

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

Petition: 84-017-08-1-3-00060
Petitioners: Robert L. and Ellen C. Kylander, Trustees
Respondent: Vigo County Assessor
Parcel: 84-08-13-400-001.000-017
Assessment Year: 2008

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

Procedural History

1. The Petitioners initiated an assessment appeal with the Vigo County Property Tax Assessment Board of Appeals (PTABOA).¹
2. The PTABOA mailed notice of its decision for the 2008 assessment on June 21, 2010.
3. The Petitioners appealed to the Board by filing a Form 131 Petition for Review of Assessment on July 30, 2010. They elected to have this case heard according to small claims procedures.
4. The Board issued its notice of hearing on March 11, 2011.
5. Administrative Law Judge Ronald Gudel held the Board's administrative hearing on April 21, 2011. He did not inspect the property.
6. Robert L. Kylander appeared *pro se*. Certified Tax Representative Edward J. Bisch represented the Respondent. They both were sworn as witnesses. In addition, Kenneth Steiner testified for the Petitioners.

Facts

7. The property is a sand and gravel quarry located on Morris Road in or near Terre Haute. It has no improvements.
8. The PTABOA determined the assessed value is \$126,400.
9. The Petitioners claimed the assessed value should be \$35,000.

¹ The Form 130 attached to the Form 131 is for the 2010 assessment.

Record

10. The official record contains the following:
 - a. Form 131 Petition,
 - b. Digital recording of the hearing,
 - c. Petitioners Exhibit 1 – Form 131 Petition,
Petitioners Exhibit 2 – Aerial photograph,
Petitioners Exhibit 3 – Assessment Guideline Tables,
Petitioners Exhibit 4 – Property record cards for the subject property,
Petitioners Exhibit 5 – Taxes/net farming income history,
Petitioners Exhibit 6 – Witness information for Mr. Steiner,
Respondent Exhibit 1 – Summary of Respondent exhibits and testimony,
Respondent Exhibit 2 – 2008 property record card for the subject property,
Respondent Exhibit 3 – Notice of PTABOA hearing,
Respondent Exhibit 4 – Property record card for the subject property after
PTABOA corrections for 2008,
Respondent Exhibit 5 – PTABOA Final Assessment Determination, Form 115,
Respondent Exhibit 6 – Power of Attorney,
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 the Petitioners' case:
 - a. The current assessment is too high. A more accurate assessed value would be \$35,000. The current land values assigned to the parcel are arbitrary. *Kylander testimony*.
 - b. "I have no real basis for my assertion that the property should be assessed at \$35,000, other than that this basis might result in annual tax of about \$1,000, which might be reasonable for now." *Pet'rs Ex. 1, Attachment 1 at 2*.
 - c. The subject parcel had been used for agricultural purposes. In 1992, sand and gravel mining operations began. Its tillable acreage declined each year as more of the parcel was put to quarry use. Net farm income for 2008 was only \$785 and by 2009 the parcel did not have any tillable acreage remaining. *Kylander testimony; Pet'rs Ex. 5*.

- d. S & G, operated by Mr. Steiner, has leased the subject property from the Petitioners and is conducting the mining activities currently taking place. This kind of operation typically produces top soil, compactable fill, sand, and gravel. For the subject property, most of what can be sold is already gone, although some gravel remains. *Steiner testimony*.
 - e. It is unlikely this site can ever become a desirable lake property because water levels are not stable. *Steiner testimony; Kylander testimony*.
12. Summary of the Respondent's case:
- a. The legal description states that this parcel contains 65.30 acres, but the original 2008 assessment had priced only 40.50 acres. The PTABOA corrected the original assessment by including the other 24.80 acres. *Bisch testimony; Resp't Ex. 1 at 3; Resp't Ex. 2*. The PTABOA also corrected the classification of the land types present on the parcel. *Id.; Resp't Ex. 4, 5*.
 - b. The Petitioners presented no market evidence to support their proposed \$35,000 valuation. *Bisch testimony; Resp't Ex. 1 at 3*.

Analysis

13. A Petitioner seeking review of a determination of an assessing official has the burden to prove 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, 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.”)
15. 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.
16. The Petitioners did not make a case for any assessment change for the following reasons:
- a. The Petitioners presented testimony that a “reasonable” tax bill might be \$1,000. The tax bill, however, is determined by several factors. The Board is a creation of the legislature and it has only those powers conferred by statute. *Matonovich v. State Bd. of Tax Comm'rs*, 705 N.E.2d 1093, 1096 (Ind. Tax Ct. 1999). It determines appeals concerning the assessed value of tangible property, deductions, exemptions, and credits. Ind. Code § 6-1.5-4-1(a). It lacks authority

to determine tax rates or tax bills. Any issue about what a “reasonable” tax bill would be is outside of the Board’s jurisdiction. In addition, the testimony about what would be a reasonable tax bill is merely a conclusory opinion. Such unsupported statements are not probative evidence and they are not sufficient to make a case. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E. 2d 1113, 1122 (Ind. Tax 1998).

- b. Some of the arguments addressed land classification, but this record provides no basis to change part of the current land classification from industrial to agricultural. Although some small amount of the property was farmed in 2008, the Petitioners did not quantify the amount. It is clear that by 2008 almost all of the property was being used for the sand and gravel operations, which are not agricultural. The land classification argument does not help determine this case.
- c. 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 is presumed to be accurate, but that value 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.
- d. The Petitioners proved that in 2008 the primary use was leasing the property to extract sand and gravel. Therefore, the fact that they had little or no farming income from this property at that point is irrelevant. The Petitioners presented no evidence about what kind of income they get from the lease. They presented no appraisal or any other information compiled in accordance with generally accepted appraisal principles regarding market value of the property as it actually was being used.
- e. The undisputed evidence indicates that much of the sand and gravel already has been depleted and at some future point those operations will cease. The undisputed evidence also indicates that at the end of those operations the property probably will have no practical use. (Inconsistent water levels probably will make the property unsuitable for any kind of future recreational development.) But the record contains no probative evidence relating those facts to any kind of actual value that is relevant to the 2008 assessment. Consequently, they do not make the Petitioners’ case.

- f. As the Petitioners acknowledged in their Form 131 Petition, their evidence provides “no real basis” to conclude that a more accurate assessment would be the proposed \$35,000. *Pet’rs Ex. 1, Attachment 1 at 2*. Again, unsubstantiated conclusory statements do not constitute probative evidence. *Whitley Products*, 704 N.E.2d at 1119. The Petitioners failed to make a prima facie case for changing their 2008 assessment.
- g. When a taxpayer fails to provide probative evidence supporting the 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 for a change in assessed value. 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: _____

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

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>