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

Petition: **07-006-09-1-5-00002**
Petitioner: **Kathryn Gillette**
Respondent: **Brown County Assessor**
Parcel: **006-01040-01**
Assessment Year: **2009**

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

Procedural History

1. The Petitioner initiated an assessment appeal with the Brown County Property Tax Assessment Board of Appeals (PTABOA) by filing Form 130.

2. The PTABOA mailed notice of its decision, Form 115, on August 3, 2011.

3. The Petitioner appealed to the Board by filing a Form 131 Petition for Review of Assessment on September 12, 2011. The Petitioner elected to have this case heard according to small claims procedures.

4. The Board issued a notice of hearing on November 30, 2012.

5. Administrative Law Judge Paul Stultz held the Board's administrative hearing on January 8, 2013. He did not inspect the property.

6. Kathryn Gillette appeared *pro se*. Attorney Marilyn Meighen represented the Respondent. Ms. Gillette, County Assessor Mari Miller, Gerald Cox and Ken Surface were sworn as witnesses. But Ms. Miller and Mr. Surface did not testify.

Facts

7. The property is a residence located at 7037 Oppossum Drive, Nineveh. It has some frontage on Sweetwater Lake.

8. The PTABOA determined the assessed value is $102,400 for land and $534,100 for improvements (total $636,500).

9. The Petitioner claimed the total assessment should be $440,000.

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 A – Three page statement of the property's history,
    Petitioner Exhibit B – Appraisal as of September 1, 1998,
    Petitioner Exhibit C – Appraisal as of April 21, 2006,
    Petitioner Exhibit D – Insurance invoices,
    Petitioner Exhibit E – Letter from Brown County Department of Health dated October 8, 2004,
    Petitioner Exhibit F – Letter from Brown County Department of Health dated January 30, 2006,
    Petitioner Exhibit G – Copies of three lease agreements,
    Respondent Exhibit A – Property record card, sketch, and aerial map,
    Respondent Exhibit B – Change in assessment analysis,
    Respondent Exhibit C – Various MLS listings for the subject property,

    f. These Findings and Conclusions.

Request for Continuance

11. Shortly after the start of the hearing, the Petitioner requested a continuance because at that point she realized she was not prepared to represent herself adequately. Ms. Gillette stated she did not feel knowledgeable about the industry-specific terms. According to Ms. Gillette, she made numerous attempts to contact her attorneys, but got no response from them.

12. The Respondent objected to a continuance. The Respondent pointed out that expense already was incurred based on the people (attorney and witnesses) at the hearing. Furthermore, according to Ms. Meighen, she and Ms. Gillette spoke by telephone on the evening before the hearing and Ms. Gillette did not say she wanted or needed a continuance.

13. The Petitioner did not establish a reason that might justify a continuance under these circumstances. The Board agrees with our ALJ's determination to deny the continuance and proceed with the hearing.

Objections

14. The Respondent objected to the admission of all of the Petitioner's exhibits except Petitioner's Ex. A. The Respondent argued that the appraisals, insurance invoices, letters from the Brown County Department of Health, and the leases relate to time periods that are too far removed from the valuation date, making them not relevant. The Respondent's objection goes more to the weight of the evidence than its admissibility. Consequently, all the Petitioner's exhibits are admitted.

Contentions

15. Summary of the Petitioner's case:

    a. According to the Expedia website, the United States housing bubble caused prices to decline in 2006 and 2007. *Gillette testimony.*

    b. The property was appraised for $260,000 as of September 1, 1998. A second appraisal of the property concluded the property's value was $482,000 as of April 21, 2006. *Gillette testimony; Pet'r Ex. B, C.*

    c. The improvements on the property are valued by insurance experts at $399,000 in 2009. This value does not include the value of the land. *Gillette testimony; Pet'r Ex. D.*

    d. The photograph of the docks in the 2006 appraisal compared to the photograph of same area in the 1998 appraisal demonstrates how the docks have been built up over the years. The excessive amount of docks in this small area detracts from the value of the land, which is located at the end of a cove and does not have the same kind of lake frontage other properties have. Furthermore, garbage gathers in the backwashes at the end of the cove and a film gathers on top of the water. *Gillette testimony; Pet'r Ex. B, C.*

    e. The land should be valued at $40,000 and not at the assessed value of $102,000. Adding the $40,000 to the 2009 insurance value of around $400,000 makes the subject property's value $440,000. This value is also supported by the 2006 appraised value of $482,000. *Gillette testimony; Pet'r Ex. C, D.*

    f. The PTABOA based its decision on realtor listings for the subject property, but it never sold. There was no offer during all the time the property was listed. The listing price of a property is not a good indicator of market value. The selling price would be. *Gillette testimony.*

    g. The property was rented in 2001 for $1,200 per month and in 2003 for $1,495 per month. There was no response to rental advertisement of the property for a monthly rental rate of $2,495 or $2,500. The normal value for property is 1% of the rental rate. *Gillette testimony; Pet'r Ex. G.*

16. Summary of the Respondent's case:

   a. The 2009 assessment increased by more than 5% from the 2008 assessment. The Respondent has the burden of proof. The Respondent is attempting to present a prima facie case for the 2009 assessment. In past decisions the Board has determined that, when the Respondent fails to make a prima facie case, the assessment will be reduced to the assessed value of the prior year. In this case that would reduce the assessment to $592,000. The Petitioner has the burden of proof for any further reduction. *Meighen argument; Resp't Ex. A, B.*

   b. The insurance invoices for the property introduced by the Petitioner erroneously describe the home as brick. The lower portion actually is stone and the remaining portion is frame. The alleged insurance experts failed to correctly describe the home. The insurance invoices are not relevant because they are not related to the valuation date of January 1, 2008 . *Meighen argument.*

   c. The Petitioner's claim about the housing bubble (based on Expedia) makes no reference to this particular geographic location. *Meighen argument.*

   d. The increase in value from the 1998 appraisal to the 2006 appraisal contradicts the Petitioner's conclusion that the increased building of docks reduces the value of the subject property. *Meighen argument; Pet'r Ex. B, C.*

   e. Over the past 4 years the Petitioner listed the property for sale at prices ranging from $799,900 to $599,000. Her asking prices are all more than the $592,000 assessed value. *Cox testimony; Resp't Ex. C.* Furthermore, the April 2006 appraisal offered by the Petitioner states, "List to sales price ratio is 97%." *Cox testimony.*

   f. Both of the appraisals (as of September 1998 and April 2006) are so far removed from the required valuation date that they are not relevant. *Meighen argument.*

Burden

5. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that a property's assessment is wrong and what its 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). Nevertheless, the Indiana General Assembly enacted a statute that in some cases shifts the burden of proof:

> This section applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal increased the assessed value of the assessed property by more than five percent (5%) over the assessed value determined by the county assessor or township assessor (if any) for the immediately preceding assessment date for the same property. The county assessor or township assessor making

> the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.

Ind. Code § 6-1.1-15-17.2.

17. The Respondent acknowledged that the assessed value increase was more than 5%. According to Ind. Code § 6-1.1-15-17.2, the Respondent has the burden to prove the total assessed value of $636,500 is correct.

Analysis

18. The Respondent did not attempt to make a prima facie case supporting the assessment of $636,500 and admitted the assessment should be reduced to the prior year's valuation, which was $592,000. This change is consistent with other Board final determinations where the Respondent failed to satisfy the burden imposed by Ind. Code § 6-1.1-15-17.2. To the extent the Petitioner requested an even lower valuation, the Petitioner has the burden of proof.

19. The Petitioner did not provide substantial, probative evidence to support her claim that the 2009 assessment should be anything less than $592,000.

    a. Real property is assessed 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). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. The primary method for assessing officials is the cost approach. *Id.* at 3. Indiana promulgated Guidelines that explain the 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 method used to rebut the presumption of accuracy, one must explain how the evidence relates to market value-in-use as of the relevant valuation date. *O'Donnell v. Department of Local Government Finance,* 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Township Assessor,* 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For a 2009 assessment, the valuation date was January 1, 2008. 50 IAC 21-3-3.

    c. The Petitioner's conclusory testimony about declining housing prices in 2006 and 2007 is not substantial, probative evidence to support her claim. She attributed her statement to an unspecified article from the Expedia website. Assuming,

arguendo, that there was such a general trend, that fact does not prove an accurate value for the subject property because the Petitioner failed to establish specifically how such a general trend might have affected the value of the subject property. In addition, the record contains nothing relating that evidence to the required valuation date, January 1, 2008. Accordingly, this evidence is not probative. *Long*, 821 N.E.2d 471.

d. It has frequently been recognized that an appraisal of the subject property can be a very good way to prove an accurate valuation in an assessment appeal. But again, the Petitioner failed to provide any substantial evidence to relate either the appraised value as of September 1, 1998, or the appraised value as of April 21, 2006, to the required valuation date, which was January 1, 2008. Therefore, neither of the appraisals is probative evidence for this case. *Id.*

e. The Petitioner attempted to support her alleged valuation with several years of insurance invoices. This evidence shows that the subject property was insured as a 1-family brick rental. In 2005 the limit of liability was $275,300. This limit increased over the next several invoices. The most recent documents show it increased to $399,000 in December 2009 and $475,215 in December 2012.[1] The Respondent also admitted that the house was not brick—it is stone and frame construction. While those documents perhaps are some evidence of a minimum market value for the house, nothing shown on the documents supports the Petitioner's claim that "insurance experts" determined those limits of liability were market values of the property. Nothing in the record explains the basis for those values, how they were determined, or the qualifications of the individuals who made the determinations. Nothing in this evidence precludes the possibility that the Petitioner simply elected to insure less than the actual market value of the house. The insurance documents do not help to prove the Petitioner's claim.

f. The Petitioner also acknowledged that none of the insurance figures included land value, which she claimed was approximately $40,000. While she testified about facts that probably have some kind of negative impact on the land value of the subject property, she failed to provide any substantial evidence to quantify the impact of those facts on the market value of her property.[2] Ultimately, the Petitioner's testimony that the land value was only $40,000 is merely an

[1] Therefore, these documents relate to times before and after the required valuation date. But again, nothing in the record establishes how those figures relate to the required valuation date of January 1, 2008.

[2] For example, the small cove area has become increasingly crowded with boat docks. Even though that fact was not disputed, the record contains no substantial, probative evidence to relate that fact to a specific valuation amount. Similarly, there was no dispute about the fact that garbage collects in the water at the end of the cove where the subject property is located, but the Petitioner failed to offer substantial, probative evidence to relate that fact to a specific valuation amount. And although there is evidence that the septic system had failed in 2004, the Brown County Department of Health letter dated January 30, 2006, states, "As of today, 1/30/06, there has been no sign of a surface failure. Our department will continue to check the septic field and should a failure be found an immediate pump and haul program will be instituted." There is no evidence in the record that the septic problem still existed in 2009, but even if it did, the Petitioner also failed to quantify the effect of such a problem in terms of a specific dollar amount.

unsupported conclusion. It does not help prove her case. *See Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998).[3]

g. There was no dispute that the subject property is used as a rental. As previously noted, the income approach is a generally recognized and used technique to value property. It is also commonly called income capitalization. For income producing property, appraisers frequently consider this approach. If they had been for a relevant time, the leases for the subject property might have been a starting point for using the income capitalization approach in this case. But the Petitioner did nothing to establish that using these leases, which are several years old, would be consistent with generally accepted appraisal principles. Furthermore, the Petitioner offered absolutely no calculations that even begin to resemble the income capitalization approach to valuation. The Petitioner simply testified in a conclusory manner that normal value for a property is 1% of the rental rate. She made no attempt to explain the basis or validity for such a rule. Again, such bald conclusions do not help prove a case. *Id.*

h. Finally, the Petitioner and the Respondent both addressed the fact that over the past 4 years the Petitioner has attempted to sell the subject property with asking prices ranging from $799,000 down to $599,000. Those efforts have been unsuccessful. From the totality of the evidence, we conclude that the asking prices have been too high. The Respondent, however, has agreed to a valuation that is even less.

Conclusion

20. The Respondent admitted the assessment should be reduced to $592,000 and the Petitioner failed to make a prima facie case for any assessed value less than that amount.

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[3] The parties introduced conflicting evidence about how much land the subject property contains, but neither one directly addressed the discrepancy. The property record card itself has conflicting information about the number of lots and total acreage. The acreage entered on the property record card is 1.5. But added notations indicate 2.0274 acres per GIS. The added notes also indicate 5 lots. The MLS listings offered by the Respondent have different information. One lists 5 lots with 3.2 acres, some merely list 3.2 acres, another lists both 1.5 and 2.14 acres at the same time, and another lists 3 lots with 1.5 acres. The Petitioner never talked about the total acreage. One of the appraisals (Exhibit B) states that the dimensions of the site were "not available" and the site area is "typical/waterfront." The other appraisal (Exhibit C) states that the property has 2.14 acres. All this evidence covers several years. Perhaps these differences are mistakes. Perhaps there are other reasons for the discrepancies. We will not speculate on the reasons, but merely note that they are in the record and that they were not addressed by either party. The land is obviously a significant component of the value for this lakefront property. After considering all of the evidence, however, it is impossible to draw any legitimate conclusion about how much land the subject property actually has or what its actual value might be.

Final Determination

In accordance with the above findings and conclusions, the assessment will be changed to $592,000.

ISSUED: April 5, 2012

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Commissioner, 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

- 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>