

REPRESENTATIVE FOR PETITIONERS:

William and Sharon Bassett, *pro se*

REPRESENTATIVE FOR RESPONDENT:

Edward Bisch, Jr., Marshall County Representative

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

William & Sharon Bassett,	)	Petition Nos.: 50-013-07-1-5-00030
	)	50-013-07-1-5-00031
	)	50-013-07-1-5-00032
	)	50-013-07-1-5-00033
Petitioners,	)	50-013-07-1-5-00034
)	
	)	Parcel Nos.: 50-21-27-000-144.000-013
	)	50-21-27-000-145.000-013
v.	)	50-21-27-000-146.000-013
	)	50-21-27-000-147.000-013
	)	50-21-27-000-168.000-013
)	
Marshall County Assessor,	)	County: Marshall
)	
	)	Township: Union
)	
Respondent.	)	Assessment Year: 2007

Appeal from the Final Determination of the
Marshall County Property Tax Assessment Board of Appeals

January 22, 2010

FINAL DETERMINATION

The Indiana Board of Tax Review (“Board”), having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Introduction

1. In this assessment appeal, William and Sharon Bassett argued that their vacant lot was worth less than the amount for which it was assessed primarily because of zoning restrictions that prevent them from building on it. But the Bassetts offered no probative evidence to quantify the property’s market value-in-use. The Board therefore finds for the Assessor.

Procedural History

2. On April 20, 2008, the Bassetts filed notice with the Marshall County Assessor contesting the March 1, 2007, assessments for five parcels that comprise a single lakefront lot.¹ On February 24, 2009, the Marshall County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determinations denying the relief that the Bassetts had requested. As a result, on April 9, 2009, the Bassetts filed Form 131 petitions with the Board. The Board has jurisdiction over the Bassett’s appeals under Ind. Code §§ 6-1.1-15 and 6-1.5-4-1.

Hearing Facts and Other Matters of Record

3. On October 29, 2009, the Board’s Administrative Law Judge, Patti Kindler (“ALJ”), held a consolidated administrative hearing on the Bassetts’ appeals. Neither the Board nor the ALJ inspected the subject property.

¹ Unless otherwise indicated, the Board refers to all five parcels together as “the subject property.”

4. The following people were sworn in as witnesses:

For the Bassetts:

William and Sharon Bassett, *pro se*

For the Assessor:

Edward Bisch, Jr., Marshall County Representative

Debra A. Dunning, Marshall County Assessor

5. The Bassetts submitted the following exhibits:

- Petitioners' Exhibit 1: Surveys and diagrams of subject parcels (4 pages),
- Petitioners' Exhibit 2: Property information for Lot 19 and part of Lot 20 in Venetian Village, taken from the "beacon" website,
- Petitioners' Exhibit 3: Summary of Respondent Exhibits and Testimony,
- Petitioners' Exhibit 4: May 7, 2008, letter from Charles Norman to Marlene Mahler.

6. The Assessor submitted the following exhibits²:

- Respondent's Exhibit 1: Exhibit coversheet,
- Respondent's Exhibit 2: Summary of Respondent's Exhibits and Testimony,
- Respondent's Exhibit 3: Notice of Appearance of Consultant,
- Respondent's Exhibit 4: Respondent Signature and Attestation Sheet,
- Respondent's Exhibit 5: Property record cards for the five appealed parcels,
- Respondent's Exhibit 6: April 20, 2008, letter from the Bassetts to Marlene Mahler,
- Respondent's Exhibit 7: Notice of PTABOA hearing,
- Respondent's Exhibit 8: Evidence offered by the Bassetts at the PTABOA hearing: November 10, 2008, letter from William Bassett to the PTABOA with attached letter from the Marshall County Health Department and document titled "Steps to Obtain a Septic Permit"; an e-mail from Russ Mason to Mr. Bassett; surveys and diagrams of subject parcels (4 pages),

² The Assessor's representative, Mr. Bisch, labeled the Assessor's exhibits in a confusing manner. Several of those exhibits included multiple, discreet documents that were attached to each other with paper clips and labeled with post-it notes. To make matters worse, Mr. Bisch offered a coversheet that, in some instances, did not reasonably identify all of the documents included under the same exhibit number. To alleviate some of the confusion, the Board has affixed exhibit stickers to the first page of each exhibit and has tried to more comprehensively describe the documents contained under each exhibit number. The Board cautions Mr. Bisch to organize and label his exhibits more clearly in the future.

- Respondent's Exhibit 9: October 23, 2008, letter from the Union Township Assessor to the Marshall County PTABOA,
- Respondent's Exhibit 10: Township exhibits from the PTABOA hearing: undated letter from the Marshall County Health Department with an attached document titled "Steps to Obtain a Septic Permit"; guidelines for using an old septic system; October 17, 2008, letter from the Marshall County Health Department; Union Township land order; Section 3.2 from Culver zoning ordinance; data from beacon website for Thomas & Debra Reinke parcel (4 pages); property record card for Reinke parcel; GIS map from beacon website and property record cards for the subject property; four property record cards for the Gary & Kathleen Downey parcels; and two property record cards for the Charles Norman parcels,³
- Respondent's Exhibit 11: Form 115 determinations for the five subject parcels,
- Respondent's Exhibit 12: Form 115 determinations, property record cards, PTABOA minutes, and an e-mail from the county assessor regarding two parcels at 615 South Side Drive; two sales disclosures and the sales disclosure review sheet for the Norman property; handwritten notes (1 page); May 7, 2008, letter from Charles Norman to Marlene Mahler; handwritten notes (2 pages),
- Respondent's Exhibit 13: Marshall County Taxing Unit Report with Marshall County Support Data (5 pages),
- Respondent's Exhibit 13A: Aerial plat of lakefront properties; Union Township sales ratio data for 2004 and 2005 sales (12 pages),⁴
- Respondent's Exhibit 13B: Marshall County Taxing Unit Report for Neighborhood 800206 (5 pages),
- Respondent's Exhibit 13C: Sales disclosure for 550 South Shore Drive and 19 Venetian Village with property record cards (7 pages).

7. The Board recognized the following additional items as part of the record of proceedings:

- Board Exhibit A: The Form 131 petitions,
 Board Exhibit B: Notices of hearing,
 Board Exhibit C: Hearing sign-in sheet.

³ Mr. Bisch misidentified this exhibit as Respondent's Exhibit 9 several times during the hearing.

⁴ The Assessor's exhibit coversheet does not separate Respondent's Exhibit 13. Mr. Bisch, however, identified the actual exhibits as Respondent Exhibit 13, 13A, 13B, and 13C.

8. The subject property consists of five adjacent vacant parcels. Together, they comprise an unimproved lakefront lot on Lake Maxinkuckee in Culver, Indiana.
9. In total, the PTABOA valued the subject property at \$1,188,800. It broke down that assessment as follows:

Parcel 50-21-27-000-144.000-013

Land: \$131,700 Improvements: \$0 Total: \$131,700

Parcel 50-21-27-000-145.000-013

Land: \$526,800 Improvements: \$0 Total: \$526,800

Parcel 50-21-27-000-146.000-013

Land: \$131,700 Improvements: \$0 Total: \$131,700

Parcel 50-21-27-000-147.000-013

Land: \$65,900 Improvements: \$0 Total: \$65,900

Parcel 50-21-27-000-168.000-013

Land: \$332,700 Improvements: \$0 Total: \$332,700

10. The Bassetts requested that a 45% negative influence factor be applied to the subject property's assessment.

Administrative Review and the Parties' Burdens

11. A taxpayer seeking review of an assessing official's determination must establish a prima facie case proving both that the current assessment is incorrect and what the correct assessment should 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).

12. In making its case, the taxpayer must explain how each piece of evidence relates to its 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”).
13. If the taxpayer establishes a prima facie case, the burden shifts to the assessor to offer evidence to rebut or impeach the taxpayer's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.

Analysis

Summary of Parties' Contentions

A. The Bassetts' Contentions

14. Because of its size, shape, and soil content, the subject property has unique problems that its assessment does not take into account. To make the subject property's assessment accurate and consistent with the assessments for similar properties, the Board should apply a 45% negative influence factor to the subject property's assessment. *W. Bassett argument*.
15. Under Culver's current zoning ordinance, the subject property is too small for a private septic system. *W. Bassett testimony; Pet'rs Ex. 3 at 3*. Although the town is proposing a public sanitary sewer system in the near future, the subject property did not have access to a sanitary sewer in 2007. *Id.* In 1980, the Bassetts had obtained a permit to build a sand-mound septic system. *W. Bassett testimony; Pet'rs Ex. 1*. In 2000, however, Culver changed its zoning laws to require a building site to have 21,000 square feet for a sand-mound system. *W. Bassett testimony*. The subject property is only 15,440 square feet.

Id. The Bassetts' old building permit is therefore invalid and they cannot build a home on the property without obtaining a special variance. *Id.* Even if the Bassetts could build on the site, the property's trapezoidal shape combined with a sand-mound system would reduce the property's buildable area by 60%. *Id.*

16. Given those restrictions, the Assessor should have applied a negative influence factor to the subject property. The Real Property Assessment Guidelines for 2002 – Version A list several influence factors that the Assessor could have used, including:
- under improvement (code # 2) to reflect the fact that the property is vacant;
 - shape (code # 4) to reflect that the property's trapezoidal shape prevents it from being used to its full potential;
 - mis-improvement (code # 5), once again to reflect that the property is vacant; and
 - restrictions (code # 6) because of the zoning ordinance's building restrictions.

W. Bassett testimony; Bd. Ex. A at 2.

17. The Assessor applied a 45% negative influence factor to the adjoining "George property." *W. Bassett testimony; Pet'rs Ex. 3 at 4.* Because the George property is similar to the subject property in size and shape, the subject property should receive the same discount. *W. Bassett testimony.* Another neighborhood property owned by Charles Norman received a 40% negative influence factor. *W. Bassett testimony; Pet'rs Ex. 2 at 3.*
18. Also, the Assessor made several errors in the assessment process. *W. Bassett testimony and argument.* For example, the Assessor originally overestimated the subject property's frontage by 10 feet. *W. Bassett testimony; Pet'rs Ex. 3 at 4.* Similarly, the Assessor relied on incorrect sales information for the Norman property. In 2008, the Normans bought two vacant lots adjoining their home. The Assessor, however, should not have considered that sale as valid because Mr. Norman bought the lots under duress. *W.*

Bassett testimony; Pet'rs Ex. 4. Similarly, the disclosure statement from when the Normans bought their home erroneously listed the property as having no improvements. *W. Bassett testimony; Pet'rs Ex. 2; Resp't Ex. 12.*

19. The subject property is unique because it is an unimproved, unbuildable lakefront lot located among improved lakefront lots. *W. Bassett testimony and argument.* The Bassetts checked with three appraisers about getting an appraisal for their appeal, but the appraisers all indicated that they had not been successful in tax appeals for properties located on Lake Maxinkuckee. *W. Bassett testimony.*

B. The Assessor's Contentions

20. The subject property is fairly and accurately assessed. The Assessor acknowledged that the property may not be buildable. But the Bassetts offered nothing to quantify the degree to which that fact affected the property's market value-in-use. And the Assessor found no market-based evidence to support a negative influence factor, either. *Bisch testimony.*
21. Although the disclosure statement for the Norman property's sale may not have reflected existing improvements, the sale still supports the subject property's assessment. If the improvement value from the Norman property's record card (\$469,400) is subtracted from the \$1,576,000 sale price, the portion of that sale price attributable to the land exceeds \$1,000,000.⁵ *Bisch testimony.* Furthermore, while the Beacon website reflects a negative 40% influence factor for the Norman property, the Norman property's record card does not show that influence factor. *Bisch testimony; Resp't Ex. 10 at 23-25.* The Assessor removed the influence factor after Mr. Norman bought the property. *Id.* Similarly, the 45% negative influence factor applied to the neighboring George property was for 2006. *Bisch testimony; Resp't Ex. 12.* When the Bassetts brought that influence

⁵ In his illustration, Mr. Bisch used the 2009 improvement value from the Norman property's record card rather than the 2007 improvement value. *See Resp't Ex. 13 at 21.*

factor to the Assessor's attention, she determined that it was an error and removed it for 2007. *Id.*

22. According to Marshall County's 2007 land order, the subject property should have received a negative 1% influence factor for vacancy. *Bisch testimony; Resp't Ex. 5.* The property's total assessment therefore should be lowered to \$1,046,500. *Id.*

Discussion

23. Indiana assesses real property based on its true tax value, which the 2002 Real Property Assessment Manual defines 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 at 2 (incorporated by reference at 50 IAC 2.3-1-2). Appraisers traditionally have used three methods to determine a property's market value: the cost, sales-comparison, and income approaches. *Id.* at 3, 13-15. Indiana assessing officials generally use a mass-appraisal version of the cost approach set forth in the Real Property Assessment Guidelines for 2002 – Version A.
24. A property's market value-in-use, as determined using the Guidelines, 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 rebut that presumption with evidence that is consistent with the Manual's definition of true tax value. MANUAL at 5. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice often will suffice. *Kooshtard Property VI*, 836 N.E.2d at 506 n. 6. A taxpayer may also offer actual construction costs, sales information for the subject or comparable properties, and other information compiled according to generally accepted appraisal principles. MANUAL at 5.

25. The Bassetts offered nothing to show the subject property's overall market value-in-use. Instead, they primarily claimed that the subject property should receive a negative influence factor because of building restrictions stemming from the property's size, shape, and soil content.
26. The term "influence factor" refers to a multiplier "that is applied to the value of land to account for characteristics of a particular parcel of land that are peculiar to that parcel." 2002 REAL PROPERTY ASSESSMENT GUIDELINES – VERSION A, glossary at 10 (incorporated by reference at 50 IAC 2.3-1-2). Even under Indiana's old true-tax-value system—which generally did not incorporate market value as an external benchmark against which to measure assessments—taxpayers were required to quantify requested influence factors. *Talesnick v. State Bd. of Tax Comm'rs*, 756 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001). And they could do so by offering market evidence. *Id.* Under the current market-value-in-use system, that type of evidence is now paramount.
27. The problems that the Bassetts identified might well affect the subject property's value. But the Bassetts offered no probative market-value-in-use evidence to quantify a negative influence factor. Instead, they pointed to influence factors applied to the George property in 2006 and to the Norman property currently. Yet the fact that those two properties received negative influence factors does nothing to quantify how the subject property's size, shape and soil content, or the building restrictions stemming from those things, affected the property's market value-in-use. In fact, the property that the Bassetts claimed was most similar to the subject property—the George property—did not even receive a negative influence factor for the 2007 assessment year at issue in this appeal.
28. The Bassetts also pointed to several mistakes that they claimed cast doubt on the accuracy of the subject property's assessment. For example, the Assessor originally overestimated the subject property's frontage by ten feet. Similarly, in defending the subject property's assessment, the Assessor relied on a disclosure statement for the sale of the Norman property that erroneously described that property as having no improvements. Again, those facts do nothing to show the subject property's market

value-in-use. At best, they attack the methodology used to compute the property's assessment. But a taxpayer does not rebut the presumption that a property is accurately assessed simply by contesting an assessor's methodology. *See Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 678 (Ind. Tax Ct. 2006).

29. The Bassetts therefore failed to make a prima facie case. Nonetheless, the Assessor, through her representative, Mr. Bisch, conceded that the subject property's assessment should be lowered from \$1,188,800 to \$1,046,500. The Board adopts that concession.

Summary of Final Determination

30. Because the Bassetts offered no probative market value-in-use evidence to rebut the presumption that the subject property's March 1, 2007 assessment was accurate, they failed to make a prima facie case. In light of the Assessor's concession, however, the Board orders that the total assessment for all five parcels be reduced to \$1,046,500.

The Indiana Board of Tax Review issues this Final Determination of the above captioned matter the date written above.

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <<http://www.in.gov/judiciary/rules/tax/index.html>>. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. P.L. 219-2007 (SEA 287) is available on the Internet at <<http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>>