

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

Petition Nos.: 46-022-04-1-5-00127
46-022-06-1-5-00368
Petitioner: Raymond A. Cupples
Respondents: Michigan Township Assessor¹
LaPorte County Assessor
Parcel No.: 420121306008
Assessment Years: 2004 and 2006

The Indiana Board of Tax Review (the Board) issues this determination in the above matters and finds and concludes as follows:

Procedural History

1. The Petitioner initiated assessment appeals with the LaPorte County Property Tax Assessment Board of Appeals (the PTABOA).
2. The PTABOA issued notice of its determination on the Petitioner's 2004 appeal on January 31, 2007. On July 10, 2008, the PTABOA issued its determination on the Petitioner's 2006 appeal.
3. The Petitioner filed appeals with the Board by filing a Form 131 Petition to the Indiana Board of Tax Review for Review of Assessment for 2004 on February 27, 2007. The Petitioner filed the Form 131 for 2006 on August 8, 2008. The Petitioner elected to have his cases heard pursuant to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated December 1, 2010.
5. The Board held an administrative hearing on January 6, 2011, before the duly appointed Administrative Law Judge (the ALJ) Ellen Yuhan.
6. Persons present and sworn in at hearing:

For Petitioner: Raymond A. Cupples, property owner

¹ For the 2004 appeal, the Michigan Township Assessor was the Respondent because the PTABOA determination was issued before June 30, 2007. Pursuant to Indiana Code § 6-1.1-15-3(b), if an appeal is based on a PTABOA determination issued after June 30, 2007, then the county assessor is the party to defend the determination.

For Respondent:² Judy A. Anderson, LaPorte County, Chief Deputy Assessor.

Facts

7. The subject property is a house located at 609 Colfax Avenue, Michigan City.
8. The ALJ did not conduct an on-site visit of the property.
9. For 2004, the PTABOA determined the assessed value of the subject property to be \$102,200 for the land and \$42,600 for the improvements, for a total assessed value of \$144,800. For 2006, the PTABOA determined the assessed value of the subject property to be \$219,000 for the land and \$76,800 for the improvements, for a total assessed value of \$295,800.
10. The Petitioner did not request a specific value for his property for 2004 or 2006.

Issues

11. Summary of the Petitioner's contentions in support of an error in his property's assessment:
 - a. The Petitioner contends that his house is over-assessed based on the condition of the property. *Cupples testimony*. According to Mr. Cupples, the house has no furnace, no water, the roof leaks, and the foundation is crumbling. *Id.* In support of this contention, the Petitioner presented photographs of the property and utility statements from NIPSCO and Michigan City Utilities. *Petitioner Exhibits 1A, 1C, 3, 6, and 12*. Mr. Cupples further contends he cannot rent the property because of the condition of the house and he has been unable to rehabilitate the property because of his health and his limited income. *Cupples testimony*.
 - b. The Petitioner further contends his property is over-assessed because his lot, which is 40 feet by 65 feet, is not buildable. *Cupples testimony*. According to Mr. Cupples, the building code requires 50 feet by 100 feet, or 5,000 square feet, of land to build upon. *Id.*; *Petitioner Exhibit 7*. Mr. Cupples contends that when he applied for electrical and plumbing permits, he was told he would be unable to obtain a permit to build anything on his property. *Cupples testimony*. Further, Mr. Cupples testified that he has been unable to obtain a loan to do any necessary repairs on the house because no bank will loan money on a property that is not buildable. *Id.*

² Marilyn Meighen, Meighen & Associates, PC, appeared as counsel for both the Michigan Township Assessor and the LaPorte County Assessor.

- c. Additionally, the Petitioner contends his property is over-assessed because he does not have beach access. *Cupples testimony*. According to Mr. Cupples, his neighbor installed a fence which restricts his access to the beach. *Id.*; *Petitioner Exhibits 1-D and 1-E*. Mr. Cupples testified that, to the contrary, his property has a restriction against blocking or barricading the neighbor's sidewalk. *Cupples testimony*.
 - d. Finally, Mr. Cupples contends it is unfair to double the property taxes from 2004 to 2006 on a house that is not livable. *Cupples testimony*.
12. Summary of the Respondents' contentions in support of the property's assessment:
- a. The Respondents' counsel argues that the Petitioner has the burden of proof in the appeal process. *Meighen argument*. According to Ms. Meighen, the Petitioner must prove the assessment is wrong and show what the assessed value should be. *Id.* Ms. Meighen contends that the Petitioner's statements and photographs are not enough to show the assessed value of his property is wrong or to quantify a value for the property. *Id.*
 - b. The Respondents' counsel further contends that the property is correctly assessed based on comparable sales. *Meighen argument*. According to the Respondents' witness, a property located at 405 Colfax sold on October 11, 2005, for \$375,000. *Anderson testimony; Respondent Exhibit 2*. Ms. Anderson contends that the property is one block from the Petitioner's property and is similar in size, year of construction, and view. *Id.* Ms. Anderson testified that the house has since been torn down and replaced with a three story structure. *Id.* Therefore, Ms. Anderson argues, the \$375,000 sale price was simply for the land. *Id.* Ms. Anderson also contends that the property located at 204 Lake Street sold on October 3, 2003, for \$362,500. *Anderson testimony; Respondent Exhibit 3*. According to Ms. Anderson, the property is a lake bungalow very similar in size to the Petitioner's property. *Id.* Similarly, Ms. Anderson argues, the sale of 115 Lake Street on August 2, 1999, for \$255,000 supports the property's 2004 assessed value. *Anderson testimony; Respondent Exhibit 4*.
 - c. Finally, the Respondents' counsel argues that the Petitioner's property is lake property. *Meighen argument*. According to Ms. Anderson, the Petitioner may access the beach by public land located one house from his property. *Anderson 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 Raymond Cupples,

c. Exhibits:

- Petitioner Exhibit 1A – Photograph of the property’s foundation,
- Petitioner Exhibit 1B – Photograph of the property’s deteriorating stairs,
- Petitioner Exhibit 1C – Photograph of the ceiling damage in the house,
- Petitioner Exhibit 1D – Photograph of the neighbor’s fence,
- Petitioner Exhibit 1E – Photograph of the neighbor’s fence and the area between houses,
- Petitioner Exhibit 1F – Photograph of a broken window and missing shutter on the neighboring house,
- Petitioner Exhibit 2 – Cover letter with a list of the taxes for 1998 through 2009,
- Petitioner Exhibit 3 – NIPSCO statements for January 2006 and June 2004,
- Petitioner Exhibit 4 – Form 131 for 2004,
- Petitioner Exhibit 5 – Form 131 for 2006,
- Petitioner Exhibit 6 – History Report of Michigan City Utilities,
- Petitioner Exhibit 7 – Zoning Standards,
- Petitioner Exhibit 8 – Survey of the Petitioner’s property,
- Petitioner Exhibit 9 – Letter from the Michigan City Department of Planning and Inspection dated February 1, 1993, with an attached survey,
- Petitioner Exhibit 10 – Plumbing permit dated October 19, 2006,
- Petitioner Exhibit 11 – Electrical permit dated October 15, 2003,
- Petitioner Exhibit 12 – Picture of a gas pipe with no meter,

- Respondent Exhibit 1 – Six photographs of the subject property,
- Respondent Exhibit 2 – Property record card, photograph, and sales disclosure form for 405 Colfax,
- Respondent Exhibit 3 – Property record card and photographs for 204 Lake Avenue,
- Respondent Exhibit 4 – Property record card and photograph for 115 N. Lake Avenue,
- Respondent Exhibit 5 – Aerial map,
- Respondent Exhibit 6 – Indiana Board of Tax Review determination on the Petitioner’s 2002 and 2003 appeals,

- Board Exhibit A – Form 131 petition,
- Board Exhibit B – Notice of Hearing-Reschedule, dated December 1, 2010,
- 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 case. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
15. The Petitioner failed to provide sufficient evidence to establish an error in his property's assessment. The Board reached this decision for the following reasons:
 - a. The 2002 Real Property Assessment Manual defines “true tax value” 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 approach, the sales comparison approach and the income approach to value. *Id.* at 3, 13-15. Indiana assessing officials generally assess real property using a mass-appraisal version of the cost approach, as set forth in the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A.
 - b. 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); *P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 2006). A taxpayer may rebut that assumption 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 (USPAP) often will suffice. *See Kooshtard Property VI*, 836 N.E.2d

at 505, 506 n.1. A taxpayer may also offer actual construction costs, sales information for the subject property or comparable properties, and any other information compiled according to generally accepted appraisal practices. MANUAL at 5.

- c. Regardless of the method used to rebut an assessment's presumption of accuracy, a party must explain how its evidence relates to the property's market value-in-use as of the relevant valuation date. *O'Donnell v. Department of Local Government Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. MANUAL at 4, 8; *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct.2005). This is also true for succeeding assessment years through 2005. *See* MANUAL at 2 (stating that the Manual contains the rules for assessing real property for the March 1, 2002, through March 1, 2005, assessment dates); *see also* Ind. Code § 6-1.1-4-4.5 (requiring the DLGF to adopt rules for annually adjusting assessments to account for changes to value in years since general reassessment with such adjustments to begin in 2006). For the March 1, 2006, assessment, the valuation date was January 1, 2005. 50 IAC 21-3-3.
- d. The Petitioner first argues that his property is over-valued based on its condition. *Cupples testimony*. According to the Petitioner, the house is unlivable. *Id.* There is no furnace, no water, the foundation leaks, and there is damage to the ceiling because the roof leaks. *Id.* In support of his contention, the Petitioner submitted photographs, NIPSCO statements, and a history of the water and sewage bills. *Petitioner Exhibits 1-A, 1-C, 1-F, 3, 6, and 12*. A condition rating is a "rating assigned each structure that reflects its effective age in the market." *See* GUIDELINES, app. B, at 5. The ratings range from "excellent" to "very poor" and are determined by relating the structure to comparable structures within the subject property's neighborhood. *Id.* at 7. Here, the Petitioner presented some evidence concerning the condition of the house on the property. However, neither party submitted any evidence as to the structure's current condition rating. Thus, while the Petitioner may have proven that the property was without gas service, there is no evidence that the house was assessed as if it had a heating or cooling system. Similarly, while the roof and foundation leaks may be evidence of some deferred maintenance on the house, there is no evidence that the structure is not presently assessed to reflect that condition. Therefore, the Board cannot determine that the property's assessment was in error based on the evidence provided by the Petitioner.
- e. Even if the Petitioner had proven that the condition of his house was assessed in error, an assessor's failure to comply with the Guidelines alone does not show that the assessment is not a reasonable measure of a property's market value-in-use. 50 IAC 2.3-1-1(d); *Eckerling v. Wayne Township Assessor*, 841

N.E.2d 764 (Ind. Tax Ct. 2006) (“Therefore, when a taxpayer chooses to challenge an assessment, he or she must show that the assessor's assessed value does not accurately reflect the property's market value-in-use. Strict application of the regulations is not enough to rebut the presumption that the assessment is correct.”) Thus, the Petitioner must show through the use of market-based evidence that the assessed value of his property does not accurately reflect the property’s market value-in-use. Here, the Petitioner merely contends that the structure is not livable. The Petitioner, however, presented no appraisal or sales information or other market data in support of his argument. Conclusory statements regarding a property’s value do not constitute probative evidence. *See Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1119, 1120 (Ind. Tax Ct. 1998).

- f. The Petitioner also contends his access to the beach is obstructed and his lot is unbuildable because of the lot’s size. *Cupples testimony*. In support of these contentions, the Petitioner presented photographs showing the proximity of neighboring homes, the neighbor’s fence, and a letter from the Department of Planning and Inspection. *Petitioner Exhibits 1-D, 1-E, and 9*. The letter, dated February 1, 1993, states that the 44 foot by 65 foot size of the lot was substandard, and the minimum size lot for building is 50 feet by 100 feet, or 5,000 square feet.³ Land values in a given neighborhood are generally determined by collecting and analyzing comparable sales data for the neighborhood and the 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 included with the surrounding properties for purposes of valuation. The term “influence factor” refers to a multiplier that is applied to the value of the land to account for the 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). Here, while the property’s size or access to the lake may be relevant to the issue of whether a negative influence factor should apply to the Petitioner’s property, the Petitioner 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. *See Talesnick*, 756 N.E.2d at 1108. Thus, even if the Petitioner sufficiently proved that he could not further develop his property, the Petitioner failed to make a prima facie case that the property is over-valued based on its size or limited access to Lake Michigan.
- g. Finally Mr. Cupples contends it is unfair to double the property taxes from 2004 to 2006 on a house that is not livable. However, an argument regarding

³ The letter cautions, however, that “this office does not have the power to give a definitive answer as to whether this is a buildable lot considering its non-conforming status.”

the property's taxes does nothing to show that the property's assessment is incorrect. Furthermore, the Board lacks jurisdiction to address tax rates or tax bills. The Board has only the powers conferred by statute. *Whetzel v. Dep't of Local Gov't Fin.*, 761 N.E.2d 904, 908 (Ind. Tax Ct. 2001) (citing *Matonovich v. State Bd. of Tax Comm'rs*, 705 N.E.2d 1093, 1096 (Ind. Tax Ct. 1999)).⁴

- h. The Board therefore finds that the Petitioner failed to raise a prima facie case that his property was over-valued for the 2004 or 2006 assessment years. Where the Petitioner has not supported his claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. LTD v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

- 16. The Petitioner's evidence failed to raise a prima facie case that his property is over-assessed. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review determines that the property's assessment should not be changed for either the 2004 or 2006 assessment year.

ISSUED: _____

⁴ The Board notes, however, that the property's 2004 assessment is based on a valuation date of January 1, 1999, and the property's 2006 assessment is based on a valuation date of January 1, 2005. Thus, the change in the property's assessment (and the increase in taxes) was the result of six years of appreciation rather than a year or two.

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>>