

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

Petition: 15-002-06-1-5-00014
Petitioners: Sam, Dolores, and Melissa S. Orlando
Respondent: Dearborn County Assessor
Parcel: 15-12-07-500-199.000-002
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 Dearborn County Property Tax Assessment Board of Appeals (PTABOA) by written notice dated November 27, 2007.
2. The PTABOA issued notice of its decision on March 14, 2008.
3. The Petitioners appealed to the Board by filing a Form 131 on April 9, 2008. They elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing to the parties dated April 17, 2008.
5. Administrative Law Judge Paul Stultz held the Board's hearing on May 28, 2008.
6. County Attorney Robert Ewbank represented the Respondent at the hearing. Sam Orlando, Dolores Orlando, and County Assessor Gary Hensley were sworn as witnesses.

Facts

7. The parcel is classified as residential property located at 5400 Dutch Hollow Road, Aurora, Indiana.
8. The Administrative Law Judge did not conduct an inspection of the property.
9. The PTABOA determined the assessed land value is \$33,000 and the improvement value is \$95,700 (total \$128,700).
10. The Petitioners contended the assessed value should be \$21,240 for the land and \$95,700 for the improvements (total \$116,940).

Contentions

11. The Petitioners presented the following evidence:
 - a. The Petitioners sold a lot next to the subject property for \$18,257 on May 31, 2001. *Orlando testimony; Pet'rs Ex. 1.*
 - b. The subject property slopes in both the front and the back. This land is not worth \$33,000. *Orlando testimony.*
12. The Respondent presented the following evidence:
 - a. The Respondent's assessing vendor determined the assessed value for the subject lot is \$33,000. *Hensley testimony.*
 - b. There were few sales of vacant land in the Petitioners' neighborhood, so the Respondent reviewed sales of five improved properties. The Respondent used the abstraction method and determined the range of values for comparable land sales was \$29,600 to \$33,680.¹ That analysis verified the \$33,000 assessed land value is consistent with the values of other land sales in the neighborhood. *Hensley testimony; Resp't Ex. A.*
 - c. The Petitioners listed two other properties for sale in 2005. They placed a value of \$239,000 on a neighboring improved property and \$50,000 on 5.64 vacant acres. *Hensley testimony; Resp't Ex. B.*

Record

13. The official record for this matter contains the following:
 - a. The Petition,
 - b. A digital recording of the hearing,
 - c. Petitioners Exhibit 1 - Escrow closing account statement,
Respondent Exhibit A - Statement of position,
Respondent Exhibit B - Listing contracts of two comparable properties,
Respondent Exhibit C - Property record card for the subject property,
Board Exhibit A - Form 131 Petition for Review of Assessment,
Board Exhibit B - Notice of Hearing,
Board Exhibit C - Hearing Sign In Sheet,
 - d. These Findings and Conclusions.

¹ "The **abstraction method** is used to determine the indicated value of residential land if the sample of vacant land sales is insufficient for a geographic area." REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 - VERSION A, ch. 2 at 14 (incorporated by reference at 50 IAC 2.3-1-2).

Objections

14. The Petitioners objected to Respondent's Exhibit A and B. They provided no legal basis for the objections. The Board will not exclude evidence simply because the opposing party does not agree with it. Both objections were overruled at the hearing and the exhibits are part of the record.

Analysis

15. 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 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”).
16. The Petitioners did not provide sufficient evidence to support their claim because:
 - a. The conclusory testimony that this land is not worth \$33,000 because it slopes is not probative evidence. *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 v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). Even if that conclusion were correct, the Petitioners needed to prove what the correct assessment would be.
 - b. 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. *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.

- c. An assessment for 2006 must reflect the value of the property as of January 1, 2005. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. If evidence of value relates to a different date, there must be some explanation about how that evidence demonstrates, or is relevant to, the subject property's value as of that required valuation date. Otherwise, such evidence does not prove what the assessment should be. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
- d. The Petitioners established that they sold a vacant lot next to the subject property for \$18,257 on May 31, 2001. But they failed to explain how that fact might be relevant to value as of January 1, 2005. Consequently, it does not prove what the assessment should be. *See Long*, 821 N.E.2d at 471.
- e. When a taxpayer fails to provide probative evidence supporting its position that an assessment should be changed, the Respondent's duty to support the assessment with substantial evidence is not triggered. *See Lacy Diversified*, 799 N.E.2d at 1221-1222; *Whitley Products*, 704 N.E.2d at 1119.

Conclusion

17. The Petitioners failed to prove their case. The Board finds in favor of the Respondent.

Summary of Final Determination

In accordance with the above findings and conclusions, the assessment will not be changed.

ISSUED: _____

Commissioner, Indiana Board of Tax Review

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- 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>>