

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

Petition: 06-019-07-1-5-00729
Petitioner: Brett Faulkner
Respondent: Boone County Assessor
Parcel: 019-50000-03
Assessment Year: 2007

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

Procedural History

1. The Petitioner initiated an assessment appeal with the Property Tax Assessment Board of Appeals (PTABOA) by filing an Appeal Worksheet dated October 17, 2008.
2. The PTABOA mailed notice of its decision, Form 115, on December 4, 2008.
3. The Petitioner appealed to the Board by filing a Petition for Review of Assessment, Form 131, on December 19, 2008. The Petitioner elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing on December 30, 2010.
5. Administrative Law Judge Paul Stultz held the Board’s administrative hearing on February 8, 2011. He did not inspect the property.
6. Brett Faulkner, County Assessor Lisa Garoffolo, and Peggy Lewis were sworn as witnesses.¹ Attorney Lawrence Giddings represented the Respondent.

Facts

7. The property is located at 1328 Sullivan Ridge in Zionsville. It is a single family residence.
8. The PTABOA determined the assessed value is \$61,000 for land and \$255,000 for improvements (total \$316,000).
9. The Petitioner claimed the total assessment should be \$260,365.

¹ Peggy Lewis did not testify.

Record

10. The official record for this matter contains the following:
- a. Petition for Review of Assessment (Form 131) with attachments,
 - b. Notice of Hearing,
 - c. Hearing Sign-in Sheet,
 - d. Digital recording of the hearing,
 - e. Petitioner Exhibit 1 – Property Record Card (“PRC”) for subject property,
Petitioner Exhibit 2 – Settlement Statement of Petitioner’s purchase of subject property,
Petitioner Exhibit 3 – Withdrawn,
Petitioner Exhibit 4 – Sales disclosure form,
Respondent Exhibit 1 – Appeal Worksheet,
Respondent Exhibit 2 – Form 114,
Respondent Exhibit 3 – Front photograph of subject property,
Respondent Exhibit 4 – Back photograph of subject property,
Respondent Exhibit 5 – Comparative market analysis,
Respondent Exhibit 6 – PRC for subject property,
Respondent Exhibit 7 – Screenshot regarding subject property,
Respondent Exhibit 8 – MIBOR listing,
Respondent Exhibit 9 – Form 115,
Respondent Exhibit 10 – Indiana Tax Board hearing notice,
 - f. These Findings and Conclusions.

Contentions

11. Summary of the Petitioner’s case:
- a. A simple definition of market value is the price paid for a property. The subject property was purchased for \$260,365 in August 2006. At that time it had been on the market for two years. The 2007 assessed value should be based on that price. *Faulkner testimony; Pet’r Ex. 2, 4.*
 - b. The 2007 assessment, however, is \$327,600. That value would be an appreciation of \$67,235 in six months or annual appreciation of 25.8%. Based on records from the assessor’s office, assessed values in the area increased by only 2% annually. With 2% appreciation on the purchase price from the date of sale to March 1, 2007, the value would be \$265,572. *Faulkner testimony.*

- c. Market value was paid for the subject property. The list price has nothing to do with its market value. Whether the Petitioner considers the purchase to be a “good deal” is not relevant. *Faulkner testimony*.
12. Summary of the Respondent’s case:
- a. The subject property listed for \$349,980 when originally put on the market. The list price later was reduced to \$314,900. *Garoffolo testimony; Resp’t Ex. 8*.
 - b. A purchase price does not always represent market value because “people get great deals” or the purchase is not a valid sale. The Petitioner’s purchase price may be below market because it was a relocation sale. Relocation sales “generally go for a lower amount.” *Garoffolo testimony*.
 - c. Fair market value is determined by property sales in the area. The 2007 assessment is based on comparable sales from 2005 and 2006. All of the comparables have similar square footage and are in the same neighborhood as the subject property. *Garoffolo testimony; Resp’t Ex. 5*.
 - d. The Petitioner has the burden to show that the assessment is incorrect and what the correct assessment should be. He did not provide any comparable sales or an appraisal. His purchase price alone does not satisfy that burden. *Giddings argument*.

Analysis

- 13. A Petitioner seeking review of an assessing official’s determination 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. 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.
- 16. The Petitioner proved his claim for an assessment change.
 - 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). There are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach. *Id.* at 3. Indiana promulgated Guidelines for 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. Regardless of the approach used to prove market value-in-use, a 2007 assessment must reflect value as of January 1, 2006. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. Evidence relating to a different date must have an explanation about how it demonstrates or is relevant to the required valuation date. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
- c. The sale price of a property can be the best evidence of its market value-in-use. Here there is no dispute about the fact that the Petitioner purchased the property for \$260,365 in August 2006, a time that falls squarely within the period of sales that are relevant to the valuation date, January 1, 2006, for a 2007 assessment. *See Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3.* This is precisely the kind of evidence that can be used to overcome the presumption that the existing assessment on the subject property is accurate. MANUAL at 5.
- d. The Respondent argued that the sale price is not reliable evidence of market value because the transaction was a “relocation sale” and the sale price might be below market. Apparently that conclusion was partly based on the fact that the final selling price was substantially less than the original asking price and even the reduced asking price for it. But the Respondent failed to establish how the difference between asking prices and selling price might be relevant or probative evidence. Furthermore, Assessor Garoffolo’s conclusory testimony about the purported unreliability of relocation sales was not supported by any substantial facts or authorities and it is not probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
- e. The Respondent also presented some information about sales of other homes in the same neighborhood, but failed to establish a sufficient basis for drawing any meaningful conclusion about the value of the subject property from that information. (The “analysis” in Respondent Exhibit 5 appears to be primarily calculations of price paid per square foot for homes in Huntington Woods during 2004-2007.) Most importantly, the Respondent failed to explain how the data might help prove that the current assessed value is correct or how it might help prove that the Petitioner’s purchase price was less than actual market value. *See Long*, 821 N.E.2d at 471. Therefore, even if comparable sales could have been probative, the Respondent failed to make that evidence work to effectively overcome the Petitioner’s evidence of a much lower value.

- f. Ultimately, the Respondent did not present substantial evidence that the Petitioner paid less than market value.

Conclusion

17. The Board finds in favor of the Petitioner. He proved the current assessment is wrong and a more accurate valuation would be what he paid for the property. The evidence and argument from the Respondent does not convincingly establish anything to the contrary.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now finds the total assessed value of the subject property must be changed to \$260,400.

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>