

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

Petition: 83-006-06-1-4-00198
Petitioners: Albert and Joyce Clark
Respondent: Vermillion County Assessor
Parcel: 006-014-0021-00
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 Vermillion County Property Tax Assessment Board of Appeals (PTABOA) by written document dated June 21, 2007.
2. The Petitioners received notice of the decision of the PTABOA on November 13, 2007.
3. The Petitioners appealed to the Board by filing a Form 131 on December 31, 2007, and elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing to the parties dated April 1, 2008.
5. Paul Stultz, the appointed Administrative Law Judge, held the administrative hearing on May 1, 2008, in Newport, Indiana.
6. Albert Clark and County Assessor Patricia Richey were present and sworn as witnesses.

Facts

7. The property is an automobile dealership located at 105 North Division Street in Cayuga.
8. The Administrative Law Judge did not inspect the property.
9. The PTABOA determined the assessed value is \$4,700 for the land and \$266,800 for the improvements (total \$271,500).
10. The Petitioners contended the assessed value should be \$4,600 for the land and \$205,400 for the improvements (total \$210,000).

Contentions

11. The Petitioners presented the following evidence:
 - a. The office building was originally constructed in 1998 and 1999 for \$125,000. *Clark testimony.*
 - b. The Petitioners appealed the 2005 assessment and the Board determined the correct value of the building was \$205,400. That determination of value was fair. The 2006 assessment should also be this amount. *Clark testimony.*
 - c. The land should be assessed at \$4,600. *Clark testimony.*
 - d. No property in Cayuga could be sold for \$200,000. The ratio study prepared by the county assessor included properties from all parts of the county rather than examining sales only in the local community. *Clark testimony.*

12. The Respondent presented the following evidence:
 - a. A ratio study based on sales data established that commercial property in the county increased in value by 30% for 2006. The study had to include all eighteen commercial sales in the county in order to obtain sufficient sales information. The Petitioners' assessed value was increased based on this data. *Richey testimony.*
 - b. The PTABOA requested that the Petitioners provide financial information in order to compute the value based on the income approach, but the Petitioners failed to provide this information. *Richey testimony.*

Record

13. Neither party introduced any exhibits.

14. The official record for this matter is made up of the following:
 - a. The Petition,
 - b. A digital recording of the hearing,
 - c. Board Exhibit A - Form 131 Petition for Review of Assessment,
Board Exhibit B - Notice of Hearing on Petition,
Board Exhibit C - Hearing Sign-in Sheet,
 - d. These Findings and Conclusions.

Analysis

15. 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). 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”).
16. The Petitioners did not make a prima facie case. The Board arrived at his conclusion 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 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.
 - b. As a starting point, Mr. Clark testified that the building was constructed in 1998 and 1999 for \$125,000. That testimony, however, lacked detail and was not supported by any documentation. While it is true that actual construction costs are one way to prove what a value really should be, actual construction costs must include all the direct labor and material costs, plus all the indirect labor and material costs including supervision, permits and fees, insurance, taxes, construction interest, profit, equipment rental and utilities used during construction. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002—VERSION A, intro. at 1 (incorporated by reference at 50 IAC 2.3-1-2). The Petitioner’s cursory, conclusory testimony about 1998 and 1999 construction cost is insufficient to prove what the value should be. *See Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). Further, construction costs would need to be related to the required valuation date, January 1, 2005, but the Petitioner failed to do so. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
 - c. The Petitioners primarily relied on the purported 2005 assessed value of the building as proof of error in the current assessment. But the record contains no documentation of that value or the determination associated with it. Consequently, the testimony that the 2005 assessment for the building was

\$205,400 has little, if any, weight. More importantly, in Indiana each assessment and each tax year stands alone. A prior assessment is of no probative value. *See Thousand Trails Inc. v. State Bd. of Tax Comm'rs*, 757 N.E.2d 1072, 1077 (Ind. Tax Ct. 2001). Furthermore, starting with the 2006 assessments, there is a system for annually adjusting the assessed value of real property to account for changes in value since the last general reassessment. Ind. Code § 6-1.1-4-4.5; Ind. Admin. Code tit. 50, r. 21-3-3. Therefore, even if the record conclusively proved what the 2005 assessed value was, that fact would not prove what the value should be for the 2006 assessment.

- d. The Petitioners also claimed the land value should be \$4,600 rather than \$4,700, but they did not present any probative evidence to support it. Again, unsubstantiated, conclusory testimony does not constitute probative evidence and does not make a case. *Whitley Products*, 704 N.E.2d at 1119.
- e. The Petitioners failed to overcome the presumption that the current assessment is correct.
- f. When a taxpayer fails to provide probative evidence supporting its position that an assessment should be changed, 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 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

17. 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: _____

Commissioner, 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>