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

Petition Nos.:	**45-018-06-1-5-00001**
	45-018-06-1-5-00002
Petitioners:	**William A. and Sharon L. Watts**
Respondent:	**Lake County Assessor**
Parcel Nos.:	**006-27-18-0141-0019**
	006-27-18-0141-0004
Assessment Year:	**2006**

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

Procedural History

1. The Petitioners initiated assessment appeals with the Lake County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated June 28, 2007.

2. The Petitioners received notice of the PTABOA determination on August 14, 2009.

3. The Petitioners filed their appeals to the Board by filing Form 131 petitions on August 27, 2009.[1] The Petitioners elected to have their cases heard pursuant to the Board's small claims procedures.

4. The Board issued a notice of hearing to the parties dated January 29, 2010.

5. The Board held an administrative hearing on March 19, 2010, before the duly appointed Administrative Law Judge (the ALJ) Ellen Yuhan.

6. Persons present and sworn in at hearing:

   For Petitioners: Sharon Watts, Property owner,
   Charles Carroll, Ms. Watts' brother-in-law,

[1] Mr. Carroll argues that Mr. Watts filed petitions on all five parcels that make up the property. However, the county only had petitions for the two parcels at issue here. The Petitioners did not produce file stamped copies of the three other appeals Mr. Watts purportedly filed. Further, Mr. Watts had passed away prior to hearing and neither Ms. Watts, nor Mr. Carroll, had personal knowledge of the filing. Therefore the Board only has jurisdiction over the two appeal petitions before it and only heard evidence on those lots.

For Respondent: Julia M. Wolek, Hobart Township Assessor.

Facts

7. The subject property includes Parcel 006-27-18-0141-0004 (Parcel No. 4), a residential lot with the Petitioners' house located at 2705 W. 37th Avenue, and Parcel No. 006-27-18-0141-0019 (Parcel No. 19), a vacant, residential lot located in the 3700 block of Linden Street. Both parcels are located in Hobart.

8. The ALJ did not conduct an on-site visit of the property.

9. For 2006, the Hobart Township Assessor determined the assessed value of Parcel No. 4 to be $22,700 for the land and $93,500 for the improvements, for a total assessed value of $116,200; and the assessed value of Parcel No. 19 to be $1,600 for the land.

10. The Petitioner requested an assessment of $22,700 for the land and $80,000 for the improvements, for a total assessed value of $102,700 for Parcel No. 4; and an assessed value of $1,600 for Parcel No. 19.

Issues

11. Summary of the Petitioners' contentions in support of an error in their assessment:

    a. The Petitioners' witness, Mr. Carroll, contends that the Petitioners' assessment is too high when compared to neighboring properties. *Carroll testimony*. In support of this contention, Mr. Carroll presented assessment information for two properties in the Petitioners' neighborhood. *Petitioner Exhibits 13 and 14*. According to Mr. Carroll, both properties have more living area than the Petitioners' house, but the improvements are assessed at a lower value. *Carroll testimony*.

    b. Mr. Carroll further contends the assessor applied a higher influence factor to the two neighboring properties. *Carroll testimony*. According to Mr. Carroll, the assessor applied a 24% negative influence factor to the Petitioners' property, but the neighboring properties have negative influence factors of 28% and 36%, respectively. *Id.; Petitioner Exhibits 13 and 14*.

    c. Finally, Mr. Carroll contends that the Board previously determined Parcel No. 19 was a rear lot and landlocked. *Carroll testimony*. In support of this contention, the Petitioner submitted the Board's determination on the parcel's 2002 assessment. *Petitioner Exhibit 1*. According to Mr. Carroll, nothing has changed since the Board issued its determination. *Carroll testimony*. However, Mr. Carroll admitted that, for 2006, Parcel No. 19 was still assessed for only $1,600. *Id.* The increase in assessed value did not occur until 2008. *Id*.

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

a. The Respondent's witness, Ms. Wolek, contends the Petitioners' house is a well-maintained, brick house, with a fireplace and swimming pool. *Wolek testimony*. According to Ms. Wolek, the assessed value of $116,200 is supported by sales. *Id*. Ms. Wolek further argues that the Petitioners did not show their property is comparable to the neighboring properties in terms of age or type of construction. *Id*.

b. Ms. Wolek further contends the Petitioners' lot is 90 feet by 217 feet. *Wolek testimony*. According to Ms. Wolek, the assessor applied a negative 24% influence factor to the lot for excess frontage. *Id.* The neighboring properties, however, are larger and therefore larger influence factors were applied to the lots. *Id.*

c. Finally, the Respondent's witness contends Parcel No. 19 is not landlocked because it is adjacent to another parcel owned by the Petitioners and there is an alleyway for access. *Wolek testimony*. According to Ms. Wolek, however, the assessment remained $1,600 for 2006, which is the value that the Indiana Board determined for the parcel for the 2002 assessment. *Id.*

Record

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

a. The Petition,

b. The compact disk recording of the hearing labeled 45-018-06-1-5-00001 Watts,

c. Exhibits:

Petitioner Exhibit 1 – Indiana Board of Tax Review final determination,
Petitioner Exhibit 2 – Request for Preliminary Conference,
Petitioner Exhibit 3 – Notice of Defect,
Petitioner Exhibit 4 – Form 131 petition,
Petitioner Exhibit 5 – PTABOA letter of denial,
Petitioner Exhibit 6 – Property record card for Parcel No. 19,
Petitioner Exhibit 7 – Aerial map of the properties,
Petitioner Exhibit 8 – Map,
Petitioner Exhibit 9 – Property tax bill for Parcel No. 19 dated September 29, 2009,
Petitioner Exhibit 10 and 10A – Photographs of Parcel No. 19,
Petitioner Exhibit 11 – Plat survey,
Petitioner Exhibit 12 – Notice of Assessment and property record card for Parcel No. 4,
Petitioner Exhibit 13 – Property record card for the property located at 2609 West 37th Avenue,

Petitioner Exhibit 14 – Property record card for the property located at 2707 West 37th Avenue,
Petitioner Exhibit 15 – Form 131 and Form 115 for Parcel No. 4,
Petitioner Exhibit 16 – Notice of Defect,
Petitioner Exhibit 17 – 2009 Property record card for Parcel No. 4,
Petitioner Exhibit 18A-18D – Photographs of Parcel No. 4,
Petitioner Exhibit 22A-22D – Photographs of the purported alley,

Respondent Exhibit 1 – GIS aerial map of the subject properties,

Board Exhibit A – Form 131 petitions,
Board Exhibit B – Notice of Hearing, dated January 29, 2010,
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 Board of Tax Commissioners*, 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 provide sufficient evidence to establish an error in their assessments. The Board reached this decision for the following reasons:

a. The 2002 Real Property Assessment Manual defines "true tax value" 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 use three methods to determine a property's market value: the cost approach, the sales

comparison approach and the income approach to value. *Id.* at 3, 13-15. Indiana assessing officials generally assess real property using a mass-appraisal version of the cost approach, as 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. Assessor*, 836 N.E.2d 501 (Ind. Tax Ct. 2005)*; P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 2006). A taxpayer may rebut that assumption 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 (USPAP) often will suffice. *See Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.6. A taxpayer 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 practices. MANUAL at 5.

c. Regardless of the method used to rebut an assessment's presumption of accuracy, a party must explain how its evidence relates to the subject property's market value-in-use as of the relevant valuation date. *O'Donnell v. Department of Local Government Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2006, assessment, the valuation date was January 1, 2005. 50 IAC 21-3-3.

d. The Petitioners first contend their property is over-assessed based on the assessed values of other properties in their neighborhood. In support of this contention, the Petitioner provided assessment information for two neighboring houses. This argument, however, was found to be insufficient to show an error in an assessment by the Indiana Tax Court in *Westfield Golf Practice Center, LLC v. Washington Township Assessor*, 859 N.E.2d 396 (Ind. Tax Ct. 2007) (rejecting taxpayer's lack of uniformity and equality claim where the taxpayer showed neither its own property's market value-in-use nor the market values-in-use of purportedly comparable properties). In that case, the Tax Court held that it is not enough for a taxpayer to show that its property is assessed higher than other comparable properties. *Id.* Instead, the Court found that the taxpayer must present probative evidence to show that its assessed value does not accurately reflect the property's market value-in-use. *Id.*

e. Further, the Petitioners failed to show the comparability of those neighboring properties. By comparing their assessed values to the assessed values of other comparable properties, the Petitioners essentially rely on a "sales comparison" method of establishing the market value of their property. In order to effectively use the sales comparison approach as evidence in property assessment appeals, 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 party seeking to rely on a sales comparison approach must explain the characteristics of the subject property and how those characteristics compare to those of purportedly comparable properties. *See Id.* at 470-71. They must explain how any differences between the properties affect their relative market value-in-use. Here, the Petitioners merely offered property record cards for the purportedly comparable properties and noted the differences in living area. This falls far short of the showing required to prove comparability.

f. The Petitioners also contend that the influence factor applied to their land is lower than the influence factor applied to the two neighboring properties. In Indiana, assessors typically apply an influence factor "to account for the characteristics of a particular parcel of land that are peculiar to that parcel. " GUIDELINES, Glossary at 10. An influence factor "may be positive or negative and is expressed as a percentage." *Id*. To prevail on this issue, a taxpayer must produce "probative evidence that would support an application of a negative influence factor and a quantification of that influence factor." *See Talesnick v. State Bd. of Tax Comm'rs*, 756 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001). Here, the assessor applied a negative influence factor to the Petitioners' land for their property's excess frontage. The Petitioners failed to show that the influence factor applied to their land was incorrect. Further, the Petitioners failed to present any evidence that a different or greater influence factor should apply. The Petitioners merely argued that the assessor applied a larger influence factor to the larger neighboring properties. This is insufficient to show an error in their assessment.[2]

h. The Petitioners failed to establish a prima facie case. Where a Petitioner has not supported his claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus., LTD v. Department of Local Government Finance*, 709 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2002).

Conclusion

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

[2] The Petitioners also appealed the assessed value on Parcel No. 19. However, the assessed value of this lot did not change until 2008. The 2006 assessment of the parcel is $1,600, which is the value the Petitioners requested on their Form 131 petition. Therefore, the Petitioners failed to show any error in the assessment of Parcel No. 19.

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: _____

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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>