

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

Petition: 49-901-06-1-4-20836
Petitioners: Harsukh & Parul Bosamia
Respondent: Marion County Assessor
Parcel: 9012191
Assessment Year: 2007

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

Procedural History

1. The Petitioners initiated an assessment appeal for the 2006 assessment regarding the subject property with the Marion County Property Tax Assessment Board of Appeals (PTABOA) by written document on December 9, 2008.
2. The PTABOA mailed a Form 115 decision on July 23, 2010, but that decision contained no assessed value numbers. It merely stated, “Appeal was filed late. Based on the fact that the Petitioner failed to appeal for a hearing on late filing, there is not sufficient reason for the appeal to proceed.”
3. The Petitioners appealed the decision to the Board by filing a Form 131 petition on August 16, 2010. At a preliminary hearing on March 22, 2011, the Respondent acknowledged that although the Petitioners filed late for a 2006 appeal, their filing was timely for the 2007 assessment. Therefore, while this appeal was initially identified as being for the 2006 assessment, at this point it will be considered as an appeal for the 2007 assessment as authorized by Ind. Code § 6-1.1-15-1(e). Because of this change in the assessment year, both parties agreed to continue the Board’s hearing until April 11, 2011.
4. The Petitioners elected to have this case heard according to small claims procedures.
5. Administrative Law Judge Paul Stultz held the Board’s administrative hearing as agreed on April 11, 2011. He did not inspect the property.
6. The following persons were sworn as witnesses:
For the Petitioners – Harsukh Bosamia,
Parul Bosamia,
For the Respondent – Samantha Steele,
Gabe Deaton.

Facts

7. The subject property is a fast food restaurant located at 3337 Georgetown Road in Indianapolis.
8. The 2007 assessment is \$61,600 for land and \$74,400 for improvements (total \$136,000).
9. The Petitioners claimed the total assessed value should be \$61,000.

Record

10. The official record for this matter is made up of the following:
 - a. Petition for Review of Assessment (Form 131) with attachments,
 - b. Notice of Hearing,
 - c. Digital recording of the hearing,
 - d. Petitioner Exhibit 1 – Average list price, average square footage, average semi-annual property tax liability, and the average semi-annual property tax liability per square foot for eight properties,
Petitioner Exhibit 2 – Calculation of value based on price per square foot from a nearby sale (Comp 1),
Petitioner Exhibit 3 – Realtor’s data for seven properties,
Petitioner Exhibit 4 – Statement from the Petitioners,
Respondent Exhibit 1 – Sales in the subject property’s neighborhood from January 22, 2007, through July 31, 2008,
Respondent Exhibit 2 – Sales in the subject property’s neighborhood from August 1, 2008, through October 21, 2010,
Respondent Exhibit 3 – Aerial photograph of the Georgetown Road area showing the location of the subject property with its land and improvement assessed values noted,
Respondent Exhibit 4 – Aerial photograph of the Georgetown Road area north of the area shown in Exhibit 3,
Respondent Exhibit 5 – Status summary for the Petitioners’ 2006, 2007, 2008, 2009, and 2010 appeals regarding the subject property,
Respondent Exhibit 6 – Form 11 C/I for the subject property (Notice of new assessment effective March 1, 2007),
Board Exhibit A – Form 131 Petition,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Sign in Sheet,
 - e. These Findings and Conclusions.

Contentions

11. Summary of the Petitioners' case:

- a. The Petitioners calculated the average list price, average square footage, average semi-annual property tax payment and average semi-annual property tax payment per average square foot for eight properties that are the same size or bigger than the subject property. This information is from 2010 listings, not actual sales data. The average list price (Column A) is \$64,975. The average square footage (Column B) is 2,252. The average semi-annual tax (Column C) is \$838.81. Based on those numbers, the average semi-annual property tax payment per square foot is \$0.37. The tax liability for the subject property is well above that amount. Furthermore, the assessed values for those properties are less than the assessed value of the subject property. *H. Bosamia testimony; Pet'r Ex .1.*
- b. The building next to subject property was listed on the market for \$375,000. It sold in August 2005 for \$360,000. That selling price is \$46.15 per square foot. At \$46.15 per square foot, the subject property should be valued at \$59,441. *H. Bosamia testimony; Pet'r Ex. 2.*
- c. Listings obtained from realtors for seven other properties show those properties are not selling for their list price. They show the subject property's land value of \$61,000 is not supported. *H. Bosamia testimony; Pet'r Ex .3.*
- d. The vacant lot next to the subject property is four times larger than the subject property. Its owners have been attempting to sell it for \$25,000 and have been unsuccessful, which also shows a land value of \$61,000 for the subject property is not justified. *P. Bosamia testimony.*
- e. The subject property was purchased for \$70,000 in 2002, when the market was higher. Now businesses along 38th Street such as Kroger, Burger King, and Olive Garden have closed due to the high unemployment, high crime rates, or high property taxes. With the current market, the subject property might sell for \$60,000. *P. Bosamia testimony; Pet'r Ex. 4.*

12. Summary of the Respondent's case:

- a. Sales from 2007 to 2010 do not support a decrease in subject assessment. *Steele testimony; Resp't Ex. 1, 2.*
- b. The first aerial shows the subject property and its surrounding area. The subject property is located approximately in the middle of the map. Its assessed land value of \$61,600 is shown in red numbers. Surrounding assessed values for land are shown in red. Sales prices of four properties in the area are shown in yellow. The second aerial shows additional properties to the north. Again, land assessed

values are shown in red and actual sales prices are shown in yellow. *Steele testimony; Resp't Ex. 3, 4.*

- c. The Petitioner has not presented sufficient market evidence to support a change in the assessment. *Steele testimony.*

Analysis

13. 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 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).
14. In making a case, the taxpayer must explain how each piece of evidence is relevant to the 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”).
15. The Petitioners did not make a case for any assessment change because:
 - a. Real property is assessed based on its "true tax value," which means "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." Ind. Code § 6-1.1-31-6(c); 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach. *Id.* at 3. Indiana promulgated Guidelines that explain the application of the cost approach. The value established by use of the Guidelines, while presumed to be accurate, is merely a starting point. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut that presumption. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.
 - b. Much of the Petitioners’ case was an attempt to compare the property taxes per square foot or the selling price per square foot of other properties with their own property. The evidence and argument they presented on that basis, however, was ineffective and did not help to prove what a more accurate market value-in-use might be. In order to use a comparison approach as evidence, the proponent must establish the comparability of the properties. Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of comparability. A party seeking to rely on a comparison approach must explain the characteristics of the subject property and how those characteristics compare to those of the purportedly comparable properties as well

as how any differences between the properties affect the relative market values-in-use. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). But in this case the Petitioners failed to provide the kind of facts and explanation that are required to draw any legitimate conclusions from comparing their property to the purported comparables.¹

- c. Furthermore, comparing tax liabilities does nothing to establish whether an assessed valuation is accurate or inaccurate. Property tax liability can vary depending on deductions or exemptions. The tax liability will also vary with the tax rate of the taxing unit where each property is located. And here the Petitioners' purported comparables are scattered all around Indianapolis. Their comparison of property tax liability does not demonstrate how the relevant values compare.
- d. The Petitioners presented listings for seven other properties that are being offered for sale. They are not selling at those asking prices. The Petitioners failed to establish any basis of comparability. But even if those properties were comparable, an asking price alone has no probative value where there is virtually no evidence about what marketing attempts have taken place, the length of time on the market, and many other possibly significant facts. (Perhaps it is normal for properties to sell for something less than asking price.) Their failure to sell at list price does not establish what a more accurate assessment might be.
- e. A vacant lot next to subject property is for sale and it is four times bigger than the subject property. According to the Petitioners, the bigger property cannot be sold for its list price of \$25,000 and this situation shows their land value of \$61,000 is not justified. Again, the mere fact that it has not sold for the asking price does not help prove the Petitioners' case. Without knowing how long the property has been on the market and what kind of market efforts have taken place, it is impossible to draw any legitimate conclusion about the value of the subject property based on that neighbor.
- f. The Petitioners testified that businesses in their neighborhood have been closing due to high unemployment and a high crime rate in the area—points the Respondent did not attempt to dispute and points that almost certainly have some effect on the value of the subject property for its current use as a fast food restaurant. But in making their case, the Petitioners needed to do more than merely prove the existence of such problems. They testified that it would be difficult to sell the subject property and they would be lucky to get even \$60,000 for it. They failed, however, to present substantial, probative evidence to establish how they came up with that number. There is no evidence that their \$60,000 value figure was compiled in accordance with generally accepted appraisal principles. There is no substantial evidence or explanation supporting

¹ One of the comparables is the building next to the subject property. That location might be a start toward establishing comparability, but the Petitioners provided no further meaningful analysis regarding even that property.

the credibility of that number. Consequently, their conclusory \$60,000 figure does not constitute probative evidence for reducing the assessment.

- g. In several cases we have recognized that the actual purchase price of a property on the open market can be among the best kind of evidence to prove its actual market value-in-use. The subject property was purchased for \$70,000 in August 2002, but virtually nothing about the terms and conditions of that transaction was presented. More importantly, the required valuation date for a 2006 assessment was January 1, 2005. 50 IAC 21-3-3. (The required valuation date changes for every assessment year.) To be relevant, the record must somehow establish how evidence relates to market value-in-use as of the required valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 864 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long*, 821 N.E.2d at 472. The Petitioners failed to establish how their 2002 purchase price might relate to value as of the required valuation date. Therefore, what they paid for the subject property does not help to prove what a more accurate assessed value might be.
- h. When taxpayers fail 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); *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

Conclusion

- 16. The Petitioners failed to make a prima facie case. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings and conclusions, the 2007 assessment will not be changed.

ISSUED: _____

Commissioner, Indiana Board of Tax Review

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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, 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>>