

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

Petition: 10-040-10-1-4-00001
Petitioner: Centra Credit Union
Respondent: Clark County Assessor
Parcel: 10-26-08-800-219.000-040
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 Petitioner initiated an assessment appeal with the Clark County Property Tax Assessment Board of Appeals (PTABOA) by filing a Form 130 dated November 12, 2010.
2. The PTABOA mailed notice of its decision, Form 115, on October 24, 2011.
3. The Petitioner appealed to the Board by filing a Petition for Review of Assessment, Form 131, on November 29, 2011. The Petitioner elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing on May 23, 2012.
5. Administrative Law Judge Paul Stultz held the Board's administrative hearing on July 11, 2010. He did not inspect the property.
6. Certified tax representative Milo Smith represented the Petitioner and was sworn as a witness. Attorney Marilyn Meighen represented the Clark County Assessor. Ken Surface was sworn as a witness for the Respondent. Assessor Vicky Kent Haire was present, but she did not testify.

Facts

7. The property is a vacant commercial parcel located on Hamburg Way. The Form 130 and Form 131 both indicate it is in Clarksville, but all other documentation indicates it is in Sellersburg. Resolution of this discrepancy is not essential to the outcome of this case.
8. The PTABOA determined the assessed value is \$280,000 (land only).
9. The Petitioner claimed the assessed value should be \$178,800.

Record

10. The official record contains the following:
 - a. The Form 131 Petition,
 - b. A digital recording of the hearing,
 - c. Petitioner Exhibit 1 – Geographic information system (GIS) map showing the subject property,
Petitioner Exhibit 2 – Subject property record card (PRC),
Petitioner Exhibit 3 – Form 115 for 2010,
Petitioner Exhibit 4 – Subject’s property assessment detail report,
Petitioner Exhibit 5 – GIS map of the subject property and surrounding property and property assessment detail reports for the five properties marked on the map,
Petitioner Exhibit 6 – Department of Local Government Finance “Fact Sheet,”
Respondent Exhibit A – PRC’s 2008, 2009, and 2010 for the subject property,
Respondent Exhibit B – Sales disclosure form for the subject property,
Respondent Exhibit C – Aerial map of the subject property and two comparable properties,
Respondent Exhibit D – Sales disclosure form and PRC for comparable B,
Respondent Exhibit E – Sales disclosure form and PRC for comparable C,
Board Exhibit A – Form 131 Petition,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing sign in sheet,
 - d. These Findings and Conclusions.

Contentions

11. Summary of the Petitioner’s case:
 - a. The subject property has 2.98 acres and is vacant, except for an automatic teller machine (ATM). The ATM is personal property. The Petitioner purchased the land on February 20, 2007, for \$700,000 with the intent of holding it for future commercial development, the construction of a credit union. *Smith testimony.*
 - b. The subject property initially was assessed at \$60,000 per acre (\$178,000 total). The PTABOA subsequently increased the assessment to \$93,960 per acre (\$280,000 total). *Smith testimony; Pet’r Exs. 2, 3.*
 - c. A GIS map shows the subject property and five comparable parcels located in the surrounding area. Property assessment detail reports show that parcel 1 is assessed at \$60,017 per acre. Parcel 2 is assessed at \$20,000 per acre. Parcel 3 is

assessed at \$20,000 per acre. Parcel 4 is farm land and is assessed as such. Parcel 5 is assessed at \$60,000 per acre. *Smith testimony; Pet'r Ex. 5.*

- d. The Petitioner's parcel is the only one in the area that has a positive 57% influence factor. The Respondent cannot apply an influence factor to the subject property without applying it to surrounding properties. *Smith testimony.*
- e. The PTABOA increased the assessment based on the sale price of the parcel. Parcels are not assessed based on sale price. *Smith testimony.*

12. Summary of the Respondent's case:

- a. The base rate is \$60,000 per acre for the subject property for assessment years 2008, 2009, and 2010, but the 2010 land value has a 57% positive influence factor. With that positive influence factor, the assessed value of the subject property is \$93,960 per acre. *Surface testimony; Resp't Ex. A.*
- b. On appeal the PTABOA added the influence factor and increased the assessment of the subject property based on two 2010 comparable sales. Those properties are labeled B and C on the aerial map. *Surface testimony; Resp't Ex. C.*
- c. Lot B is a contiguous agricultural property. It sold for \$138,760 per acre on October 19, 2010. At 10.81 acres lot B is larger than the subject property, which is approximately three acres. Lot B is assessed for \$1,900 per acre based on state mandatory guidelines for agricultural land. That assessment does not reflect market value. *Surface testimony; Resp't Ex. D.*
- d. Lot C is across the street from the subject property. Lot C has 1.34 acres of commercial property that sold for \$109,400 per acre on April 27, 2010. *Surface testimony; Resp't Ex. E.*
- e. Those two comparable sales establish a market value of \$138,760 and \$109,400 per acre. The sales of both Lots B and C occurred after the March 1, 2010, assessment date and are outside the "preferred timeframe."¹ Nevertheless, both sale dates are close to the assessment date. *Surface testimony; Resp't Exs. D, E.*
- f. The purportedly comparable properties identified by the Petitioner as 2 and 3 are significantly larger than the subject property. For example, property 3 is 22 acres. The price per acre varies based on the size and use. *Surface testimony, referring to Pet'r Ex. 5.*

¹ This reference apparently is to 50 IAC 27-5-2(a), which states "The county assessor shall use sales of properties occurring during a time period that is as short as possible and, ideally not more than fourteen (14) months before the March 1 assessment and valuation date. A longer time period may be required to produce a representative sample for a property class within the county."

- g. The subject property sold for \$700,000 on February 20, 2007. That price is \$233,333 per acre. *Surface testimony; Resp't Ex. B.*
- h. The subject property is under valued even with the 2010 assessment increase. *Surface testimony.*

Burden

- 13. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that a property's assessment is wrong and what its 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). Nevertheless, the Indiana General Assembly enacted a statute that in some cases shifts the burden of proof:

This section applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal increased the assessed value of the assessed property by more than five percent (5%) over the assessed value determined by the county assessor_or township assessor (if any) for the immediately preceding assessment date for the same property. 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.

I.C. § 6-1.1-15-17.2.

- 14. Both parties agreed the Respondent has the burden of proof in this case.

Analysis

- 15. 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). 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. Indiana promulgated Guidelines that explain the application of the cost approach. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 - VERSION A (incorporated by reference at 50 IAC 2.3-1-2). The value established by use of the Guidelines is presumed to be accurate, but it is merely a starting point. Additional relevant 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.

16. It has frequently been recognized that an arm's-length sale of the subject property can be some of the best evidence of its value. And here there is no dispute about the fact that the subject property sold for \$700,000. That price was the equivalent of \$233,333 per acre. But that transaction was February 20, 2007, and the required valuation date for a 2010 assessment was March 1, 2010. To be relevant, the record must somehow establish how that sale price relates to the required valuation date. See *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. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). It does not do so. The record fails to make the required connection between that 2007 selling price and a value as of March 1, 2010. Therefore, the selling price of the subject property does not help to prove an accurate assessed value.
17. The comparable sales method is another way to prove an accurate assessed value. But merely offering conclusory statements that another property is "similar" or "comparable" is not sufficient to prove actual comparability. *Long*, 821 N.E.2d at 470. Specific reasons must be provided for why a property is comparable to the subject property. *Id.* When seeking to establish comparability of land, the relevant characteristics to compare include features such as location, accessibility, and topography. See *Blackbird Farms Apts., LP v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002) (holding that taxpayer failed to establish comparability of parcels of land where, among other things, taxpayer did not compare the topography and accessibility of parcels). The proponent also must explain how any differences between the properties affect their relative market values-in-use. See *Long at 471*.
18. The Respondent presented evidence regarding two other vacant land sales from 2010 to support the disputed assessed value of \$93,960 per acre. One of those sales (lot B) was for \$138,790 per acre and the other (lot C) was for \$109,400 per acre. Although neither of those sale dates exactly corresponds to the required valuation date, both April 27, 2010, and October 19, 2010, are close enough to March 1, 2010, to be relevant and probative without much substantial explanation.
19. Whether the Respondent did enough to actually establish a valid basis for comparing the relative value of those properties to the subject property, however, is a close question of the *minimum* requirements for making a case regarding unimproved land. The two parcels identified by the Respondent as comparables are in close proximity to the parcel under appeal—lot B is contiguous and lot C is just across the street. The Respondent focused almost entirely on proximity, size, the fact that all three parcels are unimproved, and the fact that the values are from actual sales. The aerial photograph (Respondent Exhibit C) shows this proximity. It is readily apparent in the aerial photograph that these three parcels have the same sort of general topography, except for the rear half of lot B, where the topography is obscured by vegetation. Similarly, the aerial photograph shows that the subject property has accessibility that is as good as (or perhaps even better than) the accessibility for lot B or lot C. Significantly, the Petitioner presented no substantial evidence to the contrary.

20. The relative sizes of the subject property, lot B, and lot C are clear. The subject property has 2.98 acres. Lot B has 10.81 acres and lot C has 1.34 acres. In other words, one comparable is about 3 times bigger than the subject property and the other is about half as big. It is also clear that lot B is used for agricultural purposes, while the subject property and lot C are not. The agricultural use of lot B may or may not have had an impact on its price, but ultimately that point does not affect the outcome of this case. The most significant point is that both lot B and lot C sold for more per acre than the per acre assessed value of the subject property.
21. The Petitioner challenged the PTABOA's application of a 57% positive influence factor to the subject property while that influence factor was not applied to surrounding properties. But merely disputing the methodology used to calculate the assessment (*i.e.* the influence factor) does not prove a more accurate valuation. The Petitioners must show that the total assessment is not a reasonable measure of true tax value. Arguments based on strict application of the Guidelines are not sufficient to rebut the assumption that the assessment is correct. *O'Donnell*, 854 N.E.2d at 95; *Eckerling v. Wayne Twp. Assessor*, 841 N. E. 2d 674, 678 (Ind. Tax Ct. 2006). Accordingly, the purportedly improper use of the positive influence factor is not significant so long as the bottom-line valuation is justified.
22. Comparing assessments and/or land base rates without relating those amounts to actual market value-in-use is not probative. It is not enough to show the subject property is assessed for more than other property. *See also Westfield Golf Practice Center v. Washington Twp. Assessor*, 859 N.E.2d 396, 399 (Ind. Tax Ct. 2007); *P/A Builders & Developers, LLC v. Jennings Co. Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (focus is on determining whether the assessed value is actually correct.) If the Petitioner was attempting to make a case based on lack of uniformity and equality, it did not do so. According to the Tax Court, "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. Such studies, however, must be prepared according to professionally acceptable standards. *See Kemp v. State Bd. of Tax Comm'rs*, 726 N.E.2d 395, 404 (Ind. Tax Ct. 2000). Such studies 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 Petitioner failed to establish that the five other assessments it relied on satisfy that requirement.
23. Unfortunately, both parties failed to provide the kind of detailed comparative analysis that would assist the Board in reaching a conclusion in this case. But after weighing all the evidence, it is possible to reach a limited conclusion: The market value-in-use of the subject property is not less than the range established by the sales of lot B and lot C, which is somewhere between \$109,400 per acre and \$138,760 per acre. Most

importantly, as the Respondent pointed out, the entire range is more than the current assessment.²

Conclusion

24. The Respondent made a case for a valuation that is at least as much as the disputed assessment. After weighing all of the Petitioner's evidence and arguments that the assessment must be something less, we are not convinced. Therefore, the Board finds in favor of the Respondent.

Final Determination

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

ISSUED: October 9, 2012

Commissioner, Indiana Board of Tax Review

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- 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>

² The Respondent did not seek to raise the assessment from what the PTABOA had determined. Therefore, it is unnecessary to reach a decision about what a more exact valuation would be.