

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

Petition: 03-011-06-1-5-00002
Petitioners: Richard B. and Wilma L. Gottschalk
Respondent: Bartholomew County Assessor
Parcel: 06-84-01.34-400
Assessment Year: 2006

The Indiana Board of Tax Review (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 Bartholomew County Property Tax Assessment Board of Appeals (PTABOA) by written document.
2. The PTABOA issued its decision on July 31, 2007.
3. The Petitioners appealed to the Board with a Form 131 petition on September 14, 2007. They elected to have the case heard according to small claims procedures.
4. The Board issued a notice of hearing dated June 16, 2009.
5. Administrative Law Judge Alyson Kunack held the Board's hearing on August 25, 2009. She did not inspect the property.
6. Certified Tax Representative Milo Smith represented the Petitioners. Deputy County Assessor Robert Blessing represented the Respondent. Both Mr. Smith and Mr. Blessing were sworn as witnesses.

Facts

7. The property is lot 325 on Grandview Lake. It is located near the city of Columbus. The only improvement on the property is a small wooden dock.
8. The PTABOA determined the assessed value of the subject property is \$285,000 for the land and \$2,100 for the improvements (total assessed value of \$287,100).
9. The Petitioners requested an assessed value of \$90,000 for the land and \$2,100 for the improvements (total assessed value of \$92,100).

Record

10. The official record for this matter contains the following:
 - a. The Petition,
 - b. The digital recording of the hearing,
 - c. Petitioners Exhibit 1 – Indiana Code § 6-1.1-4-4.5,
Petitioners Exhibit 2 – Subject property record card (PRC),
Petitioners Exhibit 2A – Form 115,
Petitioners Exhibit 3 – 50 IAC 21-2-6,
Petitioners Exhibit 4 – Map of Grandview Lake,
Petitioners Exhibit 5 – PRC for lot 243A on Grandview Lake,
Petitioners Exhibit 6 – PRC for lot 245 on Grandview Lake,
Petitioners Exhibit 7 – Map of subject property and seven neighboring properties showing assessed values for land and their PRCs,
Petitioners Exhibit 8 – Aerial photograph showing the subject property,
Petitioners Exhibit 9 – Wider view aerial photograph of subject property and surrounding area,
Petitioners Exhibit 10 – Four photographs showing waterline of the subject property,
Respondent Exhibit 1 – Subject PRC,
Respondent Exhibit 2 – Parcel characteristic report for Grandview Lake,
Respondent Exhibit 3 – Aerial photograph showing the subject parcel,
Respondent Exhibit 4 – Map of Grandview Lake,
Respondent Exhibit 5A-J – PRCs for properties on Grandview Lake showing sales information,
Respondent Exhibit 6 – Plat map of Grandview Lake with sales information,
Board Exhibit A – Form 131 Petition,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing sign-in sheet,
 - d. These Findings and Conclusions.

Contentions

11. Summary of the Petitioners' case:
 - a. The land value of the subject property was initially \$300,000. Based on cove restrictions and location, the PTABOA reduced it to \$285,000. That assessed value is incorrect because no adjustment percentage was applied to account for changes from the 2002 assessment. Indiana Code § 6-1.1-4-4.5 states, in relevant part, that the assessment rules must promote uniform and equal assessments. It also states that the Department of Local Government Finance (DLGF) must review and certify each annual adjustment. There is no indication on the subject

property record card that the DLGF ever approved the annual adjustment. *Smith testimony; Petitioners Exhibits 1, 2.*

- b. According to 50 IAC 21-2-6, the subject property and others like it should be broken down into a uniform group by location as part of the assessment process. There is no evidence of such a stratification process ever having been applied. *Smith testimony; Petitioners Exhibit 3.*
- c. Lakefront parcels directly on the main body of water are assessed at \$300,000. Those parcels are much more valuable than ones back in the cove, such as the subject property. The Petitioners' parcel should be priced accordingly. *Smith testimony; Petitioners Exhibits 5, 6.*
- d. The parcels in the cove are similar in size, view, and access to the main body of the lake, but they vary from \$147,000 to \$300,000 in assessed value. The increase from one lot to the next should be more gradual than it is—currently the land value almost doubles between adjacent lots. *Smith testimony; Petitioners Exhibits 4-7.*
- e. The assessed value is excessive because a large ravine runs through the middle of the property and the shoreline has erosion problems. As it is, the ravine makes the property unbuildable and the erosion problems need to be addressed. These features would have a significant negative impact on the potential selling price. *Smith testimony; Petitioners Exhibits 8-10.*

12. Summary of Respondent's case:

- a. Initially all Grandview Lake lots were priced at \$300,000 for the 2006 assessment. In the appeal process adjustments were made for reasons such as limited lake access, location far back in a cove, or lack of a lake view. *Blessing testimony.*
- b. Lot 55A sold for \$300,000 on June 29, 2005. This sale is noteworthy because it was a vacant lot that did not have “a great location” and had only minimal access to the water. The Respondent presented property record cards from other properties on Grandview Lake that sold between October 1999 and July 2008. Five of them sold twice during that time. Each of those had a substantial price increase with the second sale. Together, these sales support the base price of \$300,000. *Respondent Exhibits 5A-J; Blessing testimony.*
- c. Part of the increase in land values may have been driven by out-of-town buyers who found the prices at Grandview Lake to be a bargain compared to other options such as Geist Reservoir or the Harbors. *Blessing testimony.*
- d. The Petitioners' property is located in a cove, but it has access to the lake “without too much of a problem.” The PTABOA made a \$15,000 reduction due

to its location. The ravine and the erosion problems were not mentioned at the PTABOA hearing. *Blessing testimony; Respondent Exhibit 3.*

Analysis

13. 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).
14. In making its case, a Petitioner 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”).
15. Once a Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the case. *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 evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
16. The Petitioners failed to make a prima facie case for any assessment change.
 - a. Real property is assessed based on its "true tax value," which does not mean fair market value. It means "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." Ind. Code § 6-1.1-31-6(c); 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). There are three generally accepted techniques to calculate market value-in-use: the cost approach, the sales comparison approach, and the income approach. The primary method for assessing officials to determine value-in-use is the cost approach. MANUAL at 3. Indiana promulgated a series of guidelines that explain the application of the cost approach. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002—VERSION A, (incorporated by reference at 50 IAC 2.3-1-2). The value established by use of the Guidelines, while presumed to be accurate is merely a starting point. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut that presumption. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.
 - b. Much of the Petitioners' case focuses on assessment methodology. They argue that there was no annual adjustment percentage applied to the subject property, as required by Ind. Code § 6-1.1-4-4.5. They also argue that Grandview Lake properties were not properly broken down into uniform groups by location as part of a stratification process mandated by 50 IAC 21-2-6. The Tax Court, however,

has stated that a taxpayer cannot rebut an assessment's presumed accuracy simply by arguing about the methodology that the assessor used to compute the assessment. To be successful, a taxpayer must show that the assessment does not accurately reflect the property's market value-in-use. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 94-95 (Ind. Tax Ct. 2006); *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). The evidence about the annual adjustment percentage and stratification that was offered in this case does not help to prove what a more accurate valuation of the subject property might be. Consequently, those points do not make the Petitioners' case.

- c. The Petitioners also attempted to prove their case by comparing the assessed value of their lot to the assessed value of other lots on Grandview Lake. They established that the subject property is in a cove, rather than directly on the main body of water, but it is not as far back into the cove as some other lots. The evidence established that lots on the main body of the lake generally have an assessed value of \$300,000. The assessed value of the Petitioners' lot is \$285,000. The lot in the cove immediately across the water from the subject property has an assessed value of \$300,000. Further back in the cove, lot values drop to \$147,000. *Petitioners Exhibit 7*. According to Mr. Smith, the lots on the main body of the lake are much more valuable than those in the cove. Such a sketchy, conclusory attempt to compare properties, however, cannot support any valid determination about their relative values. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (explaining that the taxpayers were responsible for explaining the characteristics of their own property, how those characteristics compared to those of the purportedly comparable properties, and how any differences affected the relevant values). Furthermore, even if Mr. Smith's conclusion about relative value of cove lots and main body lots is accurate, it does not prove the current assessment of the Petitioners' land is wrong. It does not prove what a more accurate market value-in-use might be. And his conclusory testimony that there should have been a more gradual change in lot values transitioning from the \$147,000 lots to the \$300,000 lots has no probative value. *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
- d. The ravine running through the middle of the property and shoreline erosion problems very well could have negative impact on a potential selling price. But to make a case, the Petitioners were required to offer probative evidence about what a more accurate valuation would be. Merely establishing the existence of the ravine or shoreline erosion is not enough to require changing the assessment. They offered no such proof. Consequently, those points do not help prove the assessment should be changed.
- e. The Petitioners failed to make a prima facie case. When a taxpayer fails to provide probative evidence that an assessment should be changed, the Respondent's duty to support the assessment with substantial evidence is not triggered. *See Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

17. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings and conclusions the assessment will not be changed.

ISSUED: _____

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- 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>.