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

Petition: **76-002-03-1-5-00002**
Petitioners: **Thomas & Phyllis A. Blee**
Respondent: **Fremont Township Assessor (Steuben County)**
Parcel: **01-19-240-106.040-32**
Assessment Year: **2003**

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

Procedural History

1. The Petitioners initiated an assessment appeal with the Steuben County Property Tax Assessment Board of Appeals (PTABOA) by written document dated August 25, 2004.

2. The PTABOA mailed notice of its decision on September 6, 2006.

3. The Petitioners appealed to the Board by filing a Form 131 with the county assessor on September 29, 2006, and elected small claims procedures.

4. The Board issued a notice of hearing to the parties dated March 15, 2007.

5. Administrative Law Judge Patti Kindler held the hearing in Angola on May 10, 2007.

6. Persons present and sworn as witnesses:
   For Petitioners – Thomas Blee,
   For Respondent – Jennifer Becker,
   Larry May, Steuben County Assessor.

Facts

7. The subject property is a 60 foot by 80 foot lot with a detached garage. It is located at 78 Lake Drive in Clear Lake.

8. The Administrative Law Judge (ALJ) did not conduct an inspection of the property.

9. The PTABOA determined the assessed value is $18,300 for land and $14,600 for improvements (total $32,900).

10. The Petitioners requested $7,840 for land and $14,600 for improvements (total $22,440).

Issue

11. Summary of Petitioners' case:

a) The subject property is part of a lot the Petitioners purchased for $16,000 ($100 per front foot) in November 1999. The Petitioners bought the property for the purpose of constructing a garage. They have a lakefront cottage across the street. *Blee testimony; Pet'r Ex. 3(e).*

b) The Petitioners bought a 160 foot by 80 foot lot. They immediately sold a 100 foot by 80 foot part of that lot to their neighbors, the Gardners, for $10,162. That price was approximately the same front foot price as the Petitioners paid. *Blee testimony; Pet'r Ex. 3(e), 3(f), 3(g).*

c) The net purchase price of the land the Petitioners kept was $5,840 ($16,000 for the entire parcel less $10,162 paid by the Gardners). The Petitioners also paid $2,000 to fill some of the low part of their lot so they could build a garage. The net purchase price of $5,840 plus the $2,000 for fill is $7,840. This amount is the best evidence of the land's market value. The value of the garage is not disputed. *Blee testimony; Pet'r Ex. 2, 3(d), 3(f), 3(g).*

d) The property still has a wooded ravine at the rear of the lot that drops off into swampland. The ravine and swampland are not useable. The other lots on the lake with garages are level, usable lots. Some of the level lots have tennis courts. The level lots are not comparable to the property because of the ravine and swampland. *Blee testimony; Pet'r Ex. 3(h).*

e) The Petitioners bought the lot in an arms length transaction with a corporation. The parties negotiated and agreed to a price of $100 per front foot. *Blee testimony; Pet'r Ex. 3(c), 3(e).*

f) Strong Corporation sold 210 feet of frontage to Bradley and Teresa Gay for $23,500 in June 1999. That property is located 3 homes east of the subject property. This sale supports the price of $100 per front foot and shows that the assessment is excessive. *Blee testimony; Pet'r Ex. 3(b).*

g) The sales of the Gay property, the Gardner property and the subject property occurred within eighteen months of January 1, 1999. These sales are in the same neighborhood and were for $100 per front foot. These sales were not included by the Respondent as comparables in determining the land assessment. The Respondent considered all usable level lots from across the lake as comparables, but those lots are superior because they are level, multi-use lots. The lots used by the Respondent are not comparable to the property. The assessment of the property is excessive and incorrect. *Blee testimony; Pet'r Ex. 3(b), 3(e), 3(f).*

12. Summary of Respondent's case:

a) The Guidelines outline the procedure for assessors to follow in developing land values. Sales in the area that occur within eighteen months of January 1, 1999 are considered. These sale prices are divided by the front foot measurements of the lots to come up with per front foot value. After the sales are placed in ascending order, the median and mean are established. The median value is applied consistently to all the properties in the area as one front foot rate. In this case, the front foot rate is $414 for 2003. *Becker testimony; Resp't Ex. 5, 9.*

b) The sales used to determine the land assessment were similar back accessory lots that range from $267 to $774 per front foot. The median is $438 and the mean is $483. This is a good indication that the sales are representative of the market. Sales that are outside the norm or varied too widely from the median, such as the $100 per front foot sale of the subject property and two sales at $1,000 per front foot, were not included in the review. It was hard to tell if the subject property's sale as well as the two other sales submitted by the Petitioners for $100 per front foot are outside the normal range for the lake. *Becker testimony; Resp't Ex. 6, 7.*

c) The Guidelines do not state that sales used in determining the value of land lots must be comparable to the land being valued. Properties are not assessed on an individual basis in a mass appraisal. The Guidelines do not instruct an assessor to value each individual property by its sale price. They require an assessor to analyze sales of multiple properties and to value all property in a uniform manner. Further, the assessor must verify sales with visual inspection of the property and make a reasonable attempt to determine that the sales were arm's length transactions. *Becker testimony; Resp't Ex. 1.*

d) The purchase of the subject property was not an arm's length transaction. The property was not listed on the market. The Petitioners sold some of the land to a neighbor. The seller's sister, who lives at the lake, was the "go-between" in the sale. *Becker testimony.*

e) The Petitioners did not submit an appraisal for the property or any other evidence quantifying the negative impact of the ravine and unusable area at the back of the property. The current assessed value of the property, based on sales around the lake, is the better indication of value. *Becker testimony; Resp't Ex. 1.*

Record

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

a) The Petition,

b) The digital recording of the hearing,

c) Petitioner Exhibit 1 – Form 115 and Petitioners' rebuttal,
Petitioner Exhibit 2 – Form 131 Petition,
Petitioner Exhibit 3(a) – Letter dated 8/19/99from seller's attorney,
Petitioner Exhibit 3(b) – Sales Disclosure Form and PRC for the Gay purchase,
Petitioner Exhibit 3(c) – Negotiation letter to seller's attorney dated 8/30/99,
Petitioner Exhibit 3(d) – Letter to the Gardners dated 10/11/99 regarding the property,
Petitioner Exhibit 3(e) – Deed and Closing statement for the subject property,
Petitioner Exhibit 3(f) – Closing Statement and Sales Disclosure for Gardner purchase,
Petitioner Exhibit 3(g) – Survey showing the Gardner and Blee properties,
Petitioner Exhibit 3(h) – Photographs of the Blee parcel showing swamp ravine,
Petitioner Exhibit 4 – Petitioners' Brief,
Respondent Exhibit 1 – Township Assessor Response to Petitioner Issues,[1]
Respondent Exhibit 2 – Notice of Appearance of Consultant,
Respondent Exhibit 3 – Copy of Petitioners' issues from Form 131 Petition,
Respondent Exhibit 4 – Copy of subject PRC,
Respondent Exhibit 5 – Copy of Chapter 2 from the 2002 Real Property Assessment Guidelines,
Respondent Exhibit 6 – PRC and Sales Disclosure Form for each sales used in determining the assessment,
Respondent Exhibit 7 – Spreadsheet of sales around Clear Lake,
Respondent Exhibit 8 – Township Assessor signature and attestation sheet,
Respondent Exhibit 9 – Subject PRC showing 2003 assessment,
Respondent Exhibit 10 – GIS map of neighborhood and subject parcel,
Board Exhibit A – Form 131 Petition with attachments,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing Sign-In Sheet,

d) These Findings and Conclusions.

[1] The Petitioners objected to the introduction of the Respondent's Exhibits because they did not receive copies prior to the hearing. The applicable small claims rule requires the parties to make the evidence available prior to the hearing, if a request is made for it. 52 IAC 3-1-5(f). The Petitioners have not shown that they requested copies of the Respondent's exhibits or that the Respondent failed to honor such a request. Therefore, the Board overrules that objection.

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 did not provide sufficient evidence to support their contentions. This conclusion was arrived at because:

    a) Real property is assessed on the basis of 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); 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). 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. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 - VERSION A (incorporated by reference at 50 IAC 2.3-1-2). The value established by use of the Guidelines, while presumed to be accurate, is merely a starting point. A taxpayer is permitted to 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' argument separates the assessment into a land component and an improvement component. While the Guidelines use that approach as a starting point for an assessment, the Petitioners' approach is contrary to the fundamental goal of the current assessment system, which seeks to arrive at the overall market value-in-use as of the assessment date. *See O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90 (Ind. Tax Ct. 2006); *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006).

c) In this case, the market value-in-use and the assessment must be based on the property as it physically existed on the assessment date, March 1, 2003. *See* Ind. Code § 6-1.1-1-2; Ind. Code § 6-1.1-2-1.

d) The price paid for a property frequently is strong evidence, but there are exceptions. In this case, the Petitioners made substantial changes to the subject property after they bought it. The Petitioners failed to establish the relevance of what they paid. Alternatively, without probative evidence and analysis regarding the changes, what the Petitioners paid has no probative value regarding the proper assessment.

e) The Petitioners sold approximately 60% of the original land purchase. Clearly, the 40% they kept was sufficient for the use they intended.

f) The Petitioners admitted the value increased because they added fill so they could build their garage, but the record lacks supporting documentation of the amount. More importantly, even if it is true they actually paid $2,000 to fill part of their lot, the Petitioners offered only a conclusory statement that this change added $2,000 to the value of the land. Such a statement is not probative evidence. There is no probative evidence that establishes how much this change to the land actually increased market value-in-use by permitting the garage to be built.

g) The Petitioners used the property for the construction of a garage associated with a property across the street where they have a lakefront cottage. The Petitioners failed to establish how the value-in-use of the subject property can be determined without considering this relationship.

h) The Petitioners offered conclusory statements that what they paid for the land and the fill was the best evidence of value, but those statements are not probative evidence. *Whitley Products v. State Bd. Of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

i) The Petitioners evidence is not probative of the property's overall market value-in-use for the 2003 assessment. The Petitioners did not make a prima facie case.

16. When a taxpayer fails to provide probative evidence supporting a claim that an assessment should be changed, the Respondent's duty to support the assessment with substantial evidence is not triggered. *See Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003); *Whitley Products*, 704 N.E.2d at 1119.

Conclusion

17. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings and conclusions, the assessment will not be changed.

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>