

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

Petition: 15-007-11-1-4-00061
Petitioner: John Kruetzkamp
Respondent: Dearborn County Assessor
Parcel: 15-01-24-101-066.000-007
Assessment Year: 2011

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 Dearborn County Property Tax Assessment Board of Appeals (PTABOA) by written notice dated September 19, 2011.
2. The PTABOA mailed notice of its decision, Form 115, on December 7, 2011.
3. The Petitioner appealed to the Board by filing a Form 131 Petition for Review of Assessment on January 10, 2012. The Petitioner elected to have this case heard according to small claims procedures.
4. The Board issued notice of hearing to the parties on March 21, 2013.
5. Administrative Law Judge Paul Stultz held the Board's administrative hearing on May 16, 2013. He did not inspect the property.
6. John Kruetzkamp, the successor trustee of the Judith Ann Kruetzkamp Trust, appeared *pro se*. County Attorney Andrew Baudendistel represented the Respondent. John Kruetzkamp, Regina Hamilton and Gary Hamilton of Sibcy Cline Realtors, and County Assessor Gary Hensley were sworn as witnesses.

Facts

7. The subject property is a five-unit apartment building located at 207 - 209 State Street, West Harrison.
8. The PTABOA determined the assessed value is \$16,300 for land and \$123,400 for improvements (total \$139,700).
9. The Petitioner requested a total assessed value of \$96,300.

Objections

10. The Respondent objected to the admission of Petitioner's Ex. 7, the Comparative Market Analysis, contending it is not relevant. The date on the cover letter of this exhibit is January 12, 2012.¹ The Respondent's objection goes to weight of the evidence rather than admissibility. Petitioner's Ex. 7 is admitted into the record and given appropriate weight.

Record

11. The official record for this matter contains the following:
 - a. Form 131 Petition,
 - b. Digital recording of the hearing,
 - c. Petitioner Exhibit 1 – Two page chronological summary of events,
Petitioner Exhibit 2 – Letter from the Petitioner to the Respondent dated September 19, 2011, and two page marketing activity report,
Petitioner Exhibit 3 – Summary of return on investment and redacted copy of Petitioner's 2010 Federal tax Schedule E, Supplemental Income and Loss,
Petitioner Exhibit 4 – Form 115,
Petitioner Exhibit 5 – Form 131,
Petitioner Exhibit 6 – Copy of business card and credentials of Regina Hamilton,
Petitioner Exhibit 7 – Comparative Market Analysis prepared by Regina Hamilton,
Petitioner Exhibit 8 – 2010 monthly rental income,
Petitioner Exhibit 9 – Spreadsheet stating taxes paid by the Petitioner and refund amount requested,
Respondent Exhibit 1 – Subject property record card,
Respondent Exhibit 2 – IncomeWorks evaluation report,
Respondent Exhibit 3 – Comparative market analysis,
Board Exhibit A – Form 131 Petition with attachments,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing Sign In Sheet,
 - d. These Findings and Conclusions.

¹ Respondent's Exhibit 3 includes a dated cover letter, which Petitioner's Exhibit 7 lacks.

Contentions

12. Summary of the Petitioner's case:

- a. The property was listed for sale with realtors Regina Hamilton and Gary Hamilton on December 20, 2010, with an asking price of \$119,000. The property was on the market for 388 days. The asking price was reduced to \$116,000 two months prior to the letter initiating this appeal dated September 19, 2011. An offer of \$100,000 was made; however, the Petitioner would have been required to pay all closing costs and realtor's fees, subsequently this offer was rejected. *Kruetzkamp testimony; Pet'r Ex. 2, 7.*
- b. According to the Petitioner's witness, Regina Hamilton, the subject property is worth around \$95,000. The comparative market analysis utilized three comparable properties to determine this value. The first property, located at 235 Elm Street, Lawrenceburg, sold for \$45,000 and was on the market for 200 days. The second property, located at 502 Third Street, Aurora, is listed at \$118,900 and has three units. This property, however, is not comparable to the Petitioner's property. The third property, located at 203 Broadway, West Harrison, is "right around the corner" from the subject property and is listed for \$97,900. This property has been on the market for 214 days. *R. Hamilton testimony; Pet'r Ex. 7.*
- c. The return on investment for the subject property for 2011 would be 2.93% based on the 2010 income of \$4,083 and the current assessed value of \$139,700. For 2012, the return on investment would be 3.15% based on the same income and the assessed value of \$129,700. These are not acceptable returns on investment ratios. *Kruetzkamp testimony; Pet'r Ex. 3.*
- d. The actual potential gross rent for the subject property is \$21,000 with an occupancy rate of 92.29%. The actual expenses are \$15,293 or 79% of potential gross income. *Kruetzkamp testimony; Pet'r Ex. 8.*
- e. Due to incorrect assessments of the subject property, the Board should order local officials to issue a refund in the amount of \$1,202. *Kruetzkamp testimony; Pet'r Ex. 9.*

13. Summary of the Respondent's case:

- a. The subject property was assessed using a mass appraisal system approved by the Department of Local Government Finance (DLGF). The Assessor contracts with Tyler Technologies to do the mass appraising work which involves studying sales and performing ratio studies. *Hensley testimony.*
- b. Information on income producing properties, such as the subject property, was provided by "IncomeWorks." According to this report, the potential gross rent in

Dearborn County is \$440 per unit per month. Based on this information, the subject property's potential gross rent would be \$26,400. Using an 8.10% vacancy rate and a 42.8% expense rate, the net operating income would be \$14,016. Thus, the value indicated using the income approach, with a 9% capitalization rate, is \$155,738. This amount is greater than the subject property's value determined using the market-adjusted cost approach, which is \$139,700. The lowest of the three approaches to value must be used.² Therefore, the subject property was valued at \$139,700. *Hensley testimony; Resp't Ex. 1, 2.*

- c. The Petitioner provided the Assessor with a comparative market analysis on January 12, 2012. However, this information was provided after the PTABOA had made its determination on December 7, 2011. *Hensley testimony; Resp't Ex. 3.*

Burden

14. 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.

15. The Respondent demonstrated that the assessed value under appeal is less than the prior year's assessment. *Resp't Ex. 1.* Both parties agreed that the Petitioner has the burden to establish a prima facie case proving 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).

² The Respondent is apparently referring to Ind. Code § 6-1.1-4-39, which states the assessment of rental properties of more than four units must be the lowest valuation determined by the three approaches to value.

Analysis

16. The Board is a creation of the legislature and has only the powers conferred by statute. *Whetzel v. Dep't of Local Gov't Fin.*, 761 N.E.2d 904, 908 (Ind. Tax Ct. 2001) (citing *Matonovich v. State Bd. of Tax Comm'rs*, 705 N.E.2d 1093, 1096 (Ind. Tax Ct. 1999)). By statute, the Board must conduct an impartial review of all appeals concerning the assessed valuation of tangible property, property tax deductions, property tax exemptions, and property tax credits that are made from a determination by an assessing official or county property assessment board of appeals to the Board under any law. Ind. Code § 6-1.5-4-1.
17. In contrast, no statute authorizes the Board to review taxes due or the appropriate amount of any refund. The Board therefore lacks jurisdiction to address the Petitioner's assertions that he should receive a refund of \$1,202.
18. The Petitioner made a case for a change in the assessment. The Board reached this decision for the following reasons:
 - 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). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach. A taxpayer is permitted to offer evidence relevant to market value-in-use to rebut an assessed valuation. 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.
 - b. To be relevant, the record must somehow establish how such evidence relates to market value-in-use as of the required valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For a 2011 assessment, the valuation date was March 1, 2011. 50 IAC 21-3-3 (2009).
 - c. The Petitioner presented a comparative market analysis based on three properties and concluded that it indicated a market value of \$95,000 for the subject property. To effectively use any kind of comparison approach to value a property, one must establish that properties truly are comparable. Conclusory statements that properties are "similar" or "comparable" are not sufficient. *Long*, 821 N.E.2d at 470. The Petitioner is "responsible for explaining to the Indiana Board the characteristics of their own property, how those characteristics compared to those of the purportedly comparable properties, and how any differences affected the relevant market value-in-use of the properties." *Id.* at 471. The Petitioner provided no such comparison in this appeal. Instead, Ms. Hamilton merely identified the addresses, their selling or asking price, the number of days on the

market, and in some cases the number of rental units. She even testified that one of the selected properties was not comparing “apples to apples.” Additionally, the cover letter of this document is dated January 12, 2012. No explanation was offered to relate this analysis to the relevant valuation date. Accordingly, the comparative market analysis is not probative. *See Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1119, (Ind. Tax Ct. 1998) (explaining that unsupported conclusory statements are not probative evidence).

- d. The Petitioner presented 2010 monthly income figures and a redacted portion of his 2010 Federal tax Schedule E showing the subject property’s income and expenses. According to the Petitioner, this data demonstrated that the return on investment would be 2.93% based on the 2011 assessment of record and such a return would be too low. The Petitioner, however, failed to establish that simply using the revenue and expenses of the subject property to determine its value conforms to generally accepted appraisal principles. Additionally, even if true, this point does nothing to establish the market value-in-use of the subject property. This conclusory evidence is of no probative value. *Whitley*, 704 N.E.2d at 1119.
 - e. The subject property was listed for sale on December 20, 2010, with an initial asking price of \$119,000, which later was lowered to \$116,000. The property was on the market for 388 days, but only one offer was made during that whole time. It was for \$100,000 and required the Petitioner to pay all closing costs and realtor fees. The net proceeds from this offer would have been approximately \$95,000. This offer was not accepted.
 - f. This evidence, although minimal, is sufficient to establish a prima facie case the subject property had a market value no more than \$116,000 on the relevant valuation date.
19. 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.
 20. A substantial amount of the Respondent’s case related to how the mass appraisal system and annual trending works, as well as how the Respondent met these requirements. The Respondent implied that the subject property’s assessment draws validity from the fact that the disputed assessment was computed using procedures approved by the state for mass appraisals. An appeal of an individual assessment, however, is an entirely different thing. Accordingly, this argument is of no probative value when determining whether the current assessment is correct.
 21. The Respondent also introduced an income capitalization report that concluded the true tax value of the property was \$155,738. As the Respondent acknowledged, however, the assessment of this rental property must be the lowest valuation determined by the three

approaches to value. Ind. Code § 6-1.1-4-39. The value determined by the income capitalization approach value exceeds the value that was determined by the cost approach, which was \$139,700. Accordingly, the income capitalization calculation does nothing to support the current assessment.

22. The Respondent did not support the assessment with substantial evidence.

Conclusion

23. The Petitioner made a case for reducing the assessed value to \$116,000. The Respondent failed to impeach or rebut the Petitioner’s evidence. Thus, the Board finds in favor of the Petitioner.

Final Determination

In accordance with the above findings and conclusions, the assessment will be changed to \$116,000.

ISSUED: September 4, 2013

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 and the Indiana Tax Court’s rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court’s rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.