

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

Petition #: 64-011-06-1-5-00012
Petitioner: Alan W. Brannan
Respondent: Porter County Assessor
Parcel #: 04-04-455-010.000
Assessment Year: 2006

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 initiated an assessment appeal with the Porter County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated May 7, 2007.
2. The Petitioner received notice of the decision of the PTABOA on July 24, 2007.
3. The Petitioner filed an appeal to the Board by filing a Form 131 on August 8, 2007. The Petitioner elected to have this case heard pursuant to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated May 13, 2008.
5. The Board held an administrative hearing on June 17, 2008, before the duly appointed Administrative Law Judge (the ALJ) Ellen Yuhan.
6. Persons present and sworn in at hearing:

For Petitioner: Alan W. Brannan, Taxpayer

For Respondent: John R. Scott, Porter County Assessor

Facts

7. The subject property is an unimproved, residential lot located at 112 West Marne, Beverly Shores (Lot 10).
8. The ALJ did not conduct an on-site visit of the property.

9. The PTABOA determined the assessed value of the subject property to be \$22,200.
10. The Petitioner requested an assessment of \$5,000 on the Form 131 petition.

Issues

11. Summary of the Petitioner's contentions in support of an error in the assessment:
 - a. The Petitioner contends that the subject property is over-valued because under the current building code the lot is too small to build upon. *Brannan testimony*. According to the Petitioner, the building code requires either 100 feet of frontage or 20,000 square feet. *Id.* Lot 10 has only 60 front feet and 11,400 square feet. *Id.*
 - b. The Petitioner admits that he owns the adjacent lot, Lot 11, but contends the Pine Township Assessor erred when she considered Lot 10 and Lot 11 as a single building parcel. *Brannan testimony; Petitioner Exhibit 3*. According to the Petitioner, he has gone to great lengths to keep the parcels separate. *Brannan testimony; Petitioner Exhibit 5*. The Petitioner further contends that, even if he were to sell the house on Lot 11, he would not sell the house with both lots. *Brannan testimony*.
 - c. The Petitioner testified that he purchased the lot in 1992 or 1993 for \$1,000. *Brannan testimony*. According to the Petitioner, he purchased the lot as a buffer for Lot 11, which at the time his mother owned. *Id.* Mr. Brannan testified that purchasing the lot ensured that no one could build on the west side of his mother's property. *Id.*
 - d. The Petitioner further contends the assessment of Lot 10 is excessive when compared to a similar lot, Lot 12, which is assessed at \$8,300. *Brannan testimony; Petitioner Exhibit 7*.
 - e. In response to the Assessor's argument, the Petitioner contends that the Pine Township Assessor and the Clerk-Treasurer of Beverly Shores both recognize the property to be wetland. *Brannan testimony; Petitioner Exhibits 3 and 6*. Further, the Petitioner contends the lots listed in the Respondent's sales disclosures are not comparable to the subject property because they are all buildable lots. *Brannan testimony; Respondent Exhibits 6-9*.
12. Summary of the Respondent's contentions in support of the assessment:

- a. The Respondent contends the assessed value is correct. *Scott testimony.* According to the Respondent, sales disclosures indicate that lots in Beverly Shores sell for much more than the Petitioner's assessed value. *Id.*; *Respondent Exhibits 6-9.*
- b. The Respondent further contends the value of the lot would be lower if it was designated wetland, but, the Respondent argues, the Petitioner has not presented evidence proving that the lot is wetlands. *Scott testimony.*

Record

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

- a. The Petition,
- b. The compact disk recording of the hearing labeled Brannan Hearing,
- c. Exhibits:

Petitioner Exhibit 1 – Notice of Assessment, lot 10, block 126, dated April 25, 2007,

Petitioner Exhibit 2 – Appeal to the Pine Township Assessor dated May 7, 2007,

Petitioner Exhibit 3 – May 16, 2007, letter from the Pine Township Assessor responding to the Petitioner's Appeal,

Petitioner Exhibit 4 – Copy of "Fact Sheet" relating to annual adjustment of assessed values,

Petitioner Exhibit 5 – Copy of Partial Release and Mortgage Modification Agreement dated January 4, 2005,

Petitioner Exhibit 6 – August 1, 2007, letter from the Beverly Shores Clerk-Treasurer stating that Lot 10 is designated as a wetland,

Petitioner Exhibit 7 – Property Tax Assessment search results for Lot 12,

Respondent Exhibit 1 – May 16, 2007, letter from the Pine Township Assessor responding to the Petitioner's Appeal,

Respondent Exhibit 2 – Notice of Assessment, Form 11, dated April 25, 2007,

Respondent Exhibit 3 – Property record card for Lot 10,

Respondent Exhibit 4 – Property record card for Lot 11,

Respondent Exhibit 5 – Form 115 for the 2002 assessment,

Respondent Exhibit 6 – Sales disclosure for Lot 2 Coronada Avenue,

Respondent Exhibit 7 – Sales disclosure for Drexwood,

Respondent Exhibit 8 – Sales disclosure for vacant lots on Wells Road,

Respondent Exhibit 9 – Sales disclosure for Lot 13 in Block 197 in
Beverly Shores,

Board Exhibit A - Form 131 petition,
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 Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 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.
15. The Petitioner failed to provide sufficient evidence to establish an error in the assessment. The Board reached this decision for the following reasons:
- a. Real property is assessed on the basis of its “true tax value,” which means “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or similar user, from the property.” Ind. Code § 6-1.1-31-6(c); 2002 REAL PROPERTY ASSESSMENT MANUAL (hereafter MANUAL) at 2 (incorporated by reference at 50 IAC 2.3-1-2). There are three generally accepted techniques to calculate market value-in-use: the cost approach, the sales comparison approach, and the income approach. The primary method for assessing officials to determine market value-in-use is the cost approach. *Id.* at 3. To that end, Indiana promulgated a series of guidelines that explain the application of the cost approach. REAL PROPERTY

ASSESSMENT GUIDELINES FOR 2002 – VERSION A (hereafter GUIDELINES).

The value established by use of the GUIDELINES, while presumed to be accurate, is merely a starting point. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut that presumption. 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. MANUAL at 5.

- b. Here, the Petitioner contends the assessment of Lot 10 is excessive because the lot is unbuildable. In support of this contention, the Petitioner testified the current building code requires 20,000 square feet or 100 feet of frontage for a dwelling. The subject lot has only 60 feet of frontage and is 11,400 square feet.

- d. Land values in a given neighborhood are generally determined through the application of a Land Order that was developed by collecting and analyzing comparable sales data for the neighborhood and surrounding areas. *See Talesnick v. State Bd. of Tax Comm'rs*, 693 N.E.2d 657, 659 n. 5 (Ind. Tax Ct. 1998). Properties often possess peculiar attributes, however, that do not allow them to be lumped with each of the surrounding properties for purposes of valuation. 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." GUIDELINES, glossary at 10. The Petitioner has the burden to produce "probative evidence that would support an application of a negative influence factor and a quantification of that influence factor." *See Talesnick v. State Bd. of Tax Comm'rs.*, 756 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001).

- e. Here, the Petitioner merely argues that the building code requires 20,000 square feet or 100 foot of frontage. The Petitioner, however, failed to cite to any ordinance or statute that limits construction on the site. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products*, 704 N.E.2d at 1118. More importantly, the Board does not view this property in a vacuum. The Petitioner may argue that he treats Lot 10 and Lot 11 as separate lots. The evidence, however, shows that he owns both lots. Lot 10 may or may not be "unbuildable," but the Petitioner's property as a whole is a valuable, buildable, piece of property. The subject property currently has a negative 47.143% influence factor applied for excess frontage and wetland. The Petitioner failed to present any evidence that a higher factor should apply to the property.

- g. The Petitioner further argues that other lots are assessed lower than the subject property. In support of this contention, the Petitioner presented assessment information showing that a neighboring lot, Lot 12, is assessed for \$8,300. To introduce evidence of comparable properties, however, a taxpayer must

explain *how* the properties are comparable. *See Blackbird Farms Apts. v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002) (holding that the taxpayer did not present a prima facie case where it provided assessment information for allegedly comparable properties but failed to explain *how* the properties were comparable). Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the two properties. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). 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. The proponent likewise must explain how any differences between the properties affect their relative market values-in-use. *Id.* Here, the Petitioner submitted assessment information for the neighboring property but made no attempt to show that Lot 12 is comparable to the subject property in features, size or topography.

- h. Finally, it is not enough for a taxpayer to show that its property is assessed higher than other comparable properties. *Westfield Golf Practice Center, LLC v. Washington Township Assessor et al.*, 859 N.E.2d 396, 399 (Ind. Tax Ct. 2007). Instead, the taxpayer must present probative evidence to show that the assessed value, as determined by the assessor, does not accurately reflect the property’s market value-in-use. *Id.* Although the Petitioner testified that he purchased Lot 10 in 1992 or 1993 for \$1,000, the 2006 assessment must reflect the value of the property as of January 1, 2005. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. A Petitioner who presents evidence of value relating to a different date must provide some explanation about how it demonstrates, or is relevant to, the subject property’s value as of January 1, 2005. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The Petitioner presented no evidence of the property’s market value-in-use as of January 1, 2005. Therefore, the Petitioner failed to raise a prima facie case its 2006 assessment was in error.
- h. Where the Petitioner fails to provide probative evidence for an assessment change, 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).

Conclusion

- 16. The Petitioner failed to provide sufficient evidence to support a change in the assessment. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review determines that the assessment should not be changed.

ISSUED: _____

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>.