REPRESENTATIVE FOR PETITIONERS: Leo Meyer, Pro Se

REPRESENTATIVE FOR RESPONDENT: Frank Kelly, Consultant

BEFORE THE
INDIANA BOARD OF TAX REVIEW

Leo and Cheryl Meyer,	)	Petition No.: 10-037-07-1-5-00001
	)	Parcel: 41-00007-006-0
Petitioners,	)	
	)	
v.	)	
	)	Clark County
Clark County Assessor,	)	Utica Township
	)	2007 Assessment
Respondent.	)	

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

April 23, 2010

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has reviewed the evidence and arguments presented in this case. The Board now enters its findings of fact and conclusions of law.

ISSUE

Did the Petitioners prove that the current assessment of $36,000 fails to accurately reflect the market value-in-use of the subject property and did the Petitioners prove what the correct valuation should be?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

HEARING FACTS AND OTHER MATTERS OF RECORD

1. The subject property is a .22 acre parcel that is contiguous to a second .22 acre parcel also owned by the Petitioners. Their residence at 407 Shore Acres Drive is situated on both parcels. Although it physically sits on both parcels, the residence is only reflected on the property record card of the second parcel. The second parcel is number 41-00007-007-0 and has an assessed value for 2007 of $70,000 for land and $263,500 for improvements. There is no indication that the Petitioners appealed that assessment.

2. On April 3, 2009, the Clark County Property Tax Assessment Board of Appeals (PTABOA) issued its determination that the 2007 assessment for the subject property is $36,000. This valuation is for land only.

3. On May 20, 2009, the Petitioners filed a Form 131 Petition for Review regarding the PTABOA's determination. They contend the assessed value of the subject parcel should be $0.

4. The Petitioners elected to proceed under the Board's plenary rules (52 IAC 2).

5. Administrative Law Judge Paul Stultz held the Board's hearing on December 9, 2009. He did not conduct an on-site inspection of the property.

6. The following persons were sworn as witnesses and testified at the hearing:

   For the Petitioners – Leo Meyer,
   Cheryl Meyer,
   For the Respondent – County Assessor Vicky Kent Haire,
   Deputy Assessor Holly Dalton,
   Frank Kelly, consultant.

7. The Petitioners presented the following exhibits:

Exhibit 1 – Statement of the Petitioners' contentions,

Exhibit 2 – Aerial photograph showing the subject property and seven nearby properties,

Exhibit 3 – Photographs of the subject property and seven properties with assessment information attached,

Exhibit 4 – Settlement statement for the Petitioners' purchase of the subject property and the contiguous property,

Exhibit 5 – List of witnesses and exhibits and notice of hearing.

8. The Respondent presented the following exhibits:

Exhibit 1 – Property record card of the subject parcel, 41-00007-006-0,

Exhibit 2 – Property record card of contiguous parcel, 41-00007-007-0,

Exhibit 3 – Plat map.

9. The following additional items are recognized as part of the record:

Board Exhibit A – The 131 Petition,[1]

Board Exhibit B – Notice of Hearing,

Board Exhibit C – Hearing Sign in Sheet.

[1] The 131 Petition had several attachments including Form 130, Form 115, and several other documents:

Exhibit 1 – "Deed of Correction" filed December 11, 2000, from William Knauss to Leo H. Meyer and Cheryl D. Meyer,

Exhibit 2 – Survey Map,

Exhibit 3 – Property record card for parcel 41-00007-007-0 with added notes,

Exhibit 4 – Parcel Identification Information for parcel 41-00007-008-0,

Exhibit 5 – Shoreacres lot map.

An earlier version of the deed from William Knauss to the Petitioners (August 2000) and a Warranty Deed from Winston Knaus to Marine Builders, Inc., in 1999 were also included in the attachments. Although the Petitioners failed to offer these documents as evidence, they were discussed many times during the hearing without any objections. Therefore, the Board will consider them as part of the evidence as if they had been properly offered and admitted.

SUMMARY OF THE PETITIONERS' CASE

10. The Petitioners' residence has a total of 105 feet of Ohio River frontage (50 feet with the subject parcel and 55 feet with the other). The Petitioners purchased the residence for $250,000 on August 2, 2000.

11. The entire residential property should be considered as one parcel and get one tax bill. It should not be assessed as two parcels. The only logical and fair way to define a piece of marketable property is to tax based on the deed. The Assessor should respect this system by assigning a 0 (zero) market value to a parcel not backed by a deed. And no deed exists for the second "phantom" parcel (41-00007-006-0).

12. When the property was purchased, a single deed was prepared to convey the entire property. Subsequently, a typographical error was discovered and a Deed of Correction was prepared on December 11, 2000. Apparently, it caused local assessing officials to split the property, which had always been assessed as parcel 41-00007-007-0 into two parcels. The Petitioners did not request that split. Having two parcels for the residence has created a double taxation of the property because the full value of the land is already in the assessment of parcel 41-00007-007-0.

13. Other parcels on the street have 50 feet of river frontage and they are being assessed at close to $70,000. Some of these properties are "deep lots" with more depth than the Petitioners' lots.

14. The parcel next to the Petitioners' property has 145 feet of river frontage and is assessed for $74,200.

15. The parcel at the end of the street has 110 feet of river frontage and is assessed at $20,300.

16. The land values for the two contiguous parcels owned by the Petitioners are $70,000 and $36,000 (the parcel under appeal) for a total land assessment of $106,000. This is more than other parcels on the street.

17. The parcel under appeal cannot be sold or built upon as a separate property because part of the house is already located on it. Therefore, it should be assessed as having no value.

18. The parcel periodically floods. The flooding reduces its market value.

19. The Petitioners admitted that the total land they own with this residence is .44 of an acre.

SUMMARY OF THE RESPONDENT'S CASE

20. The Clark County plat map identifies the parcel under appeal as 41-7-006. The contiguous parcel owned by the Petitioners is identified as 41-7-007. The dimensions on this map (Respondent Exhibit 3) show the Petitioners own approximately .44 acres. The property record cards (Respondent Exhibits 1 and 2) establish that between these two parcels the Petitioners are assessed for .44 acres. The total land area is correct. There is no double taxation of the Petitioners' property.

21. Most parcels in this area with 50 feet of river frontage are assessed for approximately $87,000. The Petitioners' two parcels (with 50 and 55 feet of river frontage) should be combined into one parcel (with 105 feet of river frontage) because the house straddles the lot line. Doing so would result in an increase in the total assessed value of the land from the combined total of $106,000 that now exists for 2007 because a negative 50% influence factor was allowed for the parcel under appeal to account for the fact the house straddles the lot line. This action is consistent with how other similarly situated properties were assessed.

22. Errors were made in some assessments in this area. For example, some parcels were incorrectly assessed on an acreage basis while others were assessed on a front foot basis,

which is how the market typically values riverfront properties. The properties at each end of the Petitioners' street that were assessed for only $20,300 and $74,200 are under assessed.

23. The Petitioners have not established that the assessed value is incorrect, nor have they demonstrated what the correct value should be.

ADMINISTRATIVE REVIEW AND BURDEN

24. 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).

25. 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").

26. 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.

ANALYSIS

27. There appears to be no substantial dispute about the fact that the Petitioners own .44 acres and collectively the two property record cards (for parcel 41-00007-006-0 and for parcel 41-00007-007-0) show land valuations for a total of .44 acres. The Petitioners have not proved they were assessed for more land than they actually own.

28. Furthermore, although the Petitioners claimed they were being subjected to double taxation, the property record cards, maps, and testimony establish without any substantial contradiction the .22 acres assessed on one parcel is not in any respect the same .22 acres that is assessed on the second parcel. Clearly, the Petitioners are not being assessed for the same land twice.

29. The Petitioners provided no substantial authority to support their contention that how the property was deeded to them somehow dictates that there should be only one parcel and one tax bill. That point is irrelevant.

30. The Petitioners argument really is based on their assumption that the $70,000 land value shown on the assessment of parcel 41-00007-007-0 is enough value for their entire .44 acres and the additional $36,000 land value assessed on parcel 41-00007-006-0 is an improper duplication apparently caused by improperly splitting the property they bought into two parcels. The split and whether their property should be considered as one parcel or two is really just a tangent issue. The central and significant question is the correct market value-in-use of the Petitioners' land. The fact that they appealed one parcel, but not the other adds to the difficulty of fully considering and deciding their case because it necessarily involves how both parcels are assessed. The Petitioners' argument assumes that the current land value on their unappealed parcel is enough for the entire .44 acres, but they failed to provide a substantial basis for that assumption.

31. 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); 2002 REAL PROPERTY ASSESSMENT MANUAL (incorporated by reference at 50 IAC 2.3-1-2) 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. MANUAL at 3. Indiana promulgated a series of guidelines that explain the application of the cost approach. *See* 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, 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.

32. A 2007 assessment must reflect the value of the property as of January 1, 2006. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. Any evidence of value relating to a different date must also have an explanation about how it demonstrates, or is relevant to, the value as of that required valuation date. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).

33. The Petitioners purchased the property for $250,000 in August 2000. But they provided no explanation to relate that price to the required valuation date, January 1, 2006. Therefore, their purchase price has no probative value. *Id*.

34. The Petitioners presented no appraisal, sales data, or other information compiled in accordance with generally accepted appraisal principles to support their claims about the value of the subject parcel or the entire .44 acres. *See Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674 at 678 (Ind. Tax Ct. 2006).

35. The area where the subject property is located periodically floods. And flooding almost certainly reduces value. The Petitioners, however, failed to quantify the impact on value. Accordingly, being subject to flooding does not prove that the current valuation is wrong and it does not prove what a more accurate valuation might be. *See Kooshtard Property VII v. Shelby Co. Assessor*, 902 N.E.2d 913, (Ind. Tax Ct. 2009) (explaining that the taxpayer must quantify the impact on value); *Talesnick v. State Bd. of Tax Comm'rs*, 756 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001).

36. The Petitioners offered photographs and data concerning seven purportedly comparable properties near their home. Other than proximity along the river, the Petitioners did almost nothing to establish a meaningful basis for comparing those properties to the subject property. Therefore, the purported comparables do not help to prove what a more accurate valuation might be for the assessment of the subject property. *See Long*, 821 N.E.2d at 470-471.

37. Several of the purported comparables have fifty feet of river frontage. They have assessed land values ranging from $81,800 to $87,000. According to the Petitioners, some of these adjoining properties are deeper lots than theirs—they implied that those higher valuations are because of depth. But testimony established that market forces value these parcels on the basis of the amount of front footage on the river. The Petitioners failed to show how lot depth might affect the market value-in-use of the properties. Their unsubstantiated conclusions do not constitute probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs,* 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). The Petitioners offered no substantial explanation for how these purported comparables actually support their claim that $70,000 is an appropriate valuation for both of their parcels (with a total of 105 feet of river frontage). *See Indianapolis Racquet Club, Inc.*, 802 N.E.2d at 1022 ("[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis").

38. Two of the Petitioners' purported comparables are assessed for $74,200 (for 145 feet of river front footage) and $20,300 (for 110 feet of river front footage). The local assessing official testified these two assessments appear to be in error. There is no sound reason to award the Petitioners an assessment that is mistakenly too low simply because two neighbors benefited from mistakenly low valuations. *See Allport v. Fulton Co. Assessor*, 919 N.E.2d 1251, (Ind. Tax Ct. 2010). Furthermore, the Petitioners failed to prove that the assessed values of these parcels support their proposed assessed value of zero for the subject property. *See Indianapolis Racquet Club, Inc.*, 802 N.E.2d at 1022.

39. The Petitioners' parcels have 50 and 55 feet of river frontage, yet each parcel is already assessed for less than other parcels in the neighborhood that have 50 feet of river frontage. Granting the requested relief would result in the Petitioners owning .22 acres of land with river frontage on which they pay no property taxes, while their neighbors' assessments range from $81,800 to $87,800 for similarly situated parcels. Such obvious inequity cannot be condoned.

SUMMARY OF FINAL DETERMINATION

40. The Petitioners failed to make a prima facie case for a lower 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.

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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