

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

Petition: 10-010-08-1-5-00001
Petitioner: Charles Glotzbach
Respondent: Clark County Assessor
Parcel: 10-21-04-800-174.000-009
Assessment Year: 2008

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 Clark County Property Tax Assessment Board of Appeals (PTABOA) by filing a Taxpayer's Notice to Initiate an Appeal dated September 23, 2009.
2. The PTABOA mailed notice of its decision, Form 115, on December 2, 2009.
3. The Petitioner appealed to the Board by filing a Petition for Review of Assessment, Form 131, on January 15, 2010. The Petitioner elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing on November 4, 2010.
5. Administrative Law Judge Paul Stultz held the Board's administrative hearing on January 4, 2011. He did not inspect the property.
6. Charles Glotzbach, County Assessor Vicky Kent Haire and Frank Kelly were sworn as witnesses.

Facts

7. The property is a single family residence located at 2501 Coopers Lane, Sellersburg.
8. The PTABOA determined the assessed value is \$23,600 for land and \$83,500 for improvements (total \$107,100).
9. At the hearing, the Petitioner claimed the total assessed value should be \$62,000.

Record

10. The official record for this matter contains the following:
- a. Form 131 Petition,
 - b. Digital recording of the hearing,
 - c. Petitioner Exhibit 1 – Settlement statement from purchase of the subject property,
Respondent Exhibit 1 – Property record card,
Respondent Exhibit 2 – Aerial photograph,
Respondent Exhibit 3 – Sales disclosure form dated May 9, 2008, for the
Petitioner’s purchase of the subject property from US
Bank National Association,
Respondent Exhibit 4 – Sales disclosure form for the subject property dated
February 21, 2008, Sheriff Rodden to US Bank National
Association,
Board Exhibit A – Form 131 Petition,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing Sign In Sheet,
 - d. These Findings and Conclusions.

Contentions

11. Summary of the Petitioner’s case:
- a. Sunnyside Realtors had the subject property on the market when the Petitioner purchased it for \$62,000 on May 9, 2008. They had been offering it for sale “for a little while.” *Glotzbach testimony; Pet’r Ex. 1.*
 - b. The property is worth no more than that purchase price. *Glotzbach testimony.*
 - c. The property is located in a 100-year flood plain. All the land in the area is in the 100-year flood plain, which was designated back in the 80’s. *Glotzbach testimony.*
 - d. “If the house is ever down or burned or anything, you can’t build nothing back. It’s got to be—the ground’s got to be raised up to 464 above sea level before you can build anything out there.” *Glotzbach testimony.*
 - e. “I’d love to be able to sell it for [\$107,000].” *Glotzbach testimony.*

12. Summary of the Respondent's case:
 - a. The property sold twice in 2008. On February 21, 2008, the Clark County Sheriff sold the parcel to US Bank National Association for \$77,000. *Kelly testimony; Resp't Ex. 4.*
 - b. The Petitioner purchased the property from US Bank National Association for \$62,000 on May 9, 2008. *Kelly testimony; Resp't Ex. 3.*
 - c. Neither sale is sufficiently close to the required valuation date of January 1, 2007. Nothing establishes how either of those sales shows market value-in-use for the 2008 assessment. *Kelly testimony.*
 - d. Additionally, both 2008 transactions were foreclosure sales and not arm's-length transactions. *Kelly 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. The Petitioner did not make a prima facie case for any 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: 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 is presumed to be accurate, but it 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. The valuation date for a 2008 assessment is January 1, 2007. 50 IAC 21-3-3 (2009). Consequently, a party relying on market value evidence to establish an assessment must provide some explanation for how the evidence demonstrates, or is relevant to, value as of that 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).
 - c. There appears to be no dispute about the fact that the subject property sold twice in 2008.¹ Nevertheless, nobody established how either of the 2008 sales help prove market value-in-use of the property on January 1, 2007. Without somehow relating the sale prices to the required valuation date, those prices have no probative value. This failure is fatal to the Petitioner's claim that the assessed valuation should not be more than what he paid for the property. *Id.*
 - d. The Petitioner also established that the property is in a 100-year flood plain. This fact probably has a negative impact on a potential selling price. But merely establishing that the flood plain exists is not enough to require changing the assessment. To make his case, the Petitioner was required to offer probative evidence about what a more accurate valuation would be. The Petitioner presented no such proof. Consequently, the assessed value cannot be changed merely because the property is in a flood plain. *See Meridian Towers*, 805 N.E.2d at 478.
 - e. The Petitioner needed to demonstrate the assessed value does not accurately reflect the property's market value-in-use. *See Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006). He did not do so.
16. When a taxpayer fails to provide probative evidence supporting the position that an assessment should be changed, the Respondent's duty to support the assessment with substantial evidence is not triggered. *See Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003); *Whitley*, 704 N.E.2d at 1119.

¹ Mr. Kelly characterized those sales as invalid indicators of market value because they were "foreclosure" sales and they were "not arm's-length transactions." His conclusory use of those terms appears to stem merely from the involvement of U.S. Bank in both transactions. From the very limited evidence that was presented, however, it is impossible to determine whether those characterizations are accurate. The Board will not assume those transactions yielded below-market prices simply because a bank was involved. It may be true that appraisers applying generally accepted appraisal principles are reluctant to rely on such sales, but no probative evidence established that point in this case. Furthermore, an "arm's-length transaction" is one where parties conduct themselves as if they were strangers so no conflict of interest arises. *See BLACK'S LAW DICTIONARY* (9th ed. 2009). The record contains no evidence indicating the 2008 sales were or were not "arm's-length transactions." More importantly, that term is just part of the proper considerations for determining whether a sale is reliable, persuasive valuation evidence. MANUAL at 10 (defining market value). Here, neither party presented relevant, probative evidence or argument regarding those considerations.

Conclusion

17. The Petitioner failed to make a prima facie case for a change in assessed value. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings and conclusions, the assessment will not be changed.

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>