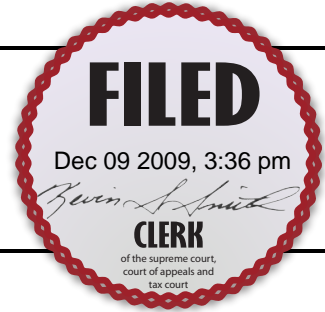


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**IN THE
INDIANA TAX COURT**



WAYNE ROBEY,)
)
Petitioner,)
)
v.)
)
FAIRFIELD TOWNSHIP ASSESSOR,)
)
Respondent.)

Cause No. 49T10-0708-TA-42

ON APPEAL FROM A FINAL DETERMINATION OF
THE INDIANA BOARD OF TAX REVIEW

NOT FOR PUBLICATION
December 9, 2009

FISHER, J.

Wayne Robey (Robey) challenges the final determination of the Indiana Board of Tax Review (Indiana Board) which upheld the Fairfield Township Assessor's (Assessor) assessment of his real property for the 2004 and 2005 tax years (years at issue). While Robey raises several issues on appeal, the Court consolidates and restates them as: whether the Indiana Board's final determination was improper.

FACTS AND PROCEDURAL HISTORY

During the years at issue, Robey owned residential real property in Lafayette, Indiana (Fairfield Township, Tippecanoe County). The property was assessed at \$42,800 (\$13,000 for land and \$29,800 for improvements).¹ Believing that assessed value to be incorrect, Robey filed Petitions for Review, first with the Tippecanoe County Property Tax Assessment Board of Appeals (PTABOA) and then with the Indiana Board.

On April 10, 2007, the Indiana Board held a hearing on the matter. On July 6, 2007, the Indiana Board issued its final determination in which it concluded (in relevant part) that Robey did not prima facie demonstrate that his assessment was incorrect.

On August 20, 2007, Robey filed this original tax appeal. The Court heard the parties' oral arguments on May 16, 2008. Additional facts will be supplied as necessary.

STANDARD OF REVIEW

When this Court reviews an Indiana Board final determination, it is limited to determining whether it is:

- (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
- (2) contrary to constitutional right, power, privilege, or immunity;
- (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory jurisdiction, authority, or limitations;
- (4) without observance of procedure required by law; or

¹ The improvements, a house and an outbuilding, were assessed at \$29,500 and \$300 respectively. (See Cert. Admin. R. at 90-91; V. Pet. for Judicial Review (hereinafter, "Pet'r Pet.") at 9-11 ¶ 9.)

(5) unsupported by substantial or reliable evidence.

IND. CODE ANN. § 33-26-6-6(e)(1)-(5) (West 2009). The party seeking to overturn the Indiana Board's final determination bears the burden of proving its invalidity. *Osoło Twp. Assessor v. Elkhart Maple Lane Assocs.*, 789 N.E.2d 109, 111 (Ind. Tax Ct. 2003).

DISCUSSION AND ANALYSIS

Robey claims that during the Indiana Board hearing, he presented probative evidence which demonstrated that his property's assessed value was incorrect. More specifically, Robey explains that he presented: (1) a value-in-use method which demonstrated that his land assessment was not uniform and equal with other comparable land; (2) a land comparison method which established that the actual market value-in-use of his land was \$5,500; (3) evidence that his house should have received a condition rating of fair; and (4) a linear interpolation method which established that his property's total actual market value-in-use was only \$12,700. (See *generally* V. Pet. for Judicial Review (hereinafter, "Pet'r Pet.") at 2-18 ¶¶ 6-17.) (See *also* Pet'r Br. at 24.) Robey requests that the Court reverse the Indiana Board's final determination based on the totality of this evidence.

(1) Robey's value-in-use method

Robey argues that his land assessment violates Article 10, Section 1 of the Indiana Constitution, which requires a "uniform and equal rate of property assessment and taxation." IND. CONST. art. 10, § 1(a). More specifically, Robey explains that a comparable property had been assigned the same assessed value as his property, despite the fact that the comparable property had a higher value-in-use. (See Pet'r Br. at 15-17.) Robey presented several photographs of both his property and the

comparable property in order to substantiate this claim. (Cert. Admin. R. at 100-02.) Robey explained that the photographic evidence demonstrated that the other property's land offered more utility (and thus, a higher value-in-use) than his land because it supported a larger house, contained two two-car garages, had "more attractive and useful space" on the sides of the house, had a bigger back yard, and had access to an alley and on-street parking. (See Pet'r Br. at 16-17.) Robey's comparison, however, misses the point.

In Indiana, real property is assessed on the basis of its "true tax value." "True tax value" does not mean fair market value, but rather it is "[t]he 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." See IND. CODE ANN. § 6-1.1-31-6(c) (West 2004); 2002 REAL PROPERTY ASSESSMENT MANUAL (2004 Reprint) (hereinafter, "Manual") (incorporated by reference at 50 IND. ADMIN. CODE 2.3-1-2 (2002 Supp.)) at 2. Indiana's assessment system uses objectively verifiable data (i.e., market data) to determine a property's market value-in-use. See Manual at 3. See also *Westfield Golf Practice Ctr., LLC v. Washington Twp. Assessor*, 859 N.E.2d 396, 399 (Ind. Tax Ct. 2007). Robey's value-in-use method, however, is nothing more than his visual evaluation (i.e., his opinion) of the value of purely subjective criteria. (See Pet'r Pet. at 6 ¶ 8(c) (explaining that Robey's method only required the fact finder to "look at [the photographs] and see if there [was] a substantial difference in the utility that the land offer[ed] to the owner or a similar user".) (See also Pet'r Reply Br. at 8-9.) Because Robey's value-in-use method links both the uniformity of assessments and the value of property to the idiosyncrasies of a single observer rather than objectively verifiable data, the Court

concludes that Robey has not demonstrated that his land assessment violated Article 10, Section 1 of the Indiana Constitution.

(2) Robey's Land Comparison Method

Next, Robey claims that through the use of some “unapproved” and “unknown” method of assessment, the Assessor assigned significantly disparate values to his land and comparable land within his neighborhood.² (See Cert. Admin. R. at 80-81, 198-202 (footnote added).) (See also Oral Argument Tr. at 24.) In contrast, Robey presented his “Land Comparisons” exhibit, which he claimed both represented an application of “approved” mass appraisal methods (i.e., the front and square foot methods of assessment as described in Indiana’s assessment guidelines) and demonstrated that his land should have been valued at \$5,500. (Cert. Admin. R. at 81-85.)

Robey arrived at this value by essentially applying a two-part formula: first, he divided the quotient of his property’s assessed value and its frontage by its depth factor to ascertain its effective front foot value (the EFFV); then, he multiplied his property’s frontage, depth factor, and the EFFV of the designated base lot to ascertain his property’s purported market value-in-use. (See Cert. Admin. R. at 85, 205-12.) Robey explained that these calculations were primarily based on three premises: (1) that the assessed value assigned to each of the selected parcels was correct; (2) that those

² Robey also asserted that the Assessor’s method of assessment violated Indiana’s Property Taxation Clause. (See Cert. Admin. R. at 80-84; Pet’r Br. at 3.) The Court finds the claim to be meritless, however, given that Indiana’s Supreme Court has explained that the Clause “does not prohibit the use of different assessment methodologies . . . provided that the result is substantial uniformity and equality based on property wealth across all property classifications.” *State Bd. of Tax Comm’rs v. Town of St. John*, 702 N.E.2d 1034, 1043 (Ind. 1998).

assessed values contained no adjustments for influence factors;³ and (3) that one of the parcels was the base lot.⁴ (See Cert. Admin. R. at 82; 204-05 (footnotes added).) Once again, Robey has missed the point.

At the outset, Robey's claim is based solely on the Assessor's use of the site value pricing method instead of her use of what he believes to be the proper method (i.e., the front or square foot pricing methods). (See Cert. Admin. R. at 82-83, 206-07.) This claim, however, merely attacks the Assessor's methodology and does not demonstrate that his land was incorrectly assessed. See REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 - VERSION A (2004 reprint) (hereinafter, "Guidelines") (incorporated by reference at 50 IAC 2.3-1-2(c)), Bk. 1, Ch. 2 at 16 (stressing that "the pricing method for valuing [land (i.e., the front foot value, square foot value, or site value)] is of less importance than arriving at the *correct* value of the land as of the valuation date" (emphasis added)).

Furthermore, and despite the fact that Robey's land comparison method theoretically incorporated market value-in-use data (i.e., the assessor's assessed values), the Court cannot say that it accurately measures the market value-in-use of his land.⁵ Specifically, the viability of Robey's method required the acceptance of two

³ An influence factor is a multiplier, either positive or negative, that is applied to a land assessment to reflect a condition or feature inconsistent with the norm for the neighborhood. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 - VERSION A (2004 reprint) (hereinafter, "Guidelines") (incorporated by reference at 50 IND. ADMIN. CODE 2.3-1-2(c)), Bk. 2, Glossary at 10.

⁴ A base lot "represent[s] the typical and average characteristics of lots" located within a specific neighborhood. See *id.*, Bk. 1, Ch. 2 at 9.

⁵ For the sake of argument, the Court assumes that the parcels used in Robey's land comparison method were actually comparable.

premises: 1) that one of the parcels could be reliably deemed to be the base lot; and 2) that the assessed values included no adjustments for influence factors. See *supra* pp. 5-6. Robey, however, did not attempt to explain what characteristics of the designated base lot rendered it an appropriate representation of the typical and average lots within his neighborhood. But see *Fidelity Fed. Sav. & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005) (explaining that a taxpayer must walk the Indiana Board and this Court through every element of its analysis) (citation omitted). Moreover, the fact that Robey did not understand how to quantify the impact of influence factors cannot justify his complete disavowal of their existence. (See, e.g., Cert. Admin. R. at 82 (explaining that influence factors are difficult to quantify).) But see *In re Estate of Carnes*, 866 N.E.2d 260, 265 (Ind. Ct. App 2007) (stating that “pro se litigants are held to the same standard as are licensed lawyers” (citation omitted)). Robey’s land comparison method therefore generated a land value that was based upon little more than conjecture: namely, Robey’s purported reverse application of the guidelines’ front and square foot methods. Accordingly, the Court cannot say that the Indiana Board erred when it concluded that this evidence had no probative value.

(3) The Condition Rating

Robey also maintains that he established that the Assessor erred in assigning his house a condition rating of “average” because a condition rating of “fair” more accurately reflected its physical condition. (See Pet’r Pet. at 9.) Had the house received the proper condition rating, asserts Robey, it would have been entitled to a 65% physical depreciation adjustment, thereby reducing its value from \$29,500 to \$20,600 for the years at issue. (See Cert. Admin. R. at 83-84; Pet’r Pet. at 10 ¶ 9.)

The market value-in-use of an improvement must reflect, among other things, the presence of any physical depreciation. See Guidelines, Bk. 1, App. B at 4. Physical depreciation is the loss in value which may be caused by the “wear and tear that an improvement suffers from its regular use[,] . . . the impact of the weather, and insect infestation[.]” *Id.* Determining the degree of physical depreciation from which a residential improvement suffers involves, *inter alia*, the consideration of its condition rating: the “rating assigned [to a] structure that reflects its effective age *in the market.*” *Id.* at 5 (emphasis added). Thus, an improvement’s condition rating is contingent not only upon the physical state of the property, but on the physical state of comparable properties within the subject’s neighborhood as well.⁶ See *id.* (footnote added). At the very least, therefore, Robey needed to present evidence as to the condition of other comparable properties within his neighborhood. Robey did not make this evidentiary showing.

Indeed, while Robey testified at the Indiana Board hearing that he “kn[ew] of no inhabited structures in the area with a roof that appear[ed] to be in such poor condition[.]” he only submitted three photographs of one other property located in his

⁶ For instance, a structure with a condition rating of “average” means that it “has been maintained like[,] and is in the typical physical condition of[,] the majority of the structures in the neighborhood.” Guidelines, Bk. 1, App. B. at 7. In contrast, an improvement with a condition rating of “fair” “suffers from minor deferred maintenance and demonstrates less physical maintenance than the majority of structures within [its] neighborhood. It [also] suffers from minor inutilities in that it lacks an amenity [or] . . . is in a less desirable location within the neighborhood than the majority of the structures.” *Id.*

neighborhood.⁷ (Cert. Admin. R. at 101-02, 121 (footnote added).) Robey asserted that the submission of additional photographs would have been “excessively burdensome” and unnecessary, given that it can be assumed that “the fact finder ha[d] an idea of what average [was.]” (Pet’r Reply Br. at 5.) Nevertheless, the totality of Robey’s evidence did not demonstrate that the Assessor erred in assigning his house a condition rating of average, as he failed to relate the condition of his house to sufficient market data for his neighborhood. Accordingly, the Indiana Board’s conclusion that this argument was not persuasive was neither arbitrary, capricious, an abuse of discretion, or unsupported by the evidence.

(4) Robey’s Linear Interpolation Method

Finally, Robey asserts that his linear interpolation⁸ method of valuation established that his assessment should have been \$12,700. (See Pet’r Pet. at 17-18 ¶¶ 16-17 (footnote added).) At the Indiana Board hearing, Robey explained that he used his property’s 1978 purchase price of \$10,500, its 2004 tax sale price of \$13,200, and its 2006 assessed value of \$44,300 to determine a trending factor to apply to his 2004 tax sale price. (See Cert. Admin. R. at 84, 112-14, 220-27.) Robey explained that his method presumed that: (1) the tax sale was equivalent to an arm’s length transaction;

⁷ Robey also presented two photographs of the rear of his house demonstrating that portions of the paint had peeled to such a degree that the underlying building material was exposed. (See Cert. Admin. R. at 104.) Finally, Robey claimed that the lack of adequate parking space rendered the location of his house inferior to the location of the other houses within his neighborhood. (See Cert. Admin. R. at 82, 218-19.)

⁸ Linear interpolation is the “estimation of a function (as a logarithm) by assuming that it is a straight line between known values.” MERRIAM-WEBSTER ONLINE DICTIONARY, *available at* <http://www.merriam-webster.com> (select the “Dictionary” button and enter “linear interpolation” as the search).

(2) the tax sale price was most indicative of the property's market-value-in-use; and (3) property generally appreciated at a constant rate over time. (See Cert. Admin. R. at 84, 220-27.)

In Indiana, a market sale reflects “[t]he most probable price (in terms of money) which a property should bring in a competitive and open market under all conditions requisite to a fair sale[.]” Manual at 10. “Implicit in this definition is the consummation of a sale . . . and the passing of title from the seller to buyer under conditions whereby[t]he buyer and seller are typically motivated.” *Id.*

Robey, however, has not demonstrated that the 2004 tax sale was consummated. Specifically, Robey's tax sale documents only evidence that someone bid on his property; his property record card does not indicate that the property was sold in 2004 or thereafter; and his notice of assessment indicates that he owned the property as of the 2006 assessment date. (See Cert. Admin. R. at 90-91, 107-12, 114.) The remaining evidence within the record merely establishes that Robey purchased the property on or about November 6, 1978. (See Cert. Admin. R. at 113.) The totality of this evidence presents an implausible scenario: that on or about October 6, 2004, Robey caused the property to be sold at a tax sale (i.e., he did not pay the property taxes) in order to determine its value; and he then redeemed the property for an unspecified amount before the March 1, 2006 assessment date. (See, e.g., Pet'r Pet. at 12-14 ¶ 11.)

More importantly, the fact that property at a tax sale is sold to the highest bidder does not necessarily mean that the bid price is equivalent to the property's market value-in-use. Indeed, at a tax sale the seller of the property (i.e., the county treasurer)

attempts only to generate enough money to pay the delinquent and current taxes, fees, penalties, and other costs associated with the sale. See IND. CODE ANN. § 6-1.1-24-5(e) (West 2004). Thus, when property is sold to the highest bidder at a tax sale, the price received may be wholly unrelated to the property's market value-in-use. Accordingly, a taxpayer must present market based evidence in order to demonstrate that the bid price is probative as to the property's market value-in-use. See, e.g., *Lake County Assessor v. U.S. Steel Corp*, 901 N.E.2d 85, 91-92 (Ind. Tax Ct. 2009) (approving of the use of bankruptcy sales when taxpayer established that such sales were a market norm), *review denied*. As Robey did not make this evidentiary showing, the Indiana Board did not err when it concluded that Robey's tax sale evidence had no probative value.

Finally, Robey's linear interpolation method simply ignores the actual workings of the market, given that real property is more likely to appreciate or depreciate at differing rates, rather than at a constant rate over a twenty-year period. See, e.g., *In re Estate of White*, 651 N.E.2d 324, 326 (Ind. Ct. App. 1995) (stating that the "value of [wife's one-third] interest in [life-estate] did not freeze upon [her husband's] death, but rose or fell as the property appreciated or depreciated during the administration of the estate and until the time of sale"). Accordingly, the Indiana Board correctly determined that Robey's

linear interpolation method lacked probative value.⁹

CONCLUSION

For the above stated reasons, the final determination of the Indiana Board is
AFFIRMED.

⁹ Robey has also asserted that his ability to challenge his assessment was hampered in this case because: 1) Indiana's "true tax value" standard is flawed; 2) the difficulty of ascertaining the motivations of buyers and sellers renders the use of sales data unreliable; and 3) there were no comparable sales within the relevant time frame. (See Cert. Admin. R. at 84; Pet'r Reply Br. at 10-11.) These arguments have no bearing on the outcome of this case, as a property's market value-in-use may also be ascertained through an application of the cost approach. See 2002 REAL PROPERTY ASSESSMENT MANUAL (2004 Reprint) (hereinafter, "Manual") (incorporated by reference at 50 IAC 2.3-1-2) at 3 (explaining that "the cost approach[] estimates the value of the land as if vacant and then adds the depreciated cost new of the improvements to arrive at a total estimate of value") (emphasis omitted).