

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

Petition: 15-020-06-1-5-00079
Petitioners: Karen Judd & Robert Collins
Respondent: Dearborn County Assessor
Parcel: 15-06-23-304-013.000-020
Assessment Year: 2006

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 with the Dearborn County Property Tax Assessment Board of Appeals (“PTABOA”) by filing a Form 130.
2. The PTABOA mailed its decision on March 20, 2008.
3. The Petitioners appealed to the Board by filing a Form 131 on April 9, 2008, and elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing to the parties dated September 22, 2008.
5. Administrative Law Judge Kay Schwade held the Board’s administrative hearing on December 17, 2008. She did not conduct an inspection of the property.
6. The following persons were present and sworn as witnesses at the hearing:
For the Petitioners—Karen Judd and Robert Collins,
For the Respondent—Gary R. Hensley, Dearborn County Assessor.

Facts

7. This is a case about residential property located at 20214 Cedar Cliff Drive in Lawrenceburg.
8. The PTABOA determined the assessed value is \$127,500 for land and \$325,000 for improvements (total \$452,500).
9. The Petitioners requested an assessed value of \$75,000 for land and \$288,000 for improvements (total \$363,000).

Contentions

10. A summary of the Petitioners' case:

- a. The property at 20204 Cedar Cliff Drive (located next door to the subject property) has 80 feet of frontage and a land assessment of \$106,400. The property at 20234 Cedar Cliff Drive (located on the other side of the subject property) has 70 feet of frontage and a land assessment of \$72,700. The subject property has 75 feet of frontage and a land assessment of \$150,000. This evidence shows that the subject property's land assessment is excessive. *Judd testimony; Pet'r Ex. 1, 2, 3.*
- b. The total assessment of the subject property is more than the sale price of neighboring properties. The property at 20142 Firewood Way (located across the street from the subject property) sold for \$196,900 in 2005. The property at 20184 Cedar Cliff Drive sold for \$310,000 in 2006. Comparison with these sales shows the assessment of the subject property is excessive. *Judd testimony; Pet'r Ex. 4, 5.*
- c. A storm drain runs under the street and across the subject property. It makes a portion of the property unusable and lowers its value. *Collins testimony; Judd testimony; Pet'r Ex. 6.*
- d. The previous owner paid to have the house "pinned" to correct "slippage" caused by the storm drain. *Collins testimony.*

11. A summary of the Respondent's case:

- a. The assessment data available through the county's assessment website does not include all the data affecting property assessment such as grade, condition, and so on. When questioning assessments, taxpayers are encouraged to obtain property record cards from the assessor's office to ensure proper comparisons. The Petitioners presented assessment data that was obtained through the county's assessment website. It lacks all the data necessary to make an adequate assessment comparison. *Hensley testimony.*
- b. Jeff Thomas was hired to appraise the subject property. He is an Indiana Certified General appraiser and works regularly in Dearborn County. His appraisal values the subject property at \$430,000. It uses sales comparables from the same time period used for the sales ratio study. *Hensley testimony; Resp't Ex. A.*
- c. The appraisal value is lower than the current assessment, but it is probably a better indicator of the value. Nevertheless, the current assessed value is acceptable because it is within the 15% range allowed by IAAO standards for sales ratio studies. *Hensley testimony.*

Record

12. The official record contains the following:
 - a. The Petition,
 - b. Digital recording of the hearing,
 - c. Petitioner Exhibit 1 – Assessment information and property record card for 20204 Cedar Cliff Drive,
Petitioner Exhibit 2 – Assessment information and property record card for the subject property,
Petitioner Exhibit 3 – Assessment information and property record card for 20234 Cedar Cliff Drive,
Petitioner Exhibit 4 – Sales disclosure information for 20142 Firewood Way,
Petitioner Exhibit 5 – Sales disclosure information and assessment information for 20184 Cedar Cliff Drive,
Petitioner Exhibit 6 – Photograph of the drainage ditch on the subject property,
Respondent Exhibit A – Appraisal,
Board Exhibit A – Form 131 Petition for Review of Assessment with attachments,
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”).
14. The Petitioners failed to prove that the current assessment is wrong or what a more accurate assessment might be. This conclusion was arrived at for the following reasons:
 - a. Real property is assessed on the basis of 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); 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. MANUAL at 3. To that end, Indiana promulgated a series of guidelines that explain the application of the cost approach. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A. 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. Even if an assessment does not fully comply with the Guidelines, a taxpayer must show that the assessment is not a reasonable measure of market value-in-use in order to prevail. *See* Ind. Admin. Code tit. 50, r.2.3-1-1(d) (stating that failure to comply with the Guidelines does not in itself show the assessment is not a reasonable measure of value); *Westfield Golf Practice Center v. Washington Twp. Assessor*, 859 N.E.2d 396, 399 (Ind. Tax Ct. 2007)(explaining that beginning in 2002, Indiana overhauled its property tax system—the new benchmark is market value-in-use. “As a result, the new system shifts the focus from examining how the regulations were applied . . . to examining whether a property’s assessed value actually reflects the external benchmark of market value-in-use.”); *O’Donnell v. Dep’t of Local Gov’t Fin.*, 854 N.E.2d 90, 94-95 (Ind. Tax Ct. 2006)(explaining that a taxpayer who focuses on alleged errors in applying the Guidelines misses the point of Indiana’s new assessment system). In this case, the Petitioners failed to present probative evidence about what the market value-in-use of their property really is.
- c. Rather than focusing on the total market value-in-use of their property, much of the Petitioners’ case focused on the assessed land value, pointing out that the assessed land value for the subject property is much higher than it is for the neighbors on either side. The subject property has 75 feet of lake frontage and its land assessed value is \$150,000. The property on one side has 80 feet of lake frontage and its land assessed value is \$106,400. The property on the other side has 70 feet of lake frontage and its land assessed value is \$72,700. The property record cards (*Pet’r Ex. 1, 2, 3*) are consistent with these numbers. They also show that the lots are of differing depths, which would account for some of the difference in the current assessed valuations. The main reason for the difference, however, appears to be that the base rate used for the subject property is \$2,000 per front foot, while the neighbors on either side have a base rate of \$1,400 per front foot. This difference is troubling, but neither party directly addressed the point and the Board will not speculate about whether the difference is justified or

not. More importantly, even if the Petitioners established an inconsistency with the methodology (base rate) the Respondent used for their land value as compared to their neighbors' land values, the point does not help to prove what the market value-in-use of the subject property really should be. Therefore, it does not help the Petitioners to make their case.

- d. The storm drain running across part of the property would limit the use of that area¹ and might reduce value. Testimony established that the house had to be “pinned” to correct “slippage” caused by the storm drain.² The Petitioners, however, failed to quantify the amount of any lost value from these reasons. The mere existence of these facts does not prove what a more accurate assessment of the property might be.
- e. The Petitioners compared the assessments and sale prices of neighboring properties to their assessment in an attempt to show that their property is over assessed. But they failed to establish specific facts or explain how those other properties are truly comparable. They failed to deal with how any differences affect the relative values of the properties. As a result, the unsupported conclusions about relative values cannot be the basis for any legitimate comparison. Without specific facts and analysis about the similarities and differences of the properties, such evidence is not probative. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005); *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005) (stating that the parties are responsible for explaining the characteristics of the subject property, how those characteristics compared to those of the purportedly comparable property, and how any differences affected the relevant market value-in-use of the properties).
- f. Even though the Petitioners failed to prove their case, the Respondent submitted an appraisal that values the property at \$430,000 and admitted the appraisal is a more accurate valuation of the subject property. Thus, the Respondent made a case for changing the current assessment.
- g. The Respondent's argument that the current assessment of \$452,500 should be upheld because it is within 15% of the appraisal lacks merit. The Respondent baldly claimed that IAAO standards for sales ratio studies accept a 15% range of values, but provided no specific authority for that position. Even if that claim about the IAAO standards is accurate, this case is not about a sales ratio study. The Respondent provided no authority or explanation that there is an “acceptable range” for this particular assessment. Furthermore, because a taxpayer is specifically permitted to offer evidence relevant to the market value-in-use of a

¹ Other than the photograph, the evidence fails to establish the size or any other specific details about this storm drain area.

² The Petitioners did not explain what this testimony means, how serious the problem might be, or how much it might lower the value of the property.

property (specifically including appraisals), an argument that the existing assessment is somehow close enough to be acceptable is wrong. MANUAL at 5.

Conclusion

15. The Petitioner failed to make a prima facie case. Nevertheless, the Respondent's appraisal established a more accurate market value-in-use, which is \$430,000.

Final Determination

In accordance with the above findings and conclusions, the assessment will be changed to \$430,000.

ISSUED: March 12, 2009

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>>