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

Petition: **06-011-06-1-5-00507**
Petitioners: **Richard D. and Marilyn J. Bast**
Respondent: **Boone County Assessor**
Parcel: **011-00420-00**
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 Boone County Property Tax Assessment Board of Appeals (PTABOA).

2. The PTABOA mailed notice of its decision (Form 115) on January 10, 2008.

3. The Petitioners appealed to the Board by filing a Form 131 on February 26, 2008. They elected to have this case heard according to small claims procedures.

4. On September 23, 2008, the Board issued a notice for a hearing to be held on October 28, 2008. But then neither the Petitioners nor any representative for them appeared at that hearing.

5. On November 12, 2008, the Board entered an Order of Dismissal. Among other things, this Order stated, "Pursuant to 52 IAC 2-10-1, petitioners are hereby notified that their failure to appear at the administrative hearing shall constitute the basis for a dismissal of their appeal. *** Within ten (10) days after the issuance of this Order, petitioners may file a written objection requesting that this Order be vacated and set aside."

6. On November 25, 2008, the Board received a letter from the Petitioners regarding the Order of Dismissal. The letter indicated that the Petitioners were currently in Florida and that they had not thought it was necessary to be present at the hearing. As a result of this letter, the Board rescheduled the hearing.

7. On December 5, 2008, the Board issued a notice of the re-scheduled hearing to be held on January 8, 2009.

8. Administrative Law Judge Paul Stultz held the Board's administrative hearing on January 8, 2009. He did not conduct an inspection of the property.

9. The Petitioners did not appear at the January 8 hearing. In an earlier telephone call to ALJ Stultz they said that they would not be present and requested that the exhibits with their petition (two letters from the Petitioners to the Respondent and their 2006 payable 2007 tax bill) be considered as part of the record.

10. Lisa Garoffolo, Boone County Assessor, and Jeffrey Wolfe, PTABOA member, were present and sworn as witnesses for the Respondent at the January 8 hearing.

Facts

11. The property is a single family residence in or near Thorntown.

12. The PTABOA determined the assessed value is $20,600 for land and $173,900 for improvements (total assessed value of $194,500).

13. On their Form 131, the Petitioners contended the assessed value should be $7,500 for land and $173,900 for improvements (total assessed value of $181,400).

Contentions

14. The Petitioners' case:

    a. Parts of the "Boone County Appeal Letter" state as follows:

> Land – gross value – $20,600
> This is ¾ acre. This equates to $27,466.67 an acre. This ¾ acre is out in the middle of the country, not in a subdivision in town with sidewalks, etc. This lot should be valued at approximately $7500. I was told that Jackson on West 300 North was selling 1 acre lots for $10,000. An Assessor should be knowledgeable about what acre lots are selling for in the county.
>
> Improvements – gross value – $191,300
> Last year the Improvements were valued at $141,900. That is a $49,400 or 34.8% increase. I doubt if that is a logical increase with the price of real estate as it is today. Why didn't the township assessor and/or the county assessor review those figures before they were sent out? They should have determined at that time that they were out of line and lowered them to a logical level.
>
> The land and improvements gross value totaled $211,900. Enclosed is an Appraisal done by Steve Clifford as of 9/18/06 and 5/1/07 with a property value of $190,000.[1] That is $21,900 less than your Gross Value. Is there something wrong with this

[1] No appraisal, however, was included among the exhibits with the Form 131.

> picture? What does it say when we have to pay an appraiser to determine the value of our property to keep from being overtaxed?
>
> The gross values that you submitted have raised our tax levy from $1484.50 to $1971.28 or 32.8%. This does not sound reasonable to me. Our fixed income from Social Security, a pension, and a few small investments will not increase near that percentage. You are creating a real problem for us Senior Citizens. I hope you don't have this problem after you retire.

Pet'rs Ex. 1.

b. The 2006 payable 2007 tax bill shows $1,971.28 as the amount due. A note written on the bill says "pd 11/29/07 ck # 2129." *Pet'rs Ex. 2.*

c. Parts of Mr. Bast's letter dated January 28, 2008, to Assessor Garoffolo are as follows:

> I received Form 115 – Notification of Final Assessment Determination and must say I am a little confused.
>
> The Section III: Final Determination showed an improvement reduction from $191,300 to $173,900 or $17,400. That total of land and improvement is still $4500 more than the Appraisal copy I sent you. (Please refer to my Appeal Letter). There wasn't much explanation for the reduction. "Grade change to c" is not much of an explanation.
>
> I also again question the gross value of the ¾ acre at $20,600.

Pet'rs Ex. 3.

15. Summary of the Respondent's case:

a. A comparative market analysis was prepared based on sales of four properties in the Petitioners' neighborhood during 2004 and 2005. These four properties had an average sale price of $166,250. *Garoffolo testimony; Resp't Ex. 6.*

b. In an attempt to approximate the appraisal value, the PTABOA changed the grade factor to C. This reduced the improvement's true tax value from $191,300 to $173,900. The Petitioners did not present any factual evidence to address the land value. The revised total assessment is $194,500, which is close to the appraisal value of $190,000 and well within the State's allotted ten percent value range. *Wolfe testimony; Resp't Ex. 7.*

Record

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

    a. The Petition,

    b. Digital recording of the hearing,

    c. Petitioners Exhibit 1 – One page document titled Boone County Appeal,
    Petitioners Exhibit 2 – Tax bill for 2006 payable 2007,
    Petitioners Exhibit 3 – Letter from the Petitioners to the Boone County Assessor dated January 28, 2008, and an attached letter from Deputy Assessor LaFollette to Richard Bast dated February 4, 2008,
    Respondent Exhibit 1 – Property questionnaire,
    Respondent Exhibit 2 – Property record card for the 2002 assessment,
    Respondent Exhibit 3 – Property record card for the 2007 assessment,
    Respondent Exhibit 4 – Appeal letter from the Petitioners to the Respondent,
    Respondent Exhibit 5 – Photograph of the subject property,
    Respondent Exhibit 6 – Comparative Market Analysis,
    Respondent Exhibit 7 – Appraisal,
    Respondent Exhibit 8 – Form 115 dated January 10, 2008,
    Respondent Exhibit 9 – Letter from the Petitioners to the Respondent dated January 28, 2008,
    Respondent Exhibit 10 – Letter to Richard Bast from Deputy Assessor LaFollette dated February 4, 2008,
    Respondent Exhibit 11 – Form 131 Petition,
    Respondent Exhibit 12 – Tax bill for 2006 payable 2007,
    Respondent Exhibit 13 – Notice of Hearing,
    Board Exhibit A – Form 131 Petition,
    Board Exhibit B – Notice of Hearing for January 8, 2009,
    Board Exhibit C – Hearing Sign In Sheet,
    Board Exhibit D – Telephone record,
    Board Exhibit E – Notice of Hearing for October 28, 2008,
    Board Exhibit F – Order of Dismissal dated November 12, 2008,
    Board Exhibit G – Letter from Richard Bast received November 25, 2008,

    d. These Findings and Conclusions.

Analysis

17. 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.

18. The Petitioners failed to make a prima facie case for any assessment change because:

a. The amount of the tax bill and the increase from prior years is not relevant to what the correct assessment is. The Board has only the power conferred by statute. *Whetzel v. Dep't of Local Gov't Fin.*, 761 N.E.2d 904, 908 (Ind. Tax Ct. 2002) (citing *Matonovich v. State Bd. of Tax Comm'rs*, 705 N.E.2d 1093, 1096 (Ind. Tax Ct. 1999)); *Hoogenboom-Nofziger v. State Bd. of Tax Comm'rs*, 715 N.E.2d 1018, 1021 (Ind. Tax Ct. 1999). Its jurisdictional power extends only to appeals concerning the assessed value of tangible property, deductions, and exemptions. Ind. Code § 6-1.5-4-1. The Board has no jurisdiction to address complaints about the increase in taxes or the Petitioners' ability to pay.

b. 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 at 2 (incorporated by reference at 50 IAC 2.3-1-2). A taxpayer may offer evidence relevant to market value-in-use to rebut the presumption the assessment is correct. 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.

c. The Petitioners' letter says the land value of their .75-acre parcel should be reduced to $7,500 because "I" (probably Mr. Bast) was told that one-acre lots located elsewhere in Boone County were selling for $10,000. This statement is not probative evidence for many reasons. But even if Mr. Bast had provided such *testimony* under oath at the hearing and the hearsay problems were ignored, this point still would not help to prove the Petitioners' case.

d. In order to use the sales comparison approach, the proponent must establish comparability of the properties being examined. Statements that a property is "similar" or "comparable" to another property are conclusory and do not constitute probative evidence. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470 (Ind. Tax Ct. 2005). To make a case, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties as well as establish how any differences affect the relative values of the properties. *Id.* at 471. When seeking to establish comparability of land, the relevant characteristics to compare include factors such as location, accessibility, and topography. *See Blackbird Farms Apts., LP v. Dep't of Local Gov't Fin*., 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002) (holding that the taxpayer failed to establish comparability of parcels of land where, among other things, the taxpayer did not compare the topography and accessibility of parcels). The Petitioners failed to provide any such evidence or explanation. Their unsubstantiated conclusions regarding comparability are not probative evidence that there is any error in the assessment. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs,* 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

e. The Petitioners' letter also said that an appraisal established the total value of the property was $190,000 on both September 18, 2006, and May 1, 2007. Although the Petitioners failed to provide that appraisal, the Respondent did (Respondent Exhibit 7).

f. A market value-in-use appraisal, completed in conformance with the Uniform Standards of Professional Appraisal Practice can be the most effective method to prove what the assessment should be. *Kooshtard Property VI, LLC v. White River Twp. Assessor,* 836 N.E.2d 501, 506 n. 6 (Ind. Tax Ct. 2005).

g. A 2006 assessment, however, must reflect the value of the property as of January 1, 2005. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. Any evidence of value relating to a different date must also have an explanation about how it demonstrates, or is relevant to, the value as of that required valuation date. *See Long*, 821 N.E.2d at 471. In this case, nobody related the 2006 and 2007 appraisal dates to the required January 1, 2005, valuation date. Consequently, the appraisal does not help prove what the assessment should be.

h. The Respondent argued the current total assessment should be sustained because it is within ten percent of the appraisal value. There is, however, no support for the contention that a ten percent range for assessments is acceptable.[2]

[2] The Respondent is apparently relying upon the instruction that "the overall level of assessment, as determined by the median assessment ratio, should be within ten percent (10%) of the legal level." MANUAL at 21. This statement clearly refers to standards for evaluating the accuracy of the median assessment ratio in the equalization process. It does not grant a ten percent range for individual assessments.

i. When a taxpayer fails to provide probative evidence supporting his/her position that an assessment should be changed, the Respondent's duty to support the 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.*, 704 N.E.2d at 1119.

Conclusion

19. The Petitioners 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 assessment will not be changed.

ISSUED: April 6, 2009

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Commissioner,
Indiana Board of Tax Review

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Commissioner,
Indiana Board of Tax Review

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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>