

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

Petition #: 71-026-03-1-5-00007
Petitioner: Richard J. Bandera
Respondent: Portage Township Assessor (St. Joseph County)
Additional Party: St. Joseph County Assessor¹
Parcel #: 1840351274
Assessment Year: 2003

The Indiana Board of Tax Review (“Board”) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. The Petitioner, Richard J. Bandera, initiated an assessment appeal with the St. Joseph County Property Tax Assessment Board of Appeals (“PTABOA”) on May 10, 2004.
2. The PTABOA issued notice of its determination on April 22, 2005.
3. Mr. Bandera filed a Form 131 Petition to the Indiana Board of Tax Review for Review of Assessment on May 25, 2005. Mr. Bandera elected to have this case heard under the Board’s procedures for small claims.
4. The Board issued a notice of hearing to the parties dated August 14, 2007.
5. On September 26, 2007, the Board held an administrative hearing on Mr. Bandera’s appeal before its duly appointed Administrative Law Judge, Jennifer Bippus (ALJ).
6. Persons present and sworn in at hearing:
 - a) For the Petitioner: Richard J. Bandera, Taxpayer
 - b) For Respondent: Rosemary Mandrici, Portage Township Assessor
Kevin Klaybor, St. Joseph PTABOA
Dennis Dillman, St. Joseph PTABOA
Ross Portolese, St. Joseph PTABOA
Ralph Wolfe, St. Joseph PTABOA

¹ The St. Joseph County Assessor appeared as an additional party under Ind. Code § 6-1.1-15-4(p) (2006).

- c) For St. Joseph County Assessor: David Wesolowski, St. Joseph County Assessor
7. Terrance Wozniak, St. Joseph Deputy County Attorney, appeared on behalf of the Portage Township Assessor.

Facts

8. Mr. Bandera uses the property as his primary residence. The property is located at 425 South Meade Street, South Bend, Indiana.
9. The ALJ did not inspect the subject property.
10. The PTABOA determined the assessed value of the subject property is \$2,000 for the land and \$63,300 for the improvements for a total assessment of \$65,300.
11. Mr. Bandera requested a value of \$2,000 for the land and \$37,900 for the improvements for a total assessment of \$39,900.

Parties' Contentions

12. Mr. Bandera offered the following evidence and arguments:
- a) Mr. Bandera contends that the Respondent assessed his property for more than its market value. In support of his contention, Mr. Bandera submitted a certified uniform residential appraisal report prepared by William Flanagan, a licensed appraiser. *Pet'r Ex. 1*. The appraisal, which First Source Bank ordered when Mr. Bandera and his wife applied for a home equity loan in 2004, estimates the property's value at \$40,000 as of January 22, 2004. *Id.* at 5; *Bandera testimony*.
- b) Mr. Bandera contends that he would not be able to sell his property for \$65,300. *Bandera argument*. He argues that \$40,000 is a more reasonable value. *Id.*
13. The Respondent offered the following evidence and arguments:
- a) Ms. Mandrici, the Portage Township Assessor, arrived at the original \$65,300 assessment through a strict Guideline-based calculation. *Mandrici testimony*.
- b) Mr. Bandera appealed that assessment. Based on the information Mr. Bandera provided with his appeal petition, Ms. Mandrici sent Mr. him a letter offering to lower the subject property's assessment to \$39,900. *Mandrici testimony; Resp't Ex. 7*. Mr. Bandera did not remember receiving the letter, and did not sign or return it. *Bandera testimony*. Ms. Mandrici, therefore, did not disturb the original \$65,300 assessment, and forwarded Mr. Bandera's appeal to the PTABOA. *Mandrici testimony*.

- c) Mr. Bandera did not appear at the PTABOA hearing. Consistent with its policy concerning no-shows, the PTABOA did not change his assessment. *Claybor testimony*.
- d) Despite Ms. Mandrici's original inclination to lower Mr. Bandera's assessment, Mr. Dillman, a licensed appraiser, argued that the appraisal has significant flaws. First, it contains a notation that "[t]his appraisal is a departure from USAAP [sic] standards." *Pet'r Ex. 1* at 6.
- e) Second, the First Source Bank, not Mr. Bandera, engaged the appraiser. *Dillman argument*. According to Mr. Dillman, each financial institution writes its own instructions to appraisers, and those instructions can vary. Thus, a bank appraisal is not the best evidence for a tax hearing. *Dillman argument*.
- f) Third, the appraiser did not present his sales-comparison approach in a normal fashion. *Dillman argument*. The appraiser left blank a chart that typically compares the subject property's features to those of comparable properties lists adjustments to the comparable properties' sale prices to account for relevant differences. *See Pet'r Ex. 1* at 5. Instead, Mr. Bandera attached a chart that appears to list features and sale prices for comparable properties. Mr. Bandera, however, could not identify that document's source. *Bandera testimony*.
- g) Finally, the appraiser did not trend his value estimate back to January 1, 1999. *Dillman argument; Pet'r Ex. 1*.

Record

14. The official record for this matter is made up of the following:

- a) The Form 131 petition
- b) The digital recording of the hearing
- c) Exhibits:

Petitioner Exhibit 1: Appraisal of the subject property,
Petitioner Exhibit 2: Copy of Notice of Assessor Appearance and Notice of
Hearing

Respondent Exhibit 1: Form 130 Petition to the PTABOA
Respondent Exhibit 2: Form 115 Notification of Final Assessment
Respondent Exhibit 3: Form 131 Petition
Respondent Exhibit 4: PTABOA Uniform Check List
Respondent Exhibit 5: Subject Property Record Card
Respondent Exhibit 6: Portage Township Worksheet

Respondent Exhibit 7: Letter dated March 8, 2005 from Ms. Mandrici to Mr. Bandera

Board Exhibit A: Form 131 Petition

Board Exhibit B: Notice of Hearing

Board Exhibit C: Notice of Appearance for the St. Joseph County PTABOA

Board Exhibit D: Notice of County Assessor Appearance

Board Exhibit E: Hearing Sign-In Sheet

d) These Findings and Conclusions

Analysis

15. The most applicable governing cases are:

- a) A petitioner seeking review of an assessing official's determination 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 petitioner must explain how each piece of evidence relates to its requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 276 (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.

16. Mr. Bandera did not make a prima facie case. The Board reaches that conclusion for the following reasons:

- a) The 2002 Real Property Assessment Manual defines “true tax value” as “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.” 2002 REAL PROPERTY ASSESSMENT MANUAL 2 (incorporated by reference at 50 IAC 2.3-1-2). Appraisers traditionally have used three methods to determine a property's market value: the cost, sales-comparison and income approaches. *Id.* at 3, 13-15. Indiana assessing officials generally assess real property using a mass-appraisal version of the cost approach, as set forth in the Real Property Assessment Guidelines for 2002 – Version A.
- b) A property's market value-in-use, as determined using the Guidelines, is presumed to be accurate. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp.*

Assessor, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005) *reh'g den. sub nom. P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax 2006). But a taxpayer may rebut that presumption with evidence that is consistent with the Manual's definition of true tax value. MANUAL at 5. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice ("USPAP") often will suffice. *See id.*; *see also Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer sales information for the subject or comparable properties and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.

- c) And the taxpayer must explain how its evidence relates to its property's value as of the relevant valuation date. *Long v. Wayne Twp. Assessor*, 821 N.E. 2d 466, 471 (Ind. Tax Ct. 2005); *see also* MANUAL at 4, 8. For assessment years 2002 – 2005, that valuation date is January 1, 1999. *Id.*; *see also* MANUAL at 2 (stating that the Manual contains the rules for assessing real property for the March 1, 2002, through March 1, 2005, assessment dates); Ind. Code § 6-1.1-4-4.5 (requiring the DLGF to adopt rules for annually adjusting assessments to account for changes to value in years since general reassessment, with such adjustments beginning in 2006).
- d) Here, Mr. Bandera presented an appraisal estimating the subject property's market value to be \$40,000 as of January 22, 2004. *Pet'r Ex. 1*. But he did not explain how that value related to the subject property's value as of January 1, 1999. Thus, he failed to make a prima facie case.
- e) In reaching that conclusion, the Board recognizes that Ms. Mandrici offered to settle Mr. Bandera's appeal and reduce the subject property's assessment to \$39,500. But the Board does not assign that offer any probative weight. The judicial policy of Indiana strongly favors settlement agreements. *Klebes v. Forest Lake Corp.*, 607 N.E.2d 978, 982 (Ind. Ct. App. 1993). They allow courts to operate more efficiently and allow the parties to fashion the outcome of their disputes through mutual agreement. *Natare Corp. v. Aquatic Renovation Systems, Inc.*, 987 F. Supp. 695, 700 (S.D. Ind. 1997). Indiana law therefore provides several incentives for parties to engage in settlement negotiations in several ways. Most importantly for this case, it prohibits parties from using settlement agreements, or even statements made in settlement negotiations, to prove liability for or invalidity of a claim or its amount. *Dep't of Local Gov't Fin. v. Commonwealth Edison Co.*, 820 N.E.2d 1222, 1227, (Ind. 2005); Ind. Evidence Rule 408. Indeed the Tax Court has refused to afford consummated settlement agreements any precedential effect in property tax appeals, because to do so "would have a chilling effect on the incentive of all assessing officials to resolve cases outside the courtroom." *Boehning v. State Bd. of Tax Comm'rs*, 673 N.E.2d 502, 505 (Ind. Tax. Ct. 2001).
- f) Granted, the Respondent, not Mr. Bandera, offered Ms. Mandrici's letter into evidence. And had that letter contained factual statements or a clear admission demonstrating the subject property's true tax value, the Respondent might have waived any objection to the Board relying on that letter to support a finding for Mr.

Bandera. But the letter contains neither of those things. It therefore does not serve to cure Mr. Bandera's failure to relate his appraiser's value estimate to the subject property's value as of January 1, 1999.

- g) That being said, if the Respondent believes that the subject property's assessment is too high, nothing in this decision should be read as prohibiting the Respondent from reducing it. The Board simply finds that, under the applicable case law and administrative regulations, Mr. Bandera did not present sufficient evidence to rebut the assessment's presumption of correctness.

Conclusion

- 17. Mr. Bandera failed to make a prima facie case. The Board finds for the Respondent.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now determines that the assessment should not be changed.

ISSUED: December 20, 2007

Commissioner,
Indiana Board of Tax Review

IMPORTANT NOTICE

- 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>>