

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

Petition No.: 48-003-07-1-4-07709
Petitioner: Terry Stailey
Respondent: Madison County Assessor
Parcel No.: 18 699-4-01
Assessment Year: 2007

The Indiana Board of Tax Review (“Board”) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. On January 30, 2009, Terry Stailey,¹ filed written notice with the Madison County Assessor contesting the subject property’s 2007 assessment. On July 1, 2009, the Madison County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination lowering the property’s assessment, but not to the level that Mr. Stailey had requested.
2. Mr. Stailey then timely filed a Form 131 petition with the Board. He elected to have his appeal heard under the Board’s small claims procedures.
3. On June 9, 2010, the Board held an administrative hearing through its Administrative Law Judge, Patti Kindler (“ALJ”).
4. The following people were sworn in and testified:
 - a) For Mr. Stailey: Terry and Diane Stailey
 - b) For the Madison County Assessor: Jack Norris, Jr., Deputy Assessor

Facts

5. The subject property is located at 927 Broadway in Anderson, Indiana.

¹ The Form 131 petition lists Terry Stailey as the property’s owner, and Mr. Stailey signed the petition in his individual capacity. *Board Ex. A*. Other documents describe the property’s owner alternately as Stailey Properties, LLC and Stailey Homes, Inc. *See id.*

6. The PTABOA determined the following values for the subject property:
Land: \$12,700 Improvements: \$65,500 Total: \$78,200.
7. At hearing, Mr. Stailey requested an assessment of \$45,000 to \$50,000.

Parties' Contentions

8. Summary of Mr. Stailey's contentions:
 - a) The subject property is assessed too high. The building is vacant, and it is not producing any income. *T. Stailey testimony*. Based on Mr. Stailey's unsuccessful efforts to sell the property, it is worth no more than \$45,000 to \$50,000. *T. Stailey argument*.
 - b) On July 13, 2008, Mr. Stailey listed the property for sale with SP Realty, a residential real estate company that he owns with his wife. Based on a commercial broker's opinion of value, Mr. Stailey began with an asking price of \$100,000. *T. Stailey testimony; Pet'r Exs. 1 - 2*. There were no offers, even though Mr. Stailey reduced the price five times, all the way down to \$62,000. *Id.* In September 2009, a commercial broker at RE/MAX listed the property for \$75,000, although Mr. Stailey later reduced the asking price to \$69,000. Because there were no offers, Mr. Stailey next engaged an auctioneer to sell the property. *T. Stailey testimony; Pet'r Ex. 3*. The auctioneer had two open houses, but there was no interest in the property. On March 12, 2009, before the scheduled auction, a local broker made an offer on the property and Mr. Stailey agreed to sell it for \$50,000. *T. Stailey testimony; Pet'r Ex. 4*. But the sale fell through when the property appraised for only \$45,000. *T. Stailey testimony*. The bank that ordered the appraisal would not give it appraisal to Mr. Stailey, but a bank employee did confirm that the appraiser had estimated the property's value at \$45,000. *T. Stailey testimony; Pet'r Ex. 5*. The appraiser also e-mailed a list of six comparable properties that he used in his appraisal. *T. Stailey testimony; Pet'r Ex. 6*. The broker later made an offer of \$45,000, but Mr. Stailey rejected it. *T. Stailey testimony*.
 - c) Mr. Stailey also offered a "Comparative Market Analysis" that Diane Stailey prepared. Ms. Stailey based her analysis on five of the six comparable properties from the appraisal. Two of those properties sold in the fall of 2005. The others sold from late 2007 to early 2009. Among other things, Ms. Stailey's analysis listed the size and age for each building and the number of parking spaces on each property, although she did not include similar information for the subject property. Ms. Stailey then computed both an average sale price and what appears to be an average sale price per square foot, although she based the second average on only two of the five sales. *Pet'r Ex. 7*.

9. Summary of the Assessor's contentions:

- a) The PTABOA reduced the subject property's assessment from \$98,400 to \$78,200 by classifying the building's upper level as an attic, rather than as a half story. *Norris testimony*. The Assessor therefore contends that the assessment is accurate. *Id.*

Record

10. The official record for this matter is made up of the following:

- a) The Form 131 petition,
b) A digital recording of the hearing,
c) Exhibits:

Petitioner Exhibit 1: Summary of listing activity,
Petitioner Exhibit 2: History of listing with SP Realty and RE/MAX,
Petitioner Exhibit 3: January 1, 2010 contract for real estate auction,
Petitioner Exhibit 4: March 12, 2010 purchase Agreement,
Petitioner Exhibit 5: May 26, 2010 e-mails between Diane Stailey and Sam Pellegrino, Vice President, Main Source Bank,
Petitioner Exhibit 6: May 7, 2010 e-mail from Geff Lady to Jean Jukes,
Petitioner Exhibit 7: Comparative Market Analysis and MLS sales data for five properties,
Petitioner Exhibit 8: Form 130 and Form 131 petitions.

Board Exhibit A: Form 131 petition,
Board Exhibit B: Notice of hearing,
Board Exhibit C: Hearing sign-in sheet.

- d) These Findings and Conclusions.

Analysis

Burden of Proof

11. A taxpayer seeking review of an assessing official's determination must make a prima facie case proving both that the current assessment is incorrect and specifically what the correct assessment should 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).
12. In making its case, the taxpayer must explain how each piece of evidence relates to its 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”).

13. Once the taxpayer makes a prima facie case, the burden shifts to the respondent to impeach or rebut the taxpayer’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *Meridian Towers*, 805 N.E.2d at 479.

Mr. Stailey’s Case

14. Mr. Stailey did not make a prima facie case for reducing the subject property’s assessment. The Board reaches this conclusion for the following reasons:
- a) Indiana assesses real property based on its “true tax value,” which the 2002 Real Property Assessment Manual defines 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 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, sales-comparison, and income approaches. *Id.* at 3, 13-15. Indiana assessing officials generally use a mass-appraisal version of the cost approach 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. PA Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 2006). But a taxpayer may rebut that presumption 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 often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 506 n.6. A taxpayer may also offer actual construction costs, sales information for the subject or comparable properties, and any other information compiled according to generally accepted appraisal principles. MANUAL at 5.
 - c) Regardless of the method used to rebut an assessment’s presumed accuracy, a party must explain how its evidence relates to the subject property’s market value-in-use as of the relevant valuation date. *O’Donnell v. Dep’t of Local Gov’t Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, that evidence lacks probative value. *Long*, 821 N.E.2d at 471. For March 1, 2007 assessments, the relevant valuation date was January 1, 2006. 50 IAC 21-3-3 (2009) (*Repealed by Dep’t of Local Gov’t Fin.; filed Apr 8, 2010, 1:45 p.m.: 20100505-IR-050090502FRA*).
 - d) Mr. Stailey relied primarily on the subject property’s recent history on the real estate market. But Mr. Stailey did not list the property for sale until July 2008—more than

- 2 ½ years after the relevant valuation date for the 2007 assessment under appeal. Mr. Stailey therefore needed to explain how his failed attempts to sell the subject property from 2008 forward related to the property's value as of January 1, 2006. And he failed to do so.
- e) The same is true for the appraisal about which Mr. Stailey testified. That appraisal was performed in connection with a broker's offer to buy the subject property in March 2009. Presumably, the appraiser estimated the property's value as of approximately that date. Granted, two of the six sales that the appraiser used in his sales-comparison analysis were from the fall of 2005. But the record does not show whether the appraiser made adjustments to relate those sale prices to market conditions in 2009. And the other sales occurred substantially after January 1, 2006. Also, Mr. Stailey did not have a copy of the appraisal, so there is no evidence to show how the appraiser reached his valuation opinion. Thus, even if the appraiser had estimated the subject property's value as of the relevant valuation date, Mr. Stailey's testimony about the appraiser's valuation opinion would still lack probative value.
 - f) Diane Stailey also performed her own market analysis using five of the sales from the appraisal. Again, while two of those sales were from the fall of 2005, the rest occurred substantially after January 1, 2006. And Ms. Stailey did not explain how they related to property values as of January 1, 2006.
 - g) More importantly, Ms. Stailey did not explain how her analysis related to the subject property's market value-in-use. The sales-comparison approach to value assumes that potential buyers will pay no more for a subject property than it would cost them to purchase an equally desirable substitute property already existing in the marketplace. MANUAL at 13. Thus, one may prove a given property's market value-in-use through evidence showing the sale prices for comparable properties. MANUAL at 5. But the party offering that evidence must show how those other properties compare to the property under appeal. Conclusory statements that the properties are "similar" or "comparable" do not suffice. *Long*, 821 N.E.2d at 470. Instead, the party must identify the subject property's relevant characteristics and explain how those characteristics compare to the characteristics of the purportedly comparables properties. *Id.* at 471. Similarly, she must explain how any differences between the properties affect their relative market values-in-use. *Id.*
 - h) Ms. Stailey did not meaningfully compare any of the characteristics of her five purportedly comparable properties to those of the subject property. And she did not explain how any relevant differences affected the properties' respective market values-in-use. Instead, Ms. Stailey simply showed the range of prices for which the comparable properties sold and computed averages both for overall sale price and for price per square foot. *Pet'r Ex. 7*. Interestingly, the average overall sale price was \$69,200, which is much closer to the subject property's assessment than to the \$45,000 to \$50,000 assessment that Mr. Staley requested. *Id.* Similarly, although Ms. Stailey only used two of the sales to compute an average price-per-square-foot, that average price was \$62.59. *Id.* When multiplied by the subject building's area of

1,485 square feet, that yields a value of \$92,946.15. *Id.*; see also *Pet'r Ex. 8 (MLS sheet attached to Form 131 petition listing the subject building's area)*. In any event, because Ms. Stailey did not meaningfully compare the five purportedly comparable properties to the subject property, the sales data for those properties and Ms. Stailey's market analysis both lack probative value.

Conclusion

- 15. Mr. Stailey did not make a prima facie case for reducing the subject property's assessment. The Board therefore finds for the Madison County Assessor.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now affirms the assessment.

ISSUED: _____

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

IMPORTANT NOTICE

- 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>