig testimony; Petitioner Exhibits 2 – 10*. The Respondent testified that the subject properties are assessed at \$13,100 per lot, while the "comparables" assessed values ranged from \$710 to

\$32,100 per lot. *Id.* The Respondent alleges that this shows that the subject lots are assessed fairly. *Loebig testimony.*

- b. The Respondent testified that the market in the subject properties' area has declined since the 1999 valuation date due to loss of industry in the area, making values in 1999 higher than what they would be for 2003. *Id.*
- c. Regarding the Petitioners' comparable sales, the Respondent contends that the Petitioners failed to show how sales listings from 2003 through 2005 were relevant to or establish the subject properties values as of the January 1, 1999, valuation date. *Id.*

Record

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

- a. The Petition,
- b. The tape recording of the hearing labeled STB 2290 and CD recording labeled STB 2290A,
- c. Exhibits:

Petitioner Exhibit 1 – Form 131 petition for parcel #010-07225-00,
Petitioner Exhibit 2 – Form 130 petition for parcel #010-07225-00,
Petitioner Exhibit 3 – Form 131 petition for parcel #010-07224-00,
Petitioner Exhibit 4 – Form 130 petition for parcel #010-07224-00,
Petitioner Exhibit 5 – Multiple Listing Sheet (MLS) for Deere Run
Addition II Lot 13,

Petitioner Exhibit 6 – MLS for the subject lots in Deere Run Addition II,
Petitioner Exhibit 7 – MLS for Deere Run Addition II Lot 9,
Petitioner Exhibit 8 – MLS for Deere Run Addition II Lot 14,
Petitioner Exhibit 9 – MLS for Deere Run Addition II Lot 4,
Petitioner Exhibit 10 – MLS for Deere Run Addition II Lot 18,
Petitioner Exhibit 11 – MLS for Shafer Shores Section D Lot 9, Deere
Run II Addition – one acre lot, and Deere Run II
Addition Lot 2,

Petitioner Exhibit 12 – MLS for Deerfield Estates Lot 18 & 19 and Deere
Run II Addition Lot 27,

Petitioner Exhibit 13 – MLS for Deere Run II Addition Lot 3, Deerfield
Estates Lot 12 and Deerfield Estates Lot 14A,

Petitioner Exhibit 14 – MLSs for Deere Run II Addition Lots 22 & 23,

Petitioner Exhibit 15 – A sheet summarizing seven properties sold from
2003 to 2005,

Petitioner Exhibit 16 – MLS for Victory Garden Lot 3,
Petitioner Exhibit 17 – MLS for Victory Garden Lot 11,
Petitioner Exhibit 18 – MLS for Victory Garden Lot 14,
Petitioner Exhibit 19 – MLS for 0 West 11th Street, Rochester,
Petitioner Exhibit 20 – MLSs for River Bend Estates A Lots 6 & 7,
Petitioner Exhibit 21 – MLS for Whipporwill Estates Section 1 Lot 2,
Petitioner Exhibit 22 – MLS for Quail Hollow Building Lot 14,
Petitioner Exhibit 23 – Settlement statement for Deere Run II Addition
Lots 24 & 25 from G & M Development, LLC to
Michael and Linda Wagoner, dated June 3, 2004,
Petitioner Exhibit 24 – Notification of Final Assessment Determination
(Form 115), dated May 27, 2005

Respondent Exhibit 1 – Subject property record cards (PRC) for parcels
#010-07224-00 and #010-07224-00,
Respondent Exhibit 2 – Sales Disclosure and PRC from G & M
Development, LLC to James & Treva Mulligan,
Respondent Exhibit 3 – Sales Disclosure and PRC from Carl D. Shafter
Family Living Trust to Sandra & Jeffrey Good,
Respondent Exhibit 4 – Sales Disclosure and PRC from Tom Brovont to
Thomas & Ann Garver,
Respondent Exhibit 5 – Sales Disclosure and PRC from Tom Brovont to
Maralyn Newll- Arila,
Respondent Exhibit 6 – Sales Disclosure and two PRCs from Larry
Calhoun to Randy Overmyer,
Respondent Exhibit 7 – Sales Disclosure and PRC from Bryan & Julia
Lewis to Donald & Linda McNeal,
Respondent Exhibit 8 – Sales Disclosure and PRC from Lewis
Development, LLC to Skyline Builders,
Respondent Exhibit 9 – Sales Disclosure and two PRCs from Ronald
Bailey to David Koontz,
Respondent Exhibit 10 – Sales Disclosure and three PRCs from Bryan &
Julia Lewis to Herninder & Harpreet Mashiana,

Board Exhibit A – Form 131 petitions,
Board Exhibit B – Notices of Hearings,
Board Exhibit C – Hearing sign-in sheets,

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 Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 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 Township 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 Petitioners provided sufficient evidence to establish a prima facie case for a reduction in value. The Board reached this decision for the following reasons:
- a. The Petitioners contend that the land assessments on the subject properties are excessive. *L. Wagoner testimony*. In support of this claim, the Petitioners argued that G & M Development, LLC, had legal title to the subject lots in 2003, therefore the land was reclassified incorrectly.¹ *Id.* Further, the Petitioners contend, the purchase price of the lots and the sales prices of comparable properties to the subject properties show that the properties are over-valued. *Id.; Petitioner Exhibits 5 – 24.*

Land Classification

- b. The Petitioners contend the subject lots are currently being assessed as vacant lots at \$13,100 each. *L. Wagoner testimony; Respondent Exhibit 1*. According to the Petitioners, prior to the purchase of the subject properties in 2004, the subject lots were receiving what the Rochester Township Assessor explained was a “developer’s factor”, and therefore were being assessed at \$500 per lot. *L.*

¹ The March 1, 2003, assessment is under appeal in this matter. *See Board Exhibit A*. The Petitioners testified that they purchased the properties on June 3, 2004. *Wagoner testimony*. The Petitioners submitted two documents that were executed at the closing on the subject properties June 3, 2004, a Tax Agreement between the Petitioners and G & M Development, LLC sent to Fretz Abstract Company and a Change of Ownership to the Fulton County Treasurer/Auditor. Both documents indicated that the Petitioners would be responsible for the taxes commencing with the 2003 payable 2004 tax year. *See Board Exhibit A at 33 - 35*. As the “the taxpayer responsible for the property taxes payable on the subject property,” the Petitioners are proper parties in this matter. *See 52 IAC 2-2-13*.

Wagoner testimony; Respondent Exhibit 1. . The Petitioners testified that they purchased the properties on June 3, 2004. *Wagoner testimony.* In support of this testimony, the Petitioners submitted the settlement statement from their purchase of the properties. *See Petitioner Exhibit 23.* Therefore, the Petitioners argue, the developer still owned the property on the assessment date of March 3, 2003 and the property should not have lost the “developer’s factor.” *Wagoner testimony.*

- c. Pursuant to Ind. Code § 6-1.1-4-12, “if land assessed on an acreage basis is subdivided into lots, the lots may not be reassessed until the next assessment date following a transaction which results in a change in legal or equitable title to that lot.” Ind. Code § 6-1.1-4-12 (2003). According to Indiana law, the assessment date is March 1 for all tangible property (real property), except mobile homes as defined in Ind. Code § 6-1.1-7-1. Ind. Code § 6-1.1-1-2 (2003). Here, the Petitioners submitted a settlement statement that shows they purchased the subject lots from G & M Development, LLC, on June 3, 2004. *Petitioner Exhibit 23.* In doing so, the Petitioners have shown that G & M Development, LLC, held legal title to the subject lots for the assessment year as of March 1, 2003. *Id.* In further support of their contention, the subject properties’ property record cards show the assessed values for each lot to be \$500 for the assessment years of 2002 and 2004. *Respondent Exhibit 1.* Thus, the Petitioners have raised a prima facie case that the properties were improperly reassessed prior to the Petitioners’ ownership of the lots contrary to the provisions of Ind. Code § 6-1.1-4-12.
- d. 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 Insurance Company 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. Here, the Respondent merely alleged that the land is valued under the assessment guidelines. *Loebig testimony.* However, to overcome a Petitioner’s prima facie case, the Respondent must do more than simply assert that it assessed the property correctly. *See Canal Square v. State Board of Tax Commissioners*, 694 N.E.2d 801, 808 (Ind. Tax Ct. Apr. 24, 1998) (mere recitation of expertise insufficient to rebut prima facie case).
- e. The Board finds that the Petitioners were not the owners of record as of March 1, 2003 and, therefore, the subject lots were improperly reassessed prior to any change in legal or equitable title. The Board holds that the value of the lots for the assessment year of March 1, 2003 is \$500.00 each.

Comparable Properties

- f. The Petitioners further contend that the subject properties are over-assessed and should be valued at \$9250 per lot based on the purchase price and comparable sales. *Petitioner Exhibit 23; Wagoner testimony.* In support of this contention,

the Petitioners submitted twenty-three multiple listings of similar vacant land sales. *Petitioner Exhibits 5-22*. The Petitioners argued that the vacant land sales of similar size and type of lots sold from January 1996 through December 2005 from \$5000 to \$21,500. *Id.* In particular two comparable sales occurred near the assessment date, are the same size as the subject lots and are located in the same neighborhood sold for \$12,500 each on March 16, 1999. *Petitioner Exhibit 14; Wagoner testimony*.

- g. The 2002 Real Property Assessment Manual (“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 similar user, from the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL –VERSION A at 2 (incorporated by reference at 50 IAC 2.3-1-2). A taxpayer may use any generally accepted appraisal methods as evidence consistent with the Manual’s definition of true tax value, such as sales information regarding the subject or comparable properties that are relevant to a property’s market value-in-use, to establish the actual true tax value of a property. *See* MANUAL at 5. Thus, a taxpayer may establish a prima facie case based upon an appraisal quantifying the market value of a property through use of generally recognized appraisal principles. *See Meridian Towers*, 805 N.E.2d 479 (holding that the taxpayer established a prima facie case that its improvements were entitled to a 74% obsolescence depreciation adjustment based on an appraisal quantifying the improvements’ obsolescence through cost and income capitalization approaches).
- h. Regardless of the approach used to prove the market value-in-use of a property, Indiana’s assessment regulations provide that for the 2002 general reassessment, a property’s assessment must reflect its value as of January 1, 1999. *Long*, at 471; MANUAL at 4. Consequently, a party relying on market value evidence to establish the value-in-use of a property must provide some explanation as to how the sales or appraised value demonstrates or is relevant to the property’s value as of January 1, 1999. *Id.*
- i. Here the Petitioners rely on a “sales comparable” method of establishing market value of the subject properties. In order to effectively use the sales comparison approach as evidence in a property assessment appeal, however, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the two properties. *Long*, 821 N.E.2d at 470. Instead, the party seeking to rely on a sales comparison approach must explain the characteristics of the subject property and how those characteristics compare to those of purportedly comparable properties. *See Id.* at 470-71. They must explain how any differences between the properties affect their relative market values-in-use.

- j. The Petitioners identified several vacant land sales in the area of the subject properties. *Petitioner Exhibits 5-22*. The Petitioners, however, provided no evidence of lot shape, topography, geographical features, accessibility or uses as required to determine the lots presented by the Petitioners were “comparable” properties. *See Blackbird Farms Apartments, LP v. Department of Local Government Finance*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002). In addition, the Petitioners’ purchase of the properties and most of the Petitioners’ “comparable” sales were not from 1999. Therefore, the Petitioners needed to show how the sales prices were relevant to the January 1, 1999, valuation date. The Petitioners failed to establish comparability between the subject properties and the sales submitted and failed to relate the sale of the properties and their purported “comparable” sales to January 1, 1999. Therefore, the Petitioners failed to establish a prima facie case.

- k. Where Petitioner has not supported the claim with probative evidence, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacey Diversified Indus., LTD v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

- 16. The Petitioners provided sufficient evidence to establish a prima facie case that the properties were improperly reassessed prior to their purchase from the developer. The Board finds in favor of the Petitioners and determines that the land assessments of the subject lots should be changed to \$500 each. The Petitioners failed to raise a prima facie case on all other matters.

Final Determination

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

ISSUED: June 30, 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>.