

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

Petition No.: 20-015-11-1-5-00155
Petitioners: Don & Joan Helen Myers
Respondent: Elkhart County Assessor
Parcel No.: 20-11-09-105-002.000-015
Assessment Year: 2011

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, Don and Joan Myers, filed an appeal with the Elkhart County Assessor contesting the subject parcel’s March 1, 2011 assessment. On November 7, 2012, the Elkhart County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination upholding the assessment. The Petitioners then timely filed a Form 131 petition with the Board. They elected to have their appeal heard under the Board’s small claims procedures.
2. On May 29, 2013, the Board held a hearing through its designated administrative law judge, Jennifer Bippus (“ALJ”). The following people were sworn in and testified:
 - a) For the Petitioners: Don Myers, *pro se*
 - b) For the Respondent: Cathy Searcy, Elkhart County Assessor

Facts

3. The subject parcel is an unimproved, residential lot located behind the Petitioners’ home in Goshen.
4. Neither the Board nor the ALJ inspected the subject property.
5. The PTABOA determined the following assessment:

Land: \$3,500	Improvements: \$0	Total: \$3,500
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6. The Petitioners requested the following assessment:

Land: \$1,800	Improvements: \$0	Total: \$1,800
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Summary of Parties' Contentions

7. The Petitioners offered the following evidence and arguments:
- a) The subject parcel's assessment is too high; an assessment of \$1,800 to \$2,000 would be plenty. The parcel, which sits directly behind the Petitioners' house, contains springs and a stream, and it is wet and marshy year-round. There is so much water moving from the springs that it does not freeze in the winter. Even during a drought, the parcel is so wet that one needs boots to walk on it. *Myers testimony; Pet'rs Ex. 1.*
 - b) The parcel cannot be used for anything. There is no access to it, and one cannot drive a vehicle on the parcel due to the wetness. *Id.*
8. The Respondent offered the following evidence and arguments:
- a) The subject parcel is assessed at \$1,500 per acre, which is consistent with other residential excess land in the county. To illustrate that point, the Respondent pointed to the following properties:
 - Elisabeth DeFries owns a property in Jackson Township (the same township as the subject parcel) that is assessed at \$3,100.
 - John Hite owns a property located in Osolo Township that is assessed at \$4,700.
 - David Rohm owns a parcel in Cleveland Township that is assessed at \$2,300. Like the subject parcel, Mr. Rohm's parcel is covered by trees.
 - Kenneth Carner owns a parcel in Jackson Township that is valued at \$4,800. It contains an undeveloped area sitting next to a house.
 - Greg Faubion owns an undeveloped, landlocked parcel in Elkhart Township that is assessed at \$3,600.

Searcy testimony; Resp't Exs. 5-14.
 - b) While the subject parcel is located in a flood plain next to a river, the Respondent did not indicate whether any of her purportedly comparable parcels are located in a flood plain. *See Searcy testimony.*

Record

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

- a) The Form 131 petition,
- b) A digital recording of the hearing,
- c) Exhibits:

Petitioners Exhibit 1: Eight photographs of the subject property.

Respondent Exhibit 1: Property record card for the subject parcel,

Respondent Exhibit 2: Aerial map showing the subject parcel,

Respondent Exhibit 3: Aerial map showing the subject parcel with sale prices,

Respondent Exhibit 4: Aerial map of the subject parcel, showing flood plain,

Respondent Exhibit 5: Property record card for parcel owned by Elisabeth DeFries,

Respondent Exhibit 6: Aerial map showing the DeFries parcel,

Respondent Exhibit 7: Property record card for parcel owned by John B. Hite, Jr.,

Respondent Exhibit 8: Aerial map showing the Hite parcel,

Respondent Exhibit 9: Property record card for parcel owned by David A. & Karen L. Rohm,

Respondent Exhibit 10: Aerial map showing the Rohm parcel,

Respondent Exhibit 11: Property record card for parcel owned by Kenneth P. Garner,

Respondent Exhibit 12: Aerial map showing the Garner parcel,

Respondent Exhibit 13: Property record card for parcel owned by Gregory S. & Stephanna Faubion,

Respondent Exhibit 14: Aerial map showing the Faubion parcel.

Board Exhibit A: Form 131 petition,

Board Exhibit B: Hearing notice,

Board Exhibit C: Hearing sign-in sheet.

- d) These Findings and Conclusions.

Analysis

Burden of Proof

10. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that his property's assessment is wrong and what the 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). The taxpayer must explain how each piece of

evidence relates to his 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.”). If the taxpayer makes a prima facie case, the burden of proof shifts to the assessor to offer evidence to impeach or rebut the taxpayer’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.

11. Indiana Code § 6-1.1-15-17.2, however, shifts the burden of proof to the assessor in cases where the assessment under appeal has increased by more than 5% over the previous year’s assessment for the same property:

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.

12. The parties agree that the subject property’s assessment increased more than 5%—from \$3,000 to \$3,500—between March 1, 2010, and March 1, 2011. The Respondent therefore has the burden of proving that the assessment was correct. To the extent that the Petitioners seek an assessment below the previous year’s level, however, they have the burden of proving a lower value for the subject parcel.

Discussion of the Merits

13. The Respondent failed to make a prima facie case that the subject parcel’s March 1, 2011 assessment was correct. The Board reaches this conclusion for the following reasons:
 - a) In Indiana, assessors value real property based on the property’s true tax value, which the Department of Local Government Finance (“DLGF”) defines as the property’s market value-in-use. Thus, a party’s evidence in a tax appeal must be consistent with that standard. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice (“USPAP”) often will be probative. *Kooshtard Property VI v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n. 6. (Ind. Tax Ct. 2005). A party may also offer actual construction costs or sales information for the property under appeal, sales or assessment information for comparable properties, and any other information compiled according to generally accepted appraisal principles.

- b) Regardless of the method used, a party must explain how its evidence relates to the appealed 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). Otherwise, the evidence lacks probative value. *Id.* For March 1, 2011 assessments, the assessment and valuation dates were the same. *See* I.C. § 6-1.1-4-4.5(f).
- c) Here, the Respondent attempted to support the subject parcel's assessment by comparing it to the assessments of purportedly comparable properties. Indiana Code § 6-1.1-15-18 allows parties to introduce assessments of comparable properties to prove the market value-in-use of a property under appeal. But where an appeal involves a residential property, those comparable properties must be located in the same taxing district or within two miles of the taxing district's boundary. Ind. Code § 6-1.1-15-18(c)(1). Here, only one of the Respondent's five comparable properties is in the subject parcel's township, and the record does not show how far away from the township's boundaries the other properties are located.
- d) Even if one assumes that the parcels meet Ind. Code § 6-1.1-15-18's taxing-district requirements, other properties' assessments do not necessarily prove the market value-in-use of a property under appeal. Instead, the party relying on those assessments must show that the other properties are comparable to the property under appeal and how relevant differences affect their relative values. *See* Ind. Code § 6-1.1-15-18(c)(2) (requiring the use of generally accepted appraisal and assessment practices to determine whether properties are comparable); *see also Long*, 821 N.E.2d at 471 (finding sales data lacked probative value where they did not explain how purportedly comparable properties compared to their property or how relevant differences affected the properties' relative market values-in-use).
- e) Granted, the Respondent chose mostly tree-covered vacant lots that are roughly similar in size to the subject parcel. But her comparison of the parcels ended there. And she did not explain how any relevant differences between the parcels affected their relative values. Perhaps most importantly, at least part of the subject parcel contains streams and springs, and is located in a flood plain, while there is no indication that any of the other parcels suffer from similar problems.
- f) The Respondent therefore failed to make a prima facie case that the subject parcel's March 1, 2011 assessment of \$3,500 was correct. But the Board's inquiry does not end there—the Petitioners seek an assessment below the parcel's March 1, 2010 value of \$3,000. It is to that question that the Board now turns.

14. The Petitioners failed to make a prima facie case for reducing the assessment below \$3,000. The Board reaches this conclusion for the following reasons:

- a) The Petitioners claim that the parcel's wet and marshy condition limits its value to no more than \$1,800 to \$2,000. But simply listing a property's problems

does not suffice to prove its value. Instead, a party must offer probative evidence to quantify that value. Since the Petitioners failed to do that, the Board will not lower the subject parcel's assessment below its March 1, 2010 level of \$3,000.

Conclusion

15. The Respondent failed to meet her burden of proving that the subject parcel's March 1, 2011 assessment of \$3,500 was correct. The assessment therefore must be reduced to its previous year's level of \$3,000. The Petitioners, however, failed to make a prima facie case for reducing the parcel's assessment any further.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now orders that the subject parcel's March 1, 2011 assessment be lowered to \$3,000.

ISSUED: August 9, 2013

Commissioner, 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>.