

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

Petition No.: 71-016-07-1-5-00261
Petitioner: Rafael Munoz, Trustee
Respondent: St. Joseph County Assessor
Parcel No.: 16-2044-1498
Assessment Year: 2007

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 St. Joseph County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated January 7, 2009.
2. The PTABOA issued notice of its decision on August 17, 2009.
3. The Petitioner filed an appeal to the Board by filing a Form 131 on September 24, 2009. The Petitioner elected to have its case heard pursuant to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated March 23, 2011.
5. The Board held an administrative hearing on June 7, 2011, before the duly appointed Administrative Law Judge (the ALJ) Ellen Yuhan.
6. Persons present and sworn in at hearing:

For Petitioner: Rafael A. Munoz, trustee of the property owner,

For Respondent: Rosemary Mandrici, St. Joseph County Assessor.¹

Facts

7. The subject property is a house located at 609 Fairmont Avenue, in Mishawaka, Indiana.
8. The ALJ did not conduct an on-site visit of the property.

¹ Frank J. Agostino appeared as counsel for the Respondent.

9. For 2007, the PTABOA determined the assessed value of the subject property to be \$7,600 for the land and \$42,400 for the improvements, for a total assessed value of \$50,000.
10. The Petitioner requested an assessment of \$20,000.

Issues

11. Summary of the Petitioner's contentions in support of an alleged error in its property's assessment:
 - a. The Petitioner's representative contends that the Petitioner's property is over-assessed based on its purchase price. *Munoz argument*. According to Mr. Munoz, the Petitioner purchased the subject property and an adjacent lot for \$25,000 in May of 2008. *Munoz testimony*.
 - b. Mr. Munoz further argues that Board should give little weight to the 2005 and 2006 sales submitted by the Respondent. *Munoz argument*. According to Mr. Munoz, the price of real estate in 2005 and 2006 was inflated because of mortgage fraud. *Id*. Mr. Munoz contends that he could not sell any of his properties for their 2005 and 2006 values even after spending money to repair them. *Id*.
 - c. Finally, Mr. Munoz argues that he has the right to appeal the property's assessed value because the Petitioner owns the subject property and the Petitioner is responsible for paying the property taxes on the property. *Munoz argument*. According to Mr. Munoz, the assessment form he received stated that the Petitioner had 45 days in which to file an appeal. *Id*. Mr. Munoz argues that there were no exclusions or exceptions to the appeal rights identified on the form. *Id*.
 - d. Mr. Munoz contends that the county's denial of the right to appeal to any individual that purchased real estate between March 2, 2008, and December 31, 2008, forces buyers to accept the arbitrary value decided by the county. *Munoz argument*. While this may increase revenues in the short term, Mr. Munoz argues, it only creates distrust and reduces investments. *Id*.
12. Summary of the Respondent's contentions in support of the assessment:
 - a. The Respondent's counsel argues that the Petitioner's property's assessment is correct based on a previous sale of the property. *Agostino argument*. According to the Assessor, the property sold in June of 2006 for \$68,000. *Mandrici testimony*. In support of this contention, the Respondent submitted the property record card for the subject property showing the transfer of ownership. *Respondent Exhibit 1*. The Respondent argues the property's price in 2006 is closer in time to the valuation date of January 1, 2006, than the Petitioner's 2008 purchase of the property. *Agostino argument*.

- b. The Respondent further contends that the Petitioner's property is correctly assessed based on sales of comparable properties. *Mandrici argument*. In support of this contention, the Respondent submitted a list of sales in the area. *Respondent Exhibit 2*. According to Ms. Mandrici, properties in the Petitioner's neighborhood sold for an average price of \$77.75 per square foot, which would result in an assessed value of \$63,000 for the subject property. *Mandrici testimony; Respondent Exhibit 2*.
- c. Finally, the Respondent argues that the burden of proof is on the Petitioner. *Agostino argument*. According to Mr. Agostino, the Petitioner's representative has not established that the Petitioner has any standing in this appeal because it was not the owner of the property on March 1, 2007. *Id.* Furthermore, Mr. Agostino contends, the Petitioner has not produced any closing statement showing it was responsible for paying the property's 2007 taxes or any tax receipts showing that it paid the taxes. *Id.*

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 71-016-07-1-5-00261Munoz,
 - c. Exhibits:
 - Petitioner Exhibit 1 – Summary of issues,
 - Respondent Exhibit 1 – Property record card for the subject property,
 - Respondent Exhibit 2 – List of comparable sales used to adjust the property's market value,
 - Board Exhibit A – Form 131 petition,
 - Board Exhibit B – Notice of Hearing dated March 23, 2011,
 - 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 478.
15. The Petitioner failed to provide sufficient evidence to establish a prima facie case that his property was over-valued for the March 1, 2007, assessment year.² 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 traditionally have 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. In 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 501,505 (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.1. Taxpayers 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-

² The Respondent contends that because the Petitioner was not the owner of the property on March 1, 2007, Mr. Munoz has no right to appeal the property’s 2007 assessment. 52 IAC 2-2-13 reads, in relevant part, “Party” means a participant in a matter governed by this article, which may include the following: (1) the owner of the property; (2) The taxpayer responsible for the property taxes payable on the subject property...” Thus, the fact that the Petitioner was not the owner of the property on the March 1, 2007, assessment date does not automatically deprive the Petitioner of standing to appeal the assessment

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, 2007, assessment, the valuation date was January 1, 2006. 50 IAC 21-3-3.

- d. The Petitioner's representative argues that the subject property is over-valued based on the Petitioner's purchase of the subject property and an adjacent lot for \$25,000 on May 5, 2008. *Munoz testimony*. The purchase price of a property can be the best evidence of a property's 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). Here, however, the Petitioner's purchase of the property occurred almost two and a half years after the January 1, 2006, valuation date. Because the Petitioner's representative did not relate the property's May 5, 2008, purchase price to the property's value as of the January 1, 2006, valuation date, the Petitioner failed to raise a prima facie case that its property was over-valued for the 2007 assessment year. *See Long*, 821 N.E.2d at 471 (holding that an appraisal indicating a property's value for December 10, 2003, lacked probative value in an appeal from a 2002 assessment because the taxpayer did not explain how it related to the relevant valuation date.)³
- e. The Petitioner failed to raise a prima facie case that the subject property was over-valued for the March 1, 2007, assessment year. Where a Petitioner has not supported his 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).

Conclusion

16. The Petitioner failed to raise a prima facie case that the subject property was over-valued for the March 1, 2007, assessment year. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review determines that the assessed value of the subject property should not be changed.

³ Even if the Petitioner's purchase price was sufficient to raise a prima facie case that its property was over-valued for the March 1, 2007, assessment year, the county rebutted the Petitioner's case with evidence that the property sold on June 14, 2006, for \$68,000. The sale of the subject property within months of the valuation date has more weight than a sale of the property almost two and a half years after the valuation date.

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>>