

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

Petition No.: 45-030-03-1-4-00007
Petitioners: Thomas and Karen Pruzin
Respondent: Lake County Assessor
Parcel No.: 008-08-15-0023-0040
Assessment Year: 2003

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 an assessment appeal with the Lake County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated April 29, 2005.
2. The Petitioners received notice of the decision of the PTABOA on August 3, 2007.
3. The Petitioners filed a Form 131 with the Board on September 19, 2007. The Petitioners elected to have their case heard pursuant to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated April 1, 2009.
5. The Board held an administrative hearing on May 6, 2009, before the duly appointed Administrative Law Judge (the ALJ) Ellen Yuhan.
6. Persons present and sworn in at hearing:

For Petitioners: Rex D. Hume, Tax representative, Uzelac & Associates

For Respondent: No one appeared for the Respondent.¹

¹ The ALJ verified that the Notice of Hearing was mailed with proof of mailing and was not returned to the Board. The Respondent did not contact the Board or the ALJ to request a continuance.

Facts

7. The subject property is a funeral home located at 6350 Broadway, in Merrillville, Indiana.
8. The ALJ did not conduct an on-site visit of the property.
9. For 2003, the PTABOA determined the assessed value of the subject property to be \$381,500 for the land and \$300,400 for the improvements, for a total assessed value of \$681,900.
10. The Petitioners requested an assessment of \$501,800.

Issues

11. Summary of Petitioners' contentions in support of an error in the assessment:
 - a. The Petitioners contend the assessment is over-stated because the property, which actually consists of two parcels, appraised in February 1997 for \$750,000. *Hume testimony*. In support of this contention, the Petitioners submitted a complete appraisal report prepared by Lee & Associates. *Petitioner Exhibit 2*. According to Mr. Hume, the parties stipulated to the value of \$270,000 for the second parcel appraised in the Petitioners' appraisal. *Hume testimony; Petitioner Exhibit 4*.
 - b. The Petitioners' representative testified that he adjusted the 1997 appraised value to the January 1, 1999, valuation date using the Consumer Price Index (CPI). *Hume testimony*. Mr. Hume calculated the adjusted value to be \$771,800 for the two parcels. *Id.* In support of his valuation, Mr. Hume submitted the calculation and a page from the U. S. Department of Labor showing the CPI for years 1996 through 2007. *Id.; Petitioner Exhibit 1 and 3*. According to Mr. Hume, he used the CPI to adjust the appraised value because the Board approved the method in its *Gerber Lewis and Kokomo Sanitary Pottery* determinations. *Hume testimony; Petitioner Exhibit 6*.
 - c. Finally, the Petitioners' representative concludes, when the \$270,000 stipulated value of the second parcel is deducted from the \$771,800 time adjusted appraised value for both parcels, the subject parcel should be valued at \$501,800. *Hume testimony; Petitioner Exhibit 4*.

Record

12. The official record for this matter is made up of the following:
 - a. The Petition,

b. The compact disk recording of the hearing labeled 45-030-03-1-4-00007
Pruzin Hearing,

c. Exhibits:

- Petitioner Exhibit 1 – Appeal Issues for Assessment Year 2003,
- Petitioner Exhibit 2 – Appraisal report dated February 11, 1997 by Lee & Associates,
- Petitioner Exhibit 3 – Consumer Price Index for years 1996-2007,
- Petitioner Exhibit 4 – Board order on stipulated agreement on Parcel No. 008-08-15-0023-0034,
- Petitioner Exhibit 5 – Property record card,
- Petitioner Exhibit 6 – Copy of the Board’s determination in *Gerber Lewis and Kokomo Sanitary Pottery v. Center Township Assessor*,
- Petitioner Exhibit 7 – Conference request dated April 19, 2005,
- Petitioner Exhibit 8 – Power of attorney,
- Petitioner Exhibit 9 – Issues as presented to township assessor,
- Petitioner Exhibit 10 – Summary of issues for the Lake County PTABOA,
- Petitioner Exhibit 11 – Memorandum to Deborah Johnson on the suitability of trending factors,
- Petitioner Exhibit 12 – Lake County PTABOA determination,
- Petitioner Exhibit 13 – Form 131,

- Board Exhibit A – Form 131 petition,
- Board Exhibit B – Notice of Hearing dated April 1, 2009,
- Board Exhibit C – Hearing sign-in sheet
- Board Exhibit D – Proof of mailing,

d. These Findings and Conclusions.

Analysis

13. 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 evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
14. The Petitioners provided sufficient evidence to establish an error in the assessment. 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. 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) *reh'g den. sub. nom. P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 2006). But 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 id.*; *see also Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer sales information regarding the subject property or comparable properties. MANUAL at 5.
 - c. Regardless of the method, a taxpayer must explain how its evidence relates to the property's value as of the relevant valuation date. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 477 (Ind. Tax Ct. 2005); *see also* MANUAL at 4, 8. For assessment years 2002-2005, that valuation date is January 1, 1999. *Id.*; *see also* MANUAL at 2 (stating that the Manual contains the rules for assessing real property for the March 1, 2002, through March 1, 2005, assessment dates).
 - d. Here, the Petitioners submitted an appraisal dated February 11, 2007, that valued the subject property and a second parcel for \$750,000. *Petitioner Exhibit 2*. The Petitioners' representative adjusted the appraised value to the

January 1, 1999, valuation date by using a 1.029 multiplier that Mr. Hume calculated from the Consumer Price Index resulting in a value of \$771,800 for both parcels. *Petitioner Exhibit 3*. Mr. Hume then subtracted the stipulated value of \$270,000 for the second parcel valued in the appraisal and determined a residual value of \$501,800 for the subject property.

- e. Ind. Code § 6-1.1-15-4 states that, “The Indiana Board may assign full, limited, or no evidentiary value to the assessed valuation of tangible property determined by stipulation submitted as evidence of a comparable sale.” The Board’s Notice of Stipulated Agreement for the second parcel valued by the Petitioners’ appraisal states that the agreement should not be construed as a determination regarding the propriety of the agreement. Here because the Petitioners established a value limit for both parcels as of the valuation date and the value of one parcel has already been designated, the Board will assign full evidentiary value to the stipulation. Thus, the Board determines that the Petitioners established a prima facie case the subject property is over-valued.
- e. Because the Petitioners raised a prima facie case, the burden shifted to the Respondent to impeach or rebut the trended appraised value. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). Here the Respondent failed to appear at the hearing to support the assessment or to rebut the Petitioners’ case.

Conclusion

- 15. The Petitioners raised a prima facie case that the subject property is over-valued on the basis of its trended appraised value. The Respondent failed to appear at the hearing. The Board finds in favor of the Petitioners and determines the true tax value of the property is \$501,800.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment on the subject property should be changed to \$501,800.

ISSUED: July 28, 2009

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>>