

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

Petition: 55-015-08-1-5-00001
Petitioners: Larry and Trudy Ellis
Respondent: Morgan County Assessor
Parcel: 55-06-02-200-004.001-015
Assessment Year: 2008

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 Morgan County Property Tax Assessment Board of Appeals (PTABOA) by written document dated July 2, 2009.
2. The PTABOA issued notice of its decision on October 15, 2009.
3. The Petitioners appealed to the Board by filing a Petition for Review of Assessment (Form 131) on December 1, 2009. The Petitioners elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing to the parties dated August 24, 2010.
5. Administrative Law Judge Ronald Gudgel held the Board's administrative hearing on November 16, 2010.
6. Petitioner Trudy Ellis appeared *pro se*, as did County Assessor Brenda Brittain. And both were sworn as witnesses. Reva Brummett also was sworn, but she did not testify.

Facts

7. The property is a manufactured home located at 11769 North Forest Manor Drive in or near Mooresville.
8. The Administrative Law Judge did not conduct an inspection of the property.
9. The PTABOA determined the assessed value is \$59,900 for land and \$66,800 for improvements (total \$126,700).
10. The Petitioners claimed the total assessed value should be \$45,000 for land and \$50,000 for improvements (total \$95,000).

Record

11. The official record for this matter is made up of the following:
 - a. The Petition,
 - b. Digital recording of the hearing,
 - c. Petitioners Exhibit A–Explanation of exhibits,
Petitioners Exhibit 1–List from Assessor with two mobile homes,
Petitioners Exhibit 2A–Realtor’s cost and market approaches to value,
Petitioners Exhibit 2B–Sale information for 11753 Forest Manor Drive,
Petitioners Exhibit 2C–Property record card for 11753 Forest Manor Drive,
Petitioners Exhibit 2D–Sale information for 5982 Rinker Road,
Petitioners Exhibit 2E–Property record card for 5982 Rinker Road,
Petitioners Exhibit 2F–Sale information for 5958 Rinker Road,
Petitioners Exhibit 3A–Property record card for 11739 Forest Manor Drive,
Petitioners Exhibit 3B–Photographs of the Petitioners’ garage and house,
Petitioners’ Exhibit 3C–Property record card for 6256 Roselyn Drive,
Petitioners Exhibit 4A–Property record card for 11818 Mann Road,
Petitioners Exhibit 4B–Photographs of running paths,
Petitioners Exhibit 4C–Photographs of the Petitioners’ property after tornado,
Petitioners Exhibit 4D–Photographs of uprooted trees on the Petitioner’s property,
Petitioners Exhibit 4E–Sale information for 7847 Landersdale Road,
Petitioners Exhibit 4F–Property record card for 7847 Landersdale Road,
Petitioners Exhibit 4G–Sale information for 12900 Robertson Street,
Petitioners Exhibit 5A–Property record card for 11827 Forest Manor Drive,
Petitioners Exhibit 5B–Photographs of 11827 Forest Manor Drive,
Petitioners Exhibit 5C–Property record card for 10576 Mann Road,
Petitioners Exhibit 6A–Note from Dottie Stapleton dated October 30, 2010,
Petitioners Exhibit 6B–Sale information for 11753 Forest Manor Drive with
added notes and computations,
Petitioners Exhibit 6C–Photographs of damage inside the Petitioners’ house,
Petitioners Exhibit 7A–Part of a 2007 article about foreclosures,
Petitioners Exhibit 7B–Part of a 2009 article about foreclosures,
Respondent Exhibits–None,
Board Exhibit A–Form 131 Petition,
Board Exhibit B–Notice of Hearing,
Board Exhibit C–Hearing Sign In Sheet,
 - d. These Findings and Conclusions.

Contentions

12. Summary of the Petitioners' case:

- a. The Petitioners' manufactured home is a 1984 model, although they actually occupied it in September 1983. The home still has the original furnace and lacks air conditioning. *Ellis testimony.*
- b. The Respondent used sales of two mobile homes to arrive at the assessed value of the Petitioners' property. One sold for \$152,500 on April 25, 2006. The other sold for \$90,000 on August 21, 2006. *Ellis testimony; Pet'r Ex. 1.*
- c. In early 2010 a local realtor estimated the value of the Petitioners' property using both the cost and market (sales comparison) approaches to value. The realtor concluded the value was \$87,000 under the cost approach. And based on the sales comparison approach the value was \$72,800. *Ellis testimony; Pet'r Ex. 2A.*
- d. One of the three properties included in the market analysis (sale 1) is located directly across the street from the Petitioners' property. It is a mobile home with the same square footage as the Petitioners' property, but it is twelve years newer and has two wells and septic systems. It also has central air conditioning and a crawl space, features not present in the Petitioners' home. It was on the market for at least eight months before selling in October 2009 for \$42,000. *Ellis testimony; Pet'r Ex. 2A, 2B.* It was assessed for \$72,600—well in excess of its sale price. *Ellis testimony; Pet'r Ex. 2C.*
- e. One of the homes used to assess the Petitioners' property is located at 5982 Rinker Road. It is seven years newer. It sold for \$104,000 in 2006, but the purchaser received a \$3,500 buyer's assistance credit. This credit reduced the market value to \$100,500. *Ellis testimony; Pet'r Ex. 2D.* The 2008 assessment of this manufactured home at \$90,600 appears to be reasonable. *Ellis testimony; Pet'r Ex. 2E.*
- f. In 2006 the manufactured home located at 5958 Rinker Road sold for \$53,900. It is one year older than the Petitioners' home and its lot is .37 acres larger than the Petitioners' land. It has central air conditioning, but the Petitioners' home has more square footage and a two car garage. *Ellis testimony; Pet'r Ex. 2F.*
- g. The property located at 11739 Forest Manor Drive is located near the Petitioners' property. It has a newer garage that is assessed for less than assessed value of the Petitioners' garage, even though the Petitioners' garage floods and has moss growing on the shingles because it is not located in direct sunlight. *Ellis testimony; Pet'r Ex. 3A, 3B.*

- h. The property located at 6256 Roselyn Drive was assessed for \$123,100 in 2008, but in 2009 it sold for \$64,133. It has a garage built in 1980 that is assessed for \$4,900 less than the Petitioners' garage. *Ellis testimony; Pet'r Ex. 3C.*
 - i. The property at 11818 Mann Road is adjacent to the Petitioners' property. It has 9 acres that are flat with running trails and a desirable view. Those 9 acres are assessed for a total of \$1,750. In contrast, the Petitioners' land has deep ravines and is littered with downed trees from tornado damage of several years ago. *Ellis testimony; Pet'r Ex. 4A - 4D.* One acre of the Petitioners' property is assessed for \$48,200. *Ellis testimony.*¹
 - j. A house and one acre at 7847 Landersdale Road in Camby sold for \$8,000 in 2009. *Ellis testimony; Pet'r Ex. 4E, 4F.*
 - k. A house and one acre at 12900 Robertson Street in Camby sold for \$25,000. That price is far below the Petitioners' land assessment. *Ellis testimony; Pet'r Ex. 4G.*
 - l. The property at 11827 Forest Manor Drive is adjacent to the Petitioners' property. In 2004 it sold for \$168,000 and in 2009 it sold again for \$134,900. These sales establish that property values have declined in the neighborhood. Furthermore, this property was assessed for \$182,600 in 2007, which is an indication that assessments in the area are excessive. *Ellis testimony; Pet'r Ex. 5A, 5B.*
 - m. The property at 10576 Mann Road in Mooresville sold for \$71,721 in 2007. But was assessed at \$136,100. Again, this difference shows the assessments in the area are excessive. *Ellis testimony; Pet'r Ex. 5C.*
 - n. A realtor estimated damage to the subject property from water, mold, and downed trees is \$20,000. *Ellis testimony; Pet'r Ex. 6A - 6C.*
 - o. Nationally and locally, many properties have experienced foreclosures. *Pet'r Ex. 7A, 7B.*
13. The Respondent testified the assessed value is based on sales and trending data.

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).

¹ The property record card for 11818 Mann Road also shows that it has a 1 acre homesite with an assessed value of \$48,200. *Pet'r Ex. 4A.*

15. 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. 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.
17. The Petitioners did not make a prima facie case for any assessment change for the following reasons:
 - a. Real property is assessed 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); 2002 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. *Id.* at 3. Indiana promulgated Guidelines that explain the application of the cost approach. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 - VERSION A (incorporated by reference at 50 IAC 2.3-1-2). 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 method used to challenge an assessment, a party must explain how its evidence relates to 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 a 2008 assessment, the valuation date was January 1, 2007. 50 IAC 21-3-3 (2009).
 - c. The Petitioners relied on an undated one-page opinion of value from a realtor who did not appear at the hearing. It concludes that the value is \$87,000 using the cost approach and \$72,800 using the sales comparison approach. The realtor made certain adjustments to the comparables in her sales comparison approach, but nothing explains how she quantified those adjustments or otherwise shows that their amounts have a substantial basis in fact. Similarly, the realtor’s cost approach contains no substantial explanation for the amounts used in that calculation. The values suggested by the realtor are only unsubstantiated conclusions that have no probative value. And there is no evidence that the realtor complied with the Uniform Standards of Professional Appraisal Practice or

used generally accepted appraisal methods to arrive at her conclusions. Furthermore, absolutely nothing relates the realtor's opinions to the required valuation date, January 1, 2007. Such evidence does not help to prove what a more accurate assessed value for the subject property might be.

- d. The Petitioners also attempted to use sales and assessments of other neighborhood properties to show what a more accurate value-in-use is. In order to effectively use a comparison approach, however, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the two properties. One must identify the characteristics of the subject property 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. *Long*, 821 N.E.2d at 470-471. The Petitioners did not provide any such analysis. They provided only minimal comparison of similarities and differences. Even for the comparison factors that the Petitioners identified, they failed to deal with how differences affected the relative values. Consequently, it is impossible to draw any legitimate conclusion about the actual value of the subject property from what the Petitioners offered.
 - e. The Petitioners mentioned the national and local prevalence of foreclosures. But they failed to offer any substantial explanation or argument about how this point would help to prove what a more accurate valuation of their property is. Therefore, analysis of how foreclosures might impact the market value-in-use of the subject property will not be attempted in this case.
 - f. Finally, the Petitioners brought up the fact that their terrain is uneven and tornado damage brought down many of their trees. The topography and fallen trees on the property very well could have a negative impact on a potential selling price. To make a case, however, the Petitioners needed to offer probative evidence about what a more accurate valuation would be. Establishing the existence of the ravines or fallen trees without somehow quantifying what they do to value is not enough to require changing the assessment. The same is true in regard to the lack of air conditioning, water leaks and mold problems. The Petitioners offered no substantial proof to quantify value amounts for any of these things. Consequently, they do not help prove the assessment should be changed.
18. When a taxpayer fails to provide probative evidence supporting the 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. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

Conclusion

- 19. The Petitioners failed to make a prima facie case for a change in assessed value. The Board finds in favor of the Respondent.

Final Determination

- 20. In accordance with the above findings and conclusions, the assessment will 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>