

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

Petition Nos.: 25-009-10-1-5-00091
25-009-11-1-5-00053
Petitioners: Kevin L., Brenda S., & Kari M. Prosser
Respondent: Fulton County Assessor
Parcel No.: 25-07-15-476-018.000-009
Assessment Years: 2010 & 2011

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

Procedural History

1. The Prossers filed Form 130 petitions contesting the subject property’s March 1, 2010 and March 1, 2011 assessments. On March 20, 2012, the Fulton County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determinations lowering the assessments although not to the level that the Prossers had requested.
2. The Prossers then timely filed Form 131 petitions with the Board. They elected to have their appeals heard under the Board’s small claims procedures.
3. On November 1, 2012, the Board held a hearing on both appeals through its administrative law judge, Patti Kindler (“ALJ”).
4. The following people testified under oath:
 - a) Kevin Prosser
Richard H. Hammond, accountant
 - b) Judy Dancy, Fulton County Assessor
Dudley Scheumann, district supervisor, Appraisal Research

Facts

5. The subject property is a single-family home on a .53-acre site located on Lake Manitou in Rochester, Indiana.
6. Neither the Board nor the ALJ inspected the property.

7. The PTABOA determined the following values:

March 1, 2010

Land: \$83,500 Improvements: \$130,600 Total: \$214,100

March 1, 2011

Land: \$85,600 Improvements: \$133,900 Total: \$219,500

8. The Prossers requested an assessment of \$175,000 for each year.

Contentions

9. Summary of the Prossers' evidence and contentions:

a) The subject property was assessed too high in comparison to what the Prossers paid for it. The Prossers bought the property for \$175,000 on August 31, 2010. At the very least, the Assessor should have used that sale price as the starting point for determining the property's 2010 and 2011 assessments. *Prosser testimony; Pet'rs Exs. 2-3.*

b) The Assessor argued that the sale was not an arm's-length transaction. In response, Mr. Prosser pointed to the following October 30, 2012 statement signed by the Prossers and the sellers, Hal M. Hammel and Lois E. Hammel:

The property located @ 2922 S. Country Club Dr. Rochester, IN 46975 was Sold at an "Arms Length Transaction", and was not under Duress, Coercion or for Tax avoidance. We wanted to try to sell our Home at a fair price without the services of a Realtor and the need to pay a commission. Our decision to sell was not based on Financial, Health or Age. We merely wanted to sell our property at a fair price and relocate.

Pet'rs Ex. 1.

c) Thus, a willing seller and a willing buyer established what they thought was a fair price for the subject property. For the Assessor to say otherwise is hearsay. Although the sellers might have gotten a higher price if they had listed the property with a realtor, they would have had to pay for an appraisal and pay the realtor a commission. Both the Board and various courts have noted that the actual cost of land and improvements trended to the assessment date is credible evidence of a property's value. *Hammond testimony.*

10. Summary of the Assessor's evidence and contentions:
- a) Assessments are based on mass appraisal practices. Adjusting each parcel's assessment to its sale price would be sales chasing, which is an unacceptable practice in mass appraisal. *Dancy testimony; Resp't Ex. 2.*
 - b) In any case, the transaction in which the Prossers bought the subject property does not appear to have been at arm's length. As the Assessor testified, "The property was not listed on the open market" and the Prossers were neighbors of the sellers. *Dancy testimony.* According to the Assessor, both those facts could be grounds for viewing the sale as invalid for purposes of determining the property's market value-in-use. Also, the Prossers did not offer an appraisal even though appraisals are typically done in conjunction with sales. *Dancy testimony and argument; Resp't Ex. 2.*
 - c) To support the assessments, the Assessor's witness, Dudley Scheumann, analyzed five sales from 2008 through 2011. He included sales from 2008 because there was limited sales activity in 2009 and 2010; but he adjusted the 2008 sale prices downward by 1% per year. Mr. Scheumann also made adjustments for various differences between the sold properties and the subject property in terms of land and building size, exterior features, building age and construction quality, the number of bedrooms and bathrooms, and the presence or absence of a basement, rear lot, or garage. The average adjusted sale price was \$226,700 and the median was \$217,500. *Scheumann testimony; Resp't Exs. 2, 4, 5-9.*
 - d) Finally, the Assessor contends that the Prossers had no right to appeal the subject property's March 1, 2010 assessment because they did not own the property on that assessment date and were not responsible for paying taxes based on the assessment. *Scheumann testimony.*

Record

11. The official record for this matter is made up of the following:
- a) The Form 131 petitions
 - b) A digital recording of the hearing
 - c) Exhibits:
 - Petitioner Exhibit 1: October 30, 2012 statement signed by the Prossers and Hal and Lois Hammel
 - Petitioner Exhibit 2: Sales Disclosure Form for the subject property dated August 31, 2010
 - Petitioner Exhibit 3: Buyer's Statement with August 31, 2010 settlement date
 - Petitioner Exhibit 4: Legal Description

Petitioner Exhibit 5: Warranty Deed executed on August 31, 2010

Respondent Exhibit 1: Form 115 determination for March 1, 2011 assessment

Respondent Exhibit 2: Statement of Assessor's position

Respondent Exhibit 3: Subject property record card ("PRC"), photo, and sales disclosure form

Respondent Exhibit 4: Adjustment grid and site map

Respondent Exhibit 5: Comparable #1 PRC, photo, and sales disclosure form

Respondent Exhibit 6: Comparable #2 PRC, photo, and sales disclosure form

Respondent Exhibit 7: Comparable #3 PRC, photo, and sales disclosure form

Respondent Exhibit 8: Comparable #4 PRC, photo, and sales disclosure form

Respondent Exhibit 9: Comparable #5 PRC, photo, and sales disclosure form

Board Exhibit A: Form 131 petitions

Board Exhibit B: Hearing notices

Board Exhibit C: Hearing sign-in sheet

d) These Findings and Conclusions.

Analysis

Standing for 2010 appeal

12. The Assessor claims that the Prossers lack standing to appeal the property's March 1, 2010 assessment because they did not own the property on that assessment date. Under the Board's regulations, a "[p]arty" includes the "(1) the owner of the subject property[, or] (2) [t]he taxpayer responsible for the property taxes payable on the subject property...." 52 IAC 2-2-13. Thus, the fact that the Prossers did not own the subject property on March 1, 2010, does not automatically deprive them of standing to appeal from that year's assessment. Indeed, the Prossers offered a statement from their purchase of the subject property showing that they were responsible for taxes that were based on the March 1, 2010 assessment, although they received a credit from the seller for a portion of those taxes. *See Pet'rs Ex. 3*. The Prossers therefore had standing to appeal from the property's March 1, 2010 assessment.

Merits

13. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that his property's assessment is wrong and what its 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). To make a prima facie case, a taxpayer must explain how each piece of evidence relates to his 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."). If

the taxpayer makes a prima facie case, the burden shifts to the assessor to offer evidence to impeach or 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.

14. Effective July 1, 2011, however, the General Assembly enacted Indiana Code § 6-1.1-15-17, which has since been repealed and re-enacted as Ind. Code § 6-1.1-15-17.2.¹ That statute shifts the burden of proof to an assessor in cases where the assessment under appeal has increased by more than 5% over the previous year's assessment:

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 of the Indiana Tax Court.

Ind. Code § 6-1.1-15-17.2 (emphasis added).

15. For purposes of determining whether Ind. Code § 6-1.1-15-17.2 shifts the burden of proof from the taxpayer to the assessor in a given appeal, the Board must compare the assessment under review by the Board, which in these appeals are the PTABOA's determinations, to the assessment determined by the county or township assessor for the immediately preceding year. In each instance, the assessment under review actually represents a decrease from what the Assessor determined for the previous year. Thus, the Prossers have appealed the PTABOA's March 1, 2010 determination assessing the subject property at \$214,100. The Assessor, however, valued the property at \$252,500 for the March 1, 2009. Similarly, the PTABOA's determination for March 1, 2011 was \$219,500, while the Assessor valued the property at \$235,400 for March 1, 2010.² The Prossers therefore had the burden of proof for both assessment years under appeal.
16. The Prossers did not prove that the subject property's assessment should be reduced for either assessment year. The Board reaches that conclusion for the following reasons:
 - a) Indiana assesses real property based on its true tax value, which the 2002 Real Property Assessment Manual defines 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

¹ HEA 1009 §§ 42 and 44 (signed February 22, 2012). This was a technical correction stemming from two different provisions having been codified under the same section number.

² The PTABOA later reduced the property's March 1, 2010 assessment to \$214,000. Even if one compares that reduced March 1, 2010 assessment to the 2011 assessment on appeal to the Board (\$219,500), the difference is still less than 5%.

reference at 50 IAC 2.3-1-2 (2009)). A party's evidence in a tax appeal must be consistent with that standard. *See id.* For example, a market-value-in-use appraisal prepared according to Uniform Standards of Professional Appraisal Practice often will be probative. *See id.*; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). A party may also offer actual construction costs, sales information for the subject or comparable properties, and any other information compiled according to generally acceptable appraisal principles. MANUAL at 5.

- b) The Prossers rely solely on the fact that they bought the subject property for \$175,000. A property's sale price can be 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). But that presumes that the sale is an arm's-length transaction and that other indicia of a market-value sale were present. Those indicia are found in the Manual's definition of market value:

The most probable price (in terms of money) which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- The buyer and seller are typically motivated;
- Both parties are well informed or advised and act in what they consider their best interests;
- A reasonable time is allowed for exposure in the open market;
- Payment is made in terms of cash or in terms of financial arrangements comparable thereto;
- The price is unaffected by special financing or concessions.

MANUAL at 10.

- c) Here, the Assessor claimed that two different indicia of a market value sale were missing: (1) the sale was not at arm's length because the sellers were neighbors of the Prossers and therefore presumably were not typically motivated, and (2) the property was not exposed to the market. The Prossers allayed concerns about the parties' motivation by offering a signed statement from the sellers indicating that they were not under any duress or coercion and that they wanted to get a fair price for the property.

- d) But the Prossers offered nothing to address the property's lack of exposure to the market. The Assessor testified, albeit in a summary fashion, that the seller did not market the property. And the Prossers did not offer any evidence to dispute that fact. Thus, there is no evidence in the record to show that the sellers marketed the property or that they otherwise attempted to solicit offers from anyone but the Prossers. The lack of evidence regarding market exposure is a significant problem, particularly where the property at issue is of the type that normally would be actively marketed, whether through a realtor or through other means.
- e) That does not mean that the subject property's sale price is irrelevant. To the contrary, had the Prossers offered some evidence to show that, consistent with generally accepted appraisal principles, the sale price could be adjusted to account for the lack of market exposure, or that other evidence supports using the unadjusted price as a valid indicator of the property's market value-in-use despite the lack of exposure, the Board might reach a different conclusion. Under these circumstances, however, the sale price does not show the subject property's market value-in-use or even a likely range of values.

Conclusion

- 17. Because neither assessment under appeal represents an increase of more than 5% over the subject property's assessment for the immediately preceding assessment year, the Prossers had the burden of proof. The Prossers failed to meet their burden, and the Board therefore finds for the Assessor.

Final Determination

In accordance with the above findings of fact and conclusions of law, the assessment will not be changed for the 2010 and 2011 assessment dates.

ISSUED: January 29, 2013

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

- 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>>.