

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

Petition #: 46-022-03-1-5-00104
Petitioners: Stephen and Nancy King
Respondent: Michigan Township Assessor (LaPorte County)
Parcel #: 42-01-21-314-010
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 an assessment appeal with the LaPorte County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated September 21, 2004.
2. The Petitioners received notice of the decision of the PTABOA on February 4, 2005.
3. The Petitioners filed a Form 131 with the county assessor on February 8, 2005, initiating an appeal to the Board. The Petitioners elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated May 24, 2006.
5. The Board held an administrative hearing on July 24, 2006, before the duly appointed Administrative Law Judge (the ALJ) Debra Eads.
6. Persons present and sworn in at hearing:

For Petitioner: Stephen King, Property Owner,

For Respondent: Terry Beckinger, Michigan Township Assessor,
Carol McDaniel, County Assessor and PTABOA Member,

Marilyn Meighen appeared as counsel for the Michigan Township Assessor and the LaPorte County PTABOA.

Facts

7. The subject property is a single family dwelling on a lot measuring 50' x 250' located at 503 Lakeshore Drive in Michigan City, Indiana.
8. The ALJ did not conduct an on-site inspection of the property.
9. The PTABOA determined the assessed value of the subject property to be \$125,000 for the land and \$91,200 for the improvements, for a total assessed value of \$216,200.
10. The Petitioners requested an assessment of \$43,000 for the land and \$91,200 for the improvements, for a total assessed value of \$134,200.

Issue

11. Summary of Petitioners' contentions in support of an error in the assessment:
 - a. The Petitioners contend that the land value of the property is overstated based on the market. In support of this contention, the Petitioners testified the useable portion of the property is very limited (approximately 50' x 75' of the 50' x 250' lot) due to the non-accessible dune area at the rear of the lot. *Petitioner Exhibit 1*.
 - b. The Petitioners further contend that the property next door to the subject property has full use of the lot and a superior view of the lake. *King testimony; Petitioner Exhibit 1*. According to the Petitioners, multiple lots in the vicinity of the subject have a far better location and have a lower assessed value than the subject property. *King testimony* The Petitioner submitted property record cards for seven properties that the Petitioner alleges are comparable to the subject property and described the distance to the lake from each house, the size of the lot, and the portion that was usable, as well as the noise nuisance from traffic. *King testimony and Petitioner Exhibit 4*. Based on these "comparable" properties, the Petitioners estimate the appropriate land value of the subject property to be \$43,000. *King testimony and Petitioner Exhibits 2 and 4*.
 - c. Finally, the Petitioners contend that even though the Respondent has assigned a higher base rate to the land on Lakeshore Drive, the land in the lower lying areas is far more desirable because of the lack of traffic in the lower lying area. *King testimony*.
12. Summary of Respondent's contentions in support of the assessment:
 - a. The Respondent contends that the land value is appropriate for the subject property. In support of this contention, the Respondent submitted evidence indicating that the base rate for the lots located on Lakeshore Drive is \$2,000 per front foot and the base rate for 204 Louisiana Avenue, 114 Louisiana Avenue and 711 Sheridan Beach

Avenue, properties in the lower lying area, is \$1,400 per front foot. *Beckinger testimony; Respondent Exhibits B thru H.* According to the Respondent, the township placed a higher land base rate (\$2,000 per front foot) on the properties that are topographically higher and have a better view of the lake than the land base rate (\$1,400 per front foot) assigned to the properties in the topographically lower area that have a very limited lake view. *Id.*

- b. The Respondent contends the sale of the property located at 505 Lakeshore Drive referenced by the Petitioners is not an arm's length transaction. *Beckinger testimony.* According to the Respondent, the transfer of ownership on the property record card for 505 Lakeshore Drive shows that the September 24, 2002, sale of \$150,000 retained the name of one of the owners and therefore represents only a re-title of the property. *Id.; Respondent Exhibit B.*
- c. Finally, the Respondent contends that it is inappropriate to value the land separately from the improvements on the property. *Meighen argument.* According to the Respondent, it is the "bottom line value of the property as a whole" that the Board should address. *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 BTR # 6250,
- c. Exhibits:

Petitioner Exhibit 1 – Site plan of the subject property,
Petitioner Exhibit 2 – Neighborhood site plan of comparable properties,
Petitioner Exhibit 3 – Form 131 Petition,
Petitioner Exhibit 4 – Market data on comparable property and brief description
of comparables.

Respondent Exhibit A – Map,
Respondent Exhibit B – Property record card and photographs of subject property,
Respondent Exhibit C – Property record card and photographs of 204 Louisiana
Avenue,
Respondent Exhibit D – Property record card and photographs of 114 Louisiana
Avenue,
Respondent Exhibit E – Property record card and photographs of 711 Sheridan
Beach Avenue,
Respondent Exhibit F – Property record card and photographs of 505 Lake Shore
Drive,

Respondent Exhibit G – Property record card and photographs of 409 Lake Shore Drive,

Respondent Exhibit I – Property record card and photographs of 501 Lake Shore Drive.

Board Exhibit A – Form 131 petition,

Board Exhibit B – Notice of Hearing,

Board Exhibit C – Notice of Appearance for Marilyn Meighen,

Board Exhibit D – Hearing Sign In Sheet.

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 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.

15. The Petitioners 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:

Comparable Assessments

a. The Petitioners contend that the land value of the property is overstated when compared to the land values of other properties in the area. In support of this contention, the Petitioners submitted evidence showing the assessed values and locations of purported comparable properties in the vicinity of the subject property. *Petitioner Exhibits 2 and 4.*

b. Indiana Code § 6-1.1-2-2 requires uniform and equal assessments. Thus, the Petitioner argues, to the extent that he proves that his property is not assessed

uniformly or equal to comparable properties, 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.*

- c. 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).
- d. In the case at bar, the Petitioners have not met this burden. While the Petitioners compared the amount of traffic and street noise, and estimated the distance to the lake or beach of the properties, they failed to quantify how these differences affect the value of the land in question.¹ Further, the Petitioners identified the area of property that they contend is “usable” and compared their “usable” property against the “usable” property of other lots. The Petitioners, however, have provided no support for its designation of “usable” property. Finally, even if the Petitioners had properly shown the market value of the lot, they have failed to show the market value-in-use of the property. As the Respondent observed, adding the assessed value of the

¹ Further, the Petitioner’s “comparable” properties are in different neighborhoods. The Petitioners present no analysis of the manner in which the neighborhoods of the purported comparable properties are comparable, either to the subject property’s neighborhood or to each other. Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the five properties to the property under appeal. *Whitley Products, Inc. v. State Board of Tax Comm’rs*, 704 N.E.2d 1113 (Ind. Tax Ct. 1998). Neighborhoods share common development characteristics, average ages of the improvements, size of lots, subdivision plats and zoning maps, school and other taxing district boundaries, among other characteristics. GUIDELINES, Chap. 2 at 8. Mere proximity of properties is insufficient to prove similarity of neighborhoods. Instead, a party must explain the characteristics of the subject neighborhood and how those characteristics compare to those of purportedly comparable properties, as well as how any differences between the properties’ neighborhoods affect the relative market values-in-use. *Long v. Wayne Township Assessor*, 821 N.E.2d 466 (Ind. Tax Ct. 2005). The only showing the Petitioners make here is that different neighborhoods have different land values.

improvements to the market value of the lot does not represent the “bottom line value of the property.” The Respondent is correct. Here, the Petitioners mix two approaches to value - the mass appraisal cost approach utilized by the GUIDELINES and the sales comparison approach. In essence, the Petitioners add apples to oranges, and urge the Board to find that the resulting figure represents the market value-in-use of the property. This we decline to do. The Petitioners, therefore, have failed to raise a prima facie case that their property is over-valued on the basis of the assessed value of neighboring lots.

Influence Factor

- e. The Petitioners further contend that the property is incorrectly valued based on the condition of the lot. According to the Petitioners, the improvements encroach on Lakeshore Drive and only 60’ to 75’ feet of the depth of the land is usable because the area in back is a non-accessible dune area.
- f. Generally, land values in a given neighborhood are 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, VERSION A, glossary at 10 (incorporated by reference at 50 IAC 2.3-1-2). The 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).
- g. While the alleged use limitations on the property may be relevant to the issue of whether a negative influence factor should apply here, the Petitioner failed to show how this condition would impact the market value of the subject property or to show the actual market value of the property. *See Talesnick*, 756 N.E.2d at 1108. In fact, the Petitioner presented no evidence to establish the market value-in-use of the property under appeal or to show that the subject property is assessed differently than neighboring parcels with the same characteristics. The petitioner must submit ‘probative evidence’ that adequately demonstrates all alleged errors in the assessment. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. *See Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113 (Ind. Tax 1998).
- 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

16. The Petitioners 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.

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>.