

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

Petition Nos.: 71-026-08-1-5-04024
71-026-09-1-5-01861
Petitioner: 908 Land Trust
Respondent: St. Joseph County Assessor
Parcel No.: 71-08-02-259-008.000-026¹
Assessment Years: 2008 and 2009

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

Procedural History

1. 908 Land Trust, by its trustee, Steven Kollar, filed Form 130 petitions contesting the subject property’s assessments for 2008 and 2009. On August 2, 2011, the St. Joseph County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determinations denying the Trust relief.
2. The Trust then timely filed Form 131 petitions with the Board, electing to have its appeals heard under the Board’s small claims procedures.
3. On September 19, 2013, the Board held a hearing on the Trust’s petitions through its designated administrative law judge, Patti Kindler (“ALJ”).²
4. Frank Agostino appeared as counsel for the St. Joseph County Assessor. Steven Kollar and Deputy Assessor Patricia St. Clair were sworn as witnesses.

Facts

5. The property consists of a home and a detached garage located at 908 Harrison in South Bend.
6. Neither the Board nor the ALJ inspected the property.
7. The PTABOA determined the following assessment for both 2008 and 2009:
Land: \$6,100 Improvements: \$32,100 Total: \$38,200

¹ 908 Land Trust appears to have listed the key number (018-1072-3057) on its Form 131 petitions.

² The ALJ consolidated the hearing with a hearing on a separate property owned by 1030 Land Trust. The Board is issuing a separate determination for each property.

8. The Trust requested an assessment of \$15,750 for each year.

Summary of the Parties' Contentions

9. The Trust's case:
 - a) The Trust bought the property for \$15,750 on April 4, 2006, after it had been listed for sale through the Multiple Listing Service ("MLS") for 90 days. At the time of the Board's hearing, the Trust was listing the property for sale at \$15,000. *Kollar testimony and argument; Pet'r Ex. 1.*
 - b) The property was in poor condition as illustrated by a list of code violations that were originally identified by South Bend's Department of Code Enforcement in 2002. Based on those violations, the department brought enforcement actions against the Trust in 2007 and again in April 2010. The Trust completed the necessary repairs in August 2010. *Kollar testimony; Pet'r Exs. 2-3.*
10. The Assessor's case:
 - a) The assessments reflect the property's market value-in-use for both years. The land value was established by the land commission in 1999 and the improvement value was based on the 2002 cost manual. Beginning in 2006, the assessment was adjusted annually based on the market. The Trust did not offer any probative evidence, such as an appraisal, a realtor's market analysis, or a sales-comparison analysis to show that the assessment was wrong. *St. Clair testimony; Agostino argument.*
 - b) The price that the Trust paid for the property in 2006 does not reflect its market value-in-use. The Trust bought the property through a foreclosure and the market for the property was not a "foreclosure market." *Kollar testimony.* Also, the sale occurred before the relevant valuation periods for the 2008 and 2009 assessment dates. *St. Clair testimony; Agostino argument.*

Record

11. The record includes the following:
 - a) The Form 131 petitions.
 - b) A digital recording of the hearing.
 - c) Exhibits:

Petitioner Exhibit 1: 2013 property record card,
Petitioner Exhibit 2: April 28, 2010 Order to Comply and Notice of Hearing from
Department of Code Enforcement in Case no. 03-294,
Interior Code List from Katrina Kester, dated December 6,

2002, April 4, 2007 Order to Comply and Notice of \$5,000 Civil Penalty and Repair Hearing from Department of Code Enforcement, Interior Code List from Katrina Kester, dated December 6, 2002, Exterior Code list from Katrina Kester, dated December 6, 2002, page 2 of 2 from undated document,

Petitioner Exhibit 3: Copies of 29 photographs of the home and garage dated May 1, 2007, and April 26, 2010,

Respondent Exhibit 1: 2008 Real Property Master tax sheet,

Board Exhibit A: Form 131 petitions for 2008 and 2009,

Board Exhibit B: Hearing notices,

Board Exhibit C: Hearing sign-in sheet,

Board Exhibit D: Notice of Appearance by Frank Agostino.

d) These Findings and Conclusions.

Objections

12. The Assessor objected to Mr. Kollar's testimony, arguing that Mr. Kollar offered nothing to show that he had any legal interest in the property or that he was authorized to practice before the Board. *Agostino argument.*
13. The Board overrules the objection. While phrased as an objection specifically to Mr. Kollar's testimony, it appears that the Assessor really contests the Trust's right to offer any evidence on grounds that it did not appear at the Board's hearing in person or by an authorized representative. Mr. Kollar, however, testified that he was the trustee for, and beneficiary of, the Trust. Indeed, he signed the Form 131 petitions in his capacity as trustee. Thus, he had both legal title to, and an equitable interest in, the property. *See* I.C. § 30-4-2-6(a) ("The trustee takes title to the trust property."); I.C. § 30-4-2-7(a) ("The beneficiary takes an equitable interest in the trust property."). While the Assessor pointed out that Mr. Kollar did not offer the trust agreement or any other documents to support his testimony, the Assessor offered nothing to contradict that testimony.
14. Next, the Assessor objected to Petitioner's Exhibit 2. That exhibit contains two orders from the South Bend Department of Code Enforcement in case number 03-294: one from 2007, and another from 2010. It also contains lists of interior and exterior code violations from an inspector named Katrina Kester. Those lists are dated December 6, 2002. Finally, the exhibit includes 29 photographs of the home and garage from 2007 and 2010. According to Mr. Kollar, the photographs and violation lists were served with the orders.
15. The Assessor made three objections to the exhibit: (1) that the violations listed were from 2002 and were therefore irrelevant to the home's condition in 2008 and 2009, (2) that the documents are hearsay because they contain assertions by employees from the

Department of Code Enforcement who did not testify at the Board's hearing, and (3) that the person who took the photographs did not authenticate them.

16. Once again, the Board overrules the Assessor's objections. First, while the violation lists are from 2002, Mr. Kollar testified, if only vaguely, that they identified ongoing conditions that were repaired in August 2010. The lists are therefore relevant. Second, although the Assessor rightly characterizes the violation lists as hearsay,³ the Board's procedural rules allow it to admit hearsay. If the opposing party objects to the hearsay and, it does not fall within a recognized exception to the hearsay rule,⁴ the Board cannot base its determination solely on that evidence. 52 IAC 2-7-3.
17. Finally, as to the Assessor's claim that that nobody authenticated the photographs, the Board notes that it does not strictly apply the rules of evidence in its proceedings. *See* 52 IAC 2-7-2(a)(2) ("The administrative law judge shall regulate the course of proceedings in . . . a manner without recourse to the rules of evidence."). But the rules of evidence exist for a reason—they promote determining the truth and justly resolving proceedings. *See* Ind. Evid. R. 102. Those rules therefore inform the Board's decisions about the admissibility and weight of evidence.
18. Photographs can be offered for two purposes. Most often, they are offered as demonstrative evidence, meaning that they are merely a "nonverbal method of expressing a witness' testimony. . . ." *Rogers v. State*, 902 N.E.2d 871, 876 (Ind. Ct. App. 2009). In those instances, a photograph is admissible only if the witness can testify that it truly and accurately represents a scene that the witness personally viewed. *Id.* Photographs may also be offered as substantive evidence to speak for themselves under the "silent witness theory." *Id.* In those cases, more stringent authentication requirements apply. *See id.*
19. The Trust did not authenticate the photographs under either theory. Nonetheless, while photographs might not be admissible under the rules of evidence, they were taken by an employee of a public agency. And Mr. Kollar independently, if vaguely, testified to the home's condition. The Board therefore admits the photographs. The Board, however, gives the photographs little or no weight and does not ultimately rely on them, or on any of the documents from Petitioner's Exhibit 2, in deciding the Trust's appeal.

Analysis

Burden of Proof

20. Generally, a taxpayer seeking review of an assessing official's determination must make a prima facie case proving both that the current assessment is incorrect and what the

³ The Indiana Rules of Evidence define hearsay as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Ind. Evid. R. 801(c).

⁴ Although Mr. Kollar pointed out that the documents were records of a public agency, he did not lay a foundation for admitting them under the public records and reports exception to the hearsay rule. *See* Evid. R. 803(8) (laying out requirements for admitting reports of a public office or agency).

correct assessment should 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). The taxpayer 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 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is taxpayer’s duty to walk the Indiana Board . . . through every element of the analysis”). If the taxpayer makes a prima facie case, the burden shifts to the respondent to offer evidence to impeach or rebut the taxpayer’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.

Discussion

21. The Trust proved that the property’s assessment should be reduced to \$15,800 for both assessment years under appeal. The Board reaches this conclusion for the following reasons:
 - a) Indiana assesses real property based on its true tax value, which the 2002 Real Property Assessment Manual defines 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 (2009)). A party’s evidence in a tax appeal must be consistent with that standard. *See id.* For example, a market-value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice (“USPAP”) often will be probative. *See id.; Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). A party may also offer actual construction costs, sales information for the subject or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.
 - b) For evidence to be relevant, however, the record must establish how it relates to the property’s market value-in-use as of the appropriate valuation date. *O’Donnell v. Dep’t of Local Gov’t Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the 2008 and 2009 assessment years, those valuation dates were January 1, 2007, and January 1, 2008, respectively. 50 IAC 21-3-3.
 - c) The Trust relies primarily on the fact that it bought the subject property for \$15,750 on April 4, 2006. A property’s sale price can be compelling evidence of its market value-in-use where the sale was an arm’s-length transaction between typically motivated parties and, as was the case here, the property was exposed to the market for a reasonable time. The Assessor, however, challenged the sale by pointing to Mr. Kollar’s testimony (1) that the Trust bought the property from the Federal Home Loan Mortgage Corporation (“Freddie Mac”) after Freddie Mac had acquired the property through foreclosure, and (2) that the market was not a “foreclosure market.” The Assessor apparently takes the position that when an entity acquires a property through foreclosure, the price for which the entity re-sells the property necessarily fails to

qualify as an indicator of the property's market value-in-use unless foreclosure-related sales constitute the typical market in the area. The Board disagrees. Instead, the key is what generally accepted appraisal practices require in the context of the particular sale. And the Assessor shed no light on that question.

- d) The Assessor also claims that the sale was too far removed from the relevant valuation dates to be probative of the subject property's true tax value for the years under appeal. Again, the Board disagrees. The sale occurred less than eight months before the January 1, 2007 valuation date that applies to 2008 assessments. While the sale is further removed from the January 1, 2008 valuation date that applies to 2009 assessments, the Assessor herself did not change the property's assessment between the 2007 and 2009 assessment years. Although not compelling, that fact is sufficient to at least prima facie relate the sale price to the property's value as of January 1, 2009. And the Assessor offered nothing to dispute that relationship.

Conclusion

22. Based on what it paid for the subject property, the Trust proved that the property's assessment should be changed to \$15,800⁵ for both assessment years under appeal.

Final Determination

The subject property's assessment must be changed to \$15,800 for 2008 and 2009.

ISSUED: December 11, 2013

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

⁵ Although the Board relies on the \$15,750 sale price from the transaction in which the Trust bought the property, assessments are rounded to the nearest \$100 increment. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, ch. 2 at 130 (incorporated by reference at 50 IAC 2.3-1-2 (2009)).

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 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 after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court Rules are available at <http://www.in.gov/judiciary/rules/tax/index.html>.