

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

Petition: 15-016-06-1-5-00055
Petitioner: Augustus Dillon Cook, Jr.
Respondent: Dearborn County
Parcel: 15-07-03-204-032.000-016
Assessment Year: 2006

The Indiana Board of Tax Review (Board) issues its determination in the above matter. The Board finds and concludes as follows:

Procedural History

1. The Petitioner initiated an assessment appeal with the Dearborn County Property Tax Assessment Board of Appeals (PTABOA) by written document dated September 18, 2007.
2. The PTABOA mailed its decision on March 18, 2008.
3. The Petitioner appealed to the Board by filing a Form 131 on April 21, 2008, 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 2, 2009.
5. Administrative Law Judge Kay Schwade held the Board's administrative hearing on June 18, 2009. She did not conduct an inspection of the property.
6. The Petitioner represented himself. Attorney John D. Gay represented the Respondent. The following persons were sworn as witnesses at the hearing:
For the Petitioner — Augustus Cook,
For the Respondent — County Assessor Gary Hensley.

Facts

7. This is a case about a residential property located at 324 Arthur Street in Lawrenceburg.
8. The PTABOA determined the assessed value is \$27,200 for land and \$178,000 for improvements (total \$205,200).
9. The Petitioner requested a total assessed value of \$21,700 for land and \$138,100 for improvements (total \$159,800).

Record

10. The official record for this matter is made up of the following:
- a) Petition for Review of Assessment (Form 131) with attachments,
 - b) Notice of Hearing,
 - c) Hearing Sign-In Sheet,
 - d) Digital recording of the hearing,
 - e) Petitioner Exhibit 1 – Page 2 of the Form 131,
Petitioner Exhibit 2 –Notice of Assessment of Land and Structures,
Petitioner Exhibit 3 – Annually Adjusting Assessed Values Fact Sheet published
by the Dep't of Local Gov't Finance in August 2006,
Petitioner Exhibit 4 – Property record card for the subject property,
Petitioner Exhibit 5 – Parcel record for the subject property,
Petitioner Exhibit 6 – Parcel record for 302 Arthur Street,
Petitioner Exhibit 7 – Sales disclosure information for 327 Arthur Street,
Petitioner Exhibit 8 – Sales disclosure information for 330 Arthur Street,
Petitioner Exhibit 9 – Parcel record for 331 Arthur Street,
Respondent Exhibits – None,
 - f) These Findings and Conclusions.

Contentions

11. Summary of the Petitioner's case:
- a) According to the Annually Adjusting Assessed Values Fact Sheet (Fact Sheet) published by the Department of Local Government Finance, a property's assessed value is based on what it could sell for. This system is different than the old system because the new system adjusts values based on the sales data for a particular property type in a neighborhood or area. It is the fairest way to assess property and apparently is a good system because forty-eight other states use it. *Cook testimony; Pet'r Ex. 3.*
 - b) The Fact Sheet explains that the process of annual adjustment compares the prior year assessment with current sales of the properties in a neighborhood. *Cook testimony; Pet'r Ex. 3.*
 - c) The comparables presented are single story homes on Arthur Street where the subject property is located. Arthur Street is a short street with eight homes on it. Two of the homes are 2-story homes and one is a Spanish style ranch home. The

remaining ones are rectangular single story ranch style homes. The 2-story homes and the Spanish style were excluded because they do not compare to the subject property. *Cook testimony; Pet'r Ex. 6 – 9.*

- d) The information provided about the comparable properties is either a partial assessment record or sales disclosure information. The sales disclosure information shows that 330 Arthur Street sold for \$149,000 in 2004 and its current assessed value is \$151,500. Sales disclosure information shows that 327 Arthur Street sold for \$80,500 in 2006, but it is assessed for \$121,100. 327 Arthur Street is across the street from the subject property on a corner lot adjacent to a park. 331 Arthur also borders the park and pond. The assessment record for 331 Arthur Street shows its current assessment is \$147,500. *Cook testimony; Pet'r Ex. 7 – 9.*
- e) The property located at 302 Arthur Street is several years older than the subject property. The remaining comparables are newer than the subject property by ten to fifteen years. The comparables are similar in construction to the subject property, but they are not identical to it. *Cook testimony.*
- f) The subject property was purchased in 2001 for \$161,000. The property record card shows that the 2002 assessed value was \$175,200. But after an informal meeting with a representative of the county assessor, that assessment was reduced to \$159,800 bringing it in line with the 2001 purchase price. The assessed value remained at \$159,800 until 2006, when it took a big jump up. *Cook testimony; Pet'r Ex. 4.*
- g) Because the country has been in a deep recession for two years, it does not make sense that the value would increase between 2005 and 2006. *Cook testimony.*

12. Summary of the Respondent's case:

- a) The difference between the 2002 assessment and the 2005 assessment is a result of applying an adjustment factor after a study of sales activity. The difference between the 2005 assessed value and the 2006 assessed value is the result of applying an adjustment factor after a study of a different group of sales. The differences reflect the market activity during the time period. *Hensley testimony; Pet'r Ex. 4.*
- b) Petitioner's Exhibits 5, 6, and 9 are assessment records rather than sales information. They do not have sufficient information to establish comparability because these records do not reveal characteristics such as grade, condition, or age that are necessary to make a true comparison to the subject property. *Hensley testimony.*
- c) Petitioner Exhibit 7 shows that 327 Arthur Street sold for \$80,500 and is assessed at \$121,100. But there is not enough information to analyze the sale or the

difference between sale price and assessed value. From what the Petitioner presented, there is no reason to believe that the assessment for 327 Arthur Street is too high. *Hensley testimony*.

- d) Petitioner Exhibit 8 shows that 330 Arthur Street sold for \$149,000 and is assessed for \$151,500. It indicates the system is working. *Hensley testimony*.
- e) The taxpayer's burden is to come forward with probative evidence to demonstrate error. The Petitioner did not meet that burden. *Gay argument*.

Analysis

- 13. The Petitioner who seeks 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 Petitioner 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”).
- 14. The Petitioner failed to prove that the current assessment is wrong or what a more accurate assessment might be. This conclusion was arrived at for the following reasons:
 - 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. Indiana promulgated a series of guidelines that explain the application of the cost approach. 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 a property’s value-in-use, a 2006 assessment must reflect its value as of January 1, 2005. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. An appraisal or any other evidence of value must have some explanation as to how it demonstrates or is relevant to value as of the required

valuation date. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).

- c) Each assessment year is separate and distinct. *See Quality Stores, Inc. v. State Bd. of Tax Comm'rs*, 740 N.E.2d 939, 942 (Ind. Tax Ct. 2000); *Barth v. State Bd. of Tax Comm'rs*, 699 N.E.2d 800, 806 (Ind. Tax Ct. 1998) (each tax year stands on its own and where taxpayer challenges an assessment the resolution does not depend on how the property was previously assessed).
- d) The Petitioner showed that his purchase price (\$161,000) and his 2002 through 2005 assessments (\$159,800) were close—implying that valuation was reasonably accurate. He testified that it does not make sense that the 2006 assessment would increase when the country is going through a deep recession. But such conclusions are not probative evidence. *See Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221 (Ind. Tax Ct. 2003); *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998) (stating that conclusory statements do not qualify as probative evidence). Furthermore, the Petitioner's conclusion improperly disregards the fact that a 2006 assessment must be based on a different valuation date than his prior assessments. And the Petitioner failed to relate his purchase price to a value as of January 1, 2005. Therefore, his purchase price is not probative evidence for this case. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3; *Long*, 821 N.E.2d at 471. Similarly, the prior assessments of \$159,800 all relate back to a value as of January 1, 1999.¹ They do not help to prove what a more accurate assessment for 2006 might be. *Long*, 821 N.E.2d at 471; *Quality Stores*, 740 N.E.2d at 942; *Barth*, 699 N.E.2d at 806.
- e) The Petitioner also presented assessment and sale evidence about other properties in an attempt to show that the subject property is over assessed. The subject property and the comparables are all located on Arthur Street, which is short and only has eight homes on it. The Petitioner did not consider three of the homes on Arthur Street to be comparable. But according to the Petitioner, his property and the four comparables are all single story ranch style homes with “similar construction.” He identified one of the comparables as being older, while the other comparables are ten to fifteen years newer than the subject property. While this kind of evidence is a step in the right direction, it is far from enough to reach any legitimate conclusion about the value of the subject property. The Petitioner failed to provide sufficient evidence to meaningfully compare the values of the properties. *Fidelity Federal Savings & Loan v. Jennings Co. Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005); *Long*, 821 N.E.2d 471 (both cases stating that the parties are responsible for explaining the characteristics of the subject property, how those characteristics compared to those of the purportedly comparable property, and how any differences affected the relevant market value-in-use of the properties). A taxpayer's statements that another property “is similar” or “is comparable” are nothing more than conclusions and conclusory

¹ All assessments for 2002 through 2005 were required to be based on a valuation date of January 1, 1999. MANUAL at 4; *Long*, 821 N.E.2d at 471.

statements about the value of property are not probative evidence. They do not help to prove what a more accurate valuation might be. *See Long*, 821 N.E.2d at 470; *Whitley Products*, 704 N.E.2d at 1119.

- f) The Petitioners evidence is not sufficient to establish a prima facie case for any change to the assessment.
15. Where the Petitioner 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*, 799 N.E.2d at 1221-1222.

Conclusion

16. 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: _____

Commissioner,
Indiana Board of Tax Review

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- 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>>