

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

Petitions: 76-011-08-1-5-00091
76-011-08-1-5-00093
Petitioners: James & Jacque Hale
Respondent: Steuben County Assessor
Parcels: 76-06-04-430-109.000-011
76-06-04-430-113.000-011
Assessment Year: 2008

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

Procedural History

1. James and Jacque Hale filed two Form 130 petitions challenging the above-captioned assessments for 2008. On September 24, 2010, the Steuben County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination denying the relief requested.
2. The Hales timely filed two Form 131 petitions with the Board. They elected to have those appeals heard under the Board’s small claims procedures.
3. On April 25, 2012, the Board held a hearing on both petitions through its administrative law judge, Jennifer Bippus (“ALJ”). Neither the Board nor the ALJ inspected the property.
4. James Hale, County Assessor Marcia Seevers, and Phylis Olinger were sworn and testified at that hearing.

Facts

5. The parcels at issue are two unimproved residential lots located on Lane 335 at Lake James near Angola.
6. The PTABOA determined the assessed value (land only) is \$69,200 for parcel 76-06-04-430-109.000-011 and \$67,200 for parcel 76-06-04-430-113.000-011.
7. The Hales requested \$20,000 assessments for each parcel.

Summary of Contentions

8. The Hales' case:

- a) The Hales bought the subject parcels on contract in 1999. Their parcels are not on the lake, but they believed their purchase included dock spaces on the lake. Those spaces, however, were never recorded. The dock spaces sold several times before the Hales found out about it. Because the Hales were not receiving tax statements for the dock spaces, they had to collaborate with the legal owner to rescue the spaces out of a tax sale approximately three years ago. As a result of the confusion, the Hales' use of the dock spaces—and therefore their access to the lake—has been severely restricted. *Hale testimony.*
- b) The subject parcels should not be assessed as lakefront lots, but they are assessed higher than some lakefront lots. For example, lakefront lots owned by the Feicks are assessed at only \$2,300. Further, one of the Basset's lots across the street with no dock was assessed at approximately \$2,800 and a lot next to the Pelkingtons was assessed at around \$3,500. These other lots also are vacant. *Hale testimony.*
- c) Approximately six years ago, the Hales had an offer on one parcel, but that deal fell through because a soil test reported pilings would have to be installed to establish a solid base before a house could be built. *Hale testimony.*

9. The Assessor's case:

- a) The Hales offered no evidence to quantify or support their request for \$20,000 assessments. *Olinger argument.*
- b) The Feick properties that Mr. Hale referenced are owned by Feick Point Development Co. LLC. Those properties are situated on the lakefront and are assessed with a base rate of \$2,375 per front foot. The Feick assessments are lower because the Assessor applied the “developer's discount” to those properties.¹ The Hale's parcels are assessed with a base rate of \$725 per front foot. *Olinger testimony; Resp't Exs. 4, 4a, 5.* The Basset's property is not on the lakefront and also is assessed with a base rate of \$725 per front foot. *SeEVERS testimony.*
- c) The subject parcels are assessed as required by the Guidelines. Land base rates were established by developing neighborhoods based on common characteristics, and then analyzing market value sale prices within those defined neighborhoods. *Olinger testimony; Resp't Ex. 6.*
- d) Two sales in this neighborhood support the current assessments. Specifically, the two properties owned by Michael Nufer and Lloyd Depew that sold during 2005 and

¹ Ind. Code § 6-1.1-4-12 provides a “developer's discount” for land that a developer holds for sale in the ordinary course of business. The Assessor attributed a 99% negative influence factor on the Feick assessments to the developer's discount.

2006. Those properties and the subject parcels all have no view of, access to, or frontage on the lake. The land value for each property was determined by subtracting the improvement value from each sale price. The indicated land values were \$2,115 per front foot for the Nufer property, and \$2,582 per front foot for the Depew property. *Olinger testimony; Resp't Ex. 2, 7, 8.*

Record

10. The official record contains the following:
 - a) The Form 131 petitions,
 - b) Digital recording of the hearing,
 - c) Petitioner Exhibits – None,
Respondent Exhibit 1 – Exhibit coversheet,
Respondent Exhibit 2 – Summary of testimony,
Respondent Exhibit 3 – Power of Attorney,
Respondent Exhibit 4 – Property record card for parcel
76-06-04-430-109.000-011,
Respondent Exhibit 5 – Property record card for parcel
76-06-04-430-113.000-011,
Respondent Exhibit 6 – Guideline pages 7-9,
Respondent Exhibit 7 – Nufer and Depew property record cards,
Respondent Exhibit 8 – Aerial map showing the location of the Feick, Nufer, and
Depew properties and the subject parcels,
Respondent Exhibit 9 – Signature and attestation sheet,

Board Exhibit A – Form 131 petitions,
Board Exhibit B – Hearing notices,
Board Exhibit C – Hearing sign-in sheet,
 - d) These Findings and Conclusions.

Analysis

11. Generally, a taxpayer seeking review of an assessing official's determination must make a prima facie case proving both that the current assessment is incorrect and what the 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).
12. In making its case, the taxpayer must explain how each piece of evidence relates to its requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. 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”).

13. The Hales failed to make a prima facie case. The Board reaches this conclusion for the following reasons:
- a) Indiana assesses real property based on its true tax value, which is “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). Evidence in a tax appeal must be consistent with that standard. For example, a market-value-in-use appraisal prepared according to Uniform Standard of Professional Appraisal Practice (“USPAP”) often will be probative. See *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). A party may offer actual construction costs, sales information for the subject or comparable properties, and any other information compiled according to generally acceptable appraisal principles. MANUAL at 5.
 - b) 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. Dep’t of Local Gov’t Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006). Otherwise, the evidence lacks probative value. For March 1, 2008 assessments, the valuation date was January 1, 2007. 50 IAC 21-3-3(b)(2008).
 - c) The Hales generally claimed that the subject parcels were assessed too high in comparison to other land assessments in their immediate area. They did not specify whether they are claiming other assessments show the subject parcels are assessed for more than their market value-in-use, or the assessments are not uniform and equal. Either way, the evidence does not make a prima facie case. It is not enough for a taxpayer to show that its property is assessed higher than other comparable properties. Instead, the taxpayer must present probative evidence to show that the assessed value does not accurately reflect market value-in-use. *Westfield Golf Practice Center, LLC v. Washington Twp. Assessor*, 859 N.E.2d 396 (Ind. Tax Ct. 2007).
 - d) The Hales offered no probative evidence that their current assessments do not reflect market value-in-use. Their comparison with other assessments does not support any conclusion about what a more accurate market value-in-use for the subject parcels might be. Even if one assumes that information about other assessments can demonstrate market value-in-use, the party offering that evidence would need to prove the similarities of the properties and establish how any differences affect their relative values. See *Long v. Wayne Twp. Assessor*, 821 N.E.2d at 470-71 (Ind. Tax Ct. 2005). The same is true for a claim that properties are not assessed in a uniform and equal manner.
 - e) The Hales bought the parcels in 1999 and received an offer for one of those parcels approximately six years ago. But they provided no specifics about purchase prices

or the amount of the offer. This kind of evidence does not help to prove what a more accurate assessment might be.

- f) The dock situation probably has a negative impact on potential selling price. But merely establishing the existence of the problem is not enough to require changing the assessments. To make a case, the Hales were required to offer probative evidence as to what a more accurate valuation would be. *See Talesnick v. State Bd. of Tax Comm'rs*, 756 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001). They offered no such proof. Consequently, they did not make a prima facie case for reducing the assessments.

Conclusion

14. The Hales did not make a prima facie case to change the assessments. The Board finds for the Assessor.

Final Determination

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

ISSUED: July 17, 2012

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

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>.