Small Claims
Final Determination
Findings and Conclusions

Petition Number: **62-005-07-1-5-00001**
Petitioners: **John T. and Cathy S. McCallister**
Respondent: **Perry County Assessor**
Parcel No.: **62-16-09-400-136.001-005**
Assessment Year: **2007**

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 Petitioners initiated an assessment appeal with the Perry County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated August 22, 2008.

2. The Petitioners received notice of the decision of the PTABOA through a Form 115, Notification of Final Assessment Determination, dated February 17, 2009.[1]

3. The Petitioners initiated an appeal to the Board by filing a Form 131 petition on March 18, 2009. The Petitioners elected to have their case heard according to the Board's small claims procedures.

4. The Board issued a notice of hearing to the parties dated January 26, 2010.

5. The Board held an administrative hearing on March 16, 2010, before the duly appointed Administrative Law Judge (the ALJ) Rick Barter.

6. The following persons were present and sworn in at hearing:

[1]The Petitioners argue that their Form 115 Notification of Final Assessment issued February 17, 2009, states that board member Charlotte Arnold was in attendance, but she was not present. *C. McCallister argument; Petitioner Exhibit 2.* To the extent that the taxpayer can be seen as arguing that Ms. Arnold's absence somehow invalidates or calls the PTABOA decision into question, the Board disagrees. Once a taxpayer properly invokes the Board's jurisdiction, the proceedings are *de novo*. The taxpayer is not limited to evidence offered at the PTABOA hearing. *See* Ind. Code § 6-1.1-15-4(k) (A party participating in the hearing…is entitled to introduce evidence that is otherwise proper and admissible without regard to whether that evidence has previously been introduced at a hearing before the county board). And the Board owes the PTABOA determination no deference. Thus, any failure by the PTABOA below does not hinder the Petitioners' ability to present their case to the Board. *Id.*

a. For Petitioners: John T. McCallister, Petitioner
Cathy S. McCallister, Petitioner

b. For Respondent: Mendy Ward, Perry County Assessor

FACTS

7. The property at issue in this appeal is an unimproved residential parcel located along the Ohio River on Rome Road, in Perry County, Rome, Indiana.

8. The ALJ did not conduct an on-site visit of the property.

9. For 2007, the PTABOA determined the assessed value of the subject property to be $19,300 for the land. There are no improvements on the property.

10. For 2007, the Petitioners requested the assessed value of their property to be calculated using the front-foot or lot method of assessment with a negative influence factor for flooding. The Petitioners did not designate any specific assessed value for the parcel.

Issues

11. Summary of the Petitioners' contentions in support of an alleged error in their assessment:

a. The Petitioners contend their property's 2007 assessed value is incorrect because the property is assessed differently than similar neighboring properties. *C. McCallister testimony.* According to Ms. McCallister, the Petitioners' lot was assessed using the acreage method of value, while assessments of comparable parcels were calculated using the frontage or front-foot method of value. *Id.* In support of their contention, the Petitioners submitted copies of property record cards for the subject property and nine nearby parcels, as well as a plat map of the area. *Petitioner Exhibits 3 and 4.*

b. Further, the Petitioners contend, their assessment should be reduced by an influence factor because the property floods several times a year.[2] *C. McCallister testimony.* According to Ms. McCallister, their parcel is zoned by the county as a flood area and, as a result, no improvements may be constructed on the property. *Id.* Further, Ms. McCallister argues, flooding is eroding the shore line of the parcel, impacting the value of their property. *Id.* In support of this contention, the Petitioners submitted five photographs of flood water and brush conditions on the subject property and nearby parcels. *Petitioner Exhibit 5.*

[2] The Petitioners contend that a neighboring property, Parcel No. 62-16-09-100-137.006-005 on Rome Road, carries a negative 65 percent influence factor for flooding as a result of a Form 130 appeal hearing; whereas their property was not given any adjustment for the flooding. *C. McCallister testimony.*

c. Finally, the Petitioners admit that they purchased the property in August of 2007 for $24,000. *C. McCallister testimony.* They contend, however, that their assessment increased from $3,800 in 2006 to $19,300 in 2007, despite the fact they purchased the subject property for just $3,000 more than the previous owner paid for the property in July of 2005. *C. McCallister testimony.*

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

a. The Respondent contends that the Petitioners' 2007 assessment is correct based on the market value-in-use of the property. *Ward testimony.* According to Ms. Ward, the property was purchased in 2005 for $21,000 and again in 2007 for $24,000. *Id.* In support of this contention, the Respondent submitted a copy of the county's trending study for Neighborhood 9508 showing the two sales. *Id.; Respondent Exhibit 1.*

b. The Respondent further argues that the Petitioners failed to quantify any negative impact on the market value-in-use of their property as a result of the flooding. *Ward testimony.* Moreover, Ms. Ward argues, the Petitioners were aware of the property's zoning restrictions and propensity to flood at the time that they purchased the property. *Id.* Therefore, she argues, the zoning restrictions and flooding are reflected in the Petitioners' purchase price. *Id.*

c. Finally, the Respondent argues that the Petitioners' "comparable" properties were all located in a different neighborhood than their property. *Ward testimony.* According to Ms. Ward, the Petitioners' property is located in Neighborhood 9505,[3] which is assessed by the acreage method; whereas the other properties cited by the Petitioners are in Neighborhood 9501, which is assessed using the front-foot method. *Id.* In support of her argument, Ms. Ward submitted a copy of a revised property record card for the property adjacent to the Petitioners' lot showing that the property was originally assessed in an incorrect neighborhood. *Respondent Exhibit 2; Ward testimony.* According to Ms. Ward, the adjacent lot has subsequently been assessed in Neighborhood 9508 using the acreage method, and presently carries the same land value as the Petitioners' parcel. *Id.*

RECORD

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

a. The Petition,

b. The compact disk recording of the hearing labeled 62-005-7-1-5-00001McCallister,

[3] There appears to be a little confusion as to the Petitioners' property's neighborhood. The property record card indicates Neighborhood 9505. However, the two sales of the property appear on the trending study for Neighborhood 9508.

c. Exhibits:

Petitioner Exhibit 1 – Copy of the Form 131 Petition,
Petitioner Exhibit 2 – Copy of the Form 115,
Petitioner Exhibit 3 – Property record cards (PRC) for the Petitioners' property and nine other parcels,
Petitioner Exhibit 4 – Plat map of the area,
Petitioner Exhibit 5 – Photographs of flood conditions on the Petitioners' property and several nearby properties,

Respondent Exhibit 1 – Trending study for Neighborhood 9508,
Respondent Exhibit 2 – PRC for Parcel No. 62-16-09-400-136.002-005 located on U.S. Highway 66,

Board Exhibit A – Form 131 Petition and related attachments,
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 Twp. 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 Twp. 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 Petitioners failed to raise a prima facie case for a reduction in the property's assessed value. 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). Appraisers traditionally have 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 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.

b. A property's assessment under the Guidelines is presumed to accurately reflect its true tax value. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005)*; P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax 2006). A taxpayer may rebut that 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. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer sales information for the subject property or comparable properties and other information compiled according to generally accepted appraisal principles. 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, 2007, assessment, the valuation date was January 1, 2006. 50 IAC 21-3-3.

d. Here, the Petitioners first argue that their property's assessment is incorrect because the assessor used an "acreage" method of valuing the property; whereas neighboring properties are assessed as lots. *C. McCallister testimony.* A similar argument was rejected by the Indiana Tax Court in *Westfield Golf Practice Center, LLC v. Washington Township Assessor et al.*, 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.* The Indiana Tax Court held that under the prior assessment system, "true tax value" was determined by Indiana's assessment regulations and "bore no relation to any external, objectively verifiable standard of 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., mere methodology) to examining whether a property's assessed value actually reflects the external benchmark of market value-in-use." *Id.* Thus, it is not enough for a taxpayer to show that its

property is assessed higher or differently than other comparable properties. *Id.* 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 Co. 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).

e. To the extent that the Petitioners argue that their property is over-assessed based on the assessed values of nearby properties, the Board finds that the Petitioners likewise failed to raise a prima facie case. For 2007, the subject property was assessed for $19,300. *Petitioner Exhibit 3.* The parcel to the west, which is similar in size to the Petitioners' property, however, was assessed for $12,700 and the parcel to the east, which is approximately half the size of the Petitioners' property, was assessed for $4,600. *Id*. Because a property's assessment under the Guidelines is presumed to accurately reflect its true tax value, the assessed values of the neighboring parcels may be some evidence that the Petitioners' property is over-valued. However, that evidence is rebutted by the July 7, 2005, purchase of the subject property by its previous owners for $21,000.[4] *Respondent Exhibit 1.* Thus, the Petitioners failed to raise a prima facie case that their property is assessed in error based on the assessed values of nearby properties.

e) The Petitioners also argue that their property should be adjusted by an influence factor because the lot floods several times a year and therefore they cannot build anything on the parcel. Land values in a given neighborhood are generally determined through the application of a Land Order that was developed by collecting and analyzing comparable sales data for the neighborhood and surrounding areas. *See Talesnick v. State Bd. of Tax Comm'rs,* 693 N.E.2d 657, 659 n. 5 (Ind. Tax Ct. 1998). However, properties often possess particular attributes that do not allow them to be grouped with each of the surrounding properties for purposes of valuation. The term "influence factor" refers to 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." GUIDELINES, glossary at 10. The Petitioners have the burden to produce "probative evidence that would support an application of a negative influence factor and a quantification of that influence factor." *See Talesnick v. State Bd. of Tax Comm'rs.*, 756 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001). Here, the Petitioners merely argue that the property floods "several times a year" and because the parcel is located in a flood zone, the Petitioners cannot build anything on the lot. *C. McCallister testimony.* The

[4] While generally the 2007 assessment is to reflect the value of a property as of January 1, 2006, pursuant to 50 IAC 21-3-3(a), "local assessing officials shall use the sale of properties occurring between January 1, 2004, and December 31, 2005, in performing ratio studies for the March 1, 2006, assessment date. For assessment years occurring March 1, 2007, and thereafter, the local assessing official shall use sales of properties occurring the two (2) calendar years preceding the relevant assessment date." The Board therefore finds that a sale occurring less than six months prior to the valuation date has sufficient probative value to show that the Petitioners' property is properly assessed.

Petitioners, however, did not offer any quantification of the impact of those use limitations on the value of the property except to contend that a nearby parcel receives a 65% influence factor for flooding. This is insufficient to quantify the value of any flooding on the Petitioners' land. Even if it was sufficient evidence to show the Petitioners' property should receive a similar adjustment, the evidence of the neighboring property's influence factor is rebutted by the evidence that the property was purchased in July of 2005 for $21,000 and again by the Petitioners in 2007 for $24,000, despite the property's flooding and zoning restrictions.

b. The Petitioners failed to raise a prima facie case that the subject property was assessed in excess of its market value-in-use for the March 1, 2007, assessment date. Where a 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. Dep't of Local Gov't Fin.,* 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

16. The Petitioners failed to raise a prima facie case that the subject property is over-assessed. 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: _____

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Chairman, 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.