

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

Petition: 32-003-07-1-5-00040
Petitioner: RLS Building Corp.
Respondent: Hendricks County Assessor
Parcel: 17-1-03-51W 232-006
Assessment Year: 2007

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 this appeal by written document.
2. The County Property Tax Assessment Board of Appeals (PTABOA) issued its Notification of Final Assessment Determination on August 19, 2009.
3. The Petitioner appealed to the Board by filing a Petition for Review of Assessment (Form 131). It elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing to the parties dated March 9, 2010.
5. Administrative Law Judge Paul Stultz held the Board's administrative hearing on May 13, 2010.
6. Robert L. Sandberg (the president of RLS Building Corp.), County Assessor Gail Brown and PTABOA member Lester Need were sworn as witnesses.

Facts

7. The property is a single family residence located at 1316 Greenstone Court in Danville.
8. The Administrative Law Judge did not inspect the property.
9. The PTABOA determined the assessed value for the property is \$123,800 for land and \$471,700 for improvements (total \$595,500).
10. The Petitioner claimed the total assessed value should be \$559,000.

Contentions

11. Summary of the Petitioner's case:

- a. The Petitioner purchased the .56 acre lot for \$89,025 on September 21, 2004. After building a house on it, the Petitioner is offering this property for sale for \$600,000. At one time the Petitioner had asked for more for this property, but the asking price has been lowered. *Sandberg testimony.*
- b. A comparable property with a slightly larger lot (.79 acres) is located at 1200 Charlton Court. That property and the subject property were both offered for \$630,000 during 2007 and 2008. *Pet'r Ex. 1, 2.*
- c. The Charlton Court lot sold for \$99,000 at approximately the same time the Petitioner purchased the lot for the subject property. For 2007, the Charlton Court lot was assessed for \$101,700, or an increase of \$2,700 above the purchase price. In contrast, the Petitioner's land is assessed for \$34,775 more than its purchase price. The assessed value of the improvements for the Charlton Court property is \$379,800 compared to a current assessed value of the Petitioner's improvements (after PTABOA adjustments) of \$471,700. *Sandberg testimony; Pet'r Ex. 2, 3, 5.*
- d. The Petitioner's land should be assessed in the same manner as the Charlton Court property, which would mean increasing the purchase price by \$2,700. The Petitioner's improvements should be assessed for the same amount as the Charlton Court property improvements. *Sandberg testimony; Pet'r Ex. 2, 3.*
- e. A representative of the assessor's office said the assessed value was based on the fact it was listed for sale for \$630,000. *Sandberg testimony.*
- f. The Petitioner built two other homes on the same pond that should have an assessed value higher than the subject property, but their assessments are considerably lower than the subject property. *Sandberg testimony.*
- g. The taxes on the Charlton Court property are \$7,393 less than what the Petitioner pays. There are two million-dollar homes on the same pond that the Petitioner did not build. The Petitioner's tax liability is twice that of those properties. *Sandberg testimony.*

12. Summary of the Respondent's case:

- a. The Petitioner offered the property for sale in 2005 for \$655,000. In 2007, the listing price was reduced to \$615,000. It was reduced again in 2009 to \$599,900. All of these listing prices exceed the amount of the 2007 assessment, which is \$595,500. *Need testimony; Resp't Ex. 1.*

- b. The assessed value of property is based on the total market value-in-use. Land and improvement values should not be separated as the Petitioner did when claiming its assessment is in error. The Petitioner did not present any evidence to demonstrate the current assessment is not accurate. *Need testimony; Resp't Ex. 1.*
- c. Based on the 2005 building permit and the Petitioner's 2004 purchase price of the lot, the total projected construction cost for this property was \$592,925. *Need testimony; Resp't Ex. 1.*
- d. The 2007 assessment is \$19,500 less than the Petitioner's 2007 listing price. This listing price and the total projected construction cost both support the 2007 assessment. *Need testimony; Resp't Ex. 1.*

Record

- 13. The official record for this matter contains the following:
 - a. Form 131,
 - b. Digital recording of the hearing,
 - c. Petitioner Exhibit 1 – Statement of the Petitioner's contentions,
 Petitioner Exhibit 2 – Comparison of 1200 Charlton Court and subject property,
 Petitioner Exhibit 3 – Comparison of 1200 Charlton Court and subject property,
 Petitioner Exhibit 4 – Listing data for subject property,
 Petitioner Exhibit 5 – Property tax information for 1200 Charlton Court,
 Respondent Exhibit 1 – Presentation,
 Respondent Exhibit 2 – Photograph of subject property,
 Respondent Exhibit 3 – Building permit for subject property,
 Respondent Exhibit 4 – Listing for subject property as of October 12, 2005,
 Respondent Exhibit 5 – None,
 Respondent Exhibit 6 – Listing for subject property as of October 31, 2007,
 Respondent Exhibit 7 – Hendricks County's response,
 Board Exhibit A – Form 131,
 Board Exhibit B – Notice of Hearing,
 Board Exhibit C – Hearing Sign In Sheet,
 - d. These Findings and Conclusions.

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 Petitioner did not make a prima facie case for any assessment change for the following reasons:
 - a. Real property is assessed based on 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); 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.
 - 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. 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). The valuation date for a 2007 assessment was January 1, 2006. 50 IAC 21-3-3.
 - c. The Petitioner attempted to prove its claim by making several comparisons with other properties. In arguing that the subject property should be assessed in a manner similar to 1200 Charlton Court, the Petitioner relies on a comparison approach to establish the market value-in-use of the subject property. MANUAL at

3 (stating that the sales comparison approach “estimates the total value of the property directly by comparing it to similar, or comparable, properties that have sold in the market.”); *see also, Long*, 821 N.E.2d at 469. A major difference between the Petitioner’s methodology and the sales comparison approach is that the Petitioner seeks to establish the value of the subject property by comparing one assessment to another rather than the sale prices, but the assumption that the assessment for 1200 Charlton Court is accurately set at market value-in-use may not be valid. More importantly, the basic requirements for any valid comparison are the same: a proponent must establish the comparability of the properties being examined with meaningful, probative evidence about how the properties are alike and how they differ. Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the properties. *Long*, 821 N.E.2d at 470-71. The Petitioner is “responsible for explaining to the Indiana Board the characteristics of [its] 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.

- d. While the Petitioner submitted some minimal information regarding the proximity of the parcels and how the view of the property at 1200 Charlton Court compared to the property under appeal, it is clear that there are significant differences between these properties. The Charlton Court lot is almost 50% larger than the Petitioner’s lot. Also, the Petitioner acknowledged that “[t]he two houses, only thing that they compare is they’re sitting on the same lot, or basically the same lot. The houses are nowhere close to being the same. I understand that.” *Sandberg testimony*.
- e. The Petitioner offered no explanation to relate these differences to the market value-in-use of either property. The evidence fails to establish how the market value-in-use of the Charlton Court property might compare to the subject property. *See Long*, 821 N.E.2d at 471. Consequently, the valuation of 1200 Charlton Court is not probative and does not help prove the Petitioner’s case.
- f. The Petitioner’s asking price for the property since 2005 has consistently exceeded, and continues to exceed, its 2007 assessed value. But that fact has very little, if any, probative value when it comes to establishing what the market value-in-use really might be. At the most, when reasonable marketing efforts are made for a property at a given price for a long time and those efforts are unsuccessful, then one can probably conclude that the actual market value-in-use is something less than the asking price. In this case, however, that conclusion does not help to prove that the assessment should be reduced because the assessment already is less than what the Petitioner has been asking for it.
- g. Evidence of value relating to a different time requires some explanation to establish how the value demonstrates, or relates to, the subject property’s value as

of January 1, 2006. *See Long*, 821 N.E.2d at 471. Nothing related the 2004 purchase price for the subject lot or the 1200 Charlton Court lot to the required valuation date. Such evidence does not help to prove what a more accurate assessed valuation for 2007 might be.

- h. The Petitioner attempted to compare purportedly more desirable or superior homes that should be assessed for more than the subject property. According to the Petitioner, those homes are assessed for less. Again, one of the problems with the Petitioner's attempted comparison of assessments is that it assumes the two lower assessments accurately reflect market value-in-use, but no substantial, market based evidence was offered to support that assumption, which may not be accurate—perhaps the other two assessments should be increased to more accurately reflect their market value-in-use.¹ Furthermore, the Petitioner failed to present detailed descriptions to show comparability and it failed to present substantial evidence or explanation about how the properties' differences affect their relative market values-in-use. Without substantial facts and explanation to establish the properties are comparable and to account for how any differences affected their values, the evidence has no probative value. *See Long*, 821 N.E.2d at 471; *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
 - i. The Petitioner also tried to support its case by showing that the taxes for purportedly superior homes are less than the taxes on the subject property. The Petitioner again failed to provide the kind of detailed evidence and analysis that might form the basis for any legitimate comparison between these homes. *See Long*, 821 N.E.2d at 470-71. More importantly, several factors that have nothing to do with valuation (such as deductions and exemptions) can affect a property's taxes. Consequently, comparison of tax bills has no probative value in accurately determining an assessment.
18. When taxpayers fail to provide probative evidence supporting their 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*, 704 N.E.2d at 1119.

Conclusion

19. The Petitioner failed to make a prima facie case for a change in the assessment. The Board finds in favor of the Respondent.

¹ In making this statement, the Board makes no determination about the accuracy of those other assessments. Rather, it is merely pointing out an inherent weakness with an assessment to assessment comparison of properties such as those the Petitioner attempted without offering substantial market-based evidence of a comparable's value. Even if it is true that two properties are so similar that they have the same market value-in-use and should have the same assessment, where one is assessed for more than the other, that fact alone does not establish which value might be accurate (or that either value is).

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>