

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

Petition No.: 48-003-07-1-5-07696
Petitioners: Kim R. & Renisa Harry
Respondent: Madison County Assessor
Parcel Nos.: 18-1008-1-002Z; 18-1008-1-003Z; 18-1008-1-004Z
Assessment Year: 2007¹

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

Procedural History

1. On September 2, 2008, Kim R. & Renisa Harry filed written notice with the Madison County Assessor contesting the March 1, 2007 assessments for the three parcels listed above. On June 26, 2009, the Madison County Property Tax Assessment Board of Appeals (“PTABOA”) issued a single determination denying the Harrys relief for all three parcels.
2. The Harrys then timely filed a single Form 131 petition² with the Board. They elected to have their appeal heard under the Board’s small claims procedures.
3. On June 9, 2010, the Board held a consolidated administrative hearing through its Administrative Law Judge, Patti Kindler (“ALJ”).
4. The following people were sworn-in and testified:
 - a) Kim R. & Renisa Harry
 - b) Jack Norris, Jr., Deputy Assessor

¹ The Form 131 petition lists the assessment year under appeal as March 1, 2008. The Form 130 petition that the Harrys filed with the Anderson Township Assessor lists the assessment year under appeal as March 1, 2007, as does the Form 115 Notification of Final Assessment Determination attached to the Harrys’ Form 131 petition. *Board Ex. A.*

² The Harrys filed a single Form 131 petition despite the form’s instructions and the Board’s procedural rules, both of which generally require a separate petition for each tax parcel. *Id.*; 52 IAC 2-5-1(b). Nonetheless, the Form 115 determination from which the Harrys appealed includes all three parcels. Because the parcels are contiguous and the issues on appeal for each parcel are similar, the Harrys could have asked for leave to file a single petition. 52 IAC 2-5-1(b). In the interest of economy, the Board will proceed as if the Harrys had asked for and been granted leave to file a single petition for all three parcels.

5. The subject parcels are unimproved 72-foot-by-116-foot lots, legally described as Lots 2, 3, and 4 of Harry Heights. They are located on Coventry Drive in Anderson, Indiana. Unless otherwise indicated, the Board will refer to the parcels collectively as the “subject property.”
6. Neither the Board nor the ALJ inspected the subject property.
7. The PTABOA valued each parcel at \$9,200 for a total of \$27,600 for all three parcels.
8. The Harrys requested an assessment of \$15,000, or \$5,000 for each parcel.

Parties’ Contentions

9. Summary of the Harrys’ contentions:
 - a) The subject property was originally part of a larger one-acre property with a home that the Harrys bought in November 2006. *K. Harry testimony; Norris testimony.* Sometime in 2007, within a year after buying the property, the Harrys divided it into four parcels. They sold the parcel containing the house, leaving the three parcels that comprise the subject property. Kim Harry then put a sign up to try to sell the subject property. He has had a sign up ever since the property was subdivided. *K. Harry testimony.* His asking price was \$17,000, but he did not receive any calls. He also had Mike Lawson, a realtor with RE/MAX, list the property for \$17,000, although Mr. Harry did not say when he did that. *K. Harry testimony.* On June 18, 2009, the Harrys listed the subject property with Mid-American Realty for \$16,000. *Id.; Pet’s Ex. 2.* Once again, they received no interest. The Harrys therefore believe that the subject property is worth no more than \$15,000. *K. Harry testimony.*
 - b) Mr. Harry offered several reasons for the lack of interest in the subject property. The homes in the neighborhood are from the 1950s and 1960s, and many of them have not been maintained. *K. Harry testimony; See Pet’s Ex. 1.* For example, the property next door to the subject property is a rental, and the tenants have never mowed the back yard. *Id.* Most of the homes in the neighborhood sell for under \$60,000. Although utilities are available, the Harrys would have to pay \$4,000 to bring water and sewage from the street to the lots in order to build on them. They similarly would have to pay to put in sidewalks around those lots. *K. Harry testimony.*
 - c) The taxes and maintenance costs for the subject property will soon exceed its market value. *Id.* The Harrys have therefore contacted several organizations attempting to donate the property, but no one is interested. *Id.*
10. Summary of the Assessor’s contentions:
 - a) The Assessor valued the subject property according to state guidelines and applied a negative 50% influence factor for vacancy. *Norris testimony.* The neighborhood

trending factor, however, brought the subject property's assessment back up almost to the original value. *Id.*

Record

11. The official record for this matter is made up of the following:

- a) The Form 131 petition,
- b) A digital recording of the hearing,
- c) Exhibits:

Petitioners Exhibit 1: Six photographs of the subject neighborhood,
Petitioners Exhibit 2: Listing contract with Mid-American Realty, dated June 18, 2009.

Board Exhibit A: Form 131 petition,
Board Exhibit B: Notice of hearing,
Board Exhibit C: Hearing sign-in sheet,

- d) These Findings and Conclusions.

Analysis

Burden of Proof

- 12. A taxpayer seeking review of an assessing official's determination must make a prima facie case proving both that the current assessment is incorrect and specifically what the 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).
- 13. In making its case, the taxpayer must explain how each piece of evidence relates to the taxpayer's 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”).
- 14. Once the taxpayer makes a prima facie case, the burden shifts to the respondent to impeach or rebut the taxpayer's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.

The Harrys' Case

15. The Harrys did not make a prima facie case for reducing the subject property's assessment. The Board reaches this conclusion for the following reasons:
- 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 2 (incorporated by reference at 50 IAC 2.3-1-2). Appraisers traditionally have used three methods to determine a property's market value: the cost, sales-comparison, and income approaches. *Id.* at 3, 13-15. Indiana assessing officials generally use a mass-appraisal version of the cost approach set forth in the Real Property Assessment Guidelines for 2002 – Version A.
 - b) A property's market value-in-use, as determined using the Guidelines, is presumed to be accurate. *See* MANUAL at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005) *reh'g den. sub nom. PA Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 2006). But a taxpayer may rebut that presumption with evidence that is consistent with the Manual's definition of true tax value. MANUAL at 5. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 506 n.6. A taxpayer 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.
 - c) Regardless of the method used to rebut an assessment's presumed accuracy, a party must explain how its evidence relates to the subject property's market value-in-use as of the relevant 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). Otherwise, that evidence lacks probative value. *Long*, 821 N.E.2d at 471. For March 1, 2007 assessments, the relevant valuation date was January 1, 2006. 50 IAC 21-3-3 (2009)(*Repealed by Dep't of Local Gov't Fin.; filed Apr. 8, 2010, 1:45 p.m.: 20100505-IR-050090502FRA*).
 - d) The Harrys contend that the subject property should have been assessed at \$15,000 based on their inability to sell the property after listing it for \$16,000. In some instances, the inability to sell a property for a given asking price might show that its market value-in-use is something less than that asking price. Of course, that depends largely upon the steps taken to market the property. The Harrys offered a listing contract in which they gave Mid-American Realty the exclusive right to sell the property from June 18, 2009 to September 8, 2009. *Pet'r Ex. 2*. But the Harrys said little about their attempts to market the property before entering into a listing agreement with Mid-American Realty in 2009. At most, Kim Harry testified that he

put up a sign in 2007 and that a realtor from RE/MAX listed the property for some unidentified period.

- e) The 2009 listing, however was more than three years after the relevant January 1, 2006, valuation date for the 2007 assessments under appeal. Even if the Board were to consider the Harrys' earlier efforts to sell the property, those efforts began in 2007, which was still more than a year after the relevant valuation date. The Harrys therefore needed to explain how their listing prices related to the property's market value-in-use as of January 1, 2006. Because the Harrys did not attempt to do so, those listing prices are not probative of the subject property's true tax value.³
- f) The Harrys also offered photographs of the subject property's neighborhood, and Kim Harry testified to various factors that he felt depressed the property's value. Thus, for example, he testified that neighboring homes were not being maintained and that prospective buyers would incur additional development costs if they wanted to build on the property. While those factors might affect the subject property's value, the Harrys offered no probative market value-in-use evidence to quantify that effect. Those factors therefore do not rebut the presumption that the subject property was accurately assessed.

Conclusion

- 16. Because the Harrys offered no timely, probative market value-in-use evidence to rebut the presumption that the subject property's 2007 assessment was accurate, they failed to make a prima facie case. The Board finds for the Assessor.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now affirms the assessment for each parcel.

³ The Board would reach the same conclusion even if it were reviewing the property's March 1, 2008 assessment. In that case, the relevant valuation date would have been January 1, 2007. 50 IAC 21-3-3 (2009)(*Repealed by Dep't of Local Gov't Fin.; filed Apr. 8, 2010, 1:45 p.m.: 20100505-IR-050090502FRA*). But the 2009 listing would still have been more than two years after the relevant valuation date. And the Harrys did not offer sufficient evidence to show that their earlier efforts to sell the property reasonably exposed the property to the market. Simply putting up a sign was not enough. And the Harrys did not offer any evidence to show when they listed the property with RE/MAX.

ISSUED: _____

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

- 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>>