

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

Petition Nos.: 71-026-08-1-5-04013
71-026-09-1-5-01865
Petitioner: Land Trust, c/o Steven Kollar¹
Respondent: St. Joseph County Assessor
Parcel No.: 018-1086-3627
Assessment Years: 2008 and 2009

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

Procedural History

1. Land Trust, by its trustee, Steve Kollar, filed Form 130 petitions contesting the subject property's assessments for 2008 and 2009. On April 18, 2011, the St. Joseph County Property Tax Assessment Board of Appeals (PTABOA) issued its determinations denying the Trust relief.
2. On May 2, 2011, Mr. Kollar timely filed Form 131 petitions with the Board, electing to have its appeals heard under the Board's small claims procedures.
3. On November 21, 2013, the Board held a hearing on the Trust's petitions through its Administrative Law Judge (ALJ) Jennifer Bippus. She did not inspect the property.²
4. Steve Kollar appeared on behalf of the Trust. Attorney Frank Agostino appeared as counsel for the St. Joseph County Assessor. Mr. Kollar, Lisa Tiller, and County Assessor Rosemary Mandrici were sworn as witnesses.³

Facts

5. The property under appeal is a home located at 921 Cleveland Street in South Bend.
6. The PTABOA determined the following assessment for 2008 and 2009:

Land: \$1,400 Improvements: \$19,500 Total: \$20,900

¹ The Form 131 petition lists the property owner as "Land Trust", while other evidence in the record as "Cleveland Land Trust." The Board will refer to the Petitioner as Land Trust.

² The ALJ consolidated the hearing with a hearing on a separate property owned by 909 Land Trust. The Board is issuing a separate determination for each property.

³ Ms. Tiller, who is apparently employed by Mr. Kollar, did not testify.

7. The Trust originally requested a total assessment of \$15,000 for each year. However, at the conclusion of the hearing the Trust amended its request to a total assessment of \$16,000 for each year.

Record

8. The official record is made up of the following:

- a) Petitions for Review of Assessment (Form 131) with attachments,
- b) A digital recording of the hearing,
- c) Exhibits:

Petitioner Exhibit 1: Multiple Listing Service (MLS) information for the subject property, dated August 25, 2006,
Petitioner Exhibit 2: Department of Housing and Urban Development (HUD) Settlement Statement, dated March 30, 2006,
Petitioner Exhibit 3: Land Trust Agreement for the subject property,
Petitioner Exhibit 4: *Vacant & Abandoned Properties Task Force Report*, City of South Bend, dated February 2013.

Respondent Exhibit 1: 2013 subject property record card.

Board Exhibit A: Form 131 petitions for 2008 and 2009 with attachments,
Board Exhibit B: Hearing notice, dated August 29, 2013,
Board Exhibit C: Notice of Appearance for Frank Agostino,
Board Exhibit D: Hearing sign-in sheet.

- d) These Findings and Conclusions.

Objection

9. Mr. Agostino, while not specifically objecting to the admission of all of the Petitioner's exhibits, expressed "[i]ssues with the weight that should be given to the documents. They appear to be outside of the evaluation period." To the extent that the Board views this as an actual objection, the objection is overruled, as it goes to the weight of the evidence rather than its admissibility. All of the Petitioner's exhibits are admitted.

Contentions

10. Summary of the Petitioner's case:

- a) The subject property should be assessed at \$16,000 for each year. The Petitioner paid \$16,000 for the property in March 2006. Admittedly, the property was purchased from a bank, out of foreclosure. *Kollar testimony; Pet'r Ex. 2.*

- b) The subject property was listed for sale for \$13,900 in 2002. If one were to apply a 2.9% increase to that value each year from 2006 on, the resulting value would be less than the amount the Petitioner is requesting. *Kollar argument; Pet'r Ex. 1.*
 - c) The subject property has been rented approximately 53% of the time since March 2006. Mr. Kollar is unaware if the property was occupied in 2008 or 2009. If the property had been rented, the rent would have been \$500 per month. *Kollar argument.*
 - d) The City of South Bend published a study of vacant and abandoned properties in February 2013, and concluded that the subject property is in a blighted area. *Kollar testimony; Pet'r Ex. 4.*
11. Summary of the Respondent's case:
- a) The assessment reflects the property's market value-in-use for each year. The land and improvement values were based on the rules set forth by the Department of Local Government Finance. *Mandrici testimony; Resp't Ex. 1.*
 - b) The evidence presented by the Trust is not relevant to the assessment dates in question. Mr. Kollar offered no evidence of the property's condition on the assessment dates. Further, the MLS listing he offered expired in 2002, and the Petitioner purchased the property in 2006, both well before the 2008 and 2009 assessment dates. Further, the City of South Bend study Mr. Kollar presented was published in 2013, well after the relevant assessment dates. *Agostino argument.*
 - c) Finally, the Trust admitted the property was purchased out of foreclosure. Mr. Kollar did little to establish that the property is located in a "foreclosure market." *Agostino argument.*

Burden of Proof

12. 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.

13. Here, the parties agree that the assessed value of the subject property did not increase by more than 5% from 2007 to 2008 nor did it increase by more than 5% from 2008 to 2009. In fact, the assessment did not change from 2007 to 2009. Accordingly, the burden shifting provision of Ind. Code § 6-1.1-15-17.2 does not apply.

Analysis

14. The Petitioner failed to make a prima facie case for reducing the subject property's 2008 and 2009 assessments.
- a) Indiana assesses real property on the basis of its true tax value, which the Department of Local Government Finance (DLGF) has defined as the property's market value-in-use. To show market value-in-use, a party may offer evidence that is consistent with the DLGF's definition of true tax value. A market-value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice (USPAP) often will be probative. *Kooshtard Property VI v. White River Twp. Ass'r*, 836 N.E.2d 501, 506 n.6. (Ind. Tax Ct. 2005). A party may also offer actual construction costs for the property under appeal, sales information for that property or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.
- b) Regardless of the method used to rebut the presumption of accuracy, one must explain how the evidence relates to market value-in-use as of the relevant valuation date. *O'Donnell v. Department of Local Government Finance*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the 2008 and 2009 assessment years, those valuation dates were January 1, 2007, and January 1, 2008, respectively. 50 IAC 21-3-3.
- c) Here, the Trust relies mainly on the fact that it bought the subject property for \$16,000 on March 30, 2006. True, a property's sale price can be compelling evidence of its market value-in-use. But in this instance, Mr. Kollar admits the Trust purchased the property from Federal Home Loan Mortgage Company, out of foreclosure.
- d) The Manual provides the following definition of "market value":

The most probable price (in terms of money) which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue

stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- i. The buyer and seller are typically motivated;
- ii. Both parties are well informed and advised and act in what they consider their best interests;
- iii. A reasonable time is allowed for exposure in the open market;
- iv. Payment is made in terms of cash or in terms of financial arrangements comparable thereto;
- v. The price is unaffected by special financing or concessions.

MANUAL at 10.

- e) It is apparent from the Manual's definition that a property purchased out of foreclosure may not reflect its market value for reasons such as a lack of exposure to the open market or the seller (i.e., the bank) not being typically motivated. Therefore, it is incumbent upon the party relying upon that sale to offer specific evidence to allay these concerns. *See Lake County Assessor v. U.S. Steel Corp*, 901 N.E.2d 85, 91-92 (Ind. Tax Ct. 2009) *review denied* (approving of the use of bankruptcy sales when taxpayer established that such sales were a market norm).
- f) While Mr. Kollar offered evidence that the property had been listed on the open market, the listing he submitted spanned from March 27, 2002, to August 30, 2002. Not only is that time period well before the valuation dates in question, the listing itself bears no relationship to the Trust's 2006 purchase of the property. Mr. Kollar, in fact, offered no evidence that the property had been listed on the market when he bought it. Thus, this argument lacked probative value.
- g) Mr. Kollar also offered a study completed by the City of South Bend that was published in 2013. Mr. Kollar argued that this study provides proof that the subject property is located in a "blighted area." However, the study was published over five years after the nearest valuation date in question, and Mr. Kollar failed to prove how this study related to the relevant valuation dates in question. The Board finds no probative evidence in the study that conclusively proves that foreclosure sales were the market norm for the subject property's neighborhood as of January 1, 2007, and January 1, 2008. And Mr. Kollar failed to point the Board to any such evidence. *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").
- h) Consequently, the Board finds that the Petitioner failed to make a prima facie case that the 2008 and 2009 assessments are incorrect. Where a Petitioner has not supported its claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. LTD v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-22 (Ind. Tax Ct. 2003).

Conclusion

15. The Board finds in favor of the Respondent.

Final Determination

In accordance with these findings and conclusions of law, the 2008 and 2009 assessments will not be changed.

ISSUED: April 11, 2014

Chairman, 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 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>>.