

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

Petition #: 76-011-02-1-5-00142
Petitioners: Jerry D. & Dorothy A. Fickle
Respondent: Pleasant Township Assessor (Steuben County)
Parcel #: 06-08-330-114.000-13
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 Steuben County Property Tax Assessment Board of Appeals (PTABOA) on May 11, 2004.
2. The PTABOA issued notice of its decision on February 2, 2006.
3. The Petitioners filed a Form 131 petition with the Steuben County Assessor on February 23, 2006. The Petitioners elected to have this case heard in small claims.
4. On October 24, 2006, the Board issued a notice of hearing to the parties.
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 Petitioners: Dorothy A. Fickle, Taxpayer
 - b) For Respondent: Jennifer Becker, Representative for Pleasant Township
Larry H. May, Steuben County Assessor

Facts

7. The subject property is a one-family lake cottage located at #140 Lane 305A, Crooked Lake, Angola, as is shown on the property record card for parcel 06-08-330-114.000-13.
8. The Administrative Law Judge (ALJ) did not inspect the property.

9. The PTABOA determined that the assessed value of the subject property is \$170,300 for the land and \$32,400 for the improvements for a total assessed value of \$202,700.
10. The Petitioners request an assessment of \$95,300 for the land and \$32,400 for the improvements for a total assessment of \$127,700.

Issue

11. Summary of the Petitioners' contentions:
 - a) The subject property is located on Crooked Lake, which is divided into three basins. The subject property sits on a promontory that extends into the second basin. *See Pet'rs Ex. 7*. Thus, the front of the Petitioners' cottage faces the lake, while cottage's side faces a channel off that basin. *Fickle testimony; Pet'rs Ex. 7*.
 - b) Assessments are based on properties' locations *vis-à-vis* the lake. Thus, properties on the second basin are assessed at \$2,703 per front foot, while properties on the third basin and channel are assessed at \$1,513 per front foot and \$1,335 per front foot, respectively. *Fickle testimony; Pet'rs Exs. 1, 2, 4*.
 - c) The Petitioners contend that the second-basin base rate the Respondent used to assess the subject land is too high. *Fickle argument*. According to the Petitioners, other properties on the second basin have sandy beaches and a view of the entire lake, while the Petitioners can see only lily pads and boats passing by with their engines on idle. *Fickle testimony*. The Petitioners submitted photographs showing the view from the subject property. *Fickle testimony; Pet'rs Exs. 5-6*.
 - d) In fact, the Petitioners contend that properties on the third basin also have a better view of the lake than do the Petitioners, because the owners of those properties can see people skiing and boats speeding by. *Fickle testimony*. Third-basin properties have some muck and lily pads similar to the waterfront off the subject property. *Id*.
 - e) The Petitioners presented three property record cards for properties located on the second basin (*Pet'rs Ex. 2*), one property record card for a property located on the third basin (*Pet'rs Ex. 4*) and five property record cards for properties located on the channel (*Pet'rs Ex. 1*).
 - f) The Petitioners request that the subject property be assessed using the base rate applied to properties located on the third basin. *Fickle argument*.
 - g) The Petitioners contend that the sales data offered by the Respondent involved properties that are not comparable to the subject property. *Fickle argument*. One sale involved a property located on the second basin. *Id; Resp't Ex. 6* (outlined in blue). Both properties identified by the Respondent had selling prices lower than

their assessed values, and their assessments were subsequently decreased. *Fickle testimony*.

12. Summary of the Respondent's contentions:

- a) The Respondent presented an aerial photograph of Crooked Lake. *Resp't Ex. 5*. The first basin is on the lake's east side and has some of the higher base rates. *Becker testimony*. The second basin is in the middle, to the west of the first basin. *Id.* The squiggly part is the third basin, which has lower base rates because the properties do not have a view of the lake. *Id.*
- b) The Respondent refers to houses that face each other on the channel as "channel properties" and to properties that face the lake as "waterfront properties." *Fickle testimony*. Often, the Respondent uses a property's legal description to place it in the correct neighborhood. *Id.* The subject property is on the second basin in West Bay Colony. *Id.* The land order shows the base rate for "Second Basin - West Bay Colony and Oak Grove – on water" as \$2703. *Id.; Resp't Ex. 8 at 4.*
- c) The subject property is on a point — partly on the lake and partly on the channel. *Becker testimony*. The Respondent investigated alternative methods by which to price the subject land. *Becker testimony; Resp't Ex. 11*. But every method resulted in nearly the same value. *Id.* In the Respondent's view, this corroborated its assessment. *Becker argument*.
- d) According to the Respondent, it determined the base rate for each basin by analyzing actual sales data. *Becker testimony; Resp't Ex. 7*. The Respondent submitted as evidence the sales data upon which it calculated those base rates. *Becker testimony; Resp't Exs. 7- 9.*
- e) Contrary to Ms. Fickle's testimony, the Respondent did not lower the assessment of either property referenced in Respondent's Exhibit 6. *Becker testimony*. Ms. Becker testified that her hand-written notations on that exhibit reflect calculations regarding the percentage of the sale price attributable to the land rather than any reduction in assessment. *Id.; Resp't Ex. 6.*
- f) The Petitioners did not provide any evidence to show the subject land's market value. *Becker argument*. Thus, the Petitioners did not demonstrate that the subject property's location entitles it to a negative influence factor, and the Respondent's base rates, which it determined using actual sales data, are dispositive of the subject land's value. *Id.*

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:

- Petitioners Exhibit 1: Property record cards (5) for properties located on the channel
- Petitioners Exhibit 2: Property record cards (3) for properties located on the second basin
- Petitioners Exhibit 3: Property record cards (2) for properties located on the first basin
- Petitioners Exhibit 4: Property record card (1) for property located on the third basin
- Petitioners Exhibit 5: Photograph of view of lake from subject property
- Petitioners Exhibit 6: Photograph of subject property
- Petitioners Exhibit 7: Map of subject area

- 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 photographs showing all of Crooked Lake, and the subject parcel
- Respondent Exhibit 6: Property record cards and sales disclosures
- Respondent Exhibit 7: Spreadsheet showing sales used to develop base rates
- Respondent Exhibit 8: 2002 Land Order Summary Sheets
- Respondent Exhibit 9: Map correlating base rates to Land Summary Sheets
- Respondent Exhibit 10: *Long v. Wayne Township Assessor*, 821 N.E.2d 466 (Ind. Tax Ct. 2005)
- Respondent Exhibit 11: Alternative pricing options for subject parcel
- Respondent Exhibit 12: Respondent Signature and Attestation Sheet

- 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 Petitioners did not provide sufficient evidence to support their contentions. The Board reaches this conclusion 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 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 assess real property using a mass appraisal version of the cost approach, as set forth in the Real Property Assessment Guidelines for 2002 – Version A (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. An appraisal prepared in accordance 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 Petitioners did not offer any of the market-based types of evidence described by the Manual and Tax Court. The Petitioners instead contest the Respondent’s choice between base rates. The Petitioners argue that the Respondent should have used the third-basin rate rather than the second-basin rate because the subject property’s view more closely approximates that of properties in the third basin. The Petitioners’ claims, however, distill to an attack on the Respondent’s methodology. And, as explained above, Indiana’s new property-tax-assessment system shifts the focus from examining how regulations were applied (i.e., mere methodology) to examining whether a property’s assessed value actually reflects its market value-in-use. *Eckerling*, 841 N.E.2d at 678; *see also Westfield Golf Practice Center v. Washington Twp. Assessor*, 859 N.E.2d 396, 399 (Ind. Tax Ct. 2007). Thus, the Petitioners’ evidence fails to rebut the presumption that the subject property’s assessment is correct.
- e) Based on the foregoing, the Petitioners failed to establish a prima facie case that the Respondent erred in assessing the subject property.

Conclusion

- 16. The Petitioners failed to make a prima facie case. The Board finds in favor of the Respondent. There is no change to the assessment.

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>>.