

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

Petition: 48-005-07-1-5-07606
Petitioners: Laverne & Kathryn McKee
Respondent: Madison County Assessor
Parcel: 24-996-G14
Assessment Year: 2007

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

Procedural History

1. The Petitioner initiated an assessment appeal by filing a Form 130 with the Madison County Property Tax Assessment Board of Appeals (PTABOA) on January 20, 2009.
2. The PTABOA issued notice of its decision on April 30, 2009.
3. The Petitioners appealed to the Board by filing a Form 131 on June 5, 2009. 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 June 24, 2009.
5. Administrative Law Judge Paul Stultz held the Board's administrative hearing on August 11, 2009. He did not inspect the property.
6. The following persons were sworn as witnesses at the hearing:
 - a. For the Petitioners—Petitioner Kathryn McKee,
Shirley Hayden (her daughter),
 - b. For the Respondent—County Assessor Cheryl Heath,
Deputy Assessor Jennifer Robbins.

Facts

7. The subject property is a residential property located at 2121 Edgewood Drive, Anderson.
8. The PTABOA determined the assessed value is \$18,400 for land and \$109,500 for improvements (total \$127,900).
9. The Petitioners requested a total assessed value of \$102,100.

Contentions

10. Summary of the Petitioners' case:

- a. The assessed value is greater than fair market value. The subject property could not be sold for over \$105,000. *McKee testimony; Hayden testimony.*
- b. The subject property has 3 bedrooms, 1½ baths, and 2,050 square feet. *Hayden testimony.*
- c. Four other properties in the same area are listed for sale at prices ranging from \$64,000 to \$120,000. The average asking price is approximately \$105,000 to \$110,000. *Hayden testimony; Pet'r Exs. 1-4.*
- d. The property at 3622 Tulip has 3 bedrooms, 1 bath, and a fireplace. It is listed for sale at \$64,000. *Hayden testimony; Pet'r Ex.1.*
- e. The property at 3707 Oakwood has 3 bedrooms, 2½ baths, and 1,700 square feet. It is listed for sale at \$107,000. *Hayden testimony; Pet'r Ex. 2.*
- f. The property at 1623 Magnolia has 4 bedrooms, 2 baths, and 2,000 square feet. It is listed for sale at \$112,900 in 2009. This property also was listed for sale in 2006, 2007, and 2008. *Hayden testimony; Pet'r Ex. 3.*
- g. The property at 3433 Beechwood has 3 bedrooms, 2 baths, a large sunroom, wood floors, and is listed for sale at \$110,000. *Hayden testimony; Pet'r Ex.4.*
- h. Another house with 4 bedrooms, 3 baths, and limestone on the outside appraised for \$140,000, but the subject property does not compare to it. *Hayden testimony.*
- i. A two-story house with 4 bedrooms and 2 baths located across the street just sold. "I am sure he got under \$100,000 for it." *McKee testimony.*
- j. The subject property appraised for \$121,000 three years ago when it was purchased, but the Petitioners bought the property when property values were "at the top." *Hayden testimony; McKee testimony.*

11. Summary of the Respondent's case:

- a. The PTABOA decision is the correct assessment for the subject property. *Heath testimony.*
- b. The Respondent presented the subject property record card and two aerial photographs of subject property, but did not offer testimony regarding these exhibits. *Resp't Exs. 1-3.*

Record

12. The official record for this matter is made up of the following:
 - a. The Petition,
 - b. A digital recording of the hearing,
 - c. Petitioner Exhibit 1 – Photograph, the listed sale price, and brief description of 3622 Tulip,
Petitioner Exhibit 2 – Photograph, the listed sale price, and brief description of 3707 Oakwood,
Petitioner Exhibit 3 – Photograph, the listed sale price, and brief description of 1623 Magnolia,
Petitioner Exhibit 4 – Photograph, the listed sale price, and brief description of 3433 Beechwood,
Respondent Exhibit 1 – Property record card,
Respondent Exhibit 2 – Aerial photograph of subject property,
Respondent Exhibit 3 – Aerial photo of subject property,
Board Exhibit A – Form 131 Petition with attachments,
Board Exhibit B – Notice of Hearing on Petition,
Board Exhibit C – Hearing Sign In Sheet,
 - d. These Findings and Conclusions.

Analysis

13. 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 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 its 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. 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.

16. The Petitioners did not make a case for any assessment change.
- 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). A taxpayer may offer evidence relevant to market value-in-use to rebut the presumption the assessment is correct. 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. The Petitioners presented photographs with a notation of a list price and a brief description of four properties in the surrounding area. Though it was not explicitly stated, it is assumed that Petitioners considered these properties comparable to the subject property. *Hayden testimony; Pet'r Exs. 1-4.*
 - c. The Petitioners failed to establish that the other properties they presented are comparable to the subject property. While the Petitioners provided brief descriptions that included characteristics such as size, number of baths, and number of bedrooms, they did not provide enough detail to make a proper analysis of comparability. They were "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." *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Without proving how and why these properties are truly comparable, this type of evidence lacks probative value.
 - d. Even if the Petitioners had established some sort of comparability, their evidence does not help to prove what the assessment should be. While a completed, arms'-length sale on the open market is probably a reliable indicator of value, the Petitioners' evidence represents only the listing price for several properties. They failed to explain how listing prices are relevant or help to prove the requested value for the subject property.
 - e. The Petitioners discussed a limestone home with four bedrooms and three baths that the Petitioners claim appraised for \$140,000. It was admitted that property was not comparable to the subject property. It proves nothing relevant.
 - f. The Petitioners discussed another property, a two story home with three bedrooms, a family room, and a living room, that sold for less than \$100,000. But that vague price was left as mere speculation. The Petitioners provided no reliable, probative evidence about what the exact selling price for that property was. They also failed to provide a meaningful comparability analysis.

- g. Finally, a 2007 assessment must reflect the value of the property as of January 1, 2006. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. Any evidence of value relating to a different date must also have an explanation about how it demonstrates, or is relevant to, the value as of that required valuation date. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d at 466, 471. The Petitioners did not relate any of their evidence to the valuation date of January 1, 2006. This point is another fatal flaw in their case.
- h. Although there was testimony about an appraisal of the subject property that was done three years ago, it was not offered as evidence. It might have supported a somewhat lower assessment than the PTABOA determination (not as low as requested by the Petitioners), but that is only speculation. Perhaps the Petitioners should have offered that appraisal as evidence, but they did not do so. Therefore, it cannot be the basis for determining what the assessed value should be.

Conclusion

17. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings and conclusions there will be no change in the assessment.

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>