

REPRESENTATIVE FOR PETITIONER: Joe Shields, Pro Se

REPRESENTATIVE FOR RESPONDENT: County Assessor Teresa Rigsby

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Joe Shields,)	Petition No.: 72-007-07-1-5-00002
)	Parcel: 72-05-19-140-032.000-008
Petitioner,)	
)	
)	
v.)	
)	Scott County
Scott County Assessor,)	Vienna Township
)	Assessment Year: 2007
Respondent.)	

Appeal from the Final Determination of the
Scott County Property Tax Assessment Board of Appeals

January 5, 2010

FINAL DETERMINATION

The Indiana Board of Tax Review (Board) has reviewed the facts, evidence, and arguments presented in this case. The Board now finds and concludes the following:

ISSUE

This case challenges a 2007 assessment for a rental duplex. Does the evidence prove that the assessment should be changed?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

PROCEDURAL HISTORY

1. The Petitioner initiated an appeal on September 30, 2008. The Scott County Property Tax Assessment Board of Appeals (PTABOA) issued its determination for that appeal on October 8, 2008.
2. The Petitioner filed a Petition for Review of Assessment (Form 131) challenging the PTABOA's determination. The Petitioner elected to proceed under the Board's plenary rules (52 IAC 2) rather than under its rules for small claims (52 IAC 3).
3. The PTABOA determined the assessed value is \$16,800 for land and \$122,900 for improvements (total \$139,700).
4. The Petitioner contended the total assessed value should be \$80,000.

HEARING FACTS AND OTHER MATTERS OF RECORD

5. The subject property is a rental duplex at 140 North Keith Street in Scottsburg.
6. Administrative Law Judge Paul Stultz held the hearing on October 7, 2009. He did not conduct an on-site inspection of the subject property.
7. The following persons were sworn as witnesses at the hearing:
 - For the Petitioner – Joe Shields,
Albert Thormyer,
 - For the Respondent – County Assessor Teresa Rigsby,
Deputy Assessor Jennifer Binkley.

8. The following items are officially recognized as part of the record:
 - Board Exhibit A – Form 131 Petition with attachments,
 - Board Exhibit B – Notice of Hearing,
 - Board Exhibit C – Hearing Sign In Sheet.

9. The Petitioner presented the following exhibits:
 - Petitioner Exhibit 1 – Appraisal of the subject property by Michael D. Sexton,
 - Petitioner Exhibit 2 – Letter from Albert Thormyer with his opinion of value,
 - Petitioner Exhibit 3 – Letter from Terry Amick with his opinion of value,
 - Petitioner Exhibit 4 – Letter dated November 25, 2008, from Mike Sexton about declining market conditions and listing the subject property for sale at \$95,000.

10. The Respondent presented the following exhibits:
 - Respondent Exhibit 1 – Property record card (PRC) for the subject property,
 - Respondent Exhibit 2 – “Parcel Characteristics Report by Neighborhood”
Neighborhood 7200820 sales from 01/01/2005 to 12/31/2006, and
Neighborhood 7200810 to 7200850 sales from 01/01/2005 to 12/31/2006,
 - Respondent Exhibit 3 – Sales disclosure forms and PRCs for the comparables used in the Sexton appraisal,
 - Respondent Exhibit 4 – Valuation date disclaimer,
 - Respondent Exhibit 5 – 50 IAC 21-3-3 (Valuation date and time adjustment),
 - Respondent Exhibit 6 – International Association of Assessing Officers standards on mass appraisal, page 9,
 - Respondent Exhibit 7 – Tax Court decision, *O’Donnell v. Department of Local Government Finance*.

CONTENTIONS

11. Summary of the Petitioner’s case:
 - a. An appraiser determined that the value of the property was \$112,500 as of March 1, 2007. *Shields testimony; Pet’r Ex. 1.*

- b. Albert Thormyer has over thirty years experience in the banking business. In a letter dated September 12, 2009, he stated the value of the property as of March 1, 2007, was \$90,000. *Shields testimony; Pet'r Ex. 2.*
- c. In a letter dated September 12, 2009, Terry Amick stated the value of the property was \$90,000 as of March 1, 2007. He is a local business owner, landlord, and a member of the Scottsburg city council. *Shields testimony; Pet'r Ex. 3.*
- d. Mike Sexton, a broker and certified appraiser, concluded the Petitioner could sell the subject property for \$80,000 to \$90,000. This broker's opinion is dated November 25, 2008. *Shields testimony; Pet'r Ex. 4.*
- e. The Petitioner was offered \$80,000 for the property in October 2007, but the offer was subsequently withdrawn. The market value of the property is \$80,000. *Shields testimony.*

12. Summary of the Respondent's case:

- a. An appraisal must reflect the value as of the correct valuation date. If the appraisal is for a different date, the value has to be trended from the appraisal date to the valuation date. *Rigsby testimony.*
- b. The first comparable sale used in the appraisal was for two lots and the property was split after the sale took place. *Binkley testimony; Pet'r Ex. 1.*
- c. The appraiser used a factor of 2% per year to trend comparable sales 1 and 2 to March 1, 2007, without explaining how the trending factor was determined. *Binkley testimony; Pet'r Ex. 1.*
- d. For comparable sale 2, the sales disclosure form lists a sale price of \$99,000 and does not include any personal property. In contrast, the appraisal lists the sales

price at \$122,000 and states \$23,000 of personal property was included in the sale. *Binkley testimony; Pet'r Ex. 1; Resp't Ex. 3.*

- e. The appraisal's comparable properties 4 and 5 were sold together for \$142,200. The appraiser assigned one half of the selling price to each property. There is no documentation to support the contention that both properties are worth the same amount. *Binkley testimony; Pet'r Ex. 1.*
- f. The rent charged by the Petitioner for the subject property is below market. *Binkley testimony; Pet'r Ex. 1.*
- g. Mr. Amick's opinion of value is questionable due to the fact he is not a certified appraiser. Additionally, his letter is hearsay evidence. *Rigsby testimony.*

ADMINISTRATIVE REVIEW AND BURDEN

- 13. 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).
- 14. 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”).
- 15. 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.

ANALYSIS

16. 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.
17. Much of the evidence that the Petitioner submitted did nothing to help him overcome the presumption in favor of the existing assessment.
 - a. The Petitioner testified he was offered \$80,000 for the property, but subsequently that offer was withdrawn. This point does not help to prove what the assessment should be because only sales that are consummated by a specified date with title passing from seller to buyer are valid indicators of market value. MANUAL at 10.
 - b. The Petitioner offered letters from Albert Thormyer¹, a local banker, and Terry Amick, a local business owner, both stating opinions that the subject property had a value of \$90,000 as of March 1, 2007. Nothing in the record explains how those purported valuations were determined and nothing establishes that they are based on generally accepted appraisal principles. Such conclusory statements do not constitute probative evidence. *See Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

¹ Although Mr. Thormyer was sworn as a witness, he did not testify.

- c. The Petitioner offered a letter dated November 25, 2008, from Mike Sexton about listing the subject property for \$95,000 and anticipating a sale price would be between \$80,000 and \$90,000. This letter also discusses recent declining market conditions: “The economy is in a downfall.” *** “Prices are down 30% nationally over the past 60 days. Here in Scott County, most sales appear to be foreclosure sales but ... our market has not dropped 30% in the past 60 days. However, over the past 18 months it appears that the residential values may have dropped 20-25%.” By its own terms, this letter does not purport to indicate what a valuation for the subject property might have been as of January 1, 2006, but this letter suggests that value would have been substantially different. More importantly, this letter says the suggested prices are based on a “very limited broker’s market analysis.” As with the Thormyer and Amick letters, nothing in the record establishes the opinion is based on generally accepted appraisal principles. Such conclusory statements do not constitute probative evidence. *See Whitley Products*, 704 N.E.2d at 1119.
18. The Sexton appraisal (Petitioner’s Exhibit 1) is the heart of this case. The Tax Court has stated that a market value-in-use appraisal, completed in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP) can be the most effective method to rebut the presumption that an assessment is correct. *See French Lick Twp. Assessor v. Kimball International*, 865 N.E.2d 732, 736 n.4 (Ind. Tax Ct. 2007) ;*Kooshtard Prop. VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). The Petitioner provided such an appraisal. It values the subject property at \$112,500 as of March 1, 2007. The appraisal is by an Indiana Certified Residential Appraiser and appears to comply with USPAP standards. It considered all three approaches to valuation: cost, comparable sales and income. Its conclusion about value relied mostly on the comparable sales and the income approaches.
19. The Respondent “questioned” some of the appraiser’s methodology and his choices for comparable sales, but the Respondent failed to effectively impeach or rebut the appraisal with substantial, probative evidence. Although the Respondent perhaps poked a few

holes in the credibility of the appraisal, it was not destroyed. The appraisal remains substantial, credible evidence that a more accurate valuation for the subject property as of March 1, 2007, would be \$112,500.

20. The 2007 assessment, however, must reflect the value of the property as of January 1, 2006. 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).
21. Among the comparable sales that the appraisal considered, one was from April 11, 2003, and another was from August 26, 2004. To reach an opinion about valuation as of March 1, 2007, the appraisal adjusted each of those sales upward by 2% annually. This adjustment was one of the points where the Respondent attempted to challenge the appraisal by merely noting a lack of explanation for how it was determined. This challenge, however, had little impact because the Respondent offered no evidence that the adjustment was wrong or what a more accurate time adjustment might have been. And the PRC for the subject property shows that its assessment continued to be trended upward until 2009—an indication that a 2007 value would be higher than a 2006 value. In this particular case, whether the precise increase was 2% or something else is not of great importance. Even though the appraisal provides evidence of value that relates to the wrong valuation date (March 1, 2007, rather than January 1, 2006), whatever difference there might be operates in favor of the Respondent because the appraisal's 2007 valuation is more than it would have been if the correct valuation date had been used.
22. Therefore, the appraisal helps show that the current assessment is too much and that a more accurate valuation would not be any more than \$112,500.

CONCLUSION

23. The evidence establishes that the assessment should be changed. The assessed value should be no more than what the appraisal indicates.

FINAL DETERMINATION

In accordance with the above findings and conclusions, the assessment must be changed to \$112,500.

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 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>>