

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

Petition: 18-003-06-1-5-01411
Petitioner: Melissa A. McAbee
Respondent: Delaware County Assessor
Parcel: 18-31-402-022-000
Assessment Year: 2006

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

Procedural History

1. The Petitioner initiated an assessment appeal regarding the subject property with the Delaware County Property Tax Assessment Board of Appeals (“PTABOA”) by written document.
2. The PTABOA mailed its decision for the 2006 assessment on March 27, 2008.
3. The Petitioner appealed to the Board by filing a Form 131 petition on May 9, 2008. 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 April 15, 2009.
5. Administrative Law Judge Paul Stultz held the Board’s administrative hearing on May 19, 2009. He did not inspect the property.
6. Petitioner Melissa A. McAbee and Deputy Assessor Kelly Hisle were sworn as witnesses at the hearing.

Facts

7. The subject parcel is a single family condominium located at 3926 North Lakeside Drive in Muncie.
8. The assessed value determined by the PTABOA is \$12,700 for land and \$78,200 for improvements (total \$90,900).
9. The Petitioner claimed the land value should be \$11,000 and the improvement value should be \$67,500 (total \$78,500).

Record

10. The official record for this matter contains the following:
 - a. Petition for Review of Assessment (Form 131) with attachments,
 - b. Notice of Hearing,
 - c. Hearing Sign-in Sheet,
 - d. Digital recording of the hearing,
 - e. Petitioner Exhibit 1 – Settlement Statement,
Petitioner Exhibit 2 – Receipt for Homestead Credit and Mortgage Deduction,
Petitioner Exhibit 3 – Commitment for title insurance,
Petitioner Exhibit 4 – Cover sheet of appraisal report dated December 7, 2005,
Petitioner Exhibit 5 – Notice of Assessment of Land and Structures (Form 11 R/A) for the 2006 assessment,
Petitioner Exhibit 6 – Initial appeal letter for the 2006 assessment,
Respondent Exhibit 1 – Warranty deed,
Respondent Exhibit 2 – Mortgage record,
Respondent Exhibit 3 – Real Estate Retention Agreement,
Respondent Exhibit 4 – Sales Disclosure Form,
Respondent Exhibit 5 – Multiple listing (“MLS”) and property record card (“PRC”) for the subject property,
Respondent Exhibit 5(a) – MLS and PRC for 3909 North Lakeside Drive,
Respondent Exhibit 5(b) – MLS and PRC for 4014 North Lakeside Drive,
Respondent Exhibit 5(c) – MLS and PRC for 3756 North Lakeside Drive,
Respondent Exhibit 5(d) – MLS and PRC for 3806 North Lakeside Drive,
Respondent Exhibit 5(e) – MLS and PRC for 3772 North Lakeside Drive,
Respondent Exhibit 5(f) – MLS and PRC for 3910 North Lakeside Drive,
Respondent Exhibit 5(g) – MLS and PRC for 3914 North Lakeside Drive,
 - f. These Findings and Conclusions.

Contentions

11. Summary of the Petitioner’s case:
 - a. The assessed value of the subject property is more than its market value-in-use. It should be reduced to the same value as the 2005 assessment, which was only \$78,500. *McAbee testimony; Pet’r Ex. 5.*
 - b. The Petitioner purchased the property for \$85,900 on December 19, 2005. *McAbee testimony; Pet’r Exs. 1; Resp’t Ex. 4.*

- c. The property was appraised for \$86,000 as of December 2, 2005. This appraised value is within the range of property values in the area. *McAbee testimony; Pet'r Ex. 4.*

12. Summary of the Respondent's case:

- a. The assessment for 2006 is based upon seven comparable sales in 2004 and 2005 that ranged from \$92,500 to \$114,900. All of the comparables have similar square footage and are in the Petitioner's neighborhood. None of the comparables were estate sales. *Hisle testimony; Resp't Exs. 5(a) through 5(g).*
- b. The Petitioner's assessment of \$90,900 is within the range of those comparables. *Hisle testimony; Resp't Exs. 5 through 5(g).*
- c. The Petitioner purchased her property at an estate sale. The purchase price does not provide an accurate indicator of its market value. *Hisle testimony.*

Analysis

- 13. A Petitioner seeking review of an assessing official's determination 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).
- 14. In making a 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”).
- 15. Regardless of the approach used to prove a property's value-in-use, a 2006 assessment must reflect its value as of January 1, 2005. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. Evidence relating to a different date must have an explanation about how it demonstrates or is relevant to the required valuation date. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).¹
- 16. 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.

¹ Each assessment year stands on its own. The 2005 assessment would have been based on a valuation as of January 1, 1999. Therefore, the fact that the assessment was only \$78,500 for 2005 is irrelevant to what the assessment should be for 2006.

17. The Petitioner provided sufficient evidence to support her claim for an assessment change because:
- a. Real property is assessed based on its "true tax value," which does not mean fair market value. It 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. 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. Sales information regarding the subject property is often the most persuasive way to prove a case. The Petitioner testified she purchased the property for \$85,900 in December 2005. She provided a closing statement dated December 19, 2005, that confirms the price and date. The Respondent did not dispute when the Petitioner bought the property or what she paid for it and even provided a copy of the sales disclosure form that confirms those facts. A letter from Appraiser Nicholas Breitung to Mutual Federal Savings Bank states that in his opinion the estimated market value of the property as of December 2, 2005, was \$86,000. *Pet'r Ex. 4*. This letter appears to relate to a loan the Petitioner got to buy the property. *Pet'r Ex. 1*. Although the letter makes reference to an appraisal, without the appraisal or Mr. Breitung's testimony being put into the evidence, the letter has very little probative value—perhaps it provides a little corroboration that the purchase price was approximately market value. Still, the totality of the Petitioner's evidence makes a prima facie case for an assessment of \$85,900.
 - c. The Respondent did not attempt to argue that the December 2005 price of \$85,900 does not relate to the January 1, 2005, valuation date. Furthermore, the Respondent based the 2006 assessment on sales from 2004 and 2005. *Resp't Ex. 5a-g*. Therefore, the Respondent acknowledged the link between sales made in 2005 and the required valuation date, January 1, 2005. Ind. Code § 6-1.1-4-4.5; Ind. Admin Code tit.50, r. 21-3-3.
 - d. The Respondent claimed that the Petitioner's purchase price is not an accurate indication of value simply because she bought the property from an estate. That claim was not supported by any probative facts about the circumstances of the sale or substantial explanation for why the price might not be a good indicator of market value-in-use. Such conclusory statements are not probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind.

Tax Ct. 1998). They do not rebut or impeach the persuasive weight of the purchase price for the subject property.

- e. The Respondent also presented seven purportedly comparable properties, but failed to explain the characteristics of the Petitioner's property and how those characteristics compared to those of the purportedly comparable properties. Although location and square footage are facts that can be used to help establish comparability, they were the only basis of comparison the Respondent presented. And on cross examination Ms. Hisle even admitted that in selecting comparables she failed to distinguish between properties that are on the lake and those that are not. Whether a property is truly 'comparable' depends on many factors including size, shape, topography, accessibility, use, etc. See *Blackbird Farms Apts., LP v. Dep't of Local Gov't Fin.*, 765 N.E.2d 711, 714 (Ind. Tax Ct. 2002). The Respondent did not prove comparability. Consequently, the purportedly comparable properties do not help to prove what the assessment of the subject property should be.
- f. The Respondent did not support the accuracy of the existing assessment with substantial evidence.

Conclusion

- 18. The Board finds in favor of the Petitioner, who proved that the current assessment is wrong and that a more accurate valuation would be what she paid for the property.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now finds the total assessed value of the subject property must be changed to \$85,900.

ISSUED: _____

Commissioner, 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>>