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

Petition Nos.:	**76-011-10-1-5-00016**
	76-011-10-1-5-00058
Petitioner:	**SBYC, Inc.**[1]
Respondent:	**Steuben County Assessor**
Parcel Nos.:	**76-06-03-440-103.000-011**
	76-06-03-440-102.000-011
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. SBYC, Inc. appealed the subject parcels' March 1, 2010 assessments. On November 17, 2011, the Steuben County Property Tax Assessment Board of Appeals ("PTABOA") issued its determinations denying SBYC's appeals.

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

3. On September 5, 2012, the Board held a hearing through its administrative law judge, Patti Kindler ("ALJ").

4. The following people were sworn in and testified:

   For SBYC: Marcia R. Conley, president, SBYC

   For the Assessor: Phyl Olinger, Steuben County representative

Facts

5. The subject parcels are two adjacent off-water lots located at 925 Lane 200 Lake James, in Angola, Indiana. Parcel 76-06-03-440-103.000-011 ("Parcel 103") is a 0.31-acre lot with a home. Parcel 76-06-03-440-102.000-011 ("Parcel 102") is a 0.32-acre unimproved residential lot.

[1] The Form 131 petitions list the subject parcels' owner as "SYBC, Inc." All other documents in the record, including the property record cards for the subject parcels and the PTABOA's Form 115 determinations, identify the parcels' owner as "SBYC, Inc."

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

7. The PTABOA determined the following assessments:

Parcel 76-06-03-440-103.000-011:
Land: $77,300 Improvements: $104,300 Total: $181,600

Parcel 76-06-03-440-102.000-011:
Land: $54,500 Improvements: $0 Total: $54,500

8. SBYC requested the following assessments:

Parcel 76-06-03-440-103.000-011:
Land: $25,000 Improvements: $104,300 Total: $129,300

Parcel 76-06-03-440-102.000-011:
Land: $25,000 Improvements: $0 Total: $25,000

Summary of Parties' Contentions

9. SBYC offered the following evidence and arguments:

a) Parcel 103 was assessed at approximately $231,900 per acre, while Parcel 102 was assessed at approximately $170,000 per acre. Neither parcel has lake frontage or lake access. Meanwhile, two adjoining parcels—a one-acre parcel owned by the Harold Van Revocable Trust that adjoins Parcel 103 and a 3.54-acre parcel owned by Terry and Karen Blair that sits behind the subject parcels—were assessed at only $5,200 per acre. *Conley testimony; Pet'r Exs. 1-4, 8*. There is little difference between Van and Blair parcels on one hand, and the subject parcels on the other, except that the Van parcel has trees. In fact, the Van parcel sits beside Parcel 103 along the same road. True, the Assessor classified the subject parcels as platted lots while she classified the Van and Blair parcels as acreage. But that difference should not lead to such a big disparity in values. *Conley testimony; Pet'r Exs. 1-4, 8.*

b) The subject parcels' real estate taxes are also excessive compared to the taxes for the Van and Blair parcels. Between 2009 and 2010, Parcel 102's taxes increased by $75.90. During the same period, the Van parcel's taxes decreased by $2.72 and the Blair parcel's taxes decreased by $4.68. *Conley testimony; Pet'r Ex. 1.*[2]

[2] On June 15, 2012, SBYC bought another adjacent property from Elmer Lassus at an auction for $280,000. Ms. Conley did not believe that the Lassus property was a good comparator to the subject parcels, however, because there is a dispute about the property's size. A survey shows the property as having only 2.87 acres, but it was assessed as having 5.28 acres and valued at $519,400. *Conley testimony; Pet'r Exs. 5-6.*

c) The sales that the Assessor pointed to involved properties that are dissimilar to the subject parcels. They are located across the road from the subject parcels and therefore have frontage along or at least access to Lake James. And they are substantially deeper than the subject parcels. *Conley testimony.*

10. The Assessor offered the following evidence and arguments:

a) The Van and Blair parcels that SBYC referred to are not comparable to the subject parcels. The Van and the Blair parcels are un-platted tracts in an agricultural/rural neighborhood with residential home-sites, while the subject parcels are 100' x 160' platted lots in a residential neighborhood. The Assessor therefore valued the Van and Blair parcels using the acreage method while she valued the subject parcels using the front foot method. According to the Real Property Assessment Guidelines for 2002 – Version A, "for a residential parcel in a platted subdivision, front footage along the street is of primary importance. . . .[T]he front foot method is appropriate because the front footage of the parcel has the greatest influence on the land's value." *Resp't Ex. 6* (REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, ch. 2 at 17)*;* By contrast, the acreage method:

> [I]s appropriate where a particular use requires a large amount of land. The most frequent uses of the acreage value method are for:
> - agricultural homesites
> - rural residential homesites
> - rural residential excess acreage
> - commercial and industrial land
> - irregularly shaped platted lots that are too cumbersome to size.

Resp't Ex. 6 (GUIDELINES, ch. 2 at 17)

b) In any case, sales of properties owned by Majid Zojaji, Paul and Jennifer Jennewine, and John and Teresa Bellio support the subject parcels' assessments. The Assessor's witness, Phyl Olinger, abstracted an off-water land value for each sale by subtracting the assessed values for each property's improvements and lakefront lots from the property's overall sale price. She arrived at the following values:

- Zojaji parcel—$2,746 per front foot
- Jennewine parcel—$5,149 per front foot
- Bellio parcel—$9,378 per front foot

Olinger testimony; Resp't Ex. 2 at 3.

c) SBYC's claim about the subject parcels' taxes increasing is irrelevant. The appeal concerns the parcels' assessments, not their taxes. Tax rates and other factors unrelated to a property's assessment can affect the amount of taxes for which the owner is liable. *Olinger argument.*

Record

11. 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:

Petitioner Exhibit 1:	Grounds for appeal for Parcel 76-06-03-440-102.000-011
Petitioner Exhibit 2:	Beacon aerial map and Beacon data for Parcel 76-06-03-440-102.000-011 (3 pages)
Petitioner Exhibit 3:	Beacon aerial map and Beacon data for Harold Van property (3 pages)
Petitioner Exhibit 4:	Beacon aerial map and Beacon data for the Terry & Karen Blair property (4 pages)
Petitioner Exhibit 5:	Settlement Statement for sale of property previously owned by the Elmer & Madeline Lassus Trust
Petitioner Exhibit 6:	Survey of the Elmer & Madeline Lassus Trust property
Petitioner Exhibit 7:	Beacon aerial map for Parcel 76-06-03-440-103.000-011 and Beacon data for the subject parcels (5 pages)
Petitioner Exhibit 8:	Grounds for appeal for Parcel 76-06-03-440-103.000-011
Petitioner Exhibit 9:	Beacon aerial map, and Beacon data for the Terry & Karen Blair property (4 pages)
Petitioner Exhibit 10:	Beacon aerial map and Beacon data for the Harold Van Revocable Trust property (3 pages)
Petitioner Exhibit 11:	Survey of the Elmer & Madeline Lassus Trust property

Respondent Exhibit 1:	Respondent Exhibit Coversheet
Respondent Exhibit 2:	Summary of Respondent Testimony (4 pages)
Respondent Exhibit 3:	Power of Attorney Certification attached to Power of Attorney
Respondent Exhibit 4:	Subject 2010 property record card for Parcel 76-06-03-440-102.000-011
Respondent Exhibit 4a:	Subject 2010 property record card for Parcel 76-06-03-440-103.000-011
Respondent Exhibit 5:	Copy of the Form 115, PTABOA Determination for Parcel 76-06-03-440-102.000-011
Respondent Exhibit 5a:	Copy of the Form 115, PTABOA Determination for Parcel 76-06-03-440-103.000-011
Respondent Exhibit 6:	REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, ch. 2, pp. 15-17
Respondent Exhibit 7:	Copy of the Blair property record card and Beacon data for the Harold Van property Rev. Trust (2 pages) and Parcel 76-06-03-440-103.000-011 (2 pages)

Respondent Exhibit 8: Beacon data for two Jennewine parcels (4 pages), three Zojaji parcels (6 pages), and the Bellio parcel (2 pages)
Respondent Exhibit 9: Copy of a Beacon plat map showing the locations of the Van, Blair, Zojaji, Jennewine, Bellio parcels and subject parcels
Respondent Exhibit 10: Respondent Signature and Attestation Sheet

Board Exhibit A: Form 131 petitions
Board Exhibit B: Hearing notices
Board Exhibit C: Hearing sign-in sheet
Board Exhibit D: Subject property record cards

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). The taxpayer must explain how each piece of evidence relates to his 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 of proof shifts to the assessor 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.

13. Effective July 1, 2011, however, the Indiana General Assembly enacted Ind. Code § 6-1.1-15-17, which has since been repealed and re-enacted as Ind. Code § 6-1.1-15-17.2.[3] 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 for the same property:

> 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.

Ind. Code § 6-1.1-15-17.2

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

14. In this case, each parcel's March 1, 2010 assessment was less than its assessment for the previous year. Although SBYC argued that the taxes on both parcels increased substantially from 2009 to 2010, Ind. Code § 6-1.1-17.2 refers to *assessments* that increase by more than 5%, not taxes. Thus, SBYC had the burden of proof.

SBYC's Case

15. 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 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 Standards of Professional Appraisal Practice often will be probative. *See id.; Kooshtard Property VI, LLC v. White River Twp. Assessor,* 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). 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) SBYC did not offer any of the types of evidence the Manual contemplates. Instead, SBYC argued that its taxes increased while its neighbors' taxes decreased and that subject parcels were assessed for far more than two neighboring parcels.

c) SBYC's first claim is beside the point. The question is not whether SBYC's taxes increased at a greater rate than its neighbors' taxes did, but instead whether the subject parcels were assessed for more than their true tax value. In fact, to the extent that SBYC seeks to contest its taxes—opposed to the subject parcels' assessments—the Board lacks authority to hear SBYC's claim. The Board is a creation of the legislature and has only the powers conferred by statute. *See Whetzel v. Dep't of Local Gov't Fin.,* 761 N.E.2d 904, 908 (Ind. Tax Ct. 2001) (citing *Matonovich v. State Bd. of Tax Comm'rs,* 705 N.E.2d 1093, 1096 (Ind. Tax Ct.1999)). The Board therefore must address appeals from determinations made by local assessing officials or county PTABOAs that concern property valuations, property tax deductions, property tax exemptions, or property tax credits. Ind. Code § 6-1.5-4-1(a). By contrast, the Board lacks statutory authority to address general challenges to property taxes.[4]

d) The Board, however, must address SBYC's second claim, which focuses on the disparity between the subject parcels' assessments and the assessments for the Van

[4] The Board can hear claims that "taxes, as a matter of law, were illegal." I.C. § 6-1.1-15-12(a). Those claims are brought under Ind. Code § 6-1.1-15-12 and filed on a Form 133 Petition for Correction of an Error. SBYC did not bring such a claim.

and Blair parcels. The Manual does not necessarily contemplate using the assessments—as opposed to sale prices—of comparable properties to estimate an appealed property's value. But the Indiana General Assembly recently enacted a statute allowing parties to an appeal to do just that:

> (a) This section applies to an appeal to which this chapter applies, including any review by the board of tax review or the tax court.
> (b) This section applies to any proceeding pending or commenced after June 30, 2012.
> (c) To accurately determine market-value-in-use, a taxpayer or an assessing official may:
>
> (1) in a proceeding concerning residential property, introduce evidence of the assessments of comparable properties located in the same taxing district or within two (2) miles of a boundary of the taxing district; and
>
> (2) in a proceeding concerning property that is not residential property, introduce evidence of the assessments of any relevant, comparable property.
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> However, in a proceeding described in subdivision (2), preference shall be given to comparable properties that are located in the same taxing district or within two (2) miles of a boundary of the taxing district. *The determination of whether properties are comparable shall be made using generally accepted appraisal and assessment practices*.

Ind. Code § 6-1.1-15-18 (emphasis added).

e) In any case, whether using sale prices or assessments as proxy for market value-in-use, raw data about other properties, by itself, does little to prove an appealed property's market value-in-use. The other properties must be shown to be sufficiently comparable to the property under appeal. Conclusory statements that a property is "similar" or "comparable" to another property do not suffice. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). Instead, one must identify the characteristics of the property under appeal and explain how those characteristics compare to the characteristics of the sold properties. *Id.* at 471. One must similarly explain how any differences between the sold properties and the property under appeal affect the properties' relative market values-in-use. *Id.*

f) SBYC did little to meaningfully compare the Van and Blair parcels to the subject parcels. At most, SBYC showed that the parcels are all very close to each other—the Van parcel sits beside the subject parcels along the same road and the Blair parcel sits immediately behind them. But various factors other than location go into analyzing a piece of land's market value-in-use, such as size, shape, topography, accessibility, and 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). SBYC did not explicitly compare the parcels along any of those lines, although a

cursory examination of the record shows that the subject parcels and the Van parcel are similarly shaped and have similar accessibility.

g) SBYC also ignored significant differences between the parcels. For example, Ms. Conley admitted that, unlike the subject parcels, the Van parcel is wooded. Yet she did not explain how that difference affected the parcels' relative market values-in-use. More importantly, the subject parcels are platted while the Van and Blair parcels are not. As the Assessor explained, the Real Property Assessment Guidelines for 2002 – Version A give weight to whether a parcel is platted or not in determining the most likely influence on the parcel's value. That, in turn, helps an assessor select the most appropriate unit value to use in assessing the property. *See* REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, ch. 2 at 16-19. Thus, for a platted residential parcel in a subdivision, "front footage along the street is of primary importance," while the acreage method is appropriate where a particular use requires a large amount of land, such as a rural residential home-site or rural residential acreage. *Id*. at 16-17.

h) Of course, "the pricing method for valuing the neighborhood is of less importance than arriving at the correct value of the land as of the valuation date." *Id*. at 16. The Board therefore does not hold that a platted lot can never be comparable to an unplatted lot. On the other hand, the Board will not simply assume that the difference is irrelevant to the parcels' relative market values-in-use. SBYC needed to show that it was using generally accepted appraisal or assessment practices in seeking to value subject parcels based on the assessments of the Van and Blair parcels. Because SBYC failed to (1) compare the parcels in terms of key characteristics, and (2) explain how differences in those key characteristics affected the parcels' relative market values-in-use, the raw assessment data on which SBYC relied has little or no probative value regarding the subject parcels' market value-in-use.

i) But a taxpayer is not limited to claiming that its property is assessed for more than its market value-in-use. Tangible property must also 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).

j) 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 of simply pointing to two other properties, which differed from the subject parcels in ways that likely affected their relative values, but which were assessed for less than the subject parcels, did not suffice.

k) Nevertheless, the Assessor's justification for the disparity in assessments continues to trouble the Board.[5] The Assessor attributed the difference between the assessments of the subject parcels and the Van parcel solely to the fact that the subject parcels are platted while the Van parcel is not. As explained above, that difference might affect the parcels' relative values, and SBYC needed to deal with that and other differences between the parcels in making its assessment comparison. But the Board has a hard time seeing how the mere fact that two parcels totaling 0.63 acres (the subject parcels) are platted justifies assessing those parcels for $132,000 more than an adjacent one-acre parcel along the same road (the Van parcel). Had SBYC meaningfully dealt with the differences between the parcels, it might have persuaded the Board that the subject parcels' value lies somewhere between their current assessments and the Van parcel's assessment. As things stand, however, SBYC's failure to make a prima facie case ends the Board's inquiry. *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.").

Conclusion

16. SBYC did not make a prima facie case for reducing the subject parcels' March 1, 2010 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.

[5] In SBYC's appeal of the subject parcels' 2007 and 2008 assessments, the Assessor offered a similar justification for the disparity between the assessments for the subject parcels and the Van parcel. *See SBYC, Inc. v. Steuben County Assessor*, pet. nos. 76-011-07-1-5-00135 *etc*. (Ind. Bd. Tax Rev., June 1, 2011).

ISSUED: March 12, 2013

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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>.