

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

Petition No.: 57-004-06-1-5-00021
Petitioners: Charles F. and Becky L. Carson
Respondent: Noble County Assessor
Parcel No.: 57-04-23-400-061-000-010
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 Petitioners initiated an assessment appeal with the Noble County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated April 4, 2007.
2. The Petitioners received notice of the decision of the PTABOA on July 27, 2007.
3. The Petitioners filed a Form 131 petition with the Board on August 28, 2007. The Petitioners elected to have this case heard according to the Board's small claim procedures.
4. The Board issued notice of hearing to the parties dated March 12, 2008.
5. The Board held an administrative hearing on April 24, 2008, before the duly appointed Administrative Law Judge (the ALJ) Dalene McMillen.
6. The following persons were present and sworn in at hearing:
 - a. For Petitioners: Charles F. Carson, owner of the property
Becky L. Carson, owner of the property
 - b. For Respondent: Kim Gephart, Noble County Assessor
Mary Beth Lemings, Noble County Deputy Assessor
George Clifford, PTABOA Member

Facts

7. The property under appeal is a 54' x 195' vacant lot located in Rome City, Orange Township, in Noble County, Indiana.
8. The ALJ did not conduct an on-site inspection of the subject property.
9. The PTABOA determined the assessed value of the subject property to be \$87,500 for the land. There are no improvements on the subject property.
10. The Petitioners requested the land be valued at \$50,000.

Issue

11. Summary of Petitioners' contentions in support of alleged error in assessment:
 - a. The Petitioners contend that the assessed value of the subject property is overstated based on the sales of comparable properties. *Carson testimony*. In support of this contention, the Petitioners submitted a multiple listing sheet (MLS) for Limberlost Lot 7, which was listed for \$79,900.¹ *Petitioner Exhibits 4*. The Petitioners also submitted two additional lots that sold for \$141,000 and \$150,000, respectively. *Petitioner Exhibit 7; Carson testimony*. In addition, the Petitioners submitted evidence of a 100 acre tract of land that sold in 2007 for \$1,250,000, or just \$12,500 an acre. *Petitioner Exhibit 9; Carson testimony*. The Petitioners argue that the four comparable properties are superior to the subject property because they are all buildable lots. *Id.* Thus, the Petitioners contend, because the subject property is inferior to the comparable properties, the market value-in-use of the subject property should be no more than \$50,000. *Id.*
 - b. The Petitioners also contend that the subject property is assessed inequitably with area properties. *Carson testimony*. In support of this contention, the Petitioners submitted a property print-out showing 63.92 acres of buildable vacant land being assessed for \$17,800 in 2006. *Petitioner Exhibit 6*.
 - c. Finally, the Petitioners contend that the subject property is over-valued because it is an uneconomic remnant property. *Carson testimony*. According to the Petitioners, the Noble County Health Department prohibits the installation of a septic system on a lot the size of the subject property. *Petitioner Exhibit 3; Carson testimony*. Thus, the Petitioners argue, the property is "unbuildable" and could not be sold for its assessed value. *Carson testimony*. Further, Mr. Carson argues, it is a wooded lot without curbs or a seawall. *Id.* The parcel is strictly used for access to the lake. *Id.*

¹ Mr. Carson testified that, although Limberlost Lot 7 was listed for sale separately at \$79,900, it did not sell independently. *Carson testimony*. According to Mr. Carson, the property sold with two adjoining lots with a house and garage. *Id.*

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

- a. The Respondent contends the property is correctly assessed at \$87,500. *Gephart testimony*. According to the Respondent, two properties in the same area sold for \$147,500 and \$150,000 between August 16, 2005, and November 22, 2005. *Id.* In support of this contention, the Respondent submitted property record cards and aerial maps for properties sold in the subject property's neighborhood. *Respondent Exhibits 10 – 14*. In addition, the Respondent submitted a sales disclosure for a .01 acre, unbuildable lot in the neighborhood that sold on March 6, 2008, for \$5000 or \$11.48 per square foot. *Respondent Exhibit 22; Gephart testimony*. The Respondent argues that the subject property's assessed value is only \$8.37 per square foot. *Gephart testimony*.
- b. The Respondent also contends the property is properly assessed based on its purchase price. *Gephart testimony*. According to Mr. Gephart, the subject property and a primary lot containing the house and garage were purchased together on December 21, 2001, by the Petitioner for \$250,000. *Id.* In support of this contention, the Respondent submitted a sale disclosure, warranty deed and aerial map. *Respondent Exhibits 7, 8 and 12; Gephart testimony*. The Respondent testified that the total assessed value of the Petitioners' two parcels for 2006 is only \$251,000. *Respondent Exhibit 6 and 9; Gephart testimony*. Similarly, the Respondent argues, a neighboring property consisting of three parcels sold on August 10, 2007, for \$449,500. *Respondent Exhibit 23; Gephart testimony*. According to the Respondent, the total assessed value for the three parcels for 2006 is \$329,500. *Id.* Thus, the Respondent argues, the township has under-assessed property in the subject area. *Gephart testimony*.
- c. Finally, the Respondent argues that the 63.92 acres parcel submitted by the Petitioner is assessed on an acreage basis, whereas the subject property is assessed by frontage. *Gephart testimony*. Further, the Respondent contends, lake access from the 63.92 acres is currently restricted by the Department of Natural Resources due to protected foliage growing on the lake. *Id.* Thus, the Respondent argues, the property is not comparable to the subject property. *Id.*

Record

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

- a. The Form 131 petitions and related attachments.
- b. The digital recording of the hearing.

c. Exhibits:

- Petitioner Exhibit 1 – Petition to the Indiana Board of Tax Review for Review of Assessment – Form 131,
- Petitioner Exhibit 2 – Petition to the Property Tax Assessment Board of Appeals for Review of Assessment – Form 130,
- Petitioner Exhibit 3 – Letter from the Noble County Health Department, dated June 13, 2007,
- Petitioner Exhibit 4 – Multiple listing sheet for 1245 Limberlost Trail, Sylvan Lake,
- Petitioner Exhibit 5 – Two exterior photographs of Limberlost lot 2 and 7,
- Petitioner Exhibit 6 – Noble County property print-out for Parcel No. 57-04-23-400-030.000-011,
- Petitioner Exhibit 7 – Aerial map showing three sales in the area, dated April 19, 2008,
- Petitioner Exhibit 8 – Noble County property print-out for Parcel No. 57-04-14-300-025.000-010,
- Petitioner Exhibit 9 – Aerial map showing the location of Parcel No. 57-04-14-300-025.000-010 and the subject property,

- Respondent Exhibit 1 – Noble County Property Tax Assessment Board of Appeals minutes, dated June 22, 2007,
- Respondent Exhibit 2 – Petition to the Indiana Board of Tax Review for Review of Assessment,
- Respondent Exhibit 3 – Notification of Final Assessment Determination – Form 115 reflecting an assessed value of \$87,500,
- Respondent Exhibit 4 – Property record card for the subject property reflecting an assessed value of \$87,900,
- Respondent Exhibit 5 – Notification of Final Assessment Determination – Form 115 reflecting an assessed value of \$87,900,
- Respondent Exhibit 6 – Property record card for the subject property reflecting an assessed value of \$87,500,
- Respondent Exhibit 7 – Warranty Deed for Charles and Becky Carson, dated December 12, 2001,
- Respondent Exhibit 8 – Sales Disclosure Form dated December 12, 2001,
- Respondent Exhibit 9 – Property record card for parcel 57-04-23-400-061.000-010 (23.47 acres),
- Respondent Exhibit 10 – Property record card for neighboring property,
- Respondent Exhibit 11 – Property record card for neighboring property,
- Respondent Exhibit 12 – Aerial map of the subject property and a comparable property that sold for \$150,000,
- Respondent Exhibit 13 – Aerial map of the subject property and a comparable property that sold for \$147,500,

- Respondent Exhibit 14 – Aerial map showing Parcel No. 57-04-23-400-072.000-011,
- Respondent Exhibit 15 – Restriction for Limberlost Farm Addition, dated June 6, 1968,
- Respondent Exhibit 16 – Petition to the Property Tax Assessment Board of Appeals for Review of Assessment – Form 130,
- Respondent Exhibit 17 – Property record cards for the subject property and parcel 57-04-23-400-061.000-010,
- Respondent Exhibit 18 – Aerial map of the subject property,
- Respondent Exhibit 19 – Property record card for Limberlost Lot 2 reflecting an assessed value of \$145,500,
- Respondent Exhibit 20 – PTABOA Hearing sign-in sheet,
- Respondent Exhibit 21 – Notice of Hearing on Petition, dated March 12, 2008,
- Respondent Exhibit 22 – Sales Disclosure Form for Parcel No. 57-04-15-300-142-000-01 dated March 7, 2008, and a plat map and aerial map of the parcel,
- Respondent Exhibit 23 – Aerial map of the area and property record cards for Parcel Nos. 57-04-23-400-052.000-010 and 57-04-23-400-048.000-010, 57-04-23-400-048.000-010 and 57-04-23-400-060.000-010,

- Board Exhibit A – Form 131 petition with attachments,
- 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 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.
15. The Petitioners failed to raise a prima facie case for a reduction in value. The Board reached this decision for the following reasons:
- a. The Petitioners contend the subject property is over-assessed based on the sales of comparable properties. *Carson testimony*. In support of this contention, the Petitioners submitted a listing sheet for Limberlost Lot 7, a landscaped, level, empty lot, similar to the subject property, offered for sale for \$79,900. *Petitioner Exhibit 4 and 5; Carson testimony*. In addition, two other buildable lots located on the same lake as the subject property sold for \$141,000 and \$150,000. *Petitioner Exhibit 7; Carson testimony*. The Petitioners contend that these properties are “superior” to their property and, therefore, the subject property should be valued for no more than \$50,000. *Carson testimony*. The Petitioners also argued a 100 acre tract of land sold for \$12,500 per acre. *Petitioner Exhibit 9; Carson testimony*.
 - b. The 2002 Real Property Assessment Manual defines the “true tax value” of real estate as “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.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2) (the Manual). A taxpayer may use any generally accepted appraisal methods as evidence consistent with the Manual’s definition of true tax value, such as sales information regarding the subject or comparable properties that are relevant to a property’s market value-in-use, to establish the actual true tax value of a property. *See MANUAL* at 5.
 - c. Regardless of the approach used to prove the market value-in-use of a property, a 2006 assessment is required to reflect the value of the property as of January 1, 2005. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. Thus, any evidence of value relating to a different date must also have an explanation of how the evidence demonstrates or is relevant to, the value of the property as of that required valuation date. *Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
 - d. Here, the Petitioners contend their property is over-valued based on the sales of other similar properties. In order to effectively use the sales comparison approach

as evidence in a property assessment appeal, however, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the two properties. *Long v. Wayne Township 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. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*

- e. While the Petitioners testified regarding several differences between the subject property and Limberlost Lot 7, they failed to explain how those differences affected the relevant market value-in-use of the properties.² Further, the Petitioners failed to present any evidence regarding the comparability of their other cited properties. Moreover, the Petitioners failed to explain how the sales prices of those properties related to the statutory valuation date of January 1, 2005. Consequently, the Petitioners’ evidence is not probative of the market value-in-use of the subject property as of January 1, 2005.
- f. The Petitioners also contend that the subject property was not assessed in a uniform and equal manner in comparison to other properties in the area. *Carson testimony*. In support of this contention, the Petitioners submitted a property print-out showing the 2006 assessed value of a 63.92 acre property to be \$17,800. *Petitioner Exhibit 6*.
- g. Indiana Code § 6-1.1-2-2 requires uniform and equal assessments. However, “taxpayers are required to make a detailed factual showing at the administrative level.” *Home Federal Savings Bank v. Madison Twp. Assessor*, 817 N.E.2d 332 (Ind. Tax Ct. 2004). To meet this showing, “the taxpayer must not only present probative evidence in support of its argument, but it must also sufficiently explain that evidence.” *Id.* To introduce evidence of comparable properties, 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). Again, the Petitioners failed to present any evidence

² The Petitioners presented no evidence to support their allegation that because Lot 7 is superior to the subject property, their lot should be valued at “no more than \$50,000.” Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998); and *Herb v. State Bd. of Tax Comm’rs*, 656 N.E.2d 890, 893 (Ind. Tax Ct. 1995).

that the 63.92 acre parcel is comparable to the 54' x 194' lot at issue in this appeal.

- h. Further, the Petitioners' argument that another property was assessed differently than the subject property was found to be insufficient to show error in an assessment by the Indiana Tax Court in *Westfield Golf Practice Center, LLC v. Washington Township Assessor*, 859 N.E.2d 396 (Ind. Tax Ct. 2007). In that case, the Indiana Tax Court held that it is not enough for a taxpayer to show that its property is assessed higher than other comparable properties. *Id.* Instead, the taxpayer must present probative evidence to show that the assessed value does not accurately reflect the property's market value-in-use. *Id.* See also *P/A Builders & Developers, LLC v. Jennings Co. Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (The focus is not on the methodology used by the assessor, but instead on determining whether the assessed value is actually correct. Therefore, the taxpayer may not rebut the presumption merely by showing an assessor's technical failure to comply strictly with the Guidelines).
- i. Finally, the Petitioners contend that the subject property would not sell for its assessed value because it is an unbuildable lot. *Carson testimony*. In support of this contention, the Petitioners submitted a letter from the Noble County Health Department stating that it prohibits the installation of a septic system on a lot the size of the subject property. *Petitioner Exhibit 3; Carson testimony*.
- j. To the extent that the Petitioners can be seen to argue that their land value should be adjusted or receive a negative influence factor because of its size, that argument is also not supported by sufficient evidence. 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 Petitioners have the burden to produce "probative evidence that would support an application of a negative influence factor and a quantification of that influence factor." *Talesnick v. State Board of Tax Commissioners*, 756 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001). While alleged use limitations or conditions on the property may be relevant to the issue of whether an additional negative influence factor should apply, the Petitioners failed to show how these conditions would impact the market value-in-use of the subject property or show the actual market value of the property. The Board, therefore, finds the Petitioners have failed to raise a prima facie case that the current influence factor being applied to the land by the Respondent is in error.
- k. Where the Petitioners have not supported their claims with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

16. The Petitioners failed to establish a prima facie case. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessments 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 pursuant to 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 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/bills/2007/SE0287.1.html>.