

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

Petition #: 64-019-02-1-5-00001
Petitioners: Peter A. & Darlene Giannini
Respondent: Union Township Assessor (Porter County)
Parcel #: 09-30-129-074.000
Assessment Year: 2002

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 an assessment appeal with the Porter County Property Tax Assessment Board of Appeals (“PTABOA”) by written document dated November 24, 2003.
2. The PTABOA mailed notice of its decision on June 28, 2004.
3. The Petitioners initiated an appeal to the Board by filing a Form 131 petition with the county assessor on July 27, 2004. The Petitioners elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated January 26, 2006.
5. The Board held an administrative hearing on March 14, 2006, before the duly appointed Administrative Law Judge, Joan Rennick.
6. The following persons appeared at the hearing and were sworn as witnesses:

For Petitioner: Peter Giannini, Taxpayer

For Respondent: Shirley LaFever, Porter County Assessor
Lindy Wilson, Porter County Chief Deputy Assessor
Janine Chrisman, Porter County PTABOA Member
Teresa C. Linzy, Union Township Assessor

Facts

7. The property is classified as a residential unimproved platted lot, as is shown on the property record card for parcel 09-30-129-074.000. The 1.77-acre vacant lot is located at 494 Roxbury Road, Valparaiso, Union Township, Porter County.
8. The Administrative Law Judge (“ALJ”) did not conduct an inspection of the property.
9. The PTABOA determined that the assessed value of the subject property is \$64,700.
10. The Petitioners request a value of \$36,900.

Issue

11. Summary of the Petitioners’ contentions in support of alleged error in assessment:
 - a) The subject property is located in Section 15 of Shorewood Forest subdivision, and it contains 1.77 acres of land. *Giannini testimony; Pet’rs Ex. 3*. All lots in the subject property’s neighborhood are acreage lots and have septic systems and well water. *Giannini testimony*.
 - b) A lot located at 154 York Circle, also in Section 15 of Shorewood Forest, sold for \$50,000, on February 20, 1998. *Id; Pet’rs Ex. 4*. That lot contains 1.59 acres and is located at the end of a cul-de-sac. Although the lot is smaller than the subject property, its location at the end of the cul-de-sac is more desirable because there are no homes behind it. *Giannini testimony*.
 - c) A 1.42-acre lot located in Section 24 of Shorewood Forest sold for \$50,750 on October 20, 1999. *Id; Pet’rs Ex. 6*. That lot has city sewer and water service. It also has a lake view. *Giannini testimony*.
 - d) A third lot, located in Section 15, sold for \$41,500 on April 6, 2000. *Id; Pet’rs Ex. 5*. That lot contains 1.29 acres. *Giannini testimony*.
 - e) The front portion of the subject lot is flat, but it drops 35 feet toward the rear. *Id; Pet’rs Ex. 7*. There is a ravine running through the property. *Giannini testimony*. For those reasons, a negative influence factor of 50% should be applied to the subject property. *Giannini argument*.
 - f) Taking the average of the three comparable lots (before influence factors are applied), the assessment should be \$58,622. *Id*. The 21% negative influence factor currently applied to the property would lower the subject’s assessment to \$45,954. *Id*.

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

- a) Sales disclosures for five (5) lots from throughout the subdivision show sale prices ranging from \$20,000 to \$75,000. *Linzy testimony; Resp't Exs. 1-5.* Some of the lots have public utilities, but the lot that sold for \$20,000 has well water and septic. *Linzy testimony.* The lots identified by the Respondent are smaller than the subject property, and some are lake front lots. *Id.* There are other vacant lots located next to the subject property, which are smaller than the subject property, but which are valued higher than the subject property. *Id.*
- b) The Petitioners' lot is buildable because the front part of the lot is flat. *Linzy argument.* The subject property receives a negative 21.61% influence factor due to the ravine. That influence factor is fair, given the subdivision and the township in which the subject property is located. *Id.*

Record

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

- a) The Petition.
- b) The tape recording of the hearing labeled IBTR - 6228.
- c) Exhibits:

Petitioners Exhibit 1: Notice of Final Assessment
Petitioners Exhibit 2: Form 131 petition
Petitioners Exhibit 3: Location Map of Shorewood Subdivision
Petitioners Exhibit 4: Sales Disclosure 153 York Circle Lot 493
Petitioners Exhibit 5: Sales Disclosure 169 Wexford Rd. Lot 504
Petitioners Exhibit 6: Sales Disclosure 371 Tremont Circle Lot 804
Petitioners Exhibit 7: Survey of Petitioner's lot 495
Petitioners Exhibit 8: Assessment Record of 169 Wexford Rd. Lot 504

Respondent Exhibit 1: Sales Disclosure 454 Roxbury¹
Respondent Exhibit 2: Sales Disclosure 355 Devon Road
Respondent Exhibit 3: Sales Disclosure 421 Chadwick Circle
Respondent Exhibit 4: Sales Disclosure 450 Surrey Hill Lane
Respondent Exhibit 5: Sales Disclosure Surrey Hill, Lot 885
Respondent Exhibit 6: Shorewood Forest Brochure and Map
Respondent Exhibit 7: 2 Photographs of subject property
Respondent Exhibit 8: Trending of sales in Shorewood
Respondent Exhibit 9: Property Record Card (PRC) Lot 493 1.59 acres

¹ The Respondent did not separately label the documents it submitted at the hearing. The exhibit numbers listed herein are numbers assigned by the Board for ease of reference.

Board Exhibit 1: The Form 131 Petition with attachments.
Board Exhibit 2: Notice of Hearing.
Board Exhibit 3: 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 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 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 did not provide sufficient evidence to support their contentions. This conclusion was arrived at because:

- a) The Petitioners contend that the subject property is assessed in excess of its market value based on the sale prices of three vacant lots located near the subject property. According to the Petitioners, the subject property should be assessed for \$45,954, which equals the average sale price for the three nearby properties minus the 21% negative influence factor currently received by the subject property.
- b) Thus, the Petitioners essentially rely upon the sales comparison approach to establish the market value-in-use of the subject property. The sales comparison approach is based on the assumption that potential buyers will pay no more for a property than it would cost them to purchase an equally desirable substitute property already existing in the market place. MANUAL at 13. The appraiser locates sales of comparable properties and adjusts the selling prices to reflect the subject property’s total value. *Id.* The adjustments represent a quantification of characteristics that cause prices to vary. *Id.* The appraiser “considers and

compares all possible differences between the comparable properties and the subject property that could affect value,” using objectively verifiable evidence to determine which items have an influence on value in the market place. *Id.* The appraiser quantifies the contributory values of the items affecting value in the market place and uses those contributory values to adjust the sale prices of comparable properties. *Id.* at 13-14.

- c) Thus, in order to use the sales comparison approach as evidence in a property assessment appeal, 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 two properties. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. When seeking to establish comparability of different parcels of land, the relevant characteristics to compare include things such as size, accessibility and topography. *See Blackbird Farms Apts., LP v. Dep’t of Local Gov’t Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002). Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Long*, 821 N.E.2d at 470-71.
- d) The Petitioners submitted information concerning the sales of three lots in Shorewood Forest subdivision. Two of the three lots are in the same section of the subdivision as the subject property. Thus, the Petitioners established that the purportedly comparable lots are similar to the subject property in terms of location. The Petitioners, however, did not compare other relevant features such as the topography and shape of the properties. In fact, the map submitted by the Petitioners demonstrates that the purportedly comparable lots are shaped differently than the subject property, which is rectangular.
- e) More significantly, the Petitioners did not explain how relevant differences between the properties affect their relative market values. For example, all three of the lots identified by the Petitioner are smaller than the subject property, but the Petitioners did not adjust the sale prices of the purportedly comparable properties to account for the size disparity. At best, Mr. Giannini asserted that various other differences, such as one lot being located on a cul-de-sac and another having access to city water and sewer services, more than offset any heightened value attributable to the subject property on account of its relatively larger size. Mr. Giannini, however, did not present any objective evidence to support his conclusory assertions that those factors affect market value or to quantify the amount by which they do so. Thus, Mr. Giananni’s assertions lack probative value. *See MANUAL* at 13-14 (stating that, in applying the sales comparison apporacy, appraisers use objectively verifiable evidence to determine which items have an influence on value in the market place); *see also Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1120 (Ind. Tax Ct.

1998) (holding that conclusory statements, unsupported by factual evidence, are not sufficient to establish an error in assessment).

- f) Based on the foregoing, the Petitioners did not make a prima facie case either that the current assessment is incorrect, or what the correct assessment should be.
- g) The Petitioners also contend that the subject property is entitled to a negative influence factor in excess of the 21% influence factor that it currently receives.
- h) An influence factor refers to condition peculiar to a property that dictates an adjustment to its estimated value. *See* REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, ch. 2 at 89-90 (incorporated by reference at 50 IAC 2.3-1-2); *American United Life Ins. Co. v. Maley*, 803 N.E.2d 276, 285 (Ind. Tax Ct. 2004). A taxpayer seeking a negative influence factor 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). Market evidence may be used to quantify influence factors. *Maley*, 803 N.E.2d at 285.
- i) Mr. Giannini testified that the subject lot has a drop-off in elevation toward the rear of the lot and that a ravine runs across the rear of the property. Mr. Giannini also testified that a nearby property received a negative influence factor of 60%. *Giannini testimony; Pet’rs Ex. 5*. The Petitioners, however, submitted no market evidence to quantify the effect the elevation decline or the ravine on the market value of the subject property. Moreover, the Petitioners did not explain how the elevation decline and ravine in the subject property compared to the topography of the property receiving the negative influence factor of 60%. Consequently, the Petitioners failed to establish a prima facie case for an increase in the negative influence factor applied to the subject property.

Conclusions

- 16. The Petitioners failed to make a prima facie case of error in the assessment of the subject property. The Board finds in favor of Respondent.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now determines that the assessment 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>>.

