

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

Petition Nos.: 35-004-10-1-4-00007
35-004-10-1-4-00008
Petitioner: Albert Hall, LTD
Respondent: Huntington County Assessor
Parcel Nos.: 35-04-12-400-036.800-004
35-04-12-400-191.700-004
Assessment Year: 2010

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

Procedural History

1. Albert Hall, LTD, appealed the subject parcels' March 1, 2010 assessments. On March 9, 2011, The Huntington County Property Tax Assessment Board of Appeals ("PTABOA") issued its determinations denying Albert Hall the relief it had requested.
2. Albert Hall then timely filed Form 131 petitions with the Board. Albert Hall elected to have its appeals heard under the Board's small claims procedures.
3. On October 20, 2011, the Board held a hearing through its administrative law judge, Jennifer Bippus ("ALJ").
4. The following people were sworn in and testified:

Lance Feighner, Albert Hall's president,
Terri Boone, Huntington County Assessor, and
Julie Newsome, deputy assessor.

Facts

5. The two parcels are known collectively as Norwood Golf Club. Parcel 35-04-12-400-036.800-004 is 174.9 acres and contains, among other things, an 18-hole golf course. Parcel 35-04-12-400-191.700-004 is 1.53 acres and contains what the parties refer to as a "lodge." The parcels are located at 5961 West Maple Grove Road, Huntington, Indiana.
6. Neither the Board nor the ALJ inspected the subject parcels.

7. The PTABOA determined the following values for the subject parcels:

| <u>Parcel Number</u> | <u>Land</u> | <u>Improvements</u> | <u>Total</u> |
|--------------------------|-------------|---------------------|--------------|
| 35-04-12-400-036.800-004 | \$267,500 | \$418,800 | \$686,300 |
| 35-04-12-400-191.700-004 | \$58,900 | \$19,500 | \$78,400 |

8. On its Form 131 petitions, Albert Hall requested that both parcels be assessed at zero. At the Board's hearing, however, Albert Hall's representative said "I have stated from the beginning that some value is due," and offered evidence that he felt supported a total value between \$125,618 and \$135,555.

Parties' Contentions

9. Summary of Albert Hall's contentions:

- a) The larger of the two subject parcels is "primarily golf course." *Feighner testimony*. The smaller parcel contains a "lodge" that Albert Hall uses to prepare meals for golf outings. *Id.*
- b) The parcels are assessed too high in light of a statute that requires golf courses to be assessed using the income capitalization approach to value. *Feighner argument*. Albert Hall's president, Lance Feighner, gave the Assessor the golf course's income and expense data for 2007-2009. Based on that data, the golf course had an average net operating income ("NOI") of [REDACTED] *Feighner testimony; Pet'r Ex. 3*. Mr. Feighner later met informally with the Assessor's employees to discuss those initial calculations and to make adjustments required by the statute. Those adjustments led to an even lower NOI of [REDACTED]. *Feighner testimony; Pet'r Ex. 4*. The Assessor then compared Albert Hall's financial information to information from other Huntington County golf courses to compute market averages. But after applying that market data to Mr. Feighner's figures, Albert Hall still had [REDACTED] *Feighner testimony; Pet'r Ex. 6*. Thus, under the golf-course-valuation statute, Albert Hall's golf course has zero value. *Feighner argument*.
- c) Barry Wood, Director of the Department of Local Government Finance's ("DLGF") assessment division, addressed this scenario in a May 5, 2011 memo. In that memo, Mr. Wood provided the following guidance: "if an assessment is a zero or negative value under the income approach to value, the assessor should at least assess the land value of the property, as the land would carry some value if the golf course owner tried to sell the property." *Feighner testimony; Pet'r Ex. 9*.
- d) Mr. Feighner therefore calculated what he thought the land value should be, using three surrounding agricultural properties as a guide. Because the subject parcels would probably revert to agricultural use if they were sold, Mr. Feighner reasoned that they should be assessed at \$712 per acre—the average assessment rate for those surrounding properties. *Feighner testimony; Pet'r Ex. 10*. When applied to the subject parcels' 176.43 combined acres, that rate yields a total assessment of \$125,618. *Id; Pet'r Ex. 12*. Alternatively, Mr. Feighner suggested using the agricultural land base rate of \$1,290 per acre to assess the subject parcels. After

breaking the parcels down into tillable and non-tillable land, that rate yields a total assessment of \$135,555. *Feighner testimony; Pet'r Ex. 12*. As a third alternative, Mr. Feighner argued that the golf course base rate of \$1,200 could be used. Albert Hall would therefore accept an assessment anywhere between \$125,618 and \$135,555. *Feighner testimony and argument*.

- e) Thus, while Mr. Feighner acknowledged in his closing statement that "I have stated from the beginning that some value is due," Mr. Feighner argued that his computations should carry more weight than the Assessor's reliance on comparable property sales. *Feighner testimony and argument*. According to Mr. Feighner, the goal is to derive a property's assessed value, not its market value. *Id.*

10. Summary of the Assessor's contentions:

- a) Albert Hall operates the subject parcels under the name of Norwood Golf Club, which is a public golf course. At one point, the Assessor's witness, Ms. Newsome, testified that the "actual golf course acreage is 100." *Newsome testimony*. Later, however, she referred to a "total of 176 acres of golf course." *Id.*
- b) Based on the income and expenses that Albert Hall submitted, the golf course had [REDACTED] although the Assessor could not verify some of the factors that contributed to that [REDACTED]. Nonetheless, Albert Hall would ask for some value in return if it tried to sell the property. Thus, in accordance with Barry Wood's May 5, 2011 memo, Albert Hall's land has some value. *See Newsome testimony and argument; Resp't Ex. 16*.
- c) To determine that value, Ms. Newsome looked at the sales of five vacant parcels of land. Those parcels were all within eight miles of the subject parcels and sold between January 1, 2009 and February 29, 2010 for an average price of roughly \$3,800 per acre. *Newsome testimony; Resp't Exs. 16, 19-21*. That translates to values of \$664,620 for Albert Hall's 174.9-acre parcel and \$5,800 for the smaller 1.53-acre parcel. *Newsome testimony; Resp't Ex. 23*.
- d) Indiana Code § 6-1.1-4-13 says that land should be assessed as agricultural only if it is devoted to agricultural use. The Assessor therefore did not use the agricultural base rate to value the subject parcels. *Newsome testimony and argument; Resp't Ex. 25*. Although the Assessor ran an "ag overlay" to break down the subject parcels into tillable land, woodland, and non-tillable land, she did that to compare the subject parcels to the vacant parcels that she used in her sales-comparison analysis. *See Newsome testimony; Resp't Ex. 24*.

Record

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

- a) The Form 131 petition,
- b) A digital recording of the hearing,

c) Exhibits:

- Petitioner Exhibit 1: Ind. Code § 6-1.1-4-42
- Petitioner Exhibit 2: December 15, 2009 memorandum from Barry Wood, Assessment Division Director for the DLGF, with attachments
- Petitioner Exhibit 3: Norwood Golf Club's income and expense information for 2007-2009
- Petitioner Exhibit 4: "Recalc of Norwood Income/Expenses after taking out corp sales and cart and cogs expenses"
- Petitioner Exhibit 5: Email correspondence with Barry Wood
- Petitioner Exhibit 6: Norwood Golf Course Income: (Re-Reconstructed)
- Petitioner Exhibit 7: Form 115 for parcel 35-04-12-400-036.800-004
- Petitioner Exhibit 8: Form 115 for parcel 35-04-12-400-191.700-004
- Petitioner Exhibit 9: May 5, 2011 memorandum from Barry Wood
- Petitioner Exhibit 10: True Tax Values around the Golf Course and property record cards for three properties
- Petitioner Exhibit 11: Land Characteristics
- Petitioner Exhibit 12: True Tax Value using Comparables
- Petitioner Exhibit 13: Aerial map with subject property outlined in red

- Respondent Exhibit 1: Huntington County Assessor's Exhibit Coversheet
- Respondent Exhibit 2: Witness and exhibit list
- Respondent Exhibit 3: Notice of hearing, dated September 1, 2011
- Respondent Exhibit 4: Front page of Form 131 for petition 35-004-10-1-4-00007
- Respondent Exhibit 5: Form 115 for petition 35-004-10-0-4-00007
- Respondent Exhibit 6: Notice of hearing, dated September 1, 2011
- Respondent Exhibit 7: Front page of Form 131 petition 35-004-10-1-4-00008
- Respondent Exhibit 8: Form 115 petition 35-004-10-1-4-00008
- Respondent Exhibit 9: August 4, 2010 letter from Lance Feighner to Assessor
- Respondent Exhibit 10: Assessment analysis
- Respondent Exhibit 11: Description and Analysis of Subject Property
- Respondent Exhibit 12: Norwood Golf Club scorecard
- Respondent Exhibit 13: Aerial map with subject property outlined in red
- Respondent Exhibit 14: PRC for parcel 35-04-12-400-036.800-004
- Respondent Exhibit 15: PRC for parcel 35-04-12-400-191.700-004
- Respondent Exhibit 16: Approach to Value Analysis
- Respondent Exhibit 17: Income and expense spreadsheet
- Respondent Exhibit 18: Norwood Golf Club's income and expense information for 2007-2009
- Respondent Exhibit 19: Comparable Sale Adjustment Grid
- Respondent Exhibit 20: Map showing locations of comparable sales
- Respondent Exhibit 21: Sales disclosure forms and PRCs for comparable sales
- Respondent Exhibit 22 May 5, 2011 memorandum from Barry Wood
- Respondent Exhibit 23: Concluding Comments
- Respondent Exhibit 24: Soil assessment report
- Respondent Exhibit 25: Ind. Code § 6-1.1-4-13

Board Exhibit A: Form 131 petition
Board Exhibit B: Hearing notice dated September 1, 2011
Board Exhibit C: Hearing sign-in sheet

d) These Findings and Conclusions.

Analysis

Burden of Proof

12. Generally, a taxpayer seeking review of an assessing official's determination must make a *prima facie* case proving both that the current assessment is wrong and what the right assessment should 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 taxpayer must explain how each piece of evidence relates to its 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. If the taxpayer makes a *prima facie* case, the burden shifts to the assessor to offer evidence to impeach or rebut the taxpayer’s evidence. See *American United Life Ins. Co v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.

Discussion

15. Albert Hall proved that the portion of its property used as a golf course should be assessed at \$1,290 per acre. But Albert Hall did not prove that the assessment for the remaining portions of the subject parcels should be changed. The Board reaches these conclusions for the following reasons:

A. Standards for determining true tax value

- a) Indiana assesses property on the basis of its true tax value. For most real property, true tax value is the value determined under the DLGF’s rules. See I.C. § 6-1.1-31-6(c) (“[T]rue tax value does not mean fair market value. Subject to this article, true tax value is the value determined under the rules of the [DLGF]”). Those rules, in turn, define 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 2 (incorporated by reference at 50 IAC 2.3-1-2 (2009)).
- b) That is not true for all property, however. Beginning in 2010, a golf course’s true tax value is not its market value-in-use, but rather the amount determined using the income capitalization approach to value:

IC 6-1.1-4-42 True tax value of golf course real property determined using income capitalization; information provided by golf course owners; uniform income capitalization tables; department of local government finance administration

Sec. 42. (a) This section applies to assessment dates after January 15, 2010.

(b) As used in this section, "golf course" means an area of land and yard improvements that are predominately used to play the game of golf. A golf course consists of a series of holes, each consisting of a teeing area, fairway, rough and other hazards, and the green with the pin and cup.

(c) The true tax value of real property regularly used as a golf course is the valuation determined by applying the income capitalization appraisal approach. The income capitalization approach used to determine the true tax value of a golf course must:

(1) incorporate an applicable income capitalization method and appropriate capitalization rates that are developed and used in computations that lead to an indication of value commensurate with the risks for the subject property use;

(2) provide for the uniform and equal assessment of golf courses of similar grade quality and play length; and

(3) exclude the value of personal property, intangible property, and income derived from personal or intangible property.

(d) For assessment dates after January 15, 2010, and before March 1, 2012, a township assessor (if any) or the county assessor shall gather and process information from the owner of a golf course to carry out this section in accordance with the rules adopted by the department of local government finance under IC 4-22-2.

(e) For assessment dates after February 28, 2012, the department of local government finance shall, by rules adopted under IC 4-22-2, establish uniform income capitalization tables and procedures to be used for the assessment of golf courses. The department of local government finance may rely on analysis conducted by a state educational institution to develop the income capitalization tables and procedures required under this section. Assessing officials shall use the tables and procedures adopted by the department of local government finance to assess, reassess, and annually adjust the assessed value of golf courses.

Ind. Code § 6-1.1-4-42 (emphasis added).

- c) There is no dispute that a portion of Albert Hall's 174.9-acre parcel meets the statutory definition of a golf course. But the record does not show precisely how much of the parcel was used as a golf course. For example, the parcel's property record card includes a building that appears to be a clubhouse or pro shop. Neither that building, nor the land under it, "consists of a series of holes, each consisting of a teeing area, fairway, rough and other hazards, and the green with the pin and cup." I.C. § 6-1.1-4-42(b). Similarly, the witnesses seem to agree that something less than the entire 174.9 acre parcel was used as a golf course. Mr. Feighner described the 174.9 acres as "primarily" golf course and Ms. Newsome testified that the "actual

golf course acreage is 100," although Ms. Newsome's testimony is clouded somewhat by her later reference to "total of 176 acres of golf course." *Feighner testimony; Newsome testimony.*

- d) And it does not appear that any of the smaller 1.53-acre parcel was used as a golf course. To the contrary, that parcel contains a building that the parties referred to as a "lodge," which Albert Hall used to prepare meals for outings.
- e) Thus, Albert Hall's property must be divided into two portions for purposes of measuring its true tax value. The true tax value for the portion of the 174.9-acre parcel used as a golf course is the amount yielded by applying the income capitalization approach, while the true tax value for the remainder of that parcel and for the entire 1.53-acre parcel is the property's market value-in-use.

B. True tax value for Albert Hall's golf course

- f) The Board turns first to the portion of the 174.9-acre parcel that Albert Hall used as a golf course. The parties agree that the course had negative net operating income. Normally, an appraiser applying the income capitalization approach would not rely solely on income and expense data for the property being appraised without at least checking that information against the market. But the golf-course-valuation statute expressly contemplates that an assessor will gather information from a golf course owner in assessing the owner's course. And the Assessor did not claim that Albert Hall's income or expenses differed significantly from the market.
- g) Of course, determining net operating income normally is only part of the equation; one must also capitalize that income using an appropriate capitalization rate. *See Hometowne Associates, L.P. v. Maley*, 839 N.E.2d 269, 275 (Ind. Tax Ct. 2005) (explaining that expected rent can be converted into an overall value through dividing a property's net operating income by an appropriate capitalization rate). And Albert Hall did not offer any evidence to show what an appropriate capitalization rate would be. Nonetheless, because Albert Hall's golf course [REDACTED] [REDACTED] any capitalization rate would necessarily [REDACTED] [REDACTED]. Indeed the parties agree that the golf course had zero [REDACTED] value under the income capitalization approach.
- h) Thus, under a straightforward reading of the Ind. Code § 6-1.1-4-42, Albert Hall's golf course had no true tax value. Were that all there was to this case, the Board would order the Assessor to reduce the golf-course's assessment to zero. But the parties pointed to a memo from Barry Wood, director of the DLGF's assessment division, indicating that golf course land should still be assessed as having some value even if applying the income capitalization approach yields zero or negative value. And the parties agreed that Albert Hall's golf course parcel should be assessed as having some value. While the Board has doubts about whether such a position complies with the Ind. Code § 6-1.1-4-42, it need not decide that question here.

- i) That leaves the Board to choose between the parties' alternative approaches to valuing Albert Hall's golf course. In a sense, all the alternatives are arbitrary because they do not use the statutory standard for measuring the property's true tax value. That being said, the Board believes that the golf course should be assessed using the agricultural land base rate, which for 2010 was \$1,290 per acre. That is in keeping with how golf-course land was assessed before the legislature enacted Ind. Code § 6-1.1-4-42. See REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, app. at 37 (valuing golf-course land at \$1,050—the same base rate used for agricultural land for March 1, 2002 assessments). That rate, however, should not be adjusted based on what portions of the land are tillable or on soil productivity indexes. Those are concepts that apply uniquely to assessing agricultural land, and as the Assessor pointed out, “land shall be assessed as agricultural land only when it is devoted to agricultural use.” I.C. § 6-1.1-4-13.

C. True tax value for Albert Hall's non golf-course property

- j) The Board now turns to the part of Albert Hall's property that was not used as a golf course—the remainder of the 174.9-acre parcel and all of the 1.53-acre parcel. As explained above, the true tax value for that part of Albert Hall's property is its market value-in-use. Appraisers traditionally have used three methods to determine a property's market value: the cost, sales-comparison, and income approaches. *Id.* at 3, 13-15. Indiana assessing officials generally use a mass-appraisal version of the cost approach set forth in the Real Property Assessment Guidelines for 2002 – Version A.
- k) A property's market value-in-use, as determined using the Guidelines, is presumed to be accurate. See MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005) *reh'g den. sub nom.; P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 2006). But 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 Uniform Standards of Professional Appraisal Practice often will suffice. *Kooshtard Property VI*, 836 N.E.2d at 506 n.6. A taxpayer may also offer actual construction costs, sales information for the subject or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.
- l) Albert Hall offered none of the types of market value-in-use evidence contemplated by the Manual. Instead, Albert Hall pointed to assessments for nearby properties that were devoted to an entirely different use than what Albert Hall uses its property for. Thus, Albert Hall failed to make a prima facie case rebutting the assessment for the portions of its property that it did not use as a golf course.

Conclusion

16. Because the parties agreed that Albert Hall had ~~net~~ net operating income from its golf course, Albert Hall proved that the assessment for the portion of its 174.9-acre parcel (parcel no. 35-04-12-400-036.800-004) that it used as a golf course was wrong. While it

appears that Ind. Code § 6-1.1-4-42 means that the golf course's true tax value is zero under those circumstances, the parties agreed that the golf course had some assessable value. The Board therefore finds that the golf-course portion of the parcel should be assessed at \$1,290 per acre.

17. Albert Hall, however, did not use the remainder of the 174.9-acre parcel, or any of the 1.53-acre parcel (parcel no. 35-04-12-400-191.700-004), as a golf course. And Albert Hall failed to offer probative evidence to rebut the presumption that those parts of its property were accurately assessed. Albert Hall therefore failed to make a prima facie case for reducing the assessment for the non-golf-course portions of the subject parcels.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now partly affirms and partly reverses parcel no. 35-04-12-400-036.800-004's assessment and affirms parcel no. 35-04-12-400-191.700-004's assessment. The Assessor must determine what portion of parcel no. 35-04-12-400-036.800-004 meets the statutory definition of a golf course and assess that part of the property at the rate of \$1,290 per acre. The assessment for the remainder of that parcel and for all of parcel no. 35-04-12-400-191.700-004 should remain unchanged.

ISSUED: 2/3/12

Robert B. C. C. C.
Chairman, Indiana Board of Tax Review

Betsy J. Brand
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 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>.