

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

Petition: 45-018-06-1-5-00042
Petitioners: Joseph R. and Tracy H. McCullough
Respondent: Lake County Assessor
Parcel: 006-27-17-0010-0008
Assessment Year: 2006

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

Procedural History

1. The Petitioners initiated their 2006 assessment appeal with the Lake County Property Tax Assessment Board of Appeals (PTABOA) on July 31, 2007.
2. The PTABOA issued notice of its decision on March 7, 2012.
3. The Petitioners filed their Form 131 petition with the Board on April 21, 2012. The Petitioners elected the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated May 17, 2013.
5. Administrative Law Judge Ellen Yuhan held the administrative hearing on June 17, 2013. She did not inspect the property.
6. Joseph R. McCullough, Tracy H. McCullough and Lake County Hearing Officer Robert Metz were sworn as witnesses.

Facts

7. The property under appeal is a single-family home at 432 N. Linda Street in Hobart.
8. The PTABOA determined the 2006 assessed value is \$61,600 for the land and \$181,200 for the improvements (total \$242,800).
9. The Petitioners claimed the assessed value should be \$3,270 for the land and \$140,800 for the improvements (total \$144,070).

Record

10. The official record for this matter contains the following:
 - a. The Form 131 petition,
 - b. A digital recording of the hearing,
 - c. Petitioners Exhibit A – Form 131 petition,
Petitioners Exhibit B – Requests for preliminary conferences,
Petitioners Exhibit C – Plat of survey,
Petitioners Exhibit D – Letter to the Army Corp of Engineers,
Petitioners Exhibit E – Letter to the Department of Natural Resources (DNR),
Petitioners Exhibit F – Initial request for flood plain analysis,
Petitioners Exhibit G – Initial response to request for flood plain analysis,
Petitioners Exhibit H – Second response to request for flood plain analysis,
Petitioners Exhibit I – Pictures of the back of the subject property,
Petitioners Exhibit J – Pictures of the current state of Deep River,
Petitioners Exhibit K – Pictures of Deep River prior to construction of Hidden Lake subdivision,
Petitioners Exhibit L – Pictures of the front of the subject property prior to construction of High Street property,
Petitioners Exhibit M – Pictures of the subject property after construction of High Street property,
Petitioners Exhibit N – Additional pictures of the subject property during flooding,
Petitioners Exhibit O – Prior year valuation records,
Petitioners Exhibit P – Notice of Assessment of Land and Structures, Form 11,
Petitioners Exhibit Q – Tax summary,
Respondent Exhibit A – Appraiser Residential Detail Report for 2121 E. Cleveland Street,
Board Exhibit A – Form 131 petition,
Board Exhibit B – Notice of Hearing dated May 17, 2013,
Board Exhibit C – Hearing sign-in sheet,
 - d. These Findings and Conclusions.

Contentions

11. Summary of the Petitioners' case:
 - a. The subject property is a 100 year old home that was purchased by the Petitioners in 1986. The property is landlocked and is located in a flood plain. The home lacks city water, sewer, and does not have a street in front of the home. When the Petitioners purchased the subject property their tax bill was \$400. An addition was made to the property and the Petitioners were told by the assessor that their tax bill would increase

“one and one half what it was.” The Petitioners’ tax bill has since quadrupled.
McCullough testimony.

- b. There have been considerable increases in the subject property’s land assessments from 1996 to 2002. In 1996 the land was valued at \$3,270 while it increased to \$9,800 in 2001. In 2002, the land value further increased to \$29,300. The Petitioners claim, given the problems with the property, the accurate assessment of the land should be \$3,270. *McCullough testimony; Pet’r Ex. B, O.*
- c. Since the purchase of the subject property, two major events have affected the use. First, the Hidden Lake subdivision was built directly across the river. When it rains, the storm water from the subdivision drains into Deep River and causes flooding on the lower part of the subject property. When the water recedes, garbage and debris are left behind. On the average, this portion of the property is submerged four or five times a year and can stay underwater for as long as a week. *McCullough testimony; Pet’r Ex. I, J.*
- d. The Petitioners have also been adversely affected by the construction of a home next to their property. When the subject property was purchased, the neighboring parcel was essentially a drainage field. With the construction of the neighboring home, runoff from this property washed out their gravel driveway. The Petitioners were forced to pave some of the driveway in an attempt to keep the water from flowing into the basement. Further, this construction necessitated the addition of a drainage ditch, which was an additional cost to the Petitioners. *McCullough testimony; Pet’r Ex. M, N.*
- e. Due to the increased flooding, the home’s concrete pad has begun cracking. Further, the garage needs to be torn down because the sill plates have been submerged in water for too long. The Petitioners had plans of finishing the basement of the home, but cannot because of the water issues. Further, the lower portion of the property cannot sustain any building or support a garden. *McCullough testimony.*
- f. The Petitioners requested an updated flood plain analysis from the Department of Natural Resources (DNR) in 2008. The assessor, however, did not want to accept the analysis because it did not specifically identify their property. The new map indicates an increase in the property’s flood plain status, specifically the lower portion of the property is located in a special flood hazard area. The Petitioners contend the DNR designation as a flood plain should supersede any state land classification. *McCullough testimony; Pet’r Ex. E, F, G, H.*
- g. The Petitioners contend they could not sell their property for the current assessed value. Prospective buyers would consider the flooding and the damage to the property plus the maintenance required for a 100 year old home. Further, the lack of city services and a road would be additional deterrents. *McCullough testimony.*

- h. The Petitioners claim the comparable property presented by the Respondent is not comparable to the subject property. The property presented by the Respondent only consists of two acres of land. Further, the property is not on the river and does not have any water issues. Accordingly, “there are not comparable properties within the city limits of Hobart to compare to a 100 year old house with five acres in a flood plain, too.” *McCullough testimony; Resp’t Ex. A.*
- i. In response to the Respondent’s argument that the photographs presented are current and do not relate to the assessment year under appeal, the issues that currently exist on the subject property have been on-going since the addition of the Hidden Lake subdivision in 1999. *McCullough testimony; Pet’r Ex. I, J, K, L, M, N.*
- j. This is the third appeal for the subject property. The first appeal was successful; however, a refund was only issued for one year even though the appeal was for three years. The second appeal resulted in reducing the subject property’s assessment to \$170,000. *McCullough testimony; Pet’r Ex. A, B.*

12. Summary of the Respondent’s case:

- a. The increase in the subject property’s assessed value was a result of a reassessment. The property consists of five acres, with one acre assessed as a home site and the remainder as excess residential acreage.¹ The DNR has not designated the land as wetlands or as a protected wildlife area. The assessment is correct and should remain at \$242,800. *Metz argument.*
- b. A property similar to the subject property sold for \$218,000 in 2005. This comparable property is the same architectural style and sold during the appropriate time period. Although the lot size and the size of the home are both smaller than the subject property, no adjustments were made for the differences between the properties. *Metz argument; Resp’t Ex. A.*
- c. The Petitioners’ primary focus is on the proximity to Deep River and flooding. At the informal hearing, the Petitioners presented only a partial survey that indicated the subject property’s improvements were not in a flood plain. The Petitioners have not presented any evidence that shows the impact on the market value or that supports a lower assessed value. *Metz argument.*
- d. The subject property is not a typical landlocked property because there is adequate ingress and egress. The fact that the public road does not extend to the front of the Petitioners’ property is an issue for the City of Hobart. *Metz argument.*

¹ The legal description indicates the parcel is four acres. The property record card shows the property is assessed with four acres, a one acre home site and three acres of excess residential acreage.

- e. The recent photographs submitted by the Petitioners do not relate to the 2006 time period. Further, the Petitioners' evidence relating to 1996 has no bearing on a 2006 valuation. *Metz argument; Pet'r Ex. I, J, K, L, M, N, O.*

Burden of Proof

- 13. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that its property's assessment is wrong and what its correct assessment should 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). Nevertheless, the Indiana General Assembly enacted a statute that in some cases shifts the burden of proof:

This section applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal increased the assessed value of the assessed property by more than five percent (5%) over the assessed value determined by the county assessor or township assessor (if any) for the immediately preceding assessment date for the same property. The county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.

Ind. Code § 6-1.1-15-17.2.

- 14. Here, the property's assessed value increased from \$170,100 in 2005 to \$242,800 in 2006, which is an increase of approximately 43%. The Assessor, therefore, had the burden of proving the 2006 assessment is correct. To the extent that the Petitioners seek an assessment below the previous year's level, they have the burden of proving a lower value for their property.

Analysis

- 15. The Respondent failed to make a prima facie case to support the 2006 assessment.
 - 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 have traditionally 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. In 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 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); *PA Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 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 (USPAP) often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 506 n.6. A taxpayer may also offer actual construction costs, sales information for the subject property or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.
- c. Regardless of the method used to rebut an assessment's presumed accuracy, a party must explain how its evidence relates to market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); see also *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For a 2006 assessment, the valuation date was January 1, 2005. 50 IAC 21-3-3.
- d. Here, the Respondent presented MLS information for one property that sold in 2005 to show that the subject property was not over-assessed. In making this argument the Respondent essentially relies on a sales comparison approach to establish the market value-in-use of the property. See MANUAL at 3 (stating that the sales comparison approach "estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market.") In order to effectively use the sales comparison approach as evidence in a property assessment appeal, however, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the properties. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.* The Respondent did not do this and, in fact, Mr. Metz testified he did not make any adjustments at all.
- e. Because the Respondent failed to make a prima facie case, the assessment must be changed to the previous year's 2005 assessed value of \$170,100. That, however, does not end the Board's inquiry because the Petitioners requested a lower value. The Petitioners have the burden of proving they were entitled to that additional reduction. The Board, therefore, turns to the Petitioners' evidence.
- f. The Petitioners claimed the subject property is over-assessed based on damage caused by flooding. Here, the Petitioners are arguing that the subject property is affected by a negative influence factor. An influence factor is used to account for characteristics of a particular parcel of land that are peculiar to that parcel. It is expressed as a

percentage that represents the composite effect of the factor that influences the value. GUIDELINES, glossary at 10. To prevail in the issue of an influence factor, the taxpayer must present probative evidence that would support an application of a negative influence factor and a quantification of that influence factor at the administrative level. *Talesnick v. State Bd. of Tax Comm'rs*, 756 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001); *Phelps Dodge v. State Bd. of Tax Comm'rs*, 705 N.E.2d 1099 (Ind. Tax Ct. 1999). While heavy rains and flooding may affect the property's value, the Petitioners offered no probative evidence to show the extent to which they do so. The Petitioners' unsubstantiated conclusions do not constitute probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

- g. The Petitioners also point to what they call "huge increases" in the assessment throughout the years, in particular the land assessment, and requested that the land value be reduced to the 1996 assessed value of \$3,270. Various Indiana Tax Court rulings hold that each tax year stands alone. The Indiana Tax Court has determined that evidence as to a property's assessment in one tax year is not probative of its true tax value in a different tax year. *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)) ("Finally, the Court reminds Fleet Supply that each assessment and each tax year stands alone. ... Thus, evidence as to the Main Building's assessment in 1992 is not probative as to its assessed value three years later.") While the Petitioners claim the utility of the property has declined, the Petitioners failed to present any probative evidence that would support their requested value.
- h. The Petitioners argue that their taxes are too high. The Petitioners, however, did not provide any evidence that the property tax assessment was incorrect. While they feel the taxes are excessive, the Board has no jurisdiction over the Petitioners' taxes or the tax rate applied to the assessment.
- i. Finally, the Petitioners complain that the Respondent did not view the subject property when it was flooded. The Board's proceedings are *de novo* and the failure by the Respondent to view the subject property did not hinder the Petitioners ability to present relevant evidence and argument before the Board. See Ind. Code § 6-1.1-15-4. Therefore, the failure of the Respondent to view the subject property, in this case, is irrelevant.

Conclusion

- 16. The Respondent failed to make a prima facie case that the value was correct for March 1, 2006. Therefore, the assessment for the Petitioners' property should be returned to the previous year's level of \$170,100. The Petitioners failed to show they were entitled to any further reduction. Thus, the Board orders that the 2006 assessment must be changed to \$170,100.

Final Determination

In accordance with the above findings of fact and conclusions of law, the 2006 assessed value must be reduced to \$170,100.

ISSUED: September 13, 2013

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 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.