

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

Petition: 10-005-08-1-5-10001
Petitioners: Douglas and Jean Feuerhelm
Respondent: Clark County Assessor
Parcel: 10-21-02-100-294.000-009/21-00057-018-1
Assessment Year: 2008

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

Procedural History

1. The Petitioners initiated a 2008 assessment appeal with the Clark County Property Tax Assessment Board of Appeals (PTABOA) by written document dated September 23, 2009.
2. The PTABOA mailed its Notification of Final Assessment Determination (Form 115) on February 26, 2010.
3. The Petitioners filed a Form 131 Petition with the Board on March 15, 2010. They elected the Board's small claims procedures.
4. Administrative Law Judge Rick Barter held the administrative hearing on February 16, 2012. He did not inspect the property.
5. Petitioner Douglas Feuerhelm and Frank Kelly of Nexus Group, representing the Clark County Assessor, were sworn as witnesses.

Facts

6. The property is a single family residence located at 3110 Savannah Drive in Jeffersonville.
7. The PTABOA lowered the total assessment from \$249,500 to \$225,500. The land value remained at \$34,600 and the improvement value was reduced from \$214,900 to \$190,900.
8. On Form 131 the Petitioners claimed the assessed value should be \$29,600 for land and \$170,000 for improvements (total \$199,600).

Contentions

9. Summary of the Petitioners' case:

- a. The Feuerhelm home is a two-story brick structure built in 1990. It has 2,820 square feet of living area and a partial unfinished basement. The home sits on a lot with 12,350 square feet. The total assessed value should be approximately \$200,000. *Feuerhelm testimony.*
- b. On March 31, 2009, a comparable property sold for \$219,000. The price included \$2,000 of personal property and \$250 for a home warranty. This comparable is located at 3105 Georgian Way in the Petitioners' subdivision. It is a two-story brick residence built in 1989 with 3,876 square feet of living space and a full finished basement. Dividing its sale price (after deductions for the personal property and home warranty) by the square footage results in a value of \$57.64 per square foot. *Feuerhelm testimony; Petitioners Exhibits 4-J, 4-K.*
- c. The original 2008 assessment of the subject property (\$249,500) was \$88.48 per square foot. After the PTABOA lowered the assessment to \$225,500 it still is \$79.96 per square foot. *Feuerhelm testimony; Petitioners Exhibit 4-K.*
- d. The assessed land value of \$34,600 is too high. Although their land is assessed at the same rate as other parcels in the same subdivision, the Petitioners' lot has a 10-foot sanitary sewer easement that runs the full width of the front of the property as well as a manhole cover located in the middle of the front yard. The property also has a drainage and utility easement at the rear of the lot. These features detract from the value of the land. *Feuerhelm testimony; Petitioners Exhibits 4, 5.*
- e. A comparable parcel in a nearby subdivision, Buttonwood, is situated on a golf course—a location that makes that land more valuable. The Buttonwood lot has 23,828 square feet and the land assessment is just \$36,100 (\$1.51 per square foot). The Petitioners' land assessment, however, is \$2.80 per square foot. *Feuerhelm testimony; Petitioners Exhibit 5.*
- f. Several sources have documented a decline in home values that averaged 22 percent from 2006 to 2009. Average home prices in Jeffersonville decreased from \$130,000 in October 2008 to \$112,000 in December 2010. *Feuerhelm testimony; Petitioners Exhibits 2 to 2-C, 3 to 3-I.*
- g. The Department of Local Government Finance Sales Disclosure database for homes in Clark County shows 43 foreclosure sales in 2008 with sale prices between \$100,000 and \$250,000. *Feuerhelm testimony; Petitioners Exhibits 3, 3-H.*

10. Summary of the Respondent's case:
- a. The valuation date for a 2008 assessment is January 1, 2007. Assessing official reviewed sales occurring between January 1, 2006, and December 31, 2007, for that assessment. *Kelly testimony.*
 - b. During this time there were seven home sales in the Foxboro subdivision, where the subject property is located. The selling prices were between \$173,500 and \$270,000. Three were two-story brick homes with unfinished basements that match the property under appeal. *Kelly testimony; Respondent Exhibit 3.*
 - c. The average sale price was \$101.14 per square foot when all seven sales were included and \$96.36 per square foot when only the two-story brick homes were considered. The assessed values of the seven properties averaged \$93.70 per square foot. Considering only the three two-story brick properties, the average assessed value was \$92.54 per square foot. The assessed values of all seven neighborhood properties were somewhat lower than their sales prices. *Kelly testimony; Respondent Exhibit 3.*
 - d. The 2008 assessed value of the Petitioners' property is \$79.96 per square foot. That value is nearly 20 percent lower than the square foot value established by those seven sales and nearly 17 percent lower than the square foot value of the three two-story brick properties. *Kelly testimony.*
 - e. The sale of the property at 3105 Georgian Way was on March 31, 2009. It was 15 months after the 2006-2007 time frame ended. It is too far outside the appropriate time frame to be probative for a 2008 assessed value. *Kelly testimony.*
 - f. Land value in Buttonwood is not probative evidence for land value in Foxboro because they are different subdivisions. *Kelly testimony.*

Record

11. The official record contains the following:
- a. The Petition,
 - b. The digital recording of the hearing,
 - c. Petitioners Exhibit 1 – Form 131 Petition,
Petitioners Exhibit 2 – U.S. economic overview,
Petitioners Exhibit 3 – Kentuckiana economic overview,
Petitioners Exhibit 4 – Sales comparison based on 3105 Georgian Way,
Petitioners Exhibit 5 – Assessment comparison based on 1535 Nole Drive,
Petitioners Exhibit 6 – Form 115 PTABOA determination,

- d. Respondent Exhibit 1 – Form 131 Petition,
Respondent Exhibit 2 – Property record card,
Respondent Exhibit 3 – Sales data from the Petitioners’ subdivision, Foxboro,
Respondent Exhibit 4 – Photograph of the subject property,
- e. Board Exhibit A – Form 131 Petition,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing sign-in sheet,
- f. These Findings and Conclusions.

Analysis

- 12. A taxpayer generally has the burden to establish a prima facie case by proving the current assessment is incorrect and proving 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).
- 13. In making a 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”).
- 14. The Petitioners did not make a case for any assessment change. This conclusion was arrived at because:
 - 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). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use 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 rebut the presumed accuracy of an assessment, a party must explain how its evidence relates to the required 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). The valuation date for a 2008 assessment was January 1, 2007. 50 IAC 21-3-3 (2006). Any evidence of value relating to a different date must have an explanation about how it demonstrates, or is relevant to, value as of that date. *Long*, 821 N.E.2d at 471.
- c. The Petitioners offered undisputed evidence about increased unemployment and home foreclosures in their area. The area's job losses and foreclosures are relevant because they probably have an adverse impact on the value of the subject property, but the Petitioners needed to do more to establish exactly how that data helps get to their requested valuation of \$199,600. Similarly, there was no dispute about the fact that part of the subject property has utility easements and there is a manhole cover in the front yard. Merely establishing such facts, however, is not enough to require changing the assessment. If those facts actually reduced the market value-in-use of their property, the Petitioners needed to offer probative evidence about what a more accurate valuation would be. *See Talesnick v. State Bd. of Tax Comm'rs*, 756 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001). They failed to offer substantial proof of a more accurate number. Instead, they relied on conclusory statements that are not probative evidence. *See Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
- d. As previously noted, sales information regarding comparable properties can be one way to help prove what a more accurate valuation of the subject property is. Toward that end, the Petitioners presented evidence about a sale of a property located in their neighborhood at 3105 Georgian Way. But this sale occurred on March 31, 2009, and nothing in the record specifically relates the 2009 sale price to a value as of January 1, 2007. (To the extent it is related to the required valuation date at all, the evidence indicates declining values since 2006.) Therefore, this 2009 sale fails to help prove a case for a lower assessment. *O'Donnell*, 854 N.E.2d at 95; *Long*, 821 N.E.2d at 471.
- e. The Petitioners' attempted sales comparison analysis has additional fatal flaws. They offered only conclusory statements for the \$2,000 personal property and \$250 home warranty amounts deducted from the \$219,000 sale price of 3105 Georgian Way. Again, such conclusory statements are not probative evidence. *Whitley Products*, 704 N.E.2d at 1119. More importantly, the purported analysis is simply based on a value per square foot (\$79.96 per square foot compared to \$57.64 per square foot). It is insufficient to draw any legitimate conclusion about the value of the subject property. *See Long*, 821 N.E.2d at 471. The Board has no responsibility to review all the documentation to determine whether the properties actually were comparable. That duty rested with the Taxpayers. The Taxpayers were responsible for explaining the characteristics of their own 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. *Id.* While pointing out that both properties are two-story brick homes was a step in the right direction, much more specific detail would be required for any kind of meaningful comparative analysis or conclusion about the actual value of the subject property. (Although it makes no difference to the outcome of this case, the Respondent's evidence about average square foot values of "comparable" sales suffers from similar problems. Consequently, in this case the Respondent's comparison is equally unpersuasive.)

- f. The Petitioners' land is assessed at the same rate as other lots in their neighborhood. Nevertheless, they want a lower valuation because a larger lot located on a golf course in an adjacent subdivision has a lower assessed value. Their cursory description of the golf course parcel, however, did not establish a basis for meaningful comparison. *See Blackbird Farms Apts., LP v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 715 (Ind. Tax Ct. 2002) (holding that taxpayer failed to establish comparability of parcels of land where, among other things, taxpayer did not compare the topography and accessibility of parcels). Furthermore, simply comparing assessments (rather than sales) is problematic. The Tax Court has held that it is not enough for a taxpayer to show his own property is assessed higher than comparable properties. *Westfield Golf Practice Center v. Washington Twp. Assessor*, 859 N.E.2d 396, 399 (Ind. Tax Ct. 2007). Instead, the taxpayer must present probative evidence that the assessed value as determined by the assessor is not an accurate market value-in-use. *Id.*; *P/A Builders & Developers, LLC v. Jennings Co. Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (focus is on determining whether the assessed value is actually correct.) Here, the Petitioners failed to do so. They relied on the conclusory statement that golf course land is more valuable, but such unsubstantiated conclusions are not probative evidence. *Whitley Products*, 704 N.E.2d at 1119. The evidence does nothing to help prove the current land value is too high or what a more accurate land value would be.
15. Where a taxpayer fails to provide probative evidence 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).

Conclusion

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

Final Determination

In accordance with these findings and conclusions, the assessment will not be changed.

ISSUED: May 15, 2012

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>.