

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

Petition No.: 71-026-06-1-5-09189
Petitioner: Antonio Bastida
Respondent: St. Joseph County Assessor
Parcel No.: 1840903319
Assessment Year: 2006

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

Procedural History

1. On November 20, 2007, Antonio Bastida filed a Form 130 petition contesting the subject property’s 2006 assessment. On January 15, 2009, the St. Joseph County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination reducing the assessment, but not to the value that Mr. Bastida had requested.
2. Mr. Bastida then timely filed a Form 131 petition with the Board. He elected to have his appeal heard under the Board’s small claims procedures.
3. On October 20, 2010, the Board held an administrative hearing through its designated administrative law judge, Jennifer Bippus (“ALJ”).
4. Mr. Bastida was sworn in and testified. Frank Agostino appeared as counsel for the St. Joseph County Assessor.

Facts

5. The subject property contains a single family residence located at 734 S. Edison Avenue, in South Bend.
6. Neither the Board nor the ALJ inspected the subject property.
7. The PTABOA determined the following values for the subject property:
Land: \$1,600 Improvements: \$31,400 Total: \$33,000
8. On his Form 131 petition, Mr. Bastida requested the following values:
Land: \$1,600 Improvements: \$18,000 Total: \$19,600

Parties' Contentions

9. Summary of Mr. Bastida's contentions:
- a) The subject property is assessed too high based on what Mr. Bastida paid for it. *Bastida testimony*. Mr. Bastida bought the property for \$15,500 on October 5, 2006. *Id; Pet'r Ex. D*. To further support his position, Mr. Bastida offered a comparative market analysis prepared by Francee Foster, a realtor with At Home Realty Group in South Bend. *Bastida testimony; Pet'r Ex. B*. Ms. Foster prepared her analysis in February 2009 and recommended a sale price of \$11,100. *Id*. According to Mr. Bastida, Ms. Foster's analysis shows that the subject property's value continues to decline. *Bastida argument*. The neighborhood had many vacant properties Mr. Bastida bought the subject property, and that has not changed. Those vacancies affect the subject property's value. *Bastida testimony*.
 - b) Mr. Bastida did not understand why the subject property's assessment fluctuated from year to year. He offered a copy of a Form 115 determination fixing the subject property's March 1, 2007 assessment at \$24,500. *Pet'r Ex. A*. That is less than the property's 2006 assessment of \$33,000. The assessment then went up to \$52,600 for 2008-2010. *Bastida testimony; Pet'r Ex. C*.
10. Summary of the Assessor's contentions:
- a) The valuation date for March 1, 2006 assessments was January 1, 2005. Mr. Bastida's evidence did not address the subject property's value as of that valuation date. *Agostino argument*.
 - b) As support for the subject property's assessment, the Assessor pointed to the property's record card, which shows other sales in addition to Mr. Bastida's purchase: a March 26, 2004 sale for \$59,000 and an October 11, 2006 sale for \$33,750. *Agostino argument; Resp't Ex. 1*. According to the card, that second sale was reported on the same day as the transaction in which Mr. Bastida bought the property for \$15,500. *See id; Agostino argument*. As a result of Mr. Bastida's appeal, the PTABOA lowered the subject property's assessment from \$55,100 to \$33,000

Record

11. The official record for this matter is made up of the following:
- a) The Form 131 petition,
 - b) A digital recording of the hearing,
 - c) Exhibits:

Petitioner Exhibit A: Form 115 determination for March 1, 2007,

Petitioner Exhibit B: Comparative market analysis for the subject property, dated February, 2009,
Petitioner Exhibit C: Subject property record card,
Petitioner Exhibit D¹: Settlement statement dated October 6, 2006.

Respondent Exhibit 1: Subject property record card.

Board Exhibit A: Form 131 petition,
Board Exhibit B: Hearing notice,
Board Exhibit C: Notice of Appearance for Frank Agostino,
Board Exhibit D: Hearing sign-in sheet.

d) These Findings and Conclusions.

Analysis

12. A petitioner seeking review of an assessing official's determination must make a prima facie case proving both that the current assessment is incorrect and specifically what the 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).
13. 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 1018, 1022 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis”).
14. Once the petitioner makes a prima facie case, the burden shifts to the respondent to impeach or rebut the petitioner'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.
15. Mr. Bastida failed to prove that the subject property's assessment should be reduced. 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 (2006)). Appraisers traditionally have used three methods to determine a property's value: the cost, sales comparison, and income approaches. *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.

¹ In the recording of the hearing, the ALJ and counsel for the Assessor both refer to the settlement statement as Petitioner Exhibit 4. Mr. Bastida, however, labeled the settlement statement as Petitioner Exhibit D.

- 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 Ct. 2006). A taxpayer, however, 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. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 506 n. 6. A taxpayer 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.
- c) Regardless of the method used to rebut an assessment's presumed accuracy, a party must explain how its evidence relates to the appealed property's market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006), *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, that evidence lacks probative value. *Id.* For March 1, 2006 assessments, the valuation date was January 1, 2005. 50 IAC 21-3-3 (2006).
- d) Mr. Bastida relied primarily on Ms. Foster's comparative market analysis and the price he paid for the subject property. But Ms. Foster estimated the property's value in February 2010, more than five years after the relevant January 1, 2005 valuation date. And Mr. Bastida bought the property more than 1½ years after that valuation date. Thus, Mr. Bastida needed to explain how his evidence related to the subject property's market value-in-use as of January 1, 2005. Because he failed to do so, both Ms. Foster's analysis and the October 2006 sale price lack probative value.
- e) Ms. Foster's analysis was so remote from the valuation date that the Board need not say anything further about it. By comparison, Mr. Bastida's purchase of the subject property was much closer to the valuation date. But even if Mr. Bastida had related the sale price to the valuation date, his failure to elaborate on the circumstances of the sale would have deprived that sale price of probative weight.
- f) 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 knowledgeably, 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:

- The buyer and seller are typically motivated;
- Both parties are well informed and advised and act in what they consider their best interests;
- A reasonable time is allowed for exposure in the open market;

- Payment is made in terms of cash or in terms of financial arrangements comparable thereto;
- The price is unaffected by special financing or concessions.

MANUAL at 10.

- g) Here, the subject property was involved in another sale either on the same day as, or at least very close to, the date on which Mr. Bastida bought the property. The buyer in that other transaction paid \$33,750, or more than double what Mr. Bastida paid. And the property sold for \$59,000 approximately 2½ years earlier. Under those circumstances, the Board cannot simply assume that all the requisites to a market value transaction were present when Mr. Bastida bought the subject property. Mr. Bastida needed to offer more information about the transaction.
- h) Mr. Bastida also pointed to the many vacant properties in his neighborhood. While those vacancies might affect property values, one cannot simply point to vacant properties and say that any particular property within the same neighborhood is overvalued. Mr. Bastida needed to offer something to help quantify the effect of the vacant properties on the subject property's market value-in-use. Without that additional information, the mere fact that subject property's neighborhood may be filled with vacant properties does nothing to show that the subject property's assessment is wrong.
- i) Finally, Mr. Bastida's comparison of the subject property's 2006 and 2007 assessments does not show that the property was incorrectly assessed. Because each tax year stands alone, evidence of a property's assessment in one tax year is not necessarily probative of its true tax value in a different tax year. *Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (citing *Glass Wholesalers, Inc. v. State Bd. of Tax Comm'rs*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991)).

Conclusion

16. Because Mr. Bastida did not offer probative evidence to show the subject property's market value-in-use as of the relevant valuation date, he failed to meet his burden of proof. The Board therefore finds for the Assessor.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now affirms the assessment.

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>.