

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

Petition: 06-003-12-1-5-00253
Petitioners: James and Debra Eggleston
Respondent: Boone County Assessor
Parcel: 003-04440-17
Assessment Year: 2012

The Indiana Board of Tax Review (Board) issues this determination in the above matter, finding and concluding as follows:

Procedural History

1. The Petitioners initiated an assessment appeal with the Boone County Property Tax Assessment Board of Appeals (PTABOA) by written document on August 10, 2012.
2. The PTABOA mailed notice of its decision, Form 115, on November 15, 2012.
3. The Petitioners appealed to the Board by filing a Form 131 petition on December 10, 2013, and elected to have the case heard according to small claims procedures.
4. The Board issued a notice of hearing to the parties dated August 6, 2013.
5. Administrative Law Judge Ronald Gudgel held the Board's administrative hearing on September 19, 2013. He did not inspect the property.
6. James Eggleston appeared pro se. Boone County Assessor Lisa C. Garoffolo appeared as the Respondent. Peggy J. Lewis, an appraiser and member of the PTABOA, appeared on behalf of the Respondent. All were sworn as witnesses.

Facts

7. The property is a single family residence located at 8720 W. 96th Street, Zionsville, Indiana.
8. The PTABOA determined the assessed value is \$172,100 for the land and \$502,900 for the improvements (a total of \$675,000). *Form 115*.
9. The Petitioners contended on their Form 131 the total assessed value should be \$96,000 for the land and \$502,000 for the improvements (a total of \$599,500). The issue on appeal is whether the land assessment exceeds the market value-in-use.

Record

10. The official record for this matter contains the following:
 - a. Digital recording of the hearing,
 - b. Petitioners Exhibit 1 – Property record card for Nancy Fehsenfeld property,
 - c. Respondent Exhibit 1 – Boone County Appeal Worksheet,
Respondent Exhibit 1A – Metropolitan Indianapolis Board of Realtors (MIBOR) sales data,
Respondent Exhibit 2 – 2012 property record card before the PTABOA hearing,
Respondent Exhibit 3 – Notice of Hearing on Petition (Form 114),
Respondent Exhibit 4 – Photograph of the property under appeal,
Respondent Exhibit 5 – Comparative market analysis,
Respondent Exhibit 6 – Notification of Final Assessment Determination (Form 115),
Respondent Exhibit 7 – MIBOR listing of neighbor’s property,
Respondent Exhibit 8 – 2012 property record card after the PTABOA hearing,
Respondent Exhibit 9 – Petition to the Board for Review of Assessment (Form 131),
Respondent Exhibit 10 – Board’s Notice of Hearing on Petition,
Respondent Exhibit 11 – Request for continuance,
Respondent Exhibit 12 – Letter granting continuance,
Respondent Exhibit 13 – Board’s Notice of Hearing,
 - d. Board Exhibit A – Form 131 Petition,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing Sign-In Sheet,
 - e. These Findings and Conclusions.

Burden of Proof

11. Generally, a taxpayer seeking review of an assessing official’s determination has the burden of proving that a property’s assessment is wrong and what the correct assessment should 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). Recently, the Indiana General Assembly enacted a statute that in some cases shifts the burden of proof:

This section applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal increased the assessed value of the assessed property by more than five percent (5%) over the assessed value determined by the county assessor or

township assessor (if any) for the immediately preceding assessment date for the same property. The county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.

Ind. Code § 6-1.1-15-17.2.

12. In this case, both parties agreed that the Respondent had the burden of proving that the March 1, 2012, assessment was correct because the total assessment increased more than five percent. Specifically, the 2011 total assessment was \$588,600, and the 2012 assessment was \$675,000. *Garoffolo testimony; Bd. Ex. 1, Form 115.*
13. While the parties agreed the Respondent has the burden in this case, the remedy for the Respondent's failure to meet her burden is for the assessment to decrease to the prior year's assessment. Here, the Petitioners are only appealing the PTABOA's assessment of the land valuation. *Form 131.* However, in this case, the land valuation did not change from 2011 to 2012. Specifically, for both years, the land was assessed at \$172,100. *Resp't Ex. 2.* Therefore, if the Respondent fails to meet her burden to prove the 2012 land assessment was correct, the assessment will not change because the 2011 land assessment was the same as the 2012 land assessment.
14. On the Form 131, the Petitioners claimed the land assessment should decrease to \$96,000. At the hearing, the Petitioners claimed the land assessment should decrease to the 2013 assessment of \$116,900. Both of these figures are well below the 2011 and 2012 land assessment. The burden is on the taxpayer to prove that a decrease below the prior year assessment is proper. Thus, in this case, the taxpayers have the burden of proof for the remedy they are seeking.

Contentions

15. Summary of the Petitioners' case:
 - a. The land assessment was reduced to \$116,900 for the 2013 assessment. The 2012 land assessment should also be reduced to this amount. *Eggleston testimony.*
 - b. The Petitioners purchased the lot for \$139,000 in 2007. At that time, it was the least expensive lot in the subdivision and land values have declined since. *Eggleston testimony.*
 - c. The parcel is located on 96th Street with a normal driveway entrance directly from 96th Street. Land along 96th Street is less expensive than lots located closer to the Grand Entrance to the subdivision. *Eggleston testimony.*
 - d. A comparable property is located at 7418 W. 96th Street. This lot is similar in size to the Petitioners' parcel. For this property, the residential land is assessed at

\$68,000 and the excess residential land is assessed at \$28,600. *Eggleston testimony; Pet'r Ex. 1.* In contrast, the Petitioners' residential land is assessed at \$130,000 while their excess residential land is assessed at \$42,100. *Eggleston testimony.*

- e. The well and septic system, as well as the driveway, each cost approximately \$10,000 to install. The Petitioners did the landscaping themselves. *Eggleston testimony.*

16. Summary of the Respondent's case:

- a. The Petitioners submitted evidence of three properties they contended were comparable to their parcel. The average sale price of these properties was \$54,237 per acre. The Petitioners' lot, which is 2.62 acres, would therefore be valued at \$142,100 before the addition of land improvements such as a well and septic system, a driveway, and landscaping. *Lewis testimony.*
- b. A comparative market analysis, that examined two of the lots selected by the Petitioners and added a third vacant lot showed the average acreage value of those properties was \$49,170 per acre. *Garoffolo testimony; Resp't Ex. 5.*
- c. The PTABOA raised the assessment during the appeal process, but the increase was due entirely to a change in the improvement value. No change was made to the land assessment, which is the only part of the assessment the Petitioners are appealing. *Garoffolo testimony; Resp't Ex. 8.*
- d. The property at 7418 W. 86th Street is a rural property that is not located within a subdivision. Assessments are made by subdivisions whenever possible. *Garoffolo testimony.*

Analysis

17. The Petitioners failed to meet their burden of proving that the subject's parcel land assessment should be reduced below \$172,100. The Board reaches that conclusion for the following reasons:

- a. Indiana assesses real property based on its "true tax value," which 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); 2011 REAL PROPERTY ASSESSMENT MANUAL 2 (incorporated by reference at 50 IAC 2.4-1-2). Three standard approaches are used to determine market value-in-use: the cost, sales-comparison, and income approaches. MANUAL at 2. Those approaches, however, must be applied in accordance with generally accepted appraisal principles. *Id.* Any evidence relevant to a property's true tax value as of the assessment date, including an appraisal prepared in

accordance with generally recognized appraisal principles, may be offered in an assessment appeal. *Id.* at 3

- b. The Petitioners contended the 2012 land assessment should be reduced to either the land assessment for 2013 which was \$116,900, or to \$96,000. With respect to the contention that the land assessment should be reduced to the 2013 land assessment, each assessment and each tax year, however, stand alone. *Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (citing *Glass Wholesalers, Inc. v. State Bd. of Tax Comm'rs*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991)). Thus, evidence as to a property's assessment in one tax year is not probative of its true tax value in a different tax year. *See Id.* And, regarding the contention that the land assessment should be decreased to \$96,000, the Petitioners failed to provide any evidence to support this number.
- c. The Petitioners further asserted they purchased the land for \$139,000 in 2007. Regardless of the method used to rebut an assessment's presumption of accuracy, a party must explain how its evidence relates to the subject property's market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2012, assessment, the valuation date was March 1, 2012. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c). Here, the Petitioners offered no explanation to relate the 2007 purchase price to the March 1, 2012, valuation date. Accordingly, this testimony is of no probative value. *See Id.*
- d. The Petitioners presented a property record card from a neighboring property, contending the assessments should be similar. A party to an appeal proceeding may introduce evidence of assessments of comparable properties located in the same taxing district or within two miles of the boundary of the taxing district. The determination of whether the properties are comparable shall be based on generally accepted appraisal and assessment principles. Ind. Code § 6-1.1-15-18.
- e. In order to rely on this evidence in an assessment appeal a party must first show that the properties being examined are comparable to each other. Conclusory statements that a property is "similar" or "comparable" to another property are not probative of the properties' comparability. *Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Instead, one must identify the characteristics of the property under appeal and explain how those characteristics compare to the characteristics of the purportedly comparable properties. Similarly, one must explain how any differences between the properties affect their relative market values-in-use. *Id.* The Petitioners failed to offer a meaningful comparison of the parcels in terms of characteristics that would affect their relative markets values-in-use. Here, other than showing that this property was comparable in size to the subject property, the Petitioners failed to show how the comparable lot was in fact comparable. *Eggleston testimony.*

- f. The Petitioners also asserted that property values were declining in their subdivision. The Petitioners, however, presented no probative market evidence to support this contention. Unsubstantiated conclusions do not constitute probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
- g. In this appeal, the taxpayers failed to provide probative evidence supporting their position that the land assessment should be decreased below the prior year land assessment.

Final Determination

- 18. The Petitioners bore the burden of proving that they were entitled to a reduction below the prior year assessment. They failed to meet this burden and the 2012 assessment is affirmed.

ISSUED: December 17, 2013

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 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.

