

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

Petition #: 45-001-03-1-5-00001
Petitioner: Stuart Baruch
Respondent: Calumet Township Assessor (Lake County)
Parcel #: 001-25-42-0286-0015
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 Petitioner initiated an assessment appeal with the Lake County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated September 7, 2004.
2. The Petitioner received notice of the decision of the PTABOA on November 15, 2005.
3. The Petitioner timely filed an appeal to the Board by filing a Form 131 with the county assessor on December 13, 2005. The Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated December 4, 2006.
5. The Board held an administrative hearing on January 24, 2007, before the duly appointed Administrative Law Judge (the ALJ) Ellen Yuhan.
6. Stuart Baruch, the taxpayer, appeared and was sworn as a witness for the Petitioner. No one appeared on behalf of the Respondent.

Facts

7. The subject property is a single-family residence located at 7406 Oak Avenue, Gary, Calumet Township in Lake County.
8. The ALJ did not conduct an on-site visit of the property.
9. The PTABOA determined the assessed value of the subject property to be \$83,600 for the land and \$70,000 for the improvements, for a total assessed value of \$153,600.

10. The Petitioner requested an assessment of \$39,600 for the land and \$70,000 for the improvements, for a total assessed value of \$109,600.

Issue

11. Summary of Petitioner's contentions in support of an error in the assessment:
 - a. The Petitioner contends that the subject property's land is over-valued relative to neighboring properties because of the influence factor applied to the parcel. *Baruch testimony*. In support of this contention, the Petitioner submitted photographs and assessment information for other properties located on Oak Avenue. *Petitioner Exhibits 7-9*.
 - b. The Petitioner further contends that the township considered lake view and proximity to the lake when it established the base rates for the property's neighborhood. *Baruch testimony*. According to the Petitioner, influence factors are used only when a particular parcel is somehow different from other properties in the neighborhood with the same base rate. *Id.* Thus, the Petitioner concludes, applying an influence factor on his property for its "lake view" is improper. *Id.; Petitioner Exhibits 8 & 9*.
 - c. Finally, the Petitioner argues that the land on the subject property should be valued the same as an adjacent parcel. *Baruch testimony*. According to the Petitioner, the PTABOA removed the 200% influence factor on the parcel to the west and did not impose an influence factor for a lake view. *Id.; Petitioner Exhibit 2-I*. The Petitioner further contends that his property is the only one on Oak Avenue with an influence factor for a lake view. *Baruch testimony*.

Record

12. The official record for this matter is made up of the following:
 - a. The Petition,
 - b. The compact disk recording of the hearing labeled 45-001-03-1-5-00001 Baruch,
 - c. Exhibits:
 - Petitioner Exhibit 1 – Form 131 Petition filed December 13, 2005,
 - Petitioner Exhibit 1-A – Form 131, page 2, continuation sheet,
 - Petitioner Exhibit 1-B – Copy of Article 2.3, REAL PROPERTY ASSESSMENT MANUAL,
 - Petitioner Exhibit 1-C – Copies of pages 1 and 22 of the Glossary in VERSION A-REAL PROPERTY ASSESSMENT GUIDELINES,

Petitioner Exhibit 1-D – Three pictures taken showing no sidewalk in front of 7406 Oak Avenue, Gary,

Petitioner Exhibit 1-E – Photocopy of a letter from Cole Layer Trumble Company to Booker Blumenberg, Jr.,

Petitioner Exhibit 1-F – Copy of Form 115 dated November 11, 2005,

Petitioner Exhibit 1-G – Copy of Form 130 dated September 7, 2004,

Petitioner Exhibit 1-H – Form 130, page 2, continuation sheet,

Petitioner Exhibit 1-I – Copy of Survey of Plat of 7406 Oak Avenue, Gary,

Petitioner Exhibit 1-J – Copy of Plat Map of Blocks 23, 24, 25, and 26 in the E. E. Resubdivision of Block 26 of Norcutts Addition in Gary, Indiana,

Petitioner Exhibit 2 – Amended Form 131 filed September 27, 2006,

Petitioner Exhibit 2-A – Copy of page 1, legal description,

Petitioner Exhibit 2-B – Copy of page 2, grounds for appeal,

Petitioner Exhibit 2-C – Copy of Form 115 dated August 31, 2006,

Petitioner Exhibit 2-D – Copy of a statement to the Lake County Property Tax Assessment Board of Appeals dated July 26, 2006,

Petitioner Exhibit 2-E – Copy of a letter dated May 23, 2006, to Sherry Stone, Hearing Officer, Lake County Property Tax Assessment Board of Appeals amending the Form 130 filed September 9, 2004,

Petitioner Exhibit 2-F – Copy of letter to Booker Blumenberg, Jr., Calumet Township dated April 19, 2004,

Petitioner Exhibit 2-G – Copy of Form 11R/A, Notice of Assessment of Land and Structures dated August 18, 2007,

Petitioner Exhibit 2-H – Copy of Form 130 filed by Diane Boswell on April 5, 2005,

Petitioner Exhibit 2-I – Copy of Form 115 dated March 2, 2006, issued by the Lake County Assessment Board of Tax Appeals after hearing Diane Boswell’s appeal,

Petitioner Exhibit 2-J – Copy of Article 2.3, REAL PROPERTY ASSESSMENT MANUAL,

Petitioner Exhibit 2-K – Copy of pages 1 and 22 of the Glossary in VERSION A- REAL PROPERTY ASSESSMENT GUIDELINE,

Petitioner Exhibit 2-L – Copy of definition of “abut” in the MERRIAM-WEBSTER’S ONLINE DICTIONARY OF LAW,

Petitioner Exhibit 2-M – Copy of “Sidwell Map”,

Petitioner Exhibit 3 – List of parcels on the north side of Oak Avenue and to the west of the subject property,

Petitioner Exhibit 4 – List of parcels on the south side of Oak Avenue and to the west of the subject property,

Petitioner Exhibit 5 – List of parcels on the north side of Oak Avenue and to the east of the subject property (except 25-42-0286-0016, which is to the west of the property),

Petitioner Exhibit 6 – Lists of parcels on the south side of Oak Avenue and to the east of the subject property,

- Petitioner Exhibit 7 – Photographs of parcels within two blocks of the subject property and their lake view from Oak Avenue,
- Petitioner Exhibit 8 – Copies of property information records of assessed land values downloaded from the Lake County Indiana Assessor’s website that show influence factors, if any, that apply to a particular parcel,
- Petitioner Exhibit 9 – Copies of Indiana residential Property Record Cards,

d. These Findings and Conclusions.

Analysis

13. 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.
14. The Petitioner failed to provide sufficient evidence to establish a prima facie case for a reduction in value. The Board reached this decision for the following reasons:
 - a. The Petitioner contends that his land is not assessed in a uniform and equal manner when compared to neighboring properties. *Baruch testimony*. According to the Petitioner, his property is the only property that has an influence factor applied for a “lake view” property. *Id.*
 - b. Land values in a given neighborhood are generally determined through the application of a Land Order that was developed by collecting and analyzing comparable sales data for the neighborhood and surrounding areas. *See Talesnick v. State Bd. of Tax Comm’rs*, 693 N.E.2d 657, 659 n. 5 (Ind. Tax Ct. 1998). However, properties often possess peculiar attributes that do not allow them to be lumped with each of the surrounding properties for purposes of valuation. The term "influence factor" refers to a multiplier “that is applied to the value of land to account for

- characteristics of a particular parcel of land that are peculiar to that parcel.” REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002, VERSION A, glossary at 10 (incorporated by reference at 50 IAC 2.3-1-2) (the GUIDELINES). A Petitioner has the burden to produce "probative evidence that would support an application of a negative influence factor and a quantification of that influence factor." See *Talesnick v. State Bd. of Tax Comm'rs.*, 756 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001).
- c. Here, the Petitioner does not dispute that his property is, in fact, a “lake view” lot. The Petitioner, however, argues that his property is not assessed similar to the manner in which neighboring parcels are assessed. Indiana Code § 6-1.1-2-2 requires uniform and equal assessments. Thus to the extent that the Petitioner proves that its property is not assessed uniformly or equal to comparable properties, the Petitioner argues, his assessment should be equalized. However, “taxpayers are required to make a detailed factual showing at the administrative level.” *Home Federal Savings Bank v. Madison Twp. Assessor*, 817 N.E.2d 332 (Ind. Tax Ct. 2004). To meet this showing, “the taxpayer must not only present probative evidence in support of its argument, but it must also sufficiently explain that evidence.” *Id.*
- d. To introduce evidence of comparable properties, a taxpayer must explain how the properties are comparable. See *Blackbird Farms Apts. v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002) (holding that the taxpayer did not present a prima facie case where it provided assessment information for allegedly comparable properties but failed to explain how the properties were comparable). Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the two properties. See *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. The proponent likewise must explain how any differences between the properties affect their relative market values-in-use. *Id.* See also, *Hoogenboom-Nofziger*, 715 N.E.2d at 1024 (holding that taxpayer failed to make prima facie case when he offered conclusory statements and photographs without further explanation); *Lacy Diversified Industries, Ltd. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1220 (Ind. Tax Ct. 2003) (holding that taxpayer failed to make prima facie case when he offered conclusory statements, property record cards, and photographs without further explanation).
- f. Here the Petitioner submitted photographs and assessment data for properties on the street on which the subject property is located. *Petitioner Exhibits 7-9*. The photographs show various properties on both the north and the south side of Oak Avenue and the lake views from those properties. We note first that the Petitioner’s evidence shows that all properties on the north side of Oak Avenue, like the subject property, are uniformly assessed with a 200% influence factor except for a single parcel which was appealed and the influence factor removed. Thus, to the extent that the Petitioner’s property is assessed “unequally,” it is assessed lower than virtually all

of his neighbors.¹ Moreover, the Petitioner seeks to establish only one component of his assessment, the land value of the subject property. This is at odds with the overarching goal of determining the market value-in-use of a property as a whole.

- g. Finally, we note that the Petitioner’s argument relies entirely upon the mass appraisal approach set forth in the Guidelines. The Guidelines, however, are simply a starting point in determining market value-in-use. The Indiana Tax Court has cautioned parties against seeking to establish true tax value in an assessment appeal through reliance on the Guidelines. *See O’Donnell v. Dep’t of Local Gov’t Fin.*, 854 N.E.2d 90, 93-95 (Ind. Tax Ct. 2006)(holding that taxpayers failed to establish a prima facie case of error in assessment by pointing to alleged errors by assessor in applying Guidelines). Arguments regarding a 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 (Ind. Tax Ct. 2006) (a taxpayer must show that the assessed value does not accurately reflect market value-in-use). The Petitioner must show through the use of market-based evidence that the assessed value does not accurately reflect the property’s market value-in-use. Here, the Petitioner did not. Therefore, he failed to raise a prima facie case. *Id.* at 678, (“In challenging their assessment, the Eckerlings have offered [no] ... market value in-use evidence. Rather, they have focused strictly on the Assessor's methodology. The Eckerlings have not shown, however, that the Assessor's methodology resulted in an assessment that failed to accurately reflect their property's market value-in-use. Accordingly, the Court cannot say that the Eckerlings presented a prima facie case that their assessment was in error.”)
- h. Where the Petitioner has not supported the claim with probative evidence, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

15. The Petitioner failed to provide sufficient evidence to establish 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.

¹ We also note that the single property on the north side of Oak Street without an influence factor is an undeveloped lot whereas the subject property has a house situated on the property. Thus, the Petitioner has not shown the “comparable” property is, in fact, comparable. Even if the Board did find the neighboring property to be comparable to the subject property, it would require far more than evidence of a single assessment for this Board to determine that the subject property is “comparatively over-assessed” to other properties in his neighborhood.

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>.