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

Petition No.: **50-014-06-1-5-00031**
Petitioners: **William & Barabara Zizic**
Respondent: **Marshall County Assessor**
Parcel No.: **50-21-21-304-368-000-014**
Assessment Year: **2006**

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

Procedural History

1. William and Barbara Zizic filed a written request asking the Marshall County Property Tax Assessment Board of Appeals ("PTABOA") to reduce their property's assessment. On April 4, 2008, the PTABOA issued a determination denying the Zizics' request.

2. The Zizics disagreed with the PTABOA's determination and timely filed a Form 131 petition with the Board. They elected to have this case heard under the Board's small claims procedures.

3. On December 18, 2008, the Board held an administrative hearing through its designated Administrative Law Judge, Patti Kindler ("ALJ").

4. Ralph Huff appeared as counsel for the Zizics. He was not sworn as a witness.[1] The following people were sworn-in and testified:

    a) For the Zizics: Rene' D. Williams, certified residential appraiser

    b) For the Assessor: Debra Dunning, Marshall County Assessor
    Jennifer Becker, consultant

[1] While Mr. Huff largely argued facts separately admitted through exhibits or witnesses, he made several factual statements of his own. Because Mr. Huff was not sworn as witness, the Board does not consider those statements as evidence.

Facts

5. The appealed parcel is a vacant residential lot located at 1034 West Shore Drive in Culver, Indiana. A road separates the property from an improved lakefront parcel that the Zizics also own.

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

7. The PTABOA determined the property's assessment at $302,300.

8. The Zizics asked for an assessment of $117,500.

Parties' Contentions

9. Summary of the Zizics' contentions:

    a) The Assessor overestimated the property's value because she assessed it as if it were on the lake. In fact, the upper left corner of the property's record card says "Culver Lakefront." But a road and the Zizics' other parcel with a house separate the property from the lake. *Huff argument*; *Pet'rs Exs. 2-4*. Three appraisers agreed that they would not appraise the appealed parcel as a lakefront property because it was not actually on the lake and could be sold independently from the Zizics' lakefront parcel. *Pet'rs Exs. 2, 5-7*. Lakefront and off-lake parcels sometimes actually do sell independently of each other. *Williams testimony*.

    b) Rene Williams, a respected and knowledgeable appraiser with experience in appraising Marshall County properties offered her opinion about the property's value. She actually gave the Zizics two different written opinions—an October 24, 2005, letter in which she said that the appealed parcel should be assessed in the range of $95,000 to $120,000 and a "Land Appraisal Report" in which she purported to estimate the parcel's market value as $126,000 as of October 2, 2008. *Pet'rs Exs. 1-2*.

    c) Ms. Williams, however, clarified that she did not appraise the appealed parcel. Instead, she used an appraisal form only for ease of reading. Her "objective was to show that the county is inconsistent in its methodology for parcels that carry the same neighborhood codes." *Williams testimony on cross examination*. Thus, she used the form to "establish a fair market tax assessment and opinion of value, as compared to similar off-lake properties." *Williams testimony; Pet'rs Ex. 2.*

    d) In her report, Ms. Williams compared the appealed parcel to three other parcels. The first two were off-lake parcels whose owners also owned

lake frontage across the street. The third included a shallow lakefront lot. *Pet'rs Ex. 2*. She concluded that, at $31.68 per square foot and $6,431 per front foot, the appealed parcel was assessed at almost twice the rate of the adjacent off-lake parcel and even higher than the parcel with the lake frontage. *Pet'rs Ex. 2*.

e) In an addendum, Ms. Williams also identified several sales, focusing most heavily on two sales of off-lake properties. One was a March 7, 2005, sale of a 75' x 158' parcel from Heinsen to Doyle. Doyle bought the property for $250,000, or $3,333 per foot of road frontage. The other sale, which Ms. Williams described as "really confusing the issue of value," involved a 4.88-acre parcel that sold for $73,000. *Pet'rs Ex. 2*.

f) Ms. Williams concluded her addendum with the following:

> The assessment period is 3-1-2006 and 3-1-2007 (no change in values), the above OFF LAKE actual sales in the correct time frame is a more realistic value guide than lake front values. As the reader can see, there is a hugh (sic) difference in the above off lake, across the street from the homes on the water, sales. Howvever (sic), even the high end is only 26% of the base value being currently used assess the subject.

Pet'rs Ex. 2.

10. Summary of the Assessor's contentions:

a) The Zizics did not offer sufficient market evidence to show that the appealed parcel's assessment was wrong. Ms. Williams, the Zizics' appraiser, did not actually appraise the appealed parcel, but rather compared assessments. Even so, her analysis was flawed. One of her purportedly comparable properties was classified as agricultural land. And none of the three purportedly comparable properties was located in the Zizics' immediate neighborhood. *Becker testimony*.

b) The appealed parcel was assessed in the same manner as other off-lake parcels that were part of multi-parcel properties. And market data supported those assessments. On April 10, 2006, Lawrence Pachniak bought four parcels—two on the water and two off—for $1,175,000. In 2006, those four parcels were assessed for a total of $1,182,100. And Peter and Susan Korellis bought four similar parcels for $1,150,000 in 2004. In 2006, Korellis's parcels were assessed for a total of $1,361,700. *Becker testimony; Resp't Exs. 5-6*.

c) While off-lake parcels can be sold separately, the pattern of sales on Lake Maxinkuckee, especially in the Zizics's neighborhood, consists of multi-parcel lots on both sides of the road being sold together. *Becker testimony*. The Zizics' parcels would sell as one unit to preserve their highest and best use. The Assessor therefore valued off-lake parcels using the same front-foot rate used for lakefront parcels, but applied a negative 50% influence factor to account for the lack of actual lake frontage. Thus, while concurrent ownership of lakefront parcels influenced the assessments of off-lake parcels, those parcels were not actually assessed the same as lakefront parcels. *Becker testimony; Resp't Exs. 2-3.*

Record

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

a) The Form 131 petition,

b) The digital recording of the hearing,

c) Exhibits:

Petitioners' Exhibit 1 – October 24, 2005, letter from Rene' Williams with six pages attached,
Petitioners' Exhibit 2 – October 6, 2008, letter from Rene' Williams to Rick Huff with attached "Land Appraisal Report,"
Petitioners' Exhibit 3 – Form 131 petition,
Petitioners' Exhibit 4 – Copy of survey for the appealed parcel and the Zizics' lakefront lot,
Petitioners' Exhibit 5 – Three copies of January 9, 2008, letter from Rene Williams and one-page attachment,
Petitioners' Exhibit 6 – January 11, 2008, letter from Steve Harper,
Petitioners' Exhibit 7 – January 10, 2008, letter from Maria Pesak,
Petitioners' Exhibit 8 – Undated letter on letterhead from Caldwell Banker,
Petitioners' Exhibit 9 – Undated letter from Shawn Reed,
Petitioners' Exhibit 10 – Section 3.2-L-1 of zoning ordinance for Culver
Petitioners' Exhibit 11 – Notice of Appearance for Ralph Huff,

Respondent's Exhibit 1 – Notice of Appearance of Consultant on Behalf of Assessor,

Respondent's Exhibit 2 – Appealed parcel's 2006 property record card,
Respondent's Exhibit 3 – GIS photograph of the appealed parcel,
Respondent's Exhibit 4 – Union Township's responses for the original PTABOA hearing,
Respondent's Exhibit 5 – Copies of property record cards and sales disclosure for four parcels sold to Lawrence Pachniack,
Respondent's Exhibit 6 – Copies of property record cards and GIS map for four parcels owned by the Peter and Susan Korellis,[2]

Board Exhibit A – Form 131 petition,
Board Exhibit B – Notice of hearing,
Board Exhibit C – Hearing sign-in sheet,

d) These Findings and Conclusions.

Analysis

Burden of Proof

12. A petitioner seeking review of an assessing official's determination 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 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).

13. In making its case, the petitioner must explain how each piece of evidence is relevant to the 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").

14. 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.

[2] The Assessor's exhibits were attached to a document entitled "Summary of Respondent Exhibits and Testimony." She did not offer that document as an exhibit. The Assessor also included a document titled "Respondent Signature and Attestation Sheet," which she apparently submitted, in part, to authenticate her exhibits.

The Zizics' Case

15. The Zizics did not make a prima facie case for changing the appealed parcel's assessment. The Board reaches this conclusion for the following reasons:

A. The Zizics did not rebut the presumption that the appealed parcel was accurately assessed

a) Indiana assesses real property based on its "true tax value," which the 2002 Real Property 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." 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2).

b) Assessors typically use a mass-appraisal version of the cost approach to assess individual properties. The Real Property Assessment Guidelines for 2002 – Version A detail that approach. But those Guidelines are merely a starting point for determining value. *Westfield Golf Practice Center, LLC v. Washington Twp. Assessor*, 859 N.E.2d 396, 399 (Ind. Tax Ct. 2007). Thus, while a property's market value-in-use, as ascertained by applying those Guidelines, is presumed to be accurate, that presumption may be rebutted using relevant evidence that is consistent with the Manual's definition of true tax value. *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 676 (Ind. Tax Ct. 2006); *see also* MANUAL at 5. That evidence includes market-value-in-use appraisals, actual construction costs, sales information regarding the appealed parcel or comparable properties, and other evidence compiled using generally accepted appraisal principles. *Id.*

c) By contrast, a taxpayer cannot rebut an assessment's presumed accuracy simply by contesting the methodology that the assessor used to compute it. *Eckerling*, 841 N.E.2d at 678. Instead, the taxpayer must show that the assessor's methodology yielded an assessment that did not accurately reflect the property's market value-in-use. *Id*. Strictly applying the Guidelines does not suffice; rather, the taxpayer must offer the types of market-value-in-use evidence contemplated by the Manual. *Id*.

d) Here, the Zizics primarily claimed that the Assessor misclassified the appealed parcel as a lakefront property. The Board, however, sees little difference between that claim and other methodology-based claims that the Tax Court has rejected. *See Eckerling*, 841 N.E.2d at 674, 678 (taxpayers claimed that the assessor erred by using residential, instead of

commercial, pricing schedules); *O'Donnell v. Dep't of Local Gov't Fin*., 854 N.E.2d 90, 94-95 (Ind. Tax Ct. 2006)(taxpayers contested, among other things, the front foot rate and quality grade used to assess their property). Regardless of the appealed property's classification, the Zizics needed to offer market-value-in-use evidence to rebut the assessment's presumed accuracy.

e) The Board therefore turns to Ms. Williams's opinion about the appealed parcel's value. Ms. Williams is a certified residential appraiser. As the Tax Court has repeatedly said, "the most effective method to rebut an assessment's presumed accuracy is by offering "a market value-in-use appraisal, completed in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP)." *Eckerling*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006).

f) But, while Ms. Williams used an appraisal-report form and certified that she prepared that report in conformity with USPAP, she admitted that she did not appraise the appealed parcel. *Williams testimony; Pet'rs Ex. 2*. Instead, she compared the appealed parcel's assessment to other assessments to "establish a fair market tax assessment and opinion of value, as compared to similar off-lake properties." *Id.* There are at least two problems with Ms. Williams's approach that make her opinion an unreliable indicator of the appealed parcel's market value-in-use: she looked at the appealed parcel's value independently of the Zizics' lakefront property, and she did not show that she used generally accepted appraisal principles.

g) The first problem—looking at the appealed parcel's value independently of the Zizics' lakefront lot—arises from the fact that properties used together as a single unit are often divided into separate parcels for tax purposes. But where the owners and the market view related parcels as one property, we ultimately care about the value of the entire property—not its individual components. That is intrinsic to the definition of true tax value, which looks to the utility that an owner, or similar user, receives from a property. Thus, one cannot divorce the value of any individual parcel from the market value-in-use of the property as a whole. Saying that one parcel is over- or under-assessed inspires little confidence that the property's overall assessment is wrong.

h) Of course, that turns upon whether separate parcels are truly being used as one property. And there is little competent evidence in this case to show how the Zizics used their two lots. But given their physical relationship—the lakefront lot sits directly across the road from the appealed parcel—the Board infers that the Zizics treat the two parcels as one property. And a

similar user would likely do the same. Because Ms. Williams did not look at the two parcels' overall value, her opinion did little to rebut the presumption that the appealed parcel's current assessment is correct.

i) Even if the Board were to accept Ms. Williams's decision to value the appealed parcel independently of the Zizics' lakefront parcel, the second problem—Ms. Williams's failure to show that she used generally accepted appraisal principles—would still make her opinion unreliable. In both her 2005 opinion letter and her 2008 report, Ms. Williams compared the appealed parcel's assessment to the assessments of three purportedly comparable properties. While the sales-comparison approach recognizes that one can estimate a property's value indirectly by looking to the values of comparable properties,[3] Ms. Williams looked to those other properties' assessments instead of their sale prices. Thus, Ms. Williams used only estimates of the other properties' values, and mass-appraisal estimates at that. Without more, the Board will not assume that such an approach complies with generally accepted appraisal principles. In fact, there is good reason to infer the opposite in this case. Ms. Williams herself believed that assessments throughout the neighborhood were inconsistent. That hardly inspires confidence that the assessments for the purportedly comparable properties accurately reflected their market values-in-use.

j) In the report's addendum, however, Ms. Williams did offer information about several sales, including one in which Mr. Doyle bought an off-lake parcel for $250,000. And she said that she gave the most weight to the Doyle sale, tempered by the assessments for the off-lake sites with a full lake view. *Pet'rs Ex. 2*. In an earlier letter, however, Ms. Williams described Doyle's property as being located "quite a distance" from the appealed parcel and "certainly outside the subject's neighborhood area." *Pet'rs Ex. 1*. Also, Ms. Williams did little to compare Doyle's property, or any of the other sold properties, to the appealed parcel. And she did not explicitly adjust those sale prices or otherwise explain how any differences between those properties and the appealed parcel affected their relative market values-in-use. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470-71 (Ind. Tax Ct. 2005) (rejecting taxpayers' sales-comparison evidence where taxpayers failed to explain how properties were comparable or how any relevant differences affected their relative market values-in-use).

[3] *See* MANUAL at 13.

B. The Zizics did not show a lack of uniformity and equality in assessments

k) Finally, the Zizics may have offered Ms. Williams's letter and report for a purpose distinct from showing that the appealed parcel was assessed for more than its true tax value. Indeed, they appear to claim that assessments in their neighborhood were not uniform and equal.

l) Given the market-value-in-use universe we now live in, the clearest way for a taxpayer to show a lack of uniformity and equality is by showing that his property is assessed at a higher percentage of its market value-in-use than other properties. *See Westfield Golf*, 859 N.E.2d at 399 (finding that taxpayer failed to prove a lack of uniformity and equality where it did not show that market values-in-use of its own property or of any purportedly comparable properties). The Zizics, however, did not offer probative evidence to show either the appealed parcel's market value-in-use or the market values-in-use of any of Ms. Williams's purportedly comparable properties. And Ms. Williams looked at only three properties without doing much to compare their features to the appealed parcel's features. On this record, the Board concludes that the Zizics failed to make a prima facie case of a lack of uniformity and equality.

Conclusion

16. Because the Zizics failed to make a prima facie case, the Board finds for the Marshall County Assessor.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the appealed parcel's March 1, 2006, assessment 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**.**