

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

Petitions: 72-001-06-1-5-00001
72-001-06-1-5-00002
Petitioners: James & Nina Allen
Respondent: Finley Township Assessor (Scott County)
Parcels: 72-04-32-400-040.002-001
72-04-32-400-040.000-001
Assessment Year: 2006

The Indiana Board of Tax Review (the Board) issues this determination in the above matters. The Board finds and concludes as follows:

Procedural History

1. The Petitioners initiated assessment appeals for Parcel 72-04-32-400-040.002-001 (Parcel 2001) and Parcel 72-04-32-400-040.000-001 (Parcel 0001) with the Scott County Property Tax Assessment Board of Appeals (the PTABOA) by filing Form 130 petitions on or about October 18, 2006.
2. The PTABOA mailed notice of its decisions on December 6, 2006.
3. The Petitioners appealed to the Board by filing Form 131 petitions with the county assessor on December 27, 2006. They elected small claims procedures.
4. The Board issued notice of hearing to the parties dated March 9, 2007.
5. Administrative Law Judge Paul Stultz held the hearing in Scottsburg on June 5, 2007.
6. Persons present and sworn as witnesses at the hearing:
For Petitioners – Nina Allen,
For Respondent – Teresa Rigsby, Scott County Assessor,
Richard Schultz.

Facts

7. The subject properties are unimproved vacant land located at 5087 West Leota Road in Scottsburg. Parcel 2001 measures 1.85 acres. Parcel 0001 measures 5.808 acres.
8. The Administrative Law Judge (ALJ) did not conduct an inspection of the property.

9. The PTABOA determined the assessed values are \$13,900 for Parcel 2001 and \$37,800 for Parcel 0001.
10. The Petitioners claim the assessed values should be \$7,000 for Parcel 2001 and \$27,000 for Parcel 0001.

Issue

11. Summary of Petitioners' contentions:
 - a. The current assessments of the subject properties are excessive in comparison to the appraisal values. *Allen testimony; Pet'r Ex. 6(N), 6(O), 28.*
 - b. The appraisals prepared by Marvin Ingram (Ingram appraisal) value Parcel 2001 at \$7,000 and Parcel 0001 at \$28,500. *Pet'r Ex. 6(N), 6(O).* The appraisal prepared by John Dickerson (Dickerson appraisal) values Parcel 2001 at about \$6,000. *Pet'r Ex. 28.* The Dickerson appraisal supports the value established by the Ingram appraisal. *Allen testimony.*
 - c. The vacant land in the area is offered for sale in listings between \$2,650 and \$6,000 per acre. *Allen testimony; Pet'r Ex. 26(B), 26(C), 26(D), 26(E), 26(F), 26(G), 26(H).* Vacant land is selling for less than the trended values. *Allen testimony.*
 - d. During the PTABOA hearing, Mr. Shelhamer, a PTABOA member, stated that because it is located at the rear of the property, Parcel 2001 is worth less. *Allen testimony; Pet'r Ex. 36.* Mr. Shelhamer repeated this statement following the hearing. *Allen testimony.*
12. Summary of Respondents contentions:
 - a. The appraisals presented by the Petitioners are not valid indicators of the correct assessed value because the comparables used are sales that occurred after March 1, 2006. *Schultz testimony.*
 - b. The listings of properties offered for sale that the Petitioners presented do not support their claim because land values are established using actual sales rather than listings. *Schultz testimony.*
 - c. The subject properties are separate parcels of land, but they are contiguous with the Petitioners' home site. Because the subject properties are contiguous to the home site, the subject properties should be viewed as a whole property for valuation purposes. *Schultz testimony.*

- d. The sales ratio study performed for the vacant land sales in Finley Township shows that the coefficient of dispersion, the price related differential, the median and the mean are in acceptable range with the standards established by the Department of Local Government Finance and the International Association of Assessing Officials. *Schultz testimony; Resp't Ex. D.*

Hearsay Objection

13. The Respondent objected to the Petitioners' testimony about statements purportedly made by Mr. Shelhamer regarding the value of the subject land. Specifically, the Respondent objected that such testimony is hearsay and not admissible. The Respondent initially objected to the testimony regarding the statement made by Mr. Shelhamer during the PTABOA hearing. After learning that the Petitioners submitted an audio recording of the PTABOA hearing that contains Mr. Shelhamer's statement, the Respondent withdrew this objection. The Respondent subsequently objected to testimony regarding similar statements after the PTABOA hearing as hearsay. The Petitioners acknowledged that this testimony is hearsay evidence.
14. The Respondent argues that hearsay evidence is not admissible. The Board's procedural rules, however, provide that hearsay evidence may be admitted. Nevertheless, if hearsay is admitted, the Board may not use it as the sole basis of its decision if there was a proper objection. 52 IAC 2-7-3.
15. In this case, the Respondent's hearsay objection is overruled.

Record

16. The official record for this matter is made up of the following:
 - a. The Petition,
 - b. A digital recording of the hearing,
 - c. Petitioner Exhibits listed on Attachment A,
Respondent Exhibits listed on Attachment B,
Board Exhibit A: Form 131 Petition,
Board Exhibit B: Notice of Hearing on Petition,
Board Exhibit C: Hearing Sign In Sheet.
 - d. These Findings and Conclusions.

Analysis

17. 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.
18. The evidence is sufficient to establish that the current assessments should be changed. The Board arrives at this conclusion because:
 - a. Real property is assessed based on its "true tax value," which does not mean fair market value. It means "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." Ind. Code § 6-1.1-31-6(c); MANUAL at 2. There are three generally accepted techniques to calculate market value-in-use: the cost approach, the sales comparison approach, and the income approach. The primary method for assessing officials to determine market value-in-use is the cost approach. *Id.* at 3. To that end, Indiana promulgated a series of guidelines that explain the application of the cost approach. *See REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 - VERSION A*. The value established by use of the Guidelines, while presumed to be accurate, is merely a starting point. A taxpayer may offer evidence relevant to market value-in-use to rebut that presumption. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.
 - b. The Petitioners presented evidence relating to the assessments of several other properties. They also offered evidence relating to several other properties that were being offered for sale. In order for any such comparisons to have probative value, the Petitioners must explain the characteristics of the subject property and

those of the purportedly comparable properties. They must also explain how any differences affect the relevant market value-in-use of the properties. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470-471 (Ind. Tax Ct. 2005). Conclusory statements that a property is similar or comparable to another property do not constitute probative evidence. *Id.* The evidence offered by the Petitioners regarding the assessments of other properties and the asking prices for other properties is not sufficient to prove that the current assessments for the subject properties are wrong. Furthermore, that evidence does not help to establish what a more correct assessment would be.

- c. The Petitioners characterized one of the parcels as “landlocked.” That term means a property is "surrounded by land, with no way to get in or out except by crossing the land of another." BLACK'S LAW DICTIONARY 894 (8th ed. 2004). Other, undisputed evidence established that Petitioners have access to these parcels through another contiguous parcel that they own. Therefore, neither of the subject parcels is landlocked.¹ In addition, the Petitioners failed to offer probative evidence regarding how much the value of the parcel would be reduced if it truly were landlocked. This claim does not support any assessment change.
- d. The Petitioners presented professional, certified appraisals for both of the subject parcels. Exhibit 6(N) is an appraisal for the 1.85 acre parcel, Petition #72-001-06-1-5-00001. It states the market value was \$7,000 as of November 22, 2006. Exhibit 6(O) is an appraisal for the 5.808 acre parcel, Petition #72-001-06-1-5-00002. It states the market value was \$28,500 as of November 22, 2006. These appraisals were prepared by Logan Robinson and co-signed by Marvin Ingram, both licensed appraisers. They are credible, probative evidence that supports Petitioner’s contention. The separate advisory opinion from John Dickerson, who is also a certified appraiser, while not an actual appraisal somewhat corroborates the Ingram appraisal for the 1.85 acre parcel.
- e. The Respondent argued that the appraisals are not valid indicators of the correct assessed value because they are based on comparable sales that occurred after March 1, 2006. Both appraisals used the same three comparables. One of the sales was March 29, 2006, and the other two were in July 2006. The Respondent failed to provide any authority or substantial argument to establish that generally accepted appraisal principles would prohibit the use of those sales based on their timing. In fact, the appraisals both indicate that a time adjustment could have been made, if necessary, but no such adjustments are shown. The time of the comparable sales does not invalidate those appraisals.
- f. Further consideration of the time issue, however, is appropriate. An appraisal (or any other evidence of value) must have some explanation as to how the evidence demonstrates or is relevant to that property’s value as of the required valuation date. *See Long*, 821 N.E.2d at 471. For assessment dates from March 1, 2002,

¹ The Petitioners’ speculation that a rear parcel without access (landlocked) would be less valuable if they were to attempt to sell it is irrelevant to the current assessment.

through March 1, 2005, the required valuation date was January 1, 1999. Starting with the 2006 assessment date, the required valuation date changes and there is a system for annually adjusting the assessed value of real property to account for changes in value since the last general reassessment. Ind. Code § 6-1.1-4-4.5; Ind. Admin. Code tit. 50, r.21-3-3. “The valuation date is January 1 of the year preceding the year of the assessment date. Sales occurring before or after that date shall be trended if appropriate” 50 IAC 21-3-3. For this case, that valuation date is January 1, 2005.

- g. The appraisals establish values as of November 22, 2006. Standing alone, the appraisals do not comply with the required valuation date or the precedent established by *Long*. They would lack relevance or probative value unless other evidence or some explanation establishes how the appraised values relate back to January 1, 2005. *Long*, 821 N.E.2d at 471.
- h. As noted above, the appraisal forms include a place to make time adjustments for the differences between the dates of comparable sales and the date of the appraisal opinion. Two of the comparable sales involved a time differential of approximately five months (July to November). The third comparable sale had a time differential of approximately eight months (March to November). Although the appraiser made various adjustments to the comparables for other differences, no time adjustment was made for those sales. This lack of adjustment indicates stability of real estate values in this area during a big part of 2006.
- i. The Respondent offered evidence about the trending of land values. That evidence establishes that land values were trending upward. *Resp’t Ex. D; Schultz testimony*. On that basis, the appraised values for the subject property are probably a little higher than they would have been as of January 1, 2005. Therefore, in this case, the difference between the appraisal date and the required valuation date operates against the Petitioners and in favor of the Respondents.
- j. The Respondent attempted to support the current assessments with 2006 sales/assessment ratio studies relating to both unimproved and improved parcels in the same county. The Respondent failed to provide sufficient facts and analysis to give any evidentiary weight to the sales or assessment information relating to those other properties. The Respondent’s argument implies that the subject assessment draws validity from the fact that the sales/assessment ratio of those other properties is within an acceptable range. The Respondent provides no authority or substantial explanation for the conclusion that there is an acceptable range for establishing the value of property. This argument does not overcome probative evidence that is more precise because taxpayers are specifically permitted to offer relevant evidence that includes appraisals and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.

Conclusion

- 19. After weighing all the evidence submitted in this case, the Board concludes that the value-in-use of the subject parcels for the assessment as of March 1, 2006, was no more than \$7,000 for Parcel 2001 and it was no more than \$28,500 for Parcel 0001.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now determines that the assessments should be changed accordingly.

ISSUED: _____

Commissioner,
Indiana Board of Tax Review

- Appeal Rights -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court’s rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <<http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <<http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>>

Attachment A- Petitioner Exhibits

- Petitioner Exhibit 1: Form 11, parcel 72-04-32-400-039.001-001,
Petitioner Exhibit 2: Form 11, parcel 72-04-32-400-040.002-001 (parcel under appeal),
Petitioner Exhibit 3: Form 11, parcel 72-04-32-400-040.000-001 (parcel under appeal),
Petitioner Exhibit 4: Letter dated 10/16/06 to Danny Robbins,
Petitioner Exhibit 5: Letter dated 10/31-06 from Teresa Rigsby,
Petitioner Exhibit 6: Form 114,
Petitioner Exhibit 6A: Cover letter to PTABOA members regarding subject appeals,
Petitioner Exhibit 6B: Property record card (PRC) –subject parcel- 5.808 acres before PTABOA change,
Petitioner Exhibit 6(C): PRC for subject parcel (1.85 acres) before PTABOA change,
Petitioner Exhibit 6(D): PRC for David Coates’ 15 acres,
Petitioner Exhibit 6(E): PRC for David Coates’ 18.16 acres,
Petitioner Exhibit 6(F): PRC for Randy Gross’ 2.37 acres,
Petitioner Exhibit 6(G): PRC for Chris and Sue Gross’ 8.15 acres,
Petitioner Exhibit 6(H): PRC for Terry and Cynthia Ann Light’s 6.596 acres,
Petitioner Exhibit 6(I): Listings of real properties for sale in The Giveaway, November 15, 2006,
Petitioner Exhibit 6(J): Real property for sale listing,
Petitioner Exhibit 6(K): Real property for sale listing,
Petitioner Exhibit 6(L): Real property for sale listing,
Petitioner Exhibit 6(M): Listing of real property for sale in The Giveaway, November 22, 2006,
Petitioner Exhibit 6(N): Appraisal of subject property (1.8 acres) by Ingram Appraisals,
Petitioner Exhibit 6(O): Appraisal of subject property (5.808 acres) by Ingram Appraisals,
Petitioner Exhibit 7: Form 115 on 5.808 acres, page 1
Petitioner Exhibit 8: Form 115 on 5.808 acres, page 3
Petitioner Exhibit 9: Form 115 on 5.808 acres, page 2
Petitioner Exhibit 10: PRC (subject property 5.808 acres),
Petitioner Exhibit 11: Form 115 on 1.85 acres, page 1
Petitioner Exhibit 12: Form 115 on 1.85 acres, page 2
Petitioner Exhibit 13: Form 115 on 1.85 acres, page 3
Petitioner Exhibit 14: PRC (subject property 1.85 acres),
Petitioner Exhibit 15: Letter dated December 22, 2006, to Scott County Assessor,
Petitioner Exhibit 15(A): Excerpts from tape of PTABOA meeting of December 4, 2006,
Petitioner Exhibit 16: Form 131 petition for the 1.85 acre parcel, page 1
Petitioner Exhibit 17: Form 131 petition for the 1.85 acre parcel, page 2
Petitioner Exhibit 18: Form 131 petition for the 1.85 acre parcel, page 3
Petitioner Exhibit 19: Form 131 petition for the 5.808 acre parcel, page 1
Petitioner Exhibit 20: Form 131 petition for the 5.808 acre parcel, page 2
Petitioner Exhibit 21: Form 131 petition for the 5.808 acre parcel, page 3
Petitioner Exhibit 22: Letter from Teresa Rigsby to Petitioner,
Petitioner Exhibit 23: PTABOA minutes from December 4, 2006,

Petitioner Exhibit 24: PTABOA minutes from December 4, 2006,
Petitioner Exhibit 25(A): Photos of subject parcels (the 1.85 and the 5.808 acres),
Petitioner Exhibit 25(B): Photos of subject parcels (the 1.85 and the 5.808 acres),
Petitioner Exhibit 25(C): Photos of subject parcels (the 1.85 and the 5.808 acres),
Petitioner Exhibit 25(D): Photos of subject parcels (the 1.85 and the 5.808 acres),
Petitioner Exhibit 25(E): Photos of subject parcels (the 1.85 and the 5.808 acres),
Petitioner Exhibit 26(A): Listing of land offered for sale,
Petitioner Exhibit 26(B): Listing of land offered for sale,
Petitioner Exhibit 26(C): Listing of land offered for sale,
Petitioner Exhibit 26(D): Listing of land offered for sale,
Petitioner Exhibit 26(E): Listing of land offered for sale,
Petitioner Exhibit 26(F): Listing of land offered for sale,
Petitioner Exhibit 26(G): Listing of land offered for sale,
Petitioner Exhibit 26(H): Listing of land offered for sale,
Petitioner Exhibit 27: Printed copy of web site Automotive.com (1986 BMWs for sale),
Petitioner Exhibit 28: Advisory opinion of parcel 720434000400002001 (1.85 acres)
prepared by John Dickerson,
Petitioner Exhibit 29: Assessment history of both subject parcels,
Petitioner Exhibit 30: Property taxes paid form 2001 to present,
Petitioner Exhibit 31: Invoice for Ingram appraisal,
Petitioner Exhibit 32: Invoice for advisory opinion by Dickerson,
Petitioner Exhibit 33: Letter from Jamie Knowles to Petitioner dated May 31, 2007,
Petitioner Exhibit 34: Letter from Petitioner to Jamie Knowles dated May 31, 2007,
Petitioner Exhibit 35: Tax bills for three parcels Petitioner owns,
Petitioner Exhibit 36: Audio tape of PTABOA hearing,
Petitioner Exhibit FN1: Two pages from Department of Local Government Finance web
site,
Petitioner Exhibit FN2: Three pages of FortWayne.com/mld/journalgazette,
Petitioner Exhibit FN3: Two pages from Department of Local Government Finance web
site.

Attachment B – Respondent Exhibits

- Respondent Exhibit A: Letter of authorization for Richard Schultz,
- Respondent Exhibit B: Letter of authorization for Teresa Rigby,
- Respondent Exhibit C: Land order,
- Respondent Exhibit D: Ratio study-Finley Township- unimproved lots,
- Respondent Exhibit E: Ratio study-Finley Township- improved lots,
- Respondent Exhibit F: Nine photos of subject property,
- Respondent Exhibit G: Property record card-parcel 72-04-32-400-040.000-001,
- Respondent Exhibit H: Property record card-parcel 72-04-32-400-040.002-001,
- Respondent Exhibit I: Property record card-parcel (PRC) 72-04-32-400-039.001-001,
- Respondent Exhibit J: GIS map of subject property,
- Respondent Exhibit K: Sales disclosures, PRC, and GIS map for parcel
040940000900101,
- Respondent Exhibit L: Sales disclosures, PRC, and GIS map for parcel
042720001700201,
- Respondent Exhibit M: Sales disclosures, PRC, and GIS map for parcel
043210002300501,
- Respondent Exhibit N: Sales disclosures, PRC, and GIS map for parcel
100280000100501.