

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

Petition No.: 02-074-04-1-5-00705
Petitioner: Ulman Properties LLC
Respondent: Wayne Township Assessor (Allen County)
Parcel No.: 02-13-18-326-003.000-074
Assessment Year: 2004

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

Procedural History

1. Ulman Properties, LLC filed a written request asking the Allen County Property Tax Assessment Board of Appeals (“PTABOA”) to reduce the subject property’s assessment. On November 16, 2006, the PTABOA issued its determination.
2. Ulman Properties disagreed with the PTABOA’s determination and filed a Form 131 petition with the Board. Ulman Properties elected to have the appeal heard under the Board’s small claims procedures.
3. On April 29, 2009, the Board held an administrative hearing through its designated Administrative Law Judge, Joseph Stanford (“ALJ”).
4. F. John Rogers appeared as the attorney for the Wayne Township Assessor. The following people were sworn in and testified:
 - a) Ronald T. Ulman, Manager, Ulman Properties¹
 - b) Amanda Miller, Wayne Township Deputy Assessor

Facts

5. The subject property is located at 3513 Central Drive, Fort Wayne, Indiana. Ulman Properties uses the 884-square-foot home as a rental property.
6. Neither the Board nor the ALJ inspected the subject property.

¹ Although Mr. Ulman described himself as “manager,” he signed the Form 131 petition in the space provided for the taxpayer or its duly authorized officer. *Board Ex. A.*

7. The PTABOA determined that the subject property's assessment was \$6,200 for land and \$32,700 for improvements, for a total of \$38,900.
8. Ulman Properties asked for an assessment of \$6,200 for the land and \$13,800 for the improvements, for a total of \$20,000.

Parties' Contentions

9. Summary of Ulman Properties' contentions:
 - a) Mr. Ulman ran "some MLS comps" and determined the subject property was worth no more than \$20,000. *Ulman testimony*. Mr. Ulman did not bring that MLS information to the hearing, but he has bought and sold residential properties in southeast Fort Wayne for over 20 years. *Id.* To demonstrate his knowledge about property values in that area, he pointed to appeals that he filed on two other properties.
 - b) The first of those properties, located at 4324 Spatz Avenue, was assessed at \$18,200 for March 1, 2004. *Ulman testimony; Pet'r Ex. 3*. On appeal, Mr. Ulman claimed that the property should have been assessed at \$7,000. *Ulman testimony; Pet'r Ex. 4*. In 2006, Mr. Ulman sold the property for \$7,000 after having it on the market for at least 226 days. *Ulman testimony; Pet'r Ex. 3*. The other property, located at 2107 Roy Street, was assessed at \$18,100 for March 1, 2004. *Ulman testimony; Pet'r Ex. 6*. On appeal, Mr. Ulman argued that the property should have been assessed at \$12,000. *Ulman testimony*. In 2006, he sold the property for \$12,000 after having it on the market for at least 169 days. *Ulman testimony; Pet'r Ex. 6*.
 - c) Ulman Properties further argued that the subject property's assessments have fluctuated from year to year. The Assessor valued the property at \$20,800 in 2001, \$38,900 in 2002, \$23,400 in 2006, \$40,800 in 2007, and \$21,500 in 2008. *Ulman testimony; Pet'r Ex. 2*. The assessments for 4324 Spatz Avenue and 2107 Roy Street similarly fluctuated. But in Mr. Ulman's experience, values do not fluctuate like that. Mr. Ulman owns mostly "National Homes" that have three-inch-thick walls and were built "pretty quickly" after the war. Their values do not really change. *Ulman testimony*.
10. Summary of the Assessor's contentions:
 - a) Although the Assessor disagreed with Ulman Properties' contentions, Ms. Miller conceded that the subject property's assessment was wrong and that the property should actually be assessed at \$34,000. *See Miller testimony*.
 - b) To arrive at that number, Ms. Miller used a method she described as a "cost approach with sales comparison" because the Assessor was not able to use the income approach in 2004. *Miller testimony*. Ms. Miller first collected what she

viewed as valid sales data from five comparable properties. *Id.*; *Resp't Ex. C.* She then adjusted each sale price to account for differences between the comparable property and the subject property. *Id.* She adjusted the sale prices for differences in age, condition, grade, and exterior features. After adjusting each comparable sale price and converting it to price per square foot, Ms. Miller determined that the subject property was worth between \$34,835 and \$35,637. *Resp't Ex. C.* She therefore recommended that the assessment be lowered to \$34,000. *Miller testimony.*

- c) In response to Mr. Ulman's analysis of the fluctuations in the subject property's assessment, Ms. Miller explained that the switch from a cost method to one based on market value-in-use caused the property's assessment to change between 2001 and 2002. *Miller testimony.* She also noted that annual trending accounted for the change between 2002 and 2006. *Id.*

Record

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

- a) The Form 131 petition,²
- b) A digital recording of the hearing,
- c) Exhibits:

- Petitioner's Exhibit 1 – Form 131 petition
- Petitioner's Exhibit 2 – Property record card for the subject property
- Petitioner's Exhibit 3 – Property record card for 4324 Spatz Avenue
- Petitioner's Exhibit 4 – Form 131 petition for 4324 Spatz Avenue
- Petitioner's Exhibit 5 – Appeal form and market analysis for 4324 Spatz Avenue
- Petitioner's Exhibit 6 – Property record card for 2107 Roy Street

- Respondent's Exhibit A – Property record card for the subject property
- Respondent's Exhibit B – Photograph of the subject property
- Respondent's Exhibit C – Assessment calculations
- Respondent's Exhibit D – Property record card for 3916 Central Drive
- Respondent's Exhibit E – Photograph of 3916 Central Drive
- Respondent's Exhibit F – Property record card for 3720 Central Drive
- Respondent's Exhibit G – Photograph of 3720 Central Drive
- Respondent's Exhibit H – Property record for 3915 Central Drive
- Respondent's Exhibit I – Photograph of 3915 Central Drive
- Respondent's Exhibit J – Property record card for 3516 Central Drive
- Respondent's Exhibit K – Photograph of 3516 Central Drive

² Ulman Properties originally filed a Form 131 petition for multiple properties, including the subject property. It later filed a separate petition for the subject property. *See Board Ex. A.*

Respondent's Exhibit L – Property record card for 3712 Central Drive
Respondent's Exhibit M – Photograph of 3712 Central Drive

Board Exhibit A – Form 131 petition
Board Exhibit B – Notice of hearing
Board Exhibit C – Hearing sign-in sheet
Board Exhibit D – Notice of appearance for F. John Rogers
Board Exhibit E – Request for copies of documentary evidence and witness list

d) These Findings and Conclusions.

Analysis

Burden of Proof

12. A taxpayer seeking review of an assessing official's determination must establish a prima facie case proving both that the current assessment is incorrect 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).
13. 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).
14. If the taxpayer establishes a prima facie case, the burden shifts to the assessor to offer evidence 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.

Discussion

15. Ulman failed to make a prima facie case for changing 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 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 at 2 (incorporated by reference at 50 IAC 2.3-1-2).
 - b) Assessors typically use a mass-appraisal version of the cost approach to assess individual properties. The Real Property Assessment Guidelines for 2002 – Version A detail that approach. But those Guidelines are merely a starting point for determining value. *Westfield Golf Practice Center, LLC v. Washington Twp. Assessor*, 859 N.E.2d 396, 399 (Ind. Tax Ct. 2007). Thus, while a property's market value-in-use, as ascertained by applying those Guidelines, is presumed to

be accurate, that presumption may be rebutted using relevant evidence that is consistent with the Manual's definition of true tax value. *Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 676 (Ind. Tax Ct. 2006); *see also* MANUAL at 5. That evidence includes market-value-in-use appraisals, actual construction costs, sales information regarding the appealed parcel or comparable properties, and other evidence compiled using generally accepted appraisal principles. *Id.*

- c) Here, Ulman Properties relied mainly on Mr. Ulman's opinion of the subject property's value. Mr. Ulman, in turn, relied on his self-described knowledge of property values in southeast Fort Wayne and on undisclosed "MLS comps." In short, Mr. Ulman essentially asked the Board to take his word for what the subject property was worth. While Mr. Ulman tried to bolster his opinion by claiming that he had correctly estimated the values for two other properties, that fact does little to show that he correctly estimated the subject property's value. As the Tax Court has repeatedly said, the most effective method to rebut an assessment's presumed accuracy is by offering "a market value-in-use appraisal, *completed in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP).*" *E.g., Eckerling*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (emphasis added). Thus, even licensed appraisers with no interest in an appeal's outcome must do more to support their valuation opinions than simply point to past successes; they must show that they based their opinions on generally accepted appraisal principles. And Mr. Ulman did not do that.
- d) Ulman Properties also pointed to fluctuations in the subject property's assessment between 2001 and 2008. As Ms. Miller explained, however, some of those fluctuations might be explained by two changes in the law: the switch to a market-value-in-use system in 2002 and the institution of annual adjustments that began in 2006. *See Westfield Golf*, 859 N.E.2d at 398-99 (discussing Indiana's change to a market-value-in-use system); *see also* Ind. Code § 6-1.1-4-4.5 (requiring the Department of Local Government Finance to adopt rules for annually adjusting assessments to reflect changes in value in years between general reassessments). Those changes, however, do not explain why the subject property's assessment varied so much from 2006 through 2008. Regardless, those unexplained variations do nothing to show the subject property's market value-in-use, much less to show its market value-in-use as of the relevant valuation date for the March 1, 2004, assessment at issue in this appeal. *See* MANUAL at 2, 4, 12 (setting January 1, 1999, as the valuation date for the 2002 general reassessment and stating that the Manual provides the assessment rules for all assessment from March 1, 2002, through March 1, 2005).
- d) Although the burden never shifted to the Assessor to defend the subject property's assessment, the Assessor, through Ms. Miller, conceded that the property's assessment should be lowered to \$34,000. The Board accepts that concession.

Conclusion

16. Ulman Properties failed to make a prima facie case for reducing the subject property's assessment. Nonetheless, the Board accepts the Assessor's concession that the subject property's assessment should be lowered to \$34,000.

Final Determination

In accordance with the above findings and conclusions, the Indiana Board of Tax Review now determines that the subject property's March 1, 2004, assessment should be changed to \$34,000.

ISSUED: July 27, 2009

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>