

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

Petition: 03-011-06-1-5-00001
Petitioners: Jeffrey and Anita Hubley
Respondent: Bartholomew County Assessor
Parcel: 06-84-02.31-2300
Assessment Year: 2006

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

Procedural History

1. The Petitioners initiated an assessment appeal by filling a form 130 with the Bartholomew County Property Tax Assessment Board of Appeals (PTABOA).
2. The PTABOA issued its decision on July 31, 2007.
3. The Petitioners appealed to the Board by filing a Form 131 on September 14, 2007. The Petitioners elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing to the parties dated June 16, 2009.
5. Administrative Law Judge Alyson Kunack held the Board's administrative hearing on August 25, 2009. She did not inspect the property.
6. The Petitioners' Certified Tax Representative, Milo Smith, and Deputy County Assessor Robert Blessing were sworn as witnesses at the hearing.

Facts

7. The property is a single-family residence at 3721 South Poplar Drive, Columbus, Indiana. It also is identified as Grandview Lake lot 116.
8. The PTABOA determined the assessed value is \$285,000 for the land and \$126,300 for the improvements (total \$411,300).
9. The Petitioners requested an assessed value of \$147,000 for the land and \$126,300 for the improvements (total \$ 273,300) on their Form 131. At the hearing, however, they requested a total assessed value of \$350,900.

Record

10. The official record consists of the following:
 - a) The Petition,
 - b) A 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 3 – 50 I.A.C. 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 surrounding properties
showing assessed values for land and seven PRCs for
those lots,
Petitioners Exhibit 8 – 2002 REAL PROPERTY ASSESSMENT MANUAL, page 6,
Petitioners Exhibit 9 – 50 I.A.C. 21-3-3,
Petitioners Exhibit 10 – PRC with notation showing requested valuation changes,
Respondent Exhibit 1 – Subject PRC,
Respondent Exhibit 2 – Parcel Characteristics Report,
Respondent Exhibit 3 – Aerial photograph,
Respondent Exhibit 4 – Map of Grandview Lake,
Respondent Exhibits 5A-I – PRCs for properties on Grandview Lake with 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 assessed value of the subject property is incorrect because there was no adjustment percentage applied to account for changes from the 2002 assessment. Indiana Code §6-1.1-4-4.5 states, in part, that the assessment rules must promote uniform and equal assessments. The Department of Local Government Finance (DLGF) must review and certify each annual adjustment. *Smith testimony; Petitioners Exhibit 1.* There is no indication on the property record card that the DLGF ever approved the annual adjustment. The adjustment appears to have been simply changing the base rate of the land. The land value of the subject property was \$90,000 in 2002. It went up to \$300,000 for 2006, but the PTABOA

subsequently reduced the assessed value to its current amount of \$285,000. *Id.*; *Petitioners Exhibit 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 having been applied. *Smith testimony; Petitioners Exhibit 3*.
- c) The land value for lakefront parcels directly on the main body of water is \$300,000 per lot, while lots in the same cove as the subject property vary from \$147,000 to \$300,000. The parcels in the cove are similar in size, view, and access to the main body of the lake. The parcels on the main body of the lake are much more valuable than those back in the cove. They should be priced accordingly. *Smith testimony; Petitioners Exhibits 4-7*.
- d) The subject property's assessment should be based on its actual sale price, which was \$350,900. There is no evidence that this sale was considered as part of the assessment process for 2006. The subject property sold on October 2, 2003, which is only three months away from the 2004 and 2005 data range assessors used to determine values for the 2006 assessment. *Smith testimony; Petitioners Exhibits 2, 8, 9*. According to 50 IAC 21-3-3, sales occurring before or after the 2004-2005 timeframe "shall be trended if appropriate, in accordance with the IAAO standard." *Smith testimony; Petitioners Exhibit 9*. Nevertheless, the Petitioners do not believe any trending is necessary for the three months between the actual sale and the 2004-2005 assessment timeframe. *Smith testimony*.

12. Summary of the Respondent's case:

- a) The assessor believed that the lots at Grandview Lake had been "grossly undervalued." For the 2006 assessment, all lots at Grandview Lake initially were raised to \$300,000. Then adjustments were made through the appeals process for reasons such as limited lake access, location far back in a cove, or lack of a lake view. The PTABOA made changes to the base \$300,000 valuation, reducing assessed values from 5% to as low as \$147,000 for properties with virtually no lakefront. *Blessing testimony*.
- b) While the subject property is located in a cove, it has an average of approximately 124 feet across the cove to the opposite side. *Blessing testimony; Respondent Exhibit 3*. Also, some people actually prefer being back in a cove because boat traffic is limited and it is a bit more protected, but they still can reach the main body of the lake easily and quickly. *Blessing testimony*.
- c) The Respondent presented property record cards from nine properties on Grandview Lake (including the subject property) that sold between October 1999 and July 2008. Of those properties, five sold twice during that time. In each

instance there was a substantial increase in price for the second sale. *Blessing testimony; Respondent Exhibits 5A-I.*¹

- d) Lot 55A sold for \$300,000 on June 29, 2005. It is “not really a premium lot.” This sale is particularly noteworthy because it was a vacant lot. *Blessing testimony; Respondent Exhibit 5H.*
- e) These sales support the base price of \$300,000 per lot. *Blessing testimony; Respondent Exhibits 5A-I.*
- f) In the county appeals, the main complaint was that the land value increased so much so quickly. Few people had an issue with the improvement values. *Blessing testimony.*
- g) Part of the increase in land value 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 or the Harbors. *Blessing testimony.*

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 did not 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

¹ This group of documents actually includes a tenth card marked 5J, but the Respondent never mentioned it.

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. To that end, 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) A 2006 assessment must reflect the value of the property as of January 1, 2005. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. Any evidence of value relating to a different date must also have an explanation about how it demonstrates, or is relevant to, the value as of that required valuation date. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
- c) 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 Petitioner's case.
- d) 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 lots in the cove immediately across the water from the subject property have an assessed value of \$300,000. Further back into the cove, the lot values drop to as little as \$147,000. *Petitioners Exhibit 7*. According to Mr. Smith, the cove lots are "very similar in size, view, [and] access to the main body of the lake." And he testified that the lots on the main body of the lake are much more valuable than those in the cove. Such sketchy, conclusory attempts to make

comparisons, however, cannot support any valid determination about the relative values of the properties. *Long*, 821 N.E.2d at 471 (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 and it does not prove what a more accurate market value-in-use for their land might be.

- e) An arm's-length sale of the subject property can be very good market value evidence, but that evidence must somehow be related to the required valuation date. *See Long*, 821 N.E.2d at 471. In this case there seems to be no dispute that the Petitioners bought the subject property for \$350,900 on October 2, 2003. Mr. Smith correctly pointed out that this sale was only three months outside the 2004-2005 timeframe for sales the assessors use for trending data. Nevertheless, it is more than a year from the required valuation date. Therefore, its probative value depends on somehow establishing the relationship to value as of January 1, 2005—a task that the Petitioners failed to accomplish. The Petitioners offered only a conclusory statement from Mr. Smith that the sales price needs no adjustment for time.² Such unsupported and conclusory statements are not probative evidence. *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). Consequently, the Petitioners' purchase price does not establish a prima facie case.
- f) When a taxpayer fails to provide probative evidence supporting his position 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 Petitioners failed to make a prima facie case. The Board finds in favor of the Respondent.

² In addition to arguing that no adjustment is required, Mr. Smith implied that it was the Respondent's burden to trend the Petitioners' sale price: "I could also find no evidence the subject sales price of \$350,900 was trended, as required, therefore, the subject parcel should be assessed at the \$350,900 because we are allowed to use specific sales prices of the subject and it's within three months of the two years of data we're supposed to be using to come up with trending." He is mistaken—where the Petitioners propose to rely on such evidence, it is their burden to relate it to the required valuation date of January 1, 2005. There is no basis for concluding (as Mr. Smith suggested) that a failure to do so simply validates the evidence by default.

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>.