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

Petition:	**24-007-10-1-5-00022**
Petitioners:	**Kris & Rosemary Rugsaken**
Respondent:	**Franklin County Assessor**
Parcels:	**24-04-20-326-208.200-007 [Lot 2082]**
	24-04-20-326-208.300-007 [Lot 2083]
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 Rugsakens initiated an appeal of the 2010 assessments for the two parcels listed above. On May 3, 2011, the Franklin County Property Tax Assessment Board of Appeals ("PTABOA") issued its determination denying the relief they requested.

2. The Rugsakens timely filed a Form 131 petition with the Board.[1] They elected to follow the Board's small claims procedures.

3. On September 5, 2012, the Board held a consolidated administrative hearing through Administrative Law Judge Jennifer Bippus ("ALJ").

4. Kris Rugsaken and County Assessor Sharon Halcomb were sworn and testified. Rebecca Sacksteder was sworn, but she did not testify.

Facts

5. These parcels are two unimproved residential lots located in or near Brookville. Unless otherwise indicated, the Board will refer to them collectively as the subject property. Neither the Board nor the ALJ inspected the subject property.

6. The PTABOA determined the total assessment for both parcels is $7,000.[2]

7. The Rugsakens requested a total of $3,000.

[1] Despite the instructions on the form and the Board's procedural rules, the Rugsakens filed a single Form 131, but they could have asked for leave to do so. The Board will proceed as if they properly were granted leave to file the single petition. 52 IAC 2-5-1(b).

[2] The Assessor claimed the PTABOA intended the $7,000 assessment only for Lot 2082, and the assessment of Lot 2083 is an additional $4,900. Nevertheless, the PTABOA decision for both parcels on Form 115 indicates only a total assessment of $7,000 and that order speaks for itself. What the Form 115 says controls. *Ex. A; Resp't Ex. 2.*

Contentions

8. Summary of the Rugsaken's case:

   a) The Rugsakens bought the subject property for $3,000 per lot in June 2006. The original asking price was $4,000 per lot, but they negotiated a better deal. The $8,100 price indicated on the sales disclosure form is wrong. The Rugsakens' signatures do not appear anywhere on the form. Not only is the purchase price wrong, but the back of the form erroneously indicates that the Rugsakens purchased Lot 2079 rather than Lot 2083. *Rugsaken testimony; Resp't Ex. 10.*

   b) These two parcels were listed with a realtor from 2008-2010, but they did not sell. The Rugsakens then sold the lots on their own. They sold for $3,100 each on August 19, 2012. *Rugsaken testimony.*

   c) The price for a lot across the street from the subject property was around $4,000. *Rugsaken testimony.*

   d) The two parcels at issue have always had different assessments, but they are identical. *Rugsaken testimony.*

9. Summary of the Assessor's case:

   a) The assessment of the subject property is accurate in light of other sales in the neighborhood. The subject property is located in a residential area behind a campground. The smaller campground lots at the front of the community are about 50 x 100. The lots in the residential area at the back are about 100 x 200. It usually takes two of the residential lots to build, one lot for a dwelling and a second lot for a septic system. Consequently, the assessed value for the second lot is 30% less. *Halcomb testimony.*

   b) The two parcels comprising the subject property are assessed at different amounts because one lot must be used for the septic system, making it unbuildable. A 30% negative influence factor was applied to the unbuildable lot. *Halcomb testimony.*

   c) In 2009, the small lots in the campground area were commonly selling for between $1,500 and $5,000 each. *Halcomb testimony; Resp't Ex. 9.*

   d) No 2009 sales of lots in the residential area were found, but there are some from 2007 and 2008. The residential lots sell for a lot more than the campground lots and most of the time have improvements on them. One property (lots 2116 and 2117) sold for $61,500 on July 2, 2007. Its total assessed value was $74,100. Another property (lots 2110 and 2111) sold for $82,000 on September 1, 2007. Its total assessed value was $74,500. Another property (lots 2101 and 2099) sold for $130,900 on November 27, 2007. Its total assessed value was $132,100. One lot

(lot 2075) did sell for only $3,500 on May 17, 2008, but it sold to an adjacent property owner and would not have been an arm's-length transaction. Depending on whether it is one lot or two, these land assessments generally are $3,500 or $7,000. *Halcomb testimony; Resp't Ex. 8.*

e) The Rugsakens' purchase of the subject property may not have been an arm's-length transaction because the seller was the group of property owners in the community where there have been many bankruptcies. *Halcomb testimony; Resp't Ex. 10.*

f) No sales disclosure was filed regarding the Rugsakens' purported sale of the subject property in August 2012. *Halcomb testimony.*

10. The official record contains the following:

a) Digital recording of the hearing,

b) Petitioner Exhibits – None,
Respondent Exhibit 1 – Appeal letter,
Respondent Exhibit 2 – Form 115,
Respondent Exhibit 3 – Form 131,
Respondent Exhibit 4 – Aerial Maps,
Respondent Exhibit 5 – Property record cards for the subject property,
Respondent Exhibit 6 – Treasurer's Maintenance Report,
Respondent Exhibit 7 – Treasurer's Maintenance Report,
Respondent Exhibit 8 – Sales Disclosure Forms for Lakeshore residential area with corresponding property record cards,
Respondent Exhibit 9 – Sales Disclosure Forms for Lakeshore campground area,
Respondent Exhibit 10 – Sales Disclosure Form for the subject property,
Respondent Exhibit 11 – Letter from Kris Rugsaken to Franklin County Treasurer dated October 26, 2011,
Respondent Exhibit 12 – Franklin County Assessor's letter to the Board dated November 3, 2011, accompanying the Form 131,
Respondent Exhibit 13 – Form 114,
Respondent Exhibit 14 – Letter dated November 9, 2011, from Kris Rugsaken to the Franklin County Assessor,
Respondent Exhibit 15 – Computer screenshots showing taxes paid,
Board Exhibit A – Form 131,
Board Exhibit B – Hearing notice,
Board Exhibit C – Hearing sign-in sheet.

c) These Findings and Conclusions.

Analysis

11. Generally, a taxpayer seeking review of an assessing official's determination must make a prima facie case proving both that the current assessment is incorrect 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).

12. In making its case, the taxpayer must explain how each piece of evidence relates to the 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").

13. If the taxpayer makes a prima facie case, the burden shifts to the respondent 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.

14. The Rugsakens did not make a prima facie case for any change.

    a) Indiana assesses real property based on its true tax value, which is "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). Evidence offered in a tax appeal must be consistent with that standard. For example, a market value-in-use appraisal prepared according to Uniform Standard of Professional Appraisal Practice ("USPAP") often will be probative. *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). A party may offer actual construction costs, sales information for the subject or comparable properties, and any other information compiled according to generally accepted 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 2010 assessments, the valuation date was March 1, 2010. Ind. Code § 6-1.1-4-4.5(f) (2010).

    c) An actual arm's-length sale of the subject property can be some of the best evidence of its market value-in-use. Here, the Rugsakens attempted to prove their case based on what they paid for the subject property and what they sold it for. Mr. Rugsaken testified that they paid $3,000 for each lot in June 2006 and they got $3,100 for each lot when they sold in August 2012. There is some dispute about their original purchase price—the sales disclosure form indicates it was $8,100. There also is some dispute about whether either transaction was an arm's-length sale that satisfied commonly accepted criteria for being a reliable indication of market value. Where

the *only* documentation regarding either sale contradicts Mr. Rugsaken's testimony, neither version is particularly credible. But determining that question is not essential. Even assuming, *arguendo*, that Mr. Rugsaken's testimony about the price is accurate and that both were arm's-length transactions, the timing is problematic. Nothing in the record establishes how the June 2006 sale price or the August 2012 sale price might relate to a value as of March 1, 2010. For that reason alone, neither transaction helps to prove a more accurate assessed value for the subject property.

d) As previously noted, there are other potential ways to prove what a more accurate assessed valuation for a property might be. Sales information about comparable property is another one of the ways. MANUAL at 5. Mr. Rugsaken briefly mentioned that the price for a lot across the street was around $4,000. He did not explain why $4,000 for the lot across the street helps show $7,000 for the subject property (two lots) is too much. It is not clear if that figure was an asking price or a selling price. He did not provide a specific lot number or the size of the lot. He did not even specify a time. In short, the record contains no basis for any legitimate conclusion about the real value of the subject property based on that attempted comparison with the price for a lot across the street. *See Long*, 821 N.E.2d at 470-471 (holding that one must identify the characteristics of the property under appeal and explain how those characteristics compare to the characteristics of the purportedly comparable properties, as well as explain how any differences between the properties affect their relative market values-in-use). What the Rugsakens presented about the lot across the street is simply not probative.

e) While both parties focused a significant amount of their presentations on the Rugsakens' 2008-2010 tax payments and what the payments were for, neither of them established how that point is relevant to determining the proper valuation for the subject property.

15. Where the petitioner fails to make a prima facie case, the respondent's burden of proof is not triggered. *Lacey Diversified Indus. v. Dep't. of Local Gov't Finance*, 799 N.E.2d 1215, 1222 (Ind. Tax Ct. 2003); *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

Conclusion

16. The Rugsakens failed to prove their case.

Final Determination

In accordance with the above findings of fact and conclusions of law, the determination that the collective assessment for both parcels is $7,000 will not be changed.

ISSUED: December 31, 2012

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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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>.