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

Petition No.: **02-074-06-1-5-04265**
Petitioner: **Philip R. Davis**
Respondent: **Allen County Assessor**
Parcel No.: **02-12-23-334-023.000-074**
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 April 26, 2007, Philip R. Davis filed written notice contesting the subject property's 2006 assessment. On November 7, 2008, the Allen County Property Tax Assessment Board of Appeals ("PTABOA") issued its determination denying Mr. Davis relief.

2. Mr. Davis 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 January 14, 2010, the Board held an administrative hearing through its designated Administrative Law Judge, Joseph Stanford ("ALJ").

4. The following people were sworn in and testified:

    a) Philip R. Davis

    b) Amanda Miller, Wayne Township Real Estate Appraisal Deputy[1]

Facts

5. The subject property is an unimproved 40-foot-by-144-foot lot located at 5112 Hoagland Avenue in Fort Wayne, Indiana.

6. Neither the Board nor the ALJ inspected the subject property.

[1] F. John Rogers, attorney, represented the Allen County Assessor.

7. The PTABOA issued a Form 115 determination with the following values:

Land: $5,900 Improvements: $26,700 Total: $32,600

8. At the Board's hearing, the parties agreed that the assessment for improvements had been removed and that the land assessment was lowered to $3,000.[2]

9. On his Form 131 petition, Mr. Davis requested an assessment of $1,000. At hearing, he requested an assessment of $700.

Parties' Contentions

10. Summary of Mr. Davis' contentions:

a) The subject property is located in the Belmont addition of Fort Wayne. Although the property previously included a house, that house was demolished and the property was vacant as of the March 1, 2006, assessment date. *Davis testimony*. According to Mr. Davis, the property was assessed too high in light of its sale price and the sale prices for other vacant lots. *Davis argument.*

b) On May 2, 2005, Mr. Davis bought the subject property from the Secretary of Housing and Urban Development ("HUD") for $700. *Davis testimony; Pet'r Ex. S-1 at 3; Resp't Ex. A*. HUD had listed the property for $600. *Davis testimony; Pet'r Ex. P-1*. On September 27, 2005, after Mr. Davis had bought the subject property, HUD mistakenly resold it for $559. *Davis testimony; Pet'r Ex. S-1at 3.* Although the second sale was voided, it provides further evidence of the subject property's value. *Davis testimony and argument.*

c) Mr. Davis also pointed to several sales of properties that he felt were comparable to the subject property. There were no sales of vacant lots in Belmont in 2004 – 2005. Nonetheless, Mr. Davis pointed to two sales from neighborhoods that were within a mile of the subject property. *Davis testimony.* Those lots, located at 4437 Oliver Street and 611 East Pettit, each sold for $150. *Id.; Pet'r Exs. SC-1, SC-2.* Mr. Davis, however, acknowledged that the lots were from neighborhoods that were slightly less desirable than Belmont. *Davis testimony.*

d) Mr. Davis also offered data for five vacant-lots from Belmont, which sold for an average price of $232. *Davis testimony; Pet'r Exs. ASC-1 through ASC-5C-1, C-1.* Those sales were from 2007 rather than from 2004-2005—the relevant period for determining 2006 assessments. But Mr. Davis argued that more remote sales could be used where there were few sales from 2004-2005. *Davis argument*.

e) Because the current building code requires a lot to have 55 feet of frontage, Mr. Davis cannot build a new house on the property. *Id.* Even if Mr. Davis could legally build on the property, the neighborhood's condition would make it economically infeasible

[2] The assessment of record, however, is the assessment reflected on the PTABOA's Form 115 determination.

to do so. Mr. Davis is very familiar with Belmont, having lived within eight blocks of that neighborhood since 1956. *Id.* He has also sold real estate since 1985 and has been a licensed broker since 1988. *Id*.

11. Summary of the Assessor's contentions:

a) The subject property's assessment is correct, as it was computed in accordance with methodology established by the Department of Local Government Finance ("DLGF"). *Miller testimony and argument.*

b) In 2002, a company named CLT assisted the Assessor with land studies. *Miller testimony.* Based on CLT's 2002 study, assessing officials developed a neighborhood valuation form that valued a standard-sized lot within Belmont at $175 per front foot. *Id.* The subject property is assessed accordingly, with a 50% negative influence factor applied for "vacancy." *Id.* There are no other extenuating circumstances justifying additional negative influence factors. *Id.*

c) There are very few vacant-lot sales in Wayne Township. *Id.* In fact, from 2004 to 2005, the subject property was the only one. *Id.* When vacant lots do sell, the sales usually involve Allen County Community Development or the Allen County Commissioners selling to individuals, HUD, or Habitat for Humanity. *Id.* For those reasons, the Assessor found no comparable sales. *Id.*

12. 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's Exhibit S-1:	Hearing notice, property information from Beacon website, subject property record card
Petitioner's Exhibit P-1:	Property listing
Petitioner's Exhibit W-1:	Statement that Mr. Davis will appear as a witness
Petitioner's Exhibit M-1:	Belmont Area Map
Petitioner's Exhibit SC-1:	Comparable sale located at 4437 Oliver
Petitioner's Exhibit SC-2:	Comparable sale located at 611 East Pettit
Petitioner's Exhibit ASC-1:	Comparable sale located at 5314 Harrison
Petitioner's Exhibit ASC-2:	Comparable sale located at 5318 Harrison
Petitioner's Exhibit ASC-3:	Comparable sale located at 5000 Webster
Petitioner's Exhibit ASC-4:	Comparable sale located at 4906 McClellan
Petitioner's Exhibit ASC-5:	Comparable sale located at 4914 McClellan
Petitioner's Exhibit C-1:	Summary calculation and conclusion

Respondent's Exhibit A: Subject property record card

Respondent's Exhibit B: Mr. Davis' exhibits from the PTABOA hearing
Respondent's Exhibit C: Property record cards from unimproved lots in subject's neighborhood
Respondent's Exhibit D: Neighborhood Valuation Form for Belmont Addition

Board Exhibit A: Form 131 petition
Board Exhibit B: Notice of hearing
Board Exhibit C: Hearing sign-in sheet

d) These Findings and Conclusions.

Analysis

Burden of Proof

13. A taxpayer seeking review of an assessing official's determination must make a prima facie case proving both that the current assessment is incorrect and 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).

14. In making its case, the taxpayer 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").

15. If the taxpayer makes a prima facie case, the burden shifts to the respondent to offer evidence to impeach or rebut the taxpayer'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.

Mr. Davis' Case

16. Mr. Davis made a prima facie case that the subject property's assessment should be reduced. The Board reaches this conclusion because:

a) Indiana assesses real property based on its true tax value, which the 2002 Real Property 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 at 2 (incorporated by reference at 50 IAC 2.3-1-2). 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 set forth in the Real Property Assessment Guidelines for 2002 – Version A.

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. PA Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 2006). But a taxpayer 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 subject 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). For March 1, 2006 assessments, that valuation date was January 1, 2005. 50 IAC 21-3-3.

d) Here, Mr. Davis offered evidence of what he actually paid for the subject property as well as information about sales of other vacant lots. The Board addresses the subject property's sale first.

e) Generally, the actual sale of a property provides the best evidence of its market value-in-use. Mr. Davis bought the subject property for $700 on May 5, 2005—just five months after the January 1, 2005 valuation date. And the property was listed for sale at $600 for nearly three months before Mr. Davis bought it. The Assessor did not argue that either Mr. Davis or HUD was atypically motivated in negotiating the sale, that the property was not reasonably exposed to the market, or that any other specific factors made the sale an invalid indicator of the property's market value-in-use. Thus, Mr. Davis made a prima facie case that the subject property's assessment should be $700.

f) Mr. Davis, however, also offered evidence of other vacant-lot sales that he claimed supported an even lower value. The Board finds that claim unpersuasive. Five of the seven sale occurred in 2007—more than two years after the January 1, 2005 valuation date. While Mr. Davis argued that those sales could be used in the absence of sales from 2004-2005, he still needed to explain how those sale prices related to the properties' values as of the earlier January 1, 2005, valuation date. He did not do that. Similarly, Mr. Davis admitted that his other two sales were from neighborhoods that were less desirable than Belmont. Again, he failed to explain how that difference affected the properties' values relative to the subject property. In any event, Mr. Davis's conclusions under his comparable sales analysis would not outweigh the subject property's actual sale price. Thus, Mr. Davis did not make a prima facie case for reducing the subject property's assessment below that $700 sale price.

g) The burden therefore shifted to the Assessor to impeach or rebut the subject property's May 5, 2005, sale price as evidence of its market value-in-use. The Assessor did nothing to attack the sale's probative value. Instead, the Assessor argued that the property had been assessed using front-foot price established by CLT's 2002 land study. The Tax Court has held that simply attacking an assessor's methodology in computing an assessment does not suffice to rebut the presumption that an assessment is correct. *Eckerling v. Wayne Twp. Assessor,* 841 N.E.2d 678 (Ind. Tax Ct. 2006). It follows that, once a taxpayer has offered probative market evidence to rebut an assessment's accuracy, an assessor cannot overcome that evidence by arguing that the methodology in computing it was correct. Thus, the Assessor failed to impeach or rebut Mr. Davis' prima facie case.

Conclusion

17. Mr. Davis made a prima facie case that the subject property's 2006 assessment should be $700. The Assessor did not impeach or rebut Mr. Davis' evidence. The Board therefore finds for Mr. Davis.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now determines that the subject property's assessment should be changed to $700.

ISSUED:

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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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>.