
**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Larry G. and Sharon F. Jones,)	Petition No. 39-002-08-1-5-00001 and
)	Petition No. 39-002-09-1-5-00001
)	
)	Parcel No. 39-14-14-000-001.000-002
Petitioners,)	
)	
v.)	
)	Jefferson County
Jefferson County Assessor,)	Hanover Township
)	2008 and 2009 Assessments
Respondent.)	

Appeal from the Final Determinations of the
Jefferson County Property Tax Assessment Board of Appeals

July 17, 2013

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has reviewed the evidence and arguments presented in this case. The Board now enters its findings of fact and conclusions of law.

ISSUE

1. In 2008 and 2009 the subject property consisted of a partially completed home and approximately 100 acres of land. The Petitioners contend the home was erroneously assessed as if it were 100% complete. Did the Petitioners prove that the assessed value for the home is not an accurate market value-in-use and did the Petitioners prove what a more accurate valuation number would be?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

HEARING FACTS AND OTHER MATTERS OF RECORD

2. The Petitioners initiated an assessment appeal with the Jefferson County Property Tax Assessment Board of Appeals (PTABOA) by making a verbal request with Tina Gleeson, the Jefferson County Assessor. *Pet'r Ex. A.*¹ The verbal request and supporting information were presented at the PTABOA hearing on April 18, 2012. *Id.*
3. The PTABOA mailed notices of its decision regarding both the 2008 and 2009 assessments on April 18, 2012.
4. The Petitioners appealed to the Board by filing Form 131 petitions on May 10, 2012. Both of the Form 131 petitions state the assessment under appeal is March 1, 2007, but the record contains no PTABOA determination for 2007 that could be the subject of either appeal. The attached PTABOA determinations (Form 115) were for March 1, 2008, and March 1, 2009. Unfortunately, the parties did nothing to clear up this ambiguity. We conclude that these petitions for review must apply to the 2008 and 2009 assessments.
5. Administrative Law Judge Paul Stultz held the Board's administrative hearing on May 1, 2013. He did not conduct an on-site inspection of the property.
6. Larry Jones and County Assessor Tina Gleeson were sworn as witnesses.
7. The residential property is located at 256 Meadow Lane in or near Hanover.

¹ Indiana Code § 6-1.1-15-1(c) and (d) both require a written document to start the appeal process. Furthermore, the record contains nothing establishing how the 2008 and 2009 appeals apparently initiated in 2011 could be timely (*Pet'r Ex. A, the Sims letter dated November 2011; Gleeson testimony that the Petitioners first contacted her in 2011*). The Respondent, however, did not make these problems an issue or argue that they preclude getting to the merits of the Petitioners' case.

8. The PTABOA determined the assessed value for each year is \$105,900 for land and \$395,500 for improvements (total assessed value of \$501,400).
9. The Petitioners do not dispute their assessed land value, but claim the assessed value of the improvements should be \$0. Thus, they contend the total assessed value should be \$105,900 for 2008 and 2009.

RECORD

10. The Petitioners presented the following:
 - Petitioners Exhibit A – Notice of Hearing; letter to the Board from the Petitioners dated May 30, 2012; certified mail receipt; two-page statement from Will Sims; 2007 property record card; claim for homestead property tax credit/standard deduction; facsimile transmittal sheet.
11. The Respondent presented the following:
 - Respondent Exhibit A – 2009 property record card,
 - Respondent Exhibit B – 2012 property record card,
 - Respondent Exhibit C – Appraisal of the property,
 - Respondent Exhibit D – Real property maintenance reports for 2007, 2008, 2009, 2010, 2011, and 2012,
 - Respondent Exhibit E – Eight photographs of the property.
12. The following additional items are recognized as part of the record:
 - Board Exhibit A – The 131 Petition,
 - Board Exhibit B – Notice of Hearing,
 - Board Exhibit C – Hearing Sign in Sheet.

SUMMARY OF THE PETITIONERS' CASE

13. In 2008 and 2009 the construction of the residence was not 100% complete. *Jones testimony.*

14. Mr. Will Sims, the former Hanover Township Trustee/Assessor, prepared a two-page statement identifying errors made on the 2007 property record card. According to Mr. Sims, the residence was only 50% completed and uninhabitable in July 2008. *Jones testimony; Pet'r Ex. A.*
15. A property record card printed on April 21, 2008, contains a notation that the house was 100% complete effective March 1, 2007. Mr. Sims stated that this conclusion was an error: "I attest that to the end of my tenure as Hanover Township Assessor, July, 2008, the house on parcel 39-14-14-000-001.000-002 remained uninhabitable. Construction had come to a halt and the dwelling was not 100% complete. My estimate remained 50%." *Pet'r Ex. A.* Additionally, the homestead application mentioned on the property record card could easily have referred to another property owned by the Petitioners in the same neighborhood. *Id.*

SUMMARY OF THE RESPONDENT'S CASE

16. Mr. Jones first contacted the County Assessor on April 18, 2011, claiming their house was assessed incorrectly as 100% completed. There is no record of any earlier notification from Mr. Jones that the house was not 100% complete. *Gleeson testimony.*
17. A data collector visually inspected the exterior in October 2009 and recommended that no changes should be made on the 2009 property record card. *Gleeson testimony; Resp't Ex. A.*
18. Photographs taken on April 4, 2010, show furniture and curtains in the home. The property was physically inspected in April 2011 and appeared to be as it was when the April 2010 photographs were taken. *Gleeson testimony; Resp't Ex. E.*
19. The real property maintenance report shows a homestead exemption was filed on the subject property for the assessment year 2008 and forward. *Gleeson testimony; Resp't Ex. D.*

20. The Petitioners provided an appraisal that concluded the parcel was worth \$500,000 on January 11, 2011. It estimated the home was approximately 74% complete as of the appraisal date. This completion percentage has been used to assess the home from that time forward. *Gleeson testimony; Resp't Ex. C.*²
21. The appraisal and the homestead exemption documents are credible. In contrast, the two-page statement from Mr. Sims is not reliable. It is not notarized. It has dates that have been scratched out and written over. *Gleeson testimony.*

BURDEN OF PROOF

22. 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 its 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). Nevertheless, 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.

23. In this appeal, the parties agreed that the Petitioners have the burden of proof.

² The appraisal identifies the address of the property as 200 Meadow Lane rather than 256 Meadow Lane. The legal description in the appraisal, however, matches the legal description on the property record card. Furthermore, there appears to be no dispute that the appraisal is for the subject property.

ANALYSIS

24. Real property is assessed based on "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. The primary method for assessing officials is the cost approach. *Id.* at 3. Indiana has 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 is presumed to be accurate, but it 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.
25. 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, while the valuation date for a 2009 assessment was January 1, 2008. 50 IAC 21-3-3 (2010). 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.
26. The most effective method to show the correct value for a property is often through the presentation of a market value-in-use appraisal, completed in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP). *See O'Donnell*, 854 N.E.2d at 94 n. 3; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n. 6 (Ind. Tax Ct. 2005). In this particular case, the subject property was

appraised for \$500,000 as of January 11, 2011. This appraised value (based on the appraiser's opinion that the house was 74% complete) is very close to the disputed assessed value, which was \$501,400. Neither party, however, related that value to the required valuation dates. Therefore, this appraisal does not prove a relevant value for the 2008 and 2009 assessments. *Long*, 821 N.E.2d at 471.

27. Nevertheless, the appraisal's description of the unfinished home as of January 2011 is relevant because we conclude that the unfinished items in 2011 were also unfinished in 2008 and 2009. The Supplemental Addendum with the appraisal states:

The brick veneer is unfinished at the front entrance to the home. The front soffit, fascia and roof returns are unfinished at the front of the home. There is no guttering on the home. There are no porches or sidewalks around the home. The second floor exterior doors are a safety hazard due to no porches or safety bars on these exits. The exterior trim is unfinished around the overhead garage doors. The drywall is unfinished in the ceilings of the bay windows in the living room and family room. The stair casing in the foyer is unfinished with no railing or balusters on the stairs or along the second floor hallway. This is also a safety hazard. There are no light fixtures in most of the home. The utility room/mudroom and main floor half bathroom features a tile floor that has not been grouted. There are no interior doors in most of the home leaving unfinished casings. There is no interior trim in most of the home. The master bathroom has no door, no trim work, no cabinetry, door, or finished plumbing—only rough plumbing. The hall bathroom on the second floor has no trim work, cabinetry, door, or finished plumbing. The bonus room has unfinished drywall and no finished floor covering. There is unfinished hardwood flooring in the second floor hall and two bedrooms. There is no water heater in the home. Based on the construction inspection within this report, it is determined that the subject property is 74.5% complete as of the day of this inspection.

It is possible that this list might have been even longer in 2008 or 2009, but the Board will not speculate on that point.

28. The evidence submitted by both parties clearly indicates construction of the house was only partially completed in 2008 and 2009 and at some point it stopped. Litigation between the Petitioners and the contractor was mentioned, but no documentation and no details about it were provided as evidence in this case. According to the Sims statement,

construction was 50% complete in July 2008. According to the appraisal it was 74% complete in January 2011. Regardless of the exact percentage of completion at that time, the notation on the property record card that the dwelling was 100% complete effective March 1, 2007, is erroneous. Furthermore, Assessor Gleeson's testimony confirms that the home was assessed as if it were 100% complete for both 2008 and 2009 because a homestead exemption was filed for 2008 and subsequent years. But she provided no authority to support that conclusion and the Board finds no substantial reason to link filing a homestead exemption with the conclusion that construction was 100% complete. Nevertheless, mistakenly identifying the house as 100% complete is only a tangential point.

29. To successfully make their case, the Petitioners were required to offer substantial, probative evidence regarding the actual market value-in-use of the subject property. *O'Donnell*, 854 N.E.2d at 95; *Eckerling v. Wayne Twp. Assessor*, 841 N. E. 2d764, 768 (Ind. Tax Ct.). *See also* Ind. Admin. Code tit. 50, r.2.3-1-1(d) (explaining that failure to comply with the Guidelines does not in itself show that the assessment is not a reasonable measure of true tax value).³ In other words, the Petitioners needed to present market-based evidence that the assessed value does not accurately reflect the property's market value-in-use. And here the Petitioners presented no market evidence that the assessment is not a reasonable measure of true tax value.

30. Although it was not specifically stated, the underlying premise of the Petitioners' case appears to be that until construction of the house was completed it had no value. The Petitioners provided no authority or meaningful argument in support of that position, which is fundamentally flawed. While the incomplete aspects of the construction undoubtedly have some effect on valuation, it is also clear that a significant amount of the house had been built and had value—\$500,000 as 74% complete in 2011. The Petitioners' whole case is based on unsupported, conclusory statements that the partially completed construction has no value or is "unmarketable" and those statements simply

³ This rule was in effect for 2008 and 2009 assessments. It was repealed effective March 2, 2010.

lack credibility. Such conclusory statements do nothing to establish the property's actual market value-in-use and they are of no probative value. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

31. The Petitioners failed to make a prima facie case. Therefore, the Respondent's duty to support the assessment with substantial evidence was not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

SUMMARY OF FINAL DETERMINATION

32. There will be no change regarding the 2008 and 2009 assessments.

This Final Determination of the above captioned matter is issued on the date first written above.

Commissioner, Indiana Board of Tax Review

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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>