

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

Petition No.: 45-030-03-1-5-00002
Petitioners: Paul J. and Jane A. Sur
Respondent: Ross Township Assessor (Lake County)
Parcel No.: 008-08-15-0023-0033
Assessment Year: 2003

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

Procedural History

1. The Petitioners initiated an assessment appeal with the Lake County Property Tax Assessment Board of Appeals (the PTABOA) by written document dated May 4, 2005.
2. The Petitioners received notice of the decision of the PTABOA on June 26, 2007.
3. The Petitioners filed an appeal to the Board by filing a Form 131 with the county assessor on July 25, 2007. The Petitioners elected to have their case heard pursuant to the Board's small claims procedures.
4. The Board issued a notice of hearing to the parties dated April 1, 2009.
5. The Board held an administrative hearing on May 6, 2009, before the duly appointed Administrative Law Judge (the ALJ) Ellen Yuhan.
6. Persons present and sworn in at hearing:

For Petitioners: Rex D. Hume, Tax representative, Uzelac & Associates

For Respondent: No one appeared for the Respondent.¹

Facts

7. The subject property is a car dealership and auto repair shop located at 6300 Broadway, Merrillville.

¹ The ALJ verified that the Notice of Hearing was mailed with proof of mailing and was not returned to the Board. The Respondent did not contact the Board or the ALJ to request a continuance.

8. The ALJ did not conduct an on-site visit of the property.
9. For 2003, the PTABOA determined the assessed value of the subject property to be \$503,200 for the land and \$337,900 for the improvements, for a total assessed value of \$841,100.
10. The Petitioners requested an assessment of \$634,500.

Issues

11. Summary of Petitioners' contentions in support of an error in the assessment:
 - a. The Petitioners contend the assessment is over-stated because the property sold on December 22, 2005, for \$750,000. *Hume testimony*. In support of this contention, the Petitioners' representative submitted a closing statement and a sales disclosure form from the Lake County website. *Petitioner Exhibits 1 and 2*. According to Mr. Hume, the property was listed with a realtor for a year before it sold. *Hume testimony*.
 - b. The Petitioners' representative testified that he adjusted the 2005 sale price to the January 1, 1999, valuation date using the Consumer Price Index (CPI). *Hume testimony*. Mr. Hume calculated the adjusted value to be \$643,500. *Id.* In support of his valuation, Mr. Hume submitted the calculation and a page from the U. S. Department of Labor showing the CPI for years 1996 through 2007. *Id.*; *Petitioner Exhibit 1*. According to Mr. Hume, he used the CPI to adjust the sale value because the Board approved the method in its *Gerber Lewis and Kokomo Sanitary Pottery* determinations. *Hume testimony*.
 - c. Mr. Hume contends that, while he believes the assessment of the improvements are substantially correct and that the adjustment should be made to the land, it is the bottom-line value of the property that is at issue. *Hume testimony*.

Record

12. The official record for this matter is made up of the following:
 - a. The Petition,
 - b. The compact disk recording of the hearing labeled 45-030-03-1-5-00002 Sur Hearing,
 - c. Exhibits:

Petitioner Exhibit 1 – Form 131 with attachments,

Petitioner Exhibit 2 – Closing statement on the subject property,
Petitioner Exhibit 3 – Power of attorney,

Board Exhibit A – Form 131 petition,
Board Exhibit B – Notice of Hearing dated April 1, 2009,
Board Exhibit C – Hearing sign-in sheet,
Board Exhibit D – Proof of mailing,

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 Township Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Board of Tax Commissioners*, 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 Township 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 Petitioners provided sufficient evidence to establish an error in the assessment. The Board reached this decision for the following reasons:
- a. The 2002 Real Property Assessment Manual defines “true tax value” 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 at 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 approach, the sales comparison approach and the income approach to value. *Id.* at 3, 13-15. Indiana assessing officials generally assess real property using a mass-appraisal version of the cost approach, as 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. P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax Ct. 2006). But a taxpayer may rebut that assumption 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 (USPAP) often will suffice. *See id.*; *see also Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer sales information regarding the subject property or comparable properties. MANUAL at 5.
- c. Regardless of the method, a taxpayer must explain how its evidence relates to the property's value as of the relevant valuation date. *Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 477 (Ind. Tax Ct. 2005); *see also* MANUAL at 4, 8. For assessment years 2002-2005, that valuation date is January 1, 1999. *Id.*; *see also* MANUAL at 2 (stating that the Manual contains the rules for assessing real property for the March 1, 2002, through March 1, 2005, assessment dates).
- d. Here, the Petitioners submitted a closing statement dated December 22, 2005, wherein the subject property was sold for \$750,000. *Petitioner Exhibit 2*. The Petitioners' representative adjusted the sales value to the January 1, 1999, valuation date by using the Consumer Price Index resulting in a value of \$634,500. *Petitioner Exhibit 3*. This is sufficient to raise a prima facie case that the subject property is over-valued.
- e. Once the Petitioners raised a prima facie case, the burden shifted to the Respondent to impeach or rebut the trended value. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). Here the Respondent failed to appear at the hearing to support the assessment or to rebut the Petitioners' case.

Conclusion

- 15. The Petitioners raised a prima facie case that the subject property is over-valued on the basis of its sales price. The Respondent failed to appear at the hearing. The Board finds in favor of the Petitioners and determines the value of the property is \$634,500.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment on the subject property should be changed to \$634,500.

ISSUED: _____

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, 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>>