

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

Petition No.: 45-001-07-1-5-00004
Petitioner: William S. Neuton
Respondent: Lake County Assessor
Parcel No.: 45-05-32-230-010.000-004/001-25-45-0268-0023
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 Petitioner initiated an assessment appeal with the Lake County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated January 18, 2008.
2. The Calumet Township Assessor issued a Form 113, Notice of Assessment by Assessing Officer, dated April 29, 2009.
3. The Petitioner filed his appeal to the Board by filing a Form 131, Petition to the Indiana Board of Tax Review for Review of Assessment, on June 11, 2009. The Petitioner elected to have his case heard pursuant to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated September 22, 2009.
5. Administrative Law Judge Ellen Yuhan held the Board's administrative hearing on November 9, 2009.
6. Persons present and sworn in at hearing:

For Petitioner: William S. Newton, Petitioner

No one appeared to represent the Respondent.

Facts

7. The subject property is a vacant residential lot located at 1115 Putman Street, Gary, in Lake County.

8. The ALJ did not conduct an on-site visit of the property.
9. For 2007, the Calumet Township Assessor determined the value of the subject property to be \$63,600.
10. The Petitioner requested an assessment of \$20,000.

Issues

11. Summary of the Petitioner's contentions in support of an error in his assessment:
 - a. The Petitioner contends that his property is over-assessed because it is not lake front property and it is not buildable. *Newton testimony*. According to Mr. Newton, the parcel is basically the face of a sand dune. *Id.* Additionally, the City of Gary building codes require 50 feet of frontage for a single-family dwelling. *Id.*; *Petitioner Exhibit 4*. The subject property is only 40 feet by 128 feet. *Newton testimony*.
 - b. The Petitioner further contends that the assessed value of his property is overstated compared to the assessed values of neighboring properties. *Newton testimony*. According to Mr. Newton, the land on 1133 Putman is assessed similar to his property, but 1133 Putman is flat and has a house on it. *Newton testimony; Petitioner Exhibits 2 and 5*. Similarly, the Petitioner contends that three buildable lots, located at 7201, 7207, and 7213 Oak Avenue, are only assessed at \$15,400 each. *Newton testimony; Petitioner Exhibit 6*. Moreover, Mr. Newton contends, the lots located at 7925, 7929, and 7933 Oak Avenue are the most similar to his property because they are also unbuildable, but they are only assessed for \$1,000 each. *Newton testimony; Petitioner Exhibits 2 and 5*.
 - c. Finally, Mr. Newton argues he is being unfairly taxed because his unbuildable property would not sell for its \$60,000 assessed value when other buildable lots are valued at much less. *Newton testimony*.

Record

12. The official record for this matter is made up of the following:
 - a. The Petition,
 - b. Digital recording of the hearing,
 - c. Exhibits:

- Petitioner Exhibit 1 – Form 131 with attachments,¹
Petitioner Exhibit 2 – Aerial view of 1115 Putman, 1133 Putman, 7925 Oak Avenue, 7929 Oak Avenue, and 7933 Oak Avenue,
Petitioner Exhibit 3 – Aerial view of 1115 Putman, 7925 Oak Avenue, 7929 Oak Avenue, and 7933 Oak Avenue,
Petitioner Exhibit 4 – City of Gary building codes,
Petitioner Exhibit 5 – Property record cards for 1115 Putman, 1133 Putman, 7925-27 Oak Avenue, 7929-31 Oak Avenue, and 7933-35 Oak Avenue,
Petitioner Exhibit 6 – Aerial view and property record cards for 7201 Oak Avenue, 7207 Oak Avenue, and 7213 Oak Avenue,
- Board Exhibit A – Form 131 petition,
Board Exhibit B – Notice of Hearing dated September 22, 2009,
Board Exhibit C – Hearing sign-in sheet,

d. These Findings and Conclusions.

Analysis

13. 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 Board of Tax Commissioners*, 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 evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
14. The Petitioner failed to present probative evidence to establish an error in his assessment. The Board reached this decision for the following reasons:

¹ The Petitioner did not submit a second copy of his Form 131 Petition, but requested that the Board consider the original petition he filed in its determination.

- 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. 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); *P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 2006). A taxpayer may rebut that assumption 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. *See Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer sales information regarding the subject property or comparable properties. 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. Mr. Newton first argues that his parcel is unbuildable because of the lot’s topography and because it only has 40 feet of frontage. In Indiana, assessors typically apply an influence factor to “account for the characteristics of a particular parcel of land that are peculiar to that parcel.” GUIDELINES, Glossary at 10. An influence factor “may be positive or negative and is expressed as a percentage.” *Id.* To prevail on the issue of influence factor, however, the taxpayer has 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 Petitioner has not met this burden. While Mr. Newton identified the characteristics of his property, he failed to present probative evidence to quantify the impact of those adverse characteristics on the market value of his parcel. *See Talesnick*, 756 N.E.2d at 1108.

- e. Mr. Newton further argues that his property is over-valued based on the assessed value of neighboring parcels. 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). 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.*
- f. Moreover, the Petitioner failed to show the comparability of those neighboring parcels. By comparing his assessed value to the assessed value of other properties, the Petitioner essentially relies on a "sales comparison" method of establishing the market value of the property. In order to effectively use the sales comparison approach as evidence in property assessment appeals, 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 party seeking to rely on a sales comparison approach must explain the characteristics of the subject property and how those characteristics compare to those of purportedly comparable properties. *See Id.* at 470-71. They must explain how any differences between the properties affect their relative market value-in-use. *Id.*
- g. Here, the Petitioner presented property record cards for his property and various other parcels in the area in support of his contention that the subject property is over-assessed. The Board notes that the Petitioner's first comparable property, 1133 Putman, is located in the Petitioner's neighborhood and is assessed at the same base rate as Petitioner's lot. While Mr. Newton argues that the neighboring lot is improved while his lot is unbuildable, it was his burden to value the differences between the parcels. Merely arguing that the comparable lot is buildable falls far short of the showing required to prove the Petitioner's case. Mr. Newton also presented assessment information for 7925, 7929 and 7933 Oak Avenue and 7201, 7202 and 7213 Oak Avenue. Although these parcels are assessed at a different base rate than the Petitioner's property, the Board notes that the properties are located in a different neighborhood than the Petitioner's lot. More importantly, Mr. Newton failed to provide any meaningful comparison between the "comparable" lots and the subject property. Thus the Petitioner failed to raise a prima facie case that his property is over-valued based on the assessed value of other parcels in the area.
- h. Finally, Mr. Newton contends that his property would not sell for its assessed value. As noted above, however, the Petitioner failed to provide any market value evidence in support of his contention. Statements that are unsupported

by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998).

- h. The Petitioner therefore failed to raise a prima facie case. Where a Petitioner 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

- 15. The Petitioner's evidence failed to raise a prima facie case that his property is over-valued. The Board therefore finds in favor of the Respondent. The Board, however, reaches this conclusion reluctantly in light of the Assessor's lack of regard for its process and the time and expense incurred by the Petitioner in pursuing his case.

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

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>>