

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

Petition Nos.: 06-019-08-1-5-00196
06-019-08-1-5-00197
Petitioner: Kenneth M. Smith
Respondent: Boone County Assessor
Parcel Nos.: 019-15541-00
019-15542-00
Assessment Year: 2008

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 Petitioner initiated assessment appeals with the Boone County Property Tax Assessment Board of Appeals (the PTABOA) by written documents dated July 9, 2009.
2. The PTABOA issued notices of its decisions on October 26, 2009.
3. The Petitioner filed Form 131 petitions with the Board on November 24, 2009. The Petitioner elected to have his cases heard according to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated June 27, 2011.
5. The Board held an administrative hearing on August 11, 2011, before the duly appointed Administrative Law Judge (the ALJ) Dalene McMillen.
6. The following persons were present and sworn in at hearing:
 - a. For Petitioner:¹ Kenneth M. Smith, property owner
 - b. For Respondent:² Lisa Garoffolo, Boone County Assessor
Peggy Lewis, PTABOA member

¹ Marilyn Sutherlin was sworn in as a witness for the Petitioner but did not present any testimony at the hearing.

² Lawrence D. Giddings of Giddings, Whitsitt & Williams appeared as counsel for the Respondent.

Facts

7. The properties under appeal consist of two contiguous vacant land parcels: Parcel No 019-15541-00 with 0.62 acre (the 0.62 acre parcel) and Parcel No. 019-15542-00 with 0.30 acre (the 0.30 acre parcel). The parcels are contiguous to the parcel on which the Petitioner's house sits, located at 486 Redbud Lane, Zionsville, Eagle Township in Boone County.
8. The ALJ did not conduct an on-site inspection of the property under appeal.
9. For 2008, the PTABOA determined the assessed value of the land to be \$16,500 for the 0.62 acre parcel; and the PTABOA determined the assessed value of land to be \$8,000 for the 0.30 acre parcel. There are no improvements on either parcel.
10. For 2008, the Petitioner requested an assessed value of \$6,600 for the 0.62 acre parcel and \$3,200 for the 0.30 acre parcel.

Issue

11. Summary of the Petitioner's contentions in support of an alleged error in his properties' assessments:
 - a. The Petitioner contends that the subject properties were over-valued because the lots are unbuildable and located in a floodplain. *Smith testimony*. The Petitioner's home is located on a third lot which adjoins the properties under appeal. *Id.*; *Petitioner Exhibits 4A, 4B and 9*. According to Mr. Smith, prior to the 2008 assessment the properties had been receiving an 80% influence factor. *Id.* While there was no change to the land, the Petitioner argues, the PTABOA lowered the negative influence factor on the properties to 50%, which resulted in an increase in the properties' assessed values. *Id.*
 - b. The Petitioner also argues that his properties were over-valued based on the assessed value of similar properties in the area. *Smith testimony*. According to Mr. Smith, four nearby properties are assessed with an 80% influence factor. *Id.*; *Petitioner Exhibits 1, 2 and 3*. Mr. Smith testified that all of the properties are similar to the Petitioner's properties in topography, elevation and location in the floodplain. *Id.* Therefore, Mr. Smith argues, because his properties have a similar topography, drop-off and location to the neighboring properties, his land should receive the same 80% negative influence factor adjustment that the comparable properties receive. *Id.*
12. Summary of Respondent's contentions in support of the assessment:
 - a. The Respondent contends the property under appeal is correctly assessed. *Garoffolo testimony*. The Respondent admitted the properties are located in a

floodplain and that the land “drops off.” *Id.* However, the Respondent’s witness argues, the properties under appeal are located adjacent to the parcel on which the Petitioner’s home sits and add “aesthetic” value to that homesite. *Lewis testimony.* Thus, she testified, the PTABOA only applied a negative 50% influence factor to the property to reflect the property’s higher market value-in-use. *Lewis testimony.*

- b. The Respondent’s witness also argues that the Petitioner’s comparable properties should not be given any weight by the Board. *Lewis testimony.* According to Ms. Lewis, the property identified as Parcel No. 019-05341-02 does not have a house located on or adjacent to the parcel, so the owner has little use of the land. *Id.*; *Respondent Exhibit 8A.* Moreover, the ravine has a steeper drop off on that lot, resulting in the lot having little development potential.³ *Id.* Similarly, she argues, Parcel No. 0191003100 and Parcel No. 0190999100 have steeper elevations than the Petitioner’s properties and therefore the two lots receive a larger influence factor adjustment. *Id.* Because the Petitioner’s properties add value to his homesite and because the properties’ “drop off” is not as steep as the neighboring properties, the Respondent’s witness concludes, the Petitioner’s comparable properties are not relevant to establish that the property was entitled to an 80% negative influence factor. *Id.* Thus, Ms. Lewis argues, the Petitioner’s land was not over-valued for the 2008 assessment year. *Id.*

Record

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

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

Petitioner Exhibit 1 – Petitioner’s plea for relief,
Petitioner Exhibit 2 – Plat map,
Petitioner Exhibit 3 – Parcel information for Parcel No. 019-10031-00,
Parcel No. 019-15121-03, Parcel No. 019-05341-02, and Parcel No. 019-09991-00,
Petitioner Exhibit 4A – Aerial map for Parcel No. 019-15542-00,
Petitioner Exhibit 4B – Aerial map for Parcel No. 019-15541-00,
Petitioner Exhibit 5 – Petition to the Indiana Board of Tax Review for
Review of Assessment – Form 131 for Parcel No.
019-15541-00,

³ Mr. Smith’s plat map shows Parcel Nos. 0191512103 and 0191003100 are the same parcel referred to by Ms. Lewis as Parcel No. 019-05341-02. *Petitioner Exhibit 2; Respondent Exhibit 8A.*

- Petitioner Exhibit 6 – Notification of Final Assessment Determination – Form 115 for Parcel No. 019-15541-00,
- Petitioner Exhibit 7 – Petition to the Indiana Board of Tax Review for Review of Assessment – Form 131 for Parcel No. 019-15542-00,
- Petitioner Exhibit 8 – Notification of Final Assessment Determination – Form 115 for Parcel No. 019-15542-00,
- Petitioner Exhibit 9 – Two exterior photographs,

Parcel No. 019-15541-00:

- Respondent Exhibit 1 – Boone County appeal worksheet,
- Respondent Exhibit 2 – Petitioner’s property record card,
- Respondent Exhibit 3 – Notice of Hearing on Petition – Real Property – Form 114,
- Respondent Exhibit 4 – Aerial map for Parcel Nos. 019-15541-00 and 019-15542-00,
- Respondent Exhibit 5 – Petitioner’s letter and maps presented at the PTABOA hearing,
- Respondent Exhibit 6 – Notification of Final Assessment Determination – Form 115,
- Respondent Exhibit 7 – 2008 pay 2009 tax calculation worksheet,
- Respondent Exhibit 8 – Petition to the Indiana Board of Tax Review for Review of Assessment – Form 131,
- Respondent Exhibit 8A – Aerial map for Parcel No. 019-05341-02,
- Respondent Exhibit 9 – Indiana Board of Tax Review Notice of Hearing on Petition, dated December 30, 2010,
- Respondent Exhibit 10 – Petitioner’s request for continuance letter, dated January 7, 2011,
- Respondent Exhibit 11 – Indiana Board of Tax Review’s letter granting continuance, dated January 12, 2011,
- Respondent Exhibit 12 – Indiana Board of Tax Review Notice of Hearing on Petition, dated June 27, 2011,

Parcel No. 019-15542-00:

- Respondent Exhibit 1 – Boone County appeal worksheet,
- Respondent Exhibit 2 – Petitioner’s property record card,
- Respondent Exhibit 3 – Notice of Hearing on Petition – Real Estate – Form 114,
- Respondent Exhibit 4 – Notification of Final Assessment Determination – Form 115,
- Respondent Exhibit 5 – 2008 pay 2009 tax calculation worksheet,
- Respondent Exhibit 6 – Petition to the Indiana Board of Tax Review for Review of Assessment – Form 131,

- Respondent Exhibit 7 – Indiana Board of Tax Review Notice of Hearing on Petition, dated December 30, 2010,
- Respondent Exhibit 8 – Petitioner’s request for continuance letter, dated January 7, 2011, and Indiana Board of Tax Review’s letter granting continuance, dated January 12, 2011,
- Respondent Exhibit 9 – Indiana Board of Tax Review Notice of Hearing on Petition, dated June 27, 2011,

- Board Exhibit A – Form 131 petitions with attachments,
- Board Exhibit B – Notices of Hearing,
- Board Exhibit C – Hearing sign-in sheets,

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 Board of Tax Commissioners*, 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 case. *Id.; Meridian Towers*, 805 N.E.2d at 479.
15. The Petitioner failed to provide sufficient evidence to establish a prima facie case for a reduction in the assessed values of his properties. The Board reached this decision for the following reasons:
- a. The 2002 Real Property Assessment Manual defines “true tax value” as “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.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). Appraisers traditionally have used three methods to determine a property’s market value: the cost approach, the sales comparison approach and the income approach to value. *Id.* at 3, 13-15. In Indiana, assessing officials generally assess real property using a mass-appraisal version of the cost approach, as set forth in the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A.

- b. A property’s market value-in-use as determined using the Guidelines is presumed to be accurate. *See* MANUAL at 5; *Kooshtard Property, VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501,505 (Ind. Tax Ct. 2005); *P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 2006). A taxpayer may rebut that assumption with evidence that is consistent with the Manual’s definition of true tax value. MANUAL at 5. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice (USPAP) often will suffice. *See Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer sales information for the subject property or comparable properties and other information compiled according to generally accepted appraisal principles. MANUAL at 5.
- c. Regardless of the method used to rebut an assessment’s presumption of accuracy, a party must explain how its evidence relates to the subject property’s market value-in-use as of the relevant valuation date. *O’Donnell v. Department of Local Government Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2008, assessment date, the valuation date was January 1, 2007. 50 IAC 21-3-3.
- d. Here, the Petitioner argues that his assessed value should be lowered because the property is located in a floodplain on a steep ravine and therefore the land is unbuildable. *Smith testimony; Petitioner Exhibits 4A, 4B and 9*. Generally, land values in a given neighborhood are developed by collecting and analyzing comparable sales data for the neighborhood and surrounding areas. *See Talesnick v. State Board of Tax Commissioners*, 693 N.E.2d 657, 659 fn. 5 (Ind. Tax Ct. 1998). However, properties often possess peculiar attributes that do not allow them to be grouped with each of the surrounding properties for purposes of valuation. The term “influence factor” refers to a multiplier “that is applied to the value of land to account for characteristics of a particular parcel of land that are peculiar to that parcel.” GUIDELINES, glossary at 10. A Petitioner has the burden to produce “probative evidence that would support an application of a negative influence factor and quantification of that influence factor.” *See Talesnick v. State Board of Tax Commissioners*, 756 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001). Thus, while any use limitations caused by the steep ravine and being located in a floodplain may be relevant to the issue of whether a negative influence factor should apply here, the Petitioner failed to show how these conditions impact the

market value of the properties under appeal. *See Talesnick*, 756 N.E.2d at 1108. In fact, the Petitioner presented no evidence of the properties' market value-in-use. He merely alleged that the county assessor's office should increase the current negative 50% influence factor applied to his land to 80%. This falls far short of the Petitioner's burden to prove the county erred in assessing his properties.⁴

- e. In addition, the Petitioner argues that his land is comparable to neighboring properties and should therefore receive the same negative 80% influence factor as those properties. *Smith testimony*. However, this argument also fails to show an error in the properties' assessments. The Indiana Tax Court in *Westfield Golf Practice Center, LLC v. Washington Township Assessor*, 859 N.E.2d 396 (Ind. Tax Ct. 2007), held that it is not enough for a taxpayer to show that its property was assessed higher than other comparable properties. *Id.* Instead, the taxpayer must present probative evidence to show that the property's assessed value does not accurately reflect the property's market value-in-use. *Id.* *See also P/A Builders & Developers*, 842 N.E.2d at 899, 900 (The focus is not on the methodology used by the assessor, but instead on determining whether the assessed value is actually correct. Therefore, the taxpayer may not rebut the presumption merely by showing the assessor's technical failure to comply strictly with the Guidelines).
- f. Finally, to the extent that the Petitioner contends the Assessor erred by reducing the negative 80% influence factor formerly applied to his properties, the Petitioner is similarly incorrect. Each assessment and each tax year stand alone. *Fleet Supply, Inc. v. State Board of Tax Commissioners*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001), citing *Glass Wholesalers, Inc. v. State Board of Tax Commissioners*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991) (evidence as to a property's assessment in one tax year is not probative of its true tax value in a different tax year). Thus, the fact that the properties were once granted an 80% influence factor is not evidence that the properties should still be receiving one.
- g. The Petitioner failed to raise a prima facie case that his properties were over-assessed for the March 1, 2008, assessment year. Where the Petitioner fails to provide probative evidence that an assessed value should be changed, the Respondent's duty to support the assessment with substantial evidence is not triggered. *See Lacy Diversified Indus. v. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

⁴ Even if the Petitioner had shown that the influence factor was incorrectly applied to his properties, the Petitioner failed to show his properties' assessments did not accurately reflect the properties' market value. A Petitioner fails to sufficiently rebut the presumption that an assessment is correct by simply contesting the method the assessor used to compute the assessment. *Eckerling v. Wayne Township Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006).

Conclusion

16. The Petitioner failed to raise a prima facie case that his properties were over-valued for the March 1, 2008, assessment. The Board finds in favor of the Respondent

Final Determination

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review now determines that the assessed values of the Petitioner’s properties 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>.