

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

Petition: 67-008-06-1-5-00002
Petitioners: Paul Lefebvre and Marcia McKelligan
Respondent: Putnam County Assessor
Parcel: 67-09-07-100-013.000-007
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 Putnam County Property Tax Assessment Board of Appeals (PTABOA) by filing Form 130 dated May 11, 2007.
2. The PTABOA issued notice of its decision on October 29, 2007.
3. The Petitioners appealed to the Board by filing a Form 131 on November 28, 2007, and elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing to the parties dated June 4, 2008.
5. Administrative Law Judge Paul Stultz held the Board's administrative hearing on July 8, 2008.
6. The Petitioner Paul Lefebvre, County Assessor Wanda O'Neal, Deputy Assessor Charlene Davis, and Reassessment Supervisor Nancy Dennis were sworn as witnesses at the hearing.

Facts

7. This parcel is a residential property located at 55 Locust Trail, Greencastle, Indiana.
8. The Administrative Law Judge did not conduct an inspection of the property.

9. The assessed value determined by the PTABOA is \$26,000 for land and \$293,500 for improvements (total \$319,500).¹
10. The Petitioners did not specify what the correct assessed value should be.

Contentions

11. The Petitioners presented the following evidence:
 - a. The property is not assessed according to the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (Guidelines) (incorporated by reference at 50 IAC 2.3-1-2). There are four specific areas in which the Guidelines were not followed. *Lefebvre testimony*.
 - b. There are 272 square feet currently assessed as a two-story dwelling. This area, highlighted in yellow on the property record card (PRC), should be assessed as a one and one-half story dwelling. *Lefebvre testimony; Pet'rs Ex. 16*.
 - c. Photographs and a wooden model illustrate the story features of the home. *Lefebvre testimony; Pet'rs Exs. 1-3*. The one and one-half story sketch from the Guidelines, ch. 3 at 11, resembles the dwelling. The sketch of the two-story dwelling on the same page does not. *Lefebvre testimony; Pet'rs Ex. 17*.
 - d. The PRC shows there is a masonry cover on the basement walls, which is correct. The brick on the basement, however, was transposed to get three units of brick on the first story. Although this does not impact the assessed value of the home, the assessor has included the basement brick twice on the PRC. *Lefebvre testimony; Pet'rs Ex. 16*.
 - e. The 2007 PRC shows the upper and lower levels were assessed with air conditioning. *Lefebvre testimony; Pet'rs Ex. 16*. There is air conditioning on the upper level only. The second furnace that goes to the lower floor is not connected to an air compressor or electrical service. *Lefebvre testimony; Pet'rs Exs. 4-7*.
 - f. The 2007 PRC shows the dwelling is assessed with 651 square feet of finished basement. *Lefebvre testimony; Pet'rs Ex. 16*. The Guidelines state a finished basement must contain finish consistent with the remainder of the dwelling. *Pet'rs Ex. 17*. The basement photographs show a concrete floor with scatter rugs over it, which is not consistent with the finish of the upper floor. *Lefebvre testimony; Pet'rs Exs. 8-15*.
 - g. The Petitioners can not state what the correct market value-in-use should be. *Lefebvre testimony*.

¹ The Notification of Final Assessment Determination (Form 115) states the assessed value is \$26,000 for the land and \$293,500 for the improvements. Both parties agreed this is the correct assessment of record. The property record card incorrectly shows the 2006 assessed value for land as \$26,800. *Resp't Ex. 7*.

12. The Respondent presented the following evidence:
- a. The cost per square foot of two of the five comparable sale properties establishes an average cost of \$110.34 per square foot. *Dennis testimony; Resp't Exs. 1, 2.* The property could be assessed as high as \$338,512 based on the Department of Local Government Finance guidelines allowing property to be assessed within ten percent of its market value-in-use.² *Dennis testimony.*
 - b. Photographs of the dwelling show the tower that both parties agree is a two-story structure. *Dennis testimony; Resp't Ex. 3.* The roofline is the same from the tower back to the dormer, and the Guidelines show two-story dwellings have the same roofline. During the PTABOA hearing, the Petitioners stated the area they are contesting has an eight-foot ceiling height. *Dennis testimony; Resp't Ex. 4.* An eight-foot ceiling height means there are two full floors of living area. Therefore, the structure was correctly assessed as two-story. *Dennis testimony; Resp't Ex. 5.*
 - c. The basement is correctly assessed with a masonry exterior. The first and upper floor exterior walls drive the assessed value, not the basement walls. Three sample PRCs, pricing the dwelling with vinyl, masonry, and concrete block exterior wall for the basement, demonstrate the basement exterior wall type does not change the assessed value of the dwelling. *Dennis testimony; Resp't Ex. 6.*
 - d. The adjustments to the air conditioning and the area of finished basement are not included in the 2006 assessment. *Dennis testimony; Resp't Ex. 7.* These adjustments were made for the 2007 assessment, payable in 2008. *Board Ex. A, Form 115.*

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 – Wooden model of the dwelling,
Petitioners Exhibit 2 – Photograph of back of house,
Petitioners Exhibit 3 – Photograph of back of house,
Petitioners Exhibit 4 – Photograph of upstairs furnace,

² The Board notes that the Respondent cited no regulations, rules, or statutes that support the contention regarding an acceptable ten percent range for assessments. The Respondent apparently relies on an instruction that the overall level of assessment, as determined by the median assessment ratio, should be within ten percent. 2002 REAL PROPERTY ASSESSMENT MANUAL at 21 (incorporated by reference at 50 IAC 2.3-1-2) (MANUAL). This statement clearly refers to standards for the equalization process. It does not authorize an acceptable ten percent range for individual assessments.

Petitioners Exhibit 5 – Photograph of downstairs furnace,
 Petitioners Exhibit 6 – Photograph of air conditioning compressor,
 Petitioners Exhibit 7 – Photograph of air conditioning lines,
 Petitioners Exhibit 8 – Photograph of basement floor,
 Petitioners Exhibit 9 – Photograph of basement floor,
 Petitioners Exhibit 10 – Photograph of basement floor,
 Petitioners Exhibit 11 – Photograph of basement floor,
 Petitioners Exhibit 12 – Photograph of basement floor,
 Petitioners Exhibit 13 – Photograph of basement floor,
 Petitioners Exhibit 14 – Photograph of basement floor,
 Petitioners Exhibit 15 – Photograph of basement floor,
 Petitioners Exhibit 16 – Form 11 Notice of Assessment and PRC,
 Petitioners Exhibit 17 – Selected pages from chapter 3 and appendix C of the
 Guidelines,
 Respondent Exhibit 1 – Five PRCs and multiple listings data for other properties
 that sold,
 Respondent Exhibit 2 – Summary of information about the subject property
 compared to information from Respondent Exhibit 1,
 Respondent Exhibit 3 – Three photographs of the subject property,
 Respondent Exhibit 4 – Transcript from the PTABOA hearing,
 Respondent Exhibit 5 – Guidelines, chapter 3, pages 10 and 11,
 Respondent Exhibit 6 – Three alternative/sample PRCs computing the true tax
 value using different exterior covers for the basement,
 Respondent Exhibit 7 – Subject’s actual PRC,
 Board Exhibit A – Form 131 Petition for Review,
 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 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).
- b. In making a 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. The Petitioners did not make a prima facie case for any assessment change because:
- a. Real property is assessed on the basis of its "true tax value," which does not mean fair market value. It 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); MANUAL at 2. There are three generally accepted techniques to calculate market value-in-use: the cost approach, the sales comparison approach, and the income approach. The primary method for assessing officials to determine market value-in-use is the cost approach. *Id.* at 3. To that end, Indiana promulgated Guidelines that explain the application of the cost approach. The value established by use of the Guidelines, while presumed to be accurate, 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.
 - b. Even if an assessment does not fully comply with the Guidelines, a taxpayer must show that the assessment is not a reasonable measure of market value-in-use in order to prevail. *See* Ind. Admin. Code tit. 50, r.2.3-1-1(d) (stating that failure to comply with the Guidelines does not in itself show the assessment is not a reasonable measure of value); *Westfield Golf Practice Center v. Washington Twp. Assessor*, 859 N.E.2d 396, 399 (Ind. Tax Ct. 2007)(explaining that beginning in 2002, Indiana overhauled its property tax system—the new benchmark is market value-in-use. “As a result, the new system shifts the focus from examining how the regulations were applied ... to examining whether a property’s assessed value actually reflects the external benchmark of market value-in-use.”); *O’Donnell v. Dep’t of Local Gov’t Fin.*, 854 N.E.2d 90, 94-95 (Ind. Tax Ct. 2006)(explaining that a taxpayer who focuses on alleged errors in applying the Guidelines misses the point of Indiana’s new assessment system).
 - c. The Petitioners focused solely on methodology. They admitted they did not know the correct market value-in-use of the property. Their evidence and arguments regarding a strict application of the Guidelines are not enough to rebut the presumption that the assessment is correct. *See Eckerling v. Wayne Township Assessor*, 841 N.E.2d 674 (Ind. Tax Ct. 2006) (stating “when a taxpayer chooses to challenge an assessment, he or she must show that the assessor's assessed value does not accurately reflect the property's market value-in-use. Strict application of the regulations is not enough to rebut the presumption that the assessment is correct.”) The Petitioners did not show the assessor's methodology resulted in an assessment that fails to accurately reflect their property's market value-in-use. Accordingly, the Board cannot say that the Petitioners presented a prima facie case that the assessment is in error. *Id.*

- d. 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 Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

Conclusion

16. 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 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>>