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

Petition: **19-002-10-1-5-00026**
Petitioners: **Daniel G. & Dana L. Buechlein**
Respondent: **Dubois County Assessor**
Parcel: **19-06-34-301-205.001-002**
Assessment Year: **2010**

The Indiana Board of Tax Review (Board) issues this determination in the above matter, finding and concluding as follows:

Procedural History

1. The Petitioners initiated an assessment appeal with the Dubois County Property Tax Assessment Board of Appeals (PTABOA) by written document dated June 1, 2010.

2. The PTABOA mailed notice of its decision on August 12, 2010.

3. The Petitioners filed a Form 131 petition with the Board on September 27, 2010. They elected to have the case heard according to the Board's small claims procedures.

4. Administrative Law Judge Rick Barter held the Board's administrative hearing on January 10, 2012. He did not inspect the property.

5. Petitioner Daniel G. Buechlein, Dubois County Assessor Gail Gramelspacher, her deputy Angie Giesler, and Natalie Jenkins were sworn as witnesses. The Respondent was represented by Attorney Marilyn Meighen.

Facts

6. The subject property is located in Jasper. This parcel has 2.28 acres and some sort of improvements. It is not clear what the improvements are, but there is no dwelling. The Petitioners' home, however, is on a contiguous parcel. Furthermore, there is no dispute about the assessed value of the improvements. The Petitioners dispute only the land value.

7. The PTABOA determined that the assessment is $39,900 for land and $7,100 for improvements (total $47,000).

8. The Petitioners claimed the assessment should be $10,000 for land and $7,100 for improvements (total $17,100).

Contentions

9. Summary of the Petitioners' case:

   a. The Petitioners are not appealing the improvements, only the land. *Buechlein testimony.*

   b. This parcel cannot be sold because no building permit could be obtained for it. Local laws require lots to have a minimum of 100 feet of road frontage on a public road. The subject parcel has just 20 feet of road frontage on Andrew Lane and 60 feet of road frontage on Fidel Lane. Building on it would not be permitted. Therefore, it has no resale value. The Petitioners use it as a garden, as did Mr. Buechlein's parents and grandparents. The subject parcel is adjacent to the Petitioners' home and Mr. Buechlein's parents have their home on another adjacent parcel. *Buechlein testimony; Petitioner Exhibits 1, 8.*

   c. The Petitioners attempted to find sales of comparable land in the city of Jasper, but could not find any.[1] As an alternative, "I did find…properties that were close to mine that were taxed at a different rate." *Buechlein testimony.*

   d. The parcel at 1344 West Andrews Lane is owned by Kent L. Seitz is 2.1 acres and is located near the subject property. According to the assessor's records, its total assessed land value was $48,800 with $35,000 for residential land and $13,800 for non-residential land. *Buechlein testimony; Petitioner Exhibit 2.*

   e. Two parcels at 2350 Skyview Drive, (#19-06-33-200-006.022-002 and #19-06-33-200-006.000-002, both owned by Timothy and Sharon Weidenbenner) are 7.03 and 2.67 acres respectively. The non-residential land on the larger parcel is assessed at $45,200 for 6.03 acres, and the smaller is assessed as non-residential land at $20,000 (down from $40,100). This land is about 2 miles from the subject property. *Buechlein testimony; Petitioner Exhibit 3.*

   f. A land-only parcel (farm land) on West Division Road is 5.25-acres owned by Bert and Ramona Hoffman. Its location is "really close" to the subject property. The non-residential land value is $7,000 and the prior value was $6,100. *Buechlein testimony; Petitioner Exhibit 4.*

   g. Exhibits 4 and 5 are the best examples. *Buechlein testimony.*

[1] Part of the Petitioners' explanation for the difficulty in finding comparable sales tied into identifying the subject property as "landlocked." Purportedly, no other sales of landlocked property could be located. But that term means a property is "surrounded by land, with no way to get in or out except by crossing the land of another." BLACK'S LAW DICTIONARY 894 (8th ed. 2004). The evidence clearly establishes that the subject property is not landlocked. The Petitioners speculated that they could not sell the parcel as a separate building lot because it would not have access. That opinion, however, fails to consider that the Petitioners appear to be in a position to provide such access. More importantly, it does not deal with the value of the subject property as it relates to the Petitioners' home on contiguous property .

h. Rick Stenftenagel's 1.35 acre parcel on West Division Road is "kind of like" the subject property because his house sits on an adjoining parcel and the 1.35 acres is behind the house without any road frontage. His non-residential land is assessed at $6,800. *Buechlein testimony; Petitioner Exhibit 5.*

i. Richard and Sara Hopf have a 2.84 acre parcel at 4179 West Division Road that is only 1.8 miles from the subject property. It is similar to the subject property in size. Again, the Hopf's house is on an adjoining front parcel and the 2.84 acres is in back without direct road access. The assessment for those 2.84 acres is non-residential land at $14,200. *Buechlein testimony; Petitioner Exhibit 6.*

j. These exhibits show "land that is about like mine that has less assessed value." *Buechlein testimony.*

k. The Petitioners bought the subject property from Mr. Buechlein's parents. When Petitioners purchased the subject property it was composed of multiple parcels of various sizes and the assessed land value of those parcels totaled $2,200. The Petitioners had them combined into one parcel (now identified as the subject property) in 2009. Its assessed land value was $57,200 for 2009 and $39,900 for 2010. That assessed land value now is approximately 18 times more than it was in 2002. Exhibit 7 shows the breakdown as well as the tax bills from May 6, 2002. At that time the taxes on the subject property for 6 months were only $31.26. In 2012 the tax bill was $527.50 for six months. *Buechlein testimony, Petitioner Exhibit 7, 8.*

10. Summary of the Respondent's case:

a. The Petitioners failed to prove the assessment is incorrect and they failed to prove what a more accurate valuation would be. *Meighen argument.*

b. The assessments the Petitioners offered as comparables are all 2011 assessments and are not appropriate to consider in this case for the 2010 assessment of the subject property.[2] *Jenkins testimony.*

c. The property associated with Petitioner Exhibit 4 is a farm. It is assessed by using agricultural land rates established by the Department of Local Government Finance. And the agricultural land base rate was only $1,500 per acre. *Jenkins testimony.*

d. The subject property is in Bainbridge Township. Two of the Petitioners' purported comparables, Petitioner Exhibits 5 and 6, are located in Madison Township and as a result would have different land values. *Jenkins testimony.*

[2] The Petitioners' Exhibits 2-6 indicate "Assess Year 2010" and "Pay Year 2011." This conflict was not resolved by either party. Nevertheless, the point is not significant to the Board's final determination.

e. The tax statement information for 2002 as shown on Petitioner Exhibit 7 is of no benefit in the analysis of this case because those assessments were based on a different valuation system. *Jenkins testimony.*

f. For 2009, before the Petitioners had the parcels combined the land value was $57,200. The PTABOA determined the land assessment for 2010 is $39,900 based on excess residential pricing as established by the annual ratio study, which was approved by the Department of Local Government Finance. For 2010 the county granted a negative 30 percent influence factor on the land based on size, shape and access issues. *Meighen argument; Jenkins testimony*; *Respondent Exhibits A, B.*

Record

11. The record contains the following:

a. The Petition,

b. Digital recording of the hearing,

c. Petitioner Exhibit 1 – General Principals of Design and Minimum Requirements for the Layout of Subdivisions, Subdivision Control Ordinance pages 19, 24, 25,
Petitioner Exhibit 2 – Data on parcel #19-06-34-301-109.000-002 (Seitz property),
Petitioner Exhibit 3 – Data on parcels #19-06-33-200-006.022-002 and #19-06-33-200-006.000-002 (Weidenbenner property),
Petitioner Exhibit 4 – Data on parcel #19-06-34-300-021.002-002 (Hoffman property),
Petitioner Exhibit 5 – Data on parcel #19-06-32-400-031.004-016 (Stenftenagel property),
Petitioner Exhibit 6 – Data on parcel #19-06-32-400-025.000-016 (Hopf property),
Petitioner Exhibit 7 – Comparison of 2002 and 2012 "tax statement" totals, assessment data on the subject parcel, assessment data on parcel #19-06-34-301-205.000-002, and May 2002 tax bills,
Petitioner Exhibit 8 – Aerial photographs of the subject parcel and contiguous area,

d. Respondent Exhibit A – Comparison of 2009 and 2010 assessed values for the subject property with supporting property record cards,
Respondent Exhibit B – Aerial photographs of the subject parcel and contiguous area with Property Record Cards for the subject property, parcel #19-06-34-301-205.000-002, and parcel #19-06-34-300-019.001-002 (the Petitioners' home),

e. Board Exhibit A – Form 131 Petition and attachments,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing sign-in sheet.

f. These Findings and Conclusions.

Analysis

12. 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. *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).

13. In making its case, a party must explain how each piece of evidence is relevant to the requested assessment. *Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) (explaining one must "walk the Indiana Board . . . through every element of the analysis").

14. A party must explain how its evidence relates to the subject property's market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for a 2010 assessment was March 1, 2010. Ind. Code § 6-1.1-4-4.5(f).

15. The Petitioners did not make a case for any assessment change.

    a. Real property is assessed based on 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 a similar user, from the property." Ind. Code § 6-1.1-31-6(c); 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). 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. *Id.* at 3. Indiana promulgated Guidelines that explain the application of the cost approach. 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. The Petitioners tried to rely on a comparison approach to establish the value of the subject property by presenting evidence about the assessed value of 5 purported comparables: the Seitz property (Exhibit 2), the Weidenbenner property (Exhibit 3), the Hoffman property (Exhibit 4), the Stenftenagel property (Exhibit 5), and the Hopf property (Exhibit 6). Conclusory statements that properties are "similar" or "comparable" to one another, however, are not sufficient for any meaningful analysis. *Long*, 821 N.E.2d at 470. To make a case, the comparison must explain the characteristics of the subject property and how those characteristics compare to those of purportedly comparable properties. It also must explain how any differences

between the properties affect their relative values. *Id.* at 470-71. The Petitioners offered some data about the assessments of these other properties with a little testimony about similarities and differences such as size and location. But the totality of the case falls short of what would be required for any meaningful comparative analysis or conclusion about what the market value-in-use of the subject property is.

c. Furthermore, simply comparing the assessment of the subject property with a few other assessments does not prove that the assessed value of the subject property must be changed. *Westfield Golf Practice Center, LLC v. Washington Twp. Assessor*, 859 N.E.2d 396 (Ind. Tax Ct. 2007). The Tax Court held that it is not enough for a taxpayer to show that its property is assessed higher than other comparable properties.[3] Instead, the taxpayer must present probative evidence to show that the assessed value does not accurately reflect market value-in-use. Here, the Petitioner offered no probative evidence that the current assessment did not accurately reflect the market value-in use of their property. The comparison with other assessments does not support any conclusion about what a more accurate market value-in-use for the subject property might be.

d. It is a "cardinal principle that each tax year stands on its own." Where a taxpayer challenges an assessment, the resolution of that challenge does not depend on how the property was previously assessed." *Barth, Inc. v. State Bd. of Tax Comm'rs*, 699 N.E.2d 800, 806 n.14 (Ind. Tax Ct. 1998). Therefore, how the assessment of the subject property changed from 2002 is not relevant to determining what an accurate market value-in-use is for the subject property as of March 1, 2010. Similarly, a tax bill is a function of several variables including assessed value, tax rates, exemptions, and deductions. The amount of the Petitioners' taxes and how much this amount may have increased from prior years does not help to prove what an accurate assessed value is.

16. Where a taxpayer fails to provide probative evidence that an assessment should be changed, the Respondent's duty to support the assessment with substantial evidence is not triggered. *See Lacy Diversified Indus. v. Dep't of Local Gov't Fin.,* 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

[3] The Tax Court also recognized that "when a taxpayer challenges the uniformity and equality of his or her assessment *one* approach that he or she may adopt involves the presentation of assessment ratio studies, which compare the assessed values of properties within an assessing jurisdiction with objectively verifiable data, such as sales prices or market value-in-use appraisals." *Westfield Golf*, 859 N.E.2d at 399 n.3. Those studies, however, must be prepared according to professionally acceptable standards. *See Kemp v. State Bd. of Tax Comm'rs*, 726 N.E.2d 395m 404 (Ind. Tax Ct. 2000). And they must be based on a statistically reliable sample of properties that actually sold. *See Bishop v. State Bd. of Tax Comm'rs*, 743 N.E.2d 810, 813 (Ind. Tax Ct. 2001) (*citing Southern Bell Tel. and Tel. Co. v. Markham*, 632 So. 2d 272, 276 (Fla. Dist. Co. App. 1994). The Petitioners' attempt to use other assessments to prove their case does not satisfy this standard.

Conclusion

17. The Petitioners failed to make a prima facie case for any change in assessed value. The Board finds in favor of the Respondent.

Final Determination

In accordance with these findings and conclusions, the assessment will not be changed.

ISSUED: _____

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Commissioner, 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, 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.