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

Petition #: 89-030-02-1-4-00014
Petitioners: Bruce & Nancy Ullrich
Respondent: Wayne Township Assessor (Wayne County)
Parcel #: 463443050100029
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 Petitioners initiated an assessment appeal with the Wayne County Property Tax Assessment Board of Appeals ("PTABOA") by written document dated December 29, 2003.

2. The Petitioners received notice of the decision of the PTABOA on September 29, 2004.

3. The Petitioners filed an appeal to the Board by filing a Form 131 with the county assessor on October 27, 2004. The Petitioners elected to have this case heard in small claims.

4. The Board issued a notice of hearing to the parties dated June 21, 2005.

5. The Board held an administrative hearing on July 22, 2005, before the duly appointed Administrative Law Judge Debra Eads.

6. Persons present and sworn in at hearing:

   a) For Petitioners: Bruce Ullrich, Petitioner
      Nancy Ullrich, Petitioner

   b) For Respondent: David Alderson, Wayne Township Deputy Assessor
      Lisa Beach, Wayne County Chief Deputy Assessor
      Joseph Kaiser, PTABOA Member

Charles Todd Jr. acted as attorney for the PTABOA. Dan Williams, PTBOA member, observed the hearing.

Facts

7. The property is classified as commercial, as is shown on the property record card for parcel # 463443050100029.

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

9. Assessed Value of subject property as determined by the Wayne County PTABOA:
Land $82,700 Improvements $75,100

10. Assessed Value requested by the Petitioners at the hearing: $100,000 total

Issues

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

a) The subject property is zoned as R3 [residential] and cannot comply with the commercial zoning codes of the county. The subject land is assessed as "Primary Commercial/Industrial Land." *B. Ullrich testimony; Pet'r Exs. 2, 5.*

b) The subject property is currently covered under a "special exception" which allows for its current use as an insurance office. The subject property cannot be sold as a commercial property because the special exception dies with the sale of the property. *B. Ullrich testimony.* The covenants of the subdivision where the subject property is located do not allow for a zoning reclassification of the entire area as commercial. *B. Ullrich testimony.* A new owner would be required to reapply for a special exception and there is no guarantee that an exception would be granted. *B. Ullrich testimony.*

c) Land one (1) block away from the subject property is zoned and utilized for commercial purposes. The area surrounding the subject property, however, is zoned for residential use, and the properties within that area are used primarily for residential purposes. *B. Ullrich testimony.*

d) The value of the subject property is diminished because of the zoning restrictions. *B. Ullrich testimony.* The subject property should be assessed based upon its market value. The Petitioners' use of that property should not affect its value. *Id.*

e) The Petitioners submitted an appraisal of the subject property estimating its market value in use to be $125,000 as of May 4, 2005. *B. Ullrich testimony; Pet'r Ex. 4.* Using a compounded 3% inflation rate, the appraised value of $125,000 in 2005 correlates to a value of approximately $110,000 in 2002. *B. Ullrich testimony.* The appraiser estimated the market value of the property to be $120,000 under the sales comparison approach to value. When that value is factored back to 1999 using 3% inflation rate, the appropriate value for the subject property is $100,000. B. Ullrich testimony; Pet'r Ex. 4.

f) The Petitioners bought the subject property for $62,000 in 1990. Applying a 3% inflation rate to the purchase price brings the value between $100,000 and $110,000. Approval of the special exception was required prior to finalization of this purchase. *B. Ullrich testimony.*

g) The Petitioners presented property record cards of other insurance or similar offices located on main thoroughfares. These properties do not have land values approaching the land value assigned to the subject property. *B. Ullrich testimony; Pet'r Exs. 5 – 14.*

h) The Wal-Mart property that is located one (1) block east of the subject property has an assessed land value of $150,000 per acre while the subject property has an assessed land value of $300,000 per acre. *B. Ullrich testimony; Pet'r Exs. 5, 10.*

i) The application of a negative influence factor to an erroneous land value does nothing to rectify the underlying problem. *B. Ullrich testimony.*

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

a) When utilizing the income approach to value, the county routinely uses the previous year's income to establish a value. *Alderson testimony.*

b) In determining the value of the subject property, the Township Assessor's office was aware of the zoning "covenants" affecting the subject property and applied a negative 20% influence factor to the land value. *Alderson testimony.*

c) Zoning issues are relevant to the city, but the assessor bases the assessment of a property on its use. *Alderson testimony.* The commercial use of the subject property dictates that a commercial land rate be used to value the subject land. *Alderson testimony.*

d) Valuing the subject land as commercial is appropriate in light of the current use of the property as an insurance office. The fact that it may not have this use in the future is not reflective of the value as it is today. The focus is on the use at the time of the assessment. *Todd argument.*

e) The outlots on the Wal-Mart property have been valued at between $325,000 and $350,000 per acre. *Alderson testimony.*

Record

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

a) The Petition.

b) The tape recording of the hearing labeled BTR # 6185.

c) Exhibits:

Petitioner Exhibit 1: Form 131
Petitioner Exhibit 2: Zoning Code R3
Petitioner Exhibit 3: Zoning Code C2
Petitioner Exhibit 4: Appraisal of Real Property
Petitioner Exhibit 5: Property record Card – 3351 East Main
Petitioner Exhibit 6: Property record Card – 1126 East Main
Petitioner Exhibit 7: Property record Card – 1801 East Main
Petitioner Exhibit 8: Property record Card – 1801 Chester Blvd
Petitioner Exhibit 9: Property record Card – 1500 East Main
Petitioner Exhibit 10: Property record Card – 3601 East Main
Petitioner Exhibit 11: Property record Card – 1015 East Main
Petitioner Exhibit 12: Property record Card – 3031 East Main
Petitioner Exhibit 13: Property record Card – 1616 East Main
Petitioner Exhibit 14: Property record Card – 3701 East Main

Respondent Exhibit 1: Form 130, and Form 131 petitions together with attachments; property record cards; sales disclosure statements[1]

Board Exhibit A: Form 131
Board Exhibit B: Notice of Hearing

d) These Findings and Conclusions.

Other

14. At the hearing there was discussion regarding the requirement of the parties to exchange exhibits prior to the hearing. Although no objection was made, the Board will take this opportunity to clarify its procedures.

15. The parties elected to contest this case under the procedures governing small claims. *See* Ind. Admin. Code tit. 52, r. 3; *Board Ex. A.* Those procedures are intended to make the administration of small claims "more efficient, informal, simple, and expeditious than those administered under 52 IAC 2." 52 IAC 3-1-1(b).

16. The small claims rules provide that "the parties shall *make available* to all other parties copies of any documentary evidence and the names and addresses of all witnesses

[1]The Respondent provided the Board with what appears to be a list of exhibits it anticipated introducing at the hearing. The Respondent, however, did not separately label the individual exhibits it submitted, nor did it individually identify and describe the documents it submitted.

intended to be presented at the hearing at least five (5) days before the day of a small claims hearing." 52 IAC 3-1-5(f) (emphasis added).

17. By contrast, the rules applicable to non-small claims proceedings state that a party to the appeal "*shall provide*" to the other parties: (1) copies of documentary evidence at least five (5) business days before the hearing; and (2) a list of witnesses and exhibits at least fifteen (15) business days before the hearing. 52 IAC 2-7-1(b).

18. The Board interprets the phrase "shall make available" contained in 52 IAC 3-1-5(f) to mean that the specified items must be provided to other parties if requested. The Board does not interpret that phrase to create an obligation to provide copies of documentary evidence to other parties independent of a request by one or more of those parties. This interpretation gives meaning to the difference between the language used in 52 IAC 3-1-5(f) and 52 IAC 2-7-1(b) and best reflects the principles underlying the more informal small claims procedures.

Analysis

19. 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 Township 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 Township 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.

20. The Petitioners did provide sufficient evidence to support their contentions. This conclusion was arrived at because:

    a) Real property in Indiana is assessed based upon its "true tax value." *See* I.C. § 6-1.1-31-6(c). "True tax value" is defined as "[t]he 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 at 2 (incorporated by reference at 50 IAC 2.3-1-2)(hereinafter "MANUAL").

b) A taxpayer may use evidence consistent with the Manual's definition of true tax value, such as appraisals conducted in accordance with generally accepted appraisal techniques, to contest a property's assessment. *See* MANUAL at 5; *see also Kooshtard Property VI, LLC v. White River Twp. Assessor*, No. 49T10-0412-TA-57, 2005 Ind. Tax LEXIS 76, at *5 (Ind. Tax Ct. Nov. 3, 2005).

c) The MANUAL also provides that for the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. MANUAL at 4. Consequently, a party relying on an appraisal to establish the market value-in-use of a property must provide some explanation as to how the appraised value demonstrates or is relevant to the property's value as of January 1, 1999. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (holding that an appraisal indicating the value for a property on December 10, 2003, lacked probative value in an appeal from the 2002 assessment of that property).

d) The Petitioners presented an appraisal for the subject property, which estimates the market value of the subject property to be $125,000 as of May 4, 2005. *Pet'r Ex. 4.* The appraiser utilized the income and sales comparison approaches to value, both of which are generally accepted appraisal techniques. *See* MANUAL at 13-14.

e) While the appraisal estimates the market value of the subject property as of a date substantially removed from the relevant valuation date of January 1, 1999, the record contains at least some explanation regarding how that appraised value relates to the property's market value as of January 1, 1999. *Pet'r Ex. 4*. David Alderson, an employee of the Respondent, testified that while the Respondent trended the value of residential properties back to 1999, the Respondent did not do so with income-producing properties. *Alderson testimony*. Thus, Alderson acknowledged that residential properties actually increased in value going forward from January 1, 1999, and that income producing properties, while not necessarily increasing in value, at least remained static. The record contains at least some explanation sufficient to show that the market value-in-use of the subject property was no more than $125,000 as of the relevant valuation date of January 1, 1999.

f) The Petitioners, however, did not present probative evidence to support their request that the appraised value be "trended" back to reflect a January 1, 1999, value of $100,000. The Petitioners based their request on Mr. Ullrich's testimony that he presumed a 3% rate of inflation was an appropriate factor to use in trending the 2005 appraised value back to January 1, 1999. Mr. Ullrich, however, did not provide any support for his use of a 3% inflation factor.

g) The Petitioners' other contentions similarly fail to support a reduction in assessment below the $125,000 value estimated in the appraisal. While the Petitioners argue that zoning restrictions on the subject land reduce its market value, they did not introduce any evidence by which to quantify the effect of those restrictions.

h) The Petitioners' attempts to support a reduction in value based upon the assessments of purportedly comparable properties also lack merit. The Petitioners did little to compare salient features of the subject land, such as accessibility, location and topography, to those of the purportedly comparable properties, other than to say that all of the properties are located on major "thoroughfares." This is not a sufficient comparison to establish that the properties are comparable. *See Blackbird Farms Apts., LP v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002) (holding that taxpayer failed to establish comparability of parcels of land where, among other things, taxpayer did not compare the topography and accessibility of parcels).

i) Based on the foregoing, the Petitioners established a prima facie case that the subject property's assessment should not exceed $125,000. The burden therefore shifted to the Respondent to impeach or rebut the appraisal submitted by the Petitioners. *See Meridian Towers*, 805 N.E.2d at 479.

j) The Respondent failed to impeach the appraisal submitted by the Petitioners. The Respondent pointed to the fact that the Petitioners did not talk to the appraiser and therefore could not testify as to the appraiser's "mindset." *Todd argument*. The Petitioners, however, submitted the appraiser's report. *Pet'r Ex. 4*. The Respondent did not point to any deficiencies contained within that report.

k) The Respondent likewise failed to present any evidence to rebut the appraisal submitted by the Petitioners. At most, Mr. Alderson testified that the Respondent applied a negative influence factor of 20% to account for the effect of the zoning restrictions and restrictive covenants on the market value-in-use of the subject land. *Alderson testimony*. Mr. Alderson, however, did not explain how the Respondent arrived at that negative influence factor. Moreover, while the Respondent submitted numerous sales disclosure statements and property record cards, none of its witnesses discussed those exhibits. Respondents, like taxpayers, cannot simply cite to the record as though the evidence speaks for itself. *See Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075 (Ind. Tax Ct. 2005).

Conclusion

21. The Petitioners demonstrated by a preponderance of the evidence that the current assessment is incorrect and that the correct assessment should be no more than $125,000.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should 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>.