REPRESENTATIVE FOR PETITIONER: James F. Beatty, Attorney

REPRESENTATIVE FOR RESPONDENT: Michael S. Watkins, Deputy County Assessor

BEFORE THE
INDIANA BOARD OF TAX REVIEW

Patricia A. Kopetsky,	)	Petition No. 41-015-07-1-5-00153
	)	
Petitioner,	)	Parcel No. 41-10-27-041-023.000-015
	)	
v.	)	
	)	
Johnson County Assessor,	)	Johnson County, Hensley Township
	)	
Respondent.	)	2007 Assessment
	)	

Appeal from the Final Determination of the
Johnson County Property Tax Assessment Board of Appeals

March 14, 2011

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has reviewed the evidence and arguments presented in this case. The Board now enters its findings of fact and conclusions of law.

ISSUE

The assessment of the subject property was calculated by the Respondent as if it included a one-acre homesite, but there is no dwelling or homesite. It is just bare land. Should the assessment be changed to reflect the undisputed fact that the subject property has no homesite by using the base rate for excess residential acreage for its entire 1.53 acres?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

PROCEDURAL HISTORY

1. The Petitioner initiated an assessment appeal with the Property Tax Assessment Board of Appeals (PTABOA) by written document on February 2, 2009.

2. The PTABOA mailed its determination on June 1, 2009.

3. The Petitioner filed a Petition for Review of Assessment (Form 131) with the Board on June 17, 2009. At that time the Petitioner elected not to proceed according to small claims procedures. On December 17, 2010, the Board received an amendment to that petition. On December 20, 2010, the Board approved the amendment, thereby allowing the Petitioner to add a new issue regarding the purported improper use of "homestead" land type for assessing the subject property.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. The Board held an administrative hearing on January 11, 2011, before the duly appointed Administrative Law Judge, Ronald Gudgel.

5. Sheila J. Murray and Deputy Assessor Michael S. Watkins were sworn as witnesses.

6. The Petitioner submitted the following exhibits:

   Petitioner Exhibit 1 – Curriculum Vitae of Sheila J. Murray,
   Petitioner Exhibit 2 – Two overhead photographs of the subject property,
   Petitioner Exhibit 3 – Property record card,
   Petitioner Exhibit 4 – 2002 Version A—Real Property Assessment Guidelines, chapter 2, page 69,
   Petitioner Exhibit 5 – December 10, 2010, letter from the Johnson County Department of Planning and Zoning.

7. The Respondent offered no exhibits.

8. The following additional items are recognized as part of the record:

   Board Exhibit A – Form 131 Petition with attachments,
   Board Exhibit B – Board's Approval and Petitioner's Amendment to Appeal Petition,
   Board Exhibit C – Notice of Hearing,
   Board Exhibit D – Hearing sign-in sheet.

9. The subject property is a 1.53-acre parcel with no improvements located on South Susan Lane in Trafalgar.

10. The Administrative Law Judge did not conduct an on-site inspection of the property.

11. The PTABOA determined the assessed value is $97,900.

12. The Petitioner contended the assessed value of the land should be $19,900.

OBJECTION

13. The Petitioner objected to any testimony or exhibits from the Respondent because the Respondent failed to provide copies of documentary evidence or a witness list prior to the hearing.

14. For plenary hearings, the Board's procedural rules require that a party to the appeal must provide other parties with a list of witnesses and exhibits to be introduced at the hearing at least fifteen business days before the hearing. 52 IAC 2-7-1(b)(2). Copies of documentary evidence and summary statements of anticipated testimony must be exchanged at least five business days prior to the hearing. 52 IAC 2-7-1(b)(1). Failure to comply with these requirements can be grounds to exclude evidence. 52 IAC 2-7-1(f). The purpose of this requirement is allowing parties to be informed, avoiding surprises, and promoting an organized, efficient, fair consideration of cases.

15. The Respondent acknowledged not providing the lists or copies of documents prior to the hearing, but then offered no testimony or exhibits. This situation makes the objection a moot point.

SUMMARY OF THE PETITIONER'S CASE

16. The property is assessed as a one-acre homesite (base rate $130,000 per acre) and .53 acres of residential excess acreage (base rate $13,000 per acre). The property record card shows the assessment was determined incorrectly. The entire 1.53 acres should be assessed as residential excess acreage. *Murray testimony; Pet'r Ex. 3*.

17. There is no homesite on this property. It has no dwelling or any other structures. It does not have sewers or "any of that." It is just a wooded property with a ravine. *Murray testimony; Pet'r Ex. 2, 3, 5*.

18. The Assessment Guidelines explain how to use a county's base rates for homesites and excess residential acreage:

> *If the parcel has a dwelling*, one acre is valued using the residential homesite value. The remaining acreage is valued using the excess acreage rate. There must be a residential dwelling unit on the parcel before the homesite acreage rate can be used.
>
> *If there is no dwelling unit on the parcel*, the amount of acreage in the entire parcel is multiplied by the appropriate excess rate.
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> ****
>
> The following examples illustrate how residential acreage is valued for parcels larger than one acre. These examples assume a homesite base rate of $10,000 (per acre) and an excess acreage base rate of $1,000 (per acre).
>
> ****
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> **Example 2:** A residential parcel is vacant and has three acres. Its value is calculated by multiplying the acreage by the excess acreage base rate (3 acres x $1,000 = $3,000).

Murray testimony; Pet'r Ex. 4.

19. The excess residential acreage base rate of $13,000 per acre, as determined by county officials, is correct. Applying this rate to the 1.53 acres would result in a value that rounds to $19,900. *Murray testimony*.

SUMMARY OF THE RESPONDENT'S CASE

20. The Respondent argued that the Petitioner simply disputed the methodology used to assess the subject property, but offered no evidence about what a more accurate market value-in-use might be. *Watkins argument*.

ANALYSIS

21. The Petitioner made a prima facie case for an assessment change for the following reasons:

    a. Real property 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 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. *Id.* at 3. Indiana promulgated Guidelines that explain the application of the cost approach. The value established by use of the Guidelines is presumed to be accurate, but that is merely a starting point. The presumption is rebuttable. MANUAL at 5.

    b. The Tax Court has often explained that an assessor's misapplication of the guidelines will not *necessarily* invalidate an assessment; rather, the pivotal question is, notwithstanding the misapplication of the guidelines, does the

assessment accurately reflect the property's market value-in-use? *See , e.g., Westfield Golf Practice Ctr. v. Washington Twp. Assessor*, 859 N.E.2d 396, 399 (Ind. Tax Ct. 2007); *O'Donnell v. Dep't of Local Gov't Fin*., 854 N.E.2d 90, 94-95 (Ind. Tax Ct. 2006); *Eckerling v. Wayne Twp. Assessor,* 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006).

c. The Petitioner, however, did more than just challenge the methodology of the assessment and prove that it was misapplied. The Petitioner proved the Respondent assessed something that does not exist. There is no homesite if the parcel lacks a dwelling. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002—VERSION A, ch. 2 at 69 (incorporated by reference at 50 IAC 2.3-1-2). And the undisputed evidence established that in this case there is no dwelling.[1] Clearly the subject property contains no homesite—a fact the Respondent made absolutely no attempt to dispute.[2] By establishing the assessment includes a non-existent feature and quantifying the impact of this error, the Petitioner has shown her current assessment is not a reasonable measure of true tax value.

d. Had the Respondent produced an appraisal, evidence of sales, or other market data to support the current assessment, the fact that it did not conform to the Guidelines' methodology would be irrelevant. *See* MANUAL at 2 (recognizing that some situations may not be explained or strictly following the Guidelines may result in assessments that are inconsistent with the definition of market value-in-use; therefore, assessors can adjust an assessment to comply with the definition of market value-in-use and they can consider additional factors to accomplish this adjustment); *see also Hurricane Food, Inc. v. White River Twp.*

[1] In addition to the bare land itself, other things make a homesite. For example, those things can include landscaping, well, septic system, or utility hook-ups. GUIDELINES, ch. 2 at 68. This point was addressed only briefly during the hearing, but a little bit of evidence in the record indicates the subject property does not have "sewers or any of that." Significantly, the Respondent failed to challenge or dispute any of the description offered by the Petitioner.

[2] The base rate for a homesite is 10 times more than the base rate for residential land without a homesite. The Petitioner pointed out specific provisions in the Guidelines that emphasize the significance of the presence or absence of a dwelling in determining the value of residential land. Under these circumstances, the Respondent's apparently cavalier disregard of the subject property's lack of a homesite is extremely troubling.

Assessor, 836 N.E.2d 1069, 1074 (Ind. Tax Ct. 2005) (explaining that even if the method used by an assessing official to value property is incorrect, the assessment will not necessarily be invalidated if other probative evidence indicates that property's assessed value accurately reflects its market value-in-use).

e. But the Respondent presented no evidence. The Respondent presented absolutely no evidence or argument that the current assessed value somehow results in an accurate measure of true tax value.

f. The Board will not sustain a valuation where a significant part of that value is based on non-existent property. The non-existent homesite will not be included as part of this assessment. Accordingly, the land classification should have 1.53 acres of residential excess acreage. The assessed land value must be changed to correspond with that classification. Because there is no dispute that the appropriate base rate for the entire parcel is $13,000 per acre, the change requires only a simple mathematical calculation (1.53 x $13,000 = $19,890).

SUMMARY OF FINAL DETERMINATION

22. The Petitioner made a prima facie case that the Respondent failed to impeach or rebut. Therefore, the total assessment must be reduced to $19,900.

This Final Determination is issued on the date written above.

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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>