

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

Petition: 18-021-06-1-5-00065
Petitioners: Robert & Dana Williams
Respondent: Delaware County Assessor
Parcel: 18-10-36-431-007-000
Assessment Year: 2006

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 Petitioners initiated an assessment appeal with the Delaware County Property Tax Assessment Board of Appeals (PTABOA).
2. The PTABOA mailed notice of its decision on May 16, 2008.
3. The Petitioners appealed to the Board by filing a Form 131 on June 23, 2008. Petitioners elected to have this case heard according to small claims procedures.
4. The Board issued a notice of hearing to the parties dated April 15, 2009.
5. Administrative Law Judge Paul Stultz held the Board's administrative hearing on May 19, 2009. He did not inspect the property.
6. Dana Williams, Robert Williams, and Deputy Assessor Kelly Hisle were sworn as witnesses.

Facts

7. This case is about a residential property located at 4921 West Frances Avenue in Muncie.
8. The PTABOA determined the assessed value is \$7,100 for the land and \$92,500 for the improvements (total \$99,600).
9. The Petitioners requested an assessed value of \$7,100 for the land and \$71,900 for the improvements (total \$79,000).

Contentions

10. Summary of the Petitioners' case:
 - a. The subject property would not sell for more than \$79,000. It is situated near poorly maintained properties, some of which are occupied and some of which are vacant. *D. Williams testimony.*
 - b. The housing addition where the subject property is located was once a desirable location. Homes sold quickly. But now homes are sitting empty or they have been on the market for a few years. One home was listed in the newspaper as a foreclosure sale for \$20,000. A home across the street sold in an auction for \$30,000. Another home in the area was listed for sale at \$70,000 and finally sold for \$54,000. A well maintained home in the area has been on the market for years—it is listed for \$53,900. A property adjacent to the subject property on Elmview Drive is an all brick home comparable to the subject property in square footage, garages, and land size. The Elmview Drive property is vacant and listed for sale at \$42,900. *D. Williams testimony.*
 - c. The subject property needs updates such as windows. *D. Williams testimony.*
11. Summary of the Respondent's case:
 - a. A spreadsheet was created comparing the subject property to four nearby properties. Because the housing addition where the subject property is located did not have any 2004 or 2005 sales, the spreadsheet uses three sales from a comparable addition nearby and one sale in the same neighborhood as the subject property. The sale prices of the comparable properties were adjusted to account for differences in features, time of sale, or seller's concessions. *Hisle testimony; Resp't Ex. 2.*
 - b. Comp #1 sold in May 2005 for \$112,000. Comp #1 is an average condition one-story home built in 1969 with 1,592 square feet on crawl space, a 2-car attached garage, an open masonry porch, a patio, and without central air. The adjusted sale price for Comp #1 is \$109,340. The assessment per square foot of Comp #1 is \$70.35. Comp #2 sold in July 2004 for \$108,000. Comp #2 is an average condition one-story home built in 1960 with 1,350 square feet on crawl space, a 1-car attached garage, an enclosed frame porch, a patio, and central air. The adjusted sale price for Comp #2 is \$115,070. The assessment per square foot for Comp #2 is \$71.03. Comp #3 sold in May 2004 for \$84,900. Comp #3 is an average condition one-story home built in 1953 with 1,319 square feet on crawl space, a 1-car attached garage, an open frame porch, a patio, and without central air. The adjusted sale price for Comp #3 is \$90,880. The assessment per square foot for Comp #3 is \$63.76. Comp #4 sold in June 2004 for \$97,000. Comp #4 is an average condition one-story home built in 1960 with 1,603 square feet on crawl space, a 2-car attached garage, an open masonry porch, a patio, and without

central air. The adjusted sale price for Comp #4 is \$101,025. The assessment per square foot for Comp #4 is \$59.08. *Hisle testimony; Resp't Exs. 2–5(e)*.

- c. The average per square foot assessment of the comparable properties is \$66.06 compared to the subject property's square foot assessment of \$64.30. *Hisle testimony; Resp't Ex. 2*.
- d. The property record card has some mistakes. When those are corrected, the assessed value for the subject property should only be \$97,100. *Hisle testimony*.

Record

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

- a. The Petition with attachments,
- b. A digital recording of the hearing,
- c. Exhibits:
 - Petitioner Exhibit 1 – Form 131 Petition,
 - Petitioner Exhibit 2 – Form 115 Final Assessment Determination,
 - Petitioner Exhibit 3 – Letter requesting a review of the assessment,
 - Petitioner Exhibit 4 – Form 11 R/A for 2006,
 - Petitioner Exhibit 5 – Tax bills for 2006 and 2007,
 - Petitioner Exhibit 6 – CMA Analysis,
 - Petitioner Exhibit 7 – Summary of the Petitioners' contentions,
 - Respondent Exhibit 1 – None,
 - Respondent Exhibit 2 – Sales comparison grid,
 - Respondent Exhibit 3 – Property record card (PRC) for the subject property,
 - Respondent Exhibit 4 – Information related to the recording of the subject property's mortgage,
 - Respondent Exhibit 5 – Sale listing information and PRC for 3401 West Merrywood,
 - Respondent Exhibit 5a – Listing information and PRC for 5001 South Edgewood,
 - Respondent Exhibit 5b – Sales disclosure form for 5001 South Edgewood,
 - Respondent Exhibit 5c – Listing information and PRC for 5001 West County Road 350S, Muncie,
 - Respondent Exhibit 5d – Listing information and PRC for 5100 South State Road 67, Muncie,
 - Respondent Exhibit 5e – Sales disclosure form for 5100 South State Road 67, Muncie,
 - Board Exhibit A – Form 131 Petition with attachments,
 - Board Exhibit B – Notice of Hearing on Petition,
 - 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 Petitioners failed to prove that the current assessment is wrong or what a more accurate assessment might be. This conclusion was arrived at for the following reasons:
 - 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. Regardless of the approach used to prove a property’s value-in-use, a 2006 assessment must reflect value as of January 1, 2005. An appraisal or any other evidence of value must have some explanation as to how it demonstrates or is relevant to 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 Petitioners introduced a Comparative Market Analysis (CMA) prepared by Patrick Orr, who is identified as a broker-auctioneer. His undated letter to the Petitioners concludes the value of their home is “in the \$90,000 range.” Neither his opinion about the value of the subject property, nor any of the listing and sales data that he apparently relied on demonstrates compliance with the required valuation date for a 2006 assessment (relevant evidence must somehow relate to January 1, 2005). Nothing establishes that the CMA information was compiled in accordance with generally accepted appraisal principles. Furthermore, the Petitioners failed to explain how the CMA or Mr. Orr’s opinion might support their claim that the assessment should be \$79,000. To repeat, in making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *Indianapolis Racquet Club*, 802 N.E.2d at 1022. The CMA has no probative value and does not help to make the Petitioners’ case.
- d. The Petitioners testified about how their neighborhood has become less desirable. There are poorly maintained homes. There are vacant homes. There are homes that have been on the market for years without selling. There are homes that sell at substantially reduced prices, such as foreclosures and auctions. There can be little doubt that such circumstances reduce the value of the subject property to some degree. But to make a case, the Petitioners must quantify that effect. To make their case, they must establish what the correct valuation would be.
- e. The Petitioners offered only cursory evidence regarding sales of neighboring properties as evidence that their property is over assessed:

In our once desirable addition where homes sold quickly, homes have been sitting empty and/or on the market for a few years. One sold in the \$20,000’s range, one in the \$30,000’s. Another priced over \$70,000, I saw reduced to \$54,000, and has sold. Another well maintained property has been on the market for years and is priced at \$53,900.

D. Williams testimony; Pet’r Ex. 7. The Petitioners failed to provide specific facts and details with supporting documentation regarding any of those sales. The facts necessary for making any kind of meaningful analysis, such as the date of sale, type of sale, and whether the properties really are comparable to the subject property, are lacking. The Petitioners also failed to explain how any of this evidence supports their claim that the subject property should be valued at \$79,000. Their conclusory testimony about these sales has no probative value. *Whitley Prods., Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

- f. When a taxpayer fails to provide probative evidence supporting its position that an assessment should be changed, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *See Lacy Diversified Indus. v. Dep’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003);

Whitley Products, Inc. v. State Bd. of Tax Comm'rs, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998).

Conclusion

15. The Petitioner failed to make a prima facie case. Nevertheless, the Respondent admitted that the assessment should only be \$97,100. Therefore, a change is required.

Final Determination

In accordance with the above findings and conclusions, the assessment for the subject property must be changed to \$97,100.

ISSUED: _____

Commissioner, Indiana Board of Tax Review

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- 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>>