

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

Petition: 88-022-06-1-5-00032
Petitioner: Susan Sama
Respondent: Washington County Assessor
Parcel: 88-24-17-333-027.000-022
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 Petitioner initiated an assessment appeal with the Washington County Property Tax Assessment Board of Appeals (PTABOA) on October 11, 2007.
2. The PTABOA mailed its decision about the assessment on March 24, 2008.
3. The Petitioner appealed to the Board by filing a Form 131 on April 30, 2008, and elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing to the parties dated March 18, 2009.
5. Administrative Law Judge Paul Stultz held the Board's administrative hearing on April 30, 2009. He did not conduct an on-site inspection.
6. Property owner Susan Sama, County Assessor Jason Cockerill, and former PTABOA President Jim Davis were sworn as witnesses.

Facts

7. This is a case about a residential rental property located at 205 South Posey in Salem.
8. The PTABOA determined the assessed value is \$5,800 for land and \$49,200 for improvements (total \$55,000).
9. The Petitioner requested an assessed value of \$5,800 for land and \$40,000 for improvements (total \$45,800).

Contentions

10. Summary of the Petitioner's case:

- a. The market value of the subject property should be \$45,800 based on a comparison of the subject property to three comparable properties. *Sama testimony.*
- b. The worksheet compares the subject property to three other investment properties with similar features. The first comparable property is located at 403 S. Posey Street in Salem (Comp 1) and is in the same neighborhood as the subject property. Comp 1 is the same size as the subject property and has the same land assessed value as the subject property. But between 1995 and 2006 the increase in assessed value of Comp 1 is \$26,200 and the subject property's assessed value increase is \$37,900. The second comparable property is located at 64 East Main Street in Campbellsburg (Comp 2). It is listed for \$34,900. The total square footage of the dwelling on Comp 2 is the same as the subject property's dwelling square footage, but Comp 2 has a larger lot than the subject property. The photographs show the exterior similarities between the subject property and Comp 2. The assessed value for Comp 2 is \$33,300—compared to the subject property's assessed value of \$55,000. The third comparable property is located at 10606 State Road 66 in Hardinsburg (Comp 3). It is listed for \$42,900. It is comparable to the subject in size, age, and exterior, but it has a larger lot than the subject property. The true tax value of Comp 3 is \$92,500 compared to the subject property's true tax value of \$91,660. *Sama testimony; Pet'r Ex. 1-7.*
- c. The subject property was purchased at full market price in the low \$20,000's. It was already a rental property when it was purchased. The subject property has suffered interior damage because it is a rental. The comparable properties are in better condition than the subject property. *Sama testimony.*

11. Summary of the Respondent's case:

- a. Two residential properties were selected for market comparison. They are similar to the subject property in most aspects. They are located in the same neighborhood as the subject property. *Davis testimony; Resp't Ex. 1.*
- b. Comparable 1 sold in June 2004 for \$103,000. The time adjusted sale price for Comparable 1 is \$106,000. Comparable 1 has a 9,000 square foot lot and a 1,160 square foot dwelling built in 1918. That dwelling is D-1 grade and is in fair condition. Comparable 2 sold in October 2004 for \$115,000. The time adjusted sale price for Comparable 2 is \$117,600. Comparable 2 has a 11,890 square foot lot and a 3,335 square foot dwelling built in 1900. The Comparable 2 dwelling is C-1 grade and is in fair condition. *Davis testimony; Resp't Ex. 1-5.*

- c. The subject property has a 12,960 square foot lot and a 3,002 square foot dwelling built in 1928. It is graded D and is in fair condition. In all aspects, the subject property is superior to Comparable 1. The comparables' sale prices were time adjusted to reflect the market conditions as of January 1, 2006. The sale prices were also adjusted upward to account for the difference in lot size. The market analysis suggests that a reasonable minimum value for the subject property would be no less than \$108,500. The subject property is under assessed at \$55,000.
Davis testimony; Resp't Ex. 1.

Record

- 12. The official record for this matter is made up of the following:
 - a. The Petition,
 - b. A digital recording of the hearing,
 - c. Petitioner Exhibit 1 – Photograph of the subject property,
Petitioner Exhibit 2 – Photograph of Comp 1,
Petitioner Exhibit 3 – Worksheet comparing the subject and three comparables,
Petitioner Exhibit 4 – Property record card (PRC) for the subject property,
Petitioner Exhibit 5 – PRC for Petitioner's Comp 1,
Petitioner Exhibit 6 – Listing summary for Petitioner's Comp 2,
Petitioner Exhibit 7 – Listing summary for Petitioner's Comp 3,
Respondent Exhibit 1 – Analysis comparing the subject and two comparables,
Respondent Exhibit 2 – Form 130,
Respondent Exhibit 3 – Subject PRC,
Respondent Exhibit 4 – PRC for Respondent's Comparable 1,
Respondent Exhibit 5 – PRC for Respondent's Comparable 2,
Respondent Exhibit 6 – Appearance,
Board Exhibit A – Form 131 Petition for Review of Assessment,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing Sign In Sheet,
 - d. These Findings and Conclusions.

Analysis

- 13. The most applicable governing cases are:
 - a. 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).

- b. 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”).
 - c. 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.
14. The Petitioner did not make a case for any assessment change. This conclusion was arrived at 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). A taxpayer may offer evidence relevant to market value-in-use to rebut the presumption the assessment is correct. 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. The Petitioner presented three purportedly comparable properties in an attempt to make her case. None of her evidence, however, relates to *comparable sales*. Rather, the Petitioner attempted to compare her assessment with other assessments and with asking prices shown on sales listings. But she failed to establish that such comparisons provide any probative evidence about what the market value-in-use of the subject property should be. For example, even if it is true that between 1995 and 2006 the increase in the assessment of the subject property was much more than the increase in the assessment of Comp 1, that fact does nothing to prove what errors there might be or what the actual market value-in-use of the subject property should be. Similarly, comparing the 2006 assessed value of the subject property with some unspecified year’s assessed values for Comp 2 and Comp 3 is meaningless.
 - c. The attempted comparisons suffer from a number of additional shortcomings. Comparability must be proved. Without facts and analysis to establish comparability, conclusions about the relative values of the properties do not constitute probative evidence. The Petitioner was responsible for explaining the characteristics of the subject property, how those characteristics compared to those of the purportedly comparable property, and how any differences affected the relative market value-in-use of the properties. *Long v. Wayne Twp. Assessor*,

821 N.E.2d 466, 471 (Ind. Tax Ct. 2005); *Fidelity Federal Savings & Loan v. Jennings Co. Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005).

- d. Although the Petitioner offered some information regarding similarities between the subject property and the alleged comparable properties that is summarized on her comparison grid worksheet (Pet'r Ex. 3), what she provided is not enough to be the basis of any legitimate comparison.¹ The Petitioner's analysis ignored the fact that the subject property is in Salem, while Comp 3 is in Campbellsburg and Comp 4 is in Hardinsburg. The evidence shows the houses are not the same size, but the Petitioner failed to deal with how the differences might affect the relative values. And, although Exhibit 3 indicates the subject property was built in 1900, the PRC says it was built in 1928. Exhibit 3 indicates the comparables were built in 1890, 1789, and 1877. Again, the Petitioner failed to deal with how these age differences might affect the relative values of the properties. The totality of the facts and analysis that the Petitioner offered based on purportedly comparable properties is not sufficient to prove that the current assessment is wrong or what a more accurate valuation might be.
- e. A 2006 assessment must reflect the value of the property as of January 1, 2005. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. Any evidence of value relating to a different date must also have an explanation about how it demonstrates, or is relevant to, the value as of that required valuation date. *See Long*, 821 N.E.2d at 471. The Petitioner testified that she paid in the low \$20,000 range for the subject property. She did not provide any documentation regarding the sale including the exact, actual price or date of sale. The Petitioner also failed to provide any explanation showing how or why her purchase price might be relevant to the market value-in-use as of January 1, 2005. This evidence does not help to make the Petitioner's case.
- f. 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, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

Conclusion

15. The Petitioner failed to make a prima facie case. The Board finds in favor of the Respondent.

¹ In addition to photographs showing the front of each house, the only relevant facts that the Petitioner provided as a basis for comparison were the addresses, size of lots, square footage of each house, and the years of construction.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now affirms the assessment.

ISSUED: July 27, 2009

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 there 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 the 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>>