

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

Petition: 89-030-08-1-5-00461
Petitioners: Robert W. Alexander III and Deborah L. Alexander
Respondent: Wayne County Assessor
Parcel: 50-03-320-647.000-29
Assessment Year: 2008

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

Procedural History

1. The Petitioners initiated an assessment appeal with the Wayne County Property Tax Assessment Board of Appeals (PTABOA) by filing a Property Tax Informal Review form dated July 29, 2009.
2. The PTABOA issued notice of its decision, Form 115, on October 19, 2009.
3. The Petitioners appealed to the Board by filing a Petition for Review of Assessment (Form 131) on November 5, 2009. They elected to have this case heard according to small claims procedures. The Form 131 indicates the appeal is for 2009, but at the hearing the parties agreed the assessment year under appeal is 2008.
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. He did not inspect the property.
6. The Petitioners appeared *pro se*. Attorney Edward O. Martin represented the Respondent. Robert W. Alexander, Deborah L. Alexander and County Assessor Michael Statzer were sworn as witnesses and testified. Richard D. Lee, Dan Williams, Joseph Kaiser and Betty Smith were sworn, but did not testify.

Facts

7. The property is a single family residence located at 2820 Stoneleigh Drive in Richmond.
8. The PTABOA determined the assessed value is \$28,600 for land and \$136,100 for improvements (total \$164,700).
9. The Petitioners claimed the total assessed value should be \$159,100.

Record

10. The official record for this matter is made up of the following:
 - a. The Petition,
 - b. A digital recording of the hearing,
 - c. 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.
11. The Petitioners offered no exhibits until just prior to closing arguments. The Respondent objected to the introduction of the Petitioners' exhibits at that stage in the hearing. More importantly, the Petitioners had no extra copies and declined to let the ALJ have their documents—the proposed exhibits were described as the Form 115 and the property record card. The Form 115 is an attachment to the Form 131. *Bd. Ex. A*. And the Respondent entered the property record card into the record. *Resp't Ex. 3*. Therefore, both of the exhibits the Petitioners wanted to offer already are part of the record, which makes the offer and objection a moot point.

Contentions

12. Summary of the Petitioners' case:
 - a. The Petitioners purchased the property for \$168,900 on April 15, 2005. *R. Alexander testimony; Resp't Ex. 5*.
 - b. The property record card shows the assessor determined the 2006 value was \$159,100. This data establishes property values were declining. *R. Alexander testimony; D. Alexander testimony*.
 - c. The tax increases during the past four years are unjust. The Petitioners have one of the smallest lots in the neighborhood, but pay substantially more taxes than their neighbors. *R. Alexander testimony*.
 - d. The home has three bedrooms and one fireplace. It is incorrectly described on the property record card as having four bedrooms and two fireplaces. The total square footage shown on the property record card, however, is correct. *R. Alexander testimony; Resp't Ex. 3*.

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

13. Summary of the Respondent's case:
- a. The Petitioners purchased the property for \$168,900 in 2005. *Statzer testimony; Resp't Ex. 5.*
 - b. The assessed value of the Petitioners' parcel is based on the cost approach and then adjusted by sales data from 2006 and 2007. *Statzer testimony.* The property record card shows an upward trend in the value of the Petitioners' property during 2006, 2007, and into 2008. *Statzer testimony; Resp't Ex. 3.* In 2006, the average increase in value of single family dwellings was two percent. In 2007, the increase was between two and three percent. Values started to decline in the second half of 2008. *Statzer testimony.*
 - c. The Petitioners are being assessed for only one fireplace. The assessing software counted a fireplace opening and a stack, and therefore recorded "2" on the property record card. When calculating the assessment, however, the assessor added the assessed value of just one fireplace (\$1300) to the true tax value. *Statzer testimony; Resp't Ex. 3.*
 - d. The number of bedrooms already has been corrected in the assessor's records. Nevertheless, that information is descriptive only and does not affect the assessed value. The square footage is the key to the assessed value of the property. *Statzer testimony.*
 - e. The Petitioners failed to demonstrate that the assessment of record is not correct or show what the correct assessed value should 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 Petitioners did not make a prima facie case for any assessment change.
- a. The Petitioners complained that their property taxes increased significantly from 2005 to 2008. In addition to the assessment itself, several other factors can affect a tax bill, but the Board has no jurisdiction over such complaints. 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.
 - b. 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.
 - c. Regardless of the method used to challenge an assessment's presumption of accuracy, a party must explain how its evidence relates to market value-in-use as of the relevant valuation date. *O'Donnell v. Department of Local Government Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2008, assessment, the valuation date was January 1, 2007. 50 IAC 21-3-3 (2009).
 - d. The Petitioners purchased the property in April 2005 for \$168,900. But neither party established how that fact might be relevant by relating that price 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.
 - e. A taxpayer does not rebut the presumption that an assessment is correct simply by contesting the assessor's methodology in computing the assessment. To be successful, a taxpayer must use market-based evidence to show the assessment

does not accurately reflect market value in-use. *See Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006).

- f. Although the Petitioners complained that their assessment is based on the wrong number of bedrooms and fireplaces, the Respondent explained that the assessment includes only the value of a single fireplace (\$1300) and the number of bedrooms has been corrected, but the correction does not change the assessed value. Even if there were errors in the description of the home, the Petitioners failed to show the total assessment was not a reasonable measure of true tax value. The Petitioners presented no relevant market evidence to show that the assessment is not a reasonable measure of true tax value. Their arguments regarding application of the Guidelines are not enough to rebut the presumption that the assessment is correct. *See Eckerling*, 841 N.E.2d at 678. The Petitioners needed to show through the use of market-based evidence that the assessed value does not accurately reflect the actual market value-in-use. They failed to do so.

- 18. The Petitioners failed to make a prima facie case for any assessment change.

Conclusion

- 19. 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>