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

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| **Petition No.:** | **76-011-07-1-5-00135; 76-011-07-1-5-00136; 76-011-08-1-5-00037; 76-011-08-1-5-00038** |
| **Petitioner:** | **SBYC, Inc.** |
| **Respondent:** | **Steuben County Assessor** |
| **Parcel No.:** | **76-06-03-440-102.000-011; 76-06-03-440-103.000-011** |
| **Assessment Years:** | **2007 & 2008** |

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

### Procedural History

1. SBYC, Inc. challenged the subject parcels' March 1, 2007 and March 1, 2008 assessments. On November 30, 2009, the Steuben County Property Tax Assessment Board of Appeals ("PTABOA") issued its determinations lowering SBYC's assessments, but not to the level SBYC had requested.

2. SBYC then timely filed Form 131 petitions with the Board. SBYC elected to have its appeals heard under the Board's small claims procedures.

3. On March 3, 2010, the Board held a hearing through its administrative law judge, Patti Kindler ("ALJ").

4. Jeffrey G. Raff, appeared as counsel for SBYC. Phyl Olinger, a certified tax representative, appeared on behalf of the Steuben County Assessor. Ms. Seevers and Ms. Olinger were sworn in and testified.

### Facts

5. The subject parcels are unimproved off-water lots located at 925 Lane 200 near Lake James in Angola, Indiana.

6. Neither the Board nor the ALJ inspected the property.

7. The PTABOA determined the following values for March 1, 2007:

   Parcel 76-06-03-440-102.000-011
   Land: $50,100 Improvements: $0 Total: $50,100

Parcel 76-06-03-440-103.000-011
Land: $73,000 Improvements: $0 Total: $73,000

8. The PTABOA determined the following values for March 1, 2008:

Parcel 76-06-03-440-102.000-011
Land: $50,100 Improvements: $0 Total: $50,100

Parcel 76-06-03-440-103.000-011
Land: $77,300 Improvements: $0 Total: $77,300

9. SBYC requested an assessment of $25,300 for each parcel. SBYC's request was the same for both assessment years.

**Parties' Contentions**

10. SBYC offered the following evidence and arguments:

a) The subject parcels are roughly the same size—parcel 76-06-03-440-102.000-011 ("parcel 102") is 0.32 acres while parcel 76-06-03-440-103.000-011 ("parcel 103") is 0.31 acres—with the same amount of road frontage. *Pet'r Ex. 1*. Yet their assessments differ significantly. *Id.; Raff argument.* More importantly, the parcels' assessments almost doubled between 2006 and 2007. *See Raff argument.* Trending alone does not account for such a large increase; there must be "another factor." *Id.*

b) The Assessor did not offer sufficient evidence at the PTABOA hearing to support the subject parcels' assessments. *Raff argument.* According to SBYC, the Assessor merely "manipulate[d] numbers" without regard to the subject parcels' values. *Id.* The assessments are arbitrary and cannot stand; the assessments therefore should revert back to $25,300—the 2006 assessment for parcel 102—until the Assessor can support alternative values. *Id.*

c) The Assessor similarly failed to explain how her comparable sales—which reflect values of $2,746, $5,149, $9,378, and $11,440 per front foot—support the subject parcels' assessments of $1,000 per front foot. *Raff argument.* It therefore appears that the Assessor "arbitrarily pick[ed] a number." *Id.*

d) The subject parcels' assessments are also much higher than the assessments for adjoining parcels. *Id.; Pet'r Ex. 1.* Specifically, SBYC pointed to two parcels: a one-acre parcel owned by Harold Van, located alongside the subject parcels; and a 3.54-acre parcel owned by Terry and Karen Blair, located directly behind the subject parcels. *Raff argument; Pet'r Exs. 4-7.* Both those parcels were at $5,200 per acre, a much lower rate that the $1,000 per front foot that the Assessor used to value the subject parcels. *Id.*

e) The fact that the PTABOA did not accept the Assessor's values for either property further diminishes the credibility of the parcels' assessments. *Raff argument.* The PTABOA apparently "split the difference" between the Assessor's value and SBYC's requested assessments without justifying the values that it chose. *Id.*

11. The Assessor offered the following evidence and arguments:

a) SBYC failed to offer any evidence that the subject parcels' assessments were wrong. SBYC therefore failed to meet its burden of proof. Regardless, the current assessments are correct. *Olinger argument.*

b) The Van and Blair parcels that SBYC pointed to are not comparable to the subject parcels. *Olinger argument and testimony.* They are not even in the same class—the Van and the Blair parcels are assessed as excess acreage, while the subject parcels are assessed on a front foot basis as platted lots. *Olinger testimony; Resp't Exs. 4, 9.*

c) And contrary to SBYC's views, it is entirely possible for property values around the lake to increase 100% in two years. *Seevers testimony.* A February 9, 2010 memo from the Department of Local Government Finance instructs assessors to trend real property assessments each year to bring those assessments in line with the market value-in-use of similar properties. *Olinger testimony; Resp't Ex. 8.* The memo also explains that annual trending is done primarily by neighborhood and predominate property within a neighborhood. *Id.* The predominant property class in the subject parcels' neighborhood consisted of vacant and improved residential property, and those types of properties were analyzed to determine the subject properties' values. *Olinger testimony.*

d) The Assessor used actual sales data to perform a sales-ratio study in computing the subject parcels' assessments. *Seevers testimony; Resp't Ex. 16.* The Kuhlman, Holland, and Goodyear parcels, used in the study and presented to the PTABOA, are actual comparable market sales that support the subject parcels' assessments. *Id.*

e) The Assessor also pointed to the sales of properties owned by Majid Zojaji, Paul and Jennifer Jennewine, John and Teresa Bellio, and Dennis and Karen Schmidt. *Resp't Exs. 10-13.* Because those sales included homes, garages, and waterfront lots, the Assessor deducted the assessed values for those from the properties sale prices. *Id.; Olinger testimony.* The following abstracted values for the unimproved lots included in those sales all exceed the $1,000 per front foot used to assess the subject parcels:
   - Zojaji parcel—$2,746 per front foot;
   - Jennewine parcel—$5,159 per front foot;
   - Bellios parcel—$9,378 per front foot; and
   - Schmidt parcel—$11,440 per front foot.

   *Olinger testimony; Resp't Exs. 10-14.*

**Record**

12. The official record for this matter is made up of the following:

a) The Form 131 petitions,

b) A digital recording of the hearing,

c) Exhibits[1]:

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| Petitioner Exhibit 1: | Grounds for Appeal |
| Petitioner Exhibit 2: | Subject property record cards |
| Petitioner Exhibit 3: | Beacon aerial map of the subject parcels |
| Petitioner Exhibit 4: | Property record card for Harold Van property |
| Petitioner Exhibit 5: | Beacon aerial map of the Harold Van property |
| Petitioner Exhibit 6: | Property record card for Terry & Karen Blair property |
| Petitioner Exhibit 7: | Beacon aerial map of the Blair property |
| Petitioner Exhibit 8: | Beacon plat map of the Blair property |

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| Respondent Exhibit 1: | Respondent Exhibit Coversheet |
| Respondent Exhibit 2: | Steuben County Assessor Summary of Testimony |
| Respondent Exhibit 3: | Power of Attorney Certification attached to Power of Attorney |
| Respondent Exhibit 4: | Subject property record cards |
| Respondent Exhibit 5: | Copy of Subject Form 115 ("PTABOA Determination") |
| Respondent Exhibit 6: | Copy of SBYC's grounds for appeal for 2007 & 2008 |
| Respondent Exhibit 7: | Copy of DLGF Memo titled, "Assessment Appeals Frequently Asked Questions – Volume 2", January 4, 2011 |
| Respondent Exhibit 8: | Copy of DLGF Memo titled, "Guidance on Reporting Annual Adjustment Factors", February 9, 2010 |
| Respondent Exhibit 9: | Beacon data for the Harold Van and Terry Blair properties (5 pages) |
| Respondent Exhibit 10: | Beacon data for three Zojaji parcels (6 pages) |
| Respondent Exhibit 11: | Beacon data for the two Jennewine parcels (4 pages) |
| Respondent Exhibit 12: | Beacon data the Bellio property (2 pages) |
| Respondent Exhibit 13: | Beacon data for the Schmidt property (3 pages) |
| Respondent Exhibit 14: | Copy of Beacon map showing the locations of the Van, Blair, Zojaji, Jennewine, Bellio, Schmidt and subject parcels |
| Respondent Exhibit 15: | Respondent Signature and Attestation Sheet |

[1] The parties offered separate packets of exhibits for each petition. With the exception of Petitioner's Exhibit 2, SBYC's exhibits were the same for each petition. Exhibit 2 (property record cards for the subject parcels) was parcel specific. Similarly, with the exception of Respondent's Exhibits 4-5, which were also parcel specific, the Assessor's exhibits were the same for all four petitions.

Respondent Exhibit 16: Property record cards for four sold parcels[2]

Board Exhibit A: Form 131 petition
Board Exhibit B: Hearing notice
Board Exhibit C: Hearing sign-in sheet
Board Exhibit D: Notice of Appearance for Jeffrey G. Raff

d) These Findings and Conclusions.

## Analysis

### Burden of Proof

13. The parties have different opinions about who has the burden of proof in these appeals. According to the Assessor, SBYC bears the burden of proving that the subject parcels' assessments were wrong. SBYC's position is not as clear. At times, SBYC appeared to argue that the Board should review the PTABOA's determinations for an abuse of discretion. SBYC also argued that the Assessor failed to offer sufficient evidence to the Board to justify the PTABOA's assessment determinations.

14. The Board agrees with the Assessor. As to SBYC's first argument, the Board does not review a county PTABOA's decision for abuse of discretion; instead, hearings before the Board are *de novo*. Thus, the Board need not determine whether a county PTABOA had sufficient evidence before it to justify its decision.

15. SBYC did not explain the basis for its second argument—that the Assessor bore the burden of offering evidence at the Board's hearing to justify the PTABOA's assessment determinations. But SBYC did point to the dramatic increase in the subject parcels' assessments between 2006 and 2007. Thus, SBYC may have been referring to Indiana Code § 6-1.1-15-2(p), which was recently repealed, but which provided: "The subsection applies if the assessment for which a notice of review is filed increased the assessed value by more than five percent (5%) over the assessed value finally determined for the immediately preceding assessment date. The county assessor or township assessor making the assessment has the burden of proving that the assessment is correct." I.C. § 6-1.1-15-2(p)(2010 repl. vol.)(repealed by 2011 Ind. Acts § 30). The Board, however, has previously held that Indiana Code § 6-1.1-15-2(p)'s burden-shifting provision applied only to proceedings before the PTABOA. *See Kildsig v. Warrick County Assessor*, pet.

[2] SBYC objected to the admission of Respondent Exhibit 16, arguing that it was not offered at the PTABOA hearing. Indiana Code § 6-1.1-15-4(k) provides that "[t]he Indiana board may limit the scope of the appeal to the issues raised in the petition and the evaluation of the evidence presented to the county board in support of those issues only if all parties participating in the hearing . . . agree to the limitation." While the parties to a small claims action agree to limit their appeals to issues that are substantially the same as those below, they do not necessarily agree to limit their evidence to what was offered at the PTABOA hearing. *See* 52 IAC 3-1-2(b) ("By accepting the small claims procedure, the parties agree that the issues contained in the appeal petition are substantially the same as those presented to the PTABOA and agree that no new issues will be raised before the Board."). The Board therefore overrules SBYC's objection.

no. 87-06-35-100-056.000-015 (Ind. Bd. of Tax Rev. Nov. 23, 2010). Thus, Indiana Code § 6-1.1-15-2(p) did not operate to shift the burden to the Assessor in these appeals.

16. This past legislative session, the General Assembly enacted Public Law 172. That act adds Ind. Code § 6-1.1-15-17, which contains burden-shifting provision similar to Indiana Code § 6-1.1-15-2(p). *See* 2011 Ind. Acts 172 § 32. Unlike Indiana Code § 6-1.1-15-2(p), however, the new provision expressly applies in proceedings before the Board and the Indiana Tax Court. *Id*. But Public Law 172 has an effective date of July 1, 2011 and therefore does not apply to SBYC's appeals. *See id*.[3]

17. Thus, this appeal is governed by the well-established framework for allocating the parties' burdens in an appeal to the Board. 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). In making its case, the taxpayer must explain how each piece of evidence relates to its 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"). If the taxpayer makes a prima facie case, the burden shifts to the assessor to offer evidence to rebut or impeach 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.

SBYC's Case

18. SBYC did not make a prima facie case for reducing the subject parcels' assessments. The Board reaches this conclusion for the following reasons:

    a) Indiana assesses real property based on its true tax value, which the 2002 Real Property Assessment 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). Appraisers traditionally have used three methods to determine a property's value: the cost, sales-comparison, and income approaches. *Id*. at 3, 13-15. Indiana assessing officials generally use a mass-appraisal version of the cost approach 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.*

[3] Because SBCY's appeals have been completed before Indiana Code § 6-1.1-15-17's effective date, the Board need not decide various questions that may arise under that new provision. For example, the Board does not address whether the new provision will apply to all appeals where the Board's hearing occurs on or after July 1, 2011, or whether it will only apply to appeals where another triggering event, such as the assessor's act in assessing the property, occurs on or after July 1, 2011.

*Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005) *reh'g den. sub nom. PA Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 2006). But a taxpayer may rebut that presumption 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 often will suffice. *See Id.; Kooshtard Property VI,* 836 N.E.2d at 506 n.6. A taxpayer may also 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.

c) SBYC offered none of the types of evidence that the Manual contemplates. Instead, SBYC argued: (1) that the subject parcels' assessments almost doubled between 2006 and 2007, and (2) that those assessments were far greater than what adjoining parcels owned by Harold Van and the Blairs were assessed for.

d) SBYC's first claim fails to address the relevant issue in these appeals. The question is not whether the subject parcels' assessments increased at a greater rate than the market, but instead whether those increased assessments reflected the parcels' true tax value. Thus, the mere fact that the parcels' assessments almost doubled does not entitle SBYC to relief.

e) SBYC's second claim, which focuses on the disparity between the subject parcels' assessments and the assessments for the Van and Blair parcels, similarly fails. It is unclear whether SBYC pointed to the Van and Blair assessments in an attempt to show the subject parcels' market value in use, or whether SBYC instead offered that data to show a lack of uniformity and equality. In either case, however, SBYC failed to make a prima facie case for relief.

f) As to the question of valuation, even if one assumes that the subject parcels' market values-in-use could be estimated by using the assessments—instead of sale prices—for comparable properties, SBYC failed to meaningfully compare the subject parcels to the Van and Blair parcels. At most, SBYC showed that the Van parcel was side by side with the subject parcels and that the Blair parcel was immediately behind the subject parcels. While one may dispute how similarly situated the Blair parcel is to the subject parcels, given the Blair parcel's location behind the subject parcels and further from the water, the Van parcel appears to be comparably located. But various factors other than location go into analyzing a parcel of land's market value-in-use. *See Blackbird Farms Apartments v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 714 (Ind. Tax Ct. 2002)(quoting *Beyer v. State*, 280 N.E.2d 604, 607 (Ind. 1972)("Years ago, Indiana's Supreme Court emphasized that 'whether or not properties are similar enough to be considered 'comparable' . . . depends on a number of factors including (but not limited to) size, shape, topography, accessibility, use, and (in the case of establishing a comparable sale), closeness of the time of the sale to the present action.'"). And SBYC did not offer evidence comparing the subject parcels to the Van or Blair parcels in terms of other key factors. Even if the parcels are assumed to be comparable to each other, their differing assessments beg the question—which

assessment more accurately reflects the parcels' market value-in-use? And SBYC offered no evidence to answer that question.

g) But that does not end the Board's inquiry. Even if a taxpayer's property is accurately assessed, tangible property must be assessed "in a uniform and equal manner." I.C. § 6-1.1-2-2; *see also,* IND. CONST. ART. 10 § 1(requiring the legislature to "provide, by law, for a uniform and equal rate of property assessment and taxation. . . ."). Thus, for example, the Indiana Supreme Court has recognized that a taxpayer may seek an adjustment to his property's assessment on grounds that his taxes are higher than they would have been had other properties been properly assessed. *Dep't of Local Gov't Fin. v. Commonwealth Edison, Co*. 820 N.E.2d 1222, 1226-27 (Ind. 2005).

h) Unfortunately, there is little guidance on how a taxpayer can make an actionable lack-of-uniformity-and-equality claim under our current market value-in-use system. The Tax Court has recognized at least one way—a taxpayer can offer ratio studies, "which compare the assessed values of properties within an assessing jurisdiction with objectively verifiable data, such as sales prices or market value-in-use appraisals." *Westfield Golf Practice Center, LLC v. Washington Twp. Assessor*, 859 N.E.2d 396, 399 n. 3 (Ind. Tax. Ct. 2007)(citing MANUAL at 6, 24-26). SBYC, however, did not offer a ratio study. The Board need not decide what, if any, other ways a taxpayer might make an actionable claim for lack of uniformity and equality to find that SBYC's approach, which consisted of showing only that the subject parcels were assessed for more than two other parcels, one of which (the Van parcel) had a very similar location but about which SBYC offered scant other comparative information, does not suffice. Indeed, the Assessor pointed to at least two other nearby parcels that were assessed at substantially higher rates than the subject parcels.

i) That being said, the Assessor's justification for the disparity in assessments is troubling. The Assessor attributed the disparity to the fact that the Van and Blair parcels were classified as excess residential acreage while the subject parcels were assessed as platted lots. While the fact that a lot is platted might conceivably affect the lot's value, it is difficult to see how that fact alone would make two lots totaling approximately .64 acres (the subject parcels) worth almost $120,000 more than an adjacent one-acre lot (Harold Van's parcel). But SBCY's failure to make a prima facie case meant that the Assessor had no duty to offer probative evidence explaining the apparent disparity between the subject parcels' assessments and the assessments for the Van and Blair parcels. *See Lacy Diversified Indus. LTD v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-22 (Ind. Tax Ct. 2003)(finding that, where the taxpayer had failed to offer probative evidence to show that the State Board of Tax Commissioners had assigned an incorrect quality grade, the "Board's duty to support its final determination with substantial evidence [was] therefore not triggered."). Thus, the Assessor's unconvincing explanation does not affect the outcome of these appeals.

## Conclusion

19. SBYC did not make a prima facie case for reducing the subject parcels' 2007 and 2008 assessments. The Board therefore finds for the Assessor.

## Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now affirms the assessments.

ISSUED: _____

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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

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>.