

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

Petition #: 76-011-06-1-5-00079
Petitioners: George C. Jr. & Ann Lenz
Respondent: Steuben County Assessor
Parcel #: 760604220208000011
Assessment Year: 2006

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

Procedural History

1. On September 5, 2007, George C. Lenz, Jr. and Ann Lenz appealed their property’s assessment to the Steuben County Property Tax Assessment Board of Appeals (“PTABOA”). The PTABOA issued its determination on December 31, 2008.
2. The Lenzes timely filed a Form 131 petition with the Board. They elected to proceed under the Board’s small claims rules.
3. On August 4, 2009, the Board held an administrative hearing through its designated Administrative Law Judge, Jennifer Bippus (“ALJ”).
4. People present and sworn in at hearing:
 - a) For the Lenzes: George C. Lenz, Jr., taxpayer
Ann Lenz, taxpayer
 - b) For the Assessor: Jennifer Becker, Indiana Assessment Service

Facts

5. The subject property contains two homes and is located at 640 Lane 440 Lake James, Angola, Indiana.
6. Neither the Board nor the ALJ inspected the property.

7. The PTABOA valued the subject property as follows:
- | | | |
|-----------------|------------------------|------------------|
| Land: \$359,300 | Improvements: \$93,600 | Total: \$452,900 |
|-----------------|------------------------|------------------|
8. The Lenzes requested the following values:
- | | | |
|-----------------|------------------------|------------------|
| Land: \$150,400 | Improvements: \$69,000 | Total: \$219,400 |
|-----------------|------------------------|------------------|

Contentions

9. Summary of the Lenzes' contentions:
- The Lenzes contend that the subject property was assessed disproportionately and unfairly when compared to other properties around Lake James. The subject land was assessed using a rate of \$6,900 per front foot. That is higher than the rate used to assess comparable properties on Lake James. And the lake bottom in front of the subject property has between six and eight inches of muck. *G. Lenz testimony.*
 - Also, a 10-foot-wide strip of the subject land previously had been a public way. The Steuben County Board of Commissioners vacated that public way in conjunction with the Lenzes and a property owner on the other side of the public way granting an easement to the owner of a third property—Lot 39. *G. Lenz testimony; Pet'rs Ex. 5.* That easement grants the owners of Lot 39 ingress and egress to the lake, riparian rights, and the right to put a pier and platform on the lake. *Id.* While the Lenzes can still use the strip, they cannot interfere with Lot 39's rights to ingress and egress or use the portion of the waterfront that the easement burdens.
 - The Lenzes do not believe that they should have to pay taxes on the burdened strip, which is assessed at \$64,170; the owners of Lot 39 should pay those taxes. Because of the lake access granted by the easement, Lot 39 sold for \$90,000 in 2002, which is less than what it was assessed for in 2006. *Lenz testimony.*
 - Thus, in light of the disparity in base rates, the condition of the lake bottom in front of the subject property, and the Lenzes' reduced property rights, the subject land should be valued at \$3,200 per front foot—the same as in earlier assessment years. *Lenz argument.*
 - The Lenzes also contested the value assigned to the two houses on the subject property. Mr. Lenz compared the assessments of those houses to the assessments of other houses on Lake James and concluded that the subject houses were not assessed fairly. *G. Lenz testimony; Pet'rs Exs. 5 & 8.* Houses on adjacent properties were assessed for values ranging from \$11.20 to \$27.60 per square foot, with a weighted average of \$21.95. *Id.* By contrast, the Lenzes' houses were assessed at \$36.49 per square foot. *Id.* Mr. Lenz requested an assessment of \$69,000 for the two houses. *G. Lenz argument.*

f) Finally, Mr. Lenz claimed that the larger house on the subject property was assessed as having two fireplaces, when it actually has only one. And that fireplace is not even usable. *G. Lenz testimony.*

10. Summary of the Assessor's contentions:

- a) The Lenzes did not offer sufficient market evidence to show that the subject property's assessment was wrong. *Becker testimony.*
- b) Ms. Becker, the Assessor's representative, offered data for five property sales that were used to set 2006 assessments. She extracted the improvement value from each sale to arrive at a land value. Based on those allocated land values, the sales translated to base rates ranging from \$6,019 to \$8,247 per front foot, with a median rate of \$6,705. The subject property was assessed using adjusted rates of \$6,279 and \$6,417 per front foot. Those rates reflect the market value of land in the area. *Becker testimony; Resp't Ex. 6.*
- c) Ms. Becker used the same five sales to analyze whether the larger house on the subject property was correctly assessed. She disregarded the smaller house, which she likened to a storage building or detached garage. From those sales, Ms. Becker determined that the house was the most comparable to the Lenzes' house. There was a difference of only \$2,100 between the Lenzes' house and the house that was the most comparable to it. Ms. Becker attributed that difference to the Lenzes' house having both an extra $\frac{3}{4}$ story and 400 more square feet than the comparable house. *Becker testimony; Resp't Exs. 5-7*
- d) Ms. Becker's sales analysis also showed that houses and other improvements did not significantly contribute to property values. Because of the desirability of being on the water, the bulk of each property's value was in its land. The value assigned to the Lenzes' houses made up only 17% of the subject property's total assessment. That is in line with the ratios that Ms. Becker found in her sales analysis, which ranged from 11% to 19%. *Becker testimony.*

Record

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

- a) The Form 131 petition,
- b) A digital recording of the hearing,
- c) Exhibits:

Petitioners' Exhibit 1: Copy of Form 131 petition,

Petitioners' Exhibit 2: Copy of Form 115,

Petitioners' Exhibit 3: Copy of Notice of Hearing, Form 114, from the

PTABOA,

- Petitioners' Exhibit 4: Copy of Form 130 petition,
- Petitioners' Exhibit 5: Copy of attachments to Form 130 petition,
- Petitioners' Exhibit 6: Photograph of dock belonging to 635 Lane 440 Lake James,
- Petitioners' Exhibit 7: Copy of August 28, 2007, letter from George Lenz C. Lenz, Jr. to Larry May,
- Petitioners' Exhibit 8: "Square Footage Dollar Comparisons."

- Respondent's Exhibit 1: Respondent's exhibit coversheet,
- Respondent's Exhibit 2: Power of Attorney,
- Respondent's Exhibit 3: Certification that Power of Attorney is a true and correct copy of original,
- Respondent's Exhibit 4: Subject 2006 property record card,
- Respondent's Exhibit 5: Aerial map showing the subject property,
- Respondent's Exhibit 6: Spreadsheet of sales in the immediate area,
- Respondent's Exhibit 7: Support documentation for Respondent's Exhibit 6.

- Board Exhibit A: Copy of Form 131 and attachments
- Board Exhibit B: Notice of Hearing
- Board Exhibit C: Notice from the Assessor authorizing Ms. Hisle, the Center Township Deputy Assessor, to represent him at the hearing,
- Board Exhibit D: Hearing sign-in sheet

- d) These Findings and Conclusions.

Analysis

12. The following cases outline the parties' respective burden of proof:

- a) A petitioner seeking review of an assessing official's determination 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 petitioner must explain how each piece of evidence is relevant to its requested assessment. *See Indianapolis Racquet Club, Inc. v. Wash. Twp. Assessor*, 802 N.E.2d 276 (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 offer evidence to impeach or rebut the petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.

13. The Lenzes did not make a prima facie case to rebut the presumption that the subject property was accurately assessed. The Board reaches this conclusion for the following reasons:
- a) Indiana assesses real property based on its “true tax value,” which the 2002 Real Property Assessment Manual defines 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).
 - b) A property’s market value-in-use, as determined using the Real Property Guidelines for 2002 – Version A, 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) *reh’g den. sub nom. PA Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax 2006). But a taxpayer may rebut that presumption with evidence that is consistent with the Manual’s definition of true tax value. *Id.* A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice often will suffice. *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n. 1. A taxpayer may also offer actual construction costs, sales information for the subject or comparable properties, and other information compiled according to generally accepted appraisal principles. MANUAL at 5.
 - c) The Lenzes did not even attempt to prove the subject property’s market value-in-use. Instead, they claimed that the subject property was not assessed fairly in comparison to other properties around Lake James. That approach is problematic given Indiana’s new property tax system, which focuses on whether a property’s assessment actually reflects the external benchmark of market value-in-use. See *Westfield Golf Practice Practice Center v. Washington Township Assessor*, 859 N.E.2d 396, 399 (Ind. Tax Ct. 2007) (finding that taxpayer failed to make a lack-of-uniformity-and-equality claim where it showed neither its property’s market value-in-use nor the market value-in-use for any comparable property). Regardless, the Lenzes offered little evidence to show how the subject property compared to the other properties that they identified. At most, the Lenzes computed the per-square-foot assessments for each house and argued that their two houses were assessed at a higher rate than the others. Without a detailed comparison of features, however, those per-square foot values tell the Board little about the uniformity or equality of assessments in the area.
 - d) The Lenzes also argued that they should not have to pay taxes on a 10-foot-wide strip of land that apparently had been part of a public alley, but which the Steuben County Board of Commissioners later vacated. The Lenzes hold title to that strip, subject to an easement giving the owner of Lot 39 the right of ingress and egress across the vacated alley and riparian rights, including the right to place a pier at the end of the alley and to continue using a platform at the water’s edge. *Pet’rs*

Ex. 5. While the easement may restrict the Lenzes' ability to interfere with Lot 39's lake access, the Lenzes own legal title to the strip and are free to use it in other ways. The Board therefore cannot simply deduct the portion of the assessment attributable to the burdened strip. Instead, the Lenzes needed to offer probative evidence to show the subject property's market value-in-use, taking into account the limits posed by the easement. The Lenzes failed to do that.

- e) Finally, the Lenzes claimed that the Assessor used slightly incorrect measurement to assess the subject houses and that the bigger house was incorrectly assessed as having two fireplaces. Even if the Lenzes were correct, those claims would not suffice to make a prima facie case. The Lenzes' claims go to whether the subject property was assessed correctly under the Guidelines. As explained above, however, Indiana's new assessment system strives to ascertain a property's market value-in-use. Thus, it is no longer enough to show that an assessor erred in applying the Guidelines. A taxpayer instead must show that the error resulted in an assessment that did 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, 95 (Ind. Tax Ct. 2006); *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 764, 768 (Ind. Tax Ct. 2006). And strictly applying the Guidelines does not suffice; a taxpayer must offer independent market value-in-use evidence. *See id.*
- f) In any event, the Lenzes did not offer probative evidence to show that the Assessor erred in applying the Guidelines. Although Mr. Lenz claimed that the two houses were assessed using incorrect dimensions, he did not offer any evidence to show what the supposedly correct dimensions nor did he explain how he arrived at his measurements. And, contrary to what Mr. Lenz said, the larger house does not appear to have been assessed for two fireplaces. The subject property's record card lists a value of \$2,400 for fireplaces. *Resp't Ex. 4.* That is the amount that the Guidelines give for the first opening of a masonry fireplace. GUIDELINES, App. C at 7. Additional openings are assessed at \$1,000 each. *Id.*

Conclusion

- 14. Because the Lenzes offered no probative market-value-in-use evidence to rebut the presumption that the subject property's assessment was accurate, they failed to make a prima facie case. The Board therefore finds for the Assessor.

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 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>