

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

Petition: 88-022-06-1-5-00034
Petitioner: Susan D. Sama
Respondent: Washington County Assessor
Parcel: 88-24-17-331-110.000-022
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 assessment appeal with the Washington County Property Tax Assessment Board of Appeals (“PTABOA”) on October 11, 2007.
2. The PTABOA mailed its decision about the assessment on March 24, 2008.
3. The Petitioner appealed to the Board by filing a Form 131 on April 30, 2008. The Petitioner elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing to the parties dated March 18, 2009.
5. Administrative Law Judge Paul Stultz held the Board’s administrative hearing on April 30, 2009. He did not inspect the property.
6. Susan D. Sama, County Assessor Jason Cockerill, and Jim Davis were sworn as witnesses at the hearing.

Facts

7. The subject parcel is located at 200 North Water Street in Salem.
8. The PTABOA determined the assessed value is \$4,300 for land and \$68,400 for improvements (total \$72,700).
9. The Petitioner claimed the land value should be \$4,300 and the improvement value should be \$45,000 (total \$49,300).

Contentions

10. Summary of the Petitioner's case:

- a. The assessed value of the subject property is more than its market value-in-use. The Petitioner uses the subject property for commercial purposes and refers to it as her shop and her business. It is also identified as "shop" on Petitioner's comparison analysis. *Pet'r Ex. 1*. She claimed the subject property is incorrectly assessed as commercial instead of residential property. But the Petitioner also acknowledged the property record card identifies the assessment as residential. *Sama testimony*.
- b. The total assessment for the subject property increased by \$50,000 from 1995 to 2006. And from 2002 to 2006 it increased by \$18,560. The computed total value is \$86,560. *Sama testimony; Pet'r Ex. 2*.
- c. Four comparable properties on Water Street support an assessed value of \$49,300 for the subject property. The property located at Walnut and Water Street ("Comp 1") is a commercial dry cleaning and laundry business. From 2002 to 2006, that total assessment increased by \$8,700. It has a computed value of \$80,820, which is similar to the subject property. The property located at 208 North Water Street ("Comp 2") is a commercial plumbing business. It has a larger main floor than the subject property. Comp 2's assessment increased by \$2,100 from 2002 to 2006. The property located at 202 North Water Street ("Comp 3") is comparable in size to the subject property.¹ According to the Petitioner, the total assessment for Comp 3 increased from 2002 to 2006 by \$16,500.² The property located at 106 North Water Street ("Comp 4") is a commercial retail business. The Petitioner claims the total assessment for Comp 4 increased by \$10,100 from 2002 to 2006.³ It has a computed value of \$78,700. *Sama testimony; Pet'r Exs. 3 through 6*.
- d. The Petitioner's comparison analysis grid shows how the subject property and the four comparables compare on certain points, including lot size, building size, year of construction, and condition. *Pet'r Ex. 1*.
- e. Commercial properties were compared because they were once residential homes that were converted into a business in the same way that the subject property is being used. These properties are all on the same street. All of the properties built on Water Street were constructed between 1900 and 1930 and began with similar property values. They all have comparable finished area, but some of the finished

¹ The Petitioner testified that Comp 3 sold for \$35,000 in fall 2008. No other evidence was submitted to confirm the date, price, terms, or anything else about that sale. Consequently, such a bald statement about a sale has no probative value for this case.

² The Petitioner's calculation of the difference is slightly in error. The PRC for Comp 3 shows the total assessment for 2002 was \$45,600 and for 2006 it is \$61,700. Therefore, the actual increase was \$16,100.

³ Again, the Petitioner's calculation of the difference is slightly in error. The PRC for Comp 4 shows the total assessment for 2002 was \$20,200 and for 2006 it is \$29,900. Therefore, the actual increase was \$9,700.

areas are larger than the subject property. All of them have flooded. They have significantly decreased in market value. The increases and the assessed values of the comparable properties are significantly less than the increase and the assessed value of the subject property. These comparable properties demonstrate that the assessment of the subject property is greater than its market value. *Sama testimony.*

- f. The Petitioner spoke with an assessor who came into her shop and who confirmed that Comp 1 and Comp 2 were good comparables to the subject property. *Sama testimony.*
 - g. The assessed value for the subject property should be \$49,300. *Sama testimony.*
11. Summary of the Respondent's case:
- a. The subject property is being used for commercial purposes, but is assessed as residential. It is under valued. *Davis testimony.*
 - b. Respondent presented two comparable sales to prove the market value of the subject property. Respondent's Comparable 1 sold for \$103,400 on June 30, 2004. It was assessed at \$86,800 on March 1, 2007. Respondent's Comparable 2 sold for \$113,443 on October 29, 2004. It was assessed at \$111,700 on March 1, 2007. Both of these comparables are in the same neighborhood as the subject property. These comparables are superior in size. Therefore, an adjustment was made to account for the dissimilarities. *Davis testimony; Resp't Exs. 1, 4, 5.*
 - c. The analysis suggests that the minimum market value for the subject property should be no less than \$103,400. The current assessment of \$72,700 is too low. Nevertheless, the Respondent requests that no change be made to the 2006 assessment. *Resp't Ex. 1 and 3; Davis testimony.*

Record

12. The official record for this matter is made up of the following:
- a. Petition for Review of Assessment (Form 131) with attachments,
 - b. Digital recording of the hearing,
 - c. Petitioner Exhibit 1 – Comparison analysis for the subject property,
Petitioner Exhibit 2 – Property record card (“PRC”) for the subject property,
Petitioner Exhibit 3 – PRC for Comparable 1 at Walnut and Water Street,
Petitioner Exhibit 4 – PRC for Comparable 2 at 208 North Water Street,
Petitioner Exhibit 5 – PRC for Comparable 3 at 202 North Water Street,
Petitioner Exhibit 6 – PRC for Comparable 4 at 106 North Water Street,
Respondent Exhibit 1 – Sales comparison analysis for the subject property,

Respondent Exhibit 2 – Form 130,
Respondent Exhibit 3 – PRC for the subject property,
Respondent Exhibit 4 – PRC for Respondent’s Comparable 1, parcel
88-24-18-444-039.000-022,
Respondent Exhibit 5– PRC for Respondent’s Comparable 2, parcel
88-24-17-332-085.000-022,
Respondent Exhibit 6 – Notice of Appearance,
Board Exhibit A – Form 131 Petition for Review of Assessment,
Board Exhibit B – Notice of Hearing,
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 any assessment change. The Board arrived at this conclusion 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. The Petitioner presented four purportedly comparable properties in an attempt to make her case. Except for one statement that Comp 3 sold for \$35,000, none of her evidence relates to *comparable sales*. Rather, the Petitioner attempted to compare her assessment with other assessments and the amount of her assessment increase from 2002 to 2006 with her comparables' assessment increases for the same period. But she failed to establish that such comparisons provide any probative evidence about what the market value-in-use of the subject property should be. Even if her property has a higher assessment or a larger increase in assessment than the four comparables, that fact does not prove what errors there might be or what the actual market value-in-use of the subject property should be.
- c. The attempted comparisons suffer from additional shortcomings. Conclusory statements from the Petitioner and some unidentified assessor that the comparables are good comparables are not probative evidence. *See Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221 (Ind. Tax Ct. 2003); *Whitley Products v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). Comparability must be proved. Without facts and analysis to establish comparability, conclusions about the relative values of the properties do not constitute probative evidence. The Petitioner was 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 relative market value-in-use of the properties. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005); *Fidelity Federal Savings & Loan v. Jennings Co. Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005).
- d. Even the Petitioner's evidence shows that there are significant differences between her property and her comparables. The subject property was built in 1930, while the four comparables were built in 1915, 1900, 1910, and 1900, respectively. The subject property is in average condition, while the comparables are in good, poor, fair, and fair condition, respectively. The record indicates the total size of the subject property is 3,588 square feet and includes a full basement, main floor, and attic. Although the Petitioner claimed the square footage of Comp 1, Comp 2, and Comp 4 are similar, they actually are significantly smaller than the subject property. The Petitioner failed to establish how these differences might affect the relative values of the properties. The Petitioner failed to establish that her comparables have any probative value in this case.
- e. None of the evidence proves the current assessment is wrong or what a more accurate value might be.

- f. 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.*, 799 N.E.2d at 1221-1222; *Whitley Products*, 704 N.E.2d at 1119.

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: July 27, 2009

Commissioner, Indiana Board of Tax Review

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- 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>>