

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

Petition: 63-007-11-1-5-00037
Petitioner: Loretta L. Grimes
Respondent: Pike County Assessor
Parcel: 63-13-04-100-040.000-007
Assessment Year: 2011

The Indiana Board of Tax Review (Board) issues this determination, finding and concluding as follows:

Procedural History

1. The Petitioner filed a Form 130 appeal for her 2011 assessment on November 18, 2011.
2. The Property Tax Assessment Board of Appeals (PTABOA) mailed its Notification of Final Assessment Determination (Form 115) on August 28, 2012. (The mailing date is not on Form 115, but the Petitioner presented evidence it was mailed to her on that date.)
3. The Petitioner filed a Form 131 Petition with the Board on September 17, 2012. She elected to have this appeal heard according to small claims procedures.
4. Administrative Law Judge Rick Barter held the administrative hearing on February 21, 2013. He did not inspect the property.
5. Petitioner Loretta Grimes, County Assessor Kim Mendel and assessing contractor Kirk Reller were sworn as witnesses, but Ms. Mendel did not testify.

Facts

6. The subject property is a 1.55-acre parcel at 0 County Road 150 West in Petersburg. On July 7, 2009, the Petitioner purchased that parcel and an adjoining parcel with 0.56 acres (parcel 63-13-03-200-024.000-007). These parcels are unimproved.
7. The PTABOA determined the 2011 assessment is \$9,100 for the larger parcel and \$4,700 for the smaller one.¹ The Petitioner appealed the PTABOA assessment for the larger parcel, but not the smaller one. *Grimes testimony.*
8. The Petitioner claimed the total assessment for the parcel under appeal should be \$6,873.

¹ The Form 115 states these values are for the assessment date of March 1, 2012. At the hearing, however, the parties agreed these assessed values are the assessment for March 1, 2011.

Contentions

9. Summary of the Petitioner's case:

- a. The subject property is over-assessed based on the assessed values of ten nearby comparable properties that are being assessed at an average of \$4,434 per acre. On that basis, the Petitioner's 1.55-acre parcel should be assessed at \$6,873. *Grimes testimony; Pet'r Ex. 1.*
- b. The property record cards (PRCs) for the Petitioner's parcel and for the neighboring properties show details of the properties and their assessments for multiple years. *Pet'r Ex. 2.* The Petitioner purchased two parcels on July 7, 2009, for a total price of \$14,310. Based on that price, the PTABOA made no change to her property assessment. *Grimes testimony.*
- c. According to the PTABOA, the assessments of all properties are based on sale prices. There is nothing unique about the subject property that should result in it being assessed higher than comparable properties. If the parcel had been purchased for \$1,000, it is unlikely the assessed value would have been \$1,000. *Grimes testimony.*
- d. In 2010, the Petitioner received a notice from the assessor's office that her parcels' assessments were \$9,100 and \$4,700, for a total of \$13,800. On March 1, 2010, the assessed values were lowered to \$400 and \$100, and then later returned to \$9,100 and \$4,700. *Grimes testimony; Pet'r Ex. 2.*
- e. When an owner appeals an assessed value, the parcel must be seen by the PTABOA and the assessor. They never viewed the subject property. Buyers of property know the details and conditions of the property. Therefore, the price they pay reflects market value-in-use. The Petitioner, however, did not know about the flooding issues on the property when she purchased the subject property and consequently she over-paid. The negative factors were not taken into consideration by the assessor. The assessor should go view the property and then determine how these factors detract from its value. *Grimes testimony; Pet'r Ex. 4.*
- f. The roads in this area are not useable when it rains heavily. Heavy rains also will cause the pit across the road to overflow and wash the rock out of the Petitioner's driveway. The remaining rock is stained a rust color due to the high iron content of the water from the pit. These problems devalue the subject property. *Grimes testimony.*
- g. The Petitioner shot six photographs of the area around the subject property in January 2013. The first photograph shows the driveway where rocks have been washed away and what remains has been stained. Photograph two shows the pit that overflows. Photograph three shows a water-filled pit adjoining the subject

property. Photograph four shows a private road on the east end of the Pine Lake Recreation area with water standing on it, which makes it difficult to drive. Photographs five and six show a muddy section of County Road 900 South in front of the recreation area. Highway 61 is also there. When it floods the Petitioner must park a mile away and walk to get to the subject property. *Grimes testimony; Pet'r Ex. 4.*

10. Summary of the Respondent's case:

- a. The 2010, 2011, and 2012 assessed values on the PRCs were all \$9,100, an amount based on the purchase price of the property. During the latter part of 2010, someone in the assessor's office who was working with the split on the parcels from the parent parcel incorrectly changed the land classification from excess residential to agricultural. Several parcels were affected. This reclassification caused the assessments to significantly decrease and the assessment of the subject property, which the Petitioner described as recreational property that has never been used for agricultural purposes, changed to \$400. The assessor caught the error and changed the assessed values back. Neither party is contending this clerical error triggered any shift in the burden of proof in this appeal. *Reller testimony; Resp't Ex. 7, 8, 10, 12, 14.*
- b. The 2010-2012 assessed values on both of the Petitioner's parcels totaled \$13,800 each year. This value was calculated from the \$14,310 purchase price in 2009 and adjusted down by 4% based on ratio studies that were approved by the Department of Local Government Finance (DLGF). County officials annually examine all valid and timely arm's-length sales and prepare ratio studies that are submitted to the DLGF. When those ratio studies are approved they are used to calculate annual trending adjustments. *Reller testimony; Respondent's Exhibit 19.* Ratio studies are based on sales that are determined to be arm's-length transactions because buyers and sellers understand the value of properties they are buying or selling. The assessment for March 1, 2011, can be based on sales as long as five years earlier. *Reller testimony; Resp't Ex. 17, 19.*
- c. The Petitioner's list of comparable properties fails to relate market value-in-use to the assessed value of her property. Some of the Petitioner's exhibits contain incorrect calculations and several did not include the total land involved. *Reller testimony; Resp't Ex. 20.*
- d. The county also prepared a list of valid sales in the area. Three of the sales (the Juncker, Muensterman and McAtee properties) occurred very close to the time the subject property was purchased. Their sales prices were higher than the assessed value of the subject property. The adjustments of the 2009 sale prices of the subject property and other nearby properties were appropriately performed using the DLGF guidelines and state rules. *Reller testimony; Resp't Ex. 1 through 17, 19, 20.*

Record

11. The official record contains the following:
 - a. The Petition,
 - b. The digital recording of the hearing,
 - c. Petitioner Exhibit 1 – List of ten comparable properties,
Petitioner Exhibit 2 – Property record cards (PRCs) for the subject and comparable properties,
Petitioner Exhibit 3 – Form 115, notice of final assessment,
Petitioner Exhibit 4 – Six photographs of the property and access roads.
 - d. Respondent Exhibit 1 – List of sales,
Respondent Exhibit 2 – Aerial map of comparable properties,
Respondent Exhibit 3 – PRC and sales disclosure form for parcel 63-13-04-100-040.000-007,
Respondent Exhibit 4 – PRC for parcel 63-13-04-100-044.000-007,
Respondent Exhibit 5 – PRC for parcel 63-13-04-100-041.000-007,
Respondent Exhibit 6 – PRC and sales disclosure form for parcel 63-13-04-100-036.000-007,
Respondent Exhibit 7 – PRC and sales disclosure form for parcel 63-13-04-200-042.000-007,
Respondent Exhibit 8 – PRC and sales disclosure form for parcel 63-13-04-200-035.000-007,
Respondent Exhibit 9 – PRC for parcel 63-13-04-200-036.000-007,
Respondent Exhibit 10 – PRC for parcel 63-13-04-200-034.000-007,
Respondent Exhibit 11 – PRC and sales disclosure form for parcel 63-13-04-500-015.000-007,
Respondent Exhibit 12 – PRC and sales disclosure form for parcel 63-13-04-100-037.000-007,
Respondent Exhibit 13 – PRC for parcel 63-13-04-100-038.000-007 and 63-13-04-100-039.000-007,
Respondent Exhibit 14 – PRC and sales disclosure form for parcel 63-13-03-200-022.000-007,
Respondent Exhibit 15 – PRC for parcel 63-13-04-100-045.000-007,
Respondent Exhibit 16 – PRC and sales disclosure form for parcel 63-13-03-200-027.000-007,
Respondent Exhibit 17 – Page from Pike County ratio study for 2011,
Respondent Exhibit 18 – PRC for parcel subject 63-13-04-100-040.000-007,
Respondent Exhibit 19 – Ratio study guidance memo from Barry Wood,
Respondent Exhibit 20 – Analysis of Petitioner’s Exhibit 1.
 - e. Board Exhibit A – Form 131 Petition,
Board Exhibit B – Notice of Hearing,

Board Exhibit C – Hearing sign-in sheet.

f. These Findings and Conclusions.

Analysis

12. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that a property's assessment is wrong and what its correct assessment should be. *See Meridian Towers East and 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). Nevertheless, the Indiana General Assembly enacted a statute that in some cases shifts the burden of proof:

This section applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal increased the assessed value of the assessed property by more than five percent (5%) over the assessed value determined by the county assessor or township assessor (if any) for the immediately preceding assessment date for the same property. The county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.

Ind. Code § 6-1.1-15-17.2.

13. The Petitioner did not claim the 2011 assessment increased by more than 5% from the 2010 assessment. The property record card shows the 2010 assessed value decreased from \$9,100 to \$400 based on what was termed a clerical error by the Respondent. It later was raised back to \$9,100 and it remained unchanged in 2011. Accordingly, in this appeal the burden shifting provision of Ind. Code § 6-1.1-15-17.2 does not apply.
14. The Petitioner did not make a prima facie case for any change.
- a. Real property is assessed based on its "true tax value," which 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). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach. A taxpayer is permitted to offer evidence relevant to market value-in-use to prove an assessed valuation. 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.
 - b. Regardless of the method used, a party must explain how its evidence relates to the required valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d

90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). In this case, the assessment and valuation date was March 1, 2011. I.C. § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c). Any evidence of value relating to a different date must have an explanation about how it demonstrates, or is relevant to that date. *Long*, 821 N.E.2d at 471.

- c. The Petitioner did not relate her purchase price to March 1, 2011, or explain how it helps prove a more accurate valuation as of March 1, 2011. Therefore, this evidence does not help to prove her case. *Long*, 821 N.E.2d at 471.
- d. The Petitioner complained that the Respondent and the PTABOA did not view her property. The Board's proceedings, however, are *de novo*. Their failure to view the property did not hinder the Petitioner's ability to present relevant evidence and argument during the Board's hearing. *See* Ind. Code § 6-1.1-15-4. Therefore, at this point the failure to view the property is irrelevant.
- e. The Petitioner relied heavily on the assessed value of nearby properties. Pursuant to Ind. Code § 6-1.1-15-18(c), the assessments of comparable properties may be used as evidence, but the determinations of comparability must be made using generally accepted appraisal and assessment practices. Therefore, 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. *See Long*, 821 N.E.2d at 470. The Petitioner was responsible for explaining the characteristics of her own property, how those characteristics compared to those of the purportedly comparable properties, and how any differences affected the relevant market value-in-use of the properties. *Id.* at 471. But in this case the Petitioner failed to offer any meaningful comparison of the purportedly comparable properties. Accordingly, the other assessments presented by the Petitioner do not help to prove a more accurate assessed value for the subject property.
- f. The Petitioner also claimed her property is over-assessed based on damage caused by heavy rains and flooding. An influence factor is used to account for characteristics of a particular parcel of land that are peculiar to that parcel. It is expressed as a percentage that represents the composite effect of the factor that influences the value. Guidelines, Glossary at 10. To prevail on the issue of an influence factor, the taxpayer must present probative evidence that would support an application of a negative influence factor and a quantification of that influence factor at the administrative level. *Talesnick v. State Bd. of Tax Comm'rs*, 756 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001); *Phelps Dodge v. State Bd. of Tax Comm'rs*, 705 N.E.2d 1099 (Ind. Tax Ct. 1999). While heavy rains and flooding may affect the property's value, the Petitioner offered no probative evidence to show the extent to which they do so. The Petitioner's unsubstantiated conclusions do not constitute probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

15. Where the Petitioner has not supported her claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

16. The Petitioner failed to make a prima facie case for any change to the assessed value. Therefore, the Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now finds the total assessed value of the property will not be changed.

ISSUED: May 22, 2013

Commissioner, Indiana Board of Tax Review

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- 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>.