

FINDINGS OF FACT AND CONCLUSIONS OF LAW

ISSUE

1. The issue presented for consideration by the Board is whether the assessed values of the parcels are over-stated.

PROCEDURAL HISTORY

2. The Petitioners initiated these assessment appeals by filing Form 130, Petitions to the Property Tax Assessment Board of Appeals for Review of Assessment on August 27, 2007. The Lake County Property Tax Assessment Board of Appeals (PTABOA) issued its assessment determinations on June 25, 2009.
3. Pursuant to Ind. Code § 6-1.1-15-1, the Petitioners filed Form 131, Petitions for Review of Assessment, on July 23, 2009, petitioning the Board to conduct an administrative review of the properties' 2006 assessments.

HEARING FACTS AND OTHER MATTERS OF RECORD

4. Pursuant to Ind. Code § 6-1.1-15-4 and § 6-1.5-4-1, the duly designated Administrative Law Judge (the ALJ), Ellen Yuhan, held a hearing on November 9, 2009, in Crown Point, Indiana.
5. The following persons were sworn and presented testimony at the hearing:
For the Petitioners:
Tom Zintl, Taxpayer,
No one appeared for the Respondent.
6. The Petitioners presented the following exhibits:
Petitioner Exhibits 1A-1G – Board Determinations on the properties for 2002,

Petitioner Exhibit 2 – Form 115 from the Lake County PTABOA for Parcel No. 001-25-45-0245-0064,
Petitioner Exhibit 3 – Lake County Hearing Officer’s recommendation to the PTABOA,
Petitioner Exhibit 4 – Appraisal of the properties as of January 1, 2006,
Petitioner Exhibit 5 – Summary of lot descriptions, sizes, assessed values and cost per square foot,
Petitioner Exhibit 6 – City of Gary Zoning Code,
Petitioner Exhibit 7 – A copy of the plat map indicating the location of the parcels,
Petitioner Exhibit 8 – Enlargement of the plat map,
Petitioner Exhibit 9 – Aerial map with contours of land and spot elevations of the parcels,
Petitioner Exhibit 10 – Drawing section indicating the slope of land,
Petitioner Exhibits 11A-11H – Photographs of the lots and terrain,
Petitioner Exhibit 12 – Vacant land sales from Ayres Realtors,
Petitioner Exhibits 13A-13B – Form 131 and Form 130 with attachments for the Petitioner’s parcels,¹

7. The following additional items are officially recognized as part of the record of proceedings and labeled Board Exhibits:

Board Exhibit A – Form 131 Petitions,
Board Exhibit B – Notices of Hearing dated September 22, 2009,
Board Exhibit C – Hearing sign-in sheet.

8. The subject properties are vacant residential parcels located at 1108-10 Warrick St., Parcel No. 001-25-45-0245-0066 (Parcel No. 66); 1112-14 Warrick St., Parcel No. 001-25-45-0245-0067 (Parcel No. 67); 1116-18 Warrick St., Parcel No. 001-25-45-0245-0068 (Parcel No. 68); 1124-26 Warrick St., Parcel No. 001-25-45-0245-0070 (Parcel No. 70); 1128-30 Warrick St., Parcel No. 001-25-45-0245-0071 (Parcel No. 71); 1116-18 Warrick St., Parcel No. 001-24-45-0245-0040 (Parcel No. 40); 1120-22 Warrick St., Parcel No. 001-25-45-0245-0042 (Parcel No. 42); and 1128-30 Warrick St., Parcel No. 001-25-45-0245-0046 (Parcel No. 46).

¹ The Petitioners did not resubmit the Form 131 petitions or the Form 130 petitions, but requested that the Board consider the attachments to the petitions, which included a sales contract for the parcels and an appraisal prepared by David W. Barrick valuing the parcels as of January 1, 1998 through December 31, 1999.

9. The ALJ did not conduct an on-site inspection of the subject property.
10. For 2006, the Petitioner contends the assessed values of the subject properties are \$20,800 for Parcel No. 66; \$20,800 for Parcel No. 67; \$20,800 for Parcel No. 68; \$22,500 for Parcel No. 70; \$22,500 for Parcel No. 71; \$12,700 for Parcel No. 40; \$12,700 for Parcel No. 42; and \$12,700 for Parcel No. 46.²
11. The Petitioners contend the assessed values should be \$2,300 for Parcel No. 66; \$2,300 for Parcel No. 67; \$2,300 for Parcel No. 68; \$2,600 for Parcel No. 70; \$2,600 for Parcel No. 71; \$1,300 for Parcel No. 40; \$1,300 for Parcel No. 42; and \$1,300 for Parcel No. 46.

JURISDICTIONAL FRAMEWORK

12. The Indiana Board is charged with conducting an impartial review of all appeals concerning: (1) the assessed valuation of tangible property; (2) property tax deductions; and (3) property tax exemptions; that are made from a determination by an assessing official or a county property tax assessment board of appeals to the Indiana Board under any law. Ind. Code § 6-1.5-4-1(a). All such appeals are conducted under Indiana Code § 6-1.1-15. *See* Ind. Code § 6-1.5-4-1(b); Ind. Code § 6-1.1-15-4.

² The Petitioners contend that the Form 115 Notifications of Final Assessment Determination attached to the Form 131 petitions were altered and do not show the correct assessed value. According to Mr. Zintl, the properties are assessed for \$20,800 for Parcel No. 66; \$20,800 for Parcel No. 67; \$20,800 for Parcel No. 68; \$22,500 for Parcel No. 70; \$22,500 for Parcel No. 71; \$12,700 for Parcel No. 40; \$12,700 for Parcel No. 42; and \$12,700 for Parcel No. 46 in 2006, despite the Form 115 values of \$2,300 for Parcel No. 66; \$2,300 for Parcel No. 67; \$2,600 for Parcel No. 68; \$2,600 for Parcel No. 70; \$2,600 for Parcel No. 71; \$1,300 for Parcel No. 40; \$1,300 for Parcel No. 42; and \$1,300 for Parcel No. 46. recommended by the hearing officer. The Form 115s, however, also indicate that the PTABOA denied the Petition and the hearing officer's recommendation which supports the Petitioners' contention here.

ADMINISTRATIVE REVIEW AND THE PETITIONER'S BURDEN

13. A Petitioner seeking review of a determination of the county Property Tax Assessment Board of Appeals has the burden to establish a prima facie case proving, by a preponderance of the evidence, that the current assessment is incorrect, and specifically what the correct assessment would 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).
14. 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. Wash. 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”).
15. 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.

PETITIONERS' CONTENTIONS

16. The Petitioners contend that the assessed values of their properties are over-stated. The Petitioners presented the following evidence in support of their contentions:
 - A. The Petitioners contend their parcels are not buildable because the City of Gary zoning code requires 6,000 square feet and a minimum of 50 feet street frontage. *Zintl testimony; Petitioner Exhibit 6*. According to Mr. Zintl, the largest individual parcel under appeal is 2,016 square feet and the smallest

parcels are 1,000 square. *Zintl testimony; Petitioner Exhibit 5.* Further, the Petitioners contend there is no actual street frontage because Warrick Street was never developed. *Zintl testimony; Petitioner Exhibit 9.*

- B. Mr. Zintl argues that, even if the three contiguous parcels, Parcel No. 66, Parcel No. 67, and Parcel No. 68, are combined, it still would not create one buildable lot. *Zintl testimony; Petitioner Exhibit 5.* Similarly, according to Mr. Zintl, even if it was possible to build on their lots it would be cost prohibitive because the land slopes down steeply to a wet area below street level, and then slopes back up to Oak Street. *Zintl testimony; Petitioner Exhibits 9 and 10.*
- C. The Petitioners further argue that the properties are over-valued based on an appraisal of the parcels. *Zintl argument.* According to Mr. Zintl, the Petitioners' appraisal valued the parcels at \$500 each as of January 1, 2006. *Id.; Petitioner Exhibit 4.* Mr. Zintl argues that the PTABOA gave no credence to the appraisal and told him to meet with the township assessor to arrive at an equitable value. *Zintl argument.*
- D. Mr. Zintl testified that the Calumet Township Assessor reduced the value of one of the Petitioners' parcels, Parcel No. 001-25-45-0245-0064 (Parcel No. 64), to \$2,300.³ *Zintl testimony; Petitioner Exhibit 2.* As a result of the Assessor's adjustment of Parcel No. 64, Mr. Zintl prepared a spreadsheet using the \$2,300 assessed value as the basis for valuing the Petitioners' other parcels. *Zintl testimony; Petitioner Exhibit 5.* According to Mr. Zintl, his calculations resulted in a value of \$1.30 per square foot value; whereas the parcels were assessed for \$11-\$12 per square foot in 2006. *Id.*

³ According to Mr. Zintl, the hearing officer for the Lake County Assessor recommended that all of their appealed parcels should be assessed at \$2,300, but the PTABOA rejected her recommendation. *Zintl testimony; Petitioner Exhibit 3.*

- E. Mr. Zintl also testified that he researched sales of vacant parcels in the Miller area. *Zintl testimony*. According to Mr. Zintl, much larger lots in his neighborhood sold from \$.56 per square foot to \$2.00 per square foot. *Id.*; *Petitioner Exhibit 12*. Mr. Zintl argues that the average sale price of the properties was “maybe up to \$1.50 or \$1.60” per square foot, but he contends that the lots that were sold were likely buildable without the topography and utility disadvantages that the subject properties have. *Zintl testimony*.
- F. Finally, Mr. Zintl contends that, with the exception of Parcel No. 71 which he did not own at the time, he and his business partner at the time successfully appealed the parcels’ assessed values for the 2002 assessment to the Board. *Zintl testimony*. Based on the evidence they presented for the 2002 assessment, the Board reduced the values of the lots to the appraised values of \$500 for the small lots and \$750 for the larger lots. *Id.*; *Petitioner Exhibits 1A-1G*. According to Mr. Zintl, the PTABOA gave no consideration to the Board determinations for 2002 for these parcels. *Id.*

ANALYSIS

17. 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). The appraisal profession traditionally has used 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. In Indiana, assessing officials generally value real property using a mass-appraisal version of the cost approach, as set forth in the Real Property Assessment Guidelines for 2002 – Version A.
18. A property’s assessment under the Guidelines is presumed to accurately reflect its true tax value. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River*

Twp. Assessor, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005); *P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax 2006). 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. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer sales information for the subject property or comparable properties and other information compiled according to generally accepted appraisal principles. MANUAL at 5.

19. 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.
20. Here, the Petitioners submitted an appraisal prepared by Loray T. Robinson that estimated the value of each of the properties to be \$500 as of January 1, 2006. *Petitioner Exhibit 4*. Ms. Robinson is an Indiana Certified Appraiser who attested that she prepared the Petitioners' appraisal in accordance with the Uniform Standards of Professional Appraisal Practices. (USPAP). *Id.* The appraiser used the sales comparison approach, using properties that sold from 2005 to 2007. *Id.* While generally the 2006 assessment is to reflect the value of the property as of January 1, 2005, pursuant to 50 IAC 21-3-3(a), "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." The Board therefore finds that an appraisal using a 2005 sale in its sale comparison analysis and valuing the properties within a single day of the relevant sales dates has some probative value.

21. The Petitioners also presented an appraisal they had prepared for the 2002 appeals which provides further support for Ms. Robinson's estimated value. Both appraisers agree that the individual lots are unbuildable according to the City of Gary zoning code. Both appraisers also note that the street indicated on the plat was never developed and that properties' topography is not favorable for a residential site, even if building was permissible. It is apparent from the appraisers' descriptions of the land that there has been little or no change in the conditions or circumstances affecting these parcels. Similar to Ms. Robinson's valuation, Mr. Barrick estimated the values of Parcel No. 40, Parcel No. 42, and Parcel No. 46 at \$500 each and the values of Parcel No. 66, Parcel No. 67, Parcel No. 68 and Parcel No. 70 at \$750 each. Thus, the Board finds that the Petitioners raised a prima facie case that their properties are over-assessed. *See Meridian Towers*, 805 N.E.2d at 479.
22. Once the Petitioners establish a prima facie case, the burden shifts to the assessing official to rebut the Petitioners' evidence. *See American United Life Insurance Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). Here the Respondent failed to appear or present any evidence.⁴ The Respondent could have argued that the individual properties may have little value, but together they form a more valuable parcel. Or it could have presented evidence that the parcels contiguous to the house were worth more because of their location. The Board, however, will not make these arguments for the Assessor.

CONCLUSION

23. The Petitioners raised a prima facie case. The Respondent failed to appear at the hearing to rebut or impeach the Petitioners' evidence. The Board finds for the Petitioners and determines each properties' value to be \$500.

⁴ The Board reminds the Assessor that to the extent that it believes its assessment is correct, the Assessor should appear at hearing and vigorously defend its assessment. If the Assessor believed the assessment was in error based on the Petitioners' evidence, the Assessor should have stipulated or settled the matter prior to hearing. The Board does not appreciate wasting its resources or those of the Petitioners to hold a hearing where the Respondent does not even appear.

FINAL DETERMINATION

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessed values should be changed.

ISSUED: _____

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

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>>