

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

Petition #: 64-015-02-1-5-00020
Petitioners: George and Cherri Bonner
Respondent: Portage Township Assessor (Porter County)
Parcel #: 64-06-29-201-001.000
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 Petitioners bought two adjoining lots in 1998. At the time of the assessment under appeal, the lots were assessed as separate parcels, although the Respondent subsequently combined the lots into one parcel in 2004. The parcels are described generally as Lots 1 and 2 of St. Michaels Subdivision.¹ The Petitioners appear to have initiated assessment appeals for both parcels with the Porter County Property Tax Assessment Board of Appeals (the PTABOA) by written documents dated December 30, 2003.²
2. The PTABOA issued a Form 115 Notification of Final Assessment Determination with regard to Lot 1 on April 11, 2005. *See Pet'rs Ex. 3; Resp't Ex. 1; Board Ex. A.*

¹ The full legal descriptions for the lots as listed on the Notices of Assessment of Land and Structures Form 11 R/A (Form 11 notices) are "ST MICHAEL'S SUB LOT 1 BLK 1 TCCD DR479 P600" and "ST MICHAEL'S SUB LOT 2 BLK 1 TCCD DR479 P600," respectively.

² At the hearing, the Petitioners submitted into evidence a copy of one page of a Form 130 Petition to the Property Tax Assessment Board of Appeals for Review of Assessment (Form 130 petition) for Lot 1. *See Pet'rs Ex. 4.* That petition is file stamped December 30, 2003. *Id.* A copy a Form 130 petition for Lot 2 was attached to the Form 130 for Lot 1 submitted by the Petitioners. The Form 130 for Lot 2 was not file stamped but was signed by the Petitioners on December 29, 2003. *See Petitioner Exhibit 4.* The Petitioners attached only a copy of the Form 130 petition for Lot 2 to their Form 131 petition to the Board. *See Board Exhibit A.* The Respondent, however, does not appear to dispute that the Petitioners filed a Form 130 petition for Lot 1.

3. The Petitioners initiated an appeal to the Board of the PTABOA's determination concerning Lot 1 by filing a Form 131 petition with the Porter County Assessor on May 10, 2005.³ *See Pet'rs Ex. 1; Resp't Exs. 5-6; Board Ex. A.* The petition references the legal description for both lots, but contains the parcel number only for Lot 1. Moreover, the assessed values listed by the Petitioners refer only to Lot 1, and the relief the Petitioners request on the face of the Form 131 petition relates only to Lot 1. *See Board Ex. A.* At the hearing, Mr. Bonner acknowledged that the Petitioners owned two (2) lots, but stated that the Petitioners were appealing only the "front lot." *G. Bonner testimony.* The Petitioners therefore have appealed only the assessment with respect to Lot 1.
4. The Board issued a notice of hearing to the parties dated September 12, 2006, referencing only Lot 1. *See Board Ex. B.*
5. The Board held an administrative hearing on November 15, 2006, before the duly appointed Administrative Law Judge (the ALJ) Ellen Yuhan.
6. Persons present and sworn in at hearing:
 - For Petitioners: Kenneth M. Ostrander, Witness
Cherri Bonner, Property Owner,
George Bonner, Property Owner,
 - For Respondent: John R. Scott, Portage Township Assessor,
Kathy Sonaty, Chief Deputy, Portage Township,
Janine Chrisman, PTABOA President,
Lindy Wilson, Chief Deputy, Porter County Assessor.

Facts

7. The subject property (Lot 1) is assessed as of March 1, 2002, as vacant land located at 798 N. Governor Road, Valparaiso, Indiana.
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 \$27,500 for the land and \$0 for the improvements, for a total assessed value of \$27,500.

³ The Petitioners submitted a photocopy of a Form 131 petition bearing an additional file stamp from the County Assessor of July 15, 2005. *See Pet'rs Ex. 1.* The Petitioners do not explain the significance of that document or why it bears the additional file stamp. It appears that the Petitioners may have mistakenly re-filed their original Form 131 petition with the County Assessor in response to a notice of defect issued by the Board on June 27, 2005. *See Board Ex. A.* In addition, the Respondent submitted a photocopy of a Form 131 petition that is identical in many respects to the Form 131 petition forwarded to the Board. *See Resp't Ex. 5.* On the petition submitted by the Respondent, however, the Petitioners' requested assessment has been altered from \$7,000 to \$5,000. *See id.*

10. The Petitioners request an assessment of \$7,000 for the land and \$0 for the improvements, for a total assessed value of \$7,000.

Issue

11. Summary of Petitioners' contentions in support of an error in the assessment:
 - a. The Petitioners contend that the Respondent assessed the subject property in excess of its market value. In support of their claim, the Petitioners contend that they purchased the subject property together with an adjacent lot (Lot 2) in 1998 for \$22,900. *C. Bonner testimony*. Both lots were vacant at the time the Petitioners bought them. *Id.* As of March 1, 2002, those two lots were assessed for \$27,500 and \$21,500, respectively. *Id.*
 - b. The Petitioners also contend the subject property is over-valued because improvements cannot be constructed upon it. *C. Bonner testimony; G. Bonner testimony*. Before the Petitioners bought the subject property in 1998, a 25' x 140' portion of the property had been taken for road widening. *Ostrander testimony*. The original lot size was 106.3' x 140'. *Ostrander testimony*. When the Petitioners purchased the subject property, the lot size was 80' x 140'. *Ostrander testimony*. That reduced the original size of the lot from 14,840 square feet to approximately 11,200 square feet. *Ostrander testimony*. The Petitioners claim that this reduction in the lot size made the lot unbuildable from the beginning because it was less than the required 14,000 square feet for a single-family dwelling where an approved public water supply is installed as well as less than the required 12,000 square feet where both sanitary and water systems are installed. *Id.; Pet'rs Ex. 2*. The Petitioners contend that the size of Lot 1 was reduced further when the State took a portion of the lot on August 19, 2002. *Id.; Pet'rs Ex. 2*.
 - c. The Petitioners contend that each lot was unbuildable standing alone, and that the Petitioners had to combine the lots in order to build a house. *Ostrander testimony*.
 - d. The Respondent subsequently combined the parcels and made corrections to the subject property's assessment for 2005 and 2006. *Ostrander testimony*. The Petitioners, however, are not satisfied with the assessments for 2002-2004. *Id.*

- e. The Petitioners submitted two appraisals that valued the property as a whole (Lots 1 and 2 together with improvements) at \$130,000 as of December 11, 1998,⁴ and March 17, 2005, respectively. *See Board Exhibit A; Pet'rs Ex. 8.*

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

- a. The Respondent contends that the 1998 assessments of Lots 1 and 2 are irrelevant to the assessment year under appeal. *Sonaty testimony; Pet'rs Exs. 9-10.* The 2002 general reassessment marked a significant change in how real property is assessed in Indiana. *Id.* The 2002 reassessment was based on sales occurring from January 1, 1997 to eighteen months after January 1, 1999. *Id.* Prior to 2002, the subject property was assessed for one-third of its assessed value because the tax rate was higher, whereas the subject property was assessed for 100% of its value in 2002 because the tax rate was lower. *Id.*
- b. According to the Respondent, the fact that the Petitioners paid \$22,900 for the two lots in 1998 does not mean that the subject property was worth less than the amount for which the Respondent assessed it in 2002. *Sonaty testimony.*
- c. The Respondent shows the measurements of Lot 1 to be 106' x 140'. *Sonaty testimony; Resp't Ex. 7.* The Respondent did not know that land had been taken from the subject property prior to the date that the Petitioners' bought the property. *Sonaty testimony.*
- d. The Respondent questions why the subject property (Lot 1) was unbuildable, when Lot 2, on which the Petitioners' home is located, was actually smaller than the subject property at the time the Petitioners built their house. *Sonaty argument.*
- e. The Respondent applied an excess frontage factor when it combined the two parcels at the request of the PTABOA in 2004. *Scott testimony.* That reduced the assessed value of the combined lots by \$14,000. The Respondent does not know why the lots were not combined when the Petitioners originally purchased them in 1998. *Id.*
- f. The Respondent contends that the Petitioners were compensated for the loss of their land taken in 2002. *Sonaty testimony; Resp't Ex. 2.*

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

- a. The Form 131 petition,

⁴ The December 11, 1998, appraisal is attached to the Petitioners' Form 131 petition. *See Board Ex. A.* The Petitioners did not submit a complete copy of that appraisal as a separate exhibit at the hearing. Nonetheless, the Petitioners' witness, Kenneth M. Ostrander, testified regarding that appraisal. When the ALJ asked if the Petitioners wished for the Board to consider the appraisal as evidence, the Respondent did not object. The Board therefore considers the appraisal as part of the evidentiary record.

b. The compact disk recording of the hearing labeled George and Cherri Bonner, 64-015-02-1-5-00020,

c. Exhibits:

- Petitioners Exhibit 1 - Form 131 petition,
- Petitioners Exhibit 2 - Explanation proving lot was never buildable,
- Petitioners Exhibit 3 - Form 115,
- Petitioners Exhibit 4 - Form 130 petition,
- Petitioners Exhibit 5 - Form 11R/A's for Lots 1 and 2, dated November 20, 2003,
- Petitioners Exhibit 6 - Property record card (PRC) indicating that Lots 1 and 2 were combined, July 7, 2004,
- Petitioners Exhibit 7 - PRC indicating changes in the assessment: changing the dwelling to a manufactured home and the garage to a pole barn, September 27, 2006,
- Petitioner Exhibit 8 - Appraisals dated December 11, 1998, and March 17, 2003, for subject property,
- Petitioner Exhibit 9 - Assessment of Lot 1 effective March 1, 1998, Form 11 R/A,
- Petitioner Exhibit 10 - Assessment of Lot 2 effective March 1, 1998, Form 11R/A,
- Petitioner Exhibit 11 - INDOT survey of subject property,

- Respondent Exhibit 1 - Form 115, PTABOA determination,
- Respondent Exhibit 2 - Warranty Deed and Exhibit A attachment,
- Respondent Exhibit 3 - Exhibit B – Right-of-Way Parcel Plat,
- Respondent Exhibit 4 - Appraisal, dated March 17, 2005,
- Respondent Exhibit 5 - Form 131 dated May 10, 2005, requesting a \$5,000 assessed value for Lot 1,
- Respondent Exhibit 6 - Form 131 dated July 15, 2005, requesting a \$7,000 assessed value for Lot 1,
- Respondent Exhibit 7 - Subject's 2002 PRC,

- Board Exhibit A - Form 131 petition,
- Board Exhibit B - Notice of Hearing,
- Board Exhibit C - 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 established a prima facie case for a reduction in the subject property's assessment. The Board reaches this conclusion for the following reasons:
 - a. The 2002 Real Property Assessment Manual (Manual) defines the “true tax value” of real property 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). As set forth in the Manual, the appraisal profession traditionally has used three methods to determine a property's market value: the cost approach, the sales comparison approach, and the income approach. *Id.* at 3, 13-15. In Indiana, assessing officials primarily use the cost approach, as set forth in the Real Property Assessment Guidelines for 2002 – Version A (Guidelines), to assess real property.
 - b. 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). A taxpayer, however, may offer evidence to rebut that presumption, as long as that evidence is consistent with the Manual's definition of true tax value. *MANUAL* at 5. 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 the Uniform Standards of Professional Appraisal Practice (USPAP).”). A taxpayer also may 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.

- c. Regardless of the approach used to prove the market value-in-use of a property, Indiana’s assessment regulations provide that for the 2002 general reassessment, a property’s assessment must reflect its value as of January 1, 1999. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005); MANUAL at 4, 8. Consequently, a party relying on evidence of a property’s market value-in-use as of a date substantially removed from the relevant valuation date of January 1, 1999, must explain how that evidence demonstrates or is relevant to the property’s value as of January 1, 1999. *Id.*
- d. The Petitioners rely upon several pieces of evidence in an effort to support their position that the subject property is assessed in excess of its market value. First, the Petitioners contend that the subject property is virtually worthless because it is too small for improvements to be constructed upon it. Assuming that the building restrictions identified by the Petitioners affect the market value-in-use of the subject property, the Petitioners did not introduce any market-based evidence to quantify that effect. Consequently, the Petitioners’ evidence concerning those restrictions lacks probative value.
- e. The Petitioners also submitted a property record card showing that the subject property was assessed for \$1,030 in 1998. *Pet’rs Ex. 9*. Evidence of the subject property’s assessment in 1998 is irrelevant to a determination of the property’s proper assessment in 2002. Each assessment and each tax year stands alone. *Fleet Supply, Inc. v. State Bd. of Tax Comm’rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001). Thus, evidence as to a property’s assessment in one tax year is not necessarily probative of its true tax value in a different year. *See, id.* (“[E]vidence as to the Main Building’s assessment in 1992 is not probative as to its assessed value three years later.”). That is particularly true where, as here, the changes in assessment stem from a property being revalued in conjunction with the 2002 general reassessment. Indiana law regarding the assessment of real property changed dramatically beginning with the 2002 general reassessment. Prior to that time, true tax value was simply the value determined by applying regulations promulgated by the State Board of Tax Commissioners. *Ind. Dep’t of Local Gov’t Fin. v. Commonwealth Edison* 820 N.E.2d 1222, 1224 (Ind. 2005). Beginning in 2002, however, the rules of the Department of Local Government Finance have defined 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.” MANUAL at 2; *see also, Commonwealth Edison*, 820 N.E.2d at 1224.

- f. The Petitioners also submitted two appraisals. Both appraisals value the Petitioners’ property as a whole, including Lots 1 and 2 and the improvements located thereon. *Pet’rs Ex. 8; Board Ex. A*. The first appraisal (1998 Appraisal) estimates the market value of the combined parcels at \$130,000 as of December 11, 1998. *See Board Ex. A*. The second appraisal (2005 Appraisal) estimates the market value of the combined parcels at the same amount as of March 17, 2005. *Pet’rs Ex. 8*.
- g. The Petitioners, however, have appealed only the assessment of Lot 1, and neither of the appraisals allocates its estimate of value between the two lots. If the Petitioners had appealed the assessments of both lots, the 1998 Appraisal likely would have been compelling evidence of the true tax value of the properties, and the Board could have ordered a reduction in their combined assessment.⁵ The appraisals, however, are not probative of the true tax value of the subject property (Lot 1) standing alone.
- h. Mr. Bonner testified that the Petitioners bought the subject property and Lot 2 for a total price of \$22,900 in 1998. Mr. Bonner’s testimony constitutes at least some evidence that the current assessment of \$27,500 is incorrect and that the true tax value of the subject property, by itself, did not exceed the price of the two vacant lots combined. In fact, the portion of that sale price attributable to the subject lot likely amounted to less than \$22,900.
- i. The Petitioners also provided evidence showing that the dimensions of the subject property were 80’ x 140’ as of the assessment date of March 1, 2002. *Ostrander testimony; Pet’rs Exs. 2, 11*. The Respondent, however, assessed the subject property based upon dimensions of 106’ x 140’. *Resp’t Ex. 7*. The difference appears to be the portion of land taken for road widening prior to the Petitioners purchase of the subject property in 1998. *See Ostrander testimony; Pet’rs Exs. 2, 11*.
- j. The value of the subject property is \$20,800 if one applies the base rate and negative influence factor used by the Respondent in computing its March 1, 2002, assessment to the correct dimensions of the property.⁶ Given the combined sale price of the two lots, one might expect the market value-in-use of the subject property to be even less. The Petitioners, however, have not provided any evidence to support a lower figure. The Petitioners therefore established a prima facie case that the March 1, 2002, assessment of the subject property is incorrect and that the correct assessment should not exceed \$20,800.

⁵ The properties are assessed for a combined total of \$166,200. *See Pet’rs Ex. 5*.

⁶ Eighty (80) front feet multiplied by the adjusted rate of \$288/front foot equals \$23,040. Application of an influence factor of -9.826% to \$23,040 yields a value of \$20,775, which rounds to \$20,800.

- k. The burden therefore shifted to the Respondent to impeach or rebut the Petitioners' evidence. *See Meridian Towers*, 805 N.E.2d at 479. The Respondent, however, did not dispute or rebut the Petitioners' measurements of the subject lot. Instead, the Respondent merely indicated that it did not know when the land was taken for the road widening. *See Scott testimony*.
- l. The Respondent also did little or nothing to rebut Mr. Bonner's testimony concerning the sale price for the subject property and Lot 2. At most, Ms. Sonaty made the conclusory statement that the 1998 sale price does nothing to show that the subject property and Lot 2 were not worth the amounts for which they were assessed in 2002. The Board recognizes that the subject property arguably changed between the time the Petitioners bought it in 1998 and the March 1, 2002, assessment date at issue in this appeal, given that the Petitioners constructed a house and began treating the property as part of a larger improved parcel. The Respondent, however, assessed the subject property as a freestanding vacant lot. Under those circumstances, the 1998 purchase price is probative regarding the upper limit of the subject property's true tax value as of the March 1, 2002, assessment date.
- m. Based on the foregoing, the Petitioners established by a preponderance of the evidence that the March 1, 2002, assessment is incorrect and that the correct assessment should not be more than \$20,800.

Conclusion

- 16. The Petitioners made a prima facie case. The Respondent failed to rebut the Petitioners' evidence. The Board finds for the Petitioners and orders that the assessment be changed to not more than \$20,800.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should 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/trialproc/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.