BEFORE THE
INDIANA BOARD OF TAX REVIEW

Samuel H. and Mary Jane Lyle Revocable Living Trust,	)	Petitions: 71-026-03-3-4-00001 71-026-04-3-4-00002 71-026-05-3-4-01442
Petitioner,	)	
	)	Parcel: 71-03-34-203-002.000-26
v.	)	a/k/a 18-2114-417702
	)	
St. Joseph County Assessor,	)	St. Joseph County Portage Township
Respondent.	)	Assessment Years: 2003, 2004, and 2005

Appeal from the Final Determination of the
St. Joseph County Property Tax Assessment Board of Appeals

October 6, 2009

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 Petitioner filed Petitions for Correction of an Error for the 2003, 2004, and 2005 assessments on the subject property, claiming that the land is assessed as commercial land when it really is apartment land. In a separate appeal for the 2006 assessment, it was determined that the land classification had been wrong so the land classification and the 2006 assessed value were changed. Should the 2003, 2004, and 2005 assessments be corrected to the same valuation as 2006?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

HEARING FACTS AND OTHER MATTERS OF RECORD

1. The subject property is an apartment building at 2104 - 2120 Lathrop in South Bend.

2. The Petitioner filed Petitions for Correction of an Error (Forms 133) regarding the assessment of the subject property: one for 2003, one for 2004, and one for 2005. The Property Tax Assessment Board of Appeals (PTABOA) denied them. The Petitioner then filed the Petitions for Correction of an Error with the Board.

3. For 2003, 2004, and 2005, the PTABOA determined the assessed value is $77,100 for land and $131,700 for improvements (total $208,800).

4. The Petitioner contends the assessed value for those years should be $17,700 for land and $155,500 for improvements (total $173,200), which would be the same as the assessed value for 2006.

5. Administrative Law Judge Ted Holaday held a hearing for these petitions on July 28, 2009. There was no on-site inspection of the subject property by the Administrative Law Judge or the Board.

6. Dan Breidenbach represented the Petitioner.[1] Attorney Frank Agostino represented the Respondent. Mr. Breidenbach, County Assessor David Wesolowski, and PTABOA Member Ross Portolese testified at the hearing.

7. The Petitioner presented the following exhibit:

   Petitioner Exhibit 1 – Form 115 for the subject property for 2006.

[1] Mr. Breidenbach is purchasing the property on contract and was responsible for the taxes.

8. The Respondent presented the following exhibits:

Respondent Exhibit 1 – Form 131,
Respondent Exhibit 2 – Form 133 (March 1, 2003),
Respondent Exhibit 3 – Form 133 (March 1, 2004),
Respondent Exhibit 4 – Form 133 (March 1, 2005),
Respondent Exhibit 5 – Form 115 (March 1, 2006),
Respondent Exhibit 6 – Letter requesting continuance,
Respondent Exhibit 7 – Letter granting continuance,
Respondent Exhibit 8 – Property record card for parcel 18-2114-417704,
Respondent Exhibit 9 – Property record cards for parcels 18-2114-417703 and 18-2114-417702.

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

Board Exhibit A – The Form 133 Petitions,
Board Exhibit B – Notices of Hearing,
Board Exhibit C – Hearing Sign-In Sheet.

SUMMARY OF THE PETITIONER'S CASE

10. The property was assessed with the neighborhood classification for commercial land, code of 18494. The correct classification should be apartment land, code 18404. This mistake probably goes back to when the land originally was developed. As a result of this error, the 2003, 2004, and 2005 assessments are too much. *Breidenbach testimony.*

11. The apartment buildings on either side of the Petitioner's property were assessed using the apartment land classification. *Breidenbach testimony.*

12. The Petitioner appealed the 2006 assessment and the PTABOA agreed the land should be classified as apartment land. The Form 115 issued on July 20, 2007 shows they changed the 2006 assessment accordingly. *Breidenbach testimony; Pet'r Ex. 1.*

13. That corrected land classification and corrected total valuation of $173,200 should apply to the three prior years. *Breidenbach testimony.*

14. The PTABOA says they will not change the earlier assessments because the matter is subjective, but it is an objective determination. There is nothing subjective about the fact that the subject property is an apartment building. *Breidenbach testimony*.

SUMMARY OF THE RESPONDENT'S CASE

15. The property was assessed at $77,100 for land and $131,700 for improvements (total 208,800) in 2002. For the 2006 assessment, the trended value was $91,100 for land and $155,500 for improvements (total $246,600). These values are shown on the property record card. *Agostino argument; Resp't Ex. 9.*

16. The Petitioner appealed the 2006 assessment because the property should have been classified 18404 (code for apartments), rather than 18494 (code for other commercial property such as shopping areas or offices). There is no dispute about the fact that the subject property actually is an apartment building. For 2006, the PTABOA redetermined the land value using the correct code for apartments. This change reduced the assessment to $17,700 for land and $155,500 for improvements (total $173,200). But the change for 2006 was based on a Form 131 Petition, not a Form 133 Petition. *Agostino argument; Portolese testimony; Resp't Ex. 9*.

17. The Petitioner's Form 133 Petitions improperly seek to have these reduced values applied to the 2003, 2004, and 2005 assessments. *Agostino argument*.

18. The property is currently assessed as commercial, whereas the Petitioner is contending the neighborhood classification should be commercial/apartments. This is a subjective determination that is not allowed on a Form 133 Petition. *Wesolowski testimony*.

19. Code 18404 (apartments) and code 18494 (other commercial property such as shopping areas or offices) are both commercial classifications. Determining which code is appropriate is subjective and not allowed on a Form 133 Petition. *Portolese testimony*.

20. The requested change is similar to a selection of pricing schedule, which the Tax Court determined was subjective in *Bender v. State Bd. of Tax Comm'rs*, 676 N.E.2d 1113 (Ind. Tax Ct. 1997). *Agostino argument*.

ANALYSIS

THE 2006 ASSESSED VALUE DOES NOT PROVE WHAT THE ASSESSED VALUE FOR 2003, 2004, OR 2005 SHOULD BE.

21. In Indiana, each tax year stands alone as a separate and distinct assessment. *Indianapolis Racquet Club v. State Bd. of Tax Comm'rs*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004); *Barth v. State Bd. of Tax Comm'rs*, 699 N.E.2d 800, 806 n. 14 (Ind. Tax Ct. 1998). Evidence of a property's assessment in one tax year is not probative of its true tax value in a different tax year because each tax year stands alone. *Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (citing *Glass Wholesalers, Inc. v. State Bd. of Tax Comm'rs*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991)).

22. A 2006 assessment is based on the value of the property as of January 1, 2005. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005); Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. The valuation date for the 2003, 2004, and 2005 assessments, however, was as of January 1, 1999. *Id.*

23. The relevant valuation dates are six years apart. Nobody even attempted to relate the value as of January 1, 2005, back to a value as of January 1, 1999. Consequently, the valuation for the 2006 assessment does not help to prove what the valuation for the 2003, 2004, and 2005 assessments should be. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (evidence of value must have some explanation as to how it demonstrates or is relevant to value as of the required valuation date).

ONLY OBJECTIVE ERRORS THAT CAN BE CORRECTED WITH EXACTNESS AND PRECISION CAN BE ADDRESSED WITH A FORM 133.

24. Taxpayers have two methods to appeal an assessment: a Petition for Review of Assessment (Form 131) authorized by Ind. Code § 6-1.1-15-1, or a Petition for Correction of an Error (Form 133) authorized by Ind. Code § 6-1.1-15-12. "A taxpayer that challenges a property assessment bears the responsibility of using the appropriate method." *Franchise Realty Corp. v. Indiana Bd. of Tax Comm'rs*, 682 N.E.2d 832, 833 (Ind. Tax Ct. 1997); *Bender v. State Bd. of Tax Comm'rs*, 676 N.E.2d 1113, 1114 (Ind. Tax Ct. 1997).

25. A taxpayer can file a Form 131 challenging any element of an assessment, but it can only be initiated within 45 days after getting notice of what the assessment will be, or by May 10 of the assessment year, whichever is later. Ind. Code § 6-1.1-15-1(b).

26. The time for filing a Form 133 is longer.[2] But the issues that can be raised with a Form 133 are much more limited. Only objective errors that can be corrected with exactness and precision can be addressed with a Form 133. They are not for changes that require subjective judgment. Ind. Code § 6-1.1-15-12; *O'Neal Steel v. Vanderburgh Co. Property Tax Assessment Bd. of Appeals*, 791 N.E. 2d 857, 860 (Ind. Tax Ct. 2003); *Barth, Inc. v. State Bd. of Tax Comm'rs*, 756 N.E.2d 1124, 1128 (Ind. Tax Ct. 2001); *Bender*, 676 N.E.2d at 1114; *Reams v. State Bd. of Tax Comm'rs*, 620 N.E.2d 758, 760 (Ind. Tax Ct. 1993); *Hatcher v. State Bd. of Tax Comm'rs*, 561 N.E.2d 852, 857 (Ind. Tax Ct. 1990).

27. A determination is objective if it hinges on a simple, true or false finding of fact. *See Bender*, 676 N.E.2d at 1115. "[W]here a simple finding of fact does not dictate the result and discretion plays a role, [the] decision is considered subjective and may not be challenged through a Form 133 filing." *Id.*

[2] Indiana Code § 6-1.1-15-12 does not specify a time limit. Nevertheless, the time limit for filing a Form 133 is three years. *See Will's Far-Go Coach Sales v. Nusbaum*, 847 N.E.2d 1074, 1078 (Ind. Tax Ct. 2006).

28. The primary question is whether the Petitioner presented the kind of issue that can be addressed with a Form 133.

THE PETITIONER FAILED TO PROVE ANY OBJECTIVE ERROR THAT REQUIRES THE ASSESSMENTS TO BE CHANGED.

29. The fact that the subject property is an apartment building was not disputed. Although the Respondent offered conclusory testimony that determining which land classification code to use was a subjective judgment, no substantial explanation or fact was presented to show what actually was subjective. Therefore, for the purposes of this determination the Board will accept that the proper land classification might be an objective determination. But the land classification code, whether commercial or apartment, is only a tangential point.

30. The evidence does not establish how the land classification code might affect what the land value should be. Nobody explained why making that change greatly reduced the 2006 land value. More importantly, the Petitioner failed to prove that correcting the land classification code to 18404 for years 2003, 2004, and 2005 (so that it would be the same as the corrected land classification code for 2006) necessarily results in the assessed value for those years becoming the same as the assessed value for 2006.

31. Assessing commercial land primarily depends on three main elements: base rate, size, and influence factor. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002—VERSION A, ch. 2 at 95-96 (incorporated by reference at 50 IAC 2.3-1-2).

32. The Petitioner failed to establish any direct connection between the proper land classification and how the assessed value of the subject property is calculated. The property record card (Respondent Exhibit 9) shows how a land value for the subject property was determined, but not for any relevant year. There is no evidence regarding how this property's land value was calculated for 2003, 2004, or 2005, and no proposed corrected calculations were presented. If there was an error in the land value calculation

that could be corrected with exactness and precision, the Petitioner failed to demonstrate what it might be. *See Indianapolis Racquet Club,* 802 N.E.2d at 1022 ("[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis").

33. Nothing in the record establishes what the 2003-2005 base rate should be for the subject property. Local assessing officials record commercial land values on neighborhood valuation forms. These forms serve the same purpose of specifying base rates for land value as county land orders did in the past. They are key to any understanding and analysis of how any particular land value is determined for assessment purposes. *See* Ind. Code 6-1.1-4-13.6; *Goodhost v. Dep't of Local Gov't Fin.*, 786 N.E.2d 813, 815 (Ind. Tax Ct. 2003) (explaining that when a taxpayer challenges its land value it is essential to have an opportunity to read and analyze the relevant portion of the land order to know how it applies to the subject property in order to determine if any remedy is warranted and what the remedy should be). A taxpayer who claims its land value was incorrectly calculated, but then fails to provide the land order (or neighborhood valuation form) that is required to analyze and apply the land valuation methodology, fails to make a prima facie case. *Id.* The evidence presented in this case is similarly inadequate for any meaningful review because there is no evidence about what the correct base rate for the subject property was supposed to be. Furthermore, there is not enough evidence to determine whether selection of the base rate itself would be an objective or a subjective determination.

34. Even if the base rate for 2003, 2004, and 2005 were an objective, known fact, calculating any change to the existing land value would still require subjective determinations that are not allowed as part of a Form 133 correction of error. As noted earlier, influence factor is another key element in calculating land value according to the Assessment Guidelines. An "influence factor" is "a multiplier that is applied to the value of land to account for characteristics of a particular parcel of land that are peculiar to that parcel. The factor may be positive or negative and is expressed as a percentage." GUIDELINES,

glossary at 10. Nine specific reasons for influence factors, as well as an additional "other" category are listed. GUIDELINES, ch. 2 at 93-95. There are no set percentages to be given for the various factors. Consequently, all of the reasons require subjective determinations to be made about how the subject parcel differs from the norm. *Id*. at 92. The inherently subjective nature of determining and applying influence factors as part of the land valuation process also precludes the relief sought by the Petitioner. *See Reams*, 620 N.E.2d at 759 (explaining that Form 133 is inappropriate for challenging subjective, discretionary decisions by assessors).

THE CLAIM ABOUT LACK OF UNIFORMITY AND EQUALITY DOES NOT MAKE A CASE FOR ANY ASSESSMENT CHANGE.

35. The Petitioner asserted that other neighboring properties are correctly identified as apartment land and his was not. According to the Petitioner, this difference means that his land was not assessed uniformly and equally with those properties. This difference, however, is not enough to make a prima facie case for changing the Petitioner's assessments.

36. A similar claim about lack of uniformity and equality was rejected in *Westfield Golf Practice Center, LLC v. Washington Twp. Assessor*, 859 N.E.2d 396 (Ind. Tax Ct. 2007). Westfield Golf based its argument on the fact that the landing area for its driving range was assessed by using a different base rate than the rate used to assess the landing areas of other driving ranges. *Id.* at 397-98. That difference, however, did not establish a violation of uniformity and equality requirements. The court explained that "the overarching goal of Indiana's new assessment scheme is to measure a property's value using objectively verifiable data." *Id.* at 399. Thus, while uniformity and equality is required in the end result, the procedures used to arrive at that result need not be uniform. Rather than focusing on that end result by comparing the actual market value-in-use of its property to the market values-in-use of the other driving ranges, Westfield Golf focused solely on the methodology used to compute the assessments. Westfield Golf did not prove the actual market value-in-use of its property or the other properties. Lacking such

proof, there was no evidence that the requirements for uniformity and equality of assessment were violated. *Id.*

37. In this case, the Petitioner focused on a difference (land classification code) that is more inconsequential to the valuation than land base rates. The Petitioner never addressed whether the subject property was assessed at a higher percentage of market value-in-use than other properties. Indeed, the Petitioner only noted the properties are apartments in close proximity. Based on this record, there is no way to draw any legitimate conclusion about the assessed value or the market value-in-use of the subject property and the neighboring apartments. *See Long*, 821 N.E.2d at 471 (stating that one who offers a comparable is responsible for explaining the characteristics of the subject property, how those characteristics compare to those of purportedly comparable properties, and how any differences affect the relevant market value-in-use of the properties).

38. Making a determination about the alleged violation of uniformity and equality principles necessarily requires comparing the valuation of properties, and a legitimate comparison inherently requires subjective judgment to account for similarities and differences between properties. Attempting to bring this claim is inconsistent with the general limitation that Form 133 Petitions are limited to objective errors that can be corrected without subjective judgment. Therefore, the Petitioner's claim about lack of uniformity and equality fails.

SUMMARY OF FINAL DETERMINATION

39. The Petitioner failed to make a prima facie case. The Board finds in favor of the Respondent.

FINAL DETERMINATION

In accordance with the above findings and conclusions, there will be no change in the assessments.

ISSUED: _____

_____
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>