

REPRESENTATIVE FOR THE PETITIONER: William Krodel, pro se

REPRESENTATIVE FOR RESPONDENT: Brian Cusimano, Attorney at Law

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

WILLIAM L. AND NORMA J. KRODEL,)	Petition: 30-016-10-1-5-00001
)	Parcel: 30-01-13-300-051- 000-016
Petitioners,)	
)	
v.)	
)	
HANCOCK COUNTY ASSESSOR,)	Hancock County
)	Vernon Township
Respondent.)	2010 Assessment
)	

Appeal from the Final Determination of the
Hancock County Property Tax Assessment Board of Appeals

April 29, 2014

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSION OF LAW

In this appeal, the question is whether the assessed value of the land exceeds the market value-in-use of the land. The short answer is that Petitioners failed to present probative evidence to rebut the presumption that the 2010 assessment is accurate.

HEARING FACTS AND OTHER MATTERS OF RECORD

1. The property is a single family residence located at 5532 West 900 North, McCordsville, Indiana.
2. On November 1, 2010, the Petitioners filed a Petition for Review of Assessment with the Hancock County Assessor requesting that the assessment be \$20,000 for land and \$120,000 for improvements (total \$140,000).
3. On December 30, 2010, the Hancock County Property Tax Assessment Board of Appeals (PTABOA) issued its determination. The PTABOA determined the assessed value is \$41,500 for land and \$153,800 for improvements (total \$195,300).
4. On February 15, 2011, the Petitioners filed a Form 131 Petition appealing the determination by the PTABOA.
5. Administrative Law Judge Ron Gudgel held the hearing on January 30, 2014. He did not conduct an on-site inspection of the property.
6. Attorney Brian Cusimano and Bradley Berkemeier represented the Hancock County Assessor. Mary Noe of the Hancock County Assessor's Office and Secretary to PTABOA appeared as a witness for the Respondent. Petitioner William L. Krodel appeared pro se. Bradley Burkemeier, Mary Noe and William Krodel were all sworn as witnesses.
7. The Petitioners presented the following exhibits:
 - Petitioner Exhibit 1 - Photos of the Property,
 - Petitioner Exhibit 2 – Memo,
 - Petitioner Exhibit 3 – MLS listing for vacant lot,
 - Petitioner Exhibit 4 - Surveyor Report,
 - Petitioner Exhibit 5 - Photo of perimeter drain bee hive,
 - Petitioner Exhibit 6 - MLS listings for vacant lots,
 - Petitioner Exhibit 7 - Notice of Assessment of Land and Structures.

8. The Respondent presented no exhibits.
9. The following additional items are recognized as part of the record:
 - Board Exhibit A – Form 131 Petition, with attachments,
 - Board Exhibit B – Notice of Hearing.

Burden of Proof

10. 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 the 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). A burden-shifting statute creates two exceptions to that rule.
11. First, Indiana Code § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior year.” Ind. Code § 6.1.1-15-17.2(a). “Under this section, 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 the Indiana Tax Court.” Ind. Code § 6-1.1-15-17.2(b).
12. Second, Indiana Code § 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC § 6-1.1-15.” Under those circumstances, “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving the assessment is correct.” The statute was amended on March 25, 2014, to include this language. This change has application to all appeals pending before the Board. *See P.L. 97-2014.*

13. The record establishes that there was no change in assessments between 2009 and 2010, the subject property being assessed at \$204,500 in both years. The parties agree that the Petitioners had the burden of proof in the hearing.

SUMMARY OF THE PETITIONERS' CASE

14. This appeal relates only to the value of the land and not to the value of the improvements. The subject property was purchased in 1992 for \$1,300 per acre. The total acquisition price was \$2,600. *Pet'r Ex. 2*. The current assessed value is more than sixteen times the original purchase price. The subject property was reclassified in 2009 from C to C-1.
15. Drainage easements on the front and east sides of the property reduce the size of the property by 4,350 square feet and 3,516 square feet respectively. These easements amount to an actual net measurement of .775 acres for the property. The sale of a comparable property measuring .7 acres for \$15,000 in 2010 supports an assessment of the subject property of \$8,303.58. *Krodel testimony; Pet'r Ex. 2,4,5*.
16. Four other comparable lot sales ranging in size from 54 to 68 acres, priced between \$6,156.45 and \$7,058.82 per acre, also support a lowered assessment of the subject property. *Krodel testimony, Pet'r Ex. 6*.

SUMMARY OF THE RESPONDENT'S CASE

17. The Petitioners have the burden to demonstrate with evidence that the assessment under appeal does not reflect market value and they have not met that burden. Petitioners failed to present sufficient market based evidence to demonstrate that the assessment of the subject property by the county is incorrect. By failing to prove the actual value of the property through market based evidence rather than conclusions and opinions, Petitioners failed to establish a prima facie case that the assessment of the subject property is incorrect. *Cusimano argument, citing O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.

2d 90 (Ind. Tax Ct. 2006); *Long v. Wayne Township Assessor*, 821 N.E.2d 466 (Ind. Tax Ct. 2005).

18. Several Tax Court cases, including *O'Donnell* and *Long*, state in some form that failure to adhere to strict application of the guidelines is not enough. Challenging the methodology is not enough to overturn the assessment without probative evidence that the assessment itself is inaccurate. *Cusimano argument*.
19. The properties offered as comparable vary in size and usage from the subject property. Petitioners failed to present evidence of how their comparables reasonably compare to the subject property. And Petitioners failed to present evidence of the sales they relied on to support their position. *Cusimano argument*.

ANALYSIS

20. 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). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. 2002 Real Property Assessment Manual at 3 (incorporated by reference at 50 IAC 2.3-1-2). Assessing officials primarily use the cost approach. *Id.* at 3. The cost approach estimates the value of land as if vacant and then adds the depreciated cost of improvements to arrive at a total estimate of value. *Id.* at 3. A taxpayer is permitted to offer any evidence relevant to market value-in-use to rebut an assessed valuation. 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. *Id.* at 5.
21. 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 2010 assessment was March 1, 2010.

22. Several Tax Court cases affirm that evidence of the failure of the assessor to adhere to strict application of the assessment guidelines is not enough for a taxpayer to prevail. Challenging methodology is not sufficient without probative evidence of a more accurate value. *P/A Builders & Developers, LLC v. Jennings Co. Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006); *Kooshtard Prop. VI, LLC v. White River Twp. Ass'r*, 836 N.E.2d 501, 506 (Ind. Tax Ct. 2005); *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 676 (Ind. Tax Ct. 2006).

23. Petitioners offered MLS listings for five comparable properties. The first comparable property was a .703 acre vacant lot that sold for \$15,000. The second comparable property was a 7 acre vacant lot in Green Township that sold for \$40,000. The third comparable property was a 7.97 acre lot that sold for \$130,000. The fourth comparable property was a 60 acre agricultural parcel that sold for \$369,387. The fifth comparable property was a 68 acre agricultural parcel that sold for \$480,000. These properties vary from the subject property, which was approximately 2 acres. The Petitioners provided no other evidence or information about the comparable properties. The evidence and argument provided is insufficient for the Board to draw any legitimate conclusion about a more accurate valuation for the subject property. Such conclusory statements are of no probative value unless accompanied by some explanation relating them to the property's true tax value. *Bernacchi v. State Bd. of Tax Comm'rs*, 727 N.E.2d 1133 (Ind. Tax Ct. 2000). *See also, Whitley Products, Inc. v. State Bd. Of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

24. The Petitioner did not establish a prima facie case that the 2010 assessment must be changed. *See Eckerling*, 841 N.E.2d at 674 (stating that a taxpayer who challenges an assessment must show that the assessor's assessed value does not accurately reflect market value-in-use.)

25. Accordingly, the Respondent was not required to support the assessment with substantial evidence. *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*, 704 N.E.2d at 1119.

SUMMARY OF FINAL DETERMINATION

26. The Petitioners failed to make a prima facie case for a change in assessed value. The Board finds in favor of the Respondent. The assessment will not be changed.

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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- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.