

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

Petition No.: 44-013-06-1-5-00144
Petitioners: Kenneth R. and Therese Miller
Respondent: LaGrange County Assessor
Parcel No.: 011-22113-06
Assessment Year: 2006

The Indiana Board of Tax Review (the 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 LaGrange County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated February 1, 2007.
2. The PTABOA issued notice of its decision on January 16, 2008.
3. The Petitioners filed a Form 131 petition with the Board on February 25, 2008. The Petitioners elected to have this case heard according to the Board's small claim procedures.
4. The Board issued a notice of hearing to the parties dated July 9, 2008.
5. The Board held an administrative hearing on August 19, 2008, before the duly appointed Administrative Law Judge (the ALJ) Dalene McMillen.
6. The following persons were present and sworn in at hearing:
 - a. For Petitioners: Kenneth R. Miller, property owner
 - b. For Respondent: Lori Carney, LaGrange County Assessor

Facts

7. The property under appeal is a 968 square foot dwelling with a garage, wood deck and utility shed on a .64 acre lot (Lot 6) located at 9320 East 500 South, Wolcottville, Milford Township, in LaGrange County.
8. The ALJ did not conduct an on-site inspection of the properties under appeal.
9. The PTABOA determined the assessed value of the property to be \$159,600 for the land and \$30,000 for the improvements, for a total assessed value of \$189,600.
10. At the hearing, the Petitioners requested the assessed value to be \$85,000 for the land and \$30,000 for the improvements, for a total assessed value of \$115,000.¹

Issue

11. Summary of Petitioners' contentions in support of alleged error in assessment:
 - a. The Petitioners contend the Respondent assessed their land for more than its market value-in-use. *Miller argument*. According to Mr. Miller, the Petitioners are not appealing the assessment of improvements on the parcel.
 - b. The Petitioners first submit an appraisal report prepared by Robert Bohde of Hosler Appraisal. *Petitioner Exhibit B*. Mr. Bohde is an Indiana Certified Residential Appraiser. *Id.* In his January 18, 2007, appraisal, Mr. Bohde estimated the market value-in-use of the land, as if vacant, to be \$110,000 as of January 1, 2005.² *Id.* Mr. Miller, however, argued that the comparables used by Mr. Bohde in his appraisal are not accurate. *Miller testimony*. According to Mr. Miller, he submitted the appraisal to show that if the right comparables are not used, the true market value of a property cannot be established. *Miller testimony*.
 - c. The Petitioners contend that the land of Lot 6 is over-assessed compared to its purchase price. *Miller testimony*. According to the Petitioners, they purchased Campbell's Cove Lot 6 for \$85,000 on May 9, 2003. *Id.* Mr. Miller testified Campbell's Cove Lot 6 was listed for sale in home magazines, through multiple listing sheets and yard signs for approximately four years. *Miller testimony*. The Petitioners argue that land values in the area have not increased and therefore the

¹ On the Form 131 appeal, the Petitioners requested the assessed value to be \$100,000 for the land and \$30,000 for the improvements, for a total assessed value of \$130,000. *Board Exhibit A*.

² In the appraisal, Mr. Bohde stated "this appraisal is of the land only and gives no value to the existing improvements on the site." However, the property record card shows the subject property has a 968 square foot dwelling, attached garage, detached wood deck and utility shed that were 50% complete as of the March 1, 2006, assessment date. *Respondent Exhibit 1*.

2003 purchase price accurately reflects the 2006 market value-in-use of Lot 6. *Miller testimony.*

- d. The Petitioners also contend that their land is over-assessed compared to area properties. *Miller testimony.* In support of their position, the Petitioners submitted sales and assessment information on nine lakefront properties in the surrounding area. *Petitioner Exhibits A and B, items 1-10.* The properties sold from August 27, 2002, to July 27, 2005, for prices ranging from \$45,000 to \$165,000.³ *Id.* According to the Petitioners, four of the comparable properties are similar to the subject parcel in location, size, topography and lake frontage. *Miller testimony.* The five remaining comparable properties are superior to Lot 6 in location and topography. *Miller testimony.* According to the Petitioners, the subject land's assessed value is 82% higher than its 2003 purchase price, while similar and superior comparable properties are assessed at near their sales prices. *Miller testimony.* Thus, the Petitioners conclude, the subject land should be assessed at no more than its 2003 purchase price of \$85,000. *Miller testimony.*
- e. Finally, the Petitioners contend the property would not sell for its assessed due to the hilly, mucky, lakefront area of Lot 6. *Miller testimony.* In support of this contention, the Petitioners submitted sixteen photographs of the lakefront area. *Petitioner Exhibit C.* According to Mr. Miller, the Department of Natural Resources (DNR) regulations control the removal of the brush on the lake in the area surrounding lot 6. *Miller testimony.* In addition, the lakefront also serves as a trash dump for the traffic using the lake. *Miller testimony.*

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

- a. The Respondent contends Lot 6 is correctly assessed at \$159,600 for the land and \$30,000 for the improvements, for a total assessed value of \$189,600. *Carney testimony.* In support of this contention, the Respondent offered a list of properties that sold in 2004 and 2005 in the Campbell Cove area. *Respondent Exhibit 9; Carney testimony.*
- b. The Respondent contends the Petitioners' appraisal is flawed. *Carney testimony.* First, the Respondent argues that the three properties were vacant land sales that sold for \$72,900 to \$165,000, from September 8, 2004, to June 23, 2005. *Respondent Exhibits 10-12; Carney testimony.* In addition, two of the comparables are not located in the subject area. *Id.* Thus, the Respondent argues the three properties used in the appraisal are not comparable to the subject. *Carney testimony.* Second, the Respondent argues, the adjustments made to the comparables in the appraisal were excessive. *Carney testimony.* Finally, the Respondent contends, the appraiser valued Lot 6 as if it is a vacant lot, when in

³ In addition, two properties have been listed for sale since 2006 and 2007, for \$99,400 and \$124,500, respectively. *Miller testimony.*

fact the property is improved with a well, septic, garage and living quarters. *Respondent Exhibit 1; Carney testimony.* Therefore, the Respondent concludes, the appraisal does not reflect the property's market value-in-use as of the valuation date. *Respondent Exhibit 6; Carney testimony.*

Record

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

- a. The Form 131 petition and related attachments.
- b. The digital recording of the hearing.
- c. Exhibits:

Petitioner Exhibit A – Petitioners' comparable properties worksheet,

Item No. 1 Property information sheet, sales disclosure sheet, plat map and two aerial photographs for Campbell's Cove Lot 6,

Item No. 2 Property information sheet, sales disclosure sheet and plat map for Campbell's Cove Lot 4,

Item No. 3 Property information sheet, sales disclosure sheet and plat map for Campbell's Cove Lot 5,

Item No. 4 Property information sheet, multiple listing sheet and plat map for Campbell's Cove Lot 3,

Item No. 5 Multiple listing sheet, property information sheet and aerial photograph for Dallas Lake Eglis Peninsula Lot 5,

Item No. 6 Multiple listing sheet, information sheet and aerial photograph for Parcel No. 44-10-17-100-006.000-010 and information sheet and aerial photograph for Parcel No. 44-10-18-400-026.009-010,

Item No. 7 Multiple listing sheet for Lot 20 and part of Lot 18 Hollmans 1st Addition to Willowdale,

Item No. 8 Multiple listing sheet for Tract 3, 1025 East Big Long Lake, Hudson, Indiana,

Petitioner Exhibit B – Vacant land appraisal prepared by Robert W.

Bohde, Hosler Appraisal, dated January 23, 2007,

Item No. 9 Multiple listing sheet, property information sheet and aerial photograph for Dallas Lake Whetzels Dallas Point Lot 15,

Item No. 10 Information sheet and aerial photograph for Woodland Park Lot 14 and information sheets for Woodland Park Werts 1st Addition Lot 30, less north end strip and Lot 31, and Parcel No. 44-09-27-200-007.000-013,

Petitioner Exhibit C – Exterior photographs of the area,

Respondent Exhibit 1 – Property record card for Parcel No. 0112211306,

Respondent Exhibit 2 – Property record card for Parcel No. 0112210802,

Respondent Exhibit 3 – Property record card for Parcel No. 0112210803,

Respondent Exhibit 4 – Property record card for Parcel No. 0112210801,

Respondent Exhibit 5 – Four exterior photographs of the subject property,

Respondent Exhibit 6 – Form 130, page 4, Results of Township

Assessor/Petitioner Conference,

Respondent Exhibit 7 – Notification of Final Assessment Determination –

Form 115, dated October 20, 2007,

Respondent Exhibit 8 – Notification of Final Assessment Determination –

Form 115, dated January 16, 2008,

Respondent Exhibit 9 – IDox sales disclosure sheets,

Respondent Exhibit 10 – Property record card for Parcel No. 0103021004,

Respondent Exhibit 11 – Property record card for Parcel No. 0112721029,

Respondent Exhibit 12 – Property record card for Parcel No. 0112211304,

Respondent Exhibit 13 – Campbell’s Cove plat map,

Board Exhibit A – Form 131 petition with attachments,

Board Exhibit B – Notice of Hearing,

Board Exhibit C – Hearing sign-in sheet.

d. These Findings and Conclusions.

Analysis

14. 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 Township 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 Township 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.
15. The Petitioners failed to provide sufficient evidence to establish an error in the assessment. The Board reached this decision for the following reasons:
- a. Real property is assessed based on “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, for 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). A taxpayer may use any generally accepted appraisal method as evidence consistent with the Manual’s definition of true tax value, such as actual construction cost, appraisals, or sales information regarding the subject property or comparable properties that are relevant to the property’s market value-in-use, to establish the actual true tax value of a property. *See* MANUAL at 5.
 - b. In addition, the 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. A Petitioner who presents evidence of value relating to a different date must provide some explanation about how it demonstrates, or is relevant to, the subject property’s value as of January 1, 2005. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
 - c. The Petitioners first presented an appraisal prepared by Robert Bohde, Hosler Appraisals. *Petitioner Exhibit B*. Mr. Bohde estimated the property’s value, as if vacant, using generally accepted appraisal methodology – the sales-comparison approach. *Id.* The appraiser attested the appraisal was prepared in accordance with the Uniform Standards of Professional Appraisal Practices. (USPAP). *Id.* However, as the Respondent noted, the appraiser valued the property as if it were vacant land, when in fact improvements existed on the property on the assessment date.
 - d. In most cases, separately valuing one component of an integrated property using individual appraisal techniques, while blindly accepting the mass-appraisal value assigned to the remaining components, creates a risk of distorting the true market value-in-use of the property. There may be instances where such an approach is

acceptable. However, a taxpayer must show that its approach complies with generally accepted appraisal principles.

- e. Here, the Petitioners failed to offer any evidence to show that its methodology conformed to generally accepted appraisal principles. The appraiser certified that he complied with USPAP in determining the value of the Petitioners' land as if it were vacant. *Petitioner Exhibit B*. But that was not the relevant question the Petitioners needed to address in its appeal. To meet its burden, the Petitioners needed to show that the property's assessment did not accurately reflect its true tax value. The property's true tax value is measured by the utility the Petitioners or a similar user derived from the property as it existed on the assessment date. On the assessment date, the Petitioners' property was improved.⁴
- f. The Petitioners further argue that Lot 6 is over-assessed based on the sale of comparable properties. *Miller testimony*. In support of this contention, the Petitioners submitted the sales and assessment information on nine lakefront properties that sold or were listed for sale from 2002 to 2007, for \$45,000 to \$165,000 respectively. *Petitioner Exhibits A and B, items 1-10*. In order to effectively use the sales comparison approach as evidence in property assessment appeals, however, 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 of the properties. *Long*, 821 N.E.2d at 470. Instead, the party seeking to rely on sales comparison approach must explain the characteristics of the subject property and how those characteristics compare to those of purportedly comparable properties. *See Id.* at 470-71. They must also explain how any differences between the properties affect their relative market value-in-use. Here, the Petitioners merely offered aerial maps, assessment and sales information for the "comparable" properties and offered an opinion that because the comparables were lakefront properties, with some lots being hilly, with muck, weeds and brush, while other lots are wooded and level, with more lake front access, the properties are similar or superior to the subject property. This is insufficient to show the comparability of the properties.
- g. Further, it is not enough for a taxpayer to show that its property is assessed higher than other comparable properties. *Westfield Golf Practice Center, LLC v. Washington Township Assessor et al.* 859 N.E. 2d 396, 399 (Ind. Tax Ct. 2007). Instead, the taxpayer must present probative evidence to show that the assessed value, as determined by the assessor, does not accurately reflect the property's market value-in-use. *Id.* Although the Petitioners testified they purchased vacant land for \$85,000 in 2003, the 2006, assessment must reflect the total value of the property as of January 1, 2005. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. A

⁴ The Board notes that the Petitioners dismissed the appraisal as not reflecting the value of their property. The Board, however, considered the appraisal as it related to the Petitioners' claims their assessment should be lowered.

Petitioner who presents evidence of value relating to a different date must provide some explanation about how it demonstrates, or is relevant to, the subject property's value as of January 1, 2005. See *Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The Petitioners presented no evidence of the property's market value-in-use as of January 1, 2005. In addition, the purchase of the Petitioners' unimproved lot is not probative of the value of the property as improved without substantial evidence showing how the unimproved property's value is related to the value of the property as improved.

- h. Finally, the Petitioners argue that their land value should be lowered because the lakefront is mucky, and covered in weeds, brush, trash, and DNR regulations restrict the use of their property. That argument, however, is also not supported by sufficient evidence. While alleged limitations or conditions on the property may be relevant to the issue of whether a negative influence factor should apply, the Petitioners failed to show how these conditions would impact the market value-in-use of the property or show the actual market value of the property. See *Talesnick v. State Board of Tax Commissioners*, 756 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001).
- i. The property may, in fact, be over-valued based on the Petitioners' evidence. The Petitioners, however, failed to prove the correct value of the property as a whole. Where a petitioner fails to provide probative evidence for an assessment change, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Department of Local Government Finance*, 799 N.E.2d at 1221, 1222.

Conclusion

- 16. The Petitioners failed to provide sufficient evidence to support a change in the assessment. 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 determines that the assessment should not be changed.

ISSUED: _____

Chairman,
Indiana Board of Tax Review

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 pursuant to 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 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/bills/2007/SE0287.1.html>.