

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

Petition Nos.: 64-012-05-1-5-00001
64-012-05-1-5-00002
64-012-05-1-5-00003

Petitioner: Debra A. Loyd

Respondent: Porter County Assessor

Parcel Nos.: 64-04-01-184-016.000-012
64-04-01-184-006.000-012
64-03-01-263-001.000-012

Assessment Year: 2005

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

Procedural History

1. The Petitioner initiated assessment appeals with the Porter County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated July 5, 2006.
2. The Petitioner received notice of the decision of the PTABOA on June 1, 2007.
3. The Petitioner filed appeals to the Board by filing Form 131 petitions with the county assessor on June 8, 2007. The Petitioner elected to have her cases heard pursuant to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated February 3, 2009.
5. The Board held an administrative hearing on March 26, 2009, before the duly appointed Administrative Law Judge (the ALJ) Ellen Yuhan.
6. Persons present and sworn in at hearing:

For Petitioner: Debra A. Loyd, Petitioner,

For Respondent: John R. Scott, Porter County Assessor.¹

Facts

7. The subject properties are a residential dwelling located at 1519 Columbia Avenue and two vacant parcels on Florida Avenue, Michigan City.²
8. The ALJ did not conduct an on-site visit of the property.
9. The PTABOA determined the assessed values of the properties to be \$21,400 for the land and \$94,100 for the improvements, for a total assessed value of \$115,500 for Parcel No. 64-04-01-184-016.000 (Parcel 016); \$6,400 for the land for Parcel No. 64-04-01-184-006.000 (Parcel 006); and \$17,100 for the land for Parcel No. 64-04-01-263-001.000 (Parcel 001). There are no improvements on Parcel 006 and Parcel 001.
10. The Petitioner requested assessed values of \$8,560 for the land and \$37,640 for the improvements, for a total assessed value of \$42,200 for Parcel 016; \$2,560 for the land for Parcel 006; and \$4,560 for the land for Parcel 001.

Issues

11. Summary of Petitioner's contentions in support of an error in the assessment:
 - a. The Petitioner contends that negative external factors affect the value of her property. *Loyd testimony*. According to Ms. Loyd, her property is surrounded by transfer stations, junk shops, abandoned cars and semi-trailers and monitoring wells. *Id.* In support of this contention, the Petitioner presented a neighborhood map and photographs showing the location of the properties in relationship to her property. *Petitioner Exhibit 1 and 2*. The Petitioner argues that the junk yards are dangerous because they have abandoned appliances and materials and there has been little or no enforcement of the laws and ordinances by the county. *Loyd testimony*.
 - b. The Petitioner further contends that the area lacks police protection and patrols. *Loyd testimony*. According to the Petitioner, it takes 20 to 45 minutes for police to respond to a call. *Id.*; *Petitioner Exhibit 4*. Ms. Loyd argues that this is a major concern given that one of the area residents was murdered during an attempted bank robbery. *Id.* The Petitioner also claims that she is required to use the LaPorte County Post Office, which assigns her a Michigan City address and she also has a LaPorte County telephone number. *Loyd testimony*. According to Ms. Loyd, this creates confusion when calling 911 because the call automatically goes to LaPorte County but her emergency

¹ Peggy Hendron, Porter County Deputy Assessor was also present.

² The properties have a Michigan City mailing address even though they are located in Porter County.

services come from Porter County. *Id.* Furthermore, the nearest hospital in LaPorte County is only 4.1 miles away but the closest hospital in Porter County is 20.8 miles from her home. *Id. Petitioner Exhibits 5 and 6.*

- c. Similarly, the Petitioner contends that she is required to use the Michigan City schools, which are inferior to the Porter County schools. *Loyd testimony.* In support of this contention, the Petitioner presented a letter showing that the school her daughter attended had been placed on academic probation. *Petitioner Exhibit 3.* According to Ms. Loyd, for her daughter to go to the Porter County schools, she would have to pay thousands of dollars in “out of district fees” even though she is a Porter County resident. *Loyd testimony.* Thus, the Petitioner argues, she is taxed at the same rate as other residents in Porter County, but she is not provided the same quality of service. *Id.*
- d. The Petitioner also argues that her property’s value has decreased because the groundwater is contaminated under her property. *Loyd testimony.* According to the Petitioner, the community is located in the vicinity of three landfills. *Id. Petitioner Exhibit 8.* The United States Environmental Protection Agency (EPA) conducted a preliminary assessment on each of the landfills and found solvents, acids, heavy metals, chromium, pesticide residue, and PCBs contributing to groundwater, surface water, and soil contamination. *Loyd testimony; Petitioner Exhibit 12.* The Petitioner contends a report from the Agency for Toxic Substances and Disease Registry (ATSDR) describes the threat to human health from the metals contained in the wells. *Id.; Petitioner Exhibit 7.* According to the Petitioner, the ATSDR screened concentrations of compounds in the wells in the community against health-based guidelines and found that boron, arsenic, manganese, and lead consistently exceeded those guidelines and posed a threat to human health. *Id.* According to Ms. Loyd, testing done on her well in 2002 showed 3,280 ppb boron which exceeds EPA’s maximum contaminant level of 900 ppb. *Loyd testimony; Petitioner Exhibit 13.* The Petitioner’s wells were again tested in 2005 and the boron level was 6,500 ppb. *Loyd testimony; Petitioner Exhibit 14.*
- e. The Petitioner further contends that one of the landfills, Yard 520, is an active restricted waste facility that accepts fly ash from NIPSCO and sludge from Midwest Steel. *Loyd testimony; Petitioner Exhibit 7.* According to Ms. Loyd, the fly ash was also used throughout the community as fill for roads, driveways, and yards. *Id.* The Petitioner presented a report prepared by the Cost Benefit Group that analyzed the property value changes arising from the area’s fly ash contamination. *Petitioner Exhibit 16.* The report estimates that property values have fallen 20% because of the contamination. *Petitioner Exhibit 16 at 3.* Ms. Loyd argues that the report does not consider the other contaminants in the soil and groundwater. *Loyd testimony.* The report, however, also finds that “assessed values appear to understate sale prices by 15% to 20%.” *Id. at 4.* The authors “therefore increased assessed values by

15% to reflect market values” in their estimate of damages related to the contamination. *Id.*

- f. In addition, the Petitioner argues that a neighboring property received a 20% reduction on the assessed value of the improvements for having suspected well contamination, even though the maps show that none of the contamination levels exceeded EPA limits in their area. *Loyd testimony; Petitioner Exhibits 15 and 17.* According to the Petitioner, on the neighbor’s other parcel, the PTABOA gave them 20% for having suspected well contamination and 25% for other negative external factors. *Loyd testimony; Petitioner Exhibit 18.* Thus, the Petitioner argues, the subject properties’ assessed values should be reduced 45% for contamination issues and 30% for other external negative factors. *Loyd testimony.*
 - g. Finally, in response to the Respondent’s evidence regarding the sale of 1600 Columbia for \$88,000, the Petitioner contends that the sellers actually suffered a \$10,000 loss on that property. *Loyd testimony; Petitioner Exhibit 21.* According to Ms. Loyd, the sellers had to give the buyer \$6,000 in concessions because of the well water issues. *Id.*
12. Summary of Respondent’s contentions in support of the assessment:
- a. The Respondent contends that the properties’ negative factors have already been accounted for in their assessments. *Scott testimony.* According to Mr. Scott, Parcel No. 016 currently has a 60% negative influence factor – 40% for excess frontage and 20% for being located near a landfill. *Scott testimony; Respondent Exhibit 1.* The Respondent testified that Parcel No. 006 has a 76.21% negative adjustment applied to the land – 20% for its location near a landfill, 6.54% for the property’s lack of sewer, 4.67% for the lot’s lack of water, and 45% for parcel’s excess frontage. *Id.* The Respondent further contends that Parcel No. 001 has a 70.228% factor applied to the land, which includes 20% for its location near a landfill, 3.05% for the property’s lack of sewer, 2.18% for the lot’s lack of water, 45% for the parcel’s excess frontage, and 10% for the lot being low, wet land.³ *Id.*
 - b. The Respondent also submitted market information and property record cards for six properties in the Pines area to show that the properties are not over-assessed. *Respondent Exhibit 5.* The sales disclosure forms uniformly show that the properties were assessed below their sales prices. *Id.*
 - c. Finally, the Respondent contends that the contamination impacts the lot and not the home. *Scott testimony.* Thus, the adjustment was properly applied to the land and not the improvements. *Id.* Further, the Respondent argues, the

³ The Board notes that for Parcel No. 001 the total deductions as shown on page 2 of Respondent Exhibit 1 actually total 80.23 %.

contamination is curable if the property is connected to a city water system.
Id.

Record

13. The official record for this matter is made up of the following:
- a. The Petitions,
 - b. The compact disk recording of the hearing labeled Debra A. Loyd, 64-012-05-1-5-00001, -00002, -00003,
 - c. Exhibits:

Petitioner Exhibit 1 – Google map of the neighborhood,
Petitioner Exhibit 2 – Photographs,
Petitioner Exhibit 3 – Michigan City High School letter,
Petitioner Exhibit 4 – Newspaper article from the Pines Bank murder,
Petitioner Exhibit 5 – ENSR Local Emergency Contacts,
Petitioner Exhibit 6 – Map of the locations of the area hospitals,
Petitioner Exhibit 7 – ATSDR report,
Petitioner Exhibit 8 – Map of the locations of nearby landfills,
Petitioner Exhibit 9 – ENSR Map of the locations of CCBs,
Petitioner Exhibit 10 – Environmental Health News article,
Petitioner Exhibit 11 – ENSR map of ecological habitat assessment,
Petitioner Exhibit 12 – IDEM and EPA preliminary assessment,
Petitioner Exhibit 13 – USEPA well water test results for June 27, 2002,
Petitioner Exhibit 14 – Microbac well water test results for February, 15, 2005,
Petitioner Exhibit 15 – ENSR Map of boron levels in the groundwater,
Petitioner Exhibit 16 – Cost Benefit Group analysis of value changes resulting from the groundwater contamination,
Petitioner Exhibit 17 – Minutes from the assessment appeal of a neighboring property,
Petitioner Exhibit 18 – Property valuation record for the appealed neighboring property,
Petitioner Exhibit 19 – Disc containing the remedial investigation files,
Petitioner Exhibit 20 – Sample of well water,⁴
Petitioner Exhibit 21 – Listing information for 1600 Columbia Avenue,

For Petition No. 64-012-05-1-5-00001:

Respondent Exhibit 1 – Subject property's property record card with a calculation of influence factor,
Respondent Exhibit 2 – Subject property's worksheet,

⁴ The Petitioner produced the sample of well water but did not submit it with her other evidence.

Respondent Exhibit 3 – Subject property’s picture,
Respondent Exhibit 4 – Subject property’s section of plat map
Respondent Exhibit 5 – Sales disclosures, MLS listings, and property
record cards for 1565 Louisiana Avenue, 3997
Pine Street, 3639 Pinney Street, 1600 Columbia
Avenue, 1575 Colorado and 1716 Liberty Avenue,
Michigan City, IN 46360,

For Petition No. 64-012-05-1-5-00002:

Respondent Exhibit 1 – Subject property’s property record card with a
calculation of influence factor,

For Petition No. 64-012-05-1-5-00003:

Respondent Exhibit 1 – Subject property’s property record card with a
calculation of influence factor,

Board Exhibit A - Form 131 petitions,
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 Board of Tax Commissioners*, 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 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 evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.

15. The Petitioner failed to establish an error in the assessment. 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.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2) (the MANUAL). Appraisers traditionally have used three methods to determine a property’s market value: the cost, sales comparison and income approaches. *Id.* at 3, 13-15. Indiana assessing officials generally assess 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) *reh’g den. sub. nom. P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 2006). But 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 id.*; *see also Kooshtard Property VI*, 836 N.E.2d at 505, 506 n. 1. A taxpayer may also offer sales information compiled according to generally accepted appraisal principles. MANUAL at 5.
 - d. The Petitioner contends the assessed values of the properties are over-stated because of several negative factors that affect the properties. The Petitioner claims the authorities do not enforce the laws and ordinances regarding dump sites and junk yards in the surrounding area, the police and emergency service response times are slow, the school system she is required to use is inferior, and environmental conditions impact the value of the property.
 - e. Such negative factors can be accounted for in the value of the land or in the value of the improvements. An “influence factor” may be applied to the value of land “to account for certain characteristics of a particular parcel of land that are peculiar to that parcel.” GUIDELINES, glossary at 10 and ch.2 at 61-63. As to the application of a negative factor on the improvements, obsolescence is defined as “a diminishing of a property’s desirability and usefulness brought about by either functional inadequacies or super-adequacies inherent in the property itself, or adverse economic factors external to the property.” GUIDELINES, glossary at 14. For either an influence factor or obsolescence to be applied to the Petitioner’s properties, the Petitioner must identify the causes of the negative impact and must quantify that impact on the property’s values.

See Clark v. State Board of Tax Commissioners, 694 N.E.2d 1230, 1241 (Ind. Tax 1998).

- f. While the Petitioner failed to provide any evidence from which to quantify the effect of the surrounding area or the impact from emergency response times, lack of police patrols, or the school system, Ms. Loyd provided a report prepared by the Cost Benefit Group that analyzed the property value changes arising from the area's fly ash contamination. That report estimates property values have fallen 20% because of the contamination.⁵ The properties are already receiving negative influence factors of 20% on their land assessments for the parcels' location near a landfill. Ms. Loyd, however, argues that an adjustment should be made to the improvements also.
- g. Obsolescence may be quantified by using generally accepted appraisal practices. *Hometowne Assocs., L.P. v. Maley*, 839 N.E.2d 269, 273 (Ind. Tax Ct. 2005). Typically, a property's fair market value as determined under the income capitalization approach is compared with its fair market value as determined under the cost approach. *Id.* at 275. The difference then is attributable to the obsolescence present in the property. *Id.* at 275. Here, however, the Petitioner's evidence does not compare her properties' income approach value, or their sales comparison approach value with the properties' cost approach value – or even to its assessed value – it merely compares contaminated properties' sales values with uncontaminated properties' sales values. Thus, while Ms. Loyd may have shown that her property is worth 20% less than it would have otherwise been worth had there not been any contamination, the Petitioner did not actually show what her property is worth in its contaminated or uncontaminated state. Moreover, nothing in the record shows that Ms. Loyd's assessments do not reflect the value of her property in its contaminated state. To the contrary, the very evidence the Petitioner relies upon to support the loss in value also finds that assessed values are understated by 15% to 20%. Therefore, Ms. Loyd failed to show her assessment exceeds the market value-in-use of her properties.
- h. This conclusion is supported by the Indiana Tax Court decision in *Eckerling v. Wayne Township Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). In that case, the Tax Court held that a Petitioner fails to sufficiently rebut the presumption that an assessment is correct by simply contesting the methodology used to compute the assessment. *See also P/A Builders & Developers v. Jennings County Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct.

⁵ The Petitioner requested 45% for contamination and 30% for external negative characteristics on the total assessed value. The Petitioner, however, failed to prove that requested amount. The Petitioner's own evidence, specifically the Cost Benefit Group analysis, puts the most likely diminution of property value arising from the molybdenum/boron/fly ash contamination at 20% if certain contingencies are met, such as commencement of clean-up, provision of clean water to all homes at all times, etc. *Petitioner Exhibit 16, cover letter*. In the event the contingencies are not met, the report estimates that the reduction in value could be as high as 40% but would most likely be 22.5%. *Id.*

2006) (recognizing that the current assessment system is a departure from the past practice in Indiana, stating that “under the old system, a property’s assessed value was correct as long as the assessment regulations were applied correctly. The new system, in contrast, shifts the focus from mere methodology to determining whether the assessed value is *actually correct*”). Thus, it would not be enough for the Petitioner to contend that an obsolescence factor should have applied to her properties, but she must show that her assessments do not reflect the market values-in-use of her properties.

- i. The Petitioner also argued that a neighboring property received a 45% reduction for external factors and presented the minutes from the PTABOA hearing and the neighbor’s property record card showing a 45% reduction for external factors. *Petitioner Exhibits 17 and 18*. The Petitioner did not argue that her property was assessed for more than its market value-in-use. She merely argued that her property was assessed for more than other properties in the same area. *Loyd testimony*. This argument, however, was found to be insufficient to show an error in an assessment by the Indiana Tax Court in *Westfield Golf Practice Center, LLC v. Washington Township Assessor*, 859 N.E.2d 396 (Ind. Tax Ct. 2007) (rejecting taxpayer’s lack of uniformity and equality claim where the taxpayer showed neither its own property’s market value-in-use nor the market values-in-use of purportedly comparable properties). In that case, the Tax Court held that it is not enough for a taxpayer to show that its property is assessed higher than other comparable properties. *Id.* Instead, the taxpayer must present probative evidence to show that its assessed value does not accurately reflect the property’s market value-in-use. *Id.* Here, the Petitioner did not show the market value-in-use of her property or of any property that she claimed was more favorably assessed.
- j. Where a Petitioner fails to provide probative evidence for an assessment change, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacey Diversified Indus. v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221 – 1222 (Ind. Tax Ct. 2003).

Conclusion

16. The Petitioner failed to raise a prima facie case for a reduction in the value of her properties. The Board finds in favor of the Respondent.

Final Determination

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

ISSUED: _____

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, 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>.