

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

Petition: 83-001-09-1-5-00106
Petitioners: Bernard and Joyce Strange
Respondent: Vermillion County Assessor
Parcel: 83-13-17-12-006.000-001
Assessment Year: 2009

The Indiana Board of Tax Review (Board) issues this determination in the above matter, finding and concluding as follows:

Procedural History

1. The Petitioners initiated an assessment appeal with the Vermillion County Property Tax Assessment Board of Appeals (PTABOA) by filing Form 130 dated December 4, 2009.
2. The PTABOA mailed notice of its decision, Form 115, on July 7, 2010.
3. The Petitioners appealed to the Board by filing a Petition for Review of Assessment, Form 131, on August 20, 2010. The Petitioners elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing on November 10, 2010.
5. Administrative Law Judge Paul Stultz held the Board's administrative hearing on January 25, 2011. He did not inspect the property.
6. Bernard Strange, County Assessor Patricia Richey and Brian McHenry were sworn as witnesses at the hearing.

Facts

7. The property is a vacant lot in Clinton Township. It is approximately .137 of an acre located approximately a quarter of a mile from the junction of highways 63 and 163.
8. The PTABOA determined the assessed value is \$6,600.
9. The Petitioners claim the assessed value should be \$1,500.

Record

10. The official record for this matter contains the following:
 - a. Form 131 Petition,
 - b. Digital recording of the hearing,
 - c. Petitioners Exhibit 1 – Broker’s price opinion dated December 13, 2010,
Respondent Exhibit 1 – Broker’s price opinion dated April 30, 2009,
Respondent Exhibit 2 – Property record card for a comparable property,
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 Petitioners’ case:
 - a. The current assessed value of \$6,600 for this parcel is greater than its market value. The subject property is probably worth about \$1,500. *Strange testimony.*
 - b. This parcel is pie shaped or triangular with each side measuring about 75 feet. It is too small to build any structure on it. About the only thing you could do would be planting a garden. *Strange testimony.*
 - c. This parcel is contiguous to some other lots that the Petitioners own. *Strange testimony.*
 - d. The prior owner had purchased the subject property intending to put a billboard on it, but then discovered it is not big enough. He asked the Petitioners about buying some of their adjoining property to get enough land for the billboard, but the Petitioners refused. Being unable to erect the billboard, he eventually sold the subject property to the Petitioners for less than he had paid for it. The Petitioners paid \$4,961 for the subject property on April 30, 2004, but that was too much. “The only reason I bought it was because we had four lots and it was on the end piece.” *Strange testimony.*
 - e. On December 13, 2010, a broker’s price opinion letter from Michelle Tucker said:

To truly determine what the market might ultimately bring it [the subject property] would have to be offered for sale at a high end of a probable price range. The location and lot size indicate a price range somewhere between \$3,400 and \$19,000. A reasonable value might possibly be \$3,500.

I have considered pertinent data affecting the valuation, including location, the sales and asking price of comparable properties and the trend of the neighborhood.

As a result, I am of the opinion that the market value of the property was as of the above date: \$3,500.

Pet'rs Ex. 1.

- f. The second broker's opinion of \$3,500 is twice what the parcel would sell for. Her first opinion had estimated a possible reasonable price of only \$1,500. *Strange testimony.*
- g. The second broker's opinion included two comparable properties, but they really are not good comparables. It is difficult to get a good comparable because this kind of ground is not offered for sale. Nevertheless, the lot at 719 North 9th Street in Clinton would be the closest comparison. That property sold for 40 cents per square foot. The Petitioners' property is assessed for about 74 cents per square foot. *Strange testimony.*

12. Summary of the Respondent's case:

- a. On April 30, 2004, the Petitioners paid \$4,961 for the subject property. *McHenry testimony.*
- b. The same broker, Michelle Tucker, prepared two price opinions for the subject property. *McHenry testimony.*
- c. Her price opinion letter dated April 30, 2009, said:

A three year search of comparable sales for subjects proximity produced 23 sales with a range of value from \$6,500 to \$150,000 with an averages sales price for the area of \$70,142. Comparables used were all superior to subject adjustments needed for lot size, out buildings and or utilities.

To truly determine what the market might ultimately bring it would have to be offered for sale at a high end of a probable price range. The location and lot size indicate a price range somewhere between \$1,000 and \$3,000. A reasonable value might possibly be \$1,500.

Resp't Ex. 1.

- d. The increase in the broker's two opinions about the value of the subject property shows it is valuable. The current assessed value of \$6,600 is within the 2010 range of values established by the broker. *McHenry testimony; Resp't Ex. 1; Pet'rs Ex. 1.*

- e. The purchase of this parcel enhanced the value of the adjoining parcels that were already owned by the Petitioners. *McHenry testimony*.
- f. A parcel comparable to the subject sold for \$210,000 on April 13, 2009. It was agricultural land being converted to a commercial use. *McHenry testimony; Resp't Ex. 2*.

Analysis

- 13. Petitioners who seek review of a determination of an assessing official have 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 a case, one 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) (explaining that one needs to walk the Indiana Board through every element of the analysis).
- 15. The Petitioners 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 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.
 - b. The valuation date for a 2009 assessment is January 1, 2008. 50 IAC 21-3-3 (2009). Consequently, a party relying on market value evidence as of some other date must also provide some explanation for how the evidence demonstrates, or is relevant to, the required 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).

- c. The actual purchase price of a property often can be the best evidence of that property's market value-in-use.¹ Although the Petitioners purchased the subject property for \$4,961 on April 30, 2004, nobody related that purchase price to the valuation date of January 1, 2008. Therefore, the price the Petitioners paid does not help to prove what the 2009 assessment should be. *Long*, 821 N.E.2d at 471.
- d. The Petitioners offered conclusory testimony that the subject property could not be sold for its current assessed value and that a reasonable selling price would be only \$1,500—an amount the Petitioners primarily attribute to the limitations of the size and shape of this parcel. The prior selling prices and the broker's opinions, however, seem to contradict that testimony. Furthermore, such conclusory statements are not probative evidence. They do not help to prove what the 2009 assessment should be. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
- e. In addition, focusing entirely on the value of the subject property as a single, isolated parcel with purportedly minimal value does not create an accurate picture of reality. The Petitioners admitted they bought the subject property because it is contiguous with four other lots that they own. But those other lots are not part of this appeal and the record contains no other information about them. This situation makes it impossible to draw a conclusion about how much or how little the subject property contributes to the Petitioners' use of the five lots as a whole.² It does, however, seem clear that the evidence about not being able to build any structure because of the small size of the lot probably is not accurate, given the fact that the Petitioners own four more contiguous lots.
- f. Curiously, both sides offered letters from Michelle Tucker that purport to give her opinion about the market value of the property—the Petitioners offered a letter stating the value is \$3,500 and the Respondent offered a letter stating the value is \$1,500. (In 2009 and 2010 Ms. Tucker apparently reached different conclusions.) The Petitioners failed to present any substantial basis for how the letter they presented supports their claim for an assessment of \$1,500. Similarly, the Respondent failed to present any substantial basis for how the letter she presented supports the existing assessment of \$6,600. In fact, the Petitioners tried to establish that the value suggested by Petitioners Exhibit 1 is too much. And the Respondent tried to establish that the value suggested by Respondent Exhibit 1 is too low. Both parties attacked the credibility and reliability of Ms. Tucker's opinion letters, rather than making any attempt to support either of her opinions.

¹ For any sale to be a reliable indicator of market value, certain conditions must be satisfied. For example, the buyer and seller must be typically motivated, well informed and acting in their own best interests. See MANUAL at 10. It is not clear that the Petitioners' purchase price would be a reliable indication of the market value in this case.

² The definition of true tax value looks to the utility that an owner, or similar user, receives from a property. Sometimes (as here) the value of an individual parcel cannot realistically be separated from a greater whole.

- g. The Board concludes that both of Ms. Tucker's opinion letters lack probative value for a number of reasons, including the following points:
- She did not testify.
 - The record contains no evidence about what her qualifications might be.
 - Nothing in the record indicates that either price opinion was prepared in accordance with the Uniform Standards of Professional Appraisal Practice or any generally accepted appraisal principles.
 - The letters are primarily unsubstantiated or unexplained conclusions about the similarities and differences between the subject property and purportedly comparable properties. *See Long*, 821 N.E.2d at 470-71.
 - The letters point out that the subject property is not large enough for a septic system or for a building site, but apparently do not consider the fact that the Petitioners own contiguous lots.
 - Neither letter relates to the required valuation date, January 1, 2008.
- h. The Petitioners failed to demonstrate the assessed value of the subject property does not accurately reflect its market value-in-use. *See Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006).

16. The Respondent's duty to support the assessment with substantial evidence was 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*, 704 N.E.2d at 1119.

Conclusion

17. The Petitioners 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>