

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

Petition: 49-101-06-1-5-09848
Petitioners: Jaklin Idris and Dariana Kamenova
Respondent: Marion County Assessor
Parcel: 1103663
Assessment Year: 2006

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

Procedural History

1. The Petitioners initiated an assessment appeal with the Marion County Property Tax Assessment Board of Appeals (PTABOA) by filing Form 130 dated June 12, 2008.
2. The PTABOA mailed notice of its decision, Form 115, on September 26, 2008.
3. The Petitioners appealed to the Board by filing a Form 131 Petition for Review of Assessment.¹ They elected to have this case heard according to small claims procedures.
4. The Board issued its notice of hearing on January 31, 2011.
5. Administrative Law Judge Paul Stultz and Senior Administrative Law Judge Ted Holaday held the Board's administrative hearing on March 22, 2011. There was no inspection of the property in connection with this appeal.
6. Dariana Kamenova and Lilia Hristova (her grandmother) were sworn as witnesses for the Petitioners. Samantha Steele, Marion County Commercial and Industrial Analyst, was sworn as a witness for the Respondent.

Facts

7. The subject property is a condominium, unit 506, located at 141 South Meridian Street in Indianapolis.

¹ Jaklin Idris and Dariana Kamenova share joint ownership of the property. *Pet'rs Ex. 2, 3.* On October 10, 2008, Ms. Idris filed the Form 131 with the Marion County Assessor, who apparently did not forward the petition to the Board until December 19, 2008. *Bd. Ex. A.* The Respondent raised no issue about the timeliness of the filing. The Board considers the petition to be timely.

8. The PTABOA determined the assessed value is \$44,100 for land and \$351,800 for improvements (total \$395,900).
9. The Petitioners claimed the total assessed value should be \$270,000.

Record

10. The official record contains the following:
 - a. Form 131 Petition,
 - b. Digital recording of the hearing,
 - c. Petitioners Exhibit 1 – None,
Petitioners Exhibit 2 – Quitclaim Deed for the subject property, unit 506,
Petitioners Exhibit 3 – Notice of Assessment,
Petitioners Exhibit 4 – Metropolitan Indianapolis Board of Realtors (MIBOR)
Marion County Tax Report and multi-listing sheet for unit
607,
Petitioners Exhibit 5 – MIBOR Marion County Tax Report and multi-listing sheet
for unit 405,
Petitioners Exhibit 6 – MIBOR Marion County Tax Report and multi-listing sheet
for unit 507,
Petitioners Exhibit 7 – Duplicate of Exhibit 6,
Petitioners Exhibit 8 – Duplicate of Exhibit 5,
Petitioners Exhibit 9 – Photograph of front exterior of the building,
Petitioners Exhibit 10 – Photograph of back exterior of the building,
Petitioners Exhibit 11 – Photograph of back exterior of the building,
Petitioners Exhibit 12 – Photograph of alley behind the building,
Petitioners Exhibit 13 – Photograph of front exterior of the building,
Petitioners Exhibit 14 – Photograph of alley behind the building,
Petitioners Exhibit 15 – Copy of fire incident report dated December 7, 2008,
Petitioners Exhibit 16 – February 21, 2011, article reporting a fight at Jillian's,
Petitioners Exhibit 17 – Photograph from lobby surveillance camera,
Respondent Exhibit 1 – MIBOR multi-listing for the subject property,
Respondent Exhibit 2 – Sales disclosure form for the subject property,
Respondent Exhibit 3 – MIBOR multi-listing sheet for unit 402,
Respondent Exhibit 4 – MIBOR multi-listing sheet for unit 403,
Respondent Exhibit 5 – MIBOR multi-listing sheet for unit 401,
Respondent Exhibit 6 – MIBOR multi-listing sheet for unit 406,
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 Petitioners' case:

- a. The current assessment is too high. A more appropriate assessed value would be \$270,000. *Kamenova testimony.*
- b. The building was under construction when the condominium was purchased. *Kamenova testimony.* The Petitioners entered into a contract to purchase the condominium in July 2005, but the builders did not complete the unit on time so the closing did not occur until December 2005. *Hristova testimony.*
- c. Other condominiums in the same building have lower assessed values than the Petitioners' unit. Most of those other units are bigger than the subject property. The Petitioners' unit views an alley, while the others face different sides of the building with more attractive street views. *Kamenova testimony; Hristova testimony; Pet'rs Ex. 4-8, 10, 12, 14.*
- d. Two bars are located on the main floor of the building. Their ventilation systems create a severe odor problem and a lot of noise. *Kamenova testimony; Pet'rs Ex. 9, 11, 13.*
- e. Bar patrons often set off the fire alarm for the whole building in the middle of the night. *Kamenova testimony; Pet'rs Ex. 15.*
- f. Street beggars are a problem. *Kamenova testimony.*
- g. There have been numerous incidents of crime in the immediate area. Police were recently called to a disturbance at one of the bars in the building and a surveillance camera recorded the theft of furniture from the lobby in 2006. *Kamenova testimony; Pet'rs Ex. 16, 17.*

12. Summary of the Respondent's case:

- a. The property is classified as residential. The Petitioners purchased the condominium for \$402,671 in 2005, but its 2006 assessed value is less. *Steele testimony; Resp't Ex. 2.*
- b. When the Petitioners bought their condominium they should have been aware of the bars on the main floor because the multi-listing statement disclosed this information. *Steele testimony; Resp't Ex. 1.*
- c. Four comparable units in the same building sold for prices between \$354,797 and \$614,415 during 2005. *Steele testimony; Resp't Ex. 3-6.* A market analysis based on sales demonstrates that the assessment is appropriate. *Steele 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 Petitioners did not make a prima facie case for any assessment change for the following reasons:
 - a. Real property is assessed based on "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 has 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 Petitioners proved their property has an undesirable view, odor problems, too much noise, and crime issues. These factors very well could have a negative impact on selling price. Merely proving the existence of these problems, however, is not enough to require changing the assessment. To make a case, the Petitioners needed to offer probative evidence about what a more accurate valuation would be. *See Talesnick v. State Bd. of Tax Comm'rs*, 756 N.E.2d 1104, 1108 (Ind. Tax Ct. 2001). Here, they offered no such proof. Consequently, these points do not help prove the assessment should be changed.
 - c. The Petitioners also attempted to use assessments of other condominiums in the building to show their property is over-assessed. But merely comparing assessments and showing that other properties have lower assessments does not make a case. *See Westfield Golf Practice Center, LLC v. Washington Twp. Assessor*, 859 N.E.2d 396 (Ind. Tax Ct. 2007). Rather than comparing

assessments, a taxpayer must present probative evidence that the assessed value does not accurately reflect market value-in-use. *Id.*

- d. Any effective comparison must establish the comparability of the properties being examined. Statements that properties are “similar” or “comparable” are merely conclusions. One must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. Similarly, one must explain how any differences between the properties affect their relative market values-in-use. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 470-471 (Ind. Tax Ct. 2005). The Petitioners did not provide any meaningful comparative analysis. For the few comparison factors they did identify they failed to deal with how differences affected the relative values.
- e. Furthermore, it is undisputed that the 2005 purchase price for their condominium was \$402,671. Sales information regarding the subject property is generally an acceptable approach to proving market value-in-use, especially when the date of that sale corresponds very closely with the required valuation date. MANUAL at 5; *See also, Hubler Realty Co. v. Hendricks Co. Assessor*, 938 N.E.2d 311, 314-315 (Ind. Tax Ct. 2010) (affirming a determination that trending and the actual sale price of the subject property can be the most persuasive evidence in an appeal). The purchase price supports the 2006 assessment.

Conclusion

- 16. The Petitioners 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>