

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

Petition: 72-008-08-1-4-00058
Petitioner: 550 Rosewood, LLC
Respondent: Scott County Assessor
Parcel: 72-05-17-330-041.000-008
Assessment Year: 2008

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 the appeal process with the County Property Tax Assessment Board of Appeals (PTABOA) by filing a written document dated May 27, 2009.
2. The PTABOA issued its Notification of Final Assessment Determination (Form 115) on August 28, 2009.¹
3. The Petitioner appealed to the Board by filing a Form 131 petition on October 14, 2009. It elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing on February 12, 2010.
5. Administrative Law Judge Paul Stultz held an administrative hearing in Scottsburg on April 1, 2010. He did not inspect the property.
6. Attorneys Brian Ellerman and Dennis Williams represented the Petitioner. Attorney Marilyn Meighen represented the Respondent.
7. The following person were sworn as witnesses at the hearing:
For the Petitioner – Kurtis Kenney,
For the Respondent – Cathi Gould,
Aaron Shelhamer.

¹ The PTABOA initially issued a Form 115 on August 26, 2009, but it had an incorrect land value of \$47,390. *Pet'r Ex. 5*. The amended notice on August 28, 2009, corrected the land value to \$473,900. *Pet'r Ex. 6; Resp't Ex. G*.

Facts

8. The property is a manufactured home community (“MHC”) that is located at 550 Rosewalk Drive, Scottsburg.
9. The PTABOA determined the assessed value is \$473,900 for land and \$390,100 for improvements (total \$864,100).
10. On Form 131, the Petitioner requested an assessed total value of \$380,974 for land and \$311,706 for improvements (total \$692,680).

Record

11. The official record for this matter contains the following:
 - a. The Petition,
 - b. A digital recording of the hearing,
 - c. Petitioner Exhibit 1 – Explanation for requested change,
Petitioner Exhibit 2 – Income statement and rent roll,
Petitioner Exhibit 3 – Rosewood sales contract,
Petitioner Exhibit 4 – Appraisal of Rosewood Manufactured Home Community dated September 23, 2008,
Petitioner Exhibit 5 – Form 115, Notification of Final Assessment,
Petitioner Exhibit 6 – Amended Form 115, Notification of Final Assessment,
Petitioner Exhibit 7 – Birch Realty listings,
Petitioner Exhibit 8 – 2006 Sales disclosure form,
Petitioner Exhibit 9 – 2008 Sales disclosure form,
Respondent Exhibit A – Aerial map,
Respondent Exhibit B – Property record card (PRC),
Respondent Exhibit C – 2006 Sales disclosure form,
Respondent Exhibit D – Indiana Administrative Code tit. 50 r. 21-3-3,
Respondent Exhibit E – Appraisal of Rosewood Manufactured Home Community dated September 23, 2008,
Respondent Exhibit F– Birch Realty listings,
Respondent Exhibit G – Amended Form 115, Notification of Final Assessment,
Respondent Exhibit H – Letter dated August 28, 2009, from Dennis Williams to County Assessor Teresa Rigsby,
Board Exhibit A – Form 131 Petition with attachments,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing Sign-In Sheet,
 - d. These Findings and Conclusions.

Contentions

12. Summary of the Petitioner's case:

- a. The property sold for \$920,000 on March 17, 2006. At that time its occupancy rate was almost 100 percent. *Keeney testimony; Pet'r Ex. 8.*
- b. An appraisal dated September 23, 2008, valued the property at \$850,000. *Keeney testimony; Pet'r Ex. 4.* The Petitioner purchased the property for \$800,000 on November 3, 2008. *Keeney testimony; Pet'r Ex. 9.* Both the appraisal and purchase price were excessive because the previous owner represented that the occupancy rate was approximately 79% when its actuality was closer to 69%. *Keeney testimony*
- c. The property has 55 pads for manufactured homes, but currently only 38 are rented. *Keeney testimony; Pet'r Ex. 3.*
- d. The income approach to value is the most accurate method to determine the property's worth because it is a MHC. A valuation using this method would result in an assessment of \$692,680. This figure was calculated by determining the property's net operating income (total revenue minus total operating costs) for the first six months of 2009, and then applying a 10% capitalization rate. The total was \$346,340. That number was doubled to determine a 2009 annualized valuation. *Keeney testimony; Pet'r Ex. 1.*
- e. A 10% capitalization rate is the national standard for MHCs. *Keeney testimony; Pet'r Ex. 1.* Additionally, the capitalization rates of two other MHCs currently listed for sale were 10.8% and 13.18% for an average of 11.99%. *Keeney testimony; Pet'r Ex. 7.*
- f. Often a MHC can be valued on a per pad basis, but this method is not reliable when the occupancy rate is below 80%. The occupancy rate of the subject property is well below that level. Therefore, in this case valuation on a per pad basis is not a reliable way to determine value. *Keeney's testimony.*

13. Summary of the Respondent's case:

- a. Scott County officials assessed the property first by using the cost approach and then examining sales of commercial properties from 2006 and 2007 to confirm the accuracy of the assessment. *Gould testimony; Resp't Ex. D.*
- b. The current assessment of \$864,000 is less than the 2006 sale price. Based on the 2006 sale price, the value was \$16,727 per pad and the current assessment is only \$15,709 per pad. *Gould testimony; Resp't Ex. C.*

- c. There were two recent sales of the subject property. They occurred on March 17, 2006, and November 3, 2008. Only the 2006 sale should be considered when determining the 2008 assessment because the other sale occurred after December 31, 2007. *Meighen argument; Pet'r Exs. 8 and 9; Resp't Exs. C and D.*
- d. The Petitioner's income approach calculation used the property's actual income and expense amounts. According to generally accepted appraisal practices, the income and its expenses should be derived from market data rather than the financial records for the subject property. *Meighen argument.* Furthermore, the Petitioner's data is from 2008 and 2009 and not the required time of 2006 and 2007. *Gould testimony; Resp't Ex. D.*

Analysis

- 14. 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).
- 15. 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”).
- 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 valuation date for a 2008 assessment is January 1, 2007. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. Any evidence of value relating to a different date must have an explanation about how it demonstrates, or is relevant to, the value as of the required valuation date. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
- 18. The Petitioner did not make a case for any assessment change because:
 - a. Real property is assessed 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.

Indiana promulgated a series of guidelines that explain the application of the cost approach. See 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, while presumed to be accurate, is merely a starting point. A taxpayer may 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. The Tax Court has said that an appraisal is often the best evidence of value. And both parties introduced an appraisal that concluded as of September 23, 2008, the market value of the subject property was \$850,000. Neither party, however, related it to the required valuation date. Therefore, this appraisal does not prove what a more accurate assessed valuation might be. *Long*, 821 N.E.2d at 471.
- c. On several occasions the Board has recognized that the purchase price of the subject property also can be a good indication of its market value-in-use. In this case the record contains evidence about two recent sales of the subject property. In March 2006 it sold for \$920,000. In November 2008 the Petitioner bought it for \$800,000. (According to the Petitioner, the difference in those two prices was the result of a declining occupancy rate and the Petitioner paid more than it should have because the seller misrepresented the occupancy rate to get a higher price.) But the Petitioner did not establish (or even claim) that either of those sale prices supports its proposed value of \$692,680. Obviously the price of \$920,000 does not support any reduction in assessed value because it is substantially more than the existing assessment, which is only \$864,100. The price of \$800,000 is less than the existing assessment, but not nearly as low as the figure the Petitioner sought. More importantly, there is no substantial explanation to relate the November 2008 purchase price to the required valuation date, January 1, 2007. Accordingly, the November 2008 purchase price does not prove what a more accurate assessed valuation might be. *Id.*
- d. In addition to appraisals and sales data, other evidence that is compiled in accordance with generally accepted appraisal principles may be used to establish what a more accurate valuation would be. Certainly income and expense data presented in the context of a proper income approach to value can be an acceptable way for a taxpayer to prove a case. MANUAL at 5.
- e. The Petitioner offered a calculation based on the income capitalization approach, which is the heart of the Petitioner's case. But does that evidence prove the existing assessment of \$864,100 does not accurately state the market value-in-use of the subject property and does it prove that its actual market value-in-use as of January 1, 2007, was only \$692,680? We conclude that it does not.

- f. Although the income approach is one of the three generally accepted appraisal techniques to calculate market value-in-use, in this case the Petitioner relied on evidence that is not contained within a professional, certified appraisal. Assuming that Mr. Kenney actually collected the data and did the income analysis, the record does little to establish his professional qualifications and it does nothing to establish that he complied with generally accepted appraisal principles in doing so. These points diminish the credibility and reliability of what the Petitioner presented regarding the income capitalization approach.
- g. Most importantly, the Petitioner failed to demonstrate how the income capitalization approach using income and expenses for the first half of 2009 relates to the value as of the required valuation date of January 1, 2007. Therefore, the Petitioner's income capitalization calculation does not prove what a more accurate assessed valuation might be. *See Long*, 821 N.E.2d at 471.

Conclusion

19. The Petitioner failed to prove its case. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings and conclusions, there will be no change in the assessment.

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>>