

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

Petition #: 64-026-02-1-5-00204
Petitioners: Amelia & Joseph Scott Jordan
Respondent: Westchester Township Assessor (Porter County)
Parcel #: 64032500046000026
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 31, 2003.
2. The PTABOA mailed notice of its decision on January 14, 2005.
3. The Petitioners initiated an appeal to the Board by filing a Form 131 petition with the Porter County Assessor on February 11, 2005. The Petitioners elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated April 7, 2006.
5. The Board held an administrative hearing on May 23, 2006, before the duly appointed Administrative Law Judge, Joan Rennick.
6. Persons present and sworn in at hearing:

For Petitioners: Joseph Scott Jordan, Taxpayer

For Respondent: Candy Crone, Westchester Township Assessor
Shirley LaFever, Porter County Assessor
Lindy Wilson, Porter County Chief Deputy Assessor
Janine Chrisman, PTABOA President

Facts

7. The property is classified as “Residential Unimproved,” as is shown on the property record card for parcel # 64-03-25-200-046.000-026. The property is a vacant lot located on E. Oak Hill Road, in Porter, Indiana.
8. The Administrative Law Judge (“ALJ”) did not conduct an inspection of the property.
9. Assessed value of subject property as determined by the Porter County PTABOA:
Land: \$4,900.
10. Assessed value requested by Petitioners on their Form 131 petition:
Land: \$570.

Issues

11. Summary of the Petitioners’ contentions in support of alleged error in assessment:
 - a) The subject property is landlocked. *Jordan testimony*. The property has no access to streets, sidewalks or utilities, and the Petitioners do not have an easement to pass over adjoining properties to obtain such access. *Id.* In any event, there would be no room for an access easement given how closely together the houses on neighboring properties are spaced. *Id.*
 - b) Mr. Jordan’s father acquired the subject property as collateral for a loan in 1960. *Jordan testimony*. The original development plan showed the subject property bordering on a public street called Maple Street. *Id.*; *Pet’rs Ex. 1*. The developer did not actually build Maple Street, and the subject property became landlocked. *Jordan testimony*.
 - c) Mr. Jordan contacted several real estate agents and asked how he could market the property. *Jordan testimony*. Ms. Klein, a real estate agent at Keller Williams, told Mr. Jordan that he had three (3) options: (1) he could try to convince the owner of a neighboring lot to buy the property; (2) he could deed the property over to the county, or (3) he could simply stop paying taxes. *Id.* According to Mr. Jordan, Ms. Klein acknowledged that the subject property has value, but she indicated that the property is not worth \$4,900 because there is no market for it. *Id.* The Petitioners have contacted the owners of neighboring properties as Ms. Klein suggested, but nobody is interested in purchasing the subject property. *Id.*
 - d) Following the administrative hearing, the Petitioners submitted a letter from Ms. Klein in which she indicates that the subject property would be difficult to sell and has little value. *Pet’rs Ex. 2*. In that letter, Ms. Klein places a value of \$2,500 on the subject property. *Id.*

12. Summary of Respondent's contentions in support of the assessment:
- a) The Respondent acknowledges that the subject property is landlocked. *Crone testimony*. Nevertheless, the land has value, and the Respondent assessed it in accordance with the applicable "land order." *Id.*
 - b) The Respondent offered to apply a negative 60% influence factor to the subject land to account for the fact that improvements cannot be constructed on it. The Petitioners rejected the Respondent's offer. *Crone testimony*. The Petitioners went before the PTABOA, and the PTABOA lowered the assessment to \$4,900. *Crone testimony; Resp't Ex. 4*. The property record card for the subject property shows that it receives a negative influence factor of 82.09%. *Resp't Ex. 3*.

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 submitted at the administrative hearing:

Petitioners' Exhibit 1: Map showing the subject parcel

Respondent's Exhibit 1: Form 11

Respondent's Exhibit 2: Form 130

Respondent's Exhibit 3: Property Record Card (PRC)

Respondent's Exhibit 4: Form 115

Respondent's Exhibit 5: Form 131

Board Exhibit 1: Form 131 Petition with attachments

Board Exhibit 2: Notice of Hearing

Board Exhibit 3: Hearing Sign-In Sheet

- d) These Findings and Conclusions.
14. Subsequent to the hearing, the Petitioners submitted a letter dated June 1, 2006, from Gerri Klein reflecting Ms. Klein's opinion as to the value of the subject property. The ALJ labeled Ms. Klein's letter as Petitioners' Exhibit 2. The Board's rules for small claims provide that no post-hearing submissions "will be allowed or accepted." *Ind. Admin. Code tit. 52, r. 3-1-5(b)(e)*. Nonetheless, the ALJ suggested that the Petitioner submit a "broker's opinion of value" following the hearing, and the Respondent did not object to the Petitioner being allowed to make such a submission. The Board therefore incorporates Petitioners' Exhibit 2 into the record.

Analysis

15. 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.
16. The Petitioners did not provide sufficient evidence to support their contentions. This conclusion was arrived at because:
- 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 such 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 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.

- c) There is no dispute that the subject property is landlocked. *Crone testimony*. The issue before the Board, therefore, is whether the Petitioners submitted probative evidence to quantify the effect of the lack of street access on the market value-in-use of the subject property. The Petitioners, however, did not offer any of the types of evidence outlined by the Tax Court and Manual as being relevant to establish the market value-in-use of a property.
- d) The Petitioners requested a value of \$570 on their Form 131 petition. When questioned by the ALJ regarding the basis for the Petitioners’ request, however, Mr. Jordan could not explain how the Petitioners had arrived at that number. *See Jordan testimony*. Instead, Mr. Jordan testified that he had talked to numerous people about the subject property and that he did not recall where he obtained the number. *Id.*
- e) Following the hearing, the Petitioners submitted a letter dated June 1, 2006, from Gerri Klein of Keller Williams Realty Leaders. *Pet’rs Ex. 2*. The letter does not identify Ms. Klein’s title or qualifications, although Mr. Jordan referred to Ms. Klein as a real estate agent in his testimony at the hearing. *Id.*; *Jordan testimony*. In her letter, Ms. Klein indicates that the subject property is landlocked by three properties, that the property would be difficult to sell, and that the property therefore has little value. *Pet’rs Ex. 2*. Ms. Klein then states “[t]he value I place on the property is \$2,500.” *Id.* Nowhere in the letter does Ms. Klein explain the basis for her quantification. *Id.* Thus, Ms. Klein’s opinion of value is largely conclusory. Unsubstantiated conclusory statements do not constitute probative evidence. *See Whitley Products v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
- f) Based on the foregoing, the Petitioners failed to establish a prima facie case of error in the subject property’s assessment.

Conclusion

- 17. The Petitioners failed to make a prima facie case. The Board finds in favor of 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: November 15, 2006

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>>.