

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

Petition No.: 20-026-10-1-5-00056
Petitioners: Vaughn L. and Cynthia K. Nickell
Respondent: Elkhart County Assessor
Parcel No.: 02-16-127-048-026
Assessment Year: 2010

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, Vaughn L. and Cynthia K. Nickell, verbally initiated their appeal with the Elkhart County Assessor contesting the subject property's 2010 assessment. On May 6, 2011, the Elkhart County Property Tax Assessment Board of Appeals (PTABOA) issued its determination. The PTABOA decision did not change the subject property's 2010 assessed value.
2. The Petitioners filed a Form 131 petition with the Board on June 6, 2011. They elected to have their appeal heard under the Board's small claims procedures.
3. The Board held an administrative hearing on August 14, 2012, before the duly appointed Administrative Law Judge (the ALJ) Patti Kindler.
4. The following people were sworn in and testified:
 - a) Vaughn L. Nickell, Petitioner,
 - b) Cathy Searcy, Elkhart County Assessor.

Facts

5. The subject property is a partially paved parcel allowing access to several homes; the property is located on Maplewood Drive in Elkhart, Indiana.
6. Neither the Board nor the ALJ inspected the property.
7. For 2010, the PTABOA determined the following assessed values:
Land: \$2,500 Improvements: \$0 Total: \$2,500
8. For 2010, the Petitioners requested the following values:
Land: \$10 Improvements: \$0 Total: \$10

Summary of Parties' Contentions

9. Summary of the Petitioners' contentions in support of the alleged errors in their property's assessment:
- a) The Petitioner, Mr. Vaughn L. Nickell, contends his property is over-valued based on his purchase of the property. *Nickell testimony; Petitioner Exhibit 9*. According to the Petitioner, the subject property was purchased for \$10 on June 30, 2004. *Id.* Mr. Nickell states that the Petitioners purchased the subject property for \$10 because the former owner failed to include the subject property when the Petitioners home was purchased. *Id.*
 - b) According to the Petitioner, the subject property is an L-shaped property used as a private road. *Nickell testimony; Petitioner Exhibit 3*. Mr. Nickell states the subject property provides access to three residences, including the Petitioners' home. *Id.* Mr. Nickell contends that the subject property is considered an easement, as it cannot be built on. *Id.* Further, Mr. Nickell argues that no one would buy the subject property separately from the parcel containing the Petitioners' home. *Id.*
 - c) Mr. Nickell contends that the assessment for the subject property in 2004 was \$10. *Nickell testimony*. Further, Mr. Nickell contends the 2004 assessment accurately reflected the subject property's market value. *Id.* Mr. Nickell argues that every year since 2004, the assessed value of the subject property has "risen illogically." *Id.*
 - d) Mr. Nickell states the Petitioners maintain the subject property with no help from the county or from the other neighbors that also use the subject property. *Nickell testimony*. Further, Mr. Nickell states that the Petitioners have had the sole responsibility of the subject property, which includes resurfacing and sealing the blacktop, planting flowers, and maintaining the fencing. *Id.*
 - e) Mr. Nickell points to The Elkhart County Assessor Guidelines and Procedures Manual which lists several influence factors that, in his opinion, are applicable to the subject property. *Nickell testimony; Petitioner Exhibits 1 & 2*. Mr. Nickell argues that because the subject property cannot be built on, a negative influence for restrictions should apply. *Id.* Mr. Nickell goes on to argue that Elkhart County Guidelines allow as much as a 90% negative influence factor for unbuildable or unusable property. *Id.; Petitioner Exhibit 2*. Further, Mr. Nickell argues if the negative influence factor were applied to the subject property, the assessment would drop to \$250, which the Petitioners would accept. *Id.*
 - f) Finally, Mr. Nickell argues the Respondent's purported land comparables are not comparable to the subject property. *Nickell testimony*. Mr. Nickell goes on to argue that the comparables presented by the Respondent are all buildable and free of easements and restrictions. *Id.* Further, Mr. Nickell states that only one of the Respondent's comparables, the Zinsmeister property, has the same neighborhood code as the subject property. *Id.; Petitioner Exhibit 7*.

10. Summary of the Respondent's contentions in support of the property's assessed value:
- a) The Respondent's representative, Ms. Cathy Searcy, argues the subject property's assessment is reasonable when compared to the assessments of other off-lake parcels in the subject's neighborhood. *Searcy argument*. Further, Ms. Searcy states the Petitioners failed to provide any documentation showing the subject property's use is restricted by an easement. *Id.* Ms. Searcy goes on to argue that neither the subject property's deed nor the legal description of the subject property mentions an easement. *Id.*
 - b) Ms. Searcy states that in pricing the admittedly unusual lot, she relied on an excess acreage rate of \$6,580 from the county's approved land base rates. *Searcy argument; Respondent Exhibits 2-6*. Ms. Searcy further states that according to a memo issued on May 22, 2012, by the Department of Local Government Finance (DLGF), assessors may provide property record cards of assessments of similar properties in the same taxing district or similar area to substantiate a value placed on a property. *Id.; Respondent Exhibit 7*. Ms. Searcy admits that although she would have preferred to find undeveloped off-water parcels in the subject neighborhood to show consistency in her assessments, she had to rely on improved parcels with excess acreages. *Id.; Respondent Exhibit 8*.
 - c) Ms. Searcy contends the Petitioners are incorrect in their belief that the comparables used by the Respondent are in a different neighborhood than the subject property. *Searcy argument*. Ms. Searcy states that while the properties were in different neighborhoods in 2010, the neighborhood boundaries changed between 2010 and 2011. *Id.* Ms. Searcy goes on to state that the comparables used are in the same neighborhood as the subject property. *Id.*
 - d) Finally, Ms. Searcy argues that the influence factor codes and amounts that the Petitioners referred to are no longer used. *Searcy argument*. Ms. Searcy states the Assessor now determines whether any influence factors apply solely by looking at sales and other market-based evidence. *Id.* Ms. Searcy concludes by stating the Petitioners did not provide any market-based evidence to prove a negative influence factor is warranted for the subject property. *Id.*

Record

11. 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 Vaughn L. & Cynthia K. Nickel 20-026-10-1-5-00056,
 - c) Exhibits:

Petitioner Exhibit A:	Letter from the Petitioners to the Board,
Petitioner Exhibit 1:	Excerpt from the REAL PROPERTY ASSESSMENT GUIDELINES Chapter 2 page 78,
Petitioner Exhibit 2:	Page 1 from the <i>Elkhart County Assessor's Office Guidelines & Procedure Manual</i> ,
Petitioner Exhibit 3:	Aerial map with the subject property highlighted in red,
Petitioner Exhibit 4:	Aerial map of the properties along Maplewood Drive,
Petitioner Exhibit 5:	2011 subject property record card,
Petitioner Exhibit 6:	2011 property record card for the Petitioners adjoining residential parcel,
Petitioner Exhibit 7:	2011 property record card for the Zinsmeister parcel,
Petitioner Exhibit 8:	2011 property record card for the Irions parcel,
Petitioner Exhibit 9:	Subject property warranty deed, dated June 30, 2004,
Petitioner Exhibit 10:	Notice of hearing dated March 7, 2012,
Petitioner Exhibit 11:	2010 Form 11 Notice of Assessment for the subject property, dated October 1, 2010,
Petitioner Exhibit 12:	2011 property record card for the Weidner parcel,
Respondent Exhibit 1:	2010 property record card for the subject property,
Respondent Exhibit 2:	Aerial map showing the subject property,
Respondent Exhibit 3:	2010 property record card for the Ignafol parcel,
Respondent Exhibit 4:	Aerial map showing the location of the Ignafol parcel in comparison to the subject property,
Respondent Exhibit 5:	2010 property record card for the Dorrier parcel,
Respondent Exhibit 6:	Aerial map showing the location of the Dorrier parcel,
Respondent Exhibit 7:	Memorandum from the DLGF regarding assessment and appeal changes, dated May 22, 2012,
Respondent Exhibit 8:	2010 land rates for the subject neighborhood,
Board Exhibit A:	Form 131 petition,
Board Exhibit B:	Hearing notice dated March 7, 2012, and notice of re-scheduled hearing dated July 11, 2012,
Board Exhibit C:	Hearing sign-in sheet,

d) These Findings and Conclusions.

Analysis

Burden of Proof

12. 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 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). Effective July 1, 2011, however, the Indiana General

Assembly enacted Indiana Code § 6-1.1-15-17, which has since been repealed and re-enacted as Indiana Code § 6-1.1-15-17.2.¹ That statute shifts the burden to the assessor in cases where the assessment under appeal has increased by more than 5% over the previous year's assessment. Here because the property's assessed value did not increase more than 5% over its previous year's assessment, the Petitioners retain the burden of proof.

Discussion

13. The Petitioners failed to establish a prima facie case that the subject property's 2010 assessment was incorrect. The Board reached this conclusion for the following reasons:
 - a) Indiana assesses real property based on its true tax value, which the Manual defines 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). A party's evidence in a tax appeal must be consistent with that standard. *See id.* For example, a market-value-in-use appraisal prepared according to Uniform Standard of Professional Appraisal Practice ("USPAP") often will be probative. *See id.*; *Koostard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005) *reh'g den. sub nom.* A party may also offer actual construction costs, sales information for the subject or comparable properties, and any other information compiled according to generally acceptable appraisal principles. MANUAL at 5.
 - b) 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 2010 assessment, the valuation date was March 1, 2010. Ind. Code § 6-1.1-4-4.5(f).
 - c) The Petitioners first contend that their property was over-valued for 2010 based on their purchase of the subject property for \$10 on June 30, 2004. *Nickell testimony; Petitioner Exhibit 9.* The sale of the subject property is often the best evidence of the property's value. *See Hubler Realty Co. v. Hendricks County Assessor*, 938 N.E.2d 311, 315 (Ind. Tax Ct. 2010) (finding that the Board's determination assigning greater weight to the property's purchase price than its appraised value was proper and supported by the evidence). The Petitioners, however, bought the subject property almost six years prior to the relevant March 1, 2010, valuation date. The Petitioners needed to explain how the sale price related to the subject property's value as of March 1, 2010. The Petitioners failed to relate their June 30, 2004, purchase price to the March 1, 2010, valuation date, and the purchase of the property alone is

¹ HEA 1009 §§ 42 and 44 (signed February 22, 2012). This was a technical correction necessitated by the fact that two different provisions had been codified under the same section number.

insufficient to prove that his property was over-valued for the 2010 assessment year. *See Long*, 821 N.E.2d at 471.

- d) Furthermore, even if the Petitioners had related the purchase price to the relevant valuation date, the Board doubts that the Petitioners purchase amount was a reliable indicator of the subject property's market value-in-use. As explained in the Manual, market value is:

“The most probable price (in terms of money) which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- The buyer and seller are typically motivated;
- Both parties are well informed and advised and act in what they consider their best interests;
- A reasonable time is allowed for exposure in the open market;
- Payment is made in terms of cash or in terms of financial arrangements comparable thereto;
- The price is unaffected by special financing or concessions.”

MANUAL at 10.

- e) Here, it is questionable whether the buyer and seller were typically motivated, since it appears that the subject property was overlooked in the sale of the main property, and the previous owner simply wanted the Petitioners to take it over. More importantly, the subject property was not exposed to the open market. Thus, even without the valuation date disparity, the Board would not view the Petitioners' purchase price as a reliable indicator of the subject property's market value-in-use.
- f) The Petitioners further argue that a 90% influence factor for restrictions should be applied to the subject property. *Nickell testimony; Petitioner Exhibit 2*. An “influence factor” is 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; *see also*, GUIDELINES, ch. 2 at 56. Both parties agree that the subject property is in fact peculiar; however, the Petitioners needed to go one step further to make a prima facie case—they needed to offer probative, market-based evidence as to what a more accurate valuation would be. *Talesnick v. State Bd. of Tax Comm'rs*, 756 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001).
- g) Where the Petitioner has not supported his claim with probative evidence, 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). As such, while the Petitioners question the validity of the comparable properties that the Respondent used to defend her assessment, the Board need not address those arguments.

Conclusion

14. The Petitioners failed to establish a prima facie case that their property's assessment was incorrect for the 2010 assessment year. The Board therefore finds for 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 for the 2010 assessment year.

ISSUED: December 21, 2012

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>>.