

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

Petition: 47-008-08-1-5-00002
Petitioners: H. Elwood and Marilyn H. Rogers
Respondent: Lawrence County Assessor
Parcel: 47-02-11-200-002.000-008
Assessment Year: 2008

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

Procedural History

1. The Petitioners appealed their 2008 assessment to the Lawrence County Property Tax Assessment Board of Appeals (PTABOA).
2. The PTABOA mailed notice of its decision on March 19, 2010.
3. The Petitioners filed a Form 131 Petition with the Board on May 3, 2010. They elected to have the appeal heard according to the Board's small claims procedures.
4. Administrative Law Judge Rick Barter held the Board's hearing on March 7, 2012. He did not inspect the property.
5. Petitioner H. Elwood Rogers, County Assessor April Stapp Collins, and Kirk Reller were sworn as witnesses.

Facts

6. The subject property is an improved parcel with approximately 38 acres at 663 Dutch Ridge Road, Heltonville.
7. The PTABOA determined that the 2008 assessment is \$12,200 for land and \$100,700 for improvements (total \$112,900).
8. The Petitioners claimed the assessment should be \$9,700 for land and \$70,000 for improvements (total \$79,700).

Contentions

9. Summary of the Petitioners' case:

a. The Petitioners' Form 131 Petition contains the following statements:

Only about 4 acres is flat and accessible [*sic*] of our property

Many ravines are part of our 38 acres (3 large & 6 small ravines)

The other homes consist of as follows on our road

1 round house about 10 years old

2 older regular (stick built) homes

6 house trailers

1 old unpainted rental

1 old house used as a barn

Our home has a geo-thermal not operating and has not operated except for about 1 day of air conditional use

The home has many mistakes in construction

One neighbor in a (stick built) home has not sold in many months of trying

Our area is a down scale area; low income except 1

b. "I don't have any written evidence to back up what I say, yet I believe everything that I have stated is true." *Rogers testimony.*

c. The staff in the assessor's office told the Petitioners that the assessment increased as a result of the construction of new homes in the area. The new homes, however, are not located on the Petitioners' street. The new construction is on the opposite side of State Road 446. *Rogers testimony.*

d. The tax system needs to be changed. The bulk of property taxes are used to finance schools, but even taxpayers who have no children in schools are required to pay property taxes. *Rogers testimony.*

10. Summary of the Respondent's case:

a. To make a case, the Petitioners have the burden of proving the market value-in-use of their property with probative evidence. But here they failed to prove the assessment is incorrect or what the correct value should be. *Reller testimony.*

b. The Respondent's obligation to defend the existing assessment was not triggered. *Reller testimony.*

Record

11. The official record contains the following:
 - a. Digital recording of the hearing,
 - b. No Petitioner Exhibits,
No Respondent Exhibits,
Form 131 Petition,
Notice of Hearing,
Hearing sign in sheet,
 - c. These Findings and Conclusions.

Analysis

12. A taxpayer generally has the burden to establish a prima facie case by proving the current assessment is incorrect and proving 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).
13. In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *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.
 - 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). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach. *Id.* at 3. 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.
 - b. Regardless of the method used to rebut 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 Finance*, 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 Petitioners' land has numerous ravines. They could have a negative impact on a potential selling price. But merely establishing their existence is not enough to require changing the assessment. To make a case, the Petitioners were required to offer probative evidence about what a more accurate valuation would be. *See Talesnick v. State Bd. of Tax Comm'rs*, 756 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001). They offered no such proof. Consequently, the mere existence of the ravines does not help prove the assessment should be changed.
 - d. The Petitioners have a defective geothermal system. Their neighborhood has several inexpensive and poorly maintained residences. And although there is some new construction, it is on the opposite side of State Road 446. But again, those points alone do not make a case for any assessment change because a Petitioner must show the assessment does not accurately reflect the subject property's market value-in-use. *Id.*; *see also P/A Builders & Developers, LLC v. Jennings County Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (explaining that to successfully make a case the focus should not be on methodology, but should be on whether the assessed value is actually correct.)
 - e. A home in the neighborhood has been offered for sale for several months. The cursory description of that property, however, did not establish how it might be comparable to the subject property. The Petitioners did not even establish what the asking price is. From what was offered in this case, it is impossible to draw any legitimate conclusion about value based on that attempted sale.
 - f. The Petitioners' complaints about changing the tax system and supporting public schools are irrelevant to this case. They do nothing to help establish what the market value-in-use of the subject property is.
 - g. The Petitioners presented no probative evidence to support their proposed assessed value. Unsubstantiated conclusions do not constitute probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
15. 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 Products*, 704 N.E.2d at 1119.

Conclusion

16. The Petitioners failed to make a prima facie case for any assessment change. The Board finds in favor of the Respondent.

Final Determination

In accordance with these findings of fact and conclusions of law, the assessment will not be changed.

ISSUED: May 16, 2012

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>.