

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

Petitions: 10-010-08-1-5-00003
10-010-08-1-5-00004
Petitioners: Norman & Susan Estes
Respondent: Clark County Assessor
Parcels: 10-21-03-300-653.000-009
10-21-03-400-890.000-009
Assessment Year: 2008

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

Procedural History

1. The Petitioners initiated assessment appeals with the Clark County Property Tax Assessment Board of Appeals (PTABOA) by filing a Taxpayer's Notice to Initiate an Appeal for each parcel. They were received on November 2, 2009.
2. The PTABOA mailed notices of its decision, Form 115, on January 13, 2010.
3. The Petitioners appealed to the Board by filing Form 131 Petitions for Review of Assessment on February 24, 2010.
4. The Board issued the notices of hearing on November 4, 2010.
5. Administrative Law Judge Paul Stultz held the Board's administrative hearing on January 4, 2011. He did not inspect the property.
6. Norman Estes and Brian Smith were sworn as witnesses for the Petitioners. Frank Kelly and County Assessor Vicky Kent-Haire were sworn as witnesses for the Respondent.

Facts

7. The properties are located in or near Jeffersonville. Parcel 10-21-03-300-653.000-009 (Parcel 1) is vacant and unimproved. Parcel 10-21-03-400-890.000-009 (Parcel 2) is a lot with a storage building. Parcel 1 has 1.34 acres and Parcel 2 has 5.87 acres. They are contiguous. Parcel 2 has frontage on Hamburg Pike, but Parcel 1 does not.
8. The PTABOA determined the assessed value for Parcel 1 is \$32,300. The PTABOA determined the assessed value for Parcel 2 is \$228,800 for land and \$209,600 for improvements (total \$438,400).

9. The Petitioners claimed the value should be \$3,230 for Parcel 1. For Parcel 2, they claimed the value should be \$22,800 for land and \$0 for improvements.

Record

10. The official record contains the following:
- a. Form 131 Petitions,
 - b. Digital recording of the hearing,
 - c. Petitioner Exhibit 1 – Flood map,
Petitioner Exhibit 2 – Flooding photograph,
Petitioner Exhibit 3 – Flooding photograph,
Petitioner Exhibit 4 – Flooding photograph,
Petitioner Exhibit 5 – Flooding photograph,
Petitioner Exhibit 6 – Flooding photograph,
Petitioner Exhibit 7 – Flooding photograph,
Petitioner Exhibit 8 – Flooding photograph,
Petitioner Exhibit 9 – Flooding photograph,
Petitioner Exhibit 10 – Aerial photograph,
Respondent Exhibit 1 – Property record card for Parcel 1,
Respondent Exhibit 2 – Aerial photograph with Parcel 1 marked,
Respondent Exhibit 3 – Property record card for Parcel 2,
Respondent Exhibit 4 – Aerial photograph with Parcel 2 marked,
Board Exhibit A – Form 131 Petitions,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing Sign In Sheet,
 - d. These Findings and Conclusions.

Contentions

11. Summary of the Petitioners' case:
- a. These properties consistently flood. The creek running at the rear of the properties and the run-off caused by construction on surrounding properties both contribute to the flooding problem. Photographs show some of the flooding in 2009. *Smith testimony; Estes testimony; Pet'r Ex. 2-9.*
 - b. The properties are located in the area between Hamburg Pike and Coopers Lane on the flood map. Properties in this area flood several times a year. The properties flooded four times during this past year. *Smith testimony; Estes testimony; Pet'r Ex. 1.*

- c. The photograph showing the low-boy trailer sitting in water above the axels is an example of how the flooding causes problems. The properties are not as useable as properties that do not flood, but the current assessment does not reflect how the flooding hinders use. *Smith testimony; Estes testimony; Pet'r Ex. 4, 5, 7.*
 - d. A great deal of money would be required to make the properties useable in a manner that would justify their current assessed value. *Smith testimony.*
12. Summary of the Respondent's case:
- a. It is agreed that the subject properties occasionally flood and they are not as valuable as properties in the area that do not flood. Parcel 1 land got a negative 60% influence factor. Parcel 2 land got a negative 35% influence factor. Those negative influence factors recognize the lower value caused by flooding. *Kelly testimony; Resp't Ex. 1, 3.*
 - b. The Petitioners offered no credible market evidence for a lower value than the current assessments. *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 a case, the taxpayers 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. It is undisputed that the properties are in a flood plain and they flood, which undoubtedly makes their value less than it would be without flooding problems. The current assessments reflect a 60% reduction in land value for Parcel 1 and a 35% reduction in land value for Parcel 2. The Petitioners, however, asked for substantially greater reductions in value because of the flooding. To make a prima facie case for such changes, the Petitioners needed to present probative evidence that the current valuations (\$32,300 and \$438,400) do not accurately reflect the market value-in-use of the subject property *and* they needed to present probative evidence showing what a more accurate market value-in-use for each property would be. They did neither.
16. 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 is presumed to be accurate, but that value 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.

17. The Petitioners, however, offered no such evidence. They did not present any probative, market-based evidence of an alternate value for either parcel. Consequently, they did not overcome the presumption that the existing assessed valuations are accurate.

Conclusion

18. The Petitioners failed to make a prima facie case for a change in assessed value. 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>