

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

Petition: 27-016-02-1-5-00009
Petitioner: Billy D. Niverson
Respondent: Center Township Assessor (Grant County)
Parcel: 0705-404-009.000-16
Assessment Year: 2002

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

Procedural History

1. The Petitioner initiated an assessment appeal with the Grant County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated October 3, 2003.
2. The PTABOA mailed the notice of its decision on April 3, 2006.
3. The Petitioner filed an appeal to the Board by filing a Form 131 with the county assessor on May 1, 2006, and elected small claims procedures.
4. The Board issued a notice of hearing to the parties dated March 9, 2007.
5. Administrative Law Judge Patti Kindler held the hearing in Marion, Indiana on April 25, 2007.
6. The following persons were present and sworn as witnesses at the hearing:
For the Petitioner - Billy D. Niverson, property owner,
For the Respondent - Tamara Martin, Grant County Assessor,
Gary Landrum, Grant County Deputy Assessor.

Facts

7. The subject property is a residential dwelling on an irregularly shaped lot located at 606 Eastway Drive in Marion, Indiana.
8. The Administrative Law Judge (ALJ) did not conduct an inspection of the property.

9. The PTABOA determined the total assessed value is \$77,800. The land assessment is \$13,600 and the improvements assessment is \$64,200.
10. The Petitioner requested a total assessed value of \$63,500 (land \$8,500 and improvements \$55,000).

Contentions

11. Summary of Petitioner's contentions:
 - a) The current assessed value for the subject property is excessive. The assessed value of two comparable properties and a comparative market analysis prepared by a local realtor prove this claim. *Niverson testimony; Pet'r Ex. 1, 5, 8.*
 - b) A ravine is located on the east and south sides of the subject property. The ravine has caused damage to the garage foundation. *Niverson testimony.* The subject property's value is negatively affected by the location of the ravine. *Niverson testimony; Pet'r Ex. 3.*
 - c) A local realtor estimated the value of the subject property between \$61,000 and \$66,000 based on three comparable sales. The realtor's market analysis describes the open ravine as a marketing issue. *Niverson testimony; Pet'r Ex. 1.*
 - d) The market analysis and photographs demonstrate the garage has shifted due to the ravine. A contractor estimated \$9,000 to repair the garage. *Niverson testimony; Pet'r Ex. 1, 3.*
 - e) The subject property was listed for sale about fifteen years ago. There were no offers. Potential buyers complained about the ravine. *Niverson testimony.*
 - f) The McClure property is a neighboring lot located at 707 Eastway Drive and is assessed at \$10,600, or \$3,000 less than the subject property's current land assessment of \$13,600.¹ The McClure property is level as shown in the photograph. The subject property's land value is too high and should be lowered to half the assessed value established for the McClure property. *Niverson testimony; Pet'r Ex. 5.*
 - g) The Fuller property is located at 1511 Montpelier Pike and sold for \$92,000. The Fuller property is a level lot measuring 225 feet by 145 or 150 feet. Prior to the PTABOA's changes, the assessment of the subject property of \$88,000 was nearly as high as the Fuller property, which has a much larger, level lot. *Niverson testimony; Pet'r Ex. 8.*

¹ The Petitioner refers to the 2006 annually adjusted values listed on the property record cards he submitted rather than the applicable 2002 value from the reassessment. *Pet'r Ex. 5-8.* The McClure lot was assessed at \$12,700 in 2002, but was trended to \$10,600 in 2006.

- h) The subject property does not have 55 feet of frontage as recorded on the property record card and should not be priced by the front foot method. The subject property is landlocked with no actual frontage on Eastway Drive. Ingress and egress is provided by an easement between Eastway Drive and the subject driveway. *Niverson testimony; Pet'r Ex. 3.*
- i) The property record cards for two other Center Township properties show inconsistencies between assessed values and sale prices. The property at 909 Eastway Drive assessed at \$111,500 and sold for \$130,931. The property at 1403 Elm Drive is assessed at \$109,000 and sold for \$94,886. *Niverson testimony; Pet'r Ex. 6, 7.*

12. Summary of Respondent's contentions in support of the assessment:

- a) The subject property is assessed on a front foot basis using an actual frontage of 55 feet and an effective frontage of 93 feet. The front foot measurement is based on the boundary lines listed in the auditor's office. The subject property is not landlocked as the Petitioner claims. It has 55 feet of frontage along Eastway Drive. There is a driveway from Eastway Drive leading to the house. *Martin testimony.*
- b) The PTABOA applied a negative ten percent influence factor to the land to compensate for the ravine. *Landrum testimony.*
- c) The effective front footage of the McClure lot at 707 Eastway Drive is 79 feet wide. The difference in frontage is the reason the McClure land is assessed at a lower value than the subject property. The Petitioner did not consider the effective frontage in noting the difference in the assessment between the comparable properties and the subject property. *Landrum testimony.*
- d) The subject assessment is in line with the assessment of neighboring properties located at 610 Eastway Drive and 712 Eastway Drive. *Martin testimony.* The property at 610 Eastway Drive has a land value of \$19,400 with 120 frontage feet. *Resp't Ex. 1.* The home is a "C" grade in good condition with a 1959 effective construction date. The total assessed value for land and improvements is \$82,300. *Landrum testimony; Resp't Ex. 1.* The property at 712 Eastway Drive has a land value of \$25,900 with 160 frontage feet. The house is graded "C+1", was built in 1956, is in good condition, and is assessed \$83,900. The total assessed value is \$109,800. *Landrum testimony; Resp't Ex. 2.* The subject property is valued for less than these neighboring properties. The lower assessment compensates for the ravine. *Landrum testimony.*
- e) The market analysis prepared by a local realtor in 2006 does not relate to the 2002 assessment. *Martin testimony.*

Record

13. The official record for this matter is made up of the following:
- a) The Petition,
 - b) The digital recording of the hearing,
 - c) Petitioner Exhibit 1 – Comparative Market Analysis,
Petitioner Exhibit 2 – Form 131 Petition with attachments,
Petitioner Exhibit 3 – Five photographs of the subject property,
Petitioner Exhibit 4 – The 2002 and 2006 Form 11, Notice of Assessment,
Petitioner Exhibit 5 – Comparable assessment “A” at 707 Eastway Drive,
Petitioner Exhibit 6 – Comparable assessment “B” at 909 Eastway Drive,
Petitioner Exhibit 7 – Comparable assessment “C” at 1403 Elm Drive,
Petitioner Exhibit 8 – Fuller property at 1511 Montpelier Pike,
Respondent Exhibit 1 – Comparable property information of 610 Eastway Drive,
Respondent Exhibit 2 – Comparable property information of 712 Eastway Drive,
Respondent Exhibit 3 – Notice of County Assessor 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.

Analysis

14. The most applicable governing cases are:
- a) A Petitioner seeking review of an assessment has the burden to establish a prima facie case proving that the current assessment is incorrect and specifically what the correct assessment would be. *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. *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. *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 Petitioner did not provide sufficient evidence to support his contentions. This conclusion was arrived at because:
- a) Real property is assessed based on 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 a similar user, from the property." Ind. Code § 6-1.1-31-6(c); 2002 REAL PROPERTY ASSESSMENT MANUAL (hereafter 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. *See* REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 — VERSION A (hereafter Guidelines). The value established by use of the Guidelines, while presumed to be accurate, is merely a starting point. A taxpayer may 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 principles. MANUAL at 5.
 - b) For the 2002 reassessment, an assessment is to reflect the value of the property as of January 1, 1999. MANUAL at 4. Should a Petitioner present any evidence of value relating to a different date, the Petitioner is required to provide some explanation how that value demonstrates, or is relevant to, the subject property's value as of January 1, 1999. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The Petitioner failed to do so.
 - c) The Petitioner offered a comparative market analysis (incorrectly identified as an appraisal) from a local realtor.² It estimates the value of the subject property as of December 29, 2006, between \$61,000 and \$65,000 by comparing the subject property to sales of three other properties in Marion. *Pet'r Ex. 1*. While the Petitioner can prove a case with many types of evidence relevant to the market value-in-use of the subject property, the evidence must be in accord with generally accepted appraisal practices. MANUAL at 5. There is no evidence that the realtor's market analysis complies with generally accepted appraisal practices. For example, the market analysis does not show adjustments to the lot sizes of the comparables even though they vary widely. In addition, a negative \$12,000 adjustment was made to all three comparables for "garage floor ravine" repair

² The Tax Court has stated that "the most effective method to rebut the presumption that an assessment is correct is through the presentation of a market value-in-use appraisal, completed in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP)." *Kooshtard Prop. VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n. 6 (Ind. Tax Ct. 2005). The document presented by the Petitioner is not an appraisal performed by a certified real estate appraiser. It is simply a one-page comparative market analysis with attached MLS information for the comparables prepared by a local realtor. The document contains no reference or claim about conforming to USPAP. *Pet'r Ex. 1*.

without substantiation of that amount. The market analysis has no probative value.

- d) The comparative market analysis lacks probative value for a second reason. The Petitioner must establish how the evidence relates to January 1, 1999. *Long*, 821 N.E.2d at 471. The comparative market analysis lacks any such relationship. Therefore, it is not probative evidence for what the assessment should be.
- e) The Petitioner attempted to make a case by comparing the assessed value of two other properties to the assessed value of the subject property. The Petitioner did not establish the comparability between the alleged comparable properties and the subject property. The Petitioner only made generalized statements that the McClure and Fuller properties are flat and should be assessed at a higher value. Petitioner failed to explain how the differences affect the relevant market value-in-use. Accordingly, this evidence does not make a prima facie case. *Long*, 821 N.E.2d at 471.
- f) The Petitioner submitted the property record cards of two additional properties to show the difference between the sales prices and the assessments of these properties. Demonstrating a difference between the sale price of a property and the assessed value of a property does not constitute probative evidence that the subject assessment is incorrect. Nor do these differences establish the proper value for the subject property. Petitioner failed to establish how purported errors in the assessments of these properties might be relevant.
- g) The Petitioner testified that the 55 feet of frontage applied to the subject property's assessment is incorrect and that ingress and egress is via an easement. The Petitioner objected to the front foot pricing for the subject land, claiming he did not have actual street frontage. He failed, however, to document the measurements or that the only access to the property is via an easement. Regardless of the accuracy of the front footage or the need for an easement to get to the property, Petitioner's argument that his property does not have 55 feet of frontage focuses solely on the methodology used to determine the assessment. Even if the Respondent's assessment did not fully comply with the methodology in the Guidelines, the Petitioner must show that the total assessment is not a reasonable measure of true tax value. Ind. Admin. Code tit. 50, r.2.3-1-1(d). A Petitioner cannot make a prima facie case based only on disputes about how the Guidelines were applied. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 94-95 (Ind. Tax Ct. 2006).
- h) A negative influence factor of 10 percent was applied to the land value to account for the ravine. The Petitioner did not request that the influence factor be changed or offer any market data to establish the current influence factor is inadequate. Furthermore, this point also merely goes to the methodology used for the current assessment. It fails to make a prima facie case for any assessment change. *Id.*

- i) Where the Petitioner fails to provide probative evidence for an assessment change, 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 at 1221, 1222

Conclusion

16. The Petitioner failed to make a prima facie case. The Board finds in favor of the 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: June 25, 2007

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>.