

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

Petition Nos.: 71-026-08-1-5-03765
71-026-09-1-5-01864
Petitioner: 909 Land Trust, c/o Steve Kollar
Respondent: St. Joseph County Assessor
Parcel No.: 018-1085-3557
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. The 909 Land Trust, by its trustee, Steve Kollar, filed Form 130 petitions contesting the subject property's assessments for 2008 and 2009. On April 18, 2011, the St. Joseph County Property Tax Assessment Board of Appeals (PTABOA) issued its determinations denying the Trust relief.
2. On May 2, 2011, Mr. Kollar timely filed Form 131 petitions with the Board, electing to have its appeals heard under the Board's small claims procedures.
3. On November 21, 2013, the Board held a hearing on the Trust's petitions through its designated Administrative Law Judge (ALJ) Jennifer Bippus. She did not inspect the property.¹
4. Steve Kollar appeared on behalf of the Trust. Attorney Frank Agostino appeared as counsel for the St. Joseph County Assessor. Mr. Kollar, Lisa Tiller, and County Assessor Rosemary Mandrici were sworn as witnesses.²

Facts

5. The property under appeal is a home located at 909 Allen Street in South Bend.
6. The PTABOA determined the following assessment for 2008 and 2009:

Land: \$1,200	Improvements: \$24,000	Total: \$25,200
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7. The Trust requested a total assessment of \$15,000 for each year.

¹ The ALJ consolidated the hearing with a hearing on a separate property owned by Land Trust. The Board is issuing a separate determination for each property.

² Ms. Tiller, who is apparently employed by Mr. Kollar, did not testify.

Record

8. The official record for this matter is made up of the following:
- a) Petitions for Review of Assessment (Form 131) with attachments,
 - b) A digital recording of the hearing,
 - c) Exhibits:
 - Petitioner Exhibit 1: Department of Housing and Urban Development (HUD) Settlement Statement, dated December 8, 2006.
 - Respondent Exhibit 1: 2013 subject property record card.
 - Board Exhibit A: Form 131 petitions for 2008 and 2009 with attachments,
 - Board Exhibit B: Hearing notice, dated August 29, 2013,
 - Board Exhibit C: Notice of Appearance for Frank Agostino,
 - Board Exhibit D: Hearing sign-in sheet.
 - d) These Findings and Conclusions.

Objection

9. Mr. Agostino, while not specifically objecting to the admission of the Petitioner's exhibit, expressed concern regarding "[t]he relevance and the weight given to the document, given that it is a foreclosure purchase. We would argue again that it is not relevant to the market value-in-use of the property, as it has not been established that this market is a foreclosure market." To the extent that the Board views this as an actual objection, the objection is overruled, as it goes to the weight of the evidence rather than its admissibility. The Petitioner's exhibit is admitted.

Contentions

10. Summary of the Petitioner's case:
- a) The subject property should be assessed at \$15,000 for each year. Mr. Kollar purchased the property from a bank, out of foreclosure, in December 2006 for \$10,000. An additional \$2,000 was paid in fees, making the total purchase price \$12,000. *Kollar argument; Pet'r Ex. 1.*
 - b) Mr. Kollar argues that according to the South Bend Tribune the market has experienced "about 3% growth rate that would make this property worth \$12,600 in 2008, and \$12,900 in 2009." *Kollar argument.*

c) The subject property was not rented in 2007, but it was rented in 2008 for \$500 a month. *Kollar testimony*.

11. Summary of the Respondent's case:

a) The assessments reflect the property's market value-in-use for each year. The land and improvement values were based on the rules established by the Department of Local Government Finance. *Mandrici testimony; Resp't Ex. 1*.

b) The Petitioner purchased the subject property out of foreclosure. In 2006 Wells Fargo foreclosed on the subject property for \$23,000. Prior to the foreclosure action, the previous owner purchased the property for \$59,000.³ *Kollar testimony on cross-examination; Resp't Ex. 1*.

c) Mr. Kollar did not offer an appraisal, market analysis, or any comparable sales. Further, Mr. Kollar did not establish that the property is located in a "foreclosure market." *Agostino argument*.

Burden of Proof

12. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that a property's assessment is wrong and what its 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). Nevertheless, the Indiana General Assembly enacted a statute that in some cases shifts the burden of proof:

This section applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal increased the assessed value of the assessed property by more than five percent (5%) over the assessed value determined by the county assessor or township assessor (if any) for the immediately preceding assessment date for the same property. The county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.

Ind. Code § 6-1.1-15-17.2.

13. Here, the parties agree that the assessed value of the subject property did not increase by more than 5% from 2007 to 2008 nor did it increase by more than 5% from 2008 to 2009. In fact, the assessment did not change from 2007 to 2009. Accordingly, the burden shifting provision of Ind. Code § 6-1.1-15-17.2 does not apply.

³ According to Respondent Exhibit 1, this sale took place in 2004.

Analysis

14. The Petitioner did not made a prima facie case for reducing the subject property's 2008 and 2009 assessments.
- a) Indiana assesses real property on the basis of its true tax value, which the Department of Local Government Finance (DLGF) has defined as the property's market value-in-use. To show market value-in-use, a party may offer evidence that is consistent with the DLGF's definition of true tax value. A market-value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice (USPAP) often will be probative. *Kooshtard Property VI v. White River Twp. Ass'r*, 836 N.E.2d 501, 506 n.6. (Ind. Tax Ct. 2005). A party may also offer actual construction costs for the property under appeal, sales information for that property or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.
 - b) Regardless of the method used to rebut the presumption of accuracy, one must explain how the evidence relates to market value-in-use as of the relevant valuation date. *O'Donnell v. Department of Local Government Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Township 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 mainly on the fact that it purchased the subject property for \$10,000, plus \$2,000 in expenses, on December 8, 2006. True, a property's sale price can be compelling evidence of its market value-in-use. The Assessor argues, and the Trust admits, the property was purchased from Wells Fargo Bank, out of foreclosure.
 - d) The Manual provides the following definition of "market value":

The most probable price (in terms of money) which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- i. The buyer and seller are typically motivated;
- ii. Both parties are well informed and advised and act in what they consider their best interests;
- iii. A reasonable time is allowed for exposure in the open market;
- iv. Payment is made in terms of cash or in terms of financial arrangements comparable thereto;
- v. The price is unaffected by special financing or concessions.

MANUAL at 10.

- e) It is apparent from the Manual's definition that a property purchased out of foreclosure may not reflect its market value for reasons such as a lack of exposure to the open market or the seller (i.e., the bank) not being typically motivated. Therefore, it is incumbent upon the party relying upon that sale to offer specific evidence to allay these concerns. *See Lake County Assessor v. U.S. Steel Corp*, 901 N.E.2d 85, 91-92 (Ind. Tax Ct. 2009) *review denied* (approving of the use of bankruptcy sales when taxpayer established that such sales were a market norm).
- f) The Petitioner offered nothing to show that the property was listed on the market and nothing to establish that foreclosure sales were the market norm for the subject property's neighborhood on January 1, 2007, and January 1, 2008.
- g) However, the Assessor did not simply rest on an assertion that foreclosure-related sales can never be used to show market value-in-use; she offered specific evidence to support the inference that the particular transaction at issue was not a market-value sale. Specifically, the Assessor pointed out that prior to the foreclosure action, the subject property sold for \$59,000. The Assessor, however, offered no details about this sale. Nonetheless, when taken as a whole, this fact raises questions about the reliability of the December 2006 sale price as a reflection of the property's market value. In fact, Mr. Kollar requested that the property be assessed at a value greater than the December 2006 purchase price. Under these circumstances, the price that the Trust paid for the property is not probative of its market value-in-use.
- h) Consequently, the Board finds that the Petitioner failed to make a prima facie case that the 2008 and 2009 assessments are incorrect. Where a Petitioner has not supported its claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. LTD v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-22 (Ind. Tax Ct. 2003).

Conclusion

15. The Board finds in favor of the Respondent.

Final Determination

In accordance with these findings and conclusions of law, the 2008 and 2009 assessments will not be changed.

ISSUED: April 11, 2014

Chairman, 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 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than 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's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.