

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

Petition #: 64-016-02-1-5-00057
Petitioners: Benigene and Margie Allen
Respondent: Portage Township Assessor (Porter County)
Parcel #: 0511300021000
Assessment Year: 2002

The Indiana Board of Tax Review (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 Porter County Property Tax Assessment Board of Appeals (PTABOA) by written document dated December 9, 2003.
2. The PTABOA issued its decision on March 18, 2005.
3. The Petitioners initiated an appeal to the Board by filing a Form 131 petition with the Porter County Assessor on April 4, 2005. The Petitioners elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated August 14, 2006.
5. The Board held an administrative hearing on September 27, 2006, before the duly appointed Administrative Law Judge, Alyson Kunack.
6. Persons present and sworn in at hearing:
 - a) For Petitioners: Benigene Allen, Owner
 - b) For Respondent: John R. Scott, Portage Township Assessor
Kathleen L. Sonaty, Chief Deputy, Portage Township
Shirley Lafever, Porter County Assessor
Janine Chrisman, President, Porter County PTABOA
Lindy Wilson, Chief Deputy, Porter County

Facts

7. The property, which is located at 2337 Swanson in Portage, contains a single-family dwelling, detached garage, and utility shed, as is shown on the property record card for parcel #0511300021000.

8. The Administrative Law Judge (ALJ) did not conduct an inspection of the property.
9. Assessed Value of subject property as determined by the PTABOA:
Land \$51,400 Improvements \$94,200 Total \$145,600.
10. Assessed Value requested by the Petitioners on the Form 131 petition:
Land \$37,000 The Petitioners left the improvement value blank.

Issue

11. Summary of the Petitioners' contentions in support of alleged error in assessment:
 - a) The land portion of the subject property's assessment is too high. The subject parcel consists of 3.44 acres. The majority of the subject land is unbuildable due to a City of Portage drainage ditch and main sewer line, which consume 2.316 acres. The main sewer line runs north and south, while the drainage ditch runs diagonally east and west. The remaining 1.158-acre portion of the property is a triangular lot where the subject dwelling and outbuildings are located. The Petitioners contend that the easements, city set-backs, and triangular shape severely affect the 1.158 acres. *Allen testimony; Pet'rs Ex. 1.*
 - b) Engineers for the City of Portage told Mr. Allen that the Petitioners cannot put dirt, a bridge, or any structure on the 2.316-acre portion of the subject property where the drainage ditch and sewer line are located. *Allen testimony.*
 - c) The Petitioners had intended to subdivide the subject property into nine (9) lots and sell the lots to provide additional income in their later years. The Petitioners paid \$475 to have the lots platted. The Petitioners will not be able to follow through with their plan because of the restrictions on their use of the land. *Allen testimony; Pet'rs Exs. 7-8.*
 - d) The Petitioners submitted an appraisal of the subject land prepared by Frank Odar Jr. of AER Appraisal Group. The appraisal estimates the market value of the subject land at \$37,800 as of March 29, 2004. In the appraisal, Mr. Odar, Jr. comments that the site is encumbered by a drainage ditch and utility easement, which limit the buildable area of the site to 1.15 acres. Mr. Odar, Jr. reduced the land value by 25% due to the restrictions on its use. *Allen testimony; Pet'rs Ex. 2.*
 - e) The Petitioners submitted a partial bid package, closing statement, and plat map relating to a property sold by the Portage Park Department (Park Department) to Gore Realty. The Park Department had the property at issue appraised by Mr. Odar, Jr. Mr. Odar, Jr. appraised the Park Department's land, which contains 3.84 acres with eight (8) good unencumbered lots, at \$58,000. *Allen testimony; Pet'rs Exs. 3, 5.* The Park Department sold the property to Gore Realty for \$60,650. *Allen testimony; Pet'rs Ex. 4.* The Petitioners contend that Mr. Odar, Jr. must know what he is doing,

given that the Park Department's land sold for less than \$3,000 more than the amount for which Mr. Odar, Jr. appraised it. *B. Allen testimony.*

- f) Mr. Allen testified that Respondent's Exhibit 5 includes two parcels owned by the Petitioners - the 3.44-acre parcel, which is the subject of this appeal, and a 2.8-acre parcel located next to the subject parcel. *Allen testimony; Resp't Ex. 5.*

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

- a) The Respondent originally assessed the subject property for \$236,000. The Respondent corrected errors on the property record card resulting in a reduction of \$88,000. The original land assessment was \$80,500 and the PTABOA reduced the land value to \$51,400. *Sonaty testimony.*
- b) The Respondent has broken the subject land into three different portions for purposes of the assessment. The land contains a one (1) acre homesite valued at \$43,054, a 1.5-acre section classified as agricultural excess acreage valued at \$10,000 per acre and a 0.94-acre section classified as agricultural excess acreage valued at \$6,000 per acre. The sections classified as excess agricultural acreage receive a negative influence factor of sixty percent (60%).¹ The Respondent applied the negative influence factor to the agricultural excess acreage to account for restrictions that render that portion of the subject land unbuildable. The Respondent contends the current assessment is correct, and that the Petitioners could sell the subject property on the open market for its current assessed value of \$145,600. *Sonaty testimony; Resp't Exs. 10, 11.*
- c) The appraisal presented by the Petitioners shows a twenty-five percent (25%) reduction applied to the entire parcel. *Pet'rs Ex. 2.* The Respondent contends the appraiser should have applied the twenty-five percent (25%) reduction only to the portion of the parcel affected by restrictions rather than to entire parcel. *Sonaty testimony.*
- d) The Respondent presented a letter and aerial map of the subject property from the City of Portage Engineering Department. The letter refers to the aerial map and indicates that the non-hatched area on the map includes a right-of-way for Swanson Road, a buffer zone for a ditch, and a sanitary sewer easement. The letter further states that the hatched area is approximately 150,910 square feet. That amounts to 3.4644 acres of usable land. *Sonaty testimony; Resp't Ex. 5.*
- e) The comparable properties used in the appraisal submitted by the Petitioners all are smaller than the subject parcel. *Scott testimony.* One of those properties consists of 1.8 acres of land that sold for \$36,700, whereas the subject parcel contains 3.44 acres

¹ At one point Ms. Sonaty stated that the agricultural excess acreage received a negative influence factor of eighty percent (80%). Further testimony by Ms. Sonaty and testimony by Ms. Lafever and Ms. Chrisman, and the PRC indicate that the agricultural excess acreage actually receives a negative influence factor of sixty percent (60%). *See Resp't Ex. 10.*

assessed at \$51,400. The two values are close to each other if viewed as a function of price per acre or price per square foot. *Scott testimony.*

Record

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

a) The Form 131 petition.

b) The recording of the hearing.

c) Exhibits:

Petitioners' Exhibit 1: Plat and Aerial View of Subject Property
Petitioners' Exhibit 2: Certified Land Appraisal of Subject Property
Petitioners' Exhibit 3: Partial Bid Package of Comparable Property
Petitioners' Exhibit 4: Closing Statement of Comparable Property
Petitioners' Exhibit 5: Plat of Comparable Property Subdivided into 8 Lots
Petitioners' Exhibit 6: Form 131 Petition
Petitioners' Exhibit 7: Plat of Subject Property Subdivided into 9 Lots
Petitioners' Exhibit 8: Summary

Respondent's Exhibit 1: Form 11 dated November 20, 2003

Respondent's Exhibit 2: Form 130 Petition filed December 9, 2003

Respondent's Exhibit 3: none submitted²

Respondent's Exhibit 4: 2 pages from Form 133 Petition for 3/1/02 Assessment
Date

Respondent's Exhibit 5: Aerial map from City of Portage Showing Useable Land

Respondent's Exhibit 6: Appraisal of Land Only with Photos and Map

Respondent's Exhibit 7: Form 114

Respondent's Exhibit 8: Letters from Taxpayer

Respondent's Exhibit 9: Summary of Assessor's Position Presented at PTABOA
Hearing

Respondent's Exhibit 10: Property Record Card ("PRC") Reflecting Change Per
PTABOA Decision

Respondent's Exhibit 11: Form 115

Respondent's Exhibit 12: Form 131 Petition

Board Exhibit A: Form 131 Petition

Board Exhibit B: Notice of Hearing

Board Exhibit C: Hearing Sign-In Sheet

d) These Findings and Conclusions.

² The Respondent's Exhibit Coversheet lists as Exhibit 3, Copy of Appraisal with Map of Property. However, there was not an Exhibit 3 included with the documents submitted to the ALJ at the hearing.

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 provided sufficient evidence to support a reduction in their assessment. The Board reaches that conclusion for the following reasons:
- a) The Petitioners contend that the current assessment does not account for the restrictions on the Petitioners’ use of the subject land and the corresponding reduction in value caused by those restrictions. *Allen testimony*.
 - b) The 2002 Real Property Assessment Manual (Manual) defines the “true tax value” of real estate 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 property.
 - c) 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 use an appraisal prepared in accordance with the Manual’s definition of true tax value to rebut the presumption that an assessment is correct. MANUAL at 5; *Kooshtard Property VI*, 836 N.E.2d at 505-06 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].”).

- d) The Manual further provides that for the 2002 general reassessment, a property’s assessment must reflect its value as of January 1, 1999. MANUAL at 4. Consequently, in order to present evidence probative of a property’s true tax value, a party relying on an appraisal performed substantially after the relevant valuation date should explain how the value estimated by the appraisal relates to the property’s value as of January 1, 1999. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (holding that an appraisal indicating a property’s value for December 10, 2003, lacked probative value in an appeal from a 2002 assessment).
- e) The Petitioners rely upon an appraisal prepared a Frank Odar Jr., certified appraiser, to support their claim regarding the impact of the use restrictions on the market value of the subject land. The appraisal estimates the market value of the subject land to be \$37,800 as of March 29, 2004, a date more than five (5) years after the January 1, 1999, valuation date applicable to the March 1, 2002, general reassessment. The Petitioners do not explain how the appraised value of \$37,800 relates to the subject property’s market value-in-use as of the relevant valuation date of January 1, 1999. The appraisal therefore lacks probative value.
- f) The Petitioners also rely upon a partial bid package, closing statement, plat map and appraisal relating to a property sold by the Portage Park Department to Gore Realty. It does not appear that the Petitioners introduced those documents in order to show the market value of the subject property. Indeed, at the hearing, Mr. Allen argued that those documents bolstered Mr. Ordar Jr.’s credibility as an appraiser, given that Park Department property sold for a price that was very close to the amount for which Mr. Odar, Jr. appraised the property. As explained above, however, Mr. Odar Jr.’s appraisal of the subject property lacks probative value for reasons unrelated to Mr. Odar’s skill as an appraiser.
- g) Even if the Petitioners had offered the sale of the Park Department land as evidence of the subject property’s market value, the Board would not assign that evidence any weight. Mr. Allen did not engage in any significant comparison of the features of the Park Department land and the subject land. *See Long*, 821 N.E.2d at 471-72 (holding that the taxpayers failed to explain how the characteristics of their property compared to those of purportedly comparable properties or how any differences between the properties affected their relative market values-in-use).
- h) Finally, the Petitioners contend that the restrictions posed by “set-backs” and easements for a drainage ditch and sewer line prevent the Petitioners from building on or otherwise using 2.316 acres of the subject parcel. According to the Petitioners, those limitations severely decrease the market value of the subject land. The Board agrees with the Petitioners’ claims in that respect. So too, apparently, does the Respondent, given that it has applied a negative influence factor of sixty percent (60%) to the portions of the subject parcel affected by those restrictions. The

Petitioners, however, bear the burden of quantifying the extent to which those restrictions affect the property's market value-in-use. As explained above, however, the only market-based evidence submitted by the Petitioners (Mr. Odar, Jr.'s appraisal) lacks probative value.

i) Nonetheless, the Indiana Code provides such a quantification for at least a portion of the restricted land. Ind. Code § 6-1.1-4-14 provides, in relevant part:

(a) Except as provided in subsection (b) of this section, land may not be assessed to an adjacent property holder if it:

* * * * *

(3) is used and occupied as part of a public drainage ditch, including land that:

(A) is adjacent to the ditch; and

(B) cannot be used for farmland or any other purpose because of a need for access to the ditch

(b) Where land described in . . .(a)(3) has not been transferred by deed to a person who holds that land for . . . drainage . . . purposes, the land shall be assessed to the adjacent property owner. However, the assessed value of the land so assessed shall be deducted from the assessed value of the land assessed to the adjacent property owner. . . .

The Guidelines contain an almost identical provision. *See REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, ch. 2 at 28* (incorporated by reference at 50 IAC 2.3-1-2).

j) The Petitioners submitted evidence both of the existence of a public drainage ditch on the subject property and that they are restricted from using land within and immediately adjacent to the ditch for any purpose. *See Allen testimony; Pet'r Ex. 1.* Moreover, while aerial maps submitted by the Petitioners do not specifically quantify the amount of land occupied by the drainage ditch, Ms. Sonaty and Mr. Scott both testified to their belief that the ditch occupies 1.703 acres of the subject property currently assessed as agricultural excess acreage at a base rate of \$10,000 per acre. *See Sontay testimony; Scott testimony.* Unfortunately, that does not match entirely with the subject PRC, which values 1.5 acres of excess agricultural acreage at \$10,000 per acre and 0.94 acres at \$6,000 per acre. The most reasonable inference to be drawn from the testimony of Ms. Sontay and Mr. Scott, however, is that the drainage ditch occupies the entire 1.5-acre section of the subject land assessed at a base rate of \$10,000 and a portion of the 0.94-acre section assessed at a base rate of \$6,000.

- k) Consequently, the Petitioners have demonstrated by a preponderance of the evidence that the value attributed to the 1.703-acre portion of the subject property occupied by the drainage ditch should be deducted from the assessed value of the subject land. Thus, the Respondent must deduct the entire value attributed to the 1.5-acre portion of the subject land assessed as agricultural excess acreage at the base rate of \$10,000, which amounts to \$6,000. *See Resp't Ex. 10* (valuing the entire 1.5-acre section at \$6,000). In addition, the Respondent must deduct \$500 from the assessed value of the 0.94-acre section of the subject property assessed as agricultural excess acreage at the base rate of \$6,000 per acre.³

Conclusion

16. The Petitioners established by a preponderance of the evidence that a total of \$6,500 should be deducted from the land portion of the assessment.

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: December 22, 2006

Commissioner,
Indiana Board of Tax Review

³ The Board derives the amount of assessment attributable to the drainage ditch by multiplying the remaining 0.2083 acres occupied by the drainage ditch by \$6,000 per acre and applying a sixty percent (60%) negative influence factor ($0.203 \times \$6,000 = \$1218 \times .4 = \$487.20$ (rounded to \$500)).

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>>.