

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

Petition Nos.: 91-020-10-1-5-00014
91-020-10-1-5-00015
Petitioners: Robert and Sharon Schmitter
c/o Therese K. Zook, Executrix of Estate
Respondent: White County Assessor
Parcel Nos.: 91-73-34-000-035.300-020
91-73-34-000-035.200-020
Assessment Year: 2010

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

Procedural History

1. Therese K. Zook, on behalf of Robert and Sharon Schmitter’s estate, filed two Requests for Review with the White County Assessor contesting the above-captioned parcels’ March 1, 2010 assessments. On December 2, 2011, the White County Property Tax Assessment Board of Appeals (“PTABOA”) issued determinations denying Ms. Zook any relief.
2. Ms. Zook then timely filed two Form 131 petitions with the Board. She elected to have the appeals heard under the Board’s small claims procedures.
3. On September 13, 2012, the Board held a consolidated hearing on the petitions through its designated Administrative Law Judge, Jennifer Bippus (“ALJ”).
4. The following people were sworn in and testified:
 - a) For the Petitioners: Therese K. “Terre” Zook, Executrix of Estate, *pro se*
John Schmitter, *pro se*
James Mann, realtor
 - b) For the Respondent: Scott Potts, White County Representative

Facts

5. The subject parcels are adjacent unimproved residential lots located on Riverview Road in Monticello.

6. Neither the Board nor the ALJ inspected the subject properties.
7. The PTABOA determined the following values for the subject parcels:

Parcel 91-73-34-000-035.300-020

Land: \$26,900 Improvements: \$0 Total: \$26,900

Parcel 91-73-34-000-035.200-020

Land: \$26,700 Improvements: \$0 Total: \$26,700

8. On the Form 131 petitions, Ms. Zook requested the following values:

Parcel 91-73-34-000-035.300-020

Land: \$7,200 Improvements: \$0 Total: \$7,200

Parcel 91-73-34-000-035.200-020

Land: \$7,000 Improvements: \$0 Total: \$7,000

Parties' Contentions

9. Summary of the Petitioners' evidence and arguments:
- a) The Petitioners contend that the subject parcels are assessed too high. *Zook, Schmitter arguments*. In 2006 and 2007, the parcels were assessed at \$3,400 and \$3,300. *Schmitter testimony*. In 2008, however, the assessments jumped to \$43,200 and \$42,800. *Id.* In 2010, as a result of an informal meeting with Mr. Potts, the assessments dropped to the current values. *Id.* These values are still too high. *Schmitter argument*.
- b) The parcels are unbuildable as single lots because their grade is extremely steep. *Schmitter testimony*. For that reason, and due to the cash outlay that would be required, the county plan commission denied the Petitioners' 2006 request to rezone the land. *Id.* In 2008, when the property was appraised for the estate, the two lots were valued as one property at the family's request, with an estimated value of \$57,000. *Zook testimony; see Resp't Ex. 1*. The Petitioners concede that the parcels' values are greater when considered together than when considered as two separate, individual properties. *Zook, Mann testimony*. The Petitioners, in fact, are currently trying to sell the parcels together as one property, with a list price that has been reduced to \$49,900. *Mann testimony*. Even though the property has been listed for six years, they have not found a buyer. *Id.*
- c) Nonetheless, the Petitioners argue that the county recognizes two separate parcels and tracts for assessment purposes, so their values should be determined separately rather than as one property. *Schmitter argument*. To that end, the Petitioners offered an appraisal prepared by Lawrence Culp, an Indiana certified appraiser, who valued the subject parcels in that manner. *Pet'rs Ex. 11*. Mr. Culp attested that he prepared the appraisal in accordance with the Uniform Standards of Professional Appraisal

Practice (“USPAP”). *Id.* Mr. Culp estimated the value of each lot at \$17,000, as of March 1, 2010. *Id.* Mr. Culp relied primarily on the sales-comparison approach. One of his comparable properties is located just two lots to the east of the subject parcels. *Id.*; *Mann testimony*.

10. Summary of the Respondent’s evidence and arguments:

- a) The subject parcels were appraised in 2008 as a single property for \$57,500. *Potts testimony*. The parcels are currently for sale and being marketed as one property. *Id.* Consequently, the Respondent views the parcels together as one property. *Id.* Mr. Culp’s 2010 appraisal contradicts everything else by valuing the parcels as two separate properties. *Potts argument*.
- b) Even if the 2010 appraisal were accepted, it does not indicate the values that the Petitioners have requested. *Id.* Mr. Culp valued the parcels at \$17,000 each, not \$7,000 and \$7,200. *Id.*

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

- a) Digital recording of the hearing,
- b) Exhibits:

Petitioners Exhibit 1: Notices of hearing,
Petitioners Exhibit 2: Form 131 petitions and PTABOA determinations,
Petitioners Exhibit 3: Area Plan Commission meeting notes from 2006,
Petitioners Exhibit 4: County Commissioners meeting notes from 2006,
Petitioners Exhibit 5: PTABOA hearing notice,
Petitioners Exhibit 6: Informal hearing notice,
Petitioners Exhibit 7: Letter from Area Plan Commission,
Petitioners Exhibit 8: Property tax refund checks,
Petitioners Exhibit 9: Summary of taxes paid,
Petitioners Exhibit 10: November 2, 2011 Administrative Hearing minutes,
Petitioners Exhibit 11: Appraisal of subject property,

Respondent Exhibit 1: Appraisal for subject property dated September 13, 2008,
Respondent Exhibit 2: Current sales listing for the subject properties,

Board Exhibit A: Form 131 petition,
Board Exhibit B: Hearing notices,
Board Exhibit C: Hearing sign-in sheet,

- c) These Findings and Conclusions.

Analysis

Burden of Proof

12. Generally, a taxpayer 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 and 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 taxpayer 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 taxpayer makes a prima facie case, the burden shifts to the respondent to offer evidence to impeach or rebut the taxpayer'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.

Merits of the Case

15. The Petitioners made a prima facie case that the subject parcels' assessments should be reduced. The Board reaches this conclusion for the following reasons:
 - a) Indiana assesses real property based on its true tax value, which the 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). A party's evidence in a tax appeal must be consistent with that standard. *See id.* For example, a market-value-in-use appraisal prepared according to USPAP often will be probative. *See id.; Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005) *reh'g den. sub nom.* A party may also offer actual construction costs, sales information for the subject or comparable properties, and any other information compiled according to generally acceptable appraisal principles. MANUAL at 5.
 - b) Regardless of the method used to rebut an assessment's presumed accuracy, a party must explain how its evidence relates to the property's market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For 2010 assessments, the valuation date was March 1, 2010. Ind. Code § 6-1.1-4-4.5(f).
 - c) The Petitioners offered a variety of evidence and arguments in an attempt to show that the subject parcels were assessed too high. Much of that evidence, however, lacks probative value. For example, while they pointed to factors that they felt

detracted from the subject parcels' value, the Petitioners did not attempt to quantify their effect or otherwise explain how those factors led to the particular values that were requested.

- d) Nonetheless, the Petitioners offered Lawrence Culp's appraisal report, in which Mr. Culp valued each lot at \$17,000 as of March 1, 2010. Mr. Culp certified that he performed his appraisal in conformance with USPAP. Consequently, the Petitioners made a prima facie case that the subject parcels' assessments should be \$17,000 for each of the two lots.
- e) The burden therefore shifted to the Respondent to impeach or rebut the Petitioners' case. While Mr. Culp appraised the parcels separately and they are assessed separately, the Respondent contends that the parcels should be viewed together as one property.
- f) First, the Respondent points to another appraisal, which Mr. Culp completed in 2008, valuing the parcels together at \$57,500. That appraisal's effective date, however, is nearly two years before the relevant March 1, 2010, valuation date. Thus, it is not probative of the parcels' value or use for the 2010 assessment.
- g) The Respondent further points to the current sales listing for the subject parcels and notes that the parcels are being marketed as one property. The Respondent argues that the \$49,900 listing price is much higher than Mr. Culp's appraised value of the parcels separately.
- h) The parties agree that the subject parcels are more valuable and desirable in the market when considered together rather than separately. Consequently, the Respondent argues the parcels should be assessed as one property. In a sense, the Respondent contends that the subject parcels should be valued according to their highest and best use. The Respondent is incorrect. As stated above, true tax value is defined as the market value-in-use of a property for its *current* use, not its highest and best use. *See* MANUAL at 2. There is, therefore, no inherent requirement to value the subject parcels as one property just because they are worth more when marketed together. The Respondent failed to impeach Mr. Culp's appraisal on that argument alone.
- i) There is little in the record regarding the Petitioners' current use of the parcels. If anything, the parties seem to agree that the Petitioners do not use the parcels at all. Thus, the Board is left with determining the best valuation evidence on the record, regardless of whether that evidence values the parcels together or separately. Here, the best evidence is clearly Mr. Culp's March 1, 2010, appraisal.¹ Thus, the Board

¹ Had the Petitioners' listing produced an actual, arm's-length sale, the Board may have determined that to be more probative than Mr. Culp's appraisal, because the sale of a subject property is often the best evidence of its market value-in-use. But the parcels did not sell. Further, while the property is *currently* listed for \$49,900, the record is not entirely clear what the Petitioners' asking price was on March 1, 2010.

finds that based on Mr. Culp's appraisal, the subject parcels' March 1, 2010, assessments should be reduced to \$17,000 each.

Conclusion

16. The Petitioners made a prima facie case that the subject parcels' March 1, 2010, assessments should each be reduced to \$17,000. The Board finds for the Petitioners.

Final Determination

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review now orders that the subject parcels' March 1, 2010, assessments be reduced to \$17,000 each.

ISSUED: February 13, 2013

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

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>>.