

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

Petition No.: 76-007-06-1-5-00034
Petitioners: Howard V. & Sharon L. Meyer
Respondent: Steuben County
Parcel No.: 76-04-35-410-501.000-007
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. On August 27, 2007, Howard V. and Sharon L. Meyer appealed the subject property’s assessment to the Steuben County Property Tax Assessment Board of Appeals (“PTABOA”). On December 31, 2008, the PTABOA issued its decision lowering the assessment of the barn on the subject property but making no change to the assessment of the land.
2. The Meyers then timely filed a Form 131 petition with the Board. The Meyers elected to have their appeal heard according to the Board’s small claims procedures.
3. On April 1, 2010, the Board held an administrative hearing through its designated Administrative Law Judge, Jennifer Bippus (“ALJ”).
4. Persons present and sworn in at hearing:
 - a) Howard V. Meyer, Owner
 - b) Marcia Seevers, Deputy County Assessor
Edward J. Bisch, Jr., Technical Advisor

Facts

5. The subject property includes a barn on a platted lot located at LN 250A, Angola, Indiana.
6. Neither the Board nor the ALJ inspected the subject property.

7. The PTABOA valued the subject property as follows:
- Land: \$74,700 Improvements: \$10,800 Total: \$85,500.
8. At the hearing, the Meyers contested only the land's assessment,¹ which Mr. Meyer claimed should be \$20,750. That would leave a total assessment of \$31,550.

Parties Contentions

9. Summary of the Meyers' contentions:
- a) The subject lot is located in the third row of lots from Orland Road on Lake Gage. The lot is on a gravel road that the county does not maintain; Mr. Meyer and another property owner pay to keep the road open. *Meyer testimony*. Mr. Meyer bought the lot to build a barn for storing boats. The lot originally was on a hill that rose "30 feet to 100 feet in the depth of the lot." *Id.* The lot therefore had to be "dug out" before the barn could be built. *Id.* But the subject lot is being assessed for as much as level lots situated along paved roads. *Id.*; *Pet'rs Ex. 4.*
 - b) Mr. Meyer compared the subject lot to two other lots.² *Meyer testimony*; *Pet'rs Ex. 5-6, 8-9.* The first lot, owned by Sara McCormack, has 133' of frontage valued at only \$166 per-front-foot. The second lot, owned by Lenore Mahoney, is 40' wide and is valued at \$256 per-front-foot. Both are level lots that are closer to the lake than the subject property and are on paved roads maintained by the county. Yet the subject lot is valued \$900 per-front-foot. *Id.*
 - c) The Assessor told him that the subject lot's \$900 per-front-foot value was based on the sale of the property in front of it. But that property was level. Hilly lots, like the subject lot, are cheaper. *Meyer testimony.*
 - d) The Assessor identified the subject lot as a front lot even though it does not sit on the lake. By contrast, the Assessor identified the McCormack lot, which sits closer to the lake, as a rear lot. According to Mr. Meyer, there were many assessment errors in the neighborhood and the assessor corrected most of them, except for the subject property's assessment. The subject property's taxes almost quadrupled between the 2005 and 2006 assessment years. *Meyer testimony*; *Pet'rs Exs. 6 & 8.*
 - e) Also, when Mr. Meyers bought the subject lot, people claimed that he was supposed to have an easement for accessing the lake. But the county ruled that

¹ Mr. Meyer signed a Withdrawal of Issue Agreement withdrawing the Meyers' claims about the improvement's value. *See Board Exhibit D.*

² Mr. Meyer initially identified three properties for his comparison, but he chose not to rely on the property owned by William and Peggy Blauvelt after determining that it was located on a different lake. *See Meyer testimony*; *Pet'rs Exs. 5,7.*

there was to be no more “funneling” into the lakes. The subject property therefore is being overtaxed in light of its lack of lake access. *Meyers testimony*.³

- f) Finally, although Mr. Meyer recently received an offer of \$70,000 for the subject property, he has no plans to sell it. *Meyer testimony*.
10. Summary of the Assessor’s contentions:
- a) The Meyers failed to show that the subject property’s assessment does not fairly represent its market value. *Bisch testimony*. Mr. Meyer’s testimony that he had received an offer of \$70,000 is irrelevant. The issue on appeal is the subject property’s value as of January 1, 2005. *Bisch argument*.
 - b) Also, the purportedly comparable lots that Mr. Meyer identified are located across the lake from the subject property and are not otherwise similar to it. First, the McCormack property is one lot with a road running through it. The Assessor priced the lot in two sections—front and rear. Because the lot has lake frontage, the Assessor used a base rate of \$4,150 per-front-foot. After applying a depth factor to the rear portion, however, that portion’s adjusted rate was only \$166. By contrast, the subject lot is a front lot and was assessed using a base rate \$900. *Bisch testimony; Resp’t Exs. 1, 5, 10*.
 - c) Like the subject property, the second purportedly comparable property that Mr. Meyer pointed to is an off-water front lot. But it is one of three parcels owned by Lenore Mahoney that make up one property. Mahoney’s other two parcels have lake frontage. *Bisch testimony; Resp’t Exs. 1, 6, 11*.
 - d) Mr. Meyer used the term “back lot.” While property owners in Steuben County commonly refer to off-water lots as “back lots” and lots on the lake as “waterfront lots,” there is no such thing as a “back lot” under Indiana’s assessment guidelines. Although the subject property does not have lake frontage, it is a front lot. *Bisch testimony; SeEVERS testimony; Resp’t Ex. 1*.
 - e) To show that the subject property was assessed at or near its market value, the Assessor pointed to the sale of a property across the street from the subject property. That property sold for \$120,000 on August 24, 2004. Subtracting the improvement value of \$40,700 from the sale price leaves an abstracted land value of \$79,300, or \$1,166 per front foot. *Bisch testimony; Resp’t Exs. 1, 13-15*.

³ Before starting her case-in-chief, the Assessor objected to Mr. Meyers’ testimony about easements on grounds that it was not part of the Meyers’ “initial issues.” *Bisch objection*. The ALJ took the objection under advisement. The Board overrules the Assessor’s objection. First, the Assessor did not object contemporaneously with Mr. Meyers’ testimony. Second, Mr. Meyers’ testimony about easements related to the subject property’s lack of lake access. And the Meyers’ Form 131 petition expressly incorporates the grounds set forth in their Form 130 petition, including their claim that lots in the subject property’s addition do not have lake access. *See Board Ex. A*.

Record

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

- a) The Form 131 petition,
- b) The digital recording of the hearing,
- c) Petitioners' Exhibit 1: Notice of Hearing,
Petitioners' Exhibit 2: Form 115 (page 1),
Petitioners' Exhibit 3: Form 131 Petition (pages 1 & 2)⁴,
Petitioners' Exhibit 4: Brief Summary of Incorrect Assessment,
Petitioners' Exhibit 5: Map of lake,
Petitioners' Exhibit 6: Subject property record card,
Petitioners' Exhibit 7: Property record card for property owned by William and Peggy Blauvelt⁵,
Petitioners' Exhibit 8: Property record card for McCormack property,
Petitioners' Exhibit 9: Property record card for Mahoney property,

Respondent's Exhibit 1: Summary of Respondent Exhibits and Testimony,
Respondent's Exhibit 2: Notice of Appearance of Consultant on Behalf of Assessor,
Respondent's Exhibit 3: Power of Attorney,
Respondent's Exhibit 4: Subject property record card,
Respondent's Exhibit 5: McCormack property record card,
Respondent's Exhibit 6: Mahoney property record card,
Respondent's Exhibit 7: Blauvelt property record card,
Respondent's Exhibit 8: Plat map,
Respondent's Exhibit 8A: Large plat map with arrows showing the location of the subject property and the Blauvelt, McCormack, and Mahoney properties,

Respondent's Exhibit 9: Plat map with the subject property,
Respondent's Exhibit 10: Plat map with the McCormack property,
Respondent's Exhibit 11: Plat map with the Mahoney property,
Respondent's Exhibit 12: Plat map with the Blauvelt property,
Respondent's Exhibit 13: Property record card for property owned by Donald and Stacie Wachowiak,
Respondent's Exhibit 14: Sheets and Wachowiak Sales Disclosure Form,
Respondent's Exhibit 15: Plat map with Wachowiak property,
Respondent's Exhibit 16: Form 115,

⁴The Assessor noted that the Form 131 petition offered as Petitioners' Exhibit 3 has the word "also" at the bottom of page 2, Section III. The Form 131 petition filed with the Assessor does not have the word "also."

⁵Mr. Meyer withdrew this exhibit at the hearing after realizing that the property is located on Lake Syl-Van rather than Lake Gage. *See Resp't Ex. 8A.*

Board Exhibit A: Form 131 petition,
Board Exhibit B: Hearing notice
Board Exhibit C: Hearing sign-in sheet,
Board Exhibit D: Withdrawal of Issue Agreement,

d) These Findings and Conclusions.

Analysis

Burden of Proof

12. A petitioner seeking review of an assessing official's determination must make a prima facie case proving both that the current assessment is incorrect and what the correct assessment should 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).
13. In making its case, the petitioner must explain how each piece of evidence relates to its 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”).
14. If the petitioner makes a prima facie case, the burden shifts to the respondent to rebut or impeach 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.

Discussion

15. The Meyers failed to make a prima facie case for reducing the subject property’s land assessment. 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) Assessors typically use a mass-appraisal version of the cost approach to assess individual properties. The Real Property Assessment Guidelines for 2002-Version A detail that approach. But those Guidelines are merely a starting point for determining value. *Westfield Golf Practice Center, LLC v. Washington Twp. Assessor*, 859 N.E.2d 396, 399 (Ind. Tax Ct. 2007). Thus, while a property’s market value-in-use, as ascertained by applying those Guidelines, is presumed to be accurate, that presumption may be rebutted using relevant evidence that is consistent with the Manual’s definition of true tax value. *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 676 (Ind. Tax Ct. 2006); *see also* MANUAL at 5. That evidence includes market-value-in-use appraisals, actual construction costs,

sales information regarding the subject property or comparable properties, and other evidence compiled using generally accepted appraisal principles. *Id.*

- c) The Meyers did not offer any of the types of evidence contemplated by the Manual. While Mr. Meyer testified that he had received an offer of \$70,000 for the property, he did not sell it. And the offer was several years after January 1, 2005—the valuation date for 2006 assessments. 50 IAC 21-3-3 (2009)(Repealed by Department of Local Government Finance; filed April 8, 2010, 1:45 p.m.: 20100505-IR-050090502FRA). Yet Mr. Meyer did not explain how the offer related to the subject property's value as of that earlier valuation date. The offer therefore lacked probative value. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005)(finding that a 2003 appraisal lacked probative value where taxpayers failed to explain how the appraisal demonstrated or was relevant to their property's value as of the valuation date for 2002 assessments). In any event, on cross-examination, Mr. Meyer agreed that the \$70,000 offer was irrelevant to his case. *Meyer testimony*.
- d) Mr. Meyer did point to land assessments for two other properties in the area. It is unclear, however, whether he offered that evidence to show that the subject property was assessed for more than its market value-in-use or to show a lack of uniformity and equality in assessments. In either case, the evidence lacked probative value. At a minimum, Mr. Meyer needed to show that the properties were comparable to the subject property and explain how any differences affected their relative market values-in-use. *See Long* 821 N.E.2d at 470. Mr. Meyer, however, did little to show how the properties compare, except to say (1) that all are located off the water, (2) that the other two properties front paved roads maintained by the county while the subject property sits along a gravel road, and (3) that the other two properties are level while the subject property is hilly.
- e) While that might be a start, it is not enough. Significantly, Mr. Meyer ignored the fact that the other two properties are located across the lake from the subject property in different assessment neighborhoods. The subject property is in neighborhood 995061, while the McCormack and Mahoney properties are in neighborhoods 995049 and 955010, respectively. *Pet'rs Exs. 6, 8-9*. Without more, there is no reason to believe that those other two properties are influenced by the same location-based market factors as the subject property, or that the Assessor generally used the same base rates in all three neighborhoods. Similarly, while one of the properties that Mr. Meyer pointed to was divided into front and rear portions for assessment purposes, Mr. Meyer pointed only to the adjusted base rate used to assess the rear portion. But that adjusted rate was largely a function of the Assessor having classified the portion in question as a rear lot. *See generally*, GUIDELINES, ch. 2 at 51-52 (directing assessors to multiply a property's base rate by its depth factor to derive the adjusted rate used to assesses platted lots and explaining how to calculate depth factors). The subject property, by contrast, fronts a gravel road and was assessed as a front lot.

- f) Finally, although Mr. Meyers claimed that the subject property was assessed too high in light of its lack of lake access, he did not point to any evidence to quantify how that lack of access affected the property's market value-in-use.
- g) Thus, the Meyers failed to show either that the subject property was assessed for more than its market value-in-use or that it was not assessed uniformly and equally compared to other properties.

Conclusion

- 16. Because the Meyers offered no probative evidence to rebut the presumption that the subject property's land was assessed accurately or to show a lack of uniformity and equality, they failed to make a prima facie case. The Board therefore finds for the Steuben County Assessor.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now affirms the assessment.

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>.