

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

Petition: 45-001-09-1-5-00002
Petitioner: Glenn A. Sterba Estate
Respondent: Lake County Assessor
Parcel: 45-08-31-280-006.000-001
Assessment Year: 2009

The Indiana Board of Tax Review (Board) issues this determination, finding and concluding as follows:

Procedural History

1. The Petitioner initiated this assessment appeal with the Lake County Property Tax Assessment Board of Appeals (PTABOA) on December 29, 2010.
2. The PTABOA issued a notice of its determination on May 31, 2012.
3. The Petitioner filed the Form 131 petition with the Board on June 19, 2012. The Petitioner elected to have this appeal heard under the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties on November 21, 2013.
5. On January 13, 2014, Administrative Law Judge (ALJ) Ellen Yuhan held the administrative hearing. The ALJ did not inspect the subject property.
6. Gregory W. Brown, personal representative and attorney for the Glenn A. Sterba Estate, and Robert Metz, Lake County Hearing Officer, were sworn and testified at the hearing.

Facts

7. On March 1, 2009, the subject property was a residential parcel with a single-family dwelling located at 3103 W. 47th Avenue, Gary, Indiana.
8. For 2009, the PTABOA determined the assessment to be \$19,000 for land and \$47,000 for improvements (total \$66,000).
9. The Petitioner requested a value of \$4,400 for the land, and no value for improvements.
Board Exhibit A.

Record

10. The official record contains the following:
- a. The Form 131 petition,
 - b. A digital recording of the hearing,
 - c. Petitioner Exhibit 1 – Invoice for demolition from Graham’s Trucking and Excavating,
Petitioner Exhibit 2 – Interior photographs of the subject property (taken August 3, 2009),
Petitioner Exhibit 3 – Exterior photographs of the subject property (taken August 3, 2009),
Petitioner Exhibit 4 – Invoice from Monroe Pest Control,
Petitioner Exhibit 5 – Letter from the Lake County Health Department,
Petitioner Exhibit 6 – Appraisal Report,¹
Petitioner Exhibit 7 – Contract for the Purchase of Real Estate,
Petitioner Exhibit 8 – Sales disclosure form,

Board Exhibit A – Form 131 petition,
Board Exhibit B – Notice of Hearing,
Board Exhibit C – Hearing Sign-In Sheet,²
 - d. These Findings and Conclusions.

Burden

11. Generally, a taxpayer seeking review of an assessing official’s determination has the burden of proving that a property’s assessment is wrong and 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). Nevertheless, the Indiana General Assembly enacted a statute that in some cases shifts the burden of proof:

This section applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal increased the assessed value of the assessed property by more than five percent (5%) over the assessed value determined by the county assessor or township assessor (if any) for the immediately preceding assessment date

¹ Metz objected to the appraisal because it was not prepared by a certified appraiser. Metz’s objection goes to the weight of the evidence and not the admissibility. The ALJ entered the exhibit over objection.

² The Respondent did not offer any exhibits.

for the same property. The county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.

Ind. Code § 6-1.1-15-17.2.

12. The assessment decreased from \$126,400 in 2008 to \$66,000 in 2009. Therefore, Indiana Code section 6-1.1-15-17.2 does not apply and the Petitioner has the burden of proof.

Contentions

13. Summary of the Petitioner's case:
- a. In June 2009, the owner, Glenn Sterba, died at the property. At the time of his death, the property was found to be filled with debris and infested with rodents. The rodent infestation had existed for a number of years as they had eaten the wiring and eaten holes in the walls and the floors. Further, the neighbors had called the Health Department about the rodent situation well before Sterba's death. *Brown testimony; Petitioner Exhibit 2.*
 - b. Brown went to the residence and found the interior to be uninhabitable and the exterior overwhelmed by vegetation. The property was in need of complete demolition. He concurred with Kirk Day of the Lake County Health Department who found that the property was unfit for human habitation and had been for quite some time. *Brown testimony; Petitioner Exhibits 3 and 5.*
 - c. Prior to the demolition, Brown had to address the rat infestation and hired a pest control company in July 2009 at a cost of \$295. Brown retained Graham's Trucking and Excavating to demolish the building. The cost of demolition was \$14,755. *Brown testimony; Petitioner Exhibits 1 and 4.*
 - d. After the demolition, Brown retained Daniel Barrick, an appraiser, to appraise the property. Barrick used comparable sales from within the area and estimated the market value of the vacant land at \$4,400. *Brown testimony; Petitioner Exhibit 6.*
 - e. Neighbors had contacted Brown repeatedly about the rodent problem and about purchasing the residence. After Brown obtained the appraisal, the neighbors purchased the property in July 2011 for \$4,400. The sales disclosure form was executed on August 4, 2011. *Brown testimony; Petitioner Exhibits 7 and 8.*
14. Summary of the Respondent's case:

- a. The Petitioner’s appraisal was prepared after the demolition of the improvement which would greatly diminish the value. Further, the appraisal was not prepared by a certified appraiser and does not show an appraiser’s license number. While Barrick has experience in the real estate market, he is not a licensed appraiser in the State of Indiana. *Metz testimony; Petitioner Exhibit 6.*
- b. The Lake County Assessor recognized the poor or uninhabitable condition of the structure when the assessment was reduced to \$66,000. *Metz testimony; Board Exhibit A.*

Analysis

15. The Petitioner failed to make a prima facie case that the assessed value is incorrect. The Board reached this decision for the following reasons:
 - a. Real property is assessed based on its “true tax value”, which 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). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach. Other kinds of permissible evidence 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.
 - b. Regardless of the type of evidence, a party must explain how its evidence relates to the required 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). The valuation date for a 2009 assessment was January 1, 2008. 50 IAC 21-3-3. Any evidence of value relating to a different date must have an explanation about how it demonstrates, or is relevant to the value as of that date. *Long*, 821 N.E.2d at 471.
 - c. The Petitioner presented evidence of the uninhabitable condition of the property. The Petitioner’s evidence, however, shows the condition of the property in 2009 which is months after the assessment date and almost a year and a half after the valuation date. Brown contends the poor condition of the property had been ongoing for a number of years, but the first environmental complaint documented in the evidence is June 30, 2009, and the photographs of the property were taken in August of 2009. Brown did not present any evidence in support of his opinion that the subject property was uninhabitable as of the relevant valuation and assessment dates. Statements that are unsupported by probative evidence are conclusory and of little value to the Board in making its determination. *Petitioner Exhibits 1-5; Whitley Products, Inc. v. State Board of Tax Commissioners*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct.).

- d. The Petitioner presented an appraisal report prepared by Daniel Barrick. Barrick used sales of comparable properties to establish a value for the subject property of \$4,400, post demolition. Barrick included his qualifications in his appraisal report, but nothing in the report states that Barrick is an Indiana certified appraiser. While Barrick's assertions may not differ significantly from those made by a certified appraiser in an appraisal report, the appraiser's assertions are backed by his education, training, and experience. The appraiser also typically certifies that he complied with the Uniform Standards of Professional Appraisal Practice (USPAP). Thus, the Board, as the trier-of-fact, can infer that the appraiser used objective data where available to quantify his adjustments. And where objective data was not available, the Board can infer that the appraiser relied on his education, training and experience to estimate a reliable quantification. Here, however, there is no evidence that Barrick is a certified appraiser. He did not establish that he has any particular expertise in applying generally accepted appraisal principles; and he did not certify that he complied with USPAP in performing his analysis. Consequently, Barrick's appraisal report lacks probative value in this case. *See Inland Steel Co. v. State Board of Tax Commissioners*, 739 N.E.2d 201, 220 (Ind. Tax Ct. 2000) (holding that an appraiser's opinion lacked probative value where the appraiser failed to explain what a producer price index was, how it was calculated or that its use as a deflator was a generally accepted appraisal technique).
- e. Additionally, the appraisal report was prepared on November 18, 2010, after the residence was demolished. The appraised value, therefore, is not indicative of the value of the property as of the valuation date of January 1, 2008, nor can the appraisal substantiate the condition of the property for the March 1, 2009, assessment date.
- f. The Petitioner submitted a purchase agreement and a sales disclosure form for the subject property showing the property sold for \$4,400 in August of 2011. The property sold as vacant land and was not the same property that existed on the parcel as of March 1, 2009.
- g. The Petitioner failed to establish a prima facie case. Where the Petitioner has not supported its claims with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

Conclusion

- 16. The Board finds the Petitioner failed to establish a prima facie for a reduction in assessed value. The Board finds for the Respondent.

Final Determination

In accordance with the above findings of fact and conclusions of law, the Indiana Board of Tax Review determines that the assessed value of the subject property should not be changed.

ISSUED: March 14, 2014

Chairman, 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 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice.

The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.