

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

Petition: 10-005-06-1-5-00002
Petitioners: Hayward B. & Betty Blanton
Respondent: Clark County Assessor
Parcel: 05-00072-050-1
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 regarding the subject property by filing Form 130 petition with the Vigo County Property Tax Assessment Board of Appeals (“PTABOA”).
2. The PTABOA issued notice of its decision for the 2006 assessment on July 24, 2008.
3. The Petitioners appealed to the Board by filing a Form 131 on August 25, 2008. They elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing to the parties dated March 4, 2009.
5. Administrative Law Judge Paul Stultz held the Board’s administrative hearing on April 14, 2009. He did not inspect the property.
6. Petitioner Hayward Blanton, County Assessor Vicky Kent Haire, and Frank Kelly were sworn as witnesses at the hearing.

Facts

7. The subject parcel is a residential property located at 2908 North Walford Drive in Jeffersonville. It is also identified as Walford Manor 2nd lot 50.
8. The PTABOA determined the assessed value is \$23,000 for land and \$71,100 for improvements (total \$94,100).
9. The Petitioners claimed the land value should be \$23,000 and the improvement value should be \$61,100 (total \$84,100).

Record

10. The official record for this matter is made up of the following:
 - a. Petition for Review of Assessment (Form 131) with attachments,
 - b. Notice of Hearing,
 - c. Hearing Sign-in Sheet,
 - d. Digital recording of the hearing,
 - e. Petitioner Exhibit 1 – Letter from Oak Park Conservancy District (“OPCD”) dated September 27, 2006,
Petitioner Exhibit 2 – Letter from OPCD dated January 24, 2008,
Petitioner Exhibit 3 – Plumbing quotation for installation of backflow preventer,
Petitioner Exhibit 4 – Receipt for installed backflow preventer,
Respondent Exhibit 1 – Property record card (“PRC”),
 - f. These Findings and Conclusions.

Contentions

11. Summary of the Petitioners’ case:
 - a. The assessed value of the subject property is more than the market value-in-use. It should be reduced to \$84,100. *Blanton testimony.*
 - b. The subject property has a problem with sewer drainage in the basement that was unknown to the assessor at the time the property was assessed. The basement was built at only a slightly higher elevation than the main sewer line on North Walford Drive. *Blanton testimony.*
 - c. The depth of the basement presents more threat of damage to the subject property than other properties in the area that either do not have a basement or have a very shallow basement. Every time the sewer overflows into the basement, the plumbing must be shut off throughout the entire home and makes the residence unusable. The unique construction of the subject property’s basement has created a continuous threat of damage that reduces the value of the property. *Blanton testimony.*
 - d. As indicated in OPCD’s letter dated January 24, 2008, the subject property has been affected by sewer back up into the basement as a result of sewer blockage or surges in the main sewer line. In response to the sewer problem, the OPCD adopted Resolution 2001-07, which requires residents who experience a sewer backup from the main sewer line to install a back flow prevention device. The Petitioners installed a backflow prevention device that cost \$1,095. Nevertheless,

there is no guarantee against continuing problems. *Blanton testimony; Pet'r Exs. 1, 2, 3, 4.*

- e. The law requires full disclosure of the problem. Disclosure would reduce buyer interest and value for any potential sale. *Blanton testimony.*

12. Summary of the Respondent's case:

- a. There is no dispute that the subject property suffers from potential sewage back flow. The Petitioners, however, produced no evidence quantifying an amount equal to \$10,000 to justify a reduction in value. *Kelly testimony.*
- b. Furthermore, the Petitioners evidence demonstrates that the installation of a backflow preventer device has remedied the problem. *Kelly testimony.*
- c. The OPCD Resolution 2001-07 indicates there were other properties with the same sewer issue in the neighborhood. The sales data used to establish values in the neighborhood would include sales of properties with similar backflow problems. Therefore, the sewer problem would have been considered in the assessment of the subject property. *Kelly testimony.*

Analysis

- 13. 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).
- 14. 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”).
- 15. Regardless of the approach used to prove a property’s value-in-use, a 2006 assessment must reflect its value as of January 1, 2005. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. Evidence relating to a different date must have an explanation about how it demonstrates or is relevant to the required valuation date. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
- 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 case for any assessment change because:
- 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. To that end, Indiana promulgated Guidelines that explain the application of the cost approach. 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. Certain facts regarding the Petitioners' property were established without dispute. The Petitioners' home was built with a basement, but had the plumbing installed at only a slightly higher elevation to the main sewer line. The subject property has been affected by sewer backup or surges in the main line. The Petitioners installed a backflow prevention device to specifically address the sewage problem. The Petitioners argue that these facts make their property less valuable and less desirable than other homes that are minimally affected or do not have sewer problems. Although this situation almost certainly has a negative impact on value, the Petitioners must quantify it. The Petitioners must prove that the current assessed value is wrong and what the correct market value-in-use really should be. *Meridian Towers*, 805 N.E.2d at 478.
 - c. As noted above, there are several kinds of evidence the Petitioners could have used to prove their case. The Tax Court has stated that "the most effective method to rebut the presumption that an assessment is correct is through the presentation of a market value-in-use appraisal, completed in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP)." *French Lick Twp. Tr. Assessor v. Kimball Int'l, Inc.*, 865 N.E.2d 732, 736 (Ind. Tax Ct. 2007); *Kooshtard Prop. VI, LLC v. White Twp. Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). The Petitioners, however, did not offer any of that kind of evidence of value.
 - d. Although they offered several conclusory statements about value, the Petitioners failed to provide the kind of detailed facts, analysis, and explanation that might have made such evidence probative. Conclusory statements are not probative. *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). The Petitioners did not present a prima facie case to prove what the market value-in-use should be.

- e. When a taxpayer fails to provide probative evidence supporting its 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 Products*, 704 N.E.2d at 1119.

Conclusion

18. 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: _____

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>