

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

Petition: 84-013-02-1-5-00029
Petitioners: Gerald M & Judith A Calvert
Respondent: Otter Creek Township Assessor (Vigo County)
Parcel: 109-02-25-127-010
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. Petitioners initiated an assessment appeal with the Vigo County Property Tax Assessment Board of Appeals (the “PTABOA”) by written document dated October 9, 2003.
2. Petitioners received notice of the decision of the PTABOA on August 18, 2004.
3. Petitioners filed an appeal to the Board by filing a Form 131 with the county assessor on September 7, 2004. Petitioners elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated February 1, 2005.
5. Administrative Law Judge Rick Barter held an administrative hearing in Terre Haute on March 8, 2005.

Facts

6. The property is located at 6870 N. Fruitridge Street, Terre Haute.
7. The property is 0.78 acres of unimproved residential land.
8. The Administrative Law Judge (the “ALJ”) did not conduct an inspection of the property.
9. The total assessed value of subject property as determined by the Vigo County PTABOA is \$5,100 (land only).
10. The total assessed value requested by Petitioners is \$4,200 (land only).

11. The following persons were present and sworn as witnesses at the hearing:
For Petitioners – Gerald M. Calvert, Jr., owner,
For Respondent – Warren Soules, Otter Creek Township Assessor,
Jennifer Becker, Vigo County Assessor’s representative,
Shari Arven, Vigo County Assessor’s office,
Susan McCarty, Vigo County Deputy Assessor.

Issue

12. Summary of Petitioner’s contentions in support of alleged error in assessment:
- a) Subject property is improperly assessed using an adjusted residential acreage base rate that includes the cost of water and sewer. The subject property should be assessed using the acreage base rate without any adjustment because the subject property does not have water or sewer. *Calvert testimony.*
 - b) Subject property is unimproved, excess residential land without water or sewer. Therefore, the subject property should be assessed as vacant land as defined in a previous version of the state guidelines. *Calvert testimony.*
 - c) The Vigo County Land Order establishes a base rate of \$5,400 per acre for residential excess acreage for the subject property’s neighborhood. *Calvert testimony.*
 - d) The current assessed value for the subject property was established by using the base rate of \$5,400 and then multiplying the base rate by an adjustment factor of 1.21 to arrive at the adjusted base rate. The adjusted base rate was applied to the actual acreage of the subject parcel to arrive at an assessed value of \$5,100. *Calvert testimony; Petitioner Exhibit 1.* This procedure is outlined in the Real Property Assessment Guidelines for 2002 - Version A, ch. 2 at 70 (the "Guidelines") in the section entitled “Valuing Residential Acreage Parcels One Acre and Smaller.” *Calvert testimony; Petitioner Exhibit 2.*
 - e) This method adjusts the base rate of smaller improved parcels to the established one-acre standard for residential acreage. The subject property is not an improved parcel. This method of valuing the subject property is inappropriate because the \$5,100 assessed value includes the depreciated cost of water and sewer. *Calvert testimony; Petitioner Exhibit 1.*
 - f) Improved land is defined as land developed with water and sewer access. The value of improved land is the cost of the vacant land plus the cost of installing water and sewer access. Unimproved land is defined as vacant land without water or sewer access. Vacant land is defined as a parcel for which there is no improvement value. These definitions were in the previous assessment guidelines. *Calvert testimony; Petitioner Exhibit 3.*

- g) Because the current assessment guideline fails to clarify how unimproved vacant residential acreage is to be assessed, the correct procedure for determining the value of the subject property could be drawn from 1996 subject property record card, which shows the assessed value is established by multiplying the per acre base rate of \$1,000 by a size adjustment of 1.00 and applying the result to the actual acreage of the parcel. *Calvert testimony, Petitioner Exhibit 4.*
- h) In past assessment guidelines and manuals, land without a well or water had a lower rate than land with water and sewer. The current guidelines omitted this procedure. The correct assessed value for the subject property is the base rate of \$5,400 multiplied by the 0.78 acres, which is \$4,200. *Calvert testimony.*

13. Summary of Respondent's contentions in support of the assessment:¹

- a) The proper procedure for valuing the subject property is to multiply the actual acreage of the subject property by the per acre base rate for excess residential acreage without any adjustment made to the base rate. *Soules testimony.*
- b) The value for a parcel of land without a dwelling is established by multiplying the acreage of the entire parcel by the appropriate excess residential acreage base rate. The excess residential acreage base rate represents the 1999 acreage value of the land purchased for residential purposes in this neighborhood. *Becker testimony; Respondent Exhibit 1 at 2.*
- c) The subject property is currently valued as residential excess acreage. The excess residential acreage base rate for the subject property's neighborhood is \$5,400 and does not include the cost of installing water and sewer. The residential home site base rate for the subject property's neighborhood is \$18,000 and includes the cost of installing water and sewer and any other land improvements. *Becker testimony; Respondent Exhibit 1, 4.*
- d) An official with the Department of Local Government Finance (the "DLGF") advised the Vigo County Assessor and the Otter Creek Township Assessor via email that, although the current assessment guideline is unclear regarding the proper valuation method for unimproved parcels less than one acre, the proper method to follow for parcels less than one acre is to apply the appropriate factor from the Acreage Size Adjustment Table found in current guideline. *Becker testimony, Respondent Exhibit 6.*

¹ The township assessor and the county assessor present conflicting positions in this case. The township assessor (Soules testimony) agrees with the property owner. The county assessor (Becker testimony) presents an opposing view. While a county assessor may appear as a party in these proceedings, certain specific steps must be taken to do so. The record fails to establish that the county assessor properly appeared as a party in this matter. *See 52 IAC 2-6-6.* Therefore, the county assessor's status as one of the Respondents in this matter is ambiguous at best. County assessors are strongly cautioned to follow the Board's procedural rules if they expect to be allowed to participate in these proceedings as a party. Nevertheless, nobody raised this issue during the hearing. Therefore, the Board will consider the argument proposed by the county assessor.

- e) The subject property is assessed according to the provisions of the current assessment guideline and is uniform and equal when compared to similar properties in the area. *Becker testimony; Respondent Exhibit 1.*

Record

- 14. The official record for this matter is made up of the following:
 - a) The Petition,
 - b) The tape recording of the hearing labeled BTR 6068,
 - c) Exhibits:
 - Petitioner Exhibit 1 – The subject property record card with land calculation notations,
 - Petitioner Exhibit 2 – Page 69-70, chapter 2 from the Guidelines,
 - Petitioner Exhibit 3 – A copy of the 1996 subject property record card,
 - Petitioner Exhibit 4 – Page 2-3, Rule 4 from a prior reassessment manual,
 - Respondent Exhibit 1 – A summary of contentions,
 - Respondent Exhibit 2 – A copy of the Form 115 issued on August 18, 2004,
 - Respondent Exhibit 3 – The subject property record card,
 - Respondent Exhibit 4 – A copy of the summary report from the Vigo County Land Order for the subject property’s neighborhood,
 - Respondent Exhibit 5 – Page 68-69, chapter 2 from the Guidelines,
 - Respondent Exhibit 6 – The email communications between the DLGF representative, the Otter Creek Township Assessor and the Vigo County Assessor,
 - Board Exhibit A – Form 139L petition,
 - Board Exhibit B – Notice of Hearing,
 - Board Exhibit C – Hearing Sign In Sheet,
 - d) These Findings and Conclusions.

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 their contentions. This conclusion was arrived at because:
- a) This is a case that is strictly about the application of the assessment Guidelines. Nobody attempted to use any other method to establish the market value of the subject property.
 - b) The subject property is a vacant, unimproved parcel of land used for residential purposes and measures 0.78 acres. It is valued using an adjusted residential excess acreage base rate of \$5,400 multiplied by 1.21. The base rate of the subject property was adjusted because the subject property is less than one acre. Those adjustment factors are used to adjust the base rate for improved residential parcels less than one acre in size to make the smaller improved parcels comparable to the one acre standard established for residential acreage. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002– VERSION A, ch. 2 at 70 (incorporated by reference at 50 IAC 2.3-1-2).
 - c) The Guidelines do not authorize or require the use of acreage size adjustment factors for unimproved residential parcels less than one acre. *Id.*
 - d) Respondent claimed that although the discussion regarding the use of the acreage size adjustment factors fails to include unimproved parcels, it is the appropriate method to use for valuing the subject property. The DLGF supports this position.
 - e) Communications from the DLGF characterize the procedure for valuing unimproved residential excess acreage under one acre as "unclear" in the Guidelines. The section of the Guidelines discussing the use of the acreage size adjustment specifies that the adjustment applies to *improved* residential acreage parcels under one acre, but it does not specify the use of the adjustment to *unimproved* residential acreage parcels under one acre.
 - f) The current assessment of the subject property is incorrect because there is no basis for application of a size adjustment factor to this small, unimproved parcel. Using proper application of the Guidelines (without the size adjustment), the

correct assessment should be \$4,200. Therefore, the assessment of the subject property must be changed.

Conclusion

17. Petitioners made a prima facie case. Respondent failed to rebut Petitioner’s case. The Board finds in favor of Petitioner.

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: _____

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 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>.