

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

Petition: 89-004-08-1-1-00758
Petitioner: William G. McDonald III
Respondent: Wayne County Assessor
Parcel: 30-27-000-103-020-03
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 Petitioner initiated an assessment appeal with the Wayne County Property Tax Assessment Board of Appeals (PTABOA) by filing a Property Tax Informal Review form dated August 21, 2009.
2. The PTABOA mailed notice of its decision, Form 115, on November 6, 2009.
3. The Petitioner appealed to the Board by filing a Petition for Review of Assessment, Form 131, on December 3, 2009. The Petitioner elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing on June 4, 2010.
5. Administrative Law Judge Paul Stultz held the Board's administrative hearing on August 11, 2010. He did not inspect the property.
6. William G. McDonald III and County Assessor Michael Statzer were sworn as witnesses. The Petitioner appeared *pro se*. Attorney Edward O. Martin represented the Respondent.

Facts

7. The property is located at 10081 US Route 40 West, Centerville. It includes approximately 72 acres of farmland, a one acre homesite, a single family residence and several other improvements.
8. The PTABOA determined the assessed value is \$74,900 for land and \$341,800 for improvements (total \$416,700).
9. The Petitioner did not contest the land value, but on the Form 131 he claimed the assessed value of the improvements should be only \$150,000.

Record

10. The official record for this matter contains the following:
 - a. The Form 131 Petition,
 - b. A digital recording of the hearing,
 - c. Petitioner Exhibit 1 – Sales agreement for the log home,
Petitioner Exhibit 2 – Invoice for the log home,
Respondent Exhibit 3 – Property record card,
Respondent Exhibit 5 – Application for a building permit,
Respondent Exhibit 6 – Six photographs of outbuildings on the parcel,
Respondent Exhibit 7 – Four aerial photographs of the parcel,¹
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 Petitioner's case:
 - a. The improvements on the parcel include a log home and several outbuildings, but only the assessed value of the log home is disputed. *McDonald testimony*.
 - b. The home has a loft and a partially finished basement. The main level is approximately 1,200 square feet. The total finished area is less than 3,000 square feet. *McDonald testimony; Pet'r Exs. 1, 2*.
 - c. Materials for the home cost \$159,845 in June 2006. This figure does not include the cost of labor. *McDonald testimony; Pet'r Exs. 1, 2*.
 - d. The contractor filed the application for a building permit on May 31, 2006, and estimated the total cost to construct the home at \$340,000. This figure includes labor expenses. *McDonald testimony, referring to Resp't Ex. 5*.
 - e. The assessment is too high. The taxes almost doubled in the past year. Larger, nicer homes in the county are paying less taxes. *McDonald testimony*.
12. Summary of the Respondent's case:
 - a. The current total assessed value is \$416,700, which was determined from cost tables provided by the Department of Local Government Finance and then, after

¹ The Respondent did not offer exhibits 1, 2, or 4.

reviewing sales data from 2006 and 2007, the value was adjusted by 126 percent to reflect market conditions. Thus, the assessment is based primarily on the sales comparison approach. *Statzer testimony; Resp't Ex. 3.*

- b. The application for building permit estimates the total cost for the log home would be \$340,000. *McDonald testimony, Martin argument; Resp't Ex. 5.*
- c. There are six major outbuildings on the parcel, consisting of barns, sheds, and silos. *Statzer testimony; Resp't Ex. 6.*
- d. For the 2007 assessment, local officials assessed the home as 61 percent complete. For 2008, the home was assessed as 100 percent complete. This change resulted in a significant increase in assessed value. *Statzer testimony.*
- e. The amount of taxes on the property cannot be appealed. *Statzer testimony.*
- f. The Petitioner failed to demonstrate that the assessment is not correct or show what the correct assessed value should be. *Martin argument.*

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, 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 Petitioner did not make a prima facie case for any assessment change.
 - a. The Petitioner complained that his property taxes increased significantly from 2006 to 2008—to the point where they now exceed the taxes for purportedly superior homes. In addition to the assessment itself, several other factors can affect a tax bill, but the Board has no jurisdiction over such complaints. The Board is a creature of the legislature and has only the powers conferred by statute. *Whetzel v. Dep't of Local Gov't Fin.*, 761 N.E.2d 904, 908 (Ind. Tax Ct. 2002), *citing Matonovich v. State Bd. of Tax Comm'rs*, 705 N.E.2d 1093, 1096 (Ind. Tax Ct. 1999); *Hoogenboom-Nofziger v. State Bd. of Tax Comm'rs*, 715 N.E.2d 1018, 1021 (Ind. Tax Ct. 1999). And Ind. Code § 6-1.5-4-1 only gives the Board authority to determine appeals concerning assessed valuation, deductions and exemptions, not tax bills.

- b. 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). 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. 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 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.
- c. To be relevant, the record must somehow establish how such evidence relates to market value-in-use as of the relevant 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). For a 2008 assessment, the valuation date was January 1, 2007. 50 IAC 21-3-3 (2009). Even though the exact start and completion dates for construction of the Petitioner's log home were not clearly established, the materials were delivered on or about June 22, 2006, and on March 1, 2007, the construction was considered to be 61 percent complete. The period of construction appears to correspond closely with the required valuation date, which means that the actual construction costs for the subject property could be a good way to more accurately prove what the market value-in-use actually is.
- d. But those construction costs must include all direct labor and material costs plus the indirect expenses of constructing the building. "Examples of direct costs include labor, materials, supervision, utilities used during construction, and equipment rental. Indirect cost examples are building permits, fees, insurance, taxes, construction interest, overhead, profit, and professional fees ... it is critical that the actual construction costs represent all costs (direct and indirect) regardless of whether or not they were realized, as in the case of do-it-yourself construction." GUIDELINES, Introduction at 1.
- e. The undisputed evidence shows that the Petitioner paid \$159,845 for the materials package that was used to build the log home.² The Petitioner, however, admitted that figure does not include labor. The materials cost alone exceeds the Petitioner's proposed assessed value of \$150,000 for the log home and all the numerous other improvements on the parcel. The Petitioner's failure to provide

² The evidence does not establish whether the materials package included the materials for the deck, porch and basement.

evidence about all the actual construction costs for the log home is a fatal mistake. The sales agreement and invoice do not prove what a more accurate market value-in-use of the log home might be.

- f. Furthermore, the building permit application estimated total construction costs for the log home would be \$340,000. This amount is more than double the Petitioner’s proposed assessment and by itself is close to the current combined assessed value of the log home and all the other improvements. It is a good indication that, as things currently stand, the 2008 assessment does not overvalue the subject property.
- g. To prevail, the Petitioner needed to show the assessed value does not accurately reflect the property’s market value-in-use. *See Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). He did not do so. Therefore, he failed to make a prima facie case for any change.

16. 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

17. The Petitioner 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>