

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

Petition #: 42-022-05-1-5-00006
Petitioners: Albert & Sue Wick
Respondent: Vincennes Township Assessor (Knox County)
Parcel #: 022-012-OT01-024-068
Assessment Year: 2005

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 Knox County Property Tax Assessment Board of Appeals (the PTABOA) by written document on or about May 1, 2005.
2. The Petitioners received notice of the decision of the PTABOA via a Form 115 Notification of Final Assessment Determination dated May 25, 2005.
3. The Petitioners filed an appeal to the Board by filing a Form 131 with the county assessor on June 20, 2005. The Petitioners elected to have this case heard in small claims.
4. The Board issued a notice of hearing to the parties dated March 30, 2006.
5. The Board held an administrative hearing on June 20, 2006, before the duly appointed Administrative Law Judge (the ALJ) Rick Barter.
6. Persons present and sworn in at hearing:
 - a. For Petitioner: Sue Wick, Petitioner
 - b. For Respondent: Rose Goodwin, Vincennes Township Assessor.

Facts

7. The subject property is a residential property with two single-family improvements located at 1016-18 Busseron Street, Vincennes, Vincennes Township, Knox County.

8. The ALJ did not conduct an on-site visit of the property.
9. The PTABOA determined the assessed value of the subject property to be \$9,400 for the land and \$39,100 for the improvements, for a total assessed value of \$48,500.
10. The Petitioners requested an assessment of \$3,200 for the land and \$32,300 for the improvements, for a total of \$35,500.

Issues

11. Summary of Petitioners' contentions in support of an error in the assessment:
 - a. The Petitioners argue that nearby properties that have sold or have been on the market for sale unsuccessfully in recent years demonstrate that the assessed value of the subject property is over-stated. *Wick testimony*. In support of this argument Petitioners submitted copies of photographs of five properties, four of them improved, with handwritten notations concerning location, assessed values, and sales and listing prices. *Petitioners Exhibits 2 - 6*.
 - b. The Petitioners further contend that the 2005 assessed value of the subject land is overstated in relation to its market-value-in-use. *Wick testimony*. According to the Petitioners, the property is in close proximity to a railroad track that carries as many as 70 trains a day. *Id.* The Petitioners argue that the land should have a negative influence factor applied as a result. *Id.* In support of this contention, the Petitioners submitted seven photographs of the subject property demonstrating the property's location approximately 100 feet from the railroad track. *Petitioners Exhibit 1*.
 - c. Finally, the Petitioners allege that the Respondent previously agreed to add a fifty-five percent negative influence factor to the assessed value of the land on the subject property after witnessing the heavy railroad traffic on the nearby track. *Wick testimony*. In support of this contention, Petitioners submitted a copy of property record card for the subject property printed December 11, 2003, and with the notation "worksheet" showing the assessed value of the land lowered from \$9,400 to \$4,200 resulting from the imposition of a negative fifty-five percent influence factor. *Petitioners Exhibit 9*.
12. The Respondent agrees that the value of the land on the subject property should be lowered using a negative influence factor based on its proximity to a heavily-used railroad track. *Goodwin testimony*.

Record

13. The official record for this matter is made up of the following:
 - a. The Petition,

b. The compact disk recording of the hearing labeled 42-022-05-1-5-00006-06-20-2006 Wick,

c. Exhibits:

Petitioners Exhibit 1 - Copies of seven photographs of the subject property and improvements and the nearby railroad track,

Petitioners Exhibit 2 – Copies of three photographs of 1017 Broadway and improvements,

Petitioners Exhibit 3 - Copies of two photographs of 861 Emison Street and its improvements,

Petitioners Exhibit 4 – Copies of three photographs of 1004 Busseron Street and its improvements,

Petitioners Exhibit 5 - Copy of a photograph of 1008 Busseron Street and improvements,

Petitioners Exhibit 6 – Copies of two photographs of vacant lots near 1112 Broadway Avenue,

Petitioners Exhibit 7 – Property record card for 1017 Broadway printed January 11, 2003

Petitioners Exhibit 8 – Property record card for subject property printed June 20, 2006,

Petitioners Exhibit 9 – Property record card worksheet for subject property printed December 11, 2003,

Respondent Exhibit – None submitted

Board Exhibit A - Form 131 petition,

Board Exhibit B - Notice of Hearing,

Board Exhibit C - 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 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).

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 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”).

- 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 a prima facie case for a reduction in value of the land. The Respondent, however, agreed that a negative influence factor should be applied to the land. The Board reached this decision for the following reasons:

Comparable Properties

- a. The Petitioners contend that the assessed value of the land is over-stated when compared to the assessment of other properties. *Wick testimony*. In support of this contention, the Petitioners presented the property record card and photographs of a neighboring parcel with a land assessment of \$7,500 and testimony regarding two additional properties. *Wick testimony*; *Petitioner Exhibits 2 and 7*.
- b. Indiana Code § 6-1.1-2-2 requires uniform and equal assessments. Thus to the extent that the Petitioner proves that its property is not assessed uniformly or equal to comparable properties, Petitioner's assessment should be equalized. However, “taxpayers are required to make a detailed factual showing at the administrative level.” *Home Federal Savings Bank v. Madison Twp. Assessor*, 817 N.E.2d 332 (Ind. Tax Ct. 2004). To meet this showing, “the taxpayer must not only present probative evidence in support of its argument, but it must also sufficiently explain that evidence.” *Id.*
- c. To introduce evidence of comparable properties, a taxpayer must explain *how* the properties are comparable. *See Blackbird Farms Apts. V. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002) (holding that the taxpayer did not present a prima facie case where it provided assessment information for allegedly comparable properties but failed to explain *how* the properties were comparable). Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the two properties. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. The proponent likewise must explain how any differences between the properties affect their relative market values-in-use. *Id.* *See also, Hoogenboom-Nofziger*, 715 N.E.2d at 1024 (holding that taxpayer failed to make prima facie case when he offered conclusory statements and photographs without further explanation); *Lacy Diversified Industries, Ltd. v. Dep't of Local Gov't Fin.*,

- 799 N.E.2d 1215, 1220 (Ind. Tax Ct. 2003) (holding that taxpayer failed to make prima facie case when he offered conclusory statements, property record cards, and photographs without further explanation).
- d. In the case at bar, the Petitioners have not met their burden. While the Petitioners identify three properties that are assessed lower than the subject property, the Petitioners fail to show how these properties are comparable to the subject property. Further, while the Petitioners identify certain differences between the subject property and the alleged comparables, they fail to show how those differences affect the market value. This falls far short of the burden the Petitioners face. The Petitioners have only made a “de minimis factual showing” and have failed to “sufficiently link the evidence to the uniform and equal argument” they raise. *See Home Federal Savings Bank v. Madison Twp. Assessor*, 817 N.E.2d 332 (Ind. Tax Ct. 2004).
 - e. The Petitioners similarly argue that sales in the area indicate the assessed value is excessive. *Wick testimony*. In support of this contention, the Petitioners submitted a listing in the area for \$54,500 and three sales that took place within the last three years. *Petitioner Exhibits 3-6*.
 - f. Real property in Indiana is assessed on the basis of its “true tax value.” *See* Ind. Code § 6-1.1-31-6(c). “True tax value” is defined as “[t]he 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) (the MANUAL). The market value-in-use of a property may be calculated through the use of several approaches, all of which have been used in the appraisal profession. *Id.*, at 3; *Long v. Wayne Township Assessor*, 821 N.E.2d 466, 469 (Ind. Tax Ct. 2005). One such approach used in the appraisal profession is known as the “sales comparison approach.” *Id.* The sales comparison approach “estimates the total value of the property directly by comparing it to similar or comparable properties that have sold in the market.” *Id.*
 - g. Regardless of the approach used to prove the market value-in-use of a property, Indiana’s assessment regulations provide that for the 2002 general reassessment, a property’s assessment must reflect its value as of January 1, 1999. *Long*, at 471; MANUAL at 4. Consequently, a party relying on a sale to establish the market value-in-use of a property must provide some explanation as to how the sales price demonstrates or is relevant to the property’s value as of January 1, 1999. *Id.*
 - h. Here, the Petitioners failed to show how the listing or sale properties compare to the subject property. Further, even if the Petitioners had properly presented sales “comparables,” the Petitioners failed to relate the sales prices from 2003-2006 to the January 1, 1999, valuation date. Thus, the Petitioners failed to raise a prima facie case that the subject property is over-valued on the basis of the sale or assessment of neighboring properties.

Influence Factor

- i. The Petitioners also contend that the heavy railroad traffic near the subject property negatively impacts the market-value-in-use and the land value should be reduced. *Wick testimony.*
- j. Land values in a given neighborhood are generally determined through the application of a Land Order that was developed by collecting and analyzing comparable sales data for the neighborhood and surrounding areas. *See Talesnick v. State Bd. of Tax Comm'rs*, 693 N.E.2d 657, 659 n. 5 (Ind. Tax Ct. 1998). However, properties often possess peculiar attributes that do not allow them to be lumped 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." REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002, VERSION A, glossary at 10 (incorporated by reference at 50 IAC 2.3-1-2). The Petitioner has the burden to produce "probative evidence that would support an application of a negative influence factor and a quantification of that influence factor." *See Talesnick v. State Bd. of Tax Comm'rs.*, 756 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001).
- k. While the rail traffic near the property may be relevant to the issue of whether a negative influence factor should apply here, the Petitioner failed to show how this condition would impact the market value of the subject property or to show the actual market value of the property. *See Talesnick*, 756 N.E.2d at 1108. Thus, the Petitioner failed to show that the 2005 assessed value of the land at \$9,400 is in error.
- l. Where the Petitioner has not supported his 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). Here the Respondent had no duty to support the current assessed value. Nonetheless, the Respondent conceded that the subject property was negatively impacted by the proximity of the rail line and agreed that a fifty-five percent influence factor should be applied to the land. *Goodwin testimony.* We commend the Respondent's candor and find that the subject property's land value should be \$4,200. The assessed value of the improvements remains unchanged.

Conclusion

16. The Petitioner failed to provide sufficient evidence to establish a prima facie case. The Respondent, however, agreed that the subject property's assessment was over-valued. The Board, therefore, finds that the land assessment should be changed.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed.

ISSUED: _____

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. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>, The Indiana Trial Rules are available on the Internet at http://www.in.gov/judiciary/rules/trial_proc/index.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.