

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

Petition: 84-016-06-1-5-00001
Petitioner: LaRay Danner
Respondent: Vigo County Assessor
Parcel: 84-12-18-100-006.000-016¹
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 Petitioner initiated an assessment appeal with the Vigo County Property Tax Assessment Board of Appeals (PTABOA) by filing Form 130 dated March 13, 2007.
2. The PTABOA issued notice of its decision on September 8, 2008.
3. The Petitioner appealed to the Board by filing a Form 131 on September 15, 2008, and elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing to the parties dated April 14, 2009.
5. Administrative Law Judge Paul Stultz held the Board's administrative hearing on June 17, 2009.
6. LaRay Danner represented herself. Jennifer Becker, a certified tax representative, represented the Respondent. Both Ms. Danner and Ms. Becker were sworn as witnesses.

Facts

7. The property is a single family residence at 9615 West Little Drive in Terre Haute.
8. The Administrative Law Judge did not conduct an inspection of the property.
9. The PTABOA determined the assessed value is \$17,000 for land and \$32,800 for improvements (total \$49,800).
10. On the Form 131 the Petitioner claimed the assessed value should be \$8,000 for land and \$38,000 for improvements (total \$46,000).

¹ The Form 130, the Form 115, and the Form 131 all refer to the key number, 111-12-18-100-006, rather than the parcel number. The Property Record Card includes both numbers.

Contentions

11. Summary of the Petitioner's case:

- a. An appraiser valued the parcel at \$46,000 as of January 1, 2005. This amount should be the assessed value of the property. *Danner testimony; Pet'r Ex. 1.*
- b. The property floods at least five times a year. The flooding is going to get worse because of construction projects. This situation makes the property worthless. *Danner testimony.*
- c. The requested value for improvements was incorrectly listed on the Form 131 as \$38,000. The Petitioner is not contesting the current assessed value of the improvements. *Danner testimony.*
- d. The Form 131 petition originally identified the issue as “[PTABOA] Boards request for appraisal dated 1-1-05.” The Indiana Board of Tax Review returned the petition to the Petitioner as defective. When the Petitioner filed the corrected petition, she added a paragraph describing the purpose of the appraisal. This additional paragraph was not filed with the county officials. *Danner testimony.*

12. Summary of the Respondent's case:

- a. The issue on Vigo County's copy of the Form 131 petition states, “Boards request for appraisal dated 1-1-05.” The Respondent thought the Petitioner was contending that was the incorrect valuation date. Nevertheless, the Respondent has no objection to defining the issue as whether the property's current assessed value exceeds its market value-in-use. *Becker testimony.*
- b. At the county hearing, the PTABOA members requested that the Petitioner submit evidence from a real estate broker or an appraiser establishing value as of January 1, 2005. *Resp't Ex. 5.* But then the Petitioner submitted an appraisal that valued the property as of August 1, 2008. *Resp't Ex. 7.* The PTABOA did not rely on that appraisal to determine value because of its 2008 valuation date. *Becker testimony; Resp't Ex. 2, par. 8.*
- c. The 2008 appraisal relied on sales data from 2008 and the 2005 appraisal relied on sales data from 2004. *Becker testimony; Resp't Ex. 7; Pet'r Ex. 1.* Although different comparables were used in the two appraisals, both of them used the same cost of land and site improvements. They also reached the same opinion about the total value being \$46,000. *Id.* It is curious that they reached the identical conclusion about value. *Becker testimony.*
- d. There is no supporting documentation for the land value used in the appraisal or the statements about flooding. *Becker testimony.*

Record

13. The official record for this matter is made up of the following:
- a. The Petition,
 - b. A digital recording of the hearing,
 - c. Petitioner Exhibit 1 – Part of an appraisal as of January 1, 2005,
Petitioner Exhibit 2 – Form 131 Petition,
Petitioner Exhibit 3 – One page statement of the Petitioner’s concerns,
Petitioner Exhibit 4 – Comparable photograph page, comparable sales page, pages 4, 5, and 6 of the appraisal as of January 1, 2005,
Petitioner Exhibit 5 – Form 115 and property record card,
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 – Property record card and aerial photograph showing the subject property,
Respondent Exhibit 5 – Evidence request form from the PTABOA hearing,
Respondent Exhibit 6 – Respondent signature and attestation sheet,
Respondent Exhibit 7 – Appraisal as of August 1, 2008,
Board Exhibit A – Notice of Defect and 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.

Analysis

14. 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 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.
15. The Petitioner made a case for a change in the assessment. This conclusion was arrived at because:
- a. Real property is assessed based on 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); 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). A taxpayer may offer evidence relevant to market value-in-use to rebut the presumption the assessment is correct. 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. 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 v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
 - c. In support of her position, the Petitioner submitted an appraisal of the property as of January 1, 2005. An appraisal, completed in conformance with the Uniform Standards of Professional Appraisal Practice, is often the most effective method to rebut the presumption that an assessment is correct. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 94 (Ind. Tax Ct. 2006); *Kooshtard Property VI, LLC v. White River Township Assessor*, 836 N.E.2d 501, 506 n. 6 (Ind. Tax Ct. 2005). The Petitioner's appraisal was prepared by a licensed appraiser, who concluded that as of January 1, 2005, the total market value of the subject property was \$46,000. This evidence is sufficient to establish a prima facie case for changing the assessment.
 - d. The Respondent identified no specific errors in either appraisal. The Respondent merely argued the appraisals' conclusions about value are suspect because the same appraiser came to the conclusion that the total value was \$46,000 as of January 1, 2005, and as of August 1, 2008. Such naked suspicions, however, have little or no impact on the weight of the evidence. Furthermore, both appraisals describe the neighborhood property values as "stable," a demand/supply of homes that is "in balance," and "steady" market activity, all factors that the Respondent failed to dispute and factors that might reasonably support a conclusion that

property values in the neighborhood remained unchanged between 2005 and 2008.

- e. Unsubstantiated conclusory statements regarding the credibility of the appraisals do not constitute probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

Conclusion

- 16. The Board finds in favor of the Petitioner. Consequently, the assessment must be changed.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines the total assessed value is \$46,000.

ISSUED: _____

Commissioner, 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, 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>