

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

Petition: 84-009-06-1-5-00075
Petitioners: Ken K. & Carol A. Crain
Respondent: Vigo County Assessor
Parcel: 84-07-19-330-011.000-009
Assessment Year: 2006

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

Procedural History

1. The Petitioners initiated an assessment appeal with the Vigo County Property Tax Assessment Board of Appeals (PTABOA) by filing a Form 130 dated May 01, 2007.
2. The PTABOA issued notice of its decision on March 31, 2008.
3. The Petitioners appealed to the Board by filing a Form 131 on April 14, 2008. They elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing dated April 14, 2009.
5. Administrative Law Judge Paul Stultz held the Board's administrative hearing on June 17, 2009. He did not conduct an inspection of the property.
6. The following persons were present and sworn as witnesses at the hearing:
For the Petitioners – Ken Crain, property owner,
For the Respondent – Jennifer Becker, a certified tax representative.

Facts

7. This is a case about a residential property located at 4780 Woodshire Drive in Terre Haute.
8. The PTABOA determined the assessed value is \$27,100 for land and \$241,500 for improvements (total \$268,600).
9. The Petitioners requested an assessed value of \$23,000 for land and \$180,900 for improvements (total \$203,900).

Contentions

10. Summary of the Petitioners' case:

- a. The Petitioners bought the subject property for \$218,000 on October 1, 1999. Its 2006 assessment is \$268,600. That assessment is greater than the market value of the property. *Crain testimony.*
- b. The property across the street from the subject property at 108 East Larwin Street (Comp 4) sold for \$222,000 in September 1999, but now the subject property is being assessed for \$57,000 more than Comp 4. *Crain testimony; Pet'r Ex. 4.*
- c. The property at 4779 Woodshire Drive (Comp 1) is assessed for only \$175,000. *Crain testimony; Pet'r Ex. 1.*
- d. Other properties in the neighborhood have sold for less than the assessed value of the subject property. The property at 4749 Summerset Drive (Comp 2) sold for \$187,400 in March 2005. The property at 4756 Summerset Drive (Comp 3) sold for \$164,000 in May 2006. These sales were approximately \$100,000 less than the subject property's assessed value. *Crain testimony; Pet'r Ex. 2, 3, 5, 6, 7, 8.*
- e. The subdivision where the subject property is located is unique because smaller, older homes, some worth only \$75,000, are in the front section. Those properties have single garages (or no garages) and people park on the street. The subject property is located in the back section where the homes are larger. Water stands in the street. Cars park in the street. The subject property is on a corner lot with no privacy. These factors impact value. *Crain testimony.*
- f. Assessments should be based on the selling prices of houses in the neighborhood. The assessment should be fair and equitable within the neighborhood, but properties with equal square footage have sold for \$100,000 less than the subject property's assessed value. *Crain testimony.*

11. Summary of the Respondent's case:

- a. The Respondent "recommended" that the grade should be lowered to C+2 and the assessed value should be \$255,400. *Becker testimony; Resp't Ex. 4.*
- b. Assessments should be based on sales data. The trending report shows the data and details of the sales analyzed to develop the trending factor for the neighborhood. It used sales from 2004 and 2005, which was required for the 2006 assessment. It used twenty-nine sales in the subject property's neighborhood. The assessment/sale ratios for those properties ranged from 0.7226 to 1.100. The trending factor of 1.100 was used to equalize the assessed values of the neighborhood. Thus, the subject property was assessed according to market trends. *Becker testimony; Resp't Ex. 5.*

- c. The Petitioners did not support their contentions. They offered comparables, but did not establish how those properties compared to the subject. One sale offered as a comparable is not really comparable because it has 2,415 square feet compared to the subject property's 3,697 square feet. *Becker testimony.*
- d. The Petitioner did not present evidence showing how much poor street drainage, parking issues, or being on a corner lot affect value. *Becker testimony.*

Record

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

- a. The Petition with attachments,
- b. A digital recording of the hearing,
- c. Petitioner Exhibit 1 – Assessment information for 4779 Woodshire Drive,
 Petitioner Exhibit 2 – A partial sales disclosure form and assessment information for 4749 Summerset Drive,
 Petitioner Exhibit 3 – Assessment information for 4756 Summerset Drive,
 Petitioner Exhibit 4 – Assessment information for 108 East Larwin Street,
 Petitioner Exhibit 5 – Assessment information for 4756 Summerset Drive¹,
 Petitioner Exhibit 6 – Partial sales disclosure form for 4756 Summerset Drive,
 Petitioner Exhibit 7 – Partial sales disclosure form for 4749 Summerset Drive²,
 Petitioner Exhibit 8 – Assessment information for 4749 Summerset Drive³,
 Petitioner Exhibit 9 – Aerial map,
 Respondent Exhibit 1 – Respondent cover sheet,
 Respondent Exhibit 2 – Summary of testimony,
 Respondent Exhibit 3 – Power of Attorney,
 Respondent Exhibit 3a – Power of Attorney Certification,
 Respondent Exhibit 4 – Subject property record card and aerial photograph,
 Respondent Exhibit 5 – Supporting data for neighborhood trending factor,
 Respondent Exhibit 6 – Respondent signature and attestation sheet,
 Respondent Exhibit 7 – Trending data for the neighborhood's three highest sales,
 Board Exhibit A – Form 131 Petition for Review of Assessment,
 Board Exhibit B – Notice of Hearing,
 Board Exhibit C – Hearing Sign In Sheet,
- d. These Findings and Conclusions.

¹ Petitioner Exhibit 5 duplicates Petitioner Exhibit 3.

² Petitioner Exhibit 7 duplicates a portion of Petitioner Exhibit 2.

³ Petitioner Exhibit 8 duplicates a portion of Petitioner Exhibit 2.

Analysis

13. 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 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).
 - 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 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”).
 - c. Once a Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the case. *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 evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
14. The Petitioners failed to prove that the current assessment is wrong or what a more accurate assessment might be. This conclusion was arrived at for the following reasons:
- a. Real property is assessed on the basis of its “true tax value,” which does not mean fair market value. It 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); REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). There are three generally accepted techniques to calculate market value-in-use: the cost approach, the sales comparison approach, and the income approach. The primary method for assessing officials to determine market value-in-use is the cost approach. MANUAL at 3. Indiana promulgated a series of guidelines that explain the application of the cost approach. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A. 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 5.⁴

⁴ Consequently, the Respondent’s focus on the process of mass assessments according to the Guidelines and how the 2006 assessments were properly updated with “trending” for the subject property’s neighborhood would have little or no probative value if the taxpayer presented actual construction costs, sales information regarding the subject or comparable properties, appraisals, or any other information compiled according to generally accepted appraisal principles.

- b. A 2006 assessment must reflect the value of the property as of January 1, 2005. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. Any evidence of value relating to a different date must also have an explanation about how it demonstrates, or is relevant to, the value as of that required valuation date. *See Long*, 821 N.E.2d at 471.
- c. The problems with drainage, parking, and lack of privacy are factors that could affect value. The mere existence of these facts, however, does not prove what a more accurate valuation of the subject property might be. The Petitioners failed to quantify the loss in value due to any of these reasons. Therefore, none of these points helped the Petitioners prove their case.
- d. The Petitioners tried to compare the assessments and/or sale prices of four neighboring properties to their assessment. But they failed to establish sufficient facts to truly compare the properties and they failed to deal with how any differences affect the relative values of the properties.⁵ Without specific facts and analysis about the similarities and differences of the properties, such evidence is not probative. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005); *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005) (stating that the parties are responsible for explaining the characteristics of the subject property, how those characteristics compared to those of the purportedly comparable property, and how any differences affected the relevant market value-in-use of the properties). Unsupported conclusions cannot be the basis for any legitimate comparison or any legitimated conclusion about what a more accurate valuation for the subject property might be.
- e. The Petitioners also argued that it did not make sense that in 1999 the subject property sold for \$4,000 less than Comp 4 and now the subject property is assessed for \$57,000 more than Comp 4. While such a discrepancy might indicate a problem, without additional facts and analysis, it is impossible to determine what the reason for the discrepancy might be. The Petitioners want to draw the conclusion most favorable to their case—that their current assessment is too high. It is just as possible, however, that the current assessment for Comp 4 is too low. Or perhaps the 1999 sale prices were not a good indication of market value. There is simply no evidence to determine which conclusion might be correct. Furthermore, even if the 1999 sales establish that Comp 4 should be assessed for more than the subject property, the Petitioners failed to show how

⁵ The property record card for the subject property (*Resp't Ex. 4*) and similar data for Comp 1 (*Pet'r Ex. 1*), Comp 2 (*Pet'r Ex. 2*), Comp 3 (*Pet'r Ex. 3*), and Comp 4 (*Pet'r Ex. 4*) are contained in the evidence. Even though it might have been possible to make some rudimentary comparisons of the properties based on such limited data, the Petitioners made no attempt to even do that. To repeat, it was the Petitioners' duty to walk the Board through every element of the comparison analysis. Even if it were possible from what was submitted in this case, the Board will not attempt to scrutinize and analyze the data to determine comparative values and thereby make a case for the Petitioners. *See Meridian Towers*, 805 N.E.2d 480.

that point proves what a more accurate assessed value for the subject property might be.

- f. Comp 3 and Comp 4 are problematic for an additional reason. The Petitioners did not establish how sales from 1999 or 2006 might relate to the required valuation date of January 1, 2005. Lacking any such explanation, the evidence is not probative and does not help to prove what a more accurate assessment would be.
- g. The Petitioners failed to make a prima facie case for a reduction in assessed value. Therefore, the Respondent's burden to support its determination with substantial evidence was not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003). Nevertheless, the Respondent admitted that the assessment should be reduced to \$255,400.

Conclusion

- 15. The current assessment will not be sustained, even though the Petitioners failed to make a case.

Final Determination

In accordance with the above findings and conclusions, the assessment will be changed to \$255,400.

ISSUED: _____

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

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- 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>