

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

Petition: 84-022-07-1-5-00200
Petitioner: Sonya Doty
Respondent: Vigo County Assessor
Parcel: 84-06-30-201-001.000-022
Assessment Year: 2007

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 a Form 130 petition on September 15, 2008.
2. The PTABOA issued notice of its decision for the 2007 assessment on March 2, 2009.¹
3. The Petitioner appealed to the Board by filing a Petition for Review of Assessment (Form 131) on December 10, 2009.² She elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing to the parties dated February 9, 2010.
5. Administrative Law Judge Paul Stultz held the Board's administrative hearing on March 16, 2010. He did not inspect the property.
6. Sonya and Tim Doty, who both identified themselves as owners of the property, were sworn as witnesses. Edward J. Bisch, Jr., a certified tax representative representing the Vigo County Assessor, also was sworn as a witness.

¹ The property record card indicates that the owners of the subject property are Travis J. Rood and Sonya T. Hess-Rood. Perhaps there was some kind of change that has not been reflected on the property record card or on the Form 115. Because nobody disputed the Petitioner's ownership interest in the subject property, it is assumed that the Petitioner, Sonya Doty, and Sonya T. Hess-Rood (name shown on the property record card) are actually the same person.

² On April 3, 2009, the Petitioner filed the Form 131 with the Vigo County Assessor, who apparently did not forward the petition to the Board until December 10, 2009. *Bd. Ex. A.* The Respondent made no issue about the timeliness of the filing. The Board considers the petition to be timely.

Facts

7. The parcel is a residence located at 303 South 9th Street in West Terre Haute.
8. The PTABOA determined the assessed value is \$15,900 for land and \$160,300 for improvements (total \$176,200).
9. The Petitioner asserted the total assessed value should be \$145,000.

Record

10. The official record for this matter is made up of the following:
 - a. Form 131 with attachments,
 - b. Notice of Hearing,
 - c. Hearing Sign-in Sheet,
 - d. Digital recording of the hearing,
 - e. Petitioner Exhibit 1 – Appraisal,
Respondent Exhibit A –Signature and Attestation Sheet and Summary,
Respondent Exhibit B – Notice of PTABOA Hearing,
Respondent Exhibit C – Appraisal as submitted to the PTABOA,
Respondent Exhibit D – Appraisal as submitted to the Board,
Respondent Exhibit E – Property record card,
Respondent Exhibit F – Power of Attorney,
 - f. These Findings and Conclusions.

Contentions

11. Summary of the Petitioner's case:
 - a. The assessed value is not equal to the property's market value. *S. Doty testimony.*
 - b. The Petitioner was out of the country on the date the PTABOA mailed its notice of the hearing and she did not return until after the hearing date. The PTABOA provided only a ten-day notice before her hearing. *S. Doty testimony.*
 - c. An appraiser determined the property's value was \$145,000 as of April 14, 2008. *S. Doty testimony; Pet'r Ex. 1.*

- d. In late 2006 and early 2007, the house was listed for sale through a realtor with an asking price of \$149,900. Nobody made an offer on it. *S. Doty testimony*.
- e. The house was offered for auction in October³ with a requested initial bid of \$116,000 and there were no bids on it. *S. Doty testimony*.
- f. Subsequently the house was listed for sale again. The asking price started at \$135,000. As of March 15, 2010, the asking price has been reduced to \$125,000. The listing is with Century 21. *T. Doty testimony*.

12. Summary of the Respondent's case:

- a. The appraisal does not establish the value of the property as of the relevant valuation date, which is January 1, 2006. The Petitioner has not submitted any market evidence to demonstrate the value of the property as of that date. *Bisch testimony*.
- b. Local property values have declined in recent years. The current assessed value is reasonable for this property as of the January 1, 2006. *Bisch testimony*.
- c. If the Petitioner had presented the testimony and supporting documentation at the PTABOA hearing regarding the attempt to sell the property for \$149,900 in 2006 and getting no offers, such evidence would have been sufficient. But she didn't. *Bisch 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 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”).
- 15. 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.

³ No year was specified.

16. The record is sufficient to support an assessment change.
- 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). 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. *Id.* at 3. Indiana promulgated Guidelines that explain the application of the cost approach. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A (incorporated by reference at 50 IAC 2.3-1-2). 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. Regardless of what kind of evidence is offered, it must somehow be related to the market value-in-use as of the required 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 a 2007 assessment the valuation date was January 1, 2006. 50 IAC 21-3-3.
 - c. The Petitioner presented an appraisal with a valuation date of April 14, 2008. But there is nothing in the record that relates the appraised value to the required valuation date, January 1, 2006. Similarly, the Petitioner offered testimony regarding unsuccessful efforts to sell the property for \$135,000 or \$125,000 or even to auction it, but no evidence was presented to relate those attempts to the required valuation date. Such evidence does not help to prove what a more accurate valuation for the 2007 assessment might be. *See Long*, 821 N.E.2d at 471.
 - d. The Petitioner also presented testimony about listing and attempting to sell the property for \$149,900 in 2006. In response to this testimony, the Respondent acknowledged this evidence would have been persuasive had it been presented at the PTABOA hearing and supported by documentary evidence:

“If you would have been at the county hearing, and you would have told me what you just said now, I would have asked you to make a copy of that listing agreement for 2006 and that would have been sufficient evidence for us.”

Bisch testimony.

- e. The Respondent conceded that the facts presented by the Petitioner were adequate to justify a reduction in the assessed value, but wanted written documentation in support of those facts. Testimony alone, however, can be sufficient to prove a case. *See Boehning v. State Bd. of Tax Comm'rs*, 763 N.E.2d 502 (Ind. Tax Ct. 2001). This point is especially true when, as in this case, the opposing party did not question that the testimony is accurate and reliable. *See Canal Square v. State Bd. of Tax Comm'rs*, 694 N.E.2d 801, 807 (Ind. Tax Ct. 1998).
- f. The Respondent acknowledged the unsuccessful marketing attempt in 2006 would have supported an assessed value of \$149,900 if the PTABOA had known about it. The Board's proceedings, however, are *de novo*. The failure to appear or present evidence at the PTABOA hearing has no significance. *See* Ind. Code § 6-1.1-15-4(m) ("A person participating in a hearing [before the Board] is entitled to introduce evidence that is otherwise proper and admissible without regard to whether that evidence has previously been introduced at a hearing before the county property tax assessment board of appeals.")
- g. And the Respondent offered no evidence to support the current assessed value or otherwise rebut the Petitioner's case.
- h. Therefore, the assessed value should be reduced to \$149,900.

Conclusion

- 17. The Petitioner failed to make a prima facie case. Nevertheless, the Respondent's admission that the PTABOA would have lowered the assessment is sufficient to support an assessment change to \$149,900.

Final Determination

In accordance with the above findings and conclusions, the total assessment will be reduced to \$149,900.

ISSUED: _____

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>>