INDIANA BOARD OF TAX REVIEW

Final Determination
Findings and Conclusions
Lake County

Petition #: **45-044-02-1-4-00036**
Petitioners: **Lake of the Four Seasons**
Respondent: **Department of Local Government Finance**
Parcel #: **011-11-10-0045-0124**
Assessment Year: **2002**

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

Procedural History

1. An informal hearing as described in Ind. Code § 6-1.1-4-33 was held January 7, 2004, in Lake County, Indiana. The Department of Local Government Finance (the Respondent) determined that the Petitioner's property tax assessment for the subject property is $143,300 and notified the Petitioner on March 24, 2004.

2. Petitioner filed a Form 139L petition on April 21, 2004.

3. The Board issued a notice of hearing to the parties dated August 26, 2005.

4. A hearing was held on October 4, 2005, in Crown Point, Indiana before Special Master Dalene McMillen.

Facts

5. The subject property is located at 1048 North Lakeshore Drive, Crown Point, Winfield Township in Lake County[1].

[1] This is the address provided by the Petitioner on the Form 139 L Petition. The Board notes that Winfield Township is not located within Crown Point. Moreover, the Petitioner testified that a portion of the Lake of the

6. The subject property consists of two buildings and private roadways located on 108.576 acres of land.

7. The Special Master did not conduct an on-site visit of the property.

8. The Respondent determined that assessed value of the subject property a follows:

Land: $113,900 Improvements: $29,400 Total: $143,300.

9. The Petitioner requested the following values:

Land: $0 Improvements: $14,800 Total: $14,800

10. The following persons were present and sworn in at the hearing:

For Petitioner: Robert A. Campbell, Community Manager
Brian E. Less, Attorney for the Taxpayer

For Respondent: Sharon S. Elliott, Assessor/Auditor, Department of Local Government Finance

Issues

11. Summary of Petitioners' contentions in support of an alleged error in the assessment:

a. The Lake of the Four Seasons is a gated community containing approximately 2,500 homes with approximately 26 miles of private roads. *Less testimony.*

b. The subject property, which is part of the Lake of the Four Seasons, consists of approximately 107 acres of private roadway as well as two buildings. *Less testimony; Pet'r Ex.2.* The roads are encumbered by easements in favor of the members of the property owners' association, and they cannot be sold. *Id.* The Petitioner introduced a copy of a portion of the restrictive covenants of the subdivision to show the existence of the easements. *Id.; Pet'r Ex. 6.*

c. The roads themselves cost between $200,000 and $500,000 per year to maintain. *Less testimony; Pet'r Ex. 4.* Pursuant to the covenants of the subdivision, the Petitioner cannot charge a toll for use of the roads. *Less testimony.* The value of the roads is inherent in the residential lots throughout the Lake of the Four Seasons. The roads exist solely for the benefit of those residential lots. *Id.* The

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Four Seasons is located in Porter County. Crown Point is located significantly west of the Lake/Porter county line. Unfortunately, the parties did not provide the Board with a more accurate address for the subject property.

2,500 homes within the subdivision presumably have a greater value because they are located in a gated community with access to private roads. *Id.*

d. While there are no Indiana cases directly on point, there are several cases from other jurisdictions holding that the entire value of the common areas of residential subdivisions is included in the value of the individual lots within the subdivision. *Id.; Pet'r Exs. 8-11*. In addition, an Illinois statute provides that common area property owned by condominium associations, but subject to the exclusive right of use by the condominium unit owners, is to be assessed at $1.00 per year, with the balance of the value being assessed to the condominium unit owners. *See Pet'r Ex. 7*. Thus, Illinois recognizes that the value of common areas within a condominium complex is inherent in the value of the individual condominium units. *Less testimony*.

e. Portions of the Lake of the Four Seasons are located in Porter County. *Less testimony*. The Petitioner included a copy of its tax bill for the subdivision's private roads located in Porter County. *Id.; Pet'r Ex. 3*. Although it is not necessarily clear from the tax bill, Porter County assessed the roads at the rate of $1,050 per acre. *Less testimony*. This contrasts with the base rate of $6,500 per acre used by the Respondent to assess the subject property located in Lake County. Thus, while the Petitioner maintains that the roads should not be assessed as having any value, to the extent that they are assigned a value, the base rate should not exceed $1,050 per acre. The Petitioner is still entitled to the 90% negative influence factor that the Respondent applied to the subject land; however, that influence factor should be applied to the lower base rate of $1,050 per acre. *Id*.

12. Summary of Respondent's contentions in support of assessment:

a. The private roads are valued fairly and consistently with other properties in the subject area. *Elliott testimony.*

b. The Respondent classified the subject land as land type 14, which is unbuildable, unusable ground. *Elliot testimony*. The Respondent further applied a negative influence factor of 90% to the subject land in recognition of the Petitioner's use of the subject land for private roads. *Id*.

c. All property has value. *Elliot testimony*. The Respondent likened the subject property to a parking lot used by a business – something that is used for the benefit of the property owner as well as its customers. *Id*.

d. The $1,050 base rate to which the Petitioner referred is applicable to agricultural land. *Elliot testimony*. Porter County was incorrect to assess the Petitioner's property as agricultural land. *Id.*

e. The Respondent presented information concerning land pricing within Lake County as well as a map showing the subject parcels. *Elliot testimony; Resp't Exs. 2-3.*

Record

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

a. The Form 139L Petition,

b. The tape recording of the hearing labeled Lake Co. 1672.

c. Exhibits:

Petitioner Exhibit 1 – Notice of Final Assessment, dated March 24, 2004,
Petitioner Exhibit 2 – Subject property record card,
Petitioner Exhibit 3 – Porter County, Indiana Reconciling Tax Statement for 2002 payable 2003,
Petitioner Exhibit 4 – Lake of the Four Seasons Expense Budget,
Petitioner Exhibit 5 – Form 139L petition,
Petitioner Exhibit 6 – One page of the Lake of the Four Seasons restrictive covenants,
Petitioner Exhibit 7 – Illinois statute 765 ILL. COMP. STAT. 605/10,
Petitioner Exhibit 8 – *Supervisor of Assessments of Anne Arundel County v. Bay Ridge Properties, Inc.,* 310 A. 2d 773 (Md. Ct. App. 1973),
Petitioner Exhibit 9 – *Deerfield Village Community Ass'n v. West Bloomfield Twp.,* 181 N.W. 2d 62 (MI. Ct. App, 1970),
Petitioner Exhibit 10 – *Lochmoor Club v. City of Grosse Pointe Woods,* 159 N.W. 2d 759 (MI. Ct. App 1968),
Petitioner Exhibit 11 – *Dep't of Revenue of the State of Florida v. Morganwoods Greentree, Inc.,* 341 So. 2d 756 (Fla. 1977),

Respondent Exhibit 1 – Subject property record card,
Respondent Exhibit 2 – Incremental/Decremental Land Pricing in Lake County, Indiana, Land Recommendations, and Commercial and Industrial Neighborhood Valuation Form for neighborhood #01197,
Respondent Exhibit 3 – Lake of the Four Seasons Unit 1 plat map,

Board Exhibit A – Form 139L petition,
Board Exhibit B – Notice of Hearing on Petition,
Board Exhibit C – Hearing sign-in sheet,

d. These Findings and Conclusions.

Analysis

14. The most applicable cases are:

a. A petitioner seeking review of a determination of assessing officials 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 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 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 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.

15. The Petitioner did not provide sufficient evidence to support its contentions. This conclusion was arrived at because:

a. The Petitioner bases its claims that the subject land has no market value-in-use and that the subject buildings have a substantially lower market value-in-use than the amount for which they are assessed on the fact that the subject property is burdened by easements and restrictive covenants in favor of its members – the owners of residential properties throughout the Lake of the Four Seasons. *See Less testimony*.

b. The Petitioner acknowledges that there are no Indiana cases directly supporting its position. Likewise, the Board has found no Indiana law directly addressing the question of how to value property held by a homeowner's association for the benefit of the owners of residential lots throughout a subdivision.

c. A number of courts from other jurisdictions, however, have addressed that precise issue. *See, e.g., Forrest Lake Property Owners Ass'n, Inc. v. Baldwin County Bd. of Equalization,* 659 So.2d 607 (Ala. 1995); *Recreation Centers of Sun City, Inc.*

v. Maricopa County, *62 Az. 281, 782 P.2d 1174 (1989); Quivira Falls Community Ass'n v. Johnson County*, 634 P.2d 1115 (Kan. 1981); *Supervisor of Assessments of Anne Arundel County v. Bay Ridge Properties, Inc.*, 310 A.2d 773, 776 (Md. 1973); *Sun City Summerlin Community Ass'n v. State of Nevada*, 113 Nev. 835, 944 P.2d 234, 239 (1997); *Locke Lake Colony Ass'n, Inc. v. Town of Barnstead*, 489 A.2d 120, 121 (N.H. 1985); *Tualatin Development Co. v. Department of Revenue*, 473 P.2d 660, 664 (Or. 1970); *Timber Trails Community Ass'n v. County of Monroe*, 614 A.2d 342 (Pa. Commw. 1992); *Lake Monticello Owners' Ass'n v. Ritter*, 327 S.E.2d 117, 121 (Va. 1985); *Twin Lakes Golf & Country Club v. King County*, 548 P.2d 538, 539 (Wash. 1976).

d. In *Supervisor of Assessments of Anne Arundel County v. Bay Ridge Properties, Inc.*, 310 A.2d 773 (Md. 1973), Maryland's highest court addressed an appeal from an order of the tax court abating and cancelling the assessment of beach property owned by the developer of a residential subdivision. *Bay Ridge*, 310 A.2d at 773-74. The developer's predecessor had recorded subdivision plats showing a beach area. *Id*. at 774. The developer and its predecessor conveyed lots within the subdivision by reference to the plats, and, in some cases, conveyed deeds containing a specific right to use the beach area for bathing, boating or fishing. *Id*. In some instances, the developer and its predecessor covenanted not to erect or permit the erection of dwellings, bathhouses or commercial buildings on the beach. *Id*. Consequently, the developer retained bare legal title to the beach area, but it was precluded from making any disposition or gainful use of the area. *Id*.

e. The county supervisor argued that, although the existence of an easement may diminish the value of the servient estate burdened by that easement, the fact that 380 lots in the subdivision remained unsold meant that the beach area retained assessable value upon which the developer should pay annual taxes. *Id.* at 775. The court rejected the supervisor's argument for two reasons. First, the court found that, by implication, the easements were intended to attach to lots as soon as the plats were recorded and the first lot was sold. *Id*. at 776. Second, the court found that the combination of the grant of easements and the imposition of restrictions against disposition and improvement deprived the beach area of whatever value it otherwise might have had. *Id.* Accordingly, "[t]he easement rights in the beach, held by the owners of lots in the subdivision, enhance the values of the lots themselves, and such enhancement is directly reflected in the assessments of those properties." *Id.* at 777. In support of its holding, the court cited the following testimony of the developer's appraiser:

> It is not the beach itself that has value, it is the lots that lie behind the beach that have the value; and this is shown in the price that the lots sell for and it is consequently shown in the assessed value of those lots. But the beach itself has no fair market value. . . .

Id. (footnote omitted) (emphasis added).

f. Maryland is not the only state to recognize that common area properties encumbered by restrictions may be devoid of value. In *Locke Lake Colony Ass'n, Inc. v. Town of Barnstead*, 489 A.2d 120 (N.H. 1985), the property at issue was owned by a homeowners association and consisted of common area parcels containing a lake, community lodge, golf course, ski slope, marina, ball fields, tennis courts, beaches, swimming pools and other recreational areas. 489 A.2d at 121. The New Hampshire Supreme Court affirmed the lower court's ruling that the common area parcels were so encumbered by an easement in favor of the lot owners that they had no taxable value. 489 A.2d at 124. This was the case even though two-thirds of the members of the homeowners' association could vote to amend the instruments that encumbered the common area parcels with easements. 489 A.2d at 123. In reaching its holding, the *Loch Lake* court rejected the town's claim that assigning a zero value to the common areas would encourage taxpayers to create homeowners' associations to avoid the payment of taxes on valuable property, reasoning:

> Municipalities will not lose significant tax revenues in cases such as the one before us, because, although "a landowner whose property is subject to an easement is entitled to a reduced valuation, the value of the easement [is] added to the estate of the dominant owner." *Gowen v. Swain*, 90 N.H. 383, 387-88, 10 A.2d 249, 252 (1939). "Presumably assessors take into account this effect of easements on value in making their appraisals." *Id*. at 387, 10 A.2d at 252.

489 A.2d at 123-24. *See also Ritter*, 327 S.E.2d 117 (reversing trial court's decision that common area consisting of a golf course and clubhouse should be assessed at full value and remanding for assessment at nominal value); *Twin Lakes Golf & Country Club*, 548 P.2d 538 (affirming trial court's decision that golf course burdened by easements in favor of surrounding lot owners had no fair market value, even though the covenants creating the easements could be amended by a 75% majority of the lot owners); *Tualatin Development Co.* , 473 P.2d 660 (holding that a golf course should be assessed at zero value when it was designated as open space under local zoning ordinances, and when there was no meaningful market for the property due to the restrictions on its use).

g. There also are a number of decisions in which courts have rejected claims by developers or homeowners' associations that common areas held for the benefit of surrounding lot owners should be assessed at zero or nominal value. *See, e.g.*, *Forrest Lake Property Owners Ass'n, Inc. v. Baldwin County Bd. of Equalization*, 659 So.2d 607 (Ala. 1995); *Quivira Falls Community Ass'n v. Johnson County*,

634 P.2d 1115 (Kan. 1981); *Timber Trails Community Ass'n v. County of Monroe*, 614 A.2d 342 (Pa. Commw. 1992). In many of those cases, however, the courts addressing the issue did not reject the possibility that such common areas might have zero or only nominal value, but rather held that the taxpayers did not make a factual showing to support such a finding. Thus, for example, the Alabama Supreme Court indicated that it had "no quarrel" with the rationale expressed in *Twin Lakes*, *supra*, that "when the use of land is so restricted that its ownership is of no benefit or value, the assessment for tax purposes should be nothing." *Timber Trails*, 659 So.2d at 609 (quoting *Twin Lakes*, 548 P.2d at 540). The court did note, however, that it believed that encumbrances to a property are only one factor among many that an assessor must make in determining the just value of the property. *Id.* (citing *Dep't of Revenue v. Morganwoods Greentree, Inc.*, 341 So.2d 756, 758 (Fla. 1976)). The trial court had heard conflicting evidence regarding the value of the common areas and the effect of the encumbrances, and it found that the assessment reflected the impact of the encumbrances on the value of the property. *Id.* The Alabama Supreme Court found that the trial court's decision was supported by substantial evidence. *Id. See also Quivira Falls Community Ass'n* 634 P.2d at 1121 (distinguishing *Twin Lakes*, *Bay Ridge* and *Taulatin* on grounds that most, if not all, of those cases involved evidence that the common areas had little or no value or that the value was included in the valuation of the surrounding lots, whereas, in the case before it, neither of the taxpayer's witnesses testified that the property had no value); *but see Recreation Centers of Sun City*, 782 P.2d 1174.

h. Thus, the majority of courts that have addressed the issue recognize that common areas of a housing development may be burdened with easements and other restrictions on their use and transfer to such a degree as to render those common areas devoid of market value. Whether any given common area is burdened so severely as to deprive it of any market value, however, is a factual question that the taxpayer must prove through competent evidence.

i. This interpretation is consistent with the general legal principles underlying Indiana's scheme of real property assessment. The Indiana General Assembly has mandated that real property is to be assessed based upon its "true tax value." The 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). Thus, like the jurisdictions from which the above-cited cases arose, the market value of a property is central to its proper assessment. Moreover, both the Guidelines and decisions of the Indiana Tax Court make clear that easements and other restrictions on the use of property must be considered in determining the property's true tax value. *See Talesnick v. St. Bd. of Tax Comm'rs*, 756 N.E.2d 1104, 1108-09 (Ind. Tax Ct. 2001)(remanding to State Board of Tax Commissioners for proceeding to determine the extent to

which a taxpayer was entitled to a negative influence factor based upon a water flowage easement burdening his land); REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, ch. 2 at 78, 94 (incorporated by reference at 50 IAC 2.3-1-2)(providing for negative influence factors to account for decreases in value based upon "encumbrances, restrictive covenants, or obstructions that limit the use of the land."). In fact**,** the Guidelines expressly contemplate circumstances in which a property may have no market value-in-use to its legal title-holder due to restrictions on the owner's use of the land. For example, the Guidelines require application of a 100% negative influence factor to classified forest land, classified wildlife habitat, classified riparian land, classified windbreak land and classified filter strip land. GUIDELINES, ch. 2 at 102-03.

j. Thus, it is possible for common areas within a subdivision to be encumbered to such a degree as to deprive them of any market value-in-use. Clearly, the encumbrances must be severe, and a taxpayer seeking to demonstrate that real property is devoid of any market value-in-use bears a heavy burden. Nonetheless, it is a factual question. The Board therefore turns to the evidence presented by the Petitioner.

k. A property's market value-in-use, as ascertained through application of the Guidelines' cost approach, 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). Thus, appraisals prepared in accordance with the Manual's definition of true tax value may be used to rebut the presumption that an assessment is correct. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1 ("[T]he Court believes (and has for quite some time) 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 [USPAP]."). A taxpayer may also rely upon sales information regarding the subject or comparable properties and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.

l. The Petitioner presented little factual evidence regarding the subject property. Mr. Less testified that 107 acres of the property is devoted to use for private roads and that the property cannot be sold due to restrictive covenants. The Petitioner also introduced a portion of what appear to be the covenants of the Lake of the Four Seasons subdivision. *Pet'r Ex. 6*. Those covenants grant an easement in favor of, among others, the members of the homeowners association and residents, tenants and occupants of the residential structures within the subdivision. The easement provides the beneficiaries with the right to use and enjoy certain identified private streets and areas designated on the recorded subdivision plats as parks or pedestrian easements. *Id*. In addition, the Petitioner

presented evidence that the private roads cost between $200,000 and $500,000 per year to maintain. *Less testimony; Pet'r Ex. 4.*

m. While this evidence supports the proposition that easements and other restrictions encumbering the subject property negatively affect the property's market value-in-use, it is insufficient to rebut the current assessment. The current assessment already discounts the value of the subject land by 90%. Thus, the 107.576 acres of private roadway is currently being assessed at approximately $650 per acre. The Petitioner did not offer an appraisal prepared in conformance with USPAP or other information compiled in accordance with generally accepted appraisal practices to quantify the effect of the easements and restrictions on the subject property. The Petitioner therefore did not demonstrate that the current assessment is incorrect or what the correct assessment should be.

n. Based on the foregoing, the Petitioner failed to establish a prima facie case of error in assessment.

Conclusion

16. The Petitioner failed to make a prima facie case of error in assessment. 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: _____

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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/inde.html**. The Indiana Code is available on the Internet at **http://www.in.gov/legislative/ic/code**.