

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

Petition: 10-009-07-1-5-10000
Petitioners: Cecil and Joan C. Morgan
Respondent: Clark County Assessor
Parcel: 21-00072-055-1
Assessment Year: 2007

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 regarding the subject property by filing written notice with the Clark County Property Tax Assessment Board of Appeals (PTABOA) on November 18, 2008.
2. The PTABOA issued notice of its decision on February 18, 2009.
3. The Petitioners appealed to the Board by filing a Petition for Review of Assessment (Form 131) on February 26, 2009. They elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing to the parties dated October 16, 2009.
5. Administrative Law Judge Paul Stultz held the Board's administrative hearing on December 9, 2009. He did not inspect the property.
6. Cecil Morgan, County Assessor Vicky Kent Haire and Frank Kelly were sworn as witnesses, but Assessor Haire did not testify.

Facts

7. The property is a single family residence located at 4608 Scott Drive in Jeffersonville.
8. The PTABOA determined the assessed value is \$22,300 for land and \$97,000 for improvements (total \$119,300).
9. The Petitioners claimed the total assessed value should be \$111,200.

Record

10. The official record for this matter is made up of the following:
 - a. Form 131 with attachments,
 - b. Notice of Hearing,
 - c. Hearing Sign-In Sheet,
 - d. Digital recording of the hearing,
 - e. Petitioners Exhibit 1 – Real Estate Market Holding Steady,
Respondent Exhibit 1 – Property record card,
 - f. These Findings and Conclusions.

Contentions

11. Summary of the Petitioners' case:
 - a. The assessed value of the Petitioners' home increased from \$111,200 for 2006 to \$119,300 for 2007. That is an increase of more than \$8,000 in a recession year. *Morgan testimony.*
 - b. There was little change in real estate values in the southern Indiana market from 2006 to 2007. The average sales price in the area in 2006 was \$140,216 and the median sales price was \$123,000. For 2007, the average sales price was \$138,413 and the median sales price was \$124,295. Therefore, the 2007 assessed value of the subject property should be the same as the 2006 assessed value was. *Morgan testimony; Pet'rs Ex.1.*
 - c. The Petitioners also attempted to raise an issue about how their breezeway was valued, but that issue was not stated on their Form 131. The Board's procedural rules allow a party to amend a petition, but the Petitioners did not exercise this option. Only issues stated in the original appeal petition or an approved amendment may be raised at the hearing. Accordingly, the Board will not address the merits of the claim about the breezeway. 52 IAC 2-5-2.
12. Summary of the Respondent's case:
 - a. The Petitioners' property has more square footage and a larger garage than other properties that sold in the neighborhood. *Kelly testimony; Resp't Ex. 1.*
 - b. Mr. Morgan's opinion of value is not based on any objective or verifiable market value data for the valuation date of January 1, 2006. The Petitioners have not

presented any valuation information that would establish a prima facie case to change the assessment determined by the PTABOA. *Kelly testimony*.

- c. The Petitioners' exhibit contains sales information from 2006 and 2007. A more relevant analysis would consider sales data from calendar year 2005. Sales prices in this area were increasing during that period. *Kelly testimony*.

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 Petitioners did not make a case for any assessment change.
 - a. The assessment for every tax year stands alone. *Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (citing *Glass Wholesalers, Inc. v. State Bd. of Tax Comm'rs*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991)). Evidence about a property's assessment in one tax year does not help to prove what its market value-in-use is in a different tax year. *Id.* Therefore, the Petitioners' fundamental premise that the 2006 assessment of \$111,200 establishes a starting point for determining what the 2007 assessment should be is wrong.
 - b. The Petitioners' 2006 assessment would have been based on a valuation date of January 1, 2005, but 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).
 - c. 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 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. 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.

- d. The Petitioners, however, failed to present that kind of evidence.
- e. The Petitioners did not try to prove what the actual market value-in-use of the subject property might be with an appraisal or any other way that might satisfy generally accepted appraisal principles. The totality of their case was merely conclusory testimony from Mr. Morgan that real estate values in the area did not change much from 2006 to 2007 and a copy of a statement (apparently from Schuler Bauer Real Estate Services) purporting to show that average sale prices and median sale prices in Clark, Floyd, Harrison, Crawford, Perry, Scott, and Washington counties support the same conclusion. This conclusion appears to be based on aggregate data from several thousand residential sales, but there is absolutely no evidence related to individual sales—and the Petitioners made no attempt to establish any kind of meaningful comparison between their property and any individual sales.¹ The Petitioners failed to establish that such broad, sweeping conclusions about valuation satisfy generally accepted appraisal principles for valuing an individual property. Proof of valuation for a particular property must be much more specific.
- f. Ultimately, even if it is true that residential sales prices in those seven counties generally remained stable between 2006 and 2007, this point is not probative evidence because it has nothing to do with the relationship between the valuation date for the 2006 assessment (January 1, 2005) and the valuation date for the 2007 assessment (January 1, 2006).
- g. When taxpayers fail to provide probative evidence supporting their 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);

¹ In order to effectively use a sales comparison approach, the proponent must establish comparability of the properties being examined. Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the two properties. The proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *See Long*, 821 N.E.2d at 470-471. Here, the Petitioners did not establish how any of the sold properties might be comparable to their property or show the actual market value-in-use of any comparable properties.

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>>