

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

Petition No.: 06-019-14-1-5-00072
Petitioners: The Georgian Group, LLC
Respondent: Boone County Assessor
Parcel No.: 019-14810-00
Assessment Year: 2014

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

Procedural History

1. The Georgian Group LLC (“Petitioner”) initiated its 2014 appeal with the Boone County Property Tax Assessment Board of Appeals (“PTABOA”) by filing a Form 130.
2. On December 18, 2014, the PTABOA issued its final determination.
3. Petitioner filed a Form 131 petition with the Indiana Board of Tax Review (the “Board”) on January 9, 2015.
4. Petitioner elected to have the appeal heard under the Board’s small claims procedures. Respondent did not elect to have the matter removed from the Board’s small claims procedures.
5. On January 19, 2016, Dalene McMillen, the Board’s administrative law judge (“ALJ”) held a hearing. Neither the Board nor the ALJ inspected the property.
6. Keith Wagoner, member of the Georgian Group, LLC, was sworn and testified for Petitioner. Lisa Garoffolo, Boone County Assessor (“Respondent”), and Peggy Lewis, former member of the PTABOA, were also sworn and testified.

Facts

7. The property under appeal is a single-family home located at 445 West Sycamore Street in Zionsville.

8. The PTABOA determined the following values:
- Land: \$71,800 Improvements: \$36,500 Total: \$108,300
9. At the hearing, Petitioner requested the property's total assessed value be reduced to \$80,000.

Record

10. The official record for this matter consists of the following:
- a. A digital recording of the hearing,
 - b. Exhibits:
 - Petitioner Exhibit 1: Notice of Assessment of Land and Improvements – Form 11, dated July 15, 2014,
 - Petitioner Exhibit 2: Multiple listing sheet (“MLS”) for 355 South 5th Street, Zionsville,
 - Respondent Exhibit 1: Petition for Review of Assessment by Local Assessing Official – Property Tax Assessment Board of Appeals – Form 130, dated August 25, 2014,
 - Respondent Exhibit 2: Boone County Appeal Worksheet,
 - Respondent Exhibit 3: 2014 subject property record card,
 - Respondent Exhibit 4: Notice of Preliminary Hearing on Appeal, dated September 9, 2014,
 - Respondent Exhibit 5: Notice of Preliminary Hearing on Appeal, dated October 14, 2014,
 - Respondent Exhibit 6: Joint Report by Taxpayer / Assessor to the County Board of Appeals of a Preliminary Informal Meeting – Form 134, dated November 3, 2014,
 - Respondent Exhibit 7: Notice of Hearing on Petition – Real Property – Form 114,
 - Respondent Exhibit 8: Notification of Final Assessment Determination – Form 115,
 - Respondent Exhibit 9: Photograph of subject property,
 - Respondent Exhibit 10: The Board’s Notice of Hearing on Petition,
 - Board Exhibit A: Form 131 petition,
 - Board Exhibit B: Hearing notice,
 - Board Exhibit C: Hearing sign-in sheet,
 - c. These Findings and Conclusions.

Burden of Proof

11. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that his property's assessment is wrong and what its 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). A burden-shifting statute creates two exceptions to that rule.
12. First, Ind. Code § 6-1.1-15-17.2 "applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year." Ind. Code § 6-1.1-15-17.2(a). "Under this section, 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(b).
13. Second, Ind. Code § 6-1.1-15-17.2(d) "applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15," except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), "if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct." Ind. Code § 6-1.1-15-17.2(d).
14. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
15. The parties agreed that Petitioner had the burden of proof.

Summary of the Parties' Contentions

16. Petitioner's case:
 - a. Petitioner bought the property for \$80,000 on February 28, 2014. The property was originally listed for \$124,900. That price was later reduced to \$104,900. Petitioner purchased the property from the seller in an arm's length transaction. *Wagoner testimony*.
 - b. Petitioner contends that the house is located in a flood plain and was not in a livable condition at the time of purchase. It suffered from mold and severe flood damage. *Wagoner testimony*.

- c. Petitioner presented information about a purportedly comparable property in a nearby neighborhood on a similar lot. The house is uninhabitable and is also located in a flood plain. It sold for \$90,000 on November 30, 2013. *Wagoner testimony; Pet'r Ex. 2.*

17. Respondent's case:

- a. Respondent contends that the property under appeal was correctly assessed for the 2014 assessment year. In 2013 the property's assessed value was \$206,000. The county recognized there were various issues with the property and lowered the 2014 assessed value to \$108,300. *Garoffolo testimony; Resp't Ex. 3.*
- b. The evidence shows that a permit was issued on June 24, 2014 to raze the structures. The house and garage were on the property on March 1, 2014 and Respondent assessed the structures according the state guidelines. The structures were subsequently removed. *Garoffolo testimony; Resp't Ex. 1-3 & 9.*
- c. Respondent confirmed that Petitioner purchased the property for \$80,000 on February 28, 2014. *Garoffolo testimony; Resp't Ex. 3.*

Analysis

18. Petitioner provided sufficient evidence to establish a prima facie case for a reduction in the assessed value of the property. The Board reaches that conclusion for the following reasons:

- a. Indiana assesses real property based on its true tax value, which does not mean fair market value, but rather the value determined under the Department of Local Government Finance's ("DLGF") rules. The DLGF's 2011 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 by a similar user, from the property." 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). Evidence in a tax appeal should be consistent with that standard. For example, a market value-in-use appraisal prepared according to USPAP often will be probative. *See id.; see also, Kooshtard Property VI, LLC v. White River Township Assessor*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). A party may also offer actual construction costs, sale or assessment information for the property under appeal or comparable properties, and any other information compiled according to generally recognized appraisal practices. *See Eckerling v. Wayne Township Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *see also* Ind. Code § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments to determine an appealed property's market value-in-use).

- b. Regardless of the type of evidence offered, a party must explain how that evidence relates to the 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 Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For 2014 assessments, the valuation date was March 1, 2014. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).
- c. Petitioner purchased the subject property for \$80,000 one day prior to the relevant valuation date. When parties negotiate property at arm's length under conditions indicative of a market value transaction, a property's sale price may be compelling evidence of its value. Petitioner testified without dispute that the property was marketed for a significant period before it was purchased in the an arm's length transaction. The sale price is therefore probative of its true tax value. Thus, Petitioner made a prima facie case for reducing the assessment.
- d. Once a taxpayer raises a prima facie case that the property was overvalued, the burden shifts to the assessing official to rebut the evidence. *See American United Life Insurance Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). To rebut or impeach a petitioner's case, a respondent has the same burden to present probative evidence that the petitioner faced to raise his or her prima facie case. *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005).
- e. Respondent largely relied on the fact that she followed the guidelines and other assessment regulations. Such evidence has little or no probative weight. As the tax court has explained, strictly applying assessment regulations does not necessarily prove a property's true tax value in an assessment appeal. *Eckerling*, 841 N.E.2d at 674 (holding that taxpayers failed to make a case by simply focusing on the assessor's methodology instead of offering market value-in-use evidence). Consequently, Respondent's evidence fails to successfully rebut Petitioner's case.

Conclusion

- 19. Petitioner presented probative evidence that the value of the property was \$80,000. The Board therefore finds in Petitioner's favor and orders that the 2014 assessment be changed to \$80,000.

Final Determination

In accordance with the above findings of fact and conclusions of law, the Board determines that the assessment should be changed.

ISSUED: April 18, 2016

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>>.