

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

Petition: 88-002-06-1-5-00017
Petitioner: Susan Sama
Respondent: Washington County Assessor
Parcel: 88-32-35-223-020.000-002
Assessment Year: 2006

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 appeal with the Washington County Property Tax Assessment Board of Appeals (PTABOA) by filing a Form 130 on October 11, 2007.
2. The PTABOA issued its determination on March 24, 2008.
3. The Petitioner appealed to the Board by filing a Form 131 on April 30, 2008, and elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing to the parties dated December 24, 2008.
5. Administrative Law Judge Paul Stultz held the Board's administrative hearing on February 12, 2009. He did not conduct an on-site inspection.
6. Property owner Susan Sama, County Assessor Jason Cockerill, and PTABOA President Jim Davis were sworn as witnesses.

Facts

7. The subject property is a rental home located at 97 Franklin in Campbellsburg.
8. The assessed value determined by the PTABOA is \$8,900 for land and \$23,400 for improvements (total \$32,300).
9. The Petitioner seeks an assessment of no more than \$20,000.

Contentions

10. Summary of the Petitioner's case:

- a. The Petitioner purchased the subject property in August 2003 for \$12,000. The purchase was a "good deal." The property has not been improved since then. *Sama testimony.*
- b. Property values in Campbellsburg are not increasing. The value of the subject property has not increased \$20,000 in three years. *Sama testimony.*
- c. The subject property is not in good condition. Renters have been hard on it. Rental property is not maintained like owner-occupied property. The property tax increase is excessive in consideration of the condition of the subject property. *Sama testimony.*
- d. The Petitioner purchased a similar property in 2003 for \$20,500. That property is a few blocks away from the subject property. Both properties are on corner lots of similar size and are two bedroom homes with a porch. *Sama testimony.*
- e. The current assessment is "not that bad." Nevertheless, the subject property would not appraise for \$30,000. The assessment should be no more than \$20,000. *Sama testimony.*

11. Summary of the Respondent's case:

- a. As a result of the local hearing, this assessment was reduced to \$32,300 in consideration of the deferred maintenance. *Davis testimony.*
- b. A comparison of the subject property and two comparable properties shows that the subject property's market value would be in a range of \$38,400 to \$56,800. *Davis testimony; Resp't Ex. 1.*
- c. Comparable #1 is the same age as the subject property, but is superior in grade (Comparable #1 is D+1 and the subject property is E) and inferior in condition (Comparable #1 is poor and the subject property is average). Comparable #2 is 53 years newer than the subject property, but is superior in grade (Comparable #2 is D and the subject is E) and equal in condition (both are average). A downward adjustment of 45% was made to account for the difference in grade and an upward adjustment of 25% was made to account for the difference in condition. The differences in dwelling size and lot size were adjusted using a land to building ratio. *Davis testimony; Resp't Ex. 1.*
- d. The most weight was given to Comparable #1 because it has the highest degree of comparability. The most probable market value for the subject property would be

\$38,400. Nevertheless, the Respondent recommends that there be no change to the assessment. *Davis testimony; Resp't Ex. 1.*

Record

12. The official record for this matter is made up of the following:
 - a. The Petition,
 - b. A digital recording of the hearing,
 - c. Petitioner Exhibits – None,
Respondent Exhibit 1 – Appeal Analysis with narrative attached,
Respondent Exhibit 2 – Copy of Form 130,
Respondent Exhibit 3 – Property record card of the subject property,
Respondent Exhibit 4 – Property record card of comparable sale #1,
Respondent Exhibit 5 – Property record card of comparable sale #2,
Respondent Exhibit 6 – Notice of Appearance,
Board Exhibit A – Form 131 Petition for Review of Assessment,
Board Exhibit B – Notice of Hearing on Petition,
Board Exhibit C – Hearing Sign In Sheet,
 - 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 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.

14. The Petitioner did not make a case for an assessment change. This conclusion was arrived at 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). A taxpayer may offer evidence relevant to market value-in-use to rebut the presumption the assessment is correct. 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. A 2006 assessment must reflect the value of the property as of January 1, 2005. Ind. Code § 6-1.1-4-4.5; 50 IAC 21-3-3. Any evidence of value relating to a different date must also have an explanation about how it demonstrates, or is relevant to, the value as of that required valuation date. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The Petitioner relied on her purchase price for the subject property and an allegedly comparable property in an attempt to demonstrate what the correct assessment should be. While sales information regarding the subject or comparable properties is the type of evidence contemplated in the MANUAL, in this case the Petitioner's evidence falls short. There is no documentation regarding either sale. Most importantly, both sales were in 2003. The Petitioner did not provide any explanation showing how or why the 2003 purchase price of either property is relevant to the market value-in-use as of January 1, 2005. Therefore, the evidence is not probative. *Id.*
 - c. The sales information regarding her other property is not probative for additional reasons. Although the Petitioner offered some information regarding similarities between the subject property and the allegedly comparable property, her statements that both are "2-bedroom" or both "are on corner lots" are not sufficient to be the basis for any legitimate comparison. Without facts and analysis to establish comparability, conclusions about the relative values of the properties do not constitute probative evidence. *See Long*, 821 N.E.2d at 471; *Fidelity Federal Savings & Loan v. Jennings Co. Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005) (stating that the parties are responsible for explaining the characteristics of the subject property, how those characteristics compared to those of the purportedly comparable property, and how any differences affected the relevant market value-in-use of the properties).
 - d. The Petitioner stated that the market value of the subject property should be no more than \$20,000. But the Petitioner failed to provide probative evidence supporting this conclusion. Such conclusory statements do not constitute probative evidence and do not prove that the assessment should be changed. *See*

Whitley Products v. State Bd. Of Tax Comm'rs, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

- e. When a taxpayer fails to provide probative evidence supporting its 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. Furthermore, to the extent that the Respondent offered some evidence that the assessment should be higher, that issue was waived because the Respondent took the position that the existing assessment should not be changed.

Conclusion

- 15. The Petitioner failed to make a prima facie case. The Board finds in favor of the Respondent.

Final Determination

In accordance with the above findings and conclusions the assessment will not be changed.

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 there 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 the 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>>