

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

Petition: 15-021-08-1-1-00002
Petitioner: Judith J. Volz
Respondent: Dearborn County Assessor
Parcel: 15-09-09-400-012.000-021
Assessment Year: 2008

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 Petitioner initiated an assessment appeal with the Dearborn County Property Tax Assessment Board of Appeals (PTABOA) by filing a Form 130 petition dated June 12, 2009.
2. The PTABOA issued notice of its decision on September 4, 2009.
3. The Petitioner appealed to the Board by filing a Form 131 petition on October 2, 2009, and elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing to the parties dated July 7, 2011.
5. Administrative Law Judge Paul Stultz held the Board's administrative hearing on September 13, 2011. He did not conduct an inspection of the property.
6. The following persons were sworn as witnesses:
For the Petitioner – Judith J. Volz and Tim E. Sparks,
For the Respondent – Gary R. Hensley, Jim Davis, and Jeffrey D. Thomas.

Facts

7. The property is a single-family residence located at 16196 West County Line Road in Moores Hill.
8. The PTABOA determined that the assessed value is \$24,600 for land and \$186,900 for improvements (total assessed value of \$211,500).
9. The Petitioner requested a total assessed value of \$158,000.

Contentions

10. Summary of the Petitioner's case:

- a. The assessment is too high in light of the assessments of comparable properties and the original construction cost. *Volz argument.*
- b. Four properties in the subject's area are assessed lower than the subject property, even though they have more acreage. *Volz testimony.*¹ A property owned by Mary Ann Boyd has 17 acres and is assessed for \$169,100. *Pet'r Ex. 1.* A property owned by Marshall Alford has 79 acres and is assessed for \$236,000. *Pet'r Ex. 2.* A property owned by Marjorie Meyers has 15 acres and is assessed for \$127,500. *Pet'r Ex. 3.* A property owned by Chris Volz has 16.5 acres and is assessed for \$166,300. *Pet'r Ex. 4.*
- c. The subject home was built in 1959 and finished in 1960 at a construction cost of \$31,529.65. The property's value cannot be four times its construction cost. While property values have decreased greatly, the subject property's assessment has risen from \$188,900 in 2006 to the current \$211,500. The Petitioner could not sell the property for that amount. *Volz argument/testimony.*
- d. Because the Petitioner is over 65 years old, her tax liability should be capped at \$182,430.² All the deductions that the Petitioner is entitled to have not been applied. *Volz argument/testimony.*

11. Summary of the Respondent's case:

- a. After the Petitioner filed her appeal, the Respondent ordered an appraisal for the subject property from Jeffrey D. Thomas. *Hensley testimony.*
- b. Mr. Thomas is a certified appraiser. He appraised the value of the subject property at \$208,000 as of March 1, 2008. *Thomas testimony; Resp't Ex. 1.*
- c. Generally, the real estate market reached its peak in 2007, and has been in decline since. *Thomas testimony.*
- d. While the overall market has been in decline, some neighborhoods are not in decline or the rates of decline vary. Some neighborhoods are even increasing. Each year the Respondent compares sale prices to assessments, developing a ratio study, and determining market trends for individual neighborhoods. *Davis testimony.*

¹ The assessed values that the Petitioner underlined in her exhibits are 2010 assessments.

² The Petitioner appeared to use the terms "tax liability" and "assessed value" interchangeably.

Record

12. The official record contains the following:
- a. Petition,
 - b. Digital recording of the hearing,
 - c. Petitioner Exhibit 1 – Record card for property owned by Mary Ann Boyd,
Petitioner Exhibit 2 – Record card for property owned by Marshall Alford,
Petitioner Exhibit 3 – Record card for property owned by Marjorie Meyers,
Petitioner Exhibit 4 – Record card for property owned by Chris Volz,

Respondent Exhibit 1 – Appraisal,

Board Exhibit A – Form 131 Petition,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing Sign-In Sheet,
 - d. These Findings and Conclusions.

Analysis

13. 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”).
 - c. 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.

14. The Petitioner did not make a prima facie case for any assessment change.
- a. Real property is assessed based on "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. The primary method for assessing officials is the cost approach. *Id.* at 3. Indiana has 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. 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). The valuation date for a 2008 assessment was January 1, 2007. 50 IAC 21-3-3. Any evidence of value relating to a different date must also have an explanation about how it demonstrates, or is relevant to, the value as of that required valuation date. *Long*, 821 N.E.2d at 471.
 - c. The Petitioner attempted to compare her assessment with the assessments of four purportedly comparable properties. But to effectively use any kind of comparison approach to value a property, one must establish that properties truly are comparable. Conclusory statements that properties are "similar" or "comparable" are not sufficient. *Long*, 821 N.E.2d at 470 (explaining that one who relies on comparables is responsible both for providing the data about comparables and for analyzing it—the Board is not responsible for reviewing all the documents presented to determine whether properties are indeed comparable). The Petitioner needed to identify the subject property's characteristics, explain how those characteristics compare to the purportedly comparable properties with specifics about how they are similar. She also needed to recognize differences between the properties and explain how they affect market value-in-use. *Id.* at 471. The Petitioner, however, merely stated that the purportedly comparable properties have more acreage. She provided no meaningful basis for comparing those land values to her own land value. And the Petitioner provided no comparison whatsoever regarding the improvements. *See Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119, (Ind. Tax Ct. 1998) (explaining that unsupported conclusory statements are not probative evidence).

- d. Furthermore, simply comparing assessments is problematic. It is not enough for the Petitioner to show her property is assessed with a higher value than other properties. A taxpayer cannot rebut the presumption that her assessment is correct without presenting evidence of market value-in-use. *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 677-678 (Ind. Tax Ct. 2006). *See also Westfield Golf Practice Center v. Washington Twp. Assessor*, 859 N.E.2d 396, 399 (Ind. Tax Ct. 207). She must present probative evidence that the assessed value as determined by the assessor is not an accurate market value-in-use. *Westfield Golf*, 859 N.E.2d at 399; *P/A Builders & Developers, LLC v. Jennings Co. Assessor*, 842 N.E.2d 899, 900 (Ind. Tax Ct. 2006) (focus is on determining whether the assessed value is actually correct.) The Petitioner presented absolutely no such evidence.
- e. The Petitioner failed to establish how 1959 and 1960 construction cost has any probative value or relevance to this case. Her testimony that the value could not be four times more than the construction cost is conclusory and not probative evidence. *Whitley Products*, 704 N.E.2d at 1119. It does not help prove her case.
- f. The 2006 assessment of \$188,900 is not relevant or probative evidence in this case because it is a “cardinal principle that each tax year stands on its own. *** Where a taxpayer challenges an assessment, the resolution of that challenge does not depend on how the property was previously assessed.” *Barth, Inc. v. State Bd. of Tax Comm’rs*, 699 N.E.2d 800, 806 n.14 (Ind. Tax Ct. 1998).
- g. The Petitioner referred to an upper limit or “cap” on assessments and/or tax liability for property owners aged 65 or older in the amount of \$182,430 that purportedly should have been applied. Although she failed to specify any kind of authority for her claim, the Board assumes the Petitioner means the deduction from assessed value for persons 65 or older as provided by Ind. Code § 6-1.1-12-9. This statute has a deduction from assessed value for some people aged 65 or older, but there are several limitations and qualifications for getting this deduction. They include limits on an owner’s income and a limit on the assessed value of the property—its assessed value must not exceed \$182,430 *in order to be eligible*. The Petitioner appears to have misinterpreted this eligibility requirement. And while the Petitioner claimed that deductions for which she is entitled have not been applied, she failed to provide evidence proving her claim.
- h. The Petitioner did not make a prima facie case for any assessment change. Consequently, 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, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
- i. Nevertheless, the Respondent offered an appraisal that estimated a value at \$208,000 as of March 1, 2008. As stated previously, the relevant valuation date for 2008 assessments was January 1, 2007. And nothing in this case helps relate the appraised value back to the required valuation date. Therefore, the appraisal does not prove a

more accurate valuation for the 2008 assessment, even though it suggests a value less than the assessment determined by the PTABOA.

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: _____

Chairman, 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>>