

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

Petition No.: 52-011-07-1-4-00011
Petitioners: Ronald and Joan Achor
Respondent: Miami County Assessor
Parcel No.: 52-16-32-104-031.000-011
Assessment Year: 2007

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

Procedural History

1. The Petitioners initiated an assessment appeal with the Miami County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated September 19, 2008.
2. The PTABOA issued notice of its decision on October 30, 2008.
3. The Petitioners filed a Form 131 petition with the Board on November 25, 2008. The Petitioners elected to have their case heard according to the Board's small claim procedures.
4. The Board issued a notice of hearing to the parties dated July 7, 2009.
5. On August 27, 2009, Dalene McMillen, the duly designated Administrative Law Judge (ALJ) authorized by the Board under Ind. Code § 6-1.5-3-3, was present to conduct the hearing on the Form 131 petition. The Petitioners did not appear at the hearing.
6. On September 1, 2009, the Indiana Board of Tax Review issued an Order of Dismissal which provided the Petitioners ten days to file a written objection and request that the Order of Dismissal be vacated and set aside.
7. On September 15, 2009, the Petitioners sent a letter to the Board requesting the Order of Dismissal be vacated and set aside. On September 23, 2009, the Board vacated and set aside the Order of Dismissal.

8. The Board issued a notice of hearing to the parties dated September 23, 2009, rescheduling the hearing for October 15, 2009.¹
9. The Board held an administrative hearing on October 15, 2009, before the duly appointed Administrative Law Judge Dalene McMillen.
10. The following persons were present and sworn in at hearing:
 - a. For Petitioners: Joan Achor, Owner
Ronald Achor, Owner
 - b. For Respondent: Nancy Hardwick-Gates, Miami County Assessor
Sara McAuliffe, Miami County Deputy Assessor

Facts

11. The property is a 7,194 square foot general retail and utility storage building located at 104 – 106 North Jefferson, Converse, in Miami County.
12. The ALJ did not conduct an on-site inspection of the property under appeal.
13. For 2007, the PTABOA determined the assessed value to be \$13,800 for the land and \$27,900 for the improvements, for a total assessed value of \$41,700.
14. The Petitioners requested an assessed value of \$4,830 for the land and \$24,400 for the improvements, for a total assessed value of \$29,230.

Issues

15. Summary of the Petitioners' contentions in support of an alleged error in their assessment:
 - a. The Petitioners contend their property is assessed for more than its market value-in-use based on an appraisal. *J. Achor testimony*. In support of their position, the Petitioners submitted a summary appraisal report prepared by Steven C. Bennet of Bennet Appraisals, Auctions & Real Estate. *Petitioner Exhibit 1*. Mr. Bennet is an Indiana Certified Appraiser. *Id.* In his appraisal report, Mr. Bennet estimated the property's value to be \$34,500 as of September 15, 2008. *Id.*
 - b. Similarly, the Petitioners argue that their property is over-assessed based on its sale price. *J. and R. Achor testimony*. Mrs. Achor testified that the Petitioners entered into an agreement to sell the subject property in July of 2009, for \$20,000. *J. Achor testimony*.

¹ Both parties waived the 30 day notice of hearing as required by Ind. Code § 6-1.1-15-4 (b).

- c. Finally, the Petitioners contend the building is old and in poor condition. *J. Achor testimony*. In support of their contention, the Petitioners submitted five interior and exterior photographs of the structure. *Petitioner Exhibit 2*. Mrs. Achor argues that the deteriorated condition of the property adversely impacts its value. *J. Achor testimony*.²

16. Summary of the Respondent's contentions in support of the assessment:

- a. The Respondent argues the Petitioners' appraisal suffers from major flaws and should be given little weight. *McAuliffe testimony*. According to the Respondent's witness, the Petitioners' appraiser used sales from 1998, 2007 and 2008 in his sales comparison approach. *Respondent Exhibit 2-1; McAuliffe testimony*. Ms. McAuliffe argues however that local officials used sales occurring in 2005 and 2006 to establish assessed values for the March 1, 2007, assessment. *Respondent Exhibit 2; McAuliffe testimony*. Moreover, Ms. McAuliffe argues, the appraiser used a July 18, 1998, sale in the amount of \$35,000 in his appraisal when the same property sold on February 4, 2008, for \$39,900. *Respondent Exhibits 2-1 and 2-1A; McAuliffe*. Similarly, the Respondent's witness argues that all of the Petitioners' sales are far removed from the January 1, 2006, valuation date at issue in this appeal. *Id.*
- b. The Respondent further contends the Petitioners' property is correctly assessed at \$41,700. *McAuliffe testimony*. In support of this position the Respondent submitted sales and assessment information from the 2006 sales ratio study for two properties located in the area of the Petitioners' property. *Petitioner Exhibit 3*. According to Ms. McAuliffe, the average price for a commercial structure located in the Petitioners' neighborhood was \$41.79 per square foot while the Petitioners' property was assessed for only \$9.72 per square foot. *McAuliffe testimony; Id.* Thus, Ms. McAuliffe concludes, the subject property is assessed below the average assessment in its area. *Id.*

Record

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

- a. The Form 131 petition and related attachments.
- b. The digital recording of the hearing.
- c. Exhibits:

² The Petitioners also appear to be arguing that the property's assessed value for 2007 should roll forward for ten years. *J. Achor testimony*. The Board, however, only has the Petitioners' 2007 appeal before it and therefore makes no ruling on any other assessment year. Despite this, the Board notes that Indiana Code § 6-1.1-4-4.5 requires annual adjustments of the assessed value of real property. Assessors are required to adjust or "trend" property values every year to reflect the changing values of property. *See* Ind. Code § 6-1.1-4-4.5; 50 IAC 21-1-1.

Petitioner Exhibit 1 – Summary appraisal report prepared by Steven C. Bennet, Bennet Appraisals, Auctions & Real Estate, dated September 15, 2008,

Petitioner Exhibit 2 – Photographs of the subject property,

Respondent Exhibit 1-1 – Property record card for Parcel No. 52-16-32-104-031.000-011 located at 104 North Jefferson Street, Converse, subsequent to the PTABOA Form 115 assessment,

Respondent Exhibit 1-2 – Property record card for Parcel No. 52-16-32-104-031.000-011 located at 104 North Jefferson Street, Converse, based on the property's original assessment,

Respondent Exhibit 2 – Respondent's response to the Petitioners' appraisal,

Respondent Exhibit 2-1 – Comparable sales analysis page from Petitioners' appraisal,

Respondent Exhibit 2-1A – Property record card for Parcel No. 52-16-32-104-018.000-011 located at 110 West Wabash Street, Converse,

Respondent Exhibit 2-2 – Summary appraisal report prepared by Steven C. Bennet, Bennet Appraisals, Auctions, & Real Estate, dated September 15, 2008,

Respondent Exhibit 3 – Respondent's sales ratio study argument,

Respondent Exhibit 3-1 – Miami County 2007 Commercial Improved Spreadsheet for neighborhood 9902,

Respondent Exhibit 3-2 – Respondent's assessed value and sales comparison from the ratio study spreadsheet,

Respondent Exhibit 3-3 – Property record card for Parcel No. 52-16-32-104-028.000-011 located at 110 North Jefferson Street, Converse,

Respondent Exhibit 3-4 – Property record card for Parcel No. 52-16-32-105-009.000-011 located on Jefferson Street, Converse,

Board Exhibit A – Form 131 petition with attachments,

Board Exhibit B – Notice of Hearing, dated July 7, 2009,

Board Exhibit C – Hearing sign-in sheet, dated August 27, 2009,

Board Exhibit D – Proof of Mailing, dated July 7, 2009,

Board Exhibit E – Notice of Hearing, dated September 23, 2009,

Board Exhibit F – Hearing sign-in sheet, dated October 15, 2009.

d. These Findings and Conclusions.

Analysis

18. 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 Township 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 Township 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.
19. The Petitioners failed to provide sufficient evidence to establish a prima facie case for a reduction in their assessed value. The Board reached this decision 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, for the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL (the MANUAL) (incorporated by reference at 50 IAC 2.3-1-2). The appraisal profession traditionally has used three methods to determine a property's market value: the cost approach, the sales comparison approach, and the income approach to value. *Id.* at 3, 13-15. Indiana assessing officials generally use a mass appraisal version of the cost approach, as set forth in the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (incorporated by reference at 50 IAC 2.3-1-2) (the GUIDELINES).
 - 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 Township Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005); *P/A builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 2006). A taxpayer may rebut the presumption, however, 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. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer actual construction costs, sales information for the subject property or comparable properties and any other information compiled according to generally accepted appraisal practices. MANUAL at 5.

- c. Regardless of the method used to rebut an assessment's presumption of accuracy, a party must explain how its evidence relates to the subject property's 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 March 1, 2007, assessment date, the valuation date is January 1, 2006. 50 IAC 21-3-3.
- d. Here, the Petitioners submitted an appraisal prepared by an Indiana licensed appraiser valuing the property at \$34,500 as of September 15, 2008. *Petitioner Exhibit 1*. The Petitioners' appraisal, however, is substantially removed from the January 1, 2006, valuation date. The Petitioners did not present any evidence that valued the property as of the statutory valuation date as required by *Long*. Nor did they present any evidence of how their September 15, 2008, appraised value related to the January 1, 2006, valuation date.
- e. The Petitioners similarly argue that the property is over-valued based on their sales price of the property. *J. Achor testimony*. As with their appraisal, however, the Petitioners did not establish how their sale price of \$20,000 in July 2009, relates to the value of the property as of January 1, 2006. *See Long*, 821 N.E.2d at 471. The Petitioners' sales agreement is more than three years from the required valuation date. Thus, the Petitioners failed to raise a prima facie case that their assessment is incorrect.
- f. Finally, the Petitioners contend that their building is in poor condition. *J. Achor testimony*. The Board interprets this to be an argument that the condition of the structure was improperly assessed. A condition rating is a "rating assigned each structure that reflects its effective age in the market." *See GUIDELINES*, app. B, at 5. A condition rating is determined by relating the structure to comparable structures within the subject property's neighborhood. While Mrs. Achor testified that their building has not been properly maintained, the Petitioners presented no evidence which would justify a determination that the structure's condition rating is incorrect. Conclusory statements, unsupported by factual evidence are not sufficient to establish an error in assessment. *Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1119, 1120 (Ind. Tax Ct. 1998).

- g. Where the taxpayer fails to provide probative evidence 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).

Conclusion

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

Final Determination

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

ISSUED: _____

Chairman,
Indiana Board of Tax Review

Commissioner,
Indiana Board of Tax Review

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>.