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

Petition: **84-004-12-1-5-20053-15**
Petitioners: **Gregory Ryan Baker & Stacy E. Baker**
Respondent: **Vigo County Assessor**
Parcel: **84-09-13-205-010.000-004**
Assessment Year: **2012**

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 their 2012 assessment appeal with the Vigo County Assessor on February 6, 2013.

2. On February 12, 2015, the Vigo County Property Tax Assessment Board of Appeals (PTABOA) issued its determination denying the Petitioners any relief.

3. The Petitioners timely filed a Petition for Review of Assessment (Form 131) with the Board electing the Board's small claims procedures.

4. The Board issued a notice of hearing on January 31, 2017.

5. Administrative Law Judge (ALJ) Patti Kindler held the Board's administrative hearing on March 16, 2017. She did not inspect the property.

6. Gregory Ryan Baker appeared *pro se*. Deputy Assessor Michael West appeared for the Respondent. Both were sworn and testified.

Facts

7. The property under appeal is a single-family residence located at 5333 Bogey Lane in Terre Haute.

8. The PTABOA determined the total assessment is $620,400 (land $196,900 and improvements $423,500).

9. On their Form 131 the Petitioners requested a total assessment of $460,000 (land $65,000 and improvements $395,000).

Record

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

a) Form 131 with attachments,

b) A digital recording of the hearing,

c) Exhibits:

Petitioners Exhibit A:	Plat survey, aerial map, and a letter from John R. Keller, dated February 6, 2013,
Petitioners Exhibit B:	2012 Taxpayer's Notice to Initiate an Appeal (Form 130),
Petitioners Exhibit C:	Beacon aerial map and assessment report for the subject property,
Petitioners Exhibit D:	Beacon aerial map and assessment report for 5223 Eldridge Road,
Petitioners Exhibit E:	Beacon aerial map and assessment report for 5149 Eldridge Road,
Petitioners Exhibit F:	Beacon aerial map and assessment report for 5163 Eldridge Road,
Petitioners Exhibit G:	Subject property land only summary appraisal performed by Carl N. Miller, III, with an effective date of January 1, 2013,
Petitioners Exhibit H:	Subject property record card,
Petitioners Exhibit I:	Subject property record card with proposed land changes offered by the Respondent.
Respondent Exhibit 1:	2011 subject property record card,
Respondent Exhibit 2:	2012 subject property record card,
Respondent Exhibit 3:	2012 and 2016 Geographic Information System (GIS) aerial maps of the subject property,
Respondent Exhibit 4:	2012 subject property record card and proposed settlement offer,
Respondent Exhibit 5:	Letter from Mr. West to the Petitioners dated February 23, 2017,
Respondent Exhibit 6:	2011 REAL PROPERTY ASSESSMENT GUIDELINES Page 16,
Respondent Exhibit 7:	2011 REAL PROPERTY ASSESSMENT GUIDELINES Pages 53 and 54,
Respondent Exhibit 8:	*Arnold and Carol Brames Joint Rev. Trust v. Vigo Co. Ass'r*, Pet. nos. 84-009-12-1-5-04200 and 84-009-13-1-5-05765 (Ind. Bd. of Tax Rev., January 30, 2017).
Board Exhibit A:	Form 131 with attachments,

Board Exhibit B: Notice of hearing dated January 31, 2017,
Board Exhibit C: Hearing sign-in sheet.

d) These Findings and Conclusions.

Objections

11. Mr. West objected to Petitioners' Exhibit G because the appraiser used sales of vacant lots instead of improved lots similar to the subject property. In response, Mr. Baker stated he obtained the appraisal "in response to the PTABOA's specific request," and he "objected" to Mr. West's comments regarding the credibility of the appraisal. The ALJ took the objection under advisement.

12. While Mr. West did not specifically offer legal grounds for his objection, the Board infers his objection is on the grounds of relevancy. As discussed below, the Board agrees that the appraiser's failure to take development costs into account ultimately deprives his appraisal of probative value. But this fact goes more to the appraisal's weight than to the threshold question of its admissibility. Accordingly, Mr. West's objection is overruled. In response to Mr. Baker's statement that he "objects" to the comments made by Mr. West, the Board views this as a response and not an actual objection as he failed to state any legal grounds for striking Mr. West's comments. To the extent Mr. Baker intended his response to be a legal objection, his objection is overruled.

Contentions

13. Summary of the Petitioners' case:

a) The subject property's land assessment is too high. The subject property encompasses a 2.09 acre lot and a home. But the Petitioners are only appealing their land assessment because it "doubled" between 2011 and 2012.[1] The land assessment increased when influence factors were removed from "all the lots" in the subject property's subdivision. *Baker argument.*

b) Only 0.65 acres of their 2.09 acre lot is buildable. This "buildable" section of the property is used as their home-site. The remaining 1.44 acres is "swampy." The "swampy" portion of the lot includes an "old pond that was drained" and this 1.44 acres "cannot be sold off separately from the home." *Baker testimony; Pet'rs Ex. A.*

c) In an effort to support their argument, Mr. Baker presented a land only appraisal prepared by Carl N. Miller, III, an Indiana certified general appraiser. In performing his appraisal, Mr. Miller focused on three vacant lot sales. Two of the lots are located within the Idle Creek subdivision and the other lot is located in Blumberg Estates.

[1] On their Form 131 the Petitioners requested a lower value be assigned to the improvements, but at the hearing the Petitioners specifically stated they are only appealing the land assessment. The Board will not address the assessment assigned to the improvements.

Mr. Miller stated in his report the 1.44 acres surrounding the home-site has "limited use." In his final reconciliation of value, Mr. Miller estimated the subject property's land should be valued at $94,000 as of January 1, 2013. *Baker testimony; Pet'rs Ex. G.*

d) The Petitioners also presented information for three lots in a neighboring subdivision to indicate the large disparity between the various land assessments. The three comparable lots are similar in size, have paved roads and utilities, but the land assessments for these lots is "about $20,000 for two acres." The subject property's 2.09 acre lot is currently assessed at $196,900. *Baker argument; Pet'rs Ex. D, E, F.*

e) While the Petitioners primarily focused on the assessment portion of the 1.44 acre "unbuildable excess acreage" they also argued the portion of the land attributed to their home-site is overvalued at $140,590. According to Mr. Baker, "platted lots do not sell for that much unless they are located on a lake." Mr. Baker went on to argue he "has not seen any lot prices as high as the subject property's lot, or lots that make up 25% of a home's overall market value." The underlying reason the Petitioners rejected the Respondents proposed settlement offer lowering the excess acreage base rate to $3,640 was because the home-site was to remain at the same "excessive" rate. *Baker argument; Pet'rs Ex. C, H, I.*

14. Summary of the Respondent's case:

a) The subject property is assessed correctly. The property's land value increased in 2012 because of changes in the county land order and trending. *West argument.*

b) In valuing the subject property, the assessor relied on the 2011 Real Property Assessment Guidelines, *Valuing Vacant Platted Lots* and *Valuing Residential Acreage and Agricultural Home-sites*. According to the Guidelines, an improved vacant platted lot includes a well and septic or connection to a public source, landscaping, and private walkways and driveways. *West testimony; Resp't Ex. 6, 7.*

c) The Petitioners have argued that only 0.65 acres should be designated as a home-site because the majority of their lot is "un-buildable and un-usable." However, the Guidelines instruct assessors to apply one acre of land to the home-site and to treat any remaining land as excess acreage. The only way the assessor could value "only 0.65 acres as a home-site is if the Petitioners split the lot so only 0.65 acres was left." *West argument; Resp't Ex. 1, 2, 7.*

d) In a recent Board decision, the Board denied the Petitioners' appeal because the Petitioners' appraisal treated the land as undeveloped while it "was actually improved." The appeal at hand is "nearly identical" because the Petitioners' have presented an appraisal valuing the subject property as "vacant land unimproved" instead of "residential improved land." *West argument (citing Arnold and Carol Brames Joint Rev. Trust v. Vigo Co. Ass'r,* Pet. nos. 84-009-12-1-5-04200 and 84-009-13-1-5-05765 (Ind. Bd. of Tax Rev., January 30, 2017)*; Resp't Ex. 8.*

e) Nonetheless, the Respondent "will maintain the stipulated offer that has been made to the Petitioner at this time" lowering the total assessment to $567,900. *West testimony; Resp't Ex. 5.*

Burden of Proof

15. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass'r,* 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). The burden-shifting statute as amended by P.L. 97-2014 creates two exceptions to that rule.

16. First, Ind. Code § 6-1.1-15-17.2 "applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year." Ind. Code § 6-1.1-15-17.2(a). "Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court." Ind. Code § 6-1.1-15-17.2(b).

17. Second, Ind. Code § 6-1.1-15-17.2(d) "applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15." Under those circumstances, "if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct." Ind. Code § 6-1.1-15-17.2(d). This change was effective March 25, 2014, and has application to all appeals pending before the Board.

18. Here, the Respondent argued that the burden of proof remains with the Petitioners. The Petitioners failed to offer any argument or evidence to dispute the Respondent's claim.[2] The total assessed value for the subject property did not increase by more than 5% from 2011 to 2012. In fact, the total assessment decreased from $672,000 in 2011 to $620,400 in 2012. Accordingly, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 do not apply, and the burden rests with the Petitioners.

[2] Here, the land assessment increased from $116,600 to $196,900, while the assessment of the improvements decreased from $555,400 to $423,500. Here, the Petitioners only appealed the land assessment. However, Ind. Code § 6-1.1-15-17.2 does not expressly contemplate a separate analysis for land-only appeals. In applying the Ind. Code § 6-1.1-15-17.2, the Board tends to disregard piecemeal approaches. *See Mac's Convenience Stores, LLC v. Hamilton Co. Ass'r,* Ind. Bd. Tax Rev. pet. no. 29-006-12-1-4-02050 (November 14, 2014). Therefore, in this case, the Board holds that the burden-shifting statute should be applied to the *total assessment*, and as a result the burden remains with the Petitioners.

Analysis

19. The Petitioners failed to make a prima facie case for reducing the 2012 assessment.

a) Real property is assessed based on its market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach, but other evidence is permitted to prove an accurate valuation. 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.

b) Regardless of the method used, a party must explain how the evidence relates to the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.,* 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Ass'r,* 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For a 2012 assessment, the valuation date was March 1, 2012. *See* Ind. Code § 6-1.1-4-4.5(f).

c) The overriding purpose of real property assessment in Indiana is to determine the market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property. MANUAL at 2. Further, "true tax value may be considered as the price that would induce the owner to sell the real property, and the price at which the buyer would purchase the real property for a continuation of use of the property for its current use." *Id.* Here, the Petitioners' home is situated on the land. Thus, while the Petitioners' notice of assessment includes a separate value for the land, the land value alone is somewhat immaterial as the Petitioners could not sell only their land. Generally, the Board does not consider the land and improvements in a piecemeal manner when the property forms a single economic unit. *See Koziarz v. Marshall Co Ass'r,* Ind. Bd. Tax Rev. Pet. No. 50-017-12-1-5-00012 et. al. (May 22, 2014) ("[W]hile the Petitioner only appeals the land assessments and not the improvement, he fails to rebut the Respondent's evidence that the parcels form a single economic unit.") Nevertheless, the Board will examine the evidence presented by the Petitioners.

d) The Petitioners primarily relied on a land only appraisal prepared by Mr. Miller. Mr. Miller valued the land as a "vacant" home-site in his appraisal report. He did not consider various development costs, such as costs for the sidewalk, driveway, landscaping, and for connecting to the sewer system and other utilities. As the Respondent correctly pointed out, all those costs are considered in determining land value under the 2011 Real Property Assessment Guidelines. Thus, in valuing "improved vacant platted lots:"

> [T]he improved land value estimate represents the cost of vacant land, plus the depreciated cost of a water well and

> septic system or public utility hook-up fees plus any costs, such as landscaping and private walkways and residential driveways incurred to make the parcel suitable for building.
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> 2011 REAL PROPERTY ASSESSMENT GUIDELINES, ch. 2 at 16; *and* 2011 GUIDELINES at 53 (describing the improved land value of home-sites assessed on an acreage basis).

e) The subject property is developed for, and includes a home. It is connected to various utilities and has a driveway. Mr. Miller's appraisal does not account for how those amenities contribute to the land's value. The Petitioners are challenging the subject property's 2012 land assessment and the 2011 Guidelines include those costs in the land component of the assessment rather than in the improvement component. Therefore, the Petitioners' land only appraisal does not prove the land assessment is incorrect. This illustrates the problem in a piecemeal approach to valuation – the land's value depends on its use as a large residential lot, not its severability for other improvements.

f) In addition to their appraisal, the Petitioners compared their land assessment to the land assessments of three properties in a nearby subdivision.[3] Indeed, parties can introduce assessments of comparable properties to prove the market value-in-use of a property under appeal, provided those comparable properties are located in the same taxing district or within two miles of the taxing district boundary. Ind. Code § 6-1.1-15-18(c)(1).

g) The determination of whether the properties are comparable using the "assessment comparison" approach must be based on generally accepted appraisal and assessment practices. *Indianapolis Racquet Club, Inc. v. Marion Co. Ass'r,* 15 N.E.3d 150 (Ind. Tax Ct. 2014). In other words, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is "similar" or "comparable" to another property are not sufficient. *Long,* 821 N.E.2d at 470. Instead the proponent 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.* Similarly, the proponent must explain how any

[3] The Petitioners implicitly raise the issue of a lack of uniformity and equality in assessments. As the Tax Court explained in *Westfield Golf Practice Center*, the focus of Indiana's assessment system has changed from the application of a self-referential set of regulations to a question of whether a property's assessment reflects the external benchmark of market value-in-use. *See, Westfield Golf Practice Center, LLC v. Washington Twp. Ass'r,* 859 N.E.2d 396, 398-99 (Ind. Tax Ct. 2007). One way to prove a lack of uniformity and equality under Article X, Section 1 of the Indiana Constitution is to present assessment ratio studies comparing the assessments of properties within an assessing jurisdiction with objectively verifiable data, such as sale prices or market value-in-use appraisals. *Id*. at 399 n.3. The taxpayer in *Westfield Golf Practice Center* lost its appeal because it focused solely on the base rate used to assess its driving-range landing area compared to the rates used to assess other driving ranges and failed to show the actual market value-in-use for any of the properties. *Id*. at 399. Here, the Petitioners did not make a showing for a change in the assessment based on lack of uniformity and equality.

differences between the properties affect their relative market values-in-use. *Id.* Here, the Petitioners failed to provide any of the required analysis.

h) Consequently, the Petitioners failed to make a prima facie case that the 2012 assessment is incorrect. Where the Petitioners have not supported their claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.,* 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003). This case, however, presents a unique scenario because the Respondent presented a proposed settlement agreement the Petitioners previously rejected, but the Respondent stated "we will maintain the stipulated offer that has been made to the Petitioner at this time." To be clear, stipulation offers or agreements do not constitute probative evidence of value. In this circumstance, the Board will view the Respondent's offering of the proposal into evidence, and the statement that the Respondent "will maintain the stipulated offer," as a concession the total 2012 assessment should be lowered to $567,900. The Board will accept the Respondent's concession and orders the 2012 total assessment be lowered to $567,900.

Conclusion

20. The Board finds for the Respondent.

Final Determination

In accordance with these findings and conclusions, the 2012 assessment must be reduced to $567,900.

ISSUED: June 14, 2017

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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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 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days of the date of this notice. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. The Indiana Tax Court's rules are available at<http://www.in.gov/judiciary/rules/tax/index.html>.