

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

Petition Nos.: 50-017-06-1-5-00014
50-017-06-1-5-00015
Petitioners: Constantine and Sharon L. Vorgias
Respondent: Marshall County Assessor
Parcel Nos.: 50-31-21-000-131-000-017
50-31-21-000-129-000-017
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 Petitioners initiated two assessment appeals with the Marshall County Property Tax Assessment Board of Appeals (the PTABOA) by written documents dated April 10, 2007.
2. The Petitioners received notices of the decisions of the PTABOA on January 2, 2008.
3. The Petitioners filed Form 131 petitions with the Board on February 14, 2008. The Petitioners elected to have their cases heard according to the Board's small claims procedures.
4. The Board issued notices of hearing to the parties dated June 4, 2008.
5. The Board held an administrative hearing on August 6, 2008, before the duly appointed Administrative Law Judge (the ALJ) Dalene McMillen.
6. The following persons were present and sworn in at hearing:
 - a. For Petitioners: Constantine Vorgias, owner of the property
Sharon L. Vorgias, owner of the property
 - b. For Respondent: Debra A. Dunning, Marshall County Assessor
Jennifer Becker, Indiana Assessment Service

Facts

7. The two properties under appeal are Parcel No. 50-31-21-000-131-000-017, which is a 48' x 211' vacant lot (Lot 71) and Parcel No. 50-31-21-000-129-000-017, which is 48' x 217' lot with an 8' x 8' utility shed (Lot 73) located at 18139 Tahoe Trail, Plymouth, West Township, in Marshall County, Indiana.
8. The ALJ did not conduct an on-site inspection of the subject properties.
9. The PTABOA determined the assessed value of Lot 71 to be \$33,700 for the land. There are no improvements on Lot 71. The assessed value of Lot 73 is \$34,000 for land and \$1,100 for the improvements, for a total assessed value of \$35,100.
10. The Petitioners requested the land on Lot 71 be valued at \$20,000. The Petitioners requested the land and utility shed on Lot 73 be valued at \$20,500.

Issue

11. Summary of Petitioners' contentions in support of alleged error in assessment:
 - a. The Petitioners contend that the Respondent assessed Lot 71 and Lot 73 in excess of their market values. *C. Vorgias testimony*. According to the Petitioners, Lots 71 and 73 are located on each side of Lot 72, which is the parcel that contains the Petitioners' dwelling. *Id.* The two parcels at issue in this hearing were purchased as buffer lots for that property. *Id.*
 - b. The Petitioners argue that Lot 71 appraised for \$20,000. *C. Vorgias testimony; Petitioner Exhibit 5*. Similarly, Lot 73 appraised for \$20,500. *C. Vorgias testimony; Petitioner Exhibit 2*. In support of their position, the Petitioners submitted portions of two appraisal reports prepared by Steve Harper of S. Harper Appraisal Service. *Petitioner Exhibits 2 and 5*. Mr. Harper is an Indiana licensed appraiser. *Id.* In the excerpts, Mr. Harper estimated the market value of Lot 71 to be \$20,000 and Lot 73 to be \$20,500 as of November 28, 2007. *Id.*
 - c. The Petitioners also contend that Lots 71 and 73 are over-valued because they are unbuildable lots. *C. Vorgias testimony*. According to the Petitioners, the Marshall County Health Department prohibits the installation of a septic system on the two lots under appeal due to their soil surface and slope. *Petitioner Exhibits 3 and 4; C. Vorgias testimony*. Thus, the Petitioners argue, the properties could not be sold for their assessed values. *Id.*

12. Summary of Respondent's contentions in support of the assessment:

- a. The Respondent contends that the assessor valued Lot 71 and Lot 73 correctly at \$33,700 and \$35,100, respectively. *Respondent Exhibit 2; Becker testimony.* According to the Respondent, the Petitioners own three parcels on Lake Latonka together forming a 144' by 214' lot with a house and a shed. *Id.* The Respondent argues that the residence sits on Lot 72 and the Petitioners purchased Lots 71 and 73 as a buffer from the neighbors. *Id.* The Respondent contends that the county assessed the three lots as if they were one parcel because the Petitioners use the properties in that manner. *Id.*
- b. The Respondent argues that the Petitioners' appraisals are not probative of the value of the properties. *Becker testimony.* According to the Respondent, the Petitioners' appraiser valued Lots 71 and 73 as vacant lots, to be sold separately in the future from Lot 72, which contains the residence. *Id.* However, this is contrary to Indiana's current assessment system, where assessments are based on the market value-in-use of the property. *Id.* Because the Petitioners have no plans to sell Lots 71 and 73, the Respondent argues, the parcels should be valued as a single property with Lot 72.
- c. The Respondent argues that the Petitioners' entire property (Lot 71, 72 and 73, the Petitioners' house and a utility shed) assessed for \$163,500. *Petitioner Exhibit 5.* Although Lots 71, 72 and 73 are assessed as separate parcels, the Respondent contends, the three assessments together equals the 2006 market value-in-use of Petitioners' property. *Becker testimony.* In response to the Petitioners' question as to why there are three separate parcels, Ms. Becker testified that it is a taxpayer's responsibility to have the parcels legally combined. *Becker testimony.*

Record

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

- a. The Form 131 petitions and related attachments.
- b. The digital recording of the hearing.
- c. Exhibits:

Petitioner Exhibit 1 – Real Property Tax Statements for Parcels 50-31-21-000-131-000-017, 50-31-21-000-130-000-017 and 50-31-21-000-129-000-017, dated October 29, 2007,

Petitioner Exhibit 2 – Land Appraisal Report for Ottawa Hills Lot 73 prepared by Steve Harper, S. Harper Appraisal Service, dated November 28, 2007,
Petitioner Exhibit 3 – Letter from the Marshall County Health Department for Ottawa Hills Lot 71, dated February 10, 2004,
Petitioner Exhibit 4 – Letter from the Marshall County Health Department for Ottawa Hills Lot 73, dated February 9, 2004,
Petitioner Exhibit 5 – Land Appraisal Report for Ottawa Hills Lot 71 prepared by Steve Harper, S. Harper Appraisal Service, dated November 28, 2007,

Respondent Exhibit 1 – Notice of Appearance of Consultant on behalf of Assessor,

Respondent Exhibit 2 – Property record cards for Parcels 50-31-21-000-131-000-017, 50-31-21-000-129-000-017 and 50-31-21-000-130-000-017,

Respondent Exhibit 3 – Aerial map of the area,

Respondent Exhibit 4 – Page 2 and 3 of the 2002 Real Property Assessment Manual,

Respondent Exhibit 5 – Notes from the Property Tax Assessment Board of Appeals Hearing held October 29, 2007, and notes from the preliminary conference,

Respondent Exhibit 6 – Respondent Signature and Attestation Sheet, dated August 28, 2008,

Board Exhibit A – Form 131 petitions with attachments,

Board Exhibit B – Notices of Hearing,

Board Exhibit C – Hearing sign-in sheet,

d. These Findings and Conclusions.

Analysis

14. The most applicable governing cases are:
- a. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Township 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).

- b. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Township 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”).
 - c. 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). The assessing official must offer evidence that impeaches or rebuts the Petitioner’s evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
15. The Petitioners failed to raise a prima facie case for a reduction in value. The Board reached this decision for the following reasons:
- a. Real property is assessed based on “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, for the property.” Ind. Code § 6-1.1-31-6 (c); 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). A taxpayer may use any generally accepted appraisal method as evidence consistent with the Manual’s definition of true tax value, such as actual construction cost, appraisals, or sales information regarding the subject property or comparable properties that are relevant to the property’s market value-in-use, to establish the actual true tax value of a property. *See* MANUAL at 5. Regardless of the method used to show a property’s market value-in-use, however, a 2006 assessment must reflect the value of the property as of January 1, 2005. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. Petitioners who present evidence of value relating to a different date must provide some explanation about how it demonstrates, or is relevant to, the subject property’s value as of January 1, 2005. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
 - b. Here, the Petitioners submitted excerpts from two appraisals prepared by an Indiana licensed appraiser valuing Lot 71 at \$20,000 and Lot 73 at \$20,500 as of November 28, 2007. *Petitioner Exhibits 2 and 5*. The Petitioners’ appraisals, however, are substantially removed from the January 1, 2005, valuation date. The Petitioners did not present any evidence that valued the lots as of the statutory valuation date or show how the appraised value related to the January 1, 2005, valuation date as required by *Long*. Moreover, the appraisal is based on the fiction that Parcel 71 and Parcel 73 are remote or independent of each other and the Petitioners’ third parcel, Parcel 72. While individually the parcels may have a lower value, the Petitioners failed to show that together the parcels’ assessed value exceeds its market value-in-use. Thus, the Petitioners failed to raise a prima facie case that Lot 71 and Lot 73’s assessed values are in error.

- c. The Petitioners also contend that Lots 71 and 73 would not sell for their assessed values because they are unbuildable lots. *C. Vorgias testimony*. In support of this contention, the Petitioners submitted letters from the Marshall County Health Department stating that it prohibits the installation of a septic system on the lots due to their soil surface and slope. *Petitioner Exhibits 3 and 4; Id.* However, Mr. Vorgias testified that Lots 71 and 73 served as buffer lots for their improved parcel. Thus, the Petitioners treat their three adjacent lots as a single piece of property. Individually, Lot 71 and Lot 73 may or may not be “unbuildable,” but the Board will not view these three properties in a vacuum. The Petitioners own three side by side parcels and their property as a whole is a valuable, buildable, piece of property.
- d. Where the Petitioners have not supported their claims with probative evidence, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

16. The Petitioners failed to establish a prima facie case. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessments should not be changed.

ISSUED: _____

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 pursuant to 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 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/bills/2007/SE0287.1.html>.