

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

Petition: 83-010-06-1-5-00087
Petitioners: Darrell and Christine Foreman
Respondent: Vermillion County Assessor
Parcel: 010-006-0005-00
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. Petitioners initiated an assessment appeal by filing Form 130.
2. The Vermillion County Property Tax Assessment Board of Appeals (“PTABOA”) issued notice of its determination on August 6, 2007.
3. Petitioners appealed to the Board by filing a Form 131, and elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing to the parties dated July 17, 2008.
5. Administrative Law Judge Paul Stultz held the Board’s hearing on August 20, 2008.
6. The following persons were present and sworn as witnesses at the hearing:
For the Petitioners – Darrell Foreman,
For the Respondent – Patricia Richey, Vermillion County Assessor,
Jenny Becker, Indiana Assessment Service.

Facts

7. The subject property is a single family residence located at 325 Walnut Street in Perrysville.
8. The Administrative Law Judge did not conduct an inspection of the property.
9. The PTABOA determined the assessed value is \$16,900 for land and \$116,100 for improvements (total \$133,000).
10. Petitioners contend the assessed value should be \$6,000 for land and \$113,811 for improvements (total \$119,811).

Contentions

11. Petitioners presented the following evidence:
 - a. A Comparable Sale Analysis (“CSA”), prepared by a local realtor who is a licensed appraiser, concluded the value of Petitioners’ property was \$122,500 as of December 30, 2007. *Pet’rs Ex. 1.*
 - b. Seven photographs show neighborhood properties that are representative of the quality of homes located near the subject property. *Foreman testimony; Pet’rs Ex. 4.*
 - c. The original construction cost of the improvements was \$75,000 in 1994. *Foreman testimony.* As a general principle, residential property value is highest when new and incrementally diminishes over time due to deterioration. *Id.* To support this assertion, Petitioners’ point to a widespread national decline in property values. *Pet’rs Ex. 3.* Consequently, the subject property possessed its highest value immediately after construction in 1994. *Id.* After 14 years of material deterioration, the subject property’s assessed value continues to increase, counter to the common assumption of steady decline. *Id.*

12. The Respondent presented the following evidence:
 - a. The valuation date of the CSA is December 30, 2007, but the proper valuation date for a 2006 assessment is January 1, 2005. Petitioners failed to adjust the CSA’s 2007 value to the necessary 2005 valuation date. *Becker testimony.*
 - b. Original 1994 construction costs are irrelevant to the subject property’s market value as of January 1, 2005. *Becker testimony.*
 - c. The 2006 trending factor for Petitioners’ neighborhood was 98%. Therefore, the subject property’s preliminary assessment was already reduced by two percent based on this trending factor. *Becker 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. Petitioners Exhibit 1 – Comparable sales analysis,
Petitioners Exhibit 2 – Form 131 Petition for Review of Assessment,
Petitioners Exhibit 3 – Petitioner Statement,
Petitioners Exhibit 4 – Seven photographs of surrounding properties,

Respondent Exhibit 1 – Property record card,
Board Exhibit A – Form 131 Petition for Review of Assessment,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing Sign In Sheet,

- d. These Findings and Conclusions.

Analysis

14. The most applicable governing cases are:
- a. A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving the current assessment is incorrect and specifically what the correct assessment would be. *Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
 - b. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *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”).
 - c. 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.
15. Petitioners failed to provide sufficient evidence for an assessment change. The Board arrives at this conclusion because:
- a. Real property is assessed based on its "true tax value," which does not mean fair market value. True tax value is defined as "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." IC 6-1.1-31-6(c); 2002 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 may offer evidence relevant to market value-in-use to rebut this presumption of accuracy. 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. GUIDELINES at 5.
 - b. A 2006 assessment must reflect a subject property’s market value as of January 1, 2005. IC 6-1.1-4-4.5; 50 IAC 21-3-3. Any evidence of value relating to a different date must explain how the evidence demonstrates, or is relevant to, the

value as of the required valuation date. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).

- c. The most effective method to demonstrate assessment error can be the presentation of a market value-in-use appraisal, completed in conformance with the Uniform Standards of Professional Appraisal Practice (“USPAP”). *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n. 6 (Ind. Tax Ct. 2005).
- d. But Petitioners did not present such an appraisal. They presented a Comparable Sale Analysis (“CSA”) that purportedly was prepared by Ella Spring. *Pet’rs Ex. 1*. According to Darrell Foreman’s testimony, Ms. Spring has been a realtor for several years and she is a licensed appraiser. Nothing in the CSA indicates that she is a licensed appraiser or that the document is an appraisal, but the Respondent did not object to or dispute the testimony about Ms. Spring’s background and qualifications. Even assuming, *arguendo*, that Ms. Spring is a licensed appraiser, that she prepared this document, and that she determined the value of the subject property was \$122,500, there is no evidence that the work was completed in conformance with USPAP standards. Unsubstantiated statements that the subject property is “similar” or “comparable” to those identified as comparables #1, #2, #3, and #4 in the CSA does not constitute probative evidence and fails to establish actual comparability. One seeking to rely on comparables must identify characteristics of the subject property, explain how those characteristics compare to those of the purportedly comparable property, and explain how any differences affected the relative values of the properties. *Id.* at 471. Although the CSA contains a little bit of that kind of information, it is not sufficient for a meaningful, reliable analysis. More importantly, the CSA has an effective valuation date as of December 30, 2007. There is no explanation for how the 2007 value demonstrates, or is relevant to, the required valuation date of January 1, 2005. Therefore, the CSA is not probative evidence. *Long*, 821 N.E.2d at 471.
- e. Petitioners offered photographs of several other properties. *Pet’r Ex. 4*. They failed to establish how these neighboring properties might diminish the value-in-use of the subject property. Testimony about these dilapidated properties diminishing the value of the subject property is only a bare conclusion that does not help to prove the current assessment should be changed. *See Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
- f. Actual construction costs can be an effective way to rebut an assessment’s presumption of accuracy. GUIDELINES at 5. But without somehow relating the construction costs to the required valuation date, the costs do not prove what the assessment should be. In this case, Petitioners failed to relate the 1994 construction costs of \$75,000 to value as of January 1, 2005. Consequently, the constructions costs do not help make their case.

g. Petitioners' posit that the value of any improvement declines as the construction materials deteriorate. Their point appears to be physical depreciation, which can have an impact on value, but which is not the only thing to be considered. Many other factors also have impact on value-in-use.¹ There is no validity to Petitioners' assumption that the value should be less than original cost. The age of their property does not prove that the value-in-use is less than the cost to build, nor does it prove what the value-in-use for a 2006 assessment really should be.

16. When a taxpayer 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. *See Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003); *Whitley*, 704 N.E.2d at 1119.

Conclusion

17. The Petitioners failed to make a prima facie case. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review 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

¹ For example, supply and demand, which depends on a myriad of factors, also has a big impact on value. So does the rate of inflation. When all relevant factors are considered, it is easy for a property to have a value-in-use at the time of assessment that exceeds its original construction costs.

- 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>