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

Petition No.: **15-013-11-1-5-00002**
Petitioner: **Robert Menkhaus**
Respondent: **Dearborn County Assessor**
Parcel No.: **15-07-15-200-030.002-013**
Assessment Year: **2011**

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

Procedural History

1. Robert Menkhaus filed a Form 130 petition with the Dearborn County Assessor contesting the subject property's 2011 assessment. On December 7, 2011, the Dearborn County Property Tax Assessment Board of Appeals ("PTABOA") issued its determination denying Mr. Menkhaus relief.

2. Mr. Menkhaus then timely 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) Robert Menkhaus

    b) Gary Hensley, Dearborn County Assessor[1]

Facts

5. The subject property is a condominium located at 404 Riviera Drive in Lawrenceburg, Indiana.

6. Neither the Board nor the ALJ inspected the property.

[1] Andrew Baudendistel appeared as counsel for the Assessor.

7. The PTABOA determined the following assessment:

   Land: $0 Improvements: $230,000 Total: $230,000

8. Mr. Menkhaus requested a total assessment of $189,300.

Parties' Contentions

9. Summary of Mr. Menkhaus's case:

   a) The subject property is assessed too high in light of what Mr. Menkhaus paid for it. He bought the property for $189,300 on December 17, 2010. The assessment should more closely reflect that price. Similar condominiums in the same neighborhood sold for close to what Mr. Menkhaus paid. In fact, an identical condominium located at 403 Riviera Drive sold for $191,843 in February 2011. That condominium appraised for $188,000. *Menkhaus testimony and argument; Pet'rs Exs. 2, 4.*

   b) For 2013, the Assessor lowered the assessment from $230,000 to $196,900. The 2013 assessment is more in line with the property's value. *Menkhaus testimony; Pet'r Ex. 1.*

10. Summary of the Assessor's case:

   a) The assessment is correct. Assessments are based on a mass appraisal of all properties in the county and start with the cost approach. The Assessor then applies market factors to those cost-based valuations. The market factors are taken from sales data that the Assessor's contractor, Tyler Technologies, compiles in conjunction with performing ratio studies. Each year the Assessor submits his ratio studies to the Department of Local Government Finance ("DLGF") for approval. Thus, the assessments comply with all state requirements. *Hensley testimony and argument; Resp't Ex. 1.*

   b) After meeting with the developer of the subject property's subdivision to get more information about the various condominium buildings, the Assessor separated all the condominium units into groups based on similarities in their configurations. For example, all "200 level" units have basements and two-car garages, while other units have only a one-car garage and no basement. *Henley testimony.* The assessments ranged from $90,000 to $230,000. The subject property has a two-car garage and a basement and is therefore part of the highest grouping. The Assessor did not "sales chase" by assessing units at their sale prices. *Id.; Resp't Exs. 1-3.*

Record

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,

c) Exhibits:

Petitioner Exhibit 1: Taxpayer and property information sheet,
Petitioner Exhibit 2: Settlement statement dated 12/17/2010,
Petitioner Exhibit 3: Form 131 petition,
Petitioner Exhibit 4: Sales, appraisal, and assessment data for the subject property's neighborhood,
Petitioner Exhibit 5: Form 115 determination,

Respondent Exhibit 1: Ratio study report for subject property's neighborhood,
Respondent Exhibit 2: Neighborhood sales information,
Respondent Exhibit 3: Assessment information for various neighborhoods, including condominium unit groupings for the subject property's neighborhood,

Board Exhibit A: Form 131 petition,
Board Exhibit B: Hearing notice,
Board Exhibit C: Notice of Appearance for Andrew Baudendistel,
Board Exhibit D: Hearing sign-in sheet,

d) These Findings and Conclusions.

Objections

12. The Assessor objected to Petitioner's Exhibit 1, a tax statement from the Dearborn County Treasurer for 2013. The Assessor argued that the statement is irrelevant because it relates to years after 2011. The ALJ took the objection under advisement.

13. The Board sustains the objection. Generally, each assessment and each tax year stands alone. *Fleet Supply, Inc. v. State Bd. of Tax Comm'rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001) (*citing Glass Wholesalers, Inc. v. State Bd. of Tax Comm'rs*, 568 N.E.2d 1116, 1124 (Ind. Tax Ct. 1991)) ("Finally, the Court reminds Fleet Supply that each assessment and each tax year stands alone. … Thus, evidence as to the Main Building's assessment in 1992 is not probative as to its assessed value three years later."). Mr. Menkhaus offered the tax statement to show that the subject property's assessment was reduced in later years, but he did not explain how that fact relates to the market value-in-use for the year under appeal.

14. The Assessor also objected to Petitioner's Exhibit 4, which is a chart with sales and assessment information for other condominiums from Mr. Menkhaus's neighborhood. The Assessor argued that Mr. Menkhaus failed to lay a foundation showing where he got the information and that there was nobody at the hearing to testify as to its truth. Once again, the ALJ took the objection under advisement.

15. The Board overrules the objection. Mr. Menkhaus testified that he got the "realtor" information "off the internet." *Menkhaus testimony*. Granted, that is a vague description. And as the Assessor pointed out, the data is still hearsay. Nonetheless, the Board's procedural rules allow it to admit hearsay, with the caveat that the Board cannot base its determination solely on hearsay that is properly objected to and that does not fall within a recognized exception to the hearsay rule. 52 IAC 2-7-3. And many of the sales from Petitioner's Exhibit 4 are listed in the Assessor's own exhibits, which mitigates concerns about their reliability. *See Resp't Exs. 1-2.*[2]

Analysis

Burden of Proof

16. Generally, a taxpayer has the burden of proof in an assessment appeal. The taxpayer must make a prima facie case proving both that the challenged assessment is incorrect 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). If the taxpayer makes a prima facie case, the assessor has the burden to 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.

17. Effective July 1, 2011, however, the Indiana General Assembly enacted Indiana Code § 6-1.1-15-17, which has since been repealed and re-enacted as Ind. Code § Code 6-1.1-15-17.2.[3] That statute shifts the burden of proof to an assessor in certain appeals:

> 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 or the Indiana Tax Court.

I. C § 6-1.1-15-17.2 (emphasis added)

18. The assessment went from $92,000 in 2010 to $230,000 in 2011—an increase of far more than 5%. But the statute applies only where an assessment for the *same property* increases by more than 5%. The Assessor testified without dispute that the subject unit was still being built on March 1, 2010, and was therefore assessed based on its percentage of completion. By contrast, it was assessed as 100% complete in 2011.

[2] As discussed below, the Board does not ultimately rely on Petitioner's Exhibit 4 in reaching its decision.
[3] HEA 1009 §§ 42 and 44 (signed February 22, 2012). This was a technical correction necessitated by the fact the two different provisions had been codified under the same section number.

Because the 2011 assessment was not for the same property that was assessed in 2010, the increase does not shift the burden of proof from Mr. Menkhaus to the Assessor.

Discussion

19. Mr. Menkhaus proved that the subject property's 2011 assessment should be reduced to $189,300. The Board reaches this conclusion because:

a) Indiana assesses real property based on its true tax value, which DLGF has defined as the property's market value-in-use. Parties 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 often will be probative. *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). 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, 678 (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 2011, the assessment and valuation dates were the same—March 1, 2011. I.C. § 6-1.1-4-4.5(f).

c) Mr. Menkhaus bought the subject property for $189,300. A property's sale price is often the best evidence of its value. *See Hubler Realty Co. v. Hendricks County Assessor*, 938 N.E.2d 311, 315 (Ind. Tax Ct. 2010) (finding that the Board's determination assigning greater weight to the property's purchase price than its appraised value was proper and supported by the evidence). That is particularly true where, as here, the sale occurs close to the relevant valuation date.

d) The Assessor offered no probative valuation evidence of his own to rebut that sale price. Instead, he simply explained the procedures that were followed in assessing the property and pointed to the fact that the DLGF approved his ratio study. 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 likewise offered no authority for using a ratio study to prove that an individual property's assessment reflects its market value-in-use. In fact, the International Association of Assessing Official'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).

Conclusion

20. Based on what he paid for the subject property, Mr. Menkhaus made a prima facie case that its 2011 assessment should be reduced to $189,300. The Assessor failed to rebut Mr. Menkhaus's evidence. The Board therefore finds for Mr. Menkhaus.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now orders that the subject property's 2011 assessment be reduced to $189,300.

ISSUED: September 27, 2013

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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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>.