

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

Petition: 83-006-06-1-4-00199
Petitioners: Albert & Joyce Clark
Respondent: Vermillion County Assessor
Parcel: 006-003-0027-00
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) with a Form 130 that is dated June 21, 2007.
2. The PTABOA issued notice of its decision on November 13, 2007.
3. The Petitioners appealed to the Board by filing a Form 131 on December 31, 2007. Petitioners elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing dated April 1, 2008.
5. Administrative Law Judge Paul Stultz held the 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 subject property is a paved commercial lot in Cayuga.
8. The Administrative Law Judge did not inspect the property.
9. The PTABOA determined the assessed value is \$7,400 for the land and \$15,300 for the improvements (total \$22,700).
10. The Petitioners requested an assessed value of \$2,400 for the land and \$7,800 for the improvements (total \$10,200).

Contention

11. Summary of the Petitioners' contentions:
 - a. The subject property consists of two lots in the center of town. The subject property does not have water or sewer. No lot in Cayuga is worth over \$5,000 and none have sold for that amount. *Clark testimony.*
 - b. The property across the street includes four lots and a building. That property was appraised for \$23,000 as of January 1, 2005. The Petitioners also own that property. The building was built about five years ago for \$3,900. Based on removing \$10,000 for the value of the building, this appraisal means each lot is worth approximately \$3,000 or \$4,000. *Clark testimony; Pet'r Ex. 2.*
 - c. The blacktop is the only improvement on the subject property. The lot was paved 10 to 12 years ago with 1½ inches of asphalt. The asphalt paving is not commercial grade. It could be repaved for \$7,800. Photographs show that the asphalt is cracking and deteriorating. They were taken in March 2008, but what they show has not changed much since 2006. *Clark testimony; Pet'r Exs. 1a-1f.*

12. Summary of the Respondent's contentions:
 - a. The appraisal does not specify the value assigned to the lots. *Richey testimony.*
 - b. The paving was priced using the lowest value given in the Real Property Guidelines. The photographs were taken 2 months ago. They do not show the condition of the paving in 2006, which is the assessment year under review. *Richey testimony.*

Record

13. 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 1a-f – Six photographs of the subject paving,
Petitioner Exhibit 2 – Appraisal (not the subject property),
Board Exhibit A – Form 131 Petition,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing Sign In Sheet,
 - d. These Findings and Conclusions.

Analysis

14. 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”).
15. The Petitioners did not make a prima facie case. The Board arrived at this conclusion because:
 - a. 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); REAL PROPERTY ASSESSMENT 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. MANUAL at 3. To that end, Indiana promulgated a series of guidelines that explain the application of the cost approach. *See REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A*. The value established by use of the Guidelines, while presumed to be accurate, is merely a starting point. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut that presumption. 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. Regardless of the approach used to prove the market value-in-use of a property, a 2006 assessment must reflect value as of January 1, 2005.¹ An appraisal (or any other evidence) must have some explanation about how it demonstrates or is relevant to the required valuation date. *See Long v. Wayne Twp Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
 - c. The Petitioners attempted to prove that the land value is too high and that it should be changed to \$2,400 by comparing the assessed value to the appraised value of a property located directly across the street. To draw any legitimate conclusion from a comparison, the characteristics of the subject property and the

¹ A system for annually adjusting assessed values of real property to account for changes since the last general reassessment started with the 2006 assessments. Ind. Code § 6-1.1-4-4.5. “The valuation date is January 1 of the year proceeding the year of the assessment date.” Ind. Admin. Code tit. 50, r.21-3-3(b).

purportedly comparable property must be considered. The proponent must explain how the characteristics compare and how any differences affect the relevant market value-in-use of the properties. *Id.*

- d. The Petitioners' attempted comparison fails for several reasons. Although the appraisal indicates the purported comparable is .66 acre, the record does not establish the size of the subject property. Testimony established that the subject property consists of two lots and the purported comparable has four lots. The Petitioners' analysis seems to assume that the lots are of equal size, but nothing in the record establishes that fact. Furthermore, other than the location being directly across the street, the record fails to establish how the characteristics might compare or differ. The appraisal does not attribute any particular portion of the \$23,000 appraised value to land or improvement.² The Petitioners attempted to do so by deducting \$10,000 for the improvement—a value that was apparently derived from the purported \$3,900 construction cost five years earlier. That deduction amount is entirely conclusory. Consequently, the conclusion that the appraisal valued comparable land at \$13,000 is not probative evidence. *See Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). But even if the Board were to accept the Petitioners' assumptions and conclusions, four lots valued at \$13,000 would be equivalent to \$6,500 for two lots. Thus, the appraisal shows only a marginal difference with the current land assessment (\$7,400) and it provides no support for the claim the land assessment should be \$2,400.
- e. The Petitioners presented undisputed testimony that the 1½ inches of asphalt paving on the subject property is 10 to 12 years old and it is not commercial grade. The Board will also accept the description that the paving is cracking and deteriorating. But without additional evidence and explanation connecting them with specific numbers, those facts do not prove what a more correct valuation might be.
- f. The Petitioners' attempt to prove a number failed. As previously noted, actual construction costs are one of the recognized ways that a taxpayer can overcome the presumption that the current assessment is correct. The Petitioners merely offered conclusory testimony that the paving value should be \$7,800 because that is what it would cost to repave the lot. They did not provide documentation or details to support that statement. They did not establish specifically what "repaving" would include, but the Board will not assume that paving over existing pavement includes all required elements of cost. The speculation about the cost for repaving is conclusory and does not constitute probative evidence. It does not help make a case for the Petitioners. *Whitley Products*, 704 N.E.2d at 1119.

² The credibility of the Petitioners' analysis of the appraisal was seriously diminished when, in response to a question about whether the appraisal gave a separate land value, Mr. Clark responded, "I'll be honest with you. I have not had time to look at the appraisal. *** I don't know."

- g. The Petitioners failed to offer probative evidence that the current valuation is wrong or what a more accurate valuation might be for the subject property.

Conclusion

16. The Board finds in favor of 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>