

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

Petition: 84-002-07-1-5-00425
Petitioners: Mary M. Payne
Respondent: Vigo County Assessor
Parcel: 84-06-35-327-026.000-002
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 with the Vigo County Property Tax Assessment Board of Appeals (PTABOA) by filing a Form 130 petition on September 9, 2008.
2. The PTABOA issued notice of its decision for the 2007 assessment on April 27, 2009.
3. The Petitioner appealed to the Board by filing a Form 131 petition on May 14, 2009, and the Petitioner elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing to the parties on February 9, 2010.
5. Administrative Law Judge Paul Stultz held the Board’s administrative hearing on March 16, 2010. He did not inspect the property.
6. Petitioner Mary M. Payne and Edward J. Bisch Jr. (a certified tax representative from the Indiana Assessment Service who represented Vigo County Assessor) were sworn as witnesses at the hearing.

Facts

7. The property is a single family residence located at 2450 Cailynn Drive in Terre Haute.
8. The PTABOA determined the assessed value is \$6,600 for land and \$105,100 for improvements (total \$ 111,700).

9. On Form 131, the Petitioner requested an assessed value of \$6,300 for land and \$101,100 for the improvements (total \$107,400).

Record

10. The official record for this matter is made up of 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 – First page of the Purchase Agreement,
Petitioner Exhibit 2 – Special Message to Property Owner,
Petitioner Exhibit 3 – Handwritten note by the Petitioner,
Petitioner Exhibit 4a – News article, “home values are sinking,”
Petitioner Exhibit 4b – News article, “Terre Haute had its own housing bubble,”
Petitioner Exhibit 4c – *Housing Market Shows More Weakness*,
Petitioner Exhibit 4d – *Gov’t Mortgage Plan Aids 7 Percent of Borrowers*,
Petitioner Exhibit 4e – *Rising Unemployment Accelerates Foreclosure Crisis*,
Petitioner Exhibit 4f – *Property Taxes Back in the News as Bills Arrive*,
Respondent Exhibit 1 – Summary of Respondent exhibits and testimony,
Respondent Exhibit 2 – Signature and attestation sheet,
Respondent Exhibit 3 – Property record card,
Respondent Exhibit 4 – Purchase Agreement,
Respondent Exhibit 5 – Appraisal dated May 3, 2004,
Respondent Exhibit 6 – PTABOA Final Assessment Determination (Form 115),
Respondent Exhibit 7 – Power of Attorney.

Objections

11. The Respondent objected to Petitioner Exhibit 3 asserting it is hearsay. Exhibit 3 notes the listing price of similar nearby property. It was written by the Petitioner after speaking to a local realtor.
12. “Hearsay” is a statement, other than one made while testifying, that is offered to prove the truth of the matter asserted. Such a statement can be either oral or written. The realtor’s statements are hearsay. Nevertheless, hearsay evidence is admissible with significant limitations:

Hearsay evidence, as defined by the Indiana Rules of Evidence (Rule 801), may be admitted. If the hearsay evidence is not objected to, the evidence may form the basis for a determination. However, if the evidence is: (1) properly objected to; and (2) does not fall within a recognized exception to the hearsay rule; the resulting determination may not be based solely upon the hearsay evidence.

52 IAC 2-7-3. The Board will admit the handwritten note into evidence. But because the Petitioner objected, the evidence cannot serve as the sole basis for the Board's decision. 52 IAC 3-1-5 (b).

13. The Respondent objected to exhibits 4a through 4f (newspaper articles about home foreclosures and declining property values). The Respondent argued that articles were irrelevant. The exhibits contain nothing that specifically relates to the Petitioner's property. They merely illustrate recent downward trends of property values. The Board will admit the articles and give them appropriate weight.

Contentions

14. Summary of the Petitioner's case
 - a. The Petitioner purchased the property for \$103,400 on April 16, 2004. *Payne testimony; Pet'r Ex. 1.*
 - b. The property's 2006 assessment was \$107,400 and the assessment should have remained the same in 2007 given that the property lost value since it was purchased in 2004. *Payne testimony.*
 - c. Articles in the Terre Haute Tribune-Star reported a decline in local property values. *Payne testimony; Pet'r Exs. 4a-4f.*
 - d. The property would not sell for \$111,700 in the current market. *Payne testimony.*
 - e. A realtor stated a similar nearby property that was built by the same contractor would sell for less than its \$104,900 listing price. *Payne testimony; Pet'r Ex. 3.*
15. Summary of the Respondent's case
 - a. The PTABOA used the Petitioner's purchase agreement and appraisal, which were presented by the Petitioner at the PTABOA hearing in April 16, 2004, to establish a trending factor for the Petitioner's neighborhood. *Bisch testimony, Resp't Exs. 1, 4 and 5.* The PTABOA decided that an appropriate trending factor would be 1.07 percent and utilized it to determine the value of the Petitioner's

property on January 1, 2006. *Bisch testimony, Resp't Exs. 1*. These calculations resulted in a time-adjusted value of \$110,600 (based on the purchase price) and \$110,700 (based on the appraisal value). *Id.*

- b. The time-adjusted calculations demonstrate that an assessed value of the property for \$111,700 in January 1, 2006 is a reasonable estimation of its market value. *Bisch testimony*.

Analysis

16. A Petitioner seeking review 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 E. & W. 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).
17. 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”).
18. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner’s evidence. *See Am. 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.
19. The record supports 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. To that end, Indiana promulgated Guidelines that explain the application of the cost approach. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 - VERSION A (incorporated by reference at 50 IAC 2.3-1-2). 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. Regardless of the method used to rebut an assessment's presumption of accuracy, a party must explain how the evidence relates to the subject property's market value-in-use as of the relevant valuation date. *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 a 2007 assessment the required valuation date was January 1, 2006. 50 IAC 21-3-3.
- c. The Petitioner asserted that her 2007 assessment should be the same as her 2006 assessment because property values have declined. Each assessment and each tax year, however, stand 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)). Thus, a property's assessment in one tax year is not evidence of its true tax value in another year.
- d. The Petitioner offered testimony concerning the asking price of a similar nearby property. Stating that a property is "similar" or "comparable" to another property is not probative evidence of the comparability of the two properties. *Long*, 821 N.E.2d at 470. The Petitioner was "responsible for explaining to the . . . Board the characteristics of [her] 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." *Id.* at 471. Here, the Petitioner offered no such analysis. The asking prices of homes in 2010 do not correlate to the true value in 2006. *Cf. Fleet Supply, Inc.* at 650. Accordingly, this evidence is of no probative value.
- e. The Petitioner also presented newspaper articles about declining property values. But she failed to explain how these articles related to the tax value of her property on the required valuation date. The articles focused on declining property values throughout the United States. *Pet'r Exs. 4a-4f*. Only one article mentioned Terre Haute's property values in 2006. *Pet's Ex. 4b* ("Terre Haute had its own housing bubble in 2006 . . . But after Pfizer pulled the plug on its plant, it caused housing price to drop in 2007."). Unsubstantiated conclusions do not constitute as probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
- f. The Petitioner's purchase agreement indicated that the property sold for \$103,400 on April 16, 2004. While the Petitioner neglected to relate the sale price to the appropriate valuation date, the PTABOA performed the requisite time-adjusted calculation and determined the January 1, 2006, value of the property was \$110,600. A similar PTABOA trending calculation of the 2004 appraisal

(\$103,500) concluded that the value of the property in 2006 was \$110,700. Therefore, the PTABOA's own calculations establish that the 2006 assessment is excessive.

- g. The price paid for the subject property and the appraisal are both acceptable alternatives to determine the market value-in-use. When adjusted to the relevant valuation date, both are probative evidence. In this case, the time-adjusted purchase price of \$110,600 provides direct evidence of how market participants valued the property and is the best evidence in the record.

Conclusion

- 20. There is sufficient evidence to support an assessment change. It shows the current assessment is too high and it shows what a more accurate valuation is. Accordingly, the Board finds the assessment should be reduced to \$110,600.

Final Determination

In accordance with the above findings and conclusions, the total assessment will be changed to \$110,600.

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>