

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

Petition #: 41-015-06-1-5-00002; 41-020-06-1-5-00001
Petitioners: Gary G. & Sherry J. Browning
Respondent: Johnson County Assessor
Parcel #: 41-10-24-044-023.002-015; 41-11-19-033-017.001-020
Assessment Year: 2006

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

Procedural History

1. On June 12, 2007, the Petitioners appealed their property's assessment to the Johnson County Property Tax Assessment Board of Appeals ("PTABOA"). The PTABOA issued its determination on September 28, 2007.
2. The Petitioners then timely filed a Form 131 petition with the Board. They elected to proceed under the Board's rules for small claims.
3. On December 18, 2007, the Board held a consolidated administrative hearing through its Administrative Law Judge, Alyson Kunack ("ALJ").
4. Persons present and sworn in at the hearing:
 - a) For Petitioners: Gary and Sherry Browning, property owners
 - b) For Respondent: Mark Alexander, Johnson County Assessor's Office

Facts

5. The parcels under appeal are adjoining residential lots located in Trafalgar, Indiana. Parcel 41-10-24-044-023.002-015 is located at 6930 South 200 West. Parcel 41-11-19-033-017.001-020 is located at 200 West. The Board refers to the two parcels together as "the subject property."
6. Neither the Board nor the ALJ inspected the subject property.

7. The PTABOA's determination lists the following assessments:

Parcel 41-10-24-044-023.002-015

Land: \$38,600 Improvements: \$7,100 Total: \$45,700

Parcel 41-11-19-033-017.001-020

Land: \$29,700 Improvements: \$0 Total: \$29,700

8. The Petitioners request the following assessments:

Parcel 41-10-24-044-023.002-015

Land: \$13,900 Improvements: \$7,100 Total: \$21,000

Parcel 41-11-19-033-017.001-020

Land: \$7,220 Improvements: \$0 Total: \$7,220

Parties' Contentions

9. The Petitioners offered the following evidence and arguments:

- a) The Petitioners contend that their land assessment is too high. In their view, the assessor unfairly compared their property to other like-shaped properties without considering its terrain and topography. *G. Browning argument.*
- b) The subject property is wooded with deep ravines. *G. Browning testimony.* And part of it lies in a floodplain. *Id.*; see also *Pet'rs Ex. 3*. Most of the property is useless; the Petitioners can only build on a small part of it. They cannot even put in a septic system. *Id.* The Respondent, therefore, should have applied additional "negative influences" in assessing the subject property. *G. Browning argument.*
- c) The Petitioners bought the subject land for \$1,000 per acre, and they would not pay much more than that for it now. *G. Browning testimony.* They definitely could not sell it for \$6,800 per acre—the amount it is currently assessed for. *Id.*

10. The Respondent offered the following evidence and arguments:

- a) The subject property's assessment was based on rural residential property sales. *Alexander testimony.* Those sales included parcels of various sizes and terrains. *Id.* Differences in terrain did not quantifiably affect sale prices. *Id.*
- b) The Respondent valued all rural residential parcels in Johnson County, including the subject property, at \$11,000 per acre. *Id.* The Respondent then applied negative influence factors to account for the subject property's topography and lack of road frontage. *Id.*

- c) The Respondent separated the subject property into two parcels because it lies in different survey sections and it is located on the township line. *Id.*

Record

11. 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: Aerial map showing the subject property
Petitioners Exhibit 2: Aerial photograph showing the subject property
Petitioners Exhibit 3: Seven photographs of the subject property¹

Board Exhibit A: Form 131 Petition
Board Exhibit B: Notice of Hearing
Board Exhibit C: Hearing Sign-In sheet
Board Exhibit D: Letter of Authorization from Johnson County Assessor

- d) These Findings and Conclusions.

Analysis

Burden of Proof

- 12. A petitioner seeking review of an assessing official's determination must establish a prima facie case proving both that the current assessment is incorrect, and specifically what the correct assessment should 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).
- 13. In making its case, the petitioner must explain how each piece of evidence relates to its 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”).
- 14. Once the petitioner establishes a prima facie case, the burden shifts to the respondent to impeach or rebut the petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.

¹ The Respondent did not offer any exhibits.

The Petitioners' Case

15. The Petitioners did not provide sufficient evidence to support their contentions. The Board reaches this conclusion for the following reasons:
- a) Indiana assesses real property based on its "true tax value," which the 2002 Real Property Assessment Manual defines 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). Appraisers traditionally have used three methods to determine a property's market value: the cost, sales-comparison, and income approaches. *Id.* at 3, 13-15. Indiana assessing officials generally use 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 accurate simply by contesting the methodology that the assessor used 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 the property's market value-in-use. *Id.* And strictly applying the Guidelines is not enough to make that showing. *Id.*
 - d) The Petitioners did not offer any probative evidence to rebut the assessment's presumption of accuracy. Instead, they focused largely on their belief that the assessor unfairly compared their property to like-shaped properties with better terrain and topography. In other words, they simply attacked the assessor's methodology.
 - e) The Board recognizes that the subject property's terrain and topography likely affect its market value-in-use. But the Petitioners needed to offer market-based evidence to quantify that effect. And they did not do that.
 - f) At best, Mr. Browning testified that the Petitioners bought the subject property for \$1,000 per acre. But he did not offer any details about that transaction. He did

not even provide its date. And that is a crucial omission, because Indiana assesses real property based on its market value-in-use as of a specific valuation date. For the March 1, 2006, assessment at issue, that valuation date is January 1, 2005. See IND. ADMIN. CODE tit. 50, r. 21-3-3 (stating that, beginning with the March 1, 2006 assessment, the valuation date is January 1 of the year preceding the assessment date). Thus, the Petitioners needed to explain how the \$1,000-per-acre sale price related to the subject property's market value-in-use as of January 1, 2005. See *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005)(holding that a December 10, 2003, appraisal lacked probative value because the taxpayers did not explain how it related to the property's value as of the relevant January 1, 1999, valuation date); see also *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006). Their failure to do so prevents the Board from giving any probative weight to the \$1,000 per acre sale price.

- g) To sum up, the Petitioners did not offer any probative market-based evidence to rebut the presumption that their property is accurately assessed. They therefore failed to make a prima facie case for reducing that assessment.

Conclusion

- 16. The Petitioners failed to make 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 affirms the assessment.

ISSUED: March 7, 2008

Commissioner,
Indiana Board of Tax Review

IMPORTANT NOTICE

- 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>