

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

Petition No.: 15-020-11-1-5-00578
Petitioner: Jonathan Lawrence
Respondent: Dearborn County Assessor
Parcel No.: 15-06-23-201-025.000-020
Assessment Year: 2011

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

Procedural History

1. Jonathan Lawrence filed a Form 130 petition contesting the subject property’s 2011 assessment. On December 27, 2011, the Dearborn County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination denying Mr. Lawrence relief.
2. Mr. Lawrence then filed a Form 131 petition with the Board. He elected to have his appeal heard under the Board’s small claims procedures.
3. On July 10, 2013, the Board held a hearing through its designated administrative law judge, Jennifer Bippus (“ALJ”).
4. The following people were sworn in and testified:
 - a) Jonathan Lawrence
 - b) Gary Hensley, Dearborn County Assessor¹

Facts

5. The subject property contains a single-family home located at 1477 Brabamhurst Drive, Lawrenceburg, Indiana.
6. Neither the Board nor the ALJ inspected the property.
7. The PTABOA determined the following assessment:

Land: \$17,500	Improvements: \$165,100	Total: \$182,600
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¹ Andrew Baudendistel appeared as counsel for the Assessor.

8. On his Form 131 petition, Mr. Lawrence requested an assessment of \$157,000. He requested an assessment of \$159,000 at the Board's hearing.

Contentions

9. Summary of Mr. Lawrence's case:
 - a) The subject property's assessment is too high in light of what it appraised for and what Mr. Lawrence paid for it. He bought the property for \$157,000 on October 10, 2011. Shortly before that, on September 29, 2011, an appraiser valued the property at \$159,000. *Lawrence testimony; Pet'r Ex. 2.*
 - b) The original 2011 assessment notice must have been sent to the previous owner, because Mr. Lawrence never received it. Mr. Lawrence married and went on a honeymoon shortly after he bought the property. When he returned, there was "something in the mail" about what he needed to do to change the property's assessment. *Lawrence testimony.*
10. Summary of the Assessor's case:
 - a) The Assessor testified that on September 14, 2011, he mailed a Form 11 notice of assessment along with a separate sheet explaining taxpayers' appeal rights to all 30,000 or so taxpayers in the county. To support his testimony, the Assessor offered Form 11 notice for the subject property. But that notice was for the 2012 assessment year and was dated September 14, 2012. *Hensley testimony; Resp't Exs. 1, 3.*
 - b) Based on that September 14 mailing date, the Assessor claimed that Mr. Lawrence had 45 days, or until October 28, 2011, to file an appeal.² Because the Assessor did not receive Mr. Lawrence's appeal until November 15, 2011, the PTABOA found that the appeal was untimely. *Hensley testimony; Resp't Exs. 2, 4.*
 - c) Regardless, the assessment is correct. The Assessor complied with standards set by the International Association of Assessing Officers ("IAAO") and the Department of Local Government Finance ("DLGF"). He and his contractor, Tyler Technologies, performed a ratio study using sales from the years preceding the assessment date. The DLGF had to approve that ratio study before the Assessor could apply market factors to assessments. *Hensley testimony.*
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,

² The Assessor miscounted. Forty-five days from September 14, 2011, was actually Saturday, October 29, 2011.

c) Exhibits:

Petitioner Exhibit 1: Settlement statement dated October 10, 2011,
Petitioner Exhibit 2: Appraisal of the subject property as of September 29, 2011,

Respondent Exhibit 1: Form 11, Notice of Assessment,
Respondent Exhibit 2: Form 130 petition with attached property record card,
Respondent Exhibit 3: Notice to Dearborn County Real Property Owners,
Respondent Exhibit 4: Form 115 determination,
Respondent Exhibit 5: Form 131 petition,³

Board Exhibit A: Form 131 petition,
Board Exhibit B: Original hearing notice scheduling hearing for May 16, 2013,
Board Exhibit C: Request to continue the May 16 hearing,
Board Exhibit D: Notice rescheduling hearing for July 10, 2013,
Board Exhibit E: Notice of Appearance for Andrew Baudendistel,
Board Exhibit F: Hearing sign-in sheet

d) These Findings and Conclusions.

Burden of Proof

12. Generally, a taxpayer challenging an assessment must make a prima facie case proving both that the assessment is wrong and 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). In making its case, the taxpayer must explain how each piece of evidence relates to its 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”). If the taxpayer makes a prima facie case, the burden shifts to the assessor 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.

Discussion

13. Before reaching the merits, the Board first addresses the Assessor's claim that Mr. Lawrence did not timely file his appeal at the local level. To appeal an assessment, a taxpayer must file written notice with the township or county assessor who made the disputed assessment no later than 45 days after being given notice of that assessment. I.C. § 6-1.1-15-1 (a) – (b). The Assessor claims that Mr. Lawrence's appeal was untimely because he filed it more than 45 days after September 14, 2011—the date that the Assessor testified he mailed out Form 11 notices for the 2011 assessment year. But the Assessor offered nothing to show that he actually mailed a Form 11 for the subject

³ The Assessor also offered Exhibits 6-9, which the ALJ admitted into evidence. The Assessor subsequently withdrew those exhibits.

property on that date. He introduced a copy of a Form 11 for the subject property, but that document refers to the 2012 assessment year and lists September 14, 2012, as its mailing date. He did not include a copy of the Form 11 for the property's 2011 assessment.

14. Without more, the Assessor's testimony that he generally mailed Form 11 notices on September 14, 2011, does not show that the subject property's owner of record received notice on or near that date. Granted, there is at least some evidence that the Assessor mailed a document about the property's assessment—Mr. Lawrence testified that there was something in his mail when he returned from his honeymoon. But there is nothing to show what date that document was mailed, much less that it was received either by the property's original owner or by Mr. Lawrence more than 45 days before Mr. Lawrence filed his notice for review. The Board therefore rejects the Assessor's claim that Mr. Lawrence's initial notice for review was untimely and turns to the merits of his appeal.
15. Mr. Lawrence made 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 DLGF has defined as the property's market value-in-use. A party may offer evidence that is consistent with that definition in an assessment appeal. A market-value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice ("USPAP") often will be probative. *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2006). Sales information or actual construction costs for the property under appeal, sales or assessment information for comparable properties, and other information compiled according to generally accepted appraisal principles may also be probative. *See Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 6768 (Ind. Tax Ct. 2005); *see also* I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments to determine an appealed property's market value-in-use).
 - b) In any case, a party must explain how its evidence relates to the relevant valuation date; otherwise, that evidence lacks probative value. *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). For the 2011 assessment year, the assessment and valuation dates were the same—March 1, 2011. I.C. § 6-1.1-4-4.5(f).
 - c) Mr. Lawrence offered a settlement statement showing that he bought the subject property for \$157,000 on October 10, 2011. He also offered an appraisal valuing the property at \$159,000 as of September 29, 2011. Both are sufficiently close to the March 1, 2011 valuation date to be probative of the property's true tax value. The Board gives the purchase price slightly more weight. Thus, Mr. Lawrence made a prima facie case that the assessment should be reduced to \$157,000.
 - d) The Assessor offered no probative valuation evidence of his own to rebut that sale price. He instead simply described the procedures that he followed in computing

assessments. But as the Indiana Tax Court has explained, strictly applying assessment regulations does not necessarily prove a property's market value-in-use in an assessment appeal. *See Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (holding that taxpayers failed to make a case by simply focusing on the assessor's methodology instead of offering market value-in-use evidence).

- e) The Assessor also pointed to the DLGF's approval of his ratio study. But he offered no authority for using a ratio study to prove an individual property's market value-in-use. In fact, the IAAO's Standard on Ratio Studies, which 50 IAC 27-1-4 incorporates by reference, prohibits using ratio studies for that purpose:

Assessors, appeal boards, taxpayers, and taxing authorities can use ratio studies to evaluate the fairness of funding distributions, the merits of class action claims, or the degree of discrimination. . . .
However, ratio study statistics cannot be used to judge the level of appraisal of an individual parcel. Such statistics can be used to adjust assessed values on appealed properties to the common level.

INTERNATIONAL ASSOCIATION OF ASSESSING OFFICIALS STANDARD ON RATIO STUDIES VERSION 17.03 Part 2.3 (Approved by IAAO Executive Board 07/21/2007) (bold added, italics in original).

- f) The Assessor also vaguely argued that the subject property's assessment was in line with the sale prices of other properties in the same neighborhood. But he did not identify those properties much less explain how their sale prices related to the subject property's market value-in-use. The Assessor therefore failed to rebut Mr. Lawrence's prima facie case for reducing the assessment.

Conclusion

16. By showing that he bought the subject property for only \$157,000, Mr. Lawrence made a prima facie case for reducing its assessment. The Assessor failed to offer any probative evidence to rebut that sale price. He similarly failed to show that Mr. Lawrence's initial notice for review was untimely. The Board therefore finds for Mr. Lawrence.

Final Determination

The Board orders that the subject property's 2011 assessment be reduced to \$157,000.

ISSUED: September 27, 2013

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>>.