

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

Petition #s: **64-017-02-1-5-00042**
 64-017-02-1-5-00043
 64-017-02-1-5-00044
 64-017-02-1-5-00045
 64-017-02-1-5-00046
 64-017-02-1-5-00047
 64-017-02-1-5-00048

Petitioner: **Theodore S. Lelek**

Respondent: **Portage Township Assessor (Porter County)**

Parcel #s: **02-35-106-002-000**
 02-35-106-003-000
 02-35-106-004-000
 02-35-113-001-000
 02-35-113-002-000
 02-35-106-005-000
 02-35-106-006-000

Assessment Year: **2002**

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 Petitioner initiated assessment appeals with the Porter County Property Tax Assessment Board of Appeals (the PTABOA) by written documents dated February 1, 2004.
2. The Petitioner received notices of the decision of the PTABOA on March 11, 2005.
3. The Petitioner filed appeals to the Board by filing Form 131 petitions with the county assessor on April 11, 2005. The Petitioner elected to have these cases heard in small claims.
4. The Board issued notices of hearing to the parties dated September 12, 2006.

5. The Board held an administrative hearing on November 15, 2006, before the duly appointed Administrative Law Judge (the ALJ) Ellen Yuhan.
6. Persons present and sworn in at hearing:
 - a. For Petitioner: Theodore S. Lelek, Petitioner,
 - b. For Respondent: John R. Scott, Portage Township Assessor, Kathy Sonaty, Portage Township Chief Deputy, Janine Chrisman, PTABOA President, Lindy Wilson, PTABOA clerical staff, James Kopp, PTABOA member.

Facts

7. The subject properties consist of five parcels classified as residential vacant land and two parcels having some improvements located at 58 Diana Road, Ogden Dunes,¹ Portage Township, in Porter County.
8. The ALJ did not conduct an on-site visit of the properties.
9. The PTABOA determined the assessed value of the properties to be \$86,000 for the land and \$600 for the improvements for Parcel #02-35-106-002-000 (Lot 17), \$101,200 for the land for Parcel #02-35-106-003-000 (Lot 18), \$186,400 for the land and \$69,500 for improvements for Parcel #02-35-106-004-000 (Lots 19 and 20), \$100,300 for the land for Parcel #02-35-113-001-000 (Lot 21), \$84,000 for the land for Parcel #02-35-113-002-000 (Lot 22), \$137,500 for the land for Parcel #02-35-106-005-000 (Lot 32), and \$84,000 for the land for Parcel #02-35-106-006-000 (Lot 33).
10. The Petitioner requested an assessment of \$56,250 for the land and \$600 for the improvements for Lot 17, \$56,250 for the land for Lot 18, \$112,500 for the land and \$0 for the improvements on Lots 19 and 20, \$56,250 for the land for Lot 21, \$56,250 for the land for Lot 22, \$56,250 for the land and \$10,000 for the improvements for Lot 32, and \$25,000 for the land for Lot 33.

Issues

11. Summary of Petitioner's contentions in support of an error in the assessment:
 - a. The Petitioner contends that the subject properties are over-assessed based on the 2001 purchase of ten lots for \$250,000. *Lelek testimony*. The purchase price

¹ The Form 131 petitions indicate the subject lots are located at 58 Diana Road in Portage. The legal description and the survey, however, show the lots to be in Ogden Dunes. Furthermore, five of the lots are on Diana Road, but Lots 32 and 33 actually have frontage on Chrismar Road.

- included all seven parcels being appealed.² *Id.* The Petitioner also argues that the subsequent sale of three of these parcels in 2004 for \$225,000 further shows the properties are over-valued. *Id.* In support of these contentions, the Petitioner submitted a HUD statement showing that the properties were purchased in 2001 for \$250,000 and a HUD statement showing the sale of three parcels in 2004 for \$225,000. *Petitioner Exhibits 2 and 3.* The Petitioner contends that the sales of the parcels are the best indicators of their market value. *Lelek testimony.*
- b. The Petitioner further contends that when he purchased the lots the total assessed value was \$229,200. *Lelek testimony.* The Petitioner argues that the current assessed value of \$1,044,000 is unfair and affects the marketability of the properties. *Id.*
- c. The Petitioner claims that Lot 17 is a very steep lot. *Lelek testimony; Petitioner Exhibits 9 and 11.* According to the Petitioner, the Town of Ogden Dunes deemed Lot 17 unbuildable unless the new owner merged Lots 17 and 18. *Id.* The Petitioner further argues that Lot 17 is over-valued based on the assessed value of Lot 18. *Id.* According to the Petitioner, the assessed value for Lot 17, at the time of its purchase, was \$40,000 for the land and \$600 for a shed. *Id.* The Petitioner testified that the parcel's current assessed value is \$86,000 for the land and \$600 for the improvements, whereas the assessed value of Lot 18 is only \$19,000. *Id.* According to the Petitioner, Lot 18 is a better lot than Lot 17. *Id.*
- d. The Petitioner contends that Lots 19 and 20 are the worst of the parcels. *Lelek testimony.* The Petitioner also claims that improvements are incorrectly assessed to this parcel. *Id.* According to the Petitioner, originally there was a house on the lot which was destroyed prior to his purchase of the properties. *Id.* The Petitioner testified that, because the house was situated on the parcel, all the improvements were assessed to Lots 19 and 20. *Id.* The Petitioner argues, however, that the improvements still assessed to this parcel, including the pool, should be assessed to Lot 32. *Id.; Petitioner Exhibits 9 and 10.* Further, the Petitioner contends that the pool is not functional and has never been used. *Id.*
- e. The Petitioner also contends that Lot 21 is steep and should be assessed similarly to Lots 17, 18, 19 and 20. *Lelek testimony; Petitioner Exhibit 9.* According to the Petitioner, when he purchased the property the parcel was assessed for \$19,000. *Id.* Currently the property is assessed at \$100,300. *Id.*
- f. The Petitioner similarly contends that the topography of Lot 32 is very difficult because of the elevation of the parcel. *Lelek testimony. Id.* In support of this contention, the Petitioner submitted photographs and a survey illustrating the location and topography of the lot. *Petitioner Exhibits 9 and 10.* The Petitioner further argues that the improvements on Lot 32 consisting of a pool, cabana, and retaining walls are assessed incorrectly to Lot 19. *Id.* In addition, the Petitioner contends that the

² The Petitioner did not appeal the assessments for Lots 22, 23, or 31, which he purchased with the other seven parcels under review. According to the Petitioner, Lots 22, 23 and 31 were better lots and two of them have since been sold. Neither the Petitioner nor the Respondent submitted any documentation concerning these sales.

- property is over-valued on the basis of a comparable sale. *Id.* According to the Petitioner, a property of similar land size, with a similar pool, several retaining walls and a better cabana sold for \$435,000 and the taxes were \$2,700 annually. *Id.*; *Petitioner Exhibit 7.*
- g. Finally, the Petitioner contends that Lot 33 is very steep. *Lelek testimony.* According to the Petitioner, a comparable property with a similar topography is assessed for \$43,000, while the current assessment for Lot 33 is \$84,000. *Id.*; *Petitioner Exhibits 8 and 9.*
12. Summary of Respondent's contentions in support of the assessment:
- a. The Respondent contends that, although the Petitioner believes the market value of the ten lots should be \$250,000 based on his purchase in 2001, each lot is of a different size with different topography. *Sonaty testimony; Respondent Exhibit 1.* The Respondent argues that the Petitioner failed to show the value of the individual parcels. *Id.*
- b. The Respondent further contends that the comparables submitted by the Petitioner are not comparable to the subject parcels. *Sonaty testimony.* According to the Respondent, Petitioner Exhibit 4 is a vacant wooded lot, 2.5 acres in size located in Portage and assessed on an acreage basis. *Id.* The Respondent argues that this property is in no way comparable to platted, residential lots in Ogden Dunes. *Id.*; *Respondent Exhibit 1.* In addition, the Respondent argues that the comparable sales identified as Petitioner Exhibits 5, 7, and 8, are assessed in the same manner as the subject properties at \$860 per front foot. *Id.* The Respondent contends that the comparable property submitted as Petitioner Exhibit 6 is located in a less desirable area, farther from the lake, and thus was assessed at a lower front foot value of \$615. *Id.*
- c. The Respondent argues that, if the Town of Ogden Dunes is restricting the sales of these lots for purposes of building, then the Petitioner should submit evidence to that effect. *Scott testimony; Sonaty testimony.* Further, the Respondent argues that the pool is properly assessed. *Scott testimony; Sonaty testimony.* According to the Respondent, the pool exists and it is in good condition. *Id.* The Respondent admits, however, that 85% of the pool is on Lot 32. *Id.*
- d. Finally, a member of the PTABOA Board, Mr. Kopp, argues that the subject lots that are at a lower elevation have drainage problems. *Kopp testimony.*³ According to Mr. Kopp, if they are buildable at all, the parcels would require so much wall or piling that the cost would be prohibitive. *Id.*

Record

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

³ Mr. Kopp is an employee of the water works in Ogden Dunes.

- a. The Petition,
- b. The compact disk recording of the hearing labeled Theodore Lelek, 64-017-02-1-5-00042-00048,
- c. Exhibits:

- Petitioner Exhibit 1 – Property History and Survey of subject properties,
- Petitioner Exhibit 2 – HUD closing statement dated September 26, 2001,
- Petitioner Exhibit 3 – Property history from M.L.S. report and HUD closing statement dated November 10, 2004,
- Petitioner Exhibit 4 – Listing #100390 2.5 acres, \$468.00 taxes,
- Petitioner Exhibit 5 – Duplicate #07-0000-113-000, 100’ x 300’ lake view lot,
- Petitioner Exhibit 6 – Market data on Comparable A,
- Petitioner Exhibit 7 – Market data on Comparable B,
- Petitioner Exhibit 8 – Market data on Comparable C,
- Petitioner Exhibit 9 – Poster with pictures of subject properties,
- Petitioner Exhibit 10 – Survey of subject properties,
- Petitioner Exhibit 11 – Letter from Scott Cherry,

Respondent Exhibit – Rebuttal of Petitioner’s exhibits,

- 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 Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 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 Township 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 Petitioner failed to provide sufficient evidence to establish a prima facie case for a reduction in value. The Board reached this decision for the following reasons:

Market Value

- a. The Petitioner contends that the assessed values of the subject properties are overstated based on a 2001 purchase of ten parcels, including the seven under appeal, for \$250,000 and the subsequent sale of three of those parcels in 2004 for \$225,000. *Lelek testimony*. In support of this contention, the Petitioner submitted the HUD settlement statement for both transactions and listing information. *Petitioner Exhibits 1, 2, and 3*.
- b. 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). A taxpayer may use any generally accepted appraisal methods consistent with the Manual’s definition of true tax value, such as sales information regarding the subject or comparable properties that are relevant to a property’s market value-in-use, to establish the actual true tax value of a property. MANUAL at 5.
- c. 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. *See Long v. Wayne Township Assessor*, 821 N.E. 2d 466, 470 (Ind. Tax Ct.); 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.*
- d. Here, the Petitioner relies upon the purchase of the subject properties and three additional parcels in 2001 and the sale of three of those parcels in 2004. The Petitioner, however, failed to show how either the 2001 purchase of the ten parcels or the subsequent sale of three of the parcels are relevant to the January 1, 1999, valuation date. Thus, the Petitioner’s purchase of the properties in 2001 and sale of some parcels in 2004 are not probative of the properties’ January 1, 1999, value. Therefore the Petitioner failed to raise a prima facie case.

Influence Factor

- e. The Petitioner further argues that the topography of the lots and building restrictions negatively impact the value of the subject parcels. *Lelek testimony*. In support of this

contention, the Petitioner submitted photographs and a survey of the parcels. *Petitioner Exhibits 9 and 10.*

- g. Generally, land values in a given neighborhood are 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 Board of Tax Commissioners*, 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, VERSION A, (GUIDELINES) 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*, 756 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001).
- h. While the alleged use limitations on the properties or topography of the parcels may be relevant to the issue as to whether a negative influence factor should apply here, the Petitioner failed to show how this condition would impact the market value of the properties. *See Talesnick*, 756 N.E.2d at 1108. In fact, the Petitioner presented no evidence to establish the market value-in-use of the property as of the January 1, 1999, valuation date. A petitioner must submit 'probative evidence' that adequately demonstrates all alleged errors in the assessment. Mere allegations, unsupported by factual evidence, will not be considered sufficient to establish an alleged error. *See Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E. 2d 1113 (Ind. Tax 1998). Thus, the Petitioner failed to raise a prima facie case that the subject properties are over-valued because of their topography or other restrictions.

Comparable Assessments

- i. Finally, the Petitioner alleges that similar properties are assessed and taxed differently than the subject properties.⁴ *Lelek testimony*. In support of this contention, he submitted listing information and tax information for five properties. *Petitioner Exhibits 4-8.*
- j. Indiana Code § 6-1.1-2-2 requires uniform and equal assessments. Thus, the Petitioner argues, to the extent that he proves that his property is not assessed uniformly or equal to comparable properties, his assessment should be equalized. However, "taxpayers are required to make a detailed factual showing at the

⁴ The Petitioner also contends that when he purchased the ten parcels in 2001 the total assessed value was \$299,200. *Lelek testimony*. According to the Petitioner, the current assessed value is now \$1,044,000. *Id.* In original tax appeals, each assessment and each tax year stands alone. *See Fleet Supply, Inc. v. State Board of Tax Commissioners*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (citing *Glass Wholesalers, Inc. v. State Board of Tax Commissioners*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct 1991)). Thus, evidence submitted as to a property's assessment in one year is not probative of its true tax value in a different tax year. *See, Id.*

administrative level.” *Home Federal Savings Bank v. Madison Township 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.*

- k. To introduce evidence of comparable properties, a taxpayer must explain how the properties are comparable. *See Blackbird Farms Apartments v. Department of Local Government Finance*, 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 Township 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. Department of Local Government Finance*, 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). In the case at bar, the Petitioner has not met its burden. The Petitioner submitted several exhibits in an attempt to show inequitable assessments but failed to show comparability between the subject parcels and the purported comparables.⁵
- l. The Petitioner failed to establish a prima facie case.⁶ 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. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

16. The Petitioner failed to provide sufficient evidence to establish a prima facie case on the issues presented to the Board. The Board finds in favor of the Respondent.

⁵ The Petitioner also claims inequitable taxation. The Board, however, has no jurisdiction over matters involving legislative tax policy. Thus, the Petitioner’s contentions relating to its increased tax burden fails to raise a prima facie case that its assessment was improper.

⁶ The Petitioner alleges the improvements assessed to Lots 19 and 20 should, in fact, be assessed to Lot 32. *Lelek testimony; Petitioner Exhibits 1, 9, & 10.* The Respondent agreed that 85% of the pool was located on Lot 32. *Sonaty testimony.* We note that the assessor should ensure that the improvements are assessed to the correct parcels.

Final Determinations

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should not be changed.

ISSUED: February 6, 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 this 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>.