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

Petition: **10-037-07-1-5-00002**
Petitioner: **Charles and Linda L. Harrett Living Trust**
Respondent: **Clark County Assessor**
Parcel: **41-00007-019-0**
Assessment Year: **2007**

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

Procedural History

1. The Petitioner initiated an assessment appeal regarding the subject property by filing written notice on December 18, 2008.

2. The Clark County Property Tax Assessment Board of Appeals (PTABOA) issued notice of its decision on April 1, 2009.

3. The Petitioner appealed to the Board by filing a Petition for Review (Form 131) on May 12, 2009, and elected to have this case heard according to small claims procedures.

4. The Board issued a notice of hearing dated October 16, 2009.

5. Administrative Law Judge Paul Stultz held the Board's administrative hearing on December 9, 2009. He did not inspect the property.

6. Charles Harrett and Linda Harrett were present and sworn as witnesses for the Petitioner. County Assessor Vicky Kent Haire and Frank Kelly were present and sworn as witnesses for the Respondent.

Facts

7. On March 1, 2007, the property was a vacant lot located at Shore Acres in Jeffersonville.

8. The PTABOA determined the land's assessed value is $36,000.

9. At the hearing, the Petitioner claimed the assessed value should be $18,000.

Record

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

    a. Form 131 with attachments,

    b. Notice of Hearing,

    c. Hearing Sign-In Sheet,

    d. Digital recording of the hearing,

    e. Petitioner Exhibit 1 – Determination of Market Value & Proper Assessment,
        (1) Current assessment,
        (2) Current assessments for like property,
        (3) Photographs showing surrounding properties,
        (4) Photograph, sales disclosure form, and property record cards for other comparables,
        (5) Aerial photograph of subject property and surrounding area,
        (6) DNR building restrictions,
        (7) Photographs of tug/barge manufacturing facility behind the subject property,
        (8) City services provided,
    Respondent Exhibit A – Sales disclosure form for the subject property,
    Respondent Exhibit 1 – Photograph of subsequent improvement on the subject property,
    Respondent Exhibit 2 – Photograph of mailbox,
    Respondent Exhibit 3 – 2008 property record card for the subject property,
    Respondent Exhibit 4 – 2008 property record card for a purportedly comparable property included in Pet'r Ex. 1,
    Respondent Exhibit 5 – 2008 property record card for a purportedly comparable property included in Pet'r Ex. 1,
    Respondent Exhibit 6 – 2008 property record card for a purportedly comparable property included in Pet'r Ex. 1,
    Respondent Exhibit 7 – Aerial photograph showing two properties that Pet'r Ex. 1 identified as comparable sales,
    Respondent Exhibit 8 – 2007 property record card for the subject property,

    f. These Findings and Conclusions.

Contentions

11. Summary of the Petitioner's case:

    a. The subject property is located across a private road from another parcel that the Petitioner already owned. The Petitioner purchased the subject property for $40,000 to construct a garage. The Petitioner paid a premium to acquire this particular property due to the proximity to the Petitioner's other parcel. When it purchased the subject property, the Petitioner agreed to be responsible for the 2007 taxes. *C. Harrett testimony; L. Harrett testimony; Pet'r Ex. 1(3)*.

    b. A tug/barge manufacturing facility is located directly behind the subject property. *C. Harrett testimony; Pet'r Ex. 1(7).*

    c. The subject property is in a floodway that makes it subject to building restrictions imposed by the Department of Natural Resources. *C. Harrett testimony; L. Harrett testimony; Pet'r Ex. 1(5) and (6).*

    d. A comparable lot, the Sandlin property, is double the size of the subject property and sold for $23,000 on August 16, 2007. Its 2007 assessed value was $19,000. The Colvin property, another comparable in close proximity to the Sandlin property, was assessed for $16,500 in 2007. The property under appeal is located two blocks from those comparables. *C. Harrett testimony; Pet'r Ex. 1(4)*.

    e. Three additional comparable properties are located on the same street as the subject property. Two are immediately neighboring parcels and the third one is the next neighbor down the street. These three parcels have similar use, specifically a pole barn, a storage shed, and a garage. All three parcels are approximately the same size as the subject parcel (all are 50 foot wide lots) and each is the same distance from the Ohio River. These three parcels were assessed for $19,000, $18,600 and $18,600. *C. Harrett testimony; Pet'r Ex. 1(2) and (3).*

12. Summary of the Respondent's case:

    a. The Petitioner purchased the subject property for $40,000 on August 23, 2007. *Kelly testimony; Resp't Ex. A*.

    b. For the 2007 assessment, some parcels in the area were assessed on the front foot basis while others were assessed on an acreage basis. This practice was corrected for the 2008 assessment and all of the parcels were assessed on the front foot basis. For the 2008 assessment, parcels that did not front the Ohio River got a negative 50% influence factor. *Kelly testimony; Resp't Ex. 3–6.*

    c. The Sandlin and Colvin properties are located further from the river than the subject property. Those properties do not have a river view, but from the second floor of a structure built on the subject property there would be a river view. The

Sandlin and Colvin properties have a different neighborhood classification than the subject property. The Sandlin and Colvin properties are not comparable to the subject property. *Kelly testimony; Resp't Ex. 7.*

d. Property with a view of the Ohio River typically is more valuable than property located away from the river. *Haire testimony.*

e. The Petitioner has not presented any valuation information that makes a case for changing the assessment. *Kelly testimony*.

Analysis

13. 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 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).

14. 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 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").

15. 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.

16. The Petitioner made a case for an assessment change because:

a. Real property is assessed on the basis of its "true tax value," which does not mean fair market value. It 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. MANUAL at 3. Indiana promulgated a series of guidelines that explain the application of the cost approach. *See* 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, while presumed to be accurate, is merely a starting point. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut that presumption. Such 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.

b. The Petitioner relied on a comparison approach to establish the value-in-use of the subject property. To make such evidence relevant and probative, the proponent must establish a meaningful basis for comparison. Conclusory statements that a property is "similar" or "comparable" are not enough. Such statements do not constitute probative evidence. *See Long*, 821 N.E.2d at 470. A proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. Similarly, the proponent must explain how any differences between the properties affect their relative values. *Id*. at 471.

c. One of the comparison properties that the Petitioner relied on was the Sandlin property. Petitioner's Exhibit 1(4) contains an aerial photograph that shows the location of the Sandlin property, a sales disclosure form that documents it sold for $23,000 on August 16, 2007, and the property record card that shows it was assessed for $19,000. The data on the Sandlin property record card shows the lot is 100 x 100, which roughly corresponds to the testimony that the Sandlin property is double the size of the subject property.[1] The evidence shows that the Sandlin property is further from the river than the subject property. In addition, the Petitioner attempted to make a comparison with the Colvin property, which is located next to the Sandlin property. The Colvin property is also shown in Petitioner's Exhibit 1(4). The Colvin property record card shows the lot is 100 x 100 and was assessed for only $16,500. The neighborhood designations for the subject property, the Sandlin property, and the Colvin property are different. The location of these properties relative to the river is not the same. In attempting to use these properties as evidence of value, the Petitioner failed to explain what the difference in location means in terms of relative value. Therefore, the Sandlin and Colvin properties fail to prove what a more accurate valuation of the subject property might be. *See Long*, 821 N.E.2d at 471.

d. But the Petitioner and the Respondent both introduced evidence about three other parcels that have virtually the same location as the subject property. They are all contiguous lots and their location in relation to the river is identical. *Pet'r Ex. 1(3), 1(5).* All four lots have identical effective frontage of fifty feet. These lots have only slight differences in effective depth, ranging from 120 feet on the subject property to 135 feet on the Morrison property. *Pet'r Ex. 1(2); Resp't Ex. 3, 4, 5, 6.* The lots are used for similar purposes (pole barn, storage shed, and garage) as the Petitioner's intended use (a garage). *Pet'r Ex. 1(3).* Furthermore, the Respondent attempted to defend the assessment by showing that all four of

[1] The property record card for the subject property indicates that it is 50 x 120.

these lots were assessed with the same methodology. There is no dispute about their similarity and true comparability.[2]

e. The evidence about the value of these three comparables, however, was entirely related to assessments, not sales. It has been noted many times the Guidelines generally used by assessors for mass appraisal purposes are only a starting point. There are many ways to more accurately prove the actual market value-in-use of a property. Those possibilities include actual construction costs, comparable sales, appraisals, and other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5. Unfortunately, in this case that kind of evidence was not presented. If the Petitioner presented a prima facie case, it depends on comparing the assessment of the subject property with the assessments of the three contiguous neighboring lots. The decision in *Westfield Golf Practice Center v. Washington Twp. Assessor*, 859 N.E.2d 396 (Ind Tax Ct. 2007), however, raises some question about proving a case based on comparing assessments. Westfield operated a commercial driving range. It appealed its 2002 assessment. Westfield proved that its "landing area" (where balls come to rest after being hit from the tees) was classified as "usable undeveloped" land and assigned a base rate of $35,100 per acre. It submitted the property record cards of five other driving ranges (four of which were on golf courses) that used the golf course rate of $1,050 per acre. Westfield claimed this difference—using a different base rate for its land than was used for other golf course land—proved a violation of Article X, Section 1 requirements for uniformity and equality. The Tax Court held otherwise because Westfield only focused on methodology and failed to show what the market value-in-use of its property or the other driving ranges really was. *Id.* at 399.

f. The current case makes no such constitutional claim about uniformity and equality being violated by the use of different base rates. Rather, the Petitioner simply disputes the valuation determination placed on its lot and used the three contiguous lots as comparables to show what a more accurate value-in-use is. The current case also differs from *Westfield* because here the evidence about the similarities of the comparable properties is much more compelling. The subject property and the three comparables are literally side by side lots with the same frontage and only slight differences in depth. The topography and accessibility are indistinguishable. On the other hand, in *Westfield* about the only basis for comparison was the information on the property record cards and the use of the properties all being driving ranges or golf courses.

[2] The Respondent presented property record cards that demonstrate how the assessed values for the subject property and three neighboring properties were determined for 2008. (These are the same three neighboring properties to which the Petitioner referred.) After comparing Respondent Exhibits 4-6 with Petitioner Exhibit 1(2), it is clear that how the values were determined for 2007 is substantially different from how the values were determined for 2008. Each assessment and each tax year stand alone. *Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (citing *Glass Wholesalers, Inc. v. State Bd. of Tax Comm'rs*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991)). Thus, evidence about the 2008 assessment methodology is not probative regarding the 2007 assessment. *Id*.

g. For 2007 the subject property and the three neighboring lots all were assessed using the same base rate of $400 per front foot. *Pet'r Ex. 1(2); Resp't Ex. 8*. The values for the three neighbors were $19,000, $18,600, and $18,600 (without any influence factor whatsoever). *Pet'r Ex. 1(2)*. Again, those assessed values are merely a starting point and there are several ways that market value-in-use might be proved. But in this case, nobody disputed the fact that those other three assessments reflected the market value-in-use of those neighbors as of January 1, 2006. Under such circumstances, the assessments have some probative value for comparison purposes.

h. The 2007 property record card shows that at $18,000 the extended land value of the subject parcel was similar to its three neighboring properties. Then local officials applied a 100% positive influence factor to arrive at the assessed value of $36,000 for the subject property. *Resp't Ex. 8*. The Respondent offered absolutely no explanation about why or when the influence factor was applied. The Respondent presented absolutely nothing about the subject property that explained or justified why this one lot was singled out for such a dramatic increase in its assessed valuation with the 100% influence factor.[3] Instead, the Respondent introduced a sales disclosure form establishing the Petitioner purchased the property for $40,000 on August 23, 2007. For trending purposes, sales from calendar years 2005 and 2006 should be considered. Sales from 2007 should not be considered. See 50 IAC 21-3-3. If this assessment had been determined according to the normal assessment cycle, it would have been determined at the local level before that sale even took place. The evidence, however, suggests that the Respondent simply used a 100% positive influence factor to adjust the assessed value to approximate that sales price.[4]

i. The Tax Court recognized that whether interim assessment of recently sold property may be upheld when unsold properties of the same classification and in the same taxing jurisdiction were not reassessed is a question of first impression in Indiana. *Big Foot Stores v. Franklin Twp. Assessor*, 919 N.E.2d 621, (Ind. Tax Ct. 2009). The Tax Court did not decide that question, but specifically noted "that several jurisdictions have held that selective reappraisals, spot assessments, and sales chasing are prohibited assessment practices that violate both the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and the uniformity and equality provisions of state constitutions. Indeed, these cases explain that such assessment practices cannot be upheld, as they arbitrarily, but purposefully, subject the owners of comparable properties to both disparate treatment and disproportionate rates of taxation." *Id.*, footnote 8 (citations

[3] Influence factors are a method of accounting for unique conditions or features of a piece of land that differ from the norm for the neighborhood. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002—VERSION A, ch. 2 at 11 (incorporated by reference at 50 IAC 2.3-1-2).

[4] If there is some other explanation for the application of the positive influence factor, the Respondent should have provided it. *See Indianapolis Racquet Club, Inc.*, 802 N.E.2d at 1022 ("[I]t is the [party's] duty to walk the Indiana Board . . . through every element of the analysis").

omitted). Thus, doubling the assessed value of the subject property to get to a valuation that is close to its sale price is not strictly prohibited by any holding in *Big Foot*, but such a result seriously conflicts with the comments and authorities from other jurisdictions discussed in that decision.

j. In addition to the disfavor attached to selective reappraisals, spot assessments, and sales chasing, there is another reason that the sale of the subject property cannot be considered in determining this assessment. A 2007 assessment must reflect the value as of January 1, 2006. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. In this case the Respondent failed to relate the August 2007 sale to the valuation date of January 1, 2006. Therefore, that sale price is not probative evidence. *See Big Foot, 919 N.E.2d 621*(assessments based on sale prices that were not somehow related to required valuation date should not be sustained); *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).

k. The Petitioner made a prima facie case that the current assessed valuation is wrong and that a more accurate valuation for 2007 would be $18,000. The Respondent presented no probative evidence to impeach or rebut that case.

Conclusion

17. Therefore, the Board finds in favor of the Petitioner.

Final Determination

In accordance with the above findings and conclusions, the 2007 assessment must be changed to $18,000.

ISSUED: _____

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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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>