

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

Petition: 07-005-10-1-4-00014
Petitioner: Roy D. Winger Family LTD Partnership
Respondent: Brown County Assessor
Parcel: 001-21800-03
Assessment Year: 2010

The Indiana Board of Tax Review (Board) issues this determination in the above matter, finding and concluding as follows:

Procedural History

1. The Petitioner initiated an assessment appeal with the Property Tax Assessment Board of Appeals (PTABOA) by filing a Form 130 dated December 7, 2010.
2. The PTABOA mailed notice of its decision, Form 115, on November 9, 2011.
3. On December 19, 2011, the Petitioner appealed to the Board by filing a Petition for Review of Assessment, Form 131. The Petitioner elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing on November 30, 2012.
5. Administrative Law Judge Paul Stultz held the Board's administrative hearing on January 8, 2013. He did not inspect the property.
6. William Winger and Ellen Winger were sworn as witnesses. County Assessor Mari Miller, Ken Surface and Gerald Cox also were sworn as witnesses, but Mari Miller and Gerald Cox did not testify. Attorney Marilyn Meighen represented the Respondent.

Facts

7. There was confusion about identifying the parcel number and the amount of land that is the subject of this appeal. In the 1960s it was a farm. As parcel 001-21800-03 it originally was much larger, but over the years various parts were sold. Therefore, the amount of land constituting parcel 001-21800-03 was reduced several times and new parcel numbers were assigned to parts as they sold. *On March 1, 2010, only two non-contiguous parts of parcel 001-21800-03 actually remained unsold—a 3.048 acre part and a 1.899 acre part—for a total of approximately 4.95 acres. At that time both parts together were still identified as parcel 001-21800-03.* In 2011, they were split into separate parcels with the 3.048 acre tract still retaining the original parcel number. The 1.899 acre tract was given a new parcel number, 001-21800-73. The split has no real

impact on this appeal, but appears to be the reason for using both parcel numbers on the Form 131 and the statements that the assessed value is \$496,300.¹ It may also be the reason the Petitioner agreed the assessed value for the 3.048 acres is not disputed and only the assessed value for the 1.899 acres is in dispute.

8. The PTABOA determined that the 2010 assessed value of parcel 001-2180003 is \$500,300. Its explanation on the Form 115 states, “Steve Gore (prior assessor) did the following changes on 12/7/2010—10 pay 11—Changed acreage to agree with Stipulation Agreement of 5/5/05 and recalculated square foot values.” But nothing in the record provides any substantial details for that number.

Record

9. The official record contains the following:
 - a. Digital recording of the hearing,
 - b. Petitioner Exhibit 1 – Map,
Petitioner Exhibit 2 – Form 131 Petition,
Petitioner Exhibit 3 – Notice of Final Assessment (Form 115),
Petitioner Exhibit 4 – Letter from William K. Wininger to the Respondent dated December 16, 2011,
Petitioner Exhibit 5 – Notice of Assessment of Land and Structures (Form 11R/A) for parcel 001-21800-03 for 2010 assessment,
Petitioner Exhibit 6 – Property record card (PRC) for parcel 001-21800-73,
Petitioner Exhibit 7 – Aerial photograph/map,
Petitioner Exhibit 8 – Settlement statement dated August 24, 2007,
Petitioner Exhibit 9 – Settlement statement dated October 29, 2009,
Respondent Exhibit A – PRC for parcel 001-21800-03 with map,
Respondent Exhibit B – Form 115,
Respondent Exhibit C – PRC for parcel 001-21800-03 with map,
Respondent Exhibit D – PRC for parcel 001-21800-03 with map and photograph,
Respondent Exhibit E – Change in acreage analysis for parcel 001-21800-03,
Respondent Exhibit F – Sales grid with supporting data,
Respondent Exhibit G – 2012 Listing for parcel 001-21800-73 with PRC and photograph,
Respondent Exhibit H – 2012 Listing for parcel 001-21800-03 with PRC,
Respondent Exhibit I – 2006 Federal Emergency Management Agency flood map,
Respondent Exhibit J – Color coded topography map,
Respondent Exhibit K – Memorandum,
Board Exhibit A – Form 131 Petition and attachments,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing Sign In Sheet,

¹ See Petitioner Exhibit 6, which is the property record card for parcel 001-21800-73. It shows 1.9 acres and an assessed value of \$496,300 for 2012. It shows \$0 assessed value for 2010 and 2011.

- c. These Findings and Conclusions.

Objection

10. The Respondent objected to Petitioner Exhibit 6, a PRC for parcel 001-21800-73, because it was not relevant. This parcel number did not exist on March 1, 2010. This part of the land was not assessed as a separate parcel until 2012. The objection, however, goes more to weight than admissibility. Further, the Respondent introduced substantially the same document as part of Respondent Exhibit G. Consequently, this objection is overruled.

Contentions

11. Summary of the Petitioner's case:
 - a. The tract of 3.048 acres is correctly assessed. The remaining tract of 1.899 acres is the only portion of the property the Petitioner is contesting. *E. Wininger testimony.*
 - b. The 2012 assessment for parcel 001-28100-73 for the 1.899 acres values the land at \$496,300 and is overvalued. *E. Wininger testimony; Pet'r Ex. 6.*
 - c. The Respondent assessed the land of surrounding properties at \$6.00 per square foot. These surrounding properties, however, have buildings on them. The subject parcel is vacant land. *E. Wininger testimony; Pet'r Ex. 7.*
 - d. The Petitioner sold three comparable properties located in close proximity to the subject property. On January 4, 2007, the Petitioner sold 0.77 acres for \$6.00 per square foot. On August 24, 2007, the Petitioner sold 3.35 acres for \$4.72 per square foot. On October 9, 2009, the Petitioner sold 3.362 acres for \$4.00 per square foot. *E. Wininger testimony; Pet'r Ex. 1.*
12. Summary of the Respondent's case:
 - a. In 2010 the parcel had two non-contiguous areas assessed as one parcel. One area is 1.899 acres and the other is 3.048 acres. The total area under appeal is 4.95 acres. The PTABOA determined the total assessment is \$500,300. These areas were given separate parcel numbers, but that split was after 2010. The split was not effective for the 2010 assessment. *Surface testimony; Resp't Ex. A, B.*
 - b. For 2010, the parcel was originally assessed by the assessor for \$592,300 and the area was thought to be 5.72 acres. But the PTABOA found that the Petitioner had sold 0.77 acres without recording the sale. Therefore, the PTABOA reduced the acreage from 5.72 acres to 4.95 acres and reduced the 2010 assessment from \$592,300 to \$500,300. That PTABOA valuation is being appealed. *Surface testimony; Resp't Ex. A, B, C.*

- c. For the 2009 assessment, 9.03 acres were assessed. For 2010 the parcel has only 4.95 acres. Accordingly, the property assessed for 2009 is not the same property that was assessed for 2010 and the burden-shifting statute does not apply. *Surface testimony; Resp't Ex. C, D.*
- d. The 2010 assessment is \$2.32 per square foot (\$500,300 for 4.95 acres). Between January 2007 and November 2009, the Petitioner sold 3 other pieces from the original parent parcel. Comparable 1 sold on January 10, 2007, for an adjusted sale price of \$2.37 per square foot. Comparable 2 sold on November 9, 2009, for an adjusted sale price of \$2.46 per square foot. Comparable 3 sold on March 29, 2007, for an adjusted sale price of \$2.16 per square foot. The main factor for the adjustments on the grid is the percentage of prime land area versus the percentage that is not useable land due to the topography. This information was taken from topographic maps and geographic information system calculations. *Surface testimony; Resp't Ex. F.*
- e. The Petitioner listed both parts of the subject property for sale in 2012. The Petitioner is asking \$640,000 for the 1.899 acre tract, but its assessment for 2012 is only \$496,300. *Surface testimony; Resp't Ex. G.* The Petitioner is asking \$485,000 for the 3.05 acre tract, but its assessment for 2012 is only \$4,000. *Surface testimony; Resp't Ex. H.* The Petitioner is asking over a million dollars for this land while claiming the assessment of \$500,300 is too high. The asking prices show the disputed assessment is not too high. *Surface testimony.*

Analysis

13. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that a 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). Nevertheless, the Indiana General Assembly enacted a statute that in some cases shifts the burden of proof:

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.

14. The assessment for 2009 was for the parcel with approximately nine acres. For 2010 the parcel contained only 4.95 acres. The difference of approximately 4 acres is because the Petitioner sold more of the land. *See Resp't Exs. A, B, C*. Both parties agreed the amount of land assessed for 2009 was substantially more than the amount of land assessed for 2010. We conclude it was not the same property.
15. Therefore, the Petitioner has the burden of proving that the 2010 assessment is not correct and what the correct value should be.
16. The Petitioner did not make a prima facie case.
 - a. Real property is assessed based on its market value-in-use for its current use. Either party is permitted to offer evidence relevant to market value-in-use to prove an accurate valuation. That evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.
 - b. Regardless of the method used to prove the value of a property, one must explain how the evidence relates to the 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, 2010, assessment, the valuation date was March 1, 2010. 50 IAC 21-3-3.
 - c. In this case the subject property is bare, vacant land. Neither party provided an appraisal. They primarily focused on the sales of surrounding land in attempting to prove the value of the subject property. Petitioner's Exhibits 1 and 7, as well as Respondent's Exhibits I and J (maps showing the subject property and surrounding area) help with understanding the testimony about these sales. Respondent Exhibit J is particularly significant because it shows significantly different topography for various parts of this area. This surrounding area includes prime buildable land, low ground, bottom ground, and creek/creek bed areas. And the subject property itself has the same kind of variation: the 1.89 acre part has prime buildable land, but the 3.48 acre part (rounded to 3.05 on this map) is almost entirely bottom ground and creek/creek bed. Therefore, in order to develop a credible valuation for the subject property based on comparable sales from this area, a meaningful analysis that accounts for these differences in topography is required. *See Blackbird Farms Apts., LP v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002) (holding that taxpayer failed to establish comparability of parcels of land where, among other things, taxpayer did not compare the topography and accessibility of parcels). The Petitioner failed to satisfy the requirements for any legitimate comparison and conclusion about the value of the subject property. *See Long*, 821 N.E.2d at 470-471.

- d. Both parties discussed land value per square foot. According to the Petitioner, the 1.899 acre part of the property is assessed at \$6.00 per square foot. It is not clear how that value was derived or if it is accurate for 2010, but for the moment we will assume that is the case. On the other hand, according to the Respondent, the 2010 assessed value for the entire parcel (4.95 acres) is \$2.32 per square foot. Nobody explained this difference in a meaningful way. If the valuation of the 3.05 acre part of the parcel is low enough, perhaps the \$6.00 per square foot and the \$2.32 per square foot both are accurate. After considering all the evidence presented by both sides, it remains unclear how the PTABOA's 2010 land value on Form 115 was determined. More importantly, however, the accuracy of both numbers makes no difference to our final determination. Nothing in the record proves that either of those values per square foot is wrong and nothing in the record proves what a more accurate market value-in-use might be.
 - e. The Petitioner pointed out that the other parcels now have buildings on them and the subject property does not. The Petitioner offered no evidence or argument that the 1.89 acres is in any way unsuitable or unusable for building purposes. The Petitioner offered no substantial evidence in support of the conclusory testimony that the lack of a building on the subject property shows it has less value. Such unsubstantiated conclusions do not constitute probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
 - f. The lack of a building alone does not prove the vacant land of the subject property is less valuable than the land of other parcels in the same area with buildings.
 - g. Finally, the 2012 assessment for parcel 001-21800-73 (new parcel number for the 1.899 area that formerly was part of parcel 001-21800-03) is simply not relevant or probative evidence in this case.
17. In this appeal, the taxpayer failed to provide probative evidence supporting its position that the assessment should be changed. The Respondent's duty to support the assessment with substantial evidence therefore was 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); *Whitley*, 704 N.E.2d at 1119.

Conclusion

18. The Petitioner failed to make a prima facie case. The Board finds in favor of the Respondent. The assessment will not be changed.

Final Determination

19. In accordance with the above findings and conclusions, the assessment will not be changed.

ISSUED: April 26, 2013

Commissioner, Indiana Board of Tax Review

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- 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>