

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

Petition #: 76-011-02-1-5-00033
Petitioner: Jeffrey G. Raff
Respondent: Pleasant Township Assessor (Steuben County)
Parcel #: 06-03-440-102.000-13
Assessment Year: 2002

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

Procedural History

1. The Petitioner filed an appeal with the Steuben County Property Tax Assessment Board of Appeals (PTABOA) on April 21, 2004.
2. The PTABOA issued notice of its decision on February 9, 2006.
3. The Petitioner filed a Form 131 Petition to the Indiana Board of Tax Review for Review of Assessment (Form 131 petition) with the Steuben County Assessor on June 1, 2006. The Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated October 24, 2006.
5. The Board held an administrative hearing on December 14, 2006, before the duly appointed Administrative Law Judge, Joseph Stanford.
6. Persons present and sworn in at hearing:
 - a) For Petitioner: Jeffrey G. Raff, Taxpayer
 - b) For Respondent: Jennifer Becker, Representative for Pleasant Township Assessor
Larry H. May, Steuben County Assessor

Facts

7. The subject property is a .32-acre vacant platted lot with no street address, located in Angola, Indiana.
8. The Administrative Law Judge (ALJ) did not inspect the property.

9. The PTABOA determined that the assessed value of the subject land is \$24,900. The subject parcel contains no improvements.
10. The Petitioner requests a value of no more than \$10,000.

Issue

11. Summary of the Petitioner's contentions:
 - a) The Petitioner contends that the subject property is worth no more than \$10,000. He bases his opinion on grounds that the property is swampy and that his wife's corporation purchased an adjacent property for \$12,500 in May 2000. *Raff argument*. As to his first point, the Petitioner contends that subject property contains a ditch with a thirty-inch, grated drain fronting the property. *Id.* Water flows across the property into the ditch and drain. *Id.* The Petitioner acknowledges that he knew about the drainage problems when he bought the subject property for \$25,000 in 2001. *Raff testimony*. Nonetheless, the Petitioner contends that he paid a large premium for the property because his wife's corporation owned the adjacent property.¹ Thus, purchasing the subject property gave the Petitioner and his wife a combined two-hundred feet of frontage. *Id.* As to his second point, the Petitioner apparently contends that the two properties are comparable and that the sale price of the adjacent property therefore demonstrates the market value of the subject property.
 - b) The Petitioner further contends that the Respondent failed to submit any credible evidence to support the subject property's current assessment. *Raff argument*. According to the Petitioner, the Respondent based its assessment on three erroneous assumptions. *Id.* First, the Respondent relied on an appraisal valuing unrelated parcels located across the street from the subject property. *Id.* The Petitioner's wife and her corporation — not the Petitioner — own the three parcels valued in the appraisal. *Id.*
 - c) Second, the Respondent assumed its assessment was correct because the Petitioner's wife did not appeal the adjacent property's assessment. The Petitioner's wife purchased that property in 2000 for \$12,500, and it is assessed for \$38,100. *Raff testimony*. His wife's decision not to appeal her property's assessment, however, is irrelevant to show the value either of that property or the subject property. *Id.*
 - d) Third, the Respondent relied on a letter in which the Petitioner said he would accept an assessment of \$25,000.² But the Respondent did not accept the

¹ The Petitioner alternately referenced the adjacent property as being owned by his wife and his wife's corporation. For ease of reference, the Board refers to the adjacent property as belonging to the Petitioner's wife.

² The Pleasant Township Assessor originally assessed the subject property for \$36,000, and the assessment was lowered to \$24,900 as a result of the Petitioner's appeal to the PTABOA.

Petitioner's offer. *Raff testimony*. Even if the Respondent had accepted the Petitioner's offer, that offer is not evidence of the subject property's value. *Raff argument*.

- e) Thus, the Petitioner contends that the Respondent failed to present any credible evidence to support the subject property's assessment. The Petitioner believes that his opinion about the subject property's value is equally credible as the Respondent's "lack of evidence." *Raff testimony*. In fact, according to the Petitioner, Indiana law allows a property owner to express his opinion about his own property's value. *Raff argument*.
12. Summary of the Respondent's contentions:
- a) The Respondent contends that the Petitioner did not submit any market-based evidence to support his requested assessment. *Becker argument*. Therefore, the Respondent bore no burden to defend the assessment. *Id*.
 - b) Nonetheless, the Respondent contends that it assessed the subject property based on its sale price rather than on the appraisal of the property owned by the Petitioner's wife. *Becker testimony*. The Petitioner knew about the property's drainage problems when he bought the property for \$25,000. *Becker testimony*. The Petitioner therefore considered the property's limitations in arriving at the agreed sale price. *Id*. In fact, the Petitioner agreed to an assessment of \$25,000 in his October 7, 2004, letter to the Respondent and the Stueben County Assessor. *Becker testimony; Resp't Ex. 10*.
 - c) Moreover, aerial photographs show that there are no county drains on the Petitioner's land. *Becker testimony; Resp't Ex. 5*.

Record

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

- a) The Form 131 petition and related attachments.
- b) The digital recording of the hearing.
- c) Exhibits:³
 - Respondent Exhibit 1: Pleasant Township Assessor's response
 - Respondent Exhibit 2: Notice of Appearance for Jennifer Becker
 - Respondent Exhibit 3: Subject property record card
 - Respondent Exhibit 4: Form 115, Notice of Final Assessment Determination
 - Respondent Exhibit 5: Aerial maps (4) showing county drains

³ Although labeled as Respondent's exhibits, the Petitioner offered the above-described documents in his case-in-chief.

Respondent Exhibit 6: Transcript of PTABOA hearing
Respondent Exhibit 7: *Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005)
Respondent Exhibit 8: Respondent Signature and Attestation Sheet
Respondent Exhibit 9: Summary Report of Appraisal submitted by Petitioner at PTABOA hearing
Respondent Exhibit 10: Letter from Petitioner dated October 7, 2004

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.

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 Petitioner did not provide sufficient evidence to support his contentions. The Board reaches that conclusion for the following reasons:
- 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 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 generally value real property using a mass appraisal version of the cost approach, as set forth in the Guidelines.

- 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). But a taxpayer may offer evidence to rebut that presumption, provided such evidence is consistent with the Manual's definition of true tax value. MANUAL at 5. Thus, a professional appraisal that is consistent with the Manual's definition of true tax value generally will suffice. *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 under generally accepted appraisal principles to rebut the presumption that an assessment is correct. MANUAL at 5.
- c) By contrast, a taxpayer does not rebut the presumption that an assessment is correct simply by contesting the methodology the assessor used to compute the assessment. *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). Instead, the taxpayer must show that the assessor's methodology yielded an assessment that does not accurately reflect its property's market value-in-use. *Id.*
- d) Here, the Petitioner bases his request for a \$10,000 assessment solely on his own opinion of value. The Petitioner grounded his opinion on the adjacent property's \$12,500 sale price and the subject property's drainage problems.
- e) In citing the sale price of the adjacent property owned by his wife, the Petitioner apparently relies upon the sales comparison approach to value. That approach “estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market.” *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005). Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the two properties. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). Instead, a party relying on the sales comparison approach must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. The party offering the comparative evidence also must explain how any significant differences between the properties affect their relative market values-in-use. *Long*, 821 N.E.2d at 470-71.

- f) Here, the Petitioner did not explain how the subject property compared to the adjacent property beyond their geographical proximity to each other. Similarly, the Petitioner did not explain how any relevant differences between the two properties affect their relative market values-in-use. The sale price of the adjacent property therefore is not probative of the subject property's market value-in-use. Even if the Board were to view that sale price as having some evidentiary value, the Petitioner bought the subject property for \$25,000. While the Petitioner asserted that he paid a premium to obtain more combined frontage for the two properties, he did not provide any evidence about the circumstances of the sale. Absent such evidence, the Board cannot simply accept the notation that the Petitioner paid a premium equal to one-and-one-half times the property's market value.
- g) The second basis supporting the Petitioner's valuation opinion fares no better. Even if the Board were to assume that the drainage problems identified by the Petitioner detract from the subject property's market value, the Petitioner did not submit any market-based evidence to quantify that value.
- h) Thus, the Petitioner's opinion that the subject land is worth no more than \$10,000 is merely conclusory. Unsubstantiated conclusory statements do not constitute probative evidence that an assessment is erroneous. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
- i) Aside from testifying to his own conclusory opinion of value, the Petitioner focused his entire case on disputing what he characterized as the bases underlying the Respondent's assessment. In doing so, the Petitioner apparently misunderstood his burden of proof in a proceeding before the Board. As explained above, a taxpayer claiming an assessment error must prove both that the assessment is incorrect and what the correct assessment should be. *See Meridian Towers, supra*, 805 N.E.2d at 278. To do so, the taxpayer must introduce probative evidence of his property's market value-in-use rather than simply attack the assessor's methodology in computing the assessment. *Eckerling, supra*, 841 N.E.2d at 678. Because the Petitioner did not offer probative evidence of the subject property's market value, the burden did not shift to the Respondent to defend its assessment.

Conclusion

16. The Petitioner failed to make a prima facie case. 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: **March 12, 2007**

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>.