

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

Petition No.: 64-004-07-1-4-00020
Petitioners: John and Jeanne Rodriguez
Respondent: Porter County Assessor
Parcel No.: 64-09-26-276-001.000-004
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 Petitioners initiated an assessment appeal with the Porter County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated March 6, 2009.
2. The PTABOA issued notice of its decision on March 1, 2010.
3. The Petitioners filed an appeal to the Board by filing a Form 131 on March 22, 2010. The Petitioners elected to have their case heard pursuant to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated July 26, 2010.
5. The Board held an administrative hearing on October 7, 2010, before the duly appointed Administrative Law Judge (the ALJ) Ellen Yuhan.
6. Persons present and sworn in at hearing:

For Petitioners: John Rodriguez, Property owner,
Jeanne Rodriguez, Property owner,
John Joseph McQuestion, President, Soil Solutions, Inc.

For Respondent: Susan A. Larson, Porter County Hearing Officer,¹

¹ Peggy Hendron, PTABOA Clerical Staff, was also present.

Facts

7. The subject property is unimproved commercial land located at 850 U. S. Route 30, Valparaiso, in Porter County.
8. The ALJ did not conduct an on-site visit of the property.
9. For 2007, the Porter County Assessor determined the assessed value of the subject property to be \$245,100.
10. The Petitioners requested an assessment of no more than \$70,000.

Issues

11. Summary of the Petitioners' contentions in support of an error in their property's assessment:
 - a. The Petitioners contend that their property is over-assessed because the majority of the property is wetlands. *Rodriguez testimony*. In support of this contention, the Petitioners presented a Wetland Delineation Report prepared by John McQuestion of Soil Solutions, Inc. *Petitioner Exhibit 1*. According to Mr. McQuestion, he prepared the report pursuant to the U. S. Army Corps of Engineers Manual of 1987. *McQuestion testimony*.
 - b. The Petitioners' witness testified that only 1.34 acres of the subject property's 4.71 acres are not wetlands. *McQuestion testimony; Petitioner Exhibit 1*. However, Mr. McQuestion testified, most of the non-wetland area is located in a right-of-way for U. S. Route 30, so only .516 acres is actually buildable. *Id.* Further, Mr. McQuestion argues, the parcel is in the Salt Creek watershed – which is a highly valuable watershed. *Id.* Therefore, any request for a fill permit would be subjected to a high level of scrutiny. *Id.* According to Mr. McQuestion, it would be virtually impossible to obtain a permit to fill the entire wetlands area of the subject parcel because of its location. *Id.*
 - c. Finally, the Petitioners argue that the land is worthless because it cannot be developed. *Rodriguez argument*. According to Mr. Rodriguez, the buildable area is stretched over 700 feet of frontage, leaving only a narrow strip of land, which is too small to build upon. *Id.* Further, Mr. Rodriguez contends, the area is used by the City of Valparaiso as a water retention area, so his requests for fill permits have been turned down. *Id.*
12. Summary of the Respondent's contentions in support of the assessment:
 - a. The Respondent's witness contends the Petitioners' assessment correctly accounts for the wetland area. *Larson testimony*. According to Ms. Larson, because there is no wetlands classification for commercial land, the property

is assessed with 3.71 acres of unusable/undeveloped land and one acre of secondary land. *Id. Respondent Exhibit 6.* However, Ms. Larson contends that at the time of the assessment, the assessor did not have the Petitioners' Wetlands Delineation Report. *Larson testimony.* As a result of that information, Ms. Larson offered to adjust the assessment to .516 acres of secondary land and the remainder of the land to unusable/undeveloped. *Id.*

- b. The Respondent's witness also argues that the Petitioners offered the property for sale for \$450,000. *Larson testimony.* While the assessor did not use the listing price to value the property, Ms. Larson argues that it shows that the Petitioners thought the property was worth more than its assessed value. *Id.*

Record

- 13. The official record for this matter is made up of the following:
 - a. The Petition,
 - b. The compact disk recording of the hearing labeled 64-004-07-1-5-00020 John & Jeanne Rodriguez,
 - c. Exhibits:
 - Petitioner Exhibit 1 – Wetland Delineation Report, dated December 20, 2003,
 - Respondent Exhibit 1 – GIS map of property sales on U.S. Hwy. 30,
 - Respondent Exhibit 2 – List of commercial and industrial sales after January 1, 2003,
 - Respondent Exhibit 3 – Memorandum to the PTABOA,
 - Respondent Exhibit 4 – Copy of preliminary informal meeting statement,
 - Respondent Exhibit 5 – Copy of a Form 133 dated December 18, 2007,
 - Respondent Exhibit 6 – Copy of the Petitioners' property's property record card,
 - Respondent Exhibit 7 – GIS map of the subject property,
 - Respondent Exhibit 8 – Listing summary for the subject property,
 - Board Exhibit A – Form 131 petition,
 - Board Exhibit B – Notice of Hearing on Petition, dated July 26, 2010,
 - 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 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 case. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
15. The Petitioners failed to provide sufficient evidence to establish an error in their assessment. The Board reached this decision 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 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. 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 actual construction costs, sales

information for the subject property or comparable properties and any other information compiled according to generally accepted appraisal practices. 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 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. The Petitioners contend the assessed value of their property is over-stated because the majority of the parcel is wetlands that cannot be developed. Furthermore, the Petitioners argue, the narrow shape of the buildable area renders it worthless. Although, the Petitioners did not specifically make their request in terms of an influence factor, an "influence factor" may be applied to the value of land "to account for certain characteristics of a particular parcel of land that are peculiar to that parcel." *See* GUIDELINES, ch. 2 at 11; Glossary at 10. In making such a claim, however, the Petitioners were required to submit probative evidence that (1) identified their land's deviation from the norm and (2) quantified the impact of that deviation on the land's value. *Kooshtard Property VIII v. Shelby Co. Assessor*, 902 N.E.2d 913, 916 (Ind. Tax Ct. 2009).
- e. Here, the Petitioners established that a majority of the subject property is classified as wetlands, but they submitted no probative evidence to show how the wetlands area impacts the property's value. Their contention that the property is "worthless" is merely a conclusion that is not supported by probative evidence.² *See Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). Such unsupported conclusions do not sufficiently prove that an assessment change must be made. *Id.* Further, the Petitioners failed to show that the "unusable/undeveloped" land classification did not adequately account for the property's unusable and undeveloped wetlands.
- f. Moreover, even if the Petitioners had shown that the assessor erred in not adjusting their land value because of the wetlands area, the Petitioners failed to show that the assessment did not accurately reflect the market value of the property. A taxpayer fails to sufficiently rebut the presumption that an

² Mr. Rodriguez contends that he has been unable to obtain a fill permit because "the City of Valparaiso is using the area as a water retention area." However, Mr. Rodriguez's vague contentions that he was told that "no development would ever take place" is nothing more than unattributed hearsay that the Board gives little weight to. The Petitioner's witness only testified that a fill permit would receive "a higher level of scrutiny" and that the Petitioner would be unable to obtain a fill permit for the entire parcel. There is no evidence that a permit to fill a smaller area sufficient to develop would not be obtainable or that the property could never be developed.

assessment is correct by simply contesting the methodology used to compute the assessment. *Eckerling v. Wayne Township Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *P/A Builders & Developers v. Jennings County Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (recognizing that the current assessment system is a departure from the past practice in Indiana, stating that “under the old system, a property’s assessed value was correct as long as the assessment regulations were applied correctly. The new system, in contrast, shifts the focus from mere methodology to determining whether the assessed value is *actually correct*”). Thus, a taxpayer must show through the use of market-based evidence that the assessed value does not accurately reflect market value-in-use. *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674 (Ind. Tax Ct. 2006). The Petitioners failed to make a case for an assessment change because they failed to present probative evidence of a more accurate valuation.³

- g. The Petitioners failed to establish a prima facie case. 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). Here, however, the Respondent’s representative admitted that, based on the Petitioners’ Wetland Delineation Report, the current assessment for secondary land should be decreased to .516 acres and the amount of unusable/undeveloped land increased to 4.194 acres.⁴ The Board accepts the Respondent’s recommendation and finds that the Petitioners’ assessment should be changed to reflect the proposed assessment.

Conclusion

16. The Petitioners failed to establish a prima facie case. The Respondent’s representative, however, agreed that only .516 acres should be assessed as secondary land with the remaining acreage assessed as unusable/undeveloped. The Board therefore holds that the assessment should be changed accordingly.

³ The Board notes that there is some evidence in the record that the Petitioners purchased the parcel in 2003 for \$70,000. However, that purchase price is too far removed from the January 1, 2006, valuation date for the March 1, 2007, assessment to be probative of the property’s value.

⁴ There are four land classifications for commercial/industrial land: primary, which is the primary building or plant site; secondary, which is land used for parking or yard storage that is not used regularly; usable/undeveloped, which is the amount of acreage that is vacant and held for future development; and unusable/undeveloped, which is the amount of vacant acreage that is unusable for commercial or industrial purposes. The property’s land is currently classified as secondary land and unusable/undeveloped land. The Board notes that there is no evidence that the subject property has land other than usable/undeveloped and unusable/undeveloped. However, because neither party addressed this issue, the Board will not do so.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now determines that the assessment should 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>.