

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

Petition No.: 45-023-10-1-5-00003
Petitioners: Charles W. and Martha J. Brunson
Respondent: Lake County Assessor
Parcel No.: 45-07-07-176-016.000-023
Assessment Year: 2010

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

Procedural History

1. The Petitioners initiated their 2010 assessment appeal with the Lake County Property Tax Assessment Board of Appeals (PTABOA) on July 6, 2011.
2. The PTABOA failed to hold a hearing on the Petitioners' appeal within the statutory time frame of 180 days. *See* Ind. Code § 6-1.1-15-1(k) ("the county board shall hold a hearing on a review under this subsection not later than one hundred eighty (180) days after the date of that notice.")
3. The Petitioners filed an appeal to the Board by filing a Form 131 petition on February 14, 2012. *See* Ind. Code § 6-1.1-15-1(o)(1) ("If the maximum time elapses under a subsection (k) for the county board to hold a hearing; the taxpayer may initiate a proceeding for review before the Indiana board by taking the action required by section 3 of this chapter at any time after the maximum time elapses.")
4. The Board issued a notice of hearing to the parties dated September 25, 2013. The Petitioners elected to have this matter heard pursuant to the small claims procedures.
5. Administrative Law Judge (ALJ) Ellen Yuhan held the administrative hearing on November 14, 2013. She did not inspect the property.
6. Petitioner Charles Brunson and Sherry Stone-Lucas, Lake County Hearing Officer, were sworn as witnesses.

Facts

7. The property under appeal is a residential property that includes two buildings located at 1031 Mulberry Street, Hammond, Indiana.

8. For 2010, the assessor determined the assessed value is \$18,900 for the land and \$74,200 for the improvements, for a total assessed value of \$93,100.¹
9. The Petitioners requested an assessed value of \$15,000 for the land and \$55,000 for the improvements, for a total assessed value of \$70,000.

Respondent's Objections

10. The Respondent objected to any evidence submitted by the Petitioners because she requested their information prior to the hearing and they failed to exchange the exhibits as required.
11. Pursuant to 52 IAC 3-1-5(d), if requested not later than 10 business days prior to any hearing by any party, the parties shall provide to all other parties copies of any documentary evidence and the names and addresses of all witnesses intended to be presented at the hearing at least 5 business days before the small claims hearing. This information is included with the notice of hearing sent to the parties. Failure to comply with subsection (d) may serve as grounds to exclude evidence or testimony that has not been timely provided.
12. The Respondent requested the Petitioners' information on October 7, 2013. *Petitioners' Exhibit 1*. Mr. Brunson testified that he received the Respondent's exhibits but that he did not provide the Respondent with his evidence.
13. The Petitioners had more than thirty days to prepare for the hearing, and the hearing instructions were clear as to the exchange of evidence. The Respondent's objection is sustained and the Petitioners' evidence is excluded.

Record

14. The official record of this matter contains the following:
 - a. The Form 131 petition,
 - b. A digital recording of the hearing,
 - c. Respondent Exhibit 1 – Request for Evidence and Request for Preliminary Conference,
Respondent Exhibit 2 – Form 131 petition,
Respondent Exhibit 3 – Notice of Hearing dated September 25, 2013,

¹ Although, the parties agreed on the record that the 2010 assessed value was \$24,800 for the land and \$92,700 for the improvements for a total of \$117,500, the property record card (Respondent Exhibit 4) shows the 2010 assessed value as \$93,100. Further, Respondent Exhibit 1 indicates the assessment decreased \$24,000 from 2009 to 2010, which further supports the value on the property record card.

Respondent Exhibit 4 – Property record card,
Attachments to Respondent Exhibits – IBTR determinations for:
Petition 48-003-08-1-5-08230, *Rafael Nichols v. Madison County Assessor*;
Petition 12-011-08-1-5-00001, *Donna Faye Snodgrass v. Clinton County Assessor*;
Petition 48-003-1-5-08-08263, *Francis Edward Paschal v. Madison County Assessor*;
Petitions 49-800-02-1-4-01016, 49-800-02-1-4-01018, 49-800-02-1-4-01019, *Indianapolis Racquet Club, Inc. v. Marion County Assessor*,

Board Exhibit A – Form 131 petition,
Board Exhibit B – Notice of Hearing dated September 25, 2013,
Board Exhibit C – Hearing sign-in sheet,

- c. These Findings and Conclusions.

Burden of Proof

15. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that its property's assessment is wrong and what the correct assessment should 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). Nevertheless, the Indiana General Assembly enacted a statute that in some cases shifts the burden of proof:

This section applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal increased the assessed value of the assessed property by more than five percent (5%) over the assessed value determined by the county assessor or township assessor (if any) for the immediately preceding assessment date for the same property. The county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.

Ind. Code § 6-1.1-15-17.2.

16. Here, the property's assessed value decreased from \$117,700 in 2009 to \$93,100 in 2010. Therefore, Indiana Code section 6-1.1-15-17.2 does not apply. The Petitioner has the burden of proof.

Contentions

17. Summary of the Petitioners' case:
 - a. The property record is incorrect. The rear house on the property is not a dwelling, but more of a shed. It does not have gas or electric service. NIPSCO disconnected the service and removed the meters in 2001 and 2003. *Brunson testimony*.
 - b. The assessment for the front house includes a stairway leading to a second-floor attic on the front house that does not exist. The only access to the attic is in a closet. *Brunson testimony*.
 - c. A 1,056 square foot house two blocks from their property listed for \$99,000. It sold for \$65,000 on February 18, 2009. *Brunson testimony*.

18. Summary of the Respondent's case:
 - a. The Petitioners do not make a comparison between their property and the comparable property. Further, the Petitioners are challenging the methodology used to assess the property. Indiana Board of Tax Review determinations show that you cannot simply challenge the methodology used to assess the property. *Stone-Lucas testimony; Attachments to Respondents Exhibits*.
 - b. Although the rear house is shed-like and has no electric service, it still is a dwelling that has to be assessed. *Stone-Lucas testimony*.
 - c. The Petitioner is using a sale comparison from 2009. For an assessment year 2010, a 2010 sale is more appropriate as a comparable. *Stone-Lucas testimony*.

Analysis

The Petitioners failed to make a prima facie to support a reduction in the subject property's 2010 assessment.

- a. In Indiana, assessors value real property based on the property's market value-in-use, which the 2002 Real Property Assessment Manual defines as "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." MANUAL at 2. Thus, a party's evidence in a tax appeal must be consistent with that standard. *Id.* A market-value-in-use appraisal prepared according to USPAP will often be probative. *Kooshtard Property VI v. White River Twp. Ass'r*, 836 N.E.2d 501,506 n. 6 (Ind. Tax Ct. 2005). A party may also offer actual construction costs, sales information for the subject property or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.

- b. Regardless of the method used to rebut an assessment's presumed accuracy, a party must explain how its evidence relates to the property's market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 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). For the March 1, 2010, assessment date, the valuation date was March 1, 2010. 50 IAC 21-3-3.
- c. The thrust of the Petitioners' case concerned to alleged errors on the property record card that erroneously increased the value of the property including the assessment of a shed that has no gas and no electric service, and a stairway to an attic in the front house that does not exist. However, even if the property record card contains errors concerning the shed or attic, the Petitioners still failed to meet their burden by simply contesting the methodology used to compute the assessment. *Eckerling v. Wayne County Assessor*, 841 N.E.2d at 674, 677 (Ind. Tax Ct. 2006). To successfully make a case the Petitioners needed to 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 proper focus is not on methodology, but rather, on what the correct value actually is). The Petitioners failed to present any evidence that the assessment did not correctly reflect the property's market value-in-use.
- d. The Petitioners presented testimony that a house two blocks from their home sold for \$65,000 in 2009. To effectively use any kind of comparison approach to value a property, one must establish that the properties are truly comparable. Conclusory statements that properties are "similar" or "comparable" are not sufficient. *Long*, 821 N.E.2d at 470. The Petitioner is "responsible for explaining to the Indiana Board the characteristics of their own property, how those characteristics compared to those of the purportedly comparable properties, and how any differences affected the relevant market value-in-use of the properties." *Id.* at 471. Here, the Petitioners failed to make any comparisons at all between the subject property and the comparable property.
- e. The Petitioners failed to meet their burden. Where the Petitioner has not supported its claims with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Final Determination

The Board finds the Petitioners failed to establish a prima facie case for a reduction in assessed value. In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review affirmed the assessed value.

DATE: December 19, 2013

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 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.