

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

Petition No.: 91-020-06-1-5-00287
Petitioner: Evelyn C. Gish
Respondent: White County Assessor
Parcel No.: 014-11490-00
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 White County Property Tax Assessment Board of Appeals (the PTABOA) by written document on January 12, 2007.
2. The PTABOA issued a notice of its decision on April 2, 2008.
3. The Petitioner filed a Form 131 petition with the Board on May 22, 2008. The Petitioner elected to have this case heard according to the Board's small claim procedures.
4. The Board issued a notice of hearing to the parties dated March 27, 2009.
5. The Board held an administrative hearing on June 2, 2009, before the duly appointed Administrative Law Judge (the ALJ) Dalene McMillen.
6. The following persons were present and sworn in at hearing:
 - a. For Petitioner: Evelyn C. Gish, Owner
Wayne S. Holmes, Attorney for Petitioner¹
 - b. For Respondent: Scott Potts, County Representative

¹ Mr. Holmes was sworn as a witness and also appeared as counsel for the Petitioner. At the hearing, the ALJ discovered Mr. Holmes failed to submit a Notice of Appearance on behalf of his client pursuant to 52 IAC 2-3-2. Judge McMillen granted Mr. Holmes until June 8, 2009, to submit his Notice of Appearance. Mr. Holmes submitted Notice of Appearance on Behalf of Evelyn Gish by mail on June 3, 2009.

Facts

7. The property consists of a 1,540 square foot single-family residence with a 624 square foot detached garage located at 3787 East Ida Court, Monticello, Union Township, in White County.
8. The ALJ did not conduct an on-site inspection of the property under appeal.
9. For 2006, the PTABOA determined the assessed value of the property to be \$44,400 for the land and \$46,400 for the improvements, for a total assessed value of \$90,800.
10. The Petitioner did not request a specific assessed value on her Form 131 petition.

Issue

11. Summary of the Petitioner's contentions in support of an alleged error in the assessment:
 - a. The Petitioner contends the property is assessed for more than its market value-in-use. *Holmes testimony*. In support of her position, the Petitioner submitted two appraisal reports prepared by Lawrence Wayne Culp. *Petitioner Exhibits 2 and 3*. Mr. Culp is an Indiana Certified Appraiser. *Id.* In Mr. Culp's first appraisal, dated May 15, 2006, he estimated the property's value to be \$66,500 as of January 12, 2006. *Petitioner Exhibit 2*. In his second appraisal, dated March 26, 2008, Mr. Culp estimated the property's value to be \$70,000 as of January 1, 2005. *Petitioner Exhibit 3*.
12. Summary of the Respondent's contentions in support of the assessment:
 - a. The Respondent argues that the Petitioner's appraisals suffer from major flaws and should be given little weight. *Potts testimony*. According to the Respondent's representative, the Petitioner's appraiser is comparing the Petitioner's land with water access to rural agricultural home-sites located in Union Township. *Id.* In addition, Mr. Potts argues, the appraiser underestimated the value of the Petitioner's land in the appraisal. *Potts testimony*. Specifically, Mr. Potts argues the appraiser stated the reason for the low land value was because the water in front of the property under appeal was too shallow for boat access. *Id.* The appraiser, however, did not indicate whether he measured the depth of the water to arrive at his conclusion. *Id.*
 - b. The Respondent argues that, to further illustrate the land value in the appraisal is underestimated, a vacant parcel identified as Parcel No. 91-73-08-000-013.900-020 sold for \$32,000 or \$800 per foot on March 6, 2006. *Respondent Exhibit A; Potts testimony*. According to Mr. Potts, the comparable property is on a narrow

inlet of the lake. *Potts testimony*. The property's water access is too shallow for a boat and it has only 40 feet of water frontage. *Potts testimony*.

- c. Mr. Potts argues that if the same \$800 per front foot was applied to the Petitioner's land, the Petitioner's 100 feet of water frontage would be valued for \$80,000. *Potts testimony*. Because the Petitioner's lot is only 137 feet in depth, however, the county would apply a .85 depth factor from the 200 feet standard depth chart found in the REAL PROPERTY ASSESSMENT GUIDELINES for 2002 – VERSION A, ch.2 at 56, which results in a land value of \$68,000. *Respondent Exhibit E; Potts testimony*. Finally, Mr. Potts testified that, because the Petitioner's lot exceeds the average base lot's effective frontage set for the area, the county would also apply a negative 30% influence factor, reducing the land to an approximate value of \$47,600. *Respondent Exhibit F; Potts testimony*. Thus, the Respondent concludes, the comparable land sale supports the property's land assessment.² *Potts testimony*.

Record

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

- a. The Form 131 petition 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 – Appraisal report prepared by Lawrence Wayne Culp, dated May 15, 2006,

Petitioner Exhibit 3 – Appraisal report prepared by Lawrence Wayne Culp, dated March 26, 2008,

Respondent Exhibit A – Property record card for Parcel No. 91-73-08-000-013.900-020 located at West 17, Monticello,

Respondent Exhibit B – Plat map for Parcel No. 91-73-08-000-013.900-020, identified as number 014-17160-00,

Respondent Exhibit C – Plat map for Petitioner's property, identified as number 014-11490-00,

Respondent Exhibit D – Plat map showing the location of the Petitioner's property and Parcel No. 91-73-08-000-013.900-020,

² Mr. Potts testified the county has no issues with the appraiser's value of the building in the appraisals. *Potts testimony*.

Respondent Exhibit E – Real Property Assessment Guideline – Version A, chapter 2, page 56,

Respondent Exhibit F – White County’s Excess Frontage Influence Factor Chart,

Respondent Exhibit G – Notice of Appearance of Consultant on Behalf of Assessor, dated June 1, 2009, and Verification by the Department of Local Government Finance of Certification of Professional Appraisers, pursuant to 50 IAC 15-4-1,

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 Petitioner provided sufficient evidence to establish a prima facie case for a reduction in value. 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, sales comparison and income approaches. *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) *reh’g den. sub. nom. P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 2006). But 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 id.*; *see also Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer sales information regarding the subject property or comparable properties. MANUAL at 5.
- c. Regardless of the method used, 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 that valuation date. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
- d. Here, the Petitioner presented an appraisal, dated March 26, 2008, that estimated the value of the property to be \$70,000 as of January 1, 2005. *Petitioner Exhibit 3*. The appraiser is an Indiana Certified Appraiser that prepared the appraisal in accordance with the Uniform Standards of Professional Appraisal Practices (USPAP). *Id.* The appraisal conforms to the correct valuation date and otherwise provides probative evidence of the estimated value of the property. An appraisal performed in accordance with generally recognized appraisal principles is enough to establish a prima facie case. *See Meridian Towers*, 805 N.E.2d at 479. The Board therefore finds that the Petitioner raised a prima facie case that the property is over-assessed.³
- e. 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 Insurance Co. v.*

³ The Petitioner also submitted an appraisal dated May 15, 2006, from Lawrence Wayne Culp that concluded the value of the property was \$66,500 as of January 12, 2006. *Petitioner Exhibit 2*. This appraisal, however, does not comply with the statutory valuation date. Nor did the Petitioner present any evidence to relate the January 12, 2006, market value to the January 1, 2005, valuation date. Thus, the Board finds that the Petitioner’s March 26, 2008, appraisal is better evidence of the property’s true tax value.

Maley, 803 N.E.2d 276 (Ind. Tax Ct. 2004). To rebut or impeach the Petitioner's case, the Respondent has the same burden to present probative evidence that the Petitioner faced to raise their prima facie case. *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005).

- f. Here, the Respondent contends that the Board should give little weight to the Petitioner's appraisals because the appraiser compared the Petitioner's land with water access to rural agricultural home-sites. The Board however finds this argument unpersuasive. It is well within an appraiser's expertise to choose the sales he or she deems most comparable to the property under appeal and apply adjustments to those comparable properties to value the differences between them. The Board notes that one of the Petitioner's comparable properties in the 2008 appraisal was identified as on a bay like the subject property. Another property had a lake easement. Thus, it is clear the Petitioner's appraiser considered the property's water access. Absent evidence to the contrary, the Board will find the comparable properties chosen by the appraiser or the adjustments made by the appraiser to be reasonable.
- g. The Respondent also argues that the Petitioner's land is properly assessed based on the sale of a vacant lot. *Potts testimony*. According to the Respondent's representative, Parcel No. 91-73-08-000-013.900-020, with 40 feet of water frontage sold for \$32,000 or \$800 per foot on March 6, 2006. *Respondent Exhibit A; Potts testimony*. Mr. Potts argues that if the same \$800 per front foot was applied to the Petitioner's land, the Petitioner's 100 feet of water frontage would be valued for \$80,000. *Potts testimony*. While the Respondent's evidence may be some evidence of the market value-in-use of the land, the Respondent presented no evidence of the market value-in-use of the property as a whole. Thus, while it has some probative value, it is insufficient to rebut the Petitioner's appraisal.
- h. The Board finds that the weight of the evidence supports the Petitioner's 2008 appraised value. The Board therefore holds that the value of the subject property is \$70,000.

Conclusion

- 16. The Petitioner raised a prima facie case that property was over-valued. The Respondent failed to present sufficient evidence to impeach the Petitioner's case. Thus, the Board finds in favor of the Petitioner and holds that the market value-in-use of the property for the March 1, 2006, assessment date is \$70,000.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed.

ISSUED: August 26, 2009

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>.