

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

Petition: 84-007-06-1-5-00055
Petitioners: Wesley & Barbara Richardson
Respondent: Vigo County Assessor
Parcel: 840702476002000007
Assessment Year: 2006

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

Procedural History

1. The Petitioners initiated an assessment appeal with the Vigo County Property Tax Assessment Board of Appeals (PTABOA) by filing Form 130 dated April 14, 2007.
2. The PTABOA mailed notice of its determination on November 20, 2007.
3. The Petitioners appealed to the Board by filing a Form 131 on December 5, 2007, and elected small claims procedures.
4. On January 8, 2008, the Board issued a notice of hearing.
5. Administrative Law Judge Paul Stultz held an administrative hearing in Terre Haute on February 11, 2008.
6. The Petitioners, Wesley and Barbara Richardson, were sworn as witnesses. Edward Bisch represented the Respondent and was sworn as a witness.

Facts

7. The subject property is a residential dwelling and 3.0150 acres of land located at 10037 East Flesher Avenue in Terre Haute.
8. The Administrative Law Judge did not conduct an inspection of the property.
9. The PTABOA determined the assessed value is \$42,400 for land and \$172,300 for improvements (total \$214,700).
10. The Petitioners requested an assessed value of \$26,456 for land. They did not request a specific improvement assessed value or a specific total assessed value.

Contentions

11. Summary of Petitioners' contentions:

- a. The subject property is assigned to the wrong neighborhood. Prior to 2006, the subject property was in Neighborhood 250. In 2006, the subject property was changed to Neighborhood 105504 while the other properties that had been in Neighborhood 250 were changed to Neighborhood 105501. The neighborhood reassignment caused the subject property's base rate to increase from \$17,000 in 2005 to \$35,000 in 2006. The subject property should be in neighborhood 105501 with a base rate of \$22,400. *Richardson testimony; Pet'r Ex. 1 at 3, 6.*
- b. The subject property does not meet the requirements for R-1 zoning and cannot be classified as such. The subject property does not have access to either public water or sanitary sewer, which is a requirement for R-1 zoning. The subject property is more than 300 feet from water and sewer facilities and 3,106 feet from the nearest sanitary manhole. With the exception of the subject property, the properties in Neighborhood 105504 are all part of the Limberlost Subdivision. They have public water and sanitary sewer. The zoning for Limberlost is R-1. The subject property should be in the same neighborhood as the other properties formerly assigned to Neighborhood 250, now identified as Neighborhood 105501. They have R-S zoning, which indicates that the area does not have public water or sanitary sewers. *Richardson testimony; Pet'r Ex. 1 at 4, 5; Pet'r Ex. 2.*
- c. Fifteen comparable 1 acre homesites located in Neighborhood 105501 are assessed at \$22,400. The only property in Neighborhood 105501 that sold during the relevant time period has a land assessed value of \$22,400. The subject property's use-value is the same as the 15 comparable properties. *Richardson testimony; Pet'r Ex. 1 at 3, 13, 15; Pet'r Ex. 15.*
- d. The assessed land value should be adjusted using a negative productivity factor or negative influence factor based on the 40 foot utility easement running across the lot between the house and the detached garage. The easement also runs through the wooded ravine area at the rear of the subject property. The easement restricts the use of 5,360 square feet, or 12%, of the 1 acre homesite. No permanent structures may be built in the easement. Due to the location of the easement, the land use limitations would prohibit constructing an addition on the south side of the house, extending the deck, or constructing a swimming pool. Additionally, the utility company can, and has, cut down trees, shrubs and cleared any vegetation obstructing the easement. *Richardson testimony; Pet'r Ex. 1 at 9, 10, 11, 12; Pet'r Ex. 3 at 13, 14.*
- e. Six of the comparable properties in Neighborhood 105501 have excess acreage. The excess acreage located at 9984 East Flesher, 9961 East Flesher, 10921 East Flesher, and 10950 East Flesher has flat, buildable, and tillable areas. It is valued

at \$3,640 an acre with no negative influence factor or productivity factor. The excess acreage located at 10625 East Flesher is valued using the agricultural base rate of \$880 an acre with a 60% negative influence factor applied to the non-tillable cropland. The excess acreage at 9999 East Flesher is valued using the agricultural base rate of \$880 with productivity factors of 0.55 and 0.77 as well as a negative 80% influence factor for woodland. In addition, it has a productivity factor of 1.02 and a negative 60% influence factor for the non-tillable land. *Richardson testimony; Pet'r Ex. 1 at 16, 17, 18, 19, 20, 21, 22.*

- f. The excess 2.015 acres of the subject property should be valued at \$3,640 an acre with a productivity factor of 55% and a negative influence factor of 80% for woodland based on the use-value to the owner and the comparable properties. The excess acreage is the wooded ravine supporting trees capable of producing timber or other wood products and has more than 50% canopy. The excess acreage is not buildable or tillable. The excess acreage meets the requirements for agricultural woodland. *Richardson testimony; Pet'r Ex. 1 at 24, 25, 26, 27, 28, 29.*
 - g. The township assessor's recommendation to the PTABOA included changing the grade factor from C+2 to C. The PTABOA did not follow the township assessor's recommendation. The grade factor should be changed to C. *Richardson testimony.*
12. Summary of Respondent's contentions in support of the assessment:
- a. The assessment follows the Indiana Assessment Guideline and the Vigo County Land Order. The land value is based on value-in-use. The Petitioners use the land for residential purposes and not for any agricultural purposes. *Bisch testimony; Resp't Ex. 1.*
 - b. The Vigo County PTABOA remanded the matter to the township assessor with specific instructions for review based on the Petitioners' claims. The remand notice did not direct the township assessor to review the grade factor. The township assessor lacked the authority to recommend a grade change. *Bisch testimony; Resp't Ex. 1.*

Record

13. The official record for this matter is made up of the following:
- a. The Petition,
 - b. A digital recording of the hearing,
 - c. Petitioner Exhibit 1: A copy of the Petitioners' presentation to the Board,
Petitioner Exhibit 2: Zone map and parcel comparison information,

Petitioner Exhibit 3: A copy of the Petitioners' presentation to the PTABOA,
 Petitioner Exhibit 4: 2005 and 2006 property assessment information for the subject property at 10037 East Flesher Avenue and properties located at 9961 East Flesher Avenue, 9984 East Flesher Avenue, 9999 East Flesher Avenue, 10350 East Flesher Avenue, 10950 East Flesher Avenue, 10625 East Flesher Avenue, 10765 East Flesher Avenue, 10921 East Flesher Avenue, 3379 Terri Lynn Street, 3474 Terri Lynn Street, 3595 Terri Lynn Street, and 3720 Terri Lynn Street,
 Petitioner Exhibit 5: Packet of additional information (10 pages) presented before the PTABOA,
 Petitioner Exhibit 6: Two maps showing the proximity of the public sanitary sewer system to the subject property,
 Petitioner Exhibit 7: Form 130 with attachments,
 Petitioner Exhibit 8: The PTABOA's remand notice,
 Petitioner Exhibit 9: Form 115,
 Petitioner Exhibit 10: Form 131,
 Petitioner Exhibit 11: Date stamped Form 131 with attachments,
 Petitioner Exhibit 12: Notice of hearing,
 Petitioner Exhibit 13: Form 11 Notice of Assessment for the subject property for 2002,
 Petitioner Exhibit 14: Form 11 Notice of Assessment for the subject property for 2006,
 Petitioner Exhibit 15: Trending report and related information for Neighborhood #105101,¹
 Petitioner Exhibit 16: A map showing the lots located in Limberlost subdivision with a list of addresses and property owners as well as assessment and tax information for the property located at 10141 East Limberlost Court,
 Petitioner Exhibit 17: Department of Local Government Finance memo about legislative changes to the appeal process dated July 2007,
 Petitioner Exhibit 18: Statement of contentions about prior procedural errors,
 Respondent Exhibit 1: Response to Petitioners' issues,
 Respondent Exhibit 2: Subject property record card,
 Respondent Exhibit 3: The PTABOA's Remand Notice,
 Respondent Exhibit 4: Letter of authorization for representation,
 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.

¹ The Respondent objected to Petitioner Exhibit 15, arguing that it lacked relevance. The objection is denied. Exhibit 15 has some relevance to the Petitioners' claim that the subject property was assigned to the wrong neighborhood in determining the 2006 assessment. The weight or probative value of that point in regard to determining the market value-in-use of the subject property, however, is a matter that the Board's analysis will address separately.

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, a party 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 did not provide sufficient evidence to support their contentions. This conclusion was arrived at because:
 - a. Real property is assessed on the basis of 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 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 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 market value-in-use is the cost approach. *Id.* 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 practices. MANUAL at 5.
 - b. Taxpayers do not rebut the presumption that an assessment is accurate by contesting methodology according to the Guidelines. *See Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). Taxpayers who focus

strictly on methodology and offer no probative evidence to establish the actual market value-in-use of their property fail to make a case. *Id.* But that is exactly what the Petitioners did — none of the evidence and arguments they offered about neighborhood, productivity factor, negative influence factor, or grade prove the actual market value-in-use of the subject property. Even if the Petitioners were correct about some or all of those claims, they would not establish that the current assessment must be changed because an assessing official’s incorrect application of the cost approach does not necessarily invalidate the assessment as long as it is a reasonable measure of the property’s market value-in-use. *See P/A Builders & Developers, LLC v. Jennings Co. Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006); *O’Donnell v. Dep’t of Local Gov’t Fin.*, 854 N.E.2d 90, 94-95 (Ind. Tax Ct. 2006).

- c. Along with their claim that the subject property should be considered as part of Neighborhood 105501, the Petitioners tried to prove that comparable 1 acre homesites in that neighborhood were assessed at only \$22,400. While the Petitioners established a few points of comparison between their land and the purported comparables (mainly not being in Limberlost Subdivision and the lack of water and sanitary sewer access), the facts and analysis they presented are not enough to support any conclusion about the relative market value-in-use of the properties. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470-471 (Ind. Tax Ct. 2005) (stating that conclusory statements another property is “similar” or “comparable” are not probative evidence, that taxpayers must provide specific reasons why a property is comparable, that taxpayers are responsible for explaining the characteristics of their own property as well as the purportedly comparable properties, and that taxpayers must account for how any differences affect the relevant market value-in-use of the properties). Similarly, although the Petitioners presented evidence that flat, buildable, tillable areas of excess acreage in Neighborhood 105501 were assessed at \$3,640 per acre and that other nontillable excess acreage areas were assessed for much less, they failed to provide sufficient facts and analysis to support any conclusion that the actual market value-in-use of their property differs from the current assessment. *Id.*
16. When a taxpayer fails to provide probative evidence supporting its 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); *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

Conclusion

17. The Petitioners failed to make a prima facie case. The Board finds in favor of 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: _____

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>