

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

Petition: 18-006-08-1-5-00001
Petitioner: Donald & Elizabeth Gillentine
Respondent: Delaware County Assessor
Parcel: 18-07-20-151-007.000-006
Assessment Year: 2008

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

Procedural History

1. Donald and Elizabeth Gillentine filed a Form 130 petition contesting the subject property's March 1, 2008 assessment. On August 26, 2010, the Delaware County Property Tax Assessment Board of Appeals ("PTABOA") issued its determination denying the Gillentines the relief they had requested.
2. The Gillentines then timely filed a Form 131 petition with the Board. They elected to have their appeal heard under the Board's small claims procedures.
3. On March 15, 2012, the Board held a hearing through its administrative law judge, Patti Kindler ("ALJ"). Donald Gillentine and Kelly Hisle, the Delaware County Deputy Assessor, were sworn in and testified.

Facts

4. The subject property is an unimproved residential lot legally described as Lot 25 in Section 1 of Waterbury Landings Subdivision, in **Muncie**, Indiana.
5. Neither the Board nor the ALJ inspected the subject property.
6. The PTABOA determined the subject property's March 1, 2008 assessment at \$51,100.
7. The Gillentines requested an assessment of \$1,300.

Summary of the Parties' Contentions

8. The Gillentine's evidence and contentions:
- a. The subject property's assessment is too high. In fact, it has the highest land assessment in its subdivision. The Gillentines simply request fair and equal treatment. *Gillentine testimony and argument.*
 - b. The inequity is best illustrated by comparing the subject property's assessment to that of a property owned by Danny Payne. Mr. Payne's property, which is one lot to the north of the subject property, is similarly sized and has the same utilities as the subject property. *Gillentine testimony; Pet'rs Exs. 3-4.* The top left corner of the property record for each property refers to "500 – Residential Vacant Land." *Pet'rs Exs. 3-4.* Yet, Mr. Payne's property was valued at only \$1,300 before a land adjustment was applied.¹ By contrast, the subject property is described as non-residential land elsewhere on its property record card and was valued at \$49,200 before a land adjustment was applied. *Gillentine testimony; Pet'rs Exs. 2-3.*
 - c. Similarly, a property located across the street from the subject property and owned by Patrick and Susan Orr is also comparable to the subject property in terms of size and utilities. Yet the Orrs' property is assessed for only \$20,800. Aside from those three properties (the subject property and the Orr and Payne properties), the prevailing assessment in the subdivision seems to be \$40,000. *Gillentine testimony; Pet'rs Exs. 5,7.*
 - d. While the PTABOA's Form 115 mentions trending real property values, the market in Delaware County is "pretty much dead." *Gillentine testimony.* The government was offering an incentive plan for new homeowners. And the developer of Heron Pointe, one of Muncie's elite subdivisions, was selling lots at 45% off their list prices. *Id.; Pet'rs Ex. 6.*
9. The Assessor's evidence and contentions:
- a. The subject property's assessment increased from \$1,500 for March 1, 2007 to \$51,100 for March 1, 2008, because the property lost its developer's discount. The discount was properly removed when the Gillentines bought the property from a land developer on April 9, 2007. *Hisle testimony; Resp't Exs. 3 (citing I.C. 6-1.1-4-12(h)), 5.*
 - b. In determining the property's current assessment, the Assessor followed Department of Local Government Finance ("DLGF") guidelines for annual adjustments and ratio

¹The parties did not explain what the term "land adjustment" refers to. The Board assumes that it refers to an annual adjustment of assessed values in connection with Ind. Code § 6-1.1-4-4.5. See I.C. § 6-1.1-4-4.5(a) (requiring the Department of Local Government finance to "adopt rules establishing a system for annually adjusting the assessed value of real property to account for changes in value in those years since a general reassessment of property last took effect.").

studies. *Hisle testimony; Resp't Ex. 2 (citing 50 IAC 21-3-3(a))*. One of the sales that the Assessor used in her ratio study for the subject property's assessment neighborhood involved the subject property itself, which the Gillentines bought for \$55,000. The Assessor also used a property that Michael and Wynde Ashman bought for \$37,150 and that was assessed at \$40,000 per acre. The DLGF approved the Assessor's ratio study. *Hisle testimony; Resp't Exs. 5-8*.

- c. Based on the sales from the ratio study, the base rate for land in the subject property's neighborhood was \$40,000 per acre, and the residual rate for anything over one acre was \$18,000 per acre. The Assessor applied those rates in assessing the subject property. Thus, the subject property's assessment was correct and the Board should not change it. *Hisle testimony; Resp't Ex. 7*.

Record

10. The official record contains the following:

- a. The Form 131 petition,
- b. A digital recording of the hearing,

Petitioner Exhibit 1: Form 131 petition,
Petitioner Exhibit 2: Form 115,
Petitioner Exhibit 3: Subject property record card,
Petitioner Exhibit 4: Property record card for the Payne property,
Petitioner Exhibit 5: Property record card for the Orr property,
Petitioner Exhibit 6: List and sales prices for lots in Heron Pointe,
Petitioner Exhibit 7: Property record cards for properties in Waterbury Landing owned by Kurt A. & Paulette Jones, Nancy Zachary, and Gerald T. & Juliet S. Costello.

Respondent Exhibit 1: Subject property record card,
Respondent Exhibit 2: 50 IAC 21-3-3,
Respondent Exhibit 3: Ind. Code § 6-1.1-4-12,
Respondent Exhibit 4: Typed statement from the Gillentines,
Respondent Exhibit 5: Sales disclosure file showing the Gillentines' purchase of the subject property,
Respondent Exhibit 6: Spreadsheet with sales information for two properties,
Respondent Exhibit 7: Display Neighborhood Master screen showing land values land values in the subject property's neighborhood,
Respondent Exhibit 8: Property record card for the Ashman property,
Respondent Exhibit 9: Listing sheet for the Ashman property,
Respondent Exhibit 10: Aerial map of the subject's neighborhood with the Ashman property highlighted.

Board Exhibit A: Form 131 petition,

Board Exhibit B: Hearing notice,
Board Exhibit C: Hearing sign-in sheet.

d. These Findings and Conclusions.

Analysis

Discussion

11. A preponderance of the evidence shows that the subject property's true tax value is at least equal to its assessment:²
- a. Indiana assesses real property based on its true tax value, which the 2002 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). Evidence offered in an assessment appeal must be consistent with that standard. *See id.* For example, a market-value-in-use appraisal prepared according to Uniform Standard of Professional Appraisal Practice often will be probative. *See id.*; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005) *reh'g den. sub nom.* A party 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.
 - b. Regardless of the type of evidence that a party offers, that evidence must relate to the property's market value-in-use as of the relevant valuation date. *See O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006). Otherwise, the evidence lacks probative value. *See id.* ("[E]vidence regarding the value of property in 1997 and 2003 has no bearing on 2002 assessment values without some explanation as to how those values relate to January 1, 1999 value.") For March 1, 2008 assessments, the valuation date was January 1, 2007. 50 IAC 21-3-3(b) (2009).
 - c. Here, the Gillentines bought the subject property for \$55,000 on April 9, 2007. Indeed, a property's sale price is often the best evidence of its market value-in-use. And the Gillentines' bought the subject property only three months after the valuation date for the March 1, 2008 assessment.

² Generally, a taxpayer challenging an assessment has the burden of proof at a hearing before the Board. Where the assessment under appeal represents an increase of more than 5% over the previous year's assessment for the same property, however, the Assessor has the burden of proving that the assessment is correct. *See* Ind Code § 6-1.1-15-17.2. The ALJ preliminarily determined that the Assessor had the burden. Given the Board's recent determinations in appeals where an assessment increased due to the loss of the developer's discount, that may not be the case. *See Norris v. Howard County Assessor*, pet. nos. 34-002-10-1-5-00149 and -151 (Ind. Bd. Tax Rev., May 31, 2012) and *Paul B. and Mirella A. Markiewicz Revocable Living Trust v. Howard County Assessor*, pet. nos. 34-002-10-1-5-00020 (Ind. Bd. Tax Rev., May 31, 2012). But the Board need not delve into that question in this appeal because the subject property was assessed for less than its sale price, which is by far the most probative evidence of the property's true tax value. Thus, even if the Assessor had the burden of proof, she met it.

- d. Mr. Gillentine, on the other hand, pointed to what he described as comparable lots in Heron Pointe that were listing and selling for less than what the subject property was assessed for. But he offered no evidence to show that the Heron Pointe lots were actually comparable to the subject property or to explain how any relevant differences affected the properties' relative values. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d at 470-71 (finding that taxpayers' sales data lacked probative value where taxpayers failed to explain how the characteristics of their purportedly comparable properties compared to the taxpayers' property or how any differences affected the properties' market values-in-use). Plus, Mr. Gillentine's evidence about what Heron Pointe properties were listing and selling for related to dates well after the January 1, 2007 valuation date at issue in this appeal. *See Pet'rs Ex. 6* (sale and listing information on sheet document dated December 1, 2009).
- e. Thus, if the Assessor acted properly when she reclassified the subject property for the March 1, 2008 assessment date, the property's sale price is the best evidence of its true tax value. To answer that question, the Board turns to Ind. Code § 6-1.1-4-12. Under that statute, land must be reassessed based on its new classification when it is subdivided into lots, rezoned for a different use, or actually put to a different use. I.C. § 6-1.1-4-12(d). The statute, however, also contains what is commonly referred to as the "developer's discount." Under the developer's discount, assessors may not reclassify land that a developer holds for sale in the ordinary course of business until certain triggering events occur, one of which is a transfer of the land to a person who is not a developer. I.C. § 6-1.1-4-12(h)(1). And that is exactly what happened here. The Assessor reclassified (and therefore reassessed) the subject property on the next assessment date after the Gillentines bought it from a developer.
- f. Indeed, the Gillentines did not really argue that the Assessor violated the developer's discount statute or even that their property is worth less than what it was assessed for. Instead, the Gillentines claimed that they were the victims of unequal assessments and that the remedy is to lower the subject property's assessment to \$1,300. But Mr. Gillentine acknowledged that most lots in the subdivision were assessed at \$40,000 per acre and even offered evidence of three lots that were assessed using a base rate of \$40,000 per acre. That is consistent with the Assessor's evidence showing that the base rates for the subject property's assessment neighborhood were \$40,000 for the first acre of residential land and \$18,000 per acre for any excess land. Thus, the subject land was assessed consistently with most of the other land in the neighborhood.

Conclusion

- 12. The subject property was assessed for slightly less than its true tax value. While that arguably might justify increasing the property's assessment, the Assessor did not ask the Board to do so. In any event, the Gillentines are not entitled to have the property's assessment reduced.

Final Determination

In accordance with the above findings and conclusions, the Board affirms subject property's March 1, 2008 assessment of \$51,100.

ISSUED: June 28, 2012

Chairman, 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>.