

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

Petition: 50-014-12-1-5-00067
Petitioners: Arnold & Susan Kiran
Respondent: Marshall County Assessor
Parcel: 50-21-21-101-321.000-014
Assessment Year: 2012

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

Procedural History

1. The Petitioners, Arnold and Susan Kiran, appealed the 2012 assessment for the above-referenced parcel. On July 18, 2013, the Marshall County Property Tax Assessment Board of Appeals (the "PTABOA") issued notice of its determination denying the Petitioners relief.
2. The Petitioners timely filed a Form 131 petition with the Board, electing to have their appeal heard under our small claims procedures.
3. On March 17, 2015, our administrative law judge, Ellen Yuhan ("ALJ"), held a hearing on the petition. Neither she nor the Board inspected the property.
4. The following people were sworn and testified: Roy Michael Roush, Petitioners' counsel; Debra A. Dunning, Marshall County Assessor; and Mindy Penrose, deputy assessor.

Facts

5. The parcel under appeal is a vacant lakefront parcel in Culver. The Petitioners also own a contiguous parcel with a house located at 227 East Winfield Street in Culver.
6. The PTABOA determined an assessment of \$130,900.

Record

7. The official record contains the following:
 - a. A digital recording of the hearing,

- b. Petitioners Exhibit A: Table of Average Front Foot and Square Foot Values,
- Petitioners Exhibit B: Beacon report for the Frank property,
- Petitioners Exhibit C: Assessment information for 726 Peru Court,
- Petitioners Exhibit D: Assessment information for 233 Winfield Street,
- Petitioners Exhibit E: Spreadsheet showing upward trend of assessments,
- Petitioners Exhibit F: Beacon report and property record card ("PRC") for the Sheerin property, beacon reports for Poloncak and Groch properties, PRCs for Poloncak, Groch, Weirick, and Van Til properties,
- Petitioners Exhibit G: Real Property Assessment Guideline for 2002 – Version A, p. 78, Influence Factor Codes,
- Petitioners Exhibit H: Culver Zoning Ordinance, Sec. 3.2 – L-1, Lake District,
- Petitioners Exhibit I: PRC for Frank property,
- Petitioners Exhibit J: PRC for the parcel under appeal,
- Petitioners Exhibit K: Sales analysis for Culver neighborhood 1500504,
- Petitioners Exhibit L: PRCs for 15 properties on Peru Court,
- Petitioners Exhibit M: Beacon report for Lane property, PRC for Bracken property, beacon report for DeWitt property,

- Respondent Exhibit 1: Request for exchange of evidence,
- Respondent Exhibit 2: Form 130,
- Respondent Exhibit 3: Form 115,
- Respondent Exhibit 4: Form 131,
- Respondent Exhibit 5: Beacon report for the parcel under appeal and photograph of the Petitioners' house,
- Respondent Exhibit 6: Warranty deed,
- Respondent Exhibit 7: PRCs for the parcel under appeal and contiguous parcel owned by the Petitioners with land order,
- Respondent Exhibit 8: Sales analysis for Culver neighborhood 1500504 and sales for West Shore and Lakefront Culver neighborhoods for 2009-2012,
- Respondent Exhibit 9: Spreadsheet of sales in Lakefront Culver (9-1), beacon aerial photograph, beacon reports, sales disclosure forms, and PRCs for the properties listed in the spreadsheet (9-2 - 9-11).

Respondent Rebuttal Exhibits:

- Rebuttal Exhibit 10: Spreadsheet with information for properties listed in Petitioner Exhibit A,
- Rebuttal Exhibits 11 - 31B: PRCs and aerial photographs with parcel outlines for parcels listed in Rebuttal Exhibit 10,
- Rebuttal Exhibit 32: 2011 Real Property Assessment Guidelines, p.43, Depth Tables,

Board Exhibit A: Form 131 petition,
Board Exhibit B: Hearing notice,
Board Exhibit C: Hearing sign-in sheet.

c. These Findings and Conclusions.

Objections

8. The Petitioners' objected to the admission of information concerning two sales from Respondent's Exhibit 9 because they occurred after the March 1, 2012 valuation date at issue in this appeal. The ALJ took the objection under advisement.
9. We overrule the objection. The sales both occurred less than three months after the valuation date. That is sufficiently close to make them relevant.¹

Burden

10. Generally, a taxpayer seeking review of an assessing official's determination must prove that his property's assessment is wrong and what its correct assessment should be. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances. Where the assessment under appeal represents an increase of more than 5% over the prior year's assessment for the same property, the assessor has the burden of proving that the assessment under appeal is correct. Ind. Code § 6-1.1-15-17.2(b). The assessor similarly has the burden where a property's gross assessed value was reduced in an appeal, and the assessment for the following date represents an increase over "the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of increase...." I.C. § 6-1.1-15-17.2(d).
11. If an assessor has the burden of proof and fails to meet it, the taxpayer may offer evidence to prove the correct assessment. If neither party offers evidence sufficient to prove the correct assessment, it reverts to the previous year's level, as last corrected by an assessing official, stipulated to by the parties, or determined on review. I.C. § 6-1.1-15-17.2(b).
12. The Petitioners own two contiguous parcels, but they have appealed only one. As discussed in more detail below, they believe the parcel under appeal should be valued individually, while the Respondent believes the two parcels should be valued together as a single property. We have repeatedly explained that where a taxpayer uses contiguous tax parcels for a single economic use, those separate parcels may be considered as a single unit both for valuation purposes and for determining whether the burden-shifting

¹ That assumes the properties involved were at least roughly comparable to the Petitioners' property, a point the Petitioners did not raise in their objection.

statute applies. That is true even where the taxpayer has not appealed one or more of the tax parcels that make up the unit.

13. We will address whether the parcel under appeal was part of a larger residential property when we discuss the parties' valuation evidence. For purposes of determining who has the burden of proof, however, the question is moot. Both the assessment for the parcel under appeal and the assessment for the larger two-parcel unit increased by more than 5% between 2011 and 2012.² The Respondent therefore has the burden of proof.

Contentions

14. Summary of the Respondent's case:
 - a. As explained above, the Petitioners own two contiguous parcels. The vacant, narrow parcel under appeal fronts Lake Maxinkuckee. The other parcel has a house. The parcel under appeal therefore gives the house lake access. When considered in isolation, the parcel is "unbuildable." But the Petitioners bought the parcels together and they would probably sell them together. The PTABOA and Respondent therefore looked at the parcels as one economic unit, which the Respondent argues is consistent with our holdings in other appeals. *Dunning testimony (citing Pachniak v. Marshall County Ass'r, pet. nos. 50-014-06-1-5-00070 and -71 (IBTR March 9, 2009)); Resp't Exs. 3, 5-6.*
 - b. The lakefront parcel is part of the "Lakefront Culver" assessment neighborhood, while the house parcel is part of Central Culver." The lakefront parcel previously received a -60% influence factor. During the 2012 general reassessment, however, the Respondent removed negative influence factors from all lakefront parcels and recalculated land values.
 - c. She then looked at each parcel to determine whether to apply negative influence factors. Based on economies of scale, some properties needed a negative influence factor for excess frontage. The same was not true for parcels such as the one under appeal, with less than the standard lot's 75 feet of lake frontage, because people want lake access no matter how small the is lot that provides it. The assessment for the Petitioners' property as a whole was in line with sale prices for comparable properties. She therefore did not apply an influence factor. *Dunning testimony.*
 - d. The Respondent offered spreadsheets showing how she calculated land base rates for Lakefront Culver and Central Culver. Because she had to submit values to the Department of Local Government Finance ("DGLF") by July 1, 2011, she initially used sales from 2009-2011. For Lakefront Culver, she chose the average sale price of \$15,500 per front foot as the neighborhood's base rate. Before finalizing assessments, she re-examined neighborhood sales, this time including sales from July

² The assessment for the parcel under appeal increased from \$44,800 to \$130,900 between 2011 and 2012. The combined assessment for the two parcels similarly jumped from \$99,500 to \$212,300. See *Resp't Ex. 7.*

- 1, 2011 through March 1, 2012. If one considers only those later sales, the average price increases to \$17,345 per front foot and the median to \$17,482. Nonetheless, the Respondent kept the base rate at \$15,500. *Dunning testimony; Resp't Ex. 8.*
- e. The Respondent also prepared a spreadsheet with ten sales, most of which involved properties she believed were comparable to the Petitioners' property as a whole. The properties either had been combined into a single economic unit with lake access or were small, vacant waterfront parcels with a contiguous buildable lot. The first five sales were from 2007-2010. They included the two properties the Respondent believed were the most comparable to the Petitioners' property. The next five sales were from July 15, 2011, through June 20, 2012. The Respondent acknowledged that one of the sales in the second group involved a single parcel with considerably more lake frontage than the Petitioners' property and indicated that she included the sale "just to show market prices of property" in Lakefront Culver. She made similar comments about another sale in that group. *Dunning testimony; Resp't Ex. 9.*
- f. The Respondent subtracted the assessments for improvements to extract the portion of each sale price attributable to land. She then converted the prices to values per front foot and per square foot. The front-foot prices ranged from \$12,080 to \$72,500, with a median of \$15,938 and an average of \$17,707. The square-foot prices ranged from \$40.27 to \$132.75, with a median of \$56.62 and an average of \$71.76. By contrast, the parcel under appeal was assessed at only \$10,908 per front foot and \$118.57 per square foot. The land as a whole (including both parcels) was assessed at \$12,725 per front foot and \$24.60 per square foot. *Dunning testimony; Resp't Ex. 9.*
- g. In their Exhibit A, the Petitioners pointed to assessments for 21 out of Lakefront Culver's 117 parcels. Many of those parcels had influence factors based on parcel-specific characteristics. However, the Petitioners listed assessments for 2014. The Respondent's deputy assessor, Mindy Penrose, prepared her own version of the exhibit using assessments from 2012. She also noted where the Petitioners had included information for only one of several parcels that were used as a single property and what the assessments for those larger properties were. *Penrose testimony; Resp't Rebuttal Exs. 10-32B*
- h. The Petitioners made other comparisons that suffer from similar flaws. For example, the DLGF's assessment guidelines require assessors to use a depth factor to adjust base rates if a property is either deeper or shallower than the neighborhood's standard 200-foot-deep lot. In their Exhibit F, however, the Petitioners compared the parcel under appeal to a few smaller properties with lower assessments. The subject property is 92 feet deep with a depth factor of .69. The parcels to which the Petitioners compare it include ones with significantly lower depth factors. For example, the Sheering property has a depth factor of only .13. Those lower depth factors translate to lower base rates. *Penrose testimony; Resp't Rebuttal Ex. 32.*

- i. In any case, the Petitioners point only to assessments for other properties rather than to sales. Sales, not assessments, are used to establish market value. *Penrose testimony*.
15. Summary of the Petitioners' case:
- a. The Respondent is mistaken in viewing their parcels as a single unit. According to the relevant zoning ordinance, the parcel under appeal is unbuildable; its only feasible use is for walking down to the lake. *Roush argument; Resp't Ex. H*.
 - b. From 2007 to 2012, the parcel had a -60% influence factor for size and shape. The Respondent agrees there has been no change to the parcel, but she removed the negative influence factor, causing the assessment to increase dramatically. She applied negative influence factors to properties that have more frontage than a standard lot even though, unlike the parcel under appeal, those properties can be used for various purposes. *Roush testimony; Pet'rs Exs. E, G-H, J*.
 - c. The Petitioners identified 21 properties on Peru Court and Winfield. The parcel under appeal has one of the highest assessments per square foot. Winfield, the Petitioners' street, is closer to Culver than Peru Court and therefore has more traffic. Thus, Winfield parcels should also have a negative influence factor for traffic flow. The Respondent was not consistent in how she applied influence factors throughout the neighborhood. *Roush testimony and argument; Pet'rs Exs. A, C, L*.
 - d. Parcels that provide lake access and are similar to the parcel under appeal were assessed at a discounted rate. The Sheerins' property, which is ten feet wide, was assessed at only \$1,937 per front foot. Similarly, properties owned by the Polonacks and Grochs were each five feet wide and were assessed at \$4,917 and \$3,576 per front foot, respectively. *Roush argument; Pet'rs Ex. F*.

Analysis

16. The Respondent failed to make a prima facie case that the assessment was correct. We reach this decision for the following reasons:
- a. Real property in Indiana is assessed based on its "true tax value," which means "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." I.C. § 6-1.1-31-6(c): 2011 REAL PROPERTY ASSESSMENT MANUAL 2 (incorporated by reference at 50 IAC 2.4-1-2). A party's evidence in an assessment appeal must be consistent with that standard. For example, a market-value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice often will be probative. *See id.*; *see also, Kooshtard Property VI, LLC v. White River Twp. Ass'r*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). A party may also offer actual construction costs, sale or assessment information for the property under appeal or comparable properties, and any other information compiled according to generally accepted appraisal principles.

See Kooshtard Property VI, 836 N.E.2d at 506; *see also*, I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments to determine an appealed property's market value-in-use).

- b. In any event, a party must explain how its evidence relates to the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For 2012 assessments, the valuation date was March 1, 2012. *See* 50 IAC 27-5-2(c).

The Petitioners have appealed the assessment for only one of their two parcels. But they bought the parcels together, and the parcel under appeal gives the Petitioners access to the lake from their house. The Respondent argues that the parcels should be valued as a single economic unit. The board agrees. The Respondent may meet its burden of proof by showing that the true tax value for the property as a whole is equal to or greater than the parcels' combined assessments.

- c. The Respondent, however, did not offer sufficient probative evidence of true tax value. She first pointed to sales information used to determine base rates for Lakefront Culver and Central Culver—the assessment neighborhoods for the Petitioners' parcels. She presumably did so to show she followed the 2011 Real Property Assessment Guidelines in determining land values. Strict compliance with the Guidelines, however, does not show that an assessment reasonably measures a property's true tax value. As the Tax Court has explained, Indiana overhauled its property tax system in 2002, and the new system “shifts the focus from examining how the regulations were applied (i.e., mere methodology) to examining whether a property's assessed value actually reflects the external benchmark of market value-in-use.” *Westfield Golf Practice Center v. Washington Twp. Ass'r*, 859 N.E.2d 396 (Ind. Tax Ct. 2007); *see also, Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 679 (Ind. Tax Ct. 2006) (holding that strict application of the Guidelines is not enough to rebut the presumption that an assessment is correct and show that a taxpayer's proposed value accurately reflects his property's market value-in-use).
- d. The Respondent's reliance on her assessment methodology is particularly unconvincing in this case given her claim that the parcels should be valued as a single economic unit. She assessed the parcels largely as if they were individual entities by assigning them to different assessment neighborhoods and applying different base rates.
- e. Perhaps recognizing those problems, the Respondent pointed to ten sales, most of which involved properties she claimed were comparable to Petitioners' parcels when viewed as a single unit. Of course, if the parcels are truly considered as a single unit, the valuation of that unit should include the improvements. The Respondent, by contrast, attempted to value only land.

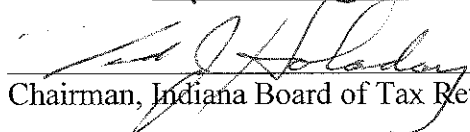
f. Leaving that aside, the sales-comparison approach, in which one locates sales of comparable properties and adjusts the selling prices to reflect a subject property's total value, is a generally accepted appraisal approach. See 2011 MANUAL at 2, 9. A party offering comparative sales data in an assessment appeal, however, must show how relevant characteristics of the sold properties compare to those of the property under appeal and how any relevant differences affect the properties' values. *Long*, 821 N.E.2d at 470-71. The Respondent showed each property's location, amount of lake frontage, depth, and total size. Those are doubtlessly relevant characteristics. But they are far from the only ones. More importantly, the Respondent failed to explain how relevant differences affected the properties' values. Thus, her analysis fell short of what the Tax Court required in *Long*. Also, five of her comparable sales, including the sales of the two properties she testified were most comparable to the Petitioners' property, occurred more than 20 months before the March 1, 2012 valuation date that applies to the Petitioners' appeal. She did not explain how those sale prices related to the valuation date.

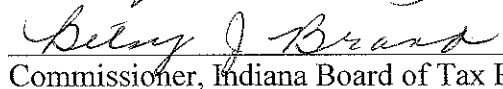
17. For those reasons, the Respondent failed to make a prima facie case that the assessment under appeal was correct. The assessment must therefore be reduced to the previous year's level of \$44,800.

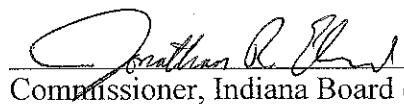
FINAL DETERMINATION

In accordance with the above findings of facts and conclusions of law, we order the assessment changed to \$44,800.

ISSUED: 9-3-15


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 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. The Indiana Tax Court's rules are available at <http://www.in.gov/judiciary/rules/tax/index.html>.