

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

Petitions: 88-002-06-1-5-00018
Petitioner: Susan Sama
Respondent: Washington County Assessor
Parcels: 88-32-35113-033.000-002
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. This is a case about a residential rental property located at 198 East Oak Street in Campbellsburg.
8. The assessed value determined by the PTABOA is \$5,200 for land and \$17,200 for improvements (total \$22,400).
9. The assessed value requested by the Petitioner is \$5,000 for land and \$15,000 for improvements (total \$20,000).

Contentions

10. The Petitioner presented the following evidence:
 - a. In 2003 the Petitioner purchased the subject property for \$20,500. It had been an owner-occupied residence, but she bought it to use as a rental property. The property taxes are so high that it is almost impossible to maintain the subject property. *Sama testimony.*
 - b. Comparing the realtor listing photographs with the current photographs, the outside of the home has changed noticeably—the porch fell off. *Sama testimony; Pet'r Ex. 1, 2, 3.*
 - c. The interior walls are damaged and require new drywall. The bathroom floor is rotten and must be replaced. *Sama testimony.*
 - d. The value of the property has not increased. With the tax increase and the level of deterioration, the property's investment value is declining. *Sama testimony.*

11. The Respondent presented the following evidence:
 - a. A comparison of the subject property and two comparable properties shows that the subject property's market value falls in a range of \$25,200 to \$32,700. *Davis testimony.*
 - b. The range reflects the adjusted sale price for two properties located in the same neighborhood as the subject property. Comparable #1 is located at 97 North Cross Street. Comparable #2 is located at 7 South Union Street. The subject property and the comparable properties are similar in age. Both Comparable #1 and Comparable #2 are considered superior to the subject property in all other aspects. The sale prices for the comparables were adjusted to account for the differences. A 10% adjustment was applied for grade and condition. The dwelling and lot size differences were adjusted using a land to building ratio. *Davis testimony; Resp't Ex. 1.*
 - c. As a result of the local hearing, the assessment was reduced to \$22,400. The current assessment is fair, if not slightly underassessed. Nevertheless, the Respondent does not recommend any change. *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 Exhibit 1 – Subject property’s realtor listing,
 Petitioner Exhibit 2 – Exterior photograph of subject property,
 Petitioner Exhibit 3 – Exterior photograph of subject property,
 Respondent Exhibit 1 – Comparative Analysis,
 Respondent Exhibit 2 – Copy of Form 130,
 Respondent Exhibit 3 – Subject property record card,
 Respondent Exhibit 4 – Property record card for Comparable #1,
 Respondent Exhibit 5 – Property record card for Comparable #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 conclusory statements that its value had decreased since she bought it. 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 does not make a case for any assessment change. There is no documentation regarding the purchase of the property. Most importantly, the Petitioner did not provide any explanation that establishes how or why the 2003 purchase price is relevant to the market value-in-use as of January 1, 2005. Therefore, this evidence is not probative.
- c. The Petitioner also offered conclusory testimony about how maintaining a rental property is difficult, especially with the burden of increased property taxes. She offered evidence regarding exterior deterioration, damaged interior walls and a rotting bathroom floor. While these points almost certainly have an effect on value, the Petitioner failed to present probative evidence establishing exactly how much they actually lower the market value-in-use of this property, which is an essential part of making her case that the assessment should only be \$20,000. The Petitioner's conclusory testimony about value does not constitute probative evidence. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).
- d. 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. To the extent that the Respondent offered 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>>