

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

Petition: 55-021-08-1-4-00052
Petitioner: Indiana Business Bank
Respondent: Morgan County Assessor
Parcel: 55-13-03-380-003.000-021
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 Morgan County Property Tax Assessment Board of Appeals (PTABOA) by filing a Petition for Review of Assessment (Form 130) on June 25, 2009.
2. The PTABOA issued notice of its decision on November 5, 2009.
3. The Petitioner appealed to the Board by filing a Petition for Review of Assessment (Form 131) on November 30, 2009. The Petitioner elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing to the parties dated August 24, 2010.
5. Administrative Law Judge Ronald Gudgel held the Board's administrative hearing on November 16, 2010. He did not conduct an inspection of the property.
6. Certified Tax Representative Carla D. Bishop represented the Petitioner. County Assessor Brenda Brittain appeared *pro se*. Both Ms. Bishop and Ms. Brittain were sworn as witnesses. Reva Brummett also was sworn, but she did not testify.

Facts

7. The property is a convenience store/gas station at 229 Grand Valley Boulevard in Martinsville.
8. The PTABOA determined the 2008 assessed value is \$396,600 for land and \$330,800 for improvements (total \$727,400).
9. The Petitioner claimed the total assessed value should be \$600,000.

Record

10. The official record for this matter is made up of the following:
 - a. Petition,
 - b. Digital recording of the hearing,
 - c. Petitioner Exhibit 1–Summary of Issues,
Petitioner Exhibit 2–Appraisal dated April 9, 2009,
Petitioner Exhibit 3–Lease dated April 29, 2010,
Petitioner Exhibit 4–CPI inflation calculation,
Petitioner Exhibit 5–LoopNet market trends,
Petitioner Exhibit 6–Form 131,
Respondent Exhibits–None,
Board Exhibit A–Form 131 Petition,
Board Exhibit B–Notice of Hearing,
Board Exhibit C–Hearing Sign In Sheet,
Board Exhibit D–Petitioner’s request for exclusion of evidence,
 - d. These Findings and Conclusions.

Objections

11. The Petitioner objected to the introduction of any testimony or exhibits by the Respondent because the Respondent failed to provide copies of documentary evidence or a witness list prior to the hearing. Ms. Bishop had requested copies of the evidence on October 22, 2010.
12. The Board’s small claims rules specifically address providing copies of exhibits and witness lists: “If requested by any party, the parties shall provide to all other parties copies of any documentary evidence and the names and addresses of all witnesses intended to be presented at the hearing at least five (5) business days before the small claims hearing.” 52 IAC 3-1-5(d).
13. The Respondent acknowledged she did not provide the requested documents and she agreed to offer no testimony or exhibits at the hearing.

Contentions

14. Summary of the Petitioner’s case:
 - a. An Indiana licensed appraiser determined the property’s value was \$542,000 as of March 31, 2009. That appraisal was prepared in accordance with USPAP standards. *Bishop testimony; Pet’r Ex. 2.* (The appraisal states that the current

use of the subject property is a convenience store/gas station with 0.831 acres, a building, asphalt paving and a canopy. *Pet'r Ex. 2 at 23-25.*)

- b. The Petitioner purchased the property at a foreclosure/sheriff's sale for \$600,000 on May 7, 2008. *Bishop testimony; Pet'r Ex. 2 at 15.*¹
 - c. On April 29, 2010, the Petitioner leased the property to Circle J Food Mart with an option to purchase at \$542,000. *Bishop testimony; Pet'r Ex. 3.*
 - d. When the appraisal is related back to the required valuation date, January 1, 2007, it is the best evidence of what the assessed value should be. The CPI Inflation Calculator indicates that \$542,000 in 2009 had the same buying power as \$523,823 in 2007. Information from LoopNet contains a chart showing "the change in asking price from January 07 to January 09" for Indianapolis, the metro area and the state. The biggest indication of the relationship between the appraisal and the required valuation date is in the appraisal itself. The sales used by the appraiser as comparables were from February 2006, August 2004, March 2006 and March 2007. All these sale dates are applicable to the valuation date of January 1, 2007. The appraiser made an adjustment (0.9) to bring those sales forward to March 2009. If that adjustment were removed, the indicated value would be \$600,000. *Bishop testimony; Pet'r Ex. 2 at 47, 4, 5.*
15. During cross examination, Ms. Bishop acknowledged that the subject property was in use and occupied on January 6, 2007, when it sold for \$855,000. She admitted this sale was not used in the appraisal—although the appraiser mentioned it. Ms. Bishop did not know why the appraiser did not use that sale. Nevertheless, she stated there was a serious question about that price being a valid indication of market value because within a year the property was in foreclosure again. *Bishop testimony; Pet'r Ex. 2 at 15.*

Analysis

16. 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).
17. 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").

¹ Although Ms. Bishop did not bring it up during her presentation, the appraisal itself indicates other sales of the subject property: a July 2005 sale for \$725,000 and the January 2007 sale for \$855,000. The appraisal also indicates the subject property is "currently" listed for sale at \$775,000.

18. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner's evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
19. The Petitioner failed to demonstrate the assessment should be changed. This conclusion is based on the following reasons:
 - 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). 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, 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. An appraisal can be one of the best ways to overcome the presumption that an existing assessed value is accurate. In this case the Petitioner presented an appraisal prepared by a licensed appraiser. It is certified as conforming to the most recent Uniform Standards of Professional Appraisal Practice. Using the sales comparison approach (and not the cost approach or the income approach), it purports to establish a value as of March 31, 2009, at \$542,000. *See Kooshtard Property VI, LLC v. White River Township Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005).
 - c. The valuation date for a 2008 assessment, however, is January 1, 2007. 50 IAC 21-3-3 (2009). Consequently, the Petitioner was required to provide some explanation about how the appraisal as of March 31, 2009, might demonstrate or be relevant to value as of January 1, 2007. *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).
 - d. The Petitioner attempted to establish that relationship in three ways. First, Ms. Bishop offered a conclusory number based on the "CPI Inflation Calculator." She failed to offer any substantial explanation for how the number was calculated or why it helps relate the appraised value to the required valuation date. Such conclusory evidence is not probative. Next, Ms. Bishop claimed that charts and

information about market trends from “LoopNet” somehow help to relate the appraisal to the required valuation date. But again, she failed to offer any substantial explanation for that conclusion or even how the information from LoopNet is relevant. Finally, Ms. Bishop claimed that eliminating a time adjustment in the appraisal (because the comparable sales were from 2004 through 2007) would relate the appraised value back to January 1, 2007. She offered no calculations or other substantial evidence to support that conclusion. Her characterization of the adjustment that she proposed to eliminate appears to be inaccurate. Furthermore, she failed to provide any support for manipulating the appraisal in that manner or her qualifications to do so.

- e. Looking beyond the valuation date issue, the weight of the evidence does not lead to the conclusion that the assessment must be changed.
- f. Sales information regarding the subject property is also an acceptable approach to proving market value-in-use. MANUAL at 5. And here the subject property sold for \$855,000 on January 6, 2007. Both Ms. Bishop and the appraisal attempted to gloss over this fact, even though the date of that sale corresponds very closely with the required valuation date.²
- g. Based on the totality of the evidence, the actual purchase price of the subject property on January 6, 2007, is more persuasive evidence than the appraisal for a number of reasons.
- h. The appraiser did not testify and Ms. Bishop’s attempts to explain or manipulate the appraisal carry very little, if any, weight. In particular we note the unexplained failure to consider the 2007 sale of the subject property in the appraisal’s comparable sales analysis. (Although Ms. Bishop speculated that there was a question about that price being a valid indication of market value.) The Petitioner failed to present evidence that the January 6, 2007, purchase was anything other than a market transaction.³ Again, the Petitioner presented no substantial evidence or argument to reconcile the contradiction between the appraised value and the actual purchase price on January 6, 2007. Specifically, Ms. Bishop’s conclusory testimony that that purchase price was excessive is not substantial evidence.
- i. An appraisal represents an estimate of a property’s value based on the opinion of an appraiser. In contrast, the actual purchase price of a property is not an

² Similarly, even though Ms. Bishop brought up the fact that the Petitioner bought the subject property at a foreclosure/sheriff’s sale for \$600,000 in 2008, she made no attempt to use this fact to prove what a more accurate assessment might be. She also made no attempt to explain how the 2010 lease with an option to purchase might support the Petitioner’s case. If these points were relevant, Ms. Bishop had the duty to walk the Board through every step of the analysis, which she did not do.

³ The appraiser specifically identified the 2008 sale of the property at a sheriff’s sale as an exchange that did not satisfy the requirements of an arm’s length transaction, but expressed no such reservations about the 2007 sale. *Pet’r Ex. 2 at 15.*

estimate, but rather is direct evidence of how a buyer and seller valued the utility of the property. The January 2007 purchase price of \$855,000 is a strong indication that the Petitioner's requested assessment of \$600,000 would be much too low. *See 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 more persuasive evidence than an appraisal). The timely \$855,000 purchase price is more convincing evidence than everything else the Petitioner offered.

- j. Perhaps the purchase price indicates the current assessment of \$727,400 is too low. The Respondent, however, made no such claim and presented no such argument. And the Board will not make such a case for her. *See Meridian Towers*, 805 N.E.2d at 480 (stating that the Indiana Board exceeded its statutory authority by attempting to make the Assessor's case for her).

Conclusion

- 20. The weight of the evidence does not establish that the subject property is assessed for more than its market value-in-use. Therefore, the Board finds in favor of the Respondent.

Final Determination

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

ISSUED: February 9, 2011

Commissioner, Indiana Board of Tax Review

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- 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>