

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

Petitions: 83-007-09-1-5-00704
83-007-10-1-5-00020
Petitioners: Robert and Patsy Penn
Respondent: Vermillion County Assessor
Parcel: 83-10-02-260-018.000-007
Assessment Years: 2009 and 2010

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 Petitioners initiated assessment appeals for the subject property with the Property Tax Assessment Board of Appeals (PTABOA) for 2009 and 2010.
2. The PTABOA mailed notice of its decision regarding the 2009 assessment on August 5, 2010, and for the 2010 assessment on February 23, 2011. (Although the Form 115 for the 2010 assessment states it was mailed on February 21, 2011, the Petitioners provided a copy of the envelope that is postmarked February 23, 2011.)
3. The Petitioners appealed both determinations to the Board by timely filing Form 131 petitions for each year. They elected to have both cases heard according to small claims procedures.
4. Administrative Law Judge Paul Stultz held the Board's administrative hearing on January 24, 2012. He did not inspect the property.
5. Patsy Penn, County Assessor Patricia Richey, William Birkle, and Brian McHenry were sworn as witnesses.

Facts

6. The subject property is a residential rental located at 4250 East Washington in Hillsdale.
7. The PTABOA determined the assessed value is \$4,100 for land and \$21,900 for improvements (total assessed value of \$26,000) for both 2009 and 2010.
8. The Petitioners requested a total assessed value between \$7,500 and \$10,000.

Contentions

9. Summary of the Petitioners' case:

- a. The Petitioners bought the property for \$5,500 on December 20, 2006. It was bought out of a "foreclosure sale." Based on purchase price, the assessments of \$26,000 are excessive. The assessments for 2009 and 2010 should be between \$7,500 and \$10,000. *Penn testimony; Pet'rs Ex. 3.*
- b. That price was fair market value. The circumstances are explained in Mr. Schenbeck's letter:

My name is Michael Schenbeck, an Indiana licensed real estate agent with L.J. Michaels, Inc., Terre Haute, IN. I have been asked by clients of mine to comment on the notion that the property they purchased through our company was not an "Arms Length Transaction."

The property, 4250 Washington Street, was on the market listed in the Multiple Listing Service of the Terre Haute Area Association of Realtors web site, where all members, agents and brokers can view and sell. The property was also on our company web site, L.J.Michaels.com as well as Realtor.com. This property was also listed with a real estate auction company who attempted to sell the property via on-line auction.

The property was listed with L.J. Michaels, from February 24, 2006, with an original price of \$34,900.00. It was finally sold to Mr. and Mrs. Robert Penn on December 20, 2006 for \$5,500. By then, 278 days later the asking price had been lowered to \$5,999.00. The property was also advertised extensively in the Terre Haute Tribune State newspaper.

I feel that this property was indeed sold at a fair marketable price.

Penn testimony; Pet'rs Exs. 2, 3.

- c. In assessing the subject property, the Respondent is not in compliance with Uniform Standards of Professional Appraisal Practice (USPAP) guidelines. The Respondent used a market analysis, but that is illegal because no properties are comparable to the subject. *Penn testimony.*
- d. The Petitioners charge \$500 per month in rent, but currently the property is not rented. *Penn testimony.*

- e. Much of the Petitioners' other evidence related to tax liabilities for prior years and a related tax sale—matters that are outside our jurisdiction. That information is irrelevant to the issue that is properly before the Indiana Board, namely, the accurate market value-in-use assessment of the subject property for March 1, 2009, and March 1, 2010. No attempt was made to include the irrelevant material in this summary of the Petitioners' case.

10. Summary of the Respondent's case:

- a. The subject property is residential rental property. Consequently, the Respondent considered the Gross Rent Multiplier (GRM) method to assess the property. *McHenry testimony.*
- b. The Respondent developed a GRM of 6 based on sales of other rental properties. When that GRM is used with annual gross rent of \$6,000 (\$500 monthly rent multiplied by 12), the resulting value is \$36,000. Because that amount is higher than the market adjusted rate of \$26,000, the Respondent used the market adjusted rate. Nevertheless, the GRM calculation supports the current assessments for 2009 and 2010. *Birkle testimony/argument; Resp't Ex. 1, 2.*
- c. The subject property originally was listed for \$34,900. The Petitioners purchased it as a distressed property. Their purchase price is not indicative of what the property would have brought on the open market. *Birkle testimony/argument; Pet'rs Ex. 2.*

Record

11. The official record contains the following:

- a. The Petition,
- b. A digital recording of the hearing,
- c. Petitioners Exhibit 1 – “Sticky note” regarding Petitioners' year of appeal,
Petitioners Exhibit 2 – Statement from Michael E. Schenbeck dated July 26, 2010,
Petitioners Exhibit 3 – Realtor listing of subject property,
Petitioners Exhibit 4 – Title Commitment,
Petitioners Exhibit 5 – Title commitment Schedule B – Section II,
Petitioners Exhibit 6 – Property record card (PRC) for subject property for 2007,
Petitioners Exhibit 7 – Real Property Maintenance Report for subject property,
Petitioners Exhibit 8 – PRC for subject property for 2009,
Petitioners Exhibit 9 – 2007 pay 2008 tax bill for subject property,
Petitioners Exhibit 10 – Notice of Tax Sale for subject property,
Petitioners Exhibit 11 – September 30, 2010, Motion to Vacate,
Petitioners Exhibit 12 – June 23, 2010, letter from County Treasurer,
Petitioners Exhibit 13 – Letter from County Auditor dated October 25, 2010,

Petitioners Exhibit 14 – 2010 Delinquent Property Tax Sale Record,
Petitioners Exhibit 15 – Letter to Petitioners from First Financial Bank dated
October 26, 2011,

Respondent Exhibit 1 – Computation of value using GRM for the 2009 appeal,
Respondent Exhibit 2 – Computation of value using GRM for the 2010 appeal,

Board Exhibit A – Form 131 Petition,
Board Exhibit B – Notices of Hearing,
Board Exhibit C – Hearing Sign-In Sheet,

d. These Findings and Conclusions.

Analysis

12. 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 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).
 - 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 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”).
 - 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 evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
13. The Petitioners did not make a prima facie case for any assessment change.
 - a. Real property is assessed based on "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). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. The primary method for assessing officials is the cost approach. *Id.* at 3. Indiana has 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 is presumed to be accurate, but it 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 challenge an assessment's presumption of accuracy, a party must explain how its evidence relates to 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 the 2009 assessment, the valuation date was January 1, 2008. 50 IAC 21-3-3 (2009). For the 2010 assessment, the valuation date was March 1, 2010. 50 IAC 21-3-3 (2010).
 - c. It has frequently been recognized that the purchase price of the subject property can be a good way to prove an accurate market value-in-use for assessment purposes. And there is no dispute that the Petitioners bought the property for \$5,500. The Respondent argued that the Petitioners' purchase price represents a distressed sale and does not indicate what this property would bring on the open market. Apparently the Respondent draws that conclusion from the fact that the property had been through foreclosure proceedings and from the fact that the asking price started at \$34,900. The evidence, however, establishes that this property was listed with a realtor for approximately ten months. During that time the property had substantial exposure on the open market and the asking price was reduced to \$5,999. The Respondent presented no substantial basis for concluding that the actual selling price represents anything other than an open market transaction. But one way or the other, that is not the point that determines this case.
 - d. The Petitioners bought the property on December 20, 2006, which is over a year before the valuation date for the 2009 assessment, and over three years before the valuation date for the 2010 assessment. The Petitioners apparently recognized this difference because during the hearing they requested assessments between \$7,500 and \$10,000 for both years. But they offered nothing to relate their purchase price to the relevant valuation dates, and nothing to prove that the value was what they requested. *See Long*, 821 N.E.2d at 471. Therefore, they failed to make a prima facie case based on purchase price.
 - e. The Petitioners offered conclusory statements that the assessments do not comply with USPAP guidelines and the Respondent used an illegal market analysis—illegal because no properties are comparable to the subject property. Such conclusory statements are not probative evidence and they do not help to prove that an assessment must be changed. *See Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

- f. Similarly, the Petitioners alluded to Homestead Credit and Replacement Credit, but it is not clear they contend they improperly were denied either one in regard to the 2009 or 2010 assessment years. If they intended to make such a claim, they offered no substantial evidence or argument for the Board to consider. Consequently, in this case there is no basis for analysis or relief on those points.
- g. When taxpayers fail to provide probative evidence supporting their position that an assessment should be changed, the Respondent's duty to support the assessment with substantial evidence is not triggered. *See Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003); *Whitley Products*, 704 N.E.2d at 1119.

Conclusion

- 14. The Petitioners failed to make a prima facie case. The Board finds in favor of the Respondent for both 2009 and 2010.

Final Determination

In accordance with the above findings and conclusions, these assessments will not be changed.

ISSUED: _____

Commissioner, Indiana Board of Tax Review

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- 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>>