

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

Petition: 15-018-10-1-5-01652
Petitioner: Welbourne G. Williams, Trustee of W.G. Williams Trust
Respondent: Dearborn County Assessor
Parcel: 15-01-29-200-086.000-018
Assessment Year: 2010

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

Procedural History

1. The Petitioner initiated an assessment appeal with the Dearborn County Property Tax Assessment Board of Appeals (PTABOA) by filing a Form 130 petition dated October 22, 2010.
2. The PTABOA issued notice of its decision on January 21, 2011.
3. The Petitioner appealed to the Board by filing a Form 131 petition on March 7, 2011. He elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing to the parties dated July 7, 2011.
5. Administrative Law Judge Paul Stultz held the Board's administrative hearing on September 13, 2011. He did not conduct an inspection of the property.
6. Welbourne G. Williams, County Assessor Gary R. Hensley, Jim Davis, and Jeffrey D. Thomas were sworn as witnesses.

Facts

7. The property is an unimproved parcel located in a single-family housing subdivision on Easy Way Drive in Guilford.
8. The PTABOA determined the total assessment is \$18,800 (land value only).
9. The Petitioner requested a total assessed value of \$16,000.

Contentions

10. Summary of the Petitioner's case:

- a. An appraisal by David Bischoff shows the assessment is too high. Mr. Bischoff is a certified appraiser. The appraisal states, "The subject property does have some limited building areas due to the topography and drainage." According to the appraisal the value of the subject property was \$16,000 as of March 1, 2010. The assessment should be no higher. *Pet'r Ex. 2010-4; Williams testimony/argument.*
- b. The subject property is "compromised" with two drainage ditches/swales running through much of it. There is a big drop from the street so that the back of the property sits approximately 40 feet below street level. This property is not suitable to build on. The Petitioner did not purchase this property to build on it, but to protect a contiguous parcel that he owns from additional water run-off. *Pet'r Ex. 2010-5; Williams testimony.*
- c. County records incorrectly state the purchase price. The property record card shows \$50,000. But that amount was for two parcels. The Petitioner actually paid only \$30,000 for the parcel that is the subject property. *Pet'r Ex. 2010-7; Williams testimony.*
- d. Eleven lots sold in this same subdivision from January 2009 to March 1, 2010. One sold for \$15,000. The others sold together for \$110,000 (an average of \$11,000 per lot). The Respondent apparently has not considered these sales because he continues to use a base rate of \$48,000 per acre to assess the subject property. *Pet'r Ex. 2010-6; Williams testimony/argument.*

11. Summary of the Respondent's case:

- a. The subject property is not a buildable parcel. Sometimes parcels that do not fit the model can "fall through the cracks." *Hensley testimony.*
- b. The appeal process can bring attention to abnormal properties such as the subject. *Davis testimony.* As a result of the appeal, Mr. Bischoff's appraisal already got a great deal of weight in the decision to lower the assessment to \$18,800. *Hensley testimony.*
- c. In Indiana assessors use a mass appraisal system that was followed in this case. It allows for assessments that are within an acceptable range. The 11 sales that the Petitioner submitted were considered along with other sales. The neighborhood is not necessarily limited to this particular subdivision. Sales from outside the subdivision could have been used. Further, the Petitioner's own appraiser used only one of the 11 sales. He also used one comparable property that is 10 miles from the subject and another that is five miles away. *Davis testimony.*

Record

12. The official record contains the following:
- a. The Petition,
 - b. A digital recording of the hearing,
 - c. Petitioner Exhibit 2010-1 – Form 131 Petition,
Petitioner Exhibit 2010-2 – Form 130 Petition,
Petitioner Exhibit 2010-3 – Form 115, Final Assessment from PTABOA,
Petitioner Exhibit 2010-4 – Certified appraisal by David Bischoff,
Petitioner Exhibit 2010-5 – Description and drawing of subject parcel,
Petitioner Exhibit 2010-6 – Listing of sales and plat map of subdivision,
Petitioner Exhibit 2010-7 – Property record card,
Petitioner Exhibit 2010-8 – Statement of Petitioner’s contentions,

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

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 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).
 - 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 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”).
 - 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 Petitioner made his case for a change in the assessment.
- a. Real property is assessed based on its "true tax value," which does not mean fair market value. It 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); 2002 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.3-1-2). A taxpayer may offer evidence relevant to market value-in-use to rebut the presumption the assessment is correct. Such evidence may 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. MANUAL at 5.
 - b. A 2010 assessment must reflect the value of the property as of March 1, 2010. Ind. Code § 6-1.1-4-4.5. Any evidence of value relating to a different date must also have an explanation about how it demonstrates, or is relevant to, the value as of the required valuation date. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
 - c. The Petitioner submitted an appraisal of the property as of March 1, 2010. An appraisal, completed in conformance with the Uniform Standards of Professional Appraisal Practice, is often the most effective method to rebut the presumption that an assessment is correct. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 94 (Ind. Tax Ct. 2006); *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 506 n. 6 (Ind. Tax Ct. 2005). The appraisal was prepared by a licensed appraiser, who concluded that as of March 1, 2010, the market value-in-use of the subject property was \$16,000. It makes a prima facie case for changing the assessment.¹
 - d. A substantial amount of the Respondent's case related to how the mass appraisal system and annual trending is supposed to work, as well as how the Respondent met those responsibilities. The Respondent implied that the subject assessment draws validity from the fact that the disputed assessment is within an acceptable range for mass appraisals. An appeal of an individual assessment, however, is an entirely different thing. The Respondent provided no authority or substantial explanation for the conclusion that there is an acceptable range for establishing the value of property for the purposes of this appeal. This kind of argument does not overcome probative evidence that is more precise about the value because taxpayers are specifically permitted to offer relevant evidence that includes appraisals and any other information compiled in accordance with generally accepted appraisal principles. MANUAL at 5.
 - e. The Respondent did little to rebut the appraisal. His only disagreement was that the appraiser's sales-comparison approach used two comparables that purportedly

¹ The Petitioner's other evidence generally supports the appraiser's conclusion, but it is unnecessary to address that evidence in detail in this determination.

are located too far away from the subject. On the other hand, the Respondent admitted the neighborhood is not limited to this particular subdivision and used sales from outside the subdivision to develop the applicable land base rate. The Respondent failed to establish that the location of the appraisal's comparable sales is a significant problem for the conclusion of value.

- f. Furthermore, the Respondent admitted that the appraisal had great weight in deciding to reduce the assessment to \$18,800.
- g. The Respondent offered nothing substantial against the reliability and credibility of the appraisal or the appraiser.
- h. Accordingly, the Respondent did not rebut or impeach the appraisal, which established that the subject property's 2010 assessment should be \$16,000.

Conclusion

15. The Board finds in favor of the Petitioner. Consequently, the assessment must be changed.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the subject property's 2010 assessed value is \$16,000.

ISSUED: _____

Commissioner, 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>>