

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

Petition #: 35-015-03-1-5-00003; 35-015-03-1-5-00004; 35-015-03-1-5-00005;
35-015-03-1-5-00006
Petitioner: Carolyn R. Lane-Hamilton
Respondent: Rock Creek Township Assessor (Huntington County)
Parcel #: 015-00354-01; 015-00355-01; 015-00352-01; 015-00352-00
Assessment Year: 2003

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 an assessment appeal with the Huntington County Property Tax Assessment Board of Appeals (PTABOA) by written document dated June 25, 2004.
2. The PTABOA mailed notice of its decision on June 3, 2005.
3. The Petitioner initiated an appeal to the Board by filing a Form 131 petition with the Huntington County Assessor on June 29, 2005. The Petitioner elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated May 3, 2006.
5. The Board held a consolidated administrative hearing with regard to the above referenced petitions on June 20, 2006, before its duly appointed administrative law judge, Jennifer Bippus.
6. Carolyn R. Lane-Hamilton, taxpayer, Jennifer Becker, Huntington County Technical Advisor, and Carol Stouder, Huntington County Deputy Assessor, appeared at the hearing and were sworn as witnesses.

Facts

7. The properties are classified as residential and are located in Markle, Indiana. Parcels 015-00354-01 and 015-00355-01 are unimproved parcels located on West Morse Street. Parcel 015-00352-01 is located at 372 West Morse Street, and contains a dwelling. Parcel 015-00352-00 is located at 370 West Morse Street, and contains a second

dwelling, in which the Petitioner resides. The Board refers to all four parcels collectively as the “subject property” unless otherwise indicated.

8. The Administrative Law Judge (ALJ) did not conduct an inspection of the property.
9. Assessed value of subject property as determined by the Huntington County PTABOA:

Parcel 015-00354-01

Land: \$1,000 Improvements: \$0 Total: \$1,000

Parcel 015-00355-01

Land: \$1,100 Improvements: \$0 Total: \$1,100

Parcel 015-00352-01

Land: \$13,900 Improvements: \$23,100 Total: \$37,000

Parcel 015-00352-00

Land: \$21,000 Improvements: \$72,300 Total: \$93,300

10. The Petitioner did not request specific values.

Issue

11. Summary of the Petitioner’s contentions in support of alleged error in assessment:
 - a) A negative influence factor should be applied to the subject land. *Lane-Hamilton argument; Pet’r Ex. 1*. The subject property could not be sold for the amount for which it is assessed. *Lane-Hamilton argument*. The Board is placing an undue burden on taxpayers by requiring them to quantify the amounts of negative influence factors; taxpayers do not have any way to know the appropriate amount. The Board should inspect the subject property. *Id.*
 - b) The subject land goes into an incline immediately outside the front door of the dwelling at 370 West Morse Street. *Lane-Hamilton testimony*. There is a wastewater plant across the street from that dwelling that has expanded twice since the Petitioner purchased the property. *Id.*
 - c) Four apartments sit in the front yard at the bottom of the incline. *Id.* The subject parcels do not have separate street access; the only street access is *via* a shared driveway. *Id.* The driveway also goes to the front door of the second dwelling, located at 372 West Morse Street. *Id.* All of the land is at the rear of this dwelling. *Id.* If something were to happen to the subject dwellings, there would never be other houses built on the subject property. *Lane Hamilton argument*.
 - d) The Petitioner submitted a letter from Matthew F. Capozza, a real estate appraiser. In that letter, Mr. Capozza states his opinion that the assessed valuations of the subject

parcels are excessive due to various factors, including the various factors to which the Petitioner testified. *Pet'r Ex. 1.*

12. Summary of Respondent's contentions in support of the assessment:
- a) The letter from Mr. Capozza does not state a value for the property, nor does it quantify an appropriate negative influence factor. *Becker argument.* While Indiana utilizes a mass appraisal system, the Respondent can adjust assessments if taxpayers submit an appraisal or other evidence of value. *Becker testimony.*
 - b) The subject homesites are slightly less than one acre, and the Respondent applied the acreage depth tables from the Real Property Assessment Guidelines for 2002 – Version A (Guidelines) in assessing those lots. *Id.*
 - c) The Respondent analyzed sales of properties to compute neighborhood factors. The Respondent applied those neighborhood factors in assessing properties. The neighborhood factors should bring assessments back to market value. *Id; Becker argument.*

Record

13. The official record for this matter is made up of the following:
- a) The Petition,
 - b) The digital recording of the hearing labeled IBTR-6187,
 - c) Exhibits:

Petitioner's exhibits for all above referenced petitions

Petitioner Exhibit 1: Letter regarding subject property prepared by Matthew F. Capozza, Appraiser,
Petitioner Exhibit 2: Form 131 Petition and attachments for parcel 015-00352-00,
Petitioner Exhibit 3: Form 131 Petition and attachments for parcel 015-00352-01,
Petitioner Exhibit 4: Form 131 Petition and attachments for parcel 015-00354-01,
Petitioner Exhibit 5: Form 131 Petition and attachments for parcel 015-00355-01,
Petitioner Exhibit 6: Form 115s for all above referenced parcels.

Respondent's exhibits for Petition 35-015-03-1-5-00003

Respondent Exhibit 1: Notice of County Assessor Representation for Rock Creek Township,
Respondent Exhibit 2: Notice of Appearance for Carol Stouder and Jennifer Becker,
Respondent Exhibit 3: Aerial photograph of subject property,

- Respondent Exhibit 4: IBTR Findings and Conclusions,
- Respondent Exhibit 5: Property Record Cards for surrounding properties priced as excess acreage,
- Respondent Exhibit 6: Property Record Card for subject property,
- Respondent Exhibit 7: Copy of *Clark v. Dep't of Local Gov't Fin.*, 779 N.E.2d 1277 (Ind. Tax Ct. 2002) (*Clark II*),
- Respondent Exhibit 8: Excess acreage base rate sales,
- Respondent Exhibit 9: Land values for Rock Creek Township excess acreage.

Respondent's exhibits for Petition 35-015-03-1-5-00004

- Respondent Exhibit 1: Notice of County Assessor Representation for the Township,
- Respondent Exhibit 2: Notice of Appearance for Carol Stouder and Jennifer Becker for the County Assessor,
- Respondent Exhibit 3: Aerial photograph of subject property,
- Respondent Exhibit 4: IBTR Findings and Conclusions,
- Respondent Exhibit 5: Property Record Cards for surrounding properties,
- Respondent Exhibit 6: Page 81 of the 2002 REAL PROPERTY ASSESSMENT GUIDELINES,
- Respondent Exhibit 7: Property Record Card for subject property,
- Respondent Exhibit 8: Copy of *Clark II*,
- Respondent Exhibit 9: Excess acreage base rates sales,
- Respondent Exhibit 10: Land values for Rock Creek Township.

Respondent's exhibits for Petition 35-015-03-1-5-00005

- Respondent Exhibit 1: Notice of County Assessor Representation for the Township,
- Respondent Exhibit 2: Notice of Appearance for Carol Stouder and Jennifer Becker for the County Assessor,
- Respondent Exhibit 3: Aerial photograph of the subject property,
- Respondent Exhibit 4: Property Record Cards for surrounding properties priced as the same homesite base rate,
- Respondent Exhibit 5: Page 73 of the 2002 REAL PROPERTY ASSESSMENT GUIDELINES,
- Respondent Exhibit 6: Property Record Card of the subject property,
- Respondent Exhibit 7: Copy of *Clark II*,
- Respondent Exhibit 8: Homesite values base rate sales,
- Respondent Exhibit 9: Homesite values for Rock Creek Township.

Respondent's exhibits for Petition 35-015-03-1-5-00006

- Respondent Exhibit 1: Notice of County Assessor Representation for the Township,
- Respondent Exhibit 2: Notice of Appearance for Carol Stouder and Jennifer Becker for the County Assessor,
- Respondent Exhibit 3: Aerial photograph of the subject property,
- Respondent Exhibit 4: Property record card of the subject property,

Respondent Exhibit 5: Property record cards of properties sold in the neighborhood with sales disclosures,

Respondent Exhibit 6: Homesite values base rate sales,

Respondent Exhibit 7: Homesite values for Rock Creek Township,

Respondent Exhibit 8: Copy of *Clark II*.

Board exhibits

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

14. The most applicable governing cases are:

- a) 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 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).
- 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 Twp. Assessor*, 802 N.E.2d 276 (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 Petitioner did not provide sufficient evidence to support her contentions. This conclusion was arrived at because:

- a) The Petitioner contends that a negative influence factor should be applied to the assessment of the subject land.
- b) An influence factor refers to a “multiplier that is applied to the value of land to account for characteristics of a particular parcel of land that are peculiar to that parcel. The factor may be positive or negative and is expressed as a percentage.” REAL PROPERTY ASSESSMENT GUIDELINES For 2002 – Version A, glossary at 10

(incorporated by reference at 50 IAC 2.3-1-2). To prevail on a claim for the application of a negative influence factor, a taxpayer must submit probative evidence that: (1) identifies the property's deviation from the norm; and (2) quantifies the effect of that deviation. *See Talesnick v. State Bd. of Tax Comm'rs*, 756 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001).

- c) The Petitioner pointed to several factors that she contends detract from the market value of the subject property, such as the presence of steep inclines, the property's location across the street from a wastewater plant, the individual parcels having a shared driveway, and the lack of street access. *Lane-Hamilton testimony; Pet'r Ex. 1*. Even if the Board were to assume that the Petitioner presented sufficient evidence to show that those conditions constitute deviations from the norm, the Petitioner did not present any evidence to quantify the effect of those deviations upon the market value-in-use of the subject property. Even the letter from the Petitioner's appraiser, Mr. Capozza, does not attempt to quantify the effect of the identified conditions on the market value of the subject property. *See Pet'r Ex. 1*.
- d) The Petitioner contends that requiring taxpayers to quantify the amount of a negative influence factor is too great a burden and suggests that the Board should inspect the subject property. It is not the duty of the Board to make taxpayers' cases for them. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (quoting *Clark v. Dep't of Local Gov't Fin.*, 779 N.E.2d 1277, 1282 n. 4 (Ind. Tax Ct. 2002) ("[I]t is the taxpayer's duty to walk the [Indiana Board and this] Court through every element of its analysis."). While the Board may inspect a property that is the subject of a petition for review, it is not required to do so. *See Ind. Code § 6-1.1-15-4(b)* ("If the Indiana board conducts a site inspection of the property as part of its review of the petition, the Indiana board shall give notice to all parties of the date and time of the site inspection. *The Indiana board is not required to assess the property in question.*") (emphasis added). The Board declines the Petitioner's request for a site inspection in this case. Even if the Board were to inspect the subject property, the Petitioner does not explain how such inspection would enable the Board to quantify an appropriate negative influence factor to apply to the subject property.
- e) Moreover, the burden of proof placed on taxpayers is not onerous. A taxpayer may rebut the validity of an assessment by presenting evidence of a property's market value-in-use compiled in accordance with generally accepted appraisal principles. 2002 REAL PROPERTY ASSESSMENT MANUAL 5. Many taxpayers are able to meet that burden by presenting an appraisal of their property prepared by a licensed or certified appraiser in conformance with the Uniform Standards of Professional Appraisal Practice. *See Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1 ("[T]he Court believes (and has for quite some time) that the most effective method to rebut the presumption that an assessment is correct is through the presentation of a market value-in-use appraisal, completed in conformance with [USPAP].").
- f) Based on the foregoing, the Petitioner failed to establish a prima facie case of error in the subject property's assessment. Consequently, 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 Petitioner failed to make 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 for the subject parcels should not be changed.

ISSUED: _____

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. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Trial Rules are available on the Internet at http://www.in.gov/judiciary/rules/trial_proc/index.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.