

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

Petition: 48-033-06-1-1-06304
Petitioner: Joe, Mark, & Jessica Stapleton
Respondent: Union Township Assessor (Madison County)
Parcel: 15-0011-1-050
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. The Petitioners initiated an assessment appeal with the Madison County Property Tax Assessment Board of Appeals (PTABOA) by filing a Form 130 dated May 10, 2006.
2. The PTABOA mailed notice of its decision to the Petitioners on September 18, 2006.
3. The Petitioners appealed to the Board by filing a Form 131 on October 18, 2006. The Petitioners elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing to the parties dated June 19, 2007.
5. Administrative Law Judge Paul Stultz (ALJ) held the administrative hearing in Anderson on July 31, 2007. He did not inspect the property.
6. The following persons were present and sworn as witnesses at the hearing:
For Petitioners – Joe Stapleton,
Betty Swift,
For Respondent – Linda Geiger, Union Township Assessor,
Cheryl Heath, Madison County Assessor.

Facts

7. The subject property is 66.67 acres of agricultural land located on County Road 400 E in or near Anderson.
8. The PTABOA determined the total assessed value is \$44,700 (land only).
9. The Petitioners did not request a specific value.

Issue

10. Summary of Petitioners' contentions:
 - a. Part of the parcel, 1.42 acres of the 66.67 acres, should be valued as non-tillable type 5 agricultural land because it has natural impediments such as an old driveway, trees, and rocks. A negative 60% influence factor should be applied to the land value. *Swift testimony, Pet'r Ex. 3.*
 - b. A legal drainage ditch runs across the subject property. The land value for the subject property will be adjusted after the county surveyor provides the measurements for the drainage ditch. *Swift testimony.*
11. The Respondent's contention: The true tax value for 30 acres of this parcel is calculated with a negative 80% influence factor. This is the area with peat. *Heath testimony.*

Record

12. The official record for this matter is made up of the following:
 - a. The Petition,
 - b. A digital recording of the hearing,
 - c. Petitioner Exhibit 1 – Form 131,
Petitioner Exhibit 2 – Aerial map,
Petitioner Exhibit 3 – Land value calculation,
Petitioner Exhibit 4 – Form 115,
Petitioner Exhibit 5 – Subject property record card,
Board Exhibit A – Form 131 with attachments,
Board Exhibit B – Notice of hearing,
Board Exhibit C – Hearing sign in sheet,
 - d. These Findings and Conclusions.

Analysis

13. 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 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. *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”).
 - 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.
14. The Petitioners did not provide sufficient evidence to support their case. This conclusion was arrived at because:
- a. Any ditch area should have been removed from the assessment. Although neither party cited authority, Ind. Code §6-1.1-4-14 provides that a public ditch and adjacent land needed for access to the ditch either may not be assessed or must be deducted from the assessment.¹ “If an assessor and a landowner fail to agree on the amount of land . . . , the assessor shall have the county surveyor make a survey to determine the amount of land so described.” Ind. Code § 6-1.1-4-14 (c). Apparently the failure of the surveyor to determine the size of the ditch was the stumbling block to deducting the ditch earlier in the assessment process. Who is responsible and the reasons for that failure are unclear, but also irrelevant. The speculation that sometime the surveyor will furnish exact measurements for the ditch is similarly irrelevant at this point. In order to get any change from the current assessment, the evidence presented to the Board must establish what the assessment should be. Lacking an agreement with the assessor or the county surveyor’s report, the Petitioners needed to provide some other probative evidence (such as an independent survey) to establish the size of the ditch area on the subject property. They failed to do so. Not knowing how much land to deduct for the ditch precludes the Board from making such a change.
 - b. The remaining part of the Petitioners’ case is based on application of the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002–VERSION A (incorporated by reference at 50 IAC 2.3-1-2), but critical facts for application of the Guidelines are lacking from the evidence. On the aerial image of the property, Ms. Swift indicated an area that she referred to as both an old driveway and a fence row. *Pet’r Ex. 2*. According to her, that area is 1,547 feet long and 40 feet wide, which she calculated to be 1.42 acres. *Pet’r Ex. 3*. The evidence fails to establish the basis for those measurements. Such conclusory statements are not probative evidence. *Lacy Diversified Indus. v. Dep’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1221(Ind. Tax Ct. 2003); *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). Furthermore, her calculation of the negative influence factor for this area, if one is appropriate, is simply based on an

¹ Unfortunately, the Respondent completely ignored this issue at the hearing.

average land value per acre, without relating the driveway/fence row to any of the several soil types and productivity factors that were used for the assessment of this parcel. Based on the evidence that was presented, it is impossible to conclude that the current assessment is wrong and what the correct assessment should be according to the Guidelines. *See Meridian Towers*, 805 N.E.2d at 478; *see also Clark*, 694 N.E.2d at 1234.

- c. The Petitioners might have made a case based on other approaches to value. Real property is assessed on the basis of 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 ASSESSMETN 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. The Guidelines explain the application of the cost approach for assessments in Indiana. The value established by using the Guidelines, while presumed to be accurate, is merely a starting point. Taxpayers are permitted to offer evidence relevant to market value-in-use to rebut that presumption. Such evidence may include actual construction cost, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.
- d. The Petitioners presented no appraisal, sales information, or other market data in support of their argument.
- e. The goal under Indiana’s new assessment system is to ascertain market value-in-use. The Petitioners focused on purported errors regarding the methodology used to determine the assessment. Even if the Respondent’s assessment did not fully comply with the Guidelines, the Petitioners failed to show that the total assessment is not a reasonable measure of true tax value. Arguments based on strict application of the assessment Guidelines are not enough to rebut the presumption that the assessment is correct. *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).
- f. When a taxpayer fails to provide probative evidence to support any change of an assessment, the Respondent’s duty to support the current assessment with substantial evidence is not triggered. *See Lacy Diversified Indus. v. Dep’t of Local Gov’t Fin.*, 799 N.E. 2d 1215, 1221-1222 (Ind. Tax Ct. 2003); *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E. 2d 1113, 1119 (Ind. Tax Ct. 1998).

Conclusion

15. The Petitioner failed to make a prima facie case.

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: _____

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>>