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

Petition: 46-022-06-1-5-00500
Petitioners: George W. & Susan I. Keeley
Respondent: LaPorte County Assessor
Parcel: 42-01-13-101-004
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. The Petitioners initiated an assessment appeal with the LaPorte County Property Tax Assessment Board of Appeals (PTABOA).

2. The PTABOA issued notice of its decision on July 22, 2008.

3. The Petitioners appealed to the Board by filing a Form 131. 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 July 1, 2009.

5. Administrative Law Judge Ellen Yuhan held the Board's administrative hearing on August 20, 2009. She did not inspect the property.

6. Petitioner George W. Keeley, Deputy Assessor Judith Anderson and Hearing Officer Michael Shultz were sworn as witnesses. Attorney Marilyn Meighen represented the Respondent, but was not sworn to be a witness.

Facts

7. The subject property is a residential parcel at 112 Overhill Trail in Michigan City.

8. The PTABOA determined the assessed value of the property is $85,300 (for land only).

9. The Petitioners requested an assessment of $6,200.

Record

10. The official record consists of the following:

    a. The Petition,

    b. Digital recording of the hearing,

    c. Exhibits:

    Petitioner Exhibit 1 – Appraisal of the subject property prepared by Shoreline Appraisals as of January 8, 2008,
    Petitioner Exhibit 2 – Form 131 petition,
    Petitioner Exhibit 3 – Market Data—Comparable Properties,
    Petitioner Exhibit 4 – Additional Information about Appraisal's Comparable Property No. 3,

    Respondent Exhibit 1 – *Cedar Lake Conference Association* Tax Court decision,
    Respondent Exhibit 2 – Ind. Code 6-1-1-8.5,
    Respondent Exhibit 3 – Summary of Assessor's Position,
    Respondent Exhibit 4 – List of Sales,
    Respondent Exhibit 5 – Property record cards (PRCs) and photographs of the Petitioner's property,
    Respondent Exhibit 6 – Sales disclosure form, PRCs and photograph of 110 Oakdale Way,
    Respondent Exhibit 7 – Sales disclosure form, PRC and photograph of 4701 Westgate Way,
    Respondent Exhibit 8 – Sales disclosure form, PRCs and photographs of 134 Maplewood Trail,
    Respondent Exhibit 9 – Sales disclosure form, PRCs and photographs of 204 Maplewood,
    Respondent Exhibit 10 – Sales disclosure form, PRCs and photograph of 320 Maplewood Drive,
    Respondent Exhibit 11 – PRC and photograph of 333 Maplewood Drive,
    Respondent Exhibit 12 – PRCs and photograph of Petitioners' comp,
    Respondent Exhibit 13 – Aerial Map with locations for Exhibits 5-12 indicated,

    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

11. Summary of Petitioners' case:

    a. The assessment for the subject parcel is excessive. An appraisal performed by an Indiana certified appraiser as of January 8, 2008, values it at $6,200. The appraiser put the most weight on comparable #3, which is directly east of the subject parcel. Comparable #3 and the subject parcel are mirror images of one another. Both are unbuildable. Comparable #3 sold for $8,000 on April 15, 2000, in a transaction between the city and an adjacent property owner. The assessed value of comparable #3 is $22,100. Exhibit 4 contains a hand-drawn sketch of both properties. *Keeley testimony; Petitioner Exhibits 1, 4*.

    b. In his final reconciliation the appraiser noted that this lot is unbuildable and included a letter from Joseph D. Siegel, the Zoning Administrator of Michigan City to document that fact. *Keeley testimony; Petitioner Exhibit 1 at 4, 10*.

    c. The difference between the appraisal date and the valuation date is not significant because values certainly were not going down. *Keeley testimony.*

12. Summary of Respondent's case:

    a. The appraisal is not for the correct valuation date of January 1, 2005. *Meighen argument*.

    b. The appraiser made no adjustments for the date of the sales, which range from 2000 to 2006. *Meighen argument*.

    c. The first two comparables in the appraisal are wetland and not similar to the subject property. And when Ms. Anderson researched the sale of comparable #3, she was unable to find a record of the sale price. *Anderson testimony*.

    d. The zoning department considers the lot unbuildable because a portion of the Petitioners' residence is on the lot. The letter from the zoning department states, "In any residence district, every single-family detached dwelling and accessory buildings or structures hereafter erected or structurally altered shall be located on a lot, and there shall be not more than one principal building on one lot." *Meighen argument; Petitioner Exhibit 1 at 10.*

    e. The Petitioners really have one property that is broken into two parcels. The Petitioners' property must be considered as a whole and not as individual parcels. This position is supported by the Indiana Tax Court decision in *Cedar Lake Conference Association* where the Court stated that key numbers are basically just for bookkeeping purposes. It would be improper to look at the parcels separately and independently. *Meighen argument; Respondent Exhibit 1*.

f. During 2004 and 2005 most of the sales within the subject neighborhood were multiple parcel sales because those houses are commonly built on more than one lot. The Respondent submitted sales disclosure and property record cards for five sales. Four of those were multiple parcel sales. The property record cards for those properties show that the assessed values were close to the sales prices. *Anderson testimony*; *Respondent Exhibits 6-10*.

g. Comparable #3 was purchased by an adjoining property owner and the assessed value that is placed on it is part of a three-parcel value. The $22,000 assessed value of comparable #3 is not necessarily what that parcel is worth, but combined with the assessed values of the other parcels it comes to the total worth of the property that the owner possesses. *Anderson testimony; Respondent Exhibit 12*.

Analysis

13. 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).

14. In making its case, a 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").

15. Once a 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.

16. The Petitioners did not make a case for any assessment change. This conclusion was arrived at because:

a. Indiana assesses real property based on it "true tax value", which the 2002 Real Property Assessment Manual defines 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." 2002 REAL PROPERTY ASSESSMENT MANUAL (incorporated by reference at 50 IAC 2.3-1-2). The appraisal profession traditionally has used three methods to determine a property's market value: the cost approach, the sales comparison approach, and the income approach. *Id*. at 3, 13-15. Indiana assessing officials generally use a mass appraisal version of the cost approach, as set forth in the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (incorporated by reference at 50 IAC 2.3-1-2).

b. A property's market value-in-use as determined using the Guidelines is presumed to be accurate. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005). Nevertheless, 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 practices. MANUAL at 5.

c. Regardless of the approach used, the taxpayer must establish how the evidence relates to the relevant valuation date. *See Long v. Wayne Twp. Assessor,* 821 N.E.2d 466, 471 (Ind. Tax Ct.2005) (holding that an appraisal as of December 10, 2003, lacked probative value in an appeal for a 2002 assessment). For a 2006 assessment, that valuation date is January 1, 2005. 50 IAC 21-3-3.

d. The Petitioners submitted an appraisal as of January 8, 2008. That date is approximately three years after the required valuation date, which is January 1, 2005. According to Mr. Keeley, the difference is not significant because values were not going down during that time. But such unsupported conclusory statements 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). No other probative evidence helps establish how a value as of January 8, 2008, might relate to what the value was as of January 1, 2005. Consequently, the appraisal fails to help prove the Petitioners' case.

e. In addition to the valuation date problem, the appraisal states that it is an opinion about the value of this parcel as if it were vacant, but that assumption is contrary to the undisputed evidence. It is not vacant. The lot is "unbuildable" because a portion of the Petitioners' house and drive are already on it. This fact is shown on the survey in Petitioner Exhibit 1 at page 11. The letter from the Zoning Administrator establishes the same thing. The existing residence is constructed on both lots 1 and 2 as one buildable lot comprised of two platted lots. So, while the subject parcel may be considered unbuildable by the zoning department, it clearly is a valuable portion of the property as a whole. Realistically the value must be determined on the basis of the Petitioners' entire residential property. Characterizing the lot as vacant and unbuildable does not help to prove what a more accurate valuation might be.[1]

f. The validity of any conclusions about the relative values of properties depends on complete and careful analysis of how they are similar and how they differ—and then establishing how the similarities and differences relate to value. *See Long*, 821 N.E.2d at 471.

[1] Petitioner Exhibit 3 consists of a copy of the sales comparison grid from the appraisal and a photograph of each comparable sale, also taken from the appraisal. Compare Petitioner Exhibit 1, pages 3 and 6 to Petitioner Exhibit 3. As the Respondent noted, those sales are from 2006, 2002, and 2000. Even considered outside of the context of the appraisal, they lack probative value for the same reasons as previously discussed: failure to relate to the required valuation date and failure to establish a substantial comparison with the subject property.

g. Although Mr. Keeley testified that the adjacent lot and his lot were mirror images and both were unbuildable, it is also undisputed that part of the Petitioners' house and the drive are on the subject lot. There is no evidence that adequately compares the real value of the adjacent lot, even though it is also part of a multi-lot property. A meaningful comparability was not established and no valid conclusion can be made about the relative assessed values of these two properties. The fact that the adjacent lot is assessed lower than the subject property is not enough to prove that the subject property's assessment is too high because it is equally possible that the assessment of the adjacent lot is too low. *See Westfield Golf Practice Center, LLC v. Washington Twp. Assessor*, 859 N.E.2d 396, 399 (Ind. Tax Ct. 2007). Rather than merely pointing out the difference, the Petitioners were required to present probative evidence to show that the assessed value, as determined by the assessor, does not accurately reflect the property's market value-in-use. *Id.*

17. When the Petitioners fail to make a prima facie case for any assessment change, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus., v. Dep't of Local Gov't Fin.,* 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

18. The Petitioners failed to make a prima facie case for a change in the assessment. The Board finds in favor of the Respondent.

Final Determination

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

ISSUED: ________________________________

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Chairman, Indiana Board of Tax Review

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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.