

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

Petition: 89-030-06-1-5-01620
Petitioner: Margaret W. Sligar
Respondent: Wayne County Assessor
Parcel: 50-03-420-106.000-29
Assessment Year: 2006

The Indiana Board of Tax Review (Board) issues this determination in the above matter, and finds and concludes 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 September 18, 2007.
2. The PTABOA issued notice of its decision on October 25, 2007.
3. The Petitioner appealed to the Board by filing a Petition for Review of Assessment (Form 131) on November 8, 2007. The Petitioner 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, 2010.
5. Administrative Law Judge Paul Stultz held the Board's administrative hearing on August 11, 2010.
6. Margaret W. Sligar and County Assessor Michael Statzer were sworn as witnesses. Attorney Edward O. Martin represented the Respondent.

Facts

7. The property is a single family residence located at 3500 Dorothy Lane in Richmond.
8. The Administrative Law Judge did not conduct an inspection of the property.
9. The PTABOA determined the assessed value is \$31,800 for land and \$133,300 for improvements (total \$165,100).
10. The Petitioner claimed the total assessed value should be \$155,100.

Record

11. The official record for this matter is made up of the following:
 - a. The Petition,
 - b. A digital recording of the hearing,
 - c. Petitioner Exhibit 1 – Photograph of retaining wall,
Petitioner Exhibit 2 – Photograph of retaining wall,
Petitioner Exhibit 3 – Proposal to repair retaining wall,
Respondent Exhibit 3 – Property record card,
Respondent Exhibit 5 – Sales disclosure form,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

12. Summary of the Petitioner's case:
 - a. The retaining wall in the Petitioner's side yard collapsed in 2005. This problem reduces the market value of the home. *Sligar testimony; Pet'r Exs. 1, 2.*
 - b. An estimate dated November 7, 2007, shows the cost to replace the retaining wall would be \$11,580. It has not been done. *Sligar testimony; Pet'r Ex. 3.*
 - c. The Petitioner could not sell this property for what she paid for it. *Sligar testimony.*
 - d. Prior to the Petitioner's purchase, the home experienced smoke damage in a fire. *Sligar testimony.*
13. Summary of the Respondent's case:
 - a. The Sligars purchased the property for \$160,000 on August 14, 2002, but the purchase price was not a factor in determining the 2006 assessment. *Statzer testimony; Resp't Ex. 5.*
 - b. The assessor valued the property using cost tables provided by the Department of Local Government Finance. Based on neighborhood sales, that amount was adjusted to 107% of that amount to account for market trends. *Statzer testimony; Resp't Ex. 3.*

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

- c. The Petitioner failed to demonstrate the assessment is not correct or what a more correct valuation would be. *Martin argument*.

Analysis

14. 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).
15. 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. 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.
17. The Petitioner did not make a prima facie case for any assessment change.
 - a. 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, 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. Regardless of the method used to challenge an assessment’s presumption of accuracy, a party must explain how its evidence relates to the subject property’s 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 2006 assessment, the valuation date was January 1, 2005. 50 IAC 21-3-3 (2009).

- c. The property was purchased in 2002 for \$160,000. Neither party, however, related this amount to the required valuation date. Accordingly, that purchase price is not probative evidence—it does not help to prove what a more accurate assessment might be. *See Long*, 821 N.E.2d at 471.
 - d. Similarly, conclusory statements that the home would not sell for its current assessed value are not probative. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
 - e. The Petitioner presented evidence about a collapsed retaining wall. She did not, however, quantify its effect on the market value-in-use of the property. Although the Petitioner presented a cost estimate to repair the wall, she presented no evidence to establish that the collapsed wall decreased the market value-in-use by that same amount. Additionally, the Petitioner did not relate the November 2007 estimated cost of repairs to the January 2005 valuation date. Although the collapsed wall almost certainly reduces the market value-in-use to some degree, the record contains no relevant, probative evidence to directly connect that fact with a more accurate valuation amount on the assessment. *See Long*, 821 N.E.2d at 471.
 - f. The Petitioner was required to show through the use of market-based evidence that the assessed value does not accurately reflect the market value-in-use. *See Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). The Petitioner failed to make such a showing. Therefore, the Petitioner failed to make a prima facie case for any change in the assessment.²
18. 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*, 704 N.E.2d at 1119.

Conclusion

19. The Board finds in favor of the Respondent.

² On Form 131, the Petitioner complained that her property taxes have increased significantly, but she did not pursue that point during the hearing. That complaint was waived. But in any case the Board would have no jurisdiction over such a complaint. 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.

Final Determination

- 20. 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>