

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

Petition No.: 45-026-06-1-5-00007
Petitioner: Daniel Maldonado
Respondent: Lake County Assessor
Parcel No.: 45-03-30-336-021.000-023
Assessment Year: 2006

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

Procedural History

1. The Petitioner initiated an assessment appeal with the Lake County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated October 16, 2007.
2. The Petitioner received notice of the decision of the PTABOA on October 1, 2009.
3. The Petitioner filed an appeal to the Board by filing a Form 131 on November 9, 2009. The Petitioner elected to have his case heard pursuant to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated April 8, 2010.
5. The Board held an administrative hearing on May 18, 2010, before the duly appointed Administrative Law Judge (the ALJ) Ellen Yuhan.
6. Persons present and sworn in at hearing:

For Petitioner: Daniel Maldonado, Taxpayer,
Linda Maldonado, Taxpayer's witness,

For Respondent: LaTonya Spearman, Lake County Hearing Officer.

Facts

7. The subject property is a multi-family rental property located at 941 Chicago Avenue, Hammond, in Lake County.
8. The ALJ did not conduct an on-site visit of the property.

Daniel Maldonado
45-026-06-1-5-00007
Findings & Conclusions
Page 1 of 7

9. For 2006, the PTABOA determined the assessed value of subject property to be \$8,300 for the land and \$98,900 for the improvements, for a total assessed value of \$107,200.
10. The Petitioner requested an assessment of \$70,000.

Issues

11. Summary of the Petitioner's contentions in support of an error in his assessment:
 - a. The Petitioner testified that the building at issue in his appeal consists of five 1-bedroom apartments. *D. Maldonado, testimony*. The Petitioner's witness testified that the Petitioner purchased the property in 2002 for \$48,000. *L. Maldonado testimony*.
 - b. Ms. Maldonado argues that Mr. Maldonado's property's assessment is too high based on the property's appraised value. *L. Maldonado testimony*. In support of this contention, the Petitioner presented an appraisal prepared by an Indiana certified residential appraiser, which estimated the value of the property to be \$60,000 as of July 30, 2009. *Petitioner Exhibit 1*.
 - c. The Petitioner further argues that the appraisal relied upon by the Respondent, dated July 16, 2008, which values the property at \$101,000, is not a valid appraisal. *D. Maldonado testimony*. According to the Petitioner's witness, her lawyer commissioned the 2008 appraisal as part of divorce proceedings, so the value was higher. *L. Maldonado testimony*. Mr. Maldonado argues that he could not sell the property for its 2008 appraised value because the area is not worth it. *D. Maldonado testimony*.
12. Summary of the Respondent's contentions in support of the assessment:
 - a. The Respondent contends that the Petitioner's assessment is correct. *Spearman testimony*. In support of this contention, the Respondent's representative submitted an appraisal that estimated the value of the subject property to be \$101,000 as of July 16, 2008. *Respondent Exhibit 3*.
 - b. The Respondent's representative further argues that the Board should give little weight to the Petitioner's appraisal because the property has been appraised several times for differing values. *Spearman testimony*. In support of this contention, the Respondent's representative presented three appraisals that the Petitioner previously submitted to the county. *Respondent Exhibit 1, 3, and 4*. The first appraisal valued the property at \$48,000 as of September 21, 2002. *Spearman testimony; Respondent Exhibit 1*. The second appraisal valued the property at \$57,000 as of January 1, 2006. *Spearman testimony; Respondent Exhibit 4*. The third appraisal, which the Respondent argues should carry the most weight, estimates the property's value to be \$101,000 as of July 16, 2008. *Spearman testimony; Respondent Exhibit 3*.

- c. In addition, the Respondent's representative argues, the property is correctly assessed based on its income approach valuation. *Spearman testimony*. According to Ms. Spearman, the 2008 appraisal used a market rent of \$2,175 and a gross rent multiplier (GRM) of 57, which Ms. Spearman argues is an accurate GRM for the Petitioner's neighborhood. *Id.*; *Respondent Exhibit 3*. Because the property is an income-producing property, Ms. Spearman argues, the income approach is the most appropriate method of valuing the property. *Id.*
- d. Finally, the Respondent's representative contends that sales in the area of the Petitioner's property support the assessed value. *Spearman testimony*. In support of this contention, Ms. Spearman submitted a list of six multi-unit properties located near the Petitioner's property that sold between 2004 and 2006 for \$75,000 to \$189,900. *Respondent Exhibit 2*.

Record

13. The official record for this matter is made up of the following:
 - a. The Petition,
 - b. The compact disk recording of the hearing labeled 45-026-06-1-5-00007 Maldonado,
 - c. Exhibits:
 - Petitioner Exhibit 1 – Appraisal from Home Appraisal Service dated July 30, 2009,
 - Respondent Exhibit 1 – Appraisal from Bochnowski Appraisal (Goodnight appraisal) dated September 21, 2002,
 - Respondent Exhibit 2 – Comparable sales,
 - Respondent Exhibit 3 – Appraisal from Bochnowski Appraisal (Granath appraisal) dated July 16, 2008,
 - Respondent Exhibit 4 – Appraisal from Home Appraisal Service, dated January 1, 2006,
 - Board Exhibit A – Form 131 petition,
 - Board Exhibit B – Notice of Hearing dated April 8, 2010,
 - Board Exhibit C – Hearing sign-in sheet,
 - d. These Findings and Conclusions.

Analysis

14. The most applicable governing cases are:

- a. 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 Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
 - b. 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 Township 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”).
 - c. 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 case. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
15. The Petitioner failed to provide sufficient evidence to establish an error in his assessment. The Respondent, however, presented evidence to show that the property’s assessment was over-valued. The Board reached this decision for the following reasons:
- a. The 2002 Real Property Assessment Manual defines “true tax value” as “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.” 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). Appraisers have traditionally used three methods to determine a property’s market value: the cost approach, the sales comparison approach, and the income approach to value. *Id.* at 3, 13-15. Indiana assessing officials generally assess real property using a mass-appraisal version of the cost approach, as set forth in the REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A.
 - b. A property’s market value-in-use as determined using the Guidelines is presumed to be accurate. *See MANUAL* at 5; *Kooshtard Property, VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501 (Ind. Tax Ct. 2005); *P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 2006). A taxpayer may rebut that assumption with evidence that is consistent with the Manual’s definition of true tax value. *MANUAL* at 5. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice (USPAP) often will suffice. *See Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.6. A taxpayer may also offer actual construction costs, sales information for the subject property or comparable properties and any other information compiled according to generally accepted appraisal practices. *MANUAL* at 5.
 - c. Regardless of the method used to rebut an assessment’s presumption of accuracy, a party must explain how its evidence relates to the subject property’s 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 March 1, 2006, assessment, the valuation date was January 1, 2005. 50 IAC 21-3-3.

- d. Here, the Petitioner offered an appraisal report prepared by an Indiana certified appraiser in which the appraiser valued the Petitioner's property at \$60,000 as of July 30, 2009. The appraiser certified that his report conformed to the Uniform Standards of Professional Appraisal Practice (USPAP). Although an appraisal is the type of market-based evidence that could be relevant and probative in determining a property's market value-in-use, in this case it fails to do so. The appraisal estimates the property's value more than four years after the relevant valuation date of January 1, 2005. Because Mr. Maldonado did not relate the property's July 30, 2009, appraised value to his property's value as of January 1, 2005, the appraisal lacks probative value. The Petitioner also failed to relate the property's 2002 purchase price to the valuation date. The Petitioner therefore failed to raise a prima facie case.
- e. Where a taxpayer 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. Department of Local Government Finance*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003). Here, however, the Respondent presented an appraisal which valued the Petitioner's property at \$57,000 as of January 1, 2006. *Respondent Exhibit 4*. In his sales comparison approach, the appraiser used properties that sold in 2005. *Id.* While generally the 2006 assessment is to reflect the value of a property as of January 1, 2005, pursuant to 50 IAC 21-3-3(a), "local assessing official shall use sales of properties occurring between January 1, 2004, and December 31, 2005, in performing sales ratio studies for the March 1, 2006, assessment date." Thus the Board finds that an appraisal using 2005 sales in its sales comparison analysis has some probative value and, in this case, is the most credible evidence of the value of the Petitioner's property.¹

Conclusion

16. The Petitioner failed to establish a prima facie case that his property was assessed in error. The Respondent, however, submitted evidence showing that the property is over-valued. The Board therefore finds that the true tax value of the Petitioner's property is \$57,000.

¹ The Respondent's witness testified that she put more weight on the 2008 appraisal because the appraiser's income approach used a GRM that she felt was accurate for the area and because the property is an income-producing property. The 2008 appraisal, however, suffers from the same deficiency as the Petitioner's evidence – it does not value the property as of the relevant valuation date of January 1, 2005. Moreover the Respondent's comparable sales are not probative of the Petitioner's property's value because Ms. Spearman made no attempt to show how the properties were comparable to the subject property. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (In order to effectively use the sales comparison approach as evidence in a property assessment appeal, however, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the two properties).

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed.

ISSUED: _____

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, 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>