

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

Petition Nos.: 45-004-06-1-5-00001
45-004-06-1-5-00002
45-004-06-1-5-00003
Petitioner: Gary M. Skish
Respondent: Lake County Assessor
Parcel Nos.: 45-05-33-211-004.000-004
45-05-33-211-006.000-004
45-05-33-211-007.000-004
Assessment Year: 2006

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 Petitioner initiated his assessment appeals with the Lake County Property Tax Assessment Board of Appeals (PTABOA) on August 20, 2007.
2. The PTABOA issued notice of its decisions on August 25, 2011.
3. The Petitioner filed his Form 131 petitions with the Board on September 22, 2011. The Petitioner elected to have his appeals heard pursuant to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated November 9, 2012.
5. The Board held an administrative hearing on January 7, 2013, before the duly appointed Administrative Law Judge (the ALJ) Ellen Yuhan.
6. The following persons were present and sworn in at hearing:

For Petitioner: Gary M. Skish, Taxpayer,

No one appeared on behalf of the Respondent.¹

¹ The Board reminds the Assessor that, to the extent that he believes that his assessments were correct, the Assessor should appear at the hearing and vigorously defend the assessments. If the Assessor believed the assessments were in error, the Assessor should have stipulated or settled the matter prior to hearing. The Board does not appreciate wasting its resources or those of the Petitioner to hold a hearing where the Respondent does not even appear.

Facts

7. The subject properties are three 25' x 121' vacant residential parcels located at 917 North Vanderburg Street, 909 North Vanderburg Street and 905 North Vanderburg Street in Gary, Indiana.
8. The ALJ did not conduct an on-site inspection of the properties under appeal.
9. For 2006, the PTABOA determined the assessed value of each parcel to be \$7,400.
10. For 2006, the Petitioner requested an assessed value of \$1,700 for each parcel.

Issues

11. Summary of the Petitioner's contentions in support of the alleged errors in his properties' assessments:
 - a. The Petitioner contends that his properties were over-assessed for the 2006 assessment year based on an Indiana Board of Tax Review determination of the properties' March 1, 2002, assessed values. *Skish argument; Petitioner Exhibit 9*. According to Mr. Skish, the Board determined the assessed value of the properties to be \$1,700 each for the 2002 assessment year. *Id.* Mr. Skish argues that the assessor should have trended the value from that determination to establish the properties' 2006 value. *Id.* Instead, Mr. Skish contends that the assessor restored the properties' value to \$7,400 a parcel, which was the assessed value of the properties in 2002 prior to the Board's determination. *Id.*
 - b. The Petitioner also contends that his properties were over-assessed for the 2006 assessment year based on his purchase price for the properties. *Skish argument*. According to Mr. Skish, he purchased the subject parcels at a tax sale on March 31, 2001, for \$1,669. *Skish testimony*. Mr. Skish argues that tax sales and commissioner's sales represent the market in the area. *Id.* According to Mr. Skish, his analysis of the Multiple Listing Service (MLS) revealed twenty-one land sales: four land sales in 2002, ten in 2003, two in 2004, and five in 2005. *Id.; Petitioner Exhibit 11*. Mr. Skish argues that during this same time frame there were fifty-seven expired listings for vacant land. *Id.* Mr. Skish contends that in comparison, there were twenty-seven properties that sold in tax sales or commissioners' sales. *Skish testimony*. This data indicates that the majority of sales of vacant parcels with no sewer available are through tax sales and commissioners' sales. *Id.*
 - c. Mr. Skish argues that "trending" the property's 2001 purchase price, or the value determined in the Board's Final Determination on the properties' 2002 values, supports a value of \$1,700 per parcel. *Skish argument*. According Mr. Skish, the fact that the assessor used the properties' 2002 assessed values before the Board's order lowering those values, for the properties' 2006 assessments shows that "the assessor saw no change in the market from January 1, 1999 (effective date of the 2002

- assessment) until January 1, 2005 (effective date of the 2006 assessment under appeal).” *Id.*; *Petitioner Exhibit 2*. Moreover, he argues, the “neighborhood trending factor of 1.01 utilized by the assessor for the 2006 reassessment” confirms that little change occurred in values in the properties’ neighborhood during the relevant time period. *Id.*
- d. Mr. Skish testified that he purchased the subject parcels with the intent of combining them with his homestead property. *Skish testimony*. According to Mr. Skish, the parcels are 25 feet by 125 feet deep each; they are heavily wooded and each parcel has an elevation change of approximately 40 feet from the street to the rear of the parcel. *Id.*; *Petitioner Exhibit 4*. In addition, Mr. Skish testified, the properties are not contiguous. *Skish testimony*. According to Mr. Skish, the parcel located at 917 Vanderburg Street is a vacant lot that is contiguous to his homestead property; however, a lot owned by the city of Gary separates 917 Vanderburg Street from the other two parcels at issue in this appeal. *Id.*
- e. The Petitioner testified that the subject parcels are “zoned R-2, which is a one-family dwelling district by the city of Gary.” *Skish testimony*. Mr. Skish argues that this zoning allows construction on lots with a minimum width of 50 feet and a minimum area of 3,000 square feet. *Id.* According to Mr. Skish, the single lot next to his homestead property, 917 North Vanderburg Street, is not buildable even if it were combined with his adjacent homestead parcel. *Id.* Moreover, although it is technically possible to build on 905 North Vanderburg Street and 909 North Vanderburg Street, Mr. Skish argues, it is physically and financially unfeasible due to the costs for the site preparation. *Id.*; *Petitioner Exhibit 7*. According to the Marshall Valuation Service Manual, the excavation and the foundation costs for a sloping sand dune site would “exceed those for flat sites by more than 500%.” *Id.* In addition, Mr. Skish argues the cost to run a sewer line to the subject properties would be approximately \$45,000 “just to run it to the curb,” and installing a septic tank and leach field would involve destroying and removing the dune. *Id.* Mr. Skish contends that lots like the subject parcels typically bounce in and out of tax sales until an adjacent property owner purchases them as a buffer or as a nature preservation area. *Id.*
- f. The Petitioner also contends that his properties were over-assessed based on sales of comparable properties. *Skish testimony*. Mr. Skish contends that he determined five sales to be the most applicable for comparison to the subject properties. *Id.* According to Mr. Skish, his first comparable sale, located at 844 North Vanderburg Street, included four contiguous parcels and sold in December of 2005 for \$.72 a square foot. *Id.*; *Petitioner Exhibits 2 and 12*. Mr. Skish testified that this property is located across the street from the subject properties and is the most comparable because it has the same extreme elevation changes as the subject properties, only in reverse because it slopes downward. *Id.* Mr. Skish contends the adjacent home owner purchased the property and consolidated with his homestead, which resulted in a “67% lower tax burden” because of the exemption. *Id.* Mr. Skish argues that the buyer’s motivations “were unique and increased the purchase price over what another

- buyer would pay with typical motivation.” *Id.* “This indicates a unit price for the subject below this sale.” *Id.*
- g. Mr. Skish contends his second comparable sale, the property located at 836 North Warren Street, is also similar to the subject properties in its topography and its lack of a sewer system. *Skish testimony; Petitioner Exhibits 2 and 12.* According to Mr. Skish, this property included six contiguous lots, totaling 150 feet by 121 feet, which sold for \$12,000 or \$.66 a square foot, on March 17, 2003. *Id.* Mr. Skish argues that this property – like the subject properties – has an extreme elevation that makes construction both physically and financially unfeasible. *Id.* However, Mr. Skish argues that this property is larger than the subject properties and therefore the unit price for the subject properties – which are smaller and not contiguous – should be lower than this particular property. *Id.*
 - h. Mr. Skish contends that the third comparable property, which is located at 835 North Vigo Street, is a single unbuildable lot that is similar to the subject properties in topography and because it also lacks a sewer system. *Skish testimony; Petitioner Exhibits 2 and 12.* Mr. Skish testified that this parcel sold in a commissioners’ sale on January 6, 2003, for \$.20 a square foot. *Id.* According to Mr. Skish, this sale illustrates the value of a single lot without the motivation of an adjacent homestead. *Id.*
 - i. Mr. Skish’s last comparable sale, which is the property located at 8701 Forest Avenue, sold on February 15, 2002, for \$8,000 or \$.47 a square foot. *Skish testimony; Petitioner Exhibits 2 and 12.* According to Mr. Skish, however, the purchaser had numerous government contracts and political connections in Gary. *Id.* Therefore, Mr. Skish argues “the purchaser was probably motivated more than typical market participants.” *Id.*
 - j. Mr. Skish contends that the comparable properties’ sale prices ranged from \$.20 to \$.72 per square foot. *Skish testimony; Petitioner Exhibit 2.* Based on adjustments to the sales, Mr. Skish argues, a reasonable unit price for the subject properties would be \$.55 a square foot, which equates to \$1,719 per parcel. *Id.* According to Mr. Skish, this value is supported by the actual purchase price of the properties, which was \$1,669 or \$.53 a square foot, in March of 2001. *Id.*

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 labeled Gary M. Skish 45-004-06-1-5-00001,2,3,
 - c. Exhibits:

- Petitioner Exhibit 1A– Form 131 petition and attachments for 917 North Vanderburg Street,
- Petitioner Exhibit 1B– Form 131 petition and attachments for 909 North Vanderburg Street,
- Petitioner Exhibit 1C– Form 131 petition and attachments for 905 North Vanderburg Street,
- Petitioner Exhibit 2 – Outline of the Petitioner’s evidence,
- Petitioner Exhibit 3 – Photographs of the subject properties,
- Petitioner Exhibit 4 – Plat map of the subject properties,
- Petitioner Exhibit 5 – Zoning map of the subject properties,
- Petitioner Exhibit 6 – Aerial map of the subject properties,
- Petitioner Exhibit 7 – Six pages from the Marshall Valuation Service Manual,
- Petitioner Exhibit 8 – Gary Sanitary District Sewer Line Map,
- Petitioner Exhibit 9 – Indiana Board of Tax Review Final Determination for Gary M. Skish for the March 1, 2002, assessment year,
- Petitioner Exhibit 10 – Map of vacant lot forfeitures for the 2006 tax year,
- Petitioner Exhibit 11 – Market sales data compiled by the Petitioner,
- Petitioner Exhibit 12 – Comparable sales information and a map of the properties’ locations,

The Respondent failed to appear and did not present any exhibits.

- Board Exhibit A – Form 131 petitions,
- Board Exhibit B – Notice of hearing, dated November 9, 2012,
- Board Exhibit C – Hearing sign-in sheet,

d. These Findings and Conclusions.

Burden of Proof

13. Generally, a taxpayer seeking review of an assessing official’s determination has the burden of proving that its property’s assessment is wrong 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). Under Indiana Code § 6-1.1-15-17.2, however, the burden of proof shifts to the assessor in cases where the assessment under appeal has increased by more than 5% over the previous year’s assessment. Here, the Petitioner did not offer the properties’ property record cards; nor did he offer any evidence of how the properties were assessed for the March 1, 2005, assessment date. He merely presented a Final Determination from the Board that established the properties’ assessed values for 2002. Therefore, because there is no evidence that the properties’ 2006 assessed value increased by more than 5% over the previous assessment as determined by the assessor, the Petitioner has the burden of proof in these appeals.

Analysis

- 14 The Petitioner raised a prima facie case that his properties' assessments were too high for the March 1, 2006, assessment date. The Board reached this decision for the following reasons.
- a. In Indiana, assessors value real property based on the property's market value-in-use, 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." MANUAL at 2. Thus, a party's evidence in a tax appeal must be consistent with that standard. *Id.* A market-value-in-use appraisal prepared according to USPAP will often be probative. *Kooshtard Property VI v. White River Twp. Ass'r*, 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 property or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.
 - b. Regardless of the method used to value a property for appeal purposes, 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 the March 1, 2006, assessment date, the valuation date was January 1, 2005. 50 IAC 21-3-3 (2009).
 - c. Here, the undisputed evidence shows that Mr. Skish purchased the subject properties at a tax sale on March 31, 2001, for \$1,669. Moreover, the evidence shows that tax sales are common in the properties' neighborhood and may, in fact, represent the market in that area. In addition, the Board lowered the properties' assessments for the 2002 assessment year from \$7,400 to \$1,700 a parcel. The 2002 assessment date is based on a valuation date of January 1, 1999. 50 IAC 21-3-3.
 - d. Mr. Skish argues that "trending" the properties' 2001 purchase price, or the value determined in the Board's Final Determination on the properties' 2002 values, supports a value of \$1,700 per parcel because the fact that the assessor used the properties' original 2002 assessed values for the properties' 2006 assessments shows that the assessor saw "no change in the market" between 1999 and 2005. Moreover, Mr. Skish argues that "this is confirmed by the subject's neighborhood trending factor of 1.01 utilized by the assessor for the 2006 reassessment." But the Petitioner failed to offer any evidence that the trending factor was 1.01 or that the "neighborhood factor" was related to trending the properties' values from 1999 to 2005. And the Petitioner presented no evidence that the value of properties did not change between 1999 and 2005.
 - e. The Petitioner characterizes the assessments as being "restored" in 2006 to their 2002 value before the Board's determination lowering the value. But it is also possible that the assessor determined the properties' values increased from \$1,700 to \$7,400 in the

- six years between valuation dates. However, the assessor failed to appear to argue its position or present any evidence to support such a finding. Thus, the Board gives some weight to the Petitioner's argument that because the assessor originally valued the properties at \$7,400 in 2002 and again valued the properties at \$7,400 in 2006, property values in the area did not significantly change during the relevant time period.
- f. The Petitioner also contends that sales of comparable properties support his argument that the purchase price of the subject properties reflect the properties' values for the 2006 assessment year. In making this argument the Petitioner essentially relies on a sales comparison approach to establish the market value-in-use of the property. *See* MANUAL at 3 (stating that the sales comparison approach "estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market.") In order to effectively use the sales comparison approach as evidence in a property assessment appeal, however, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the properties. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*
- g. In support of his argument, the Petitioner presented five vacant lots that sold for prices ranging from \$.20 to \$.72 a square foot. According to the Petitioner, the properties were comparable to the subject properties in their topography, lack of a sewer system and the requirement for a septic tank and leach field installation. But despite the fact that the Petitioner's list of sales showed that at least seven properties sold in 2004 and 2005, only one of Mr. Skish's comparable sales fell within the time frame used for the March 1, 2006, assessment date. *See* 50 IAC 21-3-3(a) ("The local assessing official shall use sales of properties occurring between January 1, 2004, and December 31, 2005, in performing sales ratio studies for the March 1, 2006, assessment date."). Three of his comparable properties sold in 2003 and one sold in 2002. However, again, the assessor failed to appear or submit evidence of other sales that occurred during the relevant time period. Thus, while those additional sales might have supported the properties' assessed values, the only evidence before the Board supports the Petitioner's requested values.
- h. 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). Here the assessor failed to appear or submit any evidence in support of the properties' assessed values. Thus, the Respondent failed to impeach or rebut the Petitioner's admittedly minimal prima facie case.

Conclusion

15. The Petitioner raised a minimal prima facie case that his properties were over-assessed for the 2006 assessment year. The Respondent failed to appear at hearing to rebut or impeach the Petitioner's evidence. The Board finds in favor of the Petitioner and holds that the properties' 2006 values are \$1,700 for each parcel.

Final Determination

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review determines that the assessed value of the Petitioner's properties should be lowered for the 2006 assessment year.

ISSUED: April 4, 2013

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

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>.