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

Petition #: **59-012-02-1-4-00017**
Petitioner: **Joyce Thayer-Sword**
Respondent: **Paoli Township Assessor (Orange County)**
Parcel #: **012-004-009-000**
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. The Petitioner initiated an assessment appeal with the Orange County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated December 22, 2003.

2. Notice of the PTABOA's decision was mailed to the Petitioner on June 9, 2004.

3. The Petitioner filed an appeal to the Board by filing a Form 131 with the county assessor on July 7, 2004. Petitioner elected to have this case heard in small claims.

4. The Board issued a notice of hearing to the parties dated June 29, 2005.

5. The Board held an administrative hearing on August 30, 2005, before the duly appointed Administrative Law Judge (the ALJ) Jennifer Bippus.

6. Persons present and sworn in at hearing:

    a) For Petitioner: Milo Smith, Taxpayer Representative

    b) For Respondent: Linda Reynolds, Orange County Assessor
    Kirk Reller, Technical Advisor

Facts

7. The property is classified as a mobile home park located on 7.94 acres.

8. The ALJ did not conduct an on-site visit of the property.

9. The PTABOA determined the assessed values of the subject property to be $65,600 for the land and $106,800 for the improvements, for a total assessed value of $172,400.

10. The Petitioner requested an assessment of $30,000 for the land and $80,000 for the improvements, for a total assessed value of $110,000.

Issues

11. Summary of Petitioner's contentions in support of alleged error in assessment:

a) The Petitioner, through its representative, contends that pursuant to the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002– VERSION A (the GUIDELINES), adjustments should be made to the mobile home site values. *Smith testimony.* In support of this contention, the Petitioner submitted the Commercial and Industrial Cost Schedules for Mobile Home Parks. GUIDELINES, app. G at 39. According to the Petitioner, the current cost per mobile home site is $4,470 for a "C" grade mobile home park. *Respondent Exhibit 1*. The Petitioner argues that under the GUIDELINES for Mobile Home Parks, "cost per site" includes engineering, site grading, street paving, patios and walks, sewers, water, electric, gas, and miscellaneous (landscaping, recreation facilities, etc.). GUIDELINES, app. G at 39. Further, according to the GUIDELINES, "if all of the components were not included, property deductions should be made … ." *Id.*

b) The Petitioner argues that grading and landscaping costs are included in the primary land cost. *Smith testimony*. In support, the Petitioner submitted a copy of the GUIDELINES, ch. 2 at 85, for primary land which states in part, "[t]he following developmental costs may be included in the base rate for primary acreage." *Petitioner Exhibit 6*. In addition, the Petitioner contends, the property owner did not install any landscaping beyond that required for the general improvement of the subject site. *Petitioner Exhibit 2 (Affidavit); Smith testimony*. Further, the Petitioner argues there are also no recreational facilities of any kind on the subject property. *Smith testimony*. Also, according to the Petitioner, the owner did not install any sidewalks or patios.[1] *Id.* In support of these contentions, Petitioner submitted Exhibit 3, a copy of an aerial photograph of the area and photographs of the subject property. *Petitioner Exhibit4 and 5.*

c) The Petitioner contends that a negative $410 adjustment should be made to the site cost on the subject property because there is no site grading beyond the "grading for general improvement of the site." *Smith testimony.* Further, the Petitioner argues, a negative $470 adjustment should be made for no landscaping and recreational facilities beyond what is included in the base rate of primary land. *Id.* Finally, the

[1] This issue was withdrawn by the Petitioner after submission of the Respondent's evidence.

Petitioner submitted Exhibit 7, a copy of the subject property record card (PRC), detailing how the Petitioner arrived at the requested assessed value.[2] *Id.*

d) In response to the Respondent's question on the value presented by the owner, the Petitioner argued that Indiana Code §§ 6-1.1-31-6(c) and 6-1.1-31-7(d) define the true tax value of these assessments and true tax value does not mean fair market value. The Petitioner contends that the code is a specific set of guidelines based on what it would cost to replace the mobile home park, land plus improvements and it is not market value. According to the Petitioner, that is why market values were not introduced at the hearing. *Smith testimony.*

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

a) The Respondent testified that, from the evidence, it appeared that the Petitioner purchased the subject property in 1994 for $145,000. *Reller testimony*. The Respondent argued that the Petitioner here is requesting an assessed value lower than the amount for which the Respondent purchased the property almost a decade earlier. *Id.* The Respondent contends that the value of the mobile home park should be determined on the rents the Petitioner is receiving. *Reller testimony*. The Respondent argued that the Petitioner submitted no income or appraisal information for the property. *Reynolds testimony.*

b) In response to Petitioner's argument that grading and landscaping is included in the cost of primary ground, the Respondent argues that the definition of primary ground states that it "may" include those items. *Id.; Petitioner Exhibit 6.* In support of the land value, the Respondent identified a sale on Hospital Road, less then 1/8 mile from the subject, that was for $72,000 an acre in 2001. According to the Respondent, this does not mean that the subject site is worth $72,000 an acre, but the sale is an indication of value for the area. *Id.*

c) The Respondent also argues that the subject property is landscaped and graded beyond that level that may be included in the cost of the primary land. *Reller testimony*. According to the Respondent, the subject mobile home park is very well landscaped with an excessive amount of trees and shrubs everywhere. *Reller and Reynolds testimonies.* While the Petitioner may have testified that she did not plant the shrubs and trees, the Petitioner purchased the park after it was a going entity. The landscaping would have been in place at the time the Petitioner purchased the property. *Reller testimony.* According to the Respondent, there is a reason the mobile home park is called "Shady Village". *Id.*

d) Further, the Respondent contends, there are walkways and patios with each mobile home. *Reller testimony; Respondent Exhibits 6-10.* The Petitioner may not have installed them herself as indicated in her affidavit, however they are there and they were installed. *Id.; Respondent Exhibits 6-10.* According to the Respondent, there

[2] The Petitioner admitted that its value would change due to the withdrawal of the issue pertaining to the patios and sidewalks. *Smith testimony.*

would be extra site preparation for the pads and patios, over and above the normal site preparation for the mobile homes. *Reynolds testimony*. All the sites have patios and pads. *Id.* Some people built decks over the patios. *Id.*

e) Finally, the Respondent contends that the subject property was fairly assessed. According to the Respondent, the original PRC called for $4,670 per site. *Reynolds testimony; RespondentExhibit 1*. The Respondent testified that $4,800 is the lower end of the mobile home parks, including land. *Reller testimony; Respondent Exhibits 2 and 3*. The value of the subject property, including land, is about $5,200 per site. The subject is a "C" grade park and falls within the definition of "C" grade. *Id.* However, the sites were adjusted for no recreational facilities and each site was graded down to a "D" grade on the miscellaneous issues but left at "C" on the other issues. *Reynolds testimony; Respondent Exhibit 3*. The adjusted site value is $4,470 per site as shown on the PRC (corrected). *See Respondent Exhibit 2.* According to the Respondent, the $4,470 on each site is outside the "C" grade. *Id.*

Record

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

a) The Petition.

b) The CD recording of the hearing labeled IBTR 6252,

c) Exhibits:

Petitioner Exhibit 1: Copy Version A- Real Property Assessment Guidelines, Appendix G, Commercial and Industrial Cost Schedules, page 39
Petitioner Exhibit 2: Affidavit from Joyce Thayer-Sword
Petitioner Exhibit 3: Aerial photo of subject property
Petitioner Exhibit 4: Photograph of subject property
Petitioner Exhibit 5: Photograph of subject property
Petitioner Exhibit 6: Copy GUIDELINES, ch. 2 at 85
Petitioner Exhibit 7: Copy of subject PRC with requested values

Respondent Exhibit 1: Subject's original 2002 PRC
Respondent Exhibit 2: Copy of 2002 corrected PRC after PTABOA hearing
Respondent Exhibit 3: Copy of GUIDELINES, app. G at 39
Respondent Exhibit 4: Copy of Grade Breakdown on components of mobile home sites
Respondent Exhibit 5: Aerial photo of subject property
Respondent Exhibit 6: Photographs of subject property
Respondent Exhibit 7: PTABOA site visit findings

Board Exhibit A: Form 131 Petition

Board Exhibit B: Notice of Hearing on Petition
Board Exhibit C: Notice of County Assessor Representation
Board Exhibit D: 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 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 Petitioner contends that the assessment on the subject parcel is excessive. In support of this claim, the Petitioner argued that its cost per site should be reduced with deductions for site grading and landscaping and a lack of recreational facilities pursuant to Schedule G. GUIDELINES, Schedule G, p. 39. The Petitioner did not provide sufficient evidence to support these contentions. This conclusion was arrived at because:

a) The subject parcel is classified as 4.00 acres of primary commercial/industrial land and 3.94 acres of usable undeveloped land. Based on this breakdown, the Petitioner refers to the GUIDELINES, ch. 2 at 85 that states in part, "For primary land, the base rate represents the estimated January 1, 1999, value of vacant land and various costs associated with the development of the land. The following developmental costs may be included in the base rate for primary acreage: sanitary sewers; storm sewers; portable water lines; fire prevention lines; gas lines; septic systems; water wells; grading for general improvement of the site; and landscaping."

b) The Petitioner argued that the grading for general improvement of the site and the landscaping are included in the primary land base rate. Further, the Petitioner contends, the subject property has no recreational facilities. Based on these arguments, the Petitioner determined that adjustments for these items should be made

to the site base rate. Using the GUIDELINES, app. G at 39, the Petitioner requested negative adjustment of $410 for no site grading beyond the "grading for general improvement of the site," and a negative $470 for having no recreational facilities and no landscaping beyond what was included in the primary land base rate.

Site Grading

c) The Petitioner argued that no site grading had occurred on the property beyond that required for "general improvement" of the property. The Petitioner merely made conclusory statements that the general site preparations (site grading and landscaping) were included in the primary land classification base rate. Unsubstantiated conclusions do not constitute probative evidence. See *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1119, 1120 (Ind. Tax Ct. 1998).

d) Further, the Respondent argued that the GUIDELINES state that developmental costs listed under primary land *may* be included in the primary land base rate. *Reller testimony*; GUIDELINES, ch. 2 at 85. The Respondent contends that the concrete pads, patios and walkways for each site indicates that additional work was required to each site and not just the grading for general improvement of the site. We agree with the Respondent and find that the Petitioner failed to raise a prima facie case that the Petitioner should receive a deduction off of the cost per site for lack of site grading.

Landscaping and Recreational Facilities

e) The Petitioner also alleges that there is no landscaping and there are no recreational facilities on the subject property. In support of this allegation, the Petitioner submitted an affidavit stating that the Petitioner did not install any landscaping and that there are no facilities of any kind at the subject property. *Petitioner Exhibit 2.*

f) Regardless of Petitioner's involvement in the installation of patios, walkways or the landscaping, the fact of the matter is that these items exist and likely existed when the Petitioner purchased the mobile home park. Whether the Petitioner actually did or did not add landscaping, patios or walkways to the property is irrelevant. As stated earlier, the subject property has been an ongoing concern since 1979. The Petitioner purchased the property in 1994. The Petitioner has not shown that there should be adjustments made to the subject property's assessment because the Petitioner did not personally install these items.

g) The Petitioner also argued that the site had no recreational facilities and thus, was entitled to a deduction on the site cost. The Respondent agreed that no recreational facilities existed on the subject property and testified that the original assessment of the mobile home sites was adjusted from $4,670 to $4,470 to compensate for the subject property's lack of recreational facilities. *Reynolds testimony*.

h) According to the GUIDELINES, miscellaneous components include "landscaping, recreation facilities, etc." The adjustment to a "C" grade mobile home park for these

components together would be $470. *Id.* As stated above, this Board rejected the Petitioner's argument that the subject property had no landscaping which is also a miscellaneous item. While the Petitioner has proven that the subject property does not have recreational facilities, the Petitioner failed to submit evidence that would show what percentage of the "miscellaneous" deduction recreational facilities would comprise. Nor did Petitioner present any evidence of the market value of such an amenity.

i) A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving both - that the current assessment is incorrect *and* 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) (emphasis added). This, the Petitioner did not do. Therefore, we determine that the Petitioner has failed to raise a prima facie case that the subject property was entitled to any different adjustment than the deduction already given for the property's lack of recreational facilities.

Failure to Submit Market Evidence

j) Even if we were to accept Petitioner's arguments regarding any failure to apply an adjustment to the subject property, we find that the assessed value is a reasonable measure of true tax value.[3] *See* Ind. Admin. Code tit. 50, r.2.3-1-1(d) (2002 Supp.) ("failure to comply with the … Guidelines … does not in itself show that the assessment is not a reasonable measure of 'True Tax Value[.]"). The Petitioner has presented no market evidence to show that the assessment is not a reasonable measure of the property's true tax value and the Petitioner's arguments regarding a strict application of the GUIDELINES are not enough to rebut the presumption that the assessment is correct. *See Eckerling v.Wayne Township Assessor, 841 N.E.2d 764 (Ind. Tax Ct. 2006)* ("Therefore, when a taxpayer chooses to challenge an assessment, he or she must show that the assessor's assessed value does not accurately reflect the property's market value-in-use. Strict application of the regulations is not enough to rebut the presumption that the assessment is correct.") Thus, 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, the Petitioner has failed to raise a prima facie case. *See Eckerling,* ("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.").

[3] Contrary to Petitioner's argument that "true tax value is not market value," the 2002 REAL PROPERTY ASSESSMENT MANUAL (incorporated by reference at 40 IAC 2.3-1-2) (the MANUAL) states that "[i]n markets in where there are regular exchanges, so that ask and offer prices converge, true tax value will equal value in exchange[.]" MANUAL at 2.

Conclusion

16. The Petitioner failed to raise 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 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/trialproc/index.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code.