

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

Petition No.: 91-020-07-1-5-00130
Petitioners: Melvin C. and Dora Hubbard
Respondent: White County Assessor
Parcel No.: 014-16250-00
Assessment Year: 2007

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 Petitioners initiated an assessment appeal with the White County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated June 23, 2008.
2. The PTABOA issued notice of its decision on July 28, 2009.
3. The Petitioners filed a Form 131 petition with the Board on September 4, 2009. The Petitioners elected to have their case heard according to the Board's small claim procedures.
4. The Board issued a notice of hearing to the parties dated September 16, 2010.
5. The Board held an administrative hearing on December 2, 2010, before the duly appointed Administrative Law Judge (the ALJ) Dalene McMillen.
6. The following persons were present and sworn in at hearing:
 - a. For Petitioners: Dora Ione Hubbard, Property Owner
Matthew Hubbard, Witness for the Petitioner
 - b. For Respondent: Scott Potts, County Representative¹

¹ The Respondent filed a power of attorney authorizing Mr. Potts to represent the Respondent "as an 'other authorized representative' under 52 IAC 2-3-2(b)." No such representative exists, however, in the Board's rules. Because the Respondent provided the proper documentation to show Mr. Potts is a "local government representative" under 52 IAC 1-1-3.5 and filed a power of attorney authorizing Mr. Potts' representation of the Assessor in this matter, the Board will consider Mr. Potts a "local government representative" for the Respondent.

Facts

7. The subject property is a vacant lot located on Tippecanoe Springs Road, Monticello, Union Township, in White County.
8. The ALJ did not conduct an on-site inspection of the property under appeal.
9. For 2007, the PTABOA determined the assessed value of the land to be \$101,600.
10. At the hearing, the Petitioners requested the assessed value of the land to be \$80,000.

Issue

11. Summary of the Petitioners' contentions in support of an alleged error in their property's assessment:
 - a. The Petitioners' witness contends the assessed value of the property under appeal is excessive because of the nature of the property. *M. Hubbard testimony*. According to Mr. Hubbard, the property is a ravine, but it is being assessed like a lake lot. *Id.*
 - b. Mr. Hubbard further testified that in 1974 the ravine was filled with debris from a tornado to improve the appearance of the subject property. *M. Hubbard testimony; Attachments to the Petition, Board Exhibit A*. Mr. Hubbard argues that, although the lot has aesthetic appeal, without extensive engineering the lot is not buildable. *M. Hubbard testimony; Petitioner Exhibit I*. In support of this contention, Mr. Hubbard submitted a letter from Vogel Real Estate Auctions dated December 1, 2004, which states: "In regards to the valuation on Lot #12, Tippecanoe Springs located next to your parents' home at 2001 S. Oak Springs Court, you will note on the bottom of the Land Grid that I discounted \$15,000 for the fill that was part of Lot #12 and question you ... whether it was a buildable lot[. T]here is no way of knowing whether it is a buildable lot without extensive engineering and investigation." *Petitioners Exhibit I*. According to Mr. Hubbard, the Assessor should deduct the costs of making the property a buildable lot from the property's assessed value. *Id.*
 - c. In response to cross examination, Mr. Hubbard testified that the Petitioners sought an appraisal of the property, but according to Mr. Hubbard, the appraiser told the Petitioners that he could not value the property without some engineering. *M. Hubbard testimony*.

12. Summary of the Respondent’s contentions in support of the assessment:
- a. The Respondent’s representative contends that the Petitioners did not present any evidence to establish that their property’s assessment was incorrect. *Potts testimony*. Mr. Potts argues the Petitioners’ Exhibit 1 shows an estimate of what the discount on the property “might” have been in 2004, but not what the value of the property would have been as of January 1, 2006, for the March 1, 2007, assessment date. *Id.* Thus, the Respondent’s representative concludes, the county’s assessed value of \$101,600 is correct. *Id.*

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:²

Petitioner Exhibit 1 – Letter from Vogel Real Estate, dated December 1, 2004,

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

² The Respondent did not submit any exhibits.

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 Petitioners failed to provide sufficient evidence to establish a prima facie case for a reduction in the assessed value of their property. 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.” Ind. Code § 6-1.1-31-6 (c); 2002 REAL PROPERTY ASSESSMENT MANUAL (MANUAL) at 2 (incorporated by reference at 50 IAC 2.3-1-2). The appraisal profession has traditionally 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. In Indiana, assessing officials generally value real property using a mass-appraisal version of the cost approach, as set forth in the REAL PROPERTY ASSESSMENT GUIDELINES for 2002 – VERSION A. (the GUIDELINES).
 - 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 sales information regarding the subject property or comparable properties and other information compiled according to generally accepted appraisal principles. 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 subject 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 March 1, 2007, assessment, the valuation date was January 1, 2006. 50 IAC 21-3-3.

- d. Here, the Petitioners argue the subject property is over-assessed because it is a ravine that could not be improved without some engineering expense. Land values in a given neighborhood are generally determined through the application of neighborhood valuation forms that were developed by collecting and analyzing comparable sales data for the neighborhood and surrounding areas. *See Talesnick v. State Board of Tax Commissioners*, 693 N.E.2d 657, 659 n. 5 (Ind. Tax Ct. 1998). However, properties often possess peculiar attributes that do not allow them to be grouped with each of 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 characteristics of a particular parcel of land that are peculiar to that parcel.” GUIDELINES, glossary at 10. The Petitioners have 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 Board of Tax Commissioners*, 765 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001).
- e. While the topography of the parcel may be relevant to the issue of whether a negative influence factor should apply, the Petitioners failed to show how this condition would impact the market value-in-use of the subject property. *See Talesnick*, 756 N.E.2d at 1108. The Petitioners’ witness testified that the property was not “unbuildable” but would require engineering before any construction could occur. *M. Hubbard testimony*. The letter the Petitioners offered in support of this contention, however, merely states that “there is no way of knowing whether it is a buildable lot without extensive engineering and investigation.” *Petitioner Exhibit 1*. Despite having “no way of knowing,” the broker discounts the lot \$15,000 for the fill. *Id.* This falls far short of the Petitioners’ burden to prove the value of their property. While the rules of evidence generally do not apply in the Board’s hearings, the Board requires some evidence of the accuracy and credibility of the evidence. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998); and *Herb v. State Board of Tax Commissioners*, 656 N.E.2d 890, 893 (Ind. Tax Ct. 1995).
- f. Even if the Board accepted the letter’s estimate of the fill’s “cost” to be \$15,000, the Board notes that there is no evidence of the value of the property without the fill to “subtract” the \$15,000 estimate. More importantly there is no evidence that the property’s assessed value does not already reflect the value of the property as a filled ravine. Finally, the Petitioners base their argument on 2004 information. As stated above, the valuation date for the March 1, 2007, assessment is January 1, 2006. Because the Petitioners failed to relate the 2004 information to the January 1, 2006, valuation date, the Petitioners failed to raise a prima facie case that their property was assessed in error in 2007. *Long*, 821 N.E.2d at 470.

- g. Where the taxpayer fails to provide probative evidence that an assessment should be changed, the Respondent's duty to support the assessment with substantial evidence is not triggered. *See Lacy Diversified Indus. v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

16. The Petitioners failed to provide sufficient evidence to support a change in the assessed value of their property. 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 assessed value of the Petitioners' property should not be changed.

ISSUED: _____

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>.