

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

Petition No.: 06-010-08-1-5-00425
Petitioner: Robert Lyon
Respondent: Boone County Assessor
Parcel No.: 010-10000-08
Assessment Year: 2008

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 Petitioner initiated an assessment appeal with the Boone County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated July 24, 2009.
2. The PTABOA issued notice of its decision on September 8, 2009.
3. The Petitioner filed a Form 131 petition with the Board on October 22, 2009. The Petitioner elected to have his case heard according to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated May 7, 2010.
5. The Board held an administrative hearing on July 28, 2010, before the duly appointed Administrative Law Judge (the ALJ) Dalene McMillen.
6. The following persons were present and sworn in at hearing:¹
 - a. For Petitioner: Robert Lyon, Property owner
 - b. For Respondent: Lisa C. Garoffolo, Boone County Assessor
Peggy J. Lewis, PTABOA Member

¹ Michael J. Andreoli and Heather M. Shumaker appeared as counsel for the Petitioner. Lawrence D. Giddings, Giddings, Whitsitt & Williams, P.C., appeared as counsel for the Respondent.

Facts

7. The subject property is a 3,348 square foot single-family home on 4.90 acres located at 9420 Timberwolf Lane, Zionsville, Union Township, in Boone County.
8. The ALJ did not conduct an on-site inspection of the property under appeal.
9. For 2008, the PTABOA determined the assessed value of the property to be \$463,900 for land and \$325,600 for the improvements, for a total assessed value of \$789,500.
10. The Petitioner did not request any specific assessed value on his appeal form.

Issue

11. Summary of the Petitioner's contentions in support of an alleged error in his assessment:
 - a. The Petitioner contends his land is over-valued. *Andreoli argument*. According to the Petitioner's counsel, the base rate of the Petitioner's excess acreage is much higher than the base rate of excess residential acreage of superior properties in the area.² *Id.* In support of this contention, Mr. Andreoli submitted a property index, property record cards and a geographic information system (GIS) map of the area. *Id.*; *Petitioner Exhibit A and C*. Mr. Andreoli argues that the base rate of excess residential acreage of superior properties in the area ranged from \$5,000 to \$62,500 per acre, while the Petitioner's property was assessed at \$87,900 per acre.³ *Andreoli testimony; Petitioner Exhibit A*. Because superior properties' excess acreage is assessed lower than the subject property's excess acreage, Mr. Andreoli argues, there is a "great disparity" and inequity in assessed values in Boone County. *Andreoli argument*.
 - b. Mr. Lyon testified that a 1.62 acre property located in the Lost Run Subdivision, which is the most expensive subdivision in Boone County, is a prime example of the assessment inequity in Boone County. *Lyon testimony*. According to Mr. Lyon, the property is located in a gated community with a stone wall, guard, and municipal utilities, but the property's excess acreage is assessed for only \$50,000 per acre. *Id.* Similarly, Ms. Shumaker argues the base rate of excess acreage for six properties adjacent to the subject property is \$19,900 per acre. *Shumaker*

² According to the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (incorporated by reference at 50 IAC 2.3-1-2), "Residential acreage parcels of more than one acre and not used for agricultural purposes are valued using the residential homesite base rate and the excess acreage base rate established by the township assessor." GUIDELINES at Chap. 2 at 69.

³ Mr. Andreoli testified the Petitioner's property has a well and septic system, while the comparable properties are on municipal sewer and water systems. *Andreoli testimony; Petitioner Exhibit A*.

testimony; Petitioner Exhibit C. Accordingly, Ms. Shumaker argues, the Petitioner's excess land base rate is \$68,000 per acre higher than properties located right behind his. *Id.* Ms. Shumaker admitted, however, that all properties in the Timberwolf subdivision where the Petitioner's property is located were assessed at \$87,900 per acre for excess residential property. *Shumaker testimony.*

- c. Finally, the Petitioner contends his property is assessed in excess of its market value-in-use. *Andreoli testimony.* In support of his position, the Petitioner's counsel submitted a residential appraisal report prepared by Gary A. Freese of G.A. Freese & Associates. *Petitioner Exhibit B.* Mr. Freese is an Indiana Licensed Residential Appraiser who certified that he preformed his appraisal in conformance with the Uniform Standards of Appraisal Practices (USPAP). *Id.* In his appraisal report, Mr. Freese estimated the property's value to be \$610,000 as of May 5, 2010.⁴ *Id.*

12. Summary of the Respondent's contentions in support of the assessment:

- a. The Respondent contends the property under appeal is correctly assessed at \$789,500. *Garoffolo testimony.* The Respondent's witness, Ms. Lewis, testified that Government Utilities Technology Service (GUTS) developed the home site and excess residential acreage base rates for each neighborhood based on vacant land sales within that neighborhood. *Lewis testimony.* According to Ms. Lewis, the Assessor's office applied the excess acreage base rate of \$87,900 per acre consistently throughout the entire Timberwolf subdivision. *Lewis testimony.* Thus, she concludes, the Petitioner's property is being assessed fairly and accurately in his neighborhood. *Lewis testimony.*
- b. Ms. Lewis further argues that the Petitioner's comparable properties should not be given any weight because the comparable properties he used are not located in the same neighborhood as the property under appeal. *Lewis testimony.* According to Ms. Lewis, if the one-acre home site and excess residential acreage base rates of the Willow Ridge subdivision and Lost Run subdivision are applied to the Petitioner's land, his assessed value would be higher than the assessment at issue in his appeal. *Id.* For example, in the Willow Ridge subdivision, the one-acre home site rate is \$250,000, while the excess acreage is \$62,500. *Id.* If those rates are applied to the Petitioner's 4.90 acres, Ms. Lewis argues, the Petitioner's land would have been assessed for \$493,750, or \$29,850 higher. *Id.* Similarly, if the Petitioner's property was located in the Lost Run subdivision, his 4.90 acres would be assessed at \$845,000, or \$381,100 higher. *Id.* Thus, Ms. Lewis concludes that, although the excess acreage base rate applied in the Timberwolf

⁴ Mr. Freese's appraisal report states "[a]djustments for additional acreage (or excess land) were made on a per acre basis using a market derived \$12,500 per acre." *Petitioner Exhibit B.* In addition, the appraisal report states "[t]he market value for the subject site, as though vacant and available for sale, is approximately \$300,000." *Id.*

subdivision is higher than Lost Run or Willow Ridge, the overall market value-in-use of the land is lower.⁵ *Lewis testimony.*

- c. In addition, Ms. Lewis argues, the Petitioner's appraisal is flawed and should be given no weight. *Lewis testimony.* According to Ms. Lewis, the Petitioner's appraiser used two sales from Hamilton County when there were sufficient sales in Boone County. *Id.* In addition, four of the six comparable homes in the appraisal were smaller in living area and the appraiser calculated the differences in living area by only \$35 per square foot. *Id.* Ms. Lewis argues that the adjustment should have been \$50 per square foot at a minimum.⁶ *Id.*
- d. Finally, the Respondent contends the property's assessment is correct based on the sale of 9400 Timberwolf Lane. *Garoffolo testimony.* In support of this contention, the Respondent submitted the MIBOR listing sheet for the property that sold February 28, 2008. *Respondent Exhibit 5.* Ms. Garoffolo testified the neighboring property has 3.52 acres of land and slightly less living area, but sold for \$1,097,000; whereas the Petitioner's house is larger and his lot is bigger, but he is currently assessed for only \$789,500. *Garoffolo testimony; Respondent Exhibits 3 and 5.* Thus, Ms. Garoffolo concludes, the Petitioner's property is not over-valued. *Garoffolo testimony.*

Record

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

- a. The Form 131 petition and related attachments.
- b. The digital recording of the hearing.
- c. Exhibits:

Petitioner Exhibit A – Petitioner's narrative, comparable property index worksheet, and property record cards for 9420 Timberwolf Drive, Zionsville, 11548 Willow Springs Drive, Zionsville, 11555 Willow Springs Drive, Zionsville, 11554 Willow Springs Drive, Zionsville, 4744 Pebblepointe Pass, Zionsville, 4075

⁵ In addition, Ms. Garoffolo testified that the six properties in Petitioner's Exhibit C assessed at \$19,900 per acre for excess residential property are located outside of the Timberwolf subdivision and are not part of that neighborhood. *Garoffolo testimony.*

⁶ Ms. Lewis testified that she is a licensed appraiser in the State of Indiana. *Lewis testimony.* According to Ms. Lewis, the appraiser should have started with a living area adjustment of approximately one-third the per square foot sales price, which was approximately \$163.80 for comparable properties. *Id.*

Wildwood Court, Zionsville, 3 Woodard Bluff, Zionsville, at 10022 Fox Trace, Zionsville, 9502 East 100 South, Zionsville, 9480 East 100 South, Zionsville, 9450 East 100 South, Zionsville, 7325 Hunt Club Drive, Zionsville, 9195 Mallard Point, Zionsville, 3042 Huddersfield Lane, Zionsville, 9984 East 300 South, Zionsville, 9570 East 300 South, Zionsville, 7014 Old Hunt Club Road, Zionsville, 6958 Old Hunt Club Road, Zionsville, 6990 Old Hunt Club Road, Zionsville, 7012 Hunt Club Drive, Zionsville, 7999 Hunt Club Road, Zionsville, 8905 Hunt Club Drive, Zionsville, 7256 Hunt Club Drive, Zionsville, 7289 Hunt Club Drive, Zionsville, 7317 Hunt Club Drive, Zionsville, 7322 Hunt Club Drive, Zionsville, and 7182 Hunt Club Drive, Zionsville,

Petitioner Exhibit B – Residential Appraisal Summary Report prepared by Gary A. Freese, G.A. Freese & Associates, dated May 5, 2010,

Petitioner Exhibit C – Boone County GIS map of the subject property and surrounding area,

Respondent Exhibit 1 – Boone County appeal worksheet, dated July 24, 2009, and power of attorney from Robert Lyon to John Johantges, Property Tax Group 1, Inc., dated September 15, 2008,

Respondent Exhibit 2 – Property record card for the Petitioner’s property,

Respondent Exhibit 3 – Property record cards for 9368 Timberwolf Lane, Zionsville, 9400 Timberwolf Lane, Zionsville, and 9434 Timberwolf Lane, Zionsville,

Respondent Exhibit 4 – Exterior photograph and aerial map of the Petitioner’s property,

Respondent Exhibit 5 – Multiple listing sheet for 9400 Timberwolf Lane, Zionsville, dated May 3, 2010,

Respondent Exhibit 6 – Exterior photograph of the Petitioner’s property,

Respondent Exhibit 7 – Petitioner’s Residential Appraisal Summary Report prepared by Gary A. Freese, G.A. Freese & Associates, dated May 5, 2010,

Respondent Exhibit 8 – Notification of Final Assessment Determination – Form 115, dated September 8, 2009,

Respondent Exhibit 9 – Letter from John Johantges, Property Tax Group 1, Inc. to Lisa Garoffolo, Boone County Assessor, dated October 22, 2009,

Respondent Exhibit 10 – Petition to the Indiana Board of Tax Review for Review of Assessment – Form 131, dated October 26, 2009,

Respondent Exhibit 11 – Indiana Board of Tax Review Notice of Hearing on Petition, dated May 7, 2010,

Board Exhibit A – Form 131 petition with attachments,
Board Exhibit B – Notice of Hearing, dated May 7, 2010,
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 Bd. of Tax Comm'rs*, 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 case. *Id.; Meridian Towers*, 805 N.E.2d at 479.
15. The Petitioner failed to provide sufficient evidence to establish a prima facie case for a reduction in his assessed value. The Board reached this decision for the following reasons:
- a. Indiana assesses real property based on its “true tax value,” which the 2002 Real Property Assessment Manual defines 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, for the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL (the MANUAL) (incorporated

- by reference at 50 IAC 2.3-1-2). The appraisal profession traditionally has used three methods to determine a property's market value: the cost approach, the sales comparison approach, and the income approach to value. *Id.* at 3, 13-15. Indiana assessing officials generally use 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 Township Assessor*, 836 N.E.2d 501,505 (Ind. Tax Ct. 2005); *P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 2006). A taxpayer may rebut the presumption 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 often will suffice. *See Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer construction costs, sales information for the subject property or comparable properties and any other information compiled according to generally accepted appraisal practices. MANUAL at 5.
 - c. Regardless of the method used to rebut an assessment's presumption of accuracy, a party must explain how its evidence relates to the subject property's market value-in-use as of the relevant valuation date. *O'Donnell v. Department of Local Government Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2008, assessment, the valuation date was January 1, 2007. 50 IAC 21-3-3.
 - d. Here, the Petitioner contends his excess residential land is assessed higher than the excess residential land of other properties in the area. *Andreoli argument; Petitioner Exhibits A and C*. This argument, however, was found to be insufficient to show an error in 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). In that case, the landing area for the petitioner's driving range was assessed as "usable undeveloped" land and assigned a value of \$35,100 per acre, while the landing areas of other driving ranges were assessed at a golf course rate of \$1,050 per acre. 859 N.E.2d at 397. Westfield appealed contending that its assessment was not uniform and equal. *Id.*
 - e. In his determination, Judge Fisher held that under Indiana's prior assessment system, "true tax value" was determined by Indiana's assessment regulations and "bore no relation to any external, objectively verifiable standard measure." 859 N.E.2d at 398. Therefore, "the only way to determine the uniformity and equality of assessments was to determine whether the regulations were applied similarly to comparable properties." *Id.* Presently, "Indiana's overhauled property tax assessment system incorporates an external, objectively verifiable benchmark – market value-in-use."

859 N.E.2d at 399. “As a result, the new system shifts the focus from examining how the regulations were applied (i.e. methodology) to examining whether a property’s assessed value actually reflects the external benchmark of market value-in-use.” *Id.* Thus, the Tax Court held, it is not enough for a taxpayer to show that its property is assessed higher than other comparable properties. *Westfield Golf Practice Center*, 859 N.E.2d at 399. Instead, the taxpayer must present probative evidence to show that the assessed value, as determined by the assessor, does not accurately reflect the property’s market value-in-use. *Id.*; *see also P/A Builders & Developers, LLC v. Jennings County Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (The focus is not on the methodology used by the assessor, but instead on determining whether the assessed value is actually correct. Therefore, the taxpayer may not rebut the presumption merely by showing an assessor’s technical failure to comply strictly with the Guidelines). Like the Petitioner in *Westfield Golf*, the Petitioner here merely argued that the assessment of his land was not uniform and therefore he failed to raise a prima facie case.

- f. Unlike the Petitioner in *Westfield Golf*, however, the Petitioner only focused on *part* of his property. But the Petitioner’s argument here is perhaps the best example of why focusing on one small area of an assessment can be misleading. The excess residential acreage value for Willow Ridge and Lost Run were \$62,500 and \$50,000, respectively, but the home site values of those lots were \$250,000 and \$650,000. Under either assessment method, the Petitioner’s land value would have been higher than the assessed value at issue in this appeal. Mr. Curley urges the Board to ignore the value assigned to the various home sites and lower his excess residential acreage because other neighborhoods’ excess acreage is assessed at a lower value but this the Board will not do. Regardless of whether too much or too little assessed value is allocated to the Petitioner’s home site or to his excess acreage, the Petitioner must show that his property’s assessment as a whole does not reflect the property’s market value-in-use. *See Eckerling v. Wayne Township Assessor*, 841 N.E.2d 674, 677 (Ind. Tax Ct. 2006) (a Petitioner fails to sufficiently rebut the presumption that an assessment is correct by simply contesting the methodology used to compute the assessment; instead the Petitioner must show that the assessment does not accurately reflect the property’s market value-in-use).
- g. The Petitioner’s counsel also argues that the excess residential acreage on six adjacent properties is assessed for \$19,900 per acre and therefore the Petitioner’s land should be similarly assessed. Mere proximity of properties, however, is insufficient to prove that the properties are comparable. Neighborhoods share common development characteristics, average ages of the improvements, size of lots, subdivision plats and zoning maps, school and other taxing district boundaries, among other characteristics. GUIDELINES, Chap. 2 at 8. Thus, a party must explain the characteristics of the subject neighborhood and how those characteristics compare to those of purportedly comparable properties, as well as how any differences between the properties’ neighborhoods affect the relative market values-in-use. *Long v. Wayne Township*

Assessor, 821 N.E.2d 466 (Ind. Tax Ct. 2005). The only showing that the Petitioner made here is that different neighborhoods have different land values. *See Pachniak v. Marshall County Assessor*, Ind. Tax Ct. Cause No. 49T10-0904-TA-18, 2010 Ind. Tax LEXIS 20 (June 20, 2010) (unreported decision) (Petitioner failed to show an error in his land assessment where two of the Petitioner's comparables were in a different neighborhood and "presumably subject to an entirely different provision of the applicable neighborhood valuation form" and the third "comparable" was valued using the same base rate as the Petitioner's parcels).

- h. Finally, the Petitioner argues that his property is over-assessed based on its \$610,000 appraised value. *Andreoli argument; Petitioner Exhibit B*. Appraisals performed in accordance with generally recognized appraisal principles are often enough to establish a prima facie case. *See Meridian Towers*, 805 N.E.2d at 479. Here, however, the appraisal valued the property as of May 5, 2010; whereas the valuation date for the March 1, 2008, assessment was January 1, 2007. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. A party must explain how its evidence relates to the subject property's market value-in-use as of the relevant valuation date. *See O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, its evidence lacks probative value. *Id.* Because the Petitioner's appraisal estimated the property's value approximately 28 months after the relevant valuation date and the Petitioner failed to explain how that appraised value related to the January 1, 2007, valuation date, the Petitioner's appraisal failed to raise a prima facie case that the Petitioner's property was over-assessed.
- i. Where the taxpayer fails to provide probative evidence that an assessment should be changed, the Respondent's duty to support the assessment with substantial evidence is not triggered. *See Lacy 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. 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 assessment should not be changed.

ISSUED: _____

Chairman,
Indiana Board of Tax Review

Commissioner,
Indiana Board of Tax Review

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 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 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/bills/2007/SE0287.1.html>.