

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

Petition: 06-019-07-1-5-00576
Petitioners: Stephen & Arlene Lonn
Respondent: Boone County Assessor
Parcel: 019-10342-21
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 Form 130 with the Boone County Property Tax Assessment Board of Appeals (PTABOA) on October 17, 2008.
2. The PTABOA issued notice of its decision on December 10, 2008.
3. The Petitioners appealed to the Board by filing a Form 131 on January 5, 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 July 16, 2009.
5. Administrative Law Judge Paul Stultz held the Board's administrative hearing on September 17, 2009. He did not inspect the property.
6. The following persons were present and sworn as witnesses:
For the Petitioners – Stephen Lonn, property owner,
For the Respondent – Lisa Garoffolo, Assessor.

Facts

7. The property is residential and is located at 4272 Creekside Pass in Zionsville.
8. The PTABOA determined the assessed value is \$191,600 for land and \$465,100 for improvements (total \$656,700).
9. The Petitioners claimed the assessed value should be \$125,000 for land and \$465,000 for improvements (total \$590,000).

Record

10. The official record for this matter is made up of the following:
 - a. Petition for Review of Assessment (Form 131) with attachments,
 - b. Notice of Hearing,
 - c. Hearing Sign-In Sheet,
 - d. Digital recording of the hearing,
 - e. Petitioner Exhibit 1 – Property record card (PRC) for Parcel #019-10340-11 (Comp 1), page 1,
Petitioner Exhibit 2 – PRC for Parcel #019-10342-50 (Comp 2), page 1,
Petitioner Exhibit 3 – Subject PRC, page 1,
Petitioner Exhibit 4 – Subject PRC, page 2,
Petitioner Exhibit 5 – PRC for Parcel #019-10342-23 (Comp 3), page 1,
Petitioner Exhibit 6 – PRC for Parcel #019-10342-22 (Comp 4), page 1,
Petitioner Exhibit 7 – PRC for Parcel #019-10342-18 (Comp 5), page 1,
Respondent Exhibit 1 – Boone County Appeal Worksheet with copies of the evidence presented to the PTABOA,
Respondent Exhibit 2 – Subject PRC,
Respondent Exhibit 3 – Photograph,
Respondent Exhibit 4 – Form 114,
Respondent Exhibit 5 – Form 115,
Respondent Exhibit 6 – Tax Calculation Worksheet,
Respondent Exhibit 7 – Form 131,
Respondent Exhibit 8 – Notice of Hearing,
Respondent Exhibit 9– Comparative Market Analysis,
 - f. These Findings and Conclusions.

Contentions

11. Summary of the Petitioners' case:
 - a. The assessed land value is too high. The subject property is bisected by a pipeline and a drainage easement. The portion of the subject property affected by the easements cannot be developed or used. The only thing that can be done with that part of the property is cut the grass. *Lonn testimony.*
 - b. The subject property was purchased from the developer in 1998 for \$89,000. The current land assessment is \$191,600 for .73 of an acre. This valuation is much higher than the land assessments of smaller lots in the neighborhood that are not

affected by the pipeline. The property located at 4220 Creekside Pass (Comp 2) has 0.68 acres and is not affected by the pipeline, but it has a land value of \$188,200. *Lonn testimony; Pet'r Exs. 2, 3.*

- c. Wintersprings is the most exclusive area of the neighborhood. It has eight of the largest lots. The property located at 4517 Winterspring Crescent (Comp 1) is one of the larger lots in the neighborhood with 1.5 acres. Comp 1 is twice the size of the subject property, but it has a lower land assessment. The land assessment for Comp 1 is \$128,000. One acre of the land, identified as type 9, is situated at a higher elevation and is valued at the higher rate. The remaining half acre, identified as type 91, is situated at a lower elevation and is valued at a lower rate. The type 91 would apply for land affected by easements, such as the subject property, because it is for land that is not useable. *Lonn testimony; Pet'r Ex. 1.*
 - d. The properties located at 4343 Creekside Pass (Comp 3) and 4355 Creekside Pass (Comp 4) are virtually side by side. Comp 3 is not affected by the pipeline and has a land assessment of \$157,800 (for .52 of an acre), while Comp 4 is affected by the pipeline and has a land assessment of \$182,100 (for .63 of an acre). *Lonn testimony; Pet'r Exs. 5, 6.*
 - e. The property located at 4366 Creekside Pass (Comp 5) is larger than the subject property. Comp 5 has 1.28 acre. Its first acre, also identified as type 9, is situated at a higher elevation and valued at the higher rate. Comp 5's remaining 0.28 acre, identified as type 91, is situated at the lower elevation and is valued using a lower rate. *Lonn testimony; Pet'r Ex. 7.*
 - f. "I built the house. I have not attempted to market it. I have no idea if that pipeline is going to affect me or not." *Lonn testimony.*
12. Summary of the Respondent's case:
- a. The codes for land type 9 and 91 are explained in the lower right section of the property record cards. Type 9 is for a homesite up to one acre. Type 91 is for excess residential, which is residential land exceeding the one acre homesite. *Garoffolo testimony.*
 - b. The sales data indicates that the pipelines do not affect the market value of the properties located in Austin Oaks subdivision. *Garoffolo testimony; Resp't Ex. 9.*

Analysis

13. A petitioner who seeks 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). In making its case, a

petitioner 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”).

14. The Petitioners did not make a case for any assessment change because:
 - a. Real property is assessed based on 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). Indiana promulgated Guidelines for assessing officials that are based on the cost approach. The value established by use of those 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. The Petitioners, however, failed to offer any probative evidence that might help to prove a more accurate market value-in-use than the existing assessment on their property. They seem to have missed the point of the assessment system that Indiana has been using since 2002. The Tax Court has explained how Indiana’s assessment system has changed: “Simply put, under the old system, a property’s assessed value was correct as long as the assessment regulations were applied correctly. The new system, in contrast, shifts the focus from mere methodology to determining whether the assessed value *is actually correct.*” *P/A Builders & Developers, LLC v. Jennings Co. Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006). A taxpayer must show through the use of market-based evidence that the assessed value does not accurately reflect market value-in-use. *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674 (Ind. Tax Ct. 2006). Here, the Petitioners did not do so, and consequently, they failed to make a prima facie case. *See Id.* at 678 (“In challenging their assessment, the Eckerlings have offered [no] . . . market value-in-use evidence. Rather, they have focused strictly on the Assessor’s methodology. The Eckerlings have not shown, however, that the Assessor’s methodology resulted in an assessment that failed to accurately reflect their property’s market value-in-use. Accordingly, the Court cannot say that the Eckerlings presented a prima facie case that their assessment was in error”); *see also O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006).
 - c. The Petitioners bought their lot for \$89,000 in 1998, but they failed to establish how this purchase price might help to prove what their 2007 assessment should be. An assessment for 2007 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. 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 the use of some portion of their lot is severely restricted by easements, but it is not clear how much of the property is covered by easements or specifically where they are. More importantly, there is no probative evidence regarding how much those restrictions might reduce the market value-in-use of the Petitioners' lot from what the value would be without such restrictions. Assuming, *arguendo*, that the easement restrictions on use lower the actual market value-in-use of the subject property to some degree, the Petitioners failed to make a prima facie case for any assessment change because they did not present any probative evidence for a more accurate assessment amount. Their claim that the land value should be \$125,000 is merely a conclusion that is not supported by any probative evidence. *See Whitley Products v. State Bd. Of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
- e. The Petitioners presented property record cards for purportedly comparable properties to support their claim. Comps 2, 3, 4, and 5 are in the same neighborhood and have the same base rate (\$205,000 per acre) as the subject property. At least part of the difference between the land assessed values of those properties and the subject apparently is due to size: bigger lots assessed for more, smaller lots assessed for less. The Petitioners failed to establish how the assessed land values for these comparables support their claim. The land value base rate used for the assessment of Comp 1 (\$125,800 per acre) is less, but it is in a different neighborhood where the lots are bigger. The Petitioners offered a conclusory statement that it is the most exclusive area, but there is no probative evidence to support that conclusion. Furthermore, the Petitioners failed to present the kind of detailed facts and analysis that might support conclusions about the relative values of any of these lots. *See Long*, 821 N.E.2d at 471.
- f. The Petitioners mistakenly claimed that land types 9 and 91 represent different land elevations. But actually, land type 9 represents homesite and land type 91 represents excess residential acreage. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002-VERSION A, ch. at 67, 68, and 77 (incorporated by reference at 50 IAC 2.3-1-2). The Petitioners failed to establish how this distinction might be relevant to determining the value of their property.
- g. When a taxpayer fails to provide probative evidence supporting his 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 Products*, 704 N.E.2d at 1119.

Conclusion

- 15. The Petitioner 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>>