

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

Petition #: 64-025-02-1-5-00007
Petitioners: Arthur J. & Florence J. Tonner
Respondent: Westchester Township Assessor (Porter County)
Parcel #: 640314310006000025
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 December 22, 2003.
2. The PTABOA issued notice of its decision on December 17, 2004.
3. The Petitioners initiated an appeal to the Board by filing a Form 131 petition with the Porter County Assessor on January 14, 2005. The Petitioners elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated April 7, 2006.
5. The Board held an administrative hearing on May 23, 2006, before the duly appointed Administrative Law Judge, Joan Rennick.
6. Persons present and sworn in at hearing:

For Petitioners: Arthur J. Tonner, Taxpayer

For Respondent: Candy Crone, Westchester Township Assessor
Shirley LaFever, Porter County Assessor
Lindy Wilson, Porter County Chief Deputy Assessor
Janine Chrisman, Porter County PTABOA President

Facts

7. The subject property is a vacant platted lot classified as “residential unimproved,” as is shown on the property record card for parcel # 64-03-14-310-006.000-025. The property is Dune Acres Lot 185 located on Crest Drive in Chesterton.
8. The Administrative Law Judge (“ALJ”) did not conduct an inspection of the property.
9. Assessed value of subject property as determined by the Porter County PTABOA:
Land: \$184,500.
10. Assessed value requested by Petitioners on the Form 131 petition:
Land \$10,000.

Issues

11. Summary of the Petitioners’ contentions in support of alleged error in assessment:
 - a) In 1972, the Petitioners purchased the subject lot (Lot 185), which was vacant, and the adjacent lot (Lot 184), which contained a house. *Tonner testimony*. When the Petitioners bought the two lots, local regulations did not prohibit them from building on the subject lot. *Id.* The Petitioners lived in the house on Lot 184 and the subject remained vacant. The Petitioners kept the lots separate. *Id.* The Petitioners intended first to raise their family in the house (on Lot 184) and then to sell the house and build a smaller one-level house on the subject lot. *Id.*
 - b) In 1992, the Petitioners approached the Dune Acres Plan Commission to obtain permission to build a one-story home on the subject lot. *Tonner testimony; Pet’rs Ex. 1*. The commission ruled that Petitioners could not begin building without first obtaining a zoning variance. *Id.* The commission found that zoning regulations had changed to require lots to be at least 120 feet wide in order for houses to be constructed upon them. *Id.* The subject lot is only 60 feet wide. *Id.*
 - c) The Petitioners contend that the zoning regulations render the subject lot “unbuildable,” making it impossible for them to sell the lot. *Tonner testimony*. According to the Petitioners, the assessment of an unbuildable lot should not be more than 10% of the assessment of a buildable lot. *Tonner testimony*.
 - d) Mr. Tonner performed some calculations regarding the value per front foot for the subject lot and for several neighboring lots. *Tonner testimony*. Mr. Tonner arrived at the following values: Lot 182 - \$2,124 per front foot; Lot 183 - \$2,200 per front foot; and Lot 184 - \$2,183 per front foot. *Id.; Pet’rs Exs. 6-8*. The subject lot, by contrast, is assessed for \$3,073 per front foot. *Tonner testimony; Pet’rs Ex. 9*. Thus, according to Mr. Tonner’s calculations, the subject lot is assessed at a higher rate per front foot than any of the other lots in the area. *Tonner testimony*.

- e) The subject lot was assessed for only \$11,100 as of the March 1, 2000, assessment date. *Tonner testimony; Pet'rs Ex. 10.* That is substantially less than the \$184,000 assessment under appeal.
12. Summary of the Respondent's contentions in support of the assessment:
- a) The Respondent corrected the assessment of the subject lot for March 1, 2006, to reflect that the lot is only 60 feet wide instead of 70 feet wide. *Crone testimony; Resp't Ex. 3.* That correction reduced the value of the subject lot to \$160,700. *Id.* That change does not effect the assessment date on appeal. *Crone testimony.*
- b) The Respondent offered to apply an influence factor for excess frontage that would have taken into consideration both lots. The Petitioners rejected the offer. *Crone testimony.*
- c) The Dune Acres Plan Commission told the Petitioners they could not build on the subject lot without first obtaining a zoning variance. *Crone testimony; Pet'rs Ex. 1; Resp't Ex. 7.* The Respondent, however, had concerns about whether or not the Petitioners could obtain a variance. *Crone testimony.*
- d) Mr. Tonner's calculations regarding the values per front foot of the subject lot and neighboring lots is misleading. *Crone testimony.* The Respondent valued all of the lots using the same base rate. *Id.; Resp't Ex. 8.* Factors such as the size and shape of the lots affect their overall assessments. *Crone testimony.*
- e) The Respondent found one recent sales disclosure for Dune Acres. The sales disclosure shows a sales price of \$165,000. *Crone testimony; Resp't Ex. 9.*
- f) The prior assessment for \$11,100 was determined under the old assessment system. The current assessment is market based. *Crone testimony.*
- g) The Porter County "land order" allows the Respondent to apply 60% negative influence factor to unbuildable lots. *LaFever testimony.* The Respondent agrees that the 60% the influence factor should apply if the Board determines that the subject lot is unbuildable. *Crone testimony.* Ms. LeFever requested permission to submit a copy of the land order following the hearing. *LaFever testimony.*

Record

13. The official record for this matter is made up of the following:
- a) The Form 131 petition.
- b) The recording of the hearing.

c) Exhibits submitted at the hearing:

Petitioners Exhibit 1: Dune Acres Plan Commission Minutes dated September 14, 1992
Petitioners Exhibit 2: Petition Form 131
Petitioners Exhibit 3: Notification Form 115
Petitioners Exhibit 4: Letter from Porter County Treasurer
Petitioners Exhibit 5: Protest Letter; Lot Unbuildable
Petitioners Exhibit 6: Property Record Card (PRC) for Lot #184 & Lot #185
Petitioners Exhibit 7: PRC for Lot # 183, 29 Crest Drive
Petitioners Exhibit 8: PRC for Lot # 182, 31 Crest Drive
Petitioners Exhibit 9: PRC for Lot # 185, 27 Crest Drive
Petitioners Exhibit 10: Tax Statement for Lot # 185 for Year 2000 payable 2001
Petitioners Exhibit 11: Tax Statement for Lot # 185 for Year 2004 payable 2005

Respondent Exhibit 1: Form 11
Respondent Exhibit 2: Form 130
Respondent Exhibit 3: Subject PRC
Respondent Exhibit 4: Form 115
Respondent Exhibit 5: Form 131
Respondent Exhibit 6: Old PRCs with lot sketches
Respondent Exhibit 7: Letter from Dune Acres Plan Commission
Respondent Exhibit 8: Three (3) neighboring PRC's
Respondent Exhibit 9: Recent sale

Board Exhibit 1: Form 131 Petition with attachments
Board Exhibit 2: Notice of Hearing
Board Exhibit 3: Hearing Sign-In Sheet

d) These Findings and Conclusions.

14. The ALJ gave the Petitioners and Respondent permission to submit additional evidence for consideration by the Board. The Petitioners presented a copy of the Dune Acres Zoning Ordinance Number 121 (Zoning Ordinance). The ALJ received the Zoning Ordinance on May 25, 2006, and labeled it Petitioners Exhibit 12. The Respondent presented a copy of the Porter County Land Valuation Order (Land Order). The ALJ received the Land Order on May 23, 2006, and labeled it Respondent Exhibit 10. The Board's rules for small claims provide that no post hearing submissions "will be allowed or accepted." Ind. Admin. Code tit. 52, r. 3-1-5(b)(e). Nonetheless, neither party objected to the other's submission of post-hearing evidence. The Board therefore incorporates Petitioners' Exhibit 12 and Respondent's Exhibit 10 into the record.

Analysis

15. 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 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”).
 - 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.
16. The Petitioners provided sufficient evidence to support a reduction in assessment. This conclusion was arrived at because:
- a) The Petitioners make three basic claims on appeal. First, the Petitioners contend that the subject property’s current assessment is excessive in light of the fact that it was assessed for only \$11,100 on March 1, 2000. Second, the Petitioners contend that the subject property is assessed at a higher rate per front foot than are neighboring properties. Finally, the Petitioners claim that the assessment is excessive because the subject lot is “unbuildable.”

Prior Assessment

- b) The Petitioners presented a copy of their tax statement showing that the subject lot was assessed for \$11,100 as of the March 1, 2000, assessment date. *Pet’rs Ex. 10*.
- c) Each assessment and each tax year stands alone. *Fleet Supply, Inc. v. State Bd. of Tax Comm’rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001). Thus, evidence as to a property’s assessment in one tax year is not necessarily probative of its true tax value in a different year. *See, id.* (“[E]vidence as to the Main Building’s assessment in 1992 is not probative as to its assessed value three years later.”). That is particularly true where, as here, the difference in assessments stems from the subject property being re-valued in conjunction with the 2002 general reassessment. Consequently, the Petitioners’ evidence concerning the March 1, 2000, assessment of the subject property lacks probative value.

Comparison to Neighboring Lots

- d) The Petitioners' attempt to compare the assessment of the subject lot to the assessments of neighboring lots is equally unavailing. In submitting such evidence, the Petitioners apparently claim that the subject lot is not assessed in a uniform and equal manner in comparison to similar lots. In order to succeed on such a claim, however, the Petitioners were required to demonstrate that the neighboring properties are comparable to the subject property. *See Home Federal Savings Bank v. Madison Twp. Assessor*, 817 N.E.2d 332 (Ind. Tax Ct. 2004)(rejecting taxpayer's claim that its land was not assessed in a uniform and equal manner where the taxpayer did not establish that its property was comparable to other properties that were assessed and taxed differently). 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, one 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 between parcels of land, the relevant characteristics to compare include things such as location, 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) (holding that taxpayer failed to establish comparability of parcels of land where, among other things, taxpayer did not compare the topography and accessibility of parcels). The party offering the comparative evidence also must explain how any significant differences between the properties affect their relative market values-in-use. *Long*, 821 N.E.2d at 470-71.
- e) Mr. Tonner did not explain how the characteristics of the neighboring lots compare to those of the subject lot other than to note the close proximity of the lots to each other. Moreover, it does not appear that the neighboring lots were assessed in a different manner than was the subject lot. The Respondent applied the same base rate - \$2,841 per front foot - to all of the lots. *Resp't Exs. 3, 8*. The Respondent apparently adjusted that rate to account for differences in the relative depths of the lots. The subject lot is deeper, and consequently has a higher adjusted base rate than, two of the three neighboring lots. *Id.* Thus, the differences in the assessments appear to be attributable, at least in part, to differences in the physical characteristics of the lots.
- f) The Petitioners therefore failed to show a lack of uniformity and equality in assessment.

Zoning Restrictions

- g) Finally, the Petitioners contend that the current assessment is excessive in light of the fact that they cannot build on the subject lot due to local zoning regulations. In support of their position, the Petitioners presented minutes from a September 14, 2002, meeting of the Dune Acres Plan Commission in which the Petitioners sought clarification on whether could build a home on the subject lot. *See Pet'rs Ex. 1*. The

- minutes reflect that the Town Attorney, David G. Clark, gave his opinion that, because the subject lot did not have sufficient frontage under the applicable zoning regulation, the Petitioners could not build a home upon the lot without first obtaining a zoning variance. *Id.*
- h) The Petitioners also presented a copy of the Dune Acres Zoning Ordinance Number 121 (Zoning Ordinance). *Pet'rs Ex. 10*. Section 6.4 of the Zoning Ordinance states that each single-family dwelling shall be located on a lot having a width of not less than 120 feet. *Pet'rs Ex. 12*. The property record card for the subject lot shows that it is only 60 feet wide. *Pet'rs Ex. 6; Resp't Ex. 3*. The Board therefore finds that the Petitioners cannot construct improvements on the subject lot absent being granted a variance from the Zoning Ordinance.
 - i) While the Board agrees that restrictions on the lot likely affect its market value-in-use, the Petitioners were required to quantify that effect in order to make a prima facie case for a change in assessment. The Petitioners, however, did not present any probative evidence to do so. Nevertheless, the Respondent conceded that the subject lot would be entitled to the application of negative influence factor of 60% if the Board were to find that the lot is “unbuildable.” Given the Respondent’s concession, the Board finds that a negative influence factor of 60% should be applied to the subject lot.
 - j) The Board’s finding, however, begs the question regarding the value to which the Respondent should apply the 60% negative influence factor. For the year under appeal, the Respondent assessed the subject lot based upon a width of 70 feet. The Respondent, however, concedes that the subject property is only 60 feet wide. *Crone testimony; Resp't Ex. 3*. The Respondent corrected the property record card for the 2006 to reflect effective frontage of 60 feet. *Id.* There is no evidence to suggest that there was any change in the width of the subject lot between March 1, 2002, and March 1, 2006. Thus, based upon the Respondent’s admission regarding the width of the subject lot, the Board finds that the 60% negative influence factor should be applied to the extended value of the subject lot as calculated based upon an effective frontage of 60 feet.

Conclusion

17. The Petitioners failed to make a prima facie of error based upon the prior assessment of the subject lot. The Petitioners similarly failed to make a prima facie case or error based upon a lack of uniformity and equality in assessment. The preponderance of the evidence, however, establishes that improvements cannot be constructed on the subject lot due to local zoning regulations, and that a negative influence factor of 60% should be applied to the subject lot to account for that fact. Moreover, given the Respondent’s admission that the subject property is only 60 feet wide, the negative influence factor should be applied to the extended value of the subject lot as calculated based upon an effective frontage of 60 feet.

Final Determination

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

ISSUED: **November 13, 2006**

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>>.