

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

Petitions: 76-007-02-1-5-00005
76-007-02-1-5-00006
Petitioners: Walter J. & Sharon F. David
Respondent: Millgrove Township Assessor (Steuben County)
Parcels: 04-13-110-103.000-09
04-13-110-201.000-09
Assessment Year: 2002

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

Procedural History

1. The Petitioners initiated the assessment appeals with the Steuben County Property Tax Assessment Board of Appeals (PTABOA) by written documents dated April 20, 2004.
2. The PTABOA issued notice of its decision on October 27, 2004.
3. The Petitioners appealed to the Board by filing Forms 131 with the county assessor on November 12, 2004. The Petitioners elected to have these cases heard according to small claims procedures. The Respondent did not exercise its right to opt out of small claim procedures.
4. The Board issued the notices of hearing to the parties dated March 29, 2006.
5. The Board held a consolidated administrative hearing on May 24, 2006, before the duly appointed Administrative Law Judge Patti Kindler.
6. Persons sworn as witnesses at the hearing:
Walter J. David, taxpayer,
Larry May, Steuben County Assessor.
7. Parcel 04-13-110-103.000-09 is as a residential lot with a detached garage. Parcel 04-13-110-201.000-09 has a manufactured home with attached garage on a residential lot. The Board will refer to these parcels collectively as the “subject property” or “subject parcels” unless otherwise indicated.
8. The Administrative Law Judge did not conduct an inspection of the property.

9. The PTABOA determined the following assessed values:

Parcel 04-13-110-103.000-09

Land \$16,900 Improvements \$18,800 Total \$35,700

Parcel 04-13-110-201.000-09

Land \$183,500 Improvements \$106,400 Total \$289,900

10. The Petitioners requested the following assessed values on the Form 131 Petitions:

Parcel 04-13-110-103.000-09

Land \$8,000+/- Improvements \$11,600+/- Total \$19,600+/-

Parcel 04-13-110-201.000-09

Land \$100,000+/- Improvements \$106,400+/- Total \$206,400+/-

Issues

11. Summary of Petitioners contentions in support of alleged error in assessment:

- a) The assessment of the land for both parcels is excessive and does not reflect market value around Lake Pleasant. *David testimony; Pet'r Ex. 1.* The assessing officials have not supported the front foot base rate (\$1,677) applied to the property with any evidence. *Id.* Several residential real estate listings of homes around Lake Pleasant show the land values for this lake do not parallel the land values of more populous lakes nearby. These listings show that the land value is excessive. *Pet'r Ex. 3.*
- b) The September 1999 sale of 555 Lane 101 (555 property) involved two lots located east of the subject property. *Pet'r Ex. 2.* The 555 property sold for \$225,000. *Id.* The 555 property has two lots (front and rear), one lot with a residence and one lot with a detached garage. The house on the 555 property has conventional frame construction with 2,081 square feet and was built in 1987. The Petitioners' home is a prefabricated dwelling built in 1978 with 2,168 square feet. *David testimony; Pet'r Ex. 2.* The Petitioners' home is inferior to the house on the 555 property. *Id.*
- c) The Petitioners presented copies of a real estate listing, two photographs, a statement from the buyers, and a general description of the 555 property. *Pet'r Ex. 2, 5-6.* The Petitioners contend the sale of the 555 property shows the \$1,677 per front foot assessment applied to the lakefront lots is excessive. If the \$1,677 per front foot were applied to the 555 property, the land value alone would be \$246,519, which is well above the sale price of \$225,000 for the entire 555 property. *David testimony; Pet'r Ex. 5-6.* The value of the Petitioners' land

should be no more than the total purchase price of the 555 property. *David testimony; Pet'r Ex. 5-6.*

- d) Lake Pleasant is only twenty-five percent developed. There are ample lots available. *David testimony; Pet'r Ex. 4.* No one has paid over \$20,000 for a lakefront lot on Lake Pleasant. *Id.*
- e) The Petitioners purchased the land in 1978 for \$6,000. They purchased the manufactured home for \$30,000. The land could not have appreciated to two times as much as the home value. *David testimony; Pet'r Ex. 7.* The lakefront land is worth approximately \$100,000. *Id.* The rear lot is worth \$8,000. *Id.* No residence can be built on the rear lot because it is a mucky accessory lot. *David testimony; Board Ex. A.*
- f) The assessment of the home is reasonable, but the assessment of the detached garage is excessive. *David testimony.* The Respondent assessed the detached garage on the 555 property for less than the Petitioners' garage even though they are nearly identical. The Respondent assessed the rear lot of the subject property \$8,800 higher for land and \$7,200 higher for improvements when compared to the 555 property. *David testimony; Pet'r Ex. 2.*¹ The Respondent may have assessed the Petitioners' garage as a residence during the drive-by assessment because of a casement window. *David testimony.*

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

- a) The property record cards and the sales disclosure for the McCracken property show that it is a residential lakefront lot with an undeveloped vacant rear lot assessed on two parcels. The McCracken property sold for \$258,900 in May of 2000. *May testimony; Resp't Ex. 1.* The McCracken property was assessed at the same base rate per front foot as the subject property. *Id.* The McCracken property has a similar location and is assessed for \$243,300, which is below its sales price. The sale of the McCracken property confirms that the assessed value attributed to Lake Pleasant front lots is correct. *Id.*
- b) The McCracken lakefront lot has 85 feet of frontage and the subject lakefront lot frontage was "quite a bit larger." Therefore, the assessment of the subject lot was factored down through the use of excess frontage applications. *May testimony; Resp't Ex. 1.* The assessing officials tried to determine the correct factor to use to reduce the larger subject lakefront lot to the appropriate market value based on the McCracken sale. *Id.*
- c) The Bohney property involved the sale of a .32-acre vacant rear accessory lot for \$20,000 in December of 2000. *May testimony; Resp't Ex. 2.* The comparable

¹ Petitioner Exhibit 2 shows the value of the subject garage parcel was \$18,800 for land and \$28,300 for the building for a total of \$47,100. The PTABOA subsequently lowered that assessment to \$16,900 for the land and \$18,800 for the improvement for a total of \$35,700 prior to this appeal.

sale is in line with its assessed value of \$18,300 for the 2002 reassessment and shows the subject assessment for the .3-acre rear lot at appeal is reasonable at \$16,900. *Id.*

- d) The listings submitted by the Petitioners do not include actual sales and many of the homes listed for sale are located on a lake channel rather than a lakefront lot. *May testimony.*
- e) The Petitioners' detached garage is assessed as a garage and not a residence. *May testimony.*

Record

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

- a) The Petitions,
- b) The digital recording of the hearing,
- c) Petitioner Exhibit 1 – Introduction to the appeal,
Petitioner Exhibit 2 – Photographs and data for the comparison of the property located at 555 Lane 101 in Lake Pleasant to the subject,
Petitioner Exhibit 3 – Eleven pages of real estate listings with the Lake Pleasant properties circled,
Petitioner Exhibit 4 – Petitioners' response to the PTABOA's request for evidence dated September 7, 2004,
Petitioner Exhibit 5 – Copy of a real estate listing for the comparable property located at 555 Lane 101,
Petitioner Exhibit 6 – Statement from the purchasers of the above property stating the purchase price,²
Petitioner Exhibit 7 – Copy of a cashier's check for the purchase of the subject land dated September 8, 1978,
Respondent Exhibit 1 – Two property record cards and a sales disclosure for the McCracken property located at 75 Lane 101 Lake Pleasant,
Respondent Exhibit 2 – Property record card and sales disclosure for the Bohney property located at 140 Lane 101 Lake Pleasant,
Respondent Exhibit 3 – Notice of County Assessor's Representation,
Board Exhibit A – Form 131 petitions,
Board Exhibit B – Notices of hearing,
Board Exhibit C – Hearing sign-in sheet,
- d) These Findings and Conclusions.

² The Petitioners labeled and referred to this exhibit as an affidavit. An affidavit is a formal written statement affirming or swearing to the truth of the facts stated, signed before a notary public or similar officer. *Random House Webster's Dictionary of the Law*, (copyright 2000) at 19. The exhibit is not an affidavit.

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.
 - d) Conclusory statements do not qualify as probative evidence. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221 (Ind. Tax Ct. 2003); *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
15. The Petitioners did not provide sufficient evidence to support their contentions. This conclusion was arrived at because:

The Land Assessments

- a) The Petitioners claim that no lots on the lakefront have sold for more than \$20,000. In support of their argument, the Petitioners submitted addresses and the names of buyers and sellers for four properties they claim sold for no more than \$20,000. *Pet'r Ex. 4*. The Petitioners failed to show the dates of the sales and the actual sale prices. Furthermore, the Petitioners failed to show how the subject parcel is comparable to the alleged comparables. The Petitioners offered no information regarding lot sizes, location, lake frontages, lot depths and amenities. Without this information, the comparability of the lots cannot be determined. Consequently, this evidence lacks probative value.
- b) Furthermore, the valuation date for the 2002 assessment year is January 1, 1999. The Petitioners were required to relate their evidence to that valuation date. 2002 REAL PROPERTY ASSESSMENT MANUAL at 8 (incorporated by reference at 50 IAC

2.3-1-2). *See also, Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The Petitioners did not do so. The Petitioners evidence fails to show how these other sales are relevant to the Petitioners' market value-in-use as of January 1, 1999.

- c) The Petitioners offered the sale of the 555 property and several 2000 – 2003 residential listings of property to show the value of the subject is incorrect. The Petitioners failed to establish how the total purchase price of the 555 property is comparable to the subject property. The record does not show how much of the total \$225,000 sale price of the 555 property is attributed to the lakefront lot, rear lot, residence, or detached garage. Furthermore, the Petitioners failed to establish the comparability of the subject with the 555 property or the properties in the listings. The record fails to explain the characteristics of the subject property, how those characteristics compared to the other properties and how any differences affected the relevant market value-in-use of the properties, as required in *Long*. Without this type of comparison, the purported comparables have no probative value. *Id.*
- d) The Petitioners also submitted a receipt for a cashier's check for \$6,000, which was the amount paid for the two lots in 1978. The Petitioners, however, did not explain the relevance of the purchase price in 1978 to the valuation date. Consequently, the purchase price has no probative value. *Id.*
- e) The Petitioners failed to present a prima facie case regarding the land assessment. Where the Petitioners have not supported their claims with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified*, 799 N.E.2d at 1222.

The Assessment of the Detached Garage

- f) The Petitioners testified that their detached garage is very similar to the detached garage on the rear parcel of the 555 property. The Petitioners did not offer the property record card, or other sufficient evidence to allow a meaningful comparison of the assessed values of these two garages. Furthermore, even if they are very similar buildings, the fact that the 555 garage is assessed for less does not prove that the Petitioners' garage assessment is wrong or what the correct assessment should be.
- g) The Petitioners presented no probative evidence to prove the market value-in-use of other comparable detached garages located on rear lots. The sale of the 555 property included a residence, detached garage, and two lots. There was no breakdown of how much of the sale price was attributed to each component. The sale of the 555 property is not probative in determining the value of the Petitioners' detached garage.

- h) The Petitioners failed to present a prima facie case regarding the garage assessment. The burden never shifted to the Respondent to rebut the Petitioners evidence.

Conclusions

16. The Petitioners failed to make a prima facie case for any assessment change. The Board finds in favor of the 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: _____

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>.