

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

Petition #: 41-019-02-1-5-00047
Petitioners: John L. & Sandra L. Wick
Respondent: Needham Township Assessor (Johnson County)
Parcel #: 4300 25 01 034/01
Assessment Year: 2002

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 Johnson County Property Tax Assessment Board of Appeals (PTABOA) by written document dated June 10, 2003.
2. The PTABOA mailed its notice of its decision to the Petitioners on October 17, 2003.
3. The Petitioners filed an appeal to the Board by filing a Form 131 with the county assessor on November 17, 2003. The Petitioner selected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated December 15, 2003.
5. The Board held an administrative hearing on January 29, 2004, before the duly appointed Administrative Law Judge (ALJ) Jennifer Bippus.
6. Persons present and sworn in at hearing:
 - a) For Petitioner:
John Wick, property owner
 - b) For Respondent:
Mark Alexander, Hearing Officer representing Needham Township

Facts

7. The property is classified as residential with a dwelling, as is shown on the property record card (PRC) for parcel #4300 25 01 034/01.

8. The ALJ did not conduct an inspection of the property.
9. Assessed Value of subject property as determined by the Johnson County PTABOA:
Land \$27,400 Improvements \$94,800 Total \$122,200
10. Assessed Value requested by Petitioner:
Land \$13,500 Improvements \$84,000 Total \$97,500

Issues

11. Summary of Petitioner's contentions in support of alleged error in assessment:
 - a. Site Description on the PRC showing the property having public utilities is incorrect. Subject property does not have city sewer, city water, cable, or city trash. The lack of these services affects the value. *Wick testimony, Petitioner Exhibit B, and Respondent Exhibit A.*
 - b. The homesite value is the only value under appeal. *Wick testimony.*
 - c. Subject property is in a flood plain that has a big affect on property value. *Wick testimony.*
 - d. The property on the north side of the subject property, has a homesite valued at \$13,500, has the same utilities as the subject and is in a flood plain. Building lots at the nearest subdivision, Franklin Lakes, which is one (1) mile north of the subject are valued at \$19,000 to \$20,000 and have all city utilities and services. *Wick testimony.*
 - e. The subject property is zoned residential, which excludes agricultural and commercial uses. The Zoning Board turned down a request for commercial use of the subject property because it was a landfill site for several years. In addition, an ordinance exists that prevents the erection of billboards. *Wick testimony.*
 - f. The Health Department refused a request for an additional septic system because the subject property was a landfill. *Wick testimony.*
 - g. The Land directly behind and to the south of the subject property, was offered to the Petitioner for purchase at \$5,000 an acre, but the true market value is far less. *Wick testimony.*
12. Summary of Respondent's contentions in support of alleged error in assessment:
 - a. The utilities issue is a software issue. It does not drive the pricing in the system. The subject property is priced as rural/residential homesite which means that it is outside the city limits. *Alexander testimony.*
 - b. The subject property is priced on an acreage basis – one (1) acre homesite and the balance of the property residual excess acreage. *Alexander testimony.*
 - c. In pricing the subject, value-in-use was applied. *Alexander testimony.*
 - d. The Petitioner did not submit comparable sales, cost or income approaches to support the value he sought. *Alexander testimony.*

- e. The subject property is assessed in accordance with 50 IAC 2.3 and the approved land order for Needham Township. *Alexander testimony.*

Record

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

- a. The Petition, and all subsequent pre-hearing, and post-hearing submissions by either party.
- b. The tape recording of the hearing labeled BTR #5850.
- c. Exhibits:
 - Petitioner Exhibit A – Summary of issues
 - Petitioner Exhibit B – PRC for subject property

 - Respondent Exhibit A – PRC for subject property
 - Respondent Exhibit B – Authorization Letter

 - Board Exhibit A – Form 131 petition including Form 130 and Form 115
 - Board Exhibit B – Notice of Hearing on Petition
- d. These Findings and Conclusions.

Analysis

14. The most applicable governing laws/statutes/cases are:

50 IAC 2.3 Real Property Assessment Manual – Definitions, page 12

“True Tax Value”: 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, less that portion of use value representing subsistence housing for its owner.

50 IAC 2.3 Real Property Assessment Manual – Definitions, page 10 -

“Market Value”: The most probable price (in terms of money) which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- a. The buyer and seller are typically motivated;
- b. Both parties are well informed or advised and act in what they consider their best interests;
- c. A reasonable time is allowed for exposure in the open market;
- d. Payment is made in terms of cash or in terms of financial arrangements comparable thereto;

- e. The price is unaffected by special financing or concessions.

The petitioner must sufficiently explain the connection between the evidence and petitioner's assertion in order for it to be considered material to the facts. *See generally, Heart City Chrysler v. State Board of Tax Commissioners*, 714 N.E. 2d 329, 333 (Ind. Tax Ct. 1999)

The Board will not change the determination of the County Board of PTABOA unless the petitioner has established a prima facie case and, by a preponderance of the evidence proven, both the alleged errors in the assessment, and specifically what assessment is correct. *See Clark v. State Board of Tax Commissioners*, 694 N.E. 2d 1230 (Ind. Tax Ct. 1998); *North Park Cinemas, Inc. v. State Board of Tax Commissioners*, 689 N.E. 2d 765 (Ind. Tax Ct. 1997).

50 IAC 2.3 Real Property Assessment Manual - Definitions, page 12

“Value-in-Use”: The value of property for a specific use. The concept that holds value to be inherent in property itself; that is, the value based on the ability of the asset to produce revenue or utility through ownership. The value a specific property has for a specific use.

15. The Petitioners did not provide sufficient evidence to support the Petitioners' contentions. This conclusion was arrived at because:

- a. The Township corrected the Petitioner's Site Description concern on the PRC by changing the Public Utilities description from “All” to “Gas, electric” (Respondent Exhibit A).
- b. The Petitioner testified that the subject property was in a flood plain, but no documentation was submitted to support this statement or to show how often the subject property floods.
- c. The Petitioner stated that the homesite base rate (\$25,000) was incorrect when it is compared to the property on the north side of the subject (\$13,500) and the lots in a subdivision one (1) mile north of the subject – Franklin Lakes (\$19,000 - \$20,000). It should be noted that the Respondent testified that his property is also valued at \$25,000 for a one (1) acre homesite and is in a flood plain. .

Identifying comparable properties and demonstrating that the property under appeal has been treated differently for tax purposes can show an error in assessment. However, the Petitioner did not provide any documentary evidence to show that these properties were comparable. There were no PRCs of the purported comparable properties submitted nor was any analysis of the properties done. The fact that they may be valued differently does not make the properties comparable. Such differences could be accounted for in many ways that would include, but not be limited to, shape and size of the parcels; acreage pricing verses lot pricing; influence factors; and location.

- d. The Petitioner discusses his zoning and ordinance requests for changes to the property that were denied, such as, changing the land to commercial use, erecting

- billboards, and adding a second septic system. The Petitioner does not show how any of these changes would result in the \$13,500 assessment he seeks for the land.
- e. The Petitioner testified that the subject property is or was a landfill and thus the value is excessive. Other than the Petitioner's statement, the Petitioner submitted nothing to support this statement.
 - f. The Respondent testified that the subject property was valued in accordance with 50 IAC 2.3. However, rather than mandating any specific assessment method, the purpose of the 2002 Real Property Assessment Manual (Manual) is to accurately determine "True Tax Value". The Manual specifically recognizes the three (3) approaches to value: the Cost Approach, Sales Comparison Approach, and Income Approach. The Respondent pointed out that the Petitioner did not use any of these approaches in order to support the change in the value requested.
 - g. The Petitioner failed to make a prima facie case through the preponderance of evidence. The Petitioner failed to show that the current assessment was incorrect and to show what the correct assessment should be. In addition, without supporting documentation many of the Petitioner's remarks were conclusory. Conclusory statements do not constitute probative evidence. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113 (Ind. Tax 1998).
 - h. The Petitioner did not demonstrate how any of his testimony on the issues above, would equate to the value he sought.

Conclusion

16. The Petitioners failed to make a prima facie case. The Board finds in favor of Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should not be changed.

ISSUED: _____

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. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice.