

ATTORNEY FOR PETITIONER:
RICHARD W. LORENZ
HICKAM & LORENZ, P.C.
Spencer, IN

ATTORNEYS FOR RESPONDENT:
GREGORY F. ZOELLER
ATTORNEY GENERAL OF INDIANA
JENNIFER E. GAUGER
TIMOTHY A. SCHULTZ
DEPUTY ATTORNEYS GENERAL
Indianapolis, IN

**IN THE
INDIANA TAX COURT**



LEONARD WHITE,)
)
Petitioner,)
)
v.) Cause No. 84T10-0807-TA-50
)
GREENE COUNTY ASSESSOR,)
)
Respondent.)

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

NOT FOR PUBLICATION
June 9, 2009

FISHER, J.

Leonard White (White) challenges the final determination of the Indiana Board of Tax Review (Indiana Board) valuing his real property as of the March 1, 2006 assessment date. The issue on appeal is whether the Indiana Board erred in affirming the Beech Creek Township Assessor's (Assessor) assessment of White's land.

FACTS AND PROCEDURAL HISTORY

White owns 91.22 acres of land in Greene County, Indiana. For the March 1, 2006 general reassessment, the Assessor determined that the market value-in-use (i.e.,

the assessed value) of White's land was \$451,900. In arriving at that value, the Assessor classified the land as "commercial" because he believed the property was being used as a mobile home park.¹

White subsequently challenged the assessment of his land with the Greene County Property Tax Assessment Board of Appeals (PTABOA). On October 12, 2007, the PTABOA denied White's request for relief. In November of 2007, White appealed his assessment to the Indiana Board.

On March 18, 2008, the Indiana Board conducted an administrative hearing on the matter. During the hearing, White explained that, pursuant to Indiana Code § 16-41-27-5, his property was not a mobile home park.² White also presented a property

¹ Within that classification, 20 acres were designated as "primary" and assessed at \$22,000 an acre. (See Cert. Admin. R. at 49.) The other 71.22 acres were designated as "non-tillable" and "woodland" and carried a combined assessed value of less than \$12,000. (See Cert. Admin. R. at 49.)

² During the year at issue, Indiana Code § 16-41-27-5 defined a "mobile home community" as one (1) or more parcels of land:

- (1) that are subdivided and contain individual lots that are leased or otherwise contracted;
- (2) that are owned, operated, or under the control of one (1) or more persons; and
- (3) on which a total of at least five (5) mobile homes or manufactured homes are located for the purpose of being occupied as principal residences.

IND. CODE ANN. § 16-41-27-5(b) (West 2006). White testified at the Indiana Board hearing that while the contracts or deeds had not actually been recorded, he sold all but five of the 91.22 acres to various people, each of whom controls his or her own tract. (See Cert. Admin. R. at 48, 68, 89-97.) (See *also* Cert. Admin. R. at 129-30.) White also testified that while there are more than five mobile homes on the entire 91.22 acres, there are no more than five mobile homes on any given subdivided tract. (Cert. Admin. R. at 108.) Finally, White testified that some of the mobile homes on the 91.22 acres are not even used as residences; instead, they are used as storage facilities or are just "junk." (Cert. Admin. R. at 109.)

analysis, and the testimony of its preparer, Mr. Jack Simmerman, a local real estate broker. Mr. Simmerman testified that because the mobile homes on the property were essentially in such poor condition, he determined that the land should be valued as though it were vacant. (See Cert. Admin. R. at 117-18.) Simmerman then explained that based on data from numerous sales of, and expired listings for, “comparable” properties in both northeast Greene County and southwest Owen County, he concluded that the market value-in-use of White’s land should have been \$164,196 (i.e., \$1,800 an acre) for the year at issue. (Cert. Admin. R. at 2-3, 59-62, 113-23.)

On June 10, 2008, the Indiana Board issued a final determination affirming the assessment. In its final determination, the Indiana Board acknowledged that the Assessor may have misclassified White’s land. (See Cert. Admin. R. at 19.) The Indiana Board went on to explain, however, that because Simmerman failed to establish the comparability of White’s property with those in northeast Greene County and southwest Owen County, White failed to demonstrate that his assessment was inaccurate despite the misclassification. (See Cert. Admin. R. at 19, 26-27.)

On July 21, 2008, White filed an original tax appeal. The Court heard the parties’ oral arguments on February 27, 2009. Additional facts will be supplied as necessary.

ANALYSIS AND OPINION

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

(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 demonstrating its invalidity. *Osolo Twp. Assessor v. Elkhart Maple Lane Assocs.*, 789 N.E.2d 109, 111 (Ind. Tax Ct. 2003).

Discussion

On appeal, White argues that the Indiana Board erred when it failed to give Simmerman's testimony and property analysis the appropriate weight or credibility.³ (Pet'r Br. at 5-6 (footnote added).) The Court, however, must disagree.

Under Indiana's assessment system, real property is assessed on the basis of its market value-in-use. See IND. CODE ANN. § 6-1.1-31-6(c) (West 2006); 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. A property's market value-in-use is its value "for its current use, as reflected by the utility received by the owner or

³ White also argues that the classification of his property as a mobile home park "flies in the face of [] commonsense reality[.]" (Pet'r Br. at 4-5; Oral Argument Tr. at 7.) Given the Court's holding in this case, however, the argument need not be addressed.

a similar user, from the property.”⁴ Manual at 2 (footnote added).

When attempting to rebut the accuracy of an assessment, a taxpayer may present evidence as to its land’s market value-in-use as calculated under the sales comparison approach. See *id.* at 3, 5. “The sales comparison approach to value is based on the assumption that potential buyers will pay no more for the subject property . . . than it would cost them to purchase an equally desirable substitute [] property already existing in the market place.” *Id.* at 13. “In this approach, the appraiser locates sales of comparable improved properties and adjusts the[ir] selling prices to reflect the subject property’s total value. The adjustments are the quantification of characteristics in [the] properties that cause prices paid to vary.” *Id.* Thus, the entire underpinning of this approach is the comparability of one property with another.

To estimate the market value-in-use of White’s land, Simmerman utilized sales of, and expired listings for, *vacant* properties in both northeast Greene County and southwest Owen County. (Pet’r Br. at 5-6.) (See *also* Cert. Admin. R. at 61-62, 113-23.) White’s property, however, is not a single, vacant parcel of land. Indeed, he has subdivided and sold the majority of the acreage to numerous people; in turn, those people use their individual tracts as either residential homesites or places to locate storage facilities and junk. See *supra*, note 2. Simmerman therefore failed to use comparable properties in estimating the market value-in-use of White’s property. Accordingly, the Indiana Board properly held that Simmerman’s analysis and testimony

⁴ Generally, a property’s market value-in-use “may be thought of as the ask price of property by its owner, because this value . . . represents the utility obtained from the property, and the ask price represents how much utility must be replaced to induce the owner to abandon the property.” 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.

did not carry any probative value in demonstrating that the market value-in-use of White's property was inaccurate.⁵

CONCLUSION

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

⁵ In arriving at White's assessment for the year at issue, the Assessor assigned an assessed value of \$30,400 to certain improvements on the property. (See Cert. Admin. R. at 49-50, 52, 80.) When White filed his appeal with the Indiana Board, he claimed that the assessed value of those improvements should have been \$18,244. (See Cert. Admin. R. at 8.) To the extent White never provided the Indiana Board with an explanation as to why the improvements should have been valued at that figure or how he arrived at the figure, the Court deems the issue waived.