

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

Petition No.: 75-002-09-1-5-00001
Petitioners: Michael C. and Juanita Milo
Respondent: Starke County Assessor
Parcel No.: 75-10-12-204-012.000-002
Assessment Years: 2009

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 Petitioners filed a Form 130 Petition for Review of Assessment with the Starke County Property Tax Assessment Board of Appeals (PTABOA) on May 21, 2010.
2. The PTABOA issued notice of its determination on November 9, 2010.
3. The Petitioners filed their Form 131 petition with the Board on December 7, 2010. The Petitioners elected to have their appeal heard pursuant to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated August 26, 2011.
5. The Board held an administrative hearing on October 19, 2011, before the duly appointed Administrative Law Judge (the ALJ) Ellen Yuhan.
6. Persons present and sworn in at hearing:

For Petitioner: Max M. Milo, the property owners' son,¹

For Respondent: Rhonda R. Milner, Starke County Assessor,
John Viveiros, Reassessment Project Manager.

¹ Steven A. Dodge appeared as counsel for the Petitioners.

Facts

7. The subject property is an 80 foot by 150 foot vacant residential lot located on County Road 210, in Knox, Indiana.
8. The ALJ did not conduct an on-site inspection of the property.
9. For 2009, the PTABOA determined the assessed value of the subject property to be \$140,200 for the land.
10. For 2009, the Petitioners requested an assessed value of \$66,000 for the land.

Issues

11. Summary of the Petitioners' contentions in support of an error in their property's assessment:
 - a. The Petitioners' counsel contends the Petitioners' property is over-valued because it is full of muck soil and is therefore unbuildable in its present state. *Dodge argument*. In support of this argument, the Petitioners presented a soil evaluation report prepared by Shane L. McBurnett, a professional soil scientist. *Petitioner Exhibit 2*. In his report, Mr. McBurnett notes that "Organic material ranges from 7 to 20 inches below the surface to a depth ranging from 70 to 84 inches below the surface in stratification. Organic material is unsuitable as a building substrate for any structure." *Id.* In addition, the Petitioners offered a proposal from Heise Excavating to bring the lot into a usable condition. *Petitioner Exhibit 3*. In that May 19, 2011, proposal, Heise Excavating estimated the cost of removing the organic material on the lot and providing appropriate fill materials to be \$74,200. *Id.* According to Mr. Dodge, the cost of making the Petitioners' lot buildable should be subtracted from the property's assessed value, resulting in an assessed value of \$66,000. *Dodge argument*.
 - b. The Petitioners' witness also argues that the Petitioners' property is over-valued compared to another property in the neighborhood. *Milo testimony*. According to the property owner's affidavit, the property located at 4500 CR 210, which Mr. Milo identified as Lot 25 and Lot 26, is larger than the subject property but is assessed for less because it has an influence factor applied to the land. *Petitioner Exhibit 6; Respondent Exhibit 8*. The Petitioners contend that their property should be assessed consistently with the 4500 CR 210 property. *Petitioner Exhibit 6*. Similarly, the Petitioners contend the taxes on their property should be consistent with the taxes on the 4500 CR 210 property. *Petitioner Exhibit 6*. According to the Petitioners, because Lot 25 and Lot 26 together are 2.17 times larger than the subject property, the tax for the subject property should be calculated by dividing the \$1,300 tax assessment for the comparable lots by 2.17, resulting in a tax rate of \$599.08 for the Petitioners' property. *Id.*

- c. Finally, the Petitioners' witness argues that the assessed value of the subject property increased from \$26,100 from 2005 to \$143,000 in 2006 with no improvements on the property. *Milo testimony*.

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

- a. The Respondent's representative contends that the subject property's assessment is correct based on the sale of a comparable property. *Viveiros testimony*. In support of this contention, the Respondent submitted a property record card, an aerial photograph, and a sales disclosure form for Parcel No. 75-10-13-103-111.000-002. *Respondent Exhibits 5-7*. According to Mr. Viveiros, the comparable property sold in March 2007 for \$125,000. *Viveiros testimony*. While the subject property's assessment is higher, Mr. Viveiros argues, the Petitioners' property has more frontage on the lake making it more valuable than the comparable property. *Id*. In addition, while the sale occurred outside of the time period relevant for the 2009 assessment, Mr. Viveiros argues, assessed values did not change from 2008 to 2009. *Id*.
- b. The Respondent's representative further contends that the topography of the subject property is flat and low and not significantly different from other adjacent lots. *Viveiros testimony*. In support of this contention, the Respondent submitted a photograph of the subject property. *Respondent Exhibit 4*. Mr. Viveiros argues that the Petitioners took their photographs during a period when there was flooding in the area. *Viveiros testimony*.
- c. Finally, Mr. Viveiros argues that the increase in the Petitioners' property's assessed value from 2005 to 2006 is irrelevant to this proceeding, because the year under appeal is 2009. *Viveiros testimony*.

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

- a. The Form 131 petition,
- b. A digital recording of the hearing labeled 75-002-09-1-5-00001 Milo,
- c. Exhibits:

Petitioner Exhibit 1 – Soil Evaluation Location Survey,
Petitioner Exhibit 2 – Soil Evaluation Report from A.L.L. Soil Consulting,
Petitioner Exhibit 3 – Proposal from Heise Excavating,
Petitioner Exhibit 4 – Photographs of the subject property and neighboring properties,
Petitioner Exhibit 5 – Property record card for the subject property,
Petitioner Exhibit 6 – Affidavit of Michael Milo,
Petitioner Exhibit 7 – Form 131 petition,
Petitioner Exhibit 8 – PTABOA findings,
Petitioner Exhibit 9 – 2005 pay 2006 tax statement,

Petitioner Exhibit 10 – 2006 pay 2007 tax statement,

Respondent Exhibit 1 – Property record card for the subject property,

Respondent Exhibit 2 – GIS aerial photograph of subject property at 90 foot scale,

Respondent Exhibit 3 – GIS aerial photograph of subject property at 360 foot scale,

Respondent Exhibit 4 – Digital photograph of the subject property (street view),

Respondent Exhibit 5 – Property record card for Parcel No. 75-10-13-103-111.000-002,

Respondent Exhibit 6 – GIS aerial photograph of Parcel No. 75-10-13-103-111.000-002,

Respondent Exhibit 7 – Sales disclosure form for Parcel No. 75-10-13-103-111.000-002,

Respondent Exhibit 8 – Property record card for 4500 S. CR 210,

Board Exhibit A – Form 131 petition,

Board Exhibit B – Notice of hearing dated August 26, 2011,

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 Petitioners failed to establish a prima facie case that their property's assessment should be reduced. The Board reached this conclusion 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 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 the property's 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 the March 1, 2009, assessment, the valuation date was January 1, 2008. 50 IAC 21-3-3.
 - d. Here, the Petitioners argue that the subject property is over-assessed because its soil content is too unstable and therefore the lot cannot be improved without incurring considerable expense. Land values in a given neighborhood are generally determined by collecting and analyzing comparable sales data for the neighborhood and surrounding areas. *See Talesnick v. State Board of Tax Commissioners*, 693 N.E.2d 657, 659 n. 5 (Ind. Tax Ct. 1998). However, properties often possess peculiar 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 the 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 Board of Tax Commissioners*, 765 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001).

- e. While the geology of the Petitioners' parcel may be relevant to the issue of whether a negative influence factor should apply, the Petitioners failed to show how the soil conditions impact the market value-in-use of the subject property. *See Talesnick*, 756 N.E.2d at 1108. The Petitioners' witness testified that the property was not buildable and would require excavation and fill before any construction could occur. *Milo testimony*. The soil evaluation report supports the Petitioners' contentions and the proposal from Heise Excavating shows the expense that would be incurred to remedy the problem. *Petitioner Exhibits 2 and 3*. There is no evidence, however, of the market value of the property with or without the fill. More importantly, there is no evidence that the property's assessed value does not already reflect the value of the property in its current condition. Without the benchmark of the property's market value as buildable, the cost of remedying the soil conditions has little probative value in establishing the property's market value-in-use.
- f. The Petitioners also argue that a larger, neighboring property is assessed lower than their property. 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 Court found that the taxpayer must present probative evidence to show that its assessed value does not accurately reflect the property's market value-in-use. *Id.*
- h. Finally, the Petitioners contend that the assessed value of their property increased from \$26,100 in 2005 to \$143,000 in 2006. This argument, however, is also insufficient to raise a prima facie case that the property's assessment is incorrect. Each assessment and 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)). Thus, evidence of a property's assessment in one tax year does not show its true tax value in a different year. *See id.*
- i. Similarly, the Milos argue that the taxes on their property increased from \$268.51 for the fall 2006 installment to \$1,355.25 for the fall 2007 installment. To the extent that the Milos contest the taxes, as opposed to the property's assessment, the Board lacks jurisdiction to hear their claim. The Board is a creation of the legislature and has only the powers conferred by statute. *Whetzel v. Dep't of Local Gov't Fin.*, 761 N.E.2d 904, 908 (Ind. Tax Ct. 2001) (citing *Matonovich v. State Bd. of Tax Comm'rs*, 705 N.E.2d 1093, 1096 (Ind. Tax Ct.1999)). The Board therefore must address appeals from determinations made by local assessing officials or county PTABOs that concern property valuations, property tax deductions, property tax exemptions, or property tax credits. Ind. Code § 6-1.5-4-1(a). By contrast, no statute authorizes the Board to review the propriety of local tax rates.

- j. The Petitioners failed to raise a prima facie case that their property was over-valued for the March 1, 2009, assessment date. Where a taxpayer has not supported his claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. LTD v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

16. The Petitioners failed to raise a prima facie case that the assessed value of their property was incorrect for the 2009 assessment year. The Board therefore finds in favor of the Respondent.

Final Determination

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review determines that the assessed value of the subject property 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 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>.